

When recorded return to:

Riley Whitcomb  
 City of Portland Parks & Recreation  
 1120 SW Fifth Avenue, Suite 1302  
 Portland, OR 97204-1933

Mail Tax Statements to:  
 No Change Requested

### COLUMBIA SLOUGH TRAIL EASEMENT

THE FAZIO GERTZ ROAD PROPERTY, LLC ("Owner") is the owner in fee simple of the real property described in the attached Exhibit A [Legal Description] ("Property") in the City of Portland, Multnomah County, Oregon. BATAVIA ZELMAN, LLC ("Tenant") is ground leasing the Property from the Owner. For the purposes of this agreement, Owner and Tenant are collectively referred to as "Grantor."

Peninsula Drainage District No. 2 ("the District") holds an easement over the area subject to this Easement ("the District Easement"). Within the District Easement, the District maintains a levee as part of a flood control system.

THE CITY OF PORTLAND ("City") is a municipal corporation in the State of Oregon. City wishes to operate a recreational trail ("the Trail") within this Easement.

1. Trail Easement. Grantor hereby grants to City for the benefit of the public a perpetual, nonexclusive easement to use a strip of land 16' wide across the Property for the Trail ("Trail Easement Area") and as more particularly described in Exhibit B. The location of the Trail Easement Area is depicted in the attached Exhibit C.
2. Purpose. The purpose of the Trail Easement is to provide public access along the Columbia Slough by creating a public path over and across the Property.
3. Scope of Public Use. The public shall have the right to use the Trail Easement Area for public access as a pedestrian/bike trail. City may enter and use the Trail Easement Area for the purpose of constructing, repairing, patrolling, and maintaining the Trail. No other uses shall be allowed.
  - 3.1 The public's right of use as set forth above constitutes the maximum rights granted to the public under this agreement.
  - 3.2 The Trail Easement Area will be open to the public for use as provided in Title 20 and in Chapter 33.272 Public Recreation Trails of the City of Portland Code, subject to any amendment of the Code the Council may from time to time enact.
  - 3.3 Grantor and the District shall together or individually have the right to restrict access to the Trail Easement Area during hours when the public does not have right of use.

4. Scope of Grantor's Use. Grantor shall retain the right to use the Trail Easement Area for all purposes consistent with the exercise by the public of the rights granted herein. No commercial activities shall be conducted in the Trail Easement Area by any party.
5. Maintenance and Repair. As provided for in Section 33.270.070, Trail Maintenance and Liability, of the Portland City Code, the City hereby agrees to assume responsibility for patrolling and maintaining the Trail within the Trail Easement Area. The City acknowledges that the Trail has been constructed in accordance with the Final Trail Design and City standards, and as such, the City hereby assumes maintenance and liability responsibilities, similar to its responsibilities for City-owned park property, for the Trail within the Trail Easement Area.
  - 5.1 The levee on which the Trail Easement is located is a flood control structure and the District maintains the levee under regulations of the U.S. Army Corps of Engineers. City acknowledges written authorization must be obtained from the District prior to any construction or repairs within the District Easement.
6. Repair of Damage to Trail. If the District's normal maintenance of the levee or flood fighting activities damage the Trail, the City shall have full responsibility for the cost of repair to the Trail.
7. Alterations and Enhancements. Grantor shall not construct any improvement in the Trail Easement Area without first obtaining the written approval of the District and Portland Parks and Recreation.
8. Hazardous Substances.
  - 8.1 Grantor represents that to the best of its knowledge the Trail Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
  - 8.2 Grantor represents that to the best of its knowledge it has disclosed all results of any report, investigations, survey, or environmental assessment regarding the Trail Easement Area. The City makes no representations or warranties concerning such reports, investigations or assessments, or any information contained therein.
  - 8.3 Grantor warrants that to the best of its knowledge there are no underground storage tanks, as defined at ORS 466.706 (20), presently on or under the Trail Easement Area.
  - 8.4 It is understood and agreed that the City, by accepting this dedication, is not accepting any liability for any release by Grantor of hazardous substances onto or from the Trail Easement Area, and that the Grantor is not attempting to convey any such liability.
  - 8.5 Grantor agrees to defend, indemnify and hold harmless the City, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) arising out of

the acts or omissions of Grantor which result in a release or threat of release of hazardous substances, as defined in ORS 465.200, onto or from the Trail Easement Area. This provision shall not apply to release of hazardous substances onto or from the Trail Easement Area either caused by the officers, agents, or employees of the City or arising from public use of the Trail.

