

Order 48-14/15

Passage: 8-0 (Leeman absent) on 9/15/2014

Effective 9/25/2014

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

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING AND AUTHORIZING THE ACTING CITY MANAGER
TO SIGN THE SECOND AMENDMENT OF
THE PURCHASE AND SALE AGREEMENT, THE GUARANTY
AND THE SOMERSET STREET COST SHARE AGREEMENT
RE: THE FEDERATED COMPANIES LLC**

ORDERED, that the Second Amendment of the Purchase and Sale Agreement, the Amendments of Guaranty and the Parking Garage Contribution and Funding Agreement, and the Somerset Street Cost Share Agreement with The Federated Companies LLC and FEDEQ DV001, LLC are hereby approved in substantially the forms attached hereto as Attachment 1 and Attachment 2; and

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

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

THIS AGREEMENT dated March _____, 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:
Its:

Approved: Ellen Sanborn, 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

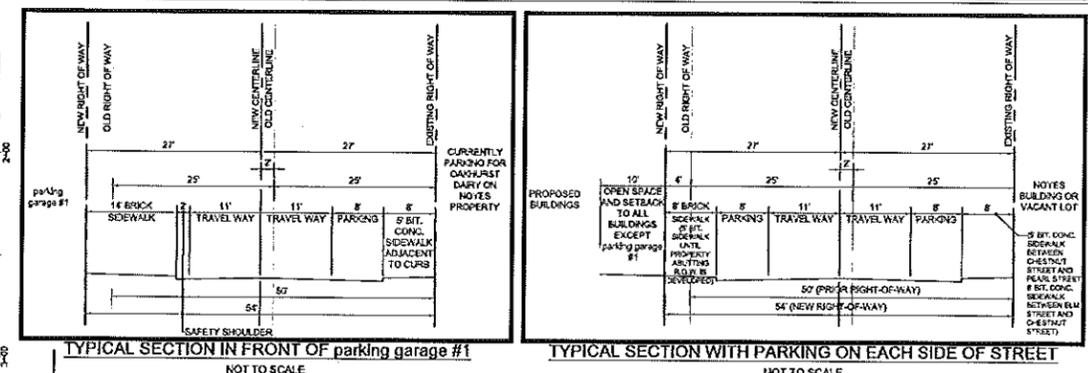
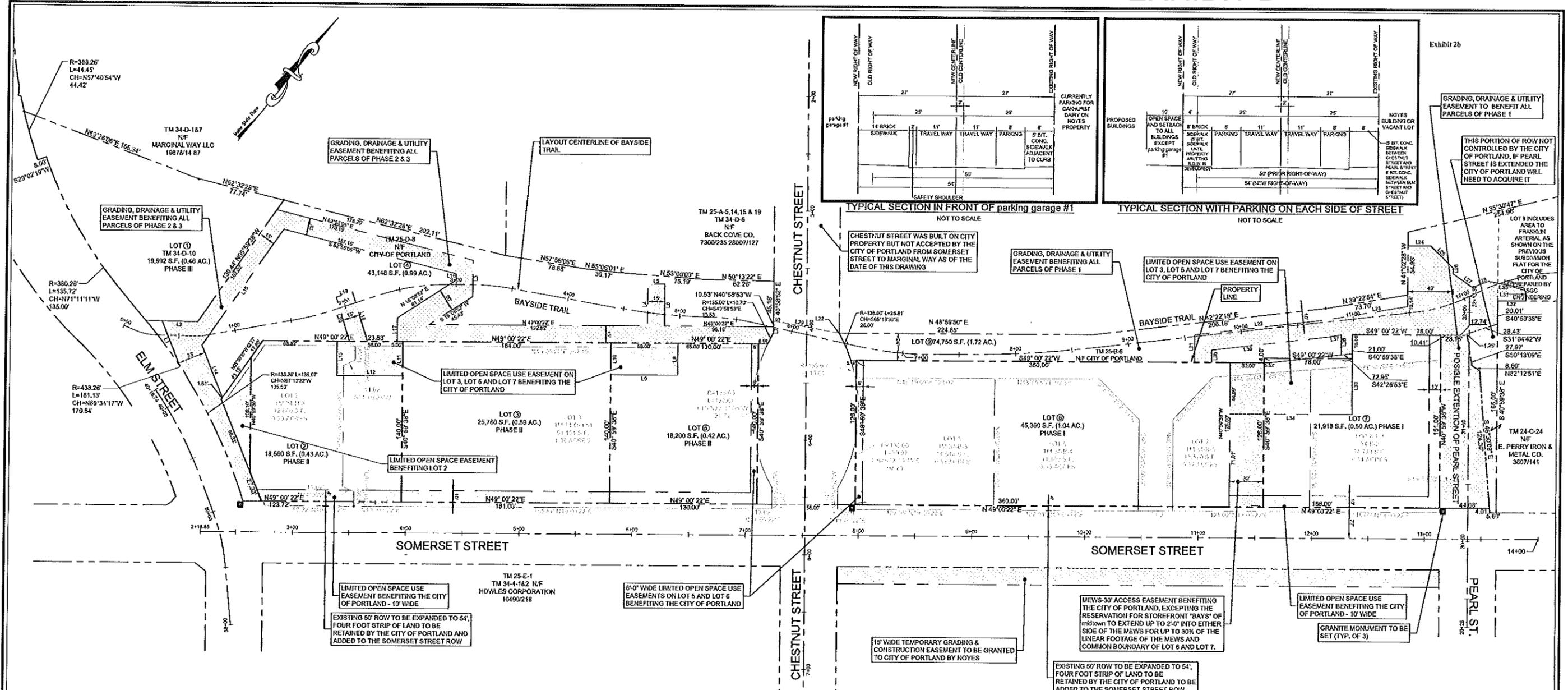
By: _____
Jonathan Cox
Its: Manager

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

EXHIBIT B
TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT

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

EXHIBIT B



EASEMENT NOTES

- THE EASEMENTS SHOWN ON THIS AMENDED SUBDIVISION PLAN LOCATED UPON LOT 4 ARE PRELIMINARY AND MAY BE RELOCATED AT THE TIME OF LEVEL III SITE PLAN APPROVAL OF THE DEVELOPMENT OF LOTS 1, 2, 3 OR 5 AS SHOWN ON THE PLAN, AND ANY APPROVED SITE PLAN CONTAINING ANY SUCH REVISED EASEMENT AREAS SHALL BE DEEMED TO AMEND THE EASEMENTS SHOWN ON THIS AMENDED SUBDIVISION PLAN, IF THE EASEMENT CHANGES ARE MADE, A NEW PLAN AND IF NECESSARY, DEED SHALL BE SUBMITTED FOR REVIEW AND APPROVAL.
- THE FOLLOWING EASEMENTS SET FORTH IN NOTES 2A, 2B, 2C, 2D, 2E, 2F AND 2G ARE NOT SHOWN ON THIS PLAN. THE LOCATION AND TERMS AND CONDITIONS OF SUCH EASEMENTS ARE TO BE FORMULATED AND APPROVED BY THE CITY CORPORATION COUNSEL AND COUNSEL TO THE PURCHASER, AND SHALL BE SET FORTH IN THE DEED CONVEYING THE LOTS FROM THE CITY OF PORTLAND TO THE PURCHASER, OR IN A SEPARATE EASEMENT DEED OR EASEMENT AGREEMENT. IF THE EASEMENT CHANGES ARE MADE, A NEW PLAN AND IF NECESSARY, DEED SHALL BE SUBMITTED FOR REVIEW AND APPROVAL.
- 2A. AN EASEMENT FOR SNOW REMOVAL ACTIVITIES IN A LOCATION OVER LOT 4 AND 9.
- 2B. AN EASEMENT FOR SUBSURFACE PILING, PILE CAPS AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHERLY, EASTERLY AND SOUTHERLY PROPERTY LINES OF LOT 2, 3 & 5 AND BURDENING LOT 4 AND THE CHESTNUT STREET AND SOMERSET STREET RIGHTS OF WAY.
- 2C. AN EASEMENT FOR SUBSURFACE PILING, PILE CAPS, AND BUILDING FOUNDATIONS GENERALLY ALONG THE NORTHWESTERLY AND SOUTHEASTERLY PROPERTY LINES OF THE SOMERSET STREET RIGHT OF WAY AND LOT 6 AND 7 AND BURDENING THE SOMERSET STREET AND LOT 9.

2D. LOTS 4 AND 9 ARE SUBJECT TO EASEMENTS FOR CONSTRUCTION, STAGING, REPAIR AND MAINTENANCE BENEFITING THE OTHER LOTS OF THE SUBDIVISION. THIS EASEMENT REQUIRES THE REPAIR OR REPLACEMENT OF ANY FEATURES IN LOT 4 OR 9 THAT MAY BE DAMAGED BY THE ACTIVITIES ALLOWED AS PART OF THESE EASEMENTS.

2E. AN EASEMENT TO THE OWNERS OF LOTS 2 AND 7 PROVIDING THE RIGHT TO CONSTRUCT STEPS, RAMPS, AND LANDINGS IN THE AREAS OF THE ELM STREET, PEARL STREET EXTENSION, AND SOMERSET STREET RIGHTS OF WAY DEPICTED ON THE SITE PLANS FOR THE MDTOWN PROJECT PREPARED BY FAY, SPOFFORD & THORNDIKE, INC. AND IDENTIFIED AS SITE PLANS C-2.1, C2.2 AND C2.3 DATED SEPTEMBER 2013.

2F. LICENSES FOR FEDERATED COMPANY, 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.

2G. AN EASEMENT BENEFITING LOTS 1, 2, 3, 5, 6 AND 7 TO CONSTRUCT, OPERATE AND MAINTAIN WATER QUALITY TREATMENT SYSTEMS UPON PORTIONS OF LOTS 4 AND 9.

3. 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 UNDERPASS EASEMENT ON LOT 1 AND 2, GEOTHERMAL EASEMENTS, FORMER LOCATION OF THE TRAIL CORRIDOR EASEMENT AND ALL OTHER EASEMENTS ON LOTS 1, 3, 5, 6, AND 7 CREATED BY AND SHOWN ON THE PRIOR AMENDED SUBDIVISION PLAN.

GENERAL NOTES

- THIS AMENDED SUBDIVISION PLAN AMENDS AND REPLACES THE SUBDIVISION RECORDING PLAT ENTITLED "SUBDIVISION RECORDING PLAT OF PROPERTY LOCATED ON BAYSIDE RAILROAD, 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 FEDERATED COMPANIES, LLC OR IT'S DESIGNATED ASSIGNEE ENTITIES ANTICIPATES ACQUISITION OF THE PARCELS NECESSARY TO CONSTRUCT PHASE 1, 2 AND 3 OF PROJECT AS DEPICTED ON YEAR 2013 MDTOWN MASTER PLAN AND MDTOWN SITE PLAN APPLICATIONS. THIS AMENDED SUBDIVISION PLAN ASSUMES PHASE 1 OF THE MDTOWN PROJECT PROPOSED BY FEDERATED WILL INCLUDE LOTS 6 AND 7. PHASE 2 WILL INCLUDE LOTS 2, 3 AND 5. PHASE 3 WILL INCLUDE LOT 1.
- THE CITY OF PORTLAND SHALL RETAIN A FOUR FOOT WIDE STRIP OF LAND ALONG THE NORTHERLY SLOPE OF SOMERSET STREET TO BE ADDED TO THE SOMERSET STREET RIGHT OF WAY, IN ORDER TO INCREASE THE WIDTH OF SOMERSET STREET ADJOINING LOTS 2 THROUGH 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 8 IN THE SUBDIVISION.
- THE CITY WILL ISSUE TO FEDERATED AS NEEDED FOR CONSTRUCTION, MAINTENANCE OR REPAIR OF FACILITY WITHIN OR ACCESSIBLE ONLY FROM THE BAYSIDE TRAIL.

EASEMENT LINE TABLE

LINE	BEARING	DISTANCE (FEET)
L1	N63°10'10"W	42.17
L2	N50°11'34"E	31.53
L3	S40°59'38"W	31.68
L4	N49°59'38"W	36.58
L5	N49°00'22"E	15.07
L6	S40°59'38"E	36.58
L7	S40°55'55"E	5.53
L8	S40°59'38"E	23.07
L9	S49°00'22"W	69.07
L10	N40°59'38"W	23.07
L11	S40°59'38"W	30.07
L12	N49°00'22"E	58.07
L13	N40°59'38"E	30.07
L14	S63°10'10"E	49.23
L15	S05°59'38"E	120.09
L16	N40°59'38"W	5.72
L17	N40°59'38"W	23.63
L18	N58°28'02"W	44.68
L19	S31°32'00"W	15.07
L20	N41°00'32"W	24.60
L21	N42°22'19"E	117.49
L22	N39°22'54"E	72.23
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	6.07
L27	N54°05'10"E	20.69
L28	N58°31'35"E	15.21
L29	N59°22'54"E	31.41
L30	S61°28'51"E	5.07
L31	S40°59'38"E	6.82
L32	S49°00'22"W	24.24
L33	N40°59'38"W	43.69
L34	S49°00'22"E	103.07
L35	S41°00'32"E	10.72
L36	S42°22'19"W	104.49
L37	S39°22'54"W	10.69
L38	N40°59'38"W	17.42

SURVEYOR WILL STAMP DRAWING UPON APPROVAL OF THE CITY

APPROVAL - CITY OF PORTLAND PLANNING BOARD

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: _____ DATE: _____
CHARPERSON: _____ JOHN W. SWAN, PLS NO. 1038

LEGEND

- AREA TO BE CONVEYED TO CHESTNUT STREET ROW
- MEWS - ACCESS EASEMENT BENEFITING THE CITY OF PORTLAND
- PORTION OF ROW NOT CONTROLLED BY CITY OF PORTLAND
- ACCESS, GRADING, DRAINAGE AND UTILITY EASEMENT FOR PHASE 1, PHASE 2 AND PHASE 3 AND LOTS 2 AND 9
- LIMITED OPEN SPACE USE EASEMENT BENEFITING THE CITY OF PORTLAND

AMENDED SUBDIVISION/RECORDING PLAT
ON
SOMERSET STREET, PORTLAND, MAINE
MADE FOR
FAY, SPOFFORD & THORNDIKE
77B MAIN STREET, SOUTH PORTLAND, MAINE

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

Drawn By	EB	Date	APRIL 10, 2013	Job No.	12012-180 P
Trace By	J.W.	Scale	1" = 40'	Drwg. No.	C-1.2
Check By	JWS				
Book No.	FILE				

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 _____, 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 Expansion-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 _____, 2014.

FEDEQ DV001, LLC

CITY OF PORTLAND

By _____,
Jonathan Cox
Its: Manager

By _____
Mark Rees, City Manager

By _____
Ellen Sanborn, 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

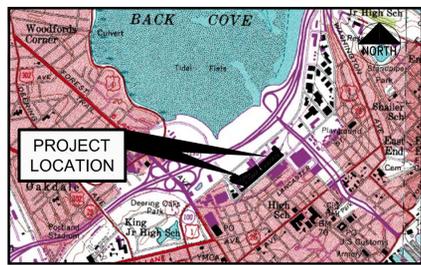


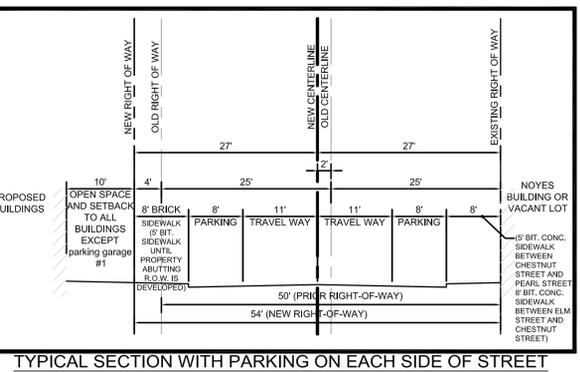
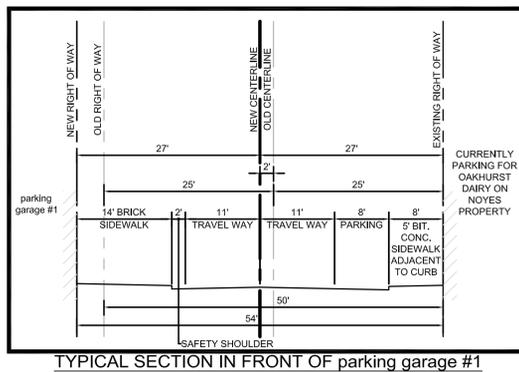
Exhibit 2v

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

NOTE 5:
ADA ramps and tactile warning strips.

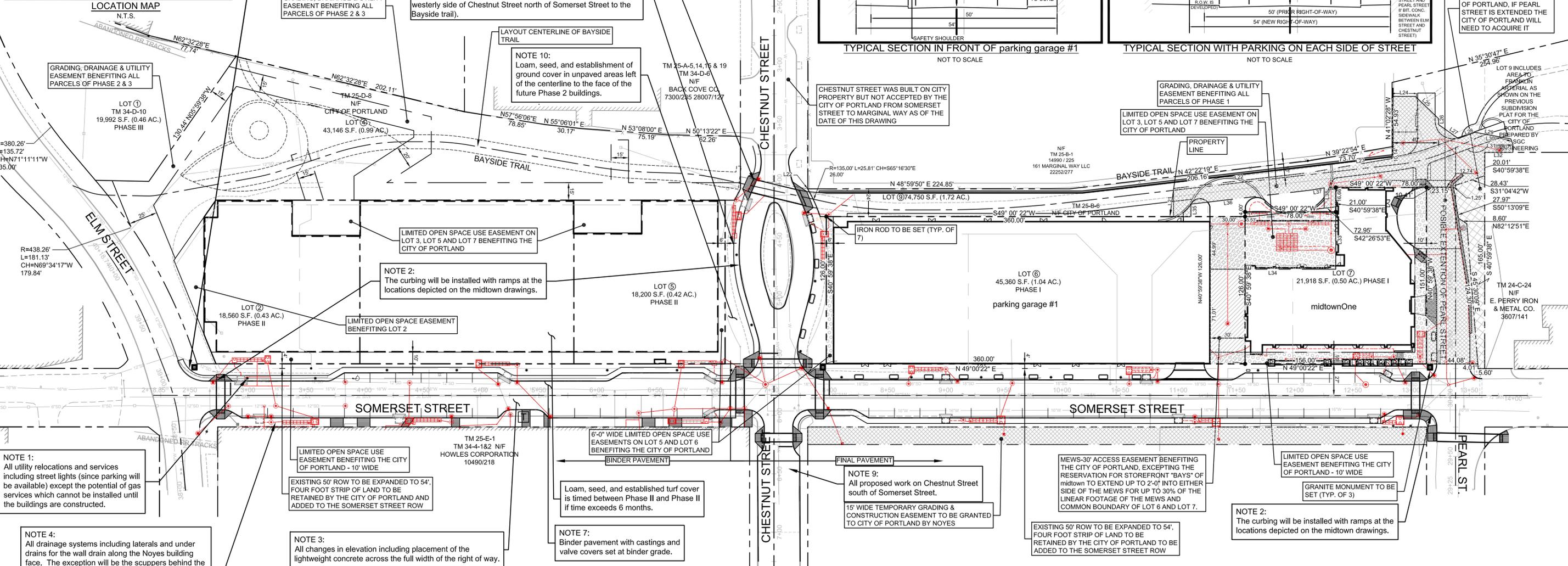
NOTE 8:
A 5 foot wide bituminous concrete walk will be constructed along Somerset Street at 19.42 to 24.42 feet left (i.e. adjacent to the curb in areas of parking) between Elm and Chestnut Street. A five foot wide bituminous sidewalk will also be constructed along the westerly side of Chestnut Street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

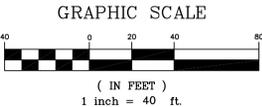
NOTE 3:
All changes in elevation including placement of the lightweight concrete across the full width of the right of way.

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