

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”), by and between The Dan B. Swarouth Revocable Trust and Janet Swarouth Hart (collectively the “**Seller**”), and The City of Salem, an Oregon municipal corporation (“**Buyer**”). Buyer and Seller are each a “**Party**” and together the “**Parties.**”

### RECITALS

A. Seller is the owner of that certain real property located in Marion County, Oregon, commonly known as 681 Rees Hill Road SE in Salem, as shown on Exhibit A and more particularly described on Exhibit B (the “**Property**”). Each of the Sellers owns an equal, undivided one half interest in the Property, acquired by contemporaneous gift to the Sellers. The Sellers have not acted as a partnership, joint venture or for-profit enterprise. Each Seller’s undertakings set forth herein relate only to his or her own undivided one half interest in the property. The Property consists of approximately seventeen and forty-eight hundredths (17.48) acres.

B. Buyer desires to purchase the Property from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.

### AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Seller and Buyer agree as follows:

**1. Agreement of Purchase and Sale.** Subject to and upon the terms and conditions herein, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Property, together with all of Seller’s right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to the Property.

**2. Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is ONE MILLION FOUR HUNDRED FIFTY THOUSAND Dollars (\$1,450,000) all cash to Seller at the close of escrow.

**3. Earnest Money.** Within fourteen (14) days of the Effective Date, Buyer shall deliver to the Title Company the amount of FIFTEEN THOUSAND Dollars (\$15,000.00) (the “**Earnest Money**”) as earnest money. Should the transfer of property not occur for any reason, except those listed in Sections 4 and 5, the Earnest Money shall be fully due to Seller.

**4. Title Company and Title Report.**

(a) Title Company. On or before three (3) business days after the Effective Date, the Parties shall deposit an executed copy of this Agreement with AmeriTitle, 320 Church St. NE, in Salem, Oregon 97301 (the “**Title Company**”).

(b) Title Report. Seller has delivered to Buyer a current preliminary commitment for title insurance for the Property, issued by the Title Company, together with copies of the underlying documents (the “**Title Report**”).

## 5. Buyer's Review Period.

- (a) Contingencies. Buyer's purchase of the Property is contingent on the following:
- (i) Buyer's written approval or waiver of any and all aspects and characteristics of the Property (including, but not limited to, title encumbrances, survey matters and zoning, inspections); within thirty (30) days (the "**Review Deadline**"), after the Effective Date as herein defined; and
  - (ii) Buyer's approval of the Title Report within thirty (30) days after the Effective Date as herein defined; and
  - (iii) Buyer's written approval, satisfaction or waiver of any and all aspects and characteristics and matters of the environmental condition of the Property within thirty (30) days after the completion of environmental assessment as described in Section 6(c).
- (b) Objection and Termination. If any condition set forth in Section 5(a) above is not satisfied to Buyer's satisfaction within the Review Deadline, then Buyer may terminate this Agreement by notifying Seller on or before three (3) business days after the Review Deadline, in which event the Parties shall have no further obligations under this Agreement and the Earnest Money shall be returned to Buyer. Buyer's failure to timely terminate this Agreement pursuant to this Section 5(b) shall be deemed a waiver or satisfaction of the conditions set forth in Section 5(a) above.
- (c) Access.
- (i) From the Effective Date through the Review Deadline, Seller grants to Buyer and Buyer's agents a right of reasonable access to the Property, for the purposes of inspecting the Property pursuant to Section 5(a) above. Buyer may obtain at Buyer's expense, a Phase I and, if necessary, a Phase II environmental site assessment of the Property. With respect to any inspection or testing that is invasive or involves digging, boring or removing any portion of the Property, Buyer must first submit to Seller a written request for any such invasive testing, and Buyer may not proceed with any such invasive testing unless Seller has given written approval of Buyer's plan; and Seller's approval shall not be unreasonably withheld, conditioned or delayed. Buyer shall conduct any such invasive testing in strict accordance with the plan approved by Seller. Seller will be entitled to have a representative present at all times during any inspection or testing on the Property. Buyer shall pay when due all costs and expenses of Buyer's inspections, tests and studies of the Property, including any repair costs necessitated by Buyer's inspections or testing, regardless of whether the Closing of the purchase and sale of the Property occurs. Buyer shall also return the Property to pre-testing conditions after any testing. Buyer agrees to provide Seller with a true and complete copy of all environmental studies, tests, and reports that Buyer obtains in connection with its inspection of the Property.
  - (ii) *Indemnification.* Buyer shall protect, defend, indemnify and hold Seller and Seller's agents and employees harmless for, from and against any claims, liabilities, damages, liens, attorneys' fees, penalties, demands, causes of actions and suits of any nature whatsoever which are the proximate result of the entry onto the Property by Buyer, its agents, employees, representatives or contractors. This indemnity obligation shall survive the Closing or the termination of this Agreement, as applicable.

