**SIDEWALK EASEMENT**

**TO THE**

**CITY OF PORTLAND**

KNOW ALL PERSONS BY THESE PRESENTS that 23 Ocean Avenue Associates, LLC, a Maine limited liability company with a mailing address of P.O B90x 1398, Portland, Maine 04101(hereinafter, “GRANTOR), for one dollar and other good and valuable consideration paid by the CITY OF PORTLAND, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter “GRANTEE”), does hereby grant to the said CITY OF PORTLAND the perpetual easement and rights described below on the land described below.

The purpose of said easement is to grant GRANTEE the right, but not the obligation, to construct, maintain, repair and replace a sidewalk in, on, under and over the portions of that certain parcel of land of the Grantor as described in **Exhibit A,** attached hereto and made a part hereof (the “Easement Area”) and as depicted on **Exhibit B** attached hereto and made a part hereof, said sidewalk to be used by the public for pedestrian, bicycle and similar non-motorized (other than wheelchair and emergency vehicles and snow removal equipment, which shall be permitted) pedestrian recreational uses, subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety. Notwithstanding anything to the contrary in this easement, it shall be the responsibility of the GRANTOR, and not the GRANTEE, to remove snow and ice from said sidewalk and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice.

GRANTOR further covenants and agrees for itself, its successors and assigns, that the land that lies in the Easement Area shall, except for the construction, maintenance, repair, or replacement of the sidewalk and any appurtenances by GRANTEE, its successors and assigns, shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and GRANTOR shall not use or permit any use that would be contrary to such condition.

To have and to hold the said Easement and all rights granted hereunder to the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by Steven E. Cope, its member thereunto duly authorized as of the 31st day of January, 2017.

WITNESS: 23 Ocean Avenue Associates, LLC

By:

Steven E. Cope, its member

STATE OF MAINE

COUNTY OF CUMBERLAND, SS. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017

Personally appeared the above named Steven E. Cope, in his capacity as member of 23 Ocean Avenue Associates, LLC, who acknowledged the foregoing instrument to be his/her free act and deed in his/her capacity and the free act and deed of 23 Ocean Avenue Associates, LLC.

Before me,

Name:

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Metes and Bounds Description

**EXHIBIT B**

Plan depicting easement area

**LICENSE AGREEMENT**

This License Agreement (“Agreement”) is entered into as of the 1st day of February, 2017, 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 **23 Ocean Avenue Associates, LLC**, a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 1398, Portland, ME 04104 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 23 Ocean Avenue, in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee described in a deed to Licensee dated March 30, 2016 and recorded in the Cumberland County Registry of Deeds in Book 33011, Page 183 (“Licensee’s Property”), for the purpose of permitting the encroachment of (i) concrete foundation and footings, canopy and roof overhang, and used as described in **Exhibit A** attached hereto and made a part hereof (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, all in connection with the development of Licensee’s multiuse 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 23 Ocean Avenue Associates, LLC , Address: 23 Ocean Avenue, Portland, Maine, recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_\_\_\_\_\_, Page \_\_\_\_\_\_\_\_\_\_ (the “Site Plan”).

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:

Steven E. Cope

P.O. Box 1398

Portland, ME 04104

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.

[Signatures appear on following page]

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Brendan O’Connell, its Finance Director thereunto duly authorized, as of the day and year first written above.

**CITY OF PORTLAND**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Brendan O’Connell

Finance Director

STATE OF MAINE

CUMBERLAND, ss \_\_\_\_\_\_\_\_\_ \_\_\_\_, 2017

Personally Appeared the above-named Brendan O’Connell, Finance Director 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:

23 Ocean Avenue Associates, LLC

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BY: Steven E. Cope

Its member

**EXHIBIT A**

The attached Plan shows the canopy, overhang, footings and foundation for 23 Ocean Avenue Associates, LLC development project that extend into the public right of way and that are subject to the license agreement.

**EXHIBIT B**

(Metes and Bounds description)

**LICENSE AGREEMENT**

**RE: 23 Ocean Avenue, Portland, ME**

This license is granted by the City of Portland "City" to23 Ocean Avenue Associates, LLC, hereinafter "Owner," for the installation and maintenance of a canopy and roof overhang over property owned by the City at the corner of Ocean Avenue and Hersey Street (23 Ocean Avenue, Portland, Maine) (the "Property"). The installation and maintenance of the canopy and roof overhand located over City property, shall be governed by the terms of this License Agreement.

1. Owner is hereby permitted to install and maintain a canopy and roof overhang over land owned by the City (i.e. on the building located at 23 Ocean Avenue, Portland, Maine), as governed and specified by the terms of this License Agreement and as shown on Exhibit A, attached hereto and incorporated herein.

2. The canopy and roof overhang to be installed and maintained pursuant to this License Agreement shall be in accordance with the location and dimensions depicted on Exhibit A attached hereto.

3. Owner shall be responsible for the proper maintenance of the canopy and roof overhang. In the event of damage to the same, Owner shall contact the City and receive approval and then shall promptly repair/restore the canopy and/or roof overhang.

4. Owner shall procure and maintain liability insurance in an amount of not less than 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 name the City as an additional insured with

respect to such coverage.

5. Owner, by execution of this License Agreement, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Owner’s entry upon City property located at or near 23 Ocean Avenue, Portland, Maine or Owner’s installation of a canopy and roof overhang over City property located at or near 23 Ocean Avenue, Portland, Maine, and does hereby forever waive, release, relinquish, remise and discharge the City, its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments (collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License Agreement, arising out of the presence in and use by the Owner of the area covered by this License Agreement.

6. This License may be revoked six (6) months after receipt by the Licensee of written notice from the City to the Owner in the event that the building located on the Owner’s property is destroyed, removed or otherwise ceases to exist on the site, and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal. 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.

**CITY OF PORTLAND**

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Brendan O’Connell

Finance Director

**23 Ocean Avenue Associates, LLC**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: Steven E. Cope

Its Member

STATE OF MAINE

CUMBERLAND, ss.

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Personally appeared the above-named Brendan O’Connell and gave oath that the foregoing statements made by her are true to the best of her knowledge, information and belief, and where based upon information and belief, she believes the same to be true.

Before me,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public/Attorney at Law

STATE OF MAINE

CUMBERLAND, ss.

Personally appeared the above-named Steven E. Cope and gave oath that the foregoing statements made by him/her are true to the best of his/her knowledge, information and belief, and where based upon information and belief, he/she believes the same to be true.

Before me,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public/Attorney at Law