

Order 266-15/16
Passage: 8-1 (Strimling) on 5/16/2016

Effective 5/26/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING AND AUTHORIZING THE CITY MANAGER
TO SIGN AMENDMENTS OF
THE PURCHASE AND SALE AGREEMENT, THE CORPORATE GUARANTY
AND THE PARKING GARAGE CONTRIBUTION AGREEMENT
RE: THE FEDERATED COMPANIES LLC MIDTOWN PROJECT**

ORDERED, that Amendments of the Purchase and Sale Agreement, the Corporate Guaranty and the Revised Parking Garage Contribution Agreement with FEDEQ DV001, LLC are hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute whatever other documents are necessary to effect the intent and purpose of the Amendments and this Order.

**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”), and **LEGACY PARK APARTMENTS, LLC** a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 (“Legacy”).

RECITALS

WHEREAS, Seller and The Federated Companies, LLC (“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, Legacy, Federated and Buyer are parties to certain Related Agreements, including 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 is the guarantor, 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, 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 MIDTOWN 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 all rights and easements of Seller and the public and all other matters 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 and replaced with the following:

“Section 15. Rights of Seller to Repurchase Undeveloped Property.

If Buyer, its successors and assigns have not reached the commencement of the “Start-up Phase,” as that term is defined within the Garage Agreement, within two (2) years after the date on which a total of \$1,000,000.00 in City Grant Funds has been requisitioned by and disbursed to Buyer or its nominee pursuant to the Garage Agreement, Seller shall have a one-time right to notify Buyer in writing of such default under this Section within thirty (30) days of such default, and Buyer shall have ninety (90) days thereafter to cure such default. If Seller fails to provide Buyer with written notice of default within thirty (30) days of such default, then the provisions of this Section shall be deemed waived by Seller.

If Buyer fails to cure a default under this section within said 90 day period, Seller shall have the right or remedy, but not the obligation, which is described in this paragraph in concept: namely, to repurchase lot 6 on the Amended Subdivision Plan, or such other lot that the Garage is constructed on, together with all buildings and improvements thereon, at Buyer’s purchase price (prorated with respect to the quantity of land, as necessary). Seller may at the closing of such repurchase, use such consideration (that is, the prorated portion of Buyer’s purchase 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 such consideration 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.

The City acknowledges that Buyer will most likely use the entire Property as collateral for a construction loan for the purpose of developing and building all portions of the project. The City therefore agrees to work on documents at the time of such financing, with Buyer 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 rights and obligations under the Corporate Guaranty and the Related Agreements are cumulative and in addition to the rights described herein.

II. The Garage Agreement, as amended, is hereby further amended as follows. Such amendment shall be known as the “Third 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 constructs a garage pursuant to the Garage Agreement.”

Further, any land proposed to be encumbered by Seller’s option to repurchase in 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 constructs a garage pursuant to the Garage Agreement.”

2. PARK-AND-SHOP.

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

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:

Subject to Planning Board approval, FEDEQ shall construct the Midtown Project in a single phase in substantially the form described in the “Midtown Project Description.” The parties agree that the Midtown Project shall consist of four buildings and will include not less than four hundred (400) residential apartments, not less than 85,000 square feet of retail space, and a parking garage containing not less than 840 spaces. Notwithstanding anything to the contrary in the Midtown Project Description, 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, provided that the Midtown Project, as approved, is in substantially the form described in the Midtown Project Description. 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 portion of the Guaranteed Project Portion as constructed, and the tax revenue that the City would have received had the Guaranteed Project Portion been substantially completed (the “Guaranteed Project Portion Value”) by the Guaranty Deadline. The parties acknowledge the intent of this amendment is to clarify that the valuation differential, if any, shall not be calculated on the basis of the full MiDTOWN project approved by the Portland Planning Board and shall, instead, be limited to the Guaranteed Project Portion Value set forth herein. The Guaranteed Project Portion Value 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..

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 P&S or 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 ancillary retail space, such space to be delivered in shell condition and subject to tenant "fit-out."

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. 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.

3. 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.

4. 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 this Fourth and Related Amendments agreement to be signed and sealed by their respective duly authorized undersigned officers as of the date first mentioned above.

CITY OF PORTLAND

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

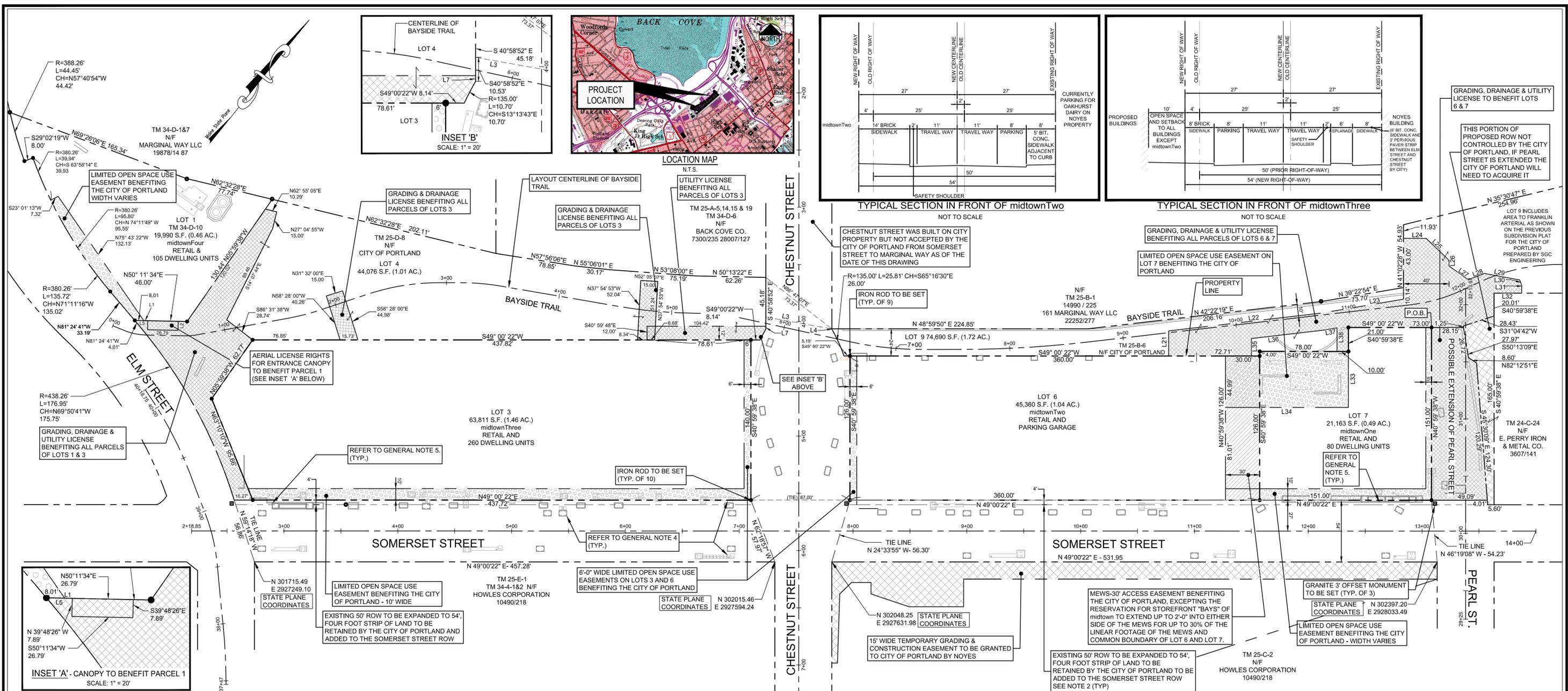
By: _____

Jonathan Cox
Its: Manager

EXHIBIT A

AMENDED SUBDIVISION PLAN

LAST REVISED 5.10.2016



LICENSE NOTES

- THE FOLLOWING LICENSES SET FORTH IN NOTES 1A, 1B, 1C, AND 1D ARE NOT SHOWN ON THIS PLAN. THE LOCATION AND TERMS AND CONDITIONS OF SUCH LICENSES ARE FURTHER DESCRIBED IN CITY COUNCIL ORDER 142-15/16 OR AS OTHERWISE DESCRIBED BELOW.
 - A LICENSE FOR SUBSURFACE PILING, PILE CAPS AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY PROPERTY LINE OF LOT 3 AND BURDENING LOT 4 AND THE CHESTNUT STREET AND SOMERSET STREET RIGHTS OF WAY.
 - A LICENSE FOR SUBSURFACE PILING, PILE CAPS, AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHWESTERLY AND SOUTHEASTERLY PROPERTY LINES OF THE SOMERSET RIGHT OF WAY AND LOT 6 AND 7 AND BURDENING THE SOMERSET STREET RIGHT OF WAY AND LOT 9.
 - LICENSES FOR THE FEDEQ DV001, LLC ("FEDERATED") OR ITS DESIGNATED ASSIGNEES TO MAINTAIN STEPS, RAMPS AND THE RELATED ACCESSIBLE LANDINGS AND TO MAINTAIN PLANTERS WITHIN PORTIONS OF THE ELM STREET, CHESTNUT STREET AND SOMERSET STREET RIGHTS OF WAY, AND UPON THE AREA DESIGNATED AS THE POTENTIAL EXTENSION OF PEARL STREET, AS WELL AS THE RIGHTS TO CONSTRUCT AND MAINTAIN PHYSICAL IMPROVEMENTS TO BE ADDED TO THE TRAIL SYSTEM UPON LOTS 4 AND 9.
 - A LICENSE BENEFITING LOTS 1, 3, 6 AND 7 TO CONSTRUCT, OPERATE AND MAINTAIN WATER QUALITY TREATMENT SYSTEMS UPON PORTIONS OF THE SOMERSET STREET, CHESTNUT STREET, ELM STREET, AND PEARL STREET.

EASEMENT NOTES

- ALL EASEMENTS CREATED BY AND SHOWN ON THE PRIOR APPROVED SUBDIVISION PLAN THAT ARE NOT EXPRESSLY SHOWN OR REFERENCED ON THIS PLAN ARE EXTINGUISHED, INCLUDING, WITHOUT LIMITATION, THE

GENERAL NOTES

- THIS AMENDED SUBDIVISION PLAN AMENDS AND REPLACES THE SUBDIVISION RECORDING PLAT ENTITLED "SUBDIVISION RECORDING PLAT OF PROPERTY LOCATED ON BAYSIDE RALLYARD, PORTLAND, MAINE PREPARED FOR DOWNTOWN PORTLAND CORPORATION BY SGC ENGINEERING, LLC. DATED OCTOBER 30, 2008 AND RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 209, PAGE 36 (THE "PRIOR APPROVED SUBDIVISION PLAN") IN ALL RESPECTS AND SUCH PRIOR SUBDIVISION IS HEREBY EXTINGUISHED.
- THE CITY OF PORTLAND SHALL RETAIN A FOUR FOOT WIDE STRIP OF LAND ALONG THE NORTHERLY SIDELINE OF SOMERSET STREET TO BE ADDED TO THE SOMERSET STREET RIGHT OF WAY, IN ORDER TO INCREASE THE WIDTH OF SOMERSET STREET ADJOINING LOTS 3, 6 & 7 FROM 50 FEET TO 54 FEET.
- THIS AMENDED SUBDIVISION PLAN AMENDS LOTS 1 THROUGH 8 FROM THE PRIOR APPROVED SUBDIVISION PLAN. THE EASTERLY SIDE OF LOT 9 REMAINS UNCHANGED FROM THE PRIOR APPROVED SUBDIVISION PLAN AND IS SHOWN ON THE PRIOR APPROVED SUBDIVISION PLAN. THERE IS NO LONGER A LOT 2, 5 & 8 IN THE SUBDIVISION.
- ALL WATER QUALITY TREATMENT DEVICES ASSOCIATED WITH THE MIDTOWN PROJECT AND LOCATED IN THE PUBLIC R.O.W. PURSUANT TO A LICENSE AGREEMENT SHALL BE PRIVATELY MAINTAINED BY THE DEVELOPER, ITS HEIRS OR ASSIGNS.
- ALL RAMPS, STAIRS, PLANTERS AND RETAINING WALLS ASSOCIATED WITH THE MIDTOWN PROJECT AND LOCATED IN THE PUBLIC R.O.W. PURSUANT TO A LICENSE AGREEMENT SHALL BE PRIVATELY MAINTAINED BY THE DEVELOPER, ITS HEIRS OR ASSIGNS.

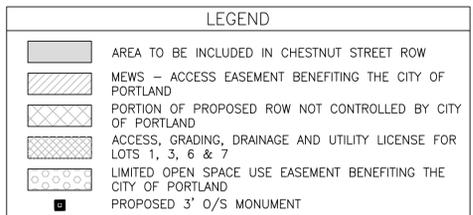
6. REFER TO AMENDED SUBDIVISION RECORDING PLAT FOR MIDTOWN DEVELOPMENT, PLAN SHEET 2 OF 2 (C-1.21), FOR CITY OF PORTLAND PLANNING BOARD CONDITIONS OF APPROVAL.

7. LOTS 1, 3, 6 AND 7 ARE LOCATED IN ZONE "C" "AREAS OF MINIMAL FLOODING", AS DEFINED ON FLOOD INSURANCE RATE MAP FOR THE CITY OF PORTLAND, COMMUNITY-PANEL NUMBER 230051 0013 B, WITH AN EFFECTIVE DATE OF JULY 17, 1986.

8. THE SURVEYED PREMISES ARE LOCATED IN THE B-7 URBAN COMMERCIAL BUSINESS DISTRICT AS SHOWN ON THE OFFICIAL ZONING MAP FOR THE CITY OF PORTLAND PREPARED IN JUNE 2008.

9. EXISTING AND PROPOSED UTILITIES ARE SHOWN ON PLAN SHEETS C-4.1, C-4.2, C-4.3 UTILITY PLANS AS INCLUDED IN PLANNING BOARD APPROVAL MARCH 3, 2015 FOR MIDTOWN PROJECT.

10. LOT DATA INCLUDING TOTAL NUMBER OF RESIDENTIAL UNITS ARE SHOWN ON PLAN SHEETS C-1.5, C-1.6 AND C-1.7.



EASEMENT LINE TABLE

LINE	BEARING	DISTANCE (FEET)
L1	N 50°11'34"E	3.39'
L2	S 39°48'26"E	7.89'
L3	N 59°04'41"E	58.90'
L4	S 40°58'52"E	0.25'
L5	N 50°11'34"E	11.40'
L6	DELETED	
L7	S 40°58'52"E	2.53'
L14	DELETED	
L15	DELETED	
L16	DELETED	
L17	DELETED	
L18	DELETED	
L19	DELETED	
L20	DELETED	
L21	N 41°00'32"W	21.94'
L22	N 42°22'19"E	136.00'
L23	N 39°22'54"E	72.27'
L24	N 49°00'22"E	20.02'
L25	S 87°16'35"E	27.70'
L26	S 40°59'38"E	5.00'
L27	N 84°05'10"E	20.69'
L28	N 28°31'08"E	15.21'
L29	N 59°22'54"E	31.41'
L30	S 61°28'51"E	5.00'
L31	S 40°59'38"E	6.82'
L32	S 49°00'22"W	24.24'
L33	N 40°59'38"W	48.99'
L34	S 49°00'22"W	108.00'
L35	S 41°00'32"E	15.29'
L36	S 42°22'19"W	64.94'
L37	S 39°22'54"W	10.86'
L38	N 40°59'38"W	20.61'

APPROVAL - CITY OF PORTLAND PLANNING BOARD

DATE _____

CHAIRPERSON _____

CERTIFICATE:

OWEN HASKELL, INC. CERTIFIES THAT THIS PLAN IS BASED ON, AND THE RESULT OF, AN ON THE GROUND FIELD SURVEY AND THAT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF, IT CONFORMS TO THE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS CURRENT STANDARDS OF PRACTICE.

DATE _____

JOHN W. SWAN, PLS NO. 1038

OWNER OF RECORD:
CITY OF PORTLAND C.C.R.D. BOOK 27870 PAGE 299

05.10.16	REVISED PER CITY COMMENTS
04.14.16	FINAL SUBDIVISION PLANS WITH CONDITIONS OF APPROVAL
02.23.16	FINAL SUBDIVISION PLANS WITH CONDITIONS OF APPROVAL
02.17.16	FINAL SUBDIVISION PLANS WITH CONDITIONS OF APPROVAL
01.21.15	REVISED PER CITY COMMENTS AND RESUBMITTED FOR CITY REVIEW
12.01.14	REVISED FOR LEVEL III SUBMISSION AND RESUBMITTED FOR CITY REVIEW
11.14.14	FINAL LEVEL III SUBMISSION TO CITY OF PORTLAND
10.17.14	PRELIMINARY LEVEL III SUBMISSION

AMENDED SUBDIVISION RECORDING PLAT FOR MIDTOWN DEVELOPMENT, PLAN SHEET 1 OF 2 ON SOMERSET STREET, PORTLAND, MAINE MADE FOR FEDEQ DV001, LLC PO BOX 37008 MIAMI FL, 33137-4110

OWEN HASKELL, INC.
390 U.S. ROUTE ONE, PALMOUTH, ME 04105 (207) 774-0424
PROFESSIONAL LAND SURVEYORS

Drwn By	EB	Date	Job No.
Trace By	JLW	APRIL 10, 2013	2012-180 P
Check By	JWS	Scale	Drwg. No.
Book No.	FILE	1" = 40'	C-1.2

**SECOND AMENDED & RESTATED THIRD AMENDMENT OF
PURCHASE AND SALE AGREEMENT**

THIS SECOND AMENDED & RESTATED THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT (“Amendment”) dated April 26, 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”), and **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (“Buyer”).

RECITALS

WHEREAS, The Seller and The Federated Companies, LLC (“Federated”) entered into a certain June 23, 2011 Purchase and Sale Agreement, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the “P&S”) and 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”), and a Third Amendment of Purchase and Sale Agreement dated October 13, 2015 (the “Third Amendment”), as well as an Amended & Restated Third Amendment of Purchase and Sale Agreement dated February 22, 2016 (“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 Park Apartments, LLC (“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, Legacy, Federated, and Buyer are parties to certain Related Agreements; and

WHEREAS, the parties wish to amend the P&S as hereinafter described;

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

1. CLOSING.

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 at 10:00 A.M. on May 31, 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”). Notwithstanding the foregoing, in no event shall Buyer be obligated to close sooner than thirty (30) days after the issuance of a building permit for the Midtown Project (the “Building Permit”).

In the event that the Buyer has not received the Building Permit by the date that is thirty (30) days prior to the Closing Date, then, at the Buyer's option, Buyer shall either (1) by notifying Seller in writing at least five (5) days prior to the Closing Date, elect to terminate this Amendment, or (2) agree to proceed to Closing without the Building Permit. In the event that Buyer elects to terminate this Amendment, this Amendment shall be deemed 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 never existed.

2. ENVIRONMENTAL REMEDIATION AND INDEMNIFICATION.

Section 5 of the P&S and section 2.e. of the Second Amendment are hereby amended to transfer environmental remediation responsibility to Buyer and relieve the City of its remaining environmental remediation responsibilities set forth in the P&S, except as otherwise noted herein. Buyer acknowledges that it has had the opportunity to conduct any environmental tests, inspections, and assessments of the Property that it desires and that it has been provided with an assessment of known remediation needs as embodied in... copies of all of the documents referenced in Exhibit B to the P&S, the DEP's November 1, 2010 Commissioner's Certification of Completion of Remedial Actions Under a Voluntary Response Action Plan, Woodard & Curran's March 29, 2013 Self-Implementing Cleanup and Disposal Plan under 40 CFR 761.61(a) Former New England Metal Recycling Site (the "Scrapyard Cleanup and Disposal Plan"), and the EPA's September 18, 2013 letter to the City of Portland regarding PCB Cleanup and Disposal Approval under 40 CFR 761.61(a) and (c) Former New England Metals Recycling Portland, Maine (the "EPA Scrapyard Approval Letter") and all attachments thereto, which documents are attached again to this Amendment as Exhibit A (the information described above and contained in Exhibit A is referred to hereafter collectively as the "Known Environmental Remediation Needs"). Buyer agrees that it shall be responsible for complying with all Known Environmental Remediation Needs, which responsibility shall survive closing. Nothing herein is intended to alter Seller's continuing responsibility, under the P&S and otherwise, to provide and satisfy any and all conditions, including provision of environmental liability insurance, associated with Pan Am/Guilford's release of prior deed restrictions related to the Land or Property including but not limited to a restriction on residential uses.

Notwithstanding anything to the contrary above, nothing in this Amendment is intended to alter the financial responsibilities of the parties for environmental remediation as set forth in the P&S, and excepting only the Seller's obligation to pay the first \$50,000 of remediation expense for the Scrapyard, Buyer shall be responsible for all costs of remediation required under the P&S. The City shall satisfy its payment obligation by providing Buyer a credit toward the Purchase Price in the amount of \$50,000.

Furthermore, 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 1st Avenue, Suite M-302, Miami, Florida 33137 ("Legacy"), jointly and severally, hereby covenant and agree, at their sole cost and expense, to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, 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 (collectively, "Claims"), that may at any time be imposed upon, incurred by or asserted or awarded against City arising out of or relating to the Buyer's compliance with Known Environmental Remediation Needs subsequent to this Amendment's mutual execution (the above duties of Buyer, Federated, and Legacy to defend, indemnify and hold the City harmless are collectively referred to as "Buyer's Environmental Indemnity"). Buyer's Environmental Indemnity shall not apply to any such Claims to the extent they relate to actions taken to comply with Known Environmental Remediation Needs prior to this Amendment's mutual execution, or are caused by the City's own negligence or wrongdoing, and shall not apply to any Claims related to matters beyond the Known Environmental Remediation Needs as outlined above. Buyer and Seller acknowledge and agree the limited purpose of Buyer's Environmental Indemnity is to ensure that, following transfer of remediation responsibility from Seller to Buyer, the Known Environmental Remediation Needs are satisfactorily complied with, and that it is not a general indemnity related to other real or potential environmental liabilities associated with the Property or Seller's status in the chain of title thereto. Buyer's Environmental Indemnity shall survive Closing and shall be binding upon Buyer's, Legacy's and Federated's successors and assigns.

3. 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. Except as amended hereby, the P&S and its Related Agreements as well as any amendments, exhibits and attachments thereto, remain in full force and effect and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the P&S or its Related Agreements and any amendments thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. The recitals set forth above are incorporated herein by reference and made a part of this Amendment.
5. This Amendment may be signed in counterparts, which shall be construed together as one document.

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

CITY OF PORTLAND

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

MB
Approved to Form: Corp. Counsel

FEDEQ DV001, LLC

By: Jonathan Cox
Jonathan Cox
Its: Manager

JOINDER OF THE FEDERATED COMPANIES, LLC AND
LEGACY PARK APARTMENTS, LLC

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 1st Avenue, Suite M-302, Miami, Florida 33137 ("Legacy") hereby joins in this Amendment for the purpose of acknowledging and accepting their obligations concerning the Buyer's Environmental Indemnity set forth in Section 2 above.

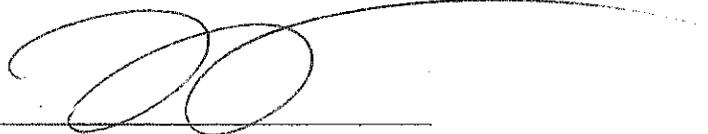
IN WITNESS WHEREOF, Federated and Legacy have caused this Joinder to be executed by their duly authorized representative as of the day and year first written above.

WITNESS:

THE FEDERATED COMPANIES, LLC



By:



Name: Jonathan Cox

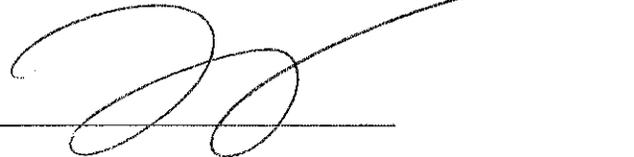
Title: Manager

WITNESS:

LEGACY PARK APARTMENTS, LLC



By:



Name: Jonathan Cox

Title: Manager

**AMENDED & RESTATED THIRD AMENDMENT OF
PURCHASE AND SALE AGREEMENT**

THIS AMENDED & RESTATED THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT (“Amendment”) dated February 22, 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”), and **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (“Buyer”).

RECITALS

WHEREAS, The Seller and The Federated Companies, LLC (“Federated”) entered into a certain June 23, 2011 Purchase and Sale Agreement, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the “P&S”) and 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”), and a Third Amendment of Purchase and Sale Agreement dated October 13, 2015 (the “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 Park Apartments, LLC (“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, Legacy, Federated, and Buyer are parties to certain Related Agreements; and

WHEREAS, the parties wish to amend the P&S as hereinafter described;

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

1. **CLOSING.**

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 at 10:00 A.M. on April 29, 2016 or at such earlier time as may be agreed to by the parties in writing, 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”). Notwithstanding the foregoing, in no event shall Buyer be obligated to close sooner than thirty (30) days after the issuance of a building permit for the Midtown Project (the “Building Permit”).

In the event that the Buyer has not received the Building Permit by the date that is thirty (30) days prior to the Closing Date, then, at the Buyer's option, Buyer shall either (1) by notifying Seller in writing at least five (5) days prior to the Closing Date, elect to terminate this Amendment, or (2) agree to proceed to Closing without the Building Permit. In the event that Buyer elects to terminate this Amendment, this Amendment shall be deemed 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 this Amendment's execution as though this Amendment never existed.

2. ENVIRONMENTAL REMEDIATION AND INDEMNIFICATION.

Section 5 of the P&S and section 2.e. of the Second Amendment are hereby amended to transfer environmental remediation responsibility to Buyer and relieve the City of its remaining environmental remediation responsibilities set forth in the P&S, except as otherwise noted herein. Buyer acknowledges that it has had the opportunity to conduct any environmental tests, inspections, and assessments of the Property that it desires and that it has been provided with an assessment of known remediation needs as embodied in copies of all of the documents referenced in Exhibit B to the P&S, the DEP's November 1, 2010 Commissioner's Certification of Completion of Remedial Actions Under a Voluntary Response Action Plan, Woodard & Curran's March 29, 2013 Self-Implementing Cleanup and Disposal Plan under 40 CFR 761.61(a) Former New England Metal Recycling Site (the "Scrapyard Cleanup and Disposal Plan"), and the EPA's September 18, 2013 letter to the City of Portland regarding PCB Cleanup and Disposal Approval under 40 CFR 761.61(a) and (c) Former New England Metals Recycling Portland, Maine (the "EPA Scrapyard Approval Letter") and all attachments thereto, which documents are attached again to this Amendment as Exhibit A (the information described above and contained in Exhibit A is referred to hereafter collectively as the "Known Environmental Remediation Needs"). Buyer agrees that it shall be responsible for complying with all Known Environmental Remediation Needs, which responsibility shall survive closing. Nothing herein is intended to alter Seller's continuing responsibility, under the P&S and otherwise, to provide and satisfy any and all conditions, including provision of environmental liability insurance, associated with Pan Am/Guilford's release of prior deed restrictions related to the Land or Property including but not limited to a restriction on residential uses.

Notwithstanding anything to the contrary above, nothing in this Amendment is intended to alter the financial responsibilities of the parties for environmental remediation as set forth in the P&S, and excepting only the Seller's obligation to pay the first \$50,000 of remediation expense for the Scrapyard, Buyer shall be responsible for all costs of remediation required under the P&S. The City shall satisfy its payment obligation by providing Buyer a credit toward the Purchase Price in the amount of \$50,000.

Furthermore, 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 1st Avenue, Suite M-302, Miami, Florida

33137 (“Legacy”), jointly and severally, hereby covenant and agree, at their sole cost and expense, to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, 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 (collectively, “Claims”), that may at any time be imposed upon, incurred by or asserted or awarded against City arising out of or relating to the Buyer’s compliance with Known Environmental Remediation Needs subsequent to this Amendment’s mutual execution (the above duties of Buyer, Federated, and Legacy to defend, indemnify and hold the City harmless are collectively referred to as “Buyer’s Environmental Indemnity”). Buyer’s Environmental Indemnity shall not apply to any such Claims to the extent they relate to actions taken to comply with Known Environmental Remediation Needs prior to this Amendment’s mutual execution, or are caused by the City’s own negligence or wrongdoing, and shall not apply to any Claims related to matters beyond the Known Environmental Remediation Needs as outlined above. Buyer and Seller acknowledge and agree the limited purpose of Buyer’s Environmental Indemnity is to ensure that, following transfer of remediation responsibility from Seller to Buyer, the Known Environmental Remediation Needs are satisfactorily complied with, and that it is not a general indemnity related to other real or potential environmental liabilities associated with the Property or Seller’s status in the chain of title thereto. Buyer’s Environmental Indemnity shall survive Closing and shall be binding upon Buyer’s, Legacy’s and Federated’s successors and assigns.

3. 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. 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 Amendment and the terms of the P&S or its Related Agreements and any amendments thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. The recitals set forth above are incorporated herein by reference and made a part of this Amendment.
5. This Amendment may be signed in counterparts, which shall be construed together as one document.

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

CITY OF PORTLAND

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

Me
Approved to Form: Corp. Counsel

FEDEQ DV001, LLC

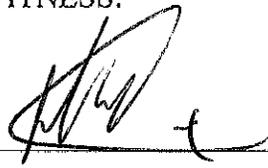
By: [Signature]
Jonathan Cox
Its: Manager

JOINDER OF THE FEDERATED COMPANIES, LLC AND
LEGACY PARK APARTMENTS, LLC

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 1st Avenue, Suite M-302, Miami, Florida 33137 (“Legacy”) hereby joins in this Amendment for the purpose of acknowledging and accepting their obligations concerning the Buyer’s Environmental Indemnity set forth in Section 2 above.

IN WITNESS WHEREOF, Federated and Legacy have caused this Joinder to be executed by their duly authorized representative as of the day and year first written above.

WITNESS:



THE FEDERATED COMPANIES, LLC

By: 

Name: Jonathan Cox
Title: Manager

WITNESS:



LEGACY PARK APARTMENTS, LLC

By: 

Name: Jonathan Cox
Title: Manager

THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT

(“Amendment”) dated October 13, 2015 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”), and **FEDEQ DV001, LLC**, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (“Buyer”).

RECITALS

WHEREAS, The Seller and The Federated Companies, LLC (“Federated”) entered into a certain June 23, 2011 Purchase and Sale Agreement, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the “P&S”) and 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”) (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 Park Apartments, LLC (“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, Legacy, Federated, and Buyer are parties to certain Related Agreements; and

WHEREAS, the parties wish to amend the P&S as hereinafter described;

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

1. CLOSING.

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 at 10:00 A.M. on February 29, 2016 or at such earlier time as may be agreed to by the parties in writing, 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”). Notwithstanding the foregoing, in no event shall Buyer be obligated to close sooner than thirty (30) days after the issuance of a building permit for the Midtown Project (the “Building Permit”).

In the event that the Buyer has not received the Building Permit by the date that is thirty (30) days prior to the Closing Date, then, at the Buyer’s option, Buyer shall either (1) by notifying Seller in writing at least five (5) days prior to the Closing Date, elect to

terminate this Amendment, or (2) agree to proceed to Closing without the Building Permit. In the event that Buyer elects to terminate this Amendment, this Amendment shall be deemed 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 this Amendment's execution as though this Amendment never existed.

2. ENVIRONMENTAL REMEDIATION AND INDEMNIFICATION.

Section 5 of the P&S and section 2.e. of the Second Amendment are hereby amended to transfer environmental remediation responsibility to Buyer and relieve the City of its remaining environmental remediation responsibilities set forth in the P&S, except as otherwise noted herein. Buyer acknowledges that it has had the opportunity to conduct any environmental tests, inspections, and assessments of the Property that it desires and that it has been provided with an assessment of known remediation needs as embodied in copies of all of the documents referenced in Exhibit B to the P&S, the DEP's November 1, 2010 Commissioner's Certification of Completion of Remedial Actions Under a Voluntary Response Action Plan, Woodard & Curran's March 29, 2013 Self-Implementing Cleanup and Disposal Plan under 40 CFR 761.61(a) Former New England Metal Recycling Site (the "Scrapyard Cleanup and Disposal Plan"), and the EPA's September 18, 2013 letter to the City of Portland regarding PCB Cleanup and Disposal Approval under 40 CFR 761.61(a) and (c) Former New England Metals Recycling Portland, Maine (the "EPA Scrapyard Approval Letter") and all attachments thereto, which documents are attached again to this Amendment as Exhibit A (the information described above and contained in Exhibit A is referred to hereafter collectively as the "Known Environmental Remediation Needs"). Buyer agrees that it shall be responsible for complying with all Known Environmental Remediation Needs, which responsibility shall survive closing. Nothing herein is intended to alter Seller's continuing responsibility, under the P&S and otherwise, to provide and satisfy any and all conditions, including provision of environmental liability insurance, associated with Pan Am/Guilford's release of prior deed restrictions related to the Land or Property including but not limited to a restriction on residential uses.

Notwithstanding anything to the contrary above, nothing in this Amendment is intended to alter the financial responsibilities of the parties for environmental remediation as set forth in the P&S, and excepting only the Seller's obligation to pay the first \$50,000 of remediation expense for the Scrapyard, Buyer shall be responsible for all costs of remediation required under the P&S. The City shall satisfy its payment obligation by providing Buyer a credit toward the Purchase Price in the amount of \$50,000.

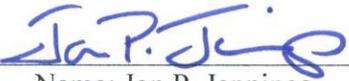
Furthermore, Buyer, the Federated Companies, LLC, a Florida limited liability company with a principal place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Federated"), and Legacy Park Apartments, LLC, a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Legacy"), jointly and severally, hereby covenant and agree, at their sole cost and expense, to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties,

assessments, citations, directives, 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 (collectively, "Claims"), that may at any time be imposed upon, incurred by or asserted or awarded against City arising out of or relating to the Buyer's compliance with Known Environmental Remediation Needs subsequent to this Amendment's mutual execution (the above duties of Buyer, Federated, and Legacy to defend, indemnify and hold the City harmless are collectively referred to as "Buyer's Environmental Indemnity"). Buyer's Environmental Indemnity shall not apply to any such Claims to the extent they relate to actions taken to comply with Known Environmental Remediation Needs prior to this Amendment's mutual execution, or are caused by the City's own negligence or wrongdoing, and shall not apply to any Claims related to matters beyond the Known Environmental Remediation Needs as outlined above. Buyer and Seller acknowledge and agree the limited purpose of Buyer's Environmental Indemnity is to ensure that, following transfer of remediation responsibility from Seller to Buyer, the Known Environmental Remediation Needs are satisfactorily complied with, and that it is not a general indemnity related to other real or potential environmental liabilities associated with the Property or Seller's status in the chain of title thereto. Buyer's Environmental Indemnity shall survive Closing and shall be binding upon Buyer's, Legacy's and Federated's successors and assigns.

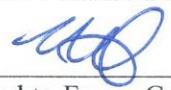
3. All terms capitalized but not defined herein shall have the meanings defined in the P&S and its Related Agreements and any amendments thereto.
4. Except as amended hereby, the P&S and its Related Agreements as well as any amendments, exhibits and attachments thereto, remain in full force and effect and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the P&S or its Related Agreements and any amendments thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect. The recitals set forth above are incorporated herein by reference and made a part of this Amendment.
5. This Amendment may be signed in counterparts, which shall be construed together as one document.

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

CITY OF PORTLAND

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


Approved: Finance Director


Approved to Form: Corp. Counsel

FEDEQ DV001, LLC


By: _____
Jonathan Cox
Its: Manager

JOINDER OF THE FEDERATED COMPANIES, LLC AND
LEGACY PARK APARTMENTS, LLC

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 1st Avenue, Suite M-302, Miami, Florida 33137 (“Legacy”) hereby joins in this Amendment for the purpose of acknowledging and accepting their obligations concerning the Buyer’s Environmental Indemnity set forth in Section 2 above.

IN WITNESS WHEREOF, Federated and Legacy have caused this Joinder to be executed by their duly authorized representative as of the day and year first written above.

WITNESS:

THE FEDERATED COMPANIES, LLC



_____ By: _____

Name: Jonathan Cox

Title: Manager

WITNESS:

LEGACY PARK APARTMENTS, LLC



_____ By: _____

Name: Jonathan Cox

Title: Manager

EXHIBIT A

KNOWN ENVIRONMENTAL REMEDIATION NEEDS

All of the documents referenced in Exhibit B to the P&S: List of Bayside Rail Yard Related Environmental Reports

1. Site Assessment and Environmental Analysis: Phase 1 of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, April 1999
2. Environmental Remediation Plan, Phase III of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, Nov. 1998
3. Phase II Environmental Site Assessment, Union Branch Rail Line Property, Portland, Maine, Haley & Aldrich, Inc. Dec. 2000
4. Environmental Conditions at the Proposed DHS Building Land annex, Portland, Maine, Tewhey Associates, August 2003
5. Tewhey Associates Memo from J. Tewhey to M. Adelson of the City of Portland Re: Results of Testing of Excavated Soil at the Former Rail Yard Site in Bayside, Tewhey Associates, December 13, 2003
6. Subsurface Soil Observations and Testing at Northern End of Proposed Chestnut Street Extension, Tewhey Associates, Jan 2005
7. Phase 1 Environmental Site Assessment, Rail Yard Subdivision Lots 1,2,3,4 and 9 Somerset Street, Portland, Maine, Tewhey Associates, Dec. 2008
8. VRAP Completion Document, Bayside Trail Project, Former Union Branch Rail Line, Portland, Maine, Tewhey Associates, August 2010
9. Bayside Rail Yard DEP VRAP, July 2001
10. Bayside Rail Yard DEP VRAP, November 2008
11. Chestnut Street Extension DEP VRAP, May 2005
12. DHS Annex Property DEP VRAP Certification, April 2004
13. Soil Remediation Consideration, Tewhey Associates, January 2002
14. Stockpiled Group 2 Soils at Brownfields Property Site, June 2005
15. NEMR Concrete Pad Sampling, September 2008

16. NEMR Phase I Environmental Site Assessment, February 2009
17. NEMR Phase II Soil Investigation, February 2007
18. NEMR Phase II Soil Investigation, July 2009

Documents additional to those referenced in Exhibit B to the P&S.

19. The DEP's November 1, 2010 Commissioner's Certification of Completion of Remedial Actions Under a Voluntary Response Action Plan;
20. Woodard & Curran's March 29, 2013 Self-Implementing Cleanup and Disposal Plan under 40 CFR 761.61(a) Former New England Metal Recycling Site (the "Scrapyard Cleanup and Disposal Plan"); and
21. The EPA's September 18, 2013 letter to the City of Portland regarding PCB Cleanup and Disposal Approval under 40 CFR 761.61(a) and (c) Former New England Metals Recycling Portland, Maine (the "EPA Scrapyard Approval Letter") and all attachments thereto.

SECOND AMENDMENT OF CORPORATE GUARANTY AGREEMENT

THIS AGREEMENT dated FEBRUARY 2, 201~~4~~⁵ 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 1st 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 1st 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 June 3, 2011 Purchase and Sale Agreement, as amended by a First Amendment to Purchase and Sale Agreement dated October 15, 2012 (the "P&S") and 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") (the P&S, as amended, is referred to herein as the "P&S"), and

WHEREAS, 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 Legacy has assigned its right to purchase the Property to a Maine limited liability company known as FEDEQ DV001, LLC by a certain Assignment and Assumption Agreement dated October 14, 2014 (the "FEDEQ Assignment"); and

WHEREAS, the City, Legacy, Federated, and FEDEQ are parties to a certain October 15, 2012 Corporate Guaranty Agreement dated October 15, 2012, as amended by the Second Amendment (the Corporate Guaranty Agreement, as amended, is referred to herein as the "Guaranty Agreement"); and

WHEREAS, the City, Legacy, and FEDEQ are parties to a certain Parking Garage Contribution and Funding Agreement dated October 15, 2012, as amended by the Second Amendment (the Parking Garage Contribution and Funding Agreement, as amended, is referred to herein as the "Parking Garage Agreement"); and

WHEREAS, as a result of a pending lawsuit filed by certain Portland residents against the City, Federated, and Legacy, Federated has submitted to the City's Planning Department a site plan application and amended subdivision plan with a redesigned plan for the development of its Midtown Project on the Property. The redesigned Midtown Project is described in a certain "Midtown Project Description" by CBT Architects, a copy of which is attached hereto as Exhibit A and made a part hereof; and

WHEREAS, the City, Legacy, Federated and FEDEQ now wish to amend certain provisions of the Guaranty Agreement and the Second Amendment as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guaranty Agreement and the Second Amendment are hereby amended as follows:

1. Section 1 of the Guaranty Agreement and sections 3(a) & (b) of the Second Amendment are hereby deleted and the following is added to the Guaranty Agreement as section 1:

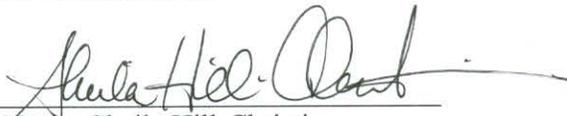
Subject to Planning Board approval, FEDEQ shall construct the Midtown Project in a single phase in substantially the form described in the Midtown Project Description. The parties agree that the Midtown Project shall consist of four buildings and will include not less than four hundred (400) residential apartments, not less than 85,000 square feet of retail space, and a parking garage containing not less than 800 spaces. Notwithstanding anything to the contrary in the Midtown Project Description, 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, provided that the Midtown Project, as approved, is in substantially the form described in the Midtown Project Description. The Midtown Project shall be substantially complete 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"). The annual penalty for not meeting 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 Midtown Project's tax revenue the City would have received had the Midtown Project been substantially completed (the "Midtown Project Value") by the Guaranty Deadline. The Midtown Project Value shall be the City of Portland Assessor's estimated assessed value of the Midtown Project property (real and personal) made on the April 1 following the Guaranty Deadline, and based on the Midtown Project as it may be approved by the Planning Board. Notwithstanding anything in the forgoing, 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. Guarantor's aggregate, maximum penalty liability under this Guaranty shall not exceed \$9,007,000.00. Finally, regardless of when substantial completion of the Midtown Project 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 as of the date of the timely and valid exercise of the City's right of repurchase under Section 9 of the Parking Garage Agreement, as amended. For purposes of this Guaranty, "substantial completion" is deemed to mean all structures having received a Certificate of Occupancy from the City of Portland, and the complete 'fit-out' of all commercial portions of the Midtown Project.

