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Inspections Division
Approved with Conditions
Date: 06/21/17

CITY OF PORTLAND
Low-Income Rental Housing Agreement and Declaration of Covenants, Conditions and Restrictions

This Low-Income Rental Housing Agreement and Declaration of Covenants, Conditions and Restrictions (the "Agreement") is entered into by and between the CITY OF PORTLAND, a public body corporate and politic with its principal place of business at 389 Congress Street, Portland, Maine, 04101 ("City") and MICHAEL W. PARE, an individual with a mailing address of 68 Inverness St, Portland, ME 04103 ("Developer").

WITNESSETH

WHEREAS, the City has established affordable housing provisions for the conditional use of additional dwelling units in the R-5 residential zone as set forth in the City's Land Use Ordinance (Portland City Code §§ 14-118(a)(5)) (the "Affordable Housing Ordinance"), which is intended to encourage production of housing that is affordable for low income households; and

WHEREAS, the Developer owns in fee simple and plans to enlarge a multi-family development project consisting of three (3) rental units on certain property located at 593 Washington Avenue, Portland, Maine (the "Development") which property is more particularly described on **Exhibit A**, attached hereto and made a part hereof; and

WHEREAS, on June 16, 2016, the City's Zoning Board of Appeals approved the Development (the "ZBA Approval"), on the condition that the Developer enter into a low income rental housing agreement with the City to satisfy the provisions of the Affordable Housing Ordinance by providing one (1) low income rental unit within the Development (the "Low Income Unit"); and

WHEREAS, in order to fulfill the provisions of the Affordable Housing Ordinance and the ZBA Approval, Developer hereby agrees to certain restrictions on the rental amounts of the Low Income Units on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S.A. Sec. 121 *et seq.*;

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, the City and the Developer hereby agree as follows:

1. **Parties' Intent**. The terms and conditions contained herein have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of the Developer and the City set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for low-income households in the City of Portland. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Property by making the Property affordable to low income families who, without such provisions, would be unable to afford property in the City similar to the Low-Income Units.

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2. **Term**. The term of this Agreement shall be for a period beginning on the date that it is record in the Cumberland County Registry of Deeds (the "Effective Date"), and ending on the date that is thirty (30) years from the Effective Date, after which time this Agreement shall automatically expire and the affordability restrictions set forth herein shall be deemed satisfied.

3. **Enforceability of Covenants**. The covenants and restrictions of Developer set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary. The covenants of Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer, or a foreclosure or transfer of title in lieu of foreclosure, but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.

4. **Covenants**. Developer hereby covenants and represents to the City as follows:

   a. **Development**. The Development shall consist of the land described in Exhibit A attached hereto, together with all improvements, which after completion of the Development will contain a total of three (3) units of rental housing, and related amenities, one (1) of which units shall be Low Income Units and two (2) of which shall be market rate units. The Low-Income Units shall include one (1) unit onsite in the Development and shall be of comparable quality and have comparable amenities to the market rate units.

   b. **Use**. The Developer shall rent a Low-Income Unit only to an Eligible Household, as that term is defined herein. Any purported lease, transfer or other disposition of a Low-Income Unit to any other person or entity done without following the procedures set forth below, or in violation of the rent limitations set forth below, shall be ***null and void***. For purposes hereof, the parties agree that the term **"Eligible Household"** means a low-income income person or household with a gross income not exceeding 80% of the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

   c. **Interior Standards for Low-Income Units.** The design, quality, and materials of Low-Income Unit interiors need not be the same as market rate units, but the Low-Income Units shall include at least the following amenities:

      i. Kitchen
         1. Refrigerator
         2. Stove or separate cook top and oven
         3. Cabinets
         4. Range Hood
         5. Microwave (if provided in market rate units)
         6. Countertop: 8 linear, though not necessarily continuous, feet minimum

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counter space, as measured at the backsplash, but not including sink and stove

ii. Bathroom
    1. Sink
    2. Shower
    3. Toilet
    4. Shower Curtain Rod or Shower Door

iii. Flooring - All living space and storage areas shall have a finished floor. The Low-Income Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

iv. Closets
    1. All units shall have adequate storage (including common space storage if provided to the market rate units).
    2. All bedrooms shall have at least one closet.
    3. All closets shall have a shelf and pole.

