Housing & Economic Development Committee Meeting
Tuesday, October 24, 2023 at 5:30 PM

MEMBERS
Councilor Pious Ali, Chair
Councilor Roberto Rodríguez
Councilor Mark Dion
Councilor Regina Phillips

To submit written public comment on an agenda item, email edd@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Housing & Economic Development meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

REMOTE ACCESS INFORMATION

The Housing & Economic Development Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the Agenda Center following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:
https://portlandmaine-gov.zoom.us/j/88317133775?pwd=SUwxaXovTU9nMHZrRi9UQmN4YXVQdz09
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International numbers available: https://portlandmaine-gov.zoom.us/u/kzYxPt9Mk

1. **Review and accept Minutes of previous meeting held on October 10, 2023.**

    a. See attached draft meeting Minutes.

2. **(Public Comment) Review and recommendation to the City Council of an Amendment to Purchase and Sale Agreement for 622 Auburn Street/0 Gray Road, Falmouth.**

    a. See attached memo and backup.

3. **(Public Comment) Review and recommendation to the City Council of an Affordable Housing Tax Increment Financing District/Credit Enhancement Agreement for Lambert Woods North (622 Auburn Street).**

    a. See attached Memo and backup.

4. **Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C)(F), the Committee will go into executive session to provide staff direction on negotiations with Maine Cooperative Development Partners Affordable Housing Development Funding Requests.**

5. **(Public Comment) Review and recommendation to the City Council of an Amendment to Purchase and Sale Agreement for Dougherty Commons (Douglas Street).**

    a. See attached Memo and backup.

6. **Communication - No vote or public hearing required.**

    a. See attached 2023 Committee Work Plan and Schedule

    b. Discussion of possible second meeting in November on November 30th.

    c. See attached public comment on funding projects from the Jill C. Duson Housing Trust Fund, HOME, and ARPA funds.

Next Meeting Date: November 14, 2023

Minutes

Remote Housing and Economic Development Committee

October 10, 2023

NOTE: This meeting was held via Zoom and can be viewed at this link:

https://www.portlandmaine.gov/602/Agendas-Minutes

These Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A remote meeting of the Housing and Economic Development Committee (HEDC) of the Portland City Council was held on Tuesday, October 10, 2023, at 5:30 p.m. via Zoom. Present from the Committee were Chair Councilor Pious Ali, and members Councilors Mark Dion and Regina Phillips. Committee member Councilor Roberto Rodriguez arrived shortly after the meeting started as noted herein. Present from the City staff were Interim Housing and Economic Development Department Director Mary Davis, Public Assembly Facilities Director Andy Downs, Parks, Recreation, and Facilities Management Director Ethan Hipple, Corporation Counsel Michael Goldman, Assistant City Manager Anne McGuire, and Principal Adm. Officer Lori Paulette. Finance Director Brendan O'Connell joined the meeting when it went into Executive Session.

Item #1: Review and vote on September 19, 2023 draft meeting Minutes

A motion was made by Councilor Phillips to accept the Minutes as published; Chair Councilor Ali seconded the motion and asked if there was any public comment, and there was none. He then asked for a vote on the motion and it passed 2-0-1 (Dion abstained).

Councilor Rodriguez joined the meeting at this time.

Item #2: Executive Session – Pursuant to 1 M.R.S.A. 405(6)(C) and 5 M.R.S.A. 13119-A, the Committee will go into executive to provide staff direction on negotiations regarding United Soccer League – Financial Due Diligence

A motion was made by Councilor Mark Dion to go into executive session; Councilor Phillips seconded the motion. Chair Councilor Ali asked if there was any public comment, and there was none. He then asked for a vote on the motion and it passed 4-0 at 5:37. At approximately 5:55 p.m., on motion made by Councilor Phillips, seconded by Councilor Rodriguez, the Committee voted 4-0 to come out of executive session.

Item #3: Review and recommendation to the City Council regarding the Portland United LLC (USL Soccer) Stadium Use Agreement for Use and Occupancy of Fitzpatrick Stadium.

Mr. Hipple said that his Department manages many agreements for use of the various public facilities that the City owns. City staff have been working with USL for the past couple of years and are now at the point of bringing this Stadium Use Agreement forward for approval, noting that public access and the priority for the schools' use of the stadium and the other dozens of users was key to making this work to balance all the needs.

Mr. Hipple then provided a high-level summary of the business terms including an initial five-year term with the option of two extensions of five years for a total of fifteen years. USL with will have access to 25 event dates for home games, noting they started with a request for 40 games. USL is also committing to significant improvements - $1 Million in capital improvements in return for City fees to be waived for the first ten years. The track is to remain in its current location, and the existing field to remain in its current state and lines.

Should USL alter anything with the City's prior consent, it will restore it at its sole expense to the City's satisfaction.

Mr. Hipple also noted that USL will operate all concessions and retain net profits. The City will operate the parking facilities and receive 100% of net parking revenue, and the City will receive 15% of all permanent net signage revenue. USL will also contribute $200,000 for an additional artificial turf field – location to be determined.

In closing, Mr. Hipple noted that this will be a good addition for the City and Portland taxpayers.

Councilor Rodriguez noted the good balancing act with priority for Portland High School, schools, other users, and public access. He asked for clarification of scheduling the events.

Mr. Hipple noted that the City will open scheduling access on or before September 1st, and USL will have 10 business days to select 25 reserved dates. They will need to think through their schedule earlier. Staff works with many facilities and scheduling, so Mr. Hipple said that all parties will be able to work through this to meet all needs.

Chair Councilor Ali then opened the meeting for public comment.

Ken Capron agreed that prioritization of the field is key, noting bad weather events that would necessitate rescheduling of dates, and also expressed concern with USL retaining all net concession revenue.

Mr. Hipple agreed with the prioritization of the field and that is key to all. His Department manages this and many other facilities and scheduling and is confident that resolutions will occur. Regarding concessions and their retaining all the net revenue, it is an incentive for them.

Mr. Downs agreed, it makes more sense for USL to manage and run the concessions.

Taylor Mannix, first team coach with Portland High School soccer, noted that this is very good for the community and the kids are excited to see this here.

Kevin Parker echoed the last comment, noting that it is great for the City across many groups.

Seeing no further comment, the Chair closed the public comment session.

On motion made Councilor Phillips, seconded by Councilor Rodriguez, the Committee voted 4-0 to forward this to the City Council with a recommendation of approval in substantially the form as presented.

Item #4: Review of the FYE2023 TIF Annual Report and vote to forward it to the City Council as a communication.

Ms. Davis noted this is the 11th year of annual reporting to the City Council. In FY2023, the City Council approved the AHTIF for 45 Dougherty LP at the former West School site on Douglas Street. This development will produce 63 rental units, with 46 units maintaining affordability for households earning at or below 60% AMI. The City Council also approved the City's Affordable Housing Development TIF District Application for future AHTIF Districts. She then described the active TIF Districts, noted the report has a 5-year table with trends, an attached appendix of each TIF District and financial activity, and highlighted that with the tax sheltering value of $48 Million, it produced an estimated savings of $3.9 million. She thanked Lori Paulette for her work for this Report.

Councilor Dion noted the good report, and that a discussion remains for this Committee regarding the construction phase for Affordable Housing TIF Districts and issues that may cause costs go up because of City TIF Policy, particularly the State prevailing wage requirement or Portland City Ordinance, whichever is greater.

On motion made by Councilor Rodriguez, seconded by Councilor Phillips, the Committee voted 4-0 to forward this item to the City Council as a communication.

Item #5: Communication – 2023 Committee Work Plan and Schedule

Ms. Davis noted that the next Committee meeting is October 24, and asked the Committee about a November meeting date of the 14th. The Committee concurred that the November 14 date works for them. Ms. Davis noted that and would look for a second meeting in November.

On motion made by Councilor Rodriguez, seconded by Councilor Dion, the Committee voted 4-0 to adjourn the meeting at 6:40 p.m.

Respectfully, Lori Paulette

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Victoria Volent
Housing and Economic Development Department

DATE: October 24, 2023

SUBJECT: Review and Approval of First Amended and Restated Purchase and Sale Agreement for City-Owned Property at 622 Auburn Street, and 0 Gray Road, Falmouth

Staff is requesting that the members of the Housing and Economic Development Committee vote to recommend to the City Council amendments to the Purchase and Sale Agreement, for the sale of city-owned property located at 622 Auburn Street, and 0 Gray Road, Falmouth.

On May 10, 2022, the City entered into a Purchase and Sale Agreement with Maine Cooperative Development Partners for an affordable housing development at 622 Auburn Street, and 0 Gray Road, Falmouth.

Originally, Maine Cooperative Development Partners proposed creating limited equity housing cooperative units ("Co-ops") at the 622 Auburn and 0 Gray Road site. All of the homes would have been permanently affordable to households earning at or up to 100% AMI. The scope of the project has changed. Maine Cooperative Development Partners (MCDP), in a 50/50 partnership with Preservation of Affordable Housing (POAH) will form a new entity which will be the eventual property owner of the property. Lambert Woods North LLC is proposing to create 72 units of Low Income Housing Tax Credit (LIHTC) rental housing affordable at 60% of the area median income.

<u>Amendment to the Terms of the Purchase and Sale Agreement</u>

a) **Due Diligence Period: Originally the Buyer had "twenty-five (25) months after May 10, 2022" (i.e. June 10, 2024) to complete their due diligence. The wording has been changed to "June 10, 2024" for simplicity and clarity.**

b) **Closing: Originally the Buyer agreed to close "on or before the day that is twenty-seven (27) months after May 10, 2022" (i.e. August 10, 2024). The wording has been changed to "on or before August 10, 2024" for simplicity and clarity.**

c) **Buyer's Post Closing Obligations: Originally the Buyer proposed to create cooperative ownership units. The wording has been changed to acknowledge the proposed project** would include "approximately seventy-two (72) dwelling units, including approximately 34 one-bedroom units, 10 two-bedroom units, and 28 three-bedroom units" to reflect the change in scope of the project.

d) Rent Restriction: Section 12 b has been added to restrict rents at 60% of the area median income for 99 years after the project has been completed. The definition of "affordable" has been added as well as the minimum household size allowed per unit. These changes reflect the change in scope of the project.

e) Exhibit C: Originally, Exhibit C provided example of rent limits based on 2020 area median income limits. Exhibit C has been updated and amended to provide rent limits based on 2023 area median income limits.

Attachments:
Amended and Restated PSA LWN redlined
Amended and Restated PSA LWN clean
Purchase and Sale Agreement for 622 Auburn and 0 Gray Road

FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT IS made this ~~10th~~ ___th day of ~~May, 2022~~August, 2023 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and LAMBERT WOODS NORTH LLC, a Maine limited liability company, care of Preservation of Affordable Housing, a Massachusetts nonprofit corporation with a mailing address of 2 Oliver Street, Suite 500 Boston, Massachusetts 02109 (hereinafter referred to as "Buyer"), as assignee of MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 ~~(hereinafter referred to as "Buyer~~("MCDP").

RECITALS

______WHEREAS, MCDP and the City ~~is~~ entered into a Purchase and Sale Agreement dated May 10, 2022 (the ~~owner of~~"Original Agreement"); and

WHEREAS, the Original Agreement relates to certain property owned by the City, specifically, approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the "Portland Premises") and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the "Falmouth Premises") (the Portland Premises and the Falmouth Premises are referred to herein collectively as the "Premises~~")~~"); and

WHEREAS, the City did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the "Request for Proposals") (the Portland Premises is identified in the City of Portland's tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth's tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, ~~Buyer~~MCDP submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the "Proposal"); and

WHEREAS, MDCP has assigned its rights under the Original Agreement to Buyer pursuant to an Assignment and Assumption Agreement of near or even date herewith; and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer~~, subject to the terms and conditions set forth herein.~~; and.

WHEREAS, Buyer and the City wish to amend the Original Agreement and to replace the Original Agreement with this Amended and Restated Agreement (this Amended and Restated Purchase and Sale Agreement is referred to hereinafter as the "Agreement");

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **AMENDMENT AND RESTATEMENT**. This Amended and Restated Purchase and Sale Agreement amends and restates the Original Agreement in its entirety.

2. **SALE**. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

3. **CONSIDERATION**. The purchase price for the Premises shall be One Dollar ($1.00) (the "Purchase Price").

4. **TITLE AND DUE DILIGENCE.**

    a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after ~~the date of this Agreement~~May 10, 2022 (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

    b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.

    c. ~~Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.~~

    d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following~~: (i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii)~~ an affordable housing tax increment financing from the City.

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e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and it attachments,; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development ~~for purposes other than passive recreation~~ within the wetland areas located on the Portland Premises for purposes other than passive recreation; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.

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i. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.

j. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.

k. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.

l. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

5. **<u>INSPECTIONS.</u>**

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

6. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX**. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

7. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to

pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.

8. **RISK OF LOSS**. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

9. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

10. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

11. **CLOSING**. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is twenty-seven (27) months after ~~the date of this Agreement~~May 10, 2022 (the "Closing Date"). At the Closing:

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a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the Purchase Price to the City.

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project ~~is~~on the Portland Premises as generally described in the Proposal. The Project shall include no less than forty~~-~~ four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger. The Project shall utilize Low Income Housing Tax Credits to be awarded by the Maine State Housing Authority ("Maine Mousing"). City acknowledges that this scope of the Project differs from the scope set forth in the Proposal with the elimination of the cooperative ownership aspect of the Proposal, which Buyer has deemed unfeasible.

b. ~~Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").~~

c. ~~Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low- and moderate income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for~~

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~~calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.~~

d. ~~Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.~~

e. Rent Restrictions. When the Project is complete, Buyer shall cause a restrictive covenant to be recorded encumbering the Project for a period of forty five (45) years, complying with the terms and requirements of Section 42 of the United States Internal Revenue Code and on such terms and conditions as Maine Housing customarily requires for developments such as the Project (the "Extended Use Agreement"). The Extended Use Agreement shall provide that all units in the Project shall be affordable to qualifying tenants under the Low Income Housing Tax Credit program.

f. Option to Repurchase. ~~Unless the Project has been transferred to the Coop as set forth above, if~~ If Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.

g. ~~The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, it assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.~~

h. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

13. **ENTIRE AGREEMENT**. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. **NON-WAIVER**. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. **HEADINGS AND CAPTIONS**. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME**. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101
With a copy to :	The Office of the Corporation Counsel at the same address.

9

FOR Buyer: ~~Maine Cooperative Development Partners,~~Preservation of Affordable Housing

______________________ ~~6 City Center, Fl. 3~~

______________________ ~~Portland, ME 04101~~2 Oliver Street

Suite 500

Boston, Massachusetts 02109

With a copy to: ~~David C. Pierson~~Edward J. Kelleher, Esq.

~~Eaton Peabody~~

~~P.O. Box 15235~~

Drummond Woodsum

84 Marginal Way, Suite 600

Portland, ME ~~04112-5235~~04101

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. **BROKERS**. The ~~CITY~~City and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

~~City~~CITY OF PORTLAND

____
Witness

____
~~By:~~___Danielle West
Its ~~Interim~~ :___City Manager

~~BUYER:~~ **~~MAINE~~**

~~COOPERATIVE~~PRESERVATION OF

~~DEVELOPMENT PARNTERS, LLC~~
AFFORDABLE HOUSING

____
Witness

____
~~Brian Eng~~By:_
Its ~~Principal~~:

Approved as to Form:

____
Corporation Counsel's Office

11

FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT IS made this ___th day of October, 2023 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and LAMBERT WOODS NORTH LLC, a Maine limited liability company, care of Preservation of Affordable Housing, a Massachusetts nonprofit corporation with a mailing address of 2 Oliver Street, Suite 500 Boston, Massachusetts 02109 (hereinafter referred to as "Buyer"), as assignee of MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 ("MCDP").

RECITALS

WHEREAS, MCDP and the City entered into a Purchase and Sale Agreement dated May 10, 2022 (the "Original Agreement"); and

WHEREAS, the Original Agreement relates to certain property owned by the City, specifically, approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the "Portland Premises") and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the "Falmouth Premises") (the Portland Premises and the Falmouth Premises are referred to herein collectively as the "Premises"); and

WHEREAS, the City did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the "Request for Proposals") (the Portland Premises is identified in the City of Portland's tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth's tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, MCDP submitted a proposal dated May 2, 2021 in response to the Request for Proposals, as revised by a Third Revised Project Narrative dated May 2, 2023, copies of which are attached hereto collectively as Exhibit B and incorporated herein (the "Proposal"); and

WHEREAS, MDCP has assigned its rights under the Original Agreement to Buyer pursuant to an Assignment and Assumption Agreement of near or even date herewith; and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer; and.

WHEREAS, Buyer and the City wish to amend the Original Agreement and to replace the Original Agreement with this Amended and Restated Agreement (this Amended and Restated Purchase and Sale Agreement is referred to hereinafter as the "Agreement");

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **AMENDMENT AND RESTATEMENT**. This Amended and Restated Purchase and Sale Agreement amends and restates the Original Agreement in its entirety.

2. **SALE**. City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

3. **CONSIDERATION**. The purchase price for the Premises shall be One Dollar ($1.00) (the "Purchase Price").

4. **TITLE AND DUE DILIGENCE.**

   a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on June 10, 2024 (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

   b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.

   c. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following an affordable housing tax increment financing from the City.

   d. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

e. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and its attachments, (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

g. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development within the wetland areas located on the Portland Premises for purposes other than passive recreation; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.

h. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth

Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.

i. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.

j. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.

k. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

5. <u>INSPECTIONS.</u>

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred

Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

6. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX**. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

7. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.

8. **RISK OF LOSS**. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

9. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

10. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

11. **CLOSING**. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before August 10, 2024 (the "Closing Date"). At the Closing:

    a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

    b. Buyer shall deliver the Purchase Price to the City.

    c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project on the Portland Premises as generally described in the Proposal, as amended by the Third Revised Project Narrative. The Project shall include approximately seventy-two (72) dwelling units, including approximately 34 one-bedroom units, 10 two-bedroom units, and 28 three-bedroom units. Contrary to the terms of the Proposal, the parties acknowledge and agree that the Project will not be a cooperative affordable housing corporation and instead shall utilize Low Income Housing Tax Credits to be awarded by the Maine State Housing Authority ("Maine Housing").

b. Rent Restrictions. For a period of 99 years after the Project has been completed, all units in the Project shall be affordable to households earning less than or equal to 60% of the area median income (AMI), adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. If at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in rent and other housing expenses including utilities, shall not exceed 30% of the household's gross monthly income, except as provided below if the Project is financed with the LIHTC program. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof. However, if the Rental Housing Project is financed under the Federal Low Income Housing Tax Credit (LIHTC) Program, maximum allowable rent shall be the maximum allowable rent under the Federal LIHTC Program during the applicable time period for that Program. Upon expiration of any affordability restrictions recorded in the Cumberland County Registry of Deeds under the Federal LIHTC Program, the provisions of Exhibit C shall apply to the Rental Housing Project for the remainder of the 99-year period.

c. Option to Repurchase. If Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.

d. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

13. **ENTIRE AGREEMENT**. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

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16. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME**. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101
With a copy to :	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Preservation of Affordable Housing 2 Oliver Street Suite 500 Boston, Massachusetts 02109
With a copy to:	Edward J. Kelleher, Esq. Drummond Woodsum 84 Marginal Way, Suite 600 Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

CITY OF PORTLAND

____________________________ ____________________________

Witness

By: Danielle P. West
Its: City Manager

PRESERVATION OF AFFORDABLE HOUSING

____________________________ ____________________________

Witness

By:
Its:

Approved as to Form:

____

Corporation Counsel's Office

EXHIBIT C

Minimum Household Size and Maximum Allowable Monthly Rent Calculation

The Minimum household size for a unit is based on the number of bedrooms in the unit, as set forth in the table below. The maximum allowable monthly rent for a unit is 1/12 of 30% of the Area Median Income, based on the minimum household size for a unit, less the occupant's costs for utilities.

	Studio/One-Bedroom Unit	Two-Bedroom Unit	Three-Bedroom Unit	Four-Bedroom Unit
Minimum Household Size	1	2	3	4

For Example, utilizing 2023 AMI levels, and assuming no out of pocket utility costs, the maximum allowable monthly rent would be as follows:

Studio/One Bedroom Unit: 1/12(0.30 x $49,700) = $1,242
Two Bedroom Unit: 1/12(0.30 x $56,800) = $1,420
Three Bedroom Unit: 1/12(0.30 x $63,900) = $1,597

In the event that the occupant has out of pocket utility expenses, the maximum allowable monthly rent would be decreased by the amount of those utility expenses. For example, for a two bedroom unit with $300 in monthly utility expenses, the maximum allowable monthly rent would be $1,420.00 - $300 = $1,120.00.

Utility allowance will be calculated in one of two ways: (1) using the utility allowance established by the Portland Housing Authority or (2) based on actual documented utility usage at the property.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of May, 2022 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the City is the owner of approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the "Portland Premises") and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the "Falmouth Premises") (the Portland Premises and the Falmouth Premises are referred to herein collectively as the "Premises") and did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the "Request for Proposals") (the Portland Premises is identified in the City of Portland's tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth's tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, Buyer submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the "Proposal"); and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. **CONSIDERATION**. The purchase price for the Premises shall be One Dollar ($1.00) (the "Purchase Price").

3. **TITLE AND DUE DILIGENCE.**

   a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after the date of this Agreement (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.

c. Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.

d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: (i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii) affordable housing tax increment financing from the City.

e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and it attachments,; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development for purposes other than passive recreation within the wetland areas located on the Portland Premises; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.

i. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.

j. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.

k. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.

l. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

4. <u>INSPECTIONS</u>.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

8. **PROPERTY SOLD "AS IS, WHERE IS**." Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full

performance and discharge by the City of every agreement and obligation contained herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is twenty-sseven (27) months after the date of this Agreement (the "Closing Date"). At the Closing:

a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the Purchase Price to the City.

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

11. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project is generally described in the Proposal. The Project shall include no less than forty-four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger.

b. Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").

c. Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low- and moderate-income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.

d. Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.

e. Option to Repurchase. Unless the Project has been transferred to the Coop as set forth above, if Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.

f. The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, it assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.

g. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

12. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

13. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

14. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

15. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

16. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

17. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

18. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:

City of Portland
ATTN: City MANAGER
389 Congress Street
Portland, ME 04101

With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Maine Cooperative Development Partners, 6 City Center, Fl. 3 Portland, ME 04101
With a copy to:	David C. Pierson, Esq. Eaton Peabody P.O. Box 15235 Portland, ME 04112-5235

19. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. BROKERS. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

City OF PORTLAND

DocuSigned by:

Danielle P. West

____
WITNESS

A6EE67828A27428...
Danielle West
Its Interim City Manager

BUYER: MAINE COOPERATIVE DEVELOPMENT PARNTERS, LLC

DocuSigned by:

____
WITNESS

Printed Name: Brian Eng
Its Principal

DocuSigned by:

Approved as to Form:

Michael Goldman

5BDA5A4DE56B4E1...
Corporation Counsel's Office

CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO:	Councilor Ali, Chair Members of the Housing and Economic Development Committee
FROM:	Victoria Volent, Housing Program Manager, Housing and Community Development Division
MEETING DATE:	October 24, 2023
SUBJECT:	2023 Affordable Housing TIF Request

Introduction

Preservation of Affordable Housing (POAH) and Maine Cooperative Development Partners (MCDP) have submitted for review and a recommendation by the Housing and Economic Development Committee to the City Council, a request for Affordable Housing Tax Increment Financing in response to the release of the *2023 Affordable Housing Development and Tax Increment Financing Application.*

Lambert Woods North

Preservation of Affordable Housing (POAH) and Maine Cooperative Development Partners (MCDP) are seeking an Affordable Housing TIF (75% for 30 years) for the proposed development of 6 residential buildings with a total of 72 apartments consisting of 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. The homes would be a mix of townhouses (four, three-story buildings) and flats (two, three-story buildings) affordable at up to 60% of the Area Median Income (AMI), which is $56,800 for two people. The target population is an all-ages demographic with a mix of household sizes. POAH Communities would manage the apartments.

The Lambert Woods North is located on City-owned property located at 622 Auburn Street, and 0 Gray Road in Falmouth. Currently the site is under an agreement via a Purchase and Sale Agreement between the City and Maine Cooperative Development Partners (see attached). The developers have requested an amendment to the Purchase and Sale Agreement to; eliminate the cooperative ownership aspect of the proposal and instead create a LIHTC rental housing development; to revise the rent and income affordability level from 100% of the Area Median Income (AMI) to up to 60% AMI. The developer also requested to eliminate the rent restriction from a period of 99 years to 45 years, however staff is recommending that the affordability period remain at 99 years. The Purchase and Sale Agreement still requires development of no less than 44 units of which no less than 25% shall be three-bedroom units or larger.

The development would integrate bus shelters for the 9A and 9B buses, lighted sidewalks, a playground, community gardens, community space with the flats, and a laundry room with seven washers and dryers.

The project will meet the City's Green Building Ordinance by certifying under the Department of Energy's Zero Energy Ready Program and achieving a Home Energy Rating System (HERS) of 52 or less.

This project is seeking a 4% Low Income Housing Tax Credit with Maine Housing.

The applicant received Planning Board approval during their February 28, 2022 public hearing.

According to the developer's application:

Lambert Woods North will accommodate households with incomes below 60% Area Median Income (AMI) or less. Following the expiration of the use restrictions and regulatory compliance periods associated with the Low Income Housing Tax Credit (LIHTC) program and loan financing from the Maine Housing Finance Authority (MSHA), the residents will have the option to purchase the property collectively through a limited-equity housing cooperative to achieve the goal of residents owning their housing. All these homes would be priced at an affordable level targeted for households earning up to 60% AMI. There will be 4 accessible units and 68 adaptable units

The property will not use any fossil fuels for building operations. Good ventilation and products with low toxicity will be selected for improved resident health. Parking and street design will use a minimal amount of pavement to reduce runoff and to preserve more habitat. Building rooflines will be oriented for solar panels, and parking will integrate EV chargers for electric cars. The buildings are organized around a park and a children's playground.

Revenue from the AHTIF would be used to pay operating costs at Lambert Woods North, such as maintenance and utilities. The funds received over the lifetime of the AHTIF will support the project in providing high quality, new, affordable apartments to the North Deering neighborhood of Portland. Without these funds, the development of 72 apartments for low- and moderate income Portland residents would not be able to move forward.

Requested Amount of Affordable Housing Development Funding

Lambert Woods North is requesting a 75% Affordable Housing Tax Increment Financing for 30 years. Based on the underwriting review, the recommendation is to not finalize the Affordable Housing TIF until a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of "Financial Necessity".

Affordable Housing Tax Increment Financing

If approved as proposed (75% for 30 years), the Affordable Housing TIF financing would be provided through a Credit Enhancement Agreement at 75% of the increased assessed value tax revenue, currently estimated at a 30-year annual average of $123,504, with an estimated total of $3,705,106 in captured increased assessed value tax revenue returned to the project/developer to off-set project operating costs. The proposed project would be taxable, with an estimated annual assessment of $9,230,483 and estimated annual tax of $8,771,960 at the current 23FY millage rate of .01361. The estimated increased assessed value is $8,771,960 or $263,158,800 over the 30 year term of the district based on an Original Assessed Value of $0.00. The increased taxable value, currently estimated at a 30-year annual average of $123,504 with an estimated total of $3,705,106 will be non-captured general fund revenue. TIF projections and proposed district map are included in the backup to this memo.

Financial Impact

Seventy-five percent (75%) of the increased assessed value tax revenue would be captured increased assessed value tax revenue returned to the project/developer through a Credit Enhancement Agreement. The remaining non-captured revenue from the increased assessed value of twenty-five percent (25%) will be general fund revenue. The Credit Enhancement Agreement would return approximately $3,705,106 in captured increased assessed value tax revenue to the project/developer (averaged at $123,504 annually over thirty years) to support the cashflow of the project. Non-captured general fund revenues are estimated at $1,235,035 (average at $41,168 annually over thirty years).

	Captured Revenue to Developer (assumes 2% increase/year to mill rate) (Tax Dollars returned to the Developer's District Account)	Captured Revenue Returned to City (assumes 2% increase/year to mill rate) (Tax Dollars returned to the City's District Account)	Non -Captured General Fund Revenue (Tax Dollars in General Fund)
30 Year TIF Total	$3,705,106	$0	$1,235,035
30 Year Average	$123,504	$0	$41,168

With the tax sheltering benefits of TIF Districts, overall savings to the City during the term of the district averages an estimated annual amount of $57,749 +, or $1,732,468 + over the life of the district.

	1. Sheltered Valuation (same as Captured Valuation	2. Avoided Loss of State Aid for Education	3. Avoided Loss of State Municipal Revenue Sharing	4. Avoided Increase in County Tax	5. Total Avoided Impacts (2+3+4)
30 Year TIF Total	$197,369,100	$1,351,320	$284,125	$97,023	$1,732,468
30 Year Average	$6,578,970	$45,044	$9,471	$3,234	$57,749

Finally, prior to TIF finalization, underwriting recommends the satisfactory review of:

- 30 year operating budget with utility costs documentation, preferably utility modeling;
- Purchase and Sale amendment by City Council to allow this use;
- Review of Joint Venture agreement;
- Updated organizational financial statements, including most recent quarterly financials, from POAH and MCDP;

- Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Attachments:

Lambert Woods North: Underwriting Memo
Lambert Woods North: Project Summary
Lambert Woods North: Development Schedule
Lambert Woods North: TIF Projection Table
Lambert Woods North: Tax Shifts – Avoided Formula Impacts
Lambert Woods North: Purchase and Sale Agreement
Lambert Woods North: map

Urban Ventures

To: Mary Davis, City of Portland
From: Anne Boynton, Urban Ventures, Inc.
Re: Lambert Woods North, POAH
Date: 10/13/23

POAH (Preservation of Affordable Housing) and MCDP (Maine Cooperative Development Partners), for their proposed Joint Venture (JV), request an Affordable Housing TIF for a proposed new construction 72 unit rental housing development serving households at 60% AMI on the Lambert Woods North site. This undeveloped parcel of 17.95 acres was awarded to Maine Cooperative Development Partners (MCDP) in 2021 for a proposed limited equity cooperative development. MCDP now proposes to divide the property into two components: "Lambert North" (the project analyzed here) and "Lambert South," a proposed limited equity cooperative which will be discussed in a separate memo.

MCDP proposes a Joint Venture with POAH to develop the "North" property with units which will be rental for 45 years, with an option to convert to cooperative ownership at the end of that term. The parcel is north of Washington Street extension, on the border with the Town of Falmouth

The JV entity and its controlling documents have not been created. The terms described in this memo are based on a "Joint Venture Term Sheet" which will be replaced by the actual JV documents. The term sheet proposes ownership interests of 60% POAH, 40% MCDP.

In addition to the City subsidy by transfer of the land, the requested TIF terms are 75% 30 year, a subsidy of $3,705,106 or $51,460 per unit. However, given recent increases in the operating budget, it is not recommended that the TIF be finalized till a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of "Financial Necessity." See "30 Year Cashflow" and "Recommendations" sections for additional details about TIF sizing.

Sources and Uses

Sources:		Uses:	
Maine Housing Must Pay	$9,675,544	Acquisition	$5
Maine Housing 0% Deferred	$8,496,000	Construction hard costs	$21,586,314
Net Syndication Equity	$10,742,118	Hard & Soft Contingency	$1,731,419
Deferred Developer Fee:	$3,000,000	Soft costs	$4,372,787
Solar Credits	$258,275	Capitalized Reserves	$939,640
		Developer Fee	$3,750,000
Total Sources:	$32,171,937	Total Uses:	$32,171,937

The JV has submitted an application for 4% LIHTC and first mortgage financing to Maine Housing and received a Notice to Proceed. While neither POAH nor MCDP have a track record with Maine Housing, combined, the two entities have extensive relevant experience. POAH is a national non-profit whose mission is, "to preserve, create, and sustain affordable, healthy homes that support economic security, racial equity, and access to opportunity for all." POAH was founded in 2001, and now has more than 130 properties with over 13,000 units in 12 states and District of Columbia. Their properties are concentrated in Chicago and Massachusetts, with several in coastal New Hampshire. Entry into the Portland area is part of POAH's strategic plan. Cory Fellows, a Senior Vice President of Real Estate

Development for POAH, lives in Scarborough, Maine. The principals of MCDP are Matthew Peters, Liz Trice and Brian Eng. Matthew Peters worked for Avesta for 8 years and is now also Executive Director of the Freeport Housing Trust. Brian and Liz bring complementary development and public sector experience.