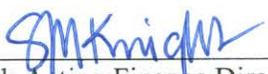
The rights and obligations under the P&S and under the Parking Garage Agreement are cumulative and in addition to the rights described herein.

2. The parties recognize that the definition of the Land subject to the P&S, as set forth in section 2(a) of the Second Amendment, is likely to change following review by the Planning Board of the new site plan application and amended subdivision plan. The parties hereby agree to execute a further amendment to the P&S and any other documents that may be required to document such a change.
3. All terms capitalized but not defined herein shall have the meanings defined in the P&S, the Guaranty and the Parking Garage Agreement.
4. 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.
5. 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.

CITY OF PORTLAND

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


Approved: 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

FEDEQ DV001, LLC

By: 
Jonathan Cox
Its: Manager

EXHIBIT A

MIDTOWN PROJECT DESCRIPTION

ATTACHMENT A

MIDTOWN PROJECT DESCRIPTION

The proposed project is a mixed-use residential/retail development in the Bayside area of Portland. It consists of four buildings designated “midtownOne”, “midtownTwo”, “midtownThree”, and midtownFour” further described below. The project will contribute about 87,200 square feet of direct street access retail space at the ground level, about 440 new apartments ranging from 400 square foot studios to 1,050 square foot two-bedroom units, and structured off street parking for about 800 vehicles.

The project site is bound on the north by the Bayside Trail, on the East by Pearl Street, on the South by Somerset Street, and on the West by Elm Street, Chestnut Street bisects the site. Immediately neighboring uses consist of Whole Foods to the southeast at Somerset and Franklin, warehousing and open land along Somerset Street opposite the project and low-rise retail and commercial development supported by surface parking extending from the Bayside Trail to Marginal Street to the North. Low and mid-rise residential development extends up the slope from Somerset Street to Portland’s downtown district along Congress Street.

The proponent’s intent is to lead the way in creating a compact walkable mixed-use residential “main street” anchoring the Bayside neighborhood with continuous retail frontage along Somerset Street, while also improving the trail.

Concurrent with the project, both Somerset Street and the Bayside Trail will be raised above flood level from Pearl Street to Elm Street. Future projects may be expected to raise this infrastructure to the East and West of the project site. Pearl Street to the north of Somerset Street has been designed in such a way as to allow its extension to Marginal Street in the future.

midtownOne and Two are located between Pearl and Chestnut Street. They are separated by a mews and courtyard providing public access between Somerset Street and the Bayside Trail. midtownOne will be a six-story building containing 80 dwelling units in a mix of studio, one, and two bedroom apartments with a main entrance on Pearl Street and a secondary entrance on the courtyard. The ground floor retail space is provided with frontage on Somerset Street, the mews, and the courtyard. midtownOne’s façade will be a mix of cement fiberboard and enameled metal panels.

midtownTwo is a seven story-parking garage. The entire ground floor is retail space accessible from Somerset Street, Chestnut Street, and the Trail. Elevator and stair cores are located in the northeast and southwest corners to provide access and egress to the mews/courtyard at one end and the corner of Somerset and Chestnut streets at the other. Garage vehicular entrance and retail service access is located at the eastern end to allow the greatest flexibility in retail leasing. Building B’s facades will consist of architectural precast concrete, painted railings, and “green screen” living plant panels.

The four buildings abut public space on all sides and therefore do not have “fronts” and “backs”. All facades of each building are composed of the same materials.

midtownThree is located between Chestnut Street and the Bayside Trailhead connection at the intersection of Elm and Somerset Streets. It consists of 260 apartments in a mix of one and two bedroom dwelling units in a pair of five story buildings over a continuous one-story retail base. The retail space has frontage on all four sides, although access to/from the trail is prevented by a six-foot high berm

containing contaminated soil abutting the building along most of its trailside facade. Apartments are accessed through a lobby and elevators on Chestnut Street. Service is located at a single point along Somerset Street contiguous with the apartment building cores. The unobstructed retail space west of these core functions allows the greatest possible flexibility to attract the variety and high quality of merchants who will make the project a success and contribute to the pedestrian desirability of Somerset Street.

midtownFour is of similar construction to midtownOne and Three; five stories of residential development over one story of retail space. This building will have 100 studio or loft apartment units with a lobby entry facing Elm Street near the trail. Retail frontage will face Elm Street and the trail. The buildings service entrance will be located to the east adjacent to the building's entrance. Move in/move out, delivery and trash/recycling vehicles will use the pull-off provided on Elm St for convenient access to these entrances. This building's façade will also be composed of a combination of enameled metal panels and cement fire boards constructed as an energy efficient "rain-screen" enclosure.

In total the project will consist of approximately 87,200 square feet of retail space in the four buildings, approximately 440 new apartments in three building to provide housing for 500-600 residents, and about 800 off-street parking spaces, providing one space per dwelling unit and four spaces per thousand square feet of retail space. The development of the midtown buildings will provide essentially continuous active street frontage along Somerset, Chestnut, Pearl, and Elm Streets and along the Bayside Trail. The height of the residential buildings at 72 feet, and of the parking garage at 92 feet, are substantially lower than the 105 and 125 foot heights allowed by the B-7 height overlay for these parcels. The design of the buildings will be in keeping with planning guidelines for the district. This project will bring great enhancement to Somerset Street, provide residential development immediately adjacent and overlooking the Bayside Trail, and will provide the catalyst for a walkable retail district from Whole Foods to Trader Joe's in the spirit of Portland's other great streets.

Prepared by

David Hancock
CBT Architects



midtown
Portland, ME

Site perspective view

A1 16 October 2014 cbt



**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 1st 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 1st 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

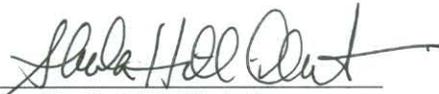
for Buyer's future use in accordance with the terms and conditions of the Parking Garage Agreement, throughout the drawdown by Buyer.

- 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
to 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT
ASSIGNMENT AND ASSUMPTION AGREEMENT TO FEDEQ
(TO BE PROVIDED)

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 1st 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

EXHIBIT B
TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT

Amended Subdivision/Recording Plat by Owen Haskell last revised December 20, 2013

EXHIBIT C
TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT
Cost Sharing Arrangement for Somerset Street Improvements

**Agreement by and between
FEDEQ DV001 and City of Portland
on Costs For Off-Site Improvements
Improving Somerset Street,
To be Partially Funded by City of Portland**

THIS AGREEMENT dated Oct. 14, 2014 is made by and between THE CITY OF PORTLAND, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 (the "City" or "Seller"), and FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("FEDEQ" or "Buyer").

RECITALS

WHEREAS, an Agreement for the purchase and sale of real estate (the "P&S Agreement") has been made between the City and FEDEQ Apartments, LLC, a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137, assignee of said P&S Agreement from 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 FEDEQ Apartments LLC has recently assigned its rights in and to the P&S Agreement to FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("FEDEQ");

WHEREAS, related to, and benefiting the development planned by Buyer on the real property which is the subject of the P&S Agreement, and integral thereto, are certain improvements detailed herein to the adjacent public way known as Somerset Street, and more specifically for the portion thereof between Pearl Street and Elm Street (the "Project"), which both the City and Buyer wish to see made;

WHEREAS, the estimated total costs of the Project are \$4,000,000; and

WHEREAS, the City and the Buyer are willing to share these costs, as set out herein;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Project and Scope and Cost and Timeline/Schedule:** FEDEQ and the City have jointly agreed to the scope of Project which work is more specifically described in Attachment A attached hereto with an estimated total project cost of \$4,000,000 (the "Total Project Cost"). FEDEQ and the City have jointly agreed to a schedule or timeline for the Project, which is attached hereto as Attachment B. The term "Total Project Cost" shall mean the actual Project cost as established by FEDEQ and the City following receipt of a guaranteed maximum cost construction contract acceptable to the City and FEDEQ.
2. **Cost Sharing and Conditions Precedent:** Subject to the terms hereof, the City will fund two-thirds (2/3) of the Total Project Cost, and FEDEQ will fund one-third (1/3) of the Total Project Cost.

FEDEQ's agreement to fund said one-third (1/3) of the Total Project Cost is contingent upon: FEDEQ (or assigns) closing on acquisition of the real estate which is subject matter of the P&S Agreement.

In the event FEDEQ (or assigns) fails to close on the acquisition of the real estate which is the subject matter of the P&S Agreement, FEDEQ shall have the right to cancel and terminate this Agreement by giving written notice of such cancellation and termination to the City, and upon the giving of such notice, this Agreement shall be terminated and FEDEQ shall be relieved of all further obligations hereunder.

Prior to the issuance of a Building Permit for the Project, FEDEQ shall provide the City with evidence of its financial resources, in the amount of at least one-third of the Total Project Cost, available and dedicated to the costs of this Project, in a form reasonably acceptable to the City's Director of Finance, which may include a commitment from a commercial lender to fund requisitions for payment of Project costs.

More than likely, the actual total project cost will not be precisely the amount of the Total Project Cost stated above. Therefore, the parties agree:

- (a) The contract(s) for the Project will not be 'mixed' with any other work needed by either party. Notwithstanding the foregoing, nothing herein shall prevent FEDEQ from entering into contracts with the same contractor for construction of other portions of the midtown project to be coordinated with the work on the Project, provided, however, that costs must be allocable to the Project and the midtown project.

- (b) In order to address both parties' concerns that the Total Project Costs could exceed the estimate stated above, the City and, FEDEQ will meet early in the development and design of this project to jointly and cooperatively manage said project's design, staging, procurement costs and construction costs; and said parties will continue to meet as reasonably necessary for this same purpose, and will work collaboratively to control procurement and construction costs. And in particular, before FEDEQ executes contracts for the construction of the Project, the parties shall meet and agree on the scope and cost of those contracts, including amounts for project supervision and construction management, general conditions, building permit fees, bonding costs, insurance and including an

appropriate construction contingency amount. All such construction contracts shall be in the form of guaranteed maximum cost contracts.

- (c) Any changes to the Project cost over and above any established contingency included in the Total Project Cost during construction shall require mutual review and agreement in writing, which shall not be unreasonably withheld or delayed.

3. Procedures for Making Disbursements (Payments). With respect to all requisitions for disbursements of the City's share of Total Project Costs, the City and FEDEQ agree as follows:

- a. FEDEQ 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.
- b. Requisitions shall be submitted by FEDEQ 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 FEDEQ as necessary to remain accurate.
- d. City shall make disbursements to FEDEQ 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.

4. **Project Administration and Supervision:** FEDEQ will be responsible for procuring the construction contracts and for providing for the owner's administration for the Project, consistent with the scope of Project contained in Attachment A, hereto, and upon the Timeline attached hereto as Attachment B. All FEDEQ's costs for procurement of construction contracts, administration or the like shall not be shared by the City, nor shall the City be required to share in any other type of internal costs of FEDEQ. Notwithstanding the foregoing, the items described in section 2(b) above shall be payable as part of the Total Project Costs.

The City of Portland will monitor and inspect the work of the Project, including for compliance with City Rules and Ordinances. The City shall have the right to suspend work on the Project as it reasonably deems necessary, to provide for such compliance, and for compliance with the Scope of Work in Attachment A. The City's monitoring and inspection will be collaborative with FEDEQ.

The Contracts for the work of the Project between FEDEQ and its vendors and contractors shall contain these two provisions:

Prior to the execution of this Agreement, the **CONTRACTOR** will procure and maintain Automobile Insurance and General Public Liability Insurance coverage and coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, naming the **CITY OF PORTLAND** as an additional insured thereon, and also Workers' Compensation Insurance coverage. With respect to the Liability Insurance, the **CONTRACTOR** will provide the **CITY OF PORTLAND** a certificate of insurance evidencing such coverage, in this way: certificate must say either: A) "the policy has been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Extension Endorsement, by which the City of Portland is automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr," or the like, or which merely states the City of Portland is named as an Additional Insured, will not be acceptable. The **CONTRACTOR** shall furnish the **CITY OF PORTLAND** and thereafter maintain certificates evidencing all such coverages, which certificates shall provide for thirty (30) days' notice to the **CITY OF PORTLAND** of termination of insurance from insurance company or agent.

The **CONTRACTOR** shall furnish to FEDEQ and to the **CITY OF PORTLAND**, upon execution of the Contract, a Contract Performance Bond and a Contract Labor and Materials Payment Bond each for the full amount of the Contract and issued by a surety

company or surety companies authorized to do business in the State of Maine and approved by the **CITY OF PORTLAND**. The Bonds shall remain in effect for one year after final acceptance of the Work, and protect both FEDEQ and **CITY OF PORTLAND** for at least one year of warranty of the Work hereunder, and also shall insure settlement of claims for the payment of all bills for labor, materials and equipment. The bonds described in this section shall be deemed to satisfy the performance guaranty requirements for the Project as required by section 14-501 of the City of Portland Code of Ordinances, and no further performance guaranty shall be required.

5. **Requirements related to Funding Sources.** FEDEQ, 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 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.
6. **Entire Agreement.** This Agreement (i) constitutes the entire agreement between the parties hereto with respect to the Project and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Project; (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 Agreement shall not confer any rights or remedies upon any third-party

other than the parties to this Agreement and their respective successors and permitted assigns.

7. **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 to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, with a copy to, the Director of Economic Development, facsimile 207-756-8217, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), and to FEDEQ, at the address recited above, with a copy to The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931.
8. **Severability.** In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

IN WITNESS WHEREOF, the City and FEDEQ, by their representatives duly authorized, have caused this instrument to be executed as of 008.14, 2014.

CITY OF PORTLAND

By 
Sheila Hill-Christian, Acting City Manager

FEDEQ DV001, LLC

By 
Jonathan Cox
Its: Manager

By 
Suzanne Knight, Acting Finance Director

By 
Corporation Counsel Attorney



Budget Site Construction Cost Estimate Peer Review

Midtown - Somerset Street Improvements

12/5/2013

Description	Site Development Costs		Somerset Street Costs		Total Costs	
	Total	% of Total	Total	% of Total	Total	% of Total
Item (a) Basis of Design:						
Site Demolition	\$ -	0.0%	\$ 28,055	2.1%	\$ 28,055	0.8%
Preliminary Site Work	\$ -	0.0%	\$ 61,241	4.6%	\$ 61,241	1.8%
Earthwork	\$ -	0.0%	\$ 32,447	2.4%	\$ 32,447	0.9%
Dewatering	\$ -	0.0%	\$ 10,000	0.8%	\$ 10,000	0.3%
Storm Drainage (See Note 1)	\$ 202,470	9.7%	\$ 1,260	0.1%	\$ 203,730	6.0%
Sanitary Systems	\$ 20,596	1.0%	\$ -	0.0%	\$ 20,596	0.6%
Water Systems	\$ 118,118	5.7%	\$ 1,200	0.1%	\$ 119,318	3.5%
Portland Water District - Water Service Fees	\$ 15,000	0.7%	\$ -	0.0%	\$ 15,000	0.4%
Misc Site Utilities (See Note 2)	\$ 175,933	8.4%	\$ 240,948	18.1%	\$ 416,881	12.2%
Unutil - Gas Utility Fees (Allowance)	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Central Maine Power - Phase 1 Electrical Utility Fees	\$ 268,000	12.8%	\$ 332,000	24.9%	\$ 600,000	17.5%
Central Maine Power - Phase 2 Electrical Utility Fees	\$ 317,000	15.2%	\$ 83,000	6.2%	\$ 400,000	11.7%
Time Warner - Communication Utility Fees (Allowance)	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Fairpoint - Communication Utility Fees	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Roads/Walks (See Note 3)	\$ 99,463	4.8%	\$ 540,113	40.5%	\$ 639,576	18.7%
Site Improvements (See Note 4)	\$ 550,623	26.4%	\$ 2,398	0.2%	\$ 553,021	16.2%
Concrete (See Note 4)	\$ 161,666	7.7%	\$ -	0.0%	\$ 161,666	4.7%
Misc Metals (See Note 4)	\$ 40,991	2.0%	\$ -	0.0%	\$ 40,991	1.2%
Electrical Site (See Note 5)	\$ 116,953	5.6%	\$ -	0.0%	\$ 116,953	3.4%
Item (a) Basis of Design Sub-Total	\$ 2,086,813	100%	\$ 1,332,662	100%	\$ 3,419,475	100%
Estimate Adjustment and Indirect Costs:						
Cost Estimate Adjustments (See W&C 11/15/2013 Memo)	\$ 11,900	3.1%	\$ 40,000	14.3%	\$ 51,900	7.8%
Contractor General Conditions (See Note 6)	\$ 166,945	43.1%	\$ 106,613	38.1%	\$ 273,558	41.0%
Contractor OH&P, Insurance, Bonds (See Note 7)	\$ 208,681	53.8%	\$ 133,266	47.6%	\$ 341,948	51.2%
Estimate Adjustment and Indirect Costs	\$ 387,526	100.0%	\$ 279,879	100.0%	\$ 667,406	100.0%
Somerset Street Improvements Total (Rounded)	\$ 2,474,000		\$ 1,613,000		\$ 4,087,000	

Notes:

- 1) Cost segregation assumes Site Development Costs include off-site drainage piping/structures required for on-site stormwater treatment system.
 - a) Cost to raise existing storm drainage manholes/catch basins is included in the Somerset Street Costs.
- 2) Cost segregation assumes Site Development Costs will include electrical trenching, backfill and precast concrete light pole bases.
 - a) Infrastructure and utility company fees to relocate overhead electrical/communication utilities are shared based on scope of work.
- 3) Cost segregation assumes Site Development Costs will include new and existing granite curbing along Somerset, Elm, Chestnut and Pearl Streets.
 - a) Cost for approximately 1,080 CY of lightweight concrete fill under new sidewalks is included in the Site Development Costs.
 - b) Cost to remove and re-set approximately 1,120 LF of existing granite curb on the southeast side is included in the Somerset Street Costs.
- 4) Cost segregation assumes Site Development Costs will include all brick pavers, concrete ramps/planters/stairs/rails and trees.
- 5) Cost segregation assumes Site Development Costs will include all site lighting concrete bases, light poles, luminaires and wiring.
- 6) Contractor General Conditions (not included in PC estimate) may range in the amount of 8-10% depending on schedule and concurrent activities.
- 7) Contractor OH&P, Insurance, Bonds and Contingency (not included in PC estimate) may range in the amount of 10-12%.
- 8) Allowance has been included for electrical utility company fees for relocating existing overhead electrical services to underground.
 - a) CMP Phase 1 cost assumes Site Development Costs include (1)-2000 & (1)-500 KVA pad mount transformers, 500 CU cable and junction pole.
 - b) CMP Phase 1 cost assumes Somerset Street Costs include (1)-1000 KVA submersible transformer, 500 CU cable and riser poles.
 - c) CMP Phase 2 cost assumes Site Development Costs include (3)-2000 & (1)-500 KVA pad mount transformers and 500 CU cable.
 - d) CMP Phase 2 cost assumes Somerset Street Costs include 500 CU primary cable at Elm Street.
- 9) Allowance has been included for water utility company fees for new Site Development fire and domestic water services.
- 10) No allowances have been included for gas, telephone and cable utility company fees since there should be no charge for this work.
- 11) No allowances have been included for unsuitable soils or contaminated groundwater treatment/disposal.
- 12) No allowances have not been included for offsite improvements or traffic control signalization.