d. **Marketing.** In each instance that the Developer intends to rent a Low-Income Unit, the Developer shall give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office prior to listing the property for rent or renewing a lease. When listing a Low-Income Unit for rent, unless otherwise agreed to by the City, the following system will be followed. The Developer will forward information regarding the unit in publishable format to at least two local organizations specializing in housing. Interested parties will be given sufficient time to request and return a preliminary application. The City shall also have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Developer or its designated representative. In the event that the the Developer or its agents receive application from and certifies an eligible household during the marketing period, the City agrees to waive the remainder of its marketing period but may retain the dormant listing for future reference on the website as an eligible low-income unit.

e. **Eligible Household; Income.** For the term of this Agreement, and in accordance with section 14-118 of the City Code and other applicable regulations, at the time a lease for a Low-Income Unit is signed, a tenant must be an Eligible Household, meaning that a tenant's household income must be at or below 80% of the Area Median Income (AMI). When determining income eligibility, the City will reference the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify a comparable method of determining income guidelines for affordability. The City determines eligibility based on a household's adjusted gross income using a process similar to what HUD recommends for its HOME program or another method deemed reasonable by the City. Developer will collect and compile all of the relevant documents and information needed to assess a household's eligibility and provide it

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to the City for the City's final approval. Such documents and information include sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other documents requested by the City or Developer to aid in their efforts to verify whether or not a household is eligible. The City may request that the Developer obtain and provide additional information in order for the City to determine elibibility. The City shall make the final determination as to whether or not a household meets the income or size requirements of each Low-Income Unit prior to the signing of the lease.

The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

No employee, agent, stockholder, member, manager, officer, director, or servant of Developer, and no family member thereof (related by blood, marriage, or operation of law), and no employee, agent, stockholder, member, manager, officer, director, or servant of any of Developer's management companies, and no family member thereof (related either by blood, marriage, or operation of law) may qualify for a Low-Income Unit or receive any benefit related in any way to this Agreement. Employees of the City's Planning Authority will not be eligible for a Low-Income Unit in the City.

f. **Household Preference.** Household preference for Low-Income Units shall be given, to the extent permitted under law, to Eligible Households in the following order:

   i. Current residents of the City;
   ii. Persons employed full time by the City, except as set forth above;
   iii. All others.

An applicant for a Low-Income Unit shall be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Developer to demonstrate preferred status. The City or Developer may request more than one form of documentation. This household preference provision does not preclude the Developer from renting to non-preferred applicants, assuming such applicants meet the necessary eligibility requirements and that no preferred applicants were found during the marketing period.

Nothing in this Agreement shall preclude Developer from using due diligence in screening applicants, including but not limited to: criminal background checks, credit

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checks and previous landlord or other character references to the extent permitted b applicable law.

g. **Maintenance of a Waiting List**. Developer is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the number of household members, the gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Developer to verify actual status until a unit becomes available. Final approval of Eligible Households, Low-Income Units, and maximum allowable rent will be decided by the City.

h. **Determination of Affordable Monthly Rent; Security Deposits**. For the term of this Agreement, rental of Low-Income Units will be restricted to households with income at or below 80% of the AMI as set forth above. To maintain consistency of Low-Income Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Low-Income Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent, but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Low-Income Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities as follows:

0.30 x (annual income based on minimum household size / 12) less tenant-paid utilities = Low-Income Rent

Developer may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer and water. For all utilities listed that are not included by the Developer in the rent the City shall make reasonable assumptions based on a unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable, the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. If at a time in the future HUD no longer provides these annual figures, the City will identify a comparable method of determining income guidelines for affordability.

The Developer may request first and last month's rent and a security deposit from applicants. Each of these three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Developer requires a parking spot(s) be leased with

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the Low-Income Unit and charges a separate fee, then parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Developers may not rent to a household utilizing other rental subsidies such as vouchers without the City's prior written approval, and never shall the total rent paid be in excess of the maximum allowable Low-Income Unit rent for a determined bedroom size.

The maximum allowable rent determination is subject to City's final approval.

i. **Unit Size.** Household size/composition at the time that a lease for Low-Income Unit is signed should be consistent with the schedules set forth below.

