

Department of Planning & Urban Development

Marge Schmuckal  
Zoning Administrator

Jeff Levine  
Director Planning & Urban Development



**CITY OF PORTLAND**  
**ZONING BOARD OF APPEALS**  
**Variance Appeal Application**

**Applicant Information:**

Liv Chase & Brent Adler  
NAME

Sunny Time Solar LLC  
BUSINESS NAME

PO Box 15372  
ADDRESS  
Portland, ME 04112

207-522-4345  
TELEPHONE #

Purchaser  
APPLICANT'S RIGHT, TITLE OR INTEREST  
(eg; owner, purchaser, etc)

B2b  
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

2-family dwelling

**Subject Property Information**

48 Hancock St.  
PROPERTY ADDRESS

20-D-12  
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)

NAME

ADDRESS

VARIANCE FROM  
SECTION 14 - 436(b)

**RECEIVED**

SEP 30 2013

Dept. of Building Inspections  
City of Portland Maine

**NOTE:** If site plan approval is required, attach preliminary or final site plan.

*The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.*

Liv Chase Adler  
SIGNATURE OF APPLICANT

9/29/2013  
DATE

Department of Planning & Urban Development

Marge Schmuckal  
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Jeff Levine  
Director Planning & Urban Development

**ZONING BOARD OF APPEALS**  
**Variance Appeal Application**

*Except as specifically provided by the Ordinance, a variance may be granted by the Board of Appeals ONLY where strict application of the Ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. In order for the Board to find "undue hardship" the applicant must answer ALL of the following questions and provide supporting evidence. The Board will consider this evidence in deciding whether to grant the appeal.*

1. The land in question cannot yield a reasonable return unless a variance is granted.  
[NOTE: "failure to yield a 'reasonable return' means 'the practical loss of all beneficial use of the land...Reasonable return DOES NOT mean maximum return" *Rowe v. City of South Portland, 730 A.2d 673, 675 (ME 1999) (citations omitted.)*]

Satisfied:   X   NOT Satisfied: \_\_\_\_\_

Reason & supporting facts:

See Attachment

2. The need for a variance is due to the unique circumstances of the property and NOT to the general conditions of the neighborhood.

Satisfied:   X   NOT Satisfied: \_\_\_\_\_

Reason & supporting facts:

See Attachment

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**ZONING BOARD OF APPEALS**  
**Variance Appeal Application**

3. The granting of a variance will NOT alter the essential character of the locality.

Satisfied:   X   NOT Satisfied:           

Reason & supporting facts:

*See Attachment*

4. The hardship is NOT the result of action taken by the applicant or a prior owner.

Satisfied:   X   NOT Satisfied:           

Reason & supporting facts:

*See Attachment*

**Question #1: The land in question cannot yield a reasonable return unless a variance is granted.**

Under City of Portland, Code Ordinances, Section 14-436 (b), the 2 family dwelling located at 48 Hancock St. Portland, ME is lawfully nonconforming as to any yard setback, therefore the dwelling is eligible for an expansion of 80% of the first floor footprint.

First floor footprint	795sf
Second floor footprint	795sf
80% expansion area (3 <sup>rd</sup> floor)	636sf

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Total area for new construction	2226sf
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The building at 48 Hancock St. is in major disrepair and has not been occupied for the last 3 years. It is the opinion of the applicant that the building cannot be repaired and must be torn down. The construction of a new structure on this site that is in accordance with current city and fire codes must contain one egress stair that meets current codes. The applicant has calculated the square footage of this stair to account for 70sf of living area per floor. The applicant would also like to propose off street parking for the building, as the current building does not have any off street parking. The applicant has calculated the square footage for such parking as being the first 20' of the first floor, equivalent to 15' width of the building X 20' depth of the garage = 300sf. If 2 off street parking spaces were incorporated into the design, then this would give a square footage for parking equal to 600sf.

First floor footprint	
Less 600sf garage and 70sf stair	125sf

Second floor footprint	
Less 70sf stair	725sf

Third floor expansion	
Less 70sf stair	566sf

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Total Livable Area	1416sf
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The total livable area created conforming to the city code is a little over 700sf/unit. This a very small footprint and would only be suitable as a studio or one bedroom dwelling unit. The applicant would be renting out these 2 units. Based on current rents in the City of Portland, each of these units would be equal to between \$750-\$850/mth. An additional amount of \$150/mth could be charged as a premium for the fact that there is off street parking. Therefore, the highest rent obtainable based on market conditions would be \$1000/mth per unit equal to \$2000/mth for the building.

Building and owning new construction has a high cost. The cost to build a building of this size is between \$150-\$200/sf. The total cost to build would be equal to \$334K-\$445K. The applicant will be financing the cost of construction. The estimated monthly mortgage amount is equal to \$2200/mth plus taxes/ insurance/ water/sewer (estimated at \$500/mth).

Income in	\$2000
Cost out	\$2700+

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Total Loss each month	-\$700+
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In conclusion, the site in question cannot yield a reasonable return based on the buildable area restrictions contained within the City of Portland Code of Ordinances. The current structure is not salvageable and building new construction based on setbacks in the B2b zone is not possible (See exhibit A).

The applicant would like to propose the following:

Increase expansion area from 80% of the first floor footprint to 200% of the first floor footprint.

The building would maintain the same building footprint.

The building would be 4 stories tall and contain a total square footage of 3180sf

The building would have a first floor garage for off street parking.

The calculated living area is as follows:

First floor footprint	
Less 600sf garage and 70sf stair	125sf
Second floor footprint	
Less 70sf stair	725sf
Third floor footprint	
Less 70sf stair	725sf
Fourth floor footprint	
Less 70 sf stair	725sf
<hr/>	
Total Livable Area	2300sf

This proposed square footage is equal to 1150sf/dwelling unit. Each unit would be either a 2 bedroom or 3 bedroom unit.

The applicant is the owner of a new construction property located at 52 Federal St. Portland, ME. The units in this building are similar 2 bedroom units with first floor garage parking and the rent per unit is \$2500/mth. It therefore seems feasible that based on the additional proposed square footage, the building at 48 Hancock St. would rent for between \$2000-\$2500/mth per unit, yielding an income of \$4000-\$5000/mth.

Given the cost of building and the additional square footage, the estimated monthly mortgage amount is equal to \$3000/mth plus taxes/ insurance/ water/sewer (estimated at \$500/mth).

Income in	\$4000-\$5000
Cost out	\$3500

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Total Profit each month	\$500-\$1500
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With this additional square footage, the applicant will see a small return on investment each month. Without this additional square footage, the applicant will see a loss and the project is not feasible.

**Question #2: The need for a variance is due to the unique circumstances of the property and NOT to the general conditions of the neighborhood.**

The property is unique in that it is the only lot in the India Street Neighborhood that is only 20' wide and not a corner lot. The other property that is 20' wide in the neighborhood is located at 66 Federal St. The property shares a brick fire wall with its abutter and it is a corner lot. The building footprint is the same width as the lot.

48 Hancock St. is located in the B2b zone. In this zone the setbacks for building new construction are as follows: front setback: none, side setback: 5', rear setback: 10'.

Given the condition of the building and its foundation, the structure at 48 Hancock St. needs to be torn down. If a building were to be built using the current B2b setbacks, the building footprint could only be approximately 10' wide by 51' long. The width of the building would be unlivable. See exhibit A.

**Question #3: The granting of a variance will NOT alter the essential character of the locality.**

The India Street Neighborhood is a very diverse neighborhood that has recently been a focal point for new development. The neighborhood is lined with old historic brick buildings along India St. that date back to the 1800's. The neighborhood is also home to a large number of vacant lots that are in the process of re-development or preparing for development. The new construction on these lots is urban and consists of large scale, high density structures. The current project that is under construction, Bayhouse Phase I consists of 86 units in two five story high buildings with first level parking. The Bayhouse Phase II is in the planning stage. This project proposes a 240' long building which is four stories high along Newbury St. These new construction projects use a variety of materials to add interest to the monolithic facades.

Positioned directly between the old architecture and the new construction in the neighborhood, the applicant's proposed structure will attempt to bridge the gap between

new and old. The applicant's structure will also be urban but at a much smaller scale. The façade with its contrast in material will create a dynamic look that blends with the existing architecture and the new construction.

The character of the neighborhood is rapidly changing and the applicant's proposed structure will embrace this change.

