

Order 28-16/17

Passage: 8-0 (Hinck absent) on 8/1/2016

Effective 8/11/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING A LICENSE TO LUMINATO CONDOMINIUM, LLC

ORDERED, that a license to Luminato Condominium, LLC allowing certain encroachments in the public right-of-way is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the _____ day of August, 2016 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 **LUMINATO CONDOMINIUM, LLC**, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 118 Congress Street, Unit 401, Portland, ME 04101 and 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 owned by the City at Newbury Street and Franklin Street in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee described in deeds to Licensee recorded in the Cumberland County Registry of Deeds in Book 32835, Page 23 and Book 33039, Page 286 (collectively “Licensee’s Property”), for the purpose of permitting the encroachment of (i) footings along Newbury Street and Franklin Street, (ii) the main entrance awning over Newbury Street, and (iii) the stoop and awning at the garage entrance from Franklin Street, all used as depicted on the revised Subdivision Plat titled “Luminato Condominium, 169 Newbury Street, Portland, Maine,” revised 7/21/16 and approved by the City of Portland on _____, 2016 and recorded in the Cumberland County Registry of Deeds at Plan Book _____; Page _____ and made a part hereof (the “Licensed Areas”) and as more particularly described in **Exhibit A**, 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, all in connection with the development of Licensee’s Luminato Condominium project being developed on the Licensee’s Property (the “Project”). 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 shown on the Site Plan (as defined below) for the Project, 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 building located on the land described on the approved site and subdivision plan for Luminato Condominium, Address: 169 (a/k/a 167) Newbury Street, Portland, Maine, recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____ (the revised "Subdivision Plat").

5. Subject to the provisions of Sections 6 and 7 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 5 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
Federle Law
254 Commercial Street
Portland, ME 04101

7. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 5 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 5 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder.

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

CITY OF PORTLAND

By: _____

Jon P. Jennings
City Manager

STATE OF MAINE

CUMBERLAND, ss

_____, 2016

Personally Appeared the above-named Jon P. Jennings, 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: _____,

Its

By: _____

Name:

Title: Its

EXHIBIT A

(Metes and Bounds Description of Licensed Areas)

A certain lot or parcel of land, being a license, located on the northwesterly side of Newbury Street and northeasterly side of Franklin Arterial, in the City of Portland, County of Cumberland, State of Maine, being more particularly bounded and described as follows:

BEGINNING at a point on the northwesterly side of Newbury Street, located S 52°21'06" W, 5.00' from a #5 rebar w/cap stamped "NCS 1314" to be set at the southerly corner of land Now or Formerly (N/F) of REBECO, LLC, as described in Deed Book 26365, Page 256, recorded in the Cumberland County Registry of Deeds and as shown on the revised Subdivision Plat approved by the City on _____, 2016 and recorded in the Cumberland County Registry of Deeds at Plan Book _____; Page _____.

THENCE: S 37°38'54" E, through said Newbury Street, 5.00' to a point;

THENCE: S 52°21'06" W, through said Newbury Street and through Franklin Arterial, 64.36' to a point;

THENCE: N 48°22'59" W, through said Franklin Arterial, 74.00' to a point;

THENCE: S 43°01'03" W, through said Franklin Arterial, 1.50' to a point;

THENCE: N 48°22'59" W, through said Franklin Arterial, 15.50' to a point;

THENCE: S 43°01'03" W, through said Franklin Arterial, 3.50' to a point;

THENCE: N 48°22'59" W, through said Franklin Arterial, 5.00' to a point;

THENCE: N 43°01'03" E, through said Franklin Arterial, 5.12' to a point;

THENCE: N 46°58'57" W, through said Franklin Arterial, 38.23' to a point;

THENCE: N 43°01'03" E, through said Franklin Arterial, 3.50' to a #5 rebar w/cap stamped "NCS 1314" on the northeasterly side of said Franklin Arterial located S 51°37'54" E, 7.82' from a #5 rebar w/cap stamped "NCS 1314" to be set at the southerly corner of land Now or Formerly (N/F) of REBECO, LLC, as described in Deed Book 28560, Page 326;

THENCE: S 46°58'57" E, along said Franklin Arterial, 43.00' to a point;

THENCE: S 48°22'59" E, along said Franklin Arterial, 85.22' to a #5 rebar w/cap stamped "NCS 1314" to be set at the intersection of the northeasterly side of said Franklin Arterial with the northwesterly side of said Newbury Street;

THENCE: N 52°21'06" E, along said Newbury Street, 33.75' to a #5 rebar w/cap stamped "NCS 1314" to be set;

THENCE: N 52°21'06" E, along said Newbury Street, 28.00' to the POINT of BEGINNING.

The above described license contains 818 s.f., more or less.

Meaning and intending to convey a license within the right-of-way limits of Newbury Street and Franklin Arterial for the benefit of land now or formerly of Luminato Condominium, LLC..

The basis of bearing for the above described license is Grid North, State Plane 2, Zone 1802, West.

The above described license is shown on the revised Subdivision Plat approved by the City of Portland on _____, 2016 and recorded in the Cumberland County Registry of Deeds at Plan Book _____;
Page _____.