The schedule below indicates the minimum household size for each unit type based on bedroom count:

Minimum Household Size By Bedroom	
Studio/One-Bed:	1
Two-Bed:	2
Three-Bed:	3
Four-Bed:	4

Low-Income Units are also be subject to maximum household sizes based on bedroom counts. The schedule below indicates the maximum number of persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household size:

Maximum Household Size By Bedroom	
Studio/One-Bed:	2
Two-Bed:	4
Three-Bed:	6
Four-Bed:	8

If Developer finds it difficult to rent a Low-Income Unit to an Eligible Household that meets the established minimum size requirements, the Developer may request that the City allow Developer to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. The Developer must make reasonable marketing efforts, as determined by the City, to find Eligible Households of a qualified size for at least 30 days prior to requesting a household minimum size waiver. The City agrees to provide a template for such waiver to be requested. Any such waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on the smaller household size. Once the Low-Income Unit is again vacant, the minimum household sizes set forth herein shall apply to future tenants. Under no circumstances will households be

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allowed to exceed the maximum household size.

j. **Low-Income Unit Leases**. All leases for Low-Income Units shall be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined as set forth above at initial application and during any recertification process prior to the renewal of a lease, as set forth below. Leases for Low-Income Units shall include the method for updating rents set forth in this Agreement and applicable regulations. As a condition of continued eligibility for a Low-Income Unit, the leases shall also include a requirement that the household report all information required by this Agreement and applicable regulations, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also describe the recertification process for Low-Income Units and its implications as outlined in this Agreement and applicable regulations. Eligible Households renting Low-Income Units must be recertified annually with final approval from the City before renewing a lease. The Developer shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against tenants of Low-Income Units who do not report as required or whose eligibility lapses.

Developer shall use residential lease forms acceptable to City and obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for occupancy of a Low-Income Unit. Such leases or certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the household's income, (b) agrees that household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, (c) agrees to comply with all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the tenancy. Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law.

k. **Recertification of Low-Income Units.** Prior to the renewal of a Low-Income Unit's lease, and not more than one per year, the Developer shall require that the tenant recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as was required with the initial application to lease the Unit. Unless the Developer can demonstrate that the tenant has violated material terms of the lease, that the tenant is refusing to comply with the requirements of the recertification process, or that the tenant does not wish to renew the lease, no other households may be considered for a lease of a Low-Income Unit. As with the initial application process set forth herein, the Developer or its representative shall collect and compile the necessary recertification documentation and information and provide it to the City, and the City shall have the right of final

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A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests for information and documents by the Developer or City within a 60-day period. The City shall make the final determination as to whether Developer has provided sufficient evidence to substantiate a household's failure to participate in the recertification process.

l. **Loss of Low-Income Household Certification.** A household shall lose its eligibility when two consecutive recertifications demonstrate that a once Eligible Household's income is greater than the allowed AMI. The recertification of all applicants is subject to final review and approval from the City. In this scenario, the Developer may, with 90 days' notice, charge Market Rent for the unit. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification.

In the case where the tenant has been accepted as a market rate tenant, the Developer shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Low-Income rent and the market rent until such time as that unit becomes occupied by an Eligible Household. The Developer shall not renew or extend the tenant's lease longer than twelve (12) months after the month in which the tenant failed to successfully pass two recertifications, unless the Developer leases a substitute unit to an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in this Agreement so long as Developer is making such payments to the City's Housing Trust. Under no circumstances shall the Developer be required to continue making payments during transitional periods of vacancy of the low-income unit.

m. **Primary Residence.** An Eligible Household shall occupy the Low-Income Unit as its primary residence. Low-Income Units may not be rented out by the Developer, or subletted by an Eligible Household, for short or long term periods. An Eligible Household must notify the City if it is absent from the Low-Income Unit for 30 days in any 45-day period. If the Eligible Household is absent from the Low-Income Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons, then the Household's eligibility will be terminated (in the City's reasonable discretion) and their lease term shall not be renewed or extended. Where absences in excess of the above limitations are caused by work obligations, health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. If tenants fail to comply with such requests for verification, their lease shall not be renewed or extended. Incarceration does not constitute a health or other emergency justifying prolonged absence from the Low-Income Unit.

n. **Administration & Record Keeping.** Developer shall maintain an Eligible Household's application, recertification forms and all related documentation, and any third party verifications throughout the Eligible Household's occupancy of a Low-

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Income Unit and for a period of at least seven (7) years thereafter. The Developer shall provide copies of these records to the City within ten (10) business days if requested. The Developer shall also keep all Low-Income Unit applications and waiting lists for a period of at least seven (7) years or some other period of time if deemed reasonable by the City. The Developer will file an annual report to the City within 60 days of the end of each calendar year providing information related to Low-Income Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information the City requests. The City agrees to provide a template for such report to be made.

o. Deemed Approval. In any instance where the City's prior approval is required under this Section 4, such approval shall be deemed to be granted if the City has not responded within five (5) days of Developer's request for such approval. Such deemed approval shall not otherwise constitute a waiver of the City's other rights or Developer's obligations under this Agreement. Provided, however, that in the event that the City requests from Developer additional information reasonably necessary for any required approval during such 5 day period, such 5 day period shall be tolled until the City receives the requested information.

