

After recording, return to:

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

Send tax statements to:

City of Salem
 Attn: Real Property Services Manager
 350 Commercial Street NE
 Salem, OR 97301

Revocable Access and Maintenance Easement

KNOW ALL MEN BY THESE PRESENTS, that the Barfknecht Revocable Living Trust (Grantor), 1508 Wallace Road NW, Salem, OR 97304, 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 City of Salem, an Oregon municipal corporation (Grantee), 350 Commercial Street NE, Salem, OR 97301, 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 between the hours of 7:00 a.m. and 6:00 p.m. weekdays, except in the case of emergency, for the purpose of accessing the property generally known as **TBD**, Salem, OR 97304 (Tax Lot **TBD**) until revoked by Grantor. Grantor shall provide Grantee ninety (90) days’ notice prior to revocation of the easement. Grantor may only revoke easement should the following event occur: Marine Drive NW is constructed and completed in manner such that Grantee can access its property. No such revocation shall be effective until a written instrument setting forth its terms has been executed by Grantor, accepted by Grantee, and recorded in the real property records of Polk 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.

Exhibit A

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Exhibit B

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