

Order 196-12/13

Passage: 8-0 (Anton absent) 4/22/13

MICHAEL F. BRENNAN (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

EDWARD J. SUSLOVIC (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING SALE OF PROPERTY RE: 60 PORTLAND PIER

ORDERED, that the City Manager is authorized to execute a Purchase and Sale Agreement in substantially the same form as that attached hereto with Mcaleney's New Meadows Lobster for the property at 60 Portland Pier (CBL 30-H-21); and

BE IT FURTHER ORDERED, that the Finance Director is authorized to execute a quitclaim deed conveying the above property.

PURCHASE AND SALE
AGREEMENT

This AGREEMENT is made and entered into this ____ day of _____, 2013, by and between the **CITY OF PORTLAND**, a body corporate and politic, with a business address of 389 Congress Street, Portland, Maine 04101 (“Seller”), and **MCALENEY'S NEW MEADOWS LOBSTER**, a Maine business corporation with an address of 60 Portland Pier, Portland, ME 04101 (“Buyer”).

WITNESSETH AS FOLLOWS:

1. PURCHASE AND SALE. Seller agrees to sell and Buyer agrees to buy, on the terms and conditions hereinafter set forth, that certain parcel of rights in and over land approximately 7,645 sq. ft. in area located at the seaward end of Portland Pier, in Portland, Maine, identified on the Portland Assessor’s Maps as 30-H-21, as conveyed to the seller in 1948, and as described on Exhibit A which is attached hereto and incorporated herein together with all improvements thereon and rights appurtenant thereto (the “Premises”).

2. PURCHASE PRICE. Subject to any adjustments and prorations hereinafter described, Buyer agrees to pay for the Premises the sum of Forty-Eight Thousand Two Hundred Dollars (\$48,200.00). The sum of Five Thousand Dollars (\$5,000.00) as a deposit (“Deposit”) is paid herewith to Seller, which Deposit shall be credited towards the Purchase Price at the closing. The balance of the Purchase Price shall be paid by certified check, bank cashier’s check or wired funds at closing.

3. TITLE. Seller shall convey the Premises to Buyer at the closing by quitclaim release deed, without warranty of title.

4. CLOSING. The closing shall take place at Room 209, Portland City Hall, 389 Congress Street, Portland, Maine, one hundred and eighty (180) days after the date on which Seller executes this Agreement (the "Effective Date"). Buyer may elect to close at an earlier date by providing ten (10) days advance written notice to Seller of the date on which Buyer wishes to close. At the closing, Seller shall execute and deliver to Buyer, against payment of the purchase price, a quitclaim release deed to the Premises (the "Deed").

5. RISK OF LOSS, DAMAGE AND INSURANCE. All risk of loss to the Premises prior to the closing shall be borne by Seller.

6. INSPECTION. Buyer may enter onto any part of the Premises at all reasonable times upon prior notice to Seller in order to inspect the Premises, conduct surveys, building inspections, engineering and environmental studies, soil tests, water quality and quantity tests, and to do such things as are reasonably necessary with respect to its acquisition, financing and development of the Premises. In the event that the inspections reveal defects or conditions which would be unacceptable to any reasonable person, then Buyer may upon notice to Seller terminate this Agreement and receive back the Deposit. Buyer agrees to hold the Seller harmless from any damage or injuries arising from such inspections of the Premises.

In the event that Buyer terminates this Agreement for the reasons set forth in this paragraph, Buyer shall provide copies of its inspection reports and other testing reports to Seller at no cost to Seller.

7. POSSESSION. The Premises shall be delivered to the Buyer at the time of the closing free and clear of all tenancies or occupancies by any person or entity, other than Buyer.

8. DEFAULT AND REMEDIES. In the event that Seller fails to close hereunder for a reason other than default of Buyer, Buyer shall have all remedies available at law and equity including the right of specific performance as to the Premises. In the event that Buyer defaults in the performance of its obligations hereunder, Seller shall have all remedies available at law.

9. BROKERAGE. Seller and Buyer represent to the other that there are no fees and commissions due any real estate brokers, other than a fee that might be due from Buyer (and not from Seller) to Malone Commercial Brokers.

13. ADJUSTMENTS, PRORATIONS AND CLOSING COSTS.

(a) Real estate taxes, assessments, rentals and utilities shall be prorated as of the closing.

(b) The Maine real estate transfer tax shall be paid by Seller and Buyer in accordance with 36 M.R.S.A. § 4641-A.

(c) The recording fee for the deed of conveyance will be paid by Buyer.

(d) A portion of the purchase price shall be withheld at the closing by Buyer if required by 36 M.R.S.A. § 5250-A.

