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655-8671

NO CHANGE IN TAX STATEMENTS  
AFTER RECORDING TO RETURN TO:  
*Stacey Kohler*  
City of Sherwood  
c/o City Manager  
22560 SW Pine Street  
Sherwood, OR 97140

Clackamas County Official Records  
Sherry Hall, County Clerk

2009-006405



\$56.00

02/03/2009 08:51:24 AM

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\$30.00 \$16.00 \$10.00

WATER TRANSMISSION LINE EASEMENT

DORA H. BIRKELAND and WILLIAM D. BIRKELAND, wife and husband and The BIRKELAND REVOCABLE LIVING TRUST, (referred hereinafter both collectively and individually as "Grantor") in consideration of the sum of Thirty-Five Thousand (\$35,000.00) Dollars on behalf of themselves, their heirs, successors and assigns for the mutual promises set forth herein as well as other good and valuable consideration (the receipt of which is hereby acknowledged), hereby grant and convey to the CITY OF SHERWOOD, an Oregon municipal corporation (referred to hereinafter as "Grantee" or "City") its successors and assigns, a perpetual easement (referred hereinafter as "Easement") under, in, above and along the real property described below (referred hereinafter as "Property"):

See

Exhibits "A" (Easement legal description) & "B" (easement map) attached hereto and incorporated herein by reference.

The Easement is for the on-going perpetual right of City, its authorized employees, contractors and agents for ingress to and egress from Easement and to locate, install, construct, operate, maintain, repair and replace up to two (2) forty-eight inch (48") diameter water transmission lines for delivery of potable water for the general benefit of City and its citizens, other uses directly related thereto as well as such other public or private utilities which by federal or state law may be required to be placed in city owned/controlled property (hereinafter collectively referred to Transmission Lines).

Grantee's Assurances.

1. Grantee shall give not less than ten (10) days oral or written notice (including estimated work schedule(s)) to Grantors, their successor(s) and assign(s) prior to any work being done by the City, its employees, contractors and authorized agents on the Transmissions Lines except in the case of an emergency when no prior notice need be given or not less than twenty-four (24) hours if the work contemplated involves only the ascertaining and marking of the location of the Transmission Lines.
2. Grantee shall after work on the location, installation, construction, operation, maintenance, repair and replacement is done on the Transmission Lines restore in as reasonable a manner as possible both the Easement and those portions of Grantor's adjacent lands and improvements disturbed by Grantee's work to the condition they were prior to the work being done. Grantee's obligation hereinabove includes restoration of those characteristics affecting the Property's agricultural use, including the existing quality and quantity of topsoil. Notwithstanding the foregoing, Grantee shall have no obligation to pay or otherwise be responsible for crop loss or

other damage to growing crops, other vegetation or other property or improvements within the Easement as a result of work on the Transmission Lines.

3. Grantee shall, to the extent reasonably appropriate, place any physical improvements necessary for the successful operation of the Transmissions Lines (or any portion thereof) on the surface of the Easement in such a way so as not to interfere with the agricultural uses of the Property and adjoining land unless otherwise required by design mandate or a regulatory agency.
4. The City agrees to indemnify, save harmless and defend Grantor from and against all claims, actions, proceedings, liens and other liabilities of any kind arising out of Grantee's location, installation, construction, operation, maintenance, repair or replacement of the Transmission Lines except to the extent the said claims and actions arise out of the fault a third party, or Grantor, their heirs, successors and/or assigns.
5. Prior to any work activity which may disturb the Easement, Grantee shall mark all necessary property corners and delineate the outer physical limits of the Easement.

#### Grantor's Assurances.

1. Grantor agrees and covenants that all agricultural or any other uses of Property and adjoining lands under Grantor's use and/or control (or the use and/or control of their heirs, successors and assigns) will be conducted in such a manner so as not to disturb, disrupt, interfere or compromise the use of the Easement by Grantee for the Transmission Lines.
2. Grantor agrees that no tree(s), shrub(s) or other plant(s) or vegetation will be grown or allowed in the Property where the roots of said tree(s), shrub(s) or other plant(s) or vegetation is possibly at maturity or before of being greater than thirty inches (30") in depth from the surface and the root(s) are capable of being one inch (1") or more in diameter at a point thirty inches (30") beneath the surface.

