

Pharmacy Development
Allen Avenue – Portland, Maine
Zoning Board of Appeals
Interpretation Appeal
Prepared For
The Richmond Company
June 2008

Traffic Engineering

- Impact Studies
- Corridor Studies
- Parking Studies
- Pedestrian Studies
- Roadway Design
- Peer Review
- Traffic Calming

Civil Engineering

- Site Plan Design
- Stormwater Management
- Erosion Control
- Utility Design
- Permitting
- Feasibility Studies

15 Shaker Rd.
PO Box 1237
Gray, ME 04039
207-657-6910



THE
RICHMOND
COMPANY, INC.
23 Concord Street
Wilmington, MA 01887
(978) 988-3900 • Fax (978) 988-3950

June 27, 2008

Board of Appeals
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Appeal of the Richmond Company, Inc

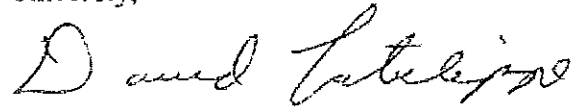
Dear Members of the Board:

Please find enclosed an appeal, under Section 14-472 of the Zoning Ordinance, from an interpretation made by the Zoning Administrator. The reasons for our appeal are described in the enclosed statement of appeal from Christopher L. Vaniotis, Esquire

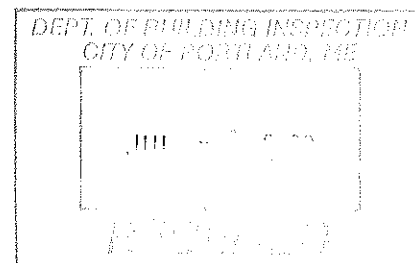
While we are optimistic that the Board will agree with our analysis and grant this appeal, we have also filed a separate request for a practical difficulties variance, as a second means to achieve our goal of redeveloping what is currently a blighted collection of properties at the corner of Washington and Allen Avenues

We look forward to meeting with the Board on July 17th

Sincerely,



David Latulippe
Vice President



Cc Philip Pastan - via interoffice mail
Kathryn Fossa - via interoffice mail
Christopher Vaniotis, Esq. - Bernstein & Shur

List of Attachments
Interpretation Appeal

1. Application
2. Statement of Interpretation Appeal
3. Tax Information
4. Title, Right, & Interest
5. Photos
6. Site Plan



City of Portland, Maine
Planning and Development Department
Zoning Board of Appeals
Interpretation Appeal Application

Applicant Information:

*Representation
Billing
PASC KASEK*
David Latulippo
Name
The Richmond Company
Business Name
23 Concord St.
Address
Wilmington, MA 01887
978-988-3900 N/A
Telephone Fax

Subject Property Information:

340 Allen Avenue
Property Address
Map 344, Lot E8, E12, E36, E37, E42, E47, E50
Assessor's Reference (Chart/Block/Lot)
Property Owner (if different):
See Attached Sheet
Name
Address
Telephone Fax

Applicant's Right, Title or Interest in Subject Property:

Purchase Option Agreement
(e.g. owner, purchaser, etc.):

Current Zoning Designation: B-2

Disputed Provisions from Section 14 - 185(c)

Existing Use of Property:

Commercial (Lockard's Collision Center, Subway/Dragon Up,
Barbor Shop, Primerica Financial Building)

Order, decision, determination, or interpretation under
dispute:

The definition and application of minimum front
yard setback in the B-2 zone.

Type of Relief Requested:

None Required

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

The undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

David Latulippo
Signature of Applicant Date *6/27/08*

STATEMENT OF INTERPRETATION APPEAL
OF THE RICHMOND COMPANY, INC.

The question in this appeal is whether the Zoning Ordinance imposes a maximum front yard setback in the B-2 zone. We believe the answer is "no," and is found right in the language of Section 14-185(c). The relevant portion of that section reads as follows:

- (c) *Yard dimensions:* (Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)

Except as provided in subsection (e) below, the following setbacks are required:

1. *Front Yard*

- a. *Minimum front yard in B-2 and B-2c zone:* None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected.
- b. *Maximum front yard in B-2b zone (On-peninsula):* The maximum front yard setback shall either be: (1) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.

Building additions are not required to meet this maximum setback.

- c. *Maximum front yard in B-2b zone (Off-peninsula):* None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected.

There is no doubt that in the B-2b zone the ordinance does impose a maximum front yard setback. The ordinance says so expressly, using the words "maximum front yard in B-2b zone" in two places, subparagraph (b) (on-peninsula) and subparagraph (c) (off-peninsula).

But the Richmond Company property is not in the B-2(b) zone; it is in the B-2 zone, and the ordinance does not contain any maximum front yard setback in the B-2 zone. It lists only a "minimum front yard."

It is obvious that the ordinance uses the word "maximum" when it means maximum and "minimum" when it means minimum, and it does not use the word maximum in the B-2 zone. Nevertheless, the zoning administrator has interpreted the minimum setback requirement of the B-2 zone as also imposing a maximum. For the reasons set forth below, the appellant believes that the Zoning Administrator's interpretation is incorrect and should be reversed by the Board of Appeals.

Section 14-185(c)(1)(b) lists the minimum front yard requirement in the B-2 zone as "none." That is easy enough to apply. A building in the B-2 zone is allowed to be constructed right at the edge of the front property line. However, there is an exception within Section 14-185(c)(1)(a), which applies when lots on either side of the subject lot are already developed. That exception states that "the front yard setback shall not exceed the average depth of the front yard of the closest developed lots on either side of the lot." Focusing on the words "shall not exceed," the Zoning Administrator interprets that language to mean that a building can be located no further away from the line established by the average depth of the buildings on either side of the subject lot – transforming the minimum setback requirement into a maximum setback requirement as well.

That interpretation does not take into account two key words in the "minimum front yard" setback requirement established for the B-2 district. First, it ignores the word "minimum." Second, it misapplies the term "setback," which is a defined term in Section 14-47 of the ordinance. Setback is: "[t]he required distance and the land resulting therefrom between a street line and the closest possible line of a conforming structure." (Emphasis added.) So when the ordinance states that the minimum front yard setback "shall not exceed" the average depth of the adjoining front yards, that means that the minimum requirement imposed on the property owner cannot exceed that average depth. Therefore, the closest the property owner can locate a business is the average depth; that is the required minimum setback. But, as with any minimum setback requirement, it does not mean that the property owner cannot locate a structure further away than the stipulated minimum.

The ordinance language is really very simple, applying plain, ordinary English. The minimum setback is the shortest allowable distance between the street and any structure. The maximum setback is the longest allowable distance between the street and any structure. For the property owner, the minimum requirement answers the question, "How close can I get?" The maximum requirement answers the question, "How far away can I get?" In the B-2 district, there is no maximum, and so no limit on how far away a building can be located from the street line.

In her written interpretation, the Zoning Administrator contends that the word "minimum" in Section 14-185(c) does not mean anything because she considers that word to be part of a "heading" or "title." But that is not the case. A heading or title is something that serves as a guide to the reader but is not part of the main text, so that you can remove a heading or title and the text still makes sense. In Section 14-185(c)(1)(a), the words "minimum front yard in B-2 and

B-2c zone” are not just a helpful guide to the reader. They are an essential piece of the regulation. Remove those words, and the remaining words of subparagraph (a) make no sense – right down to not being able to tell what zones the text applies to. The Zoning Administrator’s interpretation does not simply ignore a heading; it changes the word “minimum” to “maximum” in the text. That is rewriting the ordinance, not interpreting it.

The Zoning Administrator’s letter also tries to rewrite the ordinance in her analysis of the word “setback.” The Zoning Administrator describes the word setback as “referring to the act of setting back or away from the property line....” But that is not the definition in the Portland Zoning Ordinance. Under the ordinance definition, “setback” is not the “act of setting back,” it is the “required distance” between a building and the lot line – it is the standard set by the ordinance.

Nor is it appropriate to ignore the words of the ordinance because of comments made in staff memos to the City Council nine years ago. The characterization of the B-2 zone amendments as intended to “promote pedestrian oriented design and access” does not translate into a maximum front yard setback regulation.

