

Order 48-16/17

Passage: 9-0 on 9/7/2016

Effective 9/17/2016

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 INDIA NEWBURY RESIDENCES LLC**

**ORDERED,** that a license allowing encroachments by foundation footings and a roof overhang in the public right-of-way is hereby approved for India Newbury Residences 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.

## LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the \_\_\_\_ day of September, 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 **India Newbury Residences LLC**, with a place of business in Portland, Maine and mailing address of 2730 Transit Road, West Seneca, New York 14224, 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 and portions of airspace above land owned by the City and adjacent to property of Licensee located on Newbury Street and India Street, described in deeds to Licensee recorded in the Cumberland County Registry of Deeds in Book 31458, Page 109 and Book 32883, Page 140 (together, “Licensee’s Property”), for the purpose of permitting the encroachment of footings and foundation, cornice overhangs, and entrance awnings and/or overhangs over the City property (“encroachments”) to be located according to, and used as described in **Exhibit A** attached hereto and made a part hereof (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. 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 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 5 below subject to cure period as provided in Section 5 below.

4. This license is assignable to any subsequent owners of the property and/or building located on the land depicted on the "Subdivision Plat of 50-62 India Street" approved by the Portland Planning Board on May 24, 2016 located at the corner of Newbury Street and India Street, Portland, Maine, to be recorded herewith in the Cumberland County Registry of Deeds (the "Plan"), including without limitation a condominium association managing such land for the benefit of unit owners; and the duties and obligations hereunder shall, in any event, run with the land and burden all subsequent owners holding rights to use any portion of the Licensed Areas

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 Plan fails to be constructed substantially in accordance with the Plan or any amendments thereto; 2) the building as shown on the 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 3 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: Tom Hanson, Esq., Bernstein Shur, 100 Middle Street, Portland, Maine 04101 and \_\_\_\_\_

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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 addition, the City agrees to accept any cure of any Event of Revocation by any of Licensee's members.

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, its City Manager  
thereunto duly authorized

STATE OF MAINE  
CUMBERLAND, ss

September \_\_\_\_\_, 2016

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 by India Newbury Residences LLC

By: \_\_\_\_\_  
Gordon Reger, its Manager

**EXHIBIT A**

**TO**

**LICENSE AGREEMENT**

A certain license area situated within the southwesterly side of India Street and within the southeasterly side of Newbury Street, in the City of Portland, County of Cumberland, and State of Maine as shown on the Subdivision Plan of 50-62 India Street for India Newbury Residences, LLC, by Sebago Technics, Inc. (project number 14164) last dated July 12, 2016, and being more particularly bounded and described as follows:

Beginning at the most southerly intersection corner of Newbury Street and India Street, on the southwesterly sideline of India Street and the southeasterly sideline of Newbury Street;

Thence S 52°-20'-05" W along the southeasterly sideline of Newbury Street, a distance of 106.10 feet;

Thence N 37°-39'-55" W through Newbury Street, a distance of 2.50 feet;

Thence N 52°-20'-05" E through Newbury Street and into India Street, a distance of 108.25 feet;

