

Order 123-14/15

Passage: As Amended 9-0 on 1/5/2015

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

Effective 1/15/2015

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENT  
WITH PATRONS OXFORD INSURANCE COMPANY FOR UNIT 1  
AT PORTLAND TECHNOLOGY PARK**

**ORDERED,** that the Acting City Manager is hereby authorized to execute the Purchase and Sale Agreement with Patrons Oxford Insurance Company for Unit 1 in Portland Technology Park, in substantially the form attached hereto; and

**BE IT FURTHER ORDERED,** that the Acting City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of the Agreement.

## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT** for the purchase and sale of real estate made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as "Seller"), and **PATRONS OXFORD INSURANCE COMPANY**, a Maine insurance corporation, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Buyer").

### WITNESSETH:

**WHEREAS**, Seller owns an approximately 3.47 acre parcel of land located at the Portland Technology Park, City of Portland, County of Cumberland, State of Maine, being known as Unit 1 and LCE #1 on that certain Subdivision Plat of Portland Technology Park Condominium, Rand Road, Portland, Maine dated September 29, 2011 and last revised on September 25, 2012, prepared by SGC Engineering, LLC for the City of Portland – Declarant, approved by the City of Portland Planning Board on January 24, 2012 and recorded in the Cumberland County Registry of Deeds on October 10, 2012 in Book 212, Page 324 (the “Plan,” a copy of which is attached hereto as Exhibit A) and being further described as Unit 1 of the condominium known as the Portland Technology Park Condominium of which the Seller is the declarant as described in that certain Declaration of Condominium for the Portland Technology Park to be recorded in the Cumberland County Registry of Deeds (the “Declaration of Condominium”), together with all improvements, fixtures and rights appurtenant thereto, all as more particularly shown and depicted as the cross-hatched lot on the Plan shown on Exhibit B attached hereto and made part hereof (the “Property”). Title reference is made to a deed from Simon A. Snyder et alia to the City of Portland dated December 7, 1999 and recorded in the Cumberland County Registry of Deeds, Book 15211, Page 31; and

**WHEREAS**, Seller intends to sell and Buyer desires to acquire the Property.

**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.**

Seller agrees to sell the Property, and Buyer agrees to purchase the Property in accordance with the provisions hereof. It is hereby agreed and acknowledged that the actual description of the Property shall be determined based on the title and related due diligence work to be completed by Buyer pursuant to this Agreement and that such description shall be subject to Buyer’s and Seller’s final review and approval before including the same in the Deed (as that term is defined below) to be delivered by Seller to Buyer as set forth and described below.

### **2. CONSIDERATION.**

The consideration for the property shall be Six Hundred Twenty-Five Thousand

Dollars (\$625,000.00) payable as follows:

- (a) A deposit of Twenty Thousand Dollars (\$20,000.00) to be paid by Buyer within two (2) business days of the Effective Date and held by Buyer's agent, Andrew Ingalls of CBRE The Boulos Company, until closing and applied to the Purchase Price (or, if applicable, until returned to Buyer pursuant to this Agreement) (the "Deposit"); and
- (b) The Purchase Price, less the Deposit, to be paid by Buyer to Seller at closing by wire transfer, certified check or bank cashier's check, subject to the adjustments provided for in this Agreement.

This is a cash purchase and no financing is required.

### **3. TITLE.**

Seller shall convey the Property to Buyer at the closing in fee simple with good and marketable title or insurable title, subject to: (a) easements, privileges, restrictions, conditions, development rights, special declarant rights, and agreements created by or referred to in the Declaration of Condominium, as well as the matters showed or disclosed on the Plan; (b) provisions of (i) the Maine Condominium Act, and all amendments thereto; and (ii) the Declaration of Condominium, the bylaws and the plats and plans for The Portland Technology Park Condominium Association and all amendments or modification thereto; (c) all restrictions required because the roadway serving the Portland Technology Park Condominium (including the Property), which roadway will continue to be owned by the Seller, was improved, in part, with funding from the United States Economic Development Administration (EDA), United States Department of Commerce, a copy of which restrictions is attached hereto as Exhibit C; and (d) such taxes and assessments, including common expenses allocable to the Property, if any, as are due and payable on the date of delivery of the Deed. At the closing, Seller shall execute and deliver to Buyer, against payment of the balance of the purchase price, a Municipal Quitclaim Deed without Covenant (the "Deed"). In the event that Seller is unable to convey title as aforesaid, Seller shall be given a reasonable period of time, not to exceed sixty (60) days, in which to remedy any title defects. In the event that said defects cannot be corrected or remedied or in the event that Seller elects not to remedy same, then the Deposit shall be returned to Buyer and this Agreement, and Seller's and Buyer's obligations hereunder, will terminate. Buyer may, at Buyer's option elect to close notwithstanding such defects as may exist. Seller and Buyer understand and agree that any mortgages and liens on the Property shall not be considered title defects provided that the same shall be discharged at or prior to closing at Seller's expense. Seller may use purchase money proceeds for this purpose. The Property shall be sold and conveyed strictly on an "as is", "where is" and "with all defects" basis, and, except as set forth below, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition, past or present use, tax ramifications or consequences, compliance with law, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed.