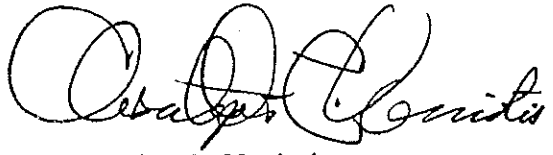
Finally, the Zoning Administrator uses the City of Portland Technical Standards and Design Guidelines to “fortify” her interpretation, with specific mention of the “urban street wall.” To the contrary, the land use ordinance specifically provides that the urban street wall standard is not a requirement in the B-2 zone. See Section 14-526(a)(27), subparagraphs (a) and (c) (copy attached). Compliance with the design guidelines for urban street walls and location of building entrances are “encouraged,” but are not mandated in the B-2 zone. The first paragraph of subsection (27) states clearly: “Where noted below, the city encourages adherence to the guidelines contained within the city’s technical and design standards and guidelines, but such adherence is not mandatory in order to meet the standards otherwise set forth herein.” (Emphasis added.) The fact that the urban street wall is encouraged but not required by subsection (27) fortifies the conclusion that there is no maximum setback requirement in the B-2 zone.

The circumstances of this case are somewhat unusual. The Board of Appeals is accustomed to having applicants who want to get closer to a property line, rather than further away. But to develop this property appropriately, the Richmond Company needs to configure the building in a way which allows customer access to the front of the building from parking located between the front of the building and the street. The Zoning Administrator’s interpretation impairs the property owner’s ability to make use of the property in an efficient, economically viable way.

It is a longstanding principle of zoning law in Maine that, where an ordinance is vague, the ordinance should be interpreted in a way which does not restrict the rights of the property owner. Town of Union v. Strong, 681 A.2d 14 (Me.1996); LaPointe v. City of Saco, 419 A.2d 1013 (Me.1980); Moyer v. Board of Zoning Appeals, 233 A.2d 311 (Me.1967); and Toulouse v. Board of Zoning Adjustment, 87 A.2d 670 (Me.1952). While we do not think there is anything ambiguous about Section 14-185(c), with its stated distinction between minimum setbacks and maximum setbacks, if the Board of Appeals concludes the ordinance is not entirely clear, that lack of clarity should not work to the detriment of the property owner. The City always has the option of amending the ordinance to make it clear.

We thank you for your attention to this appeal.

Date: June 27, 2008

A handwritten signature in cursive script, appearing to read "Christopher L. Vaniotis".

Christopher L. Vaniotis
Attorney for The Richmond Company, Inc.

City of Portland
Land Use Code
Sec. 14-526(a) (27)

(27) Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the following additional standards. Where noted below, the city encourages adherence to the guidelines contained within the City's Technical and Design Standards and Guidelines, but such adherence is not mandatory in order to meet the standards otherwise set forth herein.

- a. Urban Street Wall. Standard: In the B-1, B-1b, and B-2b zone it shall be required that buildings shall be located to create and preserve an urban street wall.

Buildings located in the B-2 zone are encouraged to adhere to guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.

- c. Building Entrances. Standard: In the B-1 and B-2b zone building entrances shall be oriented toward, located adjacent to, and directly accessible from, a sidewalk in a public right-of-way.

In the B-1b and B-2 zones building entrances are encouraged to adhere to the guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.



PORTLAND MAINE

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Lee Urban- Director of Planning and Development
Margie Schmuckal, Zoning Administrator

June 26, 2008

Christopher L. Vaniotis
Bernstein Shur Counselors at Law
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

RE: 340 Allen Avenue - 344-E-036 - B-2 Zone - Site Plan Application #2007-0189

Dear Chris,

This department is in receipt of a site plan submittal concerning the redevelopment of a site on the corner of Washington and Allen Avenues. During an initial zoning analysis, it has come to my attention that the required front yard setback is not being met as historically interpreted by this division.

It is understood that the front of this corner lot is along Washington Avenue. Therefore Allen Avenue is a side yard on a side street. 14-185(c)1.a. states:

"1. Front Yard

a. *Minimum front yard in B-2 and B-2c zone:* None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected.

b. *Maximum front yard in the B-2b zone (On-peninsula):* The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.

Building additions are not required to meet this maximum setback.

c. *Maximum front yard in B-2b zone (Off-peninsula):* None, except that the front yard setback shall not exceed the average depth of the front yards of the closest

developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected."

The property being redeveloped is within the B-2 Zone. Therefore the front yard requirements would be controlled by 1.a which regulates the front yard requirements for the B-2 and B-2c zones. The B-2b zone is regulated under 1.b. and 1.c.

The submitted plans show a front yard setback of approximately 134 feet from the front property line off Washington Avenue back to the front of the building. These same plans are showing the average setback of buildings on adjacent parcels as 38.5 feet. My interpretation of the minimum front yard setback clearly shows the new building is setback further than what is allowed under the ordinance. The new building should be setback no further than the 38.5 feet from the front property line.

I understand the applicant's reasoning concerning this section of the ordinance. However, I disagree with that reasoning. I understand that the title heading of the ordinance does read "Minimum" and not "Maximum". Court cases have previously determined that headings and/or titles of paragraph do not rule an interpretation. It is the wording of the regulations that guide an interpretation. I have determined that the wording of 1.a. does limit the projection of a structure into the site from the front property line. In essence there is a maximum setback that a building can be placed extending into a lot from the front property line, even though the heading may classify this requirement as a "minimum".

Much of my interpretation is guided by the plain meaning of the words such as "exceed", which means go beyond, or to surpass. Even the word "setback" is referring to the act of setting back or away from the property line (in this case the front property line). The setback of the new building shall not be placed further back from the front property line or beyond the average setback of the buildings on the adjacent parcels. I do not believe that "exceed" refers to placing the building closer to the front property line from the average setback line.

My interpretation of the ordinance is reinforced by Planning Board Staff memos to the City Council in 1999 when the B-2 zones were revised. The amendments at that time were characterized to "promote pedestrian oriented design and access". Orientation close to the street is one of the methods used for this goal.

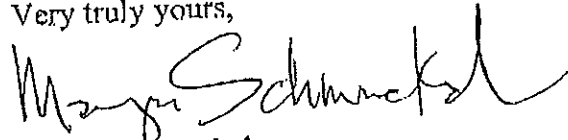
The City of Portland Technical Standards and Design Guidelines also fortify my interpretation. Under the guideline for building location and form, the Technical Standards state that "buildings shall be located near the street so as to create an urban street wall". It goes on to state that that "Major entries should be adjacent to, or very close to, the street and public sidewalk". The intent is to bring the building as close to the street line as possible. Section 14-185(c)1.a. does first state that there is no minimum setback required. The requirement in this section is not intended to set the building back further than the buildings on either side.

Instead it is intended to set the building *no further back* than the buildings on either side.

Because this particular issue arose during my zoning review of your initial application, the zoning review has not been finalized. Although, at this time, I am not aware of any other violations of the ordinance, I reserve my right to complete my review and would certainly apprise the applicant immediately of any other zoning issues.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

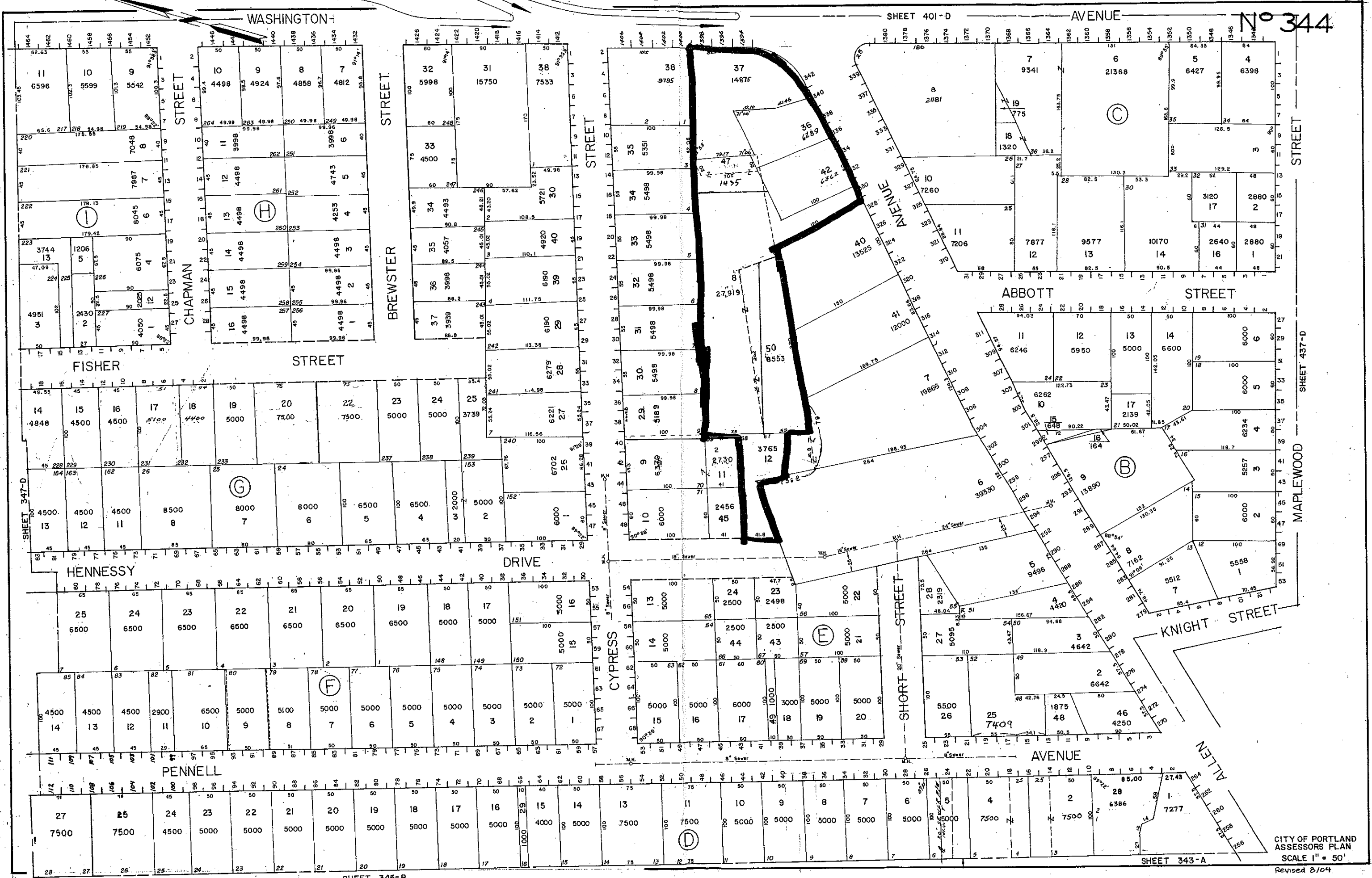
Very truly yours,



Marge Schmuckal
Zoning Administrator

Cc: Penny Littell, Director of Planning and Development
Alex Jaegerman, Planning Division Director
Barbara Barbydt, Planning
Legal
David Latulippe, The Richmond Co., 23 Concord Street, Wilmington, MA
01887

attachments



N^o 344

SHEET 401-D

AVENUE

STREET

STREET

MAPLEWOOD

STREET

STREET

STREET

CITY OF PORTLAND
ASSESSORS PLAN
SCALE 1" = 50'
Revised 8/04

WASHINGTON

STREET

CHAPMAN

FISHER

STREET

HENNESSY

DRIVE

PENNELL

CYPRESS

SHORT

AVENUE

KNIGHT

ALLEN

SHEET 345-B

SHEET 343-A

Property Owners

344-E8

DAVISON REALTY LLC
330 ALLEN AVE
PORTLAND, ME 04103

344-E36

LOCKARD, ROBERT A
PO BOX 204
GRAY, ME 04039

344-E37

LOCKARD, ROBERT A
PO BOX 204
GRAY, ME 04039

344-E42

FEENEY, THERESA & ROBERT L. FEENEY
71 BLACKSTRAP RD
FALMOUTH, ME 04105

344-E47

LOCKARD, ROBERT A
PO BOX 204
GRAY, ME 04039

344-E50

LOCKARD, ROBERT A
PO BOX 204
GRAY, ME 04039

OPTION AGREEMENT

AGREEMENT made and entered into this ^{12th} ~~July~~ day of July, 2007, by and between Davison Realty Property with a mailing address of 330 Allen Avenue, Portland, Maine 04101, as optionor (hereinafter referred to as "Seller"), and The Richmond Company, Inc., a Massachusetts corporation with a mailing address 23 Concord Street, Wilmington, Massachusetts 01887, as optionee (hereinafter referred to as "Buyer").

WITNESSETH AS FOLLOWS:

IN CONSIDERATION OF the Buyer making a deposit with John Moncure, Esq. as Escrow Agent (the "Escrow Agent") in the amount of Fifty Thousand Dollars (\$50,000.00) (the "Deposit"), within three business days after the execution hereof by the last of Buyer and Seller to sign (the "Effective Date"), all such monies paid shall be applicable to the purchase price, and the mutual covenants and promises hereinafter set forth, Seller and Buyer agree as follows:

1. **GRANT OF OPTION** Seller hereby grants to Buyer the exclusive and irrevocable option to purchase, on the terms and conditions contained in this Agreement, the real estate containing approximately 0.727 acres of land located at 330 and 306-332 Allen Avenue, Portland, Maine, being depicted on Tax Map 334, Block E as Lots 8 and 12 and 0.151 acres of land located at 334 Allen Avenue, Portland, Maine, being depicted on Tax Map 334, Block E as Lot 42 (herein referred to as the "Feeney parcel") as outlined on the attached plan (the "Premises").

2. **TERM OF OPTION, EXPIRATION OF OPTION AND EXTENSION OF OPTION; DEPOSIT; ADDITIONAL PAYMENTS**

a. This Option (the "Option") shall commence on the date hereof and shall expire on the third business day after the ninth monthly anniversary of the Effective Date (such period of time, as may be extended, is referred to hereinafter as the "Option Period"). Buyer may extend the Option by up to one (1) three (3) month extension periods upon notice to Seller on or before the expiration of the third business day following the expiration of the Option Period. The Deposit shall be credited against the purchase price at closing.

b. Unless this Agreement has been sooner terminated, commencing upon the effective Date, and concluding on first day of the last full month prior to the Closing Date or any other termination hereof, the Buyer shall make monthly payments to Seller (the "Additional Payments") in the amount of [REDACTED] per month. The Additional Payments shall be non-refundable (except in the event of default by Seller or as otherwise provided herein), but applicable to the Purchase Price.

3. NOTICE OF EXERCISE This Option shall be exercised by Buyer by written notice (the "Closing Notice") of election to exercise to Seller on or before the expiration of the third business day following the expiration of the Option Period.

4. EXERCISE In the event that Buyer exercises this Option as provided herein, the following provisions shall be applicable:

a. Purchase Price Subject to any adjustments and prorations hereinafter described, the purchase price for the Premises shall be [REDACTED] Dollars [REDACTED] payable in bank cashier's check or wire transfer at closing. The Deposit and the Additional Payments shall be credited against the purchase price at the closing.

b. Title and Condition of Premises Seller shall convey the Premises to Buyer at the Closing (as defined below) in fee simple by Warranty Deed with good marketable title, free of clear of all liens, encumbrances, restrictions and mortgages. Full possession of the Premises free of all tenants and occupants and not in violation of any applicable environmental law or regulation is to be delivered at the Closing. Seller shall not construct any substantial improvements on or materially alter the Premises during the pending of this Agreement. In the event that Seller is unable to convey title and the Premises as aforesaid, Seller shall be given a reasonable period of time, not to exceed 30 days, after receipt of notice of any such defects from Buyer, to remedy any title defects from Buyer, to remedy any title defects. Seller agrees to use good faith efforts to cure any such title defects. Buyer may elect to close without any adjustment in the purchase price notwithstanding such title defects as may exist.

c. No Representations Without limiting Seller's obligations to deliver the Premises as provided above, the Seller has made no representations, covenants, or warranties as to the physical condition of the Premises. Buyer acknowledges that it is not relying upon any representations, covenants or warranties of Seller. Seller agrees to provide Buyer full access to the Premises during the Option Period for the purpose of making any investigation that it deems necessary to determine whether it wishes to exercise the Option. Buyer, at Buyer's expense, shall restore the Premises to substantially its prior condition following any disturbance caused by any such investigation. Buyer agrees to indemnify and hold harmless Seller from the claims of any person for any an all damage or injury to property or persons caused by Buyer's investigations.

d. Closing The Closing shall take place at the office of Buyer's lender's counsel or at such other place as the Buyer and Seller may mutually agree thirty (30) days after the date of the Closing Notice. Documents to be provided by Seller to Buyer at the Closing shall include the Deed and such other documents as the Buyer's lender and the title company insuring the title may reasonably request, including, without limitation, a Mechanic's Lien and Persons in Possession Affidavit, a Taxpayer Information (1099S) Form, an Affidavit of Non-Foreign Status, a settlement statement, and such other documents as may reasonably be required by the closing agent. It is

agreed that time is of the essence with respect to all of the terms and conditions of this Agreement.

e. Adjustments, Prorations and Closing Costs

(i) The following items shall be prorated at closing: utilities, fuel and rent. Real estate taxes and assessments shall be prorated as of the closing on the basis of the latest available tax bill.

