

Order 294-15/16

Passage: 8-0 (Thibodeau recused) on 6/6/2016

Effective 6/16/2016

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 ACCEPTING AND APPROVING A BUS SHELTER EASEMENT  
FOR PUBLIC ACCESS FROM HARDYPOND DEVELOPMENT COMPANY, LLC**

**ORDERED,** that the attached bus shelter easement from Hardypond Development Company, LLC for public access and a bus shelter at 5 Pleasant Avenue is hereby accepted 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.

Record and Return to:  
David L. Galgay, Jr., Esq.  
Verrill Dana, LLP  
One Portland Square, P.O. Box 586  
Portland, ME 04112-0586

## TRANSIT SHELTER EASEMENT AGREEMENT

THIS TRANSIT SHELTER EASEMENT AGREEMENT (this "Agreement") is made this \_\_\_\_\_ day of April 2016, by and between Hardypond Development Company, LLC, a Maine limited liability company (the "Grantor") and the City of Portland, a Maine municipal corporation with a place of business in Portland, Maine and a mailing address of 389 Congress Street, Portland, Maine 04101 (the "City").

### WITNESSETH:

WHEREAS, pursuant to that Trustee's Deed dated May 15, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32274, Page 49, Grantor is the owner of that certain real property situated in Portland, Cumberland County, Maine, and located at or near the intersection of Forest Avenue and Pleasant Avenue (the "Property"), said real property being more particularly designated as Lot A on the "Subdivision Plat Plan 3 Pleasant Avenue Church Re-Development" dated 6-09-15 by Fay, Spofford & Thorndike, as revised through 03-10-2016 and to be recorded in the Cumberland County Registry of Deeds in (the "Subdivision Plat"); and

WHEREAS, the City's site plan ordinance requires a Greater Portland Transit District METRO Bus shelter to be constructed on a portion of the Property for the benefit of the public; and,

WHEREAS, Hardypond Development Company, LLC will construct said METRO bus shelter on a certain lot or parcel of land more particularly described below;

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants and terms, conditions and restrictions hereinafter set forth, the Grantor hereby gives, grants, bargains and conveys unto the City, its successors and assigns, in perpetuity, an easement for the purposes of maintaining a Transit District METRO Bus Shelter, including related facilities as hereinafter described, and an easement for members of the public to wait, board and disembark METRO buses at the Transit District shelter in and over that portion of the Property described as follows (the "Transit Shelter Area"):

A certain lot or parcel of land situated on the southwesterly side of Forest Avenue in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at a point on the southwesterly sideline of Forest Avenue, said point being 10.00 feet from its intersection with the northerly sideline of Pleasant Avenue on a course of N 21°07'05" W;

Thence, S 68°52'55" W across land of the Grantor 9.00 feet;

Thence, N 21°07'05" W across land of the Grantor 18.00 feet;

Thence, N 68°52'55" E across land of the Grantor 9.00 feet to the southwesterly sideline of said Forest Avenue;

Thence, S 21°07'05" E along the southwesterly sideline of said Forest Avenue 18.00 feet to the point of beginning containing 162 square feet.

The terms, conditions, and restrictions of this Agreement are as follows:

1. That the City or its designee shall have the right but not the obligation to erect and maintain a Transit District METRO Bus Shelter and related facilities within the Transit Shelter Area. Members of the public may wait, board and disembark buses at the said transit shelter.
2. That the City or its designee shall be and remain responsible for any and all expenditures of labor and materials or other costs or expense in the repair and maintenance of said Transit District METRO Bus Shelter within the Transit Shelter Area and related facilities.
3. That the City or its designee shall be responsible for any and all labor or other costs or expense which results from any and all future repair, relocation, or dismantling of the Transit District METRO Bus Shelter within the Transit Shelter Area and related facilities;
4. That the City agrees, to the extent allowed by Maine law, to hold Grantor harmless from any and all liability arising out of the installation and maintenance of said Transit Shelter Area and not caused by the negligence of Grantor. The parties agree that this is an indemnity agreement and nothing herein shall be construed to be a contract of insurance waiving the defense of governmental immunity;
5. The Grantor shall not be responsible for the cutting or trimming of any vegetation and cleanliness of the grounds at or around the Transit Shelter Area and the removal of trash from trash receptacles and litter from the Transit Shelter Area;
6. This Agreement shall not divest the Grantor of any rights or interests in its Property not herein mentioned;
7. All notices given under this Agreement must be in writing and must be given by U.S. certified mail (written receipt) addressed as follows:

To Grantor: Hardypond Development Company  
c/o Robert J. Gaudreau

55 Hardy Road  
Falmouth, Maine 04105

To City: City of Portland  
c/o Jon Jennings, City Manager  
389 Congress Street, Room 208  
Portland, Maine 04101

Notices shall be deemed delivered three (3) days from the date sent if addressed as set forth herein. Either party may notify the other of a change of address, which will only be effective by written notice. As necessary, day to day communication may occur between the Grantor's management company (Bibeau & Company, Inc.) for the Grantor and Transit District METRO Bus for the City, concerning the administration of this Agreement. All issues of concern discussed by either party must be resolved within ten (10) business days or in a mutually agreed timeframe in writing;

8. Within forty-five (45) days following termination of this Agreement, the City agrees to remove the said Transit District Bus shelter and related facilities from the Transit Shelter Area and to return the said Transit Shelter Area to the same condition it was in on the date hereof;
9. The City and Grantor expressly agree that the City, its employees, agents, successors and assigns shall not place any advertising on, in, or around the Transit Easement Area, excepting the posting of METRO's bus schedule and bus route map **only**, which shall not be considered advertising for the purpose of this Agreement. Any advertising so placed by the City, its employees, agents, successors and assigns on, in, or around the Transit Easement Area shall be a default under the terms of this Agreement resulting in a payment by the City to the Grantor of the amount equal to the funds received by the City for said advertising. In the event that no funds or payment was made to the City for said advertising, the City shall pay to the Grantor an advertising fee in the amount of Two Hundred and Fifty Dollars (\$250.00) per month for each such occurrence.
10. This Agreement shall be binding upon Grantor and City and their respective successors and assigns.

TO HAVE AND HOLD the rights, privileges and easement herein granted to the City of Portland, its successors and assigns forever. The covenants agreed to and the terms, conditions, and restrictions imposed herein shall be binding upon the Grantor, its agents, tenants, successors and assigns and shall continue as a servitude running with the land.

AND the Grantor covenants that it is vested of the premises in fee, has the right to convey the same in fee simple, and that the same are free from encumbrances except as hereinafter stated.

IN WITNESS WHEREOF, the parties have set their hands and seals, the last party to sign being authorized to complete the day and year first written above, and which day and year shall be the effective date of this Agreement.

WITNESS:

**HARDYPOND DEVELOPMENT  
COMPANY, LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Robert J. Gaudreau  
Its Managing Member

WITNESS:

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND

April \_\_, 2016

Then personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of Portland.

\_\_\_\_\_  
Notary Public/Attorney-at-Law  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF MAINE  
COUNTY OF CUMBERLAND

April \_\_, 2016

Then personally appeared the above-named Robert J. Gaudreau, the Managing Member of Hardypond Development Company, LLC and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Hardypond Development Company, LLC.

\_\_\_\_\_  
Notary Public/Attorney-at-Law

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

