

Order 202-19/20

Passage: 7-0 (Ali absent, Thibodeau recused) on 6/15/2020

Effective 6/15/2020

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND AUTHORIZING  
LAND EXCHANGE AGREEMENT AND LICENSE AGREEMENT BETWEEN  
J.B. BROWN & SONS AND THE CITY OF PORTLAND RE: EMERY STREET  
AND QUARRY ROAD,  
AND COMMENCEMENT OF DISCONTUANCE OF AN UNDEVELOPED  
PORTION OF EMERY STREET**

**ORDERED**, that the Land Exchange Agreement between J.B. Brown & Sons and the City of Portland for an undeveloped portion of Emery Street in exchange for a parcel of J.B. Brown property on Quarry Road is hereby approved and accepted in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that a Revocable License Agreement for J.B. Brown & Sons allowing its use of this portion of Emery Street is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED**, that the City Manager or his designee shall commence the discontinuation of the portion of Emery Street described in the Land Exchange Agreement in accordance with 26 M.R.S. § 3026-A and other applicable legal requirements; and

**BE IT FURTHER ORDERED**, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of the above orders; and

**BE IT FURTHER ORDERED**, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow J.B. Brown to close on its construction contract.

## LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (this “Agreement”) is made as of the \_\_\_\_ day of June, 2020 (the “Effective Date”), by and between **J.B. BROWN & SONS** (“JBB”), a Maine corporation with offices in Portland, Maine, and the **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (the “City”).

### Section 1. Introduction.

Each of the parties owns real property in Portland, Maine. The parties have agreed to exchange certain property, and to provide for certain appurtenant easements in connection with the exchange, all on the terms and conditions set forth in this Agreement. The properties that are the subject of this exchange are shown on **Exhibit A**, **Exhibit B**, and **Exhibit C**, attached hereto and are incorporated herein.

### Section 2. Property to be Exchanged.

In the exchange:

(i) Parcel 1. The City will take steps to discontinue the parcel of land depicted on **Exhibit A** and identified as part of an unimproved portion of an approximately 60-foot wide public right of way, known as Emery Street (“Parcel 1”) thereby providing JBB with fee ownership in Parcel 1 for all lawful uses, including, without limitation, access and egress for motorized vehicles; *provided, however*, that the City shall retain certain, specific easements, in common with JBB, on Parcel 1 for (i) ingress and egress for pedestrians, bicycles, and similar non-motorized uses, and (ii) underground, on ground, and above ground utilities ((i)-(ii) collectively referred to as the “Emery Street Easements”). The approximate locations of the Emery Street Easements are generally depicted on **Exhibit A**. JBB hereby waives any right to any damages or other compensation from the City resulting from the discontinuance of Parcel 1.

(ii) Parcel 2. JBB will convey to the City the parcel of unimproved land depicted on **Exhibit B** and identified as a portion of Tax Map 150-A-8, together with an easement for vehicular and pedestrian access over the private portion of Quarry Road labeled “Extension of Quarry Road” on **Exhibit B** (“Parcel 2”);

(iii) 30’ Easement. JBB will convey to the City a non-exclusive perpetual easement in common with JBB, its successors and assigns, under, over, and across a portion of JBB’s land abutting and parallel with Parcel 1, having a width of thirty (30) feet from the easterly sideline of Parcel 1, which easement area is generally depicted on **Exhibit C** as the shaded area on that certain plan entitled “Proposed 30’ Wide Sewer Easement” by Gorrill Palmer (hereinafter referred to as the “30’ Easement Area”), for the installation and maintenance of conduits, pipelines, and all other necessary fixtures and appurtenances for conveying storm water and sewer water (the “30’ Sewer and Stormwater Easements”). JBB or its affiliate shall be solely responsible for all costs associated with the design and installation

of a new City sewer line in the 30' Easement Area, which shall be constructed in accordance with all applicable City specifications and requirements (the "Sewer Line"). JBB's obligations under this paragraph shall survive the closing or termination of this Agreement provided that the parties execute the License Agreement; provided, however, once installation of the Sewer Line has been completed and accepted by the City, JBB shall have no further maintenance or repair obligations for the Sewer Line. If, in the future, the City decides to construct a storm water drainage facility in the 30' Easement Area, the City shall do so at its own cost and expense. The 30' Sewer and Stormwater Easements shall be conveyed to the City by easement deed in substantially the form attached hereto as **Exhibit D**.

All of these conveyances will be on the terms and conditions set forth in this Agreement.

Section 3. Equivalent Value.

The parties agree that (i) the value of Parcel 1, together with the 30' Sewer and Stormwater Easements, is equivalent to the value of Parcel 2, and (ii) each party's conveyance is in full consideration of the other party's conveyance. Except for any closing expenses as provided in Section 10 (herein) below, neither JBB nor the City is providing any other consideration for the exchange, unless the City exercises the Parcel 2 Alternative, as that term is defined below.

Section 4. Property Being Exchanged "As-Is".

(a) Parcel 1. Except as described in Section 2(i) above and as hereinafter set forth, JBB acknowledges that it is acquiring Parcel 1 "as is" with all faults. The City has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 1 or the compliance of Parcel 1 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials.

(b) Parcel 2. The City acknowledges that it is acquiring Parcel 2 "as is" with all faults. JBB has made no representations or warranties of any kind whatsoever with respect to the condition of Parcel 2 or the compliance of Parcel 2 with any laws, rules, regulations or ordinances, including (without limitation) any relating to zoning, the environment, or hazardous materials.

Section 5. Title, Inspections.

(a) Title Examinations. The parties will have from the date of this Agreement until 6:00 PM Eastern Daylight Savings Time on the sixtieth (60<sup>th</sup>) day after the date of this Agreement (the "Due Diligence Period") to complete their respective title examinations. Title shall be good, marketable and insurable title, free and clear of all encumbrances except (i) as set forth in **Exhibit B**, (ii) the Easements described in Section 2(i) herein, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable.

(b) Inspections. During the Due Diligence Period, each party and its employees, consultants, contractors and agents shall have the right, at their own expense, to enter on Parcel 1

or 2 at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things that each party determines, in its sole discretion, to be required to determine the suitability of the property for the parties' intended use (collectively, the "Inspections").

(c) Objections. Each party will have until the end of the Due Diligence Period to deliver to the other party any written objections to title matters (other than the permitted exceptions identified herein) that materially affect marketability, insurability, or use of Parcel 1 or Parcel 2, respectively, or to unacceptable results of the Inspections. Objections not made prior to the end of the Due Diligence Period will be deemed waived; *provided, however*, that objections pertaining to matters of record first appearing after the date of this Agreement may be made at any time prior to the Closing.

(d) Option to Cure. In the event of a title or Inspection objection, the party owning the property that is the subject of the objection will have the option, but not the obligation, to cure the objection and will notify the other party of its election within ten (10) business days after receipt of the title objection. In the event that the party owning the property that is the subject of the objection elects to cure the objection, that party thereupon will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the party owning the property that is the subject of the objection does not elect to cure the objection, or having elected to cure the objection fails to timely do so, the other party will have the option either to terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement) or to waive the objection in writing and proceed to the Closing; *provided, however*, that in the event that the parties execute the License Agreement, JBB shall remain obligated to execute and deliver to the City the 30' Sewer and Stormwater Easement Deed and either (i) the Parcel 2 deed or (ii) the Back-Up Consideration, as those terms are defined below.

