

Order 122-15/16

Passage: 9-0 on 12/7/2015

Effective 12/17/2015

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**

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

**ORDER GRANTING
A REVOCABLE LICENSE AT 185 FORE STREET TO THE
EAST INDIA LAND COMPANY LLC**

ORDERED that a revocable license agreement to the East India Land Company LLC to allow building foundation footings underneath the public sidewalk 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 or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order.

EXHIBIT A

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 **EAST INDIA LAND COMPANY, LLC**, a Maine limited liability company with a place of business in Portland, Maine and mailing address of _____, 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 at 185 Fore Street in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee described in a deed to Licensee dated May 1, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30624, Page 17 (“Licensee’s Property”), for the purpose of permitting the encroachment of (i) concrete foundation footings, and used as described and depicted in **Exhibits A and B**, respectively, attached hereto and made a part hereof (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 construction project being developed on the Licensee’s Property comprised of constructing a four story building with eight residential condominium units and one commercial condominium unit (the “Project”). 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 shall 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 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 its successors or assigns 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. The benefits and obligations of Licensee shall apply to any subsequent owners of the building and portions thereof located on the land described on the approved site and subdivision plan for 185 Fore Street, Address: 185 Fore 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 5 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:

185 Fore Street Associates, LLC
c/o Bateman Partners, LLC
Attn: Nathan Bateman, Vice President
P.O. Box 3572
Portland, Maine 04104

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

CITY OF PORTLAND

By: _____
Jon P. Jennings
City Manager

STATE OF MAINE
CUMBERLAND, ss

October ____, 2015

Personally appeared the above-named Jon P. 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:

EAST INDIA LAND COMPANY, LLC

By: _____

Name:

Title: Its

EXHIBIT A

License Area 1

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

Commencing at a point on the easterly sideline of India Street at the northwesterly corner of land now or formerly of the East India Land Company as described in deed book 30624 page 17;

Thence, S 46°24'57" E along the easterly sideline of said India Street 6.10 feet to the Point of Beginning;

Thence, from the Point of Beginning continuing S 46°24'57" E along the easterly sideline of said India Street 20.02 feet;

Thence, S 41°12'03" W into said India Street 0.99 feet;

Thence, N 48°47'57" W a distance of 6.00 feet;

Thence, N 41°12'03" E a distance of 1.03 feet;

Thence, N 48°47'57" W a distance of 14.00 feet;

Thence, N 41°12'03" E a distance of .79 feet to the easterly sideline of said India Street and the point of beginning containing 14 square feet more or less.

The above described parcel of land is shown as License Area 1 on "Amended Recording Plat 185 Fore Street, Fore Street, Portland, Maine made for East India Land Company LLC" dated April 15, 2015 by Owen Haskell, Inc.

License Area 2

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

Beginning at a point at the intersection of the easterly sideline of India Street with the northerly sideline of Fore Street;

Thence, N 57°57'41" E along the northerly sideline of said Fore Street 2.16 feet;

Thence, S 41°12'03" W into said Fore Street and said India Street 2.43 feet;

Thence, N 46°24'57" W a distance of 52.75 feet;

Thence, N 41°12'03" E a distance of .33 feet to the easterly sideline of said India Street;

Thence, S 46°24'57" E along the easterly sideline of said India Street 52.13 feet to the point of beginning containing 18 square feet more or less.

The above described parcel of land is shown as License Area 2 on "Amended Recording Plat 185 Fore Street, Fore Street, Portland, Maine made for East India Land Company LLC" dated April 15, 2015 by Owen Haskell, Inc.

License Area 3

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

Commencing at a point at the intersection of the easterly sideline of India Street with the northerly sideline of Fore Street;

Thence, N 57°57'41" E along the northerly sideline of said Fore Street 7.75 feet to the Point of Beginning;

Thence, N 57°57'41" E along the northerly sideline of said Fore Street 7.31 feet;

Thence, S 48°47'57" E into said Fore Street 0.67 feet;

Thence, S 41°12'03" W a distance of 7.00 feet;

Thence, N 48°47'57" W a distance of 2.78 feet to the northerly sideline of said Fore Street and the point of beginning containing 12 square feet more or less.

The above described parcel of land is shown as License Area 3 on "Amended Recording Plat 185 Fore Street, Fore Street, Portland, Maine made for East India Land Company LLC" dated April 15, 2015 by Owen Haskell, Inc.

