



## City of Portland Board of Assessment Review

Monday, July 19, 2021  
Remote Meeting

Stephen Bither  
Barbara Brewer  
Chase Hewitt

1. ZOOM Information
  - a. Please click the link below to join the webinar:  
<https://zoom.us/j/99219666470?pwd=QVkyWTZHNzdYRDluTGUVUa1dDMmxSUT09>  
Passcode: 113778  
Or One tap mobile :  
US: +13126266799,,99219666470# or +16465588656,,99219666470#  
Or Telephone:  
Dial(for higher quality, dial a number based on your current location):  
US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782  
Webinar ID: 992 1966 6470  
International numbers available: <https://zoom.us/u/as28dC3yc>
2. Approval of the Minutes for the June 14, 2021 Board of Assessment Review Meeting
  - a. Attached.
3. Consideration of Federated Companies appeal
  - a. Additional documents submitted before and following June 14, 2021 Hearing.
  - b. Responses submitted by June 26, 2021 deadline
4. New Business (if needed)
5. Next Meeting: (if needed)
6. Adjournment



## **Board of Assessment Review**

**Monday, June 14, 2021, 5:30 PM**  
**Remote Meeting Minutes**

Stephen Bither  
Barbara Brewer  
Chase Hewitt

1. The meeting, held by ZOOM technology, convened at 5:30.

Attendees: Board members Stephen Bither, Barbara Brewer, and Chase Hewitt, attorney representing the Board James Katsiaficas, attorney for the appellant Patrick Venne, Portland Assessor Christopher Huff, attorney for the city Michael Goldman, and board assistant Nancy English. No members of the public attended.

Motion was made by Barbara Brewer and seconded by Chase Hewitt to nominate Stephen Bither Chair. 3-0 in favor.

Chair Bither introduced the meeting, acknowledging the board had requested representation from Jim Katsiaficas, who had provided a legal memo concerning appeals of assessments, for representation in the matter of the Federated Companies appeal. He also said the Auburn Terrace LLC appeal on the original agenda had been withdrawn.

The attorney for Federated Companies, Patrick Venne, presented a summary of his memo concerning the appeal for assessments of FEDEQ DV004, LLC and FEDEQ DV005, LLC properties, followed with questions from city attorney Goldman, and responses. The board then asked questions.

Assessor Huff was sworn in by Chair Bither as a fact witness and presented the City's memo, followed with questions from city attorneys Venne and Goldman, and responses. The board then asked questions. Attorney Goldman presented the exhibits attached to the Assessor's memo.

Both parties offered closing presentations.

At Chair Bither's request, attorney Katsiaficas discussed legal basis for granting an appeal. He also said that there were four parcel assessments, each was being individually appealed and each would need to be treated individually, requiring four decisions.

Chair Bither asked for copies of deeds that had been discussed to be emailed. He also

accepted briefs regarding the additional documents by June 25, 2021. Patrick Venne agreed to allow an extension of the deadline for the decision by 30 days. Attorney Katsiaficas said he would email a letter for attorney Venne to sign making this extension by written agreement.

Board member Chase Hewitt made a motion to continue to a later date, seconded by Barbara Brewer. 3-0 in favor.

Meeting adjourned at 7:22 p.m.

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June 16, 2021

Patrick Venne, Esq.  
42 Barnfield Lane  
Gorham, ME 04038

Re: Portland Board of Assessment Review Appeals by FEDEQ DV004, LLC and FEDEQ DV005, LLC

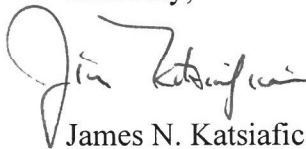
Dear Patrick:

I am writing as outside legal counsel to the Portland Board of Assessment Review Appeal with regard to the abatement appeals filed by FEDEQ DV004, LLC and FEDEQ DV005, LLC (Taxpayer) on April 27, 2021. As we discussed at the Board's June 14, 2021 meeting, the 60-day statutory period for deciding the appeal will expire on June 26, 2021. However, the Board will be able to hear the continuation of that meeting in July, and the statute (36 M.R.S. Section 843) permits the applicant (Taxpayer) to agree in writing to extend that 60 day decision period.

I understand that the Taxpayer agrees to extend the 60-day decision period for an additional 30 days, to Monday July 26, 2021. To confirm this agreement, I ask that you sign below and return a copy or scan to me with a copy to Board Assistant Nancy English.

Thank you for your assistance.

Sincerely,



James N. Katsiaficas

Seen and agreed to by:



Patrick Venne, Esq.

cc: Nancy English, Paralegal, Office of Corporation Counsel  
Michael Goldman, Assoc. Corp. Counsel

QUITCLAIM DEED WITHOUT COVENANT

**CITY OF PORTLAND**, a body corporate and politic and Maine municipal corporation ("Grantor"), FOR CONSIDERATION PAID, releases to **HORTON, LLC**, a Maine limited liability company having a mailing address of 100 Commercial Street, Box 411, Portland, Maine 04101 ("Grantee"), certain real property, together with any improvements thereon, located on Parris Street, in the City of Portland, County of Cumberland and State of Maine (the "Premises"), more particularly described on Exhibit A attached hereto and made part hereof.

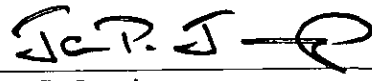
Grantee covenants and agrees by acceptance of this Deed that the Premises herein conveyed is subject to the covenants and restrictions and Grantor's option to repurchase the Premises set forth in Exhibit B attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by Jon P. Jennings, its City Manager, duly authorized, on this 5 day of April, 2018.

WITNESS:

**CITY OF PORTLAND**

  
\_\_\_\_\_

  
\_\_\_\_\_  
Jon P. Jennings  
Its City Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND

April 5, 2018

Personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing to be his free act and deed in his said capacity, and the free act and deed of said City of Portland.

Before me,

  
\_\_\_\_\_  
~~Attorney at Law~~ Notary Public  
Commission Expires:  
Print Name:

**SONIA T. BEAN**  
**NOTARY PUBLIC**  
**State of Maine**  
**My Commission Expires**  
**April 8, 2024**

**Exhibit A**

**Parris Street**

A certain lot or parcel of land located on the southwesterly side of Parris Street in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at an iron pin set (capped 5/8" rebar) on the southwesterly sideline of Parris Street at the northerly corner of land now or formerly of Christine M. Arsenault as described in a deed recorded in the Cumberland County Registry of Deeds in Book 22447, Page 341. Thence:

- (1) S 64°47'15" W by said land of Arsenault a distance of Ninety-Four and 00/100 (94.00) feet to an iron pin set (capped 5/8" rebar);
- (2) S 64°47'15" W by said land of Arsenault a distance of Zero and 68/100 (00.68) feet to the northeasterly sideline of land now or formerly of Robert Crocker as described in a deed recorded in said Registry in Book 31539, Page 187;
- (3) N 26°48'19" W by said land of Crocker, and by land now or formerly of Paul Waring and Christine Waring as described in a deed recorded in said Registry in Book 32106, Page 90, and by land now or formerly of United States of America Administrator of General Services (USA) as described in a deed recorded in said Registry in Book 3164, Page 408, a distance of One Hundred Eight and 26/100 (108.26) feet to an iron pin set (capped 5/8" rebar);
- (4) N 63°48'12" E by said land of USA a distance of Ninety-Five and 66/100 (95.66) feet to a 5'x5" concrete monument and the southwesterly sideline of said Parris Street;
- (5) S 26°16'45" E by said Parris Street a distance of One Hundred Nine and 88/100 (109.88) feet to the point of beginning.

The above described parcel contains 10,378 square feet and being all of the same properties described in a deed to the City of Portland from Portland Associates, Inc. dated October 28, 1980 and recorded in the Cumberland County Registry of Deeds in Book 4688, Page 103. Bearings are referenced to the Maine State Plane Coordinate System, West Zone, NAD83.

Reference is herein made to a Plan of Boundary Survey, 60 Parris Street, made for the City of Portland by Titcomb Associates dated September 15, 2017.

## **EXHIBIT B**

### **Covenants, Restrictions, Option to Repurchase**

1. The purpose of these covenants, restrictions, and option to repurchase (the “Covenants”) is to ensure that the Grantee develops the property described in Exhibit A attached hereto (the “Premises”) in accordance with the terms and conditions of a certain Purchase and Sale Agreement dated October 12, 2017 between Grantor and Grantee, a copy of which is on file with the City of Portland’s Department of Finance and incorporate herein by reference (the “Agreement”).

2. Payment In Lieu Of Property Taxes. Grantee agrees in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the Grantor in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Grantee shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

3. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantee or Grantor and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the Grantor’s release, handling or storage of hazardous wastes or hazardous materials on the Premises.

4. Construction of Project; Affordability; Option to Repurchase. Within 12 months after the date of the deed to which this exhibit is attached (the “Deed”), Grantee agrees to commence construction on the Premises of a residential development as generally depicted and described in Exhibit A to the Agreement (the “Project”). Specifically, the Project shall include no less than 20 dwelling units with at least one bedroom, for which only the sale prices will be calculated for affordability to 120% area median income (AMI) for 2018 for the initial sale only, irrespective of a unit purchaser’s income. To the extent that the Project is subject to the City’s Affordable Housing Ordinance, set forth in the Portland City Code §§14-484 to 488, as may be amended, it must also comply with the requirements set forth therein. If Grantee, its successors, assigns, or transferees, fails to commence construction of the Project on the Premises within one year after the date of the Deed, the Grantor shall have the right, but not the obligation, to

repurchase the Premises as set forth below at the lesser of (1) the Purchase Price set forth in the Agreement plus all construction and approval expenses incurred by Grantee or its successors to that juncture, or (2) the fair market value of the Premises determined by an appraiser agreed upon by the parties (the "Option") (the lesser of (1) or (2) is referred to herein as the "Option Price").

- a. In order to exercise the Option, Grantor must notify Grantee in writing of its intent to do so on or before the date that is 18 months after the date of the Deed (the "Notice"). Grantee agrees that if it receives such Notice, it will reconvey to Grantor the Premises within 60 days of the date of the Notice for the Option Price.
- b. In the event Grantor provides the Notice of its intent to exercise the option, the Notice is to be accompanied by a payment to Grantee or its successors or assigns of earnest money in the amount of One Thousand Dollars (\$1,000.00) (the "Earnest Money"). Grantor shall indicate in said Notice the date, time and place for closing, which shall be held not less than thirty (30) nor more than sixty (60) days after the giving of such Notice.
- c. If Grantor, its successors or assigns, exercises this Option to purchase the Premises, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:
  - i. Upon the giving of the Notice together with the Earnest Money, Grantee shall thereby be bound to sell and City shall thereby be bound to purchase the Premises upon the terms and conditions set forth herein. Grantee or its successors, transferees or assigns shall convey the Premises by a good and sufficient quitclaim deed with covenant granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility and public easements of record servicing the Premises. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and Grantee or its successors, transferees or assigns shall then and there deliver the deed to Grantor, its successors or assigns, upon tender of the balance of the Option Price by certified check, cashier's check, or cash. The balance to be tendered to Grantee or its successors or assigns shall be the Option Price, less the Earnest Money and any other option consideration actually received by Grantee.
  - ii. If counsel for Grantor, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said Premises is defective or is otherwise not free and clear of all material encumbrances or that the title is not marketable, then Grantor, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Premises, during which time Grantee or its successors, transferees or assigns shall make a reasonable effort to remove such defects at

its own expense, to the satisfaction of counsel of Grantor, its successors or assigns. If record title proves defective and Grantee or its successors or assigns shall fail to remove such defect within a reasonable time after notice from Grantor of the nature of the defect, Grantor may, at its election, (a) cure any such defect and deduct the cost thereof from the Option Price at closing, or (b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to Grantee or its successors or assigns, whereupon all Earnest Money paid by Grantor to Grantee or its successors or assigns shall immediately be returned to Grantor and thereafter the parties shall be relieved of all obligations and this Option shall terminate.

- iii. If all obligations of this agreement have been performed, excepting that Grantor does not complete the purchase, Grantee or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies, and whereupon this Option shall terminate.
  - iv. Full possession of the Premises, free of all encumbrances except as aforesaid, is to be delivered to Grantor at closing, with the Premises to be in the reasonably functional condition, reasonable wear and tear excepted.
  - v. Real estate taxes and utilities shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Premises shall be paid by Grantor and/or Grantee or its successors or assigns in accordance with the custom of the locality where the Premises are situated.
  - d. Notwithstanding anything else to the contrary herein, in the event that Grantor fails to give the Notice on or before the date that is 18 months after the date of the Deed, or Grantor commences construction of the Project on or before the date that is 12 months after the date of the Deed, then the Option, shall terminate, and upon such termination, Grantor shall and Grantee's request, execute and record an affidavit indicating that the Option has terminated.
  - e. The parties hereto hereby agree that this right and option to repurchase, and the Grantor's rights in the Premises thereby created, are immediately fully vested and are hereby deemed to be fully vested in any event, not contingent, and shall, by agreement, not be subject to the Rule Against Perpetuities, or any statutory enactment thereof, or similar law.
5. The covenants, restrictions, and option to repurchase herein may be amended or modified in whole or in part only by written agreement of Grantee and Grantor.
6. The Covenants set forth herein are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises.

7. Except as specifically set forth herein, the Covenants set forth herein shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises.

8. The Covenants set forth herein are enforceable by Grantor as a contract and shall inure to the benefit of and be enforceable by Grantor, its successors, and assigns.

9. The validity of any clause, part or provision of the covenants, restrictions, and option to repurchase herein shall not affect the validity of the remaining portions of thereof.

Received  
Recorded Register of Deeds  
Apr 06, 2018 10:02:08A  
Cumberland County  
Nancy A. Lane

## QUITCLAIM DEED WITH COVENANT

KNOW ALL PERSONS BY THESE PRESENTS, that the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, County of Cumberland, State of Maine ("Grantor"), for consideration paid by **FEDEQ DV004, LLC**, a Florida limited liability company with a mailing address of P.O. BOX 370008, Miami, FL 33137 ("Grantee"), does hereby grant, with quitclaim covenant, to the said Grantee, its successors and assigns, a certain lot or parcel of land depicted as Lot 6 on a certain "Amended Subdivision Recording Plat for MiDTOWN Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013, as revised through, and approved by the City of Portland Planning Board, on May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, recorded at the Cumberland County Registry of Deeds, Plan Book 216, Page 217 (the "Amended Subdivision Recording Plat"), which lots are more particularly described in Schedule A, attached hereto and incorporated herein by reference (the "Property"), and reserving to Grantor the following easements: a MEWS-30' Access Easement Benefitting the City of Portland thirty (30.00') feet in width in, on, and over a portion of Lot 6 along the northwesterly line of Somerset Street as shown on said Amended Subdivision Recording Plat and as more particularly described in Schedule A (the "MEWS Easement Area"); and a Limited Open Space Use Easement Benefitting The City of Portland of variable width in, on, and over a portion of Lot 6 as shown on said Amended Subdivision Recording Plat and as more particularly described in Schedule A (the "Lot 6 Easement Area") (the MEWS Easement Area and the Lot 6 Easement Area are collectively referred to herein as the "Easement Areas").