Section 6. Conditions Precedent to Closing.

(a) The City shall make reasonable efforts to cause the discontinuance of the portion of Emery Street identified as Parcel 1 on or before August 1, 2020. *Provided, however*, that in the event that the City Council votes not to approve the discontinuance of Parcel 1, but the parties have executed the License Agreement (as that term is defined in Section 11 hereof), the parties shall proceed to Closing with respect to Parcel 2 and the 30' Sewer and Stormwater Easements, *provided, however*, if the occurrence of the Parcel 2 Alternative described below has also occurred, the City may elect to accept from JBB in lieu of acquiring Parcel 2 in exchange for the License the Back-up Consideration (as defined in paragraph (b) below).

(b) The City is satisfied in its sole discretion (1) with the results of the Inspections, (2) that JBB has good, marketable and insurable title in Parcel 2, and (3) that JBB has the corporate power to convey Parcel 2 and the 30' Sewer and Stormwater Easements to the City. Notwithstanding anything to the contrary in this Agreement, and *provided* that the parties have executed the License Agreement, in the event that the City determines at any time prior to closing

that title to Parcel 2 or the results of any Inspection are in any way unsatisfactory to the City (the “Parcel 2 Alternative”), the City may elect to accept from JBB in lieu of acquiring Parcel 2 the sum of Forty-Nine Thousand Dollars (\$49,000.00) (the “Back-up Consideration”).

Section 7. Closing.

The Closing will be held on or before the thirtieth (30<sup>th</sup>) day after the later of the following: (i) the expiration of the Due Diligence Period, (ii) the date on which the Conditions to Closing described in Section 6 above are completed to the satisfaction of each party to this Agreement, or (iii) October 31, 2020 (the “Closing”), which Closing shall be held at the Offices of Verrill, LLP, at One Portland Square, Portland, Maine, or on such other date or at such other place as the parties may agree.

Section 8. Deeds.

(a) Deed or Parcel 2 Alternative Price to City. At the Closing, JBB will deliver to the City (i) a fully-executed Quitclaim Deed with Covenant conveying Parcel 2, or in the event the City elects the Parcel 2 Alternative as described in Section 6(b) above, JBB shall pay to the City the Back-up Consideration, and (ii) an easement deed for the 30’ Sewer and Stormwater Easements in substantially the form attached as Exhibit D (the “30’ Sewer and Stormwater Easement Deed”).

(b) Certificate of Discontinuance. At the Closing, the City will record a certificate of discontinuance for Parcel 1, subject to the Easements set forth in Section 2(i) herein, provided that the City Council has approved the discontinuance.

(c) Property Descriptions. The property descriptions contained in the deed to the City and the Certificate of Discontinuance will be based on survey plans (the “Plans”) that will more specifically describe the properties shown on **Exhibit A**, **Exhibit B**, and **Exhibit C**. The Plans will be distributed to the parties prior to the expiration of the Due Diligence Period for final approval. The parties will agree on the descriptions of Parcel 1, Parcel 2, and the 30’ Easement Area prior to the Closing.

(d) Abutter Status. Each deed or street discontinuance, as applicable, will recite that the grantee is an abutter to the grantor.

Section 9. Closing Deliverables.

(a) City Deliverables. At the Closing, and as a condition thereto, the City will deliver in connection with its conveyance to JBB the following as applicable:

- (i) the executed street discontinuation subject to the provisions of Section 8(b) above;
- (ii) documentation acceptable to JBB indicating that this transaction has been duly authorized and that the person executing documents on behalf of the City is duly authorized to do so;

- (iii) an executed owner's affidavit in form satisfactory to the City indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

In the event the contemplated transfer by the executed street discontinuation is not part of the transaction to be conducted at Closing, then in such an event, the items listed in this Section 9(a), clauses (i) through (iii), inclusive, will not be applicable or required.

(b) JBB Deliverables. At the Closing, and as a condition thereof, JBB will deliver in connection with its conveyance to the City, as applicable:

- (i) the executed deed to Parcel 2 or the Back-up Consideration described in Section 8(a) above;
- (ii) an executed State of Maine Real Estate Transfer Tax Declaration;
- (iii) an executed notice pursuant to 38 M.R.S.A. § 563(6) stating that, to the best of JBB's knowledge, no underground storage facility for the storage of oil or petroleum exists on Parcel 2;
- (iv) the 30' Sewer and Stormwater Easement Deed;
- (v) documentation acceptable to the City indicating that this transaction has been duly authorized and that the person executing documents on behalf of JBB is duly authorized to do so;
- (vi) an executed certificate of non-foreign and Maine residency status; and
- (vii) an executed owner's affidavit indicating no tenants or other occupants presently in possession and indicating no debts due for labor or services performed or materials used that could give rise to mechanic's liens.

In the event the contemplated transfer by JBB to City of Parcel 2 is not part of the transaction to be conducted at Closing, then in such an event, the items listed in this Section 9(b), clauses (ii), (iii), and (v) through (vii), inclusive, will not be applicable or required.

#### Section 10. Closing Costs and Apportionments.

(a) Real Estate Taxes and Assessments. The parties acknowledge that the City is exempt from taxes or assessments on Parcel 1 and that Parcel 1 is exempt from the same for fiscal year 2020/21. As to Parcel 2, JBB shall be liable for all real estate taxes and assessments for fiscal year 2020/21. JBB shall pay all such taxes for fiscal year 2020 on or before the Closing.

(b) Real Estate Transfer Tax. Each real estate transfer tax declaration will state that the

value of the properties that is the subject of the declaration is the assessed value, and JBB will pay its share of real estate transfer taxes. The parties acknowledge that, pursuant to 36 M.R.S.A. §4641-C(1), the City is exempt from real estate transfer taxes.

(c) Recording Fees. The City will pay the recording fees for the Parcel 2 deed and the 30' Sewer and Stormwater Easement Deed from JBB. JBB will pay the recording fees for the Certificate of Discontinuance for Parcel 1.

(d) Legal Fees and Expenses. The parties each will bear the cost of their respective legal fees, costs, and expenses.

Section 11. License Prior to Closing. Upon execution of this Agreement, the parties hereby agree and acknowledge that the parties shall execute a license agreement for JBB's use of Parcel 1, substantially in the form attached hereto as **Exhibit E** and incorporated herein by reference (the "License Agreement").

Section 12. Representations and Warranties.

(a) City. The City represents and warrants that:

(i) It has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by the City and is a legal, valid, and binding agreement of the City, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by the City will not violate any judgment or order applicable to the City or the City's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which the City is a party or by which Parcel 1 is bound.

(iii) The City has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 1.

(iv) The City has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 1.

(v) To the best of City's knowledge, no third party other than JBB, its successors and assigns, has any right to acquire all or any part of Parcel 1.

(b) JBB. JBB represents and warrants that:

(i) JBB has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed, and delivered by JBB and is a legal, valid, and binding agreement of JBB, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by JBB will not violate any judgment or order applicable to JBB or JBB's instruments of organization, governance or operation, and will not result in any material breach of, or constitute a material default under, or result in the creation of any material lien, charge, security interest, or other encumbrance upon Parcel 1 or the 30' Easement Area or any note, bond, indenture, mortgage, deed of trust, bank loan, or credit agreement to which JBB is a party or by which Parcel 1 is bound; provided, however, execution and delivery of the 30' Sewer and Stormwater Easement Deed will require the consent of the mortgagee currently holding a mortgage lien on JBB's land where the 30' Easement Area is situated, which consent will be obtained by JBB prior to Closing.

