

After recording return to:

Portland Parks & Recreation
Property Management
1120 SW 5th, Room 1302
Portland OR 97204

Multnomah County Official Records	2012-154807
R Weldon, Deputy Clerk	11/30/2012 01:13:33 PM
1R-EASEMT Pgs=17 Stn=21 ATESB	\$121.00
\$85.00 \$11.00 \$10.00 \$15.00	

TRAIL EASEMENT

This Trail Easement (this "Easement") is made and entered into this 30 day of November, 2012, by and between Donna Jensen; Janet L. Nollar Hatfield; Gary Beagle, Administrator of the Estate of William R. Hatfield and Senior Managing Fiduciary of Beagle, Burke and Associates of Oregon, Inc.; Ellen Leigh; Susan E. Hatfield, Julie L. Mayfield, and Harris Matarazzo, as successor Trustee of the Hatfield Irrevocable Trust ("Grantor"), and The City of Portland, an Oregon municipal government ("Holder").

RECITALS

A. Grantor is the owner of the real property commonly known as Tax Parcel 01300, Section 10BB in Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon, and legally described on Exhibit A attached hereto (the "Property").

B. Holder is an Oregon municipal government whose purpose, among other things, is to build, operate, and maintain recreational trails and pathways for the benefit of the public. Holder desires to build, operate, and maintain a recreational trail and pathway on the Property along the Columbia Slough.

C. Grantor desires to grant to Holder, and Holder desires to accept from Grantor, an easement over the Property for the purpose of allowing Holder to establish and maintain a public trail and pathway in accordance with the terms and conditions set forth below.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby dedicates, grants, covenants, and agrees as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby grants to Holder a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property (the "Easement Area"). The Easement Area runs on the top of the levee along the Columbia Slough and is more particularly described and depicted on Exhibits B-1 and B-2 attached hereto.

2. Purposes. The purposes of this Easement are to give Holder the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and pathway, which trail shall be up to 16 feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by Holder. The Trail

Recorded by TICOR TITLE 302-0052-4068W-50

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Recorded by TICOR TITLE 3026052-4068W-50

that Holder has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at Holder's discretion.

3. Construction, Repair, Maintenance.

(a) Holder may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing the following related surface and subsurface utilities and improvements (collectively, the "Trail Facilities"): (i) appropriate trail surfaces, foot bridges and associated trail structures and culverts, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public. The Trail Facilities shall be and remain the property of Holder.

(b) Holder shall be responsible for obtaining all governmental permits for construction of the Trail and Trail Facilities prior to commencing such construction and Grantor shall cooperate in good faith with Holder in obtaining any necessary construction and/or development permits. Holder shall give Grantor thirty (30) days written notice before commencing construction of the Trail and Trail Facilities.

(c) Holder shall be solely responsible for all repair and maintenance of the Trail and Trail Facilities; provided, however, that Grantor shall reimburse Holder for all sums expended by Holder to repair any damage to the Trail and Trail Facilities due to the negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

4. Permitted Trail Uses. Holder may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that Holder may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. Holder shall have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area: Grantor shall retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail by Holder or the public, or (iii) hinders or interferes with future Trail construction or repair by Holder. Without limiting the generality of the forgoing, the following activities and uses by Grantor within the Easement Area are expressly prohibited without the express written consent of the Holder:

(a) Constructing any improvements or structures, parking any vehicles, installing any paving or gravel, or storing any personal property;

(b) Blocking, obstructing, or interfering with Holder's access through the Easement Area;

(c) Excluding any persons from using the Trail, provided that such use is in accordance with the terms of this Easement, or taking any other action that unreasonably prevents or interferes with public entry onto the Trail and Trail Facilities, including without limitation imposing a fee or charge of any kind;

(d) Cutting, trimming, pruning, destroying, mowing, spraying with biocides, or removing any vegetation trees, plants, or shrubs;

(e) Planting any vegetation, including, without limitation, any trees, shrubs, grasses, or seeds of any kind;

(f) Placing or erecting any signs, billboards, or other advertising material, temporary or permanent;

(g) Dumping or storing ashes, trash, rubbish, garbage, sawdust, lawn cuttings, leaves, compost, or other material or substances;

(h) Filling, excavating, digging, dredging, mining, quarrying, removing, or disturbing the topsoil, sand, gravel, rock, minerals, or other materials;

(i) Damming, dredging, or undertaking any other activities that may be detrimental to water quality; and

(j) Taking any action that damages fish or wildlife, or their habitats; alters existing vegetation or drainage patterns, flood plains, wetlands, or the natural condition of the Easement Area; or results in erosion, siltation, or other forms of pollution.

