

After recording return to:

✓ City of Salem
Real Property Services
350 Commercial St NE
Salem, OR 97301

REEL 3809 PAGE 200
MARION COUNTY
BILL BURGESS, COUNTY CLERK
04-20-2016 04:02 pm.
Control Number 409357 \$ 116.00
Instrument 2016 00018618

FIRST AMENDMENT

This is the First Amendment to that certain Development Agreement by and between THE URBAN RENEWAL AGENCY OF THE CITY OF SALEM, an Oregon quasi-municipal corporation of the State of Oregon ("Agency") and N.W. CUSTOM STRUCTURES, LLC, an Oregon limited liability company ("Developer"), dated October 4, 2013 (Agreement). This First Amendment is effective on the date last signed by both parties below.

RECITALS:

Whereas, pursuant to the Agreement, Developer purchased from Agency, certain real property located at 3005-3042 Portland Rd. NE, Salem, Marion County, Oregon, commonly as described in the Agreement (the "Property"); and

Whereas, Agency and Developer desire to amend the Agreement to establish a new deadline for completion of the Phase I improvements to the Property;

Now therefore, the Parties agree that the following section of the Agreement be amended as shown below:

2.4 Development Schedule. Phase I of the Improvements to the Property shall be completed within ~~twelve~~ thirty-six (~~12~~ 36) months of the Effective Date and Phase II of the Improvements shall be complete within five (5) years from the Effective Date. Completion of the Phase II Improvements shall be defined as Developer having obtained a Certificate of Occupancy. The Agency, at its sole discretion and upon request by Developer, may grant a one year extension of the Phase II completion date.

IN WITNESS WHEREOF the parties have caused this First Amendment to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

AGENCY
The Urban Renewal Agency of
the City of Salem

DEVELOPER
N.W. Custom Structures, LLC

By: Kasey Duncan
Its: Deputy Director
Date: 3/31/16

By: K. Kitchen
Its: Managing Member
Date: 3-16-16

REEL 3550 PAGE 274
MARION COUNTY
BILL BURGESS, COUNTY CLERK
10-08-2013 10:53 am.
Control Number 348670 \$ 101.00
Instrument 2013 00045491

AFTER RECORDING RETURN TO:
Urban Renewal Agency of City of Salem
350 Commercial St NE
Salem, OR 97301

TAXES:
N.W. Custom Structures, LLC
9585 SW 146th Terrace #2
Beaverton, OR 97007

**DEVELOPMENT AGREEMENT BETWEEN
THE URBAN RENEWAL AGENCY OF THE CITY OF SALEM
AND N.W. CUSTOM STRUCTURES, LLC**

This is an agreement ("Development Agreement" or "Agreement") for the development of certain property located Marion County, Oregon, legally described as follows, by and between the URBAN RENEWAL AGENCY OF THE CITY OF SALEM, a quasi-municipal corporation of the State of Oregon, ("Agency") and N.W. CUSTOM STRUCTURES, LLC ("Developer"). This Agreement shall be deemed executed on the date last signed by all parties.

RECITALS

A. Whereas, Agency is an urban renewal agency, activated by the Salem City Council pursuant to ORS 457.035. Seller owns fee simple title to the real property located at 3005 – 3043 Portland Rd., legally described in Exhibit A ("the Property") and by this reference is incorporated herein. Seller acquired the Property pursuant to the North Gateway Urban Renewal Plan in order to mitigate blight in the North Gateway Urban Renewal Area; and

B. Whereas, Agency in accordance with its authority under ORS 457.180 and the Plan, Seller desires to sell the Property to Buyer, and Buyer desires to acquire the Property on the terms and conditions herein stated, so that the Property may be developed in a manner consistent with the Plan and Buyer's development plans; and

C. Whereas, the Deed requires Developer, its successors and assigns to develop the Property subject to certain requirements, and provides Agency with a right of re-entry, and other incentives to ensure the Property is developed; and

D. Whereas, Agency agrees to sell property to Developer over time via a Promissory Nnote and Trust Deed Exhibits B and C incorporated herein by this reference;

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT

ARTICLE I - EFFECTIVE DATE

This Agreement, its terms, conditions, rights and obligations, shall become effective upon the date Developer acquires fee title to the Property ("Effective Date"). If the Agency fails to convey fee title to Developer, this Agreement shall terminate, and be of no further force and effect within one hundred twenty (120) days from the date this Agreement is executed ("Acquisition Period"). Agency may, in its sole discretion, extend the Acquisition Period an additional sixty (60) days upon receipt of written notice from Developer.

