

MAINE REAL ESTATE TAX PAID

QUITCLAIM DEED WITHOUT COVENANT

**CITY OF PORTLAND**, a body corporate and politic and Maine municipal corporation ("Grantor"), FOR CONSIDERATION PAID, releases to **CHILDREN'S ODYSSEY**, a Maine nonprofit corporation having a mailing address of 110 Davis Farm Road, Portland, Maine 04103 ("Grantee"), certain real property, together with any improvements thereon, located on Libby Street and Homestead Avenue in the City of Portland, County of Cumberland and State of Maine, more particularly described on Exhibit A attached hereto and made part hereof (the "Property").

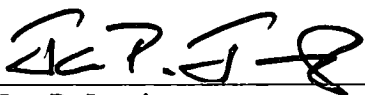
Grantee covenants and agrees by acceptance of this Deed that the Property herein conveyed is subject to the covenants and restrictions and Grantor's option to repurchase the property set forth in Exhibit B attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by Jon P. Jennings, its City Manager, duly authorized, on this 21 day of December, 2017.

WITNESS:

  
\_\_\_\_\_

**CITY OF PORTLAND**


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

STATE OF MAINE  
COUNTY OF CUMBERLAND

December 21, 2017

Personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing to be his free act and deed in his said capacity, and the free act and deed of said City of Portland.

Before me,

  
\_\_\_\_\_  
Attorney-at-Law/Notary Public  
Commission Expires: \_\_\_\_\_  
Print Name: Michael Goldman  
Per No. 9842

**Exhibit A**

**(2.51 acre Parcel and Public Access Easement)**

A certain lot or parcel of land with the buildings thereon situated between Homestead Avenue and Libby Street in the city of Portland, Cumberland County, Maine. Said parcel being comprised of two parcels acquired by the city of Portland as described in the following deeds recorded in Cumberland County Registry of Deeds book 1202, page 62 and book 1372, page 351. Said combined parcel having been recently surveyed and being more particularly bounded and described as follows:

Beginning at a 6" by 6" granite monument found with brass plug on the northwesterly sideline of said Homestead Avenue at the easterly corner of land now or formerly of Robert Elder, Jr. as described in Cumberland County Registry of Deeds book 23138, page 123;

Thence, North 44 degrees 19 minutes 05 seconds West, a distance of 200.04 feet by land of said Elder and land now or formerly of Andrew Bowman as described in Cumberland County Registry of Deeds book 21413, page 242 to a 6" by 6" granite monument found with brass plug;

Thence, North 48 degrees 07 minutes, 39 seconds West, a distance of 50.09 feet by land of said Bowman and land now or formerly of Albert and Deborah Asali as described in Cumberland County Registry of Deeds book 22727, page 19 to a 6" by 6" granite monument found with brass plug;

Thence, North 44 degrees 19 minutes 16 seconds West, a distance of 200.04 feet by land of said Asali and land now or formerly of Angel Wiggin as described in Cumberland County Registry of Deeds book 19772, page 181 to a 7" by 7" granite monument found with brass plug at the southeasterly sideline of Libby Street;

Thence, North 45 degrees 38 minutes 32 seconds East, a distance of 249.85 feet along the southeasterly sideline of said Libby Street to a 6" by 6" granite monument found with brass plug at land now or formerly of Ryan and Rachael Salamon as described in Cumberland County Registry of Deeds book 32167, page 291;

Thence, South 43 degrees 04 minutes 39 seconds East, a distance of 250.13 feet by land of said Salamon and by land now or formerly of Holly Benoit as described in Cumberland County Registry of Deeds book 32922, page 22, by land now or formerly of Lauren Greenslade as described in Cumberland County Registry of Deeds book 32298, page 272, and by land now or formerly of Jere Dewaters and Elise Scala as described in Cumberland County Registry of Deeds book 9079, page 275 to a 6" by 6" granite monument found with brass plug;

Thence, South 43 degrees 02 minutes 24 seconds East, a distance of 99.97 feet by land of said Dewater and Scala, by land now or formerly of Zoran and Biljana Mandic as described in Cumberland County Registry of Deeds book 21916, page 171, and by land now or formerly of Julia Georgieva as described in Cumberland County Registry of Deeds book 24567, page 256 to a 6" by 6" granite monument found with brass plug;

Thence, South 42 degrees 44 minutes 42 seconds East, a distance of 100.15 feet by land of said Georgieva and by land now or formerly of Stephen and Sylvia Gelinas as described in Cumberland County Registry of Deeds book 29557, page 259 to a point at the northwesterly sideline of said Homestead Avenue; Said point being situated South 45 degrees 39 minutes 32 seconds West, at a distance of 0.6 feet from a 7" by 7" concrete monument found;

Thence, South 45 degrees 39 minutes 32 seconds West, at a distance of 236.12 feet along the northwesterly sideline of said Homestead Avenue to the Point of Beginning.