ATTACHMENT B TO COST SHARING ARRANGEMENT
TIMELINE FOR PROJECT -
TO BE PROVIDED

EXHIBIT D
TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT

Midtown Phase I Plan” last revised November 22, 2013 and prepared for The Federated
Companies

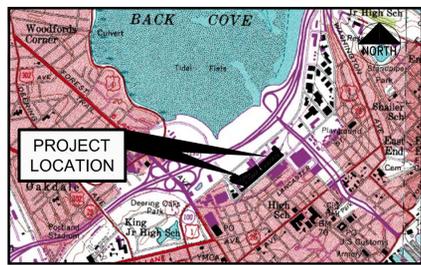


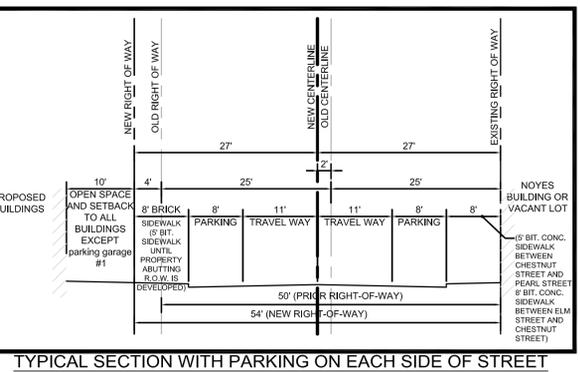
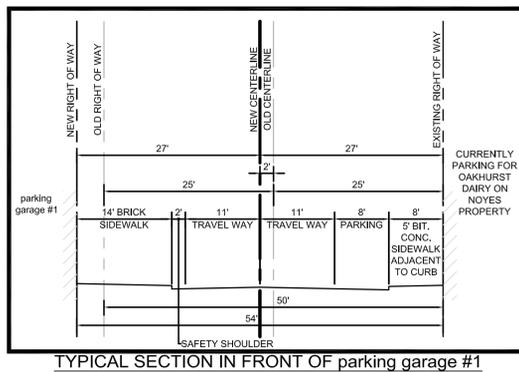
Exhibit 2v

NOTE 6:
Trees and the granite tree wells and loam will not be installed.

NOTE 5:
ADA ramps and tactile warning strips.

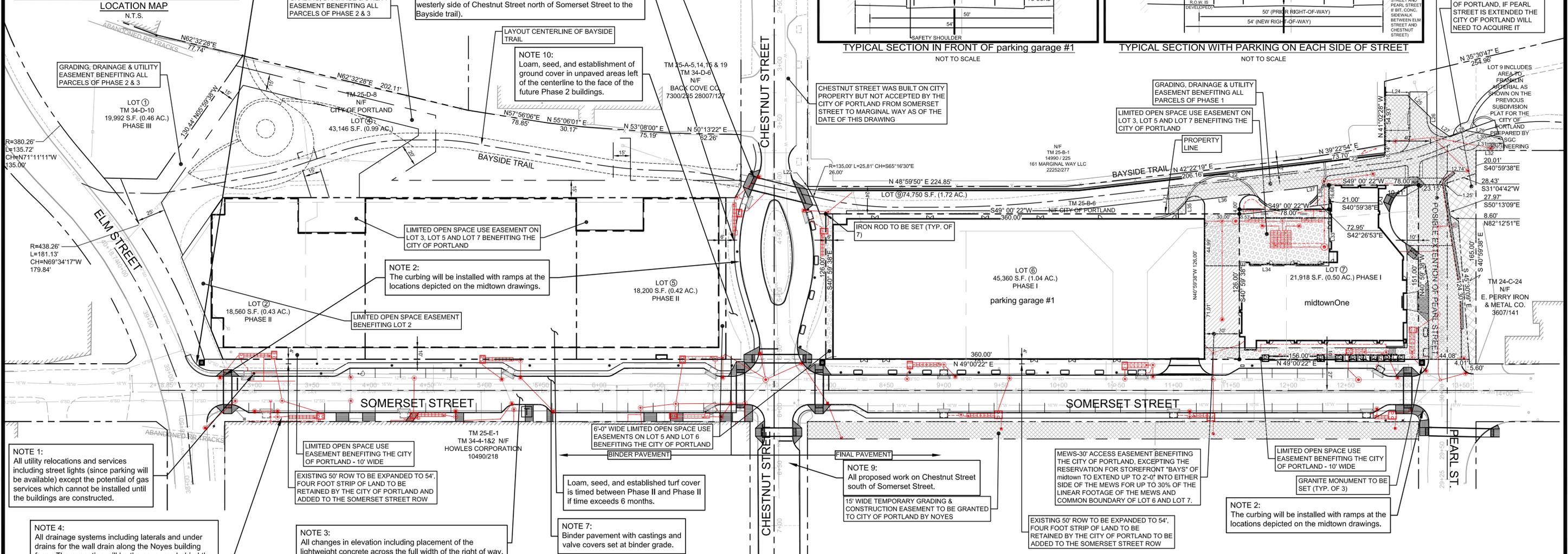
NOTE 8:
A 5 foot wide bituminous concrete walk will be constructed along Somerset Street at 19.42 to 24.42 feet left (i.e. adjacent to the curb in areas of parking) between Elm and Chestnut Street. A five foot wide bituminous sidewalk will also be constructed along the westerly side of Chestnut Street north of Somerset Street to the Bayside trail.

NOTE 10:
Loam, seed, and establishment of ground cover in unpaved areas left of the centerline to the face of the future Phase 2 buildings.



GRADING, DRAINAGE & UTILITY EASEMENT TO BENEFIT ALL PARCELS OF PHASE 1

THIS PORTION OF ROW NOT CONTROLLED BY THE CITY OF PORTLAND, IF PEARL STREET IS EXTENDED THE CITY OF PORTLAND WILL NEED TO ACQUIRE IT



NOTE 1:
All utility relocations and services including street lights (since parking will be available) except the potential of gas services which cannot be installed until the buildings are constructed.

NOTE 4:
All drainage systems including laterals and under drains for the wall drain along the Noyes building face. The exception will be the scuppers behind the ramps and landings at the northeast corner of the Elm and Somerset Street intersection. This work will include all water quality measures proposed for the midtown project on Somerset and Chestnut Streets.

NOTE 2:
The curbing will be installed with ramps at the locations depicted on the midtown drawings.

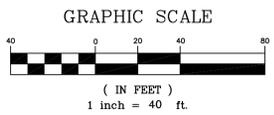
NOTE 3:
All changes in elevation including placement of the lightweight concrete across the full width of the right of way.

NOTE 7:
Binder pavement with castings and valve covers set at binder grade.

NOTE 9:
All proposed work on Chestnut Street south of Somerset Street.

NOTE 2:
The curbing will be installed with ramps at the locations depicted on the midtown drawings.

LINE	BEARING	DISTANCE (FEET)
L21	N42°22'19"E	117.46
L22	N39°22'54"E	72.27
L23	N40°59'38"W	10.14
L24	N49°00'22"E	20.02
L25	S87°16'35"E	27.70
L26	S40°59'38"E	5.00
L27	N84°05'10"E	20.69
L28	N28°31'08"E	15.21
L29	N59°22'54"E	31.41
L30	S61°28'51"E	5.00
L31	S40°59'38"E	6.82
L32	S49°00'22"W	24.24
L33	N40°59'38"W	48.99
L34	S49°00'22"W	108.00
L35	S41°00'32"E	10.72
L36	S42°22'19"W	104.49
L37	S39°22'54"W	10.86
L38	N40°59'38"W	17.42



NOTES:

- THIS DRAWING SHOWS THE RESIDENTIAL SUBDIVISION OF LOT 7. REFER TO THE AMENDED SUBDIVISION/RECORDING PLAN ON SOMERSET STREET, PORTLAND, MAINE MADE FOR FAY, SPOFFORD & THORNDIKE BY OWEN HASKELL, INC. LAST REVISED 12.20.2013.
- ALL WORK DEPICTED ON THE MIDTOWN DRAWINGS WHICH IS NORTH OF THE SOMERSET STREET RIGHT OF WAY AND EAST OF CHESTNUT STREET IS TO BE COMPLETED AS PART OF PHASE 1 INCLUDING LANDSCAPING, HARDSCAPE, BIKE RACKS, AND STREET FURNISHINGS.
- ALL LANDSCAPING SHOWN ON MP-1.0 WILL BE INSTALLED AS PART OF PHASE 1. REFER TO THIS DRAWING.
- WORK WEST OF SOMERSET STREET AND THE CHESTNUT STREET CENTERLINE REPRESENT PARTIAL RAISING AND RECONSTRUCTION OF THE STREET. PHASE 2 AND PHASE 3 OF THE MIDTOWN PROJECT WILL COMPLETE IMPROVEMENTS WITHIN THE RIGHT-OF-WAY OF SOMERSET AND WESTERLY SIDE OF CHESTNUT AND ELM STREET.
- IF THE CITY RECONSTRUCTS AND EXTENDS PEARL STREET IN THE FUTURE THE TURNOUT AT THE ENTRANCE TO MIDTOWNONE SHALL BE ELIMINATED AND A STANDARD CURBSIDE DROP-OFF AREA SHALL BE IMPLEMENTED.
- ALL UTILITY RELOCATIONS AND SERVICES INCLUDING STREET LIGHTS ALONG SOMERSET STREET AND CHESTNUT STREET WILL BE CONSTRUCTED DURING PHASE 1. THE FUTURE GAS SERVICES CANNOT BE INSTALLED UNTIL THE BUILDINGS ARE CONSTRUCTED.
- STREET LIGHTS WILL BE INSTALLED IN FRONT OF PHASE II BUILDINGS EVEN IF NOT SHOWN ON MP-1.0.
- CONTOURS ARE SHOWN ON SEPARATE DRAWINGS WHICH ACCOMPANY THE MIDTOWN MASTER PLAN AND LEVEL III SITE PLAN DRAWINGS.
- THE MATERIALS FOR CONSTRUCTION OF THE IMPROVEMENTS IN THE PUBLIC RIGHT OF WAY WILL INCLUDE THE MATERIALS SHOWN ON DRAWING C-7.0 AND WILL MEET THE CITY OF PORTLAND TECHNICAL MANUAL AND MDT STANDARD SPECIFICATIONS. WHERE A DIFFERING MATERIAL IS SPECIFIED, THE MORE STRINGENT SHALL BE USED.
- UTILITIES, LOCATIONS, SIZES, AND MATERIALS ARE SPECIFIED ON DRAWINGS C-4.0 TO C-4.4B AND PROFILES C-9.0 TO C-9.3 OF THE ACCOMPANYING LEVEL III SITE PLANS.
- THE SITE IS NOT IN AN AREA CURRENTLY DESIGNATED AS A FLOOD HAZARD ZONE.
- STORM DRAIN INFORMATION AND SCHEDULES ARE PROVIDED ON DRAWINGS C-3.0 TO C-3.17 OF THE ACCOMPANYING MIDTOWN MASTER PLAN AND LEVEL III SITE PLANS.

CONSTRUCTION OF SOMERSET STREET BETWEEN AND INCLUDING WORK WESTERLY OF THE WESTERLY CURB LINE OF CHESTNUT STREET WILL INCLUDE THE FOLLOWING WORK:

- ALL UTILITY RELOCATIONS AND SERVICES INCLUDING STREET LIGHTS (SINCE PARKING WILL BE AVAILABLE) EXCEPT THE POTENTIAL OF GAS SERVICES WHICH CANNOT BE INSTALLED UNTIL THE BUILDINGS ARE CONSTRUCTED.
- THE CURBING WILL BE INSTALLED WITH RAMPS AT THE LOCATIONS DEPICTED ON THE MIDTOWN DRAWINGS.
- ALL CHANGES IN ELEVATION INCLUDING PLACEMENT OF THE LIGHTWEIGHT CONCRETE ACROSS THE FULL WIDTH OF THE RIGHT OF WAY.
- ALL DRAINAGE SYSTEMS INCLUDING LATERALS AND UNDER DRAINS FOR THE WALL DRAIN ALONG THE NOYES BUILDING FACE. THE EXCEPTION WILL BE THE SCUPPERS BEHIND THE RAMPS AND LANDINGS AT THE NORTHEAST CORNER OF THE ELM AND SOMERSET STREET INTERSECTION. THIS WORK WILL INCLUDE ALL WATER QUALITY MEASURES PROPOSED FOR THE MIDTOWN PROJECT ON SOMERSET AND CHESTNUT STREETS.
- ADA RAMPS AND TACTILE WARNING STRIPS.
- TREES AND THE GRANITE TREE WELL AND LOAM WILL NOT BE INSTALLED.
- BINDER PAVEMENT WITH CASTINGS AND VALVE COVERS SET AT BINDER GRADE.
- A 5 FOOT WIDE BITUMINOUS CONCRETE WALK WILL BE CONSTRUCTED ALONG SOMERSET STREET AT 19.42 TO 24.42 FEET LEFT (I.E. ADJACENT TO THE CURB IN AREAS OF PARKING) BETWEEN ELM AND CHESTNUT STREET. A FIVE FOOT WIDE BITUMINOUS SIDEWALK WILL ALSO BE CONSTRUCTED ALONG THE WESTERLY SIDE OF CHESTNUT STREET NORTH OF SOMERSET STREET TO THE BAYSIDE TRAIL.
- ALL PROPOSED WORK ON CHESTNUT STREET SOUTH OF SOMERSET STREET.
- LOAM, SEED, AND ESTABLISHMENT OF GROUND COVER IN UNPAVED AREAS LEFT OF THE CENTERLINE TO THE FACE OF THE FUTURE PHASE 2 BUILDINGS.

LIST OF THE WORK WHICH WILL BE POSTPONED UNTIL THE CONSTRUCTION OF PHASE 2 AND 3 OF MIDTOWN (I.E. WORK THAT WILL NOT BE CONSTRUCTED DURING PHASE 1):

- THE RAMPS, PLANTERS, STEPS, AND LANDINGS AT THE NORTHEAST CORNER OF SOMERSET AND ELM STREET;
- THE GRINDING, SHIM AND OVERLAY ON ELM STREET TO MATCH THE NEW SOMERSET STREET PROFILE WITH APPROPRIATE TAPERS;
- THE FINAL PAVEMENT AND SETTING CASTINGS AND VALVE COVERS AT FINISH PAVEMENT GRADE BETWEEN ELM AND CHESTNUT STREET;
- REMOVAL OF THE BITUMINOUS SIDEWALKS ON THE NORTH SIDE OF SOMERSET STREET BETWEEN ELM AND CHESTNUT STREET;
- REMOVAL OF THE BITUMINOUS SIDEWALK ON THE WESTERLY SIDE OF CHESTNUT STREET FOR SOMERSET STREET TO THE TRAIL.
- THE BRICK SIDEWALKS, RAISED PLANTER, CURBING, TREES, AND HARDSCAPE IMPROVEMENTS; AND
- GAS SERVICES TO THE PHASES 2 AND 3 BUILDINGS.

APPROVAL - CITY OF PORTLAND PLANNING BOARD

DATE _____
CHAIRPERSON _____

EXHIBIT D

CORPORATE GUARANTY AGREEMENT

^{15th} THIS CORPORATE GUARANTY AGREEMENT, (this "Guaranty"), is made as of the day of Oct., 2012, by LEGACY PARK APARTMENTS, LLC, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131 ("Guarantor"), and, jointly and severally, by THE FEDERATED COMPANIES LLC, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, see below and THE CITY OF PORTLAND, MAINE, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101, ("City").

WHEREAS Guarantor 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"), as amended, 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 Apartments, LLC from funds being provided to the City by the U.S. Department of Housing and Urban Development, ("HUD Funds"), toward the expense of the design, development and construction of a garage, with no fewer than 700 parking spaces on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage"), pursuant to the terms of a Parking Garage Contribution and Funding Agreement of even or near date hereto between City and Guarantor. ("Parking Garage Agreement").

WHEREAS City, in order to induce Guarantor to enter into this Guaranty and a Job Creation Agreement, hereby agrees to pay the City Grant Funds to Guarantor, Legacy Park Apartments, LLC or its nominee ("Receiving Entity") in accordance with the terms of the Parking Garage Agreement.

WHEREAS Guarantor, contingent on receiving the City Grant Funds, hereby makes the following Guaranty, subject to the conditions contained herein.

NOW THEREFORE in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City hereby agrees to pay the City Grant Funds to the Receiving Entity and Guarantor guarantees to City that:

1. Guaranty: Guarantor shall construct and substantially complete Phase I of the Project, as more particularly described in the attached Phase I Site Plan, Design Guidelines, and Specifications Sheet, ("Exhibit 4," parts 1, 2, and 3), within three (3) years after the date of on which a total of \$1,000,000.00 in City Grant Funds has been requisitioned by the Receiving Entity and disbursed by the City to the Receiving Entity ("Guaranty Deadline"). The annual penalty for not meeting the Guaranty Deadline shall be limited to Guarantor paying to City, on an annual basis for a maximum term of 17 years, the annual difference between the actual tax revenue realized from Phase I, as constructed, and the Phase I tax revenue the City would have received had Phase I been substantially completed (The "Phase I Projected Value") by the Guaranty Deadline. The Phase I Projected Value shall be the City of Portland Assessor's estimated assessed value of the Phase I property (real and personal), made on the April 1 following the Guaranty Deadline, and based on the

description of Phase I in Exhibit 4, and the related specifications and design guidelines provided by the Guarantor on or about July 1, 2012. Notwithstanding anything in the forgoing, 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. Guarantor's aggregate, maximum penalty liability under this Guaranty shall not exceed \$9,007,000. Finally, regardless of when substantial completion of all buildings in Phase I 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 of substantial completion of Phase I or as of the date of the timely and valid exercise of the City's right of repurchase under Section 9 of the Parking Garage Agreement, as amended. For purposes of this Guaranty, "substantial completion" is deemed to mean a structure having received a Certificate of Occupancy from the City of Portland, and the complete 'fit-out' of all commercial portions of Phase I.

The rights and obligations under the Agreement between the parties hereto, and under the Parking Garage Contribution Agreement of near or even date, are cumulative and in addition to the rights described herein.

2. Warranties and Representations: In connection with the foregoing, City and Guarantor hereby make the following warranties and representations:

(a) The financial liability limitations of this Guaranty are intended by the parties to supersede and amend the defense and indemnification obligations of the Buyer/Guarantor to City in regard to the City Grant under Section 11 of the Agreement. Similarly, the provisions of the Job Creation Agreement are intended by the parties to supersede and amend the job creation duties and obligations of the Buyer/Guarantor to City under Section 11 of the Agreement. Accordingly, this Guaranty is contingent upon the City paying the City Grant Funds to Guarantor in accordance with the terms of the Parking Garage Agreement, irrespective of the source of funds utilized by the City for such City Grant Funds.

(b) Apart from the express modifications stated in this Guaranty, the Parking Garage Agreement and Job Creation Agreement, the Agreement for the purchase of the Land, as assigned and amended, remains in full force and effect and has not been otherwise modified, amended or terminated.

(c) Attached as Exhibit 1 to this Guaranty is a true, accurate and complete copy of the Purchase and Sale Agreement and First Amendment thereto.

(d) Attached as Exhibit 2 to this Guaranty is a true, accurate and complete copy of the Assignment.

(e) Attached to Exhibit 3 to this Guaranty is a true, accurate and complete copy of the Parking Garage Agreement.

(f) Attached as Exhibit 4 to this Guaranty is the, Phase I Site Plan, Design Guidelines, and Specifications Sheet.

(g) Attached as Exhibit 5 to this Guaranty is a true, accurate and complete copy of the Job Creation Agreement.

(h) Neither the Guarantor, nor the City is in default of the Agreement.

3. Successors and Assigns and Enforcement: This Guaranty shall be binding upon and inure to the benefit of the Guarantor's respective successors and assigns. Guarantor pledges that:

(a) it will not assign its rights hereunder without the City's consent, and only to a related entity;

(b) it will permit the City's Corporation Counsel, Manager, Director of Economic Development and Finance Director to review balance sheet, to satisfy themselves of the strong solvency and net worth of both the Guarantor and The Federated Companies LLC;

(c) it will not substantially change such strong solvency and net worth without notifying the City of such changes;

(d) it will not alter its corporate structure or transfer substantially all its assets without providing the City a replacement Guaranty from another entity with strong solvency and net worth, or in the alternative, a letter of credit for the obligations hereunder; and

(e) In any legal proceeding with respect to the obligations created by this Guaranty, all parties hereto waive jury trial, agree that the Maine Superior Court shall have exclusive jurisdiction, that the substantive and choice of law used shall be Maine law and that the prevailing party shall be awarded the reasonable attorneys' fees and costs incurred in regard to any legal proceeding arising out of the obligations created by this Guaranty, including, should the City prevail, a reasonable hourly fee for the services of the City's employee attorneys, that is, its Corporation Counsel.