(ii) The Maine real estate transfer tax shall be paid by Seller and Buyer in accordance with 36 M.R.S.A. 4641-A.

(iii) The recording fee for the deed of conveyance and any expenses related to any mortgage that Buyer may grant to a lender in connection with the purchase of the Premises shall be paid for by the Buyer.

f. Brokerage Each of Buyer and Seller represents and warrants to the other that they have not dealt with any real estate broker, agent or salesperson in connection with this transaction other than Joseph Malone of Malone Commercial Brokers, whose fees shall be paid by the Buyer, payable only if the Closing occurs in accordance with the terms hereof. Each of Buyer and Seller hereby agrees to indemnify and hold the other from any breach of its warranty and representation set forth in this paragraph which warranty and representation shall survive the Closing.

5. CANCELLATION; RETURN OF DEPOSIT (a) Notwithstanding anything contained herein to the contrary, Buyer shall have the right, at any time during prior to the expiration of the third business day following the expiration of the Option Period (as it may be extended pursuant to the terms hereof) to cancel this Agreement by written notice to Seller (the "Cancellation Notice"), and upon the sending of a Cancellation Notice, the Buyer and this agreement shall be of no further force and effect, without recourse to the parties hereto.

(b) If the Buyer sends a Cancellation Notice on or before the third business day following the [REDACTED] anniversary of the Effective Date (the "Hard Deposit Date"), the Escrow Agent shall promptly return the Deposit to the Buyer. If the Buyer has not sent a Cancellation Notice on or before the Hard Deposit Date, the Deposit shall become non-refundable to Buyer, except in the event of default by Seller hereunder, but shall be applied to the Purchase Price at Closing.

(c) In all events, if the Buyer fails to exercise this Option by the expiration of the Option Period, this agreement shall be terminated and be of no further force and effect, without recourse to the parties hereto.

6. CONFIDENTIALITY Each of Buyer and Seller hereby covenants and agrees to use best efforts to preserve the confidentiality of the transaction contemplated by this Agreement, to prevent disclosure of the existence of this Agreement, the price and

other terms of the transaction set forth in this Agreement, to any party other than to its attorneys, auditors, lenders, financial advisors and accountants, who shall agree to hold such information as proprietary confidential and not to be disclosed to others, except: (i) as may be approved in writing in advance by the other party in each instance; (ii) such reports as may be required by applicable statute (as for instance in the case of such reports relating to Oil and Hazardous Materials); (iii) as may be ordered by a court of court of competent jurisdiction; or (iv) the disclosure of any such information to any prospective Buyer's Assignee.

Seller covenants and agrees to take the Premises off the market and not to offer the Premises for sale or lease to any other person or entity, nor to accept, invite, or respond to offers for the purchase or leasing of the Premises, until such time as this Option is terminated by Buyer. Accordingly, Seller shall forward any inquiry or offer with respect to the Premises to Buyer during the term of the Option.

7. MISCELLANEOUS

a. Time Time is of the essence hereof.

b. Notices All notices, demand and other communications hereunder shall be in writing and sent by hand delivery, by certified or registered mail, or by Federal Express or equivalent overnight courier, addressed to other party at the address set forth above, or at such other address as the other party shall have provided notice of according to this provision. Any such notice shall be deemed to have been given upon the date of hand delivery, upon mailing or upon depositing the same with Federal Express or similar overnight courier.

c. Default In the event of breach or failure of performance by Seller of any of its obligations hereunder, the Buyer may elect to: (i) waive said Default, (ii) terminate this Agreement and demand and obtain the return of the Deposit and the Additional Payments and the obligations of the parties hereunder shall terminate forthwith, or (iii) seek all remedies available under this Agreement and/or at law or in equity, including, without limitation, specific performance of this Agreement, and/or recourse for any and all of its losses, expenses, costs, and claims of same, including without limitation, reasonable attorneys fees and costs. In the event of breach or failure of performance by Buyer of any of its obligations hereunder and Buyer's failure to cure such breach or failure within ten (10) business days after receiving notice thereof from Seller, the Seller may terminate this Agreement by written notice to Buyer and retain the Deposit and the Additional Payments to the extent paid as full liquidated damages as Seller's sole remedy at law and in equity and the obligations of the parties hereunder shall terminate forthwith.

d. Assignment Buyer's rights under this Agreement may be assigned to another party without consent of the Seller. Buyer may, following exercise of the Option, designate a nominee to take title to the Premises at the closing.

e. Entire Agreement This Agreement constitutes the entire agreement between Seller and Buyer and there are no agreements or understandings between the parties except as set forth herein.

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

g. Construction As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of one gender shall be deemed applicable to all genders. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provisions of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof. This instrument may be executed in counterparts and together such counterpart copies shall be construed as a legal contract.

8. SELLER IS NOT RECORD OWNER. Buyer hereby acknowledges that Seller is not the current record owner of a portion of the Premises (the "Feeney Premises") to be conveyed and purchased hereunder and that Seller holds the contractual right to purchase the Feeney Premises pursuant to a written agreement by and between Theresa and Robert Feeney (the "Record Owner"), as seller, and the Seller, as buyer, dated _____, a true and complete copy of which is attached hereto as Exhibit "B" (the "Underlying Agreement"). Buyer further acknowledges and agrees and Seller agree that, without limiting any other conditions to Buyer's and Seller's obligations to close as set forth in this Agreement, the obligations of Buyer and Seller under this Agreement are subject to the Record Owner conveying the Feeney Premises to Seller and otherwise performing all of its obligations under the Underlying Agreement. In the event Seller is unable to perform under this Agreement because of the Record Owner's failure to convey the Feeney Premises to Seller or to otherwise perform all of its obligations under the Underlying Agreement, then Buyer's, at its option: (i) may terminate this Agreement whereupon all deposits with interest thereon shall be forthwith refunded to Buyer (including any non-refundable portions of the Deposit and the Additional Payments) and this Agreement shall be deemed null and void without further recourse to the parties hereto; or (ii) purchase the remainder of the Premises less the Feeney Premises on all their terms and conditions contained herein, except that the Purchase Price shall be reduced by an amount equal to the purchase price listed in the Underlying Agreement. Notwithstanding anything contained herein to the contrary, if the Record Owner's failure to convey the Feeney Premises to Seller or to otherwise perform all of its obligations under the Underlying Agreement is caused by or arises by any act or omission of Seller, in which case the Buyer shall be entitled to all of its rights and remedies hereunder, at law or in equity, including without limitation, prompt return of the Deposit and the right to assume the Underlying Contract and perform Seller's obligations thereunder.

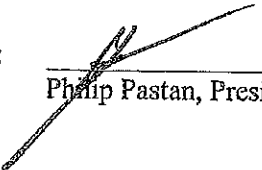
From and after the date hereof through the Closing, Seller shall not: (i) enter into any agreement or arrangement affecting the Underlying Agreement, (ii) modify, amend, cancel, terminate, extend or change the terms of the Underlying Agreement, (iii) fail to take any action or make any payment as may be required under the Underlying

Agreement, without the prior written consent of Buyer, which may be granted or withheld in Buyer's sole discretion. In addition, Seller shall, within one (1) business day, provide to Buyer copies of any notice given or received by Seller pursuant to the Underlying Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

Buyer :
The Richmond Company, Inc.

