

Order 115-20/21  
Passage: 9-0 on 10/19/2020

Effective 10/29/2020

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING EASEMENT DEED FOR A BUS SHELTER**  
**AT 605 STEVENS AVENUE**  
**FROM DC BAXTER WOODS IV LLC**

**ORDERED,** that the attached easement from DC Baxter Woods IV LLC 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 record said documents in the Cumberland County Registry of Deeds.

## EASEMENT AGREEMENT

### (BUS STOP)

THIS EASEMENT AGREEMENT (this “Agreement”) is made as of the \_\_\_\_\_ day of September, 2020, by and between DC BAXTER WOODS IV LLC, a Maine limited liability company with a place of business and mailing address of 100 Commercial Street, Suite 414, Portland, Maine 04101, (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”).

### RECITALS

WHEREAS, pursuant to a deed dated October 8, 2019 and recorded in the Cumberland County Registry of Deeds in Book 36065, Page 326, the Grantor is the owner of that certain real property situated in Portland, Cumberland County, Maine, and located at or near 583 Stevens Avenue, Portland, Maine (the “Property”), said real property being more particularly described in said deed; and

WHEREAS, the Grantor wishes to provide and the City desires to have a bus transit stop consisting of a concrete pad foundation, bench, simple weather protection structure such as a canopy, opening in the adjacent fence and landscaping (collectively the “Bus Stop”) for the benefit of residents of and visitors to the Property, the Greater Portland Transit District, a regional transit district and body politic and corporate, having its principal place of business at 114 Valley Street in Portland, Maine, or its designee (“METRO”) on a portion of the Property and for the benefit of the public using the METRO service; and

WHEREAS, Grantor will construct at its sole expense the Bus Stop on a certain lot or parcel of land shown as Lot 4 on a plan entitled “Second Amended Subdivision & Building-1, 583 Stevens Avenue, Portland, Maine” and prepared by Titcomb Associates last revised 07-15-19 and recorded in the Cumberland County Registry of Deeds, Plan Book 00220, Page 00251 (“Plan”);

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 constructing and maintaining the Bus Stop, and an easement for members of the public to wait, board, and disembark buses at the Bench in and over that portion of the Property more particularly described in Exhibit A attached hereto and made a part hereof and depicted on the portion of the Plan reproduced and attached hereto as Exhibit B (the “Easement Area”).

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

1. The City or its designee shall have the right but not the obligation to erect and maintain the Bus Stop over, under, and within the Easement Area. Members of the public may wait,

board, and disembark buses at the Bus Stop. Any construction of the Bus Stop to be done by the City shall first be approved by the Grantor.

2. No building or other structure shall be erected by any party within the Easement Area contrary to any statute, law, ordinance, or safety regulation or policy, including the Department of Interior National Park Service Secretary's Standards, or inconsistent with the City's rights granted herein. Grantor reserves the right to enter and use the Easement Area for such purposes as are not inconsistent with and do not materially interfere with the use thereof by the City.
3. Grantor shall be and remain responsible for any and all expenditures of labor and materials or other costs or expenses incurred in the construction of the Bus Stop within the Easement Area.
4. Grantor shall maintain the Bus Stop in reasonably good condition at all times. Grantor or its designee shall be responsible for any and all labor or other costs or expenses that result from any and all future repair, maintenance, replacement or dismantling of the Bus Stop within the Easement Area. Grantor may assign to the Stevens Square Commons Condominium Association all of Grantor's maintenance obligations under this instrument. In the event Grantor or such Association fail adequately to maintain the shelter or the Easement Area, the City shall have the right, but not the obligation, to perform any necessary maintenance and repairs at Grantor's expense.
5. The City agrees, to the extent allowed by Maine law, to hold Grantor and Grantor's officers, agents, employees and tenants harmless from any and all liability arising out of the installation, maintenance and use of the Bus Stop on the Easement Area to the extent such liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and is caused by any negligent act or omission of the City and not caused by the negligence of Grantor or its officers, agents, employees or tenants; provided, however, that nothing herein is intended to, nor shall it be deemed to, waive, amend or otherwise modify any claim of immunity, any defense or any limitation of liability available to the City under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., or other applicable law.
6. This Agreement shall not divest the Grantor or its tenants of any rights or interests in the Property not herein granted.
7. All notices given under this Agreement must be in writing and must be given by U.S. certified mail (written receipt) addressed to the parties at the addresses first set forth above. 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 and METRO concerning the administration of this Agreement.
8. This Agreement shall be binding upon the Grantor and the City and their respective successors, tenants, and assigns. METRO is an intended third party beneficiary of this Agreement and shall be subject to all of the terms and conditions set forth herein.

TO HAVE AND HOLD the rights, privileges, and easement herein granted to the City, 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.

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:

DC BAXTER WOODS IV LLC, Grantor

\_\_\_\_\_

By: \_\_\_\_\_  
Kevin R. Bunker, its Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND

September \_\_\_\_, 2020

Then personally appeared the above-named Kevin R. Bunker, Manager of DC Baxter Woods IV LLC, 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 DC Baxter Woods IV LLC.