## 6. Buyer's Conditions to Close.

- (a) Seller shall have timely performed, in all material respects, all of the obligations required to be performed by Seller by the terms of this Agreement, including delivery of all of the items required to be delivered by Seller pursuant to this Agreement; and
- (b) Buyer shall have obtained a commitment from the Title Company to issue the Title Insurance Policy.
- (c) Buyer may initiate a Phase I and a Phase II Environmental Assessment of the Premises. If either Phase I or Phase II results indicate environmental liability issues that are unacceptable to Buyer, then Buyer may, on written notice to Seller, terminate this Agreement and it shall be null and void for all purposes, and all of Buyer's Earnest Money shall be returned to Buyer. If such written notice to terminate is not given to Seller on or before three business days after the Review Deadline, this condition shall be deemed waived by Buyer for all purposes.
- (d) Lessee(s) or Tenant(s) of the Duplex (as defined in Section 7(c) and 7(d)), shall have vacated the Duplex, and the Property shall be free and clear of any leasehold interest. However, should Buyer agree to a new lease with Lessee(s) or Tenant(s) as described in Section 7(d), Lessee(s) or Tenant(s) shall be permitted to occupy the Duplex at Closing.

## 7. Seller's Conditions to Close. The following are conditions precedent to Seller's obligations to consummate the transaction described herein:

- (a) Buyer shall have timely performed, in all material respects, all of the obligations required to be performed by Buyer by the terms of this Agreement, including delivery of all of the items required to be delivered by Buyer pursuant to this Agreement; and
- (b) At no cost to Seller, Buyer shall grant to Seller a non-exclusive access easement (the "**Access Easement**") for the benefit of adjacent property located at 671 Rees Hill Road SE, Salem, OR 97306 (Tax Lot 083W22C00401) (the "**Dominant Estate**") generally encumbering the area of the existing driveway to the Dominant Estate and, if necessary, a utility easement (the "**Utility Easement**") for any utility services that serve the Dominant Estate through the Property. The Access Easement and Utility Easement shall automatically be extinguished upon: 1) Development of the Property or the completion of road improvements as a result of the extension of Lone Oak Road SE to Rees Hill Drive SE; and 2) The grant of an alternative easement which the Seller does hereby agree to grant, providing comparable driveway access and utility connection to any extension of Lone Oak Road SE. The cost of access and utility improvements to connect the Dominant Estate to either Rees Hill Road SE or Lone Oak Road SE shall be the sole expense of Seller or the then-owner of record of the Dominant Estate. Should the Easements require a defined survey and/or legal description, Buyer and Seller agree to split the cost of said survey and/or legal description evenly. If necessary, Buyer shall complete the survey work and Seller agrees to provide a credit at Closing for its share of the cost of the survey/legal description. The Easements granted by the provision shall be described in and granted by a separate document to be recorded at Closing, similar in form to that shown on Exhibit C.
- (c) Buyer acknowledges that the existing residential duplex building (Duplex) on the Property is served by water from a well on the Dominant Estate. Buyer agrees that said water service will be used solely to serve the Duplex until it is vacated and for no other purpose. Once the Duplex is vacated, either at Closing or at termination of the lease described in Section 7(d), water service to the Property shall no longer be served by the well on the Dominant Estate.

