

Order 265-04/05
Passed 8-0 5/16/05 (Carr absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER APPROVING EASEMENT TO WATERVIEW DEVELOPMENT LLC
FOR FOOTINGS, RETAINING WALL AND STAIRS WITH HANDRAIL**

ORDERED, that the Finance Director is authorized to execute an easement to Waterview Development LLC for the encroachment within the public right of way of building footings, a retaining wall and stairs with handrail in the vicinity of 409 Cumberland Avenue, said easement to be in substantial conformance to that shown on Attachment A; provided however, that the grant of said easement shall only become effective upon the filing of a performance guarantee for the Waterview Development LLC proposed residential building at Cumberland Ave and the issuance of a building permit for said development.

ATTACHMENT A

EASEMENT AGREEMENT

The CITY OF PORTLAND, Maine, a body politic and corporate (the "City") with an address of 389 Congress Street, Portland, Maine, 04101, grants to WATERVIEW DEVELOPMENT, LLC, a Maine limited liability company, with an address of 477 Congress Street, Portland, Maine, 04101 ("Waterview") the following described footing easements:

An easement to install, maintain, replace and repair building footings in and under the City sidewalks adjacent to property of Waterview located at the intersection of Mechanic Street and Cumberland Avenue in Portland, Cumberland County, Maine. The property of Waterview which consists of both fee and leasehold interests in land (the "Waterview Property") is more particularly shown on a plan entitled "The Waterview at Bayside Condominium Subdivision and Plat Plan" dated April 22, 2005 as last revised May__, 2005 and to be recorded in the Cumberland County Registry of Deeds (the "Plat Plan"). The location of this footing easement is identified on the Plat Plan as "Proposed Building Foundation/Footing Easement from City of Portland (see Note 12)" and is described by lines L10 to L15 identified in the Plat Plan legend as "Easement Descriptions." The footing easement herein granted is for the purpose of placing building footings consisting of concrete, steel, pilings and other materials to help support a building and any replacements thereof to be constructed on the Waterview Property. The footings may be at sufficient depth to support the building, may extend horizontally from the Waterview Property line under the sidewalk and shall, once constructed, be beneath the level of the sidewalk so as to not change the level or width of the sidewalk. This easement shall extend along the boundary of the Waterview Property along Cumberland Avenue and along the boundary of the Waterview Property along Mechanic Street as shown on the Plat Plan.

Also granting to Waterview the right to install, maintain, replace and repair retaining walls, including footings therefor on City property abutting the Waterview Property along Cumberland Avenue and Forest Avenue in the location shown on the Plat Plan and labeled "Proposed Retaining Wall Foundation/Footing Easement from City of Portland (see Note 12)" and is described by lines -L4 to L9 identified in the Plat Plan legend as "Easement Descriptions."

Also granting to Waterview the right and easement to install, maintain, replace and repair the stairs and handrails exiting the building on to Mechanic Street shown on the Plat Plan and labeled "Emergency Egress and Emergency Access."

The purpose of these easements is to allow for construction of a building on the Waterview Property and the easements shall have a duration equal to the length of time that the building to be built on the Waterview Property and any replacements thereof exists. Accordingly, after the building is built on the Waterview Property, these easements shall continue until such time as there shall have been no building on the Waterview Property and no reconstruction activity for a period of two years.

Waterview shall have and is hereby granted the right to enter on to the City land adjacent to the Waterview Property, after obtaining all necessary permits, including street occupancy permits from the City, with workers and equipment and to excavate soil and other materials, relocate utility lines and undertake such other activities as may be necessary or convenient to install the footings and other improvements for which these easements have been granted, provided however, prior to any construction activities Waterview and/or its contractors shall have:

- (i) obtained from the City requisite building permits, street occupancy permits, excavation permits and any other necessary permits;

- (ii) consulted with the City's Department of Public Works regarding any utility lines or other facilities located on or near the areas affected by the construction;
- (iii) notified the City's Department of Public Works and Building Inspection Office at least ten days in advance of the intended work start date so that the City can, if it chooses, arrange for City personnel to be present during the construction period, the costs of such personnel to be borne by Waterview.

Waterview further covenants and agrees by acceptance of these easements to indemnify and hold harmless the City, its agents and employees for, from and against any and all claims, liabilities, demands, actions, causes of action, suits, losses, judgments, costs (including attorneys' fees), damages and expenses, whatsoever of every name and nature, in law or in equity, including without limitation those related in any manner to any damage to property or personal injury to the extent arising out of the presence in and use by Waterview of the area covered by the easements herein granted or Waterview's use and enjoyment thereof and whether caused by Waterview, its agents, contractors or employees.

The easements herein granted are intended to be appurtenant to the Waterview Property for the benefit of Waterview and any successor owner thereof. Any successor owner of the Waterview Property agrees to be bound by the terms hereof.

IN WITNESS WHEREOF, the City has caused this indenture to be executed by Joseph E. Gray, its City Manager, thereunto duly authorized this _____ day of _____, 2005.

WITNESS:

CITY OF PORTLAND

By: _____
 Duane Kline
 Its Director of Finance

STATE OF MAINE
 COUNTY OF CUMBERLAND, SS.

_____, 2005

Personally appeared the above-named Duane Kline, Director of Finance 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 the City of Portland.

Before me,

 Notary Public/Attorney-at-Law

ACCEPTANCE OF EASEMENT

Waterview Development, LLC, on behalf of itself and its successors and assigns, accepts this Easement and agrees to be bound by the terms hereof.

WATERVIEW DEVELOPMENT, LLC

By: The Berl Company

By: _____
Jeffrey N. Cohen, Its Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

_____, 2005

Personally appeared the above-named Jeffrey N. Cohen, Manager of The Berl Company and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of The Berl Company.

Before me,

Notary Public/Attorney-at-Law