License Area 4

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

Commencing at a point at the intersection of the easterly sideline of India Street with the northerly sideline of Fore Street;

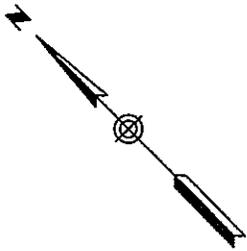
Thence, N 57°57'41" E along the northerly sideline of said Fore Street 38.53 feet to the Point of Beginning;

Thence, N 57°57'41" E along the northerly sideline of said Fore Street 4.13 feet;

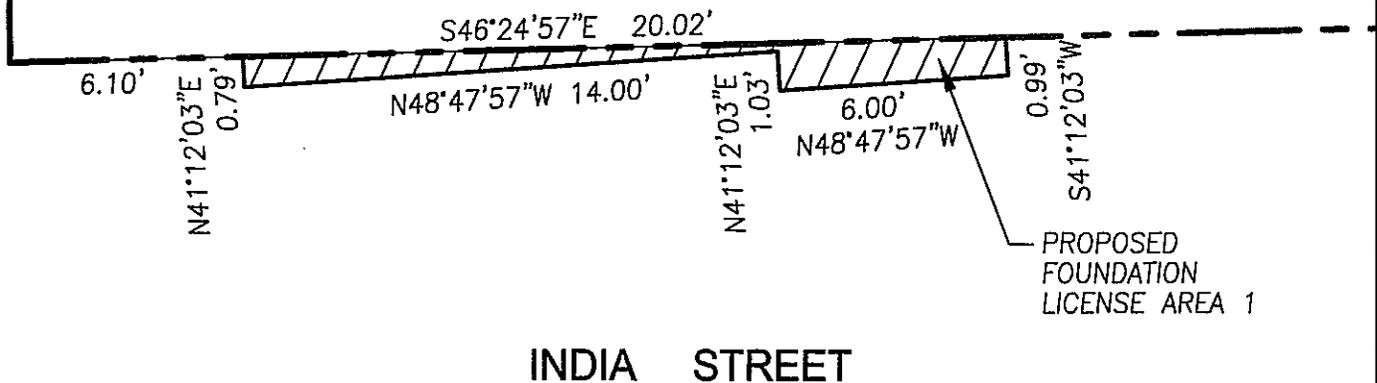
Thence, S 41°12'03" E into said Fore Street 3.95 feet;

Thence, N 48°47'57" W a distance of 1.19 feet to the northerly sideline of said Fore Street and the point of beginning containing 2.4 square feet more or less.

The above described parcel of land is shown as License Area 4 on "Amended Recording Plat 185 Fore Street, Fore Street, Portland, Maine made for East India Land Company LLC" dated April 15, 2015 by Owen Haskell, Inc.



TM 20-F-23
EAST INDIA LAND COMPANY LLC
30624/17

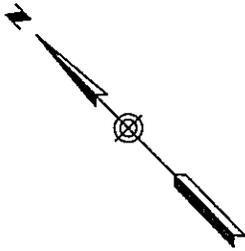


PROPOSED
FOUNDATION
LICENSE AREA 1

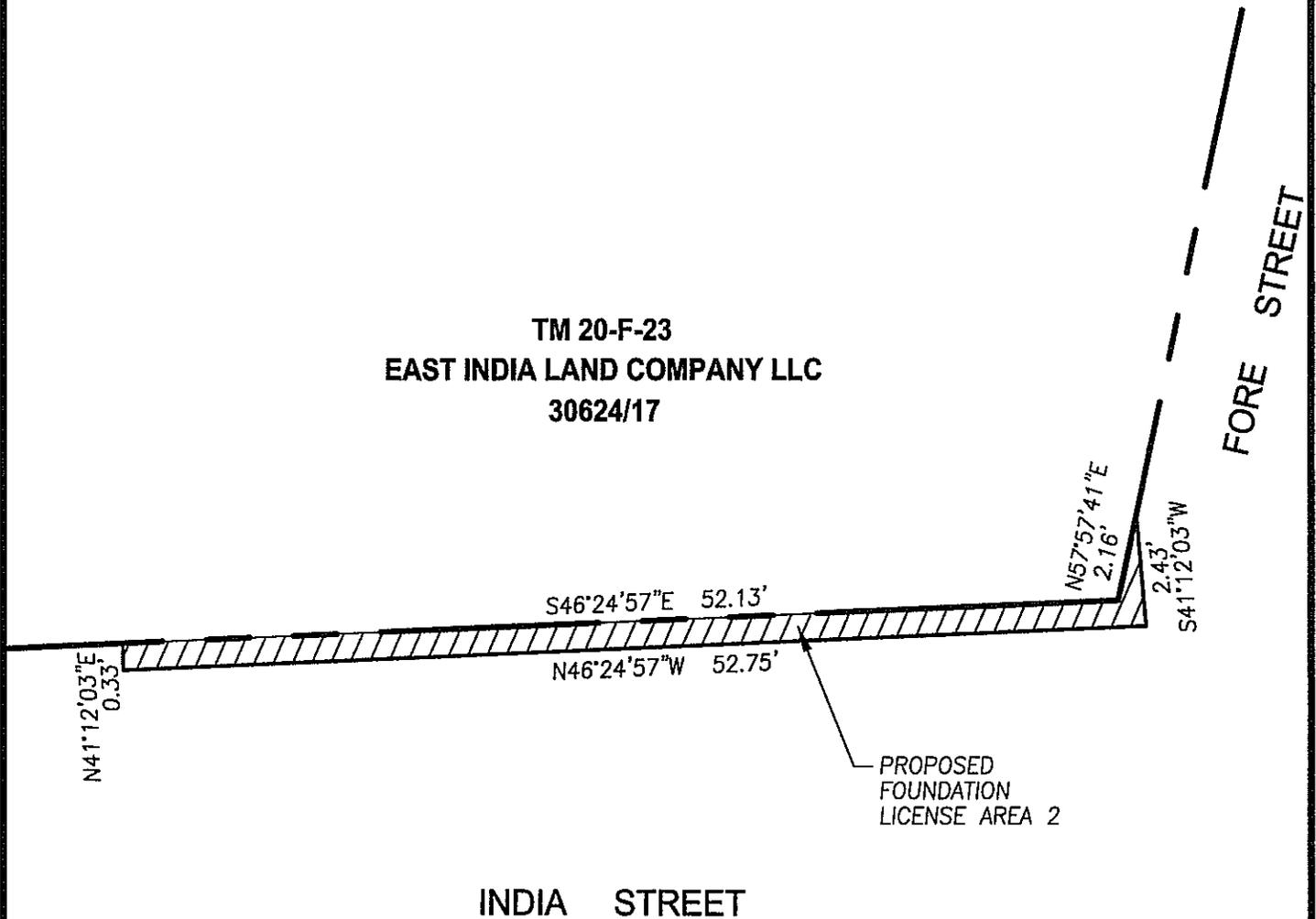
PLAN REFERENCE:

"AMENDED RECORDING PLAT, 185 FORE STREET,
PORTLAND, MAINE MADE FOR RECORD OWNER EAST
INDIA LAND COMPANY LLC" APRIL 15, 2015 BY
OWEN HASKELL, INC.

EXHIBIT A			
185 FORE STREET			
FORE STREET, PORTLAND, MAINE			
MADE FOR			
EAST INDIA LAND COMPANY LLC			
OWEN HASKELL, INC.			
390 U.S. ROUTE ONE, UNIT #10, FALMOUTH, MAINE 04105			
Drwn By	JLW	Date	10-20-15
Job No.	14-023P	Scale	1" = 5'
Check By	EB	Drwg. No.	EX-A