ARTICLE II - PROPERTY DEVELOPMENT

2.1 Price. Developer agrees to purchase from Agency and Agency agrees to sell to Developer the Property as described in Exhibit "A" attached hereto, for the sum of \$50,000.00

2.2 Payment of Purchase Price. Developer shall pay Agency according to the terms of the Promissory Note and Trust Deed Exhibits "B and C" attached hereto.

2.3 Development. The Property is subject to the North Gateway Urban Renewal Plan (Plan) and was acquired and disposed of by the Agency with the intent that it be developed consistent with the Plan, and not held for speculative purposes. Therefore, the parties agree that Developer will in good faith, use best efforts to improve the property as follows: Phase I: level and gravel the site and secure carports as required by the Salem Revised Code (SRC); install fencing and landscaping as required by the SRC; utilize the site as a sales area for carports; and Phase II: pave the necessary driveways and parking areas and complete a permanent commercial office building of no less than 1,000 square feet (the "Improvements").

2.4 Development Schedule. Phase I of the Improvements to the Property shall be completed within twelve (12) months of the Effective Date and Phase II of the Improvements shall be complete within five (5) years from the Effective Date. Completion of the Phase II Improvements shall be defined as Developer having obtained a Certificate of Occupancy. The Agency, at its sole discretion and upon request by Developer, may grant a one year extension of the Phase II completion date.

2.5 Right of Re-Entry. Prior to completing purchase and acquiring title to the Property, Developer and Agency shall instruct and cause escrow as part of that transaction to insert the following restriction on the deed allowing Agency a Right of Re-entry subject to the conditions of this Agreement:

"This conveyance is made subject to the express condition that the Urban Renewal Agency of the City of Salem, Oregon reserves a right to re-enter and retake the Property if Buyer, its successors or assigns, fails to commence or complete

construction of development of the Property consistent with that certain Development Agreement, recorded in the land records of Marion County, Oregon, at reel ____, page ____."

ARTICLE III - DEFAULT

3.1 An Event of Default shall occur if Developer fails to perform in accordance with any provision in Article II of this Agreement. If any installment payment due under Promissory Note is missed, it shall constitute an immediate default of Promissory Note without any required notice from Agency. Upon the happening and continuance of an Event of Default, Agency may elect, subject to the provisions of this Article III, to enter upon the Property or any appurtenant easement and by this entry terminate the Developer's estate in the deed and vest title to the Property or any appurtenant easement in Agency. Agency's Rights of Re-Entry shall be included in the Deed and any appurtenant easements as an express limitation on any right, title or interest conveyed thereby.

3.2 Under no circumstances will Developer have any right to mortgage the Property until the Promissory Note has been fully repaid.

3.3 Should Agency elect to exercise Agency's Rights of Re-Entry, Agency must first give Developer a notice of default in writing at least one hundred twenty (120) calendar days in advance of the date Agency intends to enforce Agency's Rights of Re-Entry (the "Notice Period"). The notice of default shall specify Developer's default. Developer shall have the right to cure any such default prior to expiration of the Notice Period.

3.4 If Developer cures the default identified in the Notice, Developer shall promptly notify Agency of such cure. If Agency deems Developer's action to satisfactory cure the default, Agency shall by written notice to Developer, declare the notice of default void. If Developer fails to cure within the Notice Period, then Agency may proceed to enforce Agency's Right of Re-Entry under this Section.

3.5 Upon Agency's reentry, title shall revert in Agency to all or any part of the Property, and any easements appurtenant thereto, Agency shall, pursuant to its responsibilities under State law, use its best efforts to resell the Property or part thereof as soon as and in such manner as Agency shall find feasible and consistent with the objectives of such law and of the North Gateway Urban Renewal Plan, to a qualified and responsible party or parties as determined by Agency who will assume the obligations of making or completing the improvements or such other improvements in their stead as shall be satisfactory to Agency and in accordance with the uses specified for the Property or part thereof in the North Gateway Urban Renewal Plan.