The Letter of Interest from the syndicator included in the application materials is stale – over a year old and prior to the involvement of POAH. The budget assumes a price of $.89 per credit. POAH reports they have received significant interest from potential syndicators when floating this concept. Considering POAH's depth of relationship with syndicators, and available balance sheet to support syndicator required guarantees, securing a reasonable deal with a syndicator is not expected to be a problem.

The proposed deferred developer fee has more than doubled in the last iteration of the budgets, from $1,370,000 to $3,000,000. This increase generates additional LIHTC basis which helps cover recent increases in construction and soft costs. Construction and soft cost increases of $1,600,000 were paired with a developer fee increase of an additional $1,630,000 in the budget update the City received October 2nd. The developer fee is now projected to be 13.65% of Total Development Costs (less developer fee and reserves). This approaches the maximum of what is nationally considered "industry standard" of 15%, and is much higher than is typical of affordable projects in the City of Portland. Since the 2020 round, developer fee has averaged 6% across 19 projects requesting funding, and has ranged from a low of 2% to a high of 9%. The developer fee per unit proposed here is over $52,000 per unit, 90% higher than the next highest fee per unit of $27,473.

With a deferred fee of this magnitude, the cashflow projections project that it will take the full 15 year syndication period to repay the debt. While historically, syndicators have required the deferred developer fee be payable out of cashflow in 12 or 13 years, POAH states and Maine Housing confirms that some syndicators have become more willing to consider deferred developer fees that are projected to require the full 15 year syndication period to be repaid.

While POAH writes, "The inclusion of this addition $1.8M in fee allows us to raise an estimated $640,000 in additional tax credit equity with no additional soft subsidy," what POAH means is no additional CAPITAL subsidy is required. Instead, POAH requests the City of Portland cover almost the entire burden of the most recent cost increases through additional TIF funding, while POAH and MCDP receive an additional $1,630,000 in fee income.

For analysis of "Uses," see Development Budget.

Development Budget

Construction Costs:

Construction costs are estimated by Penobscot based on drawings at the 50% Design Stage and dated 9/24/23. This estimate includes provision for prevailing wage requirements. Total construction cost divided among the 72 residential units is $299,010, all in including site work. While this cost per unit would have been considered high prior to COVID, it is a moderate cost in the current construction cost environment. The unit only construction cost varies by type of unit (size, townhouse or apartment style) from a low of $215,825 to a high of $246,578 (excludes site costs, overhead, required right of way work).

Penobscot includes a 2% construction contingency in their contract which is reflected in the contingency line above.

Soft Costs:

Soft costs, though high in a few areas such as accounting, are within industry standard.

Paid developer fee is $750,000, the Maine Housing cap for funded developer fee, with an additional deferred developer fee of $3,000,000. Where the prior request was on the high end of reasonable at 8.1%, the current request of 13.65% is extraordinary for affordable housing development in Portland. Developer fee is proposed to be split between POAH (60%) and MCDE (40%).

Contingency:

Hard cost contingency is carried in the development budget at 5%, the industry standard for new construction. The Penobscot estimate also includes a 2% contingency. Considering the continued high level of economic uncertainty, and persistent inflationary pressures in the construction industry, this is the bare minimum contingency.

Soft cost contingency is $208,228, which is 5% of soft costs. This is industry standard, and should be adequate, as the soft cost budget has already gone through several rounds of (primarily upward) adjustments.

Acquisition:

The site is owned by the City, which awarded it to Maine Cooperative Development Partners for the development of a limited equity cooperative. When that did not appear viable within a reasonable period of time, MCDP brought in POAH as a Joint Venture partner to develop affordable rental housing on the “North” portion of the site. MCDP is contributing the land to the JV for $5, clearly below the market value of the land.

The donation of the land is an important part of the subsidy package which keeps the rents affordable. There is no current appraisal of the land, but for some insight on how important the land subsidy is, there are currently 4 single family lots listed for sale in north Portland on Zillow (10/1/23), ranging in size from .14 acres to 1.36 acres and ranging in price from $119,000 to $186,500. MCDP plans to develop about 4 acres of the almost 18 acre total parcel, preserving substantial green space and wetlands.

Operating Budget & 20 Year Cashflow Projection

Project Income:

The operating budget anticipates the maximum allowable LIHTC rents at each income level.

A market study has been provided dated May 25, 2023. Unfortunately, it is based on 2022 LIHTC rents, so is dated, even though the report is not very old. With these assumptions, the study finds the units have a 20% rent advantage to market units for 1 & 2 bedroom units and a 28% market advantage for 3 bedroom units. Compared to 5 other area LIHTC properties, projected rents were just slightly above the average LIHTC rent, 101% of average area LIHTC rents for 1 & 2 bedroom units and 109% of average area LIHTC rents for 3 bedroom units. The weighted average capture rate of 6% suggests plenty of demand for these units. The market study also finds that 39.5% of Portland renters are rent burdened, adding evidence to pent up demand for affordable units.

Residential vacancy is budgeted at the industry standard of 5%, which is slightly above Portland's recent vacancy rates. The market study found market rate properties operating at 98.7% occupancy, and LIHTC projects at 96.1% occupancy. This property is an experiment, with 26 dedicated parking spots for 72 units in a car dependent location (.36 dedicated spots per unit). There will also be 57 on street spots (subject to snow restrictions), which will be free and available to both Lambert North and Lambert South residents. In total, there will be 65 off street parking spots and 57 on street spots for 122 parking spaces for 162 units between the two proposed developments (.74 parking spaces/unit). The bus line stops at the site and will be improved with a bus shelter. The bus system has suggested that service along the route may be increased, however, there is no commitment to increase service nor is there a proposed revised bus schedule. The site's walk score of 13 (considered "car dependent"), transit score of 31 ("some transit"), and bike score of 41 ("somewhat bike-able") suggest this location will be a challenge for those without a car.

Operating Expense

The pro forma reflects a per unit operating cost of $9,375, which is high. Of that, $1,691 per unit is real estate taxes. The "all in" projected utility expense, combining renter utility allowance and owner paid utilities, totals $218,464 per year, or an average per unit utility expense of $253 per month. This seems high for brand new construction with solar installed, though the unit mix includes 38 larger (two- and three bedroom) units, 26 of which are in townhouse construction style, which generates more walls exposed to the elements. Hence the recommendation is final TIF sizing be deferred until better utility cost data is available, as part of a final review of the projected operating budget. Administrative costs are under Maine Housing's ceiling. Grounds costs appear very high, but there are significant exterior amenities to maintain, including interior roadways and parking.

30 Year Cashflow & Debt Service Coverage Ratio (DSCR)

75% 30 Year TIF: Based on the recent increases in utility expense, a 75% TIF generates a year 1 DSCR of 1.14, which is just below the Maine Housing 1.15 DSCR requirement. POAH will need to find $1,000 per year in cost savings in order to fit their request to Maine Housing's underwriting. This will not be difficult. Using the City's TIF Model spreadsheets, the year one value of a 75% TIF would be $91,331 and the 30 year value of the TIF would be $3,705,106. The total TIF subsidy is projected to be $51,460 per unit over the 30 year term.

65% 20 Year TIF: As demonstration of how sensitive TIF sizing is to operating expenses, if the recent utility expense increase is 50% too high, resulting in cost savings to the project of $16,576 per year, a 65% TIF would generate a year one DSCR of 1.15, an exact fit for the Maine Housing underwriting standard of 1.15. A 65% TIF has an estimated year one value of $79,154, and the 20 year value of the TIF would be $1,972,839. This would provide a $27,401 subsidy per affordable unit, while saving $1,732,267 for the General Fund.

Because TIF sizing is so sensitive to projected operating costs, it is recommended that the final TIF sizing be deferred until there is additional information to evaluate the overall operating budget, including the utility projections.

Developer Financials

Though the Joint Venture has not been formed, it is currently anticipated that POAH will be the majority partner (60%) and will have responsibility for predevelopment expenses, construction period supervision, and property management during operations. Hence, POAH's financial situation is more relevant to the success of the Lambert North project than MCDP's financial situation.

Consistent with the scale of POAH's operations (over 13,000 units), POAH is a financially mature organization with assets of over $1.7 billion. POAH's consolidated audit combines the development functions, property management, and all "controlled property" operations. These layers make it challenging to take a close look at core operational profitability. Audits from 2018-2022 reflect steady, incremental growth in net assets – from $264,750,620 in 2018 to $280,601,088 in 2022, a gain of $15,850,468 (6%) over 4 years. Cash and cash equivalents of $83.5 million as of 12/31/22 provide a significant safety net and have more than doubled over 4 years, up 141%. POAH's current ratio dipped very low at the end of 2021 (1.09) but trended back up in 2022 to a still-lean 1.29. While rental income has grown steadily over the period, up 41%, expenses have risen even faster -- personnel up 44% and property operations up 52% since 2018. The pandemic, including federal pandemic related supports and the dismantling of these supports, and pandemic ignited inflation all play a role in all of this, but it is not a long-term sustainable trend.

In January 2022, POAH received a bond issuer credit rating from Standard & Poor's rating of A+, which S&P describes as "Strong capacity to meet financial commitments, but somewhat susceptible to economic conditions and changes in circumstances." In April 2022, POAH issued $75 million in 10 year sustainability bonds at 4.479%.

MCDP is anticipated to be the minority partner (40%) with limited responsibilities for the development and operations of the Lambert North project. MCDP is a young organization and relies on ____ to produce their management statements. has not yet had an audit. Their 2022 Income/Expense shows no operating income and $9,824 in expenses. However, that dramatically understates their activity. Consistent with GAAP, their project related predevelopment expenditures are accounted for on their balance sheet, in 3 project pre-development accounts. The chart below shows MCDP's predevelopment investments by property by year, including 2023 through September. Subsequently, POAH has reimbursed MCDP for Lambert North related predevelopment expenses and there have been some additional adjustments to the accounting of investments. While MCDP is young, its financial transactions are increasingly complicated and it will lay important groundwork for future financial stability to get an audit for operations through end of 2023.

	2021	2022	2023	Cumulative Total to Sept 2023	Adjusted Values 10/2/23
Douglas Commons	$ 37,452	$ 92,561	$ 77,355	$ 207,368	$157,498
Lambert North	$ 9,634	$ 162,146	$ 36,218	$ 207,998	-$63,251
Lambert South	$ 263,824	$ 352,436	$ 194,561	$ 810,821	$800,753
Investment By Year:	$ 310,910	$ 607,143	$ 308,134	$ 1,226,187	$893,000

MCDP ended 2022 with $26,298 in current assets (cash holdings) and current term liabilities of $636,926, for a current ratio of .041.

2023 through October 2, 2023, the Profit and Loss statement again reflects no income and limited ($5,000) in expenses. The action, again, is reflected on the Balance Sheet, where MCDP shows current (cash & equivalents) assets of $222,441, and other current liabilities of $800,734. The resulting current ratio is .278.

A substantial portion of MCDP's predevelopment funding has come from a subsidiary of UHAB, which lent the young organization up to $1,235,000 at 1.5% interest. The current balance on that loan is $781,845. The two year term of the predevelopment loan came due in May of this year and an extension agreement extends the term through 11/11/23. According to Matt, a longer extension is currently under negotiation.

Recommendations

The developer must at minimum meet three primary criteria for an AHTIF approval:

1. Community Need: "…site specific AHTIF designations must address an identified community need."

The prospective JV proposes 72 units of housing for households at 60% AMI. Affordable housing is identified as a community need in Portland's Plan 2030 and the City Council's 2020 Common Goals

2. Financial Necessity: "The applicant must demonstrate the City's participation is financially necessary in order for the project to proceed."

The financial projections demonstrate that a TIF will be necessary for the project to proceed. The TIF functions to support the cashflow of the project and demonstrates a cashflow cushion to the mortgage lender to meet the lender's underwriting standards, in this case Maine Housing's requirement of 1.15 DSCR. Given recent increases in the operating budget, it is not recommended that the TIF be finalized till a final review of the operating budget substantiates the appropriate level of funding, consistent with the standard of "Financial Necessity."

TIF Terms	Year 1 DSCR	TIF value
75%, 30 years	1.14	$3,705,106

Financial Capacity: "The applicant must demonstrate financial capacity to support their project."

POAH's financial statements demonstrate the financial capacity to support their project through their organizational financials (see Developer Financials above) which show POAH has the resources to attract LIHTC investors and to address unanticipated cost increases. In addition, Maine Housing "Notice to Proceed" suggests Maine Housing will likely move forward with the project.

I recommend a TIF of no more than 75% for no more than a 30 year term, with final sizing to be determined, conditioned upon satisfactory review of the following prior to execution of the TIF:

- 30 year operating budget with utility costs documentation, preferably utility modeling;
- Purchase and Sale amendment by City Council to allow this use;
- Review of Joint Venture agreement;
- Updated organizational financial statements, including most recent quarterly financials, from POAH and MCDP;
- Updated Note and Loan Agreement between MCDP and Homeownership Lending LLC demonstrating that MCDP is not in default;
- Financing commitments for debt and equity prior to closing on terms and conditions acceptable to the City of Portland;
- All standard construction conditions, including satisfactory review of final contract with GC consistent with budgeted estimates, and total contractor overhead, profit and general conditions of not to exceed 14% of net construction costs.

Project Narrative – Lambert Woods North
Affordable Housing Tax Increment Financing Application

Project Goals

The goal for **Lambert Woods North** is to partner with the City of Portland and MaineHousing to create an **affordable**, **green**, **walkable community.**

Affordable: The development will accommodate households with incomes below 60% Area Median Income (AMI) or less. Following the expiration of the use restrictions and regulatory compliance periods associated with the Low Income Housing Tax Credit (LIHTC) program and loan financing from the Maine Housing Finance Authority (MSHA), the residents will have the option to purchase the property collectively through a limited-equity housing cooperative to achieve the goal of residents owning their housing. All these homes would be priced at an affordable level targeted for households earning up to 60% AMI.

Green: The homes will be designed to meet the City of Portland's Green Building Ordinance by certifying under the Department of Energy's Zero Energy Ready Program and achieving a HERS rating of 52 or less. In addition, the property will not use any fossil fuels for building operations. Good ventilation and products with low toxicity will be selected for improved resident health. Parking and street design will use a minimal amount of pavement to reduce runoff and to preserve more habitat. Building rooflines will be oriented for solar panels, and parking will integrate EV chargers for electric cars.

Walkable: To encourage neighbor interactions and create a safe environment for children and others to play across the property, any road access through the site will be designed with pedestrians asequal users and will be slow, narrow, and safe. Easements will be provided to Portland Trails to build trail connections through the site.

Amenities: The development will integrate bus shelters for the 9A and 9B buses, lighted sidewalks, community spaces, a playground, and community gardens.

Property Information

Address: 622 Auburn Street, Portland, Maine
Parcel ID: 385 D008001
Block / Lot: 385-D-8 386-B-12-15
Size: 223,466 SF / 5.13 acres
Zoning District: R3

The zoning district R-3 allows for low-density residential development characterized by single-family homes on individual lots and PRUDs containing multifamily housing in outlying areas of the city.

Proposed Development

The proposed development contains 6 residential buildings with a total of 72 homes consisting of 34 one-bedroom, 10 two-bedroom, and 28 three-bedroom units. The homes will be a mix of townhouses and flats. There will be 4 accessible units and 68 adaptable units. The buildings are organized around a park and a children's playground. Two of the buildings with flat-style apartments upstairs will include common area spaces on the ground floor, for the residents to gather, enjoy recreational activities, or do laundry, alongside property management offices.

The whole site is 5.13 acres. Nearby amenities include a new city park to the south, connections to the Sebago to the Sea trail, a shopping plaza and grocery store up Auburn St, nearby jobs in Riverside, and a highway access point. The target population is an all-ages demographic with a mix of household sizes.

