

**After recording, return to:**

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

**Send tax statements to:**

Barfknecht Revocable Living Trust  
Leroy E. Barfknecht  
1508 Wallace Road NW  
Salem, OR 97304

## 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 Barfknecht Revocable Living (the "Grantee"), 1508 Wallace Road NW, Salem, Oregon 97304, 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 a private water well and related electric power in accordance with the conditions and covenants as follows:

1. **Revocable Easement.** The revocable easement shall include the right, privilege, and authority of Grantee to:
  - A. Maintain, repair, replace, and remove the existing water well, water pipelines, and related electric power; 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, limited to below ground water well, aboveground valve or junction boxes, manholes, and any other infrastructure related to water well. Water supplied from the well shall only be used to serve the existing single family residence at 1508 Wallace Road NW (tax lot 073W1501800) and shall not be used for any other purpose.
  - B. Authorize third parties to access and use the Easement Area for the purposes described in Section 1(A).

- 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 ninety (90) days' 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 Grantor and recorded in the real property records of Polk County, Oregon. Grantor may only revoke easement should one of two events occur: 1) removal/demolition of the existing single family home at 1508 Wallace Road NW, or 2) development or redevelopment of Grantee'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 defenses to liability. "Hazardous waste" has the same meaning as provided in Oregon Revised Statutes 466.005(7).
6. **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: 711503

May 21, 2020

Exhibit A  
(to be replaced with formal exhibit)



-  Larger Parcel (Barfknecht Property)
-  Servient Estate
-  Dominant Estate

DRAFT

Exhibit B

TBD

DRAFT