

1. Zoning Board Of Appeals Agenda

Documents: [BOARD OF ZONING APPEALS AGENDA 10.17.2013.PDF](#)

2. 211 Danforth St.

Documents: [211 DANFORTH ST. CONDITIONAL USE APPEAL.PDF](#)

CITY OF PORTLAND, MAINE
Zoning Board of Appeals

Zoning Board of Appeals Committee

DATE: 10/17/2013

TIME: 6:30 PM

LOCATION: Portland City Hall, 389 Congress Street
Room 209, second floor

AGENDA

1. New Business

A Conditional Use Appeal: 209-211 Danforth Street, Keith Hickman, buyer, Tax Map 057, Block E, Lot 008, B-1 Neighborhood Business Zone: The applicant is seeking a Conditional Use Appeal under section 14-163(a)(1) to establish a restaurant at 211 Danforth Street. Representing the appeal is the buyer and his partner Josh Kaplan.

B Variance Appeal: 48 Hancock Street, Sunny Time Solar, LLC, buyer, Tax Map 020, Block D, Lot 012, B-2b Business Zone: 48 Hancock Street is an existing two story, two family building that is nonconforming to setbacks. The applicant is proposing to demolish the two story building and build a new four story building in the same footprint. The appellant is seeking a variance from section 14-436(b) to expand the existing floor area 200 percent of the first floor footprint instead of the allowable 80 percent expansion of the first floor footprint and to raise the existing roof an additional two stories instead of the additional one story allowed. Representing the appeal are the buyers.

2. Adjournment

Marge Schmuckal
Zoning Administrator

Department of Planning & Urban Development

Jeff Levine
Director, Planning Department



RECEIVED

SEP 27 2013

CITY OF PORTLAND
ZONING BOARD OF APPEALS
Conditional Use Appeal Application

Dept. of Building Inspections
City of Portland Maine

Applicant Information:

Keith Hickman
NAME

211 Danforth
BUSINESS NAME

101 Edgeworth Avenue
ADDRESS
Portland, Maine 04103

347-446-4265
TELEPHONE #

owner buyer
APPLICANT'S RIGHT, TITLE OR INTEREST
(eg: owner, purchaser, etc)

B-1
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

corner store, hair salon

Subject Property Information

211 Danforth St, Portland, ME 04102
PROPERTY ADDRESS

057 E008001
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)
David Wasabara
NAME
211 Danforth St
ADDRESS

Portland ME

CONDITIONAL USE AUTHORIZED BY

SECTION 14 - 163 (a)(1)

TYPE OF CONDITIONAL USE

PROPOSED:
corner store, restaurant

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. *There are unique or distinctive characteristics or effects associated with the proposed conditional use;*
2. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*
3. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

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

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Keith Hickman
SIGNATURE OF APPLICANT

10/1/13
DATE

September 12, 2013

Department of Planning & Urban Development
Zoning Board of Appeals
389 Congress Street, Room 315
Portland, Maine 04101

RE: Conditional Use Appeal for 211 Danforth Street, Portland, Maine 04102

Dear Zoning Board of Appeals:

Please find the enclosed application for a Restaurant Conditional Use on the ground floor of 211 Danforth Street. I am presently under contract to purchase this property with the express intent of opening a neighborhood restaurant, currently known as "211 Danforth", on the ground floor. Enclosed, please find for your review all supporting documentation required to satisfy this Conditional Use application.

In overview, 211 Danforth Street is zoned as a B-1 Neighborhood Business. In this zone, and consistent with Sec. 14-163 Conditional Use, restaurants are allowed if they meet the following criteria:

- Peak Hour Vehicle under 100 per 2000sf of space, Industry Standard ITE Trip Generation average rate for a category 931 Quality/Sit Down Restaurant is 7.49 trips per 1000sf gross floor area during peak hour. *As such, 211 Danforth Restaurant will generate less than 14 peak hour vehicle trips per week.*
- Maximum total floor area for use of the public shall be one thousand (1,000) square feet. *As the enclosed floor plan demonstrates, public use space at 211 Danforth Restaurant would be 991 SF.*
- The hours of operation shall be limited to between 6:00am and 11:00pm each day; *Hours of Operation at 211 Danforth Restaurant would not exceed 10:00am to 11:00pm each day.*
- Food service and consumption are the primary function of the restaurant; *211 Danforth Restaurant shall be quality, sit down dining.*
- There shall be no drive-through service. *211 Danforth Restaurant will not have a drive-through.*

Should this conditional use be granted, Sec. 14-332 Other Requirements stipulates that off-street parking is required at a rate of 1 parking spot for every 150SF of public use floor space. However, based on our meeting on September 4, 2013 with members of the both the City of Portland Zoning, and Historic Preservation divisions, we have been told that the subject property is a city landmarked area and as such will not need to provide off street parking as a requirement of this application.

We firmly believe that there is a need and a market available for a quality and affordable neighborhood dining option in this area. Furthermore, we are confident that 211 Danforth Restaurant will be a welcome addition to the West End and surrounding neighborhoods. In converting the existing space into a vibrant restaurant, we intend to become not only a successful business, but a positive neighborhood institution. We also plan to do extensive upgrades to the appearance of the building with both interior and exterior work, and believe that this will help to improve the area and perhaps even neighboring property values. We plan to do nothing distinctive with 211 Danforth Restaurant which would not be in keeping with its surrounding environs, nor any activity which might have adverse impact on the neighborhood or public at large. We also understand that any proposed changes to the exterior would need to be formally reviewed and approved by the City of Portland Historic Preservation committee.