3.6 **Irrevocable Power of Attorney.** In order to effect the revestment of title to the Property as provided for in this Article, and subject to Section 3.5, Developer hereby irrevocably makes, constitutes and appoints the Executive Director of the Urban Renewal Agency of the City of Salem the lawful attorney in fact of Developer, with limited authority consistent with this Agreement to grant and sell the Property and the improvements thereof; and to make, execute, acknowledge and deliver good and sufficient deeds and conveyances for the same, and to let and demise the Property

and appurtenant easements for such rent and term as he shall deem advisable; and to ask, demand, recover, receive and receipt for all sums of money which shall become due and owing by reason of any such bargain, sale or lease and to take all lawful ways and means for the recovery thereof; giving and granting unto said attorney (or substitute or substitutes) full power and authority consistent with this Agreement to do and perform all and every act necessary to be done to accomplish the above, as fully as might or could be done by Developer with Developer hereby ratifying and confirming all that said attorney (or the substitute or substitutes) shall lawfully do or cause to be done by virtue hereof ("Agency's Power of Attorney").

3.7 Termination of Agency's Right of Re-Entry. Promptly after completion of construction in accordance with Article II, and upon the request of Developer, Agency shall furnish Developer with a Certificate of Completion, in form suitable for recording, which shall include the following:

- (a) A statement certifying that construction has been completed as defined in the condition subsequent stated in the deed;
- (b) A statement that all other conditions subsequent stated in the deed have been fully satisfied;
- (c) A statement that Agency's Right of Re-Entry stated in the deed is terminated;
- (d) A statement that Agency's Power of Attorney is terminated;
- (e) The reel and page number or other identifying number of the deed; and
- (f) The legal description of the Property.

Developer shall record the signed Certificate of Completion in the Records of Marion County, Oregon.

ARTICLE IV – GENERAL PROVISIONS

4.1. Reserved Rights. Nothing in this Agreement shall limit or restrict the right of Developer to subdivide, partition or otherwise divide or adjust the property lines on the Property, or to develop on the Property or any portion thereof with one or more additional buildings on the Property, provided:

- (a) All Development is completed as set forth in Article II.
- (b) All Development, and lots or parcels resulting from any land division shall be subject to all applicable laws, rules, regulations, codes, including the Fairview Urban Renewal Area; and
- (c) Until the conditions set forth in Article II have been satisfied, all Development, including lots or parcels resulting from the subdivision, partition or

reconfiguration of the Property shall continue to be subject to Agency's Right of Re-Entry, and such Right of Re-Entry shall apply to the entire Property

4.2. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors, heirs, legal representatives and assigns.

4.3. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same document.

4.4. Recording. This Agreement shall be recorded in land records of Marion County, Oregon.

4.5. Notices. All notices or other communications required or permitted under this Agreement must be in writing and must be (1) personally delivered, and shall be deemed received on receipt at the office of the addressee, or; (2) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications will be deemed received three days after deposit in the United States mail, postage prepaid, or; (3) sent by overnight courier delivery, which will be deemed received one business day after deposit with the courier, or; (4) sent by FAX, which notices and communications will be deemed received on the delivering party's receipt of a transmission confirmation.

To Developer: N.W. Custom Structures, LLC
Kimberly A. Kitchen
9585 SW 146th Terrace #2
Beaverton, OR 97007

To Agency: Urban Renewal Agency of the City of Salem
Attn: Real Property Services Division Manager
350 Commercial St NE
Salem, OR 97301

With a copy to: City of Salem
City Attorney's Office
555 Liberty Street NE, Room 205
Salem, OR 97301

4.6. Authority. The Parties and those signing on their behalf represent and warrant that they have the requisite legal power, right, and authority to enter into this Agreement, any instruments referred to herein, and to consummate the transactions contemplated here.

4.7. Legal Relationships

(a) Relationship of Parties. No joint venture, partnership, or other joint undertaking is intended by this Agreement. Neither party hereto will have any rights to make any representations or incur any obligations on behalf of the other. Neither party has

authorized any agent to make any representations, admit any liability, or undertake any obligation on its behalf. Neither party is executing this Agreement on behalf of an undisclosed principal.

(b) **No Third-Party Beneficiaries.** No third party is intended to be benefited or afforded any legal rights under or by virtue of this Agreement.

(c) **Joint and Several Liability.** If either party comprises more than one person or entity, the obligations of each person or entity comprising such party under this Agreement will be joint and several.

(d) **Indemnified Parties.** Any indemnification contained in this Agreement for the benefit of a party will extend to the party's members, directors, shareholders, officers, employees, and agents.

