

AFTER Recording Return:  
City of Salem,  
555 Liberty St. SE, Rm 205  
Salem, OR 97301

REEL 3471 PAGE 126  
MARION COUNTY  
BILL BURGESS, COUNTY CLERK  
02-08-2013 12:51 pm.  
Control Number 332725 \$ 86.00  
Instrument 2013 00005843

## IMPROVEMENT DEFERRAL AGREEMENT

This Agreement is made and entered into by and between the City of Salem, an Oregon municipal corporation (the "City"), and M & T Partners, Inc, a Delaware corporation, registered in the state of Oregon (the "Owner").

Whereas, City approved the Site Plan Review and Urban Growth Area Development Permit, case no. SPR-UGA 12-11, on September 7, 2012 (the "Decision") for property located at the 2500 block of Boone Road, SE (the "Property") more particularly described in Exhibits "A", "B" and "C", attached hereto and by this reference incorporated herein.

WHEREAS, Conditions of approval of the Decision require construction of the following improvements (the "Improvements"):

(Condition 1) As a condition of building permit issuance for UGA Phase 1, construct a minimum 15-foot-wide half-street improvement along the entire frontage on the development side of Boone Road, SE (Boone). The street and right-of-way width shall also accommodate a westbound right-turn lane and a westbound left-turn lane at Battle Creek Road, SE (Battle Creek).

(Condition 2) As a condition of building permit issuance for UGA Phase 1, construct a minimum 23-foot-wide half-street improvement on the development side of Battle Creek from Boone Road to Kuebler Boulevard, SE (Kuebler). The street and right-of-way width shall accommodate a northbound left-turn lane at Kuebler with a minimum 300 feet of storage and a southbound left-turn lane at Boone with a minimum 300 feet of storage.

(Condition 3) As a condition of building permit issuance for UGA Phase 1, construct an exclusive eastbound right-turn lane on Kuebler at Battle Creek.

(Condition 4) As a condition of building permit issuance for the first building in UGA Phase 2 or UGA Future Phase, along the entire frontage on the development side of Kuebler, construct a minimum 40-foot-wide half-street improvement. This project meets the criteria for fee-in-lieu of improvement per SRC 66.595.

(Condition 9) As a condition of building permit issuance for the first building in UGA Phase 2 or UGA Future Phase, complete all remaining mitigating street improvements required as a condition of approval for Zone Change, Case No. 09-

3 and specified in the final approval for Comprehensive Plan Change/Zone Change Case No. 06-6.

(Condition 10) Prior to the issuance of the building permit for the first building in UGA Phase 1, the applicant shall sign an improvement deferral agreement which specifies the terms of the deferral as outlined in conditions 1, 2, 3, 4, and 9. Said agreement shall be in a form approved by the City Attorney and shall be filed in the deed records of Marion County.

Whereas, Salem Revised Code (SRC) 113.205(b)(11)(A) authorizes the Planning Administrator to allow deferral of all or a portion of required public improvements until a stated time or until required by the City Council of the City of Salem ("Council"), whichever is earlier;

Whereas, Condition 10 of the Decision authorized deferral of construction of the Improvements, with certain of the Improvements to be constructed upon development of certain phases within different areas of the Property, identified as "UGA Phase 1," (Exhibit "A") "UGA Phase 2," and "UGA Future Phase," Exhibit "B" and "C" respectively;

WHEREAS, City is willing to grant Owner's request for deferral of the construction of the Improvements under the authority of SRC 113.205(b)(11)(A) on the terms and conditions set forth herein.

NOW THEREFORE, Owner, owning the Property, does hereby agree as follows:

(1) City, in its sole discretion, may initiate construction of the Improvements. Should City initiate construction of the Improvements alone or as part of a larger project, City, in its sole discretion, may also determine the method in which the Improvements will be made. The methods are the following:

- A) Include Property in an assessment district and assess the Property for its proportionate share of the cost of the Improvements as provided by law. If City determines this to be the method, Owner does hereby waive any right of remonstrance against the Improvements as may be provided by law, except that Owner, in the same manner as any other owner within the proposed assessment district, may object to the City's determination of Owner's proportionate share of the cost of the Improvements.
- B) Make the Improvements without forming a local improvement district. Upon completion of the project, Owner shall be responsible for payment of Owner's proportionate share of the cost of the project under the time frames specified in sections 2 or 3 of this Agreement. Payment shall be made to City upon written demand from City.