By: 
Philip Pastan, President

Seller:
Davison Realty, LLC


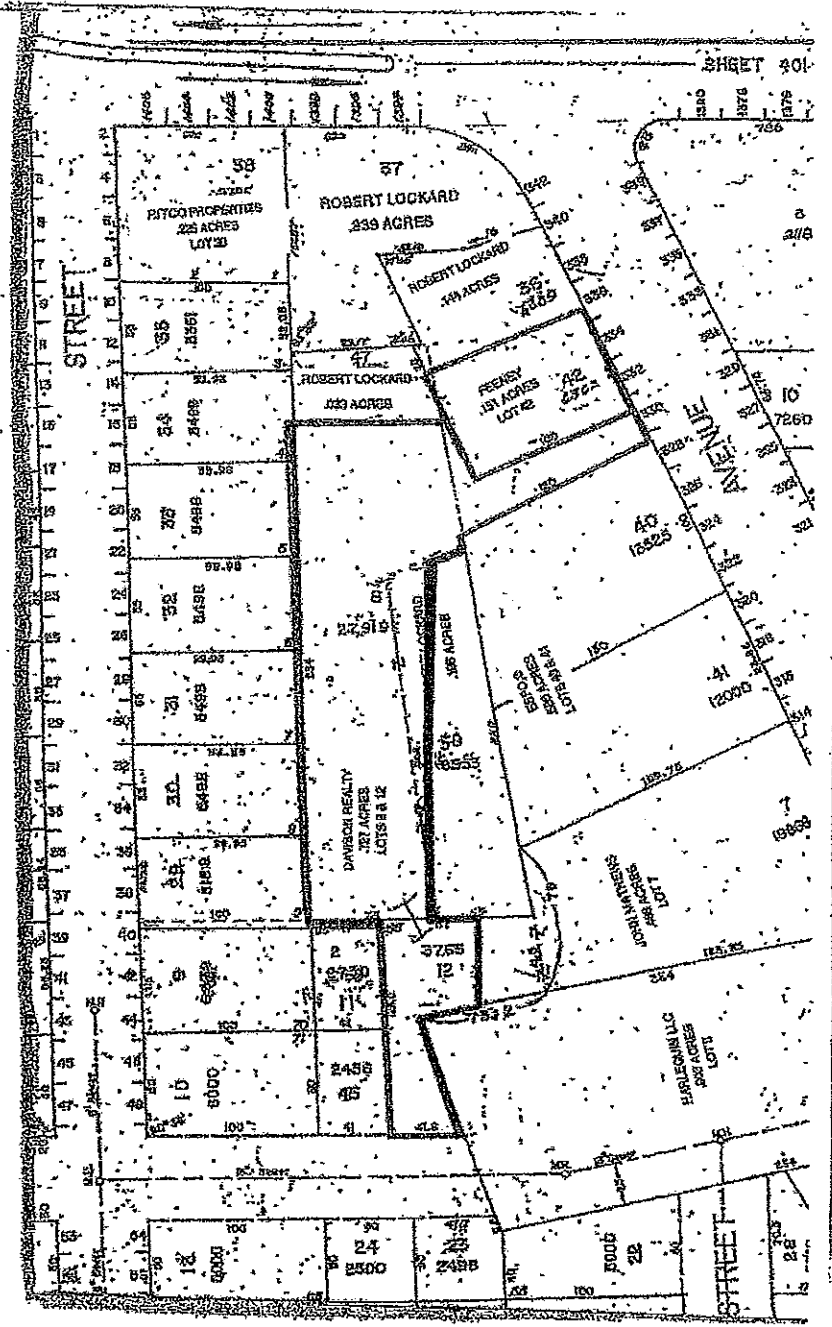
By: 
Jim Davison
Its:



EXHIBIT A

EXHIBIT A



PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the "Agreement") shall be deemed effective the date upon which a fully-executed original of this Agreement is delivered to the other party by whichever of Buyer or Seller is the last to sign this Agreement (the "Effective Date").

1. PARTIES: THE ESTATE OF ROBERT LOCKARD, by its duly authorized personal representative, LAURIE BERNIER, the mailing address for whom is P.O. Box 204, Gray, Maine, 04039 (the "Seller") hereby grants to THE RICHMOND COMPANY, INC., a Massachusetts corporation, with offices at 23 Concord Street, Wilmington, Massachusetts, 01887 or its nominee (the "Buyer"), the exclusive option (the "Option") to purchase, upon the terms and conditions herein-after set forth, the Premises (as defined below).
2. DESCRIPTION: Four parcels of land, located in Portland, Maine and generally identified on the City of Portland, Maine Tax Map 334, Block E as Lots 37 (+/- 0.0339 acres), 36 (+/- 0.1444 acres), 47 (+/- 0.033 acres) and 50 (+/- 0.196 acres) and as shown on Exhibit A attached hereto, together with any buildings, structures and improvements thereon and any easements appurtenant thereto (the "Premises"). Seller makes no representation or warranty as to the accuracy of the tax map lot lines or size of such lot and incorporates by reference the legal descriptions contained in deeds of record.
3. BUILDINGS, FIXTURES, APPLIANCES: Included in the sale as a part of the Premises are any buildings, fixtures, structures, and improvements now thereon, and such appliances and fixtures owned by the Seller and used in conjunction with such buildings and structures. Notwithstanding anything contained herein to the contrary all such buildings, fixtures, structures, improvements, and appliances shall be conveyed "as is where is" without any warranties or representation of any kind (other than title) and any such warranties are expressly disclaimed.
4. TITLE DEED: The Premises is to be conveyed by a good and sufficient WARRANTY DEED, running to Buyer, or to the nominee designated by Buyer by written notice to Seller at least seven (7) days before such deed is to be delivered as herein

provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws which do not materially interfere with Buyer's intended development of the Premises; and
- (b) Such taxes for the then current year as may not be due and payable on the date of the delivery of such deed.

5. PLANS:

In the event that Buyer elects to exercise the Option, Buyer may have a plan of the Premises prepared in a form adequate for recording and can require Seller to prepare its deed to Buyer based on such plan. Buyer agrees to provide such plan and a legal description of the Premises based on such plan no later than seven days prior to the Closing.

6. PURCHASE PRICE:

The Purchase Price for the Premises shall be [REDACTED] subject to adjustments as set forth below (the "Purchase Price").

7. PAYMENT OF DEPOSIT AND PURCHASE PRICE; ADDITIONAL PAYMENTS:

Upon execution of this Agreement by Seller, and in partial consideration whereof, Buyer shall pay [REDACTED] "the "Initial Deposit") to Seller which shall be non-refundable when made.

Unless this Agreement shall have been terminated pursuant to Paragraph 11, the Buyer shall make an additional deposit to the Seller (the "Additional Deposit") in the amount of [REDACTED] no later than the third business day after the 90th day following the Effective Date, without notice or demand. In the event that Buyer fails to pay the Additional Deposit on or before its due date notwithstanding the provisions of Paragraph 22.2, then at Seller's election this Agreement shall terminate and be without further force or effect.

Unless this Agreement shall have been terminated pursuant to Paragraph 11, beginning on the first day of the first full month which is 120 days after the Effective Date, and concluding on first day of the last full month prior to the

Closing Date or the date of termination of this Agreement, the Buyer shall make monthly payments to Seller (the "Option Payments") in the amount of [REDACTED] per month.

Each of the Initial Deposit, the Additional Deposit, the Closing Deposit (as defined below) and the Option Payments to the extent made (collectively referred to as the "Deposit") shall be non-refundable to Buyer (except in the event of a default by Seller as expressly set forth below) and shall be applied as a credit to the Purchase Price at Closing.

- 7.1 PURCHASE PRICE BALANCE: At the time for delivery of Seller's deed as provided herein (the "Closing"), Buyer shall pay to Seller the Purchase Price less the Deposit to the extent made, subject to the adjustments referred to in Paragraph 19 hereof in the form of a federal funds wire transfer or treasurer's, cashier's, or certified check or immediately available funds.
8. OPTION PERIOD: The option period (the "Option Period") shall commence on the Effective Date and shall expire on the same day [REDACTED] thereafter unless earlier terminated or extended in accordance with the terms contained in this Agreement.
9. BUYER'S REVIEW: During the Option Period, Buyer shall have the right, at Buyer's expense, to complete an examination of record title, inspect the Premises in connection with preparation of a survey, building conditions, zoning and other municipal, state and federal regulation, permits, and approvals allowed for the presence of hazardous waste or materials, to conduct and review the results of any other investigation or assessment, which Buyer shall in its sole and absolute discretion determine to undertake or commission, and to obtain all zoning and building permits and approvals and any other permits and approvals required to commence construction of Buyer's intended development of the Premises and any other parcels of land which may be developed in combination with the Premises, at Buyer's sole and absolute discretion (the "Permits and Approvals"). After real estate committee approval from Buyer's

proposed tenant Buyer covenants and agrees to use reasonable efforts to obtain all Permits and Approvals.

