

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is entered into as of this 31st day of May, 2020 (the “**Effective Date**”), by and between Barfknecht Revocable Living Trust (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 Polk County, Oregon, commonly known as 1508 Wallace Road NW, as shown on Exhibit A and more particularly described on Exhibit B (the “**Larger Parcel**”). The Larger Parcel consists of approximately six and eighteen hundredths (6.18) acres.

B. Buyer desires to purchase multiple portions of the Larger Parcel (the “**Property**”) from Seller, and Seller wishes to sell the Property to Buyer, on the terms and conditions contained herein.

C. Seller shall sell and Buyer shall purchase the Property as two separate areas identified as the “**Easement Area**” and the “**Fee Area**” (Exhibit C).

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: 1) the Fee Area, together with all of Seller’s right, title and interest in and to any rights licenses, privileges, reversions and easements appurtenant to the Property except those rights and easements granted in Sec. 7 and substantially similar in form as shown in Exhibit D and 2) the Easement Area, via a permanent easement (the “**Permanent Easement**”) a permanent and exclusive easement over, substantially similar in form to that shown in Exhibit E, and across the Easement Area for all purposes including later converting said Easement Property to fee title ownership by the Buyer for locating the future extension of Marine Drive Road as shown on Exhibit C. The Buyer retains the option to convert the Easement Area to fee title for ONE Dollar (\$1) when the property can lawfully be transferred to the Buyer. This Easement Area shall be free and clear of any other claims by Seller to any right, title, or interest in the Easement Area.

2. **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is THREE HUNDRED THOUSAND Dollars (\$300,000) all cash to Seller at the close of escrow.

3. **Earnest Money.** Within thirty (30) 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) Seller agrees to execute a non-exclusive access easement (the "**Access Easement**") to Buyer for access to the Property from Wallace Road NW substantially similar in form shown in Exhibit F.

(e) Seller agrees to work cooperatively and in a timely fashion with Buyer to complete land use and survey work for creation of Fee Area and Easement Area as described in Section 7(d).

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 an exclusive utility easement (the “**Utility Easement**”) for the benefit of Seller’s remainder property located at 1508 Wallace Road NW, Polk County, OR 97304 (the “**Dominant Estate**”) for any utility services that serve the Dominant Estate through the Property (the “**Servient Estate**”), substantially similar in form shown in Exhibit G. The Utility Easement shall automatically be extinguished upon: 1) removal of the existing single family home or 2) development of the Dominant Estate. The cost of utility repair or improvements to connect the Dominant Estate shall be the sole expense of Seller or the then-owner of record of the Dominant Estate.

(c) Buyer acknowledges that the existing residential building on the Dominant Estate is served by water from a well on the Servient Estate. Buyer agrees that said water service will be used solely to serve the Dominant Estate until it the right is extinguished as described in Section 7(b) and for no other purpose. Once the Utility Easement is extinguished as described in Section 7(b) or any other mutually agreed upon means, water service to the Dominant Estate shall no longer be served by the well on the Servient Estate.

(d) Buyer shall complete at its sole cost, all survey and land use requirements to sub-divide the Larger Parcel and create the Fee Area and Easement Area for transfer.

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 sixty (60) days from completion of land use and creation of legal lot (Fee Area) and Easement Area, 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 Fee Area 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 and convey the Easement Area by a permanent easement (the “**Permanent Easement**”).

10. Closing Costs and Taxes. Seller shall pay one-half, of any closing fees, including escrow fees up to a maximum of One Thousand Five Hundred dollars (\$1,500). Recording Fees, transfer taxes and assessments, deed stamps and one-half of any closing fees (and any additional amount exceeding Seller’s maximum contribution as stated above), 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) the Utility Easement and 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.

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, Permanent Easement, Access Easement, and all documents required to be executed in connection with this Agreement; 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.
- (c) 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.

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.

