

INTERGOVERNMENTAL AGREEMENT PW-4977-22
Between
MARION COUNTY and CITY OF SALEM

1. PARTIES TO AGREEMENT

This Agreement between City of Salem, hereafter called Agency, and Marion County, a political subdivision of the state of Oregon, hereafter called County, is made pursuant to ORS 190.010 (Cooperative Agreements).

2. RECITALS

2.1 Agency was granted a parcel of land (as recorded in Reel 2862 at Page 463 of the Marion County deed records) and intends for said parcel, upon completion of the warranty period, to be dedicated for public street right-of-way purposes for the extension of Lone Oak Road SE, excluding the 10-foot-wide slope easement. The parcel to be dedicated is more particularly shown in Exhibit A herein.

2.2 Said Exhibit A parcel is outside of the Salem city limits and, upon dedication, will be within the jurisdiction of County.

2.3 A separate parcel of land (as recorded in Reel 4058 at Page 261 of the Marion County deed records) was dedicated for public street right-of-way purposes and is under the jurisdiction of County. The dedicated land is more particularly shown in Exhibit B herein, lying south of and adjoining the parcel shown in Exhibit A.

2.4 Devon Property LLC, an Oregon limited liability company, 3425 Boone Road SE, Salem, Oregon (Developer) wishes to plat and develop certain real property under City jurisdiction identified as Affinity Estates located at 6719 Devon Avenue SE.

2.5 On February 8, 2022, the City's Planning Administrator granted conditional approval for Affinity Estates as modified under Subdivision Plat No. SUB21-01MOD1.

2.6 Condition 5b of SUB21-01MOD1 requires the Developer to construct Lone Oak Road SE from the development to Sahalee Drive SE; this section of street is located within the properties described under Exhibits A and B.

2.7. Agency intends to permit the construction of public street and utility improvements over the parcel described under Exhibit A.

2.8 County intends to permit the construction of public street and utility improvements over the parcel described under Exhibit B.

2.9 Together the improvements to be permitted by County and Agency are hereinafter called "public street improvements".

2.10 Agency and County agree that dedication of the Exhibit A parcel should occur at the end of the one-year warranty period established in Salem Revised Code (SRC) Chapter 77 so that any warranty remains fully enforceable. Said warranty period will begin upon final acceptance by Agency of all Required Improvements set forth on the approved construction plans under Agency Permit Number 19-123532-PC. Said permit relates to the public infrastructure portion of the development. Agency anticipates that final acceptance of the Required Improvements under said permit and the start of the warranty period established in SRC Chapter 77 will occur within a few months of completion of the public street improvements.

2.9 Agency and County agree that the public street improvements are necessary for the orderly development of land within Agency's jurisdiction.

3. PURPOSE OF AGREEMENT

The purpose of this Agreement is to establish the terms and conditions under which the Agency will provide on-going maintenance and repair of the public street improvements once constructed. The terms are further described in Section 6 of this Agreement.

4. TERM AND TERMINATION

4.1 This Agreement shall be effective upon execution by both parties and shall terminate automatically upon annexation of the subject public street rights-of-way into the Agency's city limits, unless sooner terminated as provided herein.

4.2 This agreement may be terminated by mutual consent of both parties at any time.

4.3 County may terminate this agreement effective upon delivery of written notice to Agency or at such later date as may be established by County under any of the following conditions:

- a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- b. If Agency fails to perform any of the provisions of this agreement or so fails to pursue the work as to endanger the performance of this agreement in accordance with its terms and after written notice from County, fails to correct such failure(s) within ten (10) days or such longer period as the County may authorize.

4.4 Agency may terminate this agreement effective upon delivery of written notice to County or at such later date as may be established by Agency under any of the following conditions:

- a. If County fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- b. If County fails to perform any of the provisions of this agreement or so fails to pursue the work as to endanger the performance of this agreement in accordance with its terms and after written notice from Agency, fails to correct such failure(s) within ten (10) days or such longer period as Agency may authorize.

4.5 Any termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

5. FUNDING AND BILLING

County and Agency agree that no money or funds will be exchanged directly between the parties as a result of this agreement.

6. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT

6.1 UNDER THE TERMS OF THIS AGREEMENT, AGENCY SHALL:

- a. For the parcel described in Exhibit A, in accordance with Agency's policies and procedures: conduct plan review and, if approved, issue a permit for roadway and public utility construction; provide inspection services during construction, and, if approved, accept the public street improvements once constructed.
- b. Once the Agency and County-permitted public street improvements pass final inspection and are accepted by the respective permitting authority, assume all long-term maintenance,

repair, reconstruction or modification responsibilities for the new public street improvements and public utilities (storm sewer, sanitary sewer and water lines) constructed within the parcels described in Exhibit A and Exhibit B at no cost to the County.

- c. Ensure that any portion of the public street improvements under Agency maintenance jurisdiction are maintained in compliance with the Americans with Disabilities Act (ADA) throughout the duration of this Agreement.
- d. Coordinate any necessary maintenance and repair activities needed for franchise utilities. The cost of such activities are anticipated to be borne by the individual utility company unless otherwise mutually agreed upon by all impacted parties.
- e. Conduct inspections of the public street improvements according to the Agency's typical frequency and procedures used for inspecting similar improvements located within the Agency's jurisdiction, but no less than once every five (5) years. Provide County with inspection records within fourteen (14) calendar days upon written request.
- f. Submit notification of any necessary maintenance, repair, reconstruction, modification or retrofit of the improvements within the right-of-way, excluding emergencies, to the County no less than thirty (30) calendar days in advance. Notification of emergency repair work shall be made within two (2) business days after the work is completed.
- g. In collaboration with County, review all required documentation for the recording of the parcel of land described in Exhibit A for dedication for public street right-of-way purposes upon completion of Agency's one-year warranty period.

6.2 UNDER THE TERMS OF THIS AGREEMENT, COUNTY SHALL:

- a. For the parcel described in Exhibit B, in accordance with County's policies and procedures: conduct plan review, and if approved, issue a permit for roadway and public utility construction; provide inspection services during construction, and if approved, accept the public street improvements once constructed. The cost of the County's work shall be borne by the developer through County imposed permit fees.
- b. Notify Agency within two (2) business days upon becoming aware that maintenance or repairs to the public street and utility improvements is needed.
- c. Review and respond to notifications provided per subsection 6.1(f) within ten (10) calendar days of receipt.
- d. Upon dedication of the parcel described in Exhibit A, be the permitting authority for work within the right-of-way of that parcel described in Exhibit A until such time this agreement is terminated.
- e. Remain the permitting authority for work within the right-of-way of that parcel described in Exhibit B until such time this agreement is terminated.
- f. Authorize Agency and Agency's contractor to enter the County right-of-way to perform maintenance, repair, reconstruction, modification, or retrofit improvements to the public street improvements.
- g. In collaboration with Agency, prepare all required documentation and record the parcel of land described in Exhibit A for dedication for public street right-of-way purposes upon completion of Agency's one-year warranty period.

7. COMPLIANCE WITH APPLICABLE LAWS

The parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the state of Oregon.

8. NONDISCRIMINATION

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations in the performance of this agreement.

9. HOLD HARMLESS

Each Party agrees to defend, indemnify, and hold harmless the other Party, its officers, agents, and employees from damages arising out of the tortious acts of the indemnifying party, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.

Nothing in this agreement shall be deemed to limit the right of either party to make a claim against the other for damages and injuries incurred by one party as a result of the actions of the other party's officers, agents, and employees.

10. INSURANCE

Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon Tort Claims Act (ORS 30.260 TO 30.300).

11. MERGER CLAUSE

Parties concur and agree that this agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change to the terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by its term and conditions.

12. NOTICES

Any notice required to be given the Agency or County under this Agreement shall be sufficient if given, in writing, by first class mail or in person as follows:

For Agency:
Peter Fernandez, Public Works Director
555 Liberty Street SE, Salem OR 97301
pfernandez@cityofsalem.net

For County:
Brian Nicholas, PE – Public Works Director
5155 Silverton Road NE, Salem OR 97305
BNicholas@co.marion.or.us

13. SIGNATURES

This agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the parties hereto as of the effective date set forth herein.

In witness whereof, the parties hereto have caused this agreement to be executed on the date set forth below.

In witness whereof, the parties hereto have caused this agreement to be executed on the date set forth below.

