

RESOLUTION No. 2016-3287

**A RESOLUTION APPROVING THE DEDICATION OF TWO PERMANENT
EASEMENTS ON CITY OWNED PROPERTY LOCATED AT 305 W.
ILLINOIS STREET.**

RECITALS:

1. The City of Newberg owns approximately 0.45 acres of property at 305 W. Illinois Street, shown as Tax Lots 1601 and 1602 on Yamhill County Assessors Map 3S-2W-18CA, commonly known as the highway 240 lift station and house. The site is located on the north side of W. Illinois street (Hwy 240) near the intersection of N. Morton Street.
2. The 2007 City of Newberg Sewerage Master Plan identified a priority project to reduce the winter wastewater overflows into Chehalem Creek at the Dayton Avenue pump station. The city purchased the 0.45 acre property single family home site located at 305 W. Illinois Street for \$282,000 in March of 2009 by Council Resolution #2008-2822 for the construction of the Highway 240 pump station.
3. The lift station and force main improvements were completed in February of 2011, which began bypassing flows away from the Dayton Avenue pump station. In 2012, Partition Plat #2012-21 recorded, which completed the division of the property into two parcels. Parcel 1, the existing house parcel, was listed for sale last winter with Coldwell Banker.
4. In 2012, Mr. Stan Bunn, the adjacent property owner at 301 W. Illinois Street, raised concerns that the common property line does not follow the existing retaining wall and fence line between the two properties.
5. The City listed Parcel 1 (existing home site) last year and received an offer to purchase the property. The potential buyer withdrew their offer to purchase the site due to the boundary line dispute.
6. Mr. Bunn has agreed to accept an exclusive easement as shown on Exhibit A, and a landscape easement shown on Exhibit B; both referenced exhibits are hereby incorporated. The dedication of the two easements by the city to Mr. Bunn will settle the boundary line dispute. The granting of the landscape and exclusive easements will allow for the use of all properties to remain as-is, and will also allow for the City to commence activities to sell Parcel 1, the existing home site.
7. Oregon Revised Statutes 221.725, requires published notice of the public hearing for sale of any interest in real property held by the City, which in this case includes the granting of the landscape and exclusive easements. Notice was published on May 11, 2016, in the Newberg Graphic, a newspaper of general circulation that meets the requirements of the Statute.
8. In compliance with ORS 221.725, a public hearing was held with the opportunity for any resident of

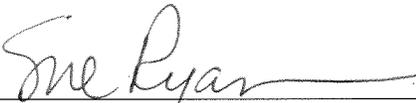
the city, or members of the general public, to present written or oral testimony. Evidence of market value of the transfer of interests in the real property, was fully disclosed by the City Council at the public hearing.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council approves the dedication of the exclusive easements to benefit the Bunn property, adjacent and north of parcel 1 and parcel 2 of partition plat 2012-21.
2. The City Council delegates, authorizes, and directs the city manager, or city manager pro-tem, to perform all necessary acts to create, modify, and execute all necessary documents, and carry out any other necessary matters in order to complete the dedication of the easements. All documents and agreements shall be approved as to form and content by the City Attorney.

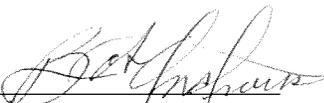
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 17, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of May, 2016.



Sue Ryan, City Recorder

ATTEST by the Mayor this 19th day of May, 2016.



Bob Andrews, Mayor

May ____, 2016

Exclusive Easement

The City of Newberg as grantor does grant to Stan Bunn as grantee a perpetual easement in the following described property:

An easement for the benefit of Stan Bunn across Parcel 1 Partition 2012-21

An easement in the Northeast ¼ Southwest ¼ Section 18 Township 3 South, Range 2 West, W.M. Yamhill County, Oregon and being across that tract of land shown as Parcel 1 Partition 2012-21, the exterior boundary being more particularly described as follows:

Beginning at a point which bears North 67° 47' 57" West 2.43 feet from the Northeast corner of Parcel 1 of Partition 2012-21; thence North 67° 47'57" West along the north line of said Parcel 1 a distance of 96.57 feet to the Northwest corner of Parcel 1; thence South 0 ° 27' 08" West along the boundary between Parcel 1 and 2 of said partition 14.17 feet; thence South 56 ° 42' 52" East 4.45 feet; thence South 84° 26' 53" East 18.50 feet to a point which is 0.25 feet northerly of the extension of an existing retaining wall westerly; thence South 74° 58' 23" East 69.78 feet parallel to and 0.25 feet northerly of wall to the point of beginning.

The easement is adjacent to the property owned by Stan Bunn and shall run with the land. The easement is for the full use and enjoyment of the easement area for residential yard and landscape purposes not prohibited by the city of Newberg Municipal Code and shall be exclusive use. However, the owner or agent of the servient estate may come upon the easement area for necessary repair of said adjacent property fence.

If owner of adjacent property comes on to said easement property for reasonable and necessary repair or maintenance of their adjacent fence they will promptly return the easement property to its condition prior to the repair.

