

Order 5 – 07/08

Passage 7/16/07 7-0 (Leeman, Duson absent)

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
EDWARD J. SUSLOVIC (A/L)

**ORDER APPROVING
RECIPROCAL EASEMENT
RE: SPRING STREET PARCEL**

ORDERED, that the City hereby grants and accepts the easement interests in City property at Spring Street (i.e. Spring Street Garage Parcel) and in private property at Spring and Free Street (former Anthem Parcel), as detailed below and for purposes noted within said easement (parking and snow removal activities respectively):

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT is made by and between **TC 110 Free Street, LLC**, a Delaware limited liability company (“FS LLC”), having a mailing address in care of c/o Trammell Crow Company, 2001 Ross Avenue, 3400 Trammell Crow Center Dallas, TX 75201, and the **City of Portland, Maine**, a body corporate and politic (the “City”) having a mailing address 389 Congress Street, Portland, ME.

WITNESSETH:

WHEREAS, FS LLC is the owner of certain real estate located between Free and Spring Streets in the City of Portland and more particularly depicted on a certain recorded Plan dated March 12, 2007, 2003, entitled “ALTA Survey of Anthem Health Building and Parking” prepared by Sebago Technics dated March 12, 2007 (the “Plan”), a reduced excerpt of which is attached hereto as Exhibit A, formerly owned by Anthem Health Plans of Maine pursuant to deeds recorded in said Registry of Deeds in Book 15513, Page 72 and in Book 17404, Page 63 (the “FS LLC Parcel”);

WHEREAS, City is the owner of real estate located northeasterly easterly of and adjoining the FS LLC Parcel and depicted on the Plan and identified as the land “n/f City of Portland” (the “City Parcel”) (Each of the FS LLC Parcel and the City Parcel are sometimes referred to herein as a “Parcel”);

WHEREAS, FS LLC and City each propose to create by this agreement certain rights and easements in favor of the other for parking, snow removal and related rights over its respective Parcel, upon and subject to the terms and conditions expressed herein;

NOW, THEREFORE, the parties hereby agree as follows:

1. Grant of Easements. The City hereby grants to FS LLC an appurtenant easement for the purposes of parking and vehicular and pedestrian ingress and egress by FS LLC, its employees, guests and invitees for the use of the existing parking area, pavement, parking and related improvements as depicted on the Plan, together with the right to maintain, repair and replace such pavement, parking areas and related improvements all at the risk and expense of FS LLC (the "Parking Easement"). The City hereby reserves, for itself, its successors and assigns, the right to enter onto the Parking Easement area to maintain and repair its abutting parking garage facility, provided that such entry shall be conducted so as to reasonably minimize the interruption of the use of the parking spaces to the extent feasible.

FS LLC hereby grants to the City an appurtenant easement during the hours of 9 PM to 6 AM each night to dump snow from the City Parcel onto the "Snow Dump Area" forming a part of the FS LLC Parcel as depicted in Exhibit A, to enter on the FS Parcel with equipment and vehicles to load and remove such snow with equipment and vehicles, but this easement shall only permit the temporary placement and removal of such snow and not the storage thereof outside of said 9 hour period during the night, together with the right to post such Snow Dump Area against overnight winter parking and to remove improperly parked vehicles at its risk and expense (the "Snow Removal Easement").

2. Binding Effect. The easements, restrictions and obligations created and imposed herein shall be effective upon the date hereof, shall run with the land, and shall inure to the benefit of and be binding upon the parties, their successors and assigns. Each of the rights created hereunder may be enforceable in a court of equity by the owner of any property covered by this Agreement; however, enforcement hereunder shall be sought solely against the then owner of the Parcel (or the owner of an interest in such Parcel) alleged to be in default.

The rights and easements contained herein are strictly for the benefit of the parties specified in this Agreement and shall not be construed to confer any right of access to any other person or entity.

3. Construction of Agreement; Captions. This Agreement is to take effect as a sealed instrument. It shall be construed under Maine law, sets forth the entire agreement between the parties and supersedes all prior agreements and memoranda with respect to the subject matter hereof. The captions used herein are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties.

4. Amendments. This Agreement may be modified, amended, or cancelled only by a written instrument executed by all parties hereto at the time of such amendment.

5. Not Partners; No Rights. Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of the others.

6. **Miscellaneous.** This Agreement is subject to the following terms and conditions which shall be binding upon FS LLC, City and their respective successors and assigns:

(a) The maintenance and improvement of the pavement forming part of the Parking Easement is the responsibility of FS LLC.

(b) If either party's use of the easement areas results in damages thereto or damage to any improvements (except for normal wear and tear) arising from accidents, negligence, or use in a manner not consistent with use by a reasonably prudent operator, such party causing the damage shall be solely responsible for the costs of repairing such damage.

(c) Each Parcel owner agrees to indemnify and hold harmless the other Parcel owner for any liability, claim, damage, loss or cost, including reasonable attorneys' fees, arising out of the exercise of such Parcel owner's rights described in this Agreement. Each Parcel owner shall obtain and maintain at all times commercial general liability insurance with respect to its Parcel.

WITNESS our hands and seals as of _____, 2007.

TC 110 FREE STREET, LLC, a Delaware limited liability company

By: TC Free Street Manager, LLC, a Delaware limited liability company, its Manager

WITNESS

by: _____
name: _____
Its _____

WITNESS:

City of Portland, Maine

WITNESS

By: _____
name: _____
Its _____

STATE OF _____

COUNTY OF _____

_____, 2007

Then personally appeared before me the above-named _____, in his said capacity and acknowledged the foregoing instrument to be his free act and deed in said capacity, the free act and deed of said limited liability company in its said capacity and the free act and deed of said TC 110 Free Street, LLC.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2007

Then personally appeared before me the above-named _____, in his said capacity and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of the City of Portland, Maine.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

Reciprocal Easement Free St, Portland ME.doc
7/18/2007

CONSENT OF MORTGAGEE

_____, holder of a mortgage from **TC 110 Free Street, LLC** dated June ____, 2007, recorded in the Cumberland County Registry of Deeds in Book _____, Page _____, and a UCC-1 Financing Statement dated June ____, 2007, recorded in the Cumberland County Registry of Deeds in Book _____, Page _____, hereby consents to, and subordinates said mortgage lien, to the foregoing Reciprocal Easement Agreement. The mortgagee hereby agreeing that its lien under the aforesaid mortgage shall be subject to the provisions of the foregoing Reciprocal Easement Agreement, and the mortgagee further agrees that in the exercise of its rights as mortgagee under the aforesaid mortgage, the mortgagee will recognize the establishment of the easements and the terms associated therewith as described in the aforesaid Reciprocal Easement Agreement.

Dated as of _____, 2007.

By: _____
Name:
Title:

STATE OF _____
COUNTY OF _____, 2007

Then personally appeared before me the above-named _____, in his said capacity and acknowledged the foregoing instrument to be his free act and deed in said capacity, the free act and deed of _____ in its said capacity and the free act and deed of said _____.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

Exhibit A