MARION COUNTY SIGNATURES:

Authorized Signature:	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> <small>DocuSigned by:</small> <i>Brian Nicholas</i> <small>9763BA7ACD6D443...</small> </div>	8/18/2022
	Department Director or designee	Date

Authorized Signature:	n/a	
	Chief Administrative Officer	Date

Reviewed by Signature:	n/a	
	Marion County Legal Counsel	Date

Reviewed by Signature:	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> <small>DocuSigned by:</small> <i>Camber Schlag</i> <small>C5B2F3DF257F444...</small> </div>	8/18/2022
	Marion County Contracts & Procurement	Date

CITY OF SALEM

Authorized Signature:		
	City Manager or designee	Date

Reel	Page
2862	463

After recording, return to:
City Recorder
555 Liberty Street SE, Room 205
Salem OR 97301-3503

Send tax statements to:
Finance Department
555 Liberty Street SE, Room 230
Salem OR 97301-3503

WARRANTY DEED

John Elmer Your, Jr. and Nicole S. York, trustees, or their successors in trust, under the John Elmer Your, Jr. Living Trust, dated July 20, 1994, and any amendments thereto, an undivided one-half interest; and Nicole S. York and John Elmer York, Jr., trustees, or their successors in trust, under the Nicole S. York Living Trust, dated July 20, 1994, and any amendments thereto, an undivided one-half interest, hereinafter called Grantor, conveys and warrants to the CITY OF SALEM, an Oregon municipal corporation, organized and existing under and by virtue of the laws of the State of Oregon, hereinafter called Grantee, all that real property situated in Marion County, State of Oregon, described as follows:

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

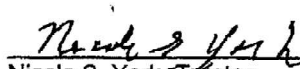
and covenants that Grantor is the owner of the above-described property free of all encumbrances except none, and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is no money, but for other valuable consideration.

"BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). 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 APPROVED USES, 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 CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004))."

Dated this 10 day of September, 2007.


John Elmer Your, Jr., Trustee


Nicole S. York, Trustee

Requested By: 308 12/22/2021

STATE OF OREGON)
)
 County of Marion)

This instrument was acknowledged before me on September 6, 2007, by John Elmer York, Jr. and Nicole S. York, trustees, or their successors in trust, under the John Elmer York, Jr. Living Trust, dated July 20, 1994, and any amendments thereto, an undivided one-half interest; and Nicole S. York and John Elmer York, Jr., trustees, or their successors in trust, under the Nicole S. York Living Trust, dated July 20, 1994, and any amendments thereto, an undivided one-half interest.



Judith L. Postier
 Notary Public - State of Oregon
 My commission expires: Sept 5, 2010

ACCEPTED ON BEHALF OF THE CITY
 OF SALEM BY:

J. L. White FOR: J. Bonnet
 Public Works Department

APPROVED AS TO FORM:

By: [Signature]
 City Attorney



Checked By: [Signature]
 Project Number: 705760
 September 6, 2007

Exhibit "A"

Beginning at a point on the northeasterly right-of-way line of Lone Oak Road S.E. at its intersection with the southerly line of Lot 482, GOLF CLUB ESTATES AT CREEKSIDE PHASE II PUD as platted and recorded in Volume 45, Page 182, Book of Town Plats for Marion County, Oregon and being situated in the Southwest Quarter Section 22, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon;

thence South 43°54'34" East 118.86 feet;
 thence southeasterly along the arc of a 560.00 foot radius curve to the right (the chord of which bears South 42°26'50" East 28.58 feet) a distance of 28.59 feet;
 thence southeasterly along the arc of a 25.00 foot radius curve to the left (the chord of which bears South 83°17'15" East 33.65 feet) a distance of 36.92 feet;
 thence North 54°24'35" East 51.67 feet to the West line of Lot 14, SUNNYSIDE FRUIT FARMS NO. 8;
 thence South 00°09'14" East along said West line a distance of 73.64 feet;
 thence South 54°24'35" West 8.98 feet;
 thence southwesterly along the arc of a 25.00 foot radius curve to the left (the chord of which bears South 12°06'26" West 33.65 feet) a distance of 36.92 feet;
 thence southeasterly along the arc of a 560.00 foot radius curve to the right (the chord of which bears South 28°47'31" East 27.43 feet) a distance of 27.43 feet to a point on the westerly extension of the South line of said Lot 14;
 thence North 89°45'04" West along said westerly extension of the South line of Lot 14, a distance of 68.88 feet;
 thence northwesterly along the arc of a 500.00 foot radius curve to the left (the chord of which bears North 49°27'52" West 315.84 feet) a distance of 321.35 feet;
 thence North 67°52'44" West 32.14 feet to an iron rod on the southwesterly right-of-way line of said Lone Oak Road;
 thence South 89°32'54" East along the southeasterly Terminus of said road and along the southerly line of said Lot 482, a distance of 162.48 feet to the Point of Beginning.