Seller covenants and agrees to use reasonable efforts to assist and cooperate with the Buyer and any prospective Buyer's assignee, at all times during the term of this Agreement, in Buyer's and such prospective Buyer's Assignee's efforts to obtain the permits and approvals, and Seller further covenants and agrees, upon reasonable request, to execute any document reasonably required to assist Buyer and such prospective Buyer's Assignee in obtaining the permits and approvals and, if required by any permitting authority, to appear before such authority along with Buyer. Promptly upon request by Buyer or any prospective Buyer's Assignee, Seller shall execute an authorization letter in such form reasonably required by Buyer and, at Buyer's or any prospective Buyer's Assignee's request, Seller shall execute substantially similar letters during the term of this Agreement. Notwithstanding, no such permits or approval shall be binding on Seller unless and until the Closing Date (as defined below.)

10. CLOSING DATE: If Buyer has not terminated this Agreement as provided for herein, Buyer may exercise its option to close the purchase of the Premises by delivering to Seller a written notice (the "Closing Notice") together with a [REDACTED] closing deposit (the "Closing Deposit") to such effect no later than the third (3rd) business day after the expiration of the Option Period, as it may be extended. The transactions contemplated by this Agreement shall be consummated (30) days after the delivery of the Closing Notice (the "Closing Date") except as otherwise provided herein. If Buyer does not deliver the Closing Notice on or before the third (3rd) business day after the expiration of the Option Period, Buyer's rights hereunder shall expire and this Agreement shall be deemed cancelled pursuant to Paragraph 11.
11. CANCELLATION: Notwithstanding anything contained herein to the contrary, Buyer shall have the right, at any time until the third business day after the expiration of the Option Period (as it may be extended pursuant to the terms hereof) to cancel this Agreement by written notice to Seller (the "Cancellation Notice"), and upon the sending of a Cancellation Notice, neither party shall have any liability

for any obligations which may have become due under this Agreement after delivery of the Cancellation Notice, In the event of any termination of this Agreement, Buyer shall return to Seller all documents furnished by Seller and shall deliver and/or assign Seller all Permits and Approvals and deliver and assign to seller without representation any existing conditions, surveys, and reports, test results, title examinations and other data which relate to the existing condition or proposed development of the Premises in Buyers possession.

12. Intentionally left blank.
13. DOCUMENTS: Within ten (10) business days of the Effective Date this Agreement, Seller shall furnish Buyer with copies of all documents or instruments in Seller's possession containing relevant information with respect to the Premises which may be in Seller's possession, to the extent not previously provided to Buyer, including without limitation: all environmental studies or impact statements and reports with respect to the Premises; all permit applications and copies of correspondence and memoranda concerning any governmental agency or authority having jurisdiction over the Seller its operation or development or the Premises; all leases and tenancy and/or occupancy agreements or arrangements; copies of existing title insurance policies, title certifications, or, title reports with respect to the Premises and copies of any easements and/or agreements with any party, together with copies of all documents, and plans referred to therein; geographical studies, analyses reports; and property tax and utility information, including, without limitation, copies of the most recent bills therefor.
14. ACCESS TO PREMISES: Buyer and any prospective Buyer's Assignee (as defined herein) and Buyer's and any prospective Buyer's Assignee's agents, servants, employees, consultants, and representatives shall have the right from time to time upon reasonable notice at Buyer's or any prospective Buyer's Assignee's (as the case may be) sole expense and risk, and in any manner as Buyer or any prospective Buyer's Assignee (as the case may be) may determine, to enter upon the Premises to make or cause to be made any analysis or inspections, including without limitation,

engineering studies (including, without limitation, surveys, test borings, and soil and groundwater and percolation test in order to determine sub-soil conditions of ledge, peat or clay) and such other tests, analyses, and studies of the Premises as Buyer or any prospective Buyer's Assignee may deem is necessary or desirable or as may be required by the rules and regulations of any governmental authority having jurisdiction prior to construction of structures on the premises, including, without limitation, to determine the presence of oil or hazardous wastes and materials as defined in applicable federal, state, and local statutes and ordinances, and regulations promulgated thereunder. Buyer shall indemnify and hold Seller harmless from and against any claim for injury to persons or damage to property arising out of Buyer's acts or omissions during the course of such tests and studies, and at the conclusion of such tests and studies, leave the Premises in substantially the same condition as their present condition whenever reasonably possible, excepting only test boring locations.

15. POSSESSION AND
CONDITION OF
PREMISES:

Full possession of the Premises free of all tenants and occupants is to be delivered at the Closing. Seller shall not construct any substantial improvements on or materially alter the Premises during the pending of this Agreement, except upon Buyer's prior written approval.

Buyer shall have the right to inspect the Premises prior to the delivery of the deed in order to determine whether the thereof complies with the terms of this Agreement.

16. CONDITION OF
TITLE AND
THE PREMISES

Within 120 days after the Effective Date hereof, the Buyer shall complete a search of the title of Premises to and/or survey the Premises and notify Seller (the "Defect Notice") of any conditions which would render title to the Premises unmarketable and uninsurable or which would constitute an uninsurable encroachment. Seller shall use reasonable efforts to remove or correct all such title defects set forth in such Defect Notice. For the purposes of this Agreement, the obligation of Seller in the foregoing sentence shall be deemed satisfied by Seller's expenditure of up to but not more than [REDACTED] in the aggregate for costs, disbursements, legal fees and other professional fees in curing such title defects, if any. In the event that Seller,

despite exercise of her best reasonable efforts, shall be unable to correct all defects set forth in the Defect Notice at or before expiration of the Closing Date and so long as Buyer has delivered the Closing Notice, then at Buyer's option and notwithstanding anything contained herein to the contrary, Buyer may terminate this Agreement in accordance with Paragraph 11. Title to the Premises shall not be deemed to be in compliance with the provisions of this Agreement with respect to title unless title to the Premises is insurable for the benefit of Buyer by a recognized title insurer selected by Buyer, of an owner's policy of title insurance, on the American Land Title Association form currently in use, and containing the following endorsements' (i) obligating the title insurance company to increase its coverage (subject to payment of premium and acts of the insured) to insure all costs incurred in improving and developing the Premises up to the full insurable value thereof; (ii) insuring access and contiguity to all adjacent highways, roads, streets, alleys and the like without any strips, gores or like intrusions; (iii) insuring Buyer's right to use all of the easements and grants appurtenant to the Premises and structures thereon; and (iv) insuring that there are no encroachments on the Premises, no party walls or similar supporting walls, and no lines, pipes or conduits (utility or otherwise) necessary for the use or operation of the Premises as described in this Agreement are situated over, under or on any property or parcel of land other than the Premises for which the permission or consent of others for use serving the Premises is required but has not been obtained. An agreement by a title insurance company to provide affirmative insurance against forfeiture of loss or other protection by reason of a title defect or exception shall not be deemed compliance by Seller with title obligations hereunder, unless Buyer, in the exercise of its sole discretion, accepts the same in writing as satisfaction of Seller's title covenants hereunder.

Seller represents to the best of her knowledge she owns, and will own on the Closing Date, good and marketable fee simple title, to the Premises. Seller represents and warrants there are no tenancies, occupancy or leases or other similar arrangements affecting the Premises, except as disclosed on Schedule 16 attached hereto. Schedule 16 lists all the material terms of any such occupancy or lease arrangements. Seller further represents and warrants that

the best of its knowledge, the Premises are not in violation of any environmental law or regulation. It shall be a condition of the Closing that all of the representations and warranties of the Seller contained herein shall be true and correct as of the Closing Date.

17. EXTENSION TO
PERFECT TITLE
OR MAKE PREMISES
CONFORM:

In the event that on the Closing Date Seller is unable to give title or make conveyance or deliver possession of the Premises, in conformity with the provisions of Paragraphs 2, 3, 4, 15 and 16 and with respect to defects in title which not voluntary or monetary liens or encumbrances, as set forth in a Defect Notice provided to seller in accordance with and required by paragraph 16, (or if such provisions have not been waived in writing by the Buyer), then Seller shall use reasonable efforts to correct same (and with respect to defects in title, described in said Defect Notice) and deliver possession as provided herein and cause the Premises to conform to the provisions hereof, and thereupon the time for performance thereof shall be extended for a period of up to ninety (90) days. In the event that at the expiration of such extended time Seller shall have failed so to remove such defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, and the closing does not occur solely as a consequence of such matter, then Buyer may either (i) cancel this Agreement, obtain a refund of the Additional Deposit and the Closing Deposit to the extent made under this Agreement and if Seller is in material default of this Agreement, Buyer shall have recourse to all remedies available hereunder in the event of default by Seller, or (ii) Buyer may accept such title as Seller can deliver to the Premises and accept possession thereof in their then condition and to pay therefore the Purchase Price without deduction, in which case Seller shall convey such title and deliver such possession. Provided that Seller takes reasonable efforts to correct defects in title in accordance with the provisions hereof, Seller's inability to cure any title defect despite such reasonable efforts shall not be deemed a breach or default of this Agreement.

