

Order 226-15/16

Passage: 9-0 on 4/25/2016

Effective 5/5/2016

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

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

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

**ORDER GRANTING LICENSES  
RE: MIDTOWN DEVELOPMENT**

**ORDERED**, that license agreements to FEDEQ DV001, LLC to allow the installation and the work of grading, drainage, and utilities at the Midtown development are hereby granted in substantially the forms attached hereto; 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 said documents and this Order.

## **REVOCABLE LICENSE FOR DRAINAGE AND GRADING**

This Revocable License For Drainage And Grading (hereinafter "License") is granted by the City of Portland (hereinafter, "City") to FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (hereinafter, "Owner") for the alteration and grading of certain real property owned by the City located northwesterly of Somerset Street and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Licensed Area"), which is adjacent to property owned by the Owner and identified as Lots 3 and 7 on a certain "Amended Subdivision Recording Plat for Midtown Development, Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds (the "Plan"). The rights of access to and site alteration of the Licensed Area and adjacent areas shall be governed by the terms of this License.

1. Owner is hereby permitted to bring upon the Licensed Area and areas adjacent thereto workers, materials and machinery necessary to carry out the drainage and grading plan as shown in a set of certain site plans entitled "Site Development Plan For Midtown, Portland, Maine, Final Subdivision And Level III Site Plans with Conditions of Approval" dated February 17, 2016 and prepared for Owner by Fay Spoffard & Thorndike (the "Site Plan"), a copy of which is on file with the City of Portland Planning Department, and which is incorporated herein by reference, and as more particularly described in Exhibit B.
2. Owner is hereby permitted to occupy the Licensed Area only for the purpose of carrying out the grading and drainage work in the Licensed Area pursuant to the terms of this License and in accordance with the Site Plan. Such grading and drainage work shall not substantially interfere with the City's use and maintenance of its pedestrian trail located in the Licensed Area, except as otherwise required by the terms of a construction management plan for the Midtown Development, a copy of which is on file with the City of Portland Planning Department and which is incorporated herein by reference.
3. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Owner'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. Owner agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property effected by work conducted by Owner 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. Owner, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Owner's use, or the use of Owner's contractors, of the City's property as described above during the term of the License. The Owner's

obligation to defend, indemnify and hold the City harmless shall survive termination or revocation of this License.

4. In the event of damage to any of the grading and drainage work and/or the Licensed Area, Owner shall promptly repair/restore the same. Prior to such repair/restoration, Owner 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.
5. Owner shall procure and maintain throughout the term of this License automobile and comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as may be amended from time to time) per occurrence for bodily injury, death, or property damage covering its activities hereunder and naming the City as an additional insured thereon. In addition, Owner shall provide evidence of Workers' Compensation insurance in the statutory amount to the extent it may be required by law. Certificates evidencing such policy shall be delivered to the City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal.
6. Owner, by execution of this License, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Owner's exercise of the rights granted by this License, and does hereby forever waive, release, relinquish, remise, indemnify and discharge the City, its agents, employees, successors and assigns from and against any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License, arising out of the presence in and use by the Owner of the area covered by this License.
7. This License is assignable to any subsequent owners of the property described as Lots 3 and/or 7 on the Plan, and in the event of such assignment, Owner shall be released from all agreement to indemnify, defend, or hold the City harmless for claims or damage to persons or property arising after the date of such assignment. Owner shall notify the City of such assignment no less than 10 days prior to the effective date of such assignment.
8. This License, and all of the rights and obligations herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
9. The City may revoke this License six (6) months after receipt by the Owner 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 Owner's receipt of such notice, except as set forth in subsection c) below. "Event of Revocation" shall mean:

- a) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto;
- b) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Owner's property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or
- c) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof.

10. Any notice of an Event of Revocation delivered pursuant to Section 9 of this License must be sent by certified mail, return receipt requested to the Owner at the address first set forth above, or at such other address as the Owner may provide to the City in writing from time to time.

11. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Owner, any mortgagee of Owner's property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 9 hereof, and the City agrees to accept such performance by any such mortgagee of Owner's obligations hereunder.

IN WITNESS WHEREOF, the City of Portland has caused this License to be executed by Jon P. Jennings, its City Manager thereunto duly authorized, and FEDEQ DV001, LLC, has caused this License to be executed by Jonathan Cox, its Manager thereunto duly authorized, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
Witness

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

**FEDEQ DV001, LLC**

\_\_\_\_\_  
Witness

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

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2016

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 FLORIDA  
DADE, ss.

\_\_\_\_\_, 2016

Then personally appeared the above-named Jonathan Cox, Manager of FEDEQ DV001, LLC, 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 limited liability company.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public  
Commission Expires:  
Print Name: Lloyd Cox

EXHIBIT A

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

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

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

COMMENCING at the westerly sideline corner of Chestnut Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BEGINNING** at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street as shown on a plan titled “Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC” dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

**BEGINNING** at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled “Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC” dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT B**  
**(Plans)**

## **REVOCABLE LICENSE FOR MAINTENANCE OF CANOPY ON CITY STREETS**

This Revocable License For Maintenance Of Canopy On City Streets (hereinafter “License”) is granted by the City of Portland (hereinafter, "City") to FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (hereinafter, "Owner") for the Owner’s installation and maintenance of a canopy over certain real property owned by the City located northwesterly of Somerset Street and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Licensed Area"), which is adjacent to property owned by the Owner and identified as Lot 1 on a certain “Amended Subdivision Recording Plat for Midtown Development, Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC” dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds (the “Plan”). The installation and maintenance of the canopy shall be governed by the terms of this License.

1. Owner is hereby permitted to bring upon the Licensed Area and areas adjacent thereto workers, materials and machinery necessary to install and maintain a canopy over the Licensed Area as shown in a set of certain site plans entitled “Site Development Plan For Midtown, Portland, Maine, Final Subdivision And Level III Site Plans with Conditions of Approval” dated February 17, 2016 and prepared for Owner by Fay Spoffard & Thorndike (the “Site Plan”), a copy of which is on file with the City of Portland Planning Department, and which is incorporated herein by reference, and as more particularly described in Exhibit B.
2. Owner is hereby permitted to occupy the Licensed Area only for the purpose of carrying out the installation and maintenance of the canopy pursuant to the terms of this License and in accordance with the Site Plan. Such work shall not substantially interfere with the City’s use and maintenance of the Licensed Area, except as otherwise required by the terms of a construction management plan for the Midtown Development, a copy of which is on file with the City of Portland Planning Department and which is incorporated herein by reference.
3. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Owner’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. Owner agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property effected by work conducted by Owner 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. Owner, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney’s fees, which arise out of Owner’s use, or the use of Owner’s contractors, of the

City's property as described above during the term of the License. The Owner's obligation to defend, indemnify and hold the City harmless shall survive termination or revocation of this License.

4. Owner shall be responsible for the proper maintenance of the canopy. In the event of damage to canopy and/or the Licensed Area, Owner shall promptly repair/restore the same. Prior to such repair/restoration, Owner 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.
5. Owner shall procure and maintain throughout the term of this License automobile and comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as may be amended from time to time) per occurrence for bodily injury, death, or property damage covering its activities hereunder and naming the City as an additional insured thereon. In addition, Owner shall provide evidence of Workers' Compensation insurance in the statutory amount to the extent it may be required by law. Certificates evidencing such policy shall be delivered to the City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal.
6. Owner, by execution of this License, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Owner's exercise of the rights granted by this License, and does hereby forever waive, release, relinquish, remise, indemnify and discharge the City, its agents, employees, successors and assigns from and against any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License, arising out of the presence in and use by the Owner of the area covered by this License.
7. This License is assignable to any subsequent owners of the property described as Lots 3 and/or 7 on the Plan, and in the event of such assignment, Owner shall be released from all agreement to indemnify, defend, or hold the City harmless for claims or damage to persons or property arising after the date of such assignment. Owner shall notify the City of such assignment no less than 10 days prior to the effective date of such assignment.
8. This License, and all of the rights and obligations herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
9. The City may revoke this License six (6) months after receipt by the Owner 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 Owner's receipt of such notice, except as set forth in subsection c) below. "Event of Revocation" shall mean:

- a) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto;
- b) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Owner's property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or
- c) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof.

10. Any notice of an Event of Revocation delivered pursuant to Section 9 of this License must be sent by certified mail, return receipt requested to the Owner at the address first set forth above, or at such other address as the Owner may provide to the City in writing from time to time.

11. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Owner, any mortgagee of Owner's property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 9 hereof, and the City agrees to accept such performance by any such mortgagee of Owner's obligations hereunder.

IN WITNESS WHEREOF, the City of Portland has caused this License to be executed by Jon P. Jennings, its City Manager thereunto duly authorized, and FEDEQ DV001, LLC, has caused this License to be executed by Jonathan Cox, its Manager thereunto duly authorized, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
Witness

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

**FEDEQ DV001, LLC**

\_\_\_\_\_  
Witness

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

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2016

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 FLORIDA  
DADE, ss.

\_\_\_\_\_, 2016

Then personally appeared the above-named Jonathan Cox, Manager of FEDEQ DV001, LLC, 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 limited liability company.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public  
Commission Expires:  
Print Name: Lloyd Cox

EXHIBIT A

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

COMMENCING at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

## **REVOCABLE LICENSE FOR INSTALLATION AND MAINTENANCE OF UTILITIES**

This Revocable License For Installation And Maintenance Of Utilities (hereinafter "License") is granted by the City of Portland (hereinafter, "City") to FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 (hereinafter, "Owner") for the Owner's installation and maintenance of the utilities described herein on certain real property owned by the City located northwesterly of Somerset Street and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Licensed Area"), which is adjacent to property owned by the Owner and identified as Lots 3 and 7 on a certain "Amended Subdivision Recording Plat for Midtown Development, Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds (the "Plan"). The installation and maintenance of the utilities shall be governed by the terms of this License Agreement.

1. Owner is hereby permitted to bring upon the Licensed Area and areas adjacent thereto workers, materials and machinery necessary to install the utilities in/on the Licensed Area as shown in a set of certain site plans entitled "Site Development Plan For Midtown, Portland, Maine, Final Subdivision And Level III Site Plans with Conditions of Approval" dated February 17, 2016 and prepared for Owner by Fay Spoffard & Thorndike (the "Site Plan"), a copy of which is on file with the City of Portland Planning Department, and which is incorporated herein by reference, and as more particularly described in Exhibit B.
2. Owner is hereby permitted to occupy the Licensed Area only for the installation and maintenance of such utilities in accordance with this License and the Site Plan and shall be responsible for the proper installation and proper maintenance of said utilities. Such utility work shall not substantially interfere with the City's use and maintenance of its pedestrian trail located in the Licensed Area, except as otherwise required by the terms of a construction management plan for the Midtown Development, a copy of which is on file with the City of Portland Planning Department and which is incorporated herein by reference.
3. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Owner'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. Owner agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property effected by work conducted by Owner 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. Owner, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable

attorney's fees, which arise out of Owner's use, or the use of Owner's contractors, of the City's property as described above during the term of the License. The Owner's obligation to defend, indemnify and hold the City harmless shall survive termination or revocation of this License.

4. In the event of damage to any of the aforementioned utilities and/or the Licensed Area, Owner shall promptly repair/restore the same. Prior to such repair/restoration, Owner shall notify the City (in writing and by telephone) at least forty-eight hours before it plans to repair/restore the any of the said utilities 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.
5. Owner shall procure and maintain throughout the term of this License automobile and comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as may be amended from time to time) per occurrence for bodily injury, death, or property damage covering its activities hereunder and naming the City as an additional insured thereon. In addition, Owner shall provide evidence of Workers' Compensation insurance in the statutory amount to the extent it may be required by law. Certificates evidencing such policy shall be delivered to the City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal.
6. Owner, by execution of this License, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Owner's exercise of the rights granted by this License, and does hereby forever waive, release, relinquish, remise, indemnify and discharge the City, its agents, employees, successors and assigns from and against any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License, arising out of the presence in and use by the Owner of the area covered by this License.
7. This License is assignable to any subsequent owners of the property described as Lots 3 and/or 7 on the Plan, and in the event of such assignment, Owner shall be released from all agreement to indemnify, defend, or hold the City harmless for claims or damage to persons or property arising after the date of such assignment. Owner shall notify the City of such assignment no less than 10 days prior to the effective date of such assignment.
8. This License, and all of the rights and obligations herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
9. The City may revoke this License six (6) months after receipt by the Owner 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 Owner's receipt of such notice, except as set forth in subsection c) below.  
"Event of Revocation" shall mean:

- a) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto;
- b) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Owner's property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or
- c) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof.

10. Any notice of an Event of Revocation delivered pursuant to Section 9 of this License must be sent by certified mail, return receipt requested to the Owner at the address first set forth above, or at such other address as the Owner may provide to the City in writing from time to time.

11. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Owner, any mortgagee of Owner's property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 9 hereof, and the City agrees to accept such performance by any such mortgagee of Owner's obligations hereunder.

IN WITNESS WHEREOF, the City of Portland has caused this License to be executed by Jon P. Jennings, its City Manager thereunto duly authorized, and FEDEQ DV001, LLC, has caused this License to be executed by Jonathan Cox, its Manager thereunto duly authorized, as of the day and year first written above.

**CITY OF PORTLAND**

\_\_\_\_\_  
Witness

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

**FEDEQ DV001, LLC**

\_\_\_\_\_  
Witness

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

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2016

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 FLORIDA  
DADE, ss.

\_\_\_\_\_, 2016

Then personally appeared the above-named Jonathan Cox, Manager of FEDEQ DV001, LLC, 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 limited liability company.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public  
Commission Expires:  
Print Name: Lloyd Cox

EXHIBIT A

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

COMMENCING at the westerly sideline corner of Chestnut Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

COMMENCING at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BEGINNING** at the westerly sideline corner of Somerset Street and The Possible Extension of Pearl Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

**BEGINNING** at the northerly sideline corner of Elm Street and Somerset Street as shown on a plan titled "Amended Subdivision Recording Plat for Midtown Development Plan Sheet 1 of 2 on Somerset Street, Portland, Maine made for FEDEQ DV001, LLC" dated April 10, 2013 as revised through February 23, 2016 by Owen Haskell, Inc. Falmouth, Maine, to be recorded at the Cumberland County Registry of Deeds;

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT B  
(Plans)