(f) This Agreement and the performance hereof by Guarantor will not contravene any law, judgment, order, injunction, decree or any contractual restriction or arrangement binding on Guarantor, at the time execution hereof. All parties hereto acknowledge that this Agreement is a legally enforceable instrument and the obligations stated herein are likewise legally enforceable, and that at the time of execution hereof they have no reason to believe otherwise.

4. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

5. Amendments: This Guaranty may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

(Signature page follows on p. 4.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of October 19, 2012.

LEGACY PARK APARTMENTS LLC, a Florida limited liability company

By: 
Jonathan Cox, Manager



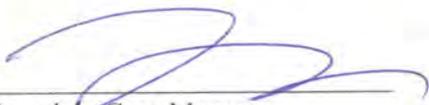

CITY OF PORTLAND

By: 
Mark H. Rees
City Manager

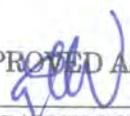
JOINDER

THE FEDERATED COMPANIES LLC, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, hereby joins in this Guaranty, agreeing that it is jointly and severally liable for, and hereby makes, the same guaranty and other obligations as described in the paragraphs numbered 1, 2 and 3 above, subject to the terms and conditions stated therein.

THE FEDERATED COMPANIES, LLC, a Florida limited liability company

By: 
Jonathan Cox, Manager


Finance Director
City of Portland, Maine

APPROVED AS TO FORM:

CORPORATION COUNSEL'S OFFICE

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

EXHIBIT 1
[P&S]

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

EXHIBIT 2

[Assignment to Legacy Park]

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT, ("Amendment"), is entered into as of Oct. 15, 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 04101 ("Seller") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company with a place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, or its nominee or assignee ("Buyer"). (Seller and Buyer are also hereinafter referred to individually as "party" or, collectively, "parties").

WHEREAS Buyer is the assignee, by virtue of an Assignment and Assumption Agreement, ("Assignment"), effective June 27, 2011 of a Purchase and Sale Agreement, effective June 23, 2011, between The Federated Companies LLC and Seller ("Agreement"). Assignment and Agreement are attached hereto and incorporated herein by reference, collectively, as Exhibit "A".

WHEREAS Section 11 of the Agreement requires that the Seller and Buyer enter into a formal agreement stipulating to the terms and conditions of the Seller's contribution of HUD Funds during the Inspection Period.

WHEREAS Section 11 of the Agreement provides that the Inspection Date shall be extended until the parties have reached agreement on the use of HUD Funds for the garage.

NOW THEREFORE for good and valuable consideration, including the mutual promises made below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree that the Agreement is amended as follows:

A. Section 4 of the Agreement is amended by deletion of the original text of Paragraph 2 and insertion of the following text in its place:

"The term "Inspection Date" means midnight on the sixtieth (60th) day following full execution by the parties and HUD approval, if HUD approval is required, of the formal agreement stipulating the terms and conditions of the HUD Funds contribution identified under Section 11 of this Agreement."

B. Section 5 of the Agreement is amended by deletion of the original text and insertion of the following in its place:

C. Section 5. **Use Restrictions and Environmental Matters.** Buyer understands that lots 1, 2, 3, 5 and a portions of lot 6 and a portion of lot 9 were encumbered with deeds restrictions, including but not limited to a restriction on residential uses on a portion of the Property. Pan Am/Guilford, the holder of those restrictions has released these restrictions, and before the start of construction by Buyer the Seller will secure environmental liability insurance on the Railyard to protect Pan

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

Am/Guilford, which was a condition of its releasing these restrictions.

The Seller, through its consultant and others has undertaken a number of environmental studies which are referenced in Exhibit B to this Amendment. The Maine Department of Environmental Protection (hereinafter "DEP") has issued one or more letter(s) confirming their approval of a Voluntary Response Action Program ("VRAP") Plan for the former rail yard property which is contained within lots 1, 2, 3, 5 and a portion of lot 6 and a portion of lot 9 (hereinafter "Railyard"). The VRAP includes a remediation plan approved on the Railyard property by the DEP. As part of the development plan for the Railyard property, Buyer is responsible for complying with the remediation VRAP Plan for the Property. To the extent required by law, the approval of the U.S. Environmental Protection Agency shall also be obtained for both of these VRAP Plans.

The Seller has commenced review of the environmental conditions for on the portion of Property which is contained within a portion of Lot 6 and Lots 7, 8 and a portion of Lot 9, (hereinafter "Scrapyard"). The Seller will secure a VRAP for the Scrapyard (subject to Buyer's input and approval) and Buyer shall undertake remediation in accordance with the VRAP. The Seller will reimburse Buyer for its first Fifty Thousand Dollars (\$50,000.00) of actual expense for such remediation, and all other costs of remediation, which shall fully comply with such VRAP, shall be paid by the Buyer from City Grant Funds received from City. The Seller will work together with the Buyer to ensure the timely remediation in accordance with the Buyer's development plans.

Although Buyer is under no obligation to obtain such environmental liability insurance, should Buyer, at Buyer's sole election, secure environmental liability insurance on the Scrapyard and/or any other portion of the Property, Buyer will use best efforts to secure for the Seller the option to obtain coverage under such insurance policy(ies) as an Additional Insured, by endorsement in any other form; provided, however, that any additional cost for such additional coverage shall be paid by the Seller and shall not relieve Seller of the duty of providing the environmental liability insurance required to provide on the Railyard for the benefit of PanAm/Guilford described above.

D. Section 6 of the Agreement is amended by adding, at the end of the existing first sentence, "including but not limited to Site Plan approval from the City of Portland, Subdivision Approval Amendment(s) from the City of Portland, and any amendments to the Land Use Code of the City of Portland."

E. The first sentence of Section 11 of the Agreement is amended by deleting the existing text, and replacing it with the following:

Contingent on the full disbursement of \$9,007,000.00 in City Grant Funds from Seller to Buyer as provided in the Parking Garage Contribution Agreement, and as a condition of this sales transaction, the Buyer will construct, at its expense, a parking garage on (approximately, as the exact location is not yet set), a portion of Lot 5 and all

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

of Lots 6 and 7 and a portion of Lot 9 which shall contain not less than 700 parking spaces, ("Garage").

F. Section 11 of the Agreement is amended by deleting the original text of numbered Paragraph 4 and the insertion of the following text in its place:

"Buyer shall construct the Garage using sustainable and energy efficient construction methods, including, but not limited to, energy efficient lighting."

G. Section 15 of the Agreement is amended by deletion of the original text and insertion of the following in its place:

"Section 15. Rights of Seller to Repurchase Undeveloped Property.

(a) If three years after the substantial completion of the Garage, construction activity has not been commenced and diligently pursued on any other portions of the Property, the Seller shall have a one-time right to notify Buyer in writing of such default under this Section within thirty (30) days of such default and Buyer shall have ninety (90) days thereafter to cure such default. Provided, however, that there shall be no event of default by Buyer if the City is in default of any provision of the Parking Garage Contribution Agreement. If Seller fails to provide Buyer with written notice of default within thirty (30) days of such default, then the provisions of this Section shall be deemed waived by Seller.

(b) If the Garage does not reach substantial completion within three years after the date of closing on the purchase by Buyer of the Property related to the Garage then the Seller shall have a one-time right to notify Buyer in writing of such default under this Section within thirty (30) days of such default and Buyer shall have ninety (90) days thereafter to cure such default. If Seller fails to provide Buyer with written notice of default within thirty (30) days of such default, then the provisions of this Section shall be deemed waived by Seller.

If Buyer fails to cure a default under either 15(a) or 15(b) above, the Seller shall have the right or remedy, but not the obligation, which is described in this paragraph in concept: namely, to repurchase any or all such portions of the undeveloped Property at Buyer's Purchase Price (prorated with respect to the quantity of land, as necessary). Seller may, at the closing of such repurchase, use such consideration (that is, the prorated portion of Buyer's Purchase Price) to pay-off and remove any and all then existing mortgages, liens, assessments or other encumbrances on the undeveloped Property being repurchased. Any amounts by which such then existing mortgages, liens, assessments and other encumbrances exceed such consideration, shall continue to the obligations of Buyer, or its successors or assigns; and Buyer, its successors or assigns, shall indemnify Seller with respect to such excess amounts.

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

The City acknowledges that Legacy Park will most likely use the entire Property as collateral for a construction loan for the purpose of developing and building all portions of the project. The City therefore agrees to work on documents at the time of such financing, with Buyer 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. Buyer agrees that while this right or remedy exists as described in the paragraph above no portion of the Property will not be mortgaged for any purpose other than development and construction of the Project.

It is noted here that the 'Parking Garage Contribution Agreement' contains Seller's remedies with respect re-acquisition of the parking garage portion of the Property, and the Rights created by this Section do not pertain to that property." The rights and obligations under the Corporate Guaranty Agreement and the Parking Garage Contribution Agreement, both of near or even date are cumulative and in addition to the rights described herein.

H. The original description of the Land in the Purchase and Sale Agreement is hereby modified to include this conveyance a portion of Lot 9, and the "Exhibit ~~A~~⁸" to the Purchase and Sale Agreement is hereby replaced with the "Exhibit ~~A~~⁸ to the Purchase and Sale Agreement, [2012]" attached hereto.

Except as amended above, all other terms and conditions of the Agreement remain unaffected by this Amendment, are in full force and effect between the parties and are hereby ratified by the parties.

All terms capitalized herein shall have their original meaning as defined in the Agreement unless otherwise defined herein. In the event of conflicting provisions or language in this Amendment and the Agreement, this Amendment is intended to control.

This Amendment may be signed in counterparts, which shall be construed together as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first written above.

SELLER:

CITY OF PORTLAND

By: 

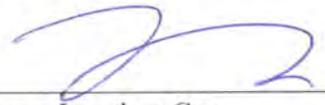
Name: Mark H. Rees

Title: City Manager

Date of Execution: 10-15-12

BUYER:

THE FEDERATED COMPANIES, LLC

By: 

Name: Jonathan Cox

Title: Manager

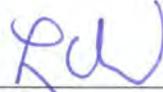
Date of Execution: 10/15/12

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc



Approved: Ellen Sanborn, Finance Director



Approved as to Form: Corp. Counsel

EXHIBIT "A"
TO FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

[insert Assignment AND P&S]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made as of the 27th day of June, 2011, by and between **THE FEDERATED COMPANIES, LLC**, a Florida limited liability company, with an address of 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 (together, the "Assignor") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company, with an address of 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 (the "Assignee").

For and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid by the Assignee to the Assignor and the mutual covenants herein contained, the receipt and sufficiency of the foregoing consideration being hereby acknowledged, the parties hereto agree as follows:

1. ASSIGNMENT: The Assignor hereby assigns, transfers, sets over and conveys to the Assignee all of the Assignor's right, title and interest in, to and under that certain Purchase and Sale Agreement by and between The City of Portland, Maine (the "City") and Assignor, with respect to certain real property described therein (the "Purchase Agreement").

2. ASSUMPTION: The Assignee does hereby assume and agree to perform all of the Assignor's obligations with respect to the Agreement accruing from and after the date hereof. Assignee acknowledges that Assignor has posted the required deposit under the Purchase Agreement and agrees that such deposit shall be refunded to Assignor upon Assignee's closing on the acquisition under the Purchase Agreement.

3. WARRANTIES AND REPRESENTATIONS: In connection with the foregoing assignment and assumption of the Purchase Agreement, the Assignor does hereby make the following warranties and representations:

(a) The Purchase Agreement remains in full force and effect and has not been modified, amended or terminated;

(b) Attached as Exhibit A to this Agreement is a true, accurate and complete copy of the Purchase Agreement; and

(c) Neither the Assignor nor, to the best of Assignor's knowledge without inquiry, the City is in default of the Purchase Agreement.

With the exception of the foregoing warranties, this Assignment is made without recourse or representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever.

4. 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.

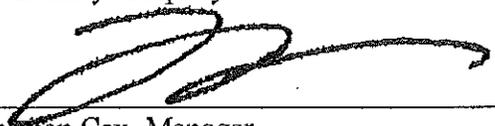
5. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. **AMENDMENTS:** This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of June 27, 2011.

ASSIGNOR:

THE FEDERATED COMPANIES, LLC, a Florida limited liability company

By: 
Jonathan Cox, Manager

ASSIGNEE:

LEGACY PARK APARTMENTS LLC, a Florida limited liability company

By: 
Jonathan Cox, Manager

Exhibit A

PURCHASE AND SALE AGREEMENT

This Purchase Agreement (this "Agreement"), is entered into as of the *Effective Date*, as defined below, 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 ("Seller") and The Federated Companies LLC, a Florida limited liability company with a place of business at 404 Washington Avenue, Suite PH, Miami Beach, FL 33139 or its nominee or assignee ("Buyer").

WHEREAS, Seller is the Owner of a certain real property located on Somerset Street, Portland, Maine which contains approximately 3.25 acres and which is known as lots 1, 2, 3, 5, 6, 7 and 8, which land is further described in Exhibit A, attached hereto and incorporated herein (collectively "the Land") and

WHEREAS, Seller seeks to sell the Land for development purposes; and

WHEREAS, Buyer desires to acquire the Land from Seller, and Seller seeks to sell the same to Buyer on such terms as are set out herein,

Now Therefore, in consideration of the foregoing and for good and valuable consideration, the parties intend to be legally bound as follows:

Section 1. Property. The Land, all rights and privileges appurtenant to the Land and all improvements located on the land, are referred to collectively as the "Property." The Seller agrees to sell the Property to Buyer on the terms and conditions contained herein. The parties understand and agree that a portion of land representing a trail access from Somerset Street as shown on Exhibit A-1, may need to be adjusted depending on the nature and extent of development on Lots 6 and 7. The trail access adjustment shall be subject to the mutual agreement of the parties on the placement of the lot lines and the trail access

Section 2. Purchase Price and Deposit. The "Purchase Price" for the Property shall be Seven Hundred Thousand Dollars (\$700,000) per acre and shall be paid in cash (or by certified or bank check or federal funds wire transfer) at the Closing as defined in Section 8 of this Agreement subject to the adjustments described in this Agreement. The calculation of the acreage of the Property shall be made by the Seller providing, not later than forty-five (45) days after the Effective Date, an ALTA survey, satisfactory to Buyer and Buyer's lender, of the Property, excluding that portion of land utilized for trail access as described above. Within ten (10) business days after the Effective Date of this Agreement, Buyer shall deliver to a nationally-recognized title company ("Escrow Agent") the sum of Twenty Five Thousand Dollars (\$25,000) (the "Initial Deposit"), which shall be held in escrow in accordance with the terms of Section 14 of this Agreement. The Initial Deposit, and any other deposits made by Buyer under the terms of this Agreement shall be held by the Escrow Agent, and is referred to collectively as the "Deposit." The Deposit shall be

applied toward the Purchase Price at the Closing unless otherwise forfeited by the Buyer pursuant to the terms of this Agreement.

Section 3. Title.

(a) Seller shall convey its interest in the Property to Buyer by a good and sufficient quitclaim deed with covenant (the "Deed"). The Deed shall convey insurable title to the Property and be free of encumbrances except (i) zoning, environmental and subdivision laws, rules, regulations and restrictions and other land use matters; and (ii) any "Defects of Title" (as defined below) accepted or waived by Buyer pursuant to Section 3(b). Buyer acknowledges that: the deed of conveyance shall contain a restriction lasting for 30 years, including the 30th year, starting on the closing date, that, in the event that the property or any portion thereof shall be exempt from real and personal property taxes 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 Property, which restriction shall also confirm that Buyer and 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. For purposes of this Agreement, insurable title means title which an insurance company with a rating of B+ or better by Standard & Poor's (or other comparable rating by another rating organization) licensed to do business in Maine is willing to insure upon payment of a premium at customary and filed rates on a standard ALTA Form B Policy (rev. October 17, 1992) with no exceptions listed on Schedule B, Part I thereof, except for the standard exceptions and Defects of Title pursuant to paragraph 3(b) below, with no indemnification or legal opinion to be required from Buyer to issue such policy, and with the creditor's rights exception deleted.

(b) On or before the date that is forty-five (45) days after the Effective Date, Buyer shall notify Seller of any defects in title that would make Seller unable to give title to the Property as herein stipulated or which would otherwise adversely affect Buyer's intended development of the Land (any of which is called herein a "Defect of Title"). Buyer shall be deemed to have waived any objection to any Defect of Title that existed as of the Effective Date if Buyer fails to notify Seller of such Defect of Title on or before the end of such 45-day period. With respect to the existence of any Defect of Title that does not exist on the Effective Date but which arises prior to the Closing Date, Buyer shall notify Seller of any such Defect of Title on or prior to the Closing Date as defined in Section 8 hereof. Seller shall have, at its option, a period of not more than sixty (60) days after receipt of notice(s) of any defect in title within which to remedy or cure any Defect of Title and Seller agrees to use good faith efforts to cure such Defect of Title. If the Closing Date shall fall within the said 60-day period, it shall be extended to the date that is ten (10) business days after the expiration of such 60-day period or after the date such Defect of Title is cured to Buyer's reasonable satisfaction (but in no event shall the Closing Date be earlier than is otherwise provided herein). Buyer shall have ten (10) business days after receipt of notification by Seller that the Defect of Title has been cured to advise Seller whether it is satisfied with the title defect cure. If such Defects of Title are not corrected or remedied within such 60-day period, then Buyer shall elect by written notice to the Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the Property subject to the uncured Defects of Title without reduction of

the purchase price and without any right to damages and without any other liability on the part of Seller, or (ii) to terminate this Agreement, whereupon the Deposit shall be returned to Buyer and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. For purposes of this subsection (b), Seller may elect to cure or remedy any Defect of Title by providing Buyer with a binding commitment from a title insurance company licensed to do business in Maine committing to issue an endorsement to Buyer's owner's title insurance policy providing affirmative coverage for such Defect of Title at no additional premium to Buyer beyond any premium required for such title policy without such endorsement; and Buyer agrees to accept such affirmative coverage as a cure or remedy for such Defect of Title provided that the form and content of such affirmative coverage is satisfactory to Buyer and its advisors in their reasonable discretion; or the Seller may cure by other means satisfactory to the Buyer.

Any time taken to cure any defect in title shall extend by the same amount of time the Inspection Date described by section 4 of this Agreement.

(c) Seller represents and warrants to Buyer, effective as of the date of this Agreement and also effective as of the date of Closing, that: (i) Seller holds good and clear, record and marketable title to the Property in fee simple; (ii) there are no uncorrected violations of any laws or codes with respect to the Property, its condition, or use; (iii) no options, rights of first refusal, or other contracts have been granted or entered into which give any other party a right to purchase or acquire any interest in the Property or obligate the Seller in any respect; (iv) there are no leases, licenses, or other occupancy agreements in effect with respect to any part of the Property, other than a deed restriction preventing residential use and other uses as required which Seller shall seek to lift before Closing; (v) Seller has not received written notice of any planned or threatened condemnation or eminent domain proceedings with respect to the Property; (vi) the Property abuts a public way which imposes no access restrictions; (vii) this Agreement has been duly authorized by all requisite action and is not in contravention of any law or organizational documents and this Agreement has been duly executed by a duly authorized officer or official of Seller; (viii) Seller's execution of this Agreement does not violate any other contracts, agreements, or any other arrangements of any nature whatsoever that Seller has with third parties and (ix) the Seller shall seek to obtain, at its sole cost and expense, such environmental insurance as may be agreed upon by Seller and PanAm/Guilford, as a prior titleholder, that is sufficient to get PanAm/Guilford to lift the current deed restrictions on uses. Seller will not cause nor, to the best of Seller's ability, permit any action to be taken which would cause any of Seller's representations or warranties to be false as of Closing, and in any event shall notify Buyer of any change in these representations and warranties. Seller's representations and warranties shall survive the Closing and the delivery of the Deed.

Section 4. Inspection of Property. Buyer, and those parties controlled by Buyer or associated with Buyer, shall have the right to access the Property to inspect its condition, including, without limitation, making surveys, testing the geotechnical quality of soils and whether any Hazardous Materials exist (including sub-surface), and pursuing permits and approvals. Seller shall cooperate with Buyer, without material cost to Seller, in connection with all such inspections and

actions by Buyer, including without limitation, by delivering to Buyer within ten (10) days of the effective date of this agreement, copies of any and all surveys, permits, title reports, hazardous waste reports, environmental assessments, geotechnical reports, samplings and investigations, all contracts and leases affecting the Property, any documents relating to the physical condition of the Property (including, without limitation, any improvements located thereon) and the status of the Property's compliance with applicable building code, zoning, land use and environmental laws, rules and regulations, feasibility studies (including financing), building and site plans, floor plans, property inspections, elevation studies, appraisals or other such pertinent information Seller has compiled related to the property and/or the proposed development that is in the Seller's possession or control, and signing any consents or authorizations for permit applications that may be required. If Buyer does not purchase the Property for any reason then Buyer shall promptly repair any damage that it may have caused.

