

DRAFT

SHARED DRIVEWAY EASEMENT AGREEMENT

This Agreement is dated this ____ day of _____, 2017 by and between Denis J. Lachman and Karen J. Smith, having an address of 55 Hamblet Avenue, Portland, Maine (“Lachman”), as the owner of property described in a deed recorded in the Cumberland County Registry of Deeds in Book 32719, Page 274, located generally at 502 Stevens Avenue (the “502 Property”) and between Roberta S. and Steven E. Cope, having a mailing address of 172 Concord Street (“Cope”) as the owner of property described in a deed recorded in said Registry in Book 33336, Page 109 (the “510 Property”). The 510 Property is generally adjacent to and northerly of the 502 Property and is generally designated on City of Portland Tax Map 135, Block E , Lot 8. The 502 Property is generally designated on City of Portland Tax Map 135, Block E, Lot 9.

W I T N E S S E T H

WHEREAS, Lachman and Cope wish to act harmoniously to configure and provide for the further development of the 502 Property and the 510 Property through this agreement; and

WHEREAS, both Lachman and Cope agree that their respective properties would be best served by the construction of a new shared driveway (referred to herein as the “Driveway”) to replace the two separate driveways currently serving both properties; and

WHEREAS, the Driveway will be located generally along and across the common boundary and will serve both the 502 Property and the 510 Property with pedestrian and vehicular access from Stevens Avenue and provide a shared utility interconnection point; and

WHEREAS, Lachman and Cope wish hereby to confirm their respective rights and obligations with respect to the construction and use of the Driveway;

NOW THEREFORE, in consideration of One Dollar, the mutual promises and covenants herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, Lachman and Cope do hereby agree as follows:

- 1) Lachman and Cope hereby grant and accept to and from each other mutually and reciprocally such rights, interests, easements and estates as are necessary to provide access by foot or by vehicle from Stevens Avenue, generally in the location and configuration shown on **Exhibit A** attached hereto and made a part hereof together with the right to install utilities above and below ground within the area depicted as the Driveway. It is acknowledged and agreed that

the rights granted herein shall be sufficient to allow the further commercial and/or residential development of the 502 Property and 510 Property with buildings and further improvements to be served by the Driveway.

2) In connection with the exercise of their rights hereunder, Lachman and Cope, its or their successors and assigns, may enter upon, construct, maintain and use the Driveway including areas on the property of the other, and may install utility lines, drainage, curbing and all other improvements above and below ground as are necessary for access to and development of their respective properties consistent with the terms hereof, provided, however, that: i) any such work shall be performed in a good and workmanlike manner; ii) all parties shall use best efforts to minimize disruption of any activities or business operations on the two respective properties; iii) the parties shall reasonably cooperate and coordinate any scheduling of work and/or interruption of utilities; iv) each party shall, upon completion of any work, repair any damage caused by its own acts or negligence promptly to its state immediately prior to such work; v) the parties shall require any contractor or agent employed for any such work to be duly insured in such reasonable amounts as either party may reasonably require; vi) any driveways, accessways, or other improvements installed may be used in common by the parties hereto and shall provide adequate curb cuts (subject to permit restrictions) as each party may request; vii) any drainage made necessary by improvements within the Driveway area engineered so as to balance the impact on the two respective properties; viii) each party shall indemnify and hold the other, its successors and assigns harmless from and against any and all claims, losses, damages or causes of action arising from its own exercise of the access and/or any other rights granted in this Agreement; ix) any improvements constructed pursuant to this Agreement shall not cause the 502 Property or the 510 Property to become legally non-compliant in any way, and shall otherwise be performed in compliance with all applicable land use code and permit requirements; x) after initial construction of improvements and development of the 502 Property and 510 Property, the parties shall equally and equitably share the cost to maintain and repair the Driveway and other improvements within the area shown on **Exhibit A** excepting only repairs made necessary solely by the use or abuse thereof by only one party, its agents, employees and/or invitees, which repairs shall be the responsibility of the party causing such damage, which shall promptly repair any and all damages caused; (xi) neither party shall use the Driveway for vehicular parking, nor allow it to be so used, as each party shall have parking rights on its own adjacent land. Enforcement of the immediately prior provision ((xi)) shall be enforceable by self-help through towing and removal of vehicles at the expense of the party in violation, which shall be payable upon demand.

3) The rights granted herein are general in nature, and the parties shall reasonably cooperate to minor and reasonable reconfiguration or adjustment the dimensions or locations of the easement areas shown on **Exhibit A** to comply with permit authorities, building codes etc. in effect from time to time to allow for the harmonious development of both the 502 Property and

the 510 Property, and the parties hereto, their successors and assigns, shall grant such further documents, permit applications and instruments as are necessary to carry out the intent hereof.

