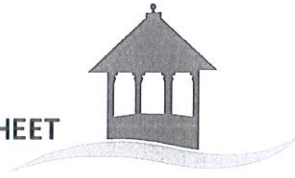




**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	02/20/2019	<b>Department</b>	City Council
<b>Agenda Item</b>	4.6 Use of TAP Surplus to reimburse Gardiner Board of Trade		
<b>Est. Cost</b>	\$29,999		

<b>Background Information</b>	TAP Surplus Account	
	Initial TAP	\$25,168
	57 Mt Vernon	(-3,400)
	23 Adams St	(-4,900)
	Balance	\$16,868
	Newest TAP	\$29,100
	Balance	\$45,968
	GBOT	\$29,999
	Remaining Balance	\$15,969
	<p>Previously, the City Council approved using tax acquired property sale funding to 'clean-up' other properties within the city. With the most recent sale of tax acquired properties, the city will have a balance of \$45,968. The City Manager is asking the City Council to approve a one-time use of these funds to reimburse Gardiner Board of Trade \$29,999, which was lent to the city to purchase 2 Highland Avenue. The GBOT has requested to be reimbursed in FY20, however, using these funds will alleviate that amount in the upcoming budget.</p>	

<b>Requested Action</b>	'I move to approve using \$29,999 of tax acquired property proceeds to reimburse the Gardiner Board of Trade.'
<b>City Manager and/or Finance Review</b>	The City Manager recommends the above action.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

<b>City Clerk Use Only</b>	1 <sup>st</sup> Reading _____	Advertised _____	<b>EFFECTIVE DATE</b> _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of the 26<sup>th</sup> day of January, 2016 by and between the **GARDINER BOARD OF TRADE**, a Maine non-profit corporation located in Gardiner, Kennebec County, Maine ("Seller") and **CITY OF GARDINER**, a body corporate and politic located in Gardiner, Kennebec County, Maine ("Buyer").

1. PURCHASE AND SALE OF PREMISES. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller the real estate, together with any improvements thereon, known as 2 Highland Avenue in Gardiner, Kennebec County, Maine, together with any fixtures and improvements located thereon ("Premises"). In January 2016, Seller is acquiring the Premises from U.S. Bank National Association, As Trustee for Credit Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-5. Seller was the winning bidder at an auction of the Premises held December 17, 2015.

2. PURCHASE PRICE. The purchase price for the Premises is One Dollar (\$1.00), payable at time of closing, plus the amount that the Buyer receives upon re-sale of the Premises to Developer's Collaborative Predevelopment LLC for the TW Dick redevelopment project, payable within thirty (30) days of receipt of payment ("Purchase Price"). This additional payment for the Purchase Price shall be Twenty-Nine Thousand Nine Hundred Ninety-Nine Dollars (\$29,999.00). In January 2016, Developer's Collaborative is entering into an option agreement with Buyer to acquire the Premises and other land, which option agreement has a termination date of January 28, 2017. If Buyer does not sell the Premises to Developer's Collaborative pursuant to the option agreement, as may be amended or extended, then the parties agree to renegotiate the terms at a mutually agreed upon purchase price.

3. CLOSING. The closing of the sale contemplated hereby shall take place within thirty (30) days of the Effective Date (hereinafter defined) ("Closing Date"), at Gardiner City Hall, 6 Church Street, Gardiner, Maine. Buyer and Seller mutually agree that time is of the essence with respect to this Agreement and the closing, and will make every effort to time the closing of the sale contemplated hereby to coincide with the Seller's formal acquisition from the aforementioned U.S. Bank National Association.

4. TITLE. Buyer's obligations under this Agreement are contingent upon title review. Seller shall provide to Buyer, within five (5) days from the Effective Date, such reports, title opinions, title insurance policies or certificates, plans or surveys, and any other documents or materials relating to the Premises as it may have in its possession. The cost for any title examination, including title insurance premiums, shall be the responsibility of Buyer. If Buyer finds title to the Premises not to be good and marketable in accordance with the Title Standards promulgated by the Maine State Bar Association or to be subject to easements, restrictions, or agreements not otherwise acceptable to Buyer (collectively the "Defects"), then Seller may delay closing for not more than thirty (30) days in order for Seller to cure the Defects. In the event Seller is unable to cure the Defects after exercising reasonable efforts therefor, Buyer may, at Buyer's option (a) accept such title as Seller can convey, or (b) terminate this Agreement, with all parties released from their obligations hereunder (except those specifically provided as surviving closing or termination hereof).