### **4. POSSESSION.**

Full possession of the Property will be delivered to Buyer at the transfer of title

free and clear of all tenancies or occupancies by any person or entity.

**5. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.**

Buyer shall be liable for all real estate taxes beginning, as of the closing date, with fiscal year 2015-16 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 for fiscal year 2014-15 and no taxes will be prorated at the closing, provided, however, that any assessments and 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. Seller is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C.

**6. RISK OF LOSS.**

The risk of loss or damage to the Property by fire or otherwise, until transfer of title hereunder, is assumed by the Seller. The Property is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event Seller is not able to deliver the Property as stated, Buyer may terminate this Agreement and receive a refund of the Deposit.

**7. INSPECTIONS AND SELLER REPRESENTATIONS AND WARRANTIES.**

Buyer may enter into any part of the Property at all reasonable times prior to the closing in order to inspect the Property, conduct surveys, test borings and engineering studies and to do such other things as are reasonably necessary with respect to the acquisition and development of the Property. In the event that the inspection reveals defects or conditions which are unacceptable to Buyer, Buyer may terminate this Agreement and receive back the Deposit.

Subject to all matters disclosed in any document delivered to Buyer by Seller or on any exhibit attached hereto, and subject to any information discovered by Buyer or other information disclosed to Buyer by Seller or any other person after the date hereof and prior to the closing, Seller represents and warrants to Buyer that, to the best of its knowledge, the following are true as of the date of this Agreement and will be true as of the closing:

- (a) Except as set forth in the Plan, there are no outstanding pending or threatened liens, claims, rights of first refusal, licenses or encumbrances against or affecting the Property.
- (b) All outstanding bills and/or accounts payable concerning the Property are either paid or will be paid prior to or at the time of closing.
- (c) There are no outstanding claims, losses or demands against Seller by any person respecting Seller's ownership, use or occupancy of the Property.
- (d) The Property has not been used for any dumping of waste materials or landfilling and are free of special wastes, underground storage tanks, radon, asbestos, lead substances, and any hazardous, biomedical, radioactive or toxic, substances, materials or wastes. The terms used in the foregoing

sentence shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.

(e) Seller has no knowledge of any boundary disputes or encroachments affecting the Property.

(f) There are rights of ingress and egress in perpetuity from the Property to public highways and roads for vehicular and pedestrian traffic and utilities, except that Seller is currently in the process of obtaining required easements to connect natural gas service to the Portland Technology Park Condominium.

(g) There are no endangered or threatened wildlife or plant habitats and no rivers, streams, great ponds, other bodies of water or wetlands or coastal sand dunes on or adjacent to the Property which, under applicable law would prohibit, limit or restrict Buyer's intended use of the Property.

All representations and warranties made by Seller herein are made to the best of Seller's knowledge and shall survive the closing of this transaction. Except as set forth herein, Buyer acknowledges that Seller makes no other representations or warranties regarding the Property.

## **8. CLOSING.**

The closing of this transaction shall take place on that date which is sixty (60) days after the Effective Date, at the offices of Bernstein Shur, 100 Middle Street, Portland, Maine. Time is of the essence of this Agreement.

## **9. DEFAULT AND REMEDIES.**

(a) In the event of Buyer's default under any of the terms, covenants or conditions of this Agreement, Seller shall have the right to retain the Deposit and any interest accrued thereon as aforesaid as liquidated damages for the breach and not as a penalty therefor. The Buyer and Seller acknowledge and agree that (i) it is not feasible to determine accurately the measure of damages that will be caused to Seller by the Buyer's breach because the uniqueness of the Property at its location preclude the utility of comparable figures to determine the extent of damages and (ii) that the amount stated as liquidated damages is agreed to reasonably forecast the amount necessary to compensate Seller for its loss in the light of the circumstances stated in clause (i) and the attendant uncertainties in marketing the Property to another purchaser.