18 USE OF

To enable Seller to make conveyance as herein provided,

PURCHASE
MONEY TO
CLEAR TITLE:

Buyer or Seller shall have the right at the Closing to use the Purchase Price or any portion thereof to clear title to the Premises of any or all monetary encumbrances, provided that all instruments so procured are recorded simultaneously with or promptly following the delivery of Seller's deed in accordance with custom and practice. Seller warrants, covenants, agrees and represents that: (i) there are no existing mortgages or other liens encumbering the Premises in excess of the Purchase Price or which cannot be cleared with the Purchase Price, and (ii) during the pendency of this Agreement Seller shall not mortgage or otherwise encumber the Premises in an amount which shall exceed the Purchase Price. Seller hereby agrees that any monetary liens shall be discharged at Closing, and that the provisions of this paragraph supersede any provision in this Agreement to the contrary.

19. ADJUSTMENTS:

Water and sewer use charges and taxes for the then current fiscal tax period, shall be apportioned as of the Closing and net amount thereof shall be added to or deducted from (as the case may be) the Purchase Price. Deed transfer taxes (stamps) shall be paid at Closing one-half by Seller and one-half by Buyer.

20. ADJUSTMENT OF
UNASSESSED
AND ABATED
TAXES:

In the event that the amount of such taxes is not known at the time of Closing, such taxes shall be apportioned on the basis of taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate add valuation can be ascertained with consideration of any improvements or adjustments based on this Agreement or any action taken by Buyer. In the event that taxes apportioned hereunder are thereafter 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 herein otherwise agreed. The provisions of this Paragraph 20 shall survive the delivery of the deed.

21. SELLER'S
AFFIDAVIT:

At Closing, Seller shall execute such documents as may be reasonably requested by Buyer, Buyer's Mortgagee or Buyer's Title Insurance Company, including without

limitation, an Affidavit to Buyer and to Buyer's Mortgagee and Buyer's Title Insurance Company that there are no parties in possession of the Premises and that no work has been done on the Premises which was ordered by Seller or its agents, which would entitle anyone to claim a mechanic's lien or material lien or to file a notice of relating to the Premises and such other customary affidavits and documents as may reasonably be required or requested.

22.1 DEFAULT
BY SELLER:

In the event of breach or failure of performance by Seller of any of its obligations hereunder and Seller fails to cure such breach or failure within ten (10) days after notice thereof from Buyer the Buyer may elect to: (i) waive said Default, (ii) terminate this Agreement by written notice to Seller and obtain a refund of the Additional Deposit and the Closing Deposit (to the extent made) from Seller and upon such refund, the obligations of the parties hereunder arising after such termination, shall terminate forthwith, or (iii) seek all other remedies and/or damages available under this Agreement and/or at law or in equity, including, without limitation, specific performance of this Agreement.

22.2 DEFAULT
BY BUYER:

In the event of breach or failure of performance by Buyer of any of its obligations hereunder and Buyer's failure to cure such breach or failure within thirty (30) days after receiving notice thereof from Seller, the Seller may terminate this Agreement by written notice to Buyer and retain the Deposit to the extent made as full liquidated damages as Seller's sole remedy at law and in equity and the obligations of the parties hereunder shall terminate forthwith. Notwithstanding such termination, Buyer obligations which would arise under the last sentence of Paragraph 11 as if this Agreement were cancelled shall remain in full force and effect.

23. BROKER:

Each of Buyer and Seller represents and warrants to the other that they have not dealt with any real estate broker, agent or salesperson in connection with this transaction, except Joe Malone of Malone Commercial Brokers (the "Broker"). The Buyer shall pay the Broker per separate agreement in addition to the purchase price. Each of Buyer and Seller hereby agrees to indemnify and hold the other

from any breach of its warranty and representation set forth in this Paragraph 23, which warranty and representation shall survive the Closing.

24. INSURANCE:

Until the delivery of the deed, Seller shall maintain insurance on the Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Comprehensive General Liability	As presently insured in the amount of \$1,000,000

25. LIABILITY OF FIDUCIARY:

In the event that Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither Seller nor Buyer so executing shall be personally liable for an obligation, whether express or implied hereunder.

26. ACCEPTANCE OF DEED:

Except as otherwise provided herein and subject to Buyer's full performance of its obligations under this Agreement, the acceptance of a deed by Buyer or its nominee shall be deemed full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the express terms hereof, to be performed after the delivery of said deed.

27. CONSTRUCTION OF AGREEMENT:

This instrument, executed in any number of original counterparts, is to be construed as a Maine contract subject to and to be interpreted in accordance with the substantive Law of the State of Maine, 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. The captions and marginal notes used only a matter of convenience and are not to be considered a part of this Agreement or to be used in determining or the intent of the parties to it.

28. NOTICES:

All notices required or permitted to be provided hereunder shall be in writing and delivered by hand, transmitted by recognized overnight courier providing receipt for delivery, or mailed postage pre-paid, by certified mail, return receipt requested; addressed to the party at the address first above-written or to such other address(es) as shall be designated by written notice to the other party as provided herein, and if to Buyer, with a copy to Ron M. Hadar, Esquire, General Counsel, The Richmond Company, Inc., 23 Concord Street, Wilmington, Massachusetts 01887; and if to Seller with a copy to:

Steven E. Cope, Esq.
Cope and Cope, P.A.
P.O. Box 1398
One Union Street,
Portland, Maine 04104

29. CONFIDENTIAL
TRANSACTION:

Each of Buyer and Seller hereby covenants and agrees to use good faith efforts to preserve the confidentiality of the transaction contemplated by this Agreement, to prevent disclosure of the existence of this Agreement, the price and other terms of the transaction set forth in this Agreement, to any party other than to its attorneys, auditors, lenders, financial advisors and accountants, who shall agree to hold such information as proprietary confidential and not to be disclosed to others, except: (i) as may be approved in writing in advance by the other party in each instance; (ii) such reports as may be required by applicable statute (as for instance in the case of such reports relating to Oil and Hazardous Materials); (iii) as may be ordered by a court of court of competent jurisdiction; or (iv) the disclosure of any such information to any prospective Buyer's Assignee or Buyer's proposed tenant.

Seller covenants and agrees to take the Premises off the market and not to offer the Premises for sale or lease to any other person or entity, nor to accept, invite, or respond to offers for the purchase or leasing of the Premises that are effective prior to such time as this Option is terminated by Buyer.

30. RECORDING OF

This Agreement may not be recorded in the Registry of

AGREEMENT: Deeds. Any recording of this document will be deemed an default hereunder by the recording party.

31. BUYER'S ASSIGNEE: Seller acknowledges and agrees that Buyer has the right to assign any, all or a part of Buyer's rights under the Agreement to a third party ("Buyer's Assignee"), which Seller hereby acknowledges shall be a party to this Agreement with the right to enforce all of Buyer's rights under the Agreement on its own behalf, and the obligation, to perform Buyer's obligations under the Agreement. Provided that Buyer has given notice in writing to Seller of the address, telephone number and other contact information of any such prospective Buyer's Assignee, Seller agrees (i) to provide notice to such prospective Buyer's Assignee simultaneously with any notice to Buyer given under the Agreement; (ii) to not amend or modify the Agreement without the written consent of such prospective Buyer's Assignee; and (iii) to not exercise any right to terminate the Agreement as a result of any failure or default by Buyer in the performance of an obligation of Buyer until Seller shall have provided such prospective Buyer's Assignee with written notice of such failure or default, and shall have provided such prospective Buyer's Assignee a thirty (30) day period after receiving such notice to cure the such default. Any assignment hereof shall not relieve Seller of any of Seller's obligation under this Agreement.

