

Amended 6.30.2016 to include change to signature line, as agreed with City attorney and PT executive director.

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TRAIL EASEMENT

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THIS TRAIL EASEMENT is made as of the _____ day of June, 2016, by and between **AAA NORTHERN NEW ENGLAND**, a Maine corporation, with a place of business in Portland, County of Cumberland, State of Maine whose mailing address is 68 Marginal Way, P.O. Box 3544, Portland, Maine 04104-3544 (hereinafter referred to as "Grantor"), and **PORTLAND TRAILS**, a Maine non-profit corporation with a place of business in Portland, Maine and a mailing address of 305 Commercial Street, Portland, Maine 04101 (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor is the owner of property on 89 Cove Street, Portland, Maine, identified on City of Portland Tax Map 9, Block A, Lot 2 and more specifically described in that certain deed to Grantor, dated May 21, 1997 and recorded on May 28, 1997 in Book 13099, Page 282 in the Cumberland County Registry of Deeds (hereinafter referred to as the "Premises"); and

WHEREAS, Grantor has agreed to grant to Grantee, a trail easement over a portion of the Premises as more particularly described herein.

NOW, THEREFORE, in consideration of the foregoing and upon the terms, conditions and limitations set forth herein agree as follows:

1. **Grant of Trail Easement.**

(a) Grantor hereby grants to Grantee a non-exclusive easement for the purpose of constructing, maintaining, repairing, using and replacing, all at Grantee's sole cost and expense, a foot path or walking trail for use by the general public for recreational purposes as specified herein (the "Trail"), over and across a portion of the Premises, which portion shall be a strip of land seven (7) feet nine (9) inches in width, more or less, measured from the northeasterly boundary of the Premises, and which strip of land runs northwesterly from the adjoining property now or formerly owned by East Bayside Studios, LLC (Tax Map 10, Block E, Lot 2-1) and more further described in an Easement Agreement between East Bayside Studios, LLC and Portland Trails, on file with the City of Portland, all as more particularly depicted on **Exhibit A**, attached hereto and made a part hereof (the "Easement Area"), together with such other improvements or appurtenances deemed to be reasonably necessary to establish and operate a trail for such purposes to be constructed within the Easement Area, including footbridges and directional signs (the "Trail Easement").

(b) Grantor also reserves the following rights with respect to the Easement Area:

(i) The right to install, maintain, replace, repair and upgrade any and all utilities as contemplated by 33 MRS §458 over or under the Easement Area in connection with the use, operation and development of the Premises, so long as Grantor repairs any damage to the Trail resulting from the exercise of such rights;

(ii) The right to access and utilize the Easement Area to allow for any required maintenance and repair of the Premises or any of the improvements thereon; and

(iii) The right to access and use the Easement Area for any other purpose that does not materially interfere with the purposes of the Easement.

(c) Notwithstanding anything to the contrary contained herein, Grantor reserves the right to relocate all or any portions of the Easement Area and the Trail and associated improvements provided that all costs and expenses associated with such relocation shall be borne by Grantor so long as such new location reasonably provides connections with the trail destinations.

2. Conditions.

(a) Both the design of the Trail and all improvements associated therewith and all plans for construction, including without limitation time line for such construction, shall be subject to the prior review and approval of Grantor, which approval shall not be unreasonably withheld. Grantee shall afford Grantor at least fifteen (15) days prior written notice before commencing any construction of the Trail and all construction associated with initial installation of the Trail shall be completed within one (1) year from the commencement of construction. Grantee hereby agrees to use good faith efforts to minimize the impact of construction of the Trail on the Grantor's use and operation of the Premises and in furtherance of this agreement during construction of the Trail Grantee agrees to keep the Easement Area in a neat and orderly fashion. Grantee shall not cause or permit the filing of any contractor's, mechanic's or material men's liens on the Premises in connection with construction of the Trail or the exercise of any of the rights granted hereunder. In the event any such lien is filed, Grantee agrees to arrange for a discharge of the line within fifteen (15) business days from the date the lien is filed.

(b) Grantee shall obtain any necessary federal, State or local permits and approvals required in connection with the construction and maintenance of the Trail at its sole cost and expense. Grantor shall cooperate as may be reasonably necessary by executing any application or other forms required for permits so long as the content of the same is acceptable to Grantor.

(c) No public access to the Easement Area shall be permitted under any circumstances until construction of the Trail is completed.

3. Use. The Trail shall be used solely for passive recreational uses during daylight hours limited to pedestrian and non-motorized bicycle traffic and shall exclude any and all motorized/mechanized wheeled/track recreational vehicles of any kind. Wheelchairs or other similar non-recreational vehicles shall be permitted. Grantee, at its sole costs and expense, shall have an affirmative obligation to maintain and repair the Trail so that it remains safe, clean and otherwise in good condition. Grantor shall have no obligation whatsoever to repair or maintain the Trail, although Grantor shall have the right to do so if Grantee fails to do so in accordance with the terms hereof, and Grantee shall reimburse for any costs expended by Grantor in connection with such maintenance or repair. Notwithstanding the foregoing, use of the Trail may be expanded to include the hours between dusk and 10 p.m. if Grantee, at its sole cost and expense, installs and regularly maintains a lighting system within the Easement Area, which lighting system shall adequately light up the entire Easement Area during evening hours. All plans and specifications for the installation of a lighting system within the Easement Area shall be subject to the prior review and approval of

Grantor, and Grantee shall give Grantor at least thirty (30) days notice prior to the installation of any such lighting system. Grantee's failure to maintain the lighting system to standard acceptable to Grantor shall be automatic grounds for restricting use of the Trail to daylight hours, which right Grantor may exercise in its sole discretion.