6. Enforcement. In addition to any other remedies available at law or in equity, Holder may compel Grantor to make the Easement Area available for the purposes set forth above in Section 2 by exercising any one or more of the following remedies:

(a) Holder may seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of this Easement, or to compel restoration of the Trail or any Trail Facilities destroyed or altered as a result of Grantor's violation of this Easement; and

(b) Holder may enter the Property to remove any barrier obstructing Holder's ability to access the Easement Area or the Trail, and may take other self-help measures or actions reasonably necessary to protect and preserve the rights of Holder under this Easement.

7. Hazardous Substances. Grantor represents and warrants to the best of its knowledge that it has disclosed to Holder the results of any and all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that Holder, by accepting this grant of easement, is not accepting any liability for any release of Hazardous

Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of Holder or Holder's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor shall pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There shall be no right to contribution from Holder for such items.

9. Liability and Indemnity. The parties to this Easement acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, both Grantor and Holder are immune from liability for injuries incurred on the property by members of the public who access the Easement Area under authority of this Easement. Holder shall indemnify, defend, and hold harmless Grantor against all losses and litigation expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or omissions of Grantor. Grantor agrees to indemnify, defend, and hold harmless Holder from any loss or litigation expense arising from, related to, or associated with (a) personal injury or property damage occurring prior to the Effective Date of this Easement, (b) activities or uses engaged in by Grantor, or Grantor's contractors, agents, employees, tenants, guests, invitees, or anyone else entering the Property by, through, or under the express or implied invitation of Grantor, or (c) structures, facilities, or improvements within the Easement Area, other than the Trail Facilities installed by Holder. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

10. Notice and Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor: Donna M. Jensen
30803 SW Grahams Ferry Road
Wilsonville, OR 97070

To Holder: The City of Portland, Property Manager
Bureau of Parks and Recreation
1120 SW 5th Avenue #1302
Portland, OR 97204-1933

With a copy to: Harry Auerbach
Chief Deputy City Attorney
The City of Portland
1221 SW 4th Avenue
Portland, OR 97204

11. Title Warranty.

(a) Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated. Grantor further represents and warrants that the Property is not subject to any other liens and encumbrances except as otherwise set forth on the attached Exhibit C.

(b) The Peninsula Drainage District No. 2, a special district of the State of Oregon (the "Drainage District"), holds a public drainage easement over certain portions of the Easement Area. Such easement was recorded in the real property records of Multnomah County on December 16, 1940, as Recording Number 29607 in Book 579 page 593 and on January 9, 1979 as Recording Number 01506 in Book 1322 page 646 (the "Drainage Easements"). This Easement is subject to the terms of the Drainage Easements, which provide, among other things, that (1) the Drainage District is authorized to build and operate drainage improvements, such as levees and other flood control structures, on certain portions of the Property for the purpose of preventing and mitigating flood damage and (b) before constructing any improvements within the Drainage District's easement area, Grantor, and therefore Holder, must first obtain the Drainage District's written consent.

12. Entire Agreement. This Easement is the final and complete agreement between the parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement.

13. Further Cooperation. Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Easement.

14. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument.

15. Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns. Without limiting the forgoing, Grantor acknowledges that Holder's rights under this Easement are assignable and that Grantor hereby consents to Holder's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, Holder shall be forever released and discharged from any and all claims, demands, and damages which

Grantor may have, make, or suffer as a result of any thing done or occurring after the date of such assignment. Nothing contained in this Section, however, shall in any way be construed as releasing Holder's successors and assigns from any obligations to Grantor created by this Easement.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

HOLDER
The City of Portland

By: *Mike Abbate*
Name: MIKE ABBATE
Title: PARKS DIRECTOR

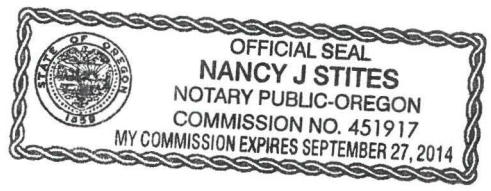
APPROVED AS TO FORM
James H. Van Dyke
CITY ATTORNEY *11/13/12*

State of OREGON

County of Multnomah

This instrument was acknowledged before me on November 19, 2012, by Mike Abbate as the director of Portland Parks, an Oregon of Recreation.

Nancy J. Stites
Notary Public - State of Oregon



GRANTOR

Donna Jensen
Donna Jensen

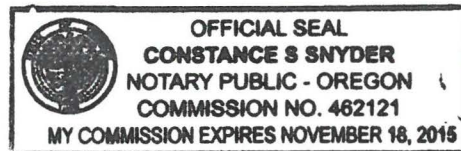
Date: 11/28/12

State of OREGON

County of Clackamas

This instrument was acknowledged before me on November 28, 2012, by
Donna Jensen.