(d) Buyer shall take title at closing subject to existing tenancies in the Duplex. Buyer acknowledges that an existing tenant (Tenant) of the Duplex desires to enter into a lease (Lease) to remain on the Property. Buyer agrees to negotiate with Tenant regarding a potential Lease; however, neither Buyer, Seller, nor Tenant shall be required to complete a Lease. The Lease shall in no way be a requirement or condition of this Agreement or condition of Closing, and no tenant of the duplex shall be considered a third party beneficiary of the Agreement.

(e) The parties shall provide an instruction to the Escrow Company that the net sale proceeds shall be distributed equally between the two Sellers, one half to the order of an authorized representative of the Dan B. Swarthout Revocable Trust and one half to the order of Janet Swarthout Hart.

(f) The Buyer shall cooperate with and accommodate the election of either of the Sellers to elect a like-kind exchange under 1031 of the Internal Revenue Code with respect to the sale proceeds.

**8. Closing.** So long as all conditions precedent to closing set forth herein have then been satisfied or waived in accordance herewith, the closing of the purchase and sale of the Property (“**Closing**”) under this Agreement shall take place as soon as possible, but no later than Ninety (90) days from the Effective Date, unless mutually agreed upon by the Parties.

The date on which Closing occurs is the “**Closing Date.**”

**9. Conveyance of Property.** At Closing, Seller shall convey the Property to Buyer by a statutory special warranty deed (the “**Deed**”) conveying fee simple title in Buyer, subject only to the encumbrances noted in the Title Report.

**10. Closing Costs and Taxes.** Seller shall pay one-half of any closing fees, including escrow fees. Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees, including escrow fees, shall be paid by Buyer. Any property taxes paid by Seller shall be prorated as of the Closing Date, and Buyer shall be responsible for any additional or deferred taxes that may result from this sale or Buyer’s use of the Property. Each party shall pay its own attorney fees, consultant fees and costs, and other expenses solely incurred by that Party.

**11. Buyer’s Closing Deliveries.** On or before the Closing Date, Buyer shall deliver the following:

(a) to the Title Company:

- (i) all documents required to be executed in connection with this Agreement; and
- (ii) immediately available funds in the amount of the Purchase Price minus the Earnest Money, and the amount of all Closing costs and other expenses to be paid by Buyer at Closing pursuant to Section 10, above.

(b) to the Escrow Company:

- (i) immediately available funds in the Escrow Amount; and
- (ii) the Escrow Agreement, executed by Buyer.

**12. Seller's Closing Deliveries.** On or before the Closing Date, Seller shall deliver the following:

- (a) to the Title Company:
  - (i) the executed and acknowledged Deed; and
  - (ii) immediately available funds in the amount of all Closing costs and expenses to be paid by Seller at Closing pursuant to Section 10, above.
- (b) to the Escrow Company, the Escrow Agreement, executed by Seller.

**13. Representations and Warranties.**

(a) Parties' Representations and Warranties. Each Party makes the following representations and warranties which are true on the date hereof and shall be true on the Closing Date as if made on such date:

- (i) *Power and Authority.* The Party is duly organized and existing under the laws of Oregon, and has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The Party has taken all action necessary to authorize the execution, delivery and performance of this Agreement. The performance by the Party of its obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, document or instrument to which the Party is a party or by which it is bound or affected. All proceedings required to be taken by or on behalf of the Party to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.
  - (ii) *Validity of Agreement.* This Agreement and all other documents required by this Agreement to be executed by Party shall constitute, when so executed, the valid and binding obligation of the Party thereto, enforceable against it in accordance with their respective terms.
- (b) Survival. All representations and warranties made by the Parties hereunder shall survive Closing.

