

Order 203-06/07

Passage: 4/30/07 9-0

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JAMES I. COHEN (5)

JAMES F. CLOUTIER (A/L)

JILL C. DUSON (A/L)

EDWARD J. SUSLOVIC (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENT  
WITH THE INN AT DIAMOND COVE, LLC,  
RE: HOSPITAL AND BARRACK ON GREAT DIAMOND ISLAND**

**ORDERED**, that the City Manager is authorized to enter into a Purchase and Sale Agreement for the sale of the Hospital and Double Barracks at Fort McKinley on Great Diamond Island to the Inn at Diamond Cove, LLC, said agreement to be substantially in the form attached as Attachment A.

## ATTACHMENT A

### PURCHASE AND SALE AGREEMENT

1. PARTIES. THE CITY OF PORTLAND, MAINE, a Maine municipal corporation (“Seller”) agrees to sell and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine (“Buyer”) agrees to buy, upon the terms and conditions hereafter set forth, the real estate described in paragraph 2 of this Agreement.

2. DESCRIPTION. The premises to which this Agreement applies consist of certain lots or parcels of land customarily known as The Hospital Building (“Building #19”) and The Double Barracks (“Building #46”) located at Fort McKinley, Great Diamond Island, Portland, Maine, together with all of the appurtenant rights thereto including any rights of way, easements, licenses and permits (“Premises”). The Premises shall also include the limited common areas surrounding the buildings as anticipated by the Diamond Cove Declaration of Covenants and Restrictions. The parcel of land relating to the Double Barracks is generally depicted on the site plan shown as Schedule A, attached hereto and made a part hereof, and is also described in deeds from McKinley Partners Limited Partnership dated May 2, 2001 and recorded in the Cumberland County Registry of Deeds in Book 16290, Pages 254 and 256. The Premises may be further delineated on a survey to be provided by the Buyer.

3. DEED. The Premises are to be conveyed by a quitclaim (release) deed, which deed shall convey good and clear record and marketable title to the Premises, free from all liens, encumbrances and tenancies, except utility easements which do not materially impair the value of the Premises.

4. CONSIDERATION. The consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged, is as follows:

- a. One Dollar (\$1.00) and other good and valuable consideration;
- b. Buyer shall proceed in good faith to prepare a development plan for the Premises which shall establish commercially viable buildings taxable by the Seller in the ordinary course (“Development Plan”);
- c. The Development Plan shall be submitted to the Portland Planning Board for site plan approval which may, at the option of Buyer, be submitted in phases which would reflect the Buyer’s intentions to proceed separately with a development of the Double Barracks and the Hospital;
- d. Buyer shall hold Seller harmless from and against any claims for assessments by the Diamond Cove Homeowners Association with respect to that real estate conveyed to the Buyer hereunder; and

e. Seller shall waive any claims for real estate taxes or assessments accruing through the date when certificates of occupancy have been issued for each approved unit within the Development Plan.

5. TIME FOR PERFORMANCE/DELIVERY OF DEED. Such deed and any other transfer documents shall be delivered on a date and time specified by the Buyer not more than fourteen (14) days after the date of Buyer's notice to Seller at the offices of Buyer's attorneys, Drummond, Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104-5081 (the "Closing"). Buyer shall elect to proceed to closing on the Double Barracks by given written notice to Seller on or before a date that is no later than September 14, 2007 ("Double Barracks Exercise Date") or on the Hospital Building by giving written notice to Seller on or before a date that is no later than September 14, 2008 ("Hospital Exercise Date") provided that Seller and Buyer may consensually extend the Notices of Exercise on either pursuant to written agreement signed by both. If the Buyer fails to elect to exercise its rights to purchase either or both the Double Barracks or the Hospital Buildings for any reason other than a default by the Seller hereunder, neither party shall have any further rights or claims against the other and this Agreement shall terminate without further recourse.