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

Print  
Name: \_\_\_\_\_  
My Commission  
Expires: \_\_\_\_\_

*[remainder of page left blank intentionally—signatures continue on next page]*

WITNESS:

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_

Jon P. Jennings

Its: City Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND

September \_\_\_\_, 2020

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: \_\_\_\_\_

*[remainder of page left blank intentionally—signatures continue on next page]*

SEEN AND AGREED TO:

GREATER PORTLAND TRANSIT DISTRICT  
(METRO)

By: \_\_\_\_\_  
Greg Jordan, Its General Manager

C:\OneDrive\Documents\CT\DC Predevelopment LLC (20981)\Baxter Woods (331)\Lot 4\Easements\Bus stop easement\_BW lot 4\_FINAL.docx

**EXHIBIT A**

July 7, 2020

Bus Stop Easement

605 Stevens Avenue Condominium

Portland, Maine

A certain easement located on the easterly side of Stevens Avenue in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point on the easterly side of Stevens Avenue at the northwesterly corner of land designated as "Lot 4" on a plan of 605 Stevens Avenue Condominium Survey Plat recorded in the Cumberland County Registry of Deeds in Plan Book 217, Page 180 and the southwesterly corner of land designated as "Lot 3" on said Plan. Thence:

- 1) S 80°33'20" E by said Lot 4 and said Lot 3 a distance of Ten and 03/100 (10.03) feet to a point;
- 2) S 05°14'27" W through said Lot 4 a distance of Nineteen and 27/100 (19.27) feet to a point;
- 3) N 84°45'33" W through said Lot 4 a distance of Ten and 00/100 (10.00) feet to a point on said Stevens Avenue;
- 4) N 05°14'27" E by said Stevens Avenue a distance of Twenty and 00/100 (20.00) feet to the point of beginning.

Bearings are referenced to grid north Maine State Plane Coordinate System, West Zone.

The above described easement contains 196 square feet lying over land designated as "Lot 4" on a plan of 605 Stevens Avenue Condominium Survey Plat recorded in the Cumberland County Registry of Deeds in Plan Book 217, Page 180.

**EXHIBIT B**

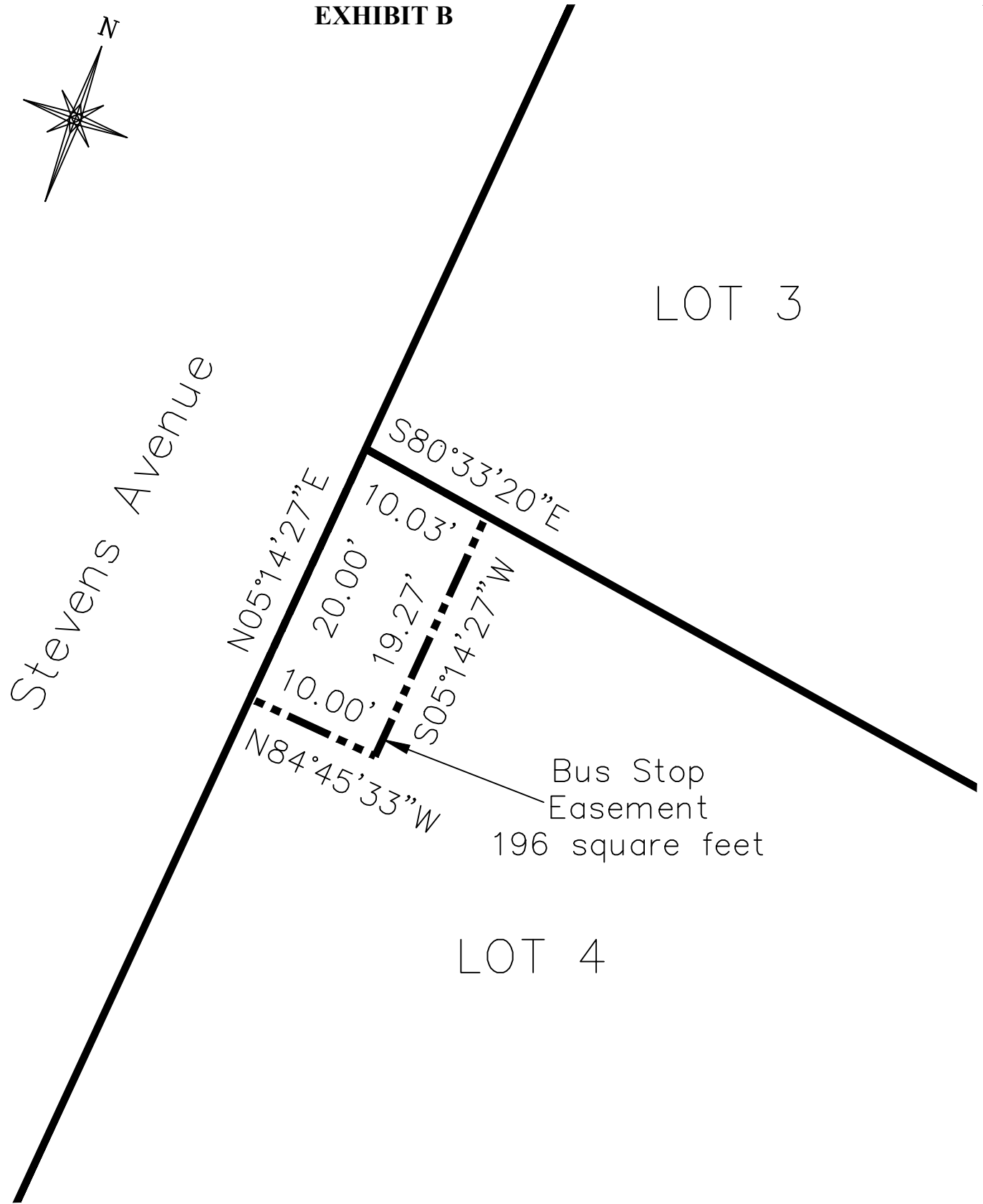
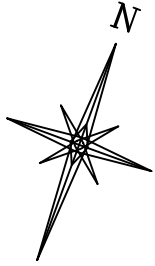


Exhibit B



**Titcomb Associates**

133 Gray Road, Falmouth, Maine 04105  
(207)797-9199 www.titcombsurvey.com

SCALE: 1"=20'

DATE: July 7, 2020