

Order 131-15/16

Passage as an Emergency: 9-0 on 12/21/2015

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**

Effective 12/21/2015

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

**ORDER GRANTING
A REVOCABLE LICENSE TO BAYSIDE ANCHOR APARTMENTS, LP**

ORDERED, that a revocable license agreement to Bayside Anchor Apartments, LP to allow foundation footings within the street right-of-way and a permanent canopy above the entrance is hereby granted in substantially the form attached hereto as Exhibit A; and

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

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and permit approval of financing for the developer that would otherwise be delayed, affecting the project's completion.

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the _____ day of December, 2015, 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 **BAYSIDE ANCHOR APARTMENTS, LP**, a Maine limited partnership with a place of business in Portland, Maine and mailing address of 14 Baxter Blvd., 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 on Boyd and Oxford Streets in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (“Licensee’s Property”), for the purpose of permitting the encroachment of (i) concrete foundation footings, and (ii) permanent canopies above the entrance to the new building to be constructed on Licensee’s Property, all of the foregoing to be located according to, and used as shown on the Recording Plat made for Bayside Anchor Apartments, by Owen Haskell, Inc., dated September 11, 2015, to be recorded in the Cumberland County Registry of Deeds (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, all in connection with the development of Licensee’s affordable multi-family apartment project being developed on the Licensee’s Property (the “Project”). A legal description of the Licensed Areas for the foundation footings and the permanent canopies is attached hereto as Exhibit A. A plan depicting the Licensed Areas for such footings and canopies is attached hereto as Exhibit B.

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 (in the event the Project becomes a condominium) 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 the Licensed Areas and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the Licensed Areas from falling or being dropped or thrown onto the City's sidewalk; repairing, replacing or removing all above-ground 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 any such 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 Bayside Anchor, Address: 81 East Oxford Street, 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 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: (i) Boston Capital Corporate Tax Credit Fund XLI, A Limited Partnership and BCCC, Inc., c/o Boston Capital Partners, Inc., One Boston Place, Boston, MA 02108 and (ii) Maine State Housing Authority, Attn: Legal Department, 353 Water Street, Augusta, Maine 04330.

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 by the Licensee's limited partner of any Event of Revocation.

[Signature Pages Follow]

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

CITY OF PORTLAND

By: _____
Jon Jennings
City Manager

STATE OF MAINE
CUMBERLAND, ss

December ____, 2015

Personally Appeared the above-named Jon 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:

BAYSIDE ANCHOR APARTMENTS, LP

BY: Bayside Anchor Development Company,
Its Sole General Partner

By: _____

Name: Mark B. Adelson

Title: Its President

EXHIBIT A

Canopy License

A certain lot or parcel of land situated in Oxford Street, in the City of Portland, County of Cumberland and State of Maine described as follows:

Commencing at the intersection of the northerly sideline of Oxford Street with the easterly sideline of Boyd Street thence, N 48°37'04" E along the northerly sideline of said Oxford Street 66.30 feet to the Point of Beginning;

Thence, from the Point of Beginning N 48°34'04" E along the northerly sideline of said Oxford Street 24.40 feet;

Thence, S 41°22'56"E into said Oxford Street 1.50 feet;

Thence, S 48°37'04" W a distance of 24.40 feet;

Thence, N 41°22'56" W a distance of 1.50 feet to the northerly sideline of said Oxford Street and the point of beginning containing 37 square feet more or less.

The above described parcel of land is shown as "Canopy License" on "Recording Plat on Oxford Street & Boyd Street, Portland, Maine made for Bayside Anchor Apartments, LP" dated October 8, 2015 by Owen Haskell, Inc.

Footing and Canopy License

A certain lot or parcel of land situated in Oxford and Boyd Street, in the City of Portland, County of Cumberland and State of Maine described as follows:

Beginning at the intersection of the northerly sideline of Oxford Street with the easterly sideline of Boyd Street thence, N 48°37'04" E along the northerly sideline of said Oxford Street 27.85 feet;

Thence, S 42°26'05"E into said Oxford Street 0.75 feet;

Thence, S 48°37'04" W a distance of 30.10 feet into said Boyd Street;

Thence, the following courses and distances in Boyd Street:

N 42°25'38" W a distance of 21.21 feet;

S 47°34'13" W a distance of 0.75 feet;

N 42°25'47" W a distance of 15.00 feet;

N 47°34'13" E a distance of 0.75 feet;

N 42°25'38" W a distance of 20.42 feet;

N 47°34'13" E a distance of 2.25 feet to the easterly sideline of said Boyd Street;

Thence, S 42°25'47" E along the easterly sideline of said Boyd Street 55.92 feet to the northerly sideline of said Oxford Street and the point of beginning containing 160 square feet more or less.

The above described parcel of land is shown as "Footing & Canopy License" on "Recording Plat on Oxford Street & Boyd Street, Portland, Maine made for Bayside Anchor Apartments, LP" dated October 8, 2015 by Owen Haskell, Inc.