Contains 0.5347 acres of land, more or less.

For roadway purposes only

ALSO a 10.00 foot wide slope easement and temporary construction easement described as follows:

Beginning at an Iron rod in the southerly boundary of GOLF CLUB ESTATES AT CREEKSIDE PHASE II PUD which bears North 89°32'54" West 339.44 feet from the Southeast corner of Lot 482 of said subdivision and being situated in the Southwest Quarter of Section 22, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon;

thence southeasterly along the arc of a 500.00 foot radius curve to the right (the chord of which bears South 49°27'52" West 315.84 feet) a distance of 321.35 feet to a point on the westerly extension of the South line of Lot 14, SUNNYSIDE FRUIT FARMS NO. 8;

thence North 89°45'04" West along said westerly extension, a distance of 11.75 feet;

thence northwesterly along the arc of a 490.00 foot radius curve to the left (the chord of which bears North 49°49'16" West 303.73 feet) a distance of 308.82 feet;

thence North 67°52'44" West 32.14 feet;

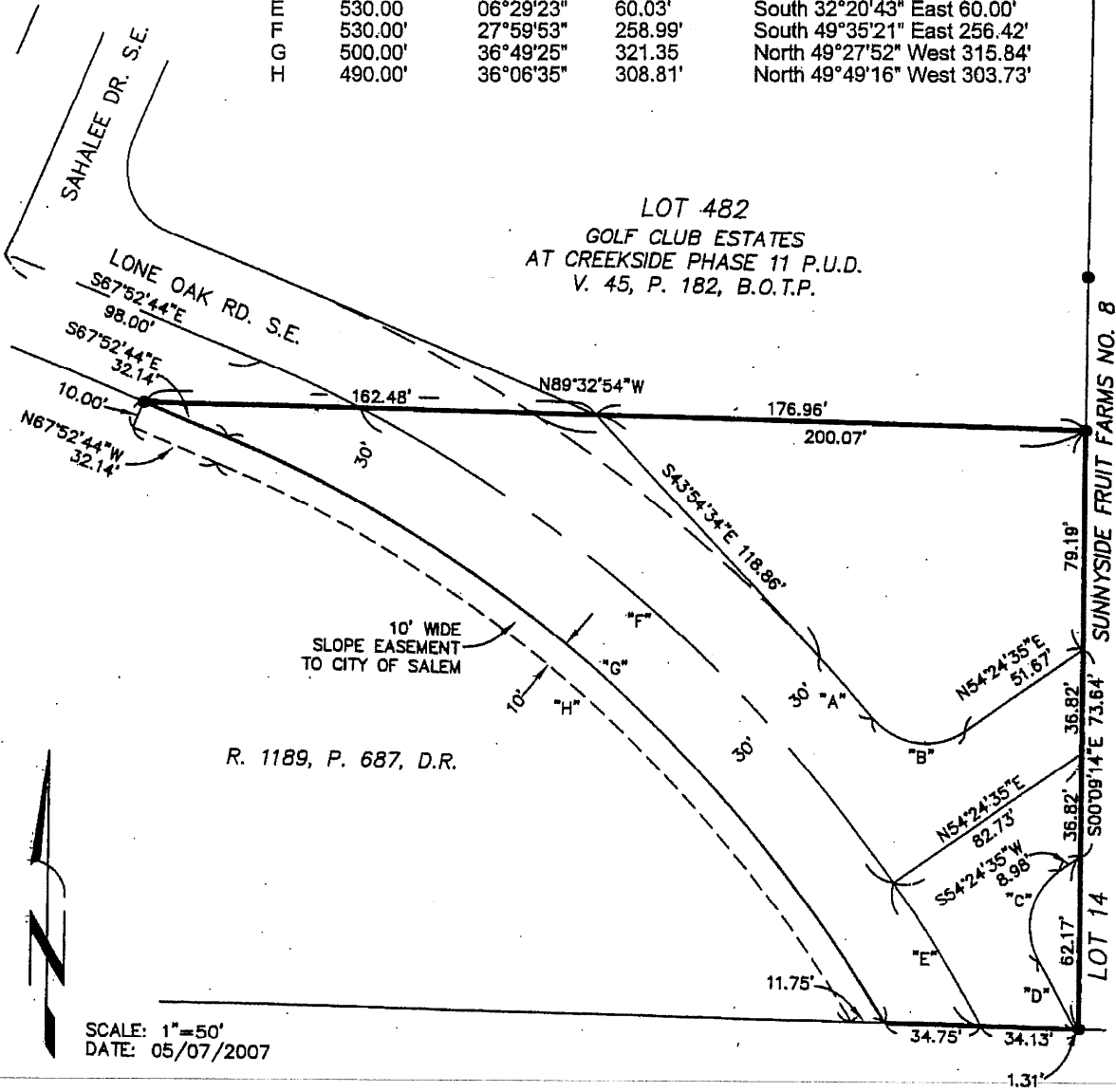
thence North 22°07'26" East 10.00 feet to the Point of Beginning.