4.8. Assignments, Successors and Alienation.

(a) **Assignments and Successors.** Developer may not assign or otherwise transfer this Agreement or any interest herein, voluntarily, involuntarily, or by operation of law, without the prior written consent of Agency in each instance, which consent will not be unreasonably withheld. Developer will not be released from its obligations under this Agreement in the event of any assignment or transfer unless expressly agreed to by Agency. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) **Alienation.** Developer may not Dispose of the Property without Agency's consent, which consent shall not be reasonably withheld. Within ten (10) calendar days of encumbering the property by mortgage, security interest, easement, or otherwise, Developer shall provide written notice to Agency of such encumbrance. Developer's failure to timely notify Agency of such encumbrance shall act as a waiver of any requirement in this Agreement that Agency provide notice to any such third party.

(c) Notwithstanding any other provision of this Agreement, Developer may, without the consent of Agency, assign or transfer this Agreement and any interest herein, and convey, transfer or otherwise Dispose of the Property and interest therein, to any Related Entity. As used in this section, "Related Entity" means any entity organized or incorporated under the laws of the State of Oregon, or other domestic entity registered with the Oregon Secretary of State's Office to conduct business Oregon, that Developer maintains a controlling interest.

4.09. Time of Essence. Except as otherwise specifically provided in this Agreement, time is of the essence for each and every provision of this Agreement.

4.10. Invalidity of Provisions. If any provision of this Agreement, or any instrument to be delivered by either party under this Agreement, is declared invalid or is unenforceable for any reason, the provision will be deleted from the document and will not invalidate any other provision contained in the document.

4.11. Neutral Construction. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and will be construed without regard to which party drafted all or part of this Agreement.

4.12. Captions. The captions of the sections and paragraphs in this Agreement are used solely for convenience and are not intended to limit or otherwise modify the provisions of this Agreement.

4.13. Waiver. The failure of either party at any time to require performance of any provision of this Agreement will not limit the party's right to enforce the provision. Waiver of any breach of any provision will not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

4.14. Subsequent Modifications. This Agreement and any of its terms may be changed, waived, discharged, or terminated only by a written instrument signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

4.15. Counting of Days. If the time for performance of any of the terms, conditions, and provisions hereof falls on a Saturday, Sunday, or legal holiday, then the time of the performance will be extended to the next business day thereafter.

4.16. Venue. In any action brought to interpret or enforce any of the provisions of this Agreement, the venue will be in Marion County, Oregon.

4.17. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon. All sums referred to in this Agreement will be calculated by and payable in the lawful currency of the United States.

4.18. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the Property and supersedes and replaces all written and oral agreements previously made or existing between the parties.

4.19. Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same contract.

4.20. Facsimile Copies. Either party may rely on facsimile copies of this Agreement to the same extent as the originals.


4.21. Statutory Disclaimer:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL

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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. 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 VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES 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, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

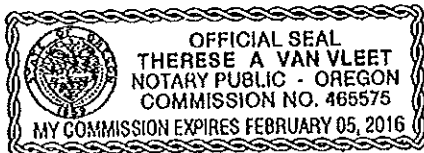
IN WITNESS WHEREOF, the parties hereto have subscribed their names

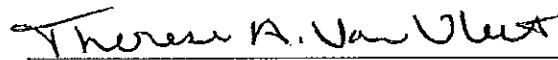
N.W. CUSTOM STRUCTURES, LLC


Kimberly A. Kitchen, Member

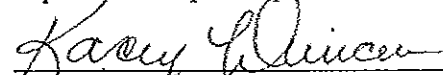
STATE OF OREGON)
)ss.
County of)

This instrument was acknowledged before me on Sept 27, 2013 by Kimberly A. Kitchen as Member of N.W. Custom Structures, LLC, and acknowledged the foregoing instrument to be the voluntary act and deed of the company, executed by authority of its members.




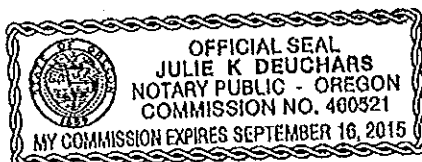

Therese A. Van Vleet
Notary Public - State of Oregon
My commission expires: 2/5/16

URBAN RENEWAL AGENCY
OF THE CITY OF SALEM, OREGON
a quasi-municipal corporation


Linda Norris, Executive Director
Kacey Duncan, Deputy Executive Director

STATE OF OREGON)
)ss.
County of Marion)

This instrument was acknowledged before me on October 4, 2013, by  Linda Norris, as Executive Director of the Urban Renewal Agency of the City of Salem.



