

As agreed applicants attorney and City Corporation Counsel 3.20.2015

REPLACEMENT 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 Redfern Munjoy LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 8816, Portland, ME 04014 (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 79 Walnut Street in Portland, Maine which is described in the Subdivision Plan of Munjoy Heights, Prepared by Nadeau land Surveys, dated December 6, 2013, and recorded in the Cumberland County Registry of Deeds in Plan Book 214, Page 48 (“Grantee’s Land”).

1. Grantor grants to Grantee a permanent and perpetual easement to use and occupy the drive apron at 79 Walnut Street (drive entrance to Munjoy Heights, development approved by the Planning board on December 17, 2013 Project #2013-228 as shown on Exhibit A attached hereto and made a part hereof (the “Apron Easement Area”) together with the right from time to time to bring on the Apron Easement Area and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the Apron Easement Area.

2. At all times the Grantee, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for installing, and constructing the sidewalk, apron and crosswalk utilities as depicted on Exhibit A and shall exclusively be responsible for repairing, replacing, keeping and maintaining the Apron Easement Area in a safe condition generally, and promptly repairing or replacing any broken or displaced bricks or other materials to match the original installation.

3. All work performed upon and use of the Apron Easement Area for the purposes set forth herein shall be in accordance with the City of Portland Technical Manual and the approved construction plans and at Grantee’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 Easement Area related to the conduct of any work related to this Easement. Grantee agrees at its sole expense to restore any adjacent City property damaged by work conducted by Grantee related to this Easement to substantially its condition prior to such work, or as close to that condition as is reasonably practicable.

4. Grantee, 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 Grantee’s use, or the use of others, of the City's property as described above.

5. Grantee 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 Grantee under the terms of this Easement. Grantee shall

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provide City with evidence of such insurance coverage and maintain such insurance in perpetuity. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101.

6. This Easement is assignable to any subsequent owners of the property and/or building located on the land described on the site plan of Munjoy Heights approved by the Portland Planning Board on December 17, 2013 located at 79 Walnut 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 Easement Areas.

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 forever.

IN WITNESS WHEREOF, the City of Portland, the Grantor, has caused this instrument to be duly executed, this ____ day of _____, 2015.

WITNESS:

CITY OF PORTLAND

By: _____

Sheila Hill-Christian
its Acting City Manager

STATE OF MAINE
CUMBERLAND, ss

_____, 2015

PERSONALLY APPEARED the above-named Sheila Hill-Christian, Acting City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her 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: _____