#### Grantor's Use of Easement Area.

Grantor may use the Easement for any purpose(s) that will not interfere with Grantee's rights including:

1. Preparation and planting of lawn, grass, shrubbery, bushes or other replaceable landscaping elements and/or crops placed in such a manner as to allow a walking inspection corridor over the Transmission Lines, and activities related thereto, including agricultural rototilling, subsoiling practices, mowing and maintenance.
2. Unless otherwise removed by the Grantee during its use of the Easement, the continued growing, management and replacement of existing trees within the Easement until such time as they are removed by Grantee.
3. The following activities are not allowed within the Easement area unless plans for same have been submitted to Grantee for review and prior written approval:
  - i. Any type of excavating work or digging including grading, filling, trenching, boring, subsoiling and auguring; and
  - ii. Installation of agricultural fencing, culverts, underground irrigation lines, underground utility lines, sidewalks, roads (paved or otherwise) and driveways.

4. Grantee agrees to permit public or private roads for ingress and egress in a manner that will not interfere with the use of the Easement for the location, installation, construction, operation, maintenance, repair and replacement of the Transmission Lines.

Legal Effect. This easement is binding upon and inures to the benefit of all heirs, successors and assigns of Grantor and Grantee and runs with the land.

Provision Applicable Law. This easement shall be governed by and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of either party at any time to require performance of any provision of this easement shall not limit the parties' right to enforce the provision, nor shall any waiver of any breach of any provision of this easement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this easement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement.

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Modification. No amendment or modification of this Easement shall be valid unless in writing and signed by all parties hereto.

Miscellaneous. If the Grantee intends to install permanent pipeline markers, such markers shall be located whenever reasonably possible along existing fence lines, roadways and other natural barriers or in areas within the Easement area that cause the least impact on the Grantor's use of the Property.

Dated this 18<sup>th</sup> day of December, 2008.

Dated this 18<sup>th</sup> day of December, 2008.

Dora H. Birkeland  
DORA H. BIRKELAND

William D. Birkeland  
WILLIAM D. BIRKELAND

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

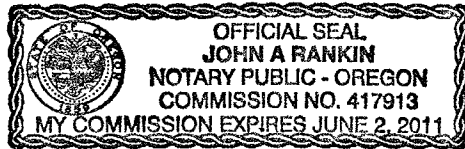
SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of December, 2008 by Dora H. Birkeland who appeared before me and said person(s) acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.



Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of December, 2008 by William D. Birkeland who appeared before me and said person(s) acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.



Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

Accepted for the City of Sherwood  
Jim Patterson  
City Manager

**NLV SERVICES, INC.**  
**SURVEYING - MAPPING**

5108 S.E. LOGUS ROAD, MILWAUKIE, OREGON 97222  
 PHONE 503-329-5703 FAX 503-654-1727

**EXHIBIT "A" - PERMANENT WATERLINE EASEMENT DESCRIPTION - REV. 3**  
 (For attachment to legal instrument)

Date: November 25, 2008

Reference Documents

1. Clackamas County Assessor's Map No. 3 1W 9, T.L. 100.
2. Deed recorded in Book 546, Page 734, Records Of Clackamas County.
3. Exhibit "B", Vicinity Map, Waterline Easement, accompanying this document.

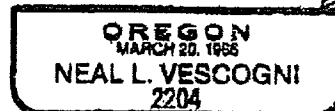
Permanent Easement

A 50 foot wide strip of land situated in the N.E. ¼ of Section 9, T.3S., R.1W., W.M., City Of Sherwood, Clackamas County, Oregon for the purpose of constructing, maintaining and repairing waterlines and appurtenances, being 25 feet each side measured at right angles from the following described centerline (extending or shortening the side lines as necessary to meet the subject property lines):