9. Effective Date. The rights of the public under this agreement shall become effective on the last date of signature indicated below.
10. Successor Interests. This Trail Easement is appurtenant to the Property. However, in the event of any partition, subdivision or sale of any portion of the Property, this Trail Easement shall remain appurtenant to the parcel(s) across which the Trail Easement lies.
11. Duration. This Trail Easement shall remain in effect perpetually, will run with the land, and will be binding on Grantor's heirs, successors and assigns. However, it shall terminate automatically in the event that the City Council, by ordinance, declares that the Trail Easement no longer is needed for the purpose described in Section 2.0, in which case the City shall execute a recordable document evidencing such termination.
12. Encumbrances. This Trail Easement is granted subject to all prior easements or encumbrances of record.
13. Consideration. The consideration for this Trail Easement shall consist of the mutual covenants and agreements of the parties contained herein.
14. Indemnification. To the extent permitted by Oregon law, and subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.300, the City will protect, indemnify and hold Grantor and the Drainage District ("Indemnitees") harmless from and against any and all loss, claim, liability and expense, including court costs and attorney fees: (a) that arises out of the recreational use of the Trail by a member of the general public or out of the activities of the City or its contractors under the Easement; and (b) is brought by or on behalf of such member of the general public or by an officer, employee or agent of the City or its contractors; and (c) except to the extent that such, claim, liability or expense arises out of the negligence or wrongful act or omission of any of the Indemnitees or of their officers, agents, employees or contractors.
15. Signatures in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the last date of signature specified below.

GRANTOR

THE FAZIO GERTZ ROAD PROPERTY LLC

By: Jack Fazio Date June 27, 2007  
Jack Fazio, Agent

BATAVIA ZELMAN, LLC

By: Raul Casey Date July 2, 2007  
Brett Foy  
Authorized member

The City of Portland does hereby accept the above Columbia Slough Trail Easement

THE CITY OF PORTLAND

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dan Saltzman, Commissioner of Public Affairs  
Nick Fish

APPROVED AS TO FORM

By: APPROVED AS TO FORM Date 9/16/09  
Chief Deputy City Attorney

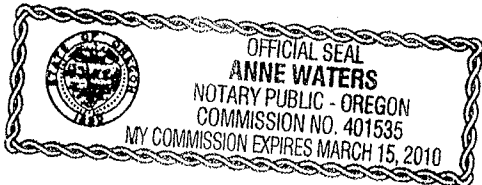
Paula Bengtson  
CITY ATTORNEY

State of Oregon )

County of Multnomah ss.

On this 27th day of June, 2007, before me Anne Waters,  
the undersigned Notary Public, personally appeared Jack Fazio, as Agent for The Fazio Gertz  
Road Property LLC, personally appeared Jack Fazio, as Agent for The Fazio Gertz  
evidence) to be the person(s) whose name is subscribed to this instrument, and acknowledged  
that he executed it.

Anne Waters  
My commission expires: 3/15/10



*See Attached AS 7/2/07*

State of Oregon )  
 )  
 ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me \_\_\_\_\_,  
the undersigned Notary Public, personally appeared Paul Casey, as Member for Batavia  
Zelman, LLC, personally known to me (or proved to be on the basis of satisfactory evidence) to  
be the person whose name is subscribed to this instrument, and acknowledged that she  
executed it.

My commission expires: \_\_\_\_\_

State of Oregon )  
 )  
 ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me \_\_\_\_\_,  
the undersigned Notary Public, personally appeared ~~Dan Saltzman~~ <sup>Nick Fish</sup>, as Commissioner of Public  
Affairs for the City of Portland, a municipal corporation, personally known to me (or proved to be  
on the basis of satisfactory evidence) to be the person whose name is subscribed to this  
instrument, and acknowledged that he executed it.

My commission expires: \_\_\_\_\_

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
County of Los Angeles } ss.