(iii) JBB has not received any written notice of any pending condemnation, violation of law, or other legal action of any kind materially and adversely affecting Parcel 2.

(iv) JBB has no knowledge of any pending or threatened litigation, administrative action, or governmental investigation or examination (including, but not limited to, environmental investigations, examinations, claims, and demands) concerning Parcel 2 or the 30' Easement Area.

(v) No third party has any right to acquire all or any part of Parcel 2 or the 30' Easement Area.

(c) Survival. All representations and warranties contained herein are intended to remain true and correct as of the Closing, are deemed to be restated at the Closing, and will survive the Closing.

### Section 13. General Provisions.

(a) Assignment. Neither this Agreement nor any of the rights or obligations of any party pursuant to this Agreement may be assigned without the prior written consent of the other party.

(b) Brokers. Each party will indemnify and hold harmless the other from and against any claims for brokerage commissions arising out of any brokerage agreements entered into by the indemnifying party.

(c) Governing Law. This Agreement is governed by, and is to be construed and enforced in accordance with, the laws of the State of Maine (without regard to conflicts-of-laws principles that would require the application of any other law).

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the exchange of the property that is the subject of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings, and courses of dealing between the parties relating thereto, and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may be modified or amended only by means of a writing signed by the parties.

(e) Notices. Any notices required or permitted to be given hereunder will be given in writing, signed by the party giving the same, and will be delivered (a) in person, (b) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, or (c) by electronic mail (with Request a Read Receipt), and such notices will be addressed as follows:

To JBB:

Vincent P. Veroneau  
J.B. Brown & Sons  
10 Free Street  
P.O. Box 207  
Portland, Maine 04112-0207  
E-Mail: veroneau@jbbrown.com

with a copy to:

David L. Galgay, Jr., Esq.  
Verrill Dana  
One Portland Square  
Portland, Maine 04101-4054  
E-Mail: dgalgay@verrill-law.com

To City:

Jon P. Jennings  
City Manager  
City of Portland  
389 Congress Street  
Portland, Maine 04101  
E-Mail: gmitchell@portlandmaine.gov with a copy to:

Danielle West-Chuhta, Esq. Corporate Counsel  
City of Portland  
389 Congress Street  
Portland, Maine 04101  
E-Mail: DWCHUHTA@portlandmaine.gov

*[End of Page / Signature Page Follows]*

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

**J.B. Brown & Sons**

**City of Portland**

By: \_\_\_\_\_  
Vincent P. Veroneau  
Its President

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

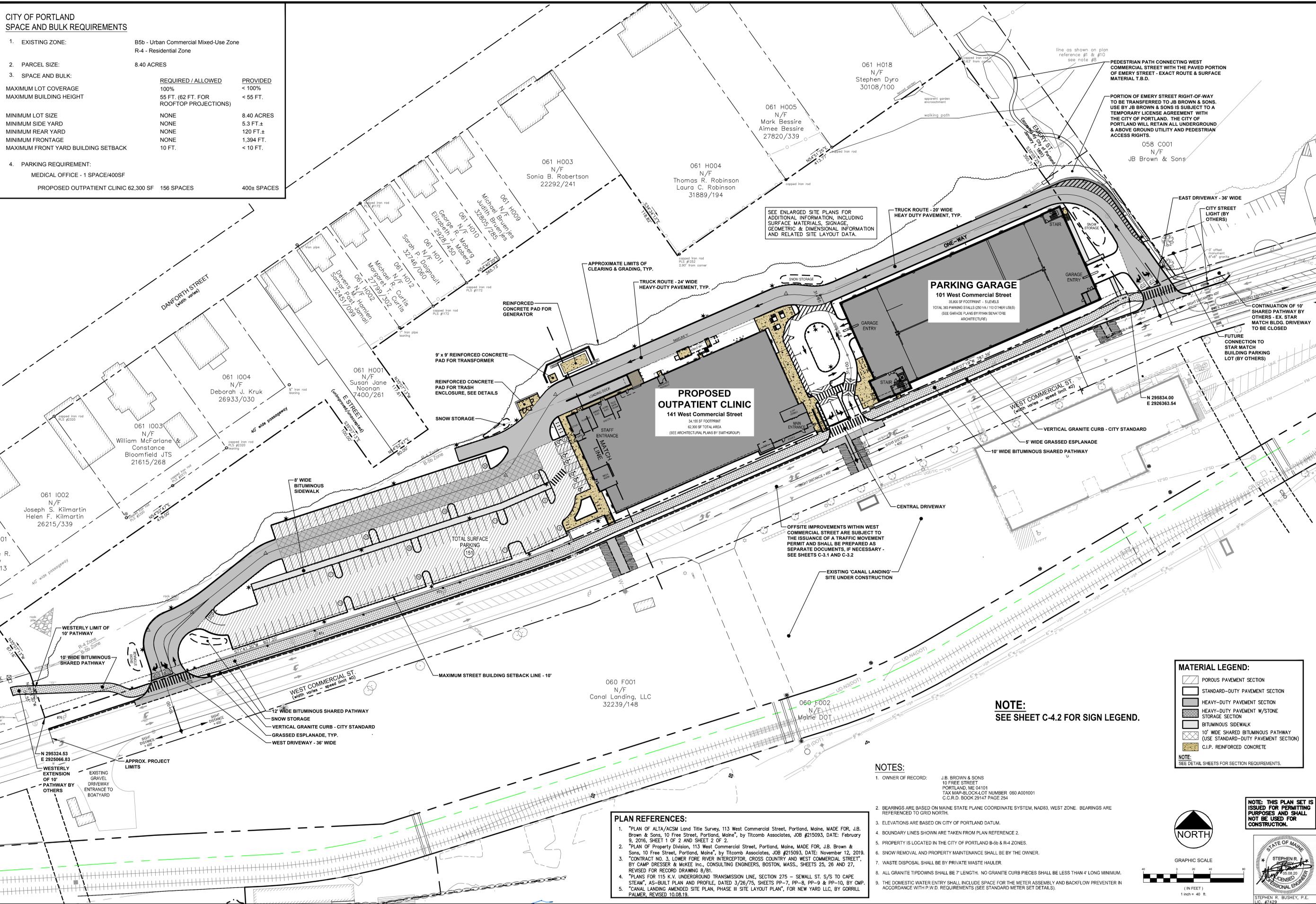
Approved as to Form: \_\_\_\_\_  
Corporation Counsel

Approved as to Funds: \_\_\_\_\_  
Finance Dept.