The term "Inspection Date" means midnight on the sixtieth (60th) day following the Effective Date.

If Buyer is not satisfied with the condition of the Property for any reason, or no reason, in its sole discretion, then Buyer may terminate this Agreement by delivering written notice of such termination to Seller no later than five (5) days after the Inspection Date, in which event the Escrow Agent shall immediately return the Initial Deposit to Buyer. However, if Buyer does not so terminate this Agreement, then the parties shall proceed forward in this transaction. Upon Buyer's election to move forward, the Buyer shall deposit, within five (5) days, an additional Twenty Five Thousand Dollars (\$25,000) in escrow with the Escrow Agent as Additional Earnest Money ("Additional Deposit"). Both the Deposit and the Additional Deposit shall be deemed non-refundable except in the event that the Seller fails to perform or the Buyer is unable to obtain the permits and approvals. The Deposit and the Additional Deposit shall be credited against the purchase price upon closing unless forfeited as otherwise provided in this Agreement.

Section 5. Covenants of the Seller. The Seller, through its consultant and others have undertaken a number of environmental studies which are referenced in Exhibit B to this agreement. The Maine Department of Environmental Protection (hereinafter "DEP") has issued one or more letter(s) confirming their approval of a Voluntary Response Action Program ("VRAP") Plan for the former rail yard property which is contained within lots 1, 2, 3, 5 and a portion of 6 (hereinafter "Railyard"). The VRAP includes a remediation plan approved on the Railyard property by the DEP. As part of the development plan for the Railyard property, Buyer shall be responsible for complying with the remediation plan for the property.

Buyer understands that lots 1, 2, 3, 5 and a portion of lot 6 are encumbered with deed restrictions, including but not limited to a restriction on residential uses on a portion of the Property. Pan Am/Guilford, a prior owner of the property has the sole discretion and is under no obligation to remove said deed restrictions. Provided that Pan Am/Guilford is in agreement with the insurance coverage provided by the Seller, the Seller will secure environmental liability insurance on the Railyard portion of the Property which will permit Pan Am/Guilford and the Seller to remove the deed restrictions on the property for residential and other uses, as required by Buyer.

The Seller has commenced review of the environmental conditions on the portion of the Property which is contained within a portion of Lot 6 and Lots 7 and 8 (hereinafter "Scrapyard"). The Seller will secure a VRAP for the Scrapyard (subject to Buyer's input and approval) and shall undertake remediation at its sole cost and expense in accordance with the VRAP. The Seller will work together with the Buyer to ensure the timely remediation in accordance with the Buyer's development plans. Buyer understands and agrees that no residential uses shall be approved on Lots 7 and 8 of the Scrapyard, even if such uses are allowed by the VRAP.

Section 6. Permit Period. Buyer shall have an additional One Hundred and Eighty (180) days following the Inspection Date (the "Permit Period") in which to obtain the permits and approvals that are necessary or desirable for Buyer's contemplated development of the Property for a mixed-use project including a parking garage as described in Section 11 of this Purchase Agreement. Buyer shall work with the City on the development of a master plan of all properties. Subject to the mutual agreement of the parties, the master plan may, but is not required to, include the elimination of the accessway from Somerset St to the Bayside Trail between Lots 6 and 7 or the 20ft wide accessway from Somerset St. to the Bayside Trail running through Lot 3, and the purchase of the underlying property in the accessway between Lots 6 and 7 by Buyer. It is the intent of the Buyer to build a mixed-use project which incorporates goals proposed by the City in its "A New Vision for Bayside", including, but not limited to, provide commercial and/or retail space on the first floor to allow for a user friendly neighborhood. If, by the end of the Permit Period, Buyer has not obtained all such permits and approvals, with all appeal periods with respect to such permits and approvals having expired with no appeal having been taken (or if taken, then with such appeal having been resolved to Buyer's satisfaction), then Buyer may terminate this Agreement by delivering written notice of such termination to Seller no later than five (5) business days after the end of the Permits Period, in which event the Deposit shall be returned to Buyer as provided in the Escrow Agreement. However, if Buyer does not so terminate this Agreement then the parties shall proceed forward in this transaction in accordance with the terms of this Agreement and the Deposit shall become non-refundable (except in the event of a Seller default, or because the Closing does not occur due to the failure of a condition precedent or as otherwise provided in this Agreement), but the Deposit shall always remain applicable to the Purchase Price unless otherwise provided by this Agreement.

During the Permit Period, as soon as practicable but no later than the same time as the Buyer presents its formal application for site plan approval, the Seller will present its plan for subdivision amendments to the Land consistent with the needs of the Buyer's site plan approval. The Seller shall be the applicant for the subdivision amendment, whether the review is done administratively or otherwise. Buyer shall provide, at its sole cost and expense, all required surveys in connection with the necessary subdivision amendments.

Notwithstanding anything in the foregoing to the contrary, Buyer shall have the right to extend the Permit Period up to three times, each extension for a period of thirty (30) days, by notifying Seller in writing of such extension within five (5) business days after the end of the then-current Permits Period, and depositing with Escrow Agent an additional deposit of Three Thousand Dollars (\$3,000) per extension (the "Permit Extension Deposit"). The Permit Extension Deposit shall be

considered part of the Deposit and shall non-refundable (except in the event of a Seller default, or because the Closing does not occur due the failure of a condition precedent or if Buyer/Seller is unable to obtain the permits and approvals or as otherwise provided in this Agreement), but the Deposit shall always remain applicable to the Purchase Price as provided herein. All references in this Agreement to the Permit Period shall mean the Permit Period as the same may be extended in accordance with the terms of this paragraph.

Section 7. Conditions Precedent to Closing. Seller and Buyer's obligation to Close hereunder are conditioned upon the satisfaction of the following conditions:

- (a) there shall be no pending or threatened action, suit, litigation, hearing or administrative proceeding relating to Seller, any entity comprising Seller, or to all or any portion of the Property;
- (b) the Property shall be free and clear of any leases, licenses, occupancy agreements, and any other parties in possession;
- (c) Seller shall have delivered to Buyer such documentary and other evidence as the Buyer's title company may reasonably require evidencing Seller's authority, the absence of mechanic's liens and parties in possession, and any other matters that the title company may reasonable require;
- (d) all of Seller's obligations under this Agreement shall have been performed and all its representations and warranties shall be true and correct;
- (e) the condition of the Property (including without limitation the condition of the Property with respect to title and survey matters, as well as the presence of fixtures, equipment, and other personal property that is to be transferred at the Closing as elected by Buyer) shall be as required by this Agreement and no changes shall have occurred to such condition of the Property since the date of this Agreement (Buyer shall have the right to re-inspect the Property prior to the Closing to confirm the foregoing);
- (e) notwithstanding anything in this Agreement to the contrary, Buyer shall have obtained any and all permits and approvals necessary or desirable for its contemplated development of the Property, with all appeal periods with respect to such permits and approvals having expired with no appeal having been taken (or if taken, then with such appeal having been resolved to Buyer's satisfaction);
- (f) any hazardous materials on the property shall be handled in accordance with the requirements of the applicable VRAP agreement and this Agreement;
- (g) Seller shall have paid, or will pay at or prior to Closing, all taxes, assessments, charges, fees, levies and impositions, coming due prior to the Closing Date;
- (h) if any subdivision or other governmental approval is required in order to convey the Property as a separate parcel or lot then Seller shall have obtained all such subdivisions and/or other governmental approvals and shall have recorded any and all required plans in connection with the same;
- (i) from and after the Effective Date, there shall have occurred no material adverse change to the Property (or any material portion thereof) which is continuing at the date and time scheduled for Closing which could have an adverse impact on Buyer's intended use of the Property; and
- (k) Buyer shall have secured all permits, licenses and approvals (not subject to further action) necessary to construct its proposed mixed-use facility and parking garage on the Property.

Section 8. Closing. The Closing shall be held and completed at 10:00 A.M. or at such other time as may be agreeable to the parties 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, on the date that is thirty (30) days (or such shorter period of time as Buyer may elect upon five (5) days written notice to Seller) following the end of the Permit Period, time being of the essence. Notwithstanding the foregoing, in no event shall Buyer be obligated to close sooner than the fifth (5th) day following the satisfaction of the conditions precedent set forth in this Agreement. At the Closing, Seller shall cause the release of the Property from all loans and other monetary encumbrances secured by the Property, including, without limitation, municipal liens and utility fees of all kinds, and Seller shall pay all prepayment penalties or fees assessed by the holders of such loans and encumbrances, if any.

Seller is exempt from real estate transfer tax pursuant to 36 M.R.S.A. § 651. Seller shall pay the brokerage commission due to the brokers(s) described below, and all of its costs incurred.

Buyer shall pay its share of the real estate transfer tax and for all recording costs, Buyer shall be responsible for all of its own costs incurred, including, without limitation, the cost of studies or inspections desired by Buyer. The real estate taxes and other customary items of proration and adjustment shall be computed as of the date of Closing and added to or deducted from the net proceeds as the case may be. In the event accurate prorations or other adjustments cannot be made at Closing because of the lack of necessary information, the parties shall prorate and adjust based on the best available information, subject to prompt modification upon the receipt of the necessary information. At the Closing, Seller shall deliver to Buyer: (i) a Quitclaim Deed with covenant (ii) releases of any real estate liens or other instruments or agreements to be cancelled pursuant to the terms of this Agreement, in form appropriate for recording; (iii) an updated certification of the warranties and representations contained herein; (iv) an assignment of permits and warranties; (v) a Bill of Sale (if applicable), in form and substance satisfactory to Buyer, transferring to Buyer, without additional charge, all fixtures, equipment, and other personal property located at the Property (except for any fixtures, equipment and other personal property that Buyer has directed Seller in writing to remove on or before the date of the Closing, which Seller shall so remove, without causing damage to the Property); (vi) an assignment, transferring ownership of all the permits, plans and approvals which are part of the Property and (vii) such other documents required under the terms of this Agreement or customarily delivered at closings in the State of Maine. On or before Closing, Seller shall terminate any contracts relating to the Property that Buyer has not agreed to assume and shall pay all costs associated with such contracts. On or before Closing, Seller will do, make, execute and deliver all such additional and further acts, instruments and documents as may be consistent with this Agreement and customarily and reasonably required by Buyer and/or the Buyer's title company to complete the transactions described in this Agreement.

Section 9. Condemnation and Casualty. If, prior to Closing, all or any part of the Property or access to the Property shall become subject to condemnation through eminent domain by governmental or other lawful authority, or should be subject to damage or destruction by fire or other casualty, then Buyer shall have the option of either (a) completing the purchase, in which event all condemnation proceeds or claims thereof (or, in the event of a fire or other casualty, all

casualty insurance proceeds, together with a credit against the Purchase Price for the amount of any insurance deductible) shall be assigned to Buyer, or (b) terminating this Agreement, in which event, notwithstanding any provision herein to the contrary, the Deposit shall be returned to the Buyer, and this Agreement shall have no further force or effect. Seller shall bear the risk of loss to the Property due to condemnation or casualty until the Closing and the recording of the Deed. Seller shall keep the Property insured at its presently insured levels from the date of this Agreement until the Closing and the recording of the Deed.

Section 10. Broker. At the Closing, Seller shall pay any and all fees or other commissions due and payable to CBRE| The Boulos Company (the "Broker"), pursuant to separate agreement. Except for the Broker, Seller and Buyer represent and warrant to each other that neither has dealt with any other real estate broker, agent, or salesperson. Seller agrees to defend, indemnify, and hold Buyer harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Seller. Buyer agrees to defend, indemnify and hold Seller harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons (other than the Broker) claiming real estate brokerage fees through Buyer. The indemnities set forth in this Section shall survive Closing.

Section 11. Conditions Which Survive Closing As a condition of this sales transaction, the Buyer will construct, at its expense, a parking garage on a portion of Lot 6 and all of Lots 7 and 8 which shall contain not fewer than 500 parking spaces. The Seller shall make a contribution to the cost of construction from the funds being provided to the Seller from the U.S. Department of Housing and Development (the "HUD Funds") in accordance with and to the extent allowed by federal law and regulations, including HUD's regulations. During the inspection period described in Section 4 above, the Seller and the Buyer shall enter into a formal agreement stipulating the terms of this contribution and the conditions of the contribution, which are expected to include the following:

1. The garage shall be open during reasonable hours 7 days per week subject to modification from time to time by buyer based on historical and projected volume of usage of the garage.
2. The garage shall have shared use with residents 7 days a week, 24 hours per day.
3. During snow bans, garage shall be available for snow ban parking and the overnight snow ban parking rate shall not exceed 50% of the then current daily maximum rate charged for parking at the garage.
4. The garage shall be made available for special event parking during off hours.
5. The garage shall provide turnover parking for the general public.
6. Rates shall be based upon market conditions.

7. The garage shall participate in the Park & Shop program.
8. The garage must accept both cash and credit card payments.
9. The garage must remain as a public parking facility for a minimum of 30 years.

The agreement referred to in this section shall further provide that Buyer shall comply with all the terms and conditions related to the use of HUD funds including, but not limited to, providing documentation of job creation. The Inspection Date shall be extended until the parties have reached agreement on these issues.

The agreement shall further provide that HUD has to approve the use of its funds for the garage and that if such approval is obtained, Buyer or any nominees, assigns or successors in interest shall be responsible for complying with any conditions required by HUD in addition to the conditions listed above and shall defend and indemnify Seller against any actions brought by HUD to enforce any HUD conditions and any sanction or fines resulting from an enforcement action.

In return for the use of HUD funds, the garage and any attached structures or units in it designed for non garage use shall comply with and be certified by the U.S. Green Building Counsel's (USGBC) Leadership in Energy and Environmental Design (LEED) Silver Standard, and shall achieve the minimum LEED optimize energy performance points necessary to meet the targets of the 2030 challenge as published by Architecture 2030, pursuant to the City of Portland's City Code, Section 6, Article VII.

Section 12. Default.

(a) Buyer Default. If Buyer defaults and fails to perform its obligations under this Agreement under this Agreement, Seller, at no cost, shall receive the Deposit and all interest thereon, as well as the results and reports of all development studies, testing reports, construction and design documents related to the garage, and surveys of the Property completed by the Buyer. The parties agree that the Deposit and development studies and surveys are a reasonable liquidated measure of Seller's damages and not a penalty and shall be Seller's sole and exclusive remedy at law and in equity because of the difficulty in ascertaining the exact amount of damages sustained by Seller.

(b) Seller's Default. If Seller defaults and fails to perform its obligations under this Agreement, then Buyer may, without limitation of its other rights and remedies, terminate this Agreement upon written notice to Seller, upon which event the Deposit and all interest thereon shall be immediately refunded to Buyer, and/or exercise all of its available remedies at law or in equity, including, but not limited to, the right to seek a judgment compelling the specific performance of this Agreement and/or an action for damages.

(c) Attorney Fees. In the event of litigation, the substantially 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.

Section 13. Miscellaneous. This Agreement (i) constitutes the entire agreement between the parties hereto with respect to the transaction contemplated herein and it supersedes all prior discussions, undertakings or agreements between the parties; (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 Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine. 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 Seller, at Portland City Hall, 389 Congress Street, Portland, Me 04101, Attn: City Manager facsimile 207-874-8669, email: pfinnigan@portlandmaine.gov, with a copy to , the Director of Economic Development facsimile 207-756-8217, email: gmitchell@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, 404 Washington Ave, Floor 8, Miami Beach, FL 33139, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j_cox@federatedcompanies.com with a copy to Marc Shandler, Esq., The Federated Companies, 404 Washington Ave, Floor 8, Miami Beach, FL 33139, facsimile (800) 523-5931, email: m_shandler@federatedcompanies.com .

In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

The term "Effective Date" as used in this Agreement shall mean the first date upon which both Buyer and Seller have executed a final counterpart of this Agreement and delivered the same to the other party.

The term "day" or "days" as it relates to a time or timeline for performance shall mean business days and shall not include weekends or state or federal holidays.

Buyer shall be entitled without Seller's consent to assign all of its right, title and interest in and to this Agreement to any primary lender or to any entity in which Buyer maintains a controlling interest. Buyer shall also be entitled with Seller's consent, which shall not be unreasonably withheld, to assign all or part of its right, title and interest in and to this Agreement to any other entity. Buyer may also take title in the name of a nominee at the closing in which case the nominee shall be subject to all obligations of Buyer under this Agreement, and all rights of Seller. If the end of any time period herein, or if any specified date, falls on a weekend or state or federal holiday, then the end of such time period, or such date, as the case may be, shall be extended to the next business day thereafter. At the request of either party, Buyer and Seller agree to reasonably cooperate with the

other and Escrow Agent in structuring and documenting the sale of the Property to effect a tax deferred exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at no cost to the other party. In no event shall such cooperation require a delay of the Closing. The Section headings as used in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement.

Section 14. Escrow Provisions. As an inducement to Escrow Agent to act as escrow agent, Buyer and Seller agree that: (a) Escrow Agent will hold the Deposit in an interest-bearing account at a banking institution with which Escrow Agent has an established banking relationship, and such interest shall follow the disposition of the Deposit in accordance with the terms of this Agreement; (b) the Escrow Agent shall disburse the Deposit (and the interest earned thereon) only in accordance with this Agreement; (c) Escrow Agent will not be liable for any error or judgment, or for any act or omission under this Agreement made in good faith, except for Escrow Agent's own gross negligence or willful misconduct; (d) Buyer and Seller will jointly and severally indemnify and hold harmless Escrow Agent from and against any claim, costs, damages, attorneys' fees, expenses, obligations, or charges made against Escrow Agent by reason of its action or failure to act in connection with any of the transactions contemplated by this Agreement, unless caused by Escrow Agent's gross negligence or willful misconduct; (e) Escrow Agent will have no liability for any claim, costs, damage, attorneys' fees, expenses, obligations, or charges resulting from a delay in the electronic wire transfer of funds, unless such matters arise as a result of Escrow Agent's gross negligence or willful misconduct; and (f) in the event Escrow Agent receives or becomes aware of conflicting instructions, demands, or claims with respect to this Agreement or the Deposit, Escrow Agent may file a suit in interpleader, and upon the filing of such suit in interpleader and placing of the Deposit with a court of competent jurisdiction, Escrow Agent shall be fully released and discharged from all further obligations imposed by this Agreement with respect to the Deposit.

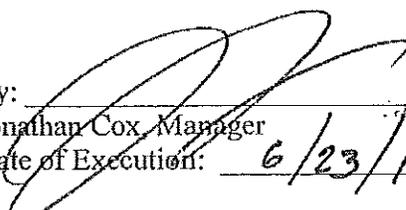
Section 15. Right of Seller to Repurchase the Property. If construction activity is not commenced and diligently pursued on any or all lots within two years of the date of receipt by the Buyer of final site plan approval, the Seller shall have the right, but not the obligation, to repurchase said lots at Buyer's purchase price

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth next to their respective signatures below.

[Signature page to follow]

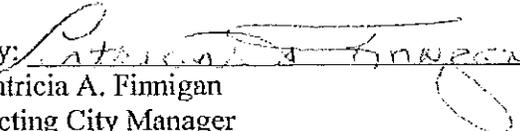
PURCHASER:

The Federated Companies LLC

By:  _____
Jonathan Cox, Manager
Date of Execution: 6/23/11

SELLER:

City of Portland

By:  _____
Patricia A. Fimmigan
Acting City Manager
Date of Execution: 6.16.2011

JOINDER OF ESCROW AGENT

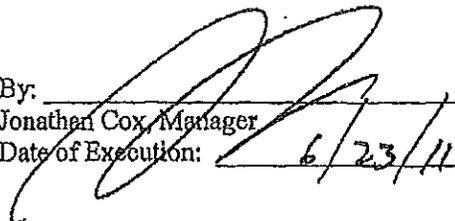
Escrow Agent joins in the execution of this Agreement to acknowledge its agreement to act as escrow agent hereunder and to handle the Deposit in accordance with the terms and conditions set forth herein.

ESCROW AGENT:

By: _____
Name: _____
Title: _____
Date: _____

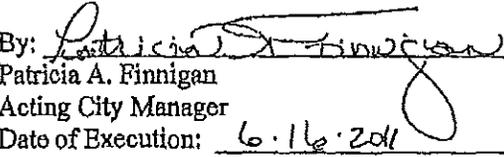
PURCHASER:

The Federated Companies LLC

By: 
Jonathan Cox, Manager
Date of Execution: 6/23/11

SELLER:

City of Portland

By: 
Patricia A. Finnigan
Acting City Manager
Date of Execution: 6.16.2011

JOINDER OF ESCROW AGENT

Escrow Agent joins in the execution of this Agreement to acknowledge its agreement to act as escrow agent hereunder and to handle the Deposit in accordance with the terms and conditions set forth herein.