Grantee shall be allowed to place a fence on the easement area if Grantor substantially lowers or removes the fence on Grantor's northern border. Placement of any fence by Grantee shall allow sufficient space for Grantor to maintain the Grantor's fence and wall and should Grantee's fence interfere with this right, Grantee shall remove such fence at Grantee's cost.

Grantee shall have full and exclusive use and control of the property except for said maintenance and repair of the fence.

This easement has been granted in exchange for good and valuable consideration including \$5.00.

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. 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.

IN WITNESS WHEREOF, the parties have executed this easement on this ____ day of _____, _____.

Steve Rhodes
City Manager, Pro Tem
City of Newberg

STATE OF OREGON)
) s.s.
County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____, by Steve Rhodes.

Notary Public for Oregon
My Commission expires:

ACCEPTED:

APPROVED AS TO FORM

Stan Bunn

Truman A. Stone, City Attorney

Dated: _____

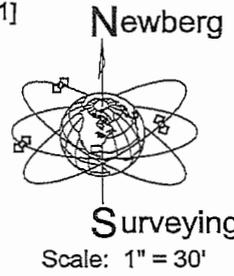
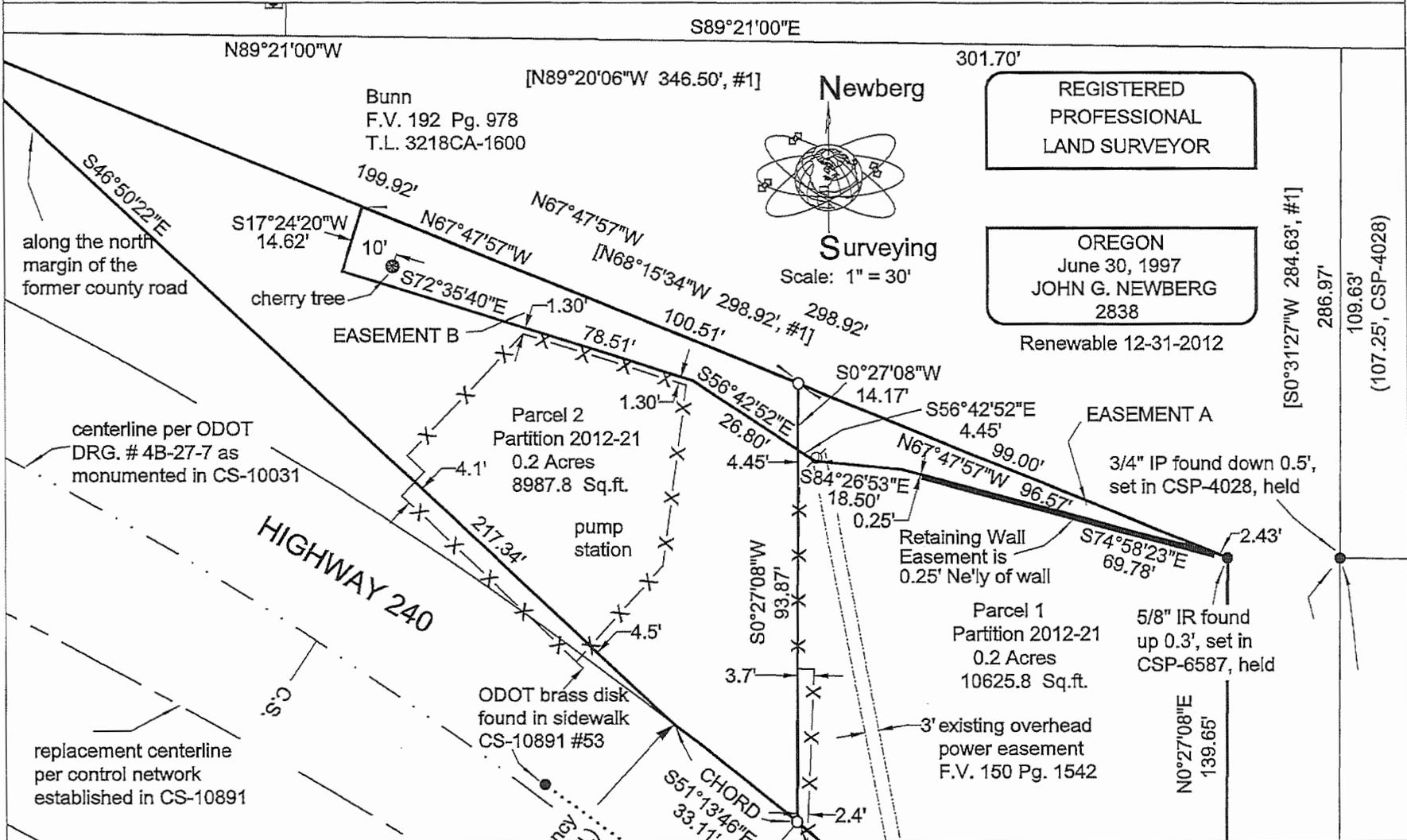
Dated: _____

Easement Survey for: **EXHIBIT A: EASEMENT SKETCH**
 City of Newberg

Location: NE 1/4 SW 1/4 Section 18 T. 3 S., R. 2 W., WM.,
 Yamhill County, OR
 Tax Lot: 3218CA-1601
 Date: 28 May, 2015

Newberg Surveying, Inc.