The Lot 6 Easement Area shall remain publicly accessible open space, free of buildings, fences, and other structures. The MEWS Easement Area shall provide public access from Somerset Street to the Bayside Trail on Lot 9, as that area is shown on the Amended Subdivision Recording Plat, for pedestrian, bicycle, and similar non-motorized uses and shall be free of buildings, fences and other structures that would inhibit public access to and views of the Trail. Subject to any depictions, exceptions and reservations on the Amended Subdivision Recording Plat, reasonable rules and restrictions as may be imposed by the Grantee or any party to whom or to which the Property is conveyed or assigned, and the approved Overall Site Plan sheet C-2.0 for midtown Portland, Maine, prepared for Grantee by Fay, Spofford & Thorndike (the "Overall Site Plan"), as the same have been or may hereafter be amended by duly authorized City reviewing authorities, Grantee shall not permit any use, condition, or state of disrepair that would be contrary to or otherwise inhibit such limited open space use or access use, as applicable, of the Easement Areas. Subject to the foregoing, Grantee shall retain all additional and customary rights of property use within the Easement Areas. All improvements within the Easement Areas

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shall be owned by Grantee or any party to whom or to which such property is conveyed or assigned. Grantee, or any party to whom or to which such property is conveyed or assigned, shall maintain the Easement Areas in accordance with the requirements of the Amended Subdivision Recording Plat, Overall Site Plan, and all applicable laws, rules, regulations, and ordinance. It shall be the responsibility of the Grantee to remove snow and ice from the MEWS Easement Areas and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Grantor shall have the right but not the obligation to repair or maintain the MEWS Easement Area when Grantor, in its sole discretion, deems such repairs or maintenance necessary to ensure public safety.

Grantee covenants and agrees by acceptance of this Deed that for a period of thirty (30) years from the date hereof, in the event that the Property or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the Grantor in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Property had such property remained taxable. Grantee, its successors and assigns, shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

Grantee further covenants and agrees by acceptance of this Deed that the Property herein conveyed is subject to and benefitted by all rights and obligations of the parties to a certain October 15, 2012 Garage Contribution And Funding Agreement, as amended, a copy of which is attached hereto as Schedule B and hereby made a part hereof.

**IN WITNESS WHEREOF**, the said City of Portland has hereunto caused this instrument to be signed by Jon P. Jennings, its duly authorized City Manager, this 16<sup>th</sup> day of June, 2016.

*Louisa Bear*  
Witness

STATE OF MAINE  
CUMBERLAND, ss.

CITY OF PORTLAND

By: *Jon P. Jennings*  
Jon P. Jennings  
City Manager

June 16, 2016

Personally appeared the above-named Jon P. Jennings, the City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the City of Portland.

Before me,

Sonia T. Bean  
Notary Public/Attorney at Law

Sonia T. Bean  
Printed Name

**SONIA T. BEAN**  
**Notary Public, Maine**  
**My Commission Expires January 10, 2017**

**SCHEDULE A**

**Legal Description of Lot 6 on the Amended Subdivision Recording Plat**

A certain lot or parcel of land located along the northerly sideline of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the northerly sideline corner of Chestnut Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

**THENCE** N 40° 59' 38" W 126.00 feet along the northeasterly line of Chestnut Street to a point;

**THENCE** N 49° 00' 22" E 360.00 feet along land now or formerly of the City of Portland to a point;

**THENCE** S 40° 59' 38" E 126.00 feet along Lot 7 to a point along the northwesterly line of Somerset Street;

**THENCE** S 49° 00' 22" W 360.00 feet along Somerset Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 45,360 square feet, more or less, and is Lot 6 as shown on said Amended Recording Plat.

Said Lot 6 herein described is subject to a Limited Open Space Use Easement Benefitting The City of Portland six (6.00') feet in width running along the northeasterly line of Chestnut Street as shown on said Amended Subdivision Recording Plat.

Said Lot 6 herein described is subject to a MEWS-30' Access Easement Benefitting the City of Portland thirty (30.00') feet in width along the northwesterly line of Somerset Street as shown on said Amended Subdivision Recording Plat, more particularly bounded and described as follows:

A certain lot or parcel of land located along the northwesterly line of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at a point along the northwesterly line of Somerset Street at the corner of Lot 6 and Lot 7.

**THENCE** S 49° 00' 22" W 30.00 feet along the northwest line of Somerset Street to a point;

**THENCE** N 40° 59' 38" W 126.00 feet through Lot 6 to a point along land now or formerly of the City of Portland as shown on said plan;

**THENCE** N 49° 00' 22" E 30.00 feet along said City of Portland land to a point at the northerly corner of said Lot 6 and located along the southwesterly boundary line of Lot 7;

**THENCE** S 40° 59' 38" E 126.00 feet along the southwesterly boundary line of Lot 7 to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 3780 square feet, more or less, and is located entirely on said Lot 6.

Said Lot 6 herein described is subject to a Limited Open Space Use Easement Benefitting The City of Portland thirty (30.00') feet in width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described as follows:

A certain lot or parcel of land located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

**THENCE** S 49° 00' 22" W 181.00 feet along the northwesterly line of Somerset Street as shown on said plan to a point;

**THENCE** N 40° 59' 38" W 81.01 feet through Lot 6 as shown on said plan to the **POINT OF BEGINNING**;

**THENCE** N 40° 59' 38" W 44.99 feet through Lot 6 to a point along the southeasterly boundary line now or formerly of the City of Portland as shown on said plan;

**THENCE** N 49° 00' 22" E 30.00 feet along said City of Portland land to a point at the northerly corner of Lot 6, said point being located along the southwesterly line of Lot 7 as shown on said plan;

**THENCE** N 40° 59' 38" W 4.00 feet along said City of Portland land and line of Lot 7 to a point;

**THENCE** N 49° 00' 22" E 78.00 feet along said City of Portland land and line of Lot 7 to a point;

**THENCE** S 40° 59' 38" E 48.99 feet through Lot 7 to a point;

**THENCE S 49° 00' 22" W 108.00 feet through Lot 7 and Lot 6 to the POINT OF BEGINNING.**

Said lot or parcel of land contains 5171 square feet, more or less, and is located partially on Lot 6 and partially on Lot 7 as shown on said plan.

Said Lot 6 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland of variable width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

THENCE N 40° 59' 38" W 151.00 feet along the southwesterly line of The Possible Extension of Pearl Street as shown on said plan to the **POINT OF BEGINNING**;

**THENCE S 49° 00' 22" W 73.00 feet along Lot 7 as shown on said plan to a point;**

**THENCE S 40° 59' 38" E 21.00 feet along Lot 7 to a point;**

**THENCE S 49° 00' 22" W 10.00 feet along Lot 7 to a point;**

**THENCE N 40° 59' 38" W 20.61 feet through land now or formerly of the City of Portland shown as Lot 9 on said plan to a point;**

**THENCE S 39° 22' 54" W 10.86 feet through said City of Portland land to a point;**

**THENCE S 42° 22' 19" W 64.94 feet through said City of Portland land to a point;**

**THENCE S 41° 00' 32" E 15.29 feet through said City of Portland land to a point;**

**THENCE S 49° 00' 22" W 72.71 feet along Lot 6 as shown on said plan to a point;**

**THENCE N 41° 00' 32" W 21.94 feet through said City of Portland land to a point;**

**THENCE N 42° 22' 19" E 136.00 feet through said City of Portland land to a point;**

**THENCE N 39° 22' 54" E 72.27 feet through said City of Portland land to a point;**

**THENCE** N 41° 02' 28" W 10.14 feet through said City of Portland land to the easterly property corner of land now or formerly of 161 Marginal Way LLC as shown on said plan;

**THENCE** N 41° 02' 28" W 43.00 feet along said 161 Marginal Way LLC land to a point;

**THENCE** N 49° 00' 22" E 20.02 feet through said City of Portland land to a point;

**THENCE** S 87° 16' 35" E 27.70 feet through said City of Portland land to a point;

**THENCE** S 40° 59' 38" E 5.00 feet through said City of Portland land to a point;

**THENCE** N 84° 05' 10" E 20.69 feet through said City of Portland land to a point;

**THENCE** N 28° 31' 08" E 15.21 feet through said City of Portland land to a point;

**THENCE** N 59° 22' 54" E 31.41 feet through said City of Portland land to a point;

**THENCE** S 61° 28' 51" E 5.00 feet through said City of Portland land to a point;

**THENCE** S 40° 59' 38" E 6.82 feet through said City of Portland land to a point along land now or formerly of E. Perry Iron & Metal Co. as shown on said plan;

**THENCE** S 49° 00' 22" W 24.24 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 40° 59' 38" E 20.01 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 31° 04' 42" W 28.43 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 50° 13' 09" E 1.25 feet along said E. Perry Iron & Metal Co. land to a point at the northwesterly end of The Possible Extension of Pearl Street;

**THENCE** S 49° 00' 22" W 28.15 feet along the end of The Possible Extension of Pearl Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 9332 square feet, more or less.

Said Lot 6 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland of variable width located within The Possible Extension of Pearl Street as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located along the northwesterly line of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

**THENCE** N 40° 59' 38" W 151.00 feet along the southwesterly line of The Possible Extension of Pearl Street to a point;

**THENCE** N 49° 00' 22" E 28.15 feet along the northwest end of The Possible Extension of Pearl Street to a point along land now or formerly of E. Perry Iron & Metal Co. as shown on said plan;

**THENCE** S 50° 13' 09" E 26.72 feet along land of E. Perry Iron & Metal Co. to a point;

**THENCE** N 82° 12' 51" E 8.60 feet along land of E. Perry Iron & Metal Co. to a point;

**THENCE** S 45° 30' 09" E 120.29 feet along land of E. Perry Iron & Metal Co. to a point along the northwest line of Somerset Street;

**THENCE** S 49° 00' 22" W 49.09 feet along the northwest line of Somerset Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 6288 square feet, more or less, and represents the Possible Extension of Pearl Street as shown on said plan.

**SCHEDULE B**

The following attachments are included in Schedule B:

- October 15, 2012 Garage Contribution And Funding Agreement (the “Garage Agreement”)
- October 14, 2014 Second Amendment of Purchase And Sale Agreement And Amendment Of Guaranty And Parking Garage Agreement (the “Second Amendment”)
- June \_\_\_, 2016 Fourth Amendment Of Purchase & Sale Agreement, Second Amendment Of Parking Garage Contribution And Funding Agreement & Third Amendment To Corporate Guaranty Agreement (the “Fourth Agreement”)

The Property conveyed by the deed to which this Schedule B is attached is subject to and benefitted by the Garage Agreement, and those portions of the Second Amendment and Fourth Amendment that amend the Garage Agreement.

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## PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT

This Parking Contribution and Funding Agreement (the "Parking Garage Agreement") is made this 5<sup>th</sup> day of October, 2012, by and between the **CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine (hereinafter "City") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company with a place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131 (hereinafter "Legacy Park").

**WHEREAS** Legacy Park is the assignee, by virtue of an Assignment and Assumption Agreement effective June 27, 2011, ("Assignment"), of a Purchase and Sale Agreement between The City of Portland, Maine, ("City"), effective June 23, 2011, ("Agreement"), for the purchase of certain blighted and brownfield real property located on Somerset Street, Portland, Maine known as Lots 1, 2, 3, 5, 6, 7, 8 and a portion of Lot 9 (collectively, "the Land"), consisting of approximately 3.25 acres formerly known as the "Bayside Railyard";

**WHEREAS** City, in order to create jobs and economic growth for the Citizens of Portland, Maine, has agreed to make a \$9,007,000.00 contribution, ("City Grant Funds"), to Legacy Park from funds being provided to the City by the U.S. Department of Housing and Urban Development pursuant to the Bayside Redevelopment Project, Maine BEDI Grant and Section 108 Loan Program, ("HUD Funds"), toward the expense of the construction of a garage, with no fewer than 700 parking spaces and at least thirty thousand square feet of retail space on the first floor on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage");

**WHEREAS** Section 11 of the Agreement requires City and Legacy Park to enter into a formal Parking Garage Agreement stipulating the terms and conditions of the contribution of the City Grant Funds to Legacy Park for the construction of the Garage.

**NOW THEREFORE**, in consideration of the foregoing and for good and valuable consideration the parties covenant and agree in this Parking Garage Agreement as follows:

1. Garage Construction. Subject to the terms and conditions of this Parking Garage Agreement and the City contributing City Grant Funds as described below, Legacy Park or its nominee shall construct the Garage in the location depicted on the plan attached hereto and incorporated herein by reference as Exhibit "A". The Garage shall have reached "Start-up Phase" as defined below within two (2) years after the date on which a total of \$1,000,000.00 in City Grant Funds has been requisitioned by Legacy Park and disbursed by the City to Legacy Park. Notwithstanding the above, Legacy Park will diligently work to have constructed a sufficient percentage of the Garage so as to permit Legacy Park to requisition the City Grant Funds in full by November 31, 2014, so as to allow full disbursement of the City Grant Funds by December 31, 2014. If Legacy Park informs the City, in good faith, before October 1, 2014 that Legacy Park will not meet this requisition timetable, with evidence and reasons for this, the City will use its best

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efforts to obtain an extension of this disbursement deadline for the HUD Funds from HUD, and if it obtains such an extension, it shall immediately transmit to Legacy Park evidence of this extension by HUD, and this timetable shall thereby be correspondingly changed, without further action of the parties hereto being required.

Legacy Park shall construct the Garage and any attached structures or units designed for non-garage use using sustainable and energy efficient construction methods, including, but not limited to, energy efficient lighting.

2. City Grant Funds. The City shall provide a grant to Legacy Park or its nominee of Nine Million Seven Thousand Dollars (\$9,007,000.00) in City Grant Funds for use by Legacy Park for the City Grant Funds Uses as defined below. This funding is being provided in part as an incentive to build the Garage which would otherwise not be commercially viable. Accordingly, the City agrees that the first \$9,007,000.00 of City Grant Funds Uses, disbursed in accordance with this Parking Garage Agreement, shall be City Grant Funds, but subject to and less the retainage described below. The City Grant Funds may be used for all purposes related to the Garage allowed with such HUD Funds, including but not limited to design, planning, permitting, environmental testing and remediation, and construction ("City Grant Funds Uses").
3. Legacy Park Contribution. Following the disbursement of City Grant Funds, less the retainage, Legacy Park shall provide sufficient additional funds for completion of the construction of the Garage, ("Legacy Park Contribution"). The Legacy Park Contribution shall either come from its own equity or financing from a construction lender. The Legacy Park Contribution, in addition to the City Grant Funds will cover the complete cost of constructing the Garage to completion.
4. Procedures for Making Disbursements (Payments). With respect to all requisitions for disbursements of the City Grant Funds, the City and Legacy Park agree as follows:
  - (a) Legacy Park shall deliver to the City a written request for payment (a "Requisition") which shall be in substantially the same form as AIA Forms G702 and G703. The Requisition shall be accompanied by: (i) a summary of all expenses requested, (ii) copies of invoices, bills, receipts and such other information as may be reasonable to document the expenditures described in the Requisition, (iii) mechanics' lien affidavits and/or written lien waivers from such contractors, laborers, subcontractors and materialmen for work done and materials supplied which were paid for pursuant to the immediately preceding Requisition, and (iv) a certified payroll in conformance with the requirements of the Davis-Bacon Act of 1931, as amended, for all contractors and subcontractors on site and for which invoices are included.