Unit Mix Summary

Unit Type	# Units	Income Targeting
1BR	34	60% AMI
2BR	10	60% AMI
3BR	28	60% AMI
Total	**72**	

Proposed Program

Unit Size	Area (SF)	# Units	Location
1BR	511	26	Buildings 3, 5, 6, 7 – Flats - 1st Floor
1BR	573	8	Buildings 1, 2 – Flats – Upper Floors
2BR	710	2	Buildings 1 and 2 – Flats – 1st Floor
2BR	753	8	Buildings 1 and 2 – Flats – Upper Floors
3BR	995	2	Buildings 1 and 2 – Flats – 1st Floor
3BR	1,130	26	Buildings 3, 5, 6, 7 – Rowhomes

Building Program

Building ID	Style	1BR	2BR	3BR	Total
1	Flats	4	5	1	**10**
2	Flats	4	5	1	**10**
3	Rowhomes	8		8	**16**
5	Rowhomes	8		8	**16**
6	Rowhomes	6		6	**12**
7	Rowhomes	4		4	**8**
Total		**34**	**10**	**28**	**72**

Maine Cooperative Development Partners (MCDP) creates neighborhoods for people of all ages, backgrounds, and incomes to live in harmony with nature and their neighbors. Our neighborhoods aim to provide a balance of green space, walkability, community, privacy, and affordability. We believe members of our community deserve to live in places that support connection with family, neighbors and nature, and more time to develop purposeful lives. Grounding principles for this work are creating equitable communities and walkable neighborhoods; building healthy buildings; and celebrating beauty, art, andthe natural environment.

Maine Cooperative Development Partners consists of Brian Eng, Liz Trice, and Matthew Peters. The partners collectively provide a large range of experience in legal, financial, residential, and commercial real estate development, community engagement, sustainable building, urban planning, and business development and management. All three partners live in Portland and are passionate in making their communities better places for all people.

Preservation of Affordable Housing (POAH) is a national nonprofit organization whose mission is to preserve, create, and sustain affordable, healthy homes that support economic security, racial equity, and access to opportunity for all. POAH revitalizes at-risk affordable housing communities as vibrant, healthy homes for low- and moderate-income residents. Since 2001, the POAH team has advanced its mission with a blend of expertise and creativity, solving complex problems that others have seen as insurmountable. We have secured long-term affordability for residents while addressing the interests of owners, funders, public agencies, and other stakeholders. The result is the preservation or creation of nearly 12,000 affordable rental apartments through transactions that guarantee that rents will remain affordable for the long-term (30+ years). POAH has also successfully influenced a range of public policies that address the vulnerability of our nation's subsidized rental housing. POAH's policy interests include regulatory and preservation efforts nationwide, incentives to empower nonprofit owners seeking to preserve long term affordability, energy efficiency, and the promotion of housing as a platform for resident success.

Site Control

Currently, the site is under agreement via a Purchase and Sale Agreement between the City of Portland and Maine Cooperative Development Partners. In the near future, MCDP will assign this agreement to the eventual property owner, Lambert Woods North LLC. This LLC will be comprised of a General Partner which consists 50/50 of MCDP and POAH. Please see the Organizational Chart under Exhibit 7 for the relationships between the property owner, MCDP, and POAH.

Municipal Housing Need

The development of 72 units of affordable housing at Lambert Woods North will be well received in Portland, Maine, which is facing an increasingly burdensome underproduction of housing.

According to the National Low Income Housing Coalition's latest reporting, there are only fifty-one affordable and available homes per 100 extremely low income renter households in the state of Maine. The NLIHC goes on to report that the Fair Market Rent for a 2-bedroom apartment in the Portland metropolitan area is $1,721. This means a family must earn $33.10 as an hourly wage to afford this apartment. However, the estimated hourly mean renter wage is only $19.07, which speaks to the lack of affordability in housing. These 72 units of affordable housing at Lambert Woods North will be important homes to families seeking a place to live.

The 2022 Housing Underproduction report, posted by Up For Growth, examines the State of Maine's housing shortage is 9,000 units short of meeting workforce demand. Close to 90% of this shortage is concentrated in the Portland-South Portland Metropolitan Statistical Area (MSA). In other words, 90% of the state's housing issue affects only 40% of the state's residents in the southern portion of the state.

Requested Affordable Housing Development Funding and its Necessity

Lambert Woods North is seeking a 75% AHTIF from the City of Portland. Other project capital funds will come from MaineHousing in the form of 4% Low-Income Housing Tax Credit (LIHTC) equity, debt, and 0% subsidy funds. MaineHousing approved our pre-application in October 2022 and invited us to submit a full application, which we did in November 2022. MaineHousing has informed us that they are reviewing our application and we anticipate a Notice to Proceed in the coming weeks.

Neighboring Land Uses

The property is surrounded by primarily single-family homes, which support the low-density residential program as proposed in this project. To the south along Auburn St or Lambert St there are several multifamily housing complexes.

Accessory Uses

In addition to the 72 individual homes, the two flat-style buildings will have community gathering space, along with storage and common laundry facilities. The buildings are organized around a common lawn and an outdoor play area for children.

Consistency with Comprehensive Plan

Lambert Woods North will provide 72 apartments that will be 100% Affordable for the future, which directly contributes to Portland's goal of increasing the overall supply of housing City-wide to meet the needs, preferences, and financial capabilities of all Portland households. With its plan to meet DOE Zero Energy Ready requirements, the project will have high quality and sustainable design standards. Specifically, the project aligns with the Comprehensive Plan's strategy of leveraging underused properties, as the current site is owned by the City and wooded.

Operations Plan

POAH Communities will manage all apartments at Lambert Woods North for the near and long-term future. Part of the POAH family since 2001, POAH Communities oversees the leasing and operations of properties in 11 states and the District of Columbia. POAH Communities provides high-quality property management and customer service to our residents, connecting them with the opportunities and partnerships that improve their quality of life. POAH Communities manages 145 apartment communities which vary in size, age, geography, and program type, 121 of which are owned by POAH.

Description of Planned Uses of Tax Increment Revenues

Revenue from the AHTIF will be used to pay operating costs at Lambert Woods North, such as maintenance and utilities. The funds received over the lifetime of the AHTIF will support the project in providing high quality, new, affordable apartments to the North Deering neighborhood of Portland. Without these funds, the development of 72 apartments for low- and moderate-income Portland residents would not be able to move forward.

Lambert Woods North – Schedule

February 2023	Planning Approvals
February 2023	MaineHousing Notice to Proceed
June 2023	Out to Bid
September 2023	Construction Loan Closing
September 2023	Construction Start
January 2025	Leasing Start
March 2025	Substantial Completion / Opening
June 2025	Stabilization

City of Portland - TIF Model
Lambert Woods North
OAV as of 3/31/2023: $0, Assessor Chart, Block, & Lot No. 385-D008001
28-Jul-23

City of Portland- TIF Projection Table - Lambert Woods North										
TIF Year	Tax Year-April 1	Increased Assessed Value Real Prop.	% of Value Captured	Captured Valuation	Projected Mill Rate	Total Projected New Taxes Captured	Captured Revenue to Business Project Account	Captured Revenue to Municipal Project Account	City Non-Captured General Fund Revenues	OAV Taxes General Fund Revenue
1	2024	$8,771,960	75.00%	$6,578,970	13.88	$91,331	$91,331	$0	$30,444	$0
2	2025	$8,771,960	75.00%	$6,578,970	14.16	$93,157	$93,157	$0	$31,052	$0
3	2026	$8,771,960	75.00%	$6,578,970	14.44	$95,020	$95,020	$0	$31,673	$0
4	2027	$8,771,960	75.00%	$6,578,970	14.73	$96,921	$96,921	$0	$32,307	$0
5	2028	$8,771,960	75.00%	$6,578,970	15.03	$98,859	$98,859	$0	$32,953	$0
6	2029	$8,771,960	75.00%	$6,578,970	15.33	$100,836	$100,836	$0	$33,612	$0
7	2030	$8,771,960	75.00%	$6,578,970	15.63	$102,853	$102,853	$0	$34,284	$0
8	2031	$8,771,960	75.00%	$6,578,970	15.95	$104,910	$104,910	$0	$34,970	$0
9	2032	$8,771,960	75.00%	$6,578,970	16.27	$107,008	$107,008	$0	$35,669	$0
10	2033	$8,771,960	75.00%	$6,578,970	16.59	$109,148	$109,148	$0	$36,383	$0
11	2034	$8,771,960	75.00%	$6,578,970	16.92	$111,331	$111,331	$0	$37,110	$0
12	2035	$8,771,960	75.00%	$6,578,970	17.26	$113,558	$113,558	$0	$37,853	$0
13	2036	$8,771,960	75.00%	$6,578,970	17.61	$115,829	$115,829	$0	$38,610	$0
14	2037	$8,771,960	75.00%	$6,578,970	17.96	$118,146	$118,146	$0	$39,382	$0
15	2038	$8,771,960	75.00%	$6,578,970	18.32	$120,509	$120,509	$0	$40,170	$0
16	2039	$8,771,960	75.00%	$6,578,970	18.68	$122,919	$122,919	$0	$40,973	$0
17	2040	$8,771,960	75.00%	$6,578,970	19.06	$125,377	$125,377	$0	$41,792	$0
18	2041	$8,771,960	75.00%	$6,578,970	19.44	$127,885	$127,885	$0	$42,628	$0
19	2042	$8,771,960	75.00%	$6,578,970	19.83	$130,443	$130,443	$0	$43,481	$0
20	2043	$8,771,960	75.00%	$6,578,970	20.22	$133,051	$133,051	$0	$44,350	$0
21	2044	$8,771,960	75.00%	$6,578,970	20.63	$135,712	$135,712	$0	$45,237	$0
22	2045	$8,771,960	75.00%	$6,578,970	21.04	$138,427	$138,427	$0	$46,142	$0
23	2046	$8,771,960	75.00%	$6,578,970	21.46	$141,195	$141,195	$0	$47,065	$0
24	2047	$8,771,960	75.00%	$6,578,970	21.89	$144,019	$144,019	$0	$48,006	$0
25	2048	$8,771,960	75.00%	$6,578,970	22.33	$146,900	$146,900	$0	$48,967	$0
26	2049	$8,771,960	75.00%	$6,578,970	22.78	$149,837	$149,837	$0	$49,946	$0
27	2050	$8,771,960	75.00%	$6,578,970	23.23	$152,834	$152,834	$0	$50,945	$0
28	2051	$8,771,960	75.00%	$6,578,970	23.70	$155,891	$155,891	$0	$51,964	$0
29	2052	$8,771,960	75.00%	$6,578,970	24.17	$159,009	$159,009	$0	$53,003	$0
30	2053	$8,771,960	75.00%	$6,578,970	24.65	$162,189	$162,189	$0	$54,063	$0
30 Year TIF Total		**$263,158,800**		**$197,369,100**		**$3,705,106**	**$3,705,106**	**$0**	**$1,235,035**	**$0**
30 Year TIF Average		**$8,771,960**		**$6,578,970**		**$123,504**	**$123,504**	**$0**	**$41,168**	**$0**

W:\Shared drives\Economic Development\TIF\Affordable Housing TIFs\Lambert Woods\July 2022 Model - Lambert Woods No 30yrs75% 7-28-2023.xls

Tax Shifts-Avoided Formula Impacts from Sheltering of Valuation: City of Portland- TIF Model - Lambert Woods North

75% Sheltered - 30 years - 75% to Developer Project Account - 25% to City Development Account

TIF Year	Tax Year-April 1	Total Added Valuation	Sheltered Valuation	Avoided Formula Impacts from Sheltering of Valuation: Avoided Loss of State Aid to for Education	Avoided Loss of State Municipal Revenue Sharing	Avoided Increase in County Tax	Total Avoided Impacts
1	2023	$8,771,960	$6,578,970	$0	$9,471	$3,234	$12,705
2	2024	$8,771,960	$6,578,970	$0	$9,471	$3,234	$12,705
3	2025	$8,771,960	$6,578,970	$0	$9,471	$3,234	$12,705
4	2026	$8,771,960	$6,578,970	$17,325	$9,471	$3,234	$30,030
5	2027	$8,771,960	$6,578,970	$34,649	$9,471	$3,234	$47,354
6	2028	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
7	2029	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
8	2030	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
9	2031	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
10	2032	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
11	2033	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
12	2034	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
13	2035	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
14	2036	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
15	2037	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
16	2038	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
17	2039	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
18	2040	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
19	2041	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
20	2042	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
21	2043	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
22	2044	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
23	2045	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
24	2046	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
25	2047	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
26	2048	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
27	2049	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
28	2050	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
29	2051	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
30	2052	$8,771,960	$6,578,970	$51,974	$9,471	$3,234	$64,679
30 Year TIF Total		**$263,158,800**	**$197,369,100**	**$1,351,320**	**$284,125**	**$97,023**	**$1,732,468**
30 Year TIF Average		**$8,771,960**	**$6,578,970**	**$45,044**	**$9,471**	**$3,234**	**$57,749**

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of May, 2022 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and MAINE COOPERATIVE DEVELOPMENT PARTNERS LLC, a Maine limited liability company, having a mailing address of 6 City Center, Fl. 3, Portland, Maine 04101 (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the City is the owner of approximately 4.85 acres of land at or near 622 Auburn Street, Portland, Maine (the "Portland Premises") and 13.3 acres of land at or near 0 Gray Road, Falmouth, Maine (the "Falmouth Premises") (the Portland Premises and the Falmouth Premises are referred to herein collectively as the "Premises") and did advertise RFP #21042 dated February 24, 2021, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 622 Auburn Street, Portland and 0 Gray Road, Falmouth, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the "Request for Proposals") (the Portland Premises is identified in the City of Portland's tax records as CBL 385 D008001, including 386-B-12 and 386-B-15, and the Falmouth Premises is identified in the Town of Falmouth's tax records as Lot U48-027 and is generally depicted on Attachments B,C, D and E to the Request for Proposals); and

WHEREAS, Buyer submitted a proposal dated May 2, 2021 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit B and incorporated herein (the "Proposal"); and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. **CONSIDERATION**. The purchase price for the Premises shall be One Dollar ($1.00) (the "Purchase Price").

3. **TITLE AND DUE DILIGENCE.**

    a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is twenty-five (25) months after the date of this Agreement (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project.

b. Property Description. The legal description of the Premises contained in the deed to the Premises will be a survey description based upon a survey plan that will more specifically describe the Premises. The survey and description of the Premises will be prepared by the Buyer at its sole expense and provided to the City for review two months prior to the expiration of the Due Diligence Period. City shall notify Buyer of any objections to the survey and description prior to the expiration of the Due Diligence Period.

c. Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to maximize residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing.

d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: (i) permanent financing for the Coop in the form of a HUD Section 213 loan; and (ii) affordable housing tax increment financing from the City.

e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and the Development Restrictions described in this Agreement and it attachments,; (ii) easements for utilities servicing or located on the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Portland Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

h. Development Restrictions on the Portland Premises. The Portland Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development for purposes other than passive recreation within the wetland areas located on the Portland Premises; provided however, that the City shall release its easement rights to permit minor wetland alterations affecting less than 10,000 square feet of the wetland areas if the Buyer determines such alterations to be reasonably necessary for the development of the Portland Premises as required by this Agreement.

i. Development Restrictions on the Falmouth Premises. The Falmouth Premises shall be conveyed subject to an easement in form and substance reasonably satisfactory to the City preventing the development of the Falmouth Premises for any purposes other than passive recreation thereon. The easement shall be held by the City or another entity reasonably acceptable to the City and Buyer; provided, however, that the City shall release such easement rights to the extent necessary to permit the development of affordable housing on the Falmouth Premises, subject to the rent and income restrictions set forth in sections 11(b) and (c) below.

j. Buyer's Right to Assign. The Buyer may assign its rights under this Agreement to an affiliated limited partnership or other affiliated entity for purposes of securing financing and/or tax credits for the project with the City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, provided any such assignee agrees to be bound to the terms of this Agreement.

k. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the due diligence period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case neither party shall have any further obligations to the other.

l. Zoning. The parties agree that the Falmouth Premises shall not be included in any lot coverage or other calculations with respect to the development of the Portland Premises.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. DEFAULT AND REMEDIES. In the event that Buyer defaults hereunder for a reason other than the default of the City, City may terminate this Agreement, and neither party shall have any further obligation to the other. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement, in which case neither party shall have any further obligation to the other.

7. RISK OF LOSS. The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

8. PROPERTY SOLD "AS IS, WHERE IS." Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

9. ENVIRONMENTAL INDEMNIFICATION. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is twenty-sseven (27) months after the date of this Agreement (the "Closing Date"). At the Closing:

a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the Purchase Price to the City.