Method of delivery	When notice deemed delivered
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:	Larger Parcel
Exhibit B:	Larger Parcel Legal Description
Exhibit C:	Easement Area and Fee Area
Exhibit D:	Deed Form
Exhibit E:	Permanent Easement (Street and Roadway)
Exhibit F:	Access Easement
Exhibit G:	Utility Easement

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:


Barfknecht Revocable Living Trust

By: 
Name: Leroy E. Barfknecht
Its: Trustee ^{2B}
Date: 5/28/20

Address: 1508 Wallace Road NW
City, State, ZIP: Salem, OR 97304
ATTN: Leroy E. Barfknecht, Trustee

BUYER:

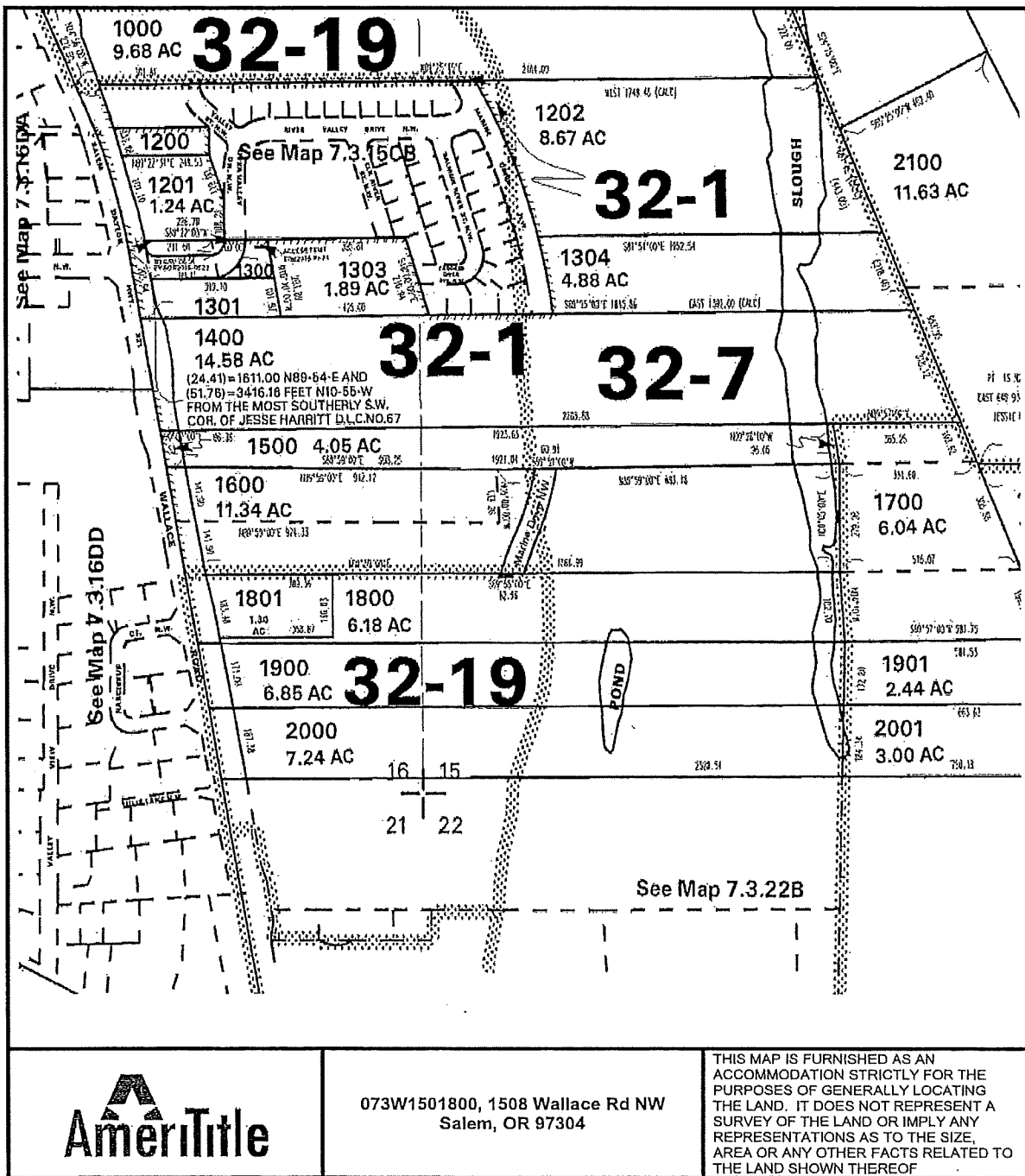
The City of Salem, an Oregon municipal corporation

By: 
Name: Steven D. Powers
Its: City Manager

Date: 05/31/2020

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

EXHIBIT A



073W1501800, 1508 Wallace Rd NW
Salem, OR 97304

THIS MAP IS FURNISHED AS AN ACCOMMODATION STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREOF

EXHIBIT B

Larger Parcel Legal Description

The portion of the Southwest 1/4 of Section 15, Township 7 South, Range 3 West, Willamette Meridian in the County of Polk and State of Oregon, described as follows:

