

## TRAIL EASEMENT

THIS TRAIL EASEMENT is made as of the \_\_\_\_\_ day of April, 2016, by and between **PORTLAND HRG RETIREMENT RESIDENCE LLC**, a Washington limited liability company, with an office in Vancouver, Washington (hereinafter referred to as "Grantor") and **PORTLAND TRAILS**, a Maine non-profit corporation with a place of business in Portland, Maine (hereinafter referred to as "Grantee").

### WITNESSETH:

WHEREAS, Grantor is the owner of property on Ocean Avenue, Portland, Maine more specifically described in deed recorded in the Cumberland County Registry of Deeds in Book 32929, Page 37 (hereinafter referred to as the "Premises"); and

WHEREAS, Grantor has agreed to grant to Grantee, or other qualified holder, a trail easement over a portion of the Premises 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 within that portion of the Premises described below, together with improvements delineating such foot path or walking trail, and directional signs, for use by the general public, subject to the conditions and limitations set forth herein.
2. Location. The easement shall be over the portion of Grantor's land (which land is described in Exhibit A) which are depicted in bold lines as "Trail Easement, Typical" on Exhibit B attached hereto. No easement rights exist or are granted hereby over that portion of the trails labelled "For Residents Only" on Exhibit B. The traveled leg of the trail shall traverse the Premises extending from Ocean Avenue to connect with the existing trail system located southerly and westerly of the land described in Exhibit A and as shown on Exhibit B (hereinafter the "Trail"). The design of the Trail and all improvements associated therewith shall be subject to the prior review and approval of Grantor, and its successors, for compliance with this Easement, which approval shall not be unreasonably withheld or delayed. 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 that are located between Ocean Avenue and the R-OS portion of the site, 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.
3. Approvals. Grantor shall obtain any necessary federal, State or local permits and approvals required in connection with the construction of the Trail at its sole cost and

expense. Grantee shall cooperate to the extent by executing any application or other forms required for permits.

4. Use. The Trail shall be used solely by the general public for passive recreational uses from dawn to 10:00 p.m., limited to pedestrian and non-motorized bicycle traffic and shall exclude any and all motorized/ wheeled/track recreational vehicles of any kind. Wheelchairs or other similar non-recreational vehicles shall be permitted. Grantor reserves the right to remove nuisance persons and activities.
5. Signs. Grantor shall install and maintain Trail signs through its property, with input from Portland Trails as to content and locations.
6. Duration. This Easement is intended to be perpetual, but 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 to a successor non-profit entity with a similar mission to that of Grantee or an assignment to the City of Portland.
7. Maintenance. Grantee, and its successors, shall have the exclusive right, but not the obligation, to establish, and maintain a paved or unpaved footpath on the Trail. Grantee is further granted the exclusive right to construct, install, and maintain without limitation: a boardwalk, a footbridge, and other low-impact outdoor recreational improvements on the Trail such as steps; railings; paved or unpaved ramps; bollards; rip rap; benches; barriers to discourage use by motorized vehicles (except for motorized wheelchairs or other similar non-recreational vehicles); cairns; and minor erosion control structures. Grantee's construction and maintenance rights may be delegated or assigned to another entity. Notwithstanding the foregoing, Grantor shall be responsible for snow removal over any portion of sidewalks for that portion of the trail that is co-located with sidewalks installed by Grantor as part of its development of the remaining portion of its property. Grantee, and its successors and/or assigns, shall contribute to Grantee a one-time payment of Ten Thousand and 00/100 Dollars \$10,000.00 to be used by Grantee to fund Grantee's maintenance responsibilities for the purpose of maintaining the Trail.
8. Enforcement. Grantee is granted the right to inspect the Trail for violations of the terms of this Trail Easement, and to enforce the same by actions at law or in equity. Grantee and Grantor intend that this Trail Easement be construed liberally to carry out its recreational purposes in accordance with the laws of the State of Maine. If a court (or other decision maker chosen by mutual consent of the parties) determines that this Trail Easement has been breached by a party hereto or his/her/its assigns, agents, employees, contractors, invitees, licensees, permittees, tenants, guests, or lessees, the breaching party will reimburse the non-breaching party for any reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by such court or decision maker. Grantor is not responsible for injury to or change in the Trail originating from outside of the Trail or Grantor's abutting land, or from natural causes, such as, but not limited to, fire, flood, storm, earth movement, natural evolution of plant and animal communities, or from any prudent action taken by Grantor under emergency

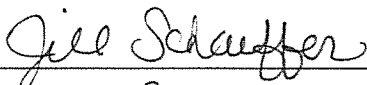
conditions to prevent, abate, or mitigate significant injury to the Trail resulting from such causes.

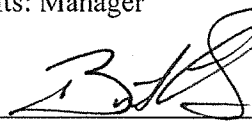
9. **Indemnification.** Portland Trails agrees to indemnify and hold harmless Grantor, its successors and assigns, from and against any loss, claim, damage, liability, expense or damage (including reasonable attorney fees) resulting from the exercise of rights granted in this Easement. Liability under this paragraph shall not apply personally to any director, officer, trustee, member or employee of Portland Trails or to any assets of Portland Trails. Portland Trails agrees to provide primary insurance coverage for public use 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 Easement.
10. **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 hereof.
11. **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.

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.

WITNESS

Portland HRG Retirement Residence LLC  
A Washington limited liability company  
By: Hawthorn Management Services Corp.  
Its: Manager

  
\_\_\_\_\_  
Jill Schaeffer

  
\_\_\_\_\_  
By: Barton G. Colson  
Its: President

STATE OF WASHINGTON  
County of Clark, ss.

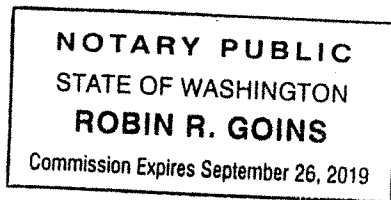
June 2nd  
April, 2016

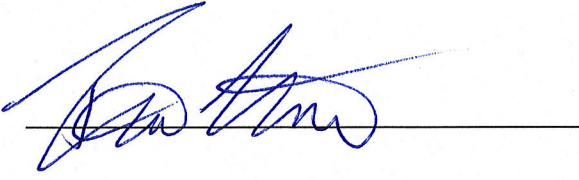
Personally appeared before me Barton G. Colson, President of Hawthorn Management Services Corp., a Washington corporation, on behalf of said corporation as Manager of Portland HRG Retirement Residence LLC, a Washington limited liability company and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited liability company.

Before me,

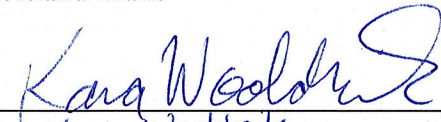
*Robin R. Goins*

Print Name: Robin R. Goins  
Notary Public for the State of Washington  
My commission expires: September 26, 2019





Portland Trails


  
By: Kara Wooldrik  
Its: Executive Director

STATE OF MAINE  
Cumberland, ss.

~~April~~ June 2<sup>nd</sup>, 2016

Personally appeared before me KARA WOODRIK, 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 Portland Trails.

Before me,

  
Notary Public

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**LILY B. HANSTEIN**  
Notary Public, Maine  
My Commission Expires February 14, 2020