

Order 152-13/14

Passage: 7-1 (Donoghue) on 2/24/2014 (Leeman absent)

Effective 3/6/2014

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 (A/L)

**ORDER GRANTING LICENSE TO EMT, LLC
and
AUTHORIZING AMENDMENT TO SIDEWALK MATERIALS POLICY**

ORDERED, that a license agreement from the City to EMT, LLC is hereby accepted in substantially the form attached hereto as Attachment 1; and

BE IT FURTHER ORDERED, that the Sidewalk Materials Policy adopted by Council Order 221 (4/17/02) and amended by Council Orders 38 (8/18/03) and 31 (8/16/10), is hereby further amended to:

Permit a brick, rather than bituminous, driveway apron and to permit the extension of granite pavers into the brick sidewalk in the following area:

Southeasterly side of Congress Street between
Atlantic Street and St. Lawrence Street at 118 Congress Street
substantially as shown on the site plan attached hereto as Attachment 2.

Attachment 1

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the ____ day of February, 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 **EMT, LLC**, a Maine limited liability company, with a place of business in Portland, Maine and mailing address of 118 Congress Street, 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 airspace above land owned by the City and adjacent to property of Licensee located at 118 Congress Street, described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book 14136, Page 274 (“Licensee’s Property”), for the purpose of permitting the encroachment of footings, balconies, decks, bays and/or overhangs over the City property (“encroachments”) to be located according to, and used as described in, Exhibit A 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. At all times during the Term of this License Agreement, Licensee, its agents and assigns, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for repairing, keeping and maintaining the Licensed Areas in a safe condition generally, by, among other things: ensuring prompt removal of, or otherwise eliminating snow and ice from all encroachments and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the encroachments from falling or being dropped or thrown onto the City’s sidewalk; repairing, replacing or removing all encroachments as necessary for public safety;

taking any and all other measures necessary to protect pedestrians in the sidewalk from injury or other harm arising out of the presence of the encroachments.

3. 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.

4. This license is assignable to any subsequent owners of the property and/or building located on the land described on the site plan of 118 on Munjoy Hill approved by the Portland Planning Board on January 28, 2014 located at 118 Congress Street, 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

5. 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 Exhibit A, to more accurately show the encroachments described above that are being licensed under this Agreement.

6. 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 to: Thomas B. Federle, Esq., 254 Commercial Street, Portland, Maine 04101.

7. 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 members.

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Mark H. Rees, its City Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

By: _____
Mark H. Rees, its City Manager
thereunto duly authorized

STATE OF MAINE
CUMBERLAND, ss

February ____, 2014

PERSONALLY APPEARED the above-named Mark H. 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: _____

Seen and Agreed to:

BY: EMT, LLC
Edward Theriault,
its Manager

Edward Theriault, Manager of EMT, LLC

EXHIBIT A

TO

LICENSE AGREEMENT

City of Portland to EMT, LLC

Licensed Areas

1. Footing easement in St. Lawrence Street

A certain easement situated along the northeasterly sideline of St. Lawrence Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the northeasterly sideline of St. Lawrence Street, which point is located N 37° 33' 00" W, as measured along St. Lawrence Street, 4.47 feet from the westernmost corner of the land now or formerly of Lawrence W. Gross (see Book 17303 Page 310) and the southernmost corner of the land now or formerly of EMT, LLC (Book 14136 Page 274, as shown on "Subdivision Recording Plat 118 on Munjoy Hill 118 Condominiums, LLC 118 Congress Street, Portland ME November 13, 2013 Pinkham & Greer Consulting Engineers" revised ;

Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;

Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;

Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;

Thence, N 37° 33' W along St. Lawrence Street 12.8 feet;

Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;

Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;

Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;

Thence, N 37° 33' W along St. Lawrence Street 19.8 feet;

Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;

Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;
Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W along St. Lawrence Street 7.67 feet;
Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;
Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W along St. Lawrence Street 3.49 feet;
Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;
Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W along St. Lawrence Street 12.05 feet;
Thence, S 52° 27' W over St. Lawrence Street 0.50 feet;
Thence, N 37° 33' W over St. Lawrence Street 4.2 feet;
Thence, N 52° 27' E over St. Lawrence Street 0.50 feet;
Thence, S 37° 33' E along St. Lawrence Street 81.01 feet to the point of beginning.

Said easement contains 13 square feet and is for the footings for the proposed building shown on the above mentioned plan.

2. Overhang easement in Congress Street

A certain easement situated along the southeasterly sideline of Congress Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the southeasterly sideline of Congress Street, which point is located N 57° 40' 00" E, as measured along Congress Street, 0.2 feet from the the point of intersection of the southeasterly sideline of Congress Street and the northeasterly sideline of St. Lawrence Street, as shown on "Subdivision Recording Plat 118 on Munjoy Hill 118 Condominiums, LLC

118 Congress Street, Portland ME November 13, 2013 Pinkham & Greer Consulting Engineers" revised ;

Thence, N 32° 20' W over Congress Street 1.4 feet;

Thence, N 57° 40' E over Congress Street 23.3 feet;

Thence, S 32° 20' E over Congress Street 1.4 feet;

Thence, N 57° 40' E along Congress Street 24.0 feet;

Thence, N 32° 20' W over Congress Street 1.4 feet;

Thence, N 57° 40' E over Congress Street 29.1 feet;

Thence, S 32° 20' E over Congress Street 1.4 feet;

Thence, N 57° 40' E along Congress Street 14.1 feet;

Thence, N 32° 20' W over Congress Street 1.4 feet;

Thence, N 57° 40' E over Congress Street 21.7 feet;

Thence, S 32° 20' E over Congress Street 1.4 feet;

Thence, S 57° 40' W along Congress Street 112.2 feet to the point of beginning.

Said easement contains 104 square feet and is for the overhangs for the proposed building shown on the above mentioned plan.

3. Overhang easement in St. Lawrence Street

A certain easement situated along the northeasterly sideline of St. Lawrence Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the northeasterly sideline of St. Lawrence Street, which point is located N 37° 33' 00" W, as measured along St. Lawrence Street, 15.1 feet from the westernmost corner of the land now or formerly of Lawrence W. Gross (see Book 17303 Page 310) and the southernmost corner of the land now or formerly of EMT, LLC (Book 14136 Page 274, as shown on "Subdivision Recording Plat 118 on Munjoy Hill 118 Condominiums, LLC 118 Congress Street, Portland ME November 13, 2013 Pinkham & Greer Consulting Engineers" revised ;

Thence, S 52° 27' W over St. Lawrence Street 2.60 feet;

Thence, N 37° 33' W over St. Lawrence Street 9.9 feet;

Thence, N 52° 27' E over St. Lawrence Street 2.60 feet;

Thence, S 37° 33' E along St. Lawrence Street 9.9 feet to the point of beginning.

Said easement contains 26 square feet and is for the overhang for the proposed building shown on the above mentioned plan.