I look forward to your comments and appreciate your time, attention and careful consideration of this application. Please feel free to contact me with any thoughts or questions at 347-446-4265 or kehickman145@gmail.com.

Sincerely yours,

Keith Hickman

Keith Hickman

Included materials:

1. Appeal application & fee
2. Plot plan
3. Floor plan current
4. Floor plan proposed
5. Tax map and parcel map
6. Photos
7. Purchase & Sale agreement
8. Letter authorizing representation

September 12, 2013

Department of Planning & Urban Development
Zoning Board of Appeals
389 Congress Street, Room 315
Portland, Maine 04101

RE: Addendum - Conditional Use Appeal for 211 Danforth Street

Dear Zoning Board of Appeals:

Upon showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

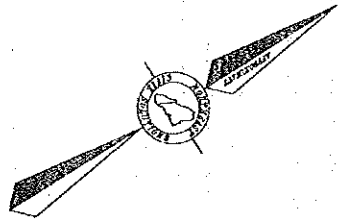
1. There are unique or distinctive characteristics or effects associated with the proposed conditional use. *We submit to the Board that there would be no unique or distinctive characteristics or effects from our proposal that are not in keeping with the neighborhood standards and attributes, and therefore should not negative factor when applying this standard. This is a commercial property, remaining a commercial property with improvement to the community both in appearance and services.*
2. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area. *We submit to the Board that there will be no adverse impact as stated above. The proposal asks for a long running store to remain and continue to provide goods for the community and a restaurant which will also have no adverse impact on the community as described when applying this standard.*
3. Such impact differs substantially from the impact which would normally occur from such a use in that zone. *We submit to the Board that the impact of our proposal would not differ substantially from normal use of a commercial property in a B-1 zone in this neighborhood, and therefore should have no adverse impact on the community as described when applying this standard.*

I look forward to your comments and appreciate your time, attention and careful consideration of this application. Please feel free to contact me with any thoughts or questions at 347-446-4265 or kehickman145@gmail.com.

Sincerely yours,

Keith Hickman

Keith Hickman



N/F
NICHOLS:
2906/534
TM 57-E-9

N/F
VANRENNEN
& HORTON
14584/124
TM 57-E-1

(43.07)

(85.12)

EXISTING
ONE STORY
COMMERCIAL
STRUCTURE

(70.22)

BRICK SIDEWALK

CLARK STREET

(45.74)

BRICK SIDEWALK

DANFORTH STREET

NOTES

1. RECORD OWNERSHIP OF THE PARCEL SHOWN CAN BE FOUND IN A DEED FROM JOHN H. MALCOLMAN TO DAVID A. WAGANZA DATED DECEMBER 11, 1987 AND RECORDED IN DEED BOOK 8112, PAGE 208 CUMBERLAND COUNTY REGISTRY OF DEEDS (CORD).
2. THE PARCEL SHOWN IS LOCATED ON THE CITY OF PORTLAND ASSESSOR'S MAP 57, BLOCK E PARCEL 8.
3. THIS IS NOT A BOUNDARY SURVEY. THIS SKETCH PLAN EXCEPTS CHAPTER 90, PART 2, SECTIONS 4 THROUGH 8 OF THE MAINE BOARD OF LICENSES FOR PROFESSIONAL LAND SURVEYOR'S RULES.
4. DUE TO THE FACT THAT THIS IS NOT A BOUNDARY SURVEY, THE RELATIONSHIP BETWEEN THE EXISTING STRUCTURES AND THE PROPERTY LINES ARE CONSIDERED APPROXIMATE AND SHOULD BE VERIFIED PRIOR TO ANY CONSTRUCTION.
5. THE DISTANCES OF THE PROPERTY LIES AS SHOWN ON THE PLAN ARE FROM THE DEED REFERENCED ABOVE. THAT DEED GIVES NO BEARINGS FOR ANY OF THE PROPERTY LINES.

EXISTING CONDITIONS PLAN

211 DANFORTH STREET
PORTLAND

MAINE

SCALE: 1"=10'