Constance S. Snyder
Notary Public - State of Oregon



GRANTOR

Janet L. Nollar Hatfield
Janet L. Nollar Hatfield

Date: 11/28/2012

State of ^{WA} OREGON ^{TW}

County of Clatsop

This instrument was acknowledged before me on November 28, 2012, by Janet L. Nollar.

[Signature]
Notary Public - State of Oregon ^{WA TW}

NOTARY PUBLIC
STATE OF WASHINGTON
TINA L. CADY
MY COMMISSION EXPIRES
MARCH 9, 2016

GRANTOR

Estate of William R. Hatfield

By: _____

Date: _____

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 2012, by _____ of the Estate of William R. Hatfield.

Notary Public - State of Oregon

GRANTOR

Janet L. Nollar Hatfield

Date: _____

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 2012, by Janet L. Nollar.

Notary Public – State of Oregon

GRANTOR

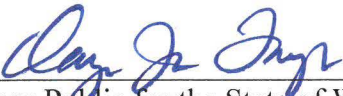


Estate of William R. Hatfield
By: Gary Beagle, Administrator and
Senior Managing Fiduciary for
Beagle, Burke and Associates of Oregon, Inc.

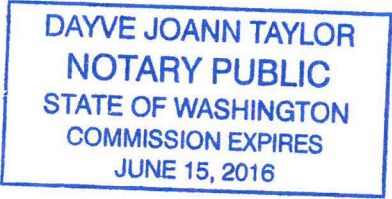
State of WASHINGTON

County of Clark

This instrument was acknowledged before me on November 28, 2012, by Gary Beagle, Administrator of the Estate of William R. Hatfield and Senior Managing Fiduciary of Beagle, Burke and Associates of Oregon, Inc.



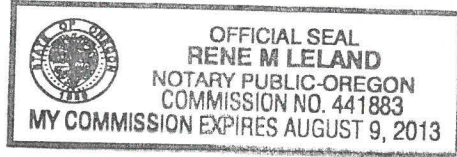
Notary Public for the State of Washington
Residing at Vancouver, Washington
My Commission Expires: 6/15/16



GRANTOR

Susan Hatfield
Susan E. Hatfield

Date: 11/14/2012^{SH}



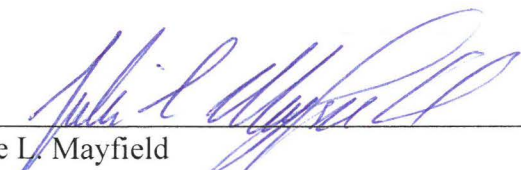
State of OREGON

County of Columbia

This instrument was acknowledged before me on 11/14, 2012, by Susan E. Hatfield.

[Signature]
Notary Public - State of Oregon

GRANTOR




Julie L. Mayfield

Date: 11/9/12

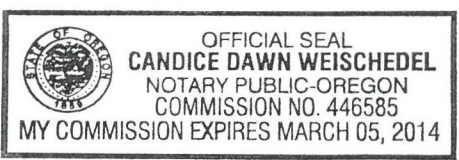
State of OREGON

County of Multnomah

This instrument was acknowledged before me on November 9, 2012, by Julie L. Mayfield.



Notary Public - State of Oregon



GRANTOR

Ellen Leigh
Ellen Leigh

Date: 11/14/12

State of OREGON

County of MULTNOMAH

This instrument was acknowledged before me on November 14, 2012, by
Ellen Leigh.

[Signature]
Notary Public - State of Oregon



GRANTOR

H. Matarazzo
Harris Matarazzo, as successor Trustee
of the Hatfield Irrevocable Trust

Date: 11/19/12

State of OREGON

County of Multnomah

This instrument was acknowledged before me on November 19, 2012, by
Harris Matarazzo, as successor Trustee of the Hatfield Irrevocable Trust

Candice Dawn Weischedel
Notary Public - State of Oregon

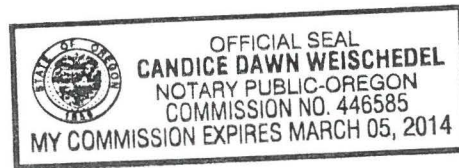


EXHIBIT A
Property Legal Description

Part of the Northwest one-quarter of Section 10, Township 1 North, Range 1 East, of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon, more particularly described as follows:

Beginning on the East line of a tract conveyed to Charles Stanis by Deed recorded in Book 1146 page 239, Deed Records, on the South line of County Road No. 1278, known as N. Schmeer Road and being North 89° 59' East, 279.7 feet and South 25 feet from the Northwest corner of the Lewis Love Donation Land Claim in said Section; thence South along the East line of the said Stanis tract, 726.58 feet to the center of Columbia Slough; thence along the center line of said Slough, North 59° West, 97 feet; thence North parallel with the East line of said Stanis tract, 219.87 feet; thence South 59° East parallel with the Columbia Slough, 30.46 feet to the Southwest corner of tract conveyed from Stanley Detz and wife to Alexander Agafodoroff and wife, by Deed recorded March 14, 1935, in Book 285 page 418, Deed Records; thence North, 472.45 feet to the South line of N. Schmeer Road; thence Easterly on said South line, 57 feet to the point of beginning.

EXHIBIT B-1
Easement Area Legal Description

A tract of land situated in the Northwest One-Quarter of Section 10, Township One North, Range One East, of the Willamette Meridian, in the County of Multnomah, State of Oregon, within that tract described as Parcel 1 of Fee No. 96-70566, Multnomah County Deed Records, more particularly described as follows:

Commencing at the point of intersection of the South line of N. Schmeer Road, County Road No. 1278-A, with the West line of the aforementioned Parcel 1; thence South $01^{\circ} 31' 21''$ West along said West line a distance of 444.81 feet to the Point of Beginning of the tract herein to be described; thence continuing South $01^{\circ} 31' 21''$ West 27.64 feet to an angle point; thence North $57^{\circ} 28' 39''$ West 30.46 feet to an angle point; thence South $01^{\circ} 31' 21''$ West 2.98 feet; thence along the arc of a 1737.50 foot radius curve to the right, through a central angle of $03^{\circ} 05' 52''$, an arc distance of 93.94 feet (the chord bears South $60^{\circ} 44' 57''$ East, 93.93 feet) to a point in the East line of the aforementioned Parcel 1; thence North $01^{\circ} 31' 21''$ East along said East line 28.60 feet; thence Northwesterly along the arc of a 1762.50 foot radius curve to the left, through a central angle of $02^{\circ} 05' 45''$, an arc distance of 64.47 feet (the chord bears North $60^{\circ} 42' 09''$ West, 64.46 feet) to the Point of Beginning.

Containing an area of 1,658 square feet, or 0.0381 acres.

EXHIBIT B-2
Depiction of Easement Area

D BRASS CAP IN MON BOX
 IE COR JOHN RANKIN D. L. C.

25' N. SCHMEER ROAD

25' COUNTY ROAD # 1278-A

SKETCH FOR LEGAL DESCRIPTION
 TAX LOT 1300, 1N1E 10BB

RECORDER'S FEE 96-70566
 PARCEL 1

1300

S. 01°31' 21" W. 444.81'

N/LINE PENINSULA DRAINAGE
 DISTRICT EASEMENT
 BOOK 578, PAGE 593

N. 01°31' 21" E.

1,658 SQ. FT. OR 0.0381 ACRES
 PERMANENT EASEMENT

27.64'

L = 64.47'

L = 93.94'

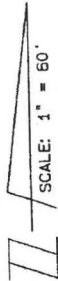
S. 01°31' 21" W.
 2.98'

30.46'
 N. 57°28' 39" W.

R = 1737.50'
 Δ = 03°05' 52"
 L = 93.94'
 C = 93.93'
 S. 60°44' 57" E.

R = 1762.50'
 Δ = 02°05' 45"
 L = 64.47'
 C = 64.46'
 N. 60°42' 09" W.

28.60'



JOB: 5332
 PLAN: 10195

EXHIBIT C
Permitted Liens and Encumbrances

Any adverse claim based upon the assertion that:

A) Some portion of said land has been brought within the boundaries thereof by an avulsive movement of the Columbia Slough or has been formed by accretion or reliction to any such portion.

B) Some portion of said property has been created by deposit of artificial fill.

And Excepting;

C) The rights of the public and governmental bodies for fishing, navigation and commerce in and to any portion of the premises herein described, lying below the high water line of the Columbia Slough.

D) The right, title and interest of the State of Oregon in and to any portion lying below the high water line of Columbia Slough

Easement, including the terms and provisions thereof,

From: Alexander Agafodoroff and Barbara Agafodoroff, husband and wife

To: Peninsula Drainage District No. 2

Recorded Date: December 16, 1940

Recording Number: 29607 in Book 579, page 593

For: drainage canal and other incidental works necessary and appurtenant to drainage

Agreement for Easement, including the terms and provisions thereof,

Between: Wineberg Properties, Inc.

And: Peninsula Drainage District No. 2

Recorded Date: January 9, 1979

Recording Number: 01506 in Book 1322, page 646