Said parcel contains 2.51 acres, more or less and the bearings are referenced to Grid North of the Maine Coordinate System 1983 West Zone.

Reserving to the Grantor a Public Access Easement, subject to the terms and conditions described below, situated in the westerly corner of the parcel adjacent to Libby Street being more particularly bounded and described as follows;

Beginning at a 7" by 7" granite monument found with brass plug at the southeasterly sideline of Libby Street and the northerly corner of land now or formerly of Angel Wiggin as described in Cumberland County Registry of Deeds book 19772, page 181;

Thence, North 45 degrees 38 minutes 32 seconds East, a distance of 15.00 feet along the southeasterly sideline of said Libby Street to a point and the TRUE POINT of BEGINNING;

Thence, North 45 degrees 38 minutes 32 seconds East, a distance of 164.58 feet along the southeasterly sideline of said Libby Street to a point;

Thence, South 44 degrees 19 minute 16 seconds East, a distance of 66.92 feet to a point;

Thence, South 45 degrees 38 minutes 32 seconds West, a distance of 65.50 feet to a point;

Thence, South 44 degrees 19 minutes 16 seconds East, a distance of 46.31 feet to a point;

Thence, South 45 degrees 38 minutes 32 seconds West, a distance of 99.08 feet to a point 15 feet northeasterly of the southwesterly boundary of the subject parcel;

Thence, North 44 degrees 19 minutes 16 seconds West, a distance of 113.23 feet parallel to and 15 feet distant from the subject parcel southwesterly boundary to the Point of Beginning.

Said Public Access Easement area contains 15,602 square feet and the bearings are referenced to Grid North of the Maine Coordinate System 1983 West Zone. Subject to the terms and conditions provided below, the Public Access Easement area shall remain open space accessible to the public at all times free of any buildings other than those accessory to the open space. Any improvements with the Public Access Easement area shall be owned by Grantee, provided that, except as described below, Grantee shall not permit any condition or state within such area that would be contrary to or otherwise inhibit the open space uses of the easement area.

Said Public Access Easement is reserved solely for recreational uses (and directly related maintenance activities by the Grantee, as described below) only. Grantee agrees at its expense to

provide basic maintenance of the Public Access Easement area, limited to mowing the grass, maintaining and replacing landscaping and, on an as-needed basis, pruning tree branches and limbs in the Public Access Easement Area and to provide for the removal of reasonable amounts of trash from the Public Access Easement Area.

Grantor agrees that Grantee may impose reasonable rules and regulations for the use of the Public Access Easement area similar to those applicable to recreational properties owned by Grantor. Notwithstanding the foregoing, Grantee may by any lawful means exclude from the Public Access Easement area persons that Grantee determines in its reasonable judgment are interfering with the quiet enjoyment by Grantee, its tenants, guests or invitees of Grantee's property or with the educational activities being conducted by Grantee, its successors and assigns. Grantee may impose reasonable temporary restrictions upon the access and use of the Public Access Easement area during the construction of improvements or rehabilitation at Grantee's property.

Both parties intend that the contemplated uses of the Easement qualify for the protections and immunities afforded owners or easement holders under 14 M.R.S.A. § 159-A.

The courses and distances as herein used were derived from a Plan of Land made for Pinkham and Greer Civil Engineers dated August 2017 prepared by Maine Survey Consultants, Inc.

The parcel herein described is conveyed together with and subject to any and all easements or appurtenances of record, insofar as the same are in force and applicable.

**EXHIBIT B**

**Covenants, Restrictions, Option to Repurchase**

1. One purpose of these covenants, restrictions, and option to repurchase (the “Covenants”) is to ensure that the Grantee develops the Property in accordance with the terms and conditions of a certain Purchase and Sale Agreement dated June 20, 2017 (“Purchase & Sale Agreement”) between Grantor and Developers Collaborative Predevelopment LLC, which assigned its rights under the Purchase & Sale Agreement to Grantee by virtue of a certain Assignment & Assumption of Purchase & Sale Agreement of near or even date herewith, copies of both of which are on file with the City of Portland’s Department of Finance and incorporated herein by reference.

2. Payment In Lieu Of Property Taxes. Grantee agrees that in the event that the Property or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City of Portland in lieu of taxes in the amount that is the least of: (a) 25% of the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Property had such property remained taxable, (b) such other target percentage as may be approved as part of a city-wide PILOT policy, or (c) \$5000 annually.

3. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys’, consultants’, and experts’ fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantee or the Grantor and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Property.