DATE: SEPTEMBER 26, 2013

PREPARED FOR: KEITH HICKMAN
211 DANFORTH STREET
PORTLAND ME

JOB NUMBER: 34043

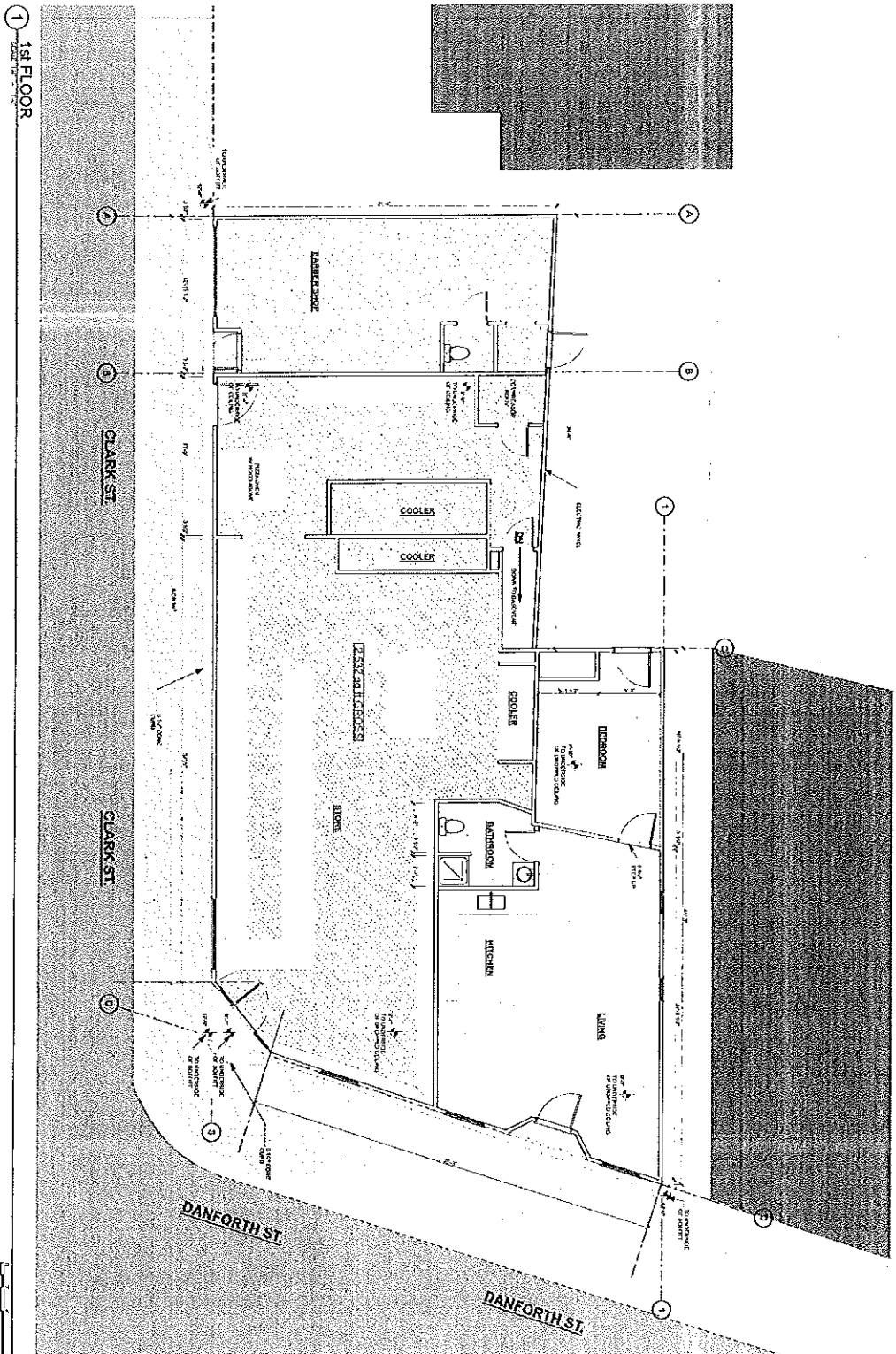
ACAD FILE: 34043WAGANZA.DWG



SURVEYING ENGINEERING LAND PLANNING
Northeast Civil Solutions
INCORPORATED

153 US ROUTE 1, SCARBOROUGH, MAINE 04074
tel 207.883.1000 fax 207.883.1001
800.882.2227 info@northeastcivilsolutions.com





KAPLAN THOMPSON
ARCHITECTS
1111 11th St NW
Nashville, TN 37203
615.259.1111

EXISTING CONDITIONS

RENOVATION
KAPLAN THOMPSON
ARCHITECTS

DATE: 11/11/2020
REVISION: 11/11/2020

X-1.1

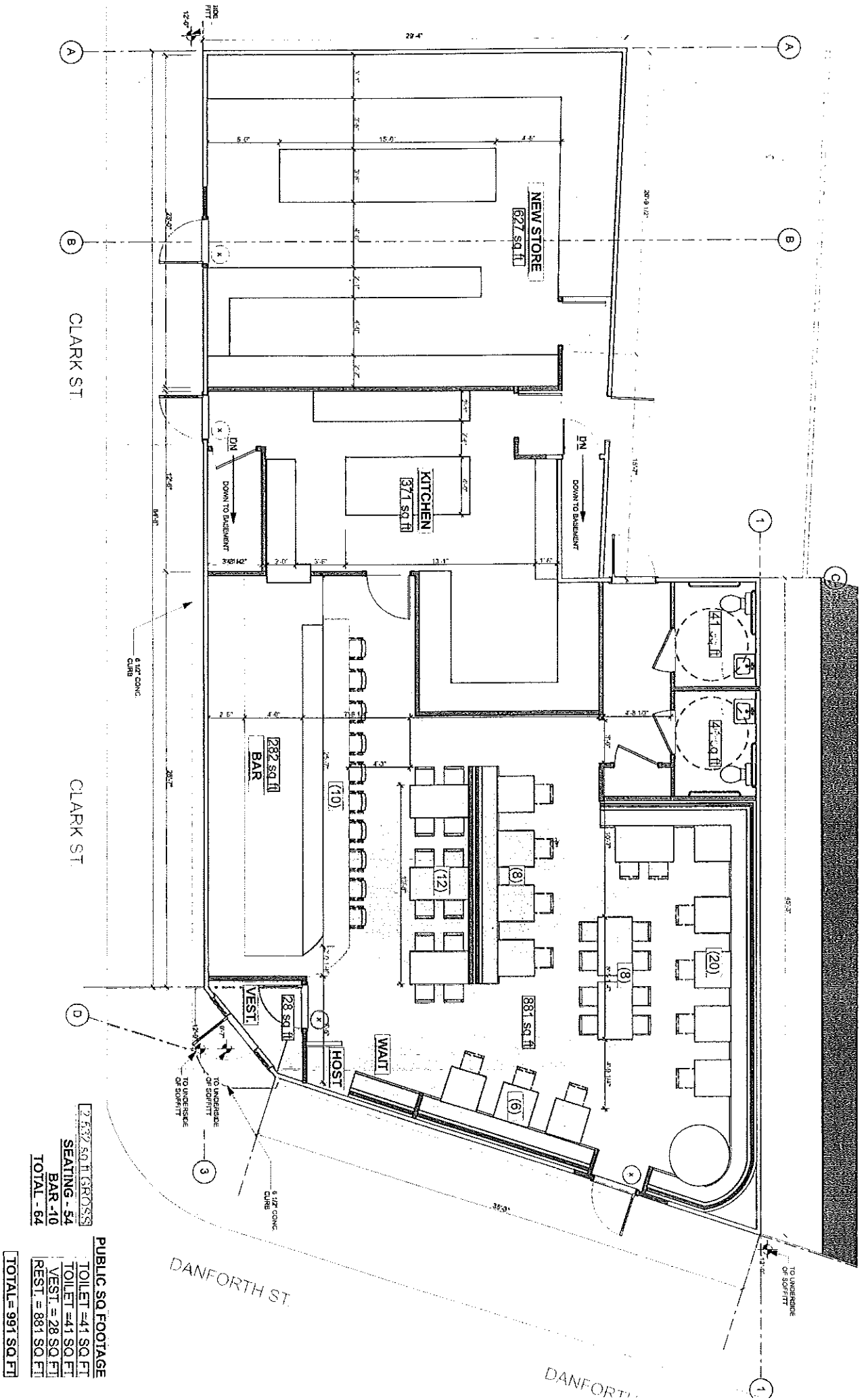