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- (b) Requisitions shall be submitted by Legacy Park no more frequently than monthly. Prior to the disbursement by the City of any requested Requisition, City's construction inspector shall certify to City that the work for which a Requisition has been submitted has been completed and the City's Housing and Neighborhood Services staff will verify all workers are being paid the prevailing wage.
- (c) A copy of the construction schedule will be submitted to the City at the beginning of the project. Updates will be provided by Legacy Park as necessary to remain accurate.
- (d) City shall make disbursements to Legacy Park only after such certification and verification, and with a certified payroll, all the same must be correct and complete. Each Requisition for disbursement shall be submitted at least five (5) days before the date for which the disbursement is requested, and the City shall make such advancement no later than fifteen (15) days after receipt of each Requisition to make such disbursement. If the City fails to make any disbursement within fifteen (15) calendar days after such requisition with all required and correct and complete paperwork as delineated in this Parking Garage Agreement, such disbursement shall be paid with interest at a rate of one-quarter of one percent per month, from that date until the disbursement is in fact made ("Interest For Late Payment"). If any such Interest For Late Payment is owed then such amount shall be in addition to the City Grant Funds.
- (e) City shall retain ten percent (10%) of the City Grant Funds as retainage, which shall be disbursed to Legacy Park upon receipt of the Certificate of Occupancy for the Garage or as mutually agreed upon between the City and Legacy Park.

5. Garage Operations.

- (a) **Key Card.** The Garage shall be equipped with a "key card" system (or its equivalent) whereby weekly, monthly or longer term users shall have 24-hour access to the Garage 7 days a week, it being understood that certain users may only have access at certain hours based on contractual agreements with the owners of Garage. Legacy Park shall make the Garage available for public (hourly access) use during the "Start-Up Phase" at such times as established by Legacy Park during reasonable commercial business hours, which shall at a minimum be from 7 a.m. to 7 p.m., Monday through Saturday, and 10 a.m. to 7 p.m., Sundays and Holidays. The expression "Start-Up Phase" shall mean that period commencing when the Garage receives a Certificate of Occupancy allowing operation of the parking garage portion of the Garage facility and ending the date when the first other building (and not merely the retail portion within the parking garage structure) within the Project is issued a Certificate of Occupancy and that building starts using parking in the Garage. During and after

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the Start-Up Phase the Garage shall be open during reasonable hours, seven days per week, subject to modification from time to time by Legacy Park based on historical and projected volume of usage.

(b) Additional Requirements:

(i) Hourly and monthly rates for the Garage shall be based upon prevailing market rates, defined as follows: in no event shall rates be greater than 110% of the average market rates charged by City at City-owned and operated garages or the average of the three highest rates charged by garages within the City, excluding any garages that may be owned by Legacy Park or any of its affiliates;

(ii) The Garage shall participate in the Park and Shop Program;

(iii) The Garage shall be available for City snow ban parking, and the overnight (i.e. 5:00 p.m. to 8:00 a.m.) snow ban parking rate per hour shall not exceed three times the then-current maximum hourly rate charged by the Garage;

(iv) Upon written request of the City in each such instance, the Garage shall be available at customary rates for parking for special events held on the Portland Peninsula after 5:30 pm on weekdays and if requested, at requested reasonable times on weekends.

(v) The Garage shall have shared use with the public 7 days a week, 24 hours per day.

(vi) The Garage shall provide a minimum of 200 hourly turnover parking to the general public, and will provide within 2 days upon request data and information, including the number of non-turnover parkers present in the Garage at any given time, in order for the City to verify compliance with this condition.

(vii) The Garage will accept both cash and credit card payments.

(viii) The Garage will be maintained so long as it is a public parking facility, in accordance with the then current edition of the National Parking Association's "Parking Garage Maintenance Manual (now in its Fourth Edition) , and in particular in accordance with the Recommended Maintenance Checklist contained therein.

(c) The Garage will remain a public parking facility for a minimum of thirty (30) years.

These requirements (a) through (c) shall be a covenant contained in the deed to Lots 6 and 7 and the covenant shall run with the Land for the stated thirty (30) year period from the date of

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conveyance of Lots 6 and 7 from the City to Legacy Park and thereafter shall automatically expire.

7. Payments in Lieu of Taxes. In consideration of the City Grant Funds paid to Legacy Park by the City, Legacy Park agrees, for itself and its successors, assigns and lessees for a period of thirty (30) years starting on the closing date of the purchase of the Land, that in the event that any portion of the Land is ever exempt from real or personal property tax, then a yearly payment by the then owner of the exempt portion shall be made in lieu of taxes equivalent to the property taxes that would otherwise be paid on the exempt portion of the real and personal property situated on the property. This requirement shall be a covenant contained in the deed to the Land and the covenant shall run with the land for the stated thirty (30) year period.
8. Compliance with HUD requirements.
  - (a) Job Creation. HUD regulations require that the City, as the original grantee of the HUD Funds, document all jobs created through the use of HUD Funds disbursed to Legacy Park as City Grant Funds. Legacy Park recognizes that one of the primary goals of City's contribution of the City Grant Funds is the creation of jobs, and Legacy Park agrees to create the required number of jobs necessary for the City's use of the HUD Funds and to provide City with timely and complete documentation of all jobs created or caused to be created as a result of receiving the City Grant Funds, and requirements related to job creation shall be contained in a Job Creation Agreement to be entered into between the parties.
  - (b) Section 108 Compliance. Legacy Park, its employees, assigns, agents and subcontractors for this project, at all times shall comply with the requirements of the Section 108 Loan Guarantee and Brownfields Economic Development Initiative Grant program and Federal Labor Standards pursuant to Davis Bacon and related Acts, specifically including:
    - A. Davis-Bacon Act, as amended.(40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.
    - B. Contract Work Hours and Safety Standards Act, as amended. (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with

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and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.

C. Copeland Anti-Kickback Act, as amended. (18 U.S.C. 874 and 40 U.S.C. 276c). This Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

9. Default. In the event that Legacy Park is in default of a material provision on any of the obligations contained in this Parking Garage Agreement, and Legacy Park fails to cure said default within ninety (90) days of receipt of written notice issued by the City, then Legacy Park shall, if requested to do so by the City, convey to the City the Garage and the related real property, on these terms and conditions:

- This conveyance to the City shall be without the requirement of further legal action by the City.
- The cost to the City for this purchase will, in concept, be the sum of the cost of construction of the Garage and all related improvements associated with the Garage, plus the cost to the cost to Legacy Park for the related land upon which the Garage sits (the "Garage Land"), less the amount of the City Grant Funds actually disbursed up to the time of this purchase.
- The City acknowledges that Legacy Park will most likely use the Garage and the Garage Land as collateral for a construction loan for the purpose of finishing the construction of the Garage and other costs and improvements related to the project. The City therefore agrees to work on documents at the time of such financing, with Legacy Park and its construction lender, to make it possible for the City to have the remedy described above in concept, and to also permit such construction financing.

The City agrees that Legacy Park's obligations under this Parking Garage Agreement are "non-recourse" and that any recovery by the City shall be limited to the Garage. None of Legacy Park, its officers, members, employees, attorneys, agents or affiliates (collectively, "Legacy Park Persons") shall be personally liable for the performance of this Parking Garage Agreement, and the City shall not commence or prosecute any action against any Legacy Park Person, for payment or performance of any obligations under this Parking Garage Agreement. The City shall not seek, obtain, or enforce a deficiency judgment against any Legacy Park Person. Notwithstanding this provision, the rights and obligations under the Agreement between the parties and the Corporate Guaranty Agreement of near or even date are cumulative and in addition to the rights described herein.

In the event of an alleged default by the City, Legacy Park, at its sole election, shall have the right to seek specific performance and any and all other relief to be provided

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by a Court, at law or in equity, including, but not limited to, common law writs. City expressly consents to the jurisdiction of the Maine Courts in the event of an alleged City breach under this Parking Garage Agreement.

10. Assignment. Legacy Park shall be entitled, without the City's consent, to assign all of its right, title, interest and obligations in and to this Parking Garage Agreement to any lender or to any entity in which Legacy Park maintains a majority interest and management control. The City must be notified within thirty (30) days or Legacy Park will be in default of this Parking Garage Agreement as described in Section 9 of this Agreement.
11. Termination. In the event that the Parking Garage Agreement is terminated on account of Legacy Park's default, the obligation of the City to provide the City Grant Funds described herein is terminated.
12. Miscellaneous Provisions. In the event of litigation, the prevailing party shall be entitled to receive its reasonable legal fees and court costs from the other party. This provision shall survive the Closing and delivery of the Deed pursuant to the Agreement.
13. Entire Agreement. This Parking Garage Agreement (i) constitutes the entire agreement between the parties hereto with respect to the construction and operation of the Garage and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Garage; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Parking Garage Agreement shall not confer any rights or remedies upon any third-party other than the parties to this Parking Garage Agreement and their respective successors and permitted assigns.
14. Notices. Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile, or sent by e-mail addressed to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, email: MHR@portlandmaine.gov, with a copy to, the Director of Economic Development, facsimile 207-756-8217, email: gmitche11@portlandmaine.gov, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), email: gary@portlandmaine.gov, and to Buyer c/o The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j\_cox@federatedcompanies.com
15. Severability. In the event any one or more of the provisions contained in this Parking Garage Agreement shall be for any reason held invalid, illegal or unenforceable in any

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respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Parking Garage Agreement, and this Parking Garage Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Parking Garage Agreement.

**In Witness Whereof**, the parties have hereunto executed this Parking Garage Agreement as of the day and year set forth next to their respective signatures below.

**LEGACY PARK APARTMENTS LLC**



By: Jonathan Cox

Its: Member

Date of Execution: 10/15/12

**CITY OF PORTLAND**



By: Mark Rees

Its: City Manager

Date of Execution: 10-15-12

  
Approved: Ellen Sanborn, Finance Director  
Approved as to Form: Corp. Counsel

For Execution.doc

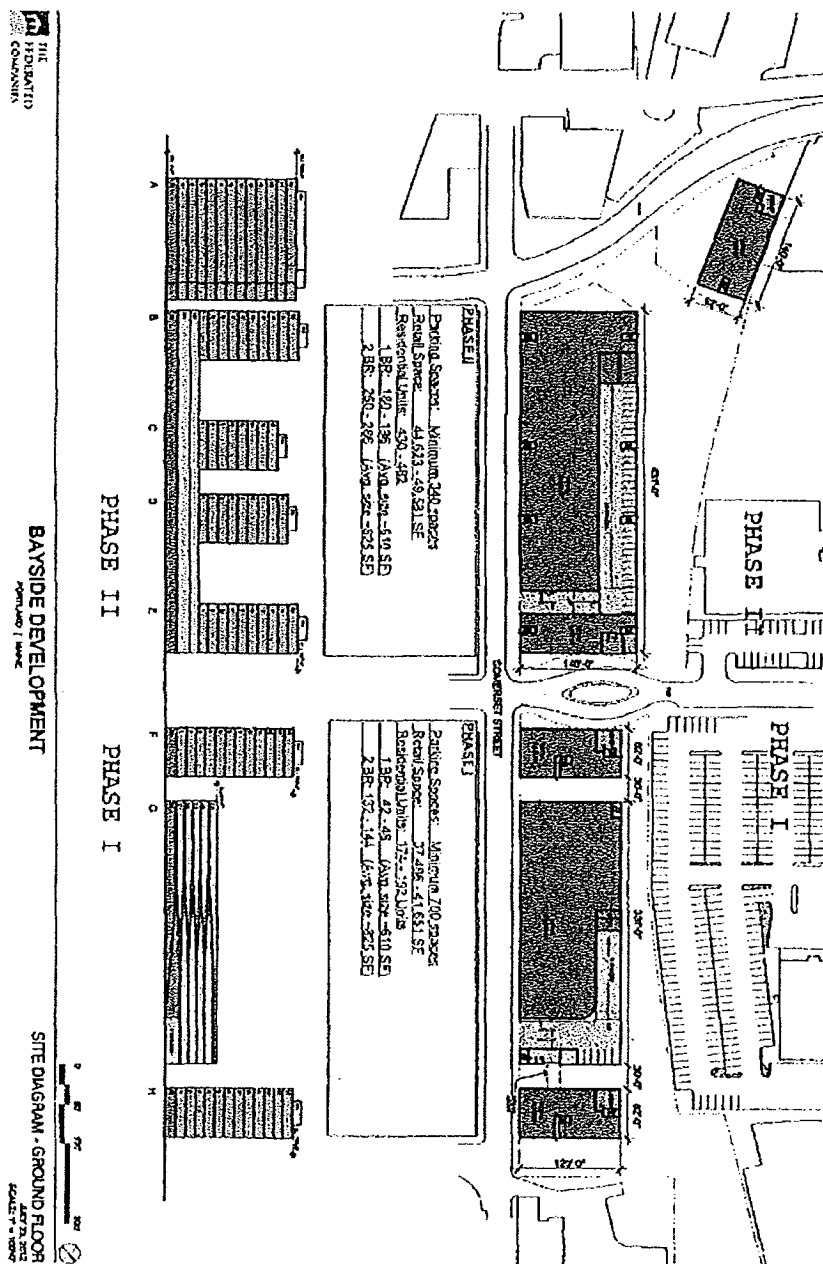


Exhibit A

**SECOND AMENDMENT OF PURCHASE AND SALE AGREEMENT  
AND  
AMENDMENT OF GUARANTY  
AND  
PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT**

THIS AGREEMENT dated March Oct. 14, 2014 is made by and between **THE CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 (the "City" or "Seller"), **LEGACY PARK APARTMENTS, LLC**, a Florida limited liability company with a place of business at 3301 NE 1<sup>st</sup> Avenue, Suite M-302, Miami, Florida 33137 ("Legacy" or "Buyer"), **THE FEDERATED COMPANIES LLC**, a Florida limited liability company with a principal place of business at 3301 NE 1<sup>st</sup> Avenue, Suite M-302, Miami, Florida 33137 ("Federated"), and **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("FEDEQ").

**RECITALS**

**WHEREAS**, The City and Federated entered into a certain Purchase and Sale Agreement dated June 23, 2011, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (collectively, the "P&S"), and Federated has assigned its rights as buyer under the P&S to Legacy pursuant to a certain Assignment and Assumption Agreement dated June 27, 2011 (the "Assignment"); and

**WHEREAS**, Legacy has assigned its right to purchase the Land to a Maine limited liability company known as FEDEQ DV001, LLC by assignment and assumption agreement, a copy of which is attached hereto as Exhibit A (the "FEDEQ Assignment");

**WHEREAS**, the City, Legacy, and Federated are parties to that certain Corporate Guaranty Agreement dated October 15, 2012 (the "Guaranty Agreement"), and the City and Legacy are parties to a certain Parking Garage Contribution and Funding Agreement dated October 15, 2012 (the "Parking Garage Agreement") and the City and Legacy are parties to a certain Job Creation Agreement dated October 15, 2012 (the "Job Creation Agreement"); and

**WHEREAS**, the City, Legacy, Federated and FEDEQ now wish to amend certain provisions of the P&S, the Guaranty Agreement and Parking Garage Agreement as set forth herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the P&S, the Guaranty Agreement and the Parking Garage Agreement are hereby amended as follows:

1. The City hereby consents to the FEDEQ Assignment, agrees to convey the Land to FEDEQ at Closing, as nominee of Legacy, and agrees to recognize FEDEQ as Buyer for all purposes under the P&S, the Parking Garage Agreement, the Job Creation Agreement and the Guaranty.