**14. Purchase AS-IS; No Representations by Seller.**

(a) Buyer understands, acknowledges and agrees that Buyer is buying Property "AS-IS" and "WHERE-IS," with all faults and without any representations or warranties, express, implied or statutory, of any kind whatsoever (including, without limitation, any representations or warranties regarding environmental matters), by Seller, its agents, brokers, consultants, counsel, employees, managers or any other person, except those expressly set forth in this Agreement.

(b) The Parties acknowledge that the closing of the sale of the Property is conditioned upon Buyer's inspection of the Property, to Buyer's satisfaction, as provided in Section 5, above. Buyer shall have the opportunity, prior to closing, to fully inspect, investigate and complete all due diligence relating to the Property.

(c) Buyer acknowledges each of the Sellers owns an equal, undivided one half interest in the Property and that the Sellers have not acted as a partnership, joint venture or for-profit enterprise and that each Seller's undertakings set forth herein relate only to his or her own undivided one half interest in the property

**15. Attorneys' Fees.** In the event of any arbitration or litigation between the parties to declare or enforce any provision of this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties, in addition to any other recovery and costs, reasonable attorneys' fees incurred in such action in arbitration, trial and all appellate courts.

**16. Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**17. Defaults and Failure to Close**

(a) Default by the Seller. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Seller, the Buyer shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(b) Default by the Buyer. If the close of escrow and the consummation of this transaction herein contemplated does not occur by reason of any default by Buyer, the Seller shall be entitled to all available legal and equitable remedies, including the remedy of specific performance and the right to recover all its out-of-pocket expenses incurred in connection with the transaction.

(c) Cancellation Charges. If this Agreement is terminated because of the Seller's default, the Seller will bear any cancellation charges required to be paid to the Title Company. If this escrow terminates because of the Buyer's default, the Buyer will bear any cancellation charges required to be paid to the Title Company. Otherwise, the Parties shall each pay one-half of any required cancellation charges.

**18. Notices.**

(a) Addresses. An "Address" means the address set forth beneath a Party's signature on this Agreement. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 18(b) below to the other Party's Address, unless one Party modifies its Address by notice to the other Party, given in accordance with Section 18(b) below.

(b) Delivery.

<b>Method of delivery</b>	<b>When notice deemed delivered</b>
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

**19. Miscellaneous.**

(a) Time is of the Essence; Calculation of Days. Time is of the essence in relation to the Parties' performance of any and all of their obligations under this Agreement. Any reference in this Agreement to "days" shall mean calendar days, unless specified as "business days." A business day is any day that is not a Saturday, Sunday or a federal or state of Oregon holiday.

(b) Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. The Parties have no understandings, agreements or representations, oral or written, regarding this Agreement that are not specified herein.

(c) Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

(d) No Waiver of Performance. No waiver by a Party of performance of any provision of this Agreement by the other Party shall be deemed a waiver of nor prejudice the other Party's right to otherwise require performance of the same provision, or any other provision.

(e) Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

(f) Counterparts. This Agreement and any amendments hereto may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

(g) Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim between Seller and Buyer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon. Each Party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue and waives any claim that such forum is an inconvenient forum.

(h) No Presumption against Drafter. No inference, presumption or conclusion shall be drawn against either Party by virtue of that Party having drafted this Agreement or any portion thereof.

(i) Brokers. Seller and Buyer warrant to each other that neither Buyer nor Seller is represented by a broker. Seller agrees that Buyer is not subject to any commission fee or payment, and Seller will agree to indemnify and hold Buyer harmless therefrom such fee or commission as a part of this Agreement and transaction.

(j) Exhibits. The Exhibit listed below is incorporated as part of this Agreement:

- Exhibit A: Site Map
- Exhibit B: Legal Description

Each person signing this Agreement below on behalf of a Party represents and warrants that he or she is duly authorized by such Party and has legal capacity to do so.