ESCROW AGENT:

Monument Title Company

By: 
Name: Karen L. Pelletier
Title: Managing Director/Exec VP
Date: July 1, 2011

EXHIBITS

A - Description of Land

A-1 Proposed Somerset Street Subdivison plan, showing possible trail access

B -- index of environmental studies

EXHIBIT A

Description of Land Being Purchased:

Lots 1,2, 3, 5, 6, 7 and 8 as shown on a subdivision plan entitled "Bayside Railyard Portland, Maine" prepared for the Downtown Portland Corporation by SGC Engineering, LLC as approved by the Portland Planning Board on December 9, 2008 and recorded in the Cumberland County Registry of Deeds on 1/27/09 in Book 209, Page 36.

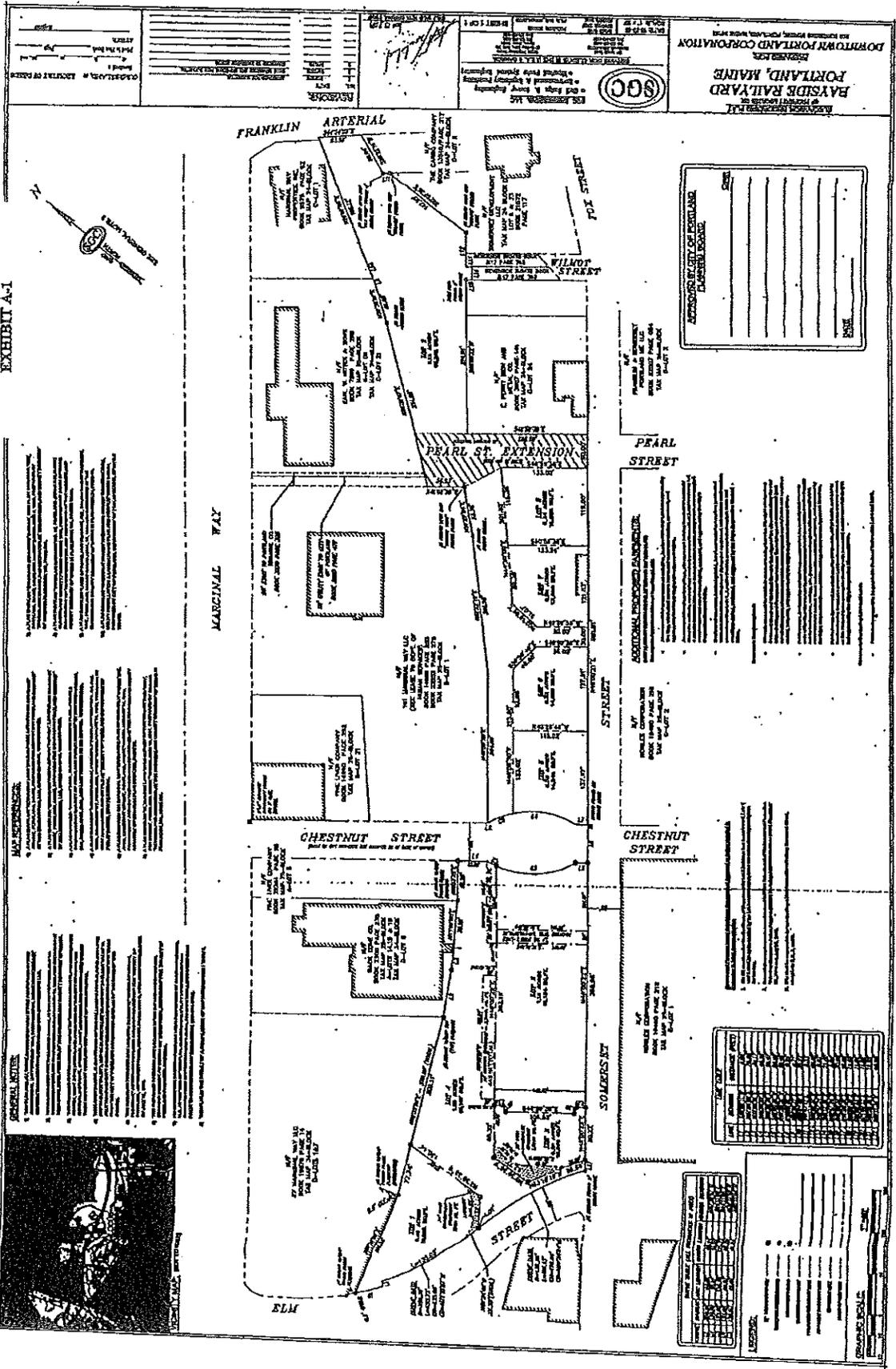


EXHIBIT A-1

GENERAL NOTES:

1. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
2. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
3. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
4. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
5. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
6. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
7. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
8. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
9. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
10. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.

MAP REFERENCES:

1. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
2. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
3. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
4. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
5. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
6. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
7. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
8. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
9. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.
10. THE LOTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE PORTLAND PORTLAND CORPORATION.

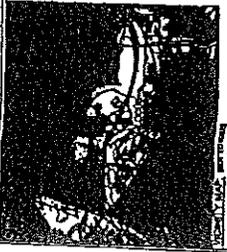


Exhibit B

List of Bayside Rail Yard Related Environmental Reports

Site Assessment and Environmental Analysis: Phase I of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, April 1999

Environmental Remediation Plan, Phase III of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, Nov. 1998

Phase II Environmental Site Assessment, Union Branch Rail Line Property, Portland, Maine, Haley & Aldrich, Inc. Dec. 2000

Environmental Conditions at the Proposed DHS Building Land annex, Portland, Maine, Tewhey Associates, August 2003

Tewhey Associates Memo from J. Tewhey to M. Adelson of the City of Portland Re: Results of Testing of Excavated Soil at the Former Rail Yard Site in Bayside, Tewhey Associates, December 13, 2003

Subsurface Soil Observations and Testing at Northern End of Proposed Chestnut Street Extension, Tewhey Associates, Jan 2005

Phase I Environmental Site Assessment, Rail Yard Subdivision Lots 1,2,3,4 and 9 Somerset Street, Portland, Maine, Tewhey Associates, Dec. 2008

VRAP Completion Document, Bayside Trail Project, Former Union Branch Rail Line, Portland, Maine, Tewhey Associates, August 2010

Bayside Rail Yard DEP VRAP, July 2001

Bayside Rail yard DEP VRAP, November 2008

Chestnut Street Extension DEP VRAP, May 2005

DHS Annex Property DEP VRAP Certification, April 2004

Soil Remediation Consideration, Tewhey Associates, January 2002

Stockpiled Group 2 Soils at Brownfields Property Site, June 2005

NEMR Concrete Pad Sampling, September 2008

NEMR Phase I Environmental Site Assessment, February 2009

NEMR Phase II Soil Investigation, February 2007

NEMR Phase II Soil Investigation, July 2009

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

EXHIBIT "B"
TO FIRST AMENDMENT TO
PURCHASE AND SALE AGREEMENT

[insert Environmental Studies]

Exhibit B

List of Bayside Rail Yard Related Environmental Reports

Site Assessment and Environmental Analysis: Phase I of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, April 1999

Environmental Remediation Plan, Phase III of the Portland Brownfields Project, Portland, Maine, Tewhey Associates, Nov. 1998

Phase II Environmental Site Assessment, Union Branch Rail Line Property, Portland, Maine, Haley & Aldrich, Inc. Dec. 2000

Environmental Conditions at the Proposed DHS Building Land annex, Portland, Maine, Tewhey Associates, August 2003

Tewhey Associates Memo from J. Tewhey to M. Adelson of the City of Portland Re: Results of Testing of Excavated Soil at the Former Rail Yard Site in Bayside, Tewhey Associates, December 13, 2003

Subsurface Soil Observations and Testing at Northern End of Proposed Chestnut Street Extension, Tewhey Associates, Jan 2005

Phase I Environmental Site Assessment, Rail Yard Subdivision Lots 1,2,3,4 and 9 Somerset Street, Portland, Maine, Tewhey Associates, Dec. 2008

VRAP Completion Document, Bayside Trail Project, Former Union Branch Rail Line, Portland, Maine, Tewhey Associates, August 2010

Bayside Rail Yard DEP VRAP, July 2001

Bayside Rail yard DEP VRAP, November 2008

Chestnut Street Extension DEP VRAP, May 2005

DHS Annex Property DEP VRAP Certification, April 2004

Soil Remediation Consideration, Tewhey Associates, January 2002

Stockpiled Group 2 Soils at Brownfields Property Site, June 2005

NEMR Concrete Pad Sampling, September 2008

NEMR Phase I Environmental Site Assessment, February 2009

NEMR Phase II Soil Investigation, February 2007

NEMR Phase II Soil Investigation, July 2009

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Purchase and Sale Agreement\2final FIRST AMENDMENT TO PURCHASE AGREEMENT for Execution.doc

Amended Exhibit ~~A~~^S to the Purchase and Sale Agreement
[2012]
Description of the Land Being Purchased

Lots 1, 2, 3, 5, 6, 7, 8 and a portion of Lot 9 as shown on a subdivision plan entitled "Bayside Railyard, Portland, Maine" prepared for Downtown Portland Corporation by SGC Engineering, LLC as approved by the Portland Planning Board on December 9, 2008, and recorded in the Cumberland County Registry of Deeds in on January 27, 2009, in Plan Book 209, Page 36; the portion of Lot 9 included is that portion which is within 120 feet of northwesterly sideline of Somerset Street.

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

EXHIBIT 3

[Parking Garage Agreement]

PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT

This Parking Contribution and Funding Agreement (the "Parking Garage Agreement") is made this 15th 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

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.

- (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

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

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

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

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: gmitchell@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

September 6, 2012, 2012 by LCW

O:\Bayside - Federated Companies\Parking Garage Cntrbtrn Agrmt\2Final Parking Contribution and Funding Agreement For Execution.doc

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

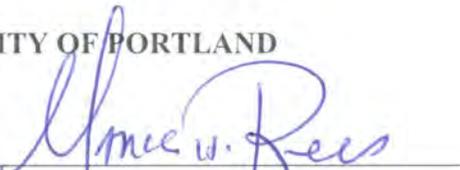


By: Jonathan Cox

Its: Member

Date of Execution: 10/15/12

CITY OF PORTLAND



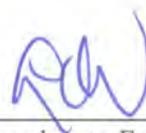
By: Mark Rees

Its: City Manager

Date of Execution: 10-15-12



Approved: Ellen Sanborn, Finance Director

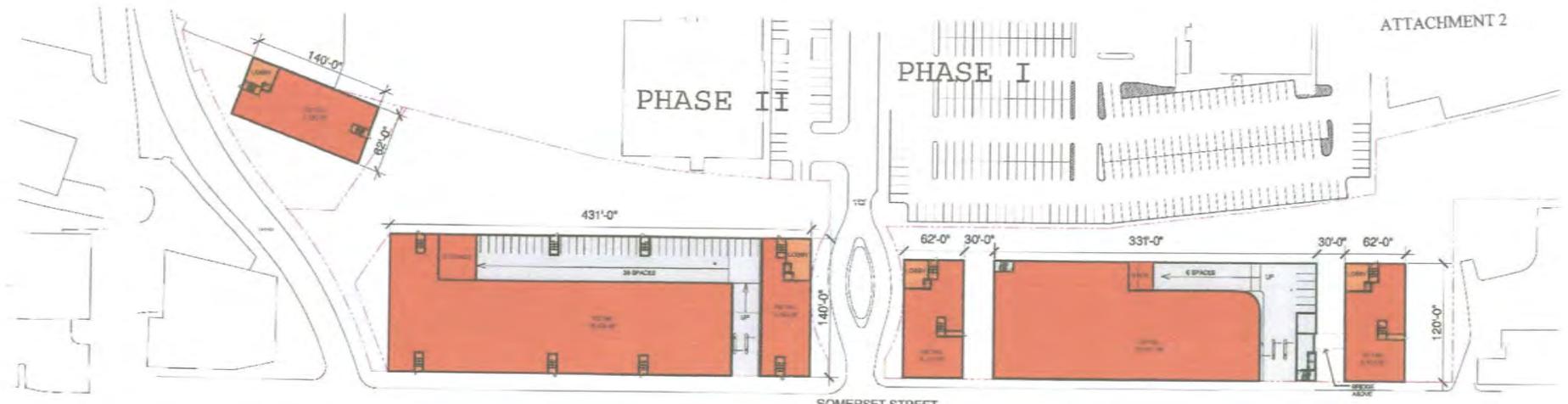


Approved as to Form: Corp. Counsel

September 6, 2012 by LCW

O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

EXHIBIT 4 (part 1 of 3)
[Phase I Site Plan]

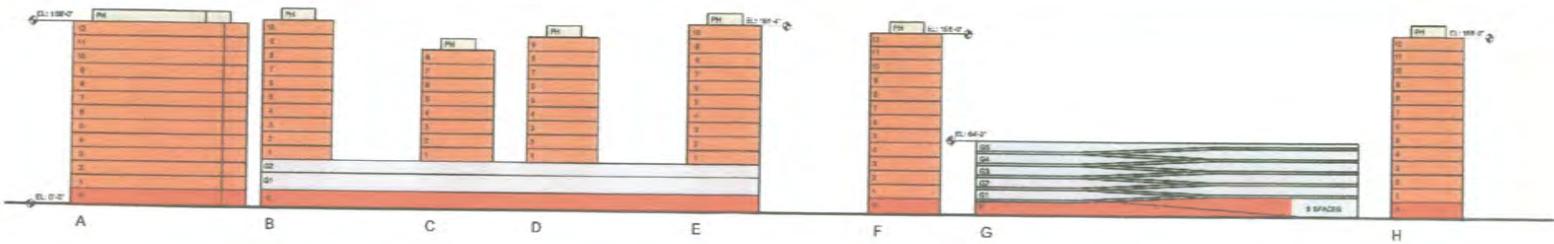


PHASE II

Parking Spaces:	Minimum 340 spaces
Retail Space:	44,623 - 49,581 SF
Residential Units:	430 - 482
1 BR:	180 - 196 (Avg. size ~610 SF)
2 BR:	250 - 286 (Avg. size ~825 SF)

PHASE I

Parking Spaces:	Minimum 700 spaces
Retail Space:	37,486 - 41,651 SF
Residential Units:	174 - 192 Units
1 BR:	42 - 48 (Avg. size ~610 SF)
2 BR:	132 - 144 (Avg. size ~825 SF)



PHASE II

PHASE I



BAYSIDE DEVELOPMENT
PORTLAND | MAINE

SITE DIAGRAM - GROUND FLOOR
JULY 23, 2012
SCALE: 1" = 100'-0"

EXHIBIT 4 (part 2 of 3) **[Phase I Design Guidelines]**

1. Introduction

The emphasis of the Guidelines is on the public spaces. The goal of the Guidelines is to provide high quality, attractive and active spaces that employ contemporary techniques but connect to the unique history of the site and Portland, ME as a whole. To this end, the Guidelines are focused on the impact of buildings on the public environment. These Guidelines seek to create spaces, not projects. The goal is to create an ever-changing, lively atmosphere with visual appeal throughout (this is not a traditional business or residential district). The focus is on the pedestrian to provide a human scale, good way finding, and a comfortable walking environment. The Guidelines are also intended to create visual interest from near and far. Up close, ground level design standards produce comfortable, inviting, and stimulating environments. From afar, a variable skyline of roof edges, vertical shafts, and signage create interest.

2. Use

2.1 Active Ground Floor Uses

Active uses that engage pedestrians shall be located along all street frontages. Ground level land uses shall be established and designed to animate public sidewalks, the wharf and alleys/mews to provide visual appeal. In required active ground floor areas, the following uses are acceptable:

- Commercial uses, such as retail stores, retail service establishments, food and beverage establishments; and/or entertainment facilities, and
- Lobbies for above grade uses such as office, residential, and hotel with an emphasis on high quality design, visual transparency, and where possible, uses that engage the street.

3. Massing

The Guidelines describe the overarching design principles for all future construction in the Project Area. The Guidelines define the intended quality, characteristics and coherence of the urban elements, which regulate how the site shall be used for civic and commercial purposes. The Guidelines define building mass, street wall heights, and façade articulation necessary to create a lively urban waterfront environment.

Building setbacks above the lower levels should be employed to help limit the perceived mass of the structure and to insure that buildings maintain a human scale and a consistent street wall throughout. Setbacks for upper stories may vary in accordance with the Master Development Plan.

The buildings will have three basic components: base; middle; and top. The base will be designed in a scale and articulation that is related directly to the pedestrian. The middle portion of the building will provide scale to the buildings both horizontally and vertically. And finally, the top will be designed in a manner to provide unique articulation that visually terminates the top of the building.

3.1 Build-to-Lines

Street walls on public rights-of-way are encouraged to vary in height and express distinguishable facade types to evoke multiple buildings/uses. A minimum of 75% of the lineal length of the mandatory building frontage shall be set at the parcel boundary line or within 10 feet there from. The first two stories of a building are required to be set at this mandatory front parcel line. Variation in street wall facades is encouraged along upper levels and roof lines. In areas where active ground floor uses are required, building entrances should be located at least every 75 feet (preferably every 30-35 feet).

The character and scale of facades forming the street wall may involve the combined use of traditional and innovative materials to express a transition from a historical era to a more modern era design vernacular. The character, height and massing of street walls should include:

- Commercial uses, such as retail stores, retail service establishments, food and beverage establishments; and/or entertainment facilities, and
- Define a continuous street and highly articulated building by building wall mass along all building lines (i.e., zero front yard setbacks along public rights of way)
- Encourage projections, canopies, signage, lighting, and variation of building size
- Discourage projecting balconies
- Encourage balconies recessed within or integral with the facade wall where balconies are proposed.
- Encourage articulation of the facade that could include changing design treatment and/or materials to reduce the apparent mass of long building facades.

Encroachments on the sidewalk will be designed to encourage pedestrian activity and will be human scale. The encroachment will not impede the visual.

4.0 Circulation & Service.

Streetscapes in the Project Area are meant to be pedestrian friendly environments, featuring a consistent palette of signage, lighting, paving, and furniture. Streets should be well lit, active, human scaled, and feel safe day and night.

The City's streetscape standards will be used for public sidewalks, streetlights, street furniture, fencing and walls, landscaping and signage in order to create a unified image of the neighborhood.

Street lighting shall comply with the *Technical and Design Standards and Guidelines*.

4.1 Parking

The provision of off-street parking within the Project Area will be as set forth in the approved planned unit development.

Parking structures will be designed to be compatible and integral to adjacent architecture in form, bulk, massing, articulation, and materials; incorporating design elements that provide visual interest on all sides visible from public rights of way.

Parking structures will be designed above grade and in a way to provide natural ventilation.

The entrance to parking structures will minimize impact on the pedestrian realm and be designed to maximize driver and pedestrian safety.

4.2 Refuse Collection

Refuse collection areas and dumpster locations shall be fully enclosed within portions of principal buildings for which they proposed to serve and shall be screened from view so as not to affect other views from around the site.

5. Architectural Features

Design references to Portland's are encouraged. The design of new buildings and structures should be timeless and enduring, seeking inspiration from the rich industrial and architectural precedents of Portland's downtown and waterfront and should seek to uphold its strong history.

5.1 Edges

Special care and design attention along with more decorative treatment and materials are desired for all edges of buildings. These are the most visible part of the urban scene. Edges include roof lines, canopies, cornices, and more prominent window openings and entrances.

5.2 Bases

Buildings should be articulated to respond to individual users. The diversity of storefront articulation will break down the scale of the overall project and street wall. The first level of buildings should be articulated by material change to express a building base and use other elements such as color, design detail, smaller scale, and higher quality materials to provide visual interest. Building ground floor bases, typically 25'x40', should emphasize the ground floor activity and provide the highest quality of pedestrian environment.

5.3 Storefront and Retail Facades

See Article 9.

5.4 Corners

Corners are particularly visible and are suggested to be made more noticeable. Changes in orientation, shapes, additional materials, colors, and projections are all favored means of adding special visual appeal to interesting streets, wharf, and public spaces.

5.5 Cornices

A crowning projection, or cornice, shall be encouraged at the top of a building along the street wall (top of the building for those under 60', and at the setback for those over). These elements can be very modest in detail.

5.6 Appurtenances

Canopies, awnings, and marquees are permitted and encouraged as they provide weather protection and provide visual interest and delight to the streetscape environment. These elements are to be decorative and light weight. Variety and non-repetitive design are desired. Canopies can be constructed of a variety of materials including both fabric and metal. Fabric awnings can be retractable.

Lettering and logos are permitted on the valence flap of the awning but lettering is generally discouraged on the main body of the awning. It is desirable for these projecting elements to incorporate outdoor heating systems to lengthen the comfortable use of outdoor spaces.