1205 NE Evans
 McMinnville, OR 97128
 (503)-474-4742 (971)-237-1956 Cell
 (503)-474-3752 Fax newberg@viclink.com



REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 June 30, 1997
 JOHN G. NEWBERG
 2838
 Renewable 12-31-2012

Resolution 2016-3287

LANDSCAPE EASEMENT

The City of Newberg, as grantor, does grant to Stan Bunn, as grantee, a perpetual easement in the following described property:

SEE EXHIBIT B LEGAL DESCRIPTION & SKETCH

This easement is over land owned by the City of Newberg (servient estate) and adjacent to the property owned by Stan Bunn (dominant estate) and shall run with the land. The easement is for landscape purposes and shall be used by grantee for landscape, lawn and yard purposes only.

The landscaping within this easement shall be maintained substantially in the same condition as exists at the time of recording of this easement. No change shall be made without prior written consent of the servient estate owner. No building, masonry wall, fences, or other structures shall be erected within the easement. The grantee shall be allowed to place plantings along the southerly line of the easement for screening purposes where no fence line exists and where it will not interfere with grantor's access to the easement area. Those that currently exist are excepted.

The landscaping within the easement shall be maintained in good order. In the event that this condition is violated, or the screening plants interfere with access, the servient estate owner shall notify the dominant estate owner in writing of any deficiency. If the deficiencies are not corrected within 20 days, the servient estate owner may elect to perform maintenance or removal, in which case the dominant estate owner shall release the servient owner and its agents from any claims related to performance of such maintenance, including any claims under ORS 105.810-815 or similar statutes. The servient estate owner shall be entitled to reimbursement for the cost of maintenance or removal and the dominant estate owner shall reimburse such costs within 60 days of receipt of a statement. Failure to reimburse such costs in full within that time frame shall be a violation of the terms herein and servient estate holder shall be entitled to any collection costs or attorney's fees incurred in enforcing the terms herein, including fees and costs on appeal.

The use of this easement for landscape purposes shall not in any way interfere with the City's use of the servient estate for public works or similar purposes. The servient estate owner may enter the easement at anytime and for any purpose that does not interfere with the landscaping or purpose of this easement. If the servient owner disturbs the easement landscaping while conducting inspection or repairs, such servient owner will promptly return the easement landscaping to its condition prior to disturbance.

In the event that a public body through eminent domain acquires the easement property, the dominant estate shall claim no compensation, but all compensation shall accrue to the servient estate.

No hazardous chemicals shall be stored, applied or used on the easement property, except readily available consumer herbicides and pesticides. Use of such herbicides and pesticides shall be according to the label and the dominant estate shall be responsible for any damages resulting from the use of such chemicals.

This easement has been granted in exchange for good and valuable consideration including \$5.00.

The witness whereof, the parties have executed this instrument on the date stated above. Any signature on behalf of the City of Newberg is made with the authority of said city.

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. 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.

IN WITNESS WHEREOF, the parties have executed this landscape easement on this ____ day of _____, _____.

Steve Rhodes
City Manager, Pro Tem
City of Newberg

STATE OF OREGON)
) s.s.
County of Yamhill)

This instrument was acknowledged before me this ____ day of _____, _____, by Steve Rhodes.

Notary Public for Oregon
My Commission expires:

ACCEPTED:

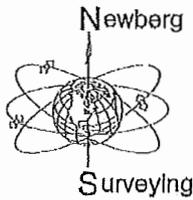
APPROVED AS TO FORM

Stan Bunn

Truman A. Stone, City Attorney

Dated: _____

Dated: _____



Newberg Surveying, Inc
1205 NE Evans
McMinnville, OR 97128
(503)-474-4742 • (503)-474-3752 FAX

**EXHIBIT B:
LEGAL
DESCRIPTION**

Exclusive Easement

for the benefit of Stan Bunn across Parcel 1 Partition 2012-21

A landscape easement in the Northeast 1/4 Southwest 1/4 Section 18 Township 3 South, Range 2 West, W.M. Yamhill County, Oregon and being across that tract of land shown as Parcel 1 Partition 2012-21, the exterior boundary being more particularly described as follows:

Beginning at a point which bears North 67° 47' 57" West 2.43 feet from the Northeast corner of Parcel 1 of Partition 2012-21; thence North 67° 47' 57" West along the north line of said Parcel 1 a distance of 96.57 feet to the Northwest corner of Parcel 1; thence South 0° 27' 08" West along the boundary between Parcel 1 and 2 of said partition 14.17 feet; thence South 56° 42' 52" East 4.45 feet; thence South 84° 26' 53" East 18.50 feet to a point which is 0.25 feet northerly of the extension of an existing retaining wall westerly; thence South 74° 58' 23" East 69.78 feet parallel to and 0.25 feet northerly of wall to the point of beginning.

