

Order 69 – 10/11

Passage 8-0 11/1/10 (Skolnik absent)

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

DORY RICHARDS WAXMAN (A/L)

JILL C. DUSON (A/L)

ORDER APPROVING SALE OF EASEMENT TO MICHAEL AND NINA MILLER - RE: 76 WATSON STREET

ORDERED, that the sale of an easement to Michael and Nina Miller for the construction, location, installation and maintenance of a seawall, concrete retaining wall and an existing deck on and over the City of Portland Right of Way in the vicinity of 76 Watson Street is hereby approved; and

BE IT FURTHER ORDERED, that City Manager is authorized to execute a Purchase and Sale Agreement, Easement Deed and Construction License, said documents to be substantially in the form attached as Attachments A, B and C, and to execute such other documents and take such other actions as are necessary to complete the sale.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2010, by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "**CITY**"), and Michael and Nina Miller, with a mailing address of 76 Watson Street, Portland, Maine 04103, (hereinafter referred to as "**BUYER**").

W I T N E S S E T H:

WHEREAS, **CITY** is the owner of certain land located in the area of 76 Watson Street, Portland, Maine, which is shown on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the **BUYER** desires to acquire rights across portions of said property; and

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. SALE

CITY agrees to sell to **BUYER** certain easement rights on the property shown on Exhibit A.

2. CONSIDERATION

The consideration for the easement rights shall be Five Thousand One Hundred and Twenty Dollars (\$5,120.00).

3. TITLE

Easement rights to the easement property shall be conveyed by Easement Deed, a copy of which is attached as Exhibit B.

4. CONTINGENCIES

This Purchase and Sale Agreement is further subject to the following contingencies:

- a. **BUYER** agrees to obtain all necessary local, state and federal approvals required to perform work in the easement area prior to

commencing such work. This contingency shall survive the closing on this purchase and sale; and

b. Approval of this Purchase and Sale Agreement by the Portland City Council.

5. CLOSING

The closing shall be held at City Hall, within Ten (10) days after approval of the Portland City Council, at a time agreeable to the parties.

6. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

7. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

8. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

FOR THE CITY: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

FOR BUYER: Michael and Nina Miller
76 Watson Street
Portland, Maine 04103

With a copy to : Jonathan L. Goldberg
MittelAsen, LLC
85 Exchange Street
Portland, ME 04101

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Joseph E. Gray, Jr.
City Manager

MICHAEL MILLER

WITNESS

Buyer

NINA MILLER

WITNESS

Buyer

EASEMENT DEED

CITY OF PORTLAND, a municipal corporation located in the County of Cumberland, with a mailing address of 389 Congress Street, Portland, Maine, (hereinafter “Grantor”), for good and valuable consideration grants and quitclaims to Michael and Nina Miller, their heirs and assigns, with a mailing address of 76 Watson Street, Portland, Maine 04103 (hereinafter “Grantees”), as joint tenants:

A non-exclusive, perpetual easement over a portion of Grantor’s land in said City of Portland, as shown on a plan entitled “Proposed Easement Rights to be conveyed within Watson Street” by Royal River survey Company dated October 18, 2010, and recorded in the Cumberland County Registry of Deeds, Plan Book _____, Page _____, dated _____ (the “Easement Premises”), a more particular description of which is attached hereto as “Exhibit A”

This Easement shall run with and be appurtenant to the land of the Grantees described in a Warranty Deed from Jane E. Lord dated September 28, 2009, and recorded in Book 27291, Page 208 of said Cumberland County Registry of Deeds, (the “Miller Property”).

The purpose of the easement is for the construction, location, installation and maintenance of a seawall, concrete retaining wall and deck on and over the City of Portland Right of Way in the vicinity of the Miller Property, as described in an approved Minor Site Plan entitled “Miller Slope Stabilization” and is subject to the following:

1. The public’s right to enter and pass over the Easement Premises; and
2. All of the existing utilities, including but not limited to an existing twelve inch diameter storm drain, and the Grantor retains the right to access, repair and maintain such utilities as Grantor deems necessary.

The structure identified as the “current deck” in the Easement Premises cannot be enlarged in any way, raised vertically, or relocated within the Easement Premises except in conformity with all applicable Grantor zoning and planning requirements in effect at the time of such enlargement, change in elevation or relocation; and any reconstruction on the same footprint as the “current deck” will be subject to all applicable Grantor permit requirements.

Grantees shall defend, indemnify and hold the Grantor harmless from any personal injury or property damage to a third party resulting from the Grantee’s construction, location, installation, and maintenance of the seawall, concrete retaining wall and deck, and shall procure and maintain liability insurance against such claims.

The Easement Premises, including the "current deck", may be used for very low intensity recreational uses such as sunbathing, reading, sitting, viewing and similar passive uses.

IN WITNESS WHEREOF, the Grantor, City of Portland , has caused this instrument to be signed and sealed this _____ day of _____, 2010.