**EXHIBIT A**  
[Depiction of Parcel 1]

**CITY OF PORTLAND  
SPACE AND BULK REQUIREMENTS**

1. EXISTING ZONE:	B5b - Urban Commercial Mixed-Use Zone R-4 - Residential Zone	
2. PARCEL SIZE:	8.40 ACRES	
3. SPACE AND BULK:		
MAXIMUM LOT COVERAGE	REQUIRED / ALLOWED < 100%	PROVIDED < 100%
MAXIMUM BUILDING HEIGHT	55 FT. (62 FT. FOR ROOFTOP PROJECTIONS)	< 55 FT.
MINIMUM LOT SIZE	NONE	8.40 ACRES
MINIMUM SIDE YARD	NONE	5.3 FT.±
MINIMUM REAR YARD	NONE	120 FT.±
MINIMUM FRONTAGE	NONE	1,394 FT.
MAXIMUM FRONT YARD BUILDING SETBACK	10 FT.	< 10 FT.
4. PARKING REQUIREMENT:		
MEDICAL OFFICE - 1 SPACE/400SF		400± SPACES
PROPOSED OUTPATIENT CLINIC 62,300 SF	156 SPACES	400± SPACES



**PROPOSED  
OUTPATIENT CLINIC**  
141 West Commercial Street  
(SEE ARCHITECTURAL PLANS BY SMITHGROUP)

**PARKING GARAGE**  
101 West Commercial Street  
35,800 SF FOOTPRINT - 51 BAYS  
TOTAL 360 PARKING SPACES (250 VEH / 110 OTHER USES)  
(SEE GARAGE PLANS BY RYAN SENATORE ARCHITECTURE)

**MATERIAL LEGEND:**

[Symbol]	POROUS PAVEMENT SECTION
[Symbol]	STANDARD-DUTY PAVEMENT SECTION
[Symbol]	HEAVY-DUTY PAVEMENT SECTION
[Symbol]	HEAVY-DUTY PAVEMENT W/STONE STORAGE SECTION
[Symbol]	BITUMINOUS SIDEWALK
[Symbol]	10' WIDE SHARED BITUMINOUS PATHWAY (USE STANDARD-DUTY PAVEMENT SECTION)
[Symbol]	C.I.P. REINFORCED CONCRETE

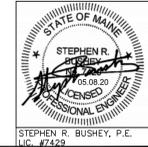
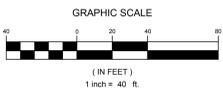
NOTE:  
SEE DETAIL SHEETS FOR SECTION REQUIREMENTS.

**NOTE:**  
SEE SHEET C-4.2 FOR SIGN LEGEND.

- NOTES:**
- OWNER OF RECORD: J.B. BROWN & SONS  
10 FREE STREET  
PORTLAND, ME 04101  
TAX MAP-BLOCK-LOT NUMBER 060 A001001  
C.C.R.D. BOOK 29147 PAGE 294
  - BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM, NAD83, WEST ZONE. BEARINGS ARE REFERENCED TO GRID NORTH.
  - ELEVATIONS ARE BASED ON CITY OF PORTLAND DATUM.
  - BOUNDARY LINES SHOWN ARE TAKEN FROM PLAN REFERENCE 2.
  - PROPERTY IS LOCATED IN THE CITY OF PORTLAND B-5b & R-4 ZONES.
  - SNOW REMOVAL AND PROPERTY MAINTENANCE SHALL BE BY THE OWNER.
  - WASTE DISPOSAL SHALL BE BY PRIVATE WASTE HAULER.
  - ALL GRANITE TYPEDOWNS SHALL BE 7' LENGTH. NO GRANITE CURB PIECES SHALL BE LESS THAN 4' LONG MINIMUM.
  - THE DOMESTIC WATER ENTRY SHALL INCLUDE SPACE FOR THE METER ASSEMBLY AND BACKFLOW PREVENTER IN ACCORDANCE WITH P.W.D. REQUIREMENTS (SEE STANDARD METER SET DETAILS).

- PLAN REFERENCES:**
- "PLAN OF ALTA/ACSM Land Title Survey, 113 West Commercial Street, Portland, Maine, MADE FOR, J.B. Brown & Sons, 10 Free Street, Portland, Maine", by Tilcomb Associates, JOB #215093, DATE: February 9, 2016, SHEET 1 OF 2 AND SHEET 2 OF 2.
  - "PLAN OF Property Division, 113 West Commercial Street, Portland, Maine, MADE FOR, J.B. Brown & Sons, 10 Free Street, Portland, Maine", by Tilcomb Associates, JOB #215093, DATE: November 12, 2019.
  - "CONTRACT NO. 3, LOWER FORE RIVER INTERCEPTOR, CROSS COUNTRY AND WEST COMMERCIAL STREET", BY CAMP DRESSER & McKEE Inc., CONSULTING ENGINEERS, BOSTON, MASS., SHEETS 25, 26 AND 27, REVISED FOR RECORD DRAWING 8/81.
  - "PLANS FOR 115 K.V. UNDERGROUND TRANSMISSION LINE, SECTION 275 - SEWALL ST. S/S TO CAPE STEAM", AS-BUILT PLAN AND PROFILE, DATED 3/26/75, SHEETS PP-7, PP-8, PP-9 & PP-10, BY CMP.
  - "CANAL LANDING AMENDED SITE PLAN, PHASE III SITE LAYOUT PLAN", FOR NEW YARD LLC, BY GORRILL PALMER, REVISED 10.08.19.

**NOTE: THIS PLAN SET IS  
ISSUED FOR PERMITTING  
PURPOSES AND SHALL  
NOT BE USED FOR  
CONSTRUCTION.**



U:\3572\_VA Clinic West Commercial St-Portland, ME - CAD\DWG\3572-SITE.dwg 9/9/2020 4:24 PM

Rev.	Date	Revision
3	05.08.20	REVISED AND RESUBMITTED TO CITY
2	05.01.20	REVISED AND RESUBMITTED TO CITY
1	03.25.20	REVISED PER CITY REVIEW AND RESUBMITTED

RELEASED TO CONTRACTOR - 100% PRICING SET	04.08.20	SRB
RELEASED TO CONTRACTOR - 90% PRICING SET	03.06.20	SRB
LEVEL III SITE PLAN APPLICATION	01.20.20	SRB
TMP APPLICATION	11.22.19	SRB
Issued For		By

Design: SRB Draft: CDD Date: NOV. 2019  
Checked: SRB Scale: AS NOTED Job No.: 3572  
File Name: 3572-SITE.dwg  
This plan shall not be modified without written permission from Gorrill Palmer Consulting Engineers, Inc.(GP). Any alterations, authorized or otherwise, shall be at the user's sole risk and without liability to GP.

