

Order 84-07/08

Agreement Amended & Passed 8-0 (Leeman absent)

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 AUTHORIZING CITY MANAGER TO EXECUTE EXTENSION OF  
PURCHASE AND SALE AGREEMENT WITH TOMAKS LLC  
RE: MISS PORTLAND DINER**

**ORDERED,** that the City Manager is hereby authorized to execute an Amendment to the Purchase and Sale Agreement with Tomaks LLC dated September 1, 2006, which Amendment shall extend the date for closing on the Miss Portland Diner and associated City property in substantially the form as attached.

## AMENDMENT TO PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement (this "Amendment") is made as of the \_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF PORTLAND ("Seller") and TOMAKS LLC ("Buyer").

**WHEREAS**, Seller and Buyer entered into that certain purchase and sale Agreement dated as of September 1, 2006, a photocopy of which is attached hereto as Exhibit A, with respect to a certain parcel of real estate situated on Marginal Way in Portland, Maine (the "Premises"), together with the building known as the "Miss Portland Diner" (the "Diner") and all personal property (the "Personalty") used in conjunction with the Diner. The purchase and sale Agreement is hereinafter referred to as the "Agreement".

**WHEREAS**, Seller and Buyer wish to amend the Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 4 of the Agreement concerning the Closing is amended as follows: The Buyer and Seller shall close on the purchase of the Diner and the Personalty no later than December 31, 2007, provided that Buyer's and Seller's conditions precedent to close set forth in the Agreement have been met. The Buyer and Seller shall close on the purchase of the Premises no later than March 28, 2008, provided that Buyer's and Seller's conditions precedent to close set forth in the Agreement have been met.
2. Section 9(a) of the Agreement concerning Other Obligations is amended as follows: Seller shall continue to store the Diner until May 1, 2008. Buyer shall pay the costs of such storage beginning on the date of execution of this Amendment until Buyer takes possession of the Diner pursuant to the terms of the Agreement.
3. Section 9(b) of the Agreement concerning Other Obligations is amended as follows: It is understood that Seller will be causing a developer of residential housing on abutting land to construct the Entrance Driveway no later than May 1, 2008. In the event that the developer of the abutting housing does not install the Entrance Driveway on or before May 1, 2008, Seller will provide a curb cut as specified in Section 9(b) of the Agreement.
4. Section 11(b) of the Agreement concerning Conditions Precedent to Buyer's Obligation to Close is amended as follows: No later than sixty (60) days prior to closing on the Premises, buyer shall receive a commitment for financing for acquisition of the Premises and the construction on the Premises of a ninety (90) seat restaurant from a lending institution for a mortgage loan in an amount, and upon such terms and conditions as are satisfactory to Buyer.
5. Section 11(d) of the Agreement concerning Conditions Precedent to Buyer's Obligation to Close is amended as follows: The restaurant to be built by Buyer on the Premises shall consist of ninety (90) seats.
6. Section 12(a) of the Agreement concerning Conditions Precedent to Seller's Obligation to Close is amended as follows: No later than sixty (60) days prior to closing on the

Premises, buyer shall receive a commitment for financing for acquisition of the Premises and the construction on the Premises of a ninety (90) seat restaurant from a lending institution for a mortgage loan in an amount, and upon such terms and conditions as are satisfactory to Buyer.

7. Section 12(b) of the Agreement concerning Conditions Precedent to Seller's Obligation to Close is amended as follows: The restaurant to be built by Buyer on the Premises shall consist of ninety (90) seats.

8. Seller and Buyer acknowledge and agree that except as amended by this Amendment, all terms of the Agreement remain unmodified and in full force and effect through the closing dates specified in this Amendment.

9. This Amendment may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

Executed as a sealed instrument as of the date and year first above set forth.

**SELLER:**  
CITY OF PORTLAND

By: \_\_\_\_\_  
Name: Joseph E. Gray, Jr.  
Title: City Manager

**BUYER:**  
TOMAKS LLC

By: \_\_\_\_\_  
Name: Thomas Manning  
Title: Manager