Contains 0.0797 acres of land, more or less.

EXHIBIT "B"

CURVE TABLE

Curve	Radius	Delta	Length	Chord Bearing & Distance
A	560.00'	02°55'29"	28.59'	South 42°26'50" East 28.58'
B	25.00'	84°36'19"	36.92'	South 83°17'15" East 33.65'
C	25.00'	84°36'19"	36.92'	South 12°06'26" West 33.65'
D	560.00'	02°48'25"	27.43'	South 28°47'31" East 27.43'
E	530.00'	06°29'23"	60.03'	South 32°20'43" East 60.00'
F	530.00'	27°59'53"	258.99'	South 49°35'21" East 256.42'
G	500.00'	36°49'25"	321.35'	North 49°27'52" West 315.84'
H	490.00'	36°06'35"	308.81'	North 49°49'16" West 303.73'



REEL:2862

PAGE: 463

September 07, 2007, 08:56 am.

CONTROL #: 205162

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 41.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.

Exhibit B



RECORDING COVER SHEET

THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING (ORS 205.234). ANY ERRORS IN THIS COVER SHEET DO NOT AFFECT THE TRANSACTIONS CONTAINED WITHIN THE DOCUMENT.

A. Names of the Transactions described in the attached instrument:

Dedication of Right of Way

B. Names of First Parties: **John E. & Nicole S. York**
6504 Lone Oak Rd SE
Salem OR 97306

Names of Second Parties: **Marion County, a political subdivision of the State of Oregon**

C. Consideration Paid: (if applicable): **None**

D. Lien or Satisfaction Amount: (if applicable): **N/A**

E. Until a change is requested, all tax statements shall be sent to the following address:

Exempt, Public Property
(Roadway Purposes)

F. Name and address of person authorized to receive the instrument after recording:

John Rasmussen, Land Development Engineering ✓
Marion County Department of Public Works
5155 Silverton Road NE
Salem, Oregon 97305

REEL 4058 PAGE 261
MARION COUNTY
BILL BURGESS, COUNTY CLERK
03-20-2018 10:40 am.
Control Number 499829 \$ 66.00
Instrument 2018 00013492

RIGHT-OF-WAY DEDICATION

John E. York and Nicole S. York, Trustees of the York Living Trust dated November 28, 2007, and any amendments thereto ("Grantor"), hereby dedicates a perpetual right-of-way for street purposes on, over, and under the following described property, and forever dedicates for use as a public street all of the following described real property situated in Marion County, Oregon:

See Exhibit "A" Legal Description attached, and as shown on Exhibit "B" Map also attached, to and made a part hereof.

The dedicated property shall only be used for public street purposes, which includes utilities.

Grantor warrants that (1) Grantor has marketable title to property, (2) Marion County may peaceably enjoy the rights and benefits of this dedication, (3) there are no other interests in the property that conflict with Marion County's intended use of this dedication, (4) the dedicated property is free of encumbrances except those of which Grantor has notified Marion County, and (5) Grantor has the unrestricted right to dedicate the property without additional consent or permission.

True and actual consideration for this transfer is no money, but for other valuable consideration.

The following is the notice as required by Oregon law: "THIS INSTRUMENT WILL 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 RIGHTS TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OF COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 93.040."

Grantor: Names (s)

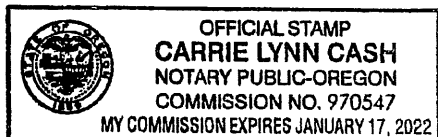
**The York Living Trust dated November 28, 2007,
and any amendments thereto**

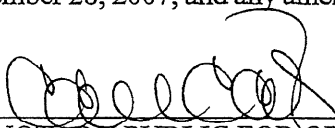
By: 

John E. York, Trustee

STATE OF OREGON)
) ss.
County of Marion)


This instrument was acknowledged before me on the 27 day of Feb, 2018 by John E. York, as Trustee of the York Living Trust dated November 28, 2007, and any amendments thereto on behalf of whom the instrument was executed.





NOTARY PUBLIC FOR OREGON
My Commission Expires: Jan 17, 2022

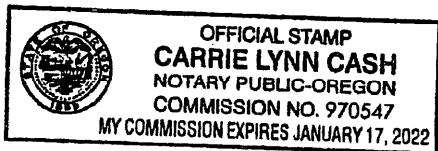
The York Living Trust dated November 28, 2007,
and any amendments thereto

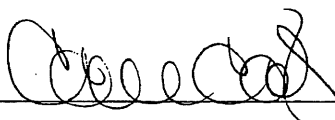
By: 

Nicole S. York, Trustee

STATE OF OREGON)
) ss.
County of Marion)

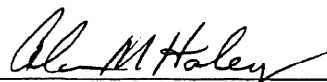
This instrument was acknowledged before me on the 27 day of Feb, 2018 by Nicole S. York, as Trustee of the York Living Trust dated November 28, 2007, and any amendments thereto on behalf of whom the instrument was executed.





NOTARY PUBLIC FOR OREGON
My Commission Expires: Jan 17, 2022

Marion County Acceptance by:



Alan Haley, Public Works Director

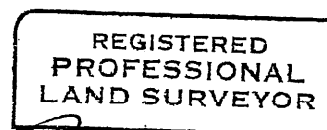
Exhibit A

Beginning at the Southwest corner of the tract of land conveyed to the City of Salem in Reel 2862, Page 463, Marion County Deed Records in the Southwest Quarter of Section 22, Township 8 South, Range 3 West of the Willamette Meridian, City of Salem, Marion County, Oregon; thence 16.80 feet along a 500.00 foot radius curve to the right (the chord of which bears South 30°05'25" East 16.80 feet); thence South 29°07'40" East 127.59 feet to the East line of Lot 7, Battle Creek Fruit Farm No. 1; thence along said East line North 00°09'14" East 125.68 feet to the North line of said Lot 7; thence along said North line North 89°45'04" West 70.19 feet to the Point of Beginning. For roadway purposes only.

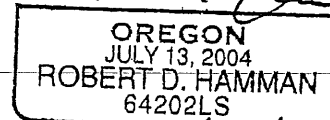
Together With:

A 10.00 foot wide slope easement and temporary construction easement described as follows:

