

Order 92-14/15

Passage: 6-0 (Hinck, Marshall absent) (Brennan absent) on 11/17/2014 Effective 11/27/2014

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 GRANTING A LICENSE AGREEMENT TO
AVESTA WASHINGTON AVE. LP**

ORDERED, that a revocable license agreement from the City to Avesta Washington Ave. LP to allow footings to extend into the public right-of-way is hereby granted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the ____ day of _____, 2014, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the “City” or “Licensor”), and **AVESTA WASHINGTON AVE. LP**, a Maine limited partnership, with a place of business in Portland, Maine and mailing address of 307 Cumberland Avenue, Portland, Maine 04101, its successors and assigns (hereinafter the “Licensee”), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a revocable license is hereby granted to Licensee to occupy portions of land and portions of the airspace above such land owned by the City and adjacent to property of Licensee located at 134 Washington Avenue, described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book ____, Page ____ (“Licensee’s Property”), for the purpose of permitting the encroachment of footings under the City’s property (“encroachments”) to be located as set forth in Exhibits A & B attached hereto and made a part hereof (collectively the “Licensed Areas”), together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein. Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Licensee’s sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City’s property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as close to that condition as is reasonably practicable. Licensee, 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 Licensee’s use, or the use of others, of the City’s property as described above.

2. Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in Section 4 below.

3. This license is assignable to any subsequent owners of the property and/or building located on the land described on the site plan of Washington Avenue Efficiencies approved by the Portland Planning Board on June 10, 2014 located at 134 Washington Avenue, Portland, Maine, to be recorded herewith in the Cumberland County Registry of Deeds (the "Site Plan"); and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Licensed Areas.

4. Subject to the provisions of Sections 5 and 6 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee except as set forth in clause 3 below. "Event of Revocation" shall mean: 1) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto; 2) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's Property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or 3) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof. City acknowledges that Licensee may amend this Agreement, upon the written approval of the City, for the purpose of correcting and/or revising Exhibits A or B, to more accurately show the encroachments described above that are being licensed under this Agreement.

5. Any notice of an Event of Revocation delivered pursuant to Section 4 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent by the same means to:

6. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 4 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 4 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder. In addition, the City agrees to accept any cure of any Event of Revocation by any of Licensee's partners.

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Sheila Hill-Christian, its Acting City Manager thereunto duly authorized, as of the day and year first written above.

[signatures on following page]

CITY OF PORTLAND

By: _____
Sheila Hill-Christian, its Acting City
Manager thereunto duly authorized

STATE OF MAINE
CUMBERLAND, ss

October ____, 2014

PERSONALLY APPEARED the above-named Sheila Hill-Christian, Acting 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

Print name: _____
My commission expires: _____

Seen and Agreed to:

BY: AVESTA WASHINGTON AVE., LP

By: Pinecone Housing Corporation,
its General Partner

By: _____

printed name: _____
Title:

EXHIBIT A

TO

LICENSE AGREEMENT

City of Portland to AVESTA WASHINGTON AVE., LP

Licensed Area

Footing easement in Washington Avenue

Beginning at a point on the westerly sideline of Washington Ave, said point being N 24°35'56" W a distance of 22.08 feet, as measured along Washington Avenue from a nail with survey disc stamped "O H Inc. 1252" said nail being located N 24°35'56" W a distance of 26.90 feet as measured along Washington Avenue from the northerly sideline of Fox Street;

Thence, N 24°35'56" W along the westerly sideline of said Washington Avenue 72.50 feet;

Thence, N 65°24'04" E into said Washington Avenue 2.00 feet;

Thence, S 24°35'56" E a distance of 55.58 feet;

Thence, S 65°24'04" W a distance of 1.50 feet;

Thence, S 24°35'56" E a distance of 16.92 feet;

Thence, S 65°24'04" W a distance of 0.50 feet to the westerly sideline of said Washington Avenue and the point of beginning containing 120 square feet more or less.

Basis of bearings: Maine State Plane Coordinate System Maine West NAD 1983

GENERAL NOTES:

- SITE AREA: 10.096 SF OR 0.23 ACRES
- APPLICANT: AVESTA 134 WASHINGTON LP
307 CUMBERLAND AVENUE
PORTLAND, MAINE 04101
- OWNER: AVESTA HOUSING DEVELOPMENT CORP.
307 CUMBERLAND AVENUE
PORTLAND, MAINE 04101
- ZONING DISTRICT: B-2-B COMMUNITY BUSINESS DISTRICT + R-6 (RESIDENTIAL)
- PARCEL IS SHOWN AS LOT 6 AND LOT 14, BLOCK E ON CITY OF PORTLAND ASSESSORS MAP 12.
- DEED RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 30618, PAGE 111.
- SPACE AND BULK STANDARDS:

	REQUIRED	PROPOSED
MINIMUM LOT SIZE:	NONE	10,096 SF
MINIMUM STREET FRONTAGE:	NONE	97 +/- FEET
FRONT YARD SETBACK:	NONE	NONE
REAR YARD SETBACK (ADJ. TO RES. ZONE):	20 FEET	20 FEET
REAR YARD SETBACK (ADJ. TO BUS. ZONE):	10 FEET	10 FEET
SIDE YARD SETBACK:	5 FEET	5 FEET
MAXIMUM IMPERVIOUS SURFACE RATIO:	90%	51%
MAXIMUM HEIGHT OF STRUCTURE:	45 FEET	44 FEET
MAXIMUM RESIDENTIAL DENSITY:	435 SF/UNIT	560 SF/UNIT
- EXISTING CONDITIONS AND BOUNDARY INFORMATION TAKEN FROM A PLAN ENTITLED 'BOUNDARY + TOPOGRAPHIC SURVEY AT 134 WASHINGTON AVENUE, PORTLAND, MAINE' PREPARED BY OWEN HASKELL, INC. DATED FEBRUARY 13, 2014.
- BEARINGS ARE BASED ON MAINE STATE PLANE COORDINATE SYSTEM, MAINE WEST NAD 83. CITY POINTS USED: L749-76-3000 N:305080.309, E: 2929308.241 AND T102-77-02 N:303502.357, E:2929187.900.
- ELEVATIONS ARE BASED ON NGVD 1929 PER BENCHMARK SHOWN ON 'PLAN AND PROFILE OF WASHINGTON AVE AND FOX ST, PORTLAND, MAINE MADE FOR THE CITY OF PORTLAND' BY OWEN HASKELL, INC. DATED JULY 2000. PK IN POLE #11 ELEVATION 12.42 CITY LEVEL BOOK 737 PAGE 77.
- PROPOSED DWELLING UNITS: 18 EFFICIENCY APARTMENT UNITS
- OFF-STREET PARKING REQUIREMENTS:

REQUIRED:	18 PARKING SPACES
PROPOSED:	1 VEHICLE PARKING SPACES 1 HANDICAP PARKING SPACE
- BICYCLE PARKING:

REQUIRED:	2 SPACES/5 DWELLING UNITS 8 SPACES (18 NEW DWELLING UNITS)
PROPOSED:	13 SPACES (12 INTERIOR/ 1 EXTERIOR)
- EXISTING IMPERVIOUS: 2,884 +/- SF (29% OF SITE)
PROPOSED IMPERVIOUS: 5,113 +/- SF (51% OF SITE)
- FLOOR AREA CALCULATIONS:

BASEMENT:	1,228 SF
FIRST FLOOR:	2,948 SF
SECOND FLOOR:	3,070 SF
THIRD FLOOR:	3,070 SF
FOURTH FLOOR:	3,070 SF
TOTAL:	13,286 SF
- ALL WORK WITHIN THE ROAD RIGHT-OF-WAY AND ALL UTILITIES CONNECTING TO INFRASTRUCTURE WITHIN THE ROAD SHALL MEET CITY OF PORTLAND TECHNICAL MANUAL STANDARDS.
- THE CONTRACTOR SHALL BE HELD SOLELY RESPONSIBLE FOR UNDERTAKING THE WORK IN A SAFE AND EFFICIENT MANNER, IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL SAFETY REGULATIONS. ALL WORK AREAS SHALL BE DELINEATED CLEARLY AND FENCED AS APPROPRIATE TO PREVENT UNAUTHORIZED ACCESS. THE SITE SHALL BE LEFT IN A SAFE, ORDERLY AND TIDY MANNER AT THE END OF EACH WORK DAY.

CERTIFICATION:

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

JOHN C. SCHWANDA, PLS NO. 1252

DATE

CONDITIONS OF APPROVAL

ON JUNE 10, 2014, THE PORTLAND PLANNING BOARD APPROVED 134 WASHINGTON AVENUE EFFICIENCIES APPLICATION FOR MAJOR SITE PLAN AND SUBDIVISION PLAN SUBJECT TO THE CITY OF PORTLAND STANDARD CONDITIONS OF APPROVAL AND THE FOLLOWING CONDITIONS:

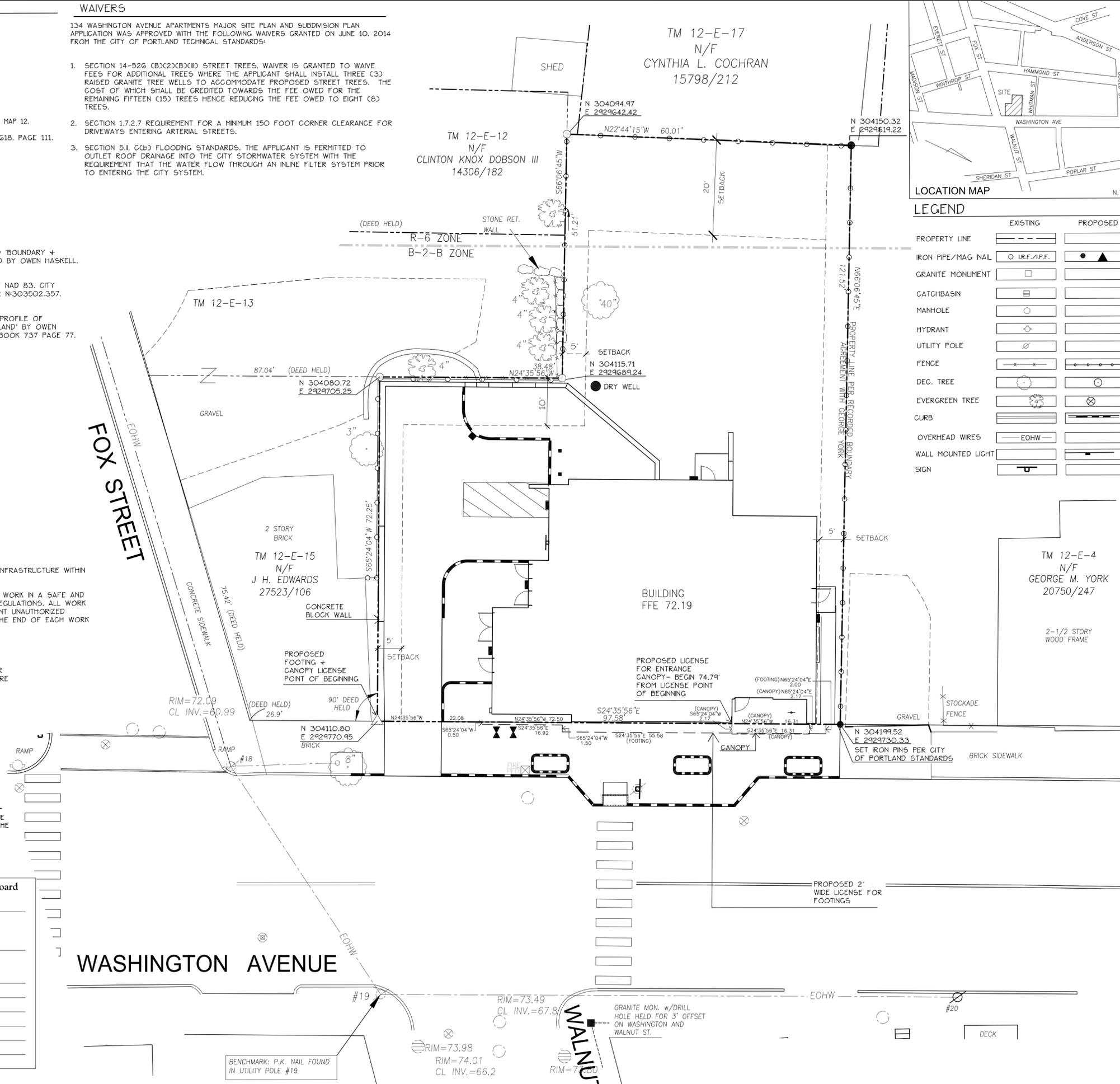
Approved: Portland Planning Board

Date: _____
Chair, _____
Board Members, _____

WAIVERS

134 WASHINGTON AVENUE APARTMENTS MAJOR SITE PLAN AND SUBDIVISION PLAN APPLICATION WAS APPROVED WITH THE FOLLOWING WAIVERS GRANTED ON JUNE 10, 2014 FROM THE CITY OF PORTLAND TECHNICAL STANDARDS:

- SECTION 14-526 (B)(2)(B)(D) STREET TREES. WAIVER IS GRANTED TO WAIVE FEES FOR ADDITIONAL TREES WHERE THE APPLICANT SHALL INSTALL THREE (3) RAISED GRANITE TREE WELLS TO ACCOMMODATE PROPOSED STREET TREES. THE COST OF WHICH SHALL BE CREDITED TOWARDS THE FEE OWED FOR THE REMAINING FIFTEEN (15) TREES HENCE REDUCING THE FEE OWED TO EIGHT (8) TREES.
- SECTION 1.7.2.7 REQUIREMENT FOR A MINIMUM 150 FOOT CORNER CLEARANCE FOR DRIVEWAYS ENTERING ARTERIAL STREETS.
- SECTION 5.I. (C)(b) FLOODING STANDARDS. THE APPLICANT IS PERMITTED TO OUTLET ROOF DRAINAGE INTO THE CITY STORMWATER SYSTEM WITH THE REQUIREMENT THAT THE WATER FLOW THROUGH AN INLINE FILTER SYSTEM PRIOR TO ENTERING THE CITY SYSTEM.



LEGEND

	EXISTING	PROPOSED
PROPERTY LINE	---	---
IRON PIPE/MAG NAIL	○ I.R.F./A.P.F.	● ▲
GRANITE MONUMENT	□	□
CATCHBASIN	▣	▣
MANHOLE	○	○
HYDRANT	⊕	⊕
UTILITY POLE	⊗	⊗
FENCE	—X—X—	—X—X—
DEC. TREE	⊗	⊗
EVERGREEN TREE	⊗	⊗
CURB	—	—
OVERHEAD WIRES	—EOHW—	—EOHW—
WALL MOUNTED LIGHT	—	—
SIGN	—P—	—P—

Prepared For:
Applicant:
AVESTA Washington Ave, LP
307 Cumberland Avenue
Portland, Maine

Prepared By:
MITCHELL & ASSOCIATES
Landscape Architects
The Staples School
70 Center Street
Portland, Maine 04101
Tel: (207) 774-4427

WASHINGTON AVENUE EFFICIENCIES
134 Washington Avenue
Portland, Maine

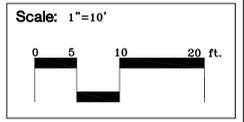
Date:
APRIL 14, 2014

Issued For:
SITE PLAN AND SUBDIVISION
PLAN REVIEW

Revisions:
May 27, 2014
June 20, 2014

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Title:
SUBDIVISION
PLAT PLAN



North:

Sheet No.:
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