- C) Allow Owner to construct the Improvements privately through permits issued by City, under the time frames specified by sections 2 and 3 of this Agreement. Under this method, Owner will be required to pay the City plan check and permit fees prescribed by the Salem Revised Code, in addition to paying the Owner's contractor and consultants. Should City direct this method of constructing the Improvements, and Owner fails to perform in a reasonable time, City may automatically proceed under either method A) or B).

2) The Owner's obligation to commence construction of the Improvements specified in Conditions 1, 2 and 3 of the Decision shall be deferred until the City's approval of the Owner's application for the first building permit for the first building in UGA Phase 1 and these Improvements specified in Conditions 1, 2 and 3 of the Decision shall be completed prior to the issuance of a temporary or permanent certificate of occupancy for the first building in UGA Phase 1. The City shall not require completion of the construction of the Improvements specified in this section prior to the issuance of a temporary or permanent certificate of occupancy for the first building in UGA Phase 1.

3) The Owner's obligation to commence construction of the Improvements specified in Condition 4 and 9 of the Decision shall be deferred until the City's approval of the Owner's application for the first building permit for the first building in UGA Phase 2 or UGA Future Phase and these Improvements specified in Conditions 4 and 9 of the Decision shall be completed prior to the issuance of a temporary or permanent certificate of occupancy for the first building in UGA Phase 2 or the UGA Future Phase. The City shall not require construction of the Improvements specified in this section prior to the issuance of a temporary or permanent certificate of occupancy for the first building in UGA Phase 2 or the UGA Future Phase.

4) Owner retains any rights it has to SDC credits and to form a reimbursement district as provided by law.

5) In the event City constructs the Improvements, Owner agrees City may pursue any legally available remedy, including, but not limited to, placement of a lien against the Property to secure payment of all sums then due.

6) To the extent allowed by law, this Agreement shall run with the land described herein and Owner's obligations herein shall be binding upon Owner's heirs, successors, and assigns.

7) In the event Owner includes more than one person or entity, all such persons or entities shall be jointly and severally liable for all conditions herein.

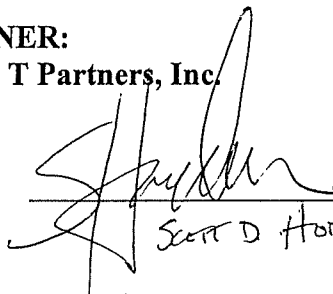
8) In the event of a sale or transfer of the Property, Owner will, as a condition of such sale or transfer, require the purchaser, or other new owner, to sign a duplicate copy of this Agreement.

9) Upon completion of the Improvements to the satisfaction of the City, City shall release Owner from all obligations under this Agreement.

OWNER:

M & T Partners, Inc.

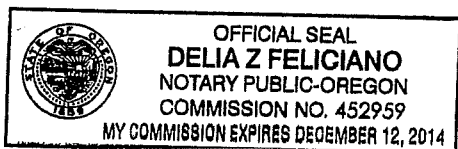
By:


  
SCOTT D. HODSON, Vice-President

State of Oregon )  
County of Washington ) ss.


On this 4<sup>th</sup> day of February, 2013, personally appeared Scott D. Hodson, on behalf of M & T Partners, Inc, and acknowledged the foregoing instrument to be his/her voluntary act and deed.

Before me:



  
Notary Public for Oregon  
My Commission Expires: 12-12-14

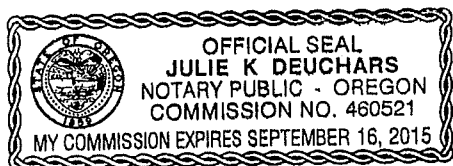
CITY OF SALEM

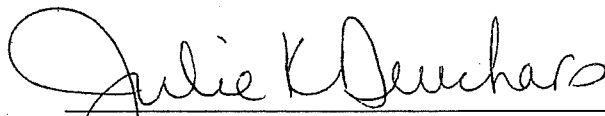
  
City Manager

State of Oregon )  
County of Marion ) ss.