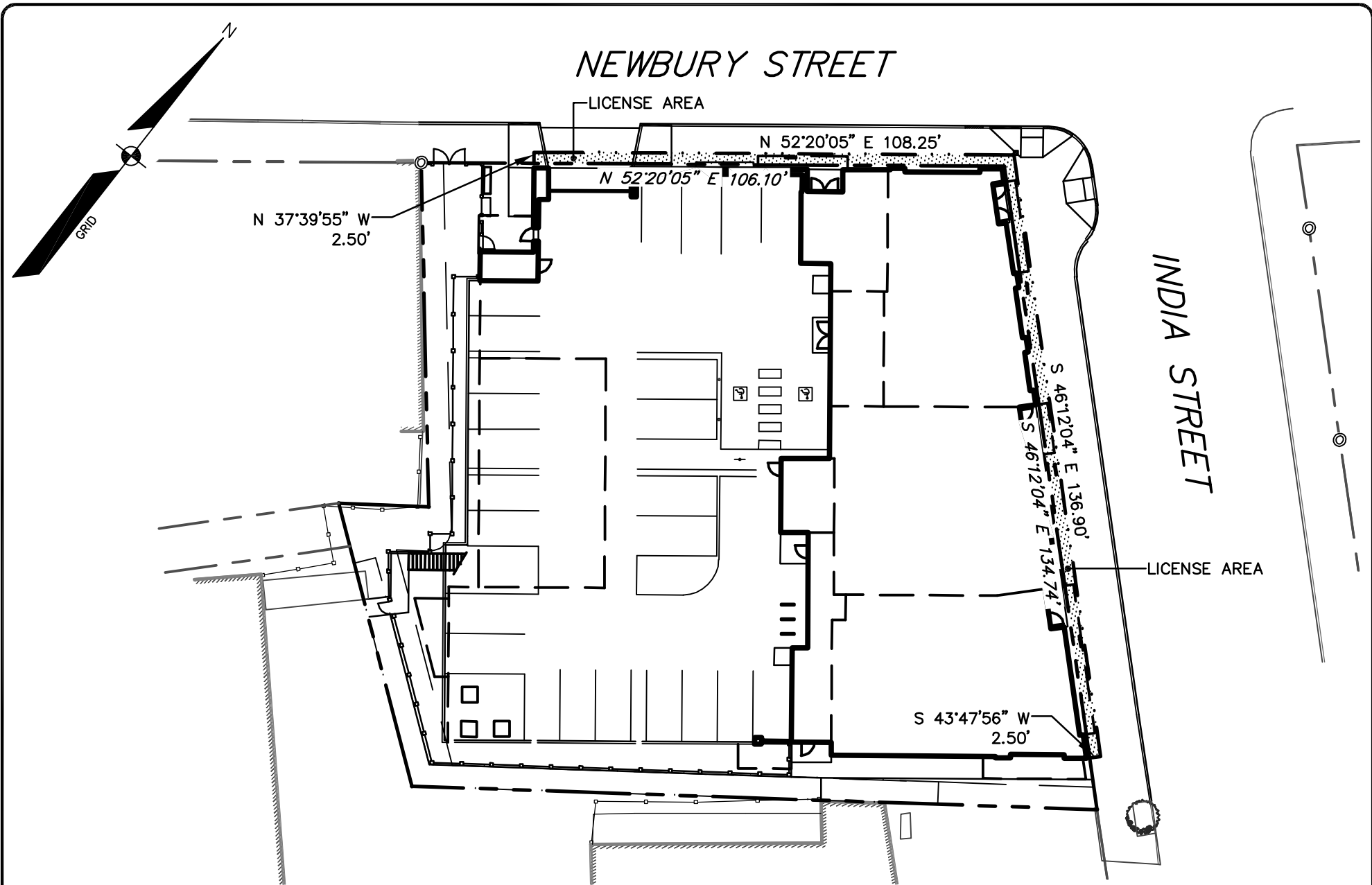
Thence S 46°-12'-04" E through India Street, a distance of 136.90 feet;

Thence S 43°-47'-56" W through India Street, a distance of 2.50 feet to the southwesterly sideline of India Street;

Thence N 46°-12'-04" W, along the southwesterly sideline of India Street, a distance of 134.74 feet to the Point of Beginning.

Meaning and intending to describe a 2.50 foot wide license area within India and Newbury Streets abutting lands of India Newbury Residences LLC as described in deeds recorded in the Cumberland County Registry of Deeds in Book 32883, Page 140 and Book 31458, Page 109.

The bearings shown hereon are Grid North, Maine State Plane Coordinate System, West Zone 1802, NAD83.



14164SB.dwg, TAB: LICENSE EXHIBIT



WWW.SEAGOTECHNICS.COM

75 John Roberts Rd. Suite 1A  
 South Portland, ME 04106  
 Tel. 207-200-2100

250 Goddard Rd. Suite B  
 Lewiston, ME 04240  
 Tel. 207-783-5656

LICENSE AREA EXHIBIT B  
 OF 50-62 INDIA STREET

LOCATION: 50-62 INDIA STREET  
 PORTLAND, MAINE

FOR: INDIA NEWBURY RESIDENCES, LLC  
 35 FAY ST. SUITE 1078  
 ROXBURY, MA 02118

SCALE: 1" = 30'

DATE: 8-22-16

SHEET: 1 OF 1