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

11. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

a. Within twelve (12) months after the Closing Date, Buyer shall commence construction of the Project, as the Project is generally described in the Proposal. The Project shall include no less than forty-four (44) dwelling units, no less than 25% of which shall be three-bedroom units or larger.

b. Upon the issuance of a certificate of occupancy for all or a portion of the first phase of the Project or at such earlier time as the Buyer, in its discretion, may determine, the Buyer shall convey the Project or provide a master lease of the Project with a right to purchase to a Cooperative Affordable Housing Corporation (the "Coop") organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended (the "Act").

c. Rent Restrictions. For a period of 99 years after the Project has been transferred to the Coop, all units and cooperative interests in the Project shall be affordable to low- and moderate-income households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under the Act. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit C, which is attached hereto and made a part hereof.

d. Income Restrictions. In order to purchase a cooperative membership interest in, and reside in a unit owned by the limited equity cooperative, a household must not earn more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD"). Household income is defined as adjusted gross income used by the IRS. This income test will be used only at the time of the household's purchase, and excludes transfers to family members or an estate beneficiary. At the time of initial sale of cooperative membership interests in the Coop, up to 20% of the cooperative membership interests may be sold to households earning up to 120% of AMI. All other sales and all subsequent sales of cooperative membership interests must be to households earning no more than 100% of AMI.

e. Option to Repurchase. Unless the Project has been transferred to the Coop as set forth above, if Buyer, its successors, assigns, or transferees fails to commence construction of the Project on the Premises within 12 months after the closing, and construct the buildings which are part of the first phase of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises and the Project at the Purchase Price plus all documented, design, development, construction, and approval expenses incurred by Buyer, or successors, to that juncture. If the City exercises this right to repurchase, Buyer shall convey the Premises to the City and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. This right to repurchase shall be assignable by the City.

f. The articles of organization for the Coop shall provide that in the event the Coop shall be dissolved, it assets will be distributed in accordance with § 1754(6) of the Act to the City or, at the City's option, to another organization permitted under § 1754(6) of the Act reasonably acceptable to the City.

g. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a Declaration of Covenants, Conditions and Restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

12. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

13. **NON-WAIVER**. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

14. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

15. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

16. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

17. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

18. **NOTICE**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101

With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Maine Cooperative Development Partners, 6 City Center, Fl. 3 Portland, ME 04101
With a copy to:	David C. Pierson, Esq. Eaton Peabody P.O. Box 15235 Portland, ME 04112-5235

19. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. BROKERS. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

City OF PORTLAND

DocuSigned by:
Danielle P. West
A6EE67828A27428...

____
WITNESS

____
Danielle West
Its Interim City Manager

BUYER: MAINE COOPERATIVE DEVELOPMENT PARNTERS, LLC

DocuSigned by:

____
WITNESS

____
Printed Name: Brian Eng
Its Principal

DocuSigned by:
Approved as to Form:
Michael Goldman
____
Corporation Counsel's Office
5BDA6A4DE5684E1...

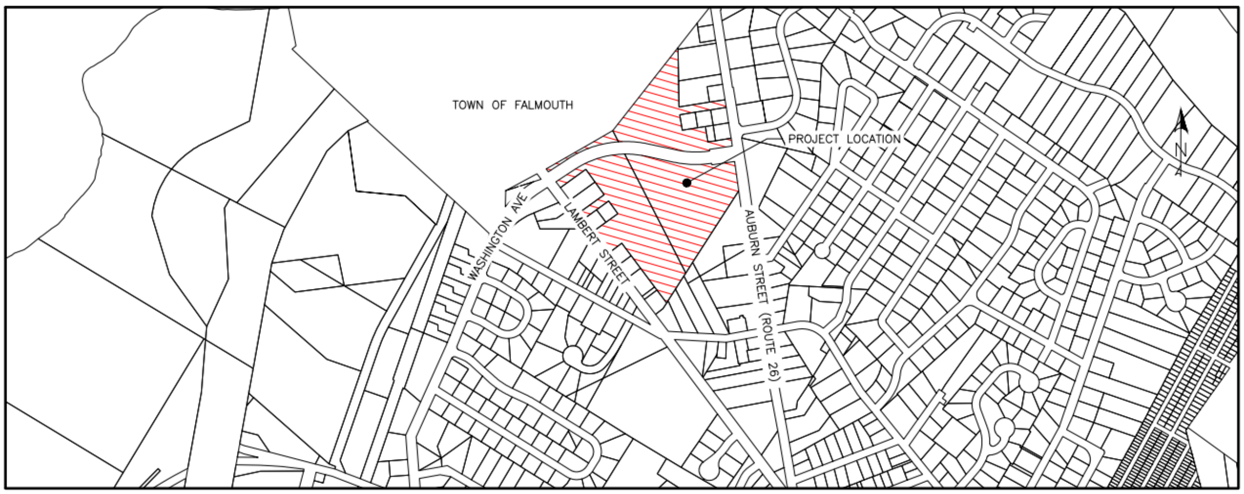
PRESERVATION OF AFFORDABLE HOUSING

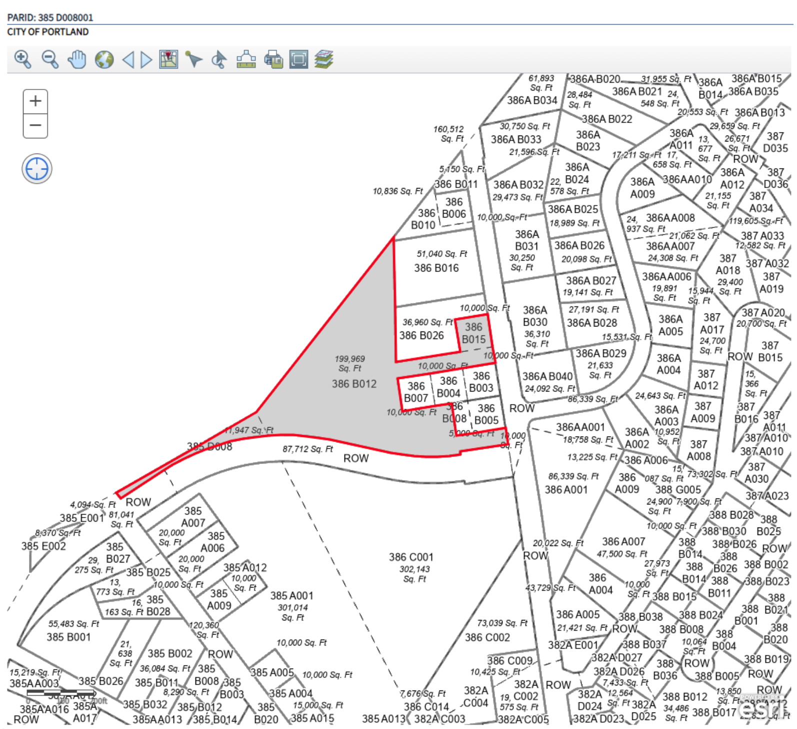
Lambert Woods North - Location / Map

Address: 622 Auburn St, Portland, ME

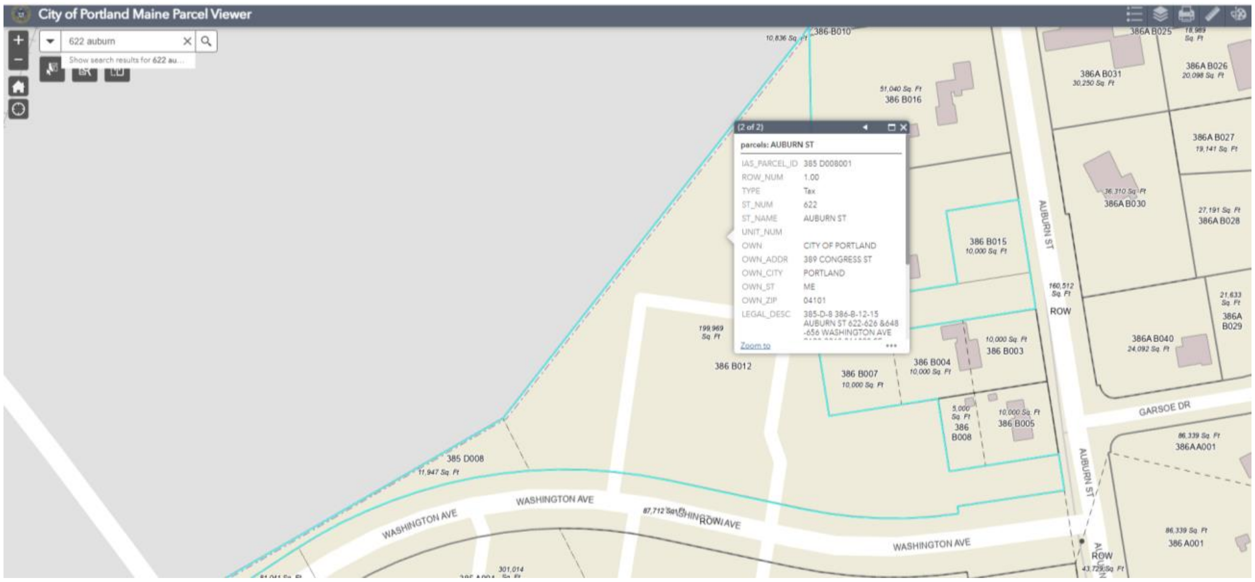
Parcel ID: 385 D008001 | Zoning District: R2 | Land Area: 223,466 SF / 5.13 acres

*Note – this specific project is referring just to 622 Auburn Street, the lot north of Washington Avenue Extension. The lot south of that road is going to be part of another development.





PRESERVATION OF AFFORDABLE HOUSING



CITY OF PORTLAND
Housing and Economic Development Department
Housing and Community Development Division

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Victoria Volent
Housing and Economic Development Department

DATE: October 24, 2023

SUBJECT: Review and Approval of Second Amendment to Purchase and Sale Agreement for City-Owned Property at 43 and 91 Douglass Street

Staff is requesting that the members of the Housing and Economic Development Committee vote to recommend to the City Council amendments to the Purchase and Sale Agreement, for the sale of city-owned property located at 43 and 91 Douglass Street.

On May 21, 2021, the City entered into a Purchase and Sale Agreement, as amended by a First Amendment to Purchase and Sale Agreement dated November 20, 2022 with Douglass Commons LLC for an affordable housing development at 43 and 91 Douglass Street.

Originally, Douglass Commons LLC (comprised of the Szanton Company and Maine Cooperative Developers Partners) proposed creating a rental housing project and a cooperative housing project on the site. The scope of the project has changed. Douglass Commons LLC has decided to restructure the project and now intends to declare a three-unit condominium on the property, with Unit 1 consisting of 63 units of residential rental apartments in a building (no change), Unit 2 consisting of 20 home ownership condominiums units in two buildings, and Unit 3 consisting of 42 units of residential rental apartments (i.e. rental and condominiums units instead of limited equity cooperative housing units). Douglass Commons LLC is also requesting to extend the Closing Date and, change the construction commencement dates, and.

Amendment to the Terms of the Purchase and Sale Agreement

a) Closing: Originally the Buyer agreed to close "twenty months after the Effective Date (i.e. 20 months from 5-21-2021 being a closing date of 1-21-2023). The wording has been changed to "on or before May 31, 2024".

b) Buyer's Post Closing Obligations: Originally the Buyer proposed to create rental and limited equity cooperative ownership units. The terms have been changed to acknowledge the proposed project would include 62 units of affordable rental housing (Unit 1), 20 condominium units (Unit 2) and 42 units of affordable rental housing (Unit 3). The Rental Housing project (now known as Unit 1) is not requesting to amend the terms of the original Purchase and Sale Agreement regarding the type or number of proposed units. However, the originally proposed limited equity cooperative housing project, which would have created 52 units with a mixture of one-, two-, and three-bedroom units with no fewer than 12 two-bedroom units and 22 three-bedroom units for households at or below 100% of the area median income (AMI), is now proposing to create 20 condominiums and 42 rental apartments with no fewer than 12 two-bedroom units and 22 three-bedroom units to be affordable to households earning less than or equal to 100% AMI.

c) Option to Repurchase All or a Portion of the Premises: Section 11 c has been revised to replace the language allowing the City the right to repurchase the premises if construction is not commenced "within 32 months of the Effective Date" (32 months from the Effective Date of 5-21-2021 is 1-21-2024) to "June 15, 2024".

d) Option to Repurchase All or a Portion of the Premises: Section 11 c has further been revised to replace the definition in section ii of a "Co-op site" to instead refer to Units 2 and Unit 3 (i.e. the 20 condos and 42 rental units) of the Dougherty Commons Condominiums.

e) Option to Repurchase All or a Portion of the Premises: Section 11 c has further been revised to replace the language "commence construction of the Cooperative Housing Project within 32 months of the date of this agreement or fails to complete construction of the Cooperative Housing Project within fifty (50) months of the date of this agreement" with "commence construction of either Unit 2 or Unit 3 on or before June 15, 2024 and complete construction of either Unit 2 or Unit 3 within 50 months thereafter".

f) Option to Repurchase All or a Portion of the Premises: Section 11 c has been revised to include section (iii) which says, " If Buyer conveys Unit 3 to a separate entity for purpose of that entity developing Unit 3, and the Entity fails to commence construction of Unit 3 by November 21, 2024, or fails to complete construction of Unit 3 on or before December 15, 2026, the City shall have the right, but not the obligation, to purchase Unit 3 and all improvements thereon for a price equal to One Hundred Thousand Dollars ($100,000), plus Approved Expenses incurred by Buyer, or successors, for purposes of developing Unit 3 to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase. Any conveyance of Unit 3 to the City will (i) be subject to any all rights of the Unit 1 owner or pursuant to any condominium documents that affect or burden Unit 3 and (i) include any and all rights of the Entity over Unit 1 (as defined below) or pursuant to any condominium documents.

g) Option to Repurchase All or a Portion of the Premises: Section 11 c iii has been revised to replace the construction commencement of Unit 1 from "within 32 months of the date of this agreement" with "on or before June 15, 2024" and to replace the completion construction date of Unit 1 from "within fifty (50) months of the date of this agreement" to "on or before June 15, 2026". Further revisions include replacing the defined term "Rental Housing Units" with "Unit 1 of the Dougherty Commons Condominium" and replace the defined term "Co-op Site" with "Unit 3 of the Dougherty Commons Condominium".

h) **Option to Repurchase All or a Portion of the Premises: Section 11 c v has been revised to replace the term "Co-op" with "owner of Units 2 and 3 of the Dougherty Commons Condominium" such that the owner of Units 2 or 3 may obtain the Pre-Development Mortgage Loan as defined therein and may encumber Units 2 or 3 as provided therein but subject to the covenants, conditions, restriction and limitations of section 11 c v.**

Attachments:
Second Amendment to Purchase and Sale Agreement clean
Purchase and Sale Agreement for 43 and 91 Douglass Street
First Amendment to Purchase and Sale Agreement

SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (the "Amendment") is effective as of the ___ day of ________, 2023 by and between the CITY OF PORTLAND, a body politic and corporate with a place of business in Portland, Maine and a mailing address of 389 Congress Street, Portland, Maine 04101 (the "Seller" or "City") and DOUGLASS COMMONS, LLC, a Maine limited liability company having a mailing address of Douglass Commons, LLC, c/o The Szanton Company, 10 Free Street, Third Floor, Portland, Maine 04101 (the "Buyer").

WHEREAS, City and Buyer entered into a Purchase and Sale agreement dated May 21, 2021, as amended by a First Amendment to Purchase and Sale Agreement dated November 20, 2022 (collectively, the "Agreement") with respect to certain real property located at or near 43 & 91 Douglass Street in Portland Maine as more fully described in the Agreement; and

WHEREAS, as a result of certain due diligence and predevelopment work, the Buyer has decided to restructure the Project and now intends to declare a three-unit condominium on the Property, with Unit 1 consisting of 63 units of residential rental apartments in a building, Unit 2 consisting of 20 home ownership condominium units in two buildings, and Unit 3 consisting of 42 units of residential rental apartments; and

WHEREAS, the City and Buyer wish to further amend the Agreement to extend the Closing Date, change the construction commencement dates, and address the restructuring of the Project; and

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Buyer do hereby agree as follows:

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment have the same meanings ascribed to such terms in the Agreement.