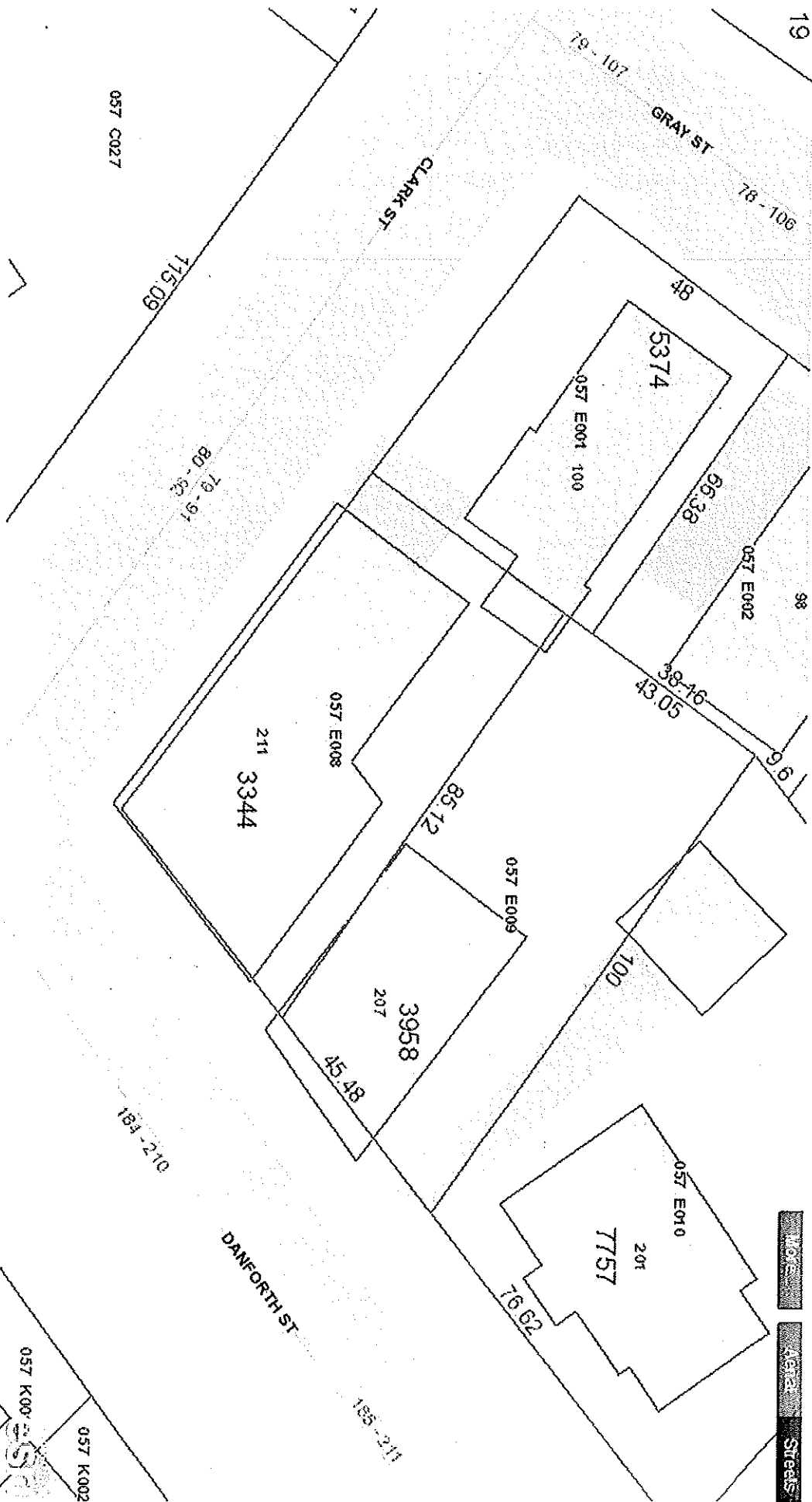
EXISTING CONDITIONS

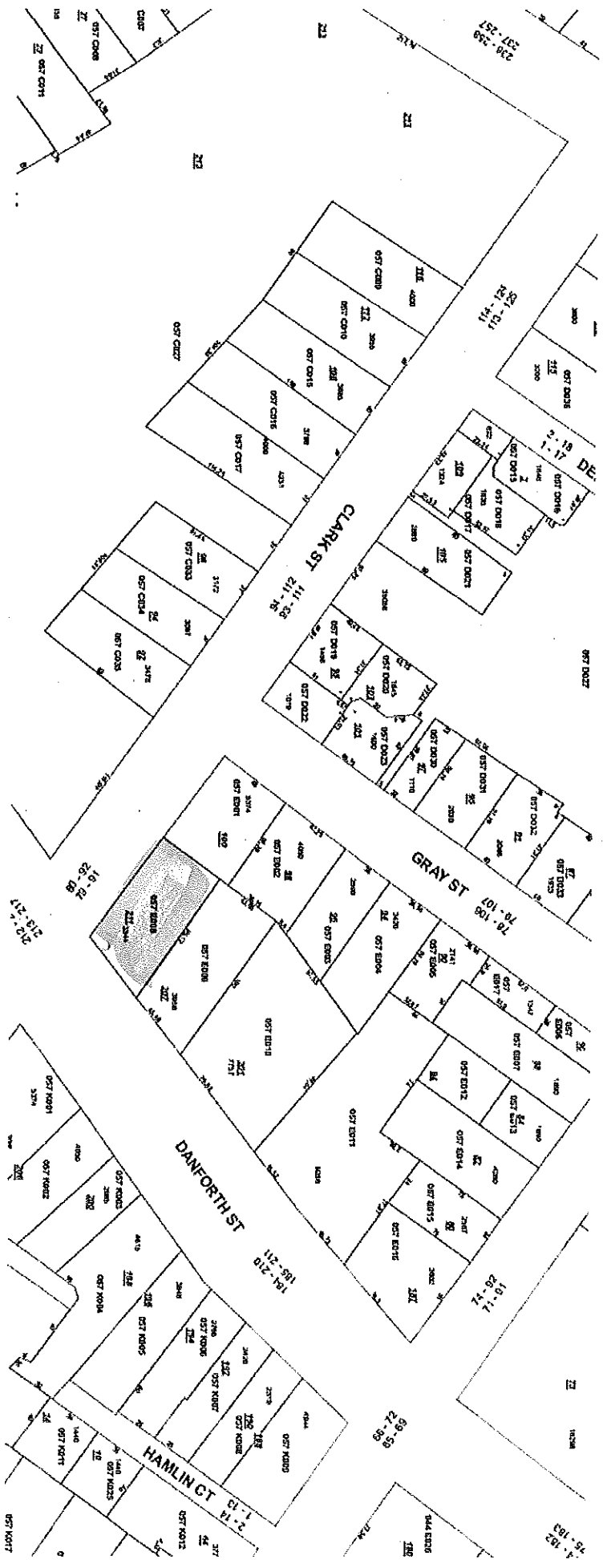
PRODUCTS
RENOVATION
KEITH HICKMAN
414 DAVIS DR. N.E. STREET
PORTLAND, ME

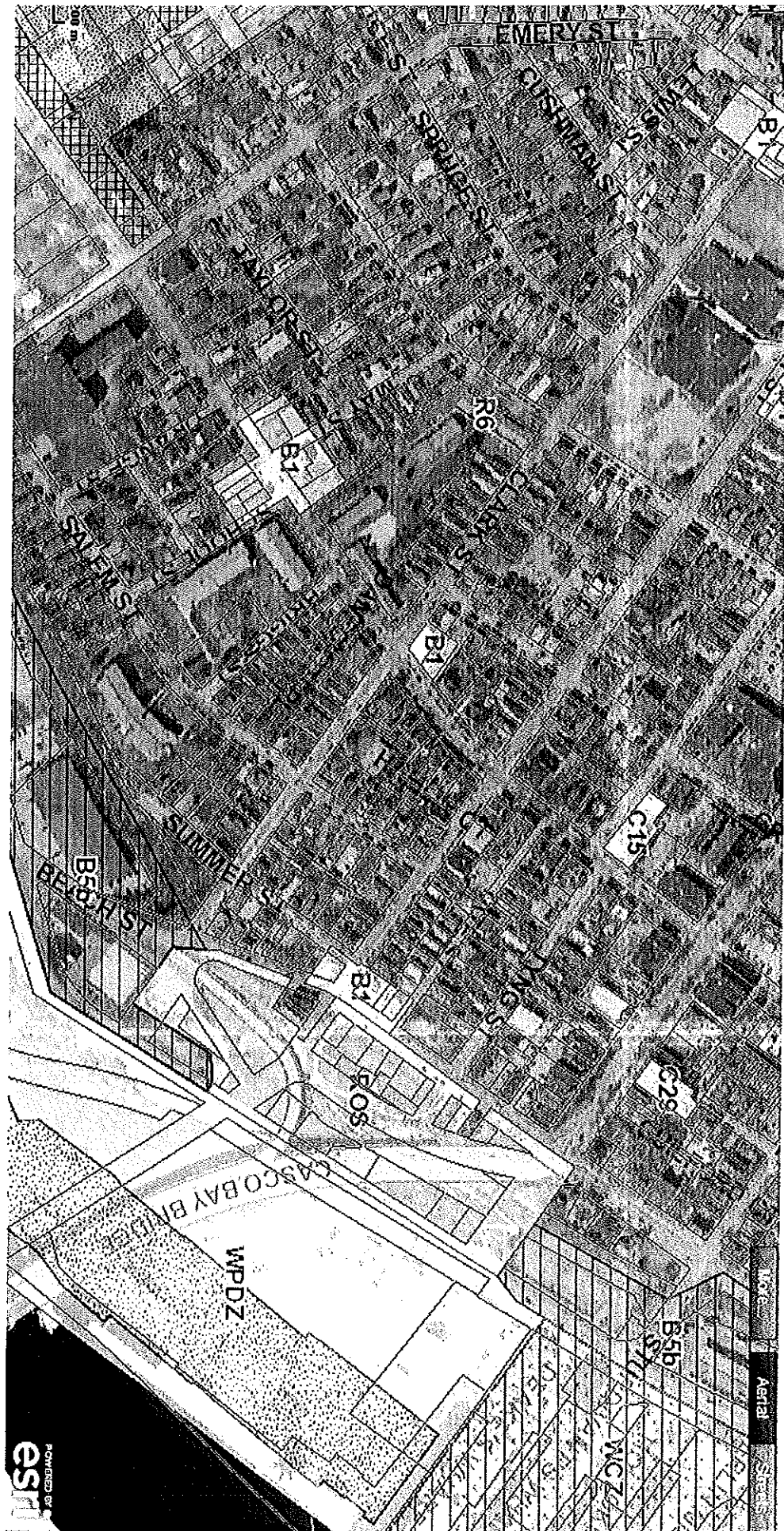
Drawn: EXISTING CONDITION	Drawn by: ML
Scale:	Revised:
Date: Monday, September 23, 2013	