4) The parties hereto shall each have the right, at any time and from time to time, to relocate the area of the easement and rights herein granted, provided that the other party consents to the relocation, such consent not to be unreasonably withheld. In the event that Lachman or Cope shall elect to relocate the easement, and shall obtain the consent of the other party, the entire costs of the relocation shall be borne by the relocating party. The covenants, agreements, easements, rights and indemnities herein described shall then apply in all respects to the new location. In no event shall it be considered unreasonable for either party to withhold its consent to a relocation that would interfere with that party's existing or contemplated improvements on the 502 Property and/or the 510 Property.

5) This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. This Agreement may only be amended by a written document signed by the parties hereto, their successors and assigns. This Agreement contains the complete understanding of the parties hereto and replaces all prior agreements, written or oral, between the parties as to the subject matter hereof, including but not limited to the Reciprocal Easement. The rights and agreements herein shall bind the successors and assigns of the parties hereto except as expressly provided herein and shall run with the land, and be appurtenant to, and benefit and burden as the case may be, the 502 Property and the 510 Property in perpetuity.

Dated as of _____, 2017

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2017

Before me appeared the above named _____, and acknowledged the foregoing instrument to be his/her free act and deed.

Notary Public / Attorney at law

Name: _____

Commission Expires: _____

Exhibit A

Common Right of Way and Easement

A certain common right of way and easement for the purpose of providing ingress and egress for vehicles and pedestrians running westerly from Stevens Avenue, so called, on both sides of the common boundary between land now or formerly of Denis J. Lachman and Karen J. Smith by deed recorded at the Cumberland County Registry of Deeds in Book 32719, Page 274 to the south and land now or formerly of Diane M. Hamilton by deed recorded at said Registry in Book 8821, Page 50 to the easterly bound of land of the City of Portland as described in a deed recorded at said Registry in Book 2950, Page 223. The right of way and easement also to include rights of utility in, over and across the following described right of way and easement area as shown on a plan of land entitled, "Final Subdivision Plan of 502 Stevens Avenue, Portland Maine, for Applicant 502 Deering Center LLC, Denis Lachman record owner", Sheet C 3.0 prepared by Four Points associates, Inc. and last revised May 5, 2017, said right of way and easement being for the exclusive benefit of Lachman et al and Hamilton, their heirs, successors and assigns, tenants, and guests, being more particularly bounded and described as follows:

Beginning at a point on the westerly bound of Stevens Avenue situated North $11^{\circ} 40' 45''$ East along Stevens Avenue a distance of fifty-eight and two tenths (58.2') feet from a $5/8''$ drill hole in a concrete walk at the northeasterly corner of land now or formerly owned by Daniel T. Lentz by deed recorded at said Registry in Book 3183, Page 199;

Thence North $82^{\circ} 55' 51''$ West passing through said land of Lachman et al., and along the face of a building being constructed on said land of Lachman et al., a distance of seventy-nine and forty-eight hundredths (79.48') feet to the northwest corner of the new building situated above the first floor level at the overhang;

Thence continuing North $82^{\circ} 55' 51''$ West passing through said land of Lachman et al., a distance of eighteen and forty-nine hundredths (18.49') feet to a point;

Thence North $02^{\circ} 58' 06''$ West passing through said land of Lachman et al., a distance of eight and ninety-seven hundredths (8.97') feet to the southeasterly corner of said land owned by the City of Portland at or near a $5/8''$ iron rebar with cap PLS #2239;

Thence North $11^{\circ} 40' 45''$ East by and along the City of Portland a distance of nineteen and two hundredths (19.02') feet to a point;

Thence South $78^{\circ} 32' 50''$ East passing through said land of Hamilton a distance of seventeen and twenty-nine hundredths (17.29') feet to a point;

Thence South $6^{\circ} 55' 23''$ West passing through said land of Hamilton a distance of five and twenty-six hundredths (5.26') feet to a point;

Thence South $82^{\circ} 47' 20''$ East passing through said land of Hamilton a distance of eighty-two and forty-five hundredths (82.45') feet to a point on the westerly bound of said Stevens Avenue;

Thence South $11^{\circ} 40' 45''$ West along the westerly bound of Stevens Avenue, a distance of twenty-one and eight hundredths (21.08') feet to the point of beginning;

The above described common right of way and easement area containing 2,212 square feet and being shown on said plan entitled, "Final Subdivision Plan of 502 Stevens Avenue, Portland Maine, for Applicant 502 Deering Center LLC, Denis Lachman record owner", Sheet C 3.0 prepared by Four Points associates, Inc. and last revised May 5, 2017. The common right of way and easement area is subject to proposed canopies and/or roof overhangs and bay windows or other improvements located above grade and attached to the above referenced building being constructed as well as on the north side of the easement area upon future development of a new building on the Hamilton property.

Bearings are based on Grid North determined by Four Points Associates, Inc. using NAD 1983 (2011) datum, Maine State Plane coordinate system, West Zone.