

Order 130-06/07

Passage: 1/17/07 9-0

JAMES I. COHEN (MAYOR)(5)

WILLIAM R. GORHAM (1)

KAREN A. GERAGHTY (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

EDWARD J. SUSLOVIC (A/L)

ORDER AUTHORIZING SECOND AMENDMENT OF THE MARGINAL WAY PURCHASE AND SALE AGREEMENT

ORDERED, that the purchase and sale agreement between the City and Campobello Island, LLC, for property located at Marginal Way is amended by allowing the sale to close by January 29, 2007 if the Buyer tenders a foundation permit fee by the closing date and applies for the permit within 30 days of the closing, and by requiring the Buyer to construct the base course for the entranceway to the student housing parcel no later than September 1, 2007, pursuant to the attached Second Amendment to the Purchase and Sale Agreement.

Second Amendment to Purchase and Sale Agreement

This Second Amendment is made as of _____, 2006, and is made by and between the City of Portland, a body politic and corporate (“Seller”) and Campobello Island, LLC, a Maine limited liability company (“Buyer”).

WHEREAS, Seller and Buyer entered into a Purchase and Sale Agreement (the “Agreement”) dated November 16, 2005, for the sale of property located on Marginal Way and described on the City of Portland Tax Assessor’s Map effective April 1, 2004 as a portion of Map 34A, Block B, Lot 1, in Portland, Maine (the “Property”); and

WHEREAS, Seller and Buyer amended the Agreement to extend the outside closing date to January 29, 2007 by a First Amendment to Purchase and Sale Agreement dated on or about November 18, 2006;

WHEREAS, Seller and Buyer wish to further amend the Sale Agreement to facilitate the closing scheduled for January 29, 2007.

NOW, THEREFORE, for good and valuable consideration received, Seller and Buyer agree as follows:

1. The second sentence of the first paragraph of Section 9, Conditions to Closing, shall be deleted in its entirety and replaced with the following: “Buyer and the City shall be obligated to close following the submission of a foundation permit application fee for either of the developments described in 9(a) or 9(b), and the delivery to the City of evidence of a loan commitment or other financial commitment, and for the development that has not satisfied all of the conditions described in 9(a) or 9(b), respectively, the Buyer must be diligently pursuing in the reasonable opinion of the City the satisfaction of the conditions described herein.”
2. Section 9(a)(ii) shall be deleted and replaced in its entirety as follows: “The Buyer shall apply for a foundation permit to construct the student housing building(s) within 30 days after the Closing, provided, however, that the payment of the fee for the foundation permit must be paid by the Closing and any required letter of credit may be provided at or after the Closing.”
3. Section 9(b)(ii) shall be deleted and replaced in its entirety as follows: “The Buyer shall apply for a foundation permit to construct the office building and parking structure within 30 days after the Closing, provided, however, that the payment of the fee for the foundation permit must be paid by the Closing and any required letter of credit may be provided at or after the Closing.”
4. Section 10(i) shall be added as follows: “No later than September 1, 2007, the Buyer shall complete construction of a bituminous base course for the entranceway to the student housing, located at the easterly end of the student housing parcel, as described in the Site Plan for Bayside Village, A Student Housing Complex, dated July 11, 2006, last revised October 4, 2006, and approved by the Portland Planning Board on November 14, 2006, as well as curbing on both sides of the entranceway. In the

event that the Buyer fails to complete construction of the base course and curbing for the entranceway by September 1, 2007, the then-owner of the student housing parcel shall pay to the City as liquidated damages an amount equal to One Thousand Dollars (\$1,000) per day that the base course entranceway and curbing is not completed following September 1, 2007, up to a maximum of One Hundred Thousand Dollars (\$100,000) in liquidated damages. The City Manager may extend the time period for satisfaction of the condition described in this paragraph, if additional time is needed due to circumstances beyond the control of the Buyer, and such extensions may be granted for so long as substantial construction work on the entranceway is in progress.

5. All terms and conditions of the Agreement, as amended, remain in full force and effect except as specifically amended by this Second Amendment.

IN WITNESS WHEREOF, Seller and Buyer have executed this Second Amendment as of the date above.

SELLER: City of Portland

BUYER: Campobello Island, LLC

By: _____
Joseph Gray
City Manager

By: _____
Theodore V. West
Manager

AND

Southern Maine Student Housing, LLC

By: _____
Joseph Cloutier
Manager