

Order 96-17/18

Passage: 8-0 (Thibodeau absent) on 11/6/2017

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 11/16/2017

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

**ORDER GRANTING A LICENSE
AT 20 THAMES STREET
TO ESSEXNORTH PORTLAND LLC**

ORDERED, that a revocable utility license at 20 Thames Street is hereby granted to EssexNorth Portland LLC. 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.

**REVOCABLE ENCROACHMENT LICENSE
(Balconies)**

This Revocable Encroachment License (hereinafter "License") is made and entered into by and between **City of Portland**, a Maine body corporate and politic (hereinafter, "City"), with a mailing address of 389 Congress Street, Portland, Maine 04101, and **ESSEXNORTH 20 THAMES LLC**, a Maine limited liability company (hereinafter the "Licensee"), having a mailing address of 462 Boston Street, Ste. 2-2, P.O. Box 394, Topsfield, MA 01983.

RECITALS

WHEREAS, Licensee is the owner of that certain parcel of land being "Lot 3" as shown on the Plan recorded in Plan Book 217, Page 239 of the Cumberland County Registry of Deeds, conveyed to Licensee by deed from EssexNorth Portland LLC dated June 28, 2017, recorded in the Registry in Book 34122, Page 22 (the "Property", which is more particularly described in the legal description attached as Exhibit A, hereto); and

WHEREAS, land of City abuts the Property; and

WHEREAS, Licensee desires to construct/place and maintain certain improvements consisting of a six-story, mixed use residential and commercial building expected to be called "20 Thames Street Condominium" (the "Building"), which Building is intended to have: four (4) balconies, two (2) located on each of the 4th and 5th floors of the Building, and which balconies may protrude 4 feet from the face of the building into the right of way of City and may extend 19 feet, 8 inches in length along the side of the building (collectively, the "**Encroachment**"). The Encroachment is depicted on the plan titled Fourth & Fifth Floor Plans, dated SEPT 2017, prepared by Archetype Architects, prepared for EssexNorth 20 Thames LLC, sheet A3 (the "Plan"), a true copy of which Plan is attached **Exhibit B**; and

WHEREAS, the area occupied by said Encroachment is referred to herein as (the "**Licensed Area**"); and

WHEREAS, the City will allow the Encroachment to encroach into the Licensed Area under the terms and conditions set forth in this License.

NOW, THEREFORE, the City and Licensee agree as follows:

1. Licensee is hereby permitted to bring upon the Licensed Area, and areas adjacent thereto, workers, materials and machinery necessary to install and maintain the Encroachment over the Licensed Area as shown on the Plan.
2. Licensee is hereby permitted to occupy the Licensed Area only for the purpose of carrying out the installation and maintenance of the Encroachment pursuant to the terms of this License and in accordance with the Plan. Such work shall not substantially interfere with the City's use and maintenance of the Licensed Area.

3. All work performed upon and use of the Licensed Area 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 effected by work conducted by Licensee under this License to substantially the same condition that it was in prior to such work 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 Licensee's contractors, of the City's property as described above during the term of the License. The Licensee's obligation to defend, indemnify and hold the City harmless shall survive termination or revocation of this License.
4. Licensee shall be responsible for the proper maintenance of the Encroachment. Minor variations of the Encroachment based on actual conditions of construction and installation will not void the grant of the within License. In the event of damage to the Encroachment and/or the Licensed Area, Licensee shall promptly repair or restore the same. Prior to such repair or restoration, Licensee shall notify the City (in writing and by telephone) at least forty-eight hours before it plans to conduct such repair or restoration and shall work with City's staff or designee on the closure, if needed, of any City streets in the vicinity of the Property in order to conduct such repair or restoration.
5. Upon prior written notice to Licensee (except in the case of an emergency, when advance notice is not required), Licensee agrees that City may enter and utilize the referenced areas at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from the Encroachment installed by Licensee, but City will make reasonable efforts to minimize such damage, disruption or other adverse consequences. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, or constructed by or on behalf of the public or at public expense, is made costlier by virtue of the construction, maintenance or existence of the Encroachment, Licensee shall pay to City an amount equal to such additional cost as reasonably determined by the Director of Public Works or said Director's duly authorized representatives.
6. Licensee agrees, binds and obligates itself, its successors and assigns as owners of the Property, to procure and maintain throughout the term of this License automobile and comprehensive general liability insurance in the minimum amount of Four Hundred Thousand Dollars (\$400,000) (or the amount stated in the Maine Tort Claims Act, as it may be amended from time to time) per occurrence for bodily injury, death, or property damage covering Licensee's activities hereunder and naming the City as an additional insured thereon. In addition, Licensee shall provide evidence of Workers' Compensation insurance in the statutory amount to the extent it may be required by law. For purposes of