On this 7 day of February, ~~2012~~<sup>2013</sup>, personally appeared Linda Norris as City Manager and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:



  
Notary Public for Oregon  
My Commission Expires: 9-16-15

## EXHIBIT "A"

FEBRUARY 1, 2013

UGA PHASE I  
LEGAL DESCRIPTION

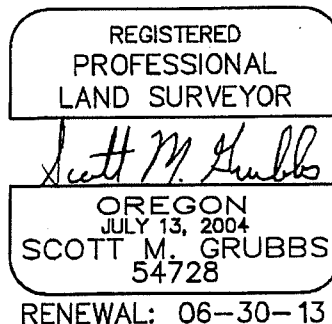
PROJECT NO. 034829

A TRACT OF LAND BEING A PORTION OF THAT PROPERTY DESCRIBED IN REEL 3436 PAGE 176 OF THE MARION COUNTY DEED RECORDS AND ALSO BEING A PORTION OF BOTH PARCELS "A" AND "B" OF SAID DEED, LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 11 AND THE SOUTHWEST ONE-QUARTER OF SECTION 12, TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, CITY OF SALEM, MARION COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE CORNER COMMON TO SECTIONS 11, 12, 13 AND 14 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 02°17'48" EAST, 30.00 FEET TO THE POINT OF BEGINNING AND BEING A POINT ON THE NORTH RIGHT-OF-WAY LINE OF BOONE ROAD S.E.; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING THREE COURSES: NORTH 88°12'18" WEST, 115.71 FEET; THENCE NORTH 85°54'09" WEST, 100.03 FEET; THENCE NORTH 88°11'44" WEST, 50.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF BATTLE CREEK ROAD S.E.; THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE NORTH 45°21'03" WEST, 51.30 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE NORTH 20°54'14" WEST, 207.55 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 70°48'01" EAST 253.27 FEET; THENCE SOUTH 87°47'46" EAST 360.00 FEET; THENCE SOUTH 2°12'14" WEST, 320.23 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF BOONE ROAD S.E.; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 87°45'22" WEST, 210.81 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE NAD83/CORS, OREGON NORTH STATE PLANE COORDINATE SYSTEM.

CONTAINING 168,169 SQUARE FEET OR 3.861 ACRES MORE OR LESS.



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KUEBLER BLVD. S.E.

UGA PHASE II

S87°47'46"E 360.00'

N70°48'01"E 253.27'

UGA PHASE I  
168,169 SQUARE FEET  
3.861 ACRES +/-

S2°12'14"W 320.23'

POINT OF  
BEGINNING

N45°21'03"W  
51.30'

N02°17'48"E  
30.00'

115.71'

210.81'

N88°12'18"W 11

N87°45'22"W 12

N88°11'44"W  
50.00'

N85°54'09"W  
100.03'

14

13

POINT OF  
COMMENCEMENT

BOONE ROAD S.E.

T 8 S, R 3 W, S 11 & 12, W.M.

SHEET NUMBER

1 of 1

**EXHIBIT "A"**  
**UGA PHASE I**

M & T PARTNERS INC.

KUEBLER DEVELOPMENT - MARION COUNTY, OREGON

DRAWING INFO

034829

34829-V-EXPH1

1" 100'

