

WESTFIELD PARKS & RECREATION



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DIRECTOR OF PARKS
MELODY JONES

To: Westfield Board of Public Works

From: Melody Jones

CC: Andy Cook, Bruce Hauk

Date: March 19, 2010

RE: Midland Trace Trail – Right of Entry Acceptance

Dear Board Members:

We are proceeding with the development of the Midland Trace Trail from Carey Road to Union Street this year. In order to meet our construction deadline I have been working with the property owners to secure a right of entry so that we can begin as soon as possible. I bring before you today one signed and notarized “Right of Entry” form requiring your acceptance on behalf of the City. This will leave us with two remaining properties that will not be giving us a Right of Entry.

We are continuing to get appraisals done. Some clearing has already begun. I will be able to answer any questions you might have.

Respectfully submitted

**AGREEMENT FOR RIGHT OF ENTRY AND CONSTRUCTION
OF THE MIDLAND TRACE TRAIL**

Eleanor Clark by Timothy J. Clark, Attorney-in-Fact, pursuant to a General Durable Power of Attorney executed by Eleanor Clark on February 16, 1999, and recorded in the office of the Hamilton County Recorder, on March 19, 2007, as Instrument No. 2007-015308 ("Clark") makes the following grant to the City of Westfield ("City") upon the covenants contained herein and other valuable consideration, the receipt of which is hereby acknowledged.

1. The City is engaged in the acquisition and construction of the Midland Trace Trail ("Midland") as an amenity to the citizens of the City. Clark wishes to assist in this endeavor by allowing the use of a portion of their property to allow for the necessary construction of the Midland and installation of a fiber conduit only.

2. Clark possesses and asserts ownership in property within the City of Westfield and a portion of that property is in the area upon which the City plans to construct a portion of the Trail, Clark hereby grants to the City the right to access the Trail to construct the Midland thereon and to allow public use thereon as well as the installation of fiber conduit only.

3. Clark and City agree that the Trail Property upon which entry is granted shall be used for construction and use as the Midland as evidenced by Exhibit "A", attached hereto and incorporated by reference herein. Additionally, the City may install a fiber conduit under the Trail Property. No other uses are intended or granted by the parties.

4. The parties acknowledge that this Agreement in no way prejudices the rights of either party with respect to the actual monetary damage award and procedures under the terms and provisions of Indiana Code 32-24-1 et seq.

5. The City shall hold Clark harmless from any claim or liability, including attorney fees, associated with the construction of Midland, installation of the fiber conduit and any use of the Trail Property.

6. The parties stipulate the undersigned has the authority to bind the respective parties.

7. Following the granting of this Agreement for Right of Entry, the City intends to complete its appraisal process for the property, and to make an offer to Clark pursuant to I.C. 32-24-1 et seq. If the parties cannot agree on the amount of compensation, Clark shall have the right to require that the City commence eminent domain proceedings no later than May 1,

2010. In any condemnation proceedings, the City acknowledges that Clark is the owner of the property described on Exhibit "A".

IN WITNESS WHEREOF, the Grantor has duly executed this Right of Entry and Construction, this 5th day of February, 2010.

GRANTOR

Timothy J. Clark
Eleanor Clark by Timothy J. Clark, Attorney-in-Fact

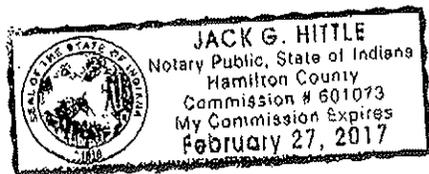
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Timothy J. Clark, Attorney-in-Fact, who having been duly sworn upon his oath, acknowledged his authority and the execution of the foregoing Right of Entry for and on behalf of the said company.

WITNESS my hand and Notary Seal this 5th day of Feb., 2010.

My Commission Expires:
February 27, 2017

Jack G. Hittle
Notary Public
Printed: Jack G. Hittle
Resident of Hamilton County,
Indiana



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in the document, unless required by law.

JACK G. HITTLE

This Instrument prepared by: Jack G. Hittle, Attorney at Law,
938 Conner Street, Noblesville, IN 46060; Tel. 317-773-2190.