(b) In the event that Seller fails to close hereunder for a reason other than the default of Buyer, Buyer may, as its sole remedy therefor, and subject to the terms of this paragraph, either (i) enforce specific performance of this Agreement against Seller, or (ii) terminate this Agreement and receive the Deposit, plus all interest earned or accrued thereon, except that in the case of any breach of a covenant,

representation or warranty of Seller, Buyer shall be entitled, as its sole remedy, to recover its actual damages therefor. Buyer agrees that any recovery against Seller for any breach of Seller's covenants, representations, or warranties hereunder or under any other document delivered by Seller to Buyer or under any law applicable to the Property or this transaction, shall be limited to Buyer's actual damages and that in no event shall Buyer be entitled to seek or obtain any other damages of any kind, including, without limitation, consequential, indirect or punitive damages.

#### **10. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE.**

The obligation of Buyer to close is subject to the satisfaction at or before the closing of all of the following conditions:

- (a) All representations and warranties of Seller contained in this Agreement shall be true as of the closing.
- (b) Seller shall, at its sole cost and expense, complete any and all additional work necessary to finalize the Declaration of Condominium in order to convey the Property and to delineate the boundaries of the same, which conveyance and delineation shall ensure that the Property is a conforming and approved lot under the City of Portland's zoning and land use laws, ordinances and regulations and not in violation of the State of Maine's subdivision laws, including, but not limited to, M.R.S.A. 30-A § 4401.
- (c) Buyer shall determine, in its sole and absolute discretion, that the Property may be used for the construction and operation of a two (2) story, 30,000 square foot, professional office building and that it is satisfied with all local, state and federal zoning and land use laws, ordinances and regulations affecting the Property, including, but not limited to, setback, lot coverage, traffic and parking requirements and, if necessary, the Buyer's ability to construct and install a local, state and federal approved curb cut into the Property from the right of way shown and identified as Easement Area 1 on the Plan.
- (d) Buyer shall determine, in its sole and absolute discretion, that it is satisfied with the terms and conditions of the Declaration of Condominium and the bylaws, plats and plans of said Portland Technology Park Condominium, it being hereby agreed and acknowledged that Seller shall deliver copies of the same to Buyer for review within five (5) days of the Effective Date and that to the extent any modifications are made to said documents pursuant to subsection (b) above, Seller shall promptly notify Buyer of the same.
- (e) In the event that any of the foregoing conditions is not satisfied, as determined by Buyer in its sole and absolute discretion, Buyer shall have the option of terminating this Agreement and receiving back the Deposit, except that should any of Seller's representations or warranties prove untrue, then Buyer shall have the right to require Seller, at Seller's expense, to make the Property conform thereto.

**11. 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.

**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 Seller and Buyer.

**13. 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.

**14. GOVERNING LAW.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

**15. NOTICE.**

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

FOR THE SELLER:	City of Portland <u>Attention:</u> City Manager 389 Congress Street Portland, ME 04101
FOR THE BUYER:	Patrons Oxford Insurance Company P.O. Box 1960 Auburn, Maine 04210 Attn: Mark A. Pettingill, President

Either party may change his address for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**16. 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. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.

**17. BROKERS.**

Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction, other than Andrew Ingalls of CBRE The Boulos Company ("CBRE"), whose commission will be paid by Seller pursuant to the terms of a separate agreement to be negotiated between Seller and CBRE. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller'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.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the day and year first above written.

**CITY OF PORTLAND**

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
Sheila Hill-Christian  
Its Acting City Manager

**PATRONS OXFORD INSURANCE  
COMPANY**

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_  
Mark A. Pettingill  
Its President

Exhibit A

[See Attached Subdivision Plat]

EXHIBIT B

[See Attached Plan Depicting Premises]

Exhibit C

**COMPLIANCE WITH EDA RESTRICTIVE COVENANTS**

The Seller and Buyer acknowledge that the Property was improved, in part, with funding from the United States Economic Development Administration (EDA), United States Department of Commerce, EDA Project Number 01-01-08630 and is subject to the terms and conditions of the EDA financial assistance award. Consequently, all recipients or owners and/or their successors and assigns, agree as follows:

Real Property or tangible Personal Property improved with EDA Investment Assistance must be used in a manner that is consistent with the authorized general and specific purposes of the Award, in this case, industrial purposes and EDA policies concerning adequate consideration and environmental compliance; and any applicable provisions of 13 CFR §314. It may not be used in violation of the nondiscrimination requirements set forth in 13 C.F.R. §302.20 or for inherently religious activities prohibited by applicable federal law.

Buyer agrees to provide Seller and/or EDA with any document, evidence or report required to assure compliance with federal and state law, including, but not limited to, applicable federal and state environmental laws.

The use of the Property, (improved with EDA assistance), for any purpose other than the authorized purpose of the EDA grant, which in this case is commercial uses, is prohibited. This covenant shall remain in effect for a period of twenty (20) years.