2. The P&S is hereby amended to reflect the following terms and conditions:
- a. The definition of the Land subject to the P&S is hereby amended to read as follows:  
Certain real property located on Somerset Street, Portland, Maine which contains approximately 3.44 acres and which is known as lots 1, 2, 3, 5, 6, and 7 shown on that certain "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine" prepared for Fay, Spofford & Thorndike by Owen Haskell, Inc., dated April 10, 2013, last revised December 20, 2013 and approved by the Portland Planning Board on January 14, 2014 (the "Amended Subdivision Plan"), a copy of which is attached hereto as Exhibit B.
  - b. The City shall grant to FEDEQ all of the easement rights over lots 4 and 9 (which lots shall be retained by the City) as shown on the Amended Subdivision Plan and over that portion of "Pearl Street Extension" owned by the City as shown on the Amended Subdivision Plan. All easements created by and shown on the prior subdivision plan, entitled "Bayside Railyard Portland, Maine" dated October 30, 2008 and prepared for the Downtown Portland Corporation by SGC Engineering, LLC, recorded in the Cumberland County Registry of Deeds in Plan Book 209, Page 36 (the "Subdivision Plan"), that are not expressly shown on the Amended Subdivision Plan are hereby extinguished, including, without limitation, an easement crossing lot 3, the underpass easement shown on lots 1 and 2, the geothermal easements, and the former location of the trail corridor easement.
  - c. The total the acreage of the Land subject to the P&S is 3.44 acres, and the Purchase Price shall be Two Million Four Hundred Eight Thousand **Dollars (\$2,408,000.00)**, based on the per acre purchase price set forth in the P&S.
  - d. The parties acknowledge that the approvals for the development of the Land obtained by the Buyer and Federated have been appealed to the Maine Superior Court, and that a further appeal may be taken to the Maine Supreme Judicial Court (collectively, the "Appeals"). The definition of the Permit Period in the P&S shall be extended for a period of time necessary to allow all such appeals to be resolved or settled, including any remand to the Portland Planning Board, and any subsequent appeals following such remand. The Permit period shall expire when all appeals have been resolved or settled, and when the time period for filing any further appeals has expired without any further appeals having been filed (the "End of Appeals"). Notwithstanding any language in the P&S to the contrary, Legacy is not required to pay an additional deposit in connection with this extension of the Permit Period.
  - e. The City, rather than Legacy, shall undertake the environmental remediation of the Scrapyard and the Railyard, in accordance with the VRAPs. Section 5 of the Agreement is hereby amended to provide that the City will undertake the remediation required by the terms of the VRAPs, during the pendency of the Appeals. Nothing set forth in this Agreement shall alter the financial responsibility of the parties for such remediation expense. The City shall pay the first \$50,000 of remediation expense for the Scrapyard, and the City shall be reimbursed for all other reasonable costs of remediation from the

City Grant Funds, provided that the City shall provide Federated with copies of all budgets, invoices and estimates for such work. The amount of City Grant Funds available to FEDEQ as nominee of Legacy under the Parking Garage Agreement shall be reduced by the amount of City Grant Funds incurred by the City for environmental remediation costs that exceed the required expenditure of \$50,000 by the City.

- f. The City and Legacy and Federated agree to share the costs of the improvements to Somerset Street as required by the City's Planning Board on January 14, 2014 in accordance with the cost estimates and sharing formula set forth on Exhibit C attached hereto.
3. The Guaranty is hereby amended to reflect the following terms and conditions:
- a. FEDEQ shall construct Phase I of the Project in accordance with the plans and specifications shown on the plan entitled "Midtown Phase I Plan" last revised November 22, 2013 and prepared for The Federated Companies (the "Phase I Plan") approved by the Portland Planning Board (the "Planning Board") on January 14, 2014 a copy of which is attached hereto as Exhibit D, and in accordance with the terms and conditions of the Level 3 site plan approval for Phase 1 of the Project approved by the Planning Board on January 14, 2014 (the "Level 3 Approval"). The specifications shown on the Phase I Plan and the terms and conditions of the Level 3 Approval shall be deemed to satisfy the design guidelines and specifications required by the terms of the Guaranty. Phase I of the Project shall consist of a parking garage containing not less than 700 spaces, not less than one hundred seventy four (174) residential apartments, and not less than 37,486 sf of retail space.
  - b. The Guaranty Deadline as set forth in the Guaranty shall be amended to extend for a period of three (3) years after the date on which the Buyer shall have requisitioned a total of \$1,000,000 in City Grant Funds, exclusive of funds requisitioned by the City or by the Buyer for environmental remediation costs.
4. The Parking Garage Agreement is hereby amended to reflect the following terms and conditions:
- a. The requisition timetable set for in the Parking Garage Agreement and the deadlines for the Buyer's initial requisition, and the City's initial disbursement, of the City Grant Funds are hereby extended until the End of Appeals, and a period of one-year thereafter (the "Amended Initial Drawdown Period"), and Buyer shall file its initial requisition request with the City before the end of the Amended Initial Drawdown Period. The Buyer shall have an additional period of three (3) months following from when it files its initial requisition request to have requisitioned \$1,000,000 in the City Grant Funds. The City shall, at the City's option, either (i) obtain and transmit to Buyer evidence of HUD's approval of the extension of the disbursement deadline for the HUD Funds and the City Grant Funds throughout the drawdown by Buyer; or (ii) the City shall draw down and hold the HUD Funds throughout the pendency of the Appeals and shall make the City Grant Funds available

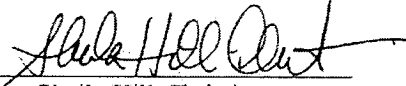
for Buyer's future use in accordance with the terms and conditions of the Parking Garage Agreement, throughout the drawdown by Buyer.

- b. The Garage shall have reached Start-Up Phase within two (2) years after the Buyer shall have requisitioned \$1,000,000 in City Grant Funds for Garage construction. Uses of the City Grant Funds by the City or by the Buyer for environmental remediation costs shall not count towards this \$1,000,000 requisition requirement.
5. All terms capitalized but not defined herein shall have the meanings defined in the P&S, the Guaranty and the Parking Garage Agreement.
6. Except as amended hereby, the P&S, the Guaranty, the Parking Garage Agreement and the Job Creation Agreement shall remain in full force an effect and are hereby ratified. In the event of any conflict between the terms of this Agreement and the terms of the P&S, the Guaranty and the Parking Garage Agreement, the terms of this Agreement shall govern and control.
7. This Agreement may be signed in counterparts, which shall be construed together as one document.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and sealed by their respective duly authorized undersigned officers as of the date first mentioned above.

(Signature page follows.)

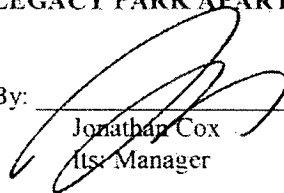
**CITY OF PORTLAND**

By:   
Name: Sheila Hill-Christian  
Its: Acting City Manager

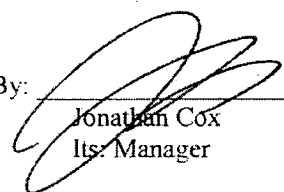
Approved: Suzanne Knight, Acting Finance Director

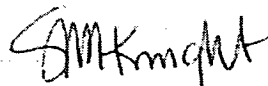
  
Approved to Form: Corp. Counsel

**LEGACY PARK APARTMENTS LLC**

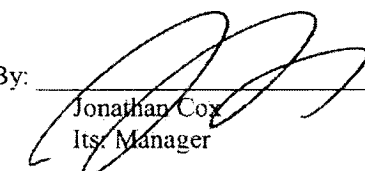
By:   
Jonathan Cox  
Its: Manager

**THE FEDERATED COMPANIES LLC**

By:   
Jonathan Cox  
Its: Manager

  
Finance Director  
City of Portland, Maine

**FEDEQ DV001, LLC**

By:   
Jonathan Cox  
Its: Manager

**EXHIBIT "A"****ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** dated Oct 14, 2014 is made by and between **LEGACY PARK APARTMENTS, LLC**, a Florida limited liability company with a place of business at 3301 NE 1<sup>st</sup> Avenue, Suite M-302, Miami, Florida 33137 ("Legacy" or "Assignor") and **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of P.O. Box 370008, Miami, Florida 33137 ("FEDEQ" or "Assignee").

**RECITALS**

**WHEREAS**, The City of Portland, Maine ("Seller") and The Federated Companies LLC ("Federated") entered into a certain Purchase and Sale Agreement (the "Purchase and Sale Agreement") effective June 23, 2011; and

**WHEREAS**, Federated subsequently assigned its rights and obligations as buyer under the Purchase and Sale Agreement to Legacy, by virtue of an Assignment and Assumption Agreement dated June 27, 2011; and

**WHEREAS**, Seller and Legacy entered into a certain First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the "First Amendment") and a Second Amendment of Purchase and Sale Agreement and Amendment of Guaranty and Parking Garage Contribution and Funding Agreement dated \_\_\_\_\_, 2014 (the "Second Amendment") (the original Purchase and Sale Agreement, the First Amendment and the Second Amendment are hereinafter collectively referred to as the "P&S"); and

**WHEREAS**, the Seller, Legacy and Federated are also parties to a certain Corporate Guaranty Agreement (the "Guaranty"), the Seller and Legacy are parties to a certain Parking Garage Contribution and Funding Agreement (the "Parking Agreement") and the City and Legacy are parties to a certain Job Creation Agreement ("Job Creation Agreement"), each dated October 15, 2012 (the Guaranty, Parking Agreement and Job Creation Agreement are hereinafter collectively referred to as the "Related Agreements"); and

**WHEREAS**, Legacy has formed FEDEQ DV001, LLC, a Maine limited liability company, to acquire the property and to undertake the development thereof, and in connection therewith, Legacy desires to assign its rights to and obligations under the P&S and the Related Agreements to FEDEQ, and FEDEQ desires to assume the same.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **ASSIGNMENT**. Assignor hereby assigns, transfers, sets over and conveys to Assignee all of Assignor's right, title and interest in, to and under the P&S and the Related Agreements, other than the Guaranty.

2. ASSUMPTION. Assignee does hereby assume and agree to perform all of the Assignor's obligations with respect to the P&S and the Related Agreements, other than the Guaranty, accruing from and after the date hereof. Assignee acknowledges that Assignor has posted the required deposit under the P&S, and agrees that such deposit shall be refunded to the Assignor upon Assignee's closing on the acquisition under the P&S.

3. EFFECT ON GUARANTY. The Assignor and Assignee recognize that Assignee shall be the nominee of the Assignor under the Guaranty to be the "Receiving Entity" as defined therein. Notwithstanding the foregoing, nothing set forth in this Assignment and Assumption Agreement shall in any way alter or affect the obligations of Assignor or of The Federated Companies, LLC, under the Guaranty, and the Assignor and The Federated Companies, LLC shall remain obligated under the Guaranty notwithstanding this Assignment.

4. WARRANTIES AND REPRESENTATIONS. In connection with the foregoing assignment and assumption of the P&S and the Related Agreements, the Assignor does hereby make the following warranties and representations:

a. The P&S and the Related Agreements remain in full force and effect and have not been modified, amended or terminated except as set forth herein; and

b. Neither the Assignor nor, to the best of Assignor's knowledge without inquiry, the Seller, is in default under the P&S or the Related Agreements.

5. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the Assignor and the Assignee and their respective successors and assigns.

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

7. AMENDMENTS. This Agreement may not be amended in any respect except by further agreement, in writing, fully executed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives under seal as of the date first written above.

ASSIGNOR:

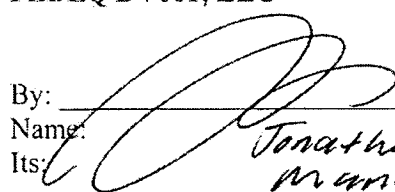
LEGACY PARK APARTMENTS, LLC

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

Jonathan Cox  
Its Manager

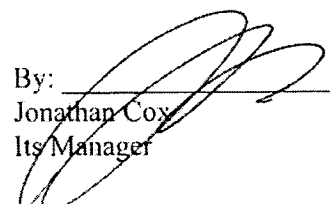
ASSIGNEE:

**FEDEQ DV001, LLC**

By:   
Name: \_\_\_\_\_  
Its: *Jonathan Cox*  
*Manager*

Consenting to the terms hereof:

**THE FEDERATED COMPANIES, LLC**

By:   
Jonathan Cox  
Its Manager

**FOURTH AMENDMENT OF PURCHASE & SALE AGREEMENT,  
SECOND AMENDMENT OF PARKING GARAGE CONTRIBUTION  
AND FUNDING AGREEMENT, &  
THIRD AMENDMENT TO CORPORATE GUARANTY AGREEMENT**

**THIS FOURTH AMENDMENT OF PURCHASE AND SALE AGREEMENT, SECOND AMENDMENT OF PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT, & THIRD AMENDMENT TO CORPORATE GUARANTY AGREEMENT** ("Fourth and Related Amendments"), dated May 16, 2016, is made by and between **THE CITY OF PORTLAND, MAINE**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (the "Seller"), **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("Buyer"), **THE FEDERATED COMPANIES LLC**, a Florida limited liability company with a principal place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Federated"), and **LEGACY PARK APARTMENTS, LLC** a Florida limited liability company with a place of business at 3301 NE 1<sup>st</sup> Avenue, Suite M-302, Miami, Florida 33137 ("Legacy") with respect to the underlying agreements being amended to which each is party.

**RECITALS**

**WHEREAS**, Seller and ("Federated") entered into a certain June 23, 2011 Purchase and Sale Agreement ("P&S"), as variously assigned and amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the "First Amendment"), a Second Amendment of Purchase and Sale Agreement and Amendment of Guaranty and Parking Garage Contribution and Funding Agreement dated October 14, 2014 (the "Second Amendment"), a Third Amendment of Purchase and Sale Agreement dated October 13, 2015 (the "Third Amendment"), an Amended & Restated Third Amendment of Purchase and Sale Agreement dated February 22, 2016 ("Amended Third Amendment"), and a Second Amended & Restated Third Amendment of Purchase and Sale Agreement dated April 26, 2016 ("Second Amended Third Amendment") (the P&S, as amended, is referred to herein as the "P&S"); and

**WHEREAS**, Federated assigned its rights as buyer under the P&S to Legacy pursuant to a certain Assignment and Assumption Agreement dated June 27, 2011 (the "Assignment"), and Legacy subsequently assigned its rights to and under the P&S and its Related Agreements to Buyer as set forth in a certain Assignment and Assumption Agreement dated October 14, 2014;

**WHEREAS**, the Seller and Buyer are parties to certain Related Agreements including a Job Creation Agreement dated October 15, 2012, and a Parking Garage Contribution and

Funding Agreement dated October 15, 2012 ("Garage Agreement") as amended by the Second Amendment;

WHEREAS, Legacy, Federated, and Seller are parties to a Corporate Guaranty Agreement dated October 15, 2012 (Corporate Guaranty) as amended by the Second Amendment and subsequently by a Second Amendment of Corporate Guaranty Agreement dated February 2, 2015 ("Second Guaranty Amendment") under which Legacy and Federated are the guarantors,

WHEREAS, the parties hereto agreed in Paragraph 2 of the Second Guaranty Amendment to execute a further amendment to the P&S and any other documents that may be required to document a change in the definition of the Land subject to the P&S as set forth in section 2(a) of the Second Amendment arising from review and approval by the Portland Planning Board of Buyer's new site plan application and amended subdivision plan;

WHEREAS, on March 3, 2015 Buyer received conditional approval ("Planning Board Approval") of its new site plan application and an amended subdivision plan pertaining to a portion of the Land set forth in the P&S which changes the definition of the same, and in recognition of the foregoing the parties wish to amend the definition of the Land within the P&S;

WHEREAS, the parties wish to make certain additional amendments to the P&S and Related Agreements as hereinafter described;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the P&S and Related Agreements are hereby amended as follows:

I. The P&S, as amended, is hereby further amended as follows. Such amendment shall be known as the "Fourth Amendment of the P&S":

1. DEFINITION OF LAND.

Section 2(a) of the Second Amendment is hereby deleted in its entirety and replaced with the following:

The definition of the Land subject to the P&S is hereby amended to read as follows: Certain real property located on Somerset Street, in Portland, Maine depicted as lots 1, 3, 6 and 7 on that certain "AMENDED SUBDIVISION RECORDING PLAT FOR MIDDTOWN DEVELOPMENT" prepared for FEDEQ DV001, LLC by Owen Haskell, Inc., last revised for City submission and signature on 05.10.16 and as approved by vote of the Portland Planning Board on March 3, 2015 (the "Amended Subdivision Plan") subject to the rights of Buyer and Seller set forth on the Amended Subdivision Plan, a copy of which is attached hereto as Exhibit A.