2. The term "Project" as used in the Agreement means the project described in the Agreement as amended by this Amendment.

3. The opening paragraph of section 10 in the Agreement is hereby deleted and replaced with the following:

   CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at the date and time specified by two weeks' written notice from Buyer to the City on or before May 31, 2024 (the "Closing Date"). At the Closing:

4. Section 11 of the Agreement is hereby deleted in its entirety and replaced with the following:

   BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY. Notwithstanding anything to the contrary in the Proposal, in its development of the Project, Buyer shall declare a condominium, likely to be named Dougherty Commons Condominium (the "Dougherty Commons Condominium"), which shall consist of three units: Unit 1 shall be a building together with associated limited common elements consisting of 63 units of rental housing; Unit 2 shall be two buildings together with associated limited common elements consisting of 20 home ownership condominium units (these 20 condominium units (the "Unit 2 Condominium") will be a sub-condominium created within Unit 2 and not separate units within the Dougherty Commons Condominium); and Unit 3 shall be four buildings together with associated limited common elements consisting of 42 units of rental housing. On or before June 15, 2024, Buyer shall commence construction of Units 1 and 2, and on or before November 21, 2024, Buyer shall commence construction of Unit 3.

   a. **Unit 1.**
      i. Unit 1 will consist of an apartment building including no less than 63 rental units, with a mixture of one-, two- and three-bedroom units. In no event shall Unit 1 include fewer than 18 two-bedroom units and 10 three-bedroom units.
      ii. For a period of 99 years after Unit 1 has been completed, at least 46 units in Unit 1 shall be affordable to, and will only be rented to, households earning less than or equal to 60% of the area median income (AMI), adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. If at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in rent and other housing expenses including utilities, shall not exceed 30% of the household's gross monthly income, except as provided below if Unit 1 is financed with the LIHTC program. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit D, which is attached hereto and made a part hereof. However, if Unit 1 is financed under the Federal Low Income Housing Tax Credit (LIHTC) Program, maximum allowable rent shall be the maximum allowable rent under the Federal LIHTC Program during the applicable time period for that Program. Upon expiration of any affordability restrictions recorded in the Cumberland County Registry of Deeds under the Federal LIHTC Program, the provisions of Exhibit D shall apply to the 46 units in Unit 1 at 60% AMI, adjusted for family size, for the remainder of the 99-year period.

b. **Unit 2 and 3.**

i. Unit 2 will include no less than 20 condominium units for home ownership in two buildings, one of which will be two stories and the other three stories, with a mixture of one- and three-bedroom units.

ii. For a period of 99 years after Unit 2 has been completed, the units in Unit 2 will be affordable to, and will only be sold to, households earning less than or equal to 100% of AMI, adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area at a purchase price that is affordable, as that term is defined below. If, at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with its mortgage payment and other housing expenses, including utilities, shall not exceed 30% of the household's gross income. These condominium units shall contain restrictive covenants in their deeds such that future sales will be subject to City approval and shall be based on the following criteria: Minimum household size allowed per unit and the formula for calculating maximum allowable purchase price is detailed on Exhibit D, which is attached hereto and made a part hereof.

iii. Unit 3 will include no less than 42 affordable rental units, with a mixture of one-, two, and three-bedroom units in four three-story buildings.

iv. In no event shall Units 2 and 3 combined include fewer than 12 two-bedroom units and 22 three-bedroom units.

v. For a period of 99 years after Unit 3 has been completed, at least 9 units in Unit 3 shall be affordable to, and will only be rented to, households earning less than or equal to 50% of AMI, and 33 units in Unit 3 shall be affordable to, and will only be rented to, households earning less than or equal to 100% of AMI, adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. If at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in rent and other housing expenses including utilities, shall not exceed 30% of the household's gross monthly income, except as provided below if Unit 3 is financed with the LIHTC program. Minimum household size allowed per unit for 50% AMI and 100% AMI units and the formula for calculating maximum allowable monthly rent for the 100% AMI units is detailed on Exhibit D, which is attached hereto and made a part hereof. For the 50% AMI units, the maximum allowable rent shall be the maximum allowable rent under the Federal LIHTC Program during the applicable time required by the Maine State Housing Authority. Upon expiration of any affordability restrictions recorded in the Cumberland County Registry of Deeds under the Federal LIHTC Program, the provisions of Exhibit D shall apply to the 42 units in Unit 3 at 60% AMI or 100% AMI depending on the specific unit restriction, adjusted for family size, for the remainder of the 99-year period.

c. **<u>Option to Repurchase All or a Portion of the Premises</u>**.
(i) If Buyer, its successors, assigns, or transferees commences no construction of any portion of the Project to be located on the Premises on or before June 15, 2024, the City shall have the right, but not the obligation, to repurchase the Premises and all improvements thereon (collectively, the "Property") at the Purchase Price (the "Property Repurchase Price") plus all commercially reasonable and documented, design, development, construction, and regulatory approval expenses ("Approved Expenses") incurred by Buyer, or successors, to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase the Property. The parties acknowledge and agree that the Approved Expenses are intended to include only costs incurred directly in connection with the development of the Property for documents, agreements, designs, plats, plans, approvals, and construction, the rights to which may be assigned or transferred to the City. In no event shall the Approved Expenses include salaries, developer fees, or the like paid by Buyer, its successors or assigns to their members, shareholders, partners, employees, or agents.

(ii) If Buyer conveys Unit 2 to a separate entity (the "Unit 2 Entity") for purposes of that entity developing Unit 2, and the Unit 2 Entity fails to commence construction of Unit 2 by June 15, 2024 or fails to complete construction of Unit 2 on or before June 15, 2026, the City shall have the right, but not the obligation, to purchase Unit 2 and all improvements thereon for a price equal to Fifty Thousand Dollars ($50,000) (the "Unit 2 Purchase Price") plus Approved Expenses incurred by Buyer, or successors, for purposes of developing Unit 2 to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase. Any conveyance of Unit 2 to the City will (i) be subject to any and all rights of the Unit 1 and Unit 3 owner pursuant to any condominium documents that affect or burden Unit 2, and (ii) include any and all rights of the Unit 2 Entity over Units 1 and 3 pursuant to any condominium documents.

(iii) If Buyer conveys Unit 3 to a separate entity (the "Unit 3 Entity") for purposes of that entity developing Unit 3, and the Unit 3 Entity fails to commence construction of Unit 3 by November 21, 2024, or fails to complete construction of Unit 3 on or before December 15, 2026, the City shall have the right, but not the obligation, to purchase Unit 3 and all improvements thereon for a price equal to Fifty Thousand Dollars ($50,000) (the "Unit 3 Purchase Price") plus Approved Expenses incurred by Buyer, or successors, for purposes of developing Unit 3 to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase. Any conveyance of Unit 3 to the City will (i) be subject to any and all rights of the Unit 1 and Unit 2 owners pursuant to any condominium documents that affect or burden Unit 3 and (ii) include any and all rights of the Unit 3 Entity over Unit 1 and Unit 2 pursuant to any condominium documents.

(iv) If Buyer conveys Unit 1 to a separate entity (the "Unit 1 Entity") for purposes of that entity developing Unit 1, and the Unit 1 Entity fails to commence construction of Unit 1 on or before June 15, 2024 or fails to complete construction of Unit 1 on or before June 15, 2026, the City shall have the right, but not the obligation, to purchase Unit 1 and all improvements thereon for a price equal to $375,000 (the "Unit 1 Repurchase Price") plus Approved Expenses incurred by Buyer, or successors, for purposes of developing Unit 1 to the date on which Unit 1 is conveyed to the City. Any conveyance of Unit 1 to the City will (i) be subject to any and all rights of the Unit 2 and Unit 3 owners pursuant to any condominium documents that affect or burden Unit 1 and (ii) include any and all rights of the Unit 1 Entity over Unit 2 and Unit 3 pursuant to any condominium documents.

(v) Any conveyance to the City pursuant to the City's option to purchase shall be subject to all mortgages of record placed by Buyer, its successors and assigns, but only if such mortgages secure financing of the development of the Premises (the "Permitted Mortgages"). In the event that there are any Permitted Mortgages on the Property, or portion thereof, at the time City exercises its right to repurchase, the parties agree that the City shall have the option to pay the applicable Repurchase Price and Approved Expenses to the first priority mortgagee. City and its successors and assigns agrees to enter into such agreements on reasonable commercial terms as may be requested by the lenders and/or investors of Buyer, its successors and assigns, to provide such lenders or investors notice and cure rights. In furtherance, but not in limitation of the foregoing, as long as MaineHousing holds a Permitted Mortgage on the Premises, no notice given by the City to the Buyer, its successors and assigns under the City's deed shall be valid unless and until a copy of the notice is given to MaineHousing at Maine Housing at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine 04330, Attn: Legal Department. MaineHousing shall have the right, but not the obligation, to cure any default or perform any obligation under the City's deed for thirty (30) days beyond any period during which Buyer, its successors and assigns may cure any default or perform any obligation under the City's deed. If the

City exercises any of the above right to purchase, Buyer or its successor shall convey the Property to the City, free and clear of all encumbrances other than the Permitted Mortgages and any utility easements granted by Buyers its successors and assigns, and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. The City agrees to make reasonable modifications to the provisions regarding the City's repurchase rights to facilitate mortgage and development financing for the Project. The rights to purchase shall be assignable by the City.

d. For all purposes of this Section 11, construction will be deemed completed for a portion of the Project upon the issuance of a Certificate of Occupancy by the City for that portion. Upon termination of the City's option with respect to a portion of the Project, the City will, at the request of the Buyer, its successors and assigns execute and record an affidavit indicating that the City's option has terminated with respect to all or a portion of the Project. Notwithstanding anything else to the contrary in this Section 11, in the event that the City fails to give the notice exercising the City's option on or before the date that is 31 months after the Closing Date, then the City's option shall terminate automatically without the need for further writing or recording.

e. Notwithstanding the above provisions, if after closing, Buyer, or its successors, assigns, or transferees determines that it is not feasible to develop the Property as a rental housing project using Maine State Housing Authority financing or as a cooperative leasing/ownership structure, Buyer may develop the Property using a different financing or leasing/ownership structure so long as the unit mix and affordability criteria provided in this Agreement are satisfied. If the Buyer or its successors does so within the time periods specified, the City shall not have the right to repurchase the Property.

f. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a declaration of covenants, conditions and restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds. The provisions of this Section 11 will also be included in the declaration, plats, and plans for the Dougherty Commons Condominium and the Unit 2 Condominium, as applicable.

5. This Amendment may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

6. Except as specifically amended hereby, the Agreement remains in full force and effect and the parties hereto ratify the terms and conditions of the Agreement. In the event of any conflict between the terms of this Amendment and the terms of the Agreement and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

CITY OF PORTLAND

___________________	________________________________
WITNESS	Danielle P. West Its City Manager

DOUGLASS COMMONS, LLC

_________________________	By: ______________________________
WITNESS	Printed Name: Its ______________________________

and

_________________________	By: ______________________________
WITNESS	Printed Name: Its ______________________________

Approved as to Form:

____
Corporation Counsel's Office

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this 21st day of May, 2021 (the "Effective Date") by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Douglass Commons, LLC, a Maine limited liability company having a mailing address as provided below (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of approximately 3.40 acres of land at or near 43 & 91 Douglass Street, Portland, Maine (the "Premises") and did advertise RFP #20067 dated April 10, 2020, entitled Request for Proposals for Disposition and Development of City-Owned Property Located at 43 and 91 Douglass Street, a copy of which is attached hereto as Exhibit A and incorporated herein (the "Request for Proposals") (the Premises is identified in the City's tax records as CBL 078 C002 and a portion of 078 B007 together with the 60 ft. wide proposed street situated between the two parcels, as is generally depicted on the Boundary Survey dated March 1, 2021 prepared by Owen Haskell, Inc. for The Szanton Company, a copy of which is attached as Exhibit B); and

WHEREAS, Buyer submitted a proposal dated June 15, 2020 in response to the Request for Proposals, a copy of which is attached hereto as Exhibit C and incorporated herein (the "Proposal"); and

WHEREAS, Buyer desires to purchase and develop the Premises, and the City desires to convey the Premises to Buyer, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. **CONSIDERATION**. The purchase price for the Premises shall be Four Hundred Seventy-Five Thousand Dollars ($475,000.00) (the "Purchase Price"), subject to the following cost adjustments and conditions:

    a. Buyer shall deliver to the City the sum of Ten Thousand Dollars ($10,000.00) (the "Deposit") within 3 business days after the full execution of this Agreement, which the City shall hold in a non-interest bearing account. The Deposit shall be governed by the terms and conditions of this Agreement and shall be fully refundable until the end of the Due Diligence Period as that term is defined below.

    b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Buyer will have from the Effective Date until 4:00 PM Eastern Time on the day that is eighteen (18) months after the Effective Date (the "Due Diligence Period") to complete any surveys, environmental review, inspections, and title examinations, and to obtain any zone change, site plan approval, and any other permits and regulatory approvals required for the Project. Buyer may, in its sole discretion, notify the City in writing that the Buyer elects to terminate the Due Diligence Period sooner and proceed to closing. Within ten days of the Effective Date, the City shall provide copies of, or reasonable access to, all known, non-confidential City files regarding the Premises, including without limitation title files.

b. Property Description. The legal description of the Premises contained in the deed will be a survey description based upon a survey plan that will more specifically describe the Premises. The parties acknowledge and agree that the survey attached as Exhibit B is a preliminary draft prepared by Buyer and is subject to change after review, amendment, and approval by both parties. The City will notify Buyer of any objections to the survey within 30 days after the Effective Date. Within 10 days after receipt of any such objection, the Buyer will either provide the City with a revised survey addressing City's objections to City's satisfaction, or notify the City that Buyer will not change the survey, in which case the City, will have the right to terminate this Agreement, return the Deposit to Buyer, and neither party shall have any further obligation to the other. Upon City's acceptance of the survey, Buyer will provide the City with a draft legal description for the Premises, which shall be based on the survey and be subject to the City's review and approval. The survey and description of the Premises will be prepared by the Buyer at its sole expense. The parties will work together in good faith to complete their review and approval of the survey and legal description on or before the day that is 90 days after the Effective Date.

c. Rezoning Contingency. Buyer proposes to obtain the Portland City Council's approval to rezone the Premises (the "Rezoning Approval") to increase residential density for its development of the Premises as described in the Proposal (the "Project"). The Buyer will be responsible for obtaining, at its sole expense, the Rezoning Approval and any other regulatory approvals required for the Project prior to Closing. Buyer may terminate this Agreement and receive a full refund of the Deposit if the Rezoning Approval is not received.

d. Financing Contingency. The Buyer's obligation to close is contingent on obtaining construction and permanent financing for the Project that the Buyer, in its discretion, determines is sufficient to put the Project on a sound financial footing. That financing is anticipated to include, but not be limited to, the following: (i) for the residential rental portion of the project an allocation of Federal low-income housing tax credits ("LIHTCs"), other financing provided by Maine State Housing Authority ("MaineHousing") and affordable housing tax increment financing from the City including a Credit Enhancement Agreement and (ii) for the cooperative housing portion of the project permanent financing under the U.S. Department of Housing and Urban Development section 213 program and affordable housing tax increment financing from the City including a Credit Enhancement Agreement. Buyer may terminate this Agreement and receive a full refund of the Deposit if the financing contingency described above is not met during the Due Diligence Period.

e. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect insurability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record environmental, or survey matters first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

f. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

g. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements of record and easements described herein, including, without limitation, an easement to be reserved by, and in form and substance satisfactory to the City and Buyer, the City for access to, and maintenance, repair, and replacement of, the trail located between the Premises and the I-295 corridor; (ii) easements for utilities servicing the property, in form and substance satisfactory to the City and Buyer, including, without limitation, Unitil and sewer (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. The City shall provide a draft of the deed, and of any declaration of covenants and restrictions pursuant to section 11, to Buyer one month before the end of the Due Diligence Period, and the City and Buyer shall in good faith endeavor to agree on the form of the deed prior to the end of the Due Diligence Period.

h. Existing Natural Gas Equipment and Easement. The City has informed Buyer that the City believes that all or a portion of the existing natural gas pipe and other equipment depicted on Exhibit B may be actually located outside of the easement provided by the City to Unitil. The City shall use best efforts to work with Unitil to resolve the actual location of the gas pipeline and equipment and amend the easement, if necessary, within three months of the Effective Date. If City is unable to amend the Unitil easement to Buyer's satisfaction, Buyer shall have the right to terminate this Agreement as set forth in subsection (i) below.

i. Buyer's Right to Terminate. The Buyer may terminate this Agreement at any time during the Due Diligence Period if, in the exercise of its sole discretion, it decides to not proceed with the Project by giving written notice of termination to the City in which case the City shall return the Deposit to Buyer and neither party shall have any further obligations to the other.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections; provided, however, the City hereby acknowledges and agrees Buyer shall have no obligation to clean-up, remove or take any other action with respect to any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **<u>REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.</u>** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the tax year during which the closing occurs, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **<u>DEFAULT AND REMEDIES</u>**. Prior to Closing, in the event that Buyer defaults hereunder for a reason other than the default of the City, the City may terminate this Agreement and retain the Deposit, and neither party shall have any further obligation

to the other. In the event that Buyer defaults on any matters addressed in this Agreement that survive Closing, Seller may pursue all available legal and equitable remedies. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance or terminate this Agreement and elect in substitution therefor, as its sole remedy, the right to a return of the Deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the Effective Date unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, obtain a return of the Deposit, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

8. **PROPERTY SOLD "AS IS, WHERE IS**." Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. **CLOSING**. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a date and time specified by

two weeks' written notice from Buyer to the City on or before the day that is twenty (20) months after the Effective Date (the "Closing Date"). At the Closing:

a. The City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the Purchase Price to the City.