the foregoing insurance requirements, in the event the Property is made subject to the terms of the Maine Condominium Act pursuant to the recording of a Declaration of Condominium in said Registry of Deeds, then the Licensee's obligation herein may be satisfied by having the Association of the Condominium unit owners obtain and maintain the insurance policies and coverages required herein in its name, and which policies shall provide such insurance for or against the acts of owners of units in such condominium. Certificates evidencing such policies shall be delivered to the City and shall provide the City with no less than thirty (30) days prior notice of cancellation or non-renewal. All insurance coverage required herein shall include coverage of all Licensees' contractors and subcontractors.

7. Licensee, by execution of this License, hereby agrees to assume and hereby does assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to Licensee's exercise of the rights granted by this License, and does hereby forever waive, release, relinquish, remise, indemnify and discharge the City, its agents, employees, successors and assigns from and against 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 Licensed Area, arising out of the presence in and use by the Licensee of the Licensed Area.
8. This License is assignable to any subsequent owner(s) of the Property, including the Building depicted on the Plan, and, in the event of such assignment, Licensee shall notify the City of such assignment no fewer than 10 days prior to the effective date of such assignment.
9. This License, and all of the rights and obligations herein, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, including mortgagees of Licensee and/or owners of units in the condominium, if the Property is made subject to the Condominium Act.
10. The City may only revoke this License six (6) months after receipt by the Licensee of written notice from City that an Event of Revocation (as defined below) has occurred and specifically identifying such Event of Revocation, and provided only that such Event of Revocation is not cured within six (6) months after Licensee's receipt of such notice; provided further, however, that the period set forth in subsection (d) below shall govern revocation in the Event of Revocation described therein. "Event of Revocation" shall mean:
 - a) Licensee's non-compliance with any of the terms of this Agreement;
 - b) the Building as shown on the Plan fails to be constructed substantially in accordance with the Plan or any amendments thereto;

- c) the Building as shown on the Plan is (i) destroyed, removed or otherwise hereafter ceases to exist on the Property and (ii) construction to rebuild said Building has not begun within twenty-four (24) months of said destruction, removal or cessation; or
 - d) failure to maintain insurance as required under Section 6 above, and such failure is not remedied within thirty (30) days after written notice thereof.
11. Any notice of an Event of Revocation delivered pursuant to Section 10 of this License must be sent by certified mail, return receipt requested, to the Licensee at the address first set forth above, or at such other address as the Licensee may provide to the City in writing from time to time.
12. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered to Licensee, 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 10 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder.


[Next page is signatures.]

IN WITNESS WHEREOF, the City of Portland has caused this License to be executed by Brendan O'Connell, its Finance Director thereunto duly authorized, and EssexNorth 20 Thames LLC has caused this License to be executed by EssexNorth Portland LLC, its Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

ESSEXNORTH 20 THAMES LLC
By: EssexNorth Portland LLC, its
manager,

By: Brendan O'Connell
Its Finance Director



By: Ara Aftandilian
Manager of EssexNorth Portland
LLC

STATE OF MAINE
CUMBERLAND, ss.

_____, 2017

Then 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,

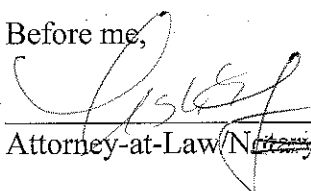
Notary Public/Attorney at Law

STATE OF MAINE
CUMBERLAND, ss

Oct. 4, 2017

Then personally appeared the above-named Ara Aftandilian, Manager of EssexNorth Portland LLC, which is the Manager of EssexNorth 20 Thames LLC, as aforesaid, and acknowledged the foregoing to be his free act and deed in his said capacity, and the free act and deed of said EssexNorth Portland LLC, and the free act and deed of EssexNorth 20 Thames LLC.