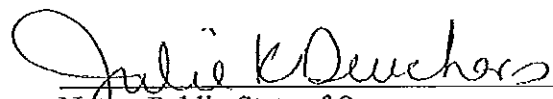

Notary Public-State of Oregon
My commission expires: 9-16-15

Exhibit A: Legal Description
Exhibit B: Promissory Note
Exhibit C: Trust Deed

EXHIBIT A

Urban Renewal Agency of the City of Salem

C.D.R.E. No.: 091, 092, 093, 094, 095

Vestee(s): URBAN RENEWAL AGENCY OF THE CITY OF
SALEM

Contract Purchaser(s): NONE

Mortgage Holder(s): NONE

Trust Deed Beneficiary(ies): NONE

Tax Map No.: 073W14AA-00900, 01100

073W14AD-00100, 00200, 00300

A tract of land in Section 14, Township 7 South, Range 3 West, Willamette Meridian, City of Salem, Marion County, Oregon, being a portion of that tract described in that document recorded on June 6, 2001 in Reel 1791, Page 391, Records of Marion County, Oregon, the said tract being that portion of said property included in a strip of land variable in width lying on the northwesterly side of the Engineer's Centerline, and southeasterly of the northwesterly line of said strip.

The widths in feet of the strip of land referred to above are as follows:

Tract 1 (Variable Width Right-of-Way)

Station	to Station	Width on the northwesterly side of Engineer's Centerline
50+00.00	51+19.66	38.76 in a straight line to 46.49
51+19.66	51+74.37	46.49 in a straight line to 47.00
51+74.37	53+50.00	47.00

EXCEPTING that portion of said strip lying within existing public roads.

Contains 1,360 square feet, or 0.031 acres, more or less.

EXHIBIT A, continued

The Engineer's Centerline referred to above is described as follows:

Beginning at Engineer's Centerline Station 36+78.80, which point is on the Located Line of the Pacific Highway as shown on Oregon Department of Transportation Drawing No. 5B-1-5, said point also being 2,199.70 feet North and 647.07 feet East of a 1-inch diameter iron pipe marking the Southeast Corner of the Samuel Penter Donation Land Claim Number 52; thence North 38°13'08" East along said Drawing No. 5B-1-5 Located Line, 1,192.00 feet to Engineer's Centerline Station 48+70.80; thence leaving said Located Line N.36°49'12"E., 304.01 feet to Engineer's Centerline Station 51+74.81; thence N.36°17'02"E., 474.92 feet to the point of curve of a 5,500.00 foot radius curve to the right at Engineer's Centerline Station 56+49.73; thence along the arc of said curve 165.83 feet, through a central angle of 01°43'39" (the chord of said curve bears N.37°08'52"E., 165.82 feet) to the point of curve of a 5,500.00 foot radius curve to the left at Engineer's Centerline Station 58+15.56; thence along the arc of said curve 347.50 feet, through a central angle of 03°37'12" (the chord of said curve bears N.38°12'06"E., 347.44 feet) to the point of curve of a 5,500.00 foot radius curve to the right at Engineer's Centerline Station 61+63.06; thence along the arc of said curve 181.67 feet, through a central angle of 01°53'33" (the chord of said curve bears N.35°20'16"E., 181.66 feet) to Engineer's Centerline Station 63+44.73; thence N.36°17'02"E., 446.39 feet to Engineer's Centerline Station 67+91.12.

Bearings for this description are based on the Oregon Coordinate System of 1983, North Zone and are from a survey performed by Otak, Incorporated in December, 2000 through June, 2001 for the Portland Road Improvement Project, said survey being recorded in the Survey Records of Marion County as C.S. 35872.

EXHIBIT A

Urban Renewal Agency of the City of Salem

C.D.R.E. No.: 091, 092, 093, 094, 095

Vestee(s): URBAN RENEWAL AGENCY OF THE CITY OF
SALEM

Contract Purchaser(s): NONE

Mortgage Holder(s): NONE

Trust Deed Beneficiary(ies): NONE

Tax Map No.: 073W14AA-00900, 01100

073W14AD-00100, 00200, 00300

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EXHIBIT A, continued

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Bearings for this description are based on the Oregon Coordinate System of 1983, North Zone and are from a survey performed by Otak, Incorporated in December, 2000 through June, 2001 for the Portland Road Improvement Project, said survey being recorded in the Survey Records of Marion County as C.S. 35872.

REEL: 3550

PAGE: 274

October 08, 2013, 10:53 am.

CONTROL #: 348670

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: \$ 101.00

BILL BURGESS
COUNTY CLERK

THIS IS NOT AN INVOICE.