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of Buyer are authorized to do so.

11. **BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.** As set forth in the Proposal, the Project includes a rental housing project and a limited equity cooperative housing project (hereinafter referred to as the "Rental Housing Project" and the "Cooperative Housing Project," respectively). Within thirty-two (32) months of the Effective Date, Buyer shall commence construction of both the Rental Housing Project and the Cooperative Housing Project.

a. **Rental Housing Project.**
   i. The Rental Housing Project will consist of an apartment building including no less than 56 units, with a mixture of one-, two- and three-bedroom units. In no event shall the Rental Housing Project include fewer than 17 two-bedroom units and 10 three-bedroom units.
   ii. For a period of 99 years after the Rental Housing Project has been completed, at least 40 units in the Rental Housing Project shall be affordable to households earning less than or equal to 60% of the area median income (AMI), adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. If at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in rent and other housing expenses including utilities, shall not exceed 30% of the household's gross monthly income, except as provided below if the Project is financed with the LIHTC program. Minimum household size allowed per unit and the formula for calculating maximum allowable monthly rent is detailed on Exhibit D, which is attached hereto and made a part hereof. However, if the Rental Housing Project is financed under the Federal Low Income Housing Tax Credit (LIHTC) Program, maximum allowable rent shall

be the maximum allowable rent under the Federal LIHTC Program during the applicable time period for that Program. Upon expiration of any affordability restrictions recorded in the Cumberland County Registry of Deeds under the Federal LIHTC Program, the provisions of Exhibit D shall apply to the Rental Housing Project for the remainder of the 99-year period.

b. **Cooperative Housing Project.**

i. The Cooperative Housing Project will include at least 52 units, with a mixture of one-, two-, and three-bedroom units owned by a Limited Equity Cooperative Corporation (the "Co-op") and leased individually to the resident shareholders of the Co-op (the holding of a Co-op share and lease agreement together constituting a resident's "cooperative interest"). In no event shall the Cooperative Housing Project include fewer than 12 two-bedroom units and 22 three-bedroom units.

ii. Upon the issuance of a certificate of occupancy for all or a portion of the Cooperative Housing Project, or at such earlier or later time as the Buyer, in its discretion, may determine, the Buyer shall convey the Cooperative Housing Project to the Co-op organized in accordance with the Maine Cooperative Affordable Housing Ownership Act, 13 M.R.S.A. §1741-1762, as may be amended or any successor provisions thereto (the "Act"). References below to particular provisions of the Act include any successor provisions to the provisions referenced.

iii. Rent Restrictions. For a period of 99 years after the Cooperative Housing Project has been completed, all residential units in the Cooperative Housing Project shall be affordable to households earning less than or equal to 100% of the area median income (AMI), adjusted for family size, based on figures published annually by HUD for the Portland Metropolitan Statistical Area. If, at a time in the future, HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability. For purposes of this Agreement, "affordable" means that the percentage of income a household is charged in connection with (i) its cooperative interest and other housing expenses, including utilities, shall not exceed 30% of the household's gross monthly income or (ii) its rent and other housing expenses, including utilities, shall not exceed 30% of the household's gross income. Minimum household size allowed per unit and the formula for calculating maximum allowable purchase price and monthly rent is detailed on Exhibit D, which is attached hereto and made a part hereof.

iv. Income Restrictions. Except as provided below regarding the initial sale of cooperative interests, a household may only purchase a cooperative interest in a unit or if its income is not more than 100% of the AMI, adjusted for family size, as published by the U.S. Department of Housing and Urban Development ("HUD") at the time of purchase. This income test will be used only at the time of the household's purchase. No income test shall apply for subsequent transfers to family members (as reasonably defined by the Co-Op Entity) or to a cooperative membership interest which is inherited or transferred upon death to a beneficiary. At the time of the initial sale of cooperative membership interests in the Co-op, up to 20% of the cooperative membership interest may be sold to households earning up to 120% AMI. All subsequent sales must be to households earning no more than 100% of AMI.

v. The articles of organization for the Co-op shall provide that in the event the Co-op shall be dissolved, its assets will be distributed in accordance with §1754 (6) of the Act. In such dissolution, the Co-Op's assets will be used first to pay all debts and other obligations of the Co-op, then to make any distributions to members required under the Co-Op's limited equity organizational documents, then any remaining balance shall be paid to the City or, at the Buyer's option with the consent of the City not to be unreasonably withheld, to another organization permitted under §1754 (6) of the Act.

c. **Option to Repurchase All or a Portion of the Premises.**

(i) If Buyer, its successors, assigns, or transferees commences no construction of any portion of the Project to be located on the Premises within 32 months of the Effective Date, the City shall have the right, but not the obligation, to repurchase the Premises and all improvements thereon (collectively, the "Property") at the Purchase Price (the "Property Repurchase Price") plus all commercially reasonable and documented, design, development, construction, and regulatory approval expenses ("Approved Expenses") incurred by Buyer, or successors, to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase the Property. The parties acknowledge and agree that the Approved Expenses are intended to include only costs incurred directly in connection with the development of the Property for documents, agreements, designs, plats, plans, approvals, and construction, the rights to which may be assigned or transferred to the City. In no event shall the Approved Expenses include salaries, developer fees, or the like paid by Buyer, its successors or assigns to their members, shareholders, partners, employees, or agents.

(ii) If Buyer conveys a portion of the Property (the "Co-Op Site"), which conveyance may be by creating and conveying a land condominium unit, to a separate entity (the "Co-Op Entity") for purposes of that entity developing the Cooperative Housing Project, and the Co-Op Entity fails to commence construction of the Cooperative Housing Project within 32 months of the date of this agreement or fails to complete construction of the Cooperative Housing Project within fifty (50) months of the date of this agreement, the City shall have the right, but not the obligation, to purchase the Co-Op Site and all improvements thereon for a price equal to One Hundred Thousand Dollars ($100,000) ("Co-Op Repurchase Price") plus Approved Expenses incurred by Buyer, or successors, for purposes of developing the Co-Op Site to the date on which the City notifies Buyer, its successors or assigns, of its intent to exercise its option to repurchase. Any conveyance of the Co-Op Site to the City will (i) be subject to any and all rights of the Rental Housing Entity (defined below) or pursuant to any condominium documents that affect or burden the Co-Op Site and (ii) include any and all rights of the Co-Op Entity over the Rental Housing Site (as defined below) or pursuant to any condominium documents.

(iii) If Buyer conveys a portion of the Property (the "Rental Housing Site"), which conveyance may be by creating and conveying a land condominium unit, to a separate entity (the "the Rental Housing Entity") for purposes of that entity developing the Rental Housing Project, and the Rental Housing Entity fails to commence construction of the Rental Housing Project within 32 months of the date of this agreement or fails to complete construction of the Rental Housing Project within fifty (50) months of the date of this agreement, the City shall have the right, but not the obligation, to purchase the Rental Housing Site and all improvements thereon for a price equal to $375,000 (the "Rental Housing Repurchase Price") plus Approved Expenses incurred by Buyer, or successors, for purposes of developing the Rental Housing Site to that the date on which the Property is conveyed to the City. Any conveyance of the Rental Housing Site to the City will (i) be subject to any and all rights of the Co-Op Housing Entity (defined below) or pursuant to any condominium documents that affect or burden the Rental Housing Site and (ii) include any and all rights of the Rental Housing Entity over the Co-Op Site (as defined below) or pursuant to any condominium documents.

(iv) Any conveyance to the City pursuant to the City's option to purchase shall be subject to all mortgages of record placed by Buyer, its successors and assigns, but only if such mortgages secure financing of the development of the Premises (the "Permitted Mortgages"). In the event that there are any Permitted Mortgages on the Property, or portion thereof, at the time City exercises its right to repurchase, the parties agree that the City shall have the option to pay the applicable Repurchase Price and Approved Expenses to the first priority mortgagee. City and its successors and assigns agrees to enter into such agreements on reasonable commercial terms as may be requested by the lenders and/or investors of Buyer, its successors and assigns, to provide such lenders or investors notice and cure rights. In furtherance, but not in limitation of the foregoing, as long as MaineHousing holds a Permitted Mortgage on the Premises, no notice given by the City to the Buyer, its successors and assigns under the City's deed shall be valid unless and until a copy of the notice is given to MaineHousing at Maine Housing at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine 04330, Attn: Legal Department. MaineHousing shall have the right, but not the obligation, to cure any default or perform any obligation under the City's deed for thirty (30) days beyond any period during which Buyer, its successors and assigns may cure any default or perform any obligation under the City's deed. If the City exercises any of the above right to purchase, Buyer or its successor shall convey the Property to the City, free and clear of all encumbrances other than the Permitted Mortgages and any utility easements granted by Buyers its successors and assigns, and assign to the City all contracts, plans, and other documents related to the design, construction, and regulatory approvals for the Project. The City agrees to make reasonable modifications to the provisions regarding the City's repurchase rights to facilitate mortgage and development financing for the Project. The rights to purchase shall be assignable by the City.

(v) Buyer anticipates that the Co-Op entity will grant a mortgage on the Co-Op Site to a lender or investor to finance the purchase of the Co-Op Site and preconstruction development costs including the Co-Op's $100,000 portion of the acquisition price, Approved Expenses and related customary and commercially reasonable financing costs (such financing is referred to as the "Pre-Development Mortgage Loan"). Buyer, for itself, its successors, and assigns, including the Co-Op Entity, agrees that it will not encumber the Co-Op Site with mortgages other than the mortgage securing Pre-Development Mortgage Loan and that such mortgage shall not exceed in the aggregate the Co-Op Pre-Development Appraised Value (as defined below) at any time prior to the closing of the full construction financing for the Cooperative Housing Project (the "Co-Op Construction Loan Closing"). Prior to the Co-Op Construction Loan Closing, notwithstanding any other provision of this Agreement, the total amount that the City is required to pay to repurchase the Co-Op Site upon exercise of its option as provided above, including Approved Expenses, shall be limited to the then-outstanding balance of the mortgage securing the Pre-Development Mortgage Loan.

The term "Co-Op Pre-Development Appraised Value" means the appraised value of the Co-Op Site as determined by an appraisal, made in accordance with all applicable professional standards, obtained by the lender making the pre-development mortgage loan to the Co-Op entity. The Co-Op entity agrees to provide a copy of that appraisal to the City prior to entering into such mortgage loan.

The provisions of this Section 11(c)(v) shall cease to apply as of the Co-Op Construction Loan Closing.

d. For all purposes of this Section 11, construction will be deemed completed for a portion of the Project upon the issuance of a Certificate of Occupancy by the City for that portion. Upon termination of the City's option with respect to a portion of the Project, the City will, at the request of the Buyer, its successors and assigns execute and record an affidavit indicating that the City's option has terminated with respect to all or a portion of the Project. Notwithstanding anything else to the contrary in this Section 11, in the event that the City fails to give the notice exercising the City's option on or before the date that is 31 months after the Closing Date, then the City's option shall terminate automatically without the need for further writing or recording.

e. Notwithstanding the above provisions, if after closing, Buyer, or its successors, assigns, or transferees determines that it is not feasible to develop the Property as a rental housing project using Maine State Housing Authority financing or as a cooperative leasing/ownership structure, Buyer may develop the Property using a different financing or leasing/ownership structure so long as the unit mix and affordability criteria provided in this Agreement are satisfied. If the Buyer or its successors does so within the time periods specified, the City shall not have the right to repurchase the Property.

f. The provisions of this Section 11 will survive closing and will be included in greater detail in the City's deed to Buyer or in a declaration of covenants, conditions and restrictions executed before or at the time of Closing, which shall be recorded in the Cumberland County Registry of Deeds.

12. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

13. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

14. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

15. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

16. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

17. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

18. **NOTICE**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after the notice is delivered to an overnight delivery service with delivery confirmation, addressed to the recipients at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE CITY:	City of Portland ATTN: City Manager 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR BUYER:	Douglass Commons LLC c/o The Szanton Company 482 Congress, Suite 203 Portland, ME 04101 And to: Maine Cooperative Development Partners, LLC c/o Brian Eng 6 City Center, Fl. 3 Portland, ME 04101
With a copy to:	John S. Kaminski Drummond Woodsum 84 Marginal Way, Suite 600 Portland, ME 04101

19. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. **BROKERS.** The City and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. **RECITALS INCORPORATED BY REFERENCE**. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on their behalf by their duly authorized offices or representatives, on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

DOUGLASS COMMONS, LLC

By:

WITNESS

Printed Name: Nathan S. Szanton
Its Manager

and
By:
Printed Name: Brian Eng
Its Manager

Approved as to Form:

City Corporation Counsel's Office

Approved as to Funds:

City Finance Department

FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is effective as of November 20, 2022 by and between the CITY OF PORTLAND, a body politic and corporate with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller" or "City") and DOUGLASS COMMONS, LLC a Maine limited liability company having a mailing address of Douglass Commons LLC, c/o The Szanton Company, 10 Free Street, Third Floor, Portland, Maine 04101 ("Buyer").

WHEREAS, City and Buyer entered into a Purchase and Sale Agreement dated May 21, 2021 (the "Agreement") with respect to certain real property located at or near 43 & 91 Douglass Street as more fully described in the Agreement; and

WHEREAS, City and Buyer wish to amend the Agreement to extend the Due Diligence Period and the Closing Date.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Buyer hereby agree as follows:

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment have the same meaning as those terms have in the Agreement.

2. The end of the Due Diligence Period, which, pursuant to Section 3 (a) of the Agreement, is November 21, 2022, is hereby extended to February 21, 2023.

3. The opening paragraph in section 10 of the Agreement is hereby deleted and replaced with the following:

   CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a date and time specified by two weeks' written notice from Buyer to the City on or before November 21, 2023 (the "Closing Date"). At the Closing:

4. The opening paragraph in section 11 of the Agreement is hereby deleted and replaced with the following:

   BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY. As set forth in the Proposal, the Project includes a rental housing project and a limited equity cooperative housing project (hereinafter referred to as the "Rental Housing Project" and the "Cooperative Housing Project," respectively). On or before November 21, 2024, Buyer shall commence construction of both the Rental Housing Project and the Cooperative Housing Project.

5. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement. In the event of any conflict between the terms of this Amendment and the terms of the Agreement and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized representatives as of the date first set forth above.

DOUGLASS COMMONS, LLC

DocuSigned by:
Nathan Szanton
62586A7836D7464...

WITNESS

By: Nathan Szanton
Its: Manager

DocuSigned by:
14F9ED9E0B984B5...

WITNESS

By: Brian Eng
Its: Manager

CITY OF PORTLAND

DocuSigned by:
Danielle P. West
ACEE67828A27428...