Backlit awnings and canopies are expressly prohibited. Awnings and canopies may be lit from the exterior.

5.7 Skyline

A goal for the project is to create a varied and highly decorative skyline as seen from afar. The varied rooflines can be achieved by changing heights, also by varying roof types, roof angles, and the addition of vertical elements to contrast with the roofs.

Rooftop terrace structures shall not be enclosed and are not considered an additional building level. Rooftop terraces are encouraged to take advantage of views.

All exposed mechanical equipment and bulkheads shall be mounted on roofs. Equipment should be integrated into the roof design and screened in a method that is integral to the architectural design of the building and adds visual interest to the skyline. All venting of HVAC equipment shall occur on the interior of development parcels. All venting runs for cooking fans shall be fully enclosed and incorporated into the interior of proposed buildings and vented through the highest roof of the building podium.

5.8 Back Sides of Buildings.

The back sides of buildings will be designed with high quality facade materials, transparent windows, operable building entrances, and other design features consistent with the primary facades of the building. Utility meters, exhaust vents, fire escapes etc. will be designed in a manner to be unobtrusive.

6. Materials

6.1 Building Materials and Color

Use of innovative building technologies is encouraged throughout the project and should be contrasted with traditional building materials that reference Portland's history.

Recent innovations in building materials can showcase advancements in environmentally conscious design and provide a sense of excitement for project visitors.

New buildings shall be constructed with materials common throughout the Portland's downtown and waterfront rich architectural history. Use of materials such as brick, stone, steel and wood is required for the first 40 vertical feet of a building's base, especially on pedestrian-oriented street wall facades. The use of these high-quality materials is intended to convey a solid, lasting look. Buildings should employ industrial materials as a way of visually and conceptually evoking the industrial/working heritage of Portland's downtown and waterfront. These include timber, forged and cast metals as well as rough hewn stone and metal cables.

The use of cement fiber shingles, imitation stone, imitation brick, stucco or exterior insulation finish systems will be considered on any building façade above the first 40 vertical feet of the buildings.

Facade coloration shall be achieved by use of the inherent color of building materials rather than the application of color to the surface of materials. Paint should be reserved for trims and accents on metal, wood, cornices, frames and the like. Use of material's inherent color sets a standard of authenticity associated with industrial structures. Examples of this type of façade coloration desired are a variety of earth tones achieved through the use of unglazed brick, wood, concrete and steel.

Masonry facades shall include the use of stone as architectural accents for lintels, sills, copings and keystones. Foundation bases, sills and lintels shall to the greatest extent possible use local (within 500 mile radius) stone or limestone. Masonry finishes are encouraged to be natural rather than highly finished or polished.

6.2 Glass and Fenestration

The base of buildings should feature the use of glass for the first story to emphasize the importance of the ground level active use (only one level of active use is required). Glazing and openings shall promote a flexibility of ground floor uses and the potential for change over time. Proportion of glazing to overall wall area shall be a minimum of 75% on ground level street wall frontages facing public rights-of-way. The first floor windows and storefronts will be transparent with active uses visible behind them. Opaque glass shall not be used at the first floor level. Window openings shall express sills and headers of metal or stone. Storefronts should be integrated into the design and materials of the entire building. The storefront's bulkhead/knee wall should be constructed of a durable and evocative material. Transoms are encouraged for larger window units. In all building facades windows are encouraged to be set back from the wall surface a minimum of six inches from the surface of masonry to the glazing. Tinted or reflective glass will not be utilized.

Window proportions, groupings and rhythms shall be integral elements of the design of each building facade and urban street-wall. Punched windows are desired above the 2nd floor. Curtain walls are discouraged unless used to define a vertical corner or other discreet architectural emphasis. Glazing systems shall be designed to promote area-wide visibility, accessibility and safety during evening hours and during the winter season. Well designed fenestration patterns that evoke historic fenestration are preferred over attempts to replicate historic patterns.

7. Signage

Signage lighting should come from direct shielded light sources and be carefully integrated into the overall design of the building so as to provide visibility and safety but avoid creating glare or light distribution that adversely affects motorists or pedestrians. Backlit signage is generally discouraged.

Neon signs may be allowed so long as they are carefully designed in size, shape and color that complement the architecture of the building and the district.

8. Lighting

The vision for Bayside seeks a maximum amount of light that creates a variety of environments and experiences. Lighting should be used for artistic purposes and carefully integrated with the architecture and buildings, such as to accent edges.

The commercial buildings are intended to be inviting to the public, to encourage visitors to enter the site from the city streets, to shop at the retail stores and eat at the restaurants, and to generally stay longer and take full advantage of the waterfront area. Balanced against an appropriate level of street illumination, there is a need to limit light that is cast up and into upper floors of buildings or the atmosphere. Lighting fixtures should be scaled to the pedestrian and have a distinctive industrial character. Architectural accent lighting should highlight corners and roof edges.

Storefront lighting is one of the best sources of sidewalk lighting in urban areas. It is warm and welcoming, and contributes to a sense of activity and watchfulness. It also generally provides a greater amount of light directly onto the sidewalk than do street-level luminaries. Retail storefronts are an effective way to provide lighting from the buildings.

The first four feet inside any retail or restaurant establishment shall have decorative lighting, preferably with visible point sources. Occupancies on the first floor that do not have active, bright window displays shall be designed to provide visual articulation from lighting at no greater than 25 feet intervals. This can be accomplished in a variety of ways, such as:

- Decorative luminaries mounted to walls, posts, brackets, etc.
- Lighting surfaces, textures and objects such as pilasters, wall features, banners, sculptures, graphics, etc.
- Internally lighted glowing architectural or graphic elements such as glass block, display cases, signage panels, canopies, transparencies, etc.
- Lighting at entryways (especially if they are recessed).
- Lighting property addresses.

9. Retail

9.1 Retail Storefront Requirements

All buildings with retail on the first floor shall incorporate a traditional storefront design with a large display window or windows of clear glass, bulkheads, recessed entries (where appropriate), transom windows, and suitable locations for signs at their ground levels. Blank walls should be minimized and static displays (including photographs) will be discouraged in display windows. Modern and creative design solutions may be employed as long as the traditional storefront proportions are referenced. Multiple storefronts within the same building should be visually compatible in terms of scale, alignment, color and materials. The intent is to encourage creativity by individual retailers to add to the character and place making of Bayside.

9.1.1 Storefront Character

Storefronts should be individual expressions of a tenant's identity; however, tenants will be discouraged from using national brand standard storefronts and/or representations of their identity in an effort to create a retail environment that is uniquely Bayside. Storefronts should be integral to the building design but should also provide a distinct retail identity at the ground level.

9.1.2 Storefront Entries and Doors

Door placement and design are an integral part of each storefront, as they are the prevalent method of entry into each space. Placement and design should provide a direct "connection" to the sidewalks and streets. Restaurant tenants are encouraged to provide a clear thru-way and a visual connection to exterior seating areas, if any.

9.1.3 Storefront Materials

The design, fit, and finish of all components for each storefront should be of the highest quality. Additional focus should be on window design to create a visual connection between the interior and exterior. Durable materials should be utilized for storefront construction as these are especially critical at street level where pedestrian contact will be considerable. Storefronts should be pre-dominantly glass to provide views into the store, but glass should not be the exclusive material.

9.1.4 Storefront Lighting

Night lighting of retail will help animate Bayside, prolong street life after business hours, and increase pedestrian safety. Storefront facades, recessed doorways, outdoor spaces and passageways should be well lit. Sign lighting, including flat-mounted signs, blade and banner signs, must be lit with concealed lighting or from above with down-lighting. Fixtures should be located and angled to ensure that they spotlight the tenant's merchandise and do not point toward the window or cause distracting reflections. Include "after hour" lighting within the front of stores to contribute to pedestrian lighting and provide for a comfortable night time strolling experience.

9.1.5 Storefront Canopies and Awnings

Design and placement should complement the scale of the store facade design. Collective placement of canopies and/or awnings along a street should maintain overall design integrity and avoid a uniform layout providing weather protection at a minimum of 20 feet at all storefront and building entrances. Canopies shall be constructed of permanent, durable materials, with glass and steel preferred. Awning material should be of a woven fabric or other material that projects the natural appearance of canvas, metal, glass, etc. Retractable or open side awnings are acceptable. Vinyl awnings and internally lit awnings are not allowed.

9.1.6 Storefront Signage

Creativity in signage design is encouraged and adds to the ground level experience at Bayside. Non-descript box signs are discouraged.

10. Sustainability

The project will be designed in accordance with the energy standards of the building codes and using new sustainability construction practices.

EXHIBIT 4 (part 3 of 3) **[Phase I Specifications Sheet]**

Standard Features

EXTERIOR FEATURES

- Pile / Grade Beam Foundation Construction
- Parapet roof design
- Multi-ply Insulated Roofing Membrane system
- Parking Garage access
- Direct access to ground floor retail
- Connecting walkways to Bayside trail
- Multi material exterior facade; brick, exterior insulated finish systems, glazing and metals

BATHROOMS

- 2- Bedroom Units shall have 2 baths; 1- Bedroom Units shall have 1 ½ baths
- Polished Brass/Chrome Fixtures & Accessories in Bathrooms
- Surface mount brushed nickel/brass vanity lights
- Half Baths/Powder rooms Pedestal Sink
- Full and ½ baths shall have White Laminate Cabinets and solid surface vanity tops with integral sink
- Baths shall have ceramic on floor and walls
- Elongated Commodes in all Baths
- Handicapped Units equipped per code
- Energy Star Rated Bathroom Fans per specification

KITCHEN

- Maple Cabinets with 30" – 42" Upper Wall Cabinets
- Premium grade Formica Counter Tops with 3 ½" backsplash
- Single Bowl Stainless Steel Drop in Sink
- Garbage disposal
- Single Lever Polished Chrome Faucet with spray
- Energy Efficient Appliance Package to include: Dishwasher, Self-Cleaning Oven, Microwave with re-circulating exhaust fan, Side x Side Refrigerator
- Appliance Packages to be Profile or Stainless Steel
- Surface mount light in Kitchen and Dining areas

ENERGY EFFICIENCY

- Energy Star Forced Warm Air High Efficiency Electric Furnace with Central Air Conditioning per unit
- Energy Star Rated 45 Gallon Electric Hot Water Heater per unit
- Energy Star Rated Efficient Double Glazed Double Hung Vinyl Tilt Windows with Screens and Grilles
- Energy Star Rated Insulation in Attic ceiling areas and Interior Walls

FLOORING

- Vinyl Flooring in Foyer, Kitchen, Laundry and Baths
- Carpeting in Hallways, Bedrooms, Dining Room, Living Room and Closets

INTERIOR FEATURES

- Six Panel Masonite Interior Doors with Brushed Nickel/Brass Hardware
- All doors, windows and cased openings shall be trimmed with 2 ½" casing. Baseboard shall be 3 ¼"
- Walls are painted one prime and one matte flat finish Sherwin Williams Linen White; trim is painted one prime and two coats semi-gloss latex Sherwin Williams White. Ceilings are smooth finish and painted white
- Ventilated Shelving in closets
- Washer and Electric Dryer per unit
- Approximately 8' Ceiling Height on all levels
- Cable/Data/Telephone ports in all bedrooms and living areas
- Outlets per code

COMMON AREAS

- Vestibules and lobby areas shall have tile and carpet flooring and painted walls
- Common hallways shall have carpeting and painted walls
- Centralized elevator lobby location (pedestrian and service) per building
- Centralized mail center per building
- Fully furnished amenity areas
- Management/Leasing Office on-site
- Private ground floor door entry with security system

CONSTRUCTION FEATURES

- Type I Construction, steel and concrete frame
- Concrete/Metal decking Flooring system
- Panelized exterior wall system; EIFS, glazing, brick
- Concrete/Metal decking Flooring system
- Interior Walls and Ceilings are gypsum wall board per code
- Closed Loop Mechanical System
- 150 Amp Electrical Service per unit
- Hard wired smoke and heat detectors with battery backup and one combination smoke/carbon monoxide detector per code
- Ground Fault Interrupt (GFI) installed per code
- Fire Suppression designed per code
- STC Rating designed per code

August 20, 2012 by LCW

O:\Bayside - Federated Companies\Corporate Guaranty\2final redline of CORPORATE GUARANTY AGREEMENT for Execution.docx

EXHIBIT 5

[Job Creation Agreement]

JOB CREATION AGREEMENT

THIS JOB CREATION AGREEMENT made this 15th day of October between **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company, with a principal place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131, its nominee or assignee, ("Legacy Park"), and **CITY OF PORTLAND, MAINE** a municipal corporation located at 389 Congress Street, Portland, Maine 04101 ("City").

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, (collectively, "Agreement"), as amended, 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 approximately thirty thousand square feet of commercial 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 Legacy Park to comply with all the terms and conditions related to the use of the HUD Funds contributed by the City as City Grant Funds to Legacy Park for the construction of the Garage related to providing documentation of job creation in accordance with the terms of this Job Creation Agreement.

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

I. Job Creation Requirement:

- (a) Legacy Park shall create a minimum of 40 new¹ permanent, full-time or full-time equivalent jobs² in the Bayside neighborhood resulting from or related to the disbursement of the City Grant Funds for the construction of the Garage. ("Job Creation Requirement"). For the purpose of this Jobs Creation Agreement, Legacy Park may meet the Job Creation Requirement with jobs related to the operation of the Garage or jobs related to new or existing Bayside neighborhood business activity created or increased by the operation of the Garage. The new jobs may be, but are not required to be, employees of Legacy Park, or its lessees.

¹ In accord with HUD law and regulations, these must be new jobs, and not re-located jobs.

² Per currently applicable regulations, full time jobs require a worker to work at least 1750 hours per year. Part time jobs require a worker to work at least 875 hours but less than 1750 hours per year. Part-time jobs **must** be converted to Full Time Equivalents (FTE). An FTE can be defined as two part time jobs. Also or said another way, no more than two part-time jobs can equal one full-time job.

City agrees to assist Legacy Park with information required by Legacy Park to meet the Reporting Requirements of this Job Creation Agreement related to Job Creation Requirement. In particular, when 'countable' new jobs are created by businesses that are not lessees of Legacy Park, the City will use best efforts to assist Legacy Park to obtain the necessary documentation from such employers or otherwise, to 'count' these jobs to, in part, meet this Job Creation Requirement; Legacy Park, however, acknowledges that this Job Creation Requirement (and the related reporting) remains its obligation. The jobs must be created within two (2) years from the issuance of the Certificate of Occupancy for the Garage.

- (b) Legacy Park shall be deemed to have met the Job Creation Requirement and this Job Creation Agreement shall terminate upon submission to the City of a Position Summary Quarterly Report identifying the 40th full time or full time equivalent new job created in accordance with the provisions of Section 1(a) of this Job Creation Agreement, and verification and approval of the same by the City.

2. Reporting Requirements:

Legacy Park shall submit a Position Summary Quarterly Report, (Attachment A), for all new jobs created under this Job Creation Agreement on a quarterly basis until the Job Creation Requirement is met:

- (a) total number of full time persons employed as a result of the completion of the Garage;
- (b) total number of part time persons employed as a result of the completion of the Garage; and
- (c) the employee name, job title, and average number of hours worked per week for the previous quarter.

AND EITHER (Choose 1 or 2 to be used for Legacy Park and it's Lessees reporting job creation):

- 1) Applicant/employer certifications (Attachment B) to be completed by all potential employees and the employer;

OR

- 2) A copy of the companies' payrolls. A baseline payroll must be submitted prior to the completion of the Garage.

- 3. Default. Legacy Park shall be deemed to be in default of this Job Creation Agreement if there is a failure to comply with any of the terms, conditions, provisions, or covenants of this Job Creation Agreement, or its obligations hereunder, including its obligation to meet

the Job Creation Requirement set forth herein. Any default will be considered a breach of this Job Creation Agreement and Section 9 of the Parking Garage Contribution Agreement. If Legacy Park informs the City, in good faith, at least 3 months before the deadline for its meeting this Job Creation Requirement that Legacy Park may not meet this deadline, with evidence and reasons for this, the City will use its best efforts to obtain an extension of this deadline from HUD or to otherwise change this requirement, such as a reduction in the number of required new jobs, and if it obtains such an extension or change, it shall immediately transmit to Legacy Park evidence of this extension or change by HUD, and this timetable shall thereby be correspondingly changed, without further action of the parties hereto being required.

4. Records. Legacy Park agrees to maintain a copy of all records related to the creation of jobs as required by this Job Creation Agreement for a period of four years after the creation of the 40th job. Legacy Park will, at any time during normal business hours, and as often as the City may deem necessary, permit the City, HUD or its designee to have full and free access to Legacy Park's records related to the new jobs identified in the Position Summary Quarterly Reports submitted under this Job Creation Agreement and to make copies of same at no cost or expense to the City. This right also extends to verification of the wages paid related to the new jobs. City agrees to review and maintain copies of such employment related records in complete confidentiality and in accordance with all State and Federal laws related to employment information and records.
5. Compliance with Laws and Regulations. Legacy Park, as the recipient City Grant Funds, shall comply with all applicable requirements of Federal laws related to the HUD Funds received by the City including, but not limited to, the applicable provisions of Title 24 Code of Federal Regulations, Section 570, state or local laws, regulations or ordinances and further agrees to abide by Title VIII of the Civil Rights Act of 1968 barring discrimination upon the basis of race, color, religion, familial status, sex or national origin, in the sale, lease, rental, use or occupancy of Legacy Park's property
6. Entire Agreement. This Job Creation Agreement and the Parking Garage Contribution Agreement constitute the entire agreement between the parties arising out of or related to Section 11 of the Agreement, as assigned and amended, and supersedes all prior representations and understandings of the parties. No modifications or amendments of the Job Creation Agreement shall be binding unless executed in writing by all the parties.
7. Waiver. No waiver of any of the provisions of this Job Creation Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
8. Successors. This Job Creation Agreement shall be binding upon and shall inure to the benefit of, the parties, their respective personal representatives, heirs, successors and assigns.
9. Assignment. Legacy Park shall not have the right to assign this Job Creation Agreement, or any rights hereunder, to any person or entity without the express written consent of the City. Such consent by the City shall not be unreasonably withheld.

10. Governing Law. This Job Creation Agreement shall be governed by and construed in accordance with the State of Maine.
11. 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: gmittchell@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.
12. Counterparts. This Job Creation Agreement may be executed in any number of counterparts, which together shall constitute one document.
13. Paragraph Headings. The paragraph headings hereof are for convenience only and shall not form a part of this Job Creation Agreement or be used in the interpretation hereof.

IN WITNESS WHEREOF, the parties have executed this Job Creation Agreement as of the date first written above.

Legacy Park Apartments LLC:



Witness



By: Jonathan Cox
Its: Member



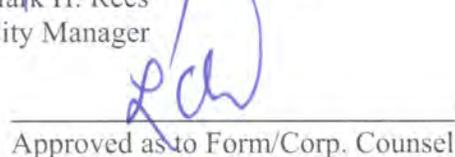
Witness

City of Portland, Maine



By: Mark H. Rees
Its: City Manager


Approved: Ellen Sanborn/Finance Director


Approved as to Form/Corp. Counsel

--	--	--

Number of Full Time Employees at End of Last Quarter _____

Number of Part Time Employees at End of Last Quarter _____

Number of New Full Time Positions Filled in this Quarter _____

Number of New Part Time Positions Filled in this Quarter _____

Total Full Time and Part Time Employees Ending this Quarter _____

(No more than two part time jobs can be added to create one full time equivalent.)

Employer Certification

To the best of my knowledge, I certify that the information contained in this position Summary Report is true and accurate.

Quarter Ending

Signature/Title

Date

Company

ATTACHMENT B
Applicant/Employer Certification

This employer has received funding from the City of Portland for business expansion that will create new jobs. The funding for this program comes from the U.S. Department of Housing and Urban Development. One of the requirements of this program is that we must report information about potential employees. Please complete the information requested below and return it to the employer. The information will not be used to evaluate you for this position.

Thank you in advance for your cooperation. If you have any questions about completing this form, please feel free to contact us at 207-874-8731.

APPLICANT CERTIFICATION

Name: _____ Address: _____

Employer: _____ Job Applied For: _____

How many persons live in your household? ____
The Head of Household is female ____ or male ____

Check all that apply. I am:

- _____ Hispanic or Latino
- _____ American Indian or Alaskan Native
- _____ Asian
- _____ Black or African American
- _____ Native Hawaiian or Other Pacific Islander
- _____ White

Date: _____ Signature: _____

EMPLOYER CERTIFICATION

Job Title: _____

Full Time _____ Part Time _____ # of Hours per Week _____

Starting Pay/Hourly Rate \$ _____

Date Interviewed: ____ / ____ / ____ Date Hired: ____ / ____ / ____

Employer Name _____ Signature/Title _____