4. Signs. Grantee hereby agrees to install and maintain at its sole cost and expense signs for the Trail which will, at minimum, indicate that public access is limited to the area improved with the Trail and that are otherwise reasonably acceptable to Grantor.

5. Duration. This Trail Easement shall terminate and be of no further force and effect in the event that it shall pass from Grantee to any third party by grant, operation of law or otherwise without the prior written consent of Grantor, its successors or assigns, except that Grantee may assign this Easement as follows, provided that any such permitted assignee shall be required to expressly agree in writing to accept all conditions and assume all obligations imposed upon Grantee hereunder:

(a) to a successor non-profit entity with a similar mission to that of Grantee, provided that Grantor is given at least thirty (30) days prior notice of any such proposed assignment and contemporaneously provided with enough information about such proposed assignee so as to make a determination as to whether such assignee is acceptable in accordance with the terms of this subsection (a); or

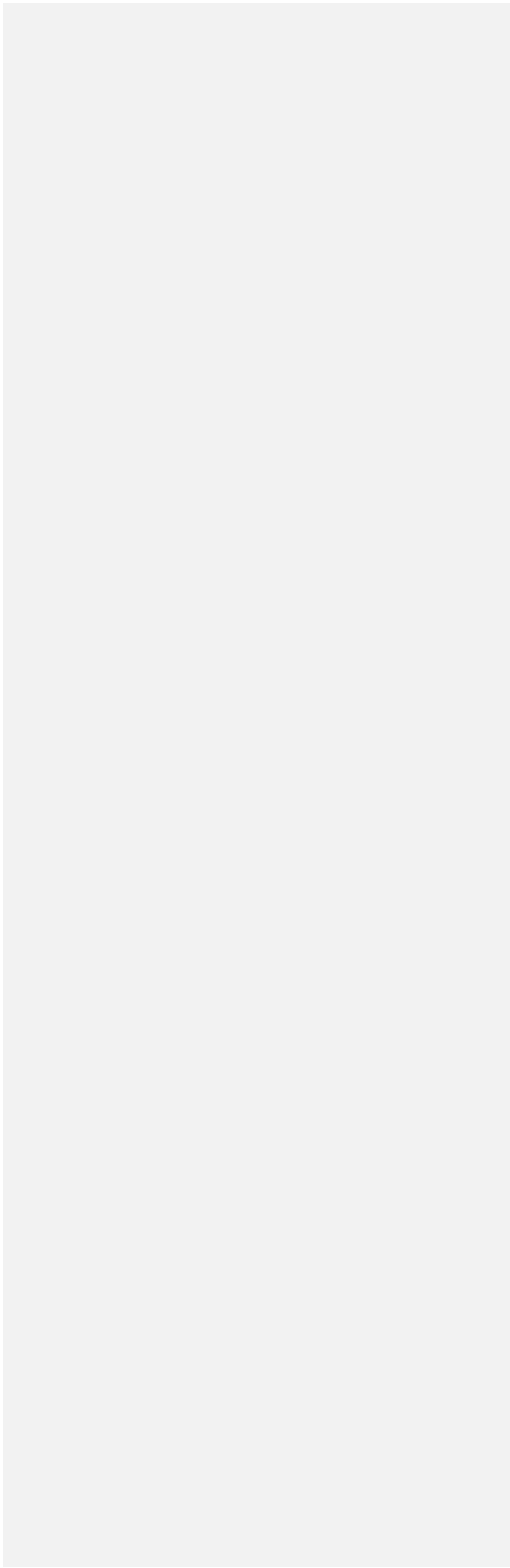
(b) to the City of Portland.

6. Indemnification & Insurance.

(a) Grantee agrees to indemnify and hold harmless Grantor, its successors and assigns, from and against any loss, claim, damage, liability, expense or damage (including reasonable attorney fees) which may be brought against, suffered or incurred by Grantor resulting from, arising out of, or in connection with the exercise of rights granted in this Easement by both Grantee and the public. Liability under this paragraph shall not apply personally to any director, officer, trustee, member or employee of Grantee. This indemnification and hold harmless agreement shall survive any termination of this Easement but shall apply solely to loss, claim, damage, liability, expense or damage arising out of acts or omissions occurring prior to the termination of this Easement.