5. DEED. At the closing of the sale, Seller shall deliver to Buyer a duly executed and acknowledged Quitclaim Deed with Covenant, in accordance with the Short Form Deeds Act, 33 M.R.S.A. §761, *et seq.*, conveying the Premises in fee simple with good and marketable title in accordance with the Title Standards promulgated by the Maine State Bar Association, free and clear of all encumbrances and liens other than (i) easements, restrictions, or agreements acceptable to Buyer; (ii) any conditions which a physical inspection of the Premises might reveal; and (iii) existing laws, ordinances, or regulations governing the use of the Premises.

Seller further agrees to execute and deliver to Buyer at the closing the following documents: (a) a title insurance "Seller's Affidavit" with regard to persons in possession and mechanics liens, (b) a title insurance "Survey Affidavit" with regard to facts about the Premises, and (c) corporate governance documents including a certificate of good standing, a copy of the instruments forming the entity, and a resolution and a certificate by the appropriate manager(s)/member(s) to enter into and fulfill its obligations under this Agreement.

6. INSPECTIONS; RIGHT OF ENTRY. Buyer may conduct whatever assessments, tests, surveys, studies and other inspections of the Premises (civil, environmental and other surveys) that Buyer deems necessary to determine the suitability of its proposed use and for permitting of its proposed use within ninety (90) days of the Effective Date. In the event the results of such assessments and inspections are unsatisfactory to Buyer, Buyer may terminate this Agreement upon written notice to Seller. Upon termination of this Agreement pursuant to this section, the Deposit shall be returned to Buyer and all parties shall be released from their obligations hereunder (except those specifically provided as surviving closing or termination hereof).

Seller hereby grants to Buyer, its agents, employees, and contractors, during the term of this Agreement, a license to enter the Premises, at any reasonable time, to inspect and to make such assessments, tests, surveys, studies and other inspections thereof as they deem necessary. It is understood and agreed that the Premises shall not be damaged or left in a disorderly or unsightly condition from such activity, for breach of which Buyer shall be responsible for repairing and for removing the disorderly or unsightly condition. Buyer shall defend, indemnify and hold Seller fully and completely harmless from and against any and all claims, demands, suits and actions of any person arising out of Buyer's exercise of the license to enter hereby granted, including all claims by or on behalf of Buyer and Buyer's agents and contractors or their respective estates.

7. RESIDENTIAL REAL PROPERTY DISCLOSURES. Pursuant to 33 M.R.S.A. §173, Seller shall execute and deliver to Buyer the residential property disclosure statement, attached hereto as Exhibit A, at the time that this Agreement is executed.

8. LEAD PAINT. Attached hereto as Exhibit B is a pamphlet entitled *Protect Your Family from Lead in Your Home*. Seller shall execute and deliver to Buyer the Lead Paint Addendum attached hereto as Exhibit C at the time this Agreement is executed. Buyer shall have ten (10) days from the Effective Date to inspect the Premises for the presence of lead paint. In the event lead paint is found, Buyer shall have the right to terminate this Agreement and all parties

shall be released from their obligations hereunder (except those specifically provided as surviving closing or termination hereof).

9. ARSENIC. Seller shall deliver to Buyer the arsenic pamphlets, attached hereto as Exhibits D and E, at the time that this Agreement is executed.

10. UNDERGROUND STORAGE TANK FACILITY. Pursuant to 38 M.R.S.A. §563(6) and (10), Seller shall execute and deliver to Buyer the underground storage facility disclosure, attached hereto as Exhibit F, at the time that this Agreement is executed.

11. POSSESSION OF PREMISES; RISK OF LOSS. At closing, Seller shall deliver possession of the Premises to Buyer free and clear of all occupants or tenants. All risk of loss to the Premises prior to the closing shall be borne by Buyer, except and unless the loss was caused by Seller. Furthermore, Seller agrees to bear the cost of demolition of the Premises up to a maximum amount of Fifteen Thousand and 00/100 Dollars (\$15,000).

