

TRAIL EASEMENT

THIS TRAIL EASEMENT is made as of the 24th day of January, 2005 by and between BALLPARK DRIVE DEVELOPMENT, LLC, a Maine limited liability company with a place of business in Portland, Maine and a mailing address of 67 Havertys Way, Portland, Maine 04103 (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 One India Street, Portland, Maine 04101 (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor is the owner of Lot 18 shown on a plan entitled "Plan of Division of Land, The Haverty Estate Property, Ballpark Drive Subdivision" by URS Corporation, Portland, Maine, dated November 22, 2004, recorded in the Cumberland County Registry of Deeds in Plan Book 204, Page 855 (hereinafter referred to as the "Plan"), being a portion of the premises described in a deed from Mary Margaret I. Haverty to Grantor dated December 8, 2004 and recorded in the Cumberland County Registry of Deeds in Book 22100, Page 73; and

WHEREAS, in connection with obtaining the Portland Planning Board's approval of Ballpark Drive Subdivision, Grantor agreed to grant Grantee or other qualified holder a trail easement over a portion of Lot 18 as more particularly described herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, the parties hereto agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement for the purpose of constructing, maintaining, repairing, using and replacing an unpaved foot path or walking trail (hereinafter referred to as the "Trail") within that portion of Lot 18 labeled "G" on the Plan (hereinafter referred to as the "Easement Area"), together with stonewalls and/or fences delineating such foot path or walking trail, footbridges and directional signs, for use by the general public, subject to the conditions and limitations set forth herein.

2. Location; Approval of Design. The Trail shall be no more than ten (10) feet in width and, together with the improvements associated therewith, shall be located no closer than twenty (20) feet from the boundary line of Lot 9 shown on the Plan. The design of the Trail and all improvements associated therewith shall be subject to the prior review and approval of Grantor for compliance with this Easement, which approval shall not be unreasonably withheld. Provided, however, and notwithstanding anything to the contrary contained herein, Grantor reserves the right to relocate all or any portions of the Trail and associated improvements provided that all costs and expenses associated with such relocation shall be borne by Grantor. In no event, however, shall the Trail be relocated closer than twenty (20) feet from Lot 9 shown on the Plan and fifty (50) feet from the remainder of the northwest boundary line of Lot 18.

3. Approvals. Grantee shall obtain any and all necessary federal, State or local permits and approvals required in connection with the construction of the Trail at its sole cost and expense.

4. 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.

(a) Grantor reserves all other rights not inconsistent or incompatible with the rights granted herein.

(b) Grantor further reserves the right to extend Ballpark Drive and associated improvements therewith through Lot 18 in a general southeasterly direction to Lot 17 thereby eliminating any portion of the Trail and associated improvements located within that portion of the Easement Area. In such event, Grantor shall be responsible for all reasonable costs and expenses incurred by Grantee associated with the creation of a new Trail head, relocation of any Trail signs and any Trail related improvements resulting from said extension of Ballpark Drive and associated improvements. The portion of Lot 18 through which Ballpark Drive may be extended is described as follows:

Commencing at a monument located at the southeasterly corner of Ballpark Drive and thence running along the following courses and distances:

S 59° 36' 14" E a distance of 88 feet to an iron pipe;

N 30° 23' 46" E a distance of 50 feet to a point;

N 59° 36' 14" W a distance of 88 feet to a monument at the northeasterly corner of Ballpark Drive;

S 30° 23' 46" W a distance of 50 feet to the point of beginning.

(c) Grantee shall have no other rights in and to the Easement Area except as set forth herein.

5. Signs. Grantee hereby agrees to install and maintain at its sole cost and expense at least two signs, one at each end of the Trail. The signs will indicate that public access is limited to the Trail. The signs will request that users of the Trail respect abutters' privacy by staying within the Trail.

6. Duration. This 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. In the event of the termination of this Easement, Grantee shall restore the Trail to its prior natural state and shall remove all improvements associated therewith at its sole cost and expense. Notwithstanding the

foregoing, this Easement shall not terminate in the event of an unconsented to assignment thereof by Grantee to the City of Portland.

7. Indemnification. 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) resulting from the exercise of rights granted in this Easement. Liability under this paragraph shall not apply personally to any director, officer, trustee, member or employee of Grantee or to any assets of Grantee and shall apply solely to Grantee's rights to insurance proceeds for and against any of the foregoing. Grantee agrees to provide insurance coverage for construction, maintenance, repair, use and replacement of the Trail and associated improvements, which insurance shall name Grantor as an additional insured. 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 License.

8. Assignment. Grantee may not assign this Easement without the prior written consent of Grantor, which consent may be withheld in Grantor's sole and exclusive discretion, and any unconsented to assignment shall result in the automatic termination hereof. Notwithstanding the foregoing, however, Grantee shall have the right to assign this Easement to the City of Portland without the prior consent of Grantor provided Grantee provides Grantor with prior notice of such assignment.

9. Governing Law. This Easement shall be governed by the laws of the State of Maine. This Easement is intended to be a trail easement as defined under 33 M.R.S.A. §1581, et seq. Grantor, by its delivery of this Easement, and Grantee, by its acceptance hereof, acknowledge and agree that this 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 and that Grantor shall have the benefit of the terms and provisions thereof.

10. Amendment. No amendment to this Easement shall be effective unless it is in writing and signed by both parties and duly recorded in the Cumberland County Registry of Deeds.

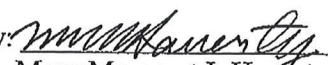
11. Declaration of Restrictions. The Easement Area is subject to the terms and provisions of a certain Declaration of Covenants and Restrictions by Grantor of even date relating to Lot 18 and recorded herewith.

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

WITNESS:



BALLPARK DRIVE DEVELOPMENT,
LLC

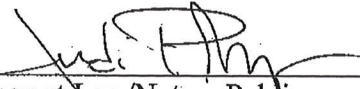
By: 
Mary Margaret I. Harty, its Chief
Executive Officer and Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

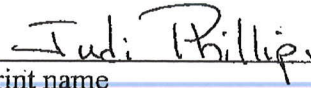
January 24, 2005

Then personally appeared the above-named Mary Margaret I. Haverty, Chief Executive Officer and Manager of Ballpark Drive Development, LLC, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said limited liability company.

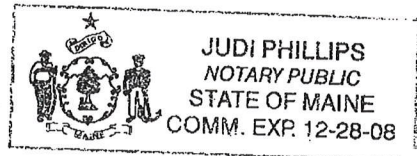
Before me,



Attorney at Law/Notary Public



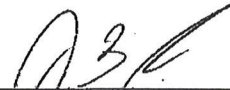
Print name



WITNESS:

PORTLAND TRAILS

Julie A. Gervais

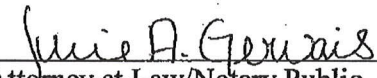
By: 
It's Jeffrey B. Sommer
President

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

FEBRUARY
January 1, 2005

Then personally appeared the above-named JEFFREY B. SOMMER,
PRESIDENT of Portland Trails; and acknowledged the foregoing instrument to be
his/~~her~~ free act and deed in his/~~her~~ said capacity and the free act and deed of said corporation.

Before me,


Attorney at Law/Notary Public

JULIE A. GERVAIS

Notary Public, Maine

My Commission Expires January 25, 2008

Received
Recorded Register of Deeds
Feb 01, 2005 01:45:13P
Cumberland County
John B O'Brien