**SELLER:**

Dan B. Swarthout Revocable Trust

By: \_\_\_\_\_  
Name: Dan B. Swarthout  
Its: Trustee  
Date: \_\_\_\_\_

Address: 19828 Kenzie Ave.  
City, State, ZIP: Bend, OR 97702  
ATTN: Dan B. Swarthout, Trustee

**SELLER:**

Janet Swarthout Hart

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

Address: 1902 North 41<sup>st</sup> St.  
City, State, ZIP: Seattle, WA 98103  
ATTN: Janet Swarthout Hart

**BUYER:**

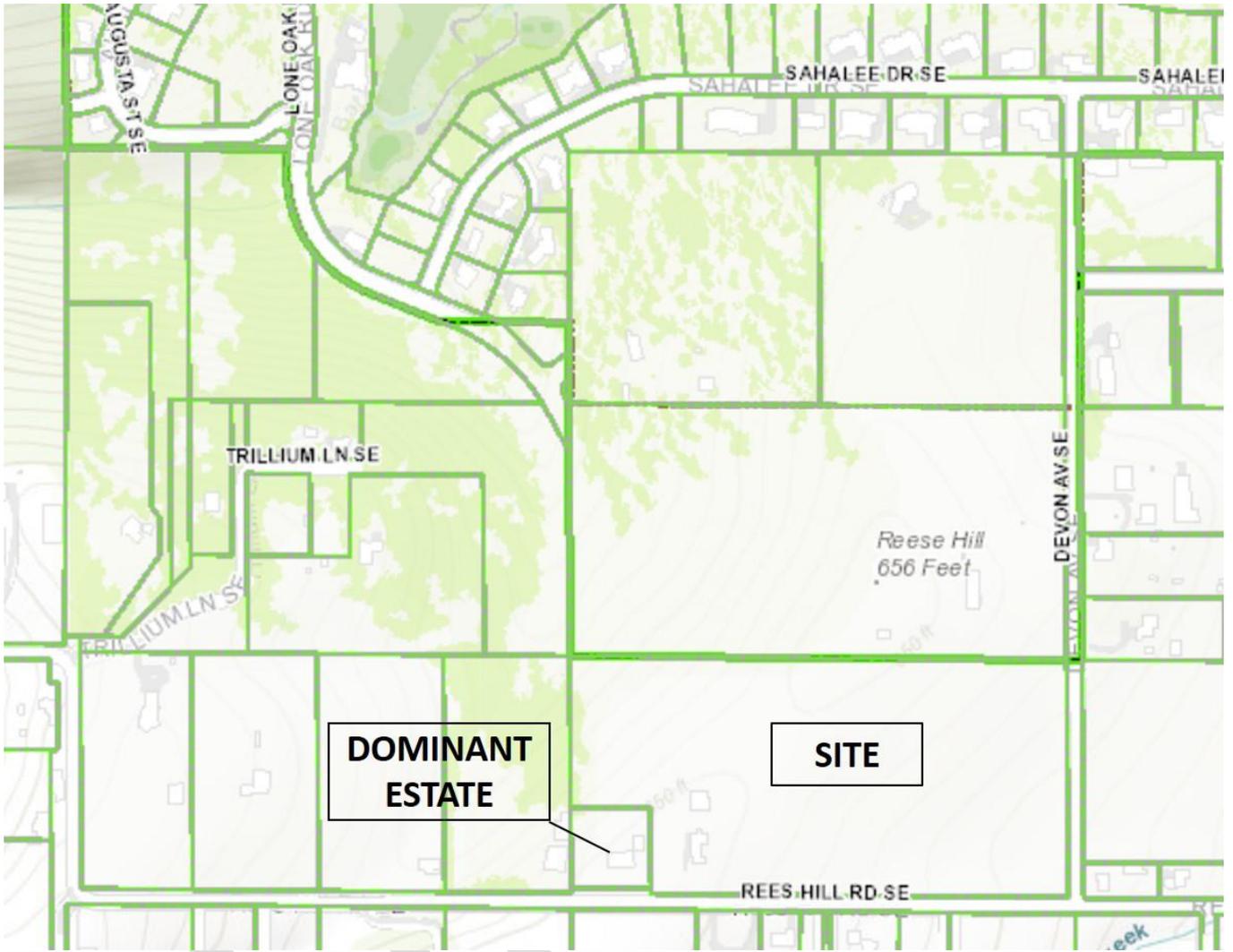
The City of Salem, an Oregon municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