**Question #4: The hardship is NOT the result of action taken by the applicant or a prior owner.**

The hardship is not the result of action taken by the applicant or prior owner. The hardship is the result of a building left vacant for many years and allowed to deteriorate. The hardship is the width of the lot and current zoning. These factors have left this building with very few options in a neighborhood that is quickly improving and developing.

To: Zoning Board of Appeals  
From: Sunny Time Solar LLC  
Subject: Letter of Intent

Applicant is requesting a variance to add an additional 1590sf to the existing 1590sf two family dwelling located at 48 Hancock St. Portland, ME. The current two story dwelling is vacant and uninhabitable. The building is in poor condition and not salvageable. The applicant is requesting to tear down the existing two story building and replace it with a four story building in the same footprint. The new structure will contain a garage on the lower level, which will add off street parking. The use of the building will remain a two family. By increasing the square footage of the building, the unit size will increase. These alterations to the square footage will yield an economically feasible project for the applicant based on the cost of new construction and projected rental income. Without this variance, the cost of new construction based on the existing square footage, will not yield a reasonable return, and it will not be feasible for the applicant.

Additionally, the new structure will create aesthetic appeal to the neighborhood based on its design and scale. The façade of the building will be metal and wood, much like its neighbor at 52 Federal St. The property's abutter to the left is Sea Port Flats (formally the Bayhouse phase II) This project is 45' in height and the applicant's proposed building will also be 45' in height thus blending with the new scale of the neighborhood.

The applicant is a board member in the India Street Neighborhood Association. The applicant has taken part in the Sustain Southern Maine Satellite Project, which has targeted the India Street Neighborhood as a neighborhood in which urban planning is currently being established. Based on the number of workshops in the last year held by Sustain Southern Maine, the people of the neighborhood have expressed interest in higher density structures from 3-5 stories high. The idea of infilling vacant lots and making the community a more vibrant place to live and work. The applicant's proposed structure fits perfectly with this up coming urban plan for the neighborhood.

The applicant is requesting this variance because it is the only feasible solution for the building and lot located at 48 Hancock St.

Sincerely,



Liv Chase & Brent Adler

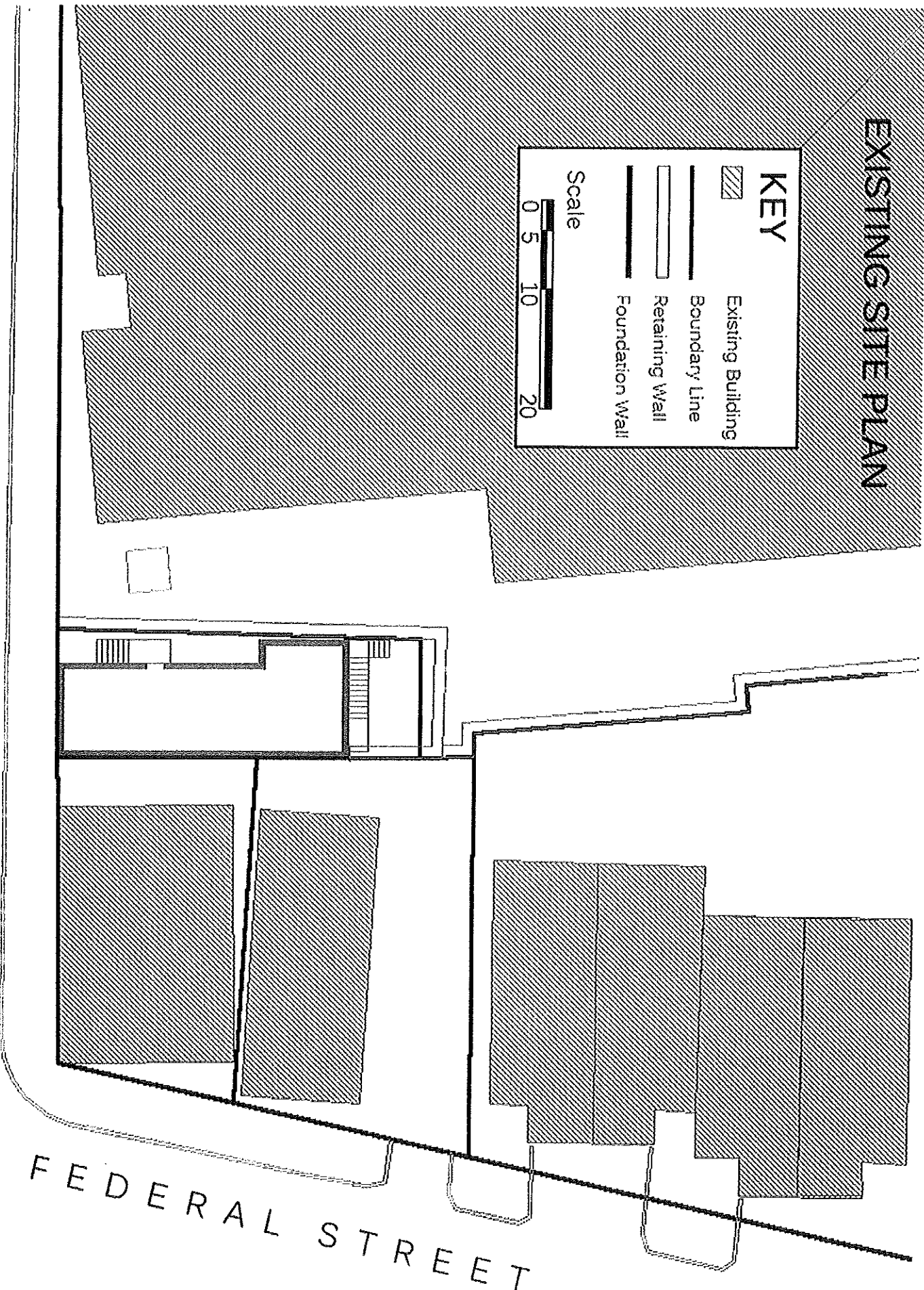


EXISTING SITE PLAN

KEY

- Existing Building
- Boundary Line
- Retaining Wall
- Foundation Wall

Scale







HANCOCK STREET

FEDERAL STREET

# PROPOSED SITE PLAN

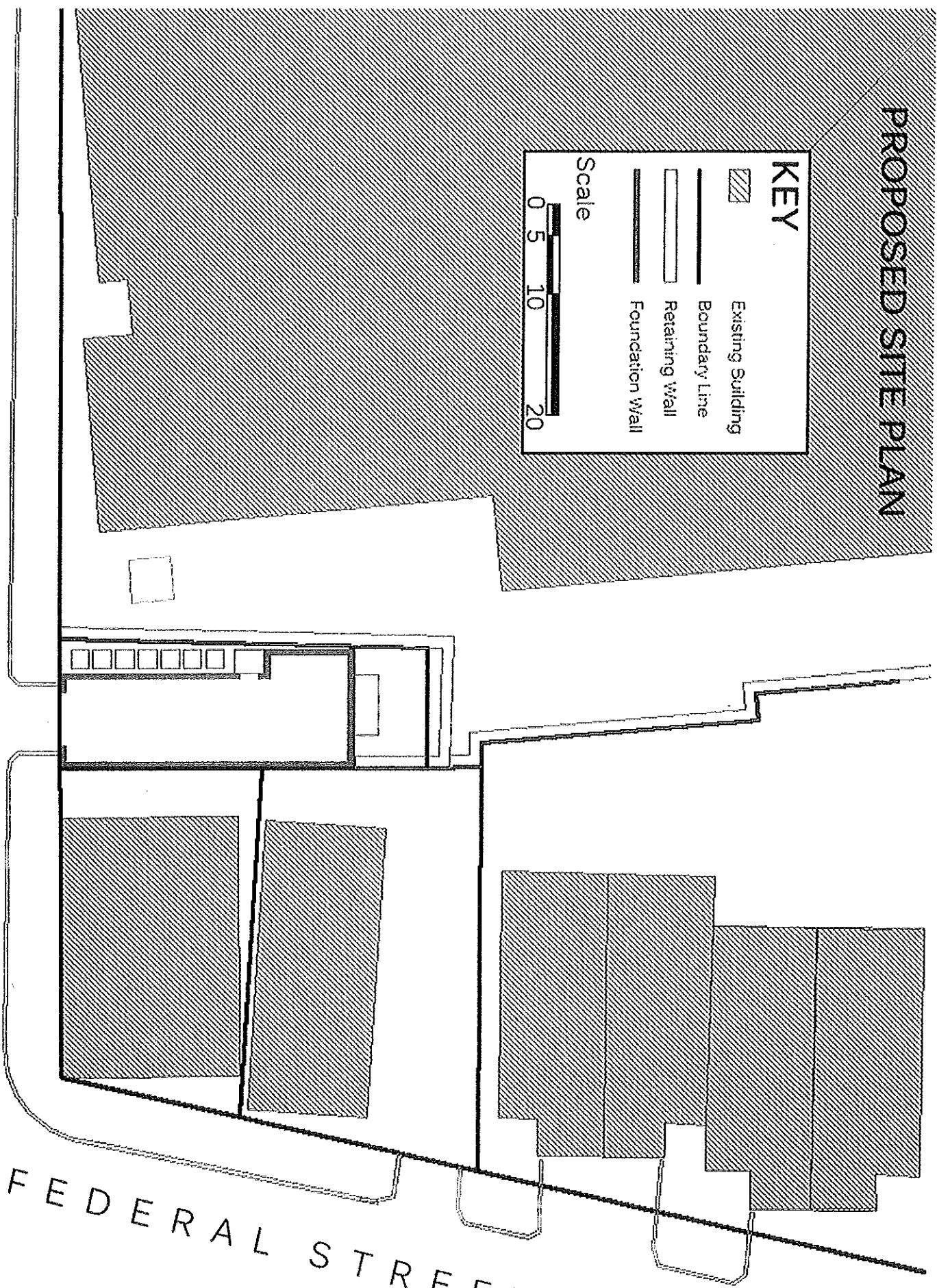
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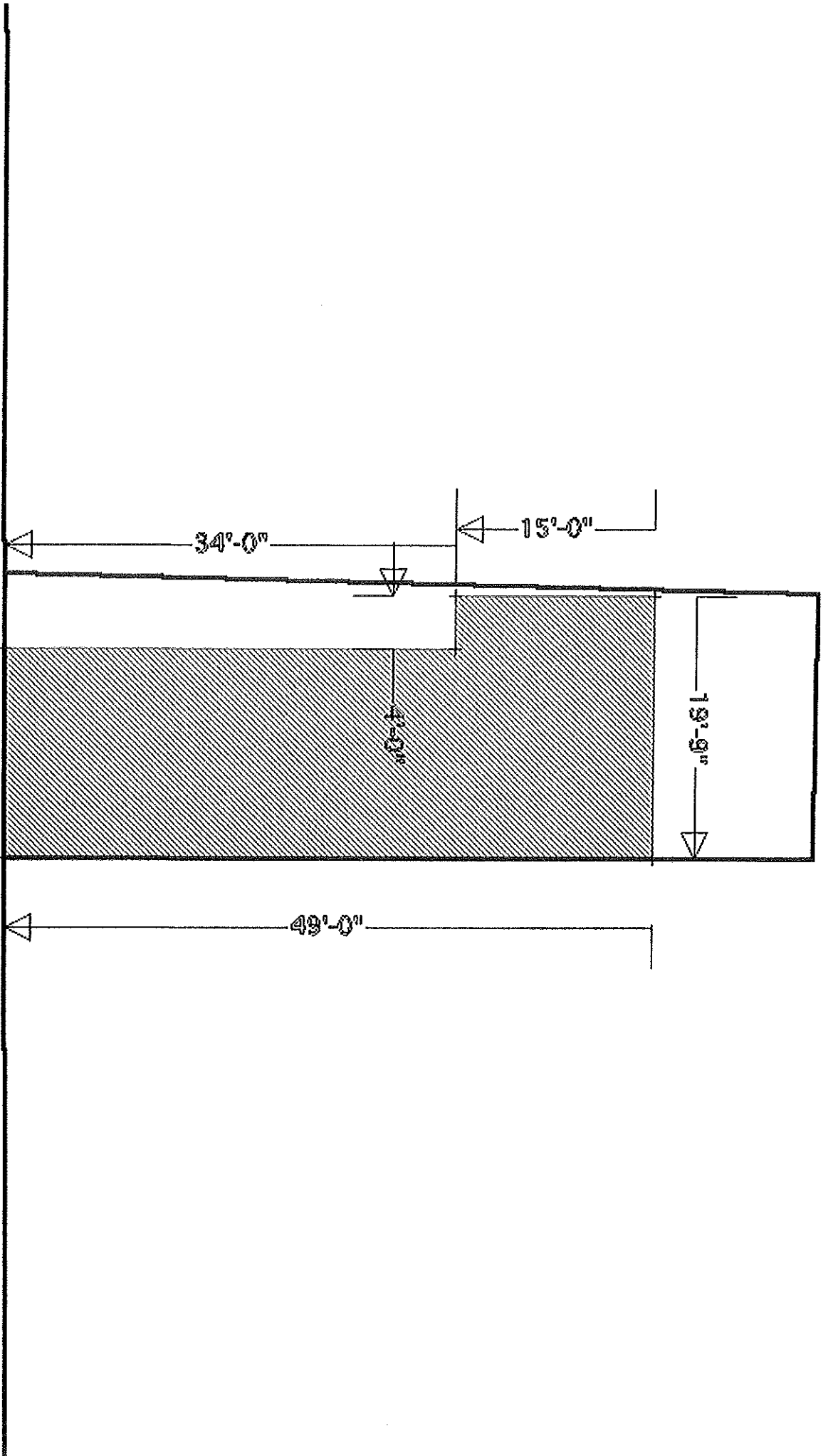
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-  Boundary Line
-  Retaining Wall
-  Foundation Wall



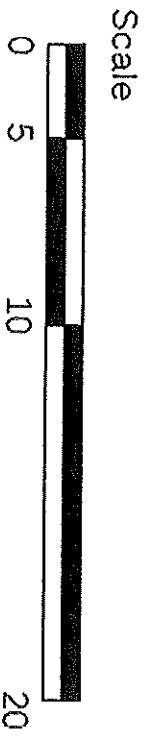
HANCOCK STREET

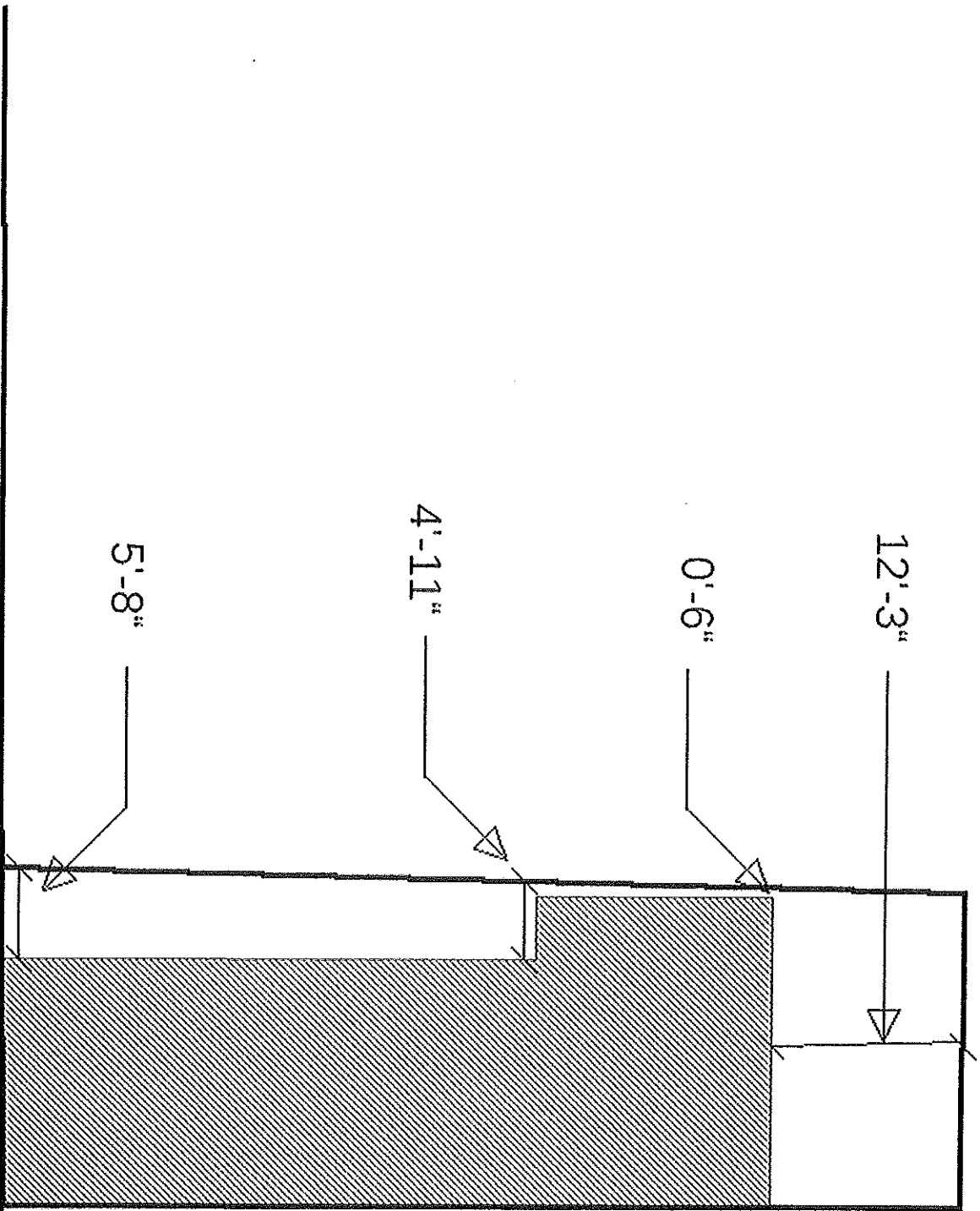
FEDERAL STREET





Building Footprint dimensions:  
existing and proposed





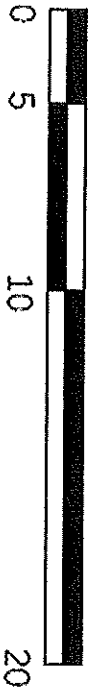
12'-3"

0'-6"

4'-11"

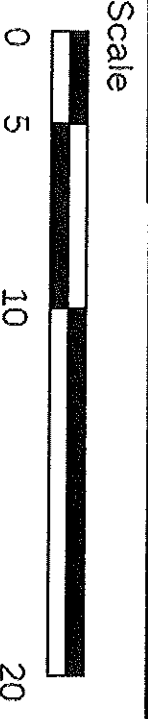
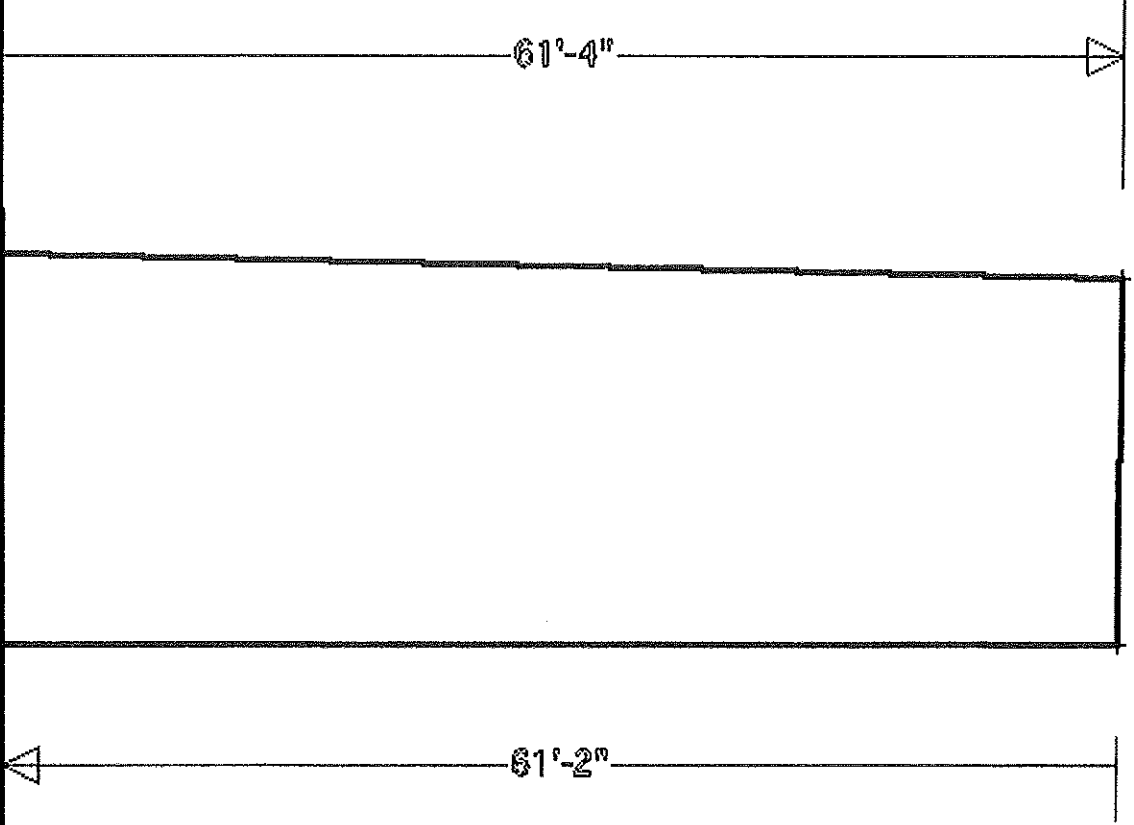
5'-8"

Scale



Distance from boundary lines

20'-0"



Lot Dimensions

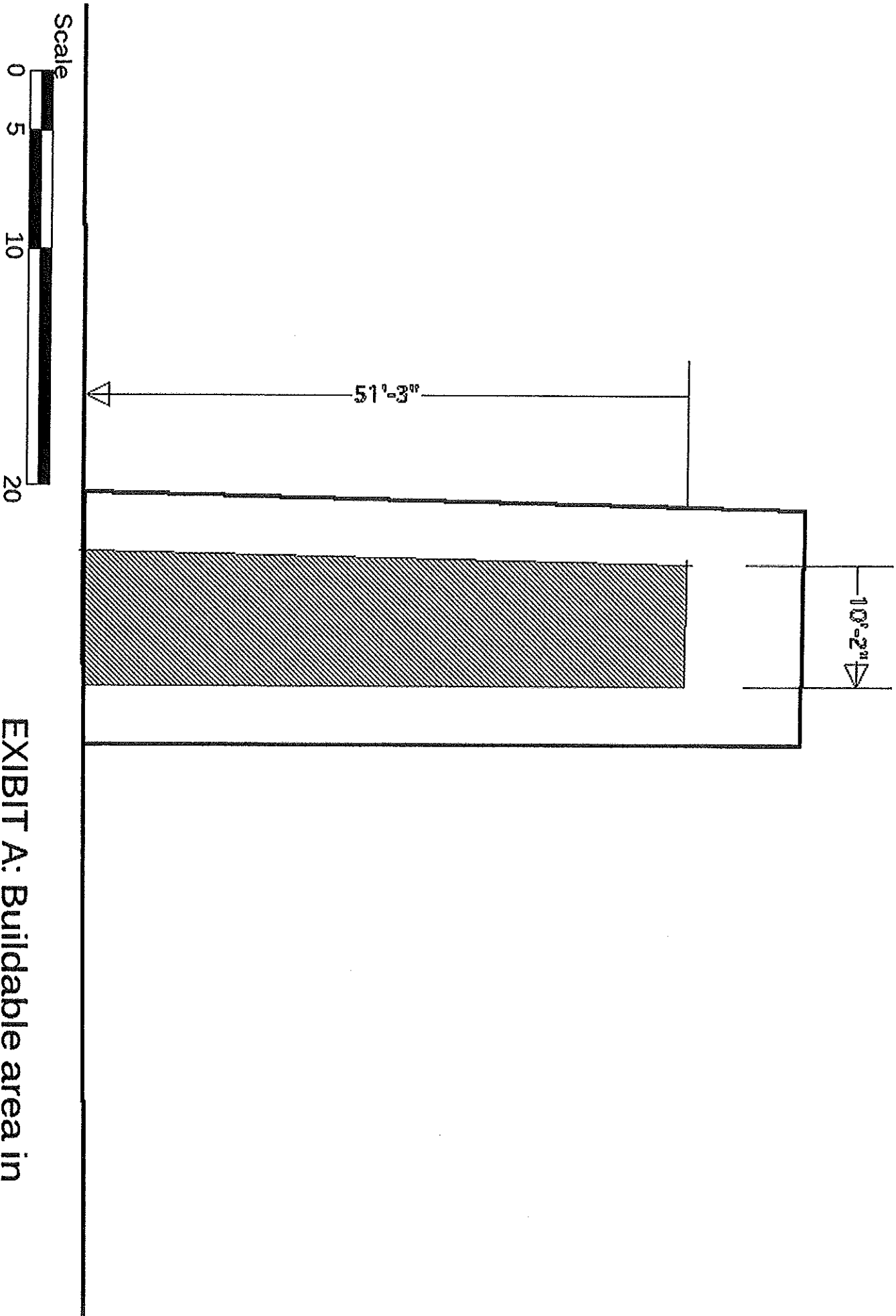
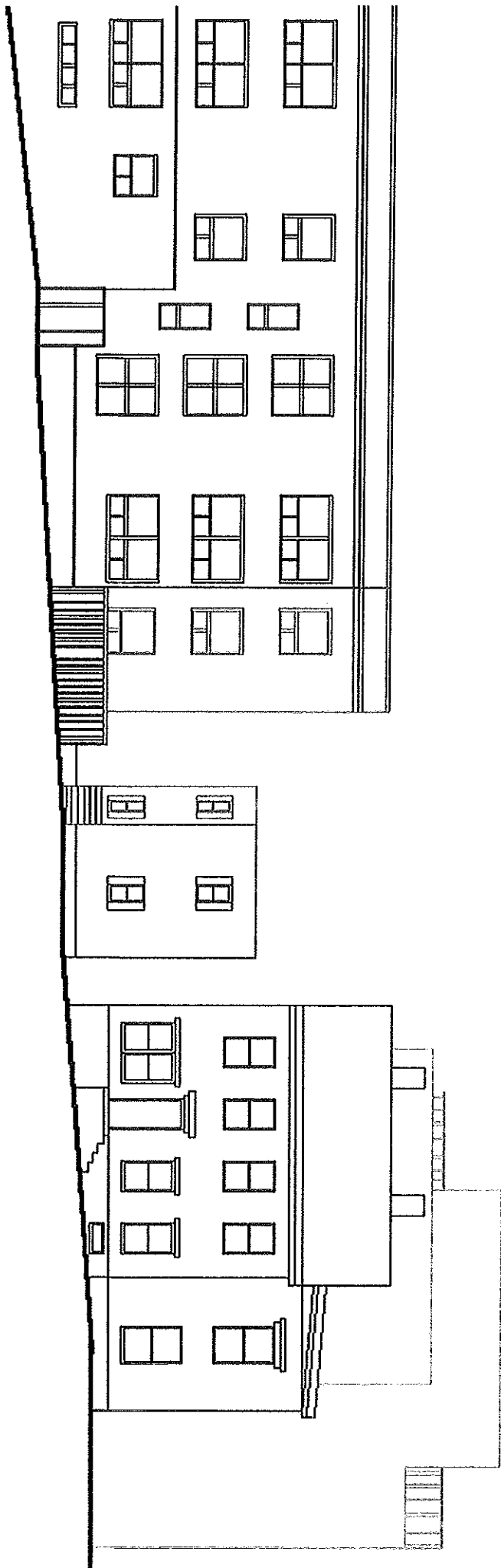
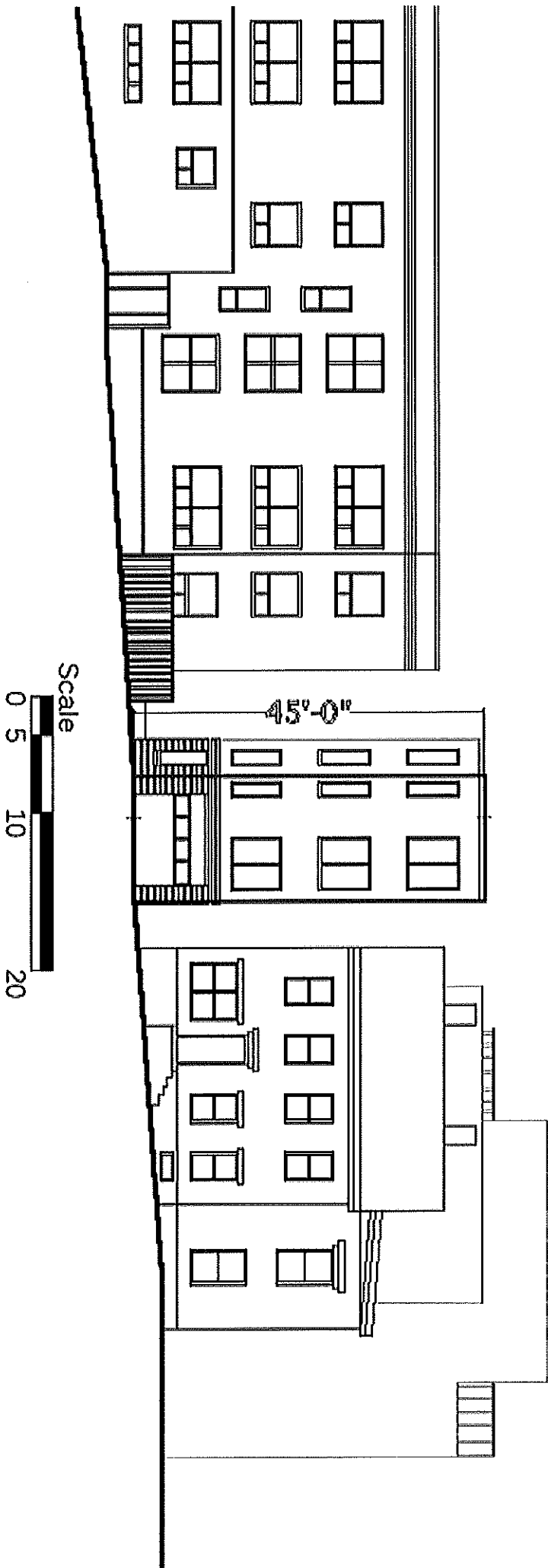


EXHIBIT A: Buildable area in accordance with B2b setbacks

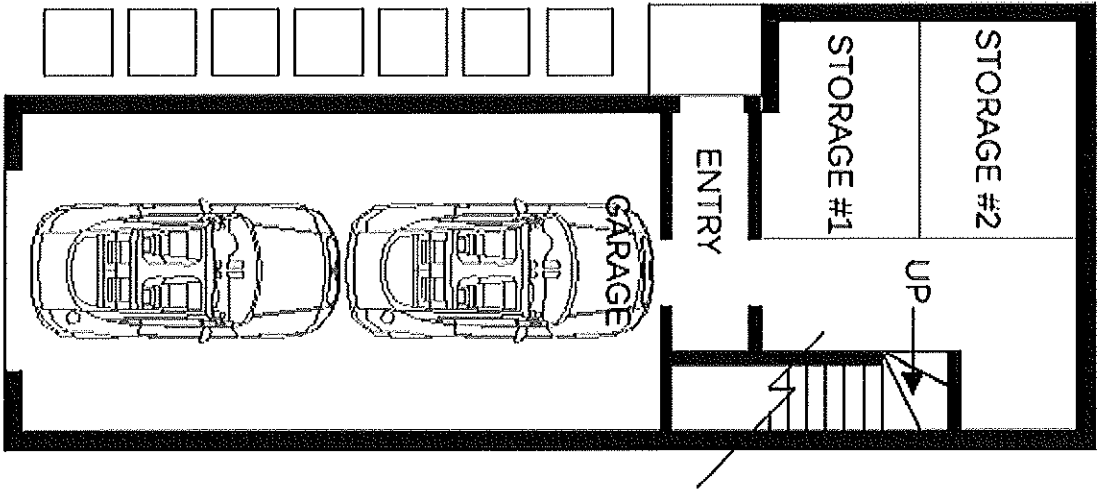
Existing Elevation



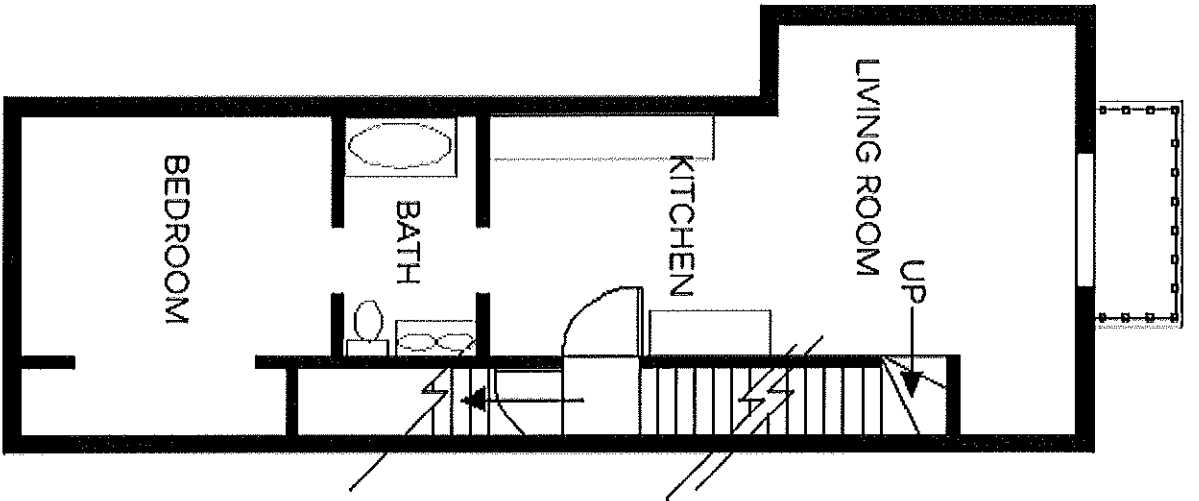


PROPOSED ELEVATION





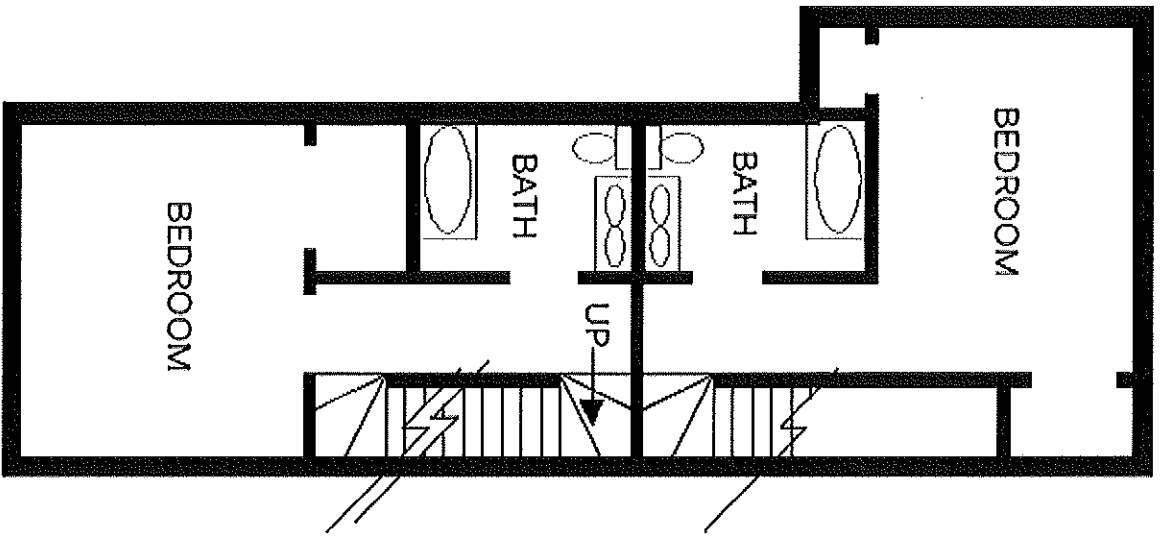
1ST FLOOR PLAN



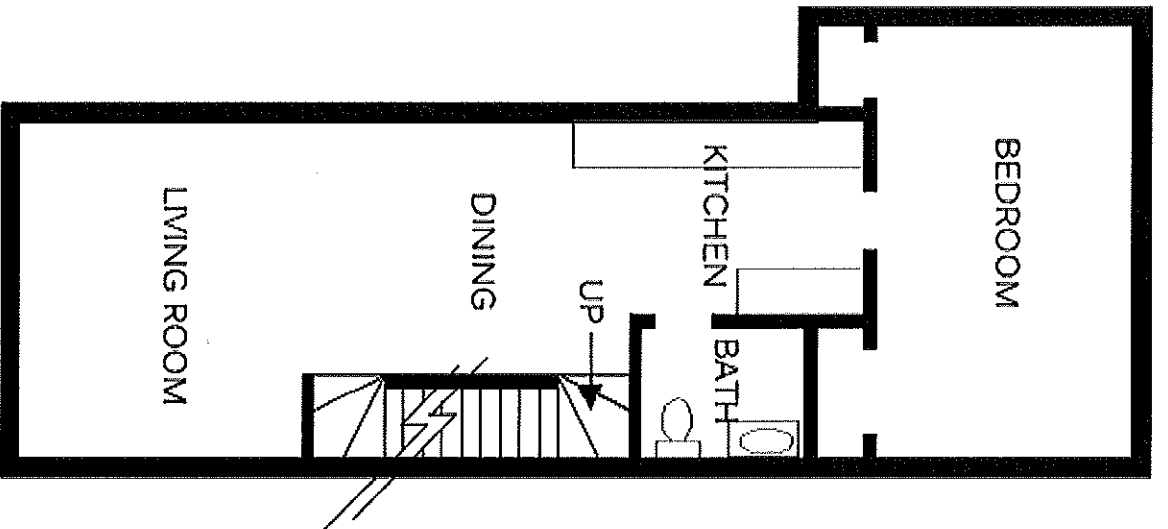
2ND FLOOR PLAN

Scale

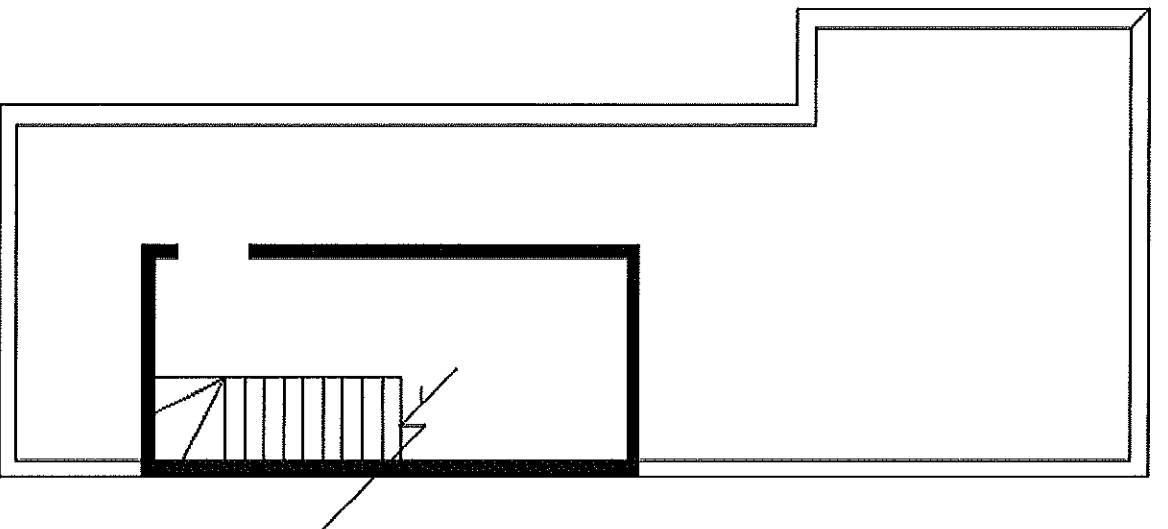




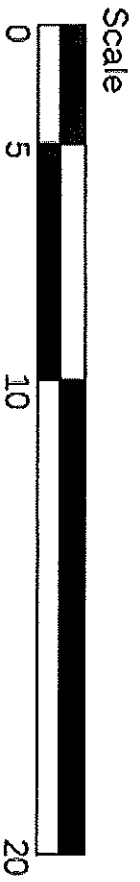
3RD FLOOR PLAN

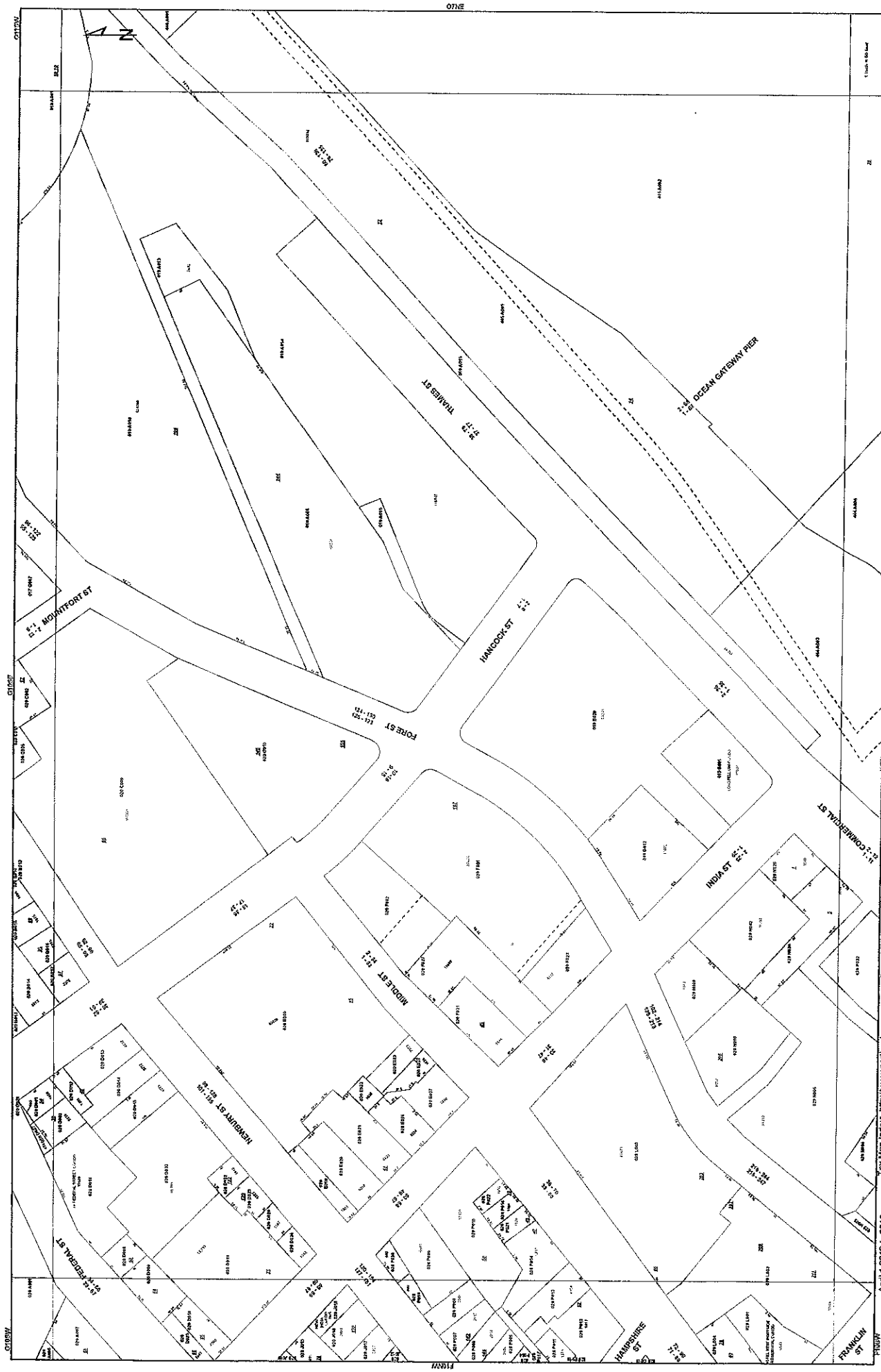


4TH FLOOR PLAN

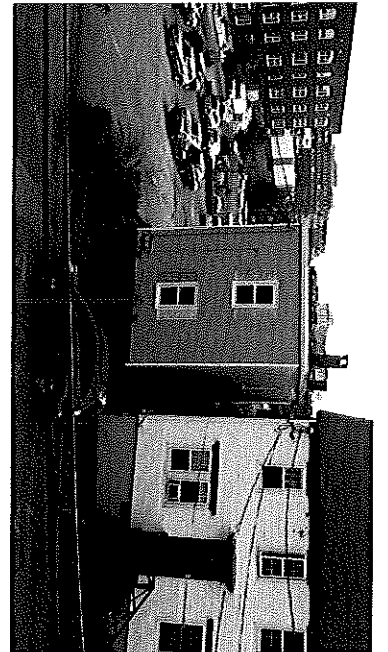
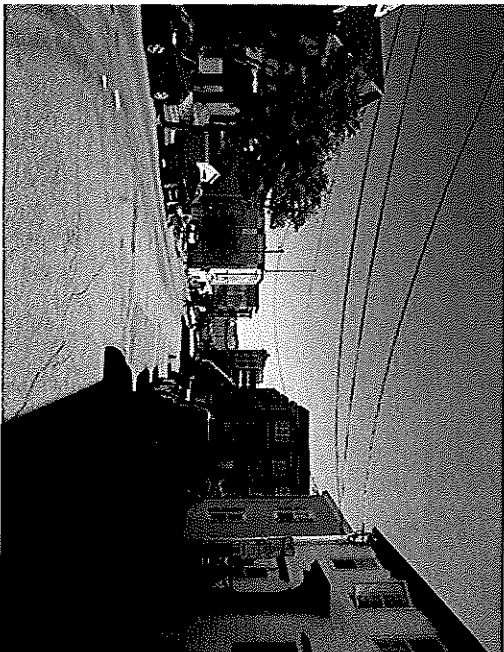
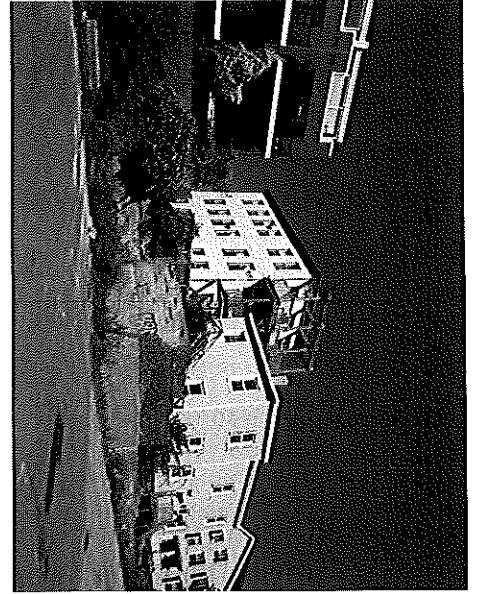


ROOF PLAN





April 1 2012 by 2013  
Tax Map Index: <http://www.poulandassessors.com/txmapjnl.htm>  
Index Number - P10NE



**PURCHASE AND SALE AGREEMENT**

AGREEMENT made as of this 26 day of August, 2013 by and between the following parties:

**SELLER:** Newbury Place REO III, LLC, a limited liability company with a place of business at 7500 Old Georgetown Road Suite 1350 Bethesda, Maryland 20814 ("Seller");

And

**BUYER:** Sunny Time Solar, LLC  
\_\_\_\_\_  
(or nominee) ("Buyer")

1. **Purchase and Sale; Property.** Seller hereby agrees to sell, and the Buyer hereby agrees to buy a certain lot or parcel of land with any buildings thereon situated generally at 48 Hancock Street, Portland Maine, and more particularly described in the mortgage deed of Roland A. Smalley a/k/a Roland A. Smalley, Jr. to Mortgage Electronic Registration Systems, Inc., as nominee for Accredited Home Lenders, Inc. dated 4/30/2007 and recorded in the Cumberland County Registry of Deeds in Vol. 25061, Page 166 ("the Property").
2. **Basic Terms of Transfer.** Seller hereby agrees to transfer, and Buyer agrees to purchase, the Property on or before 5:00 p.m. on the thirtieth (30th) day following the sale, provided that such day is one on which the City/Town is open for business, and, if not, then on the next day on which such City/Town is open for business ("the Closing Deadline"). Seller will convey its interest in the Property subject to the following conditions and restrictions:
  - a) conveyance of the Property at closing (on or before the Closing Deadline) will be by release deed. Unless otherwise indicated below, and if more than one Buyer executes this Agreement, the deed from seller to Buyer will be a deed to Buyer as tenants in common.

Buyer's affirmative election as to the form of the instrument of conveyance from Seller:

N/A joint tenancy

N/A tenancy in common

- b) the closing will take place at Bendett & McHugh, P.C., 30 Danforth Street, Ste. 104, Portland, ME 04101, or at such other place as may be agreed between parties.

- c) seller and representative make no representations of any kind or nature as to the physical condition or title to any of the Property; or the physical condition, location or value of any of the Property; or compliance with any applicable federal, state or local law, ordinance and regulation, including zoning or land use ordinances, and is sold on an "AS IS, WHERE IS" basis.
- d) conveyance at closing will be subject to all outstanding municipal tax liens or other municipal or quasi-municipal encumbrances or assessments, whether or not of record in the Cumberland Registry of Deeds on the date of closing, and further subject to all transfer taxes and sales taxes assessed by the State of Maine, all of which are entirely the responsibility of Buyer.
- e) buyer specifically and affirmatively waives the right to request any writ of possession from Seller and for the Property.
- f) conveyance is further subject to the terms and conditions of sale as announced at the public sale of the Property on August 26, 2013 or as set forth in the Terms and Conditions of Public Sale distributed by the representative to registered bidders at the time of registration to bid.

3. Purchase Price: (a) Buyer hereby agrees to pay Seller the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

for the Property as follows:

- (i) Five Thousand Dollars (\$5,000.00) at the time of the execution of this Agreement, all of which is nonrefundable and the receipt thereof is hereby acknowledged by Seller;
  - (ii) The balance (after such deposit) is due and payable at the time of closing in cash or by certified check.
- (b) Should Buyer fail to tender the balance due at closing and on or before the Closing Deadline; all deposit(s) from Buyer shall be retained by Seller as liquidated damages by which shall not limit the right of seller to enforce any other right or remedy against Buyer, including an action to compel specific performance.
- 4. Risk of Loss. The risk of loss or damage to the Property by fire or otherwise until closing and the delivery of the deed is assumed by Buyer.
  - 5. Broker. Seller and Buyer agree that there is no real estate broker involved in this transaction, and that no one is due a commission in conjunction with the sale or purchase of the Property. Buyer is not liable, by virtue of this Agreement, for payment of any fees to the representative.

*LC SM*

6. **Non-reliance; Construction.** Buyer acknowledges that Buyer has not relied upon any oral or written representations of any employee, agent, or attorney for seller not expressly set forth in this Agreement as a basis for Buyer's decision to execute this Agreement. In express recognition thereof, Buyer agrees that in the event of any ambiguity as to the meaning or intent of the terms or obligations set forth herein, or any documents executed in connection herewith, such ambiguous terms or provision shall not be construed more favorably to one party than to another.
7. **Limitation on Buyer Damages.** Buyer agrees that in any dispute or action arising out of this Agreement, or the matters described herein, the damages to which Buyer may be due at any time and as against Seller for any reason shall be specifically limited to the amount of Buyer's deposit, repayable without interest, and that under no circumstances may such damages include any claim for punitive damages, lost profits or investment opportunities, or attorneys' fees.
8. **Waiver of Jury Trial, Arbitration.** (a) Buyer agrees that in the event of any dispute as between Buyer and Seller and relating to the subject matter of this Agreement, or the property hereby contemplated to be transferred by Seller to Buyer, such dispute shall (unless Seller shall have demanded arbitration as set forth in this paragraph) be tried before a single Justice of the Superior Court in Cumberland County sitting without a jury.  
  
(b) Buyer further agrees that in any dispute or controversy with Seller as to the terms of this Agreement, or with respect to the matters described herein, and whether sounding in contract or tort, shall, at the election of seller and at any time, be resolved by binding arbitration in accordance with the applicable provisions of the Maine Uniform Arbitration Act, at 14 M.R.S.A. § 5927 et seq. and as the same may be amended from time to time. Seller may further elect to submit less than all disputes or controversies as between Buyer and Seller to binding arbitration. Nothing herein shall be construed as limiting the rights or remedies of Seller pursuant to this Agreement or any document or agreement as between Buyer and seller at any time, whether or not Seller shall have previously demanded such arbitration.
9. **Assignment.** Buyer may assign its rights under this Agreement to any third party by a writing approved by Seller, but such assignment may not mitigate or modify Buyer's obligations and liability to Seller pursuant to the terms hereof. Any such assignment, in a form approved by and acceptable to counsel for Seller, must be executed and delivered by Buyer and the proposed assignee(s) to counsel for Seller at least seven (7) calendar days prior to the date of closing.
10. **Amendments.** This Agreement contains the entire agreement of the parties, and it may not be amended subsequent to the execution hereof except by a writing executed by each of the parties to this Agreement.

LC SM

11. **Binding Nature.** This Agreement shall be binding upon the respective heirs, successors, personal representatives and assigns of the parties hereto.
12. **Applicable Law.** This Agreement shall be enforced and construed in accordance with the laws of the State of Maine.
13. **TIME IS OF THE ESSENCE AND NOT A MERE RECITAL.** Should Buyer default in any obligation under this Agreement, buyer agrees to indemnify and hold Seller harmless from any resulting or consequential loss, claim or damage of any kind whatsoever, including but not limited to any attorneys' fees incurred by Seller.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement in duplicate original as of the day and year firm above written.

Newbury Place REO III, LLC

Witness:

Andrea K. [Signature]

By: [Signature: Shannon Merrill]  
 Name: ~~Live Chase~~ Shannon Merrill *ESQ.*  
 Title: Attorney / Agent

[Signature: Andrea Merrill]

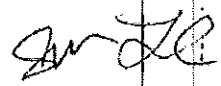
[Signature: Live Chase] or nominee  
 Buyer  
 Name Live Chase, Member

\*\*\* DISCLAIMER ON NEXT PAGE\*\*\*



**Disclaimer:** Please read this Purchase and Sale Agreement carefully. Neither seller nor its agents, employees or attorneys make any warranties or representations of any kind to Buyer beyond those expressly set forth in this Agreement. Further, none of such persons offer any advice to you as to any aspect of the arrangement reflected by, or contemplated by, the foregoing.

Counsel for Sale: Shannon M. Merrill, Esquire, Bendett & McHugh, P.C.,  
30 Danforth Street, Ste. 104, Portland, ME 04101  
207-221-0016

A handwritten signature in dark ink, appearing to be "SM Merrill", is located in the bottom right corner of the page.

After Recording Please Return To:  
Bendett & MchHugh, P.C.  
270 Farmington Avenue, Suite 151  
Farmington, CT 06032

**QUITCLAIM DEED WITHOUT COVENANT  
CORPORATE GRANTOR**

Property address:  
48 Hancock Street  
Portland, ME 04101

KNOW ALL BY THESE PRESENTS, that **Newbury Place REO III, LLC** (hereinafter referred to as "Grantor"), a financial institution organized and existing under the laws of the United States of America, and having a place of business in Bethesda, Maryland, acting pursuant to a Judgment of Foreclosure and Sale entered on June 7, 2013, in the Cumberland County Superior Court, located in Portland, Maine, Docket No. RE-11-565 and recorded in the Cumberland County Registry of Deeds in Book 30834 at Page 53, under 14 M.R.S.A. §6321 et. seq. for the foreclosure of the Mortgage granted by **Roland A. Smalley, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for Accredited Home Lenders, Inc.** dated 4/30/2007, and recorded in the Cumberland County Registry of Deeds in Book 25061, Page 166, for consideration paid, the receipt whereof it does hereby acknowledge, does hereby remise, release, bargain, sell and convey, and forever quitclaim unto **Sunny Time Solar, LLC** (hereinafter referred to as ("Grantee")) its successors and assigns forever, whose mailing address is P.O. BOX 15372, PORTLAND, ME 04112, a certain lot or parcel of land situated in the Town of Portland, County of Cumberland and State of Maine, described below:

Beginning at a post ninety-four (94) feet and four (4) inches from a stone monument on the westerly side of Hancock Street, at the junction of Newbury Street, formerly called Summer Street; thence running northwesterly twenty-one (21) feet and five (5) inches to the northerly corner of the dwelling house and land formerly belonging to Clement Thompson; thence southwesterly by said Thompson land and land now or formerly of George Sines sixty-one (61) feet and two (2) inches to a post; thence southeasterly twenty (20) feet to a post; thence northeasterly sixty-one (61) feet and four (4) inches to the first bounds.

Meaning and intending to describe and mortgage the same premises conveyed to the mortgagor(s) by deed recorded in the Cumberland County Registry of Deeds in Book 12574 at Page 217.

This deed is granted through a public sale held pursuant to 14 M.R.S.A. §6323(1). A notice of public sale stating time, place, and terms of the sale was published on July 22, 2013, July 29, 2013, and August 5, 2013 in the Portland Press Herald, a newspaper of general circulation in Cumberland County. The redemption period was waived by consent of the parties. The Public Sale was held on August 26, 2013. The Grantee was the highest bidder.

TO HAVE AND TO HOLD the same, together with all privileges and appurtenances thereunto belonging, to the said Grantee, its successors and assigns forever.