2. REPURCHASE REMEDIES.

Section G of the First Amendment, which deleted and replaced section 15 of the P&S, is hereby deleted in its entirety.

### 3. CLOSING DATE

Notwithstanding anything to the contrary in the P&S, the parties agree that the Closing date shall be determined by deleting the first and second sentences of Section 8 of the P&S and replacing them with the following:

The Closing shall be held and completed on or before 10:00 A.M. on June 16, 2016 at the office of the Buyer's lender's counsel in Portland, Maine or through electronic communication or by mail by agreement of the parties (the "Closing Date").

II. The Garage Agreement, as amended, is hereby further amended as follows. Such amendment shall be known as the "Second Garage Amendment":

#### 1. REAL PROPERTY.

The first paragraph of Section 9 of the Garage Agreement is hereby amended by deletion of the phrase "related real property" and replacing it with "Lot 6 within the Amended Subdivision Plan or such other property depicted on such Plan, as may be further amended, on which Buyer is approved to construct the Garage."

Further, any land proposed to be encumbered by any section of the Garage Agreement shall be limited to Lot 6 within the Amended Subdivision Plan or such other property depicted on such Plan, as may be further amended, on which Buyer is approved to construct the Garage."

#### 2. PARK-AND-SHOP.

Section 5(b)(ii) of the Garage Agreement is hereby deleted in its entirety.

#### 3. REMEDIES.

Section 9 of the Garage Agreement is hereby amended as follows:

The language which reads as follows "The cost to the City for this purchase will, in concept, be the sum of the cost of construction of the Garage and all related improvements associated with the Garage, plus the cost to the cost to Legacy Park for the related land upon which the Garage sits (the "Garage Land"), less the amount of the City Grant Funds actually disbursed up to the time of this purchase" is deleted and replaced with the following:

"The cost to the City for this repurchase will, in concept, be the greater of: (1) the sum of the cost of construction of the Garage and all related improvements associated with the Garage, plus the cost to Legacy Park for the related land upon which the Garage sits (the "Garage Land"), or (2) the fair market value of the Garage Land and the buildings and improvements

thereon; less the amount of the City Grant Funds actually disbursed up to the time of this repurchase (the "Repurchase Price"). The City may at the closing of such repurchase, use the Repurchase Price to pay-off and remove any and all then existing mortgages, liens, assessments or other encumbrances on the property being repurchased. Any amounts by which such then existing mortgages, liens, assessments and other encumbrances exceed the Repurchase Price shall continue to be the obligations of Buyer, its successors and assigns; and Buyer, its successors or assigns, shall indemnify Seller with respect to such excess amounts."

#### 4. ASSIGNMENT.

The following is added to the end of Paragraph 10 of the Garage Agreement:

"Legacy Park shall, upon City's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, be entitled to assign all of its right, title, interest and obligations in and to this Parking Garage Agreement to any unrelated entity."

#### 5. RECORDING OF AGREEMENT WITH DEED.

The following is added as Paragraph 16 of the Garage Agreement:

"This Garage Agreement, as amended, shall be attached to and recorded with the deed for Lot 6 on the Amended Subdivision Plan, and the deed shall reference this agreement substantially as follows: 'Grantee covenants and agrees by acceptance of this Deed that the Property herein conveyed is subject to and benefitted by all rights and obligations of Grantor and Grantee set forth in a certain October 15, 2012 Garage Contribution And Funding Agreement, as amended, a copy of which is attached hereto as Schedule B and hereby made a part hereof.'"

III. The Corporate Guaranty Agreement, as amended; is hereby further amended as follows. Such amendment shall be known as the "Third Amendment of Corporate Guaranty Agreement":

##### 1. SECTION 1

Section 1 of the Second Guaranty Amendment is hereby deleted and the following is added as Section 1 to the Corporate Guaranty in its place:

FEDEQ shall construct the Midtown Project in accordance with the City of Portland Planning Board's approval letter dated March 17, 2015, except as the same may be amended by the planning board. The parties agree that the specifications shown on a plan as may be approved by the Planning Board shall be deemed to satisfy the design guidelines and specifications required by the terms of the Guaranty. Within three years after the date on

which the Buyer shall have requisitioned a total of one million dollars (\$1,000,000.00) in City Grant Funds, exclusive of funds requisitioned by the City or by the Buyer for environmental remediation costs (the "Guaranty Deadline"), Buyer shall have constructed a portion of the Midtown Project to include not less than 180 residential apartments, not less than 840 parking spaces, and not less than 50,000 gross square feet of first floor commercial space (the foregoing portion of the Midtown Project shall be referred to as the "Guaranteed Project Portion"). The annual penalty for not completing construction of the Guaranteed Project Portion on or before the Guaranty Deadline shall be limited to Guarantor paying to City, on an annual basis for a maximum term of seventeen (17) years, the annual difference between the actual tax revenue realized from the Midtown Project, as constructed, and the tax revenue that the City would have received had the Guaranteed Project Portion been substantially completed by the Guaranty Deadline. The value of the Guaranteed Project Portion shall be the City of Portland Assessor's estimated assessed value of the real and personal property included in the Guaranteed Project Portion, had it been completed, made on the April 1 following the Guaranty Deadline (the "Guaranteed Project Portion Value"). Notwithstanding anything in the foregoing, this Guaranty is contingent on the full \$9,007,000.00 in City Grant Funds being contributed to Guarantor for the construction of the Garage or the environmental remediation work addressed in the Third Amendment. Guarantor's aggregate, maximum penalty liability under this Guaranty shall not exceed \$9,007,000.00. Finally, regardless of when substantial completion of the Guaranteed Project Portion, as defined above, is achieved, this Guaranty shall automatically terminate, Guarantor shall have zero financial liability under this Guaranty and City shall provide Guarantor with a release from any financial liability under this Guaranty effective as of the earlier of the date that the City of Portland Assessor's estimated assessed value of the Midtown Project reaches \$45,000,000.00 or the Guaranteed Project Portion, as defined above, reaches substantial completion as that phrase is defined below, whichever shall first occur, or as of the date of the timely and valid exercise of the City's right to repurchase under the Parking Garage Agreement, as amended. For purposes of this Guaranty, "substantial completion" is deemed to mean those structures within the Guaranteed Project Portion having received a Certificate of Occupancy from the City of Portland, exclusive of the retail space, such space to be delivered in shell condition and subject to tenant "fit-out."

## 2. ASSIGNMENT.

Section 3(a) of the Corporate Guaranty is hereby deleted in its entirety and replaced with the following:

"it will not assign its rights hereunder without the City's consent, which consent shall be in the City's sole and absolute discretion."

## IV. Miscellaneous Provisions

1. EFFECT OF TERMINATION OF SECOND AMENDED & RESTATED THIRD AMENDMENT.

In the event Buyer elects to terminate the Third Amendment as the same has been or may hereafter be amended and/or restated from time to time, pursuant to Section 1 thereof, this Fourth and Related Amendments agreement shall be null and void, and the P&S as well as its Related Agreements shall have the same force and effect as they had at the time just prior to the Third Amendment's execution as though the Third Amendment, the Amended Third Amendment, the Second Amended Third Amendment, and these Fourth and Related Amendments never existed.

2. CLARIFICATION OF RIGHTS

Notwithstanding anything to the contrary in the P&S and Related Agreements, as amended, nothing therein shall be construed to permit a repurchase of the Garage property for reasons other than those stated in the Garage Agreement, as amended, or paragraph 3 the Job Creation Agreement. The Seller has no right to repurchase or otherwise acquire non-Garage property under the P&S and Related Agreements, as amended.

3. DEFINED TERMS

All terms capitalized but not defined herein shall have the meanings defined in the P&S and its Related Agreements and any amendments thereto.

4. CONFLICTS

Except as amended hereby, the P&S and its Related Agreements as well as any amendments, exhibits and attachments thereto, remain in full force an effect and are hereby ratified. In the event of any conflict between the terms of this Fourth and Related Amendments and the terms of the P&S or its Related Agreements and any amendments thereto, the terms of this Fourth and Related Amendments shall govern and control so long as this Fourth and Related Amendments is in effect. The recitals set forth above are incorporated herein by reference and made a part of this Fourth and Related Amendments.

5. COUNTERPARTS

This Fourth and Related Amendments may be signed in counterparts, which shall be construed together as one document.

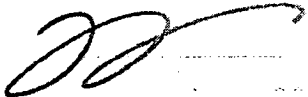
IN WITNESS WHEREOF, the parties have caused the components of this Fourth and Related Amendments agreement related to the underling documents to which they are party, to be signed and sealed by their respective duly authorized undersigned officers as of the date first mentioned above.

**CITY OF PORTLAND, MAINE**

By:   
Name: Jon P. Jennings  
Its: City Manager

  
Approved to Form: Corp. Counsel

**FEDEQ DV001, LLC**

By:   
Jonathan Cox  
Its: Manager

**LEGACY PARK APARTMENTS, LLC, as Guarantor**

By:   
Jonathan Cox  
Its: Manager

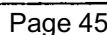
**THE FEDERATED COMPANIES, LLC, as Guarantor**

By:   
Jonathan Cox  
Its Manager

EXHIBIT A

AMENDED SUBDIVISION PLAN

LAST REVISED 5.10.2016





## QUITCLAIM DEED WITH COVENANT

KNOW ALL PERSONS BY THESE PRESENTS, that the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, County of Cumberland, State of Maine ("Grantor"), for consideration paid by **FEDEQ DV005, LLC**, a Florida limited liability company with a mailing address of P.O. BOX 370008, Miami, FL 33137 ("Grantee"), does hereby grant, with quitclaim covenant, to the said Grantee, its successors and assigns, certain lots or parcels of land depicted as Lots 1, 3, and 7 on a certain "Amended Subdivision Recording Plat for MiDTOWN Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013, as revised through, and approved by the City of Portland Planning Board, on May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, recorded at the Cumberland County Registry of Deeds, Plan Book 216, Page 217 (the "Amended Subdivision Recording Plat"), which lots are more particularly described in Schedule A, attached hereto and incorporated herein by reference (the "Property"), and reserving to Grantor the following easements: a Limited Open Space Use Easement Benefitting the City of Portland of varying width in, on, and over a portion of Lot 1 along Elm Street as shown on said Amended Subdivision Recording Plat and as more particularly described in Schedule A (the "Elm Street Easement Area"); and a Limited Open Space Use Easement Benefitting The City of Portland of variable width in, on, and over a portion of Lot 7 as shown on said Amended Subdivision Recording Plat and as more particularly described in Schedule A (the "Lot 7 Easement Area") (the Elm Street Easement Area and the Lot 7 Easement Area are collectively referred to herein as the "Easement Areas").

The Lot 7 Easement Area shall remain open space, free of buildings, fences and other structures. The Lot 7 Easement Area shall be publicly accessible from the MEWS 30' Access Easement and the Bayside Trail on Lot 9 as those areas are depicted on the Amended Subdivision Recording Plat and Overall Site Plan (defined below). The Elm Street Easement Area shall remain open space, free of buildings. Subject to any depictions on the Amended Subdivision Recording Plat and reasonable rules and regulations adopted by Grantee or the approved Overall Site Plan sheet C-2.0 for midtown Portland, Maine, prepared for Grantee by Fay, Spofford & Thorndike (the "Overall Site Plan"), as the same have been or may hereafter be amended by duly authorized City reviewing authorities, Grantee shall not permit any condition or state that would be contrary to or otherwise inhibit such limited open space uses of the Easement Areas. Subject to the foregoing, Grantee shall retain all additional and customary rights of property use within the Easement Areas. All improvements within the Easement Areas shall be owned by Grantee or any party to whom or to which such property is conveyed or assigned. Grantee, or any party to whom or to which such property is conveyed or assigned,

shall maintain the Easement Areas in accordance with the requirements of the Amended Subdivision Recording Plat, Overall Site Plan, and all applicable laws, rules, regulations, and ordinances.

Grantee covenants and agrees by acceptance of this Deed that for a period of thirty (30) years from the date hereof, in the event that the Property or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the Grantor in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Property had such property remained taxable. Grantee, its successors and assigns, shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

**IN WITNESS WHEREOF**, the said City of Portland has hereunto caused this instrument to be signed by Jon P. Jennings, its duly authorized City Manager, this 16<sup>th</sup> day of June, 2016.

CITY OF PORTLAND

Sonia Bean  
Witness

By: J.P. J-R  
Jon P. Jennings  
City Manager

STATE OF MAINE  
CUMBERLAND, ss.

June 16, 2016

Personally appeared the above-named Jon P. Jennings, the City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the City of Portland.

Before me,

Sonia T. Bean  
Notary Public/~~Attorney at Law~~

Sonia T. Bean  
Printed Name

**SCHEDULE A**

**Legal Description of Lot 1 On the Amended Subdivision Recording Plat**

A certain lot or parcel of land located along the northerly sideline of Elm Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

THENCE running northwesterly 176.95 feet along Elm Street on a curve to the left with a radius of 438.26 feet and a chord bearing and distance of N 69° 50' 41" W 175.75 feet to a point;

THENCE N 81° 24' 41" W 4.19 feet along Elm Street to the **POINT OF BEGINNING**.

**THENCE** N 81 ° 24' 41" W 33.19 feet along Elm Street to a point of curvature;

**THENCE** running northwesterly 135.72 feet along Elm Street on a curve to the right with a radius of 380.26 feet and a chord bearing and distance of N 71° 11' 16" W 135.02 feet to a point;

**THENCE** S 29° 02' 19" W 8.00 feet along Elm Street to a point;

**THENCE** running northwesterly 44.45 feet along Elm Street on a curve to the right with a radius of 388.26 feet and a chord bearing and distance of N 57° 40' 54" W 44.42 feet to a point at the southerly corner of land now or formerly of Marginal Way, LLC;

**THENCE** N 69° 26' 06" E 165.34 feet along said Marginal Way, LLC to a point;

**THENCE** N 62° 32' 28" E 77.74 feet along said Marginal Way, LLC to a point;

**THENCE** S 05° 59' 38" E 130.44 feet along land now or formerly of the City of Portland to a point;

**THENCE** S 50° 11' 34" W 46.00 feet along said City of Portland to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 19,990 square feet, more or less, and is Lot 1 as shown on said Amended Subdivision Recording Plat.

Reserving to the City of Portland, its successors and assigns a Limited Open Space Use Easement of variable width Benefitting the City of Portland along Elm Street as shown on said Amended Subdivision Recording Plat, more particularly bounded and described as follows:

A certain lot or parcel of land located along the northeasterly line of Elm Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street.

THENCE running northwesterly 176.95 feet along Elm Street along a curve to the left with a radius of 438.26 feet, an arc distance of, and a chord bearing and distance of N 69° 50' 41" W 175.75 feet to a point;

THENCE N 81° 24' 41" W 4.01 feet along the northeasterly line of Elm Street to the **POINT OF BEGINNING**

**THENCE** N 81° 24' 41" W 33.19 feet along the northeasterly line of Elm Street to a point of curvature;

**THENCE** running northwesterly 135.72 feet along Elm Street along a curve to the right with a radius of 380.26 feet and a chord bearing and distance of N 71° 11' 16" W 135.02 feet to a point;

**THENCE** N 23° 01' 13"E 7.32 feet to a point;

**THENCE** S 75° 43' 22" E 132.13 feet to a point;

**THENCE** S 50° 11' 34" W 8.01 feet to the **POINT OF BEGINNING**.

Said lot or parcel of land is located entirely on Lot 1 as shown on said plan.

Said Lot 1 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland along the northerly line of Elm Street and northwesterly line of Somerset Street of variable width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located along the northeasterly line of Elm Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the northerly sideline corner of Elm Street and Somerset Street

**THENCE** along the northeasterly line of Elm Street along a curve to the left with a radius of 438.26 feet, an arc distance of 176.95 feet, and a chord bearing and distance of N 69° 50' 41" W 175.75 feet to a point;

**THENCE** N 81° 24' 41" W 4.01 feet along the northeasterly line of Elm Street to a point at the southerly corner of Lot 1 as shown on said plan;

**THENCE** N 50° 11' 34" E 46.00 feet along said Lot 1 to a point;

**THENCE** N 05° 59' 38" W 120.02 feet along said Lot 1 to a point;

**THENCE** N 62° 55' 05" E 10.29 feet through land now or formerly of the City of Portland shown as Lot 4 on said plan to a point;

**THENCE** S 27° 04' 55" E 15.00 feet through said City of Portland land to a point;

**THENCE** S 14° 07' 44" E 89.46 feet through said City of Portland land to a point;

**THENCE** N 86° 31' 38" E 28.74 feet through said City of Portland land to a point at the westerly corner of Lot 3 as shown on said plan;

**THENCE** S 05° 59' 38" E 62.77 feet along the westerly line of Lot 3 to a point;

**THENCE** S 63° 10' 10" E 95.66 feet along the southwesterly line of Lot 3 to a point along the northwesterly line of Somerset Street as shown on said plan;

**THENCE** S 49° 00' 22" W 16.27 feet along the northwesterly line of Somerset Street to the **POINT OF BEGINNING.**

Said lot or parcel of land contains 7887 square feet, more or less, and is located entirely on Lot 4 as shown on said plan.

Said Lot 1 herein described is benefitted by a certain Revocable License for Maintenance of Canopy of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland 7.89 feet wide as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said license and as follows:

A certain lot or parcel of land located northerly of, but not adjacent to, the northeasterly line of Elm Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**COMMENCING** at the northerly sideline corner of Elm Street and Somerset Street.

THENCE along the northeasterly line of Elm Street along a curve to the left with a radius of 438.26 feet, an arc distance of 176.95 feet, and a chord bearing and distance of N 69° 50' 41" W 175.75 feet to a point;

THENCE N 81° 24' 41" W 4.01 feet along the northeasterly line of Elm Street to a point at the southerly corner of Lot 1 as shown on said plan;

THENCE N 50° 11' 34" E 11.40 feet along said Lot 1 to the **POINT OF BEGINNING**;

**THENCE** N 50° 11' 34" E 26.79 feet along said Lot 1 to a point;

**THENCE** S 39° 48' 26" E 7.89 feet through land now or formerly the City of Portland as shown on said plan to a point;

**THENCE** S 50° 11' 34" W 26.79 feet through said City of Portland land to a point;

**THENCE** N 39° 48' 26" W 7.89 feet through said City of Portland land to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 307 square feet, more or less, and is located entirely on Lot 4 as shown on said plan.

**Legal Description of Lot 3 on the Amended Subdivision Recording Plat**

A certain lot or parcel of land located along the northerly sideline of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

THENCE N 49° 00' 22" E 16.27 feet along the northwesterly line of Somerset Street to the **POINT OF BEGINNING**.

**THENCE** N 63° 10' 10" W 95.66 feet to a point;

**THENCE** N 05° 59' 38" W 62.77 feet to a point;

**THENCE** N 49° 00' 22" E 437.82 feet to a point along the southwesterly line of Chestnut Street as shown on said Amended Recording Plat;

**THENCE** S 40° 59' 38" E 140.00 feet along Chestnut Street to a point along the northwesterly line of Somerset Street;

**THENCE S 49° 00' 22" W 437.72 feet to the POINT OF BEGINNING.**

Said lot or parcel of land contains 63,811 square feet, more or less, and is Lot 3 as shown on said Amended Recording Plat.

Said Lot 3 herein described is subject to a Limited Open Space Use Easement Benefitting The City of Portland ten (10.00') feet in width running along the northwesterly line of Somerset Street and six (6.00') feet in width running along the southwesterly line of Chestnut Street as shown on said Amended Subdivision Recording Plat.

Said Lot 3 herein described is also subject to a certain Public Pedestrian Access Easement to the City of Portland from Grantee of near or even date herewith to be recorded.

Said Lot 3 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland along the northerly line of Elm Street and northwesterly line of Somerset Street of variable width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located along the northeasterly line of Elm Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the northerly sideline corner of Elm Street and Somerset Street

**THENCE** along the northeasterly line of Elm Street along a curve to the left with a radius of 438.26 feet, an arc distance of 176.95 feet, and a chord bearing and distance of N 69° 50' 41" W 175.75 feet to a point;

**THENCE** N 81° 24' 41" W 4.01 feet along the northeasterly line of Elm Street to a point at the southerly corner of Lot 1 as shown on said plan;

**THENCE** N 50° 11' 34" E 46.00 feet along said Lot 1 to a point;

**THENCE** N 05° 59' 38" W 120.02 feet along said Lot 1 to a point;

**THENCE** N 62° 55' 05" E 10.29 feet through land now or formerly of the City of Portland shown as Lot 4 on said plan to a point;

**THENCE** S 27° 04' 55" E 15.00 feet through said City of Portland land to a point;

**THENCE** S 14° 07' 44" E 89.46 feet through said City of Portland land to a point;

**THENCE** N 86° 31' 38" E 28.74 feet through said City of Portland land to a point at the westerly corner of Lot 3 as shown on said plan;

**THENCE** S 05° 59' 38" E 62.77 feet along the westerly line of Lot 3 to a point;

**THENCE** S 63° 10' 10" E 95.66 feet along the southwesterly line of Lot 3 to a point along the northwesterly line of Somerset Street as shown on said plan;

**THENCE** S 49° 00' 22" W 16.27 feet along the northwesterly line of Somerset Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 7887 square feet, more or less, and is located entirely on Lot 4 as shown on said plan.

Said Lot 3 herein described is benefitted by a certain Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds on land now or formerly of the City of Portland fifteen (15.00') feet in width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said license and as follows:

A certain lot or parcel of land, located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street.

**THENCE** N 49° 00' 22" E 16.27 feet along the northwesterly line of Somerset Street to a point at the southerly corner of Lot 3 as shown on said plan;

**THENCE** N 63° 10' 10" W 95.66 feet along the southerly line of said Lot 3 to a point;

**THENCE** N 05° 59' 38" W 62.77 feet along the westerly line of said Lot 3 to a point;

**THENCE** N 49° 00' 22" E 76.85 feet along the northwesterly line of said Lot 3 to the **POINT OF BEGINNING**;

**THENCE** N 58° 28' 00" W 40.26 feet through land now or formerly of the City of Portland as shown as Lot 4 on said plan to a point;

**THENCE** N 31° 32' 00" E 15.00 feet through said City of Portland Land to a point;

**THENCE** S 58° 28' 00" E 44.98 feet through said City of Portland Land to a point along the northwesterly line of said Lot 3;

**THENCE** S 49° 00' 22" W 15.73 feet along the northwesterly line of said Lot 3 to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 639 square feet, more or less.

Said Lot 3 herein described is benefitted by a certain Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds on land now or formerly of the City of Portland fifteen (15.00') feet in width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said license and as follows:

A certain lot or parcel of land, located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Chestnut Street and Somerset Street.

THENCE N 40° 59' 38" W 140.00 feet along the southwesterly line of Chestnut Street to a point at the northerly corner of Lot 3 as shown on said plan;

THENCE S 49° 00' 22" W 84.61 feet along the northwesterly line of said Lot 3 to the **POINT OF BEGINNING**;

**THENCE** S 49° 00' 22" W 15.02 feet along the northwesterly line of said Lot 3 to a point;

**THENCE** N 37° 54' 53" W 52.04 feet through land now or formerly of the City of Portland as shown as Lot 4 on said plan to a point;

**THENCE** N 52° 05' 07" E 15.00 feet through said City of Portland land to a point;

**THENCE** S 37° 54' 53" E 51.24 feet through said City of Portland land to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 775 square feet, more or less.

Said Lot 3 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds on land now or formerly of the City of Portland twelve (12.00') feet in width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said license and as follows:

A certain lot or parcel of land located along the southwesterly sideline of Chestnut Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Chestnut Street and Somerset Street.

THENCE N 40° 59' 38" W 140.00 feet along the southwesterly line of Chestnut Street to the **POINT OF BEGINNING** at the northerly corner of Lot 3 as shown on said plan;

**THENCE** S 49° 00' 22" W 91.29 feet along the northwesterly line of said Lot 3 to a point;

**THENCE** N 40° 59' 48" W 12.00 feet through land now or formerly of the City of Portland as shown as Lot 4 on said plan to a point;

**THENCE** N 49° 00' 22" E 104.42 feet through said City of Portland land to a point along the southwesterly line of Chestnut Street;

**THENCE** S 40° 58' 52" E 2.53 feet along the southwesterly line of Chestnut Street to a point;

**THENCE** along the southwesterly line of Chestnut Street along a curve to the left with a radius of 135.00 feet, an arc distance of 10.70 feet, and a chord bearing and distance of S 13° 13' 43" E 10.70 feet to a point;

**THENCE** S 49° 00' 22" W 8.14 feet along the southwesterly line of Chestnut Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 1229 square feet, more or less.

**Legal Description of Lot 7 on the Amended Subdivision Recording Plat**

A certain lot or parcel of land located along the northerly sideline of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the westerly sideline corner of the Possible Extension of Pearl Street, and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through May 10, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

**THENCE** S 49° 00' 22" W 151.00 feet along Somerset Street to a point;

**THENCE** N 40° 59' 38" W 130.00 feet along Lot 6 and land now or formerly of the City of Portland to a point;

**THENCE** N 49° 00' 22" E 78.00 feet along the City of Portland to a point;

**THENCE** N 40° 59' 38" W 21.00 feet along the City of Portland to a point;

**THENCE** N 49° 00' 22" E 73.00 feet along the City of Portland to a point at the northwesterly end of the Possible Extension of Pearl Street;

**THENCE** S 40° 59' 38" E 151.00 feet along the Possible Extension of Pearl Street to the **POINT OF BEGINNING.**

Said lot or parcel of land contains 21,163 square feet, more or less, and is Lot 7 as shown on said Amended Subdivision Recording Plat.

Said Lot 7 herein described is subject to a certain Public Pedestrian Access Easement to the City of Portland of varying width running along the northwesterly line of Somerset Street and the southwesterly line of the Possible Extension of Pearl Street, to be recorded and as shown on said Amended Subdivision Recording Plat.

Said Lot 7 herein described is subject to a Limited Open Space Use Easement Benefitting The City of Portland of variable width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described as follows:

A certain lot or parcel of land located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

**THENCE** S 49° 00' 22" W 181.00 feet along the northwesterly line of Somerset Street as shown on said plan to a point;

**THENCE** N 40° 59' 38" W 81.01 feet through Lot 6 as shown on said plan to the **POINT OF BEGINNING;**

**THENCE** N 40° 59' 38" W 44.99 feet through Lot 6 to a point along the southeasterly boundary line now or formerly of the City of Portland as shown on said plan;

**THENCE** N 49° 00' 22" E 30.00 feet along said City of Portland land to a point at the northerly corner of Lot 6, said point being located along the southwesterly line of Lot 7 as shown on said plan;

**THENCE** N 40° 59' 38" W 4.00 feet along said City of Portland land and line of Lot 7 to a point;

**THENCE** N 49° 00' 22" E 78.00 feet along said City of Portland land and line of Lot 7 to a point;

**THENCE** S 40° 59' 38" E 48.99 feet through Lot 7 to a point;

**THENCE S 49° 00' 22" W 108.00 feet through Lot 7 and Lot 6 to the POINT OF BEGINNING.**

Said lot or parcel of land contains 5171 square feet, more or less, and is located partially on Lot 6 and partially on Lot 7 as shown on said plan.

Said Lot 7 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds, on land now or formerly of the City of Portland of variable width as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located northwesterly of, but not adjacent to, Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

**THENCE N 40° 59' 38" W 151.00 feet along the southwesterly line of The Possible Extension of Pearl Street as shown on said plan to the POINT OF BEGINNING;**

**THENCE S 49° 00' 22" W 73.00 feet along Lot 7 as shown on said plan to a point;**

**THENCE S 40° 59' 38" E 21.00 feet along Lot 7 to a point;**

**THENCE S 49° 00' 22" W 10.00 feet along Lot 7 to a point;**

**THENCE N 40° 59' 38" W 20.61 feet through land now or formerly of the City of Portland shown as Lot 9 on said plan to a point;**

**THENCE S 39° 22' 54" W 10.86 feet through said City of Portland land to a point;**

**THENCE S 42° 22' 19" W 64.94 feet through said City of Portland land to a point;**

**THENCE S 41° 00' 32" E 15.29 feet through said City of Portland land to a point;**

**THENCE S 49° 00' 22" W 72.71 feet along Lot 6 as shown on said plan to a point;**

**THENCE N 41° 00' 32" W 21.94 feet through said City of Portland land to a point;**

**THENCE N 42° 22' 19" E 136.00 feet through said City of Portland land to a point;**

**THENCE** N 39° 22' 54" E 72.27 feet through said City of Portland land to a point;

**THENCE** N 41° 02' 28" W 10.14 feet through said City of Portland land to the easterly property corner of land now or formerly of 161 Marginal Way LLC as shown on said plan;

**THENCE** N 41° 02' 28" W 43.00 feet along said 161 Marginal Way LLC land to a point;

**THENCE** N 49° 00' 22" E 20.02 feet through said City of Portland land to a point;

**THENCE** S 87° 16' 35" E 27.70 feet through said City of Portland land to a point;

**THENCE** S 40° 59' 38" E 5.00 feet through said City of Portland land to a point;

**THENCE** N 84° 05' 10" E 20.69 feet through said City of Portland land to a point;

**THENCE** N 28° 31' 08" E 15.21 feet through said City of Portland land to a point;

**THENCE** N 59° 22' 54" E 31.41 feet through said City of Portland land to a point;

**THENCE** S 61° 28' 51" E 5.00 feet through said City of Portland land to a point;

**THENCE** S 40° 59' 38" E 6.82 feet through said City of Portland land to a point along land now or formerly of E. Perry Iron & Metal Co. as shown on said plan;

**THENCE** S 49° 00' 22" W 24.24 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 40° 59' 38" E 20.01 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 31° 04' 42" W 28.43 feet along said E. Perry Iron & Metal Co. land to a point;

**THENCE** S 50° 13' 09" E 1.25 feet along said E. Perry Iron & Metal Co. land to a point at the northwesterly end of The Possible Extension of Pearl Street;

**THENCE** S 49° 00' 22" W 28.15 feet along the end of The Possible Extension of Pearl Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 9332 square feet, more or less.

Said Lot 7 herein described is benefitted by a certain Revocable License for Installation and Maintenance of Utilities and a Revocable License for Grading and Drainage of near or even date herewith and to be recorded in the Cumberland County Registry of Deeds on land now or formerly of the City of Portland of variable width, located within The Possible Extension of Pearl Street as shown on said Amended Subdivision Recording Plat, more particularly bounded and described in said licenses and as follows:

A certain lot or parcel of land located along the northwesterly line of Somerset Street in the City of Portland, Cumberland County, State of Maine, more particularly bounded and described as follows:

**BEGINNING** at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street.

**THENCE** N 40° 59' 38" W 151.00 feet along the southwesterly line of The Possible Extension of Pearl Street to a point;

**THENCE** N 49° 00' 22" E 28.15 feet along the northwest end of The Possible Extension of Pearl Street to a point along land now or formerly of E. Perry Iron & Metal Co. as shown on said plan;

**THENCE** S 50° 13' 09" E 26.72 feet along land of E. Perry Iron & Metal Co. to a point;

**THENCE** N 82° 12' 51" E 8.60 feet along land of E. Perry Iron & Metal Co. to a point;

**THENCE** S 45° 30' 09" E 120.29 feet along land of E. Perry Iron & Metal Co. to a point along the northwest line of Somerset Street;

**THENCE** S 49° 00' 22" W 49.09 feet along the northwest line of Somerset Street to the **POINT OF BEGINNING**.

Said lot or parcel of land contains 6288 square feet, more or less, and represents the Possible Extension of Pearl Street as shown on said plan.

Received  
Recorded Register of Deeds  
Jun 17, 2016 03:30:49P  
Cumberland County  
Nancy A. Lane

PUBLIC PEDESTRIAN ACCESS EASEMENT  
TO THE  
CITY OF PORTLAND

KNOW ALL PERSONS BY THESE PRESENTS that FEDEQ DV004, LLC a Florida limited liability company with a mailing address of P.O. Box 370008, Miami, FL 33137 (hereinafter, "GRANTOR"), in consideration of the subdivision approval granted by the Portland Planning Board for Grantor's proposed project known as 'MiDTOWN,' as well as in compliance with conditions of said approval, does hereby grant to CITY OF PORTLAND, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter "GRANTEE"), the perpetual easement and rights described below on the land described below.

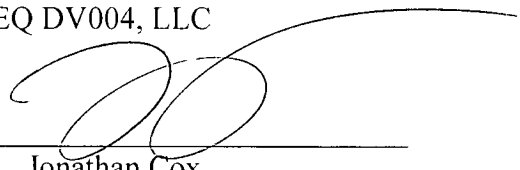
The purpose of said easement is to grant public pedestrian access afforded by this grant to GRANTEE as a public body authorized to acquire interests in real property for such purposes, in, on, under, and over the portions of that certain parcel of land of the Grantor identified as easement area over lot 6 on **Exhibit A** attached hereto and made a part hereof, said Exhibit A is also to be recorded in a Plan Book at the Cumberland County Registry of Deeds. Said Easement area represents those portions of the area shown as "Limited Open Space Easement(s)" on plan "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine made for Fay, Spofford & Thorndike by Owen Haskell, Inc. Falmouth, Maine" dated April 10, 2013, revised January 21, 2015, and as is more particularly described in the legal description within Exhibit A. The function, responsibility of maintenance and repair, and ownership of all improvements within the easement area are as more particularly described in **Exhibit B**, also attached hereto and made a part hereof.

To have and to hold the said Easement and all rights granted hereunder to the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by Jonathan Cox, its Manager, thereunto duly authorized as of the 16th day of June, 2016.

  
Witness

FEDEQ DV004, LLC

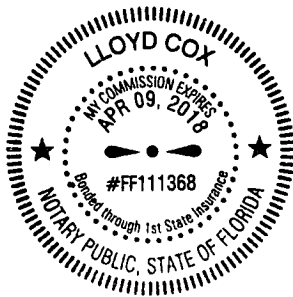
By: 

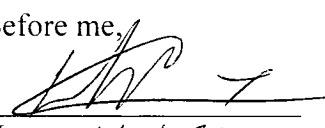
Jonathan Cox  
Its Manager

STATE OF FLORIDA  
COUNTY OF DADE, SS.

June 11, 2016

Personally appeared the above named Jonathan Cox, in his capacity as Manager of FEDEQ DV004, LLC, who acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of FEDEQ DV004, LLC.



Before me, 

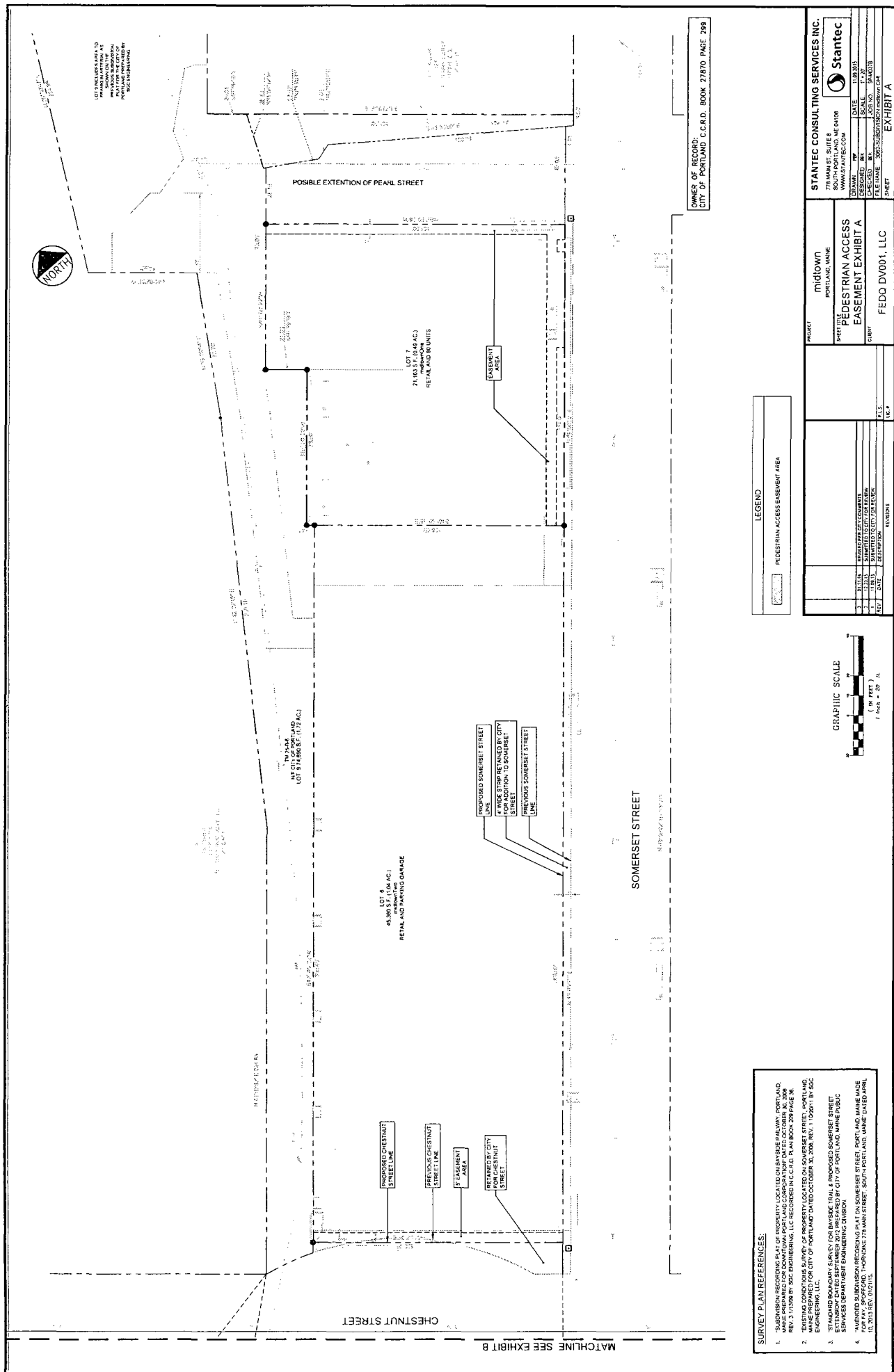
Name: Lloyd Cox

Notary Public

My Commission Expires: 4-9-18

**EXHIBIT A**

The attached Plan shows all portions of sidewalks located on private property and adjacent to the street right of way which are necessary to provide an ADA-compliant public pedestrian accessible route in satisfaction of Planning Board conditions of approval requiring the same, for that portion of the Midtown site located northeast of Chestnut Street. Immediately following and also part of this Exhibit A is a metes and bounds description for all easement areas referenced herein.



Pedestrian Access Easement over Lot 6

A certain parcel of land situated northeasterly of Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as 5' Easement area as shown on "Pedestrian Access Easement Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northeasterly sideline of Chestnut Street at the new northwesterly sideline of Somerset Street;

Thence, N 40°59'38" W along the new northeasterly sideline of said Chestnut Street 126.00 feet to land now or formerly of the City of Portland;

Thence, N 49°00'22" E along land of said City of Portland 5.00 feet;

Thence, S 40°59'38" E across Lot 6 as shown on said plan 126.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 5.00 feet to the point of beginning, containing 630 square feet more or less.

## EXHIBIT B

The Easement area shall function as a public ADA Compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian recreational uses, subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices or vehicles or equipment.

All improvements within the Easement area shall be owned by Grantor or any party to whom or to which such property is conveyed or assigned.

Maintenance and repair responsibilities within the Easement area shall belong to Grantor or any party to whom or to which such property is conveyed or assigned. It shall be the responsibility of the Grantor to remove snow and ice from said sidewalk and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Grantee shall have the right but not the obligation to repair or maintain the easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public safety.

The Easement area shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

Received  
Recorded Register of Deeds  
Jun 17, 2016 03:32:11P  
Cumberland County  
Nancy A. Lane

PUBLIC PEDESTRIAN ACCESS EASEMENT  
TO THE  
CITY OF PORTLAND

KNOW ALL PERSONS BY THESE PRESENTS that FEDEQ DV005, LLC a Florida limited liability company with a mailing address of P.O. Box 370008, Miami, FL 33137 (hereinafter, "GRANTOR), in consideration of the subdivision approval granted by the Portland Planning Board for Grantor's proposed project known as 'MiDTOWN,' as well as in compliance with conditions of said approval, does hereby grant to CITY OF PORTLAND, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter "GRANTEE"), the perpetual easement and rights described below on the land described below.

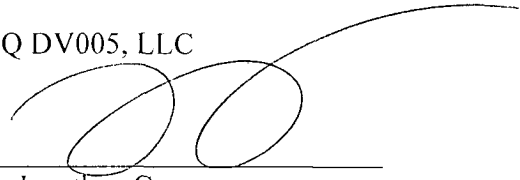
The purpose of said easement is to grant public pedestrian access afforded by this grant to GRANTEE as a public body authorized to acquire interests in real property for such purposes, in, on, under, and over the portions of that certain parcel of land of the Grantor identified as easement areas over lots 3 and 7 on **Exhibits A and B** attached hereto and made a part hereof, said Exhibits A and B are also to be recorded in a Plan Book at the Cumberland County Registry of Deeds. Said Easement area(s) represent those portions of the areas shown as "Limited Open Space Easement(s)" on plan "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine made for Fay, Spofford & Thorndike by Owen Haskell, Inc. Falmouth, Maine" dated April 10, 2013, revised January 21, 2015, and as is more particularly described in the legal descriptions within Exhibits A and B. The function, responsibility of maintenance and repair, and ownership of all improvements within the easement areas are as more particularly described in **Exhibit C**, also attached hereto and made a part hereof.

To have and to hold the said Easement and all rights granted hereunder to the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by Jonathan Cox, its Manager, thereunto duly authorized as of the 16<sup>th</sup> day of June, 2016.

  
Witness

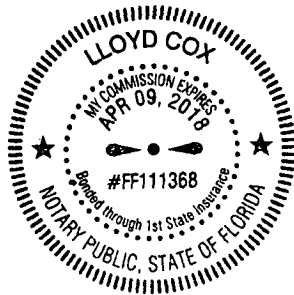
FEDEQ DV005, LLC

By:   
Jonathan Cox  
Its Manager

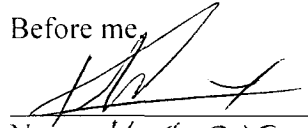
STATE OF FLORIDA  
COUNTY OF DADE, SS.

June 11, 2016

Personally appeared the above named Jonathan Cox, in his capacity as Manager of FEDEQ DV005, LLC, who acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of FEDEQ DV005, LLC.



Before me,

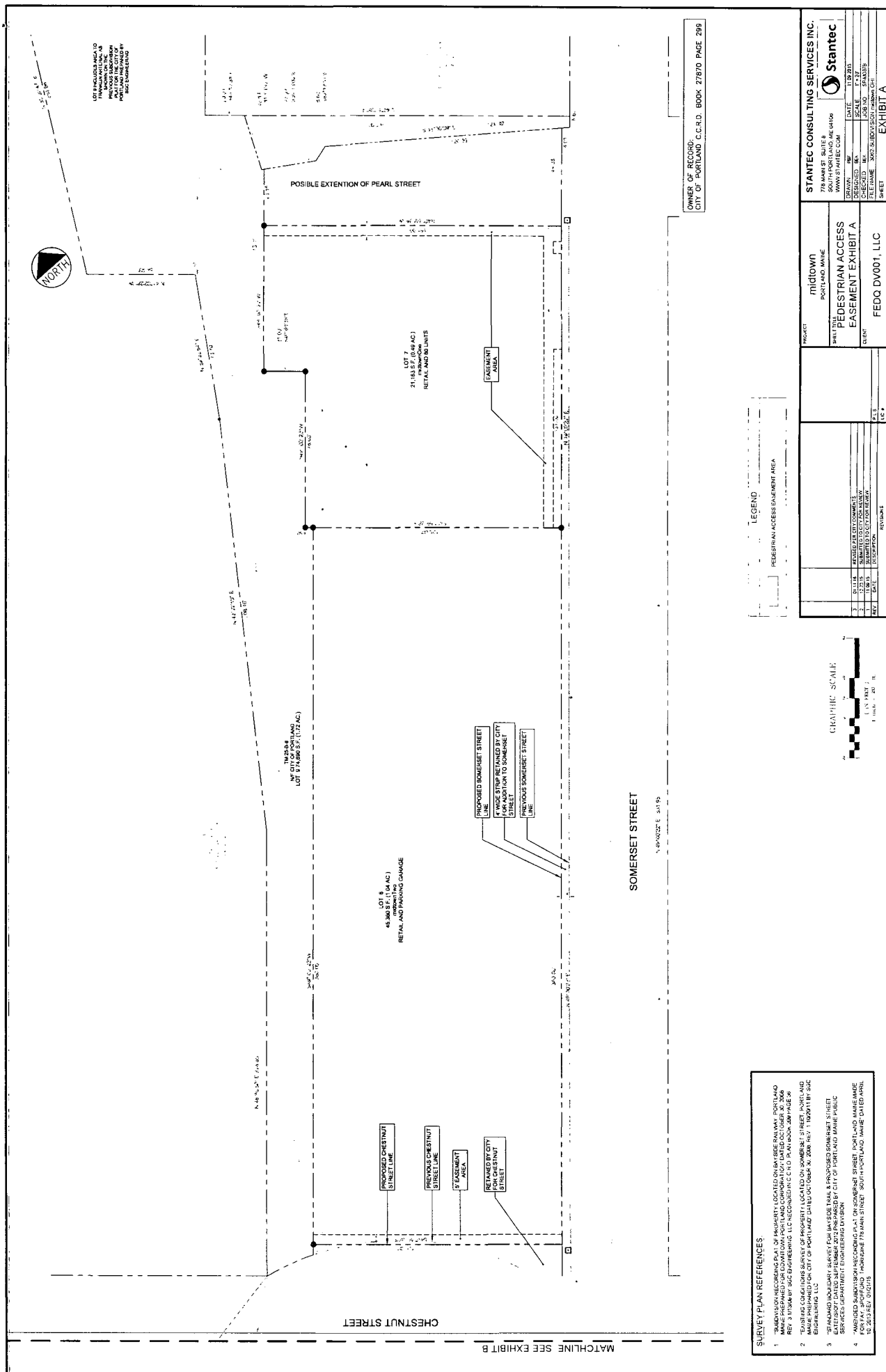
  
Name: Lloyd Cox

Notary Public

My Commission Expires: 4-9-18

**EXHIBIT A**

The attached Plan shows all portions of sidewalks located on private property and adjacent to the street right of way which are necessary to provide an ADA-compliant public pedestrian accessible route in satisfaction of Planning Board conditions of approval requiring the same, for that portion of the Midtown site located northeast of Chestnut Street. Immediately following and also part of this Exhibit A is a metes and bounds description for all easement areas referenced herein.