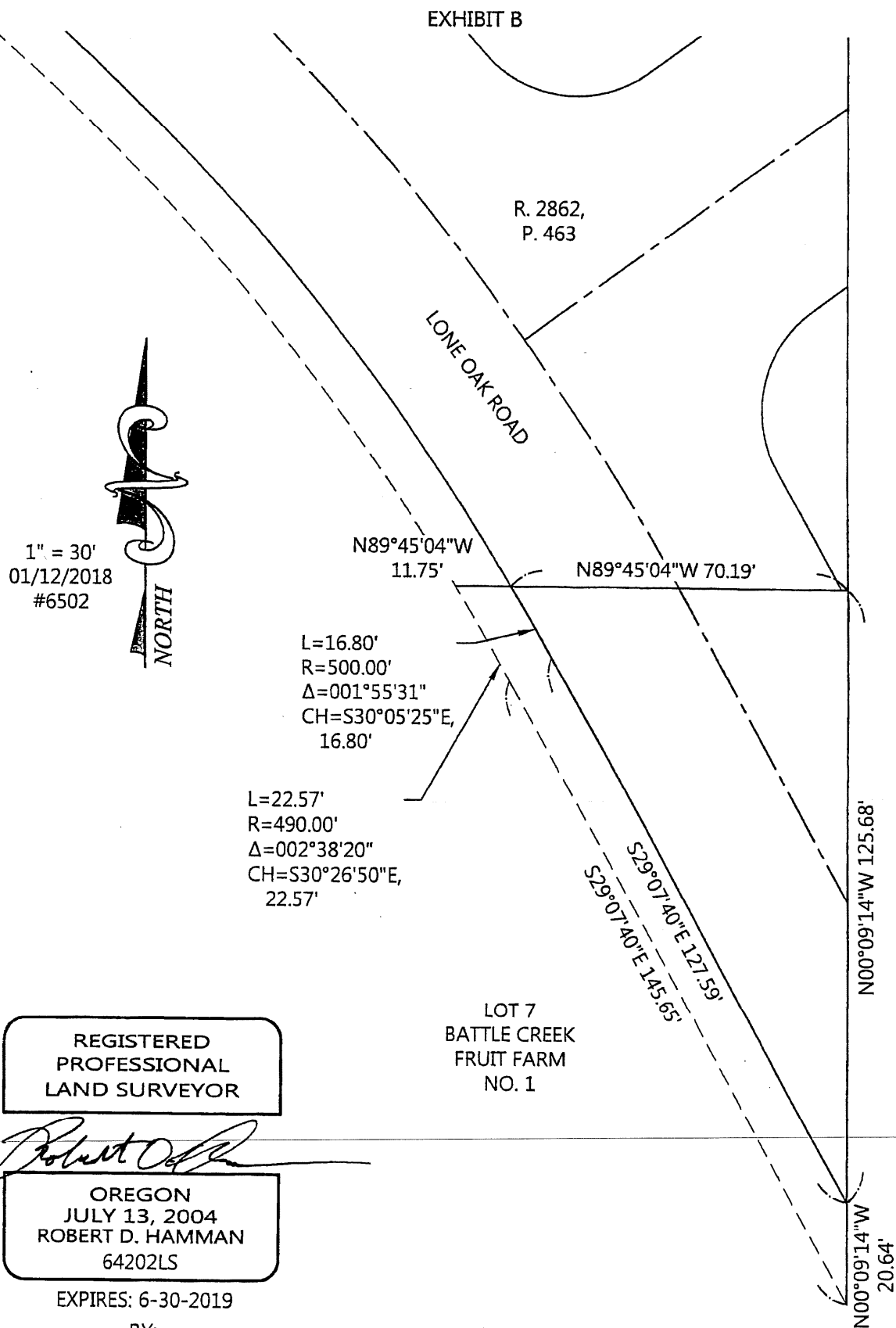
Beginning at the Southwest corner of the tract of land conveyed to the City of Salem in Reel 2862, Page 463, Marion County Deed Records in the Southwest Quarter of Section 22, Township 8 South, Range 3 West of the Willamette Meridian, City of Salem, Marion County, Oregon; thence North 89°45'04" West 11.75 feet; thence 22.57 feet along a 490.00 foot radius curve to the right (the chord of which bears South 30°26'50" East 22.57 feet); thence South 29°07'40" East 145.65 feet to the East line of Lot 7, Battle Creek Fruit Farm No. 1; thence along said East line North 00°09'14" East 20.64 feet; thence North 29°07'40" West 127.59 feet; thence 16.80 feet along a 500.00 foot radius curve to the left (the chord of which bears North 30°05'25" West 16.80 feet) to the Point of Beginning.



A handwritten signature in black ink, appearing to read "Robert D. Hamman", written over the surveyor's stamp.



EXPIRES: 6/30/2019



REGISTERED
PROFESSIONAL
LAND SURVEYOR

Robert D. Hamman

OREGON
JULY 13, 2004
ROBERT D. HAMMAN
64202LS

EXPIRES: 6-30-2019

BY:

MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227

REEL: 4058

PAGE: 261

March 20, 2018, 10:40 am.

CONTROL #: 499829

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

FEE: \$ 66.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.