Before me,



Attorney-at-Law/Notary Public

LESLIE E. LOWRY, III
ATTORNEY AT LAW

EXHIBIT A

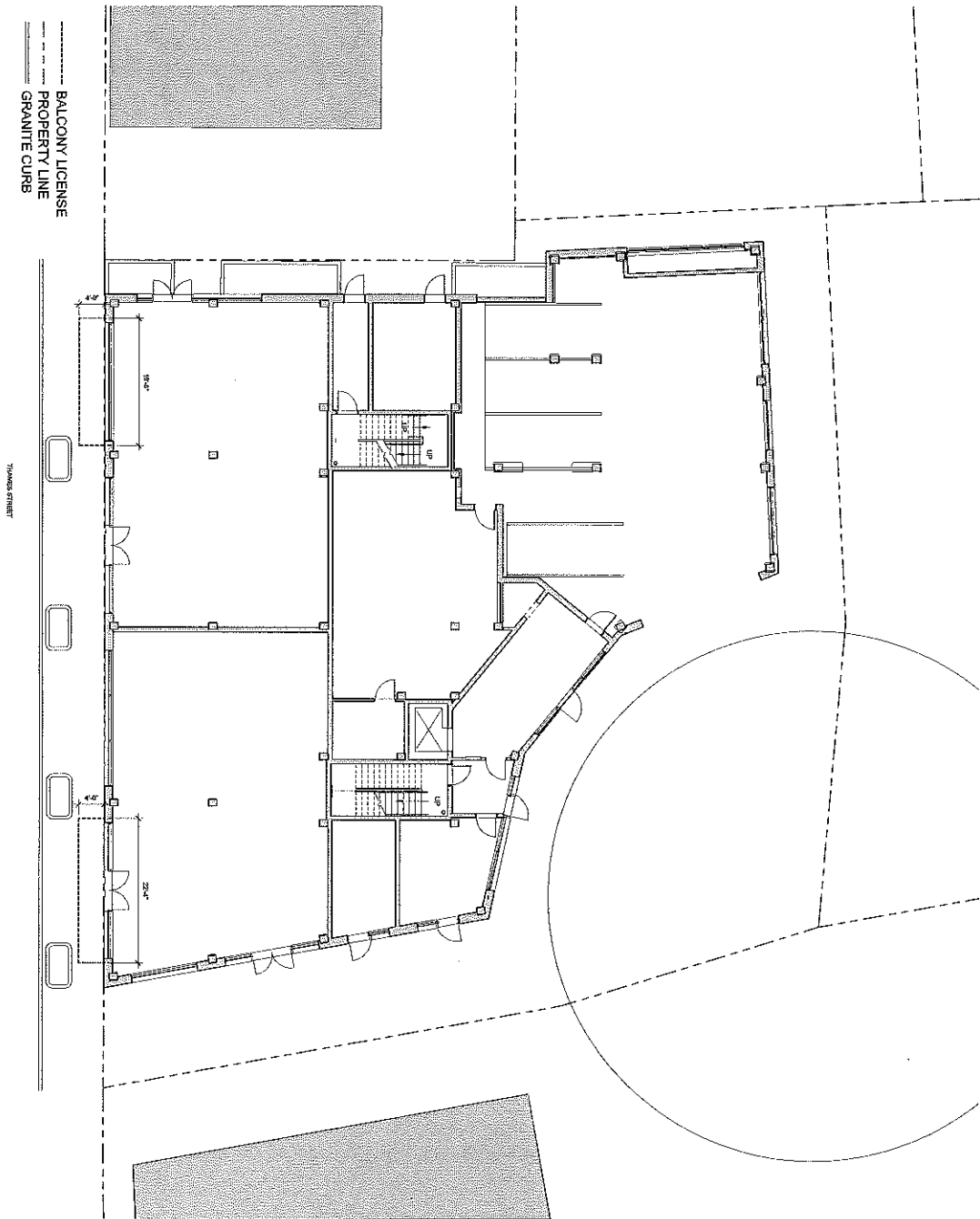
(Legal Description of Licensee's Property)

A certain parcel of land, more particularly described as Lot #3, having a total of 13,580+/- square feet, as shown on the plan titled "Amended Recording Plat, 158 Fore Street, 20 Thames Street, Portland, Maine," prepared by Owen Haskell, Inc., dated February 24, 2017, filed in the Cumberland County Registry of Deeds in Plan Book 217, Page 239 (the "Plan").

EXHIBIT B TO LICENSE FOR BALCONIES
 ESSEXNORTH 20 THAMES LLC

1 | BALCONIES LICENSE PLAN
 1/8" = 1'-0"

--- BALCONY LICENSE
 - - - - - PROPERTY LINE
 = = = = = GRANITE CURB



AC.05	Date: 22 SEPT 2017	Scale: 1/8" = 1'-0"	Revised:	Project: 20 THAMES STREET CONDOMINIUM	Architect: ARCHETYPE Architects 48 Union Wharf Portland, Maine 04101 (207) 773-4333 FAX: (207) 773-7824	Consultant:	Prepared For: EssexNorth 20 Thames LLC
	BALCONIES LICENSE PLAN			20 Thames Street, Portland Maine			