(b) At all times while this Easement is in force and of effect, including during construction, Grantee shall carry and maintain, and shall cause any agents or contractors permitted access to the Easement Area to carry and maintain the following: (a) comprehensive general liability insurance, including all contractual liability hereunder, with limits not less than \$1,000,000 bodily injury liability and \$1,000,000 property damage liability for each occurrence; (b) worker's compensation insurance and employer's liability insurance fully covering Grantee's, or its agents and contractors, activities and operations hereunder, and (c) commercial automobile insurance or other such applicable insurance, with limits not less than \$1,000,000 bodily injury liability and \$1,000,000 property damage liability for each occurrence, for all vehicles or other equipment

entering upon the Easement Area or Premises, if permitted. Grantor reserves the right to modify and increase the insurance coverage requirements cited above to reflect market coverage for similar activities.



7. Governing Law. This Trail Easement shall be governed by the laws of the State of Maine. This Trail Easement is intended to be a trail easement as defined under 33 M.R.S.A. § 1581, et seq., and Grantor, by its delivery of this Trail Easement, and Grantee, by its acceptance hereof, acknowledge and agree that this Trail Easement is being granted to Grantee without charge for the purpose of recreational activities by the general public pursuant to and in accordance with 14 M.R.S.A. § 159-A, as the same may be amended or supplemented, and that Grantor shall have the benefit of all of the terms and provisions thereof, including all rights and immunities against liability for injury to the public afforded there under.

8. Amendment. No amendment to this Trail Easement shall be effective unless it is in writing and signed by both parties and duly recorded in the Cumberland County Registry of Deeds. The rights and easements granted and obligations created by this Trail Easement shall run with the land and shall be binding upon the parties and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their officers, thereunto duly authorized, as of the date first set forth above.

AAA NORTHERN NEW ENGLAND

Witness

By: _____
Eric Cyr
Its President

CITY OF PORTLAND ~~PORTLAND TRAILS~~

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Witness

By: _____
~~Jon Jennings~~ Kara Wooldrik
Its ~~City Manager~~ Executive Director

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

June ____, 2016

Then personally appeared the above-named Eric Cyr, President of AAA Northern New England, and acknowledged the foregoing instrument to be his free act and deed, in his said capacity and the free act and deed of AAA Northern New England.

Before me,

Attorney at Law/Notary Public

Printed Name of Attorney/Notary

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

June ____, 2016

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

Before me,

Attorney at Law/Notary Public

Printed Name of Attorney/Notary

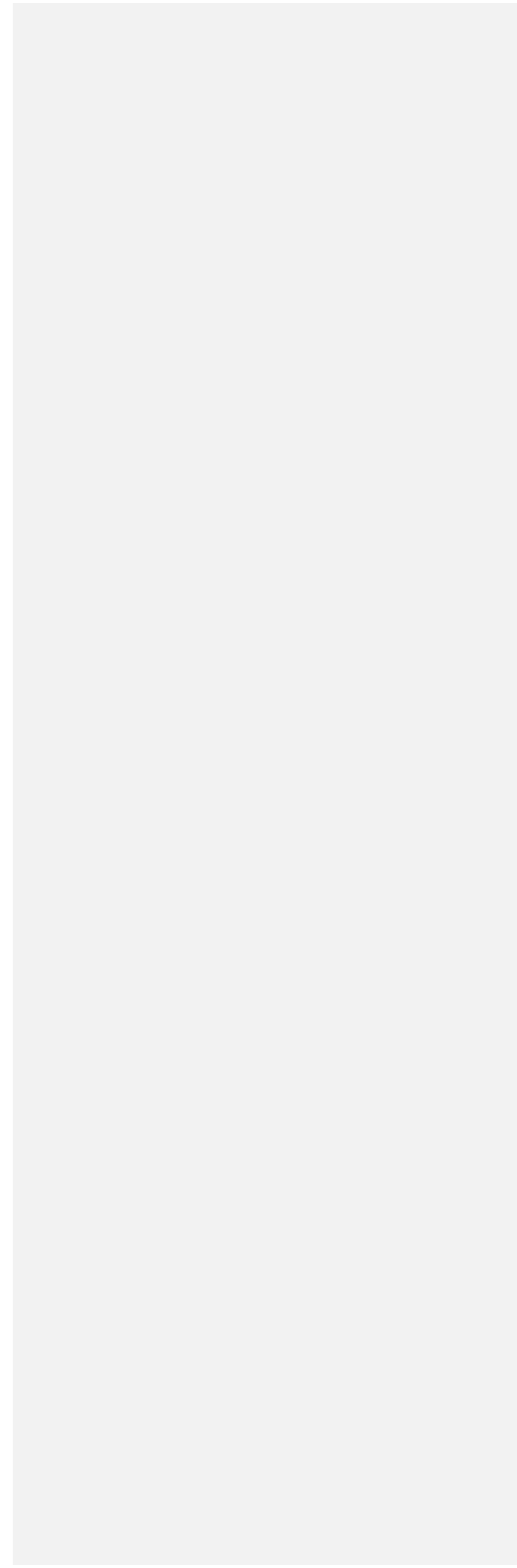


EXHIBIT A
(Plan of Easement)

