

Order 125-13/14
Passage: 9-0 on 12/16/2013

Effective 12/26/2013

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 (A/L)

ORDER GRANTING EASEMENT TO 119 DEVELOPMENT, LLC

ORDERED, that an easement is hereby granted to 119 Development, LLC in substantially the form attached hereto as Attachment 1.

Attachment 1 to Order 125-13/14

EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (“Grantor”), FOR VALUABLE CONSIDERATION, does hereby GRANT to 119 Development LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 7486, Portland, Maine 04112-7486 (the “Grantee”), easements for the purposes set forth below, over portions of Grantor’s land as described below (collectively, “Grantor’s Land”). The land which is subject to the easements granted herein abuts land of Grantee, located at 119 Exchange Street (also identified as 390 Congress Street) in Portland, Maine which is described in a deed from Metro Media Properties, LLC to Grantor recorded in said Registry in Book _____, Page _____ (“Grantee’s Land”).

1. Grantor grants to Grantee a permanent and perpetual easement over and under the sidewalk area shown on the plans attached hereto as Exhibits A and B and made a part hereof (collectively the “Plan”), which is labeled “Easement 1 Area”, for the purpose of installing, using, repairing and maintaining a radiant snow melting system (the “Snow Melt System”) under the sidewalk.
2. Grantor grants to Grantee a permanent and perpetual easement over and under the sidewalk area shown on the Plan which is labeled “Easement 2 Area”, for the purpose of installing, using, repairing and maintaining a grease trap (the “Grease Trap”) to be used in connection with the restaurant in the building which is to be constructed by Grantee on Grantee’s Land.
3. Grantor grants to Grantee a permanent and perpetual easement for portions of the building on Grantee’s Land in existence on the date of this easement and a fire escape (as it may be reconstructed as approved by Grantor) that extend beyond the parcel boundaries of Grantee’s land towards Federal Street.
4. Grantor grants to Grantee a permanent and perpetual easement to use and occupy spaces below the sidewalk on each of Market, Exchange and Federal Streets in the areas as shown on Exhibit C attached hereto and made a part hereof (the “Sub-sidewalk Easement Areas”). Grantee shall be responsible for maintaining the structural integrity of, and repairing, as necessary, the Sub-sidewalk Easement Areas. The parties acknowledge that as of the date of this Easement, there is a 10,000 gallon underground storage tank (the “UST”) in a portion of the Market Street Sub-sidewalk Easement Area, in the location specified in Exhibit C. Grantee shall at its expense remove and dispose of the UST and all product therein in compliance with all federal, state and local laws, ordinances and rules, and Grantee shall be further responsible for cleaning up any petroleum spills or other contamination existing or created as a result of the presence or removal of the UST. Upon the proper removal of the UST as aforesaid, Grantee may install a ventilation grate in the area formerly occupied by the UST.
5. In the event of damage to the spaces covered by this agreement including, but not limited to, the Snow Melt System, Grease Trap, fire escape or canopy areas and the Sub-sidewalk Easement Areas, the Grantee shall promptly repair/restore said spaces, subject, however to the provisions of subsection (a) below with respect to the Snow Melt System and Grease Trap.
 - (a) Grantee shall have the right to install the Snow Melt System and the Grease Trap in the locations approved by the City. So long as Grantee actively uses either or both of the Snow Melt System and the Grease Trap, Grantee shall have the obligation and right to maintain and/or repair the Snow Melt System and the Grease Trap and shall have responsibility for engaging a private utility locating and excavating service concerning location of below-grade utilities and reporting when required on the existence of the Snow Melt System when there is below-grade excavation occurring nearby of which Grantee becomes aware. If Grantee either ceases or does not begin use of either the Snow Melt System or Grease Trap, Grantee shall maintain and/or remove either or both to the extent required by the City so as to cause no damage to any public improvements. Grantee shall have the right to engage in all related construction and maintenance work, provided Grantee notifies the Grantor prior to undertaking said work, restores Grantor’s Land to substantially its original condition after all such installation, construction, maintenance or

repair activities and complies with traffic management plan required by Grantor. Grantee shall pay any and all installation, construction, maintenance and repair costs relating to the Snow Melt System, the Grease Trap and any encroachments of the building described herein and shall not look to Grantor for payment of any of such costs.

(b) Grantee assumes all responsibility, and shall defend, indemnify and hold the City harmless, for any and all claims and/or damage to persons or property arising out of or in any way to the Snow Melt System, the Grease Trap, the presence and removal of the UST and any encroachments of the building described herein including, but not limited to, the fire escape and canopies.

This easement replaces in its entirety an unrecorded easement from Grantor to Grantee dated May 24, 2013.

TO HAVE AND TO HOLD the aforegranted and bargained easements, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, the City of Portland, the Grantor, has caused this instrument to be duly executed, this ____ day of _____, 2013.

WITNESS:

CITY OF PORTLAND

By: _____

Mark Rees, its City Manager

STATE OF MAINE
CUMBERLAND, ss

_____, 2013

PERSONALLY APPEARED the above-named Mark Rees, 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: _____