

## EXHIBIT 3

### After recording, please return to:

Portland Parks & Recreation  
1120 SW 5<sup>th</sup> Ave.  
Portland, OR 97223

### TRAIL EASEMENT

A. This Trail Easement (this “Easement”) is made and entered into by and between **WPC Marine LLC** (“Grantor”), and the City of Portland, an Oregon municipal corporation, by and through its Bureau of Parks & Recreation (“City” or “Holder”), located at 1120 SW 5<sup>th</sup> Ave., Portland, OR. Grantor is the owner of the real property commonly known as Tax Parcels 300 and 400 , Township 1N, Range 1E, Section 01 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”).

1. Easement. Grantor hereby grants to City for the benefit of the public a perpetual, nonexclusive, affirmative easement to use a strip of land of variable width and 606.35 feet long across the Property for a public trail. The Easement Area is \* square feet in size and the location of the Easement Area is described on Exhibit B and depicted on Exhibit C attached and incorporated by reference ("Easement Area").
2. Purpose. The purpose of this easement is to provide public access to and along the Marine Drive Trail / 40 Mile Loop by creating a public path (“Trail”) over and across the Property, in accordance with Portland City Code 33.272.
3. Consideration. The consideration for this agreement shall consist of the mutual covenants and agreements of the parties contained herein, and the execution of this agreement as a condition of the City's approval of the Grantor's development of the Property.
4. Scope of Public Use. The public shall have the right to use the Easement Area as a public recreational trail in the same manner as a public park, in accordance with Chapter 20 of the Portland City Code, as currently enacted or hereafter amended, as well as any rules, regulations, and policies of Portland Parks and Recreation, unless specifically stated otherwise herein. Holder may permit the public to access the trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, and skating.
5. Scope of Grantor's Use. The Grantor shall have the right to use the Easement Area for all purposes consistent with the exercise by the public of the rights granted herein. Grantor has the right to restrict public access to the Easement Area during hours when the public does not have rights of use under City Code. Except as otherwise stated herein, Grantor is prohibited from engaging in, or allowing, 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 Easement Area by Holder or the public, (iii) constitutes a commercial use, or (iv) significantly alters the improvements or landscaping; without the express written consent of the Holder, which will be exercised in Holder’s sole discretion. Parks may require the Holder or third party to obtain a Non-Park Use Permit for any use that prevents the public’s use of the

Easement Area or is otherwise inconsistent with the terms herein. Holder may remove any barrier obstructing the public's access to the Easement Area.

6. Construction of Trail. Grantor shall construct, at its sole cost, the trail within the Easement Area in accordance with the plans attached hereto as Exhibit C and as approved by Portland Parks and Recreation. The trail shall be constructed to meet all City standards, codes, rules and regulations, and Grantor is responsible for obtaining all necessary permits and authorizations. Acceptance of the easement or approval of the plans by Portland Parks and Recreation shall not be construed as approval by the City's permitting authorities.
7. Maintenance and Repair. The Grantor, its successors and assigns, shall be responsible for maintenance and repair of the Easement Area as provided for in Section 33.272.070 of the Portland City Code. The Grantor shall maintain the Easement Area in a manner which is continuously safe for public pathway use.
8. Alterations and Enhancements. Grantor shall not construct any improvement in the Easement Area without first obtaining the approval of Portland Parks and Recreation and, if applicable, the City's Bureau of Development Services.
9. Hazardous Substances.
  - 9.1 Grantor represents that to the best of its knowledge the subject property is in compliance with all local, State and Federal environmental laws and regulations.
  - 9.2 Grantor represents that it has disclosed all results of any report, investigations, survey, or environmental assessment regarding the subject property. The City makes no representations or warranties concerning such reports, investigations or assessments, or any information contained therein.
  - 9.3 Grantor warrants that there are no underground storage tanks, as defined in Oregon law, presently on or under the subject property.
  - 9.4 It is understood and agreed that the Grantor, its successors, and assigns retain financial responsibility for complying with existing and future regulatory actions concerning environmental conditions of the subject property, including Oregon Department of Environmental Quality and United States Environmental Protection Agency orders and consent agreements. This provision shall not apply to a release of hazardous substances onto or from the property caused by the officers, agents or employees of the City.
  - 9.5 It is understood and agreed that the City, by accepting this easement, is not accepting any liability for any release of hazardous substances onto or from the subject property, and that the Grantor is not attempting to convey any such liability.
  - 9.6 The 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) resulting from a release or threat of release of hazardous substances, as defined in ORS 465.200 (9) in containers or in the soil,

groundwater, or soil vapor or any other medium, on or from the Easement Area. This provision shall not apply to release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of the City.

10. Effective Date. The rights of the public under this agreement shall become effective on the date this Easement is fully executed.
11. 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.
12. Indemnification. 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. The Grantor, its successors or assigns, shall hold harmless, defend and indemnify the City and its officers, agents, and employees against all claims, demands, actions and suits, including attorney's fees and costs, brought against any of them arising out of the Grantor's use, construction, or maintenance of the trail and Easement Area in a continuously safe condition for its intended use as a trail.
13. 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 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 anything 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. This Easement shall terminate automatically in the event that the City Council, by ordinance, declares that the easement no longer is needed for public use, in which case the City shall execute a recordable document evidencing such termination.
14. Encumbrances. This easement is granted subject to all prior easements or encumbrances of record.
15. Choice of law; Forum. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon, excluding its choice of law principles. Any litigation arising under this lease shall occur in the court sitting in Multnomah County having proper jurisdiction.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed the day and year first written above.

GRANTOR: WPC MARINE LLC

By: \_\_\_\_\_

Date: \_\_\_\_\_

HOLDER: THE CITY OF PORTLAND

By: \_\_\_\_\_  
Adena Long, Director

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as a Member of WPF Marine, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument is acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by Adena Long, Director of Portland Parks and Recreation.

\_\_\_\_\_  
Notary Public for (state) \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**Exhibit A**  
**Property**

All that portion of land lying South of the center line of NE Marine Drive (Road No. 1167) in the Sarah Wilson Heirs Donation Land Claim in Section 1, Township 1 North, Range 1 East, of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at a point at the intersection of the center lines of NE Marine Drive, (formerly Bridgeton Road) and NE 33rd Drive (formerly Sunderland Avenue); thence South  $3^{\circ}7.5'$  West on the center line of NE 33rd Drive, 448.05 feet; thence North  $79^{\circ}17.5'$  West 636.68 feet; thence North  $3^{\circ}15.5'$  East to the center line of NE Marine Drive, 415 feet, more or less; thence South  $86^{\circ}32'$  East along the center line of NE Marine Drive, 620 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that parcel conveyed to Multnomah County, a political subdivision of the State of Oregon, by Deed recorded June 13, 1961 in Book 2066, Page 406, Deed Records.

ALSO EXCEPTING THEREFROM any portion lying with the boundaries of NE Marine Drive and NE 33rd Drive.

**Exhibit B**  
**Easement Area Legal Description**

Legal description to be professionally prepared and provided at a later date.