6. BUYER'S CONTINGENCIES. In addition to such other conditions to Closing as may be set forth herein, the obligations of Buyer under this Agreement are subject to the following contingencies which are reserved solely for Buyer's benefit and may be waived by Buyer at any time:

- a. Approval of the Development Plan by the Diamond Cove Homeowners Association;
- b. Reasonable access to the Premises to confirm its condition and qualification for development;
- c. Receipt from the Seller of all engineering reports and physical inspections in the possession of Seller; and
- d. Seller shall be obligated to provide all of the information necessary to support the issuance of standard commercial title insurance covering the Premises in amounts as reasonably determined by Buyer. Such supporting information shall be provided in a timely manner as requested by the Buyer and shall apply to the period commencing upon the date which is the assessment date for the first real estate tax lien recorded against the Premises, and continuing to the date of Closing. Buyer shall be responsible for the standard commercial title insurance premium charges.

Seller and Buyer recognize that development issues may be identified in the contract phase of this Agreement requiring some amendment to the agreements expressed herein. Seller agrees that such modifications may be negotiated by its City Manager without the need for supplemental approval by the City Council.

7. TITLE CONFORMITY; EXTENSIONS; CONDITIONS. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein

stipulated, or, if at the time of the Closing the Premises do not conform with the terms and conditions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty (30) days. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, Buyer may either declare the obligations of the parties hereto void and this agreement shall be without recourse by either of the parties hereto, or Buyer may elect to accept such title to the Premises in its then condition as Seller can deliver.

8. RISK OF LOSS. Until delivery of title to the Premises from Seller to Buyer, risk of loss or damage to Premises by fire or otherwise shall be on Seller.

9. ADJUSTMENTS. Water and sewer use charges, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned to Seller as of the Closing. Real estate transfer taxes due on the transfer will be paid in accordance with Maine law.

10. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may pursue all available remedies, including specific performance and reasonable attorney's fees. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller may also pursue its remedies in law or in equity, recognizing that Buyer's obligation to proceed to Closing for either the Double Barracks or the Hospital is entirely discretionary with Buyer.

11. NOTICES. Except as otherwise specifically provided herein, any notice, demand or other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the 2<sup>nd</sup> business day after mailing by first-class mail, registered or certified, return receipt requested, addressed to the party at the address set forth herein. Either party may change its address for purposes hereof by giving the other party notice of a new address.

If to Seller: Joseph E. Gray, City Manager  
City of Portland, Maine  
389 Congress Street  
Portland, ME 04101

With a copy to: Mary Costigan  
Associate Corporation Counsel  
389 Congress Street  
Portland, ME 04101

If to Buyer: Ronald N. Ward, Agent  
The Inn At Diamond Cove, LLC  
P.O. Box 9781  
Portland, ME 04104

12. RECORDING. This Agreement or a memorandum thereof may, at the option of either party, be recorded in the Cumberland County Registry of Deeds at the expense of the recording party.

13. MISCELLANEOUS.

- a. Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original and such counterpart shall constitute one in the same instrument. This Agreement may be transmitted between the parties by facsimile and signatures appearing on faxed instruments shall be treated as original signatures.
- b. Assignment/Successors. The rights and obligations of Buyer may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- c. Entire Agreement/Amendment. Any and all prior and contemporaneous discussions, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement. This Agreement may not be modified, waived or amended except in writing assigned by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudicial thereto.
- d. Invalid or Unenforceable Terms. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of this Agreement shall be valid and be enforced to the fullest extent permitted by law. All paragraph headings in this Agreement are for convenience of reference only and have no independent legal significance. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates hereinafter set forth.

WITNESS:

CITY OF PORTLAND, MAINE

\_\_\_\_\_

By: \_\_\_\_\_  
Its

Date of Seller's acceptance of this Agreement: April \_\_, 2007

THE INN AT DIAMOND COVE, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Ronald N. Ward

Its: Agent

Effective Date of this Agreement: April \_\_\_\_, 2007

Schedule A

[Description of the Premises]



Schedule B

[Description of the Personal Property]