5. **Construction and Duration**. The covenants contained herein shall run with the land for the term of this Agreement. Developer covenants and agrees for himself, his heirs, personal representatives and assigns that the rights and restrictions contained herein shall be for the benefit of the City, its successors and assigns, and shall be binding on all future purchasers of the Property. Developer and the City agree and intend that this Agreement and the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. Sec. 121 and satisfy Portland City Code § 14-118 and other applicable laws and regulations.

6. **Records**. Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, books and records related to compliance with the covenants contained in this Agreement. Such books, records, documents and plans shall be kept for: (a) a minimum of six (6) years after the expiration of the term of this Agreement for those books, records, documents and plans pertaining to the rent and occupancy requirements described in Section 3 of this Agreement and the rent roll for all units in the Development; and (b) for a minimum of six (6) years after the end of the fiscal year or calendar year, as applicable, for all other books, records, documents and plans pertaining to the Development. Upon reasonable notice, City may audit and examine these books, records, documents and plans, and may inspect the buildings or grounds of the Development.

7. **Violation**. Developer shall immediately notify the City if Developer anticipates or discovers any noncompliance with any restriction or covenant in this Agreement, including, without limitation, noncompliance with the occupancy restrictions in Section 3 of this Agreement. Developer agrees to take such action as the City deems necessary to prevent noncompliance or to correct or cure any failure to comply with the covenants in this Agreement. In the event the Developer fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, the City shall be entitled to exercise any of its

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rights under this Agreement and applicable law, maintain an action in law or in equity agai the Developer to recover damages incurred by the City from such failure, including, without limitation, reasonable attorneys' fees and costs, and to require the Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Developer.

8. **Indemnification**. Developer shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Agreement or any action taken by the City to enforce or exercise its rights under this Agreement as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Agreement as necessary to effectuate its provisions.

9. **Modifications**. This Agreement may be amended or modified, in whole or in part, only by written agreement of Developer and the City clearly expressing the intent to modify this Agreement.

10. **Severability**. The validity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

11. **Successors and Assigns**. This Agreement shall be binding upon Developer's respective heirs, personal representatives, executors, administrators, transferees, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns. Developer shall reference this Agreement in any deed or conveyance document that conveys all or part of the Development.

12. **Governing Law**. This Agreement shall be construed in accordance with and governed by the laws of the State of Maine.

13. **Additional Documents**. The Developer shall execute such other documents the City reasonably deems necessary in order to effectuate the intent and purpose of this Agreement and the intent and purpose of Portland City Code § 14-1118 and appliucable laws and regulations.

14. **Notices**. Any notice or demand required or provided for in this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the Developer a City as of January 17, ~~2016.~~ 2017

CITY OF PORTLAND

Sonia Bean
Witness

By: _____
Jon P. Jennings
Its City Manager

APPROVED AS TO FORM:
_____
CORPORATION COUNSEL'S OFFICE

State of Maine
Cumberland, ss.

January 17, ~~2016~~ 2017

Personally appeared the above named Jon P. Jennings, City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Sonia T. Bean
Notary Public~~/Attorney-at-Law~~

_____
(Print or type name)

SONIA T. BEAN
Notary Public, Maine
My Commission Expires January 10, 2017

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DEVELOPER

Witness

By: Michael W. Pare

State of Maine
Cumberland, ss.

January 12th 2017, ~~2016~~

Personally appeared the above named Michael W. Pare and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Notary Public/Attorney-at-Law

Maxwell D. Bangs
(Print or type name)

Notary Public, State of Maine
My Commission Expires on June 2, 2023

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EXHIBIT A

(Description of the Development)

A certain lot or parcel of land with the buildings and improvements thereon, situated at East Deering, so-called, in the City of Portland, County of Cumberland and State of Maine on the Easterly side of Presumpscot Street, bounded and described as follows, viz:

Beginning at the actual corner made by the intersection of the Easterly side of Presumpscot Street and the Northerly side line of Washington Avenue; thence Northerly along said side line of Presumpscot Street one hundred(100) feet to a point; thence Southeasterly ninety-five and fifty-four one-hundredths (95.54) feet to an iron post set in the ground; thence southwesterly at nearly a right angle to a point in the said side line of Washington Avenue, fifty (50) feet distant from said actual corner of Presumpscot Street and Washington Avenue; thence Northwesterly along the said Northerly side line of Washington Avenue fifty (50) feet to said corner and the point of beginning.