12. CLOSING COSTS/DOCUMENTS. The cost and responsibility for preparation of the deed and real estate transfer tax form shall be the responsibility of Seller. The cost and responsibility for preparation of all other closing documents, closing costs and performance of the closing shall be the responsibility of Buyer. The following prorations and costs shall be paid at the closing as follows:

- a. utilities and remaining fuel oils, if any, shall be prorated between the parties based on the Closing Date;
- b. real estate taxes and assessments based on the fiscal year of the City of Gardiner shall be prorated between the parties based on the Closing Date;
- c. any other assessments or charges levied against the Premises in previous years shall be paid by Seller except that any assessments or charges for the year of closing shall be prorated between the parties based on the Closing Date;
- d. recording fee for the deed shall be paid by Buyer; and
- e. Maine real estate transfer tax shall be paid by Seller and Buyer in accordance with 36 M.R.S.A. §4641-A.

13. REAL ESTATE AGENT COMMISSION. Buyer and Seller each agreed to defend, indemnify and hold harmless the other of, from and against any and all claims, liens, costs and expenses (including but not limited to reasonable attorneys' fees) which arises out of any action such indemnitor may have taken that provides the basis for any claim for brokerage or sales commissions with respect to the transaction contemplated herein. Buyer and Seller each warrant and represent that it has not made or entered into any other brokerage or listing agreement with any real estate broker or agent with respect to the Premises.

14. BREACH; REMEDY. In the event Buyer fails to fulfill any of Buyer's obligations hereunder, then Seller shall receive the Deposit and may pursue all remedies at law or equity. In the event Seller fails to fulfill any of Seller's obligations hereunder, then the Deposit shall be returned to Buyer and Buyer may pursue all remedies at law or equity, including specific performance.

15. NOTICES. All notices required to be given hereunder shall be in writing and shall be deemed duly given when mailed by registered or certified mail, return receipt requested, or delivered by hand, addressed as follows:

To Seller at:

Nathan R. Cotnoir, President  
Gardiner Board of Trade  
PO Box 233  
Gardiner, ME 04345  
Telephone (207) 626-7502  
Facsimile (207) 626-7565  
E-Mail [ncotnoir@camdenational.com](mailto:ncotnoir@camdenational.com)

With a copy to:

Brent Hall, Treasurer  
Gardiner Board of Trade  
PO Box 233  
Gardiner, ME 04345  
Telephone (207) 588-5801  
Facsimile  
E-Mail [bhall@kennebecsavings.com](mailto:bhall@kennebecsavings.com)

To Buyer at:

Scott Morelli, City Manager  
City of Gardiner  
6 Church Street  
Gardiner, Maine 04345  
Telephone (207) 582-4200  
Facsimile (207) 582-6895  
E-mail [citymanager@gardinermaine.com](mailto:citymanager@gardinermaine.com)

With a copy to:

Sarah L. Reinhart, Esq.  
Eaton Peabody  
80 Exchange Street  
P.O. Box 1210  
Bangor, Maine 04402-1210  
Telephone (207) 947-0111  
Facsimile (207) 942-3040

16. ASSIGNMENT. Buyer may assign this Agreement to Developers Collaborative Predevelopment LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 100 Commercial St. Suite 414, Portland, Maine 04101. Assignment, transfer, or other disposition of interest of the Buyer or Seller and/or this Agreement to any other person or entity shall require prior written consent of the other party.

17. MISCELLANEOUS. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement constitutes the entire agreement between the parties, supersede all prior negotiations and understandings, and shall not be altered or amended, except by written amendment signed by Seller and Buyer. If any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provision hereof. The headings of the sections and subsections of this Agreement are inserted as a matter of convenience and for reference purposes only and in no respect define, limit or describe the scope of this Agreement or the intent

of any section or subsection. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine. For purposes hereof, the Effective Date of this Agreement is the date first written above. For the purposes of this Agreement, a facsimile signature on this Agreement shall be deemed an original.

18. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties have herunto set their hands and seals as of the day and year first above written.

Seller  
Gardiner Board of Trade

By:   
Nathan R. Cotnoir, President

Buyer  
City of Gardiner

By:   
Scott Morelli, City Manager