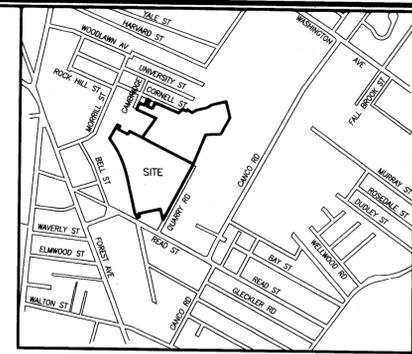


Relationships. Responsiveness. Results.  
www.gorrillpalmer.com  
207.772.2515

Drawing Name: **OVERALL SITE LAYOUT PLAN**  
Project: **U.S. Department of Veterans Affairs - Community Based Outpatient Clinic**  
Client: **FDS JBB PORTLAND, LLC**  
141 West Commercial Street, Portland, Maine  
10 Free Street, Portland, Maine 04101

Drawing No. **C-4.0**

**EXHIBIT B**  
[Depiction of Parcel 2]



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	442.44'	86.09'	85.96'	S22°32'44"W
C2	437.44'	50.40'	50.37'	S13°40'14"W
C3	507.44'	157.36'	156.73'	S19°15'15"W
C4	447.44'	138.76'	138.20'	N19°15'15"E
C5	497.44'	154.11'	153.49'	N19°14'42"E
C6	249.26'	136.48'	134.78'	N58°57'09"E

LINE	BEARING	DISTANCE
L1	S73°01'44"E	5.00'
L2	S10°22'12"W	112.69'
L3	N79°37'48"W	10.00'
L4	S28°08'12"W	89.53'
L5	N61°49'02"W	60.00'
L6	N28°08'12"E	89.49'
L7	N10°22'12"E	112.69'
L8	S79°37'48"E	10.00'
L9	N14°29'30"W	676.46'
L10	N14°10'00"E	247.57'
L11	N43°16'00"E	138.54'
L12	N74°38'20"E	168.21'
L13	N74°38'20"E	99.92'
L14	N44°03'16"E	65.77'
L15	N72°13'00"E	78.63'
L16	N77°53'19"E	205.92'
L17	S89°00'00"E	136.25'
L18	N77°30'51"E	11.61'

PLAN REFERENCES

1. PLAN OF PROPERTY IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS PLAN SHOWING THE EXISTING R.R. LOCATION EXHIBIT A AND THE PROPOSED RELOCATION EXHIBIT B AT ROCKY HILL BY J.B. BROWN & SONS BY H.I. & E.C. JORDAN, SURVEYORS DATED AUGUST 1, 1979.
2. PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE FOR J.B. BROWN & SONS BY H.I. & E.C. JORDAN, SURVEYORS DATED MARCH 27, 1981. RECORDED IN PLAN BOOK 130, PAGE 43.
3. COMPOSITE PLAN OF J.B. BROWN & SONS PARCELS IN PORTLAND, MAINE, MADE BY H.I. & E.C. JORDAN, SURVEYORS DATED SEPT. 14, 1995, RECORDED IN PLAN BOOK 132, PAGE 10.
4. PLAN OF PROPERTY IN PORTLAND, MAINE, MADE FOR FIRST BAPTIST CHURCH OF PORTLAND BY H.I. & E.C. JORDAN, SURVEYORS DATED APRIL 1, 1986.
5. PLAN OF SURVEY FOR SELTZER & RYDHOLM BY E.C. JORDAN DATED 1981.
6. EXISTING CONDITIONS SURVEY ON ALLEN AVE., MAGNOLIA ST., PRINCETON ST. & MORRILL ST. EXTENSION, PORTLAND, MAINE MADE FOR VHB BY OWEN HASKELL, INC. DATED SEPTEMBER 20, 2001 REVISED THROUGH DECEMBER 16, 2003.
7. STANDARD BOUNDARY & TOPOGRAPHIC SURVEY AT 212 CANCO ROAD, PORTLAND, MAINE MADE FOR NELSON & SMALL DATED AUGUST 28, 1996, REV. 05-01-07 BY OWEN HASKELL, INC.
8. ALTA/ACSM LAND TITLE SURVEY 212 & 250 CANCO ROAD, PORTLAND, CUMBERLAND COUNTY, MAINE MADE FOR THE CITY OF PORTLAND BY OWEN HASKELL, INC. DATED JANUARY 25, 2016.
9. PLAN OF TRACK AT ROCKY HILL PORTLAND TERMINAL COMPANY DATED JANUARY 14, 1952 RECORDED IN PLAN BOOK 38, PAGES 16 & 17.

GENERAL NOTES

1. OWNER OF RECORD: J.B. BROWN & SONS  
TAX MAP 148 BLOCK A LOT 2  
TAX MAP 150 BLOCK A LOTS 2, 3 & 8  
TAX MAP 151A BLOCK A LOTS 14, 15, 16 & 22  
PART OF TAX MAP 151A BLOCK A LOT 23  
C.C.R.D. 3531/151, 4256/60, 4468/226, 4589/152, 4839/13, 12118/16
2. BEARINGS ARE BASED ON TRUE NORTH PER PLAN REFERENCE 2.

APPROVED BY THE  
CITY OF PORTLAND PLANNING BOARD

*SJA*

SMITH G. O'BRIEN  
CITY PLANNING DIRECTOR  
pursuant § 14-496 (c) of  
Portland City Code

DATE

THIS PLAN AMENDS  
"PLAN OF SUBDIVISION IN PORTLAND, MAINE MADE  
FOR J.B. BROWN & SONS MARCH 27, 1981"  
RECORDED IN  
C.C.R.D. PLAN BOOK 130 PAGE 43

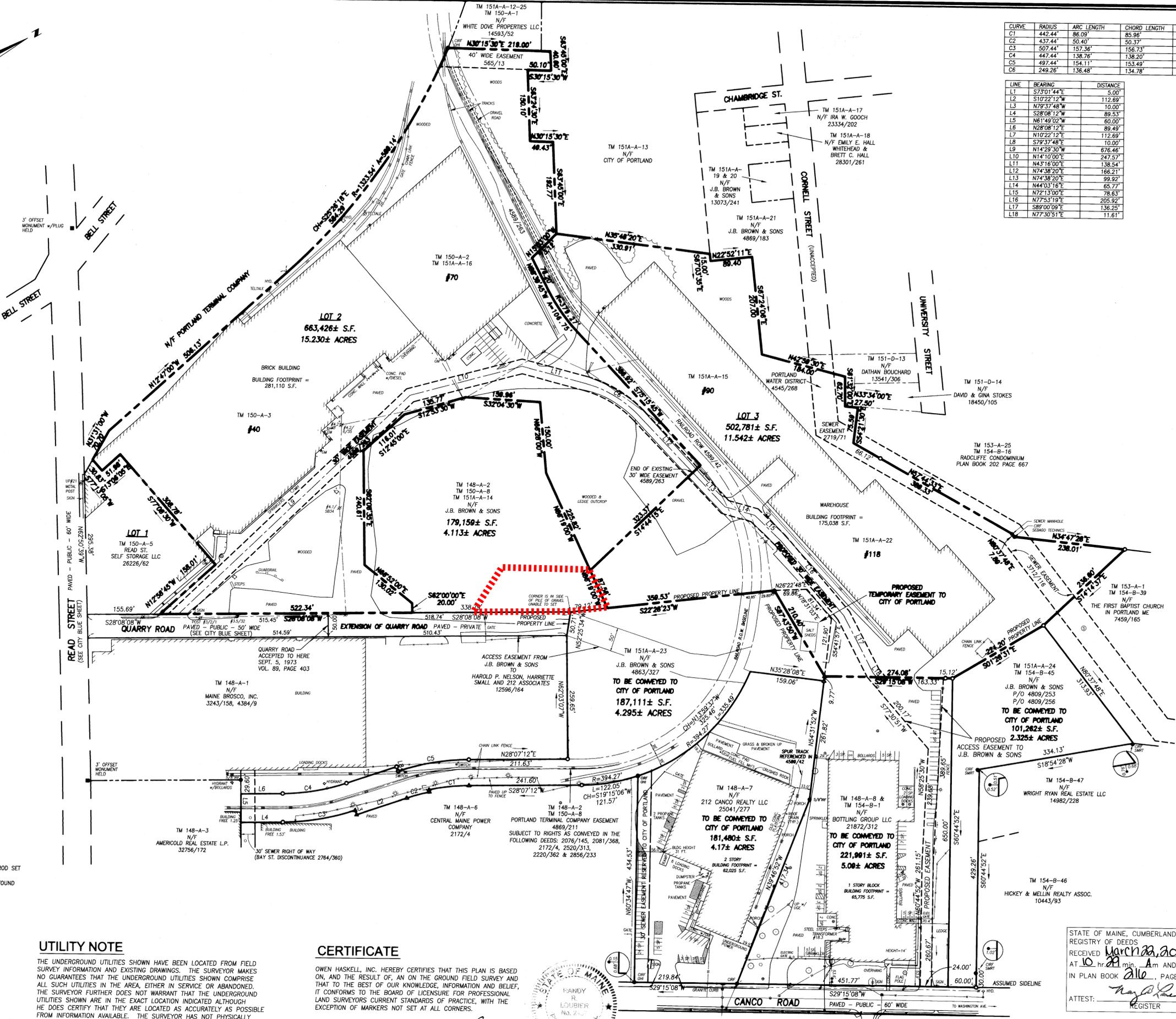
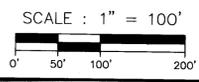
**AMENDED SUBDIVISION PLAN**  
ON  
QUARRY ROAD, PORTLAND, MAINE  
MADE FOR RECORD OWNER  
**J.B. BROWN & SONS**  
10 FREE STREET, PORTLAND, MAINE

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

Drawn By	RRL	Date	FEBRUARY 26, 2016	Job No.	2016-009 P
Trace By	JLW	Scale	1" = 100'	Drawn By	RRL
Check By	RRL	Book No.	1104		

STATE OF MAINE, CUMBERLAND, ss  
REGISTRY OF DEEDS  
RECEIVED *Yarnha, 2016*  
AT 10 hr 29 min AM AND RECORDED  
IN PLAN BOOK 1104, PAGE 83

ATTEST: *Raymond*  
REGISTER



- LEGEND**
- CAPPED 5/8" IRON ROD SET
  - △ MAG NAIL SET
  - IRON PIPE OR ROD FOUND
  - HYDRANT
  - UTILITY POLE
  - MANHOLE
  - CATCH BASIN
  - LIGHT POLE
  - SIGN
  - ELECTRIC METER
  - BOLLARD
  - FENCE
  - OVERHEAD WIRES
  - WATER LINE
  - GAS LINE
  - SS SANITARY SEWER
  - RAILROAD TRACKS
  - NOW OR FORMERLY DEED BOOK/PAGE
  - N/F TAX MAP
  - P/O PART OF
  - SP. SPACES

**UTILITY NOTE**

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES. CALL 1-888-DISSAFE AT LEAST THREE BUSINESS DAYS BEFORE PERFORMING ANY CONSTRUCTION.

**CERTIFICATE**

OWEN HASKELL, INC. HEREBY 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, WITH THE EXCEPTION OF MARKERS NOT SET AT ALL CORNERS.

3/21/16  
DATE

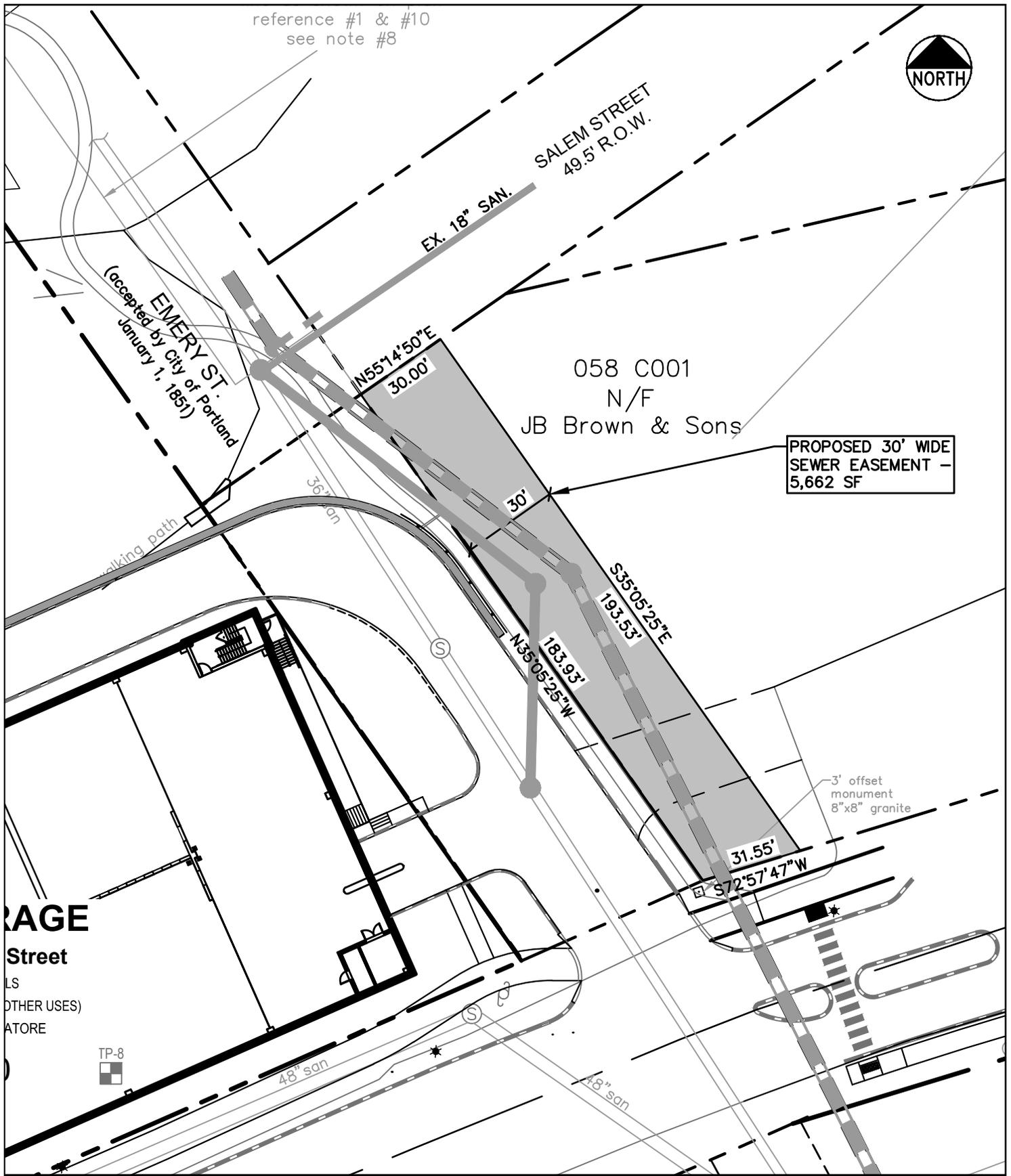
*Randy R. Louhier*  
RANDY R. LOUBIER, PLS. NO. 2407



**EXHIBIT C**

[Depiction of 30' Easement Area]

reference #1 & #10  
see note #8



**PROPOSED 30' WIDE  
SEWER EASEMENT -  
5,662 SF**

**RAGE**  
**Street**  
LS  
OTHER USES)  
ATORE



**PROPOSED 30' WIDE SEWER EASEMENT - LAND OF JB BROWN & SONS**

VA Clinic, West Commercial Street, Portland, Maine

Design: SRB	Date: JUNE 2020
Draft: CDD	Job No.: 3572
Checked: SRB	Scale: 1" = 40'
File Name: 3572-UTILITY.dwg	



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207.772.2515

**EXHIBIT**  
**A**

**EXHIBIT D**

[30' Sewer, Stormwater, and Access Easement Deed]

## **EASEMENT DEED**

KNOW ALL PERSONS BY THESE PRESENTS, that **J.B. BROWN & SONS**, a Maine corporation, with a mailing address of 10 Free Street, P.O. Box 207, Portland, Maine 04112-0207, (“Grantor”) in consideration of One Dollar (\$1.00) and other valuable consideration paid by the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (“Grantee”), does hereby grant, with quitclaim covenants, to the said City of Portland the certain easements and rights of way described below, and on, over, under, through, and across the real property described in Exhibit A attached hereto, and shown on the sketch attached hereto as Exhibit B (the “Easement Area”), both incorporated herein by reference.

An easement and right of way for the purpose of, and conveying the right, but not the obligation, to enter the Easement Area with workers, equipment, and vehicles, and to construct, install and perpetually maintain on, under, through, and across the Easement Area, conduits and/or pipelines, together with all necessary fixtures and appurtenances, for retaining, channeling, or conveying storm water, sewer water, and other underground utilities; together with the right, but not the obligation, to lay, relay, replace, repair, maintain, clean, and remove said conduit and/or pipelines and related fixtures and appurtenances; together with the right, but not the obligation, at all times to make connections with said utility systems on land, other than Grantor’s land, adjoining said easement by means of pipes or other services; and together with the right, but not the obligation, to trim, cut down and remove trees, bushes, and other vegetation of all kinds, to remove debris and deposits of any kind to such extent as Grantee determines is reasonably necessary or appropriate for any of the above purposes; and to enter upon said Easement Area at any and all times for any of the foregoing purposes.

The Grantee also hereby agrees as follows:

- (a) Grantee shall be responsible for any damage caused to any portion of the Grantor’s land, the improvements thereon or its contents arising from its use of its Easement Area rights.
- (b) Any materials used or debris generated by Grantee, its agents, licensees, invitees or employees in the exercise of its use of the Easement Area will be cleaned and removed no less frequently than daily, except for any

temporary staging or similar apparatus used in the proper exercise of Grantee's rights under this Easement Deed.

- (c) Grantee shall not deposit or scatter or allow the depositing or scattering of any type of waste, broken equipment, used cans or containers, or other debris, but shall keep the Easement Area free and clear of all such refuse.
- (d) All work done in the exercise of the Easement Area, shall be in accordance with all federal, state and local laws, with all applicable permits and approvals having been obtained by the Grantee doing the work in advance of any such work.
- (e) All work done in connection with the easements herein granted shall be in a safe manner and in such a manner as not to pose a health or safety risk to either the Grantor or the Grantee, and their respective invitees, licensees, guests and the like, or to the public.
- (f) All work done in connection with the easements herein granted shall be done with minimal interference with the business of the Grantor and its tenants, invitees, licensees, guests, customers, clients and the like.
- (g) Any and all destruction of, damage to, or disturbance of the Easement Area shall be repaired, replaced or restored to its original condition at the sole cost of Grantee.
- (h) Grantor shall not be liable to Grantee for any cost, damages, liabilities, losses or expenses relating to or arising from Grantee's use of the Easement Area, except to the extent that such cost, damages, liabilities, losses or expenses are caused by Grantor's negligent act or omission.

Grantor hereby reserves the right to use the Easement Area for any purposes it shall deem appropriate, provided that such use shall not interfere with Grantee's use of the Easement Area. In clarification of the foregoing, nothing contained herein shall preclude Grantor from (i) constructing within the Easement Area, parking spaces, driveways, lighting fixtures, utilities, drainage lines, landscaping and similar improvements, and the use thereof, or (ii) using the surface and subsurface of the Easement Area for other utility easements, so long as such uses described in clauses (i) and (ii) do not materially interfere with the easement rights herein granted; provided, however, that prior to making any such improvements, Grantor shall submit any plans to make such improvements to Grantee for its written approval, which approval will not be unreasonably delayed, withheld, or conditioned by Grantee.

Grantee, on behalf of its contractors, subcontractors, guests and invitees, agrees that its use and occupancy of the Easement Area in accordance with the terms and conditions of this Easement Deed is at Grantee's own risk, and Grantee hereby releases Grantor from all claims for any damages, injury or death arising therefrom by Grantee or Grantee's contractors,

subcontractors, guests and invitees, except to the extent that such claims are caused by Grantor's negligent act or omission.

Grantor, at its sole option and upon sixty (60) days prior written notice to Grantee, has the right to relocate the Easement Area and the storm water, sewer water, and any other utility lines, fixtures, and appurtenances located therein, provided, however, that said relocated easement area shall be on the Grantor's land, and Grantor shall be responsible for the cost and expense associated with the relocation, design, and reconstruction of Grantee's sewer, storm water, and other utility lines, fixtures, and appurtenances in the relocated easement area in accordance with Grantee's specifications and requirements.

By acceptance of this Easement Deed, Grantee hereby agrees to the terms and conditions of the easements herein granted.

[End of Page / Signature Page Follows]

IN WITNESS WHEREOF, the said J.B. BROWN & SONS has hereunto caused this instrument to be signed by Vincent P. Veroneau, Its President, duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WITNESS:

J.B. BROWN & SONS

\_\_\_\_\_

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

Vincent P. Veroneau

Its President

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2020

Personally appeared the above-named Vincent P. Veroneau in his capacity as President of J.B. Brown & Sons and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of J.B. Brown & Sons.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law

\_\_\_\_\_  
Print Name

## **Exhibit A**

**EXHIBIT E**

[License Agreement For Parcel 1]

## REVOCABLE LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is made this \_\_\_\_ day of June, 2020 (the “Effective Date”), by and between the **CITY OF PORTLAND**, a Maine municipal corporation with a place of business in Portland, Maine (“Licensor” or “City”) and the **J.B. BROWN & SONS**, a Maine corporation with offices in Portland, Maine (“Licensee”).

WHEREAS, Licensor is the current owner of that certain portion of an approximately 60-foot wide public right of way identified as Emery Street (the “City Property”) as shown on that certain plan entitled “Site Layout Plan – East Side, U.S. Department of Veterans Affairs—Community Based Outpatient Clinic,” prepared by Gorrill Palmer and dated Nov. 2019 (the “Plan”);

WHEREAS, Licensee is the abutting owner on both sides of the City Property as shown on the Plan (“JBB Property”); and

WHEREAS, subject to approval by the Portland City Council, Licensor intends to discontinue the City Property (i.e., that certain portion of Emery Street as shown on the Plan to be discontinued) and being more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “License Area”), in exchange for certain land owned by Licensee on Quarry Road in Portland, Maine, which land swap will be evidenced by a certain Land Exchange Agreement of near or even date herewith; and

WHEREAS, until License Area is discontinued by Licensor, or until this Agreement is otherwise terminated, Licensor intends to allow Licensee to use License Area for the purposes set forth below in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I. TERM:** This License shall commence on the Effective Date and terminate upon the earlier of (i) the City Council’s approval of the discontinuance of the City Property and the recording of a certificate of discontinuance in the Cumberland County Registry of Deeds, or (ii) an Event of Revocation, as that term is defined below.

**ARTICLE II. PERMITTED USES:** Licensor hereby grants to Licensee, together with its lessees, agents, contractors, subcontractors, visitors and invitees, the right to use the License Area for pedestrian and vehicular access to the JBB Property and all uses depicted on the Plan within the License Area; *provided, however*, that said use by Licensee does not interfere with Licensor’s use of the License area for (i) public ingress and egress by pedestrians, bicycles, and other non-motorized pedestrian uses and (ii) underground, on-ground, and above ground utilities.

ARTICLE III. ASSIGNMENT: This License is assignable to any subsequent owners of the property depicted on the Plan, and in the event of such assignment, Licensee shall notify the City of such assignment no fewer than 10 days prior to the effective date of such assignment.

ARTICLE IV. NOTICES: Any notices required or permitted to be given hereunder will be given in writing, signed by the party giving the same, and will be delivered (a) in person, (b) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, or (c) by electronic mail (with Request a Read Receipt), and such notices will be addressed as follows:

Licensor at: **City of Portland**  
**389 Congress Street**  
**Portland, Maine 04101**

Licensee at: **J.B. Brown & Sons**  
**10 Free Street, Suite 100**  
**Portland, Maine 04112**

ARTICLE V. INDEMNITY: To the fullest extent permitted by law, Licensee shall defend, indemnify and hold the Licensor, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments, just or unjust, that arise out of or are caused by the any act or omission of Licensee, its partners or members, agents, invitees, contractors, subcontractors, or employees, which claims arise out of or result from the activities hereunder, said claims to include, without being limited to, claims for personal injury, death, or property damage, including injury or damage to City employees or property; and claims based upon violation of any environmental law or regulation governing hazardous substances. Licensee's obligations under this paragraph shall survive the termination of this License.

ARTICLE VI. INSURANCE: Prior to the execution of this Agreement, the Licensee will procure and maintain:

- Occurrence based Commercial General Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;
- Occurrence-based Automobile Liability Insurance coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage;
- Workers' Compensation Insurance coverage to the extent required by law, which shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees;

With respect to the Automobile and Commercial General Liability Insurance, the Licensee shall name the Licensor as an additional insured for coverage only in those areas where government immunity has been expressly waived, including, without limitation, as set forth in 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of

any defenses, immunities or limitations of liability or damages available to the Licensor under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Licensor. Prior to execution of this Agreement, the Licensee shall furnish the Licensor and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the Licensor of termination of insurance from the insurance provider or agent. Licensee shall also provide a copy of any endorsement naming the Licensor as additional insured. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon Licensor's request, Licensee shall provide Licensor with a complete copy of any of the above-referenced policies. Licensee shall be responsible for any and all deductibles and/or self-insured retentions (not to exceed \$10,000.00 without prior written approval of Corporation Counsel). Licensor's acceptance or lack of acceptance of Licensee's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Licensee's obligation to obtain and maintain such insurance as required by this agreement. If the Licensee maintains broader coverage and/or higher limits than the minimum shown above, the Licensor requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensee.

ARTICLE VII. RELEASE: Licensee hereby releases the Licensor and its officers, agents and personnel (collectively, the "Releasees") from any and all claims, liabilities, damages, losses, costs, fees and expenses arising out of or resulting, directly or indirectly, from Licensee's use of any City Property, including, without limitation, injuries, losses and damages for bodily injury (including disability or death) and property damage, regardless of cause, including any and all claims, damages and liabilities that arise out of or result from any actions or omissions, including negligence, on the part of any of the Releasees. Licensee promises not to sue any of the Releasees with respect to any such claims or liabilities. This waiver and release is intended to be as broad as the law allows and shall survive termination of this agreement.

ARTICLE VIII. MAINTENANCE, RESTORATION. Licensee shall be responsible for the proper maintenance of any improvements it makes in the Licensed Area. In the event of damage to such improvements and/or the Licensed Area, Licensee shall promptly repair/restore the same. Prior to such repair/restoration, Licensee shall notify the City (in writing and by telephone) at least forty-eight hours before it plans to conduct such repair or restoration and shall work with City staff on the closure, if needed, of any City streets in the vicinity of the property in order to conduct such repair/restoration. All work performed upon and use of the Licensed Area for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property affected by work conducted by Licensee under this License to substantially the same condition that it was in prior to such work or as close to that condition as is reasonably practicable. The City also acknowledges and agrees that during the construction of the buildings and development contemplated by the Plan, public ingress and egress by pedestrians, bicycles, and other non-motorized pedestrian uses may be interrupted and not available within the License Area; provided, however, that

during any such interruption, Licensee shall provide a temporary detour for such ingress and egress on Licensee's property abutting the Licensed Area.

ARTICLE IX. CITY UTILITIES. Licensee agrees that City may enter and utilize the Licensed Area at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from any improvements installed by Licensee, but City will make reasonable efforts to minimize such damage. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is made costlier by virtue of the construction, maintenance or existence of Licensee's improvements and use, Licensee shall pay to City an amount equal to such additional cost as reasonably determined by the Director of Public Works or said Director's duly authorized representatives.

ARTICLE X. REVOCATION. Licensor may revoke this License six (6) months after receipt by the Licensee of written notice that an Event of Revocation (as defined below) has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after Licensee's receipt of such notice, except as set forth in subsection (d) below. "Event of Revocation" shall mean:

- a. Licensee's non-compliance with any of the terms of this Agreement;
- b. the building shown on the Plan fails to be constructed substantially in accordance with the Plan or any amendments thereto;
- c. the building as shown on the Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or
- d. failure to maintain insurance as required under Section 6 above, and such failure is not remedied within thirty (30) days after written notice thereof.
- e. Licensee's breach of the Land Exchange Agreement between the parties of near or even date herewith.

Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Licensee, any mortgagee of Licensee's property shall be entitled to cure the matter set forth in such notice within the time frames set forth above, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder.

ARTICLE XI. NO PROPERTY RIGHTS. This instrument is a license only and no provision hereof shall be construed as conveying an easement or other estate in land.

ARTICLE XII. MISCELLANEOUS: This License sets forth the entire agreement of the parties with respect to the subject matter hereof. Any changes to this License shall be approved in writing, signed by all of the parties. No provision of this License shall be deemed to have been waived unless the event giving rise to such waiver has occurred, and unless such waiver is in writing. No such waiver shall be deemed to be a waiver of any other or further similar or dissimilar obligation or liability of the party or parties in whose favor the waiver was given. This License shall be governed by the laws of the State of Maine.

*Signature page follows.*

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above mentioned.

WITNESS:

CITY OF PORTLAND

\_\_\_\_\_

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

Jon P. Jennings  
Its City Manager

“Licensor”

WITNESS:

J.B. BROWN & SONS

\_\_\_\_\_

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

Vincent P. Veroneau  
Its President

“Licensee”

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2020

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

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2020

Then personally appeared the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, as aforesaid, and acknowledged the foregoing to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public