4. Subject at all times to the remaining terms and conditions in this Section, if development of the Property in substantially the form described in Paragraph 14 of the Purchase & Sale Agreement is at any point abandoned or not actively pursued by Grantee for longer than six months using commercially reasonable means (such six month period is referred to herein as an “Abandonment Period”), Grantor shall have the right, but not the obligation, to repurchase the Property at Grantee’s purchase price of \$75,000.00 (the “Purchase Price”) as set forth below (such right set forth above and described below is hereinafter referred to as the “Option”). Any reconveyance under this Section shall be subject to all mortgages of record placed by Grantee in connection with the financing of the redevelopment of the Property (the “Permitted Mortgages”). Grantor agrees to enter into such agreements on reasonable commercial terms as may be requested by Grantee’s lenders and/or investors, including, without limitation, notice and cure rights.

- a. In order to exercise this Option to repurchase, Grantor must notify Grantee of its intent to do so within 30 days after an Abandonment Period. Grantee agrees that if it receives such Notice, it will reconvey to Grantor the Property within 60 days of the date of the Notice for the Purchase Price paid by Grantee to Grantor.
- b. In the event Grantor provides the Notice of its intent to exercise the option, the Notice is to be accompanied by a payment to Grantee or its successors or assigns of earnest money in the amount of One Thousand Dollars (\$1,000.00) (the "Earnest Money"). Grantor shall indicate in said Notice the date, time and place for closing, which shall be held not less than thirty (30) nor more than sixty (60) days after the giving of such Notice.
- c. If Grantor, its successors or assigns, exercises this Option to purchase the Premises, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:
  - i. Upon the giving of the Notice together with the Earnest Money, Grantee shall thereby be bound to sell and City shall thereby be bound to purchase the Premises upon the terms and conditions set forth herein. Grantee or its successors, transferees or assigns shall convey the Premises by a good and sufficient quitclaim with covenant deed granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility and public easements of record servicing the Premises and the Permitted Mortgage. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and Grantee or its successors, transferees or assigns shall then and there deliver the deed to Grantor, its successors or assigns, upon tender of the balance of the Purchase Price by certified check, cashier's check, or cash. The balance to be tendered to Grantee or its successors or assigns shall be the Purchase Price, less the Earnest Money and any other option consideration actually received by Grantee.
  - ii. If counsel for Grantor, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said Premises is defective or is otherwise not free and clear of all material encumbrances other than as set forth above or that the title is not marketable, then Grantor, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Premises, during which time Grantee or its successors, transferees or assigns shall make a reasonable effort to remove such defects at its own expense, to the satisfaction of counsel of Grantor, its successors or assigns. If record title proves defective and Grantee or its successors or assigns shall fail to remove such defect within a reasonable time after notice from Grantor of the nature of the defect, Grantor may, at its election, (a) cure any such defect and deduct the cost thereof from the

Purchase Price at closing, or (b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to Grantee or its successors or assigns, whereupon all Earnest Money paid by Grantor to Grantee or its successors or assigns shall immediately be returned to Grantor and thereafter the parties shall be relieved of all obligations and this Option shall terminate.

- iii. If all obligations of this agreement have been performed, excepting that Grantor does not complete the purchase, Grantee or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies, and whereupon this Option shall terminate.
  - iv. Full possession of the Premises, free of all encumbrances except as aforesaid, is to be delivered to Grantor at closing, with the Premises to be in the reasonably functional condition, reasonable wear and tear excepted.
  - v. Real estate taxes and utilities shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Premises shall be paid by Grantor and/or Grantee or its successors or assigns in accordance with the custom of the locality where the Premises are situated.
- d. Notwithstanding anything else to the contrary herein, upon completion of the development of the Property as described in the Purchase & Sale Agreement, the Option, including Grantor's right and option to repurchase the Property, shall terminate. Upon termination of the Option, Grantor shall execute and record an affidavit indicating that the Option, including Grantor's right and option to repurchase the Premises, has terminated. The issuance of a certificate of occupancy for the space to be used for educational purposes by Children's Odyssey shall serve as proof of such completion and upon such event Grantor's right to repurchase the Premises shall terminate.
- e. The parties hereto hereby agree that this right and option to purchase, and the Grantor's rights in the Premises thereby created, are immediately fully vested and are hereby deemed to be fully vested in any event, not contingent, and shall, by agreement, not be subject to the Rule Against Perpetuities, or any statutory enactment thereof, or similar law.
5. The covenants, restrictions, and option to repurchase herein may be amended or modified in whole or in part only by written agreement of Grantee and Grantor.
6. The Covenants set forth herein are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises.
7. Except as specifically set forth herein, the Covenants set forth herein shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises.

8. The Covenants set forth herein are enforceable by Grantor as a contract and shall inure to the benefit of and be enforceable by Grantor, its successors, and assigns.

9. The validity of any clause, part or provision of the covenants, restrictions, and option to repurchase herein shall not affect the validity of the remaining portions of thereof.

Received  
Recorded Register of Deeds  
Dec 29, 2017 10:20:50A  
Cumberland County  
Nancy A. Lane