WITNESS

Danielle P. West
Its: Interim City Manager

Approved as to Form:

DocuSigned by:
Michael Goldman
5BDA6A4DE55B4E1...

Corporation Counsel's Office

MEMORANDUM

To: Councilor Pious Ali, Chair
Members of the Housing and Economic Development Committee

From: Mary Davis, Interim Director, Housing and Economic Development Department

Date: October 20, 2023

RE: 2023 Housing and Economic Development Committee Proposed Work Plan

The work plan and draft schedule for the Housing and Economic Development Committee is attached.

As has been the practice of the committee, the work plan and schedule will be included on every HEDC meeting agenda to provide an opportunity for committee members to provide updates and direction on the agenda schedule.

DRAFT
Housing & Economic Development Committee
2023 Work Plan Schedule
as of October 20, 2023

October 24, 2023
1. (Public Comment) Review and Recommendation to the City Council of an Amendment to Purchase and Sale Agreement for 622 Auburn Street/0 Gray Road, Falmouth
2. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA - Lambert Woods North Project (622 Auburn Street)
3. Executive Session - Review and Direction to Staff on Negotiations with Maine Cooperative Development Partners Affordable Housing Development Funding requests.
4. (Public Comment) Review and Recommendation to the City Council Amendment to Purchase and Sale Agreement - Dougherty Commons

November 14, 2023
1. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing Development Subsidy (57 Douglass Street - Dougherty Commons Condo)
2. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA - and Affordable Housing Development Subsidy (57 Douglass Street - Dougherty Commons Apartment)

November 30, 2023 (date to be confirmed)
1. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA and Affordable Housing Development Subsidy- Lambert Woods South Project (165 Lambert Street)
2. Review of the 2023 Annual Accomplishment Report for the Housing and Economic Development Committee (Tentative)
3. Analysis of the Role of the Rental Housing Advisory Committee (Tentative)

December, 2023 - No meeting

COMPLETED WORK

January 17, 2023

1. Facilitated Work Plan Discussion

February 21, 2023

1. Workshop - Responsibilities of the Housing and Economic Development Department
2. Review Letter from the Rental Housing Advisory Committee
3. (Public Hearing) Review and Recommendation to the City Council – FY24 Housing Program Budget
4. (Public Hearing) Review and Recommendation to the City Council - HOME-ARP Program Plan
5. (Public Hearing) Review and Recommendation to the City Council - Thames Street Purchase and Sale Agreement

March 21, 2023

1. (Public Hearing) Review and Recommendation to the City Council – 2023 Jill C. Duson Housing Trust Fund Annual Plan
2. (Public Hearing) Review and Vote to Approve the Issuance of 2023 Affordable Housing TIF and Affordable Housing Development Fund Application for the Jill C. Duson Housing Trust Fund, HOME Program
3. (Public Hearing) Review and Recommendation to the City Council to continue to Participate in the Cumberland County HOME Consortium
4. Executive Session Review and Direction to Staff on Negotiations with USL Soccer Proposal at Fitzpatrick Stadiums

April 4, 2023

1. Presentation of Annual Report from Permitting & Inspections Dept. Re: Short/Long Term Rental Registration Program and Housing Safety.
2. Communication - Memo from City Staff regarding the Franklin Street Redesign Plan
3. Communication - Findings of January 2023 Housing Supply Boot Camp
4. Communication - Memo from City Staff regarding City Owned Property - 0 Marginal Way Parking Lot

April 25, 2023

1. (Public Hearing) Review and Recommendation to the City Council - Amendment to the City's Tax Increment Financing Policy
2. (Public Hearing) Review and Recommendation to the City Council - Report to HUD on Analysis of Impediments to Fair Housing
3. (Public Hearing) Review and Update regarding Portland Adult Ed FY23 Workforce Development Programs and FY24 Funding Request.
4. (Public Hearing) Review and Recommendation to the City Council - Regarding establishing a Tourism Improvement District.

May 16, 2023 - Canceled

June 20, 2023

1. Review of 2022 Annual Housing Report
2. Preview of Agenda for City Council Affordable Housing Workshop (June 28)
3. (Public Comment) Approve and Recommend an Affordable Housing TIF - 15 Casco Street

July 18 2023 - Canceled

August 15, 2023

1. Executive Session USL Soccer Proposal
2. Review, Consideration and Feedback on Revisions to the Outdoor Dining on Public Property Program (Sidewalks only)
3. (Public Comment) Review and Recommendation regarding a proposed Affordable Rental Housing Incentive Program
4. Reconsideration of Changes to the City's Tax Increment Financing Policy - Feedback from the Committee regarding additional information needed from staff

September 19, 2023

1. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA and Affordable Housing Development Subsidy- Portland Housing Development Corp. Riverton Park Project
2. Maine Cooperative Development Partners Update

October 10 2023

1. (Executive Session) USL Financial Due Diligence

2. (Public Comment) Review and Recommendation to the City Council regarding the Portland United LLC (USL Soccer) Stadium Use Agreement for the Use and Occupancy of Fitzpatrick Stadium
3. Review of FYE 2023 TIF Annual Report

2023 Housing and Economic Development Committee Draft Work Plan October 20, 2023

	Annual Committee Work	Staff Recommendations	Committee Members' Priorities	Status
ECONOMIC DEVELOPMENT POLICY				
Review Tax Increment Financing (TIF) investment in workforce training for FY2024 funding.		X		4.25.23
Vote on Tourism Improvement District proposal		X		4.25.23
Research and present options for public-private partnerships to support parking garage and possible new affordable housing - City-owned Bayside Lot 6, (corner of Somerset & Chestnut St) acquired by the City Council through eminent domain		X		
Waterfront Activity Workshop including - Harbor Dredge Project, Portland Harbor Commons, Off-Shore Wind, and other items		X	X	
Accessibility of Public Buildings, ADA Compliance			X	
Consideration of year-round outdoor dining on public property (excluding streets)				8.15.23

	Annual Committee Work	Staff Recommendations	Committee Members' Priorities	Status
AFFORDABLE HOUSING POLICY AND BUDGETS				
Policy Discussion re: (1) Guidelines and Priorities for the allocation of city resources for housing development (2) use of priority nodes and corridors for housing development (possible committee workshop with Planning Dept staff)	X	X	X	3.21.23
Review of FY 2024 Housing Program Budget	X			2.21.23
Review of 2023 Jill C. Duson Housing Trust Fund Annual Plan and the 2023 Affordable Housing Development Application	X			3.21.23
Review and Analysis of the Role of the Rental Housing Advisory Committee		X	X	

	Annual Committe e Work	Staff Recommendations	Committee Members' Priorities	Status
AFFORDABLE HOUSING/ECONOMIC DEVELOPMENT - PUBLIC-PRIVATE PARTNERSHIPS, REAL ESTATE TRANSACTIONS				
Review/ Vote to Approve Funding Requests Received from the Affordable Housing Development Applications -Housing Trust, HOME & AHTIF CEA Requests.	X	X		10.10.23 ??.??.23
Review City Owned property to sell/lease to support affordable housing		X		
Portland United Soccer League Proposal				10.10.23
Purchase & Sale Agreement - Sale of a portion of City-owned Thames St. Property		X		2.21.23
Kennebec Street Realignment (from Brattle to Forest)				
Review of Franklin Street Plan and Possible Use of Federal Reconnecting Communities Grant - Possible Joint Meeting with Sustainability & Transportation			X	4.4.23

	Annual Committe e Work	Staff Recommendations	Committee Members' Priorities	Status
ANNUAL REPORTS AND ACTIONS				
Presentation of 2022 Housing Report	X			6.20.23
FY24 Annual Allocation Plan (Jan-April) & Analysis of Impediments to Fair Housing	X	X		4.25.23
Annual Presentation,-Permitting & Inspections, Short/Long-term Rental Housing Registration, Safety & Inspection Program - Implementation & Financial Report Discussion of Dept. Staff Needs	X		Process established under prior Housing Committee X	4.4.23
City TIF District Annual Activity Report (November)	X			10.10.23
Committee Annual Accomplishment Report (November)	X			

PORTLAND HOUSING DEVELOPMENT CORPORATION

970 Baxter Boulevard
Portland, ME 04103
Office: 207-773-4753
Fax: 207-761-5886

October 20, 2023

Mayor Kate Snyder and Members of the City Council
City of Portland
389 Congress Street
Portland, ME 04101

Subject: Jill Duson Housing Trust Fund, HOME and ARPA Funds

Dear Mayor Snyder and Members of the City Council,

I am writing today with concerns about the City potentially awarding all remaining subsidy funding currently available to the City ($8,400,000) including the minimum required balance of $500,000 to one development team. This would be an excessive $50,000-$75,000 per unit of subsidy. This large sum of money should be leveraged to preserve or create many more units than is proposed and should also better respond to the crisis of the unhoused and those with very-low and extremely-low incomes.

Portland Housing Development Corporation (PHDC), and the Portland Housing Authority (PHA) house and support over 8,000 residents in the city of Portland through housing units or Housing Choice Vouchers. One third of the City's public school children live in our developments. We preserve and develop permanently affordable rental housing only in the City of Portland.

We understand that you have unique projects proposed that will provide various types of housing. Awarding between $50,000-$75,000 per unit of subsidy is not an efficient use of the City's scare financial resources. The Financial Feasibility standards in the City's 2023 RFP for Affordable Housing Development funds states no more than $18,000 of subsidy will be awarded per unit. The Council may waive these criteria, but I think that would be a mistake in this case.

Please consider PHDC's past and future projects when considering the requests before you that are proposing fewer units on a per-unit-subsidy basis and at income levels up to 110% Area

Median Income. I believe the best use of your funding is to serve those most in need including Long Term Stayers in Portland's shelter system and those that are very low income.

- PHDC was awarded $18,000 per unit recently for a major project on the Peninsula. Our team did not request more subsidy when cost estimates ballooned in 2021 and 2022 because the City RFP and staff reiterated that there was a subsidy per unit cap of $18,000. This project would have provided up to 90 units of housing, including for those who are homeless, as well as badly needed child care and likely could have targeted construction start in Spring 2024 if we received $50,000 per unit of subsidy.

- Our recently completed Front Street Phase 1 development is 60 units of 1-bedroom up to 5-bedroom units of rental housing for households at or below 60% AMI as well as 12 formerly homeless households. We are grateful to have received $14,350 per unit of subsidy from the City.

- Front Street Phase 2, under construction now in East Deering, is 45 units of housing for low-income older adults earning below 50% and 60% AMI and nine units for formerly homeless households. We are grateful this project was awarded $12,757 per unit of subsidy from the City.

- The Housing and Economic Development Committee recently recommended $1,500,000 of subsidy funding for the Riverton Park Redevelopment project. This 182-unit project preserves 124 units of extremely underfunded formerly public housing and develops 58 new family units and a new neighborhood center for families all earning less than 60% of the Area Median Income. PHDC is very grateful for the Committee's support for that project, at a subsidy per unit level of $8,241 and hopes the Council concurs.

- Our recently completed Washington Gardens redevelopment of severely distressed and underfunded public housing is now 100 units of housing for elderly and disabled households with extremely low incomes. We were very grateful to receive $584,000 of HTF and CDBG funds, or subsidy per unit of $5,840.

Portland Housing Development Corporation has eight redevelopment and new construction projects currently in our pipeline potentially totaling over 900 units for low-income Portland residents. We have three projects totaling 160 new units that may apply for funding in the next City RFP for HOME and HTF funding. These three projects alone could have 30-40 Homeless Set-Aside units with an award of City funding. We also know that our not-for-profit housing developer colleagues are hard at work planning with PHA / PHDC for the next Housing First projects to provide badly needed housing and supportive services for chronically homeless individuals. But if the $8,400,000 is awarded, and the projected Inclusionary Zoning funding of the HTF for 2024 only about $500,000, many badly needed housing projects will not have the gap financing needed to move forward.

As urgent as the housing crisis is in Portland, I urge you to not award all remaining funding to only the projects before you at the moment. Your ARPA funding does not need to be obligated until 12/31/24 and spent by 12/31/26. HOME funds have a 24-month commitment deadline, but there is a suspension until 12/31/23 for that timeline. City HTF does not have time constraints other than the great need currently in Portland.

We share your urgency in getting more housing units developed to help solve the worsening crisis of affordable housing in the city. Please consider those most in need, and near-future projects as you deliberate your awards of funding.

Thank you for your consideration.

Sincerely,

JWaterman

Jay Waterman
Director of Real Estate Development
Portland Housing Authority
Portland Housing Development Corporation

Cc: Mary Davis

CHOM
Community Housing of Maine

October 24, 2023

Mayor Kate Snyder and Members of the City Council
City of Portland
389 Congress Street
Portland, ME 04101

Subject: Jill Duson Housing Trust Fund, HOME and ARPA Funds

Dear Mayor Snyder and Members of the City Council,

My name is Cullen Ryan and I serve as the Executive Director of Community Housing of Maine or CHOM, the largest supportive housing provider for homeless populations in Maine. Our staff of 12 works collaboratively with more than 50 different service provider organizations to effectively and efficiently house more than 1200 of Maine's most vulnerable people. I serve in various leadership roles in working to end homelessness and have been working with homeless populations for 36 years.

I am respectfully writing today to express some concerns regarding the City potentially awarding all remaining subsidy funding currently available to the City ($8,400,000) including the minimum required balance of $500,000 to one development team. This would be an unprecedented $50,000-$75,000 per unit of subsidy. This large sum of money would be better used to preserve or create many more units than is proposed and could also better respond to the crisis of unsheltered homelessness and people with very low and extremely low incomes.

CHOM currently houses more than 410 residents in the city of Portland through affordable housing developments, including permanent supportive housing (PSH) and housing first developments targeting people experiencing homelessness and other extremely vulnerable populations.

We understand that you have unique projects proposed that will provide various types of housing. Awarding between $50,000-$75,000 per unit of subsidy is not the most efficient use of the City's scare financial resources. The Financial Feasibility standards in the City's 2023 RFP for Affordable Housing Development funds states that no more than $18,000 of subsidy will be awarded per unit. The Council may waive these criteria, but I think in this case doing so would not be advantageous.

Please consider CHOM's recently completed and future projects when considering the requests before you that propose fewer units on a per-unit-subsidy basis and at income levels up to 110% Area Median Income. I believe the best use of your funding is to serve those most in need, including Long Term Stayers in Portland's shelter system and people with very low incomes.

- CHOM is grateful to have been awarded $17,444.45 per unit for its Phoenix Flats development located on Middle Street in Portland. This recently completed project created 45 units of affordable housing for seniors, at least 13 of which are dedicated to housing Long Term Stayers in homelessness (CHOM most certainly over-achieved this at lease up).
- CHOM/Winter Street Development is grateful to have been awarded $3,846.15 per unit for its Winter Landing development, part of the larger Mercy redevelopment project. This project will create 52 units of affordable housing for seniors, 15 of which will be dedicated to housing Long Term Stayers in homelessness.
- CHOM/Winter Street Development is grateful to have been awarded $9002.33 per unit for its Equinox development, part of the larger Mercy redevelopment project. This project will create 43 units of affordable housing for families with low incomes, 10 of which will be set aside for housing vulnerable women in recovery and their children, and of these units, four (4) are dedicated to housing families in Portland shelters. An additional four (4) units will be dedicated to serving Long Term Stayers.

We also know that our colleagues developing affordable housing in Portland are hard at work planning additional affordable housing developments, including permanent supportive housing and projects targeting Long Term Stayers in Homelessness with the highest vulnerabilities. Portland certainly needs more affordable housing units, but if the $8,400,000 is awarded, and the projected Inclusionary Zoning funding of the HTF for 2024 is only about $500,000, many projects will not have the necessary gap financing to move forward.

As urgent as the housing crisis is in Portland, I urge you to not award all remaining funding to only the projects before you at the moment. The City's ARPA funding does not need to be obligated until 12/31/24 and spent by 12/31/26. HOME funds have a 24-month commitment deadline, but there is a suspension until 12/31/23 for that timeline. City HTF does not have time constraints other than the great need currently in Portland.

We share your urgency in getting more housing units developed to help solve the worsening crisis of affordable housing in the city. Please consider people most in need, and near-future projects as you deliberate your awards of funding.

Thank you for your time and careful consideration.

Sincerely,

Cullen Ryan

Executive Director
Community Housing of Maine (CHOM)
CHOM Development Corporation

Cc Mary Davis