Witness

By _____
Ellen S. Sanborn
Its: Finance Director
Duly Authorized

STATE OF MAINE
County of Cumberland

Dated:

Personally appeared the above-named Ellen S. Sanborn, in her capacity as Finance Director of the City of Portland and acknowledges the foregoing instrument to be her 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: _____

EXHIBIT A
Easement Description

A certain irregularly shaped parcel situated within the bounds of Watson Street, so called, or the extension thereof, originally laid out as Upland Avenue and accepted by the Portland City Council November 12, 1906, and renamed as Watson Street by the Portland City Council December 18, 1961, being more particularly bounded and described as follows, to wit:

Beginning at a certain survey marker situated on the northeast sideline of Watson Street 157.85 feet southeast of the intersection of said Watson Street's northeast sideline with the southeast sideline of Island Avenue, so called, and proceeding around the easement parcel hereby described in a counter-clockwise fashion;

Thence S 37°-49'-54" W a distance of 6.36 feet to a certain survey marker;

Thence S 19°-46'-23" E a distance of 4.77 feet to a certain survey marker at the northwest end of a certain concrete retaining wall;

Thence S 54°-20'-52" E along said wall for a distance of 8.79 feet to a certain survey marker;

Thence S 03°-02'-53" E a distance of 15.36 feet to a certain survey marker;

Thence S 32°-52'-05" E a distance of 1.50 feet;

Thence S 41°-43'-27" E a distance of 1.61 feet;

Thence S 68°-14'-15" E a distance of 3.58 feet to a certain survey marker at or near the face of a certain concrete retaining wall;

Thence N 37°-24'-08" E along said wall a distance of 20.56 feet to the land of Nina A. Miller and Michael J. Miller as described in the deed recorded in the Cumberland County Registry of Deeds in book 27291 page 208, said marker situated 2.75 feet northwest of a certain iron eye bolt set in ledge on the shore of Casco Bay ;

Thence N 53°-16'-36" W along the northeast sideline of Watson Street and land of Miller for a distance of 29.16 feet to the Point of Beginning herein.

The above description was prepared by benefit of a survey plan and on the ground survey performed by Royal River Survey Company entitled, "Proposed Easement Rights to be conveyed within Watson Street" dated October 18, 2010. All bearings cited herein are based upon the local magnetic meridian of 2009. All markers cited herein as "certain survey marker" are 5/8 inch diameter steel rebar with identification caps inscribed, "Royal River PLS 1154".

LICENSE AGREEMENT

THIS LICENSE made by and between the **CITY OF PORTLAND**, a body politic and corporate, located in Cumberland County, State of Maine (hereinafter "**City**") and Michael and Nina Miller, with a mailing address of 76 Watson Street, Portland, Maine 0410_ (hereinafter "**Licensee**").

WHEREAS, City has approved **Licensee's** application for Slope Stabilization at 76 Watson Street (Application No. 10-79900027 – the "Project"), a portion of which is located on **City** property as shown on Exhibit A (the "Property"); and

WHEREAS, City has conveyed an easement on its property for such Project, subject to the public's right to use the Property; and

WHEREAS, Licensee and its contractors will need access and use of the **City's** Property during construction of the Project;

NOW, THEREFORE, in consideration of the foregoing and the covenants herein contained, **City** hereby grants to **Licensee** a revocable license to use the Property on the following terms:

1. License. **City** hereby grants to **Licensee** a right of access to, and use of, the Property by people, machinery and materials for the purpose of staging equipment and materials for the Project, provided however, that Licensee shall not block or prevent access to or from other properties located adjacent to the **City's** right of way.
2. Consideration. The consideration for the use of the Property is \$1.00, plus other valuable consideration acknowledged as received by **City**.
3. Term. This Agreement shall be effective as of the date of execution until _____, unless this License is sooner terminated by **City**, as provided herein.
4. Removal of Pavement and Restoration of Area. Upon expiration of this Agreement or completion of the Project and removal of equipment and materials from Property, whichever is earlier, **Licensee** shall remove and dispose of any equipment or materials located on the Property and shall also restore any disturbed areas within the Property, including but not limited to grass, curbing and pavement, to their existing condition prior to **Licensee's** use of the Property.

5. Compliance with laws: **Licensee** agrees to comply with all applicable laws and regulations in its operations hereunder, including but not limited to all applicable federal, state and local environmental laws and regulations, including without limitation all laws and regulations governing hazardous substances.
6. Indemnification: To the fullest extent permitted by law, **Licensee** shall defend, indemnify and hold the **City**, its officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including without limitation attorney's fees), fines, damages or judgments, just or unjust, that arise out of or in connection with the activities of **Licensee** under this License Agreement, said claims to include, without being limited to, claims for personal injury or property damage or for violation of any federal, state or local law or regulation. This indemnification shall extend to employees and property of the **City** as well as third parties. This indemnification shall survive the termination of this license. **Licensee** hereunder shall include its agents, contractors and invitees.
7. Insurance. **Licensee** shall procure and maintain throughout this Agreement general comprehensive liability insurance and vehicle liability insurance covering claims on an occurrence basis in the minimum amount of Four Hundred Thousand Dollars (\$400,000) combined single limit for bodily injury and for property damage, and naming the **City**, its officers, agents and employees, as additional insured thereon. Such insurance may be provided through **Licensee's** contractor for the Project.
8. No property rights. This instrument is a license only and no provision hereof shall be construed as conveying an easement or other estate in land.
10. No Assignment. This License Agreement is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party except upon the prior written approval of the **City**.
11. Revocable License. This License is revocable by **City** upon a thirty (30) day notice to **Licensee**. Upon termination of this License, **Licensee** shall remove all equipment and materials from the Property in the time designated by **City**. If **Licensee** fails to do so, **City** shall have the right but not the obligation to remove the materials **Licensee** shall be responsible for any and all costs incurred by the **City** in removing the equipment and materials from the Property including but not limited to the costs of removal and attorneys fees. In addition, **Licensee** waives any and all claims it may have against the **City** related to the removal of the equipment and materials in the event that the **City** exercises this right of removal.

IN WITNESS WHEREOF, the **City** and **Licensee** have executed this Agreement through their duly authorized representatives on, _____, 2010.

CITY OF PORTLAND

By: _____
Joseph E. Gray, Jr.
Its City Manager

MICHAEL AND NINA MILLER

By: _____

By: _____

Witness

Witness

Witness