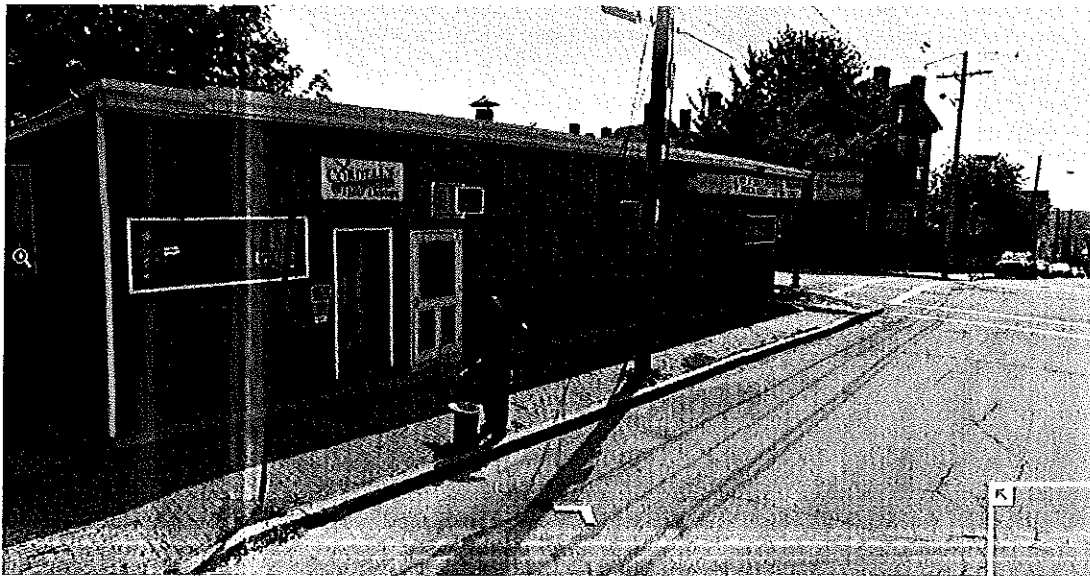
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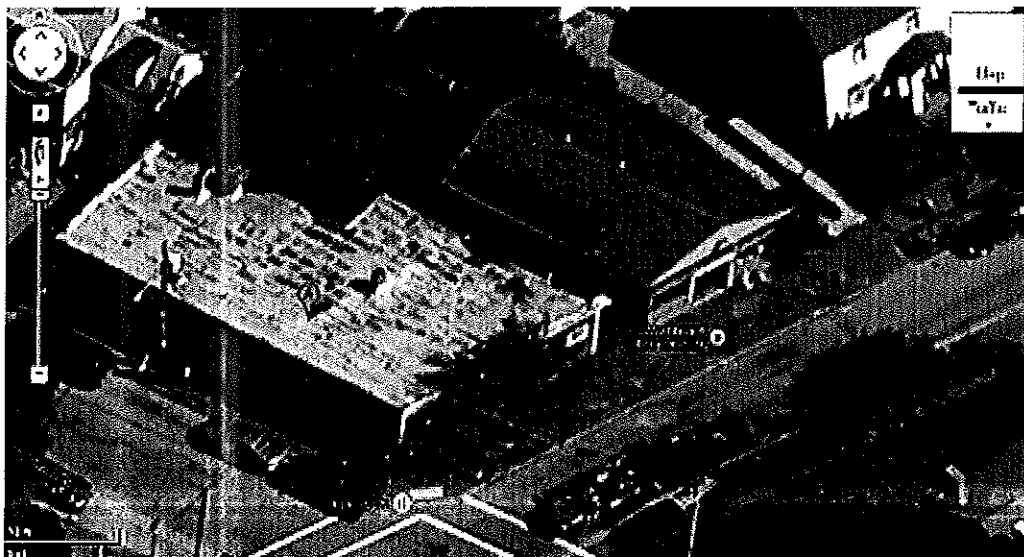












CONTRACT FOR THE SALE OF COMMERCIAL REAL ESTATE

RECEIVED from Keith Hickman, whose mailing address is 145 Park Place, 3D, Brooklyn, NY 11217 (hereinafter called "Purchaser"), this 26th day of August, 2013, the sum of Eighty-Eight Thousand Dollars (\$ 88,000.00) as earnest money deposit toward purchase and sale of certain real estate owned by David Wagabaza (hereinafter called the "Seller") and located at 211 Danforth St in the city/town of Portland, County of Cumberland, State of Maine, described as follows: Single story Retail-Multi Occupancy building approximately 2728sf of 1st floor space with floor basement. And the assets of the Convenience Store Doing business As - Vespuccia. and being more fully described at said County Registry of Deeds in Book 8112, Page 208, upon the terms and conditions indicated below.