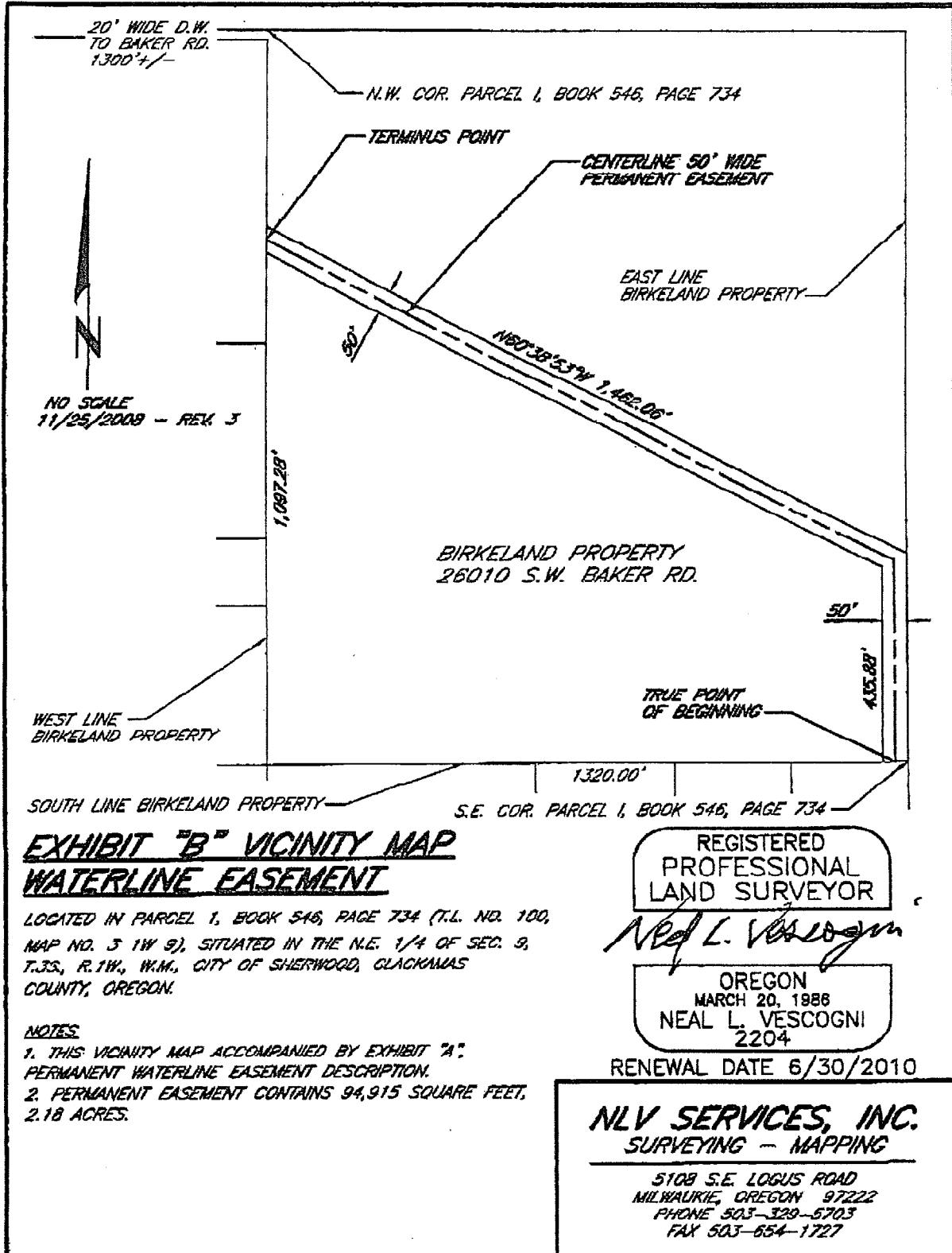
Beginning at the southeast corner of that tract of land conveyed to William D. and Dora H. Birkeland as Parcel I by deed recorded October 13, 1958 in Book 546, Page 734, Records of Clackamas County; thence westerly along the southerly line of said Birkeland tract 25.00 feet to the **True Point Of Beginning** of the centerline herein to be described; thence northerly, parallel with and 25 feet westerly of the easterly line of said Birkeland tract 435.88 feet; thence N60°38'53"W 1,462.06 feet to a point on the westerly line of said Birkeland tract which bears 1,097.62 feet from the southwest corner thereof, said point being the **Terminus Point** of the centerline herein described. Contains 94,915 square feet, 2.18 acres.



*Neal L. Vesogni*



*Exp. 6/30/2010*



**EXHIBIT "B" VICINITY MAP**  
**WATERLINE EASEMENT**

LOCATED IN PARCEL 1, BOOK 546, PAGE 734 (T.L. NO. 100, MAP NO. 3 1W 9), SITUATED IN THE N.E. 1/4 OF SEC. 9, T.3S., R.1W., W.M., CITY OF SHERWOOD, CLATSOP COUNTY, OREGON.

**NOTES**

1. THIS VICINITY MAP ACCOMPANIED BY EXHIBIT "A": PERMANENT WATERLINE EASEMENT DESCRIPTION.
2. PERMANENT EASEMENT CONTAINS 94,915 SQUARE FEET, 2.18 ACRES.

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Neal L. Vesco*

OREGON  
 MARCH 20, 1988  
 NEAL L. VESCOGNI  
 2204

RENEWAL DATE 6/30/2010

**NLV SERVICES, INC.**  
 SURVEYING - MAPPING

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