Pedestrian Access Easement over Lot 7

A certain parcel of land situated on the northwesterly side of Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as Easement Area as shown on "Pedestrian Access Easement Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street at the most easterly corner of Lot 7 as shown on said plan;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 7.67 feet;

Thence, N 40°59'38" W across said Lot 7 a distance of 4.00 feet;

Thence, S 49°00'22" W across said Lot 7 a distance of 6.00 feet;

Thence, S 40°59'38" E across said Lot 7 a distance of 4.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 48.00 feet;

Thence, N 40°59'38" W across said Lot 7 a distance of 4.00 feet;

Thence, S 49°00'22" W across said Lot 7 a distance of 89.33 feet to Lot 6 as shown on said plan;

Thence, N 40°59'38" W along said Lot 6 a distance of 5.00 feet;

Thence, N 49°00'22" E across said Lot 7 a distance of 146.00 feet;

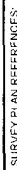
Thence, N 40°59'38" W across said Lot 7 a distance of 142.00 feet to land now or formerly of the City of Portland;

Thence, N 49°00'22" E along land of said City of Portland 5.00 feet;

Thence, S 40°59'38" E along land of said City of Portland 151.00 feet to the point of beginning, containing 1,688 square feet more or less.

**EXHIBIT B**

The attached Plan shows all portions of sidewalks located on private property and adjacent to the street right of way which are necessary to provide an ADA-compliant public pedestrian accessible route in satisfaction of Planning Board conditions of approval requiring the same, for that portion of the Midtown site located southwest of Chestnut Street. Immediately following and also part of this Exhibit B is a metes and bounds description for all easement areas referenced herein.



Pedestrian Access Easement over Lot 3

A certain parcel of land situated northwesterly of Somerset Street and southwesterly of Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as 4' Wide Easement area and 5' Easement Area as shown on "Pedestrian Access Easement Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being the southeasterly corner of Lot 3 as shown on said plan;

Thence, N 63°10'10" W along the southerly line of said Lot 3 a distance of 4.32 feet;

Thence, N 49°00'22" E across said Lot 3 a distance of 434.35 feet;

Thence, N 40°59'38" W across said Lot 3 a distance of 136.00 feet to the westerly line of said Lot 3;

Thence, N 49°00'22" E along the westerly line of said Lot 3 a distance of 5.00 feet to the new southwesterly sideline of Chestnut Street;

Thence, S 40°59'38" E along the new southwesterly sideline of said Chestnut Street 140.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 437.72 feet to the point of beginning, containing 2,434 square feet more or less.

### EXHIBIT C

The Easement areas shall function as a public ADA Compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian recreational uses, subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices or vehicles or equipment.

All improvements within the Easement areas shall be owned by Grantor or any party to whom or to which such property is conveyed or assigned.

Maintenance and repair responsibilities within the Easement areas shall belong to Grantor or any party to whom or to which such property is conveyed or assigned. It shall be the responsibility of the Grantor to remove snow and ice from said sidewalk and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Grantee shall have the right but not the obligation to repair or maintain the easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.

Received  
Recorded Register of Deeds  
Jun 17, 2016 03:32:37P  
Cumberland County  
Nancy A. Lane

|                          |   |                             |
|--------------------------|---|-----------------------------|
| CITY OF PORTLAND         | ) | BOARD OF ASSESSMENT REVIEW  |
|                          | ) |                             |
| FEDEQ DV004, FEDEQ DV005 | ) | SUPPLEMENTAL MEMORANDUM     |
|                          | ) | OF THE ASSESSOR OF THE CITY |
|                          | ) | OF PORTLAND                 |
| ABATEMENT APPEALS        | ) |                             |
|                          | ) |                             |

The Board of Assessment Review held a hearing in the above-referenced abatement appeals on June 14, 2021. At the end of the hearing, the Board invited the parties to submit brief post hearing memoranda. The Assessor submits this memorandum to address briefly (1) the additional exhibits that the Board requested at the end of the hearing, and (2) FEDEQ's argument that the property is overvalued because the litigation between the City and FEDEQ somehow deprives FEDEQ of right, title and interest in the property at issue in this matter. For the reasons set forth below, the Assessor respectfully requests that the Board deny FEDEQ's appeal in this matter.

### **1. Additional Assessor Exhibits**

At the end of the hearing in this matter, the Board expressed an interest in reviewing the deeds related to the properties at issue in this case (the "Property"), which the City conveyed to FEDEQ DV004 and FEDEQ DV005 (collectively, "FEDEQ"); as well as the City's deed to Horton, LLC, by which the City conveyed the property located at 60 Parris Street, which is the Parris Street property referenced in the Assessor's June 11, 2021 Memorandum to the Board. The Assessor submitted those deeds to the Board by email dated June 15, 2021, and hereby offers them into the record in this matter as follows:

- ASSESSOR EXHIBIT 11 - Quitclaim Deed With Covenant from City of Portland to FEDEQ DV005, LLC dated June 16, 2016, recorded in the Cumberland County Registry of Deeds, Book 33201, Page 233 (re City Tax Parcels 034-D-010-001, 025-A-022-001 and 025-B-002-001).
- ASSESSOR EXHIBIT 12 - Quitclaim Deed With Covenant from City of Portland to FEDEQ DV004, LLC dated June 16, 2016, recorded in the Cumberland County Registry of Deeds, Book 33201, Page 247 (with attached Parking Garage Contribution And Funding Agreement) (re City Tax Parcel 025-B-003-001).
- ASSESSOR EXHIBIT 13 - Public Pedestrian Access Easement To The City Of Portland granted by FEDEQ DV005, LLC, dated June 11, 2016, recorded in the Cumberland County Registry of Deeds, Book 33201, Page 289.
- ASSESSOR EXHIBIT 14 - Public Pedestrian Access Easement To The City Of Portland granted by FEDEQ DV004, LLC, dated June 11, 2016, recorded in the Cumberland County Registry of Deeds, Book 33201, Page 283.

- ASSESSOR EXHIBIT 15 - Quitclaim Deed Without Covenant from City of Portland to Horton, LLC dated April 5, 2018, recorded in the Cumberland County Registry of Deeds, Book 34759, Page 17 (this is the deed, with attached deed restrictions, for the Parris Street property referenced in the Assessor's June 11, 2021 Memorandum to the Board of Assessment Review).

For the reasons argued at the hearing in this matter, and those stated in the Assessor's June 11, 2021 Memorandum, as supported by the case law cited in June 7, 2021 Memorandum to the Board from the Board's Counsel, James Katsifas and Emily Arvizu (both of which memoranda are incorporated herein by reference), the record demonstrates that FEDEQ has failed to meet its burden of proving with credible evidence, that the Property is substantially overvalued, that the assessment was based on unjust discrimination, or that the assessment was otherwise manifestly wrong.

## **2. The Litigation Between FEDEQ And The City Does Not Deprive FEDEQ Of Right, Title, And Interest In The Property.**

In the hearing in this matter and in its appeal memorandum, FEDEQ argued its law suit against the City and the City's counterclaim somehow deprive it of right, title, and interest in the Property. In Exhibit A to its appeal, FEDEQ points out that "[t]he City has previously taken the position with [FEDEQ], in writing, that it will not entertain land use applications filed by [FEDEQ] absent demonstration of the requisite right, title or interest to support standing for same." In support of that proposition, FEDEQ offered in evidence an email from the City dated May 27, 2015 purportedly addressing a change of use application. The record in this case establishes, however, that in the time since its site plan approval expired in 2018, FEDEQ has never sought to file any new applications related to the development of the Property (Assessor Ex. 10). The City does not disagree with the notion that establishing right, title and interest is required for certain land development applications. The question here is whether the litigation concerning the Property, in and of itself, deprives FEDEQ of right, title, and interest in that property.

As the Law Court has explained, establishing right, title, and interest is a test for standing to file an application pursuant to which an "applicant for a license or permit to use property in certain ways must [establish that it has] 'the kind of relationship to the . . . site,' that gives him a legally cognizable expectation of having the power to use that site in the ways that would be authorized by the permit or license he seeks." *Southridge Corp. v. Board of Env'tl. Protection*, 655 A.2d 345, 348 (Me. 1994) (citing *Murray v. Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (finding "that a purchase and sale agreement, conditioned upon the seller's acquisition of any necessary subdivision approval conferred on the purchaser sufficient interest in the property to have the requisite standing to petition the BEP for approval to build on the property"). In *Southridge*, the Law Court pointed out that in *Murray*, the fact that the purchaser could opt out of the purchase at issue did not deprive the purchaser of standing to file an application. *Southridge Corp.*, 655 A.2d at 348. The *Southridge* Court then went on to explain that a party in litigation with an adverse possession claim to property also has right, title, and interest to file a land use application for that property even though he might not prevail on the adverse possession claim. *Id.*

The record in this case establishes that in the time since its site plan approval expired, FEDEQ has never sought to file any new applications related to the development of the Property, so it is not clear what type of application they would file, how they would like to use the Property, or whether they would be granted any approvals. The Law Court's decisions in *Murray* and *Southridge* demonstrate, however, that even though the FEDEQ Property is subject to litigation between the parties, and even though the City has filed a counterclaim seeking the reconveyance of the Property, that, in and of itself, does not deprive FEDEQ of right, title and interest to the Property.

### **3. Conclusion**

For the reasons set forth above and those presented at the hearing and in the Assessor's June 11, 2021 Memorandum, the Assessor respectfully requests that the Board of Assessment Review deny FEDEQ's applications for abatement in this matter.

Dated: June 25, 2021

By: /Michael Goldman/  
Michael I. Goldman  
Corporation Counsel's Office  
Attorney for Christopher Huff, Assessor  
City of Portland  
389 Congress St., Room 211  
Portland, ME 04101

FEDEQ DV004, LLC &  
FEDEQ DV005, LLC  
PO Box 191887  
Miami Beach, FL

June 25, 2021

City of Portland  
Board of Assessment Review

RE: *Follow up on Midtown Properties Assessment Appeal*

Dear Ms. English, Mr. Chairman, and Member of the Board of Assessment Review:

Enclosed as Exhibit "A" please find FEDEQ DV004, LLC's and FEDEQ DV005, LLC's (together, "Federated's") follow up submission regarding the matter referenced above, which was last heard by the Board of Assessment review on Monday, June 14, 2021, and which is scheduled for a follow up hearing on Monday, July 8, 2021.

Thank you as always for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Venne', with a stylized flourish extending to the right.

Patrick Venne

### **Exhibit “A”**

Subsequent to the June 14, 2021 hearing on this matter, the Board was presented with the following documents for additional consideration:

1. A deed conveying title of a certain parcel of land from the City to Horton, LLC and containing certain recorded land use restrictions permitting the City to repurchase such lot in the event particular construction milestones are not timely met (the “60 Paris Street Deed”);
2. A deed conveying title of certain real property (“Lot 6”) from the City to FEDEQ DV004, LLC containing recorded land use restrictions permitting the City to repurchase such property under described conditions (the “DV004 Deed”);
3. A deed conveying title of certain real property (“Lots 1, 3 and 7”) from the City to FEDEQ DV005, LLC containing recorded land use restrictions permitting the City to repurchase such property under described conditions (the “DV005 Deed”); and
4. Two recorded pedestrian easements over the Applicant’s property.
5. The DV004 Deed also contains a recorded copy of that certain Parking Garage Contribution and Funding Agreement burdening between Legacy Park Apartments, LLC (and its successors) and the City (the “Garage Agreement”).

As stated in the Applicant’s appeal, signed by the Applicant directly, it is not the mere presence of the Garage Agreement as a recorded land use restriction, which the City and this Board have the right to consider when reviewing this matter, which impacts value; instead, it is the fact that the City, as the assessing authority, is actively trying to repurchase through contested proceedings the Applicant’s property in a forced sale jeopardizing *all* of the properties now before you. The City is seeking a reconveyance of “the property referenced in the Garage Agreement” in its prayer for relief in the now pending federal lawsuit against the Applicant. As can be seen in Section 9 of the initial Garage Agreement, regarding “Default”, the City is claiming a right not only to the non-existent “Garage” (which was never built), but “the related real property” – a vague term if ever there was one. Later, in the Fourth Amendment of the Garage Agreement, the City clarifies that this real property refers to “Lot 6 within the Amended Subdivision Plan or such other property depicted on such Plan, as may be further amended, on which Buyer is approved to construct the Garage.” Read together with the vagueness of the City’s requested relief, the now-pending counterclaim casts a cloud over the entirety of the Applicant’s real property.

Further, and to briefly reiterate, while the Applicant may not have filed an application for use since the date of its 2018 building permit expiration, the City has acknowledged for it to do so it would need right, title or interest in the subject land. The position that the Applicant possesses such right, title or interest sufficient to confer upon it the requisite standing to apply for land use is inconsistent at best with the City’s simultaneous position that it, in fact, is legally entitled to the Applicant’s property.

Next, concerning the 60 Paris Street Deed, whatever the restrictions contained therein may say, the City’s own Assessor is on record acknowledging that none of the properties used for comparables in determining the value of the Applicant’s property had similar land use restrictions, or were in active litigation with the same party assessing value – as is the case for

the Applicant. Accordingly, the existence of such restrictions is irrelevant, because they were not accounted for in determining value. The City's position that the Applicant's property value today is the same as before it commenced a proceeding to reacquire its property simply defies logic; it is manifestly wrong.

The Applicant reserves the right to supplement this position at the follow up hearing July 8, 2021.

Thank you all, again, for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Venne', with a long horizontal flourish extending to the right.

Patrick Venne