TM 20-F-23
EAST INDIA LAND COMPANY LLC
30624/17



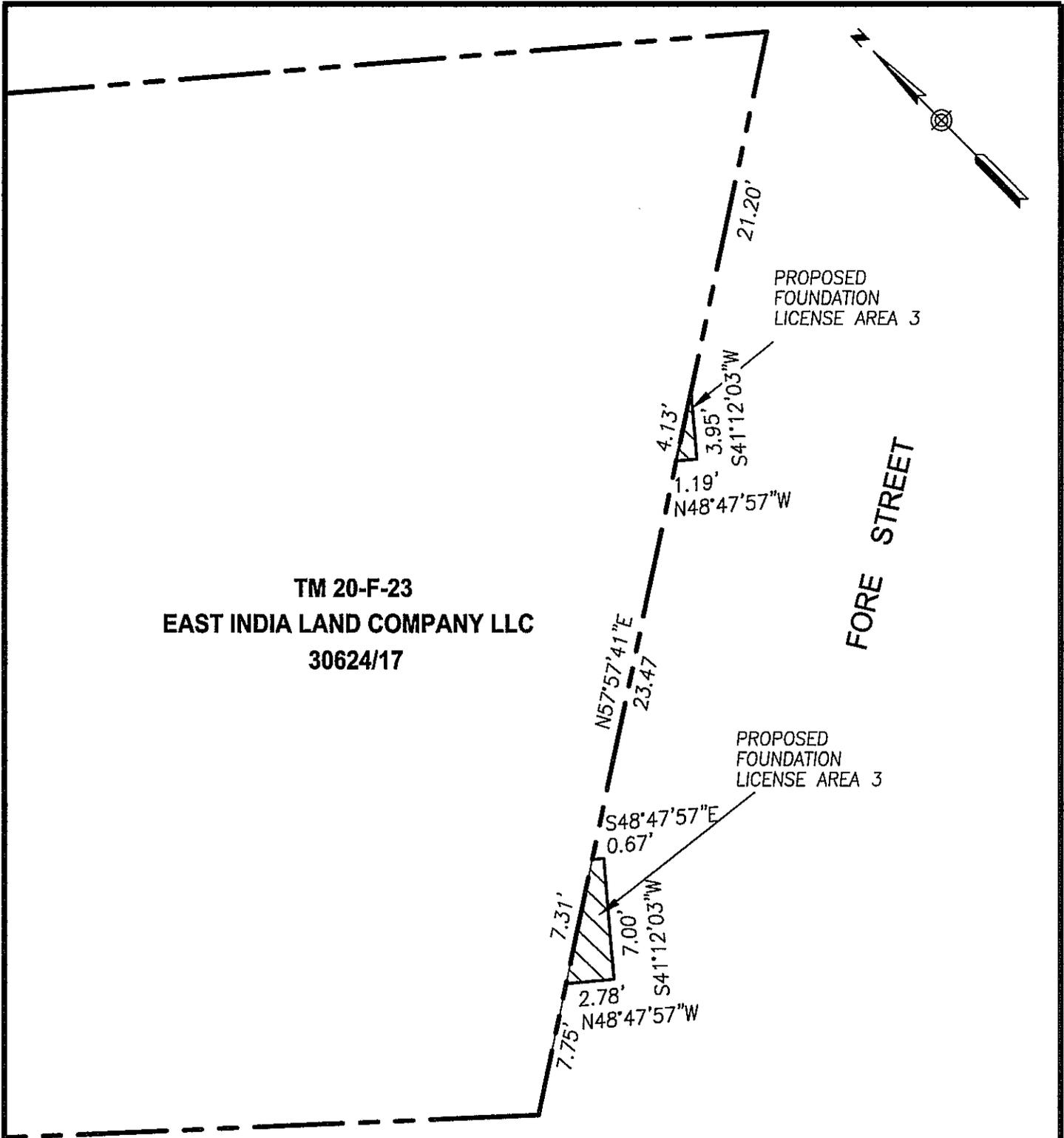
PLAN REFERENCE:

"AMENDED RECORDING PLAT, 185 FORE STREET,
PORTLAND, MAINE MADE FOR RECORD OWNER EAST
INDIA LAND COMPANY LLC" APRIL 15, 2015 BY
OWEN HASKELL, INC.

EXHIBIT B
185 FORE STREET
FORE STREET, PORTLAND, MAINE
MADE FOR
EAST INDIA LAND COMPANY LLC

OWEN HASKELL, INC.
390 U.S. ROUTE ONE, UNIT #10, FALMOUTH, MAINE 04105

Drwn By	JLW	Date	10-20-15	Job No.	14-023P
Check By	EB	Scale	N.T.S.	Drwg. No.	EX-B



TM 20-F-23
 EAST INDIA LAND COMPANY LLC
 30624/17

PROPOSED
 FOUNDATION
 LICENSE AREA 3

FORE STREET

PROPOSED
 FOUNDATION
 LICENSE AREA 3

INDIA STREET

PLAN REFERENCE:

"AMENDED RECORDING PLAT, 185 FORE STREET, PORTLAND, MAINE MADE FOR RECORD OWNER EAST INDIA LAND COMPANY LLC" APRIL 15, 2015 BY OWEN HASKELL, INC.

EXHIBIT C 185 FORE STREET FORE STREET, PORTLAND, MAINE MADE FOR EAST INDIA LAND COMPANY LLC		
OWEN HASKELL, INC. 390 U.S. ROUTE ONE, UNIT #10, FALMOUTH, MAINE 04105		
Drwn By	JLW	Date 10-20-15
Check By	EB	Scale N.T.S.
Job No.	14-023P	Drwg. No. EX-C