

After recording return to:
City of Tualatin, Oregon
18880 SW Martinazzi Ave.
Tualatin, OR 97062-7092



**ENCROACHMENT AGREEMENT
(Private Encroachment of a City Public Utility Easement)**

Subject to the terms and conditions contained herein, the City of Tualatin (“City”), pursuant to Resolution No. 5651-22, hereby grants to Malony Laurence, the owner of 19551 SW 56th Court within Fox Hill No. 1 subdivision (“Owner”) the right to encroach upon and occupy a portion of public utility easement, as more particularly described in Exhibit A (“Lot 51 of Fox Hill No. 1 subdivision plat”) for the purpose of constructing and maintaining the deck and edge of a pool (“Encroachment”).

In consideration of the rights granted by this Agreement, Owner and its heirs, successors and assignees agrees to the following terms, conditions, and restrictions:

1. The Encroachment as constructed must pass inspection by the City confirming it complies with all applicable Codes of the City of Tualatin including, but not limited to, structural safety, traffic, sanitation, land use, and fire requirements.
2. In constructing and maintaining the Encroachment, Owner agrees to comply with the plans and specifications approved by the City and all applicable permits.
3. Owner must maintain the Encroachment in good order and must immediately notify the City of any dangers to person or property, or any dangerous conditions, that exist with regard to the Encroachment, which are either known or discovered by Owner.
4. Owner assumes all risk of damage to its Encroachment, and any buildings, structures, utilities, or other appurtenances connected to the Encroachment, resulting from, or arising out of, any and all uses of the public utility easement by the City, its officers, employees, agents, utilities and the general public. Owner

further releases, waives, discharges and covenants not to sue City for any and all claims, demands, losses, lost profits, costs, expenses or causes of action arising out of, or connected with the Encroachment.

5. Owner is responsible for the timely repair or replacement of any City-owned improvements disturbed in the public utility easement as the result of Owner's and its agent's use of rights granted in this Agreement.
6. Owner agrees to reimburse City for all expenses that the City would not have incurred, but for the Owner's construction, use maintenance, repair or replacement of the Encroachment.
7. By accepting and recording this Agreement, Owner agrees to defend, indemnify, and hold harmless the City, its elected officials, officers, agents, and employees, from and against any and all claims, losses, damages or liabilities of any kind arising from or alleged to have arisen from the Encroachment permitted by this Agreement, whether such claim, loss, damage or liability results from normal operation or accident or any other cause. Owner shall maintain insurance levels in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 to 30.274.
8. The placing of the Encroachment in a portion of the aforesaid public utility easement will not give to Owner, or anyone else, any permanent right to its continued or exclusive occupancy. Owner agrees to cooperate with the City and any utility company in the event that such entity needs access to the public utility easement to install, construct, service, maintain, or repair utilities.
9. This Agreement may be terminated by the City, in its sole discretion, for any reason and at any time. City will provide Owner at least 60 days prior written notice of termination and provide the specific effective date of the termination in the notice. On or before the effective date of the revocation, Owner, at its sole expense, must remove the Encroachment from City's public utility easement; and, failing to do so, the City may cause removal of the Encroachment at the cost and expense of Owner, including any and all legal costs and attorney fees. Owner expressly grants the City permission to enter Owner's property for the purposes of removing the Encroachment along with any supporting structures, restore the public utility easement, and assess a lien on Owner's property benefited by this Agreement for the costs expended by the City in taking such actions. City will have no obligation to restore Owner's property or remove other portions of facilities making up the Encroachment if City removes the Encroachment pursuant to the authority granted by this paragraph.
10. It is further agreed between the parties, their heirs, successors and assigns that this Agreement shall continue only so long as the Encroachment is maintained within the public utility easement as indicated on Exhibit A. All rights and privileges

granted to Owner by the City under this Agreement shall terminate upon relocation or reconstruction of the Encroachment or discontinuance of its use. All rights and privileges granted to Owner by the City under this Agreement shall also terminate if Owner's use of the Encroachment fails to comply with applicable federal, state and local laws, statutes, ordinances, codes or regulations.

11. It is agreed between the parties hereto that this Agreement, unless and until terminated, shall be held to run with and bind the property described herein, and shall extend to and include the heirs, successors, assigns, devisees, lessees, and holders of every kind of and under Owner.
12. In the event Owner includes more than one person or entity, all such persons or entities are jointly and severally liable for all conditions herein.
13. Owner agrees and acknowledges that this Agreement is solely for the purpose of permitting Owner to maintain and locate the Encroachment within the City's public utility easement and is not a conveyance of any right, title or interest in or to the easement nor is it meant to abandon any easement rights conveyed to the City. Owner further agrees and acknowledges that this Agreement does not convey any right to use or occupy any property in which a third party may have an interest. Owner agrees that it will obtain all necessary permissions before occupying any such other property.
14. Owner covenants and agrees that it will not assign all or any of its rights, privileges or duties under this Agreement independent of a conveyance of the real property adjacent to the Encroachment without the prior written approval of the City, and any attempted assignment without such written approval shall be void, provided however, that in the event Owner conveys the real property on which the Improvement is situated, Owner's rights and obligations under this Agreement will be deemed to have been automatically assigned to the new owner and no approval of the City shall be required.
15. The provisions of this Agreement related to Owner's duty to defend and indemnify City as well as to remove the Encroachment and restore the public utility easement shall survive termination of this Agreement unless this the rights granted by this Agreement are assigned per the terms of this Agreement, in which case Owner's duty to defend and indemnify City as well as to remove the Encroachment and restore the public utility easement shall extend to any such assigns.
16. This Agreement is governed by and construed in accordance with the laws of the State of Oregon. Any action or suit brought by the Parties relating to this Agreement shall be brought and conducted solely and exclusively in the Circuit Court of Washington County for the State of Oregon, United States of America. The Parties hereby consent to the in personal jurisdiction of such courts, waive any objection to venue in such courts, and waive any claim that such forum is an inconvenient forum; provided, however, that if a claim must be brought in a federal

forum, then it will be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon.

17. Failure of the City at any time to require performance of any provision of this Agreement shall not limit the City's right to enforce the provision, nor shall any waiver of any breach of any provision of the Agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision. No amendment or modification of this Agreement shall be valid unless in writing and signed by the parties and re-recorded against the property.

/
/
/
/
/
/
/
/
/
/
/

ACCEPTED, and the conditions hereof acknowledged and agreed to the 13
day of October, 2022.

Permitee:

Owner of 19551 SW 56th Court

By: Jamene E. Malony

STATE OF OREGON)
) ss.
County of Clatsop)

This instrument was acknowledged before me on October 13, 2022, by Lawrence E Malony, known to me to be the owner of 19551 SW 56th Ct, Lot 51, Fox Hill No. 1 Subdivision.



[Handwritten Signature]

Notary Public—State of Oregon
My commission expires: Oct 18, 2025

Witness my hand this _____ day of _____, 20__.

By: _____
City Manager

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____, 20____, by Sherilyn Lombos, as the City Manager for the City of Tualatin, Oregon.

Notary Public—State of Oregon
My commission expires: _____