On July 2, 2007 before me, Sandra L. Garay  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Brett Foy  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~they executed the same in his/~~her~~their authorized capacity(ies), and that by his/~~her~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Sandra L. Garay  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

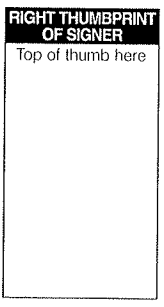
Description of Attached Document

Title or Type of Document: Columbia Slough Trail Easement  
Document Date: TBD Number of Pages: 8  
Signer(s) Other Than Named Above: Jack Fazio

Capacity(ies) Claimed by Signer

- Signer's Name: Brett Foy
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney-in-Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: Batavia Zelman, LLC



**Exhibit A**  
**Description of Real Property**

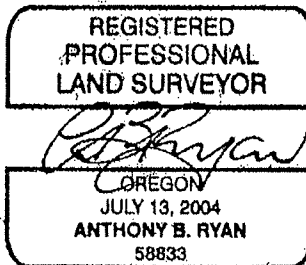
Parcel 1, PARTITION PLAT NO. 1995-166, in the City of Portland, County of Multnomah and State of Oregon.



# WEDDLE SURVEYING

Excellence is our benchmark.

1750-SW Skyline Blvd. Suite 105  
Portland, Oregon 97221  
Phone : (503) 292-8083  
Fax : (503) 292-0938  
Email : weddle@integra.net



June 20, 2007  
Job No. 4127TE

RENEWAL DATE: DEC. 31, '08

## LEGAL DESCRIPTION:

### Exhibit B

A tract of land for public recreational trail easement purposes being a portion of Parcel 1, Partition Plat No. 1995-166, a duly recorded Plat, in the Northwest 1/4 and the Southwest 1/4 of Section 11, Township 1 North, Range 1 East of the Willamette Meridian, City of Portland, County of Multnomah and State of Oregon, said easement being 16.00 feet wide, 8.00 feet on both sides of the following described centerline, to wit:

Commencing at the Northwest corner of said Parcel 1; thence along the West line thereof South 00°00'00" East, 1684.53 feet to a point which bears South 28°08'45" West, 5.11 feet from the U.S. Army Corps of Engineers centerline station 203+16.97 and the True Point of Beginning of the herein described centerline; thence along the following courses and distances: South 69°45'55" East, 525.59 feet; South 64°26'05" East, 239.37 feet; South 67°59'58" East, 188.58 feet; thence South 61°27'34" East, 92.63 feet to a point on the East line of said Parcel 1, said point bears North 25°44'59" East, 2.88 feet from the U.S. Army Corps of Engineers centerline station 192+70.92, said point being the terminus of said centerline. The sidelines of said easement shall be lengthened or shortened to intersect property lines.

The basis of bearings for this description is Partition Plat No. 1995-166, Multnomah County Plat Records.



N.E. GERTZ ROAD

Surveyor:  
Weddle Surveying, Inc.  
1750 SW Skyline Blvd.  
Suite 105  
Portland, OR 97221-2544  
Ph. (503) 292-8083  
Fax: (503) 292-0938



**EXHIBIT "C"**  
**PUBLIC RECREATIONAL TRAIL EASEMENT**  
IN PARCEL 1, PARTITION PLAT NO. 1995-166  
LOCATED IN THE NORTHWEST QUARTER AND  
THE SOUTHWEST QUARTER OF SECTION 11,  
TOWNSHIP 1 NORTH, RANGE 1 EAST,  
WILLAMETTE MERIDIAN, CITY OF PORTLAND,  
MULTNOMAH COUNTY, OREGON.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Anthony B. Ryan*  
OREGON  
JULY 13, 2004  
ANTHONY B. RYAN  
58833

RENEWAL DATE: DECEMBER 31, 2008

SCALE 1" = 200'  
DATE: JUNE 20, 2007

P.O.B.

N.W. CORNER PARCEL 1  
PARTITION PLAT NO. 1995-166

S 00°00'00"E 1684.53'

T.P.O.B.

PARCEL 1  
PARTITION PLAT 1995-166

203+16.97 5.11LT

16' WIDE TRAIL EASEMENT

S 69°45'55"E  
525.59'

S 67°59'58"E  
188.58'

S 61°27'34"E  
92.63'

PARCEL 2  
PARTITION PLAT 1995-166

S 64°26'05"E  
239.37'

192+70.92 2.88RT

PENINSULA DRAINAGE CANAL

U.S. ARMY CORPS OF  
ENGINEERS CENTERLINE

JOB NO. 4127TE

183630