32. TIME IS OF THE ESSENCE: Time is of the essence of this Agreement.

[Signatures appear on the following pages.]

EXECUTED under seal effective as of the Effective Date.

Seller:

ESTATE OF ROBERT LOCKARD, by its duly
authorized personal representative,
LAURIE BERNIER

Laurie Bernier P.A.

Date: 4/26/07

Buyer:


THE RICHMOND COMPANY, INC.

By: _____
Name: Philip Pastus
Its: President
Hereunto Duly Authorized

Date: 6/12/07



EXHIBIT A

 Subject Property

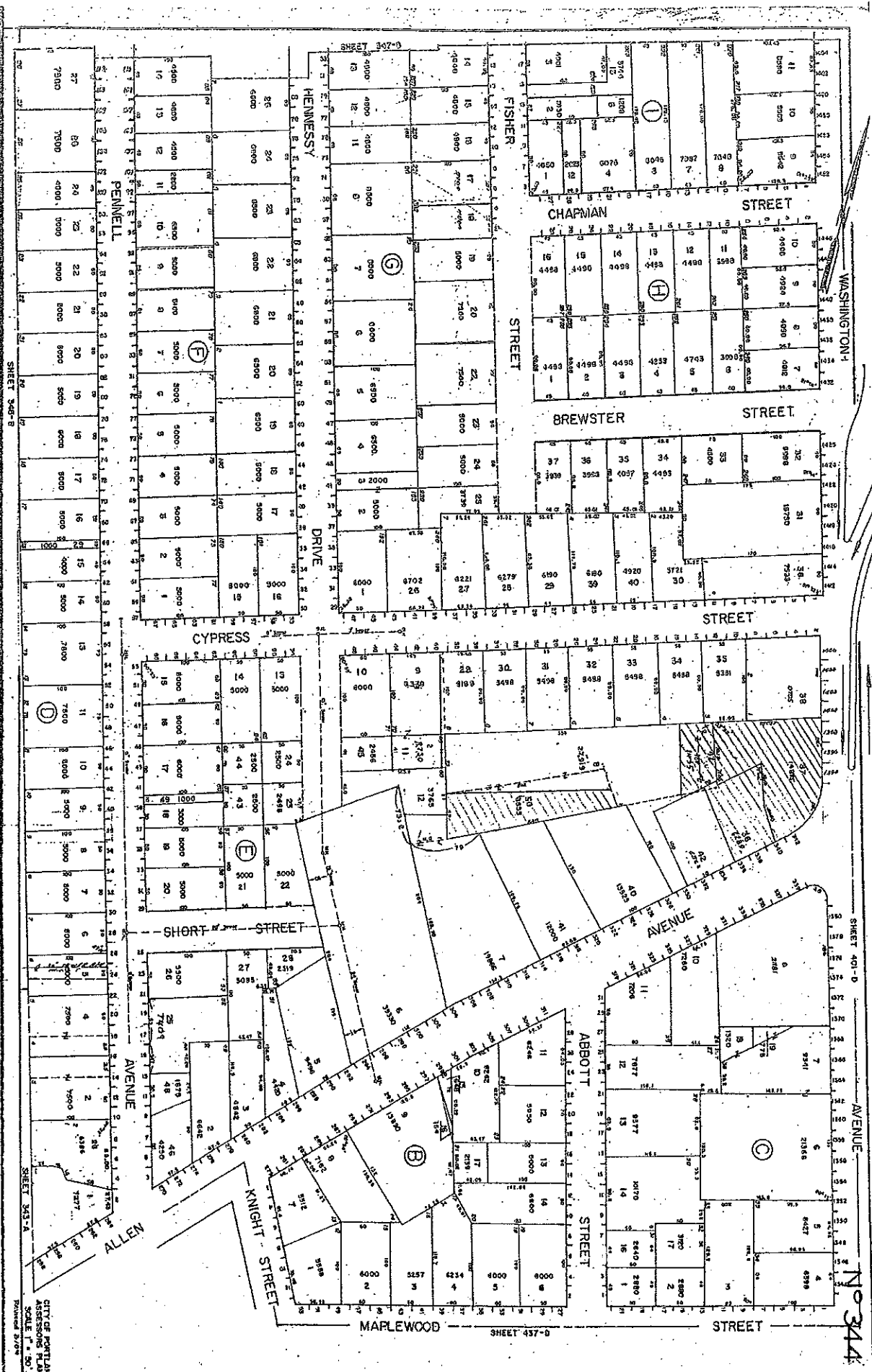


Exhibit A

EXHIBIT 16
TENANTS

1. Portland Islamic Center, 2400 +/- Sq. Ft - Tenant at Will
2. Commercial Restaurant space is vacant

**THE
RICHMOND
COMPANY, INC.**
23 Concord Street
Wilmington, MA 01887
(978) 988-3900 • Fax (978) 988-3950

October 2, 2007

Mr. Bob Esposito
318 Allen Avenue
Portland, Maine 04103

Re: Cross Easement and Land Swap Agreement, between 320 Allen Ave and 340 Allen Ave.,
Portland, Maine

Dear Mr. Esposito:

Pursuant to your conversations with Joe Malone, The Richmond Company, Inc., ("Richmond") is pleased to present Allen Ave Extension, LLC ("Espos") the following revised Offer to enter into a Cross Easement and Land Swap Agreement between 320 Allen Ave. and 340 Allen Ave. on the following terms and conditions. The purpose of this document is to memorialize certain business points. The parties mutually acknowledge that their agreement is qualified and that they, therefore, contemplate the drafting and execution of a more detailed agreement (the "Land Swap Agreement").

Reciprocal

Cross Easements: Richmond and Espos shall grant each other reciprocal easements over all roadways, driveways and entrance ways for vehicle and pedestrian access.

Land Swap: Espos shall grant to Richmond approximately 3,383 s.f. (0.08 acres) of land and Richmond shall grant to Espos approximately 22,443 s.f. (0.52 acres) of land as shown Exhibit A via a quitclaim deed with covenant.

Payment: Richmond shall pay Espos \$ [REDACTED] upon recording of the easement and land swap.

Deposit: One Hundred Twenty (120) days after the effective date of the Land Swap Agreement, Richmond shall pay to Espos a \$ [REDACTED] deposit (the "Deposit"). The Deposit shall be non-refundable to Richmond, except in the event of default by Espos, but shall be applied to the \$ [REDACTED] payment required by Richmond above.

**Conditions of Cross
Easement & Land
Swap Agreement:**

- a) Permits & Approvals:
Richmond obtaining all state and local approvals for the proposed improvements shown on Exhibit A.

b) **Improvements:**
Richmond shall be responsible to construct all improvements shown on Exhibit A which shall include the following:

- 1) Richmond shall close Espos eastern entrance on Allen Ave and reconfigure the front parking field.
- 2) Richmond shall relocate Espos pylon sign to the proposed location shown on Exhibit A.
- 3) Richmond shall resurface and restripe Espos' existing parking lot and the land provided by Richmond to Espos, all as shown on Exhibit A.
- 4) In the event that any retail space is constructed in addition to the pharmacy proposed the Richmond development adjacent to the Espos property, such additional retail space shall not be used for any restaurant use.
- 5) Richmond shall have nine (9) months from the date the Cross Easement and Land Swap Agreement is executed to obtain its proposed tenant's approval and obtain all necessary state and local permits and approvals.
- 6) The final improvements, land swap areas and pylon sign relocation shall be based on the final site plan approved by the City of Portland. Espos shall have the right to review and comment on the final site plan.
- 7) Richmond shall install a directional sign at the proposed Richmond Washington Avenue entrance. Such direction sign shall identify the Espos use and the Richmond use. Richmond's obligations to install such signage are subject to City of Portland approvals.

Bob Esposito
October 2, 2007
Page 3

If Espos is in agreement with the above terms and conditions, please signify by signing below. Once we receive a signed offer, Richmond shall instruct its counsel to draft a Cross Easement and Land Swap Agreement. This Offer is good until 5:00 p.m., September __, 2007.

Sincerely,


Philip Pastan
President

AGREED TO AND ACCEPTED THIS ____ DAY OF ____, 2007.

Allen Ave. Extension LLC


By:
Its:

cc: Kathryn Fossa (via interoffice mail)
David Latulippe (via interoffice mail)
Ron Hadar (via interoffice mail)
Joe Malone (Malone Commercial Brokers)