1. PERSONAL PROPERTY: The following items of personal property are included in this sale (if applicable):

None

2. PURCHASE PRICE: The total Purchase Price is Four Hundred Forty Thousand Dollars (\$ 440,000.00), with payment made as follows:

Earnest money to be delivered on or before <u>08/29/2013</u> :	\$ <u>88,000.00</u>
Other: <u>To be delivered at closing</u>	\$ <u>44,000.00</u>
Other: _____	\$ _____
Balance due at closing, in immediately-available funds:	\$ <u>308,000.00</u>

3. EARNEST MONEY/ACCEPTANCE: KW Commercial ("Escrow Agent") shall hold the earnest money in a non-interest bearing account and act as escrow agent until closing. This offer shall be valid until August 28, 2013 at 5:00 (☐ AM ☒ PM). In the event of Seller's non-acceptance of this offer, the earnest money shall be returned promptly to Purchaser.

4. TITLE: Within 15 days of the Effective Date (the "Title Review Period"), Purchaser shall notify Seller in writing (the "Title Objection Notice") of any matters affecting title to the property that are objectionable to Purchaser in Purchaser's sole discretion ("Title Defects"). Purchaser shall be deemed to have waived the right to object to any matter affecting title as of the Effective Date, except for any mortgage, tax lien, mechanics' lien, judgment lien, or other liens encumbering the property (for which no objection is required), if Purchaser fails to specifically identify such matters in the Title Objection Notice (each matter not objected to being a "Permitted Encumbrance"). Within seven (7) days of Seller's receipt of the Title Objection Notice, Seller shall notify Purchaser in writing whether or not Seller elects to cure any of the matters identified in the Title Objection Notice. If Seller elects to cure certain Title Defects, Seller shall use good faith efforts to cure such Title Defects and shall have a period of not more than thirty (30) days after notice of Seller's election within which to cure any such Title Defects (the "Title Cure Period"), and the Closing Date shall be extended until five (5) days after the expiration of the Title Cure Period. Seller agrees that, after the Effective Date, it shall not permit or suffer encumbrance of the property with any liens, easements, leases or other encumbrances without Purchaser's prior written consent, except that Purchaser shall not unreasonably withhold or delay its consent to new leases. On or before the Closing Date, Seller shall remove at its sole cost any such matters affecting the title to the property suffered or created by or consented to by Seller after the Effective Date that are not approved in writing by Purchaser. If Seller elects not to cure any Title Defects or if Title Defects which Seller elects to cure are not cured within the Title Cure Period, then Purchaser shall elect, by written notice to Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the property subject to such uncured Title Defects without reduction of the purchase price and without any liability on the part of Seller therefor, in which case such Title Defects shall be Permitted Encumbrances, or (ii) to terminate this Contract, whereupon the earnest money immediately shall be returned to Purchaser and neither party shall have any further obligations under this Contract.

5. DEED: In return for payment in full of the purchase price, Seller shall convey the property on 11/01/13 (the "Closing Date") to Purchaser by Maine Statutory Short-Form Quit claim with covenants Deed (the "Deed"), and the parties agree to execute and deliver on the Closing Date such other documents that are customary and/or reasonably necessary to complete the conveyance. It is a condition to Purchaser's obligations hereunder that title to the property shall be free and clear of all liens and encumbrances except for the following matters and otherwise in compliance with the requirements of this Contract: (i) zoning restrictions and land use laws and regulations and permits and approvals issued pursuant thereto; (ii) current taxes and assessments attributable to periods from and after the Closing, which Purchaser shall be liable to pay; (iii) leases and occupancies disclosed to Purchaser pursuant to Section 11 below; and (iv) any Permitted Encumbrance.

Page 1 of 5

Buyer's Initials _____

Seller's Initials _____

money and thereafter neither party shall have any further obligation under this Contract. Failure of Purchaser to timely notify Seller of its termination of the Contract pursuant to any of its foregoing rights to do so under this Section 11 shall be deemed to be a waiver of the applicable right under this Section 11 to terminate the Contract. At the closing, Seller shall deliver written notice to the tenants and occupants of the property of the transfer of the property, and of the tenants' security deposits, to Purchaser. List tenants: To follow.