Beginning in the center of the County Road leading from Salem to Spring Valley in Polk County at a point 35.65 chains North 10° 55' West from where the center of said County Road intersects the South line of Jesse Harritt and wife's Donation Land Claim No. 67; thence North 10° 55' West following the center of said road 2.78 chains; thence East 36.13 chains to the East line of aforesaid Donation Land Claim; thence South 24° 15' East following the said East line of said Donation Land Claim 3.02 chains to John Bigleu land; thence West 36.83 chains to the place of beginning and being a part of the aforesaid Donation Land Claim, situate in Township 7 South, Range 3 West of the Willamette Meridian in Polk County, Oregon.

SAVE AND EXCEPT: Beginning at an iron pipe on the Easterly bank of a slough which is North 10° 55' West 38.43 chains and North 89° 57' East 1,868.51 feet from the interx of the center line of Wallace Road and South line of Jesse Harriett Donation Land Claim No. 67 in Township 7 South, Range 3 West of the Willamette Meridian in Polk County, Oregon; running thence North 89° 57' East a distance of 516.07 feet to a 1 inch iron pipe in the East line of said claim; thence South 23° 57' East along the East line of said Claim a distance of 199.32 feet to a 2 inch iron pipe and the John Bigleu land; thence South 89° 57' West a distance of 583.75 feet to a 2 inch iron pipe in the Easterly bank of said slough; thence Northwesterly along the Easterly bank of said slough, whose long chord bears North 4° 10' West a distance of 182.70 feet to the place of beginning.

ALSO SAVE AND EXCEPT: Beginning at a 5/8 inch iron rod with aluminum cap marking the intersection of the Easterly right-of-way line of Wallace Road and the Northerly boundary of that tract of land described in Volume 125, Page 388, Polk County Record of Deeds, said monument bears North 10° 25' 30" West 2536.38 feet along the centerline of Wallace Road and South 89° 58' East 30.51 feet from the intersection of said centerline and the South line of the Jesse Harritt Donation Land Claim No. 67, in Township 7 South, Range 3 West of the Willamette Meridian, Polk County, Oregon and running thence South 89° 58' East 389.36 feet along the Northerly boundary line of the aforementioned parcel of land to a 5/8 inch iron rod with aluminum cap; thence South 0° 02' East 166.03 feet perpendicular to said Northerly boundary line to a 5/8 inch iron rod with aluminum cap on a line parallel to a perpendicular distance of 15.00 feet, measured Northerly, from the South Southerly boundary line of said parcel of land; thence North 89° 54' 40" West 358.87 feet along said line to a 5/8 inch iron rod with aluminum cap on said Easterly right-of-way line of Wallace Road; thence North 10° 25' 30" West 168.24 feet along said Easterly right-of-way line to the point of beginning.

ALSO SAVE AND EXCEPT that portion of the above described property lying within the boundary of public roads and highways.

EXCEPTING therefrom that portion conveyed to the State of Oregon, by and through it's Department of Transportation by document recorded August 2, 1996 in Book 321, Page 1160, Book of Records, Polk County, Oregon

EXHIBIT C








- | | | | |
|---|-------------------------------------|---|------------------|
|  | Larger Parcel (Barfknecht Property) |  | Utility Easement |
|  | Fee Area |  | Access Easement |
|  | Easement Area | | |

EXHIBIT D

MAIL TAX STATEMENTS TO:

City of Salem
Attn: Real Property Services Division
350 Commercial St. NE
Salem, OR 97301

AFTER RECORDING RETURN TO:

City of Salem
Attn: Clint Dameron
350 Commercial St. NE
Salem, OR 97301

STATUTORY SPECIAL WARRANTY DEED

Barfknecht Revocable Living Trust, (“***Grantor***”) conveys and specially warrants to ***The City of Salem***, an Oregon municipal corporation (“***Grantee***”) the real property described in ***Exhibit A***, which is attached hereto and incorporated herein, free of encumbrances created or suffered by the Grantor except as specifically set forth on ***Exhibit B***.

The following is the notice as required by Oregon law: “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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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.”

The true and actual consideration paid for this conveyance is _____ Thousand Dollars (\$_____).

[Signature Page to Follow]

Dated this _____ day of _____ 20__.