Address: 350 Commercial St. NE  
City, State, ZIP: Salem, OR 97301  
ATTN: Clint Dameron

**EXHIBIT A**  
**Site Map**



**EXHIBIT B**  
**Legal Description**

P.P. 1994-106, Parcel 1

## EXHIBIT C

**After recording, return to:**

City Recorder, City of Salem  
555 Liberty Street SE, Room 205  
Salem OR 97301-3513

**Send tax statements to:**

Dan B. Swarthout Revocable Trust  
Janet Swarthout  
19828 Kenzie Avenue  
Bend, OR 97702

### REVOCABLE PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that The City of Salem, an Oregon municipal corporation (Grantor), 350 Commercial Street NE, Salem, OR 97301, for the consideration of no money, but for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do forever grant unto the Dan B. Swarthout Revocable Trust and Janet Swarthout, (collectively the "Grantee"), 19828 Kenzie Avenue, Bend, Oregon 97702, a revocable easement over and along the full width and length of the premises described as follows, to-wit:

See Exhibit A attached and as shown on Exhibit B attached (Easement Area).

TO HAVE AND TO HOLD the above-described revocable easement unto Grantee until revoked by Grantor and for the use and benefit of public utility companies furnishing electric power, natural gas, communication, and cable television service in accordance with the conditions and covenants as follows:

1. **Revocable Easement.** The revocable easement shall include the right, privilege, and authority of Grantee and such public utilities to:
  - A. Maintain, repair, replace, and remove underground sanitary sewer, storm drain, or water pipelines; electric power, transmission, and supply cables; natural gas pipelines; and cable television and communication lines and make excavations therefor from time to time, in, under, and through the above-described premises, together with all appurtenances incident to or necessary for the above described facilities, including but not limited to aboveground valve or junction boxes, fire hydrants, and manholes.
  - B. Authorize third parties to access and use the Easement Area for the purpose of connecting to the City or public utility-owned facilities located thereon.
  - C. Upon written approval from Grantor, remove from the Easement Area any vegetation, buildings, structures, fences, fill, or other materials or obstructions, or appurtenances attached to or connected therewith, for any reason; and
  - D. The right of ingress and egress in, under, over, across, and through the Easement Area at any and all times for any purpose. Grantor shall at all times upon reasonable notice from Grantee remove any surface obstructions or open gates which would otherwise prevent ingress or egress by Grantee. Grantor shall not be responsible for costs associated with

the removal or replacement of surface obstructions placed in the Easement Area by the Grantee.

E. Grantor shall provide Grantee six (6) months' notice prior to revocation of the easement. No such revocation shall be effective until a written instrument setting forth its terms has been executed by the City and recorded in the real property records of Marion County, Oregon. Grantor may only revoke easement should one of two events occur: 1) commencement of development of Grantor's property (identified as Tax Lot 083W22C00400), or 2) commencement of construction of the Lone Oak Road SE extension on Grantor's property.

2. **Prohibited Activities.** The Grantee is prohibited from engaging in any activity within the Easement Area, or use of the Easement Area, or allowing another to engage in or use the Easement Area, in any manner inconsistent with the purposes of this Easement or detrimental to the Grantee's use of the Easement, including but not limited to:

A. Excavation or the placement of fill or material that would serve as an embankment in the Easement Area without the prior express written consent of Grantor.

B. Placing, installing, or constructing any buildings, structures, fences, fill, plantings, or other materials or obstructions without the prior express written consent of Grantor.

