

PERMISSIVE LAND USE AGREEMENT

THIS LICENSE AND PERMISSIVE LAND USE AGREEMENT (“Agreement”) is made and entered into on or about the 18th day of January, 2024, by and between the City of Old Town (hereinafter “the City”) and James A. Mitchell (“Owner”), as owner of Lot 188 (the “Owners’ Lot”) located at the southwest corner of French Island in Old Town, Maine. It is expressly understood that this agreement shall extend to the heirs, successors and assigns of Owner. (Owner and the City, each a Party and collectively hereinafter referred to as the “Parties”).

WHEREAS there is currently pending in the Maine District Court, litigation between the City and Owner as to that portion of Lot 189 owned by the City (hereinafter “Lot 189”), which borders Owner’s Lot (the “Litigation”).

WHEREAS the Parties wish to resolve that said litigation to their mutual satisfaction.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. OWNERSHIP. Owner hereby acknowledges that Lot 189 is owned by the City.
2. USAGE. Owner, and Owners’ heirs, successors and assigns shall have license to use that portion of Lot 189 contiguous to Owners’ Lot as shown in the highlighted portion of Exhibit A (hereinafter the “Permissive Use Area”). Owner and Owners’ heirs, successors and assigns may

place, maintain and/or use landscaping and related improvements, yard furniture, temporary structures (meaning no permanent foundations located in whole or in part below the surface of the ground), lawns and gardens on said Permissive Use Area. Except for those pre-existing structures identified on Exhibit A, no permanent structures or retaining walls shall be erected on the Permissive Use Area.

3. LIMITATIONS.

- A. It is understood that the City maintains a sewer line on Lot 189. Owner and Owners' heirs, successors and assigns shall in no way interfere with the City's access to said sewer line. The City has the unrestricted right to service, upgrade, modify, remove, or maintain said sewer line, subject only to the limitation of this Agreement. Said rights include the right to collocate with or near the sewer line any other subsurface utilities deemed necessary or desirable by the City, in its sole discretion.
- B. Upon written request of the City, delivered by mail or hand delivery to the Owner or last known occupant of Owner's Lot, Owner shall temporarily remove any garden beds or other structures, including those pre-existing structures identified on Exhibit A, the temporary removal of which the City, in its sole discretion, deems reasonably necessary to provide it access to service, replace, upgrade, modify or maintain said sewer line.
- C. The City shall not unnecessarily interfere with the use and enjoyment by Owner or Owners' heirs, successors and assigns of the contiguous portion of Lot 189, as established by this Agreement. It is further understood and is a condition of this

Agreement that the Parties shall not allow usage of Lot 189 by the general public. Nothing in this Agreement shall be construed to require to City to take any enforcement or other affirmative action to prevent or prohibit members of the general public from using Lot 189. Nothing in this Agreement shall prevent Owner, or Owners' heirs, successors, and assigns, from taking reasonable and lawful measures to prevent the general public from using the Permissive Use Area.

4. REVOCATION.

- A. If the Owner, or the Owners' heirs, successors and assigns, fail to comply with the City's Request made pursuant to Section 3 of this Agreement within thirty (30) days of a written request, the City may permanently revoke this Agreement and/or remove any or all such structures located on Lot 189. In the event of removal, the City shall not be responsible for restoring or repairing the structures or improvement identified in Section 2 of this Agreement, or returning any personal property of Owner located on Lot 189.
- B. If Owner, or the Owners' heirs, successors and assigns, is found by the City to be conducting a use not consistent with Section 2 of this Agreement, following thirty (30) days written notice of non-compliance by the City, delivered by mail or hand delivery to the Owner or last known occupant of Owner's Lot, the City may permanently revoke this Agreement and/or remove any or all such structures located on Lot 189 otherwise located in the Permissive Use Area. In the event of removal, the City shall not be responsible for restoring or repairing the structures

or improvement identified in Section 2 of this Agreement, or returning any personal property of Owner located on Lot 189.

5. NO ADVERSE POSSESSION. It is expressly understood and agreed that the City is providing a license for voluntary and permissive use of the premises to Owner. By entering into this Agreement, Owner and Owners' heirs, successors and assigns, hereby forever waive and shall not be entitled to claim any ownership interest in Lot 189 whatsoever, including without limitation any claim to the property by utilization of the doctrines of Adverse Possession, Prescriptive Easement, or any similar theory, either in law or equity. This section shall survive the revocation of this Agreement pursuant to Section 4.

6. INDEMNITY/RISK OF LOSS.

A. Owner and Owners' heirs, successors and assigns shall assume full responsibility for the defense of any tort liability occasioned by the fault or negligence of the Owner and **Owner's heirs, successors and assigns**, and shall indemnify, defend and hold the City and its agents harmless from any/all claims, demands, actions, causes of action, judgment, costs and other expenses (including reasonable attorneys fees) relating in any way to Owner and Owners' guests, invitees or agents, use or occupancy of the Permissive Use Area including, but not limited to, any death, personal injuries and/or property damage suffered by any person. It is understood that the City is solely responsible for the maintenance of the sewer line on Lot 189 and that by this agreement the Owner does not assume liability for any causes of action flowing from possessory acts by the City within Lot 189. This provision specifically excludes indemnification for any and all claims

demands, actions, causes of action, judgment, costs and other expenses occasioned by the City's accessing and maintaining said sewer line.

- B. Owner, and Owner's heirs, successors and assigns accept all responsibility for any improvements which they place or allows to be placed within the premises. The City shall have no liability whatsoever to Owner, or any third parties, relating to property damage to personal property or said improvements within the premises.

7. AGREEMENT BINDING AND RUNNING WITH THE LAND. The parties agree that subsequent transfers of Lots 188 and 189 shall be conveyed subject to the terms and conditions set forth in this Agreement, which shall run with the land and be binding on all parties having any right, title or interest in said properties, their heirs, successors and assigns, and shall inure to the benefit of said parties, subject to the revocation provisions of Section 4 herein.

8. LITIGATION. In the event of litigation arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its reasonable costs, attorneys' fees, consultant fees and court costs associated with any such action.

9. AMENDMENT. This Agreement shall not be amended except in writing signed by all parties hereto. Any such amendment shall be immediately recorded with the Penobscot Registry of Deeds prior to becoming effective.

10. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties in connection with the subject matter addressed herein. Each party acknowledges that it has not executed this document in reliance on any promise, representation or warranty not contained in this Agreement.

IN WITNESS WHEREOF, the parties hereunto set their hands the date set forth above.

City of Old Town

William Mayo, Town Manager

STATE OF MAINE

Penobscot, ss.

January ____, 2024

Personally appeared before me the above named, William Mayo, in his capacity as the Town Manager of the City of Old Town, duly authorized and made oath to the foregoing instrument.

Before me,

Notary Public/Attorney at Law

Print or Type Name

Date Commission Expires

James A. Mitchell, Owner

STATE OF MAINE

Penobscot, ss.

January ____, 2024

Personally appeared before me the above named, James A. Mitchell, and made oath to the foregoing instrument.

Before me,

Notary Public/Attorney at Law

Print or Type Name

Date Commission Expires