Barfknecht Revocable Living Trust

By: _____
LeRoy E. Barfknecht, Trustee

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 20__, personally appeared LeRoy E. Barfknecht, who being duly sworn, did acknowledge the foregoing instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: _____

ACCEPTED ON BEHALF OF THE CITY
OF SALEM, AN OREGON MUNICIPAL CORPORATION

Steven D. Powers, City Manager

APPROVED AS TO FORM

By: _____
City Attorney

EXHIBIT E

Permanent Easement (Street and Roadway)
(see attached)

EXHIBIT F

Access Easement
(see attached)

EXHIBIT G

Utility Easement
(see attached)

MAIL TAX STATEMENTS TO:

City of Salem
Attn: Real Property Services Division
350 Commercial St. NE
Salem, OR 97301

AFTER RECORDING RETURN TO:

City of Salem
Attn: Clint Dameron
350 Commercial St. NE
Salem, OR 97301

STATUTORY SPECIAL WARRANTY DEED

Barfknecht Revocable Living Trust, (“*Grantor*”) conveys and specially warrants to *The City of Salem*, an Oregon municipal corporation (“*Grantee*”) the real property described in *Exhibit A*, which is attached hereto and incorporated herein, free of encumbrances created or suffered by the Grantor except as specifically set forth on *Exhibit B*.

The following is the notice as required by Oregon law: “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. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. 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 DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, 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.”

The true and actual consideration paid for this conveyance is _____ Thousand Dollars (\$_____).

[Signature Page to Follow]

Dated this _____ day of _____ 20__.

Barfknecht Revocable Living Trust

By: _____
LeRoy E. Barfknecht, Trustee

State of Oregon)
) ss.
County of _____)

On this _____ day of _____, 20__, personally appeared LeRoy E. Barfknecht, who being duly sworn, did acknowledge the foregoing instrument to be its voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: _____

ACCEPTED ON BEHALF OF THE CITY
OF SALEM, AN OREGON MUNICIPAL CORPORATION

Steven D. Powers, City Manager

APPROVED AS TO FORM

By: _____
City Attorney

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.

Dated this _____ day of _____, 20____.

BARFKNECHT REVOCABLE LIVING
TRUST

By: _____
Grantor

Leroy E. Barfknecht, Trustee

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: _____

The foregoing conveyance is hereby approved and accepted by the Grantee pursuant to
ORS 93.908

CITY OF SALEM:

Steven D. Powers, City Manager

APPROVED AS TO FORM:

City Attorney

Print Name

Checked By: _____
Project Number: 711503
May 26, 2020

Exhibit A

TBD

REF

Exhibit B

TBD

DRAFT

After recording, return to:
City Recorder, City of Salem
555 Liberty Street SE, Room 205
Salem OR 97301-3513

Street and Roadway Easement

KNOW ALL MEN BY THESE PRESENTS, that Barfknecht Revocable Living Trust (Grantor), 1508 Wallace Road NW, Salem, OR 97304, for the consideration of _____ DOLLARS (\$XXX) to it paid, the receipt of which is hereby acknowledged, do forever grant unto the CITY OF SALEM, an Oregon municipal corporation (Grantee), 555 Liberty Street SE, Salem, Oregon 97301-3513, a permanent easement for street and roadway use, including the option of later conversion of said permanent easement for ONE Dollar (\$1) to fee title ownership by the Grantee, over and along the following described premises for the purposes of constructing, maintaining, and repairing the improvement of Marine Drive NW. In the event any structure within the Easement area incurs substantial damage or is destroyed, Grantor or Grantor's successors have no right to rebuild or repair the structure and must remove the remaining elements of the structure at Grantor's or Grantor's successors expense within forty-five (45) days of the date of destruction or substantial damage.

The real property covered by this easement is described as follows, to-wit:

See Exhibit A attached and as shown on Exhibit B attached.

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 construction, operation, or maintenance of said project. This instrument, and the covenants and agreements contained in this instrument, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.

Barfknecht Revocable Living Trust

By: _____
Grantor

Leroy E. Barfknecht, Trustee

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: _____

ACCEPTED ON BEHALF OF THE CITY
OF SALEM BY:

Steven D. Powers, City Manager

APPROVED AS TO FORM:

City Attorney

Print Name

Checked By:
Project Number: 711503
May 26, 2020

Exhibit A

TBD

DRAFT

Exhibit B

TBD

REF

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 26, 2020

Exhibit A
(to be replaced with formal exhibit)



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

DA

Exhibit B

TBD

RF