Should such written consent be given, Grantor will set forth the conditions under which such activity may take place, including a stipulation that all risks of damage to the pipeline shall be assumed by Grantee, its successors, or assigns.

3. **Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, its heirs, and assigns, from claims for injury to person or property as a result of the negligence of Grantee, its agents, or employees in the use of the revocable easement, unless caused by Grantor's negligent or willful conduct or Grantor's failure to fulfill any duty owed to another.

4. **Restoration.** Grantee, upon the initial construction and upon each and every occasion that the easement is used, shall restore the premises of Grantor, and any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of pavements, gravel areas, topsoil, and lawn.

5. **Hazardous Substances.** Grantor assumes no liability for any hazardous waste on or from this Property. Grantee, its successors and assigns, shall indemnify and hold harmless the Grantor, its officers, employees, and agents against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Easement Area, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Easement Area caused by the officers, employees, or agents of Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any



Exhibit A

TBD

Exhibit B

TBD

**After recording, return to:**

City Recorder, City of Salem  
555 Liberty Street SE, Room 205  
Salem OR 97301-3513

**Send tax statements to:**

Dan B. Swarthout Revocable Trust  
Janet Swarthout  
19828 Kenzie Avenue  
Bend, OR 97702

**REVOCABLE ACCESS AND MAINTENANCE EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that The City of Salem, an Oregon municipal corporation (Grantor), 350 Commercial Street NE, Salem, OR 97301, for the consideration of no money, but for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do forever grant unto the Dan B. Swarthout Revocable Trust and Janet Swarthout, (collectively the "Grantee"), 19828 Kenzie Avenue, Bend, Oregon 97702, a revocable easement over and along the full width and length of the premises described as follows, to-wit:

See Exhibit A attached and as shown on Exhibit B attached ("Easement Area").

TO HAVE AND TO HOLD the above-described revocable easement unto Grantee in accordance with the conditions and covenants as follows:

**1. Revocable Easement.** The revocable easement shall include the right to Grantee, its employees, contractors, and agents to pedestrian and vehicular ingress and egress over said above-described premises at any and all times for the purpose of accessing the property generally known as 671 Rees Hill Road SE, Salem, OR 97306 (Tax Lot 083W22C00401) until revoked by Grantor. Grantor shall provide Grantee six (6) months' notice prior to revocation of the easement. Grantor may only revoke easement should one of two events occur: 1) commencement of development of Grantor's property (identified as Tax Lot 083W22C00400), or 2) commencement of construction of the Lone Oak Road SE extension on Grantor's property. No such revocation shall be effective until a written instrument setting forth its terms has been executed by the City and recorded in the real property records of Marion County, Oregon.

**2. Indemnification.** To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee will indemnify and hold harmless Grantor, its heirs, and assigns, from claims for injury to person or property as a result of the negligence of Grantee, its agents, or employees in the use of the revocable easement, unless caused by Grantor's negligent or willful conduct or Grantor's failure to fulfill any duty owed to another.

**3. Restoration.** Grantee, upon the initial construction and upon each and every occasion that the easement is used, shall restore the premises of Grantor, and any improvements

disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of pavements, gravel areas, topsoil, and lawn.

**4. Hazardous Substances.** Grantor assumes no liability for any hazardous waste on or from this Property. Grantee, its successors and assigns, shall indemnify and hold harmless the Grantor, its officers, employees, and agents against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Easement Area, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Easement Area caused by the officers, employees, or agents of Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability. "Hazardous waste" has the same meaning as provided in Oregon Revised Statutes 466.005(7).

**5. No Waiver or Abandonment of Grantee's Rights.** Failure of Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. No delay by or failure of Grantee to exercise its rights under this Easement shall be construed as abandonment of the Easement by Grantee.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF SALEM

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

Grantor

\_\_\_\_\_  
Title

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public—State of Oregon  
My commission expires: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Print Name

Checked By: \_\_\_\_\_  
Project Number: 717415  
November 4, 2019

Exhibit A

TBD

Exhibit B

TBD