14. MISCELLANEOUS. Time is of the essence in this Agreement. Buyer may not assign or transfer its rights under this Agreement. In the event that the date for the performance of any obligation hereunder shall fall on a holiday or weekend, then the date of performance shall be extended to the next business day. All notices, demands and

other communications hereunder shall be in writing and shall be given either (i) by first class mail, postage prepaid, certified, return receipt requested, at the addresses set forth below; (ii) by hand delivery to the addresses set forth below; or (iii) by Fed Ex, or similar overnight express mail, prepaid, to the addresses set forth below. All notices shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein (in the case of mailing) or upon delivery (if hand delivered) or when delivered to a Fed Ex (or similar overnight delivery service) courier or office at the time indicated on the proof of delivery (if sent by overnight delivery service).

TO SELLER: City Manager
 Portland City Hall
 389 Congress Street
 Portland, ME 04101

with copies to: Corporation Counsel
 Portland City Hall
 389 Congress Street
 Portland, ME 04101

and

Director of Economic Development
Portland City Hall
389 Congress Street
Portland, ME 04101

TO BUYER: Peter McAleney
 New Meadows Lobster
 60 Portland Pier
 Portland, ME 04101

With a copy to: Joe Malone
 Malone Commercial Brokers
 5 Moulton Street
 Portland, ME 04101

Either party may change its address for purposes of this Agreement by giving the other party notice of the new address in the manner described herein. This Agreement will inure to the benefit of and bind the respective personal representatives, heirs, successors and assigns of Sellers and Buyer. This Agreement shall be governed by and construed in accordance with the laws of Maine. 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.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

WITNESS:

CITY OF PORTLAND – Seller

By: _____

Mark H. Rees
Its City Manager

Dated: _____, 2013

– Buyer

McAleney's New Meadows Lobster

By: _____

Peter McAleney
Its President

Dated: _____, 2013

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Exhibit A

A certain lot or parcel of land with any structures thereon that comprise the area at the end of Portland Pier in said Portland extending into Portland Harbor, and bounded and described as follows:

Beginning at a point in the southwesterly side line of Portland Pier as laid out by the County Commissioners June 6, 1887, distant southeasterly along the said southwesterly side line six hundred and seventy (670) feet from its intersection with the southerly side line of Commercial Street; thence southeasterly and making an included angle of one hundred and seventy (170) degrees through the west with the northwesterly direction of the said southwesterly side line of Portland Pier and following approximately the northeasterly side line of the wharf as now exists or formerly existed, a distance of twenty-five (25) feet to a point; thence southerly and making an included angle of one hundred and fifty-seven (157) degrees through the west with the northwesterly direction of the last described course a distance of twenty-six (26) feet to a point; thence southwesterly on a course which is at right angles to the northeasterly side line of the dock between Commercial Wharf and Portland Pier a distance of eight (8) feet more or less to the said northeasterly side line of the dock between Commercial Wharf and Portland Pier; thence southeasterly by and along the said northeasterly side line of the dock between Commercial Wharf and Portland Pier and by and along the said side line of said dock produced southeasterly in a straight line a distance of eight-eight (88) feet more or less to the Harbor Commissioner's line as 1887; thence northeasterly by the said Harbor Commissioner's line a distance of eighty-seven (87) feet to a point, thence northwesterly and making an included angle of ninety-six (96) degrees with the southwesterly direction of the Harbor Commissioners Line and following approximately the southwesterly line of the wharf as it now exists or formerly existed a distance of seventy-nine (79) feet; thence southwesterly and following approximately the line of the wharf as it now exists or formerly existed and making an included angle of one hundred and one (101) degrees with the southeasterly direction of the last described course a distance of eight (8) feet to a point and an angle in the southwesterly side line of the said wharf; thence northwesterly and making an included angle of ninety-nine (99) degrees with the northeasterly direction of the last described course and following approximately the southwesterly side line of said wharf a distance of twenty-five (25) feet more or less to a point; thence southwesterly on a line at right angles to the southwesterly side line of Portland Pier as described above a distance of thirty-four (34) feet more or less to the said southwesterly side line of Portland Pier and the point begun at. Together with whatever dock and riparian rights relating to the above described premises, rights of way and easements related thereto.

This conveyance is subject to the rights and easements the public and the City of Portland have in the Public Way or Street approximately twenty-eight (28) feet wide leading southerly from said Commercial Street over and along said Pier to the Harbor Commissioners' Line; and the City of Portland hereby reserves and excepts from this conveyance a public right of access at all times over said entire length of said Way, for itself and the public.

Reference is made to the deed to this Grantor from Harbor Realty Company dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189; and to the Laying Out of a Street on Portland Pier in Volume 2, Page 195 of the City of Portland, Department Public Works Street Records.