12. **FINANCING:** Notwithstanding anything to the contrary contained in this Contract, Purchaser's obligation to close hereunder is conditioned upon Purchaser's obtaining within Fifteen (15) days from the Effective Date of this Contract (the "Commitment Date") a written commitment (the "Commitment") from a lender for a mortgage loan of not less than 70.000 % of the purchase price at an initial interest rate not to exceed 5.250 % per annum, amortized over a period of not less than Thirty (30) years and otherwise on terms reasonably acceptable to Purchaser. In the event the Purchaser is unable to obtain the Commitment and Purchaser notifies Seller thereof by the Commitment Date, then Escrow Agent shall immediately return the earnest money to Purchaser, this Contract shall terminate, and neither party shall be under any further obligation under this Contract. It shall be a further condition of Purchaser's obligation to close hereunder that the Commitment shall not lapse, be terminated and/or withdrawn prior to the Closing Date for any reason whatsoever, including but not limited to the property failing to appraise at or above the Purchase Price, or any such other level acceptable to Purchaser and Purchaser's lender sufficient to support the Commitment. In the event the Commitment shall lapse, be terminated and/or withdrawn by Purchaser's lender for any reason (other than at the request of Purchaser) at any time prior to the Closing Date, Purchaser shall within Three (3) days of Purchaser's receipt of notice of lapse, termination and/or withdrawal notify Seller of same, and upon such notification Purchaser may, at Purchaser's option, elect to terminate this Contract and thereafter the earnest money immediately shall be returned to Purchaser and neither party shall have any further obligation under this Contract. If Purchaser does not timely notify Seller that it has failed to obtain the Commitment or that the Commitment has lapsed, terminated and/or been withdrawn, then Purchaser shall be in default of this Contract at the election of Seller. This contingency benefits Purchaser only, and only Purchaser may waive it by providing written notice to Seller specifically waiving this condition and contingency or any part thereof.
13. **AGENCY DISCLOSURE:** Purchaser and Seller acknowledge that they have been informed that n/a ("Transaction Broker") is acting as a transaction broker in this transaction and does not have a client relationship with either Purchaser or Seller. n/a ("Selling Agent") is acting as a n/a agent in this transaction and is representing n/a and that Edward Herczeg ("Listing Agent") is acting as a Listing agent in this transaction and is representing David Wagabaza, (Transaction Broker, Selling Agent and Listing Agent are referred to elsewhere herein as "Licensees").
14. **DEFAULT:** If the sale of the property as contemplated hereunder is not consummated solely by reason of Purchaser's default hereunder, provided that Seller is then ready, willing and able to consummate the sale of the property as contemplated by this Contract and provided further that all conditions to Purchaser's obligation to consummate such purchase have been satisfied or waived by Purchaser, Seller shall be entitled to either (i) pursue any and all legal and/or equitable remedies or (ii) terminate this Contract and receive the earnest money as full and complete liquidated damages for the breach of this Contract, it being agreed between the parties that the actual damages to Seller in the event of such breach are difficult to ascertain and/or prove and the earnest money is a reasonable estimate and forecast of such actual damages. The parties acknowledge that the payment of the earnest money is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. In the event of an undisputed default by either party, the Escrow Agent may deliver the earnest money to the party entitled to it under this Contract, with written notice to both parties pursuant to Maine Real Estate Commission regulations. If a dispute arises between Purchaser and Seller as of the existence of a default hereunder and said dispute is not resolved by the parties within thirty (30) days, the Escrow Agent may elect to file an action in interpleader and deposit the earnest money in the court to resolve said dispute, or otherwise disburse the earnest money pursuant to Maine Real Estate Commission regulations. Purchaser and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorneys' fees, incurred by the Escrow Agent in connection with said action and/or in connection with any dispute relating to this Contract and/or the earnest money.
15. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract or the property addressed in this Contract shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the Maine Association of Dispute Resolution Professionals or its successor organization. This clause shall survive the closing of this transaction.
16. **PRIOR STATEMENTS:** This Contract sets forth the entire agreement between the parties, and there are no other representations, agreements or understandings with respect to the subject matter of this Contract. This Contract shall be construed according to the laws of the State of Maine.

Addendum I to Agreement

Addendum to contract dated August 26, 2013

between David Wagabaza (hereinafter "Seller")

and Keith Hickman (hereinafter "Buyer")

property 211 Danforth St, Portland,

1) Buyer will be granting a mortgage to the seller on the property with the following terms:

- a) Buyer will provide personal financial statement, 2012 tax return, fill out a credit application, with 5 days from the effective date of this contract.
- b) Seller will have 15 days after receiving "1a" to verify information and notify buyer of declining or accepting the sellers application for mortgage.
- c) The interest will be 5.25% fixed, amortized at 30 years on the principle of \$308,000, with a balloon payment due on the remaining principle on or before the 5th (five) year mark (no later than the 60 month), no prepayment penalty shall be assessed should buyer pay principle balance earlier than the 60th month.

2) The sale includes all business assets, inventory, name, phone number, web site, vendor list, employee information of the existing business "Vespuccis".

3) Once all contingencies are satisfactory to both buyer and seller the earnest money deposit of \$88,000 shall become non-refundable and the buyer shall have the right to money immediately on the 21st day from the effective date of this contract and buyer will agree to the release of deposit by the escrow agent.

4) ~~Seller shall be responsible for any outstanding invoices pertaining to the business "Vespuccis" up the date of the closing.~~

4) days means calendar days.

Parties acknowledge Agency's advice to seek legal, tax and other professional advice as necessary in connection with sale/purchase of property.

DocuSigned by:

Keith Hickman

1AF37D72E0B2403...
Buyer 8/28/2013
Keith Hickman Date

Seller
David Wagabaza Date

Buyer Date

Seller Date

September 12, 2013

Department of Planning & Urban Development
Zoning Board of Appeals
389 Congress Street, Room 315
Portland, Maine 04101

RE: Letter of Authorization

Dear Zoning Board of Appeals:

Should you require any meeting or discussion in regard to this application review process, I hereby authorize my business partner Josh Kaplan to represent the property and our intentions regarding future plans. Of course, I will always be reachable by phone and email at anytime before my closing date of November 1, 2013.

Sincerely yours,

Keith Hickman

Keith Hickman
Kehickman145@gmail.com
347-446-4265