SHEET INFO

DRAWN SMG

CHECKED BA

LAST EDIT 2/1/2013

PLOT DATE 2/1/2013

**WHPacific**

## EXHIBIT "B"

FEBRUARY 1, 2013

UGA PHASE II  
LEGAL DESCRIPTION

PROJECT NO. 034829

A TRACT OF LAND BEING A PORTION OF THAT PROPERTY DESCRIBED IN REEL 3436 PAGE 176 OF THE MARION COUNTY DEED RECORDS AND ALSO BEING A PORTION OF BOTH PARCELS "A" AND "B" OF SAID DEED, LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 11 AND THE SOUTHWEST ONE-QUARTER OF SECTION 12, TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, CITY OF SALEM, MARION COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE CORNER COMMON TO SECTIONS 11, 12, 13 AND 14 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 02°17'48" EAST, 30.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF BOONE ROAD S.E.; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING THREE COURSES: NORTH 88°12'18" WEST, 115.71 FEET; THENCE NORTH 85°54'09" WEST, 100.03 FEET; THENCE NORTH 88°11'44" WEST, 50.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF BATTLE CREEK ROAD S.E.; THENCE ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE NORTH 45°21'03" WEST, 51.30 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE NORTH 20°54'14" WEST, 207.55 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ON SAID RIGHT-OF-WAY LINE NORTH 20°54'14" WEST, 127.97 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF KUEBLER BLVD. S.E.; THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE THE FOLLOWING FOUR COURSES: NORTH 13°52'59" EAST, 47.90 FEET; THENCE NORTH 56°48'50" EAST, 87.50 FEET; THENCE NORTH 65°25'13 EAST, 456.38 FEET; THENCE NORTH 68°47'27" EAST, 66.40 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE SOUTH 25°32'11" EAST 207.56 FEET; THENCE SOUTH 2°12'14" WEST 171.10 FEET; THENCE NORTH 87°47'46" WEST, 360.00 FEET; THENCE SOUTH 70°48'01" WEST, 253.27 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE NAD83/CORS, OREGON NORTH STATE PLANE COORDINATE SYSTEM.

CONTAINING 158,163 SQUARE FEET OR 3.631 ACRES MORE OR LESS.



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KUEBLER BLVD. S.E.

N68°47'27"E  
66.40'

S25°32'11"E  
207.56'

S2°12'14"W  
171.10'

UGA PHASE II  
158,163 SQUARE FEET  
3.631 ACRES +/-

N87°47'46"W  
360.00'

UGA PHASE I

N02°17'48"E  
30.00'

115.71'

N88°12'18"W  
11 12

N88°11'44"W  
50.00'

N85°54'09"W  
100.03'

POINT OF  
COMMENCEMENT

BOONE ROAD S.E.

T 8 S, R 3 W, S 11 & 12, W.M.

BATTLE CREEK ROAD S.E.

N56°48'50"E  
87.50'

N13°52'59"E  
47.90'

POINT OF  
BEGINNING

127.67'

N20°54'14"W

207.55'

S70°48'01"W  
253.27'

N45°21'03"W  
51.30'

SHEET NUMBER

1 of 1

EXHIBIT "B"

UGA PHASE II

M & T PARTNERS INC.

KUEBLER DEVELOPMENT - MARION COUNTY, OREGON

DRAWING INFO

034829

34829-V-EXPHII

1" 100'

SHEET INFO

DRAWN SMG

CHECKED BA

LAST EDIT 2/12/2013

PLOT DATE 2/12/2013

WHPacific



## EXHIBIT "C"

FEBRUARY 1, 2013

UGA FUTURE PHASE  
LEGAL DESCRIPTION

PROJECT NO. 034829

A TRACT OF LAND BEING A PORTION OF THAT PROPERTY DESCRIBED IN THE FOLLOWING: REEL 2420 PAGE 177, REEL 2556 PAGE 136, REEL 2579 PAGE 173 OF THE MARION COUNTY DEED RECORDS, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 12, TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, CITY OF SALEM, MARION COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

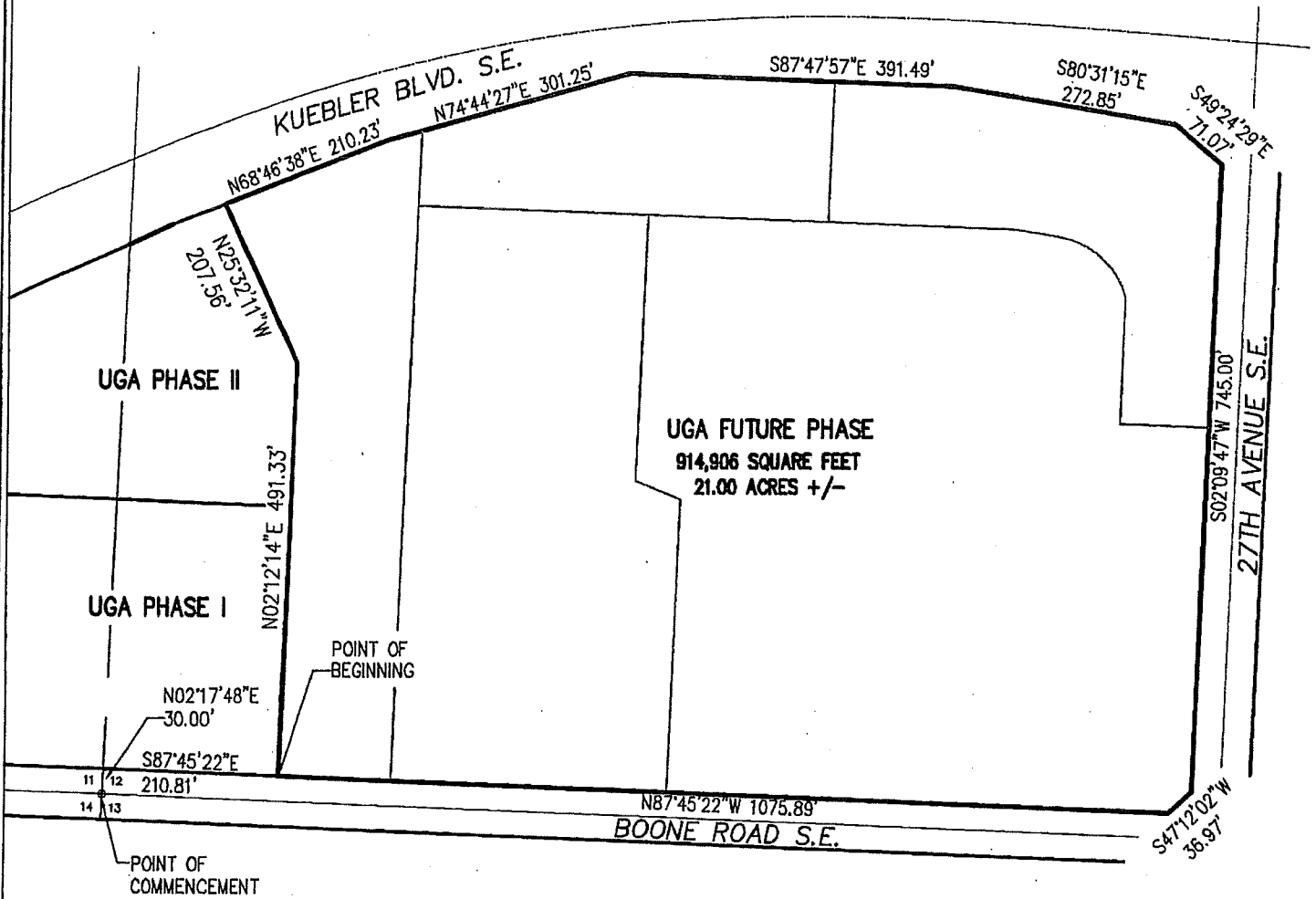
COMMENCING AT THE CORNER COMMON TO SECTIONS 11, 12, 13 AND 14 OF SAID TOWNSHIP AND RANGE; THENCE NORTH 02°17'48" EAST, 30.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF BOONE ROAD S.E.; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE, SOUTH 87°45'22" EAST, 210.81 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID NORTH RIGHT-OF-WAY LINE, NORTH 02°12'14" EAST, 491.33 FEET; THENCE NORTH 25°32'11" WEST, 207.56 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF KUEBLER BLVD S.E.; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 68°46'38" EAST, 210.23 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR COURSES: NORTH 74°44'27" EAST, 301.25 FEET; THENCE SOUTH 87°47'57" EAST, 391.49 FEET; THENCE SOUTH 80°31'15" EAST, 272.85 FEET; THENCE SOUTH 49°24'29" EAST, 71.07 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF 27<sup>TH</sup> AