

Order 119-07/08

Passage: 1-7-08 7-0 (Leeman, Duson absent)

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING LICENSE AGREEMENT WITH CHAPIN REALTY LLC RE: RESIDENCE INN

ORDERED, that the City Manager is hereby authorized to execute a License Agreement between the City of Portland and Chapin Realty LLC in substantial form as attached for purposes of encroachments on City property for footings, drainage pipes, eaves, canopies and other construction and architectural features for the Residence Inn.

LICENSE AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, 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"), hereby GRANTS to CHAPIN REALTY, LLC, a Delaware limited liability company (hereinafter the "Grantee") with a place of business in Portland, Maine, and having a mailing address c/o Norwich Partners of Portland LLC, 10 Morgan Court, Lebanon, New Hampshire (hereinafter the "Licensee"), and Licensee's successors and assigns as set forth herein, a revocable (but only as set forth herein) license to occupy portions of property on or over land owned by the City being known as Fore Street and land known as "Proposed Hancock Street Extension", in Portland, Cumberland County, Maine. The land of City abuts the property of Licensee conveyed to Licensee from Shipyard Brewing Company Limited Liability Company dated December 14, 2007, recorded in the Cumberland County Registry of Deeds in Book 25688, Page 158.

The purpose of this license is to allow encroachments by certain portions of the buildings and improvements, proposed to be constructed by Licensee, onto the City's property as shown on **Exhibit A** attached hereto and made a part hereof, such encroachments being described as follows:

(i) The right to install, maintain, replace and repair building footings, foundation drainage pipes, and portions of a stormwater drainage system (including chambers and piping) in and under the City property bounded and described more specifically on **Exhibit B** consisting of 3 pages and attached hereto and made a part hereof, which are within public rights of way known as Fore Street and Middle/Hancock Street and within other property of the City sometimes called "Proposed Hancock Street Extension."

(ii) encroachments of eaves or building roof caps over the proposed sidewalk areas on Fore Street and the Proposed Hancock Street Extension; and

(iii) encroachments of window and door canopies along Fore Street and the proposed Hancock Street Extension.

The forgoing is shown, generally, on **Exhibit B**. The license granted herein is for the foregoing purposes in connection with the construction and development of a building to be used, initially, as a hotel, together with any replacements thereof on Grantee's adjacent premises as described in a deed to Grantee from Shipyard Brewing Company Limited Liability Company dated December 14, 2007, recorded in the Cumberland County Registry of Deeds in Book 25688, Page 158 (the "Benefited Property"). The purpose of the license is to allow for the construction of the hotel building, and the rights herein include the right to cause the building footings, drainage pipes and stormwater system to be of sufficient size and dimension and to be installed at a sufficient depth to support the building to be located on the Benefited Property.

The license granted in this agreement is subject to the following conditions:

1. **Indemnification**. Licensee, its successors and assigns, shall indemnify the City, its officers, agents, and employees from any and all claims which arise out

of Licensee's use, or the use by others under authority from Licensee, of the City's property encroached upon as described above.

2. Insurance. Licensee, its successors and assigns, shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit (or any amount noted in the Maine Tort Claims Act, as 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.

3. Assignment. This license is assignable to any subsequent owners of the buildings located on the land described on the approved site plan for Norwich Partners LLC, located at Fore Street and Hancock Street, Portland, Maine and depicted on Exhibit C attached hereto.

4. Revocation. This license shall be effective immediately upon the execution of this Agreement by both the City and Grantee. This license may be revoked by City, by the giving of six (6) months written notice (the "Revocation Notice") by the City to Licensee, its successors and assigns, but only in the event that: (a) the buildings shown on the attached plans (Exhibit B) are not constructed substantially in accordance with such plans or any amendments thereto; or (b) following such construction, the buildings as shown on such plans or any amendments thereto are destroyed, removed or otherwise cease to exist on the Benefited Property for a period of one (1) year or more. In the event that a Revocation Notice is given as set forth above, then the Licensee, or its successors and assigns as the case may be, shall have such six (6) month period following the Revocation Notice within which to remove or resolve the condition which caused such Revocation Notice to be given by City, whereupon Licensee, or its successors and assigns as the case may be, shall retain all of its rights hereunder. In order for a Revocation Notice to be effective, it shall be sent to Licensee, its successors and assigns, by certified mail, return receipt requested, to the address listed for Licensee in the municipal tax records for purposes of Licensee's address.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on January ____, 2008.

CITY OF PORTLAND

By: _____
Joseph E. Gray, Jr.
City Manager

STATE OF MAINE
CUMBERLAND, ss.

January ____, 2008

PERSONALLY APPEARED the above named Joseph E. Gray, Jr., 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 the City of Portland.

Before me,

Notary Public/Attorney at Law
Print name:
My commission expires:

Witness

CHAPIN REALTY LLC

By: Norwich Partners of Portland LLC, its
Manager

By: _____
Name: David Leatherwood
Its Manager

STATE OF _____
_____, ss.

January ____, 2008

PERSONALLY APPEARED the above named David Leatherwood and acknowledged the foregoing instrument to be his free act and deed in his said capacity as Manager as aforesaid, the free act and deed of said Norwich Partners of Portland, LLC, and the free act and deed of Chapin Realty LLC.

Before me,

Notary Public/Attorney at Law
Print name:
My commission expires: