



DAN JOHNSON  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 5, 2023

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Public Storm Drainage Easement at Billy Goat County Park with the City of Gladstone. No fiscal impact. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	Briefed at Issues on January 4, 2023		
<b>Performance Clackamas</b>	1. This project will help Build a Strong Infrastructure by maintaining proper storm water systems to promote water quality and reduce adverse effects of storm water events. 2. This project will help Build Public Trust through Good Government by demonstrating that the City and County can work together to provide critical infrastructure for residents.		
<b>Counsel Review</b>	8/1/2022, ARN	<b>Procurement Review</b>	No
<b>Contact Person</b>	Tom Riggs	<b>Contact Phone</b>	503-742-4345

**Background:**

This easement will allow the City of Gladstone to maintain an existing drainage line at Billy Goat county park property, located at 280 Evergreen Lane Gladstone OR, 97027.

The impact will be minimal and not disrupt park operations. The site will be fully restored upon the completion of work per the terms of the easement.

The project work is anticipated to begin immediately following the easements approval.

**Recommendation:**

Staff respectfully recommends the Board approve this easement with the City of Gladstone.

Sincerely,

Dan Johnson, Director  
Department of Transportation and Development

For Filing Use Only

After Recording Return To:  
City of Gladstone  
18505 Portland Avenue  
Gladstone, OR 97027

THIS SPACE RESERVED FOR RECORDER'S USE

**PUBLIC STORM DRAINAGE EASEMENT**

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**KNOW ALL PERSONS BY THESE PRESENTS**, that Clackamas County, hereinafter called the Grantor, conveys to the City of Gladstone, an Oregon Municipal Corporation, hereinafter called the Grantee or City, a perpetual easement for the purpose of constructing, reconstructing, inspecting, repairing, and maintaining storm drainage lines and associated infrastructure which shall be located within an easement in the Grantor's property comprised of tax lots 22E21C 00300 and 22E21C 00400, and more particularly described in Exhibit 'A and B' (the "Easement Area"), and further depicted in Exhibits "C, D, E and F" attached hereto and incorporated herein by reference. The terms of this easement are as follows:

- 1. Grantee's Permitted Uses.** Subject to Grantor's prior written approval under Subsection (3) below, Grantee may construct, or cause to be constructed by a third party, only such permanent or temporary surface or underground structures and improvements within the Easement Area as are required for its storm drainage lines, appurtenances and their inspection and maintenance. Grantee and its agents, which includes those caused to construct improvements, or employees may enter on the Grantor's property within the easement area for the purpose of constructing, reconstructing, inspecting and maintaining its facilities, lines and appurtenances. Any use of Grantor's Property other than those reasonably necessary to construct, inspect, repair and maintain the storm drainage lines and associated infrastructure is strictly prohibited and shall constitute a trespass unless otherwise agreed to in writing.
- 2. Work in the Easement Area.** Except in the event of emergencies, Grantee may enter the Easement Area during Grantor's normal business hours (Monday through Thursday, 7:30 a.m. – 6:00 p.m.) to perform the work contemplated by this Easement (the "**Work**"), subject to the remaining terms and conditions of this Easement. Grantor, for itself and its successors and assigns, reserves the right to use and enjoy the surface of the Easement

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Area, from time to time, in any manner not inconsistent with this Easement, and the City shall not impair in any material respect the ability of Grantor or its assignees to so use and enjoy the Easement Area, for such purposes and in such manner as is not inconsistent with the City's use thereof. It is understood that the easement herein granted does not convey any right or interest in any other portion of Grantor's Property, and, except as otherwise provided in this Easement. The City shall not have any rights to access, conduct work, or otherwise, as to any portion of Grantor's Property, other than the Easement Area. All Work done in connection with this Easement shall be obtained and paid for by, and be the sole responsibility of, the City, and shall be performed by the City's agents or contractors; provided, however, that Grantor shall cooperate with the City, its agents and contractors to a commercially reasonable extent at no cost or expense to Grantor.

3. **Notification of Access.** Except in the event of emergencies, the City shall not, and its contractors and agents will not, enter onto the Easement Area, without at least twenty-four (24) hours prior written notice to Grantor, which notice shall generally describe the nature of Work which is to take place, including how Grantee shall address questions of access, security and any other impacts of the Work. In the event the Grantee must undertake emergency work, it shall provide such notice to the Grantor as soon as is practicable.
4. **Other Use of Easement Area.** No permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements or site alterations over and above the Easement Area described in Exhibit 'A' shall be constructed without the prior written consent of the Grantee, which consent shall not be unreasonably withheld. All construction activities and structures must comply with federal, state, and local law.
5. **Grade Changes.** After construction of the storm drainage line, no grade changes in excess of two (2) feet in elevation shall be allowed within the Easement Area without the prior written consent of the Grantee, which consent shall not be unreasonably withheld.
6. **Permanent Structures.** The Grantor will not be allowed to build any permanent structure that would unreasonably interfere with Grantee's use, over and above the Easement Area described in Exhibit 'A.'
7. **Storage, Use and Disposal of Materials.** No materials shall be stored, used, manufactured or disposed of within the Easement, except as reasonably necessary for the repair and maintenance of the storm drainage lines and associated infrastructure, and only if in compliance with all federal, state and local law, provided that in no case may there be stored, used, manufactured, or disposed of within the easement, any hazardous materials, as defined by ORS 465.200, and implementing regulations of the Department

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of Environmental Quality or which constitute a public health hazard, as defined by the rules of the Oregon State Health Division, and no condition shall be permitted within the easement which constitutes a health hazard, as defined by rules of the Health Division. Notwithstanding the forgoing, Grantee may use, handle or store on the Easement Area, for their intended purposes in accordance with manufacturers' instructions, only those hazardous materials reasonably and necessarily used in the course of Grantee's Permitted Uses of the Easement Area. Grantee will use such hazardous materials in accordance with applicable law. Grantee will be solely responsible for, and shall indemnify, defend and hold Grantor harmless from, any costs, expenses, damages, claims, and causes of action resulting from or related to Grantee's use of hazardous materials. Provided, however, that Grantee is not responsible for pre-existing environmental contamination or for environmental contamination of the Easement Area caused by Grantor or any third party not under Grantee's control.

8. **Restoration Obligations.** Grantee shall, within a reasonable time after completion of construction or any maintenance work, restore the surface of the Easement Area to a state equal to or better than its state prior to the construction or maintenance. Grantee agrees to use vegetation equal to or better than that existing prior to construction or maintenance in the restoration of any landscaping of the Easement Area.
9. **Covenant Not to Interfere.** Grantee's use of the Easement Area shall, to the maximum extent practical, be performed in a manner that does not interfere with, damage, disturb, hinder, or prevent the use and enjoyment of Grantor's Property. In the event Grantee's rights granted hereunder require use of the Easement Area in a manner that does interfere, damage, disturb, hinder, or prevent use of Grantor's Property, the parties shall agree, in writing, to a mutually acceptable date and time for such use to occur in a manner that limits the impact to Grantor. Grantee may, in the event of an emergency, use the Easement Area without prior written agreement by the parties. No advance notice is required for routine maintenance and repair of the storm drainage lines and associated infrastructure provided such maintenance and repair does not unreasonably interfere with Grantor's use and enjoyment of its Property.
10. **Maintenance and Repair of Storm Drainage Lines.** Grantee agrees to maintain and keep the storm drainage lines and associated infrastructure in good condition and repair. In maintaining the storm drainage lines and associated infrastructure, Grantee shall have a temporary, nonexclusive license for access across Grantor's Property at reasonable times and under conditions that do not unreasonably interfere with the use of Grantor's Property by Grantors, or by Grantor's successors, assignees or lessees.

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11. **Safety Precautions.** Grantee and its agents and contractors shall comply with all applicable laws, ordinances, regulations and permits, as applicable in performing any work or causing any work to be performed on Grantor's Property.
12. **Termination.** This Easement shall terminate, and the Easement Area extinguished, by operation of law if the following events occur: (1) Grantee removes or disconnects the storm drainage lines and associated infrastructure, and work to rebuild or reconnect is not commenced within ninety (90) days after the date of removal or disconnection, or such other time as reasonably agreed to by the parties; or (2) by written mutual consent of the parties. Grantor may terminate this Agreement, and extinguish this Easement, if, after thirty (30) days' notice and opportunity to cure, Grantee violates any material term or condition of this Easement provided such storm drainage lines and associated infrastructure are either inactive or have been relocated. If this Easement is terminated and the Easement extinguished, Grantor may, without notice to Grantee, record an easement termination document in the real property records of Clackamas County, Oregon. After termination of this Easement and extinguishment of the easement granted herein, Grantee, at Grantee's expense, shall upon demand remove any and all of Grantee's property from the Easement Area and restore the Easement Area and surrounding area to Grantor's reasonable satisfaction.
13. **Other Property Rights.** This easement is nonexclusive and subject to all prior easements, encumbrances, and the pre-existing superior rights of any tenants occupying the Property, whether or not such interests are recorded, including without limitation, rights of quiet enjoyment. Grantee will not interfere in any material respect with any tenants, contractors or invitees at or on the Property, so long as the activities of such persons or entities are not inconsistent with Grantee's rights of use specified in this easement.
14. **Damage to the Easement Area or Grantor's Property.** Grantee shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, Grantee's use of, access over, or maintenance of the Easement Area or storm drainage lines and associated infrastructure, or from any act, omission, or neglect of Grantee, its agents or employees. Grantee shall repair promptly any damage, impact, or disturbance to the Easement Area or Grantor's Property directly or indirectly caused by any acts of Grantee or its contractors or agents and to restore the Easement Area or Grantor's Property to the condition it was in immediately prior to the damage, impact, or disturbance. Grantee shall promptly inform Grantor if it discovers or creates a condition on the Easement Area or Grantor's Property that it reasonably believes will give rise to any liability or claim against Grantor or would result in any occurrence or finding that would require notice to any governmental agency.

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15. **Indemnification.** Subject to the limitations on liability in the Oregon Tort Claims Act and the Oregon Constitution, Grantee agrees to indemnify, defend and hold harmless Grantor, its elected and appointed officials (Officials), officers, agents, and employees against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, and against all claims, actions, judgments based upon or arising out of any act or omission by the Grantee, or anyone acting on Grantee's behalf, in connection with, or incidental to, Grantee's use of the Easement Area or the work to be performed hereunder; provided, however, that nothing herewith shall be construed to require defense or indemnification of Grantor, or its Officials, officers, agents and employees for any liability, claims, suits, actions or judgments attributable to the act or omission of Grantor or its Officials, officers, employees or agents. However, neither Grantee nor any attorney engaged by Grantee shall defend the claim in the name of Grantor or any department of the Grantor, nor purport to act as legal representative of Grantor or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for Grantor, which shall not be unreasonably withheld. Nor shall Grantee settle any claim on behalf of Grantor without the approval of the Clackamas County Counsel's Office, which shall not be unreasonably withheld. Grantor may, at its election and expense, assume its own defense, in which case, Grantee's defense obligations under this paragraph shall no longer apply.
16. **Cooperation.** If requested of Grantor, Grantee, without charge, at any reasonable time and from time to time, within ten (10) business days after written request by Grantor, shall certify by written instrument, duly executed, acknowledged and delivered to Grantor or any other party specified by Grantor in writing, that: (a) this easement is unmodified and in full force and effect, or, if there has been a modification hereto, that the same is in full force and effect as modified and stating any such modification; (b) whether, to the knowledge of Grantee, there are then existing any defaults under this easement, and, if so, specifying the same; and (c) such other pertinent information as such Grantor reasonably may request.
17. **Liens.** In the event that any lien is placed upon all or any portion of the Easement Area or Grantor's Property resulting directly or indirectly from, or in connection with, any entry on Grantor's Property (whether or not permitted by this Easement) by Grantee or its agents, contractors or other representatives, pursuant to the terms and conditions of this Easement, Grantee shall pay and discharge or bond around and discharge such lien within ten (10) business days after Grantee's receipt of written notice of the attachment of such lien.
18. **Entire Agreement.** This easement constitutes the entire agreement between the parties relating to the provisions of this easement and supersedes all oral communication

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between the parties regarding the same prior to the execution hereof, all understandings and negotiations regarding the same having been merged herein. This easement may be amended or modified only by a written instrument executed by both Grantee and Grantor or their respective successors or assigns, as the case may be, if applicable.

19. **Governing Law.** This easement and the provisions herein shall be interpreted, construed, and enforced in accordance with the laws of the state of Oregon.
20. **Injunctive Relief.** Both parties agree that, if it, or its representatives, shall commit a breach of any of the provisions of this easement, the other party shall have the right and remedy to institute proceedings to obtain injunctive relief for any breach hereof, it being hereby acknowledged and agreed that any such breach may cause irreparable injury to the non-breaching party and its affiliates and that money damages would not provide an adequate remedy to the non-breaching party. This stipulation with respect to damages incurred by the parties upon a breach of this easement shall be limited to use in an action for injunctive relief. Further, nothing herein shall be construed to limit any other remedy available to the parties with respect to any such breach.
21. **Counterparts.** This easement may be executed in multiple counterparts, each of which shall be deemed originals, and all of which taken together shall constitute one instrument. The parties may execute and deliver this easement by forwarding signed facsimile copies or electronic scan copies of this easement, which shall have the same binding effect as original signatures.
22. **Covenants Running with the Land/Assignment.** The parties to this easement acknowledge and agree that the easements and other rights conferred by this easement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.
23. **Effective Date.** This easement shall be effective upon the last date it is executed by Grantor and Grantee.
24. **Authorized Representative.** The individual signing on behalf of each respective party states that they are the duly authorized representative of that party and that their signature on this Easement has been duly authorized by, and creates the binding and enforceable obligation of the party on whose behalf they sign.
25. **Notices.** Any notice permitted or required by this easement shall be deemed received, if delivered, when actually received, or, if mailed, on the third day after mailing by registered or certified mail, postage prepaid, to the party's address set forth below their

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respective signatures to this Easement, or to such other address designated in writing to the other party.

26. **No Attorneys' Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this easement, each party shall be responsible for its own attorneys' fees and expenses.
27. **Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Easement, Grantor is specifically not obligating itself or any other agency with respect to any discretionary action relating to the easement or Grantor's Property including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.
28. **Relationship.** Nothing contained in this easement will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Grantees and Grantor.
29. **Waiver.** Failure of either party at any time to require performance of any provision of this easement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.
30. **Recording.** The easement may be recorded by either party in the real property records of Clackamas County, Oregon.
31. **Debt Limitation.** This easement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**IN WITNESS WHEREOF**, the Grantor has executed this Instrument this \_\_\_\_\_  
day of \_\_\_\_\_, 2022

Grantor: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



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STATE OF OREGON )  
 )  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally appeared the above-named  
\_\_\_\_\_ (person name), \_\_\_\_\_ (title & corporation name),  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person  
whose name is subscribed to this instrument, and acknowledged said instrument to be his/her  
voluntary act and deed. Before me:

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







**CENTERLINE CONCEPTS**  
LAND SURVEYING, INC.

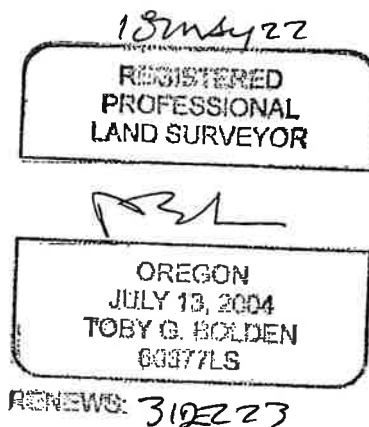
19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045  
P. 503-650-0188 F. 503-650-0189

**Exhibit "A"**  
**Easement**  
**Legal Description**

A Tract of land being a portion of that Tract of land described in Deed recorded as Document No. 2008-046350, Clackamas County Deed Records, located in the Northwest one-quarter of Section 21, Township 2 South, Range 2 East of the Willamette Meridian, City of Gladstone, County of Clackamas, State of Oregon, being more particularly described as follows:

**BEGINNING** at a point on the easterly terminus of Evergreen Lane (a 50.00 feet wide right of way) which bears South 57°01'01" East, 233.95 feet and South 31°40'32" West, 17.58 feet from the most westerly corner of Parcel 1 of Partition Plat No. 2014-052, Clackamas County Plat Records; thence leaving said easterly right of way terminus, South 58°20'48" East, 124.84 feet; thence South 31°25'26" West, 15.00 feet; thence North 58°20'48" West, 124.90 feet to said easterly terminus; thence along said easterly terminus, North 31°40'32" East, 15.00 feet to the **POINT OF BEGINNING**.

Contains 1,873 square feet, more or less.





= EASEMENT  
1,873± SF

TRACT 110

TRACT 111  
"GLADSTONE"

EDGEWATER ROAD  
WIDTH VARIES

EDGEWATER ROAD

EVERGREEN LANE  
POINT OF BEGINNING

PARCEL 1  
PARTITION PLAT  
NO. 2014-052

PARCEL 2

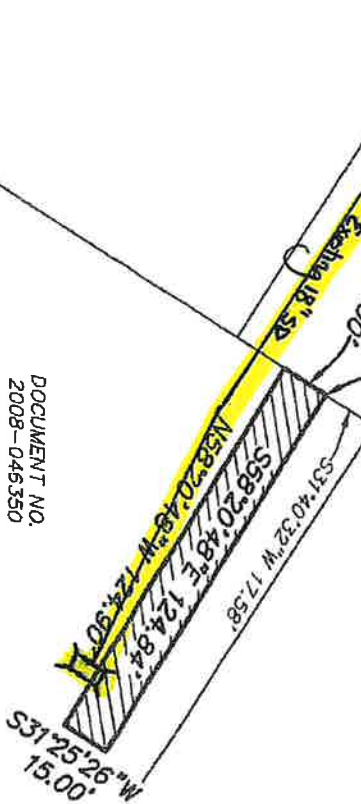
DOCUMENT NO.  
2008-046350

SIGNED ON: *18 MAY 22*

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 13, 2004  
TOBY G. BOLDEN  
60377LS

RENEWALS: DECEMBER 31, 2023



CLIENT: SISUL  
ORIG. DATE: 5-17-2022  
DRAWN BY: RLC  
SHEET No. 1 OF 1

**EXHIBIT "B"**  
**EASEMENT**  
CITY OF GLADSTONE, CLACKAMAS COUNTY, OREGON  
SCALE: 1"=50'

  
**CENTERLINE CONCEPTS**  
LAND SURVEYING, INC.  
19376 MDLALLA AVE., SUITE 120  
OREGON CITY, OREGON 97045  
PHONE 503.650.0188 FAX 503.650.0189



**CENTERLINE CONCEPTS**  
LAND SURVEYING, INC.

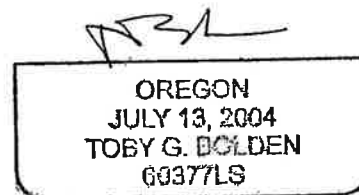
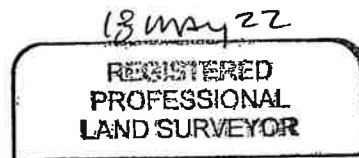
19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045  
P. 503-650-0188 F. 503-650-0189

**Exhibit "C"**  
**Temporary Easement**  
**Legal Description**

A Tract of land being a portion of that Tract of land described in Deed recorded as Document No. 2008-046350, Clackamas County Deed Records, located in the Northwest one-quarter of Section 21, Township 2 South, Range 2 East of the Willamette Meridian, City of Gladstone, County of Clackamas, State of Oregon, being more particularly described as follows:

**BEGINNING** at a point on the easterly terminus of Evergreen Lane (a 50.00 feet wide right of way) which bears South 57°01'01" East, 233.95 feet and South 31°40'32" West, 17.58 feet from the most westerly corner of Parcel 1 of Partition Plat No. 2014-052, Clackamas County Plat Records; thence along said easterly right of way terminus, North 31°40'32" East, 15.00 feet; thence leaving said easterly right of way terminus, South 58°20'48" East, 111.02 feet to the southwest line of said Parcel 1; thence leaving said southwest line of Parcel 1, South 31°25'26" West, 15.00 feet; thence North 58°20'48" West, 111.09 feet to the **POINT OF BEGINNING**.

Contains 1,666 square feet, more or less.



RENEWS: 31 DEC 23



= EASEMENT  
1,666± SF

TRACT 110

TRACT 111  
"GLADSTONE"

EDGEWATER ROAD  
WIDTH VARIES

EDGEWATER ROAD

EVERGREEN LANE  
POINT OF BEGINNING

PARCEL 1  
PARTITION PLAT  
NO. 2014-052

PARCEL 2

DOCUMENT NO.  
2008-046350

SIGNED ON: 18 May 22

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 13, 2004  
TOBY G. BOLDEN  
60377LS

RENEWS: DECEMBER 31, 2023



CLIENT: SISUL  
ORIG. DATE: 5-17-2022  
DRAWN BY: RLC  
SHEET No. 1 OF 1

**EXHIBIT "D"**  
**TEMPORARY EASEMENT**  
CITY OF GLADSTONE, CLACKAMAS COUNTY, OREGON  
SCALE: 1"=50'

  
**CENTERLINE CONCEPTS**  
LAND SURVEYING, INC.  
19378 MOLALLA AVE., SUITE 120  
OREGON CITY, OREGON 97045  
PHONE 503.650.0188 FAX 503.650.0189



**CENTERLINE CONCEPTS**  
LAND SURVEYING, INC.

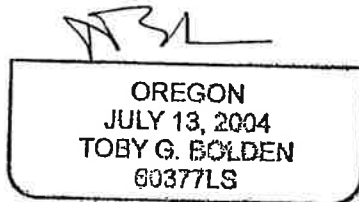
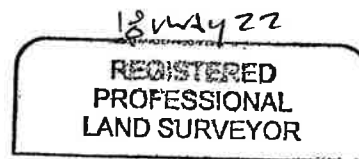
19376 Molalla Avenue, Ste. 120, Oregon City, OR 97045  
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**Exhibit "E"**  
**Temporary Easement**  
**Legal Description**

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**BEGINNING** at a point on the easterly terminus of Evergreen Lane (a 50.00 feet wide right of way) that is South 57°01'01" East, 233.95 feet and South 31°40'32" West, 32.58 feet from the most westerly corner of Parcel 1 of Partition Plat No. 2014-052, Clackamas County Plat Records; thence leaving said easterly right of way terminus, South 58°20'48" East, 124.90 feet; thence South 31°25'26" West, 15.00 feet; thence North 58°20'48" West, 124.97 feet to said easterly right of way terminus; thence along said easterly right of way terminus, North 31°40'32" East, 15.00 feet to the **POINT OF BEGINNING**.

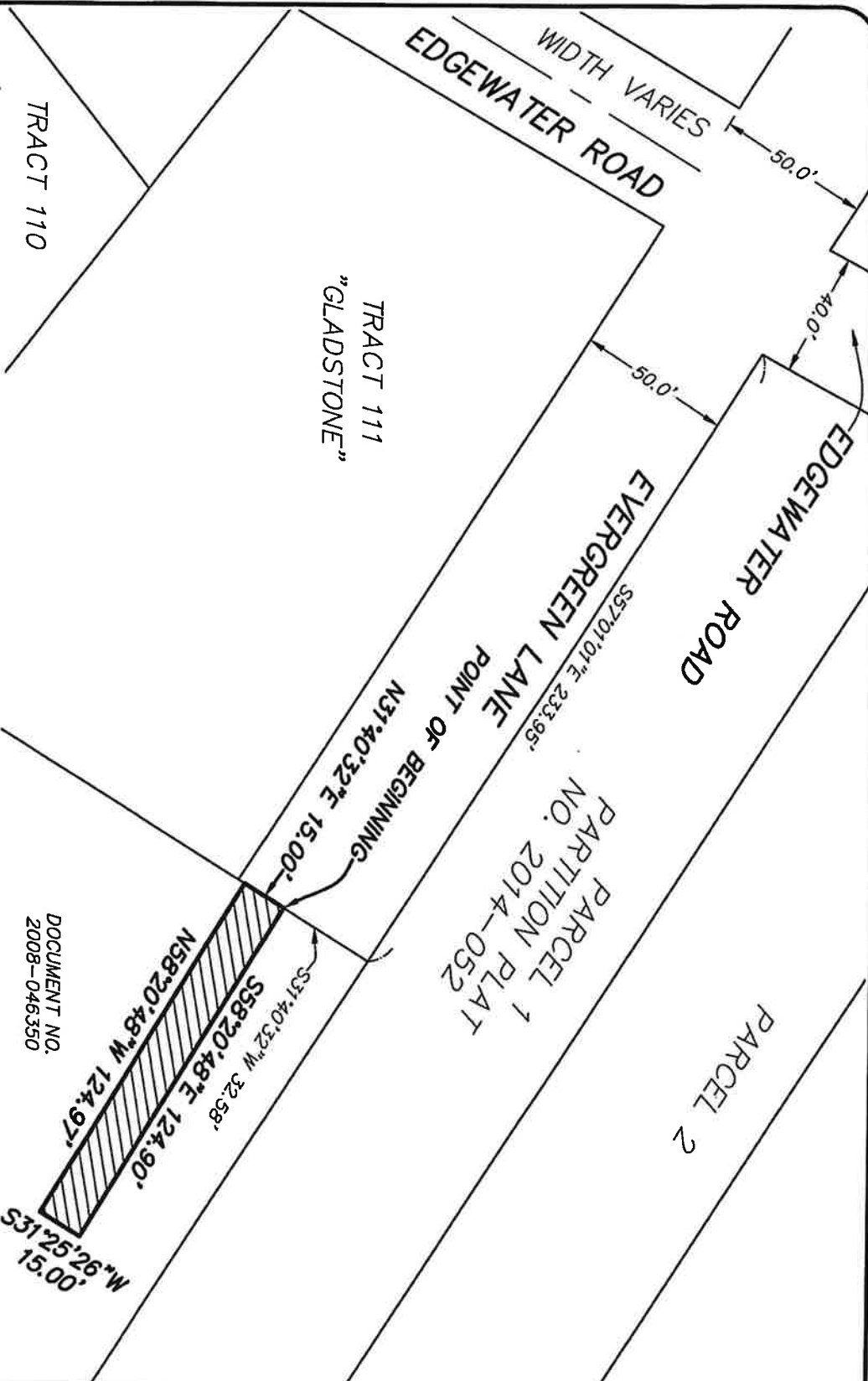
Contains 1,874 square feet, more or less.



RENEWS: 31 DEC 23



= EASEMENT  
1,874± SF



CLIENT: SISUL  
 ORIG. DATE: 5-17-2022  
 DRAWN BY: RLC  
 SHEET No. 1 OF 1

**EXHIBIT "F"**  
**TEMPORARY EASEMENT**  
 CITY OF GLADSTONE, CLACKAMAS COUNTY, OREGON  
 SCALE: 1"=50'

  
**CENTERLINE CONCEPTS**  
 LAND SURVEYING, INC.  
 19376 MOLALLA AVE., SUITE 120  
 OREGON CITY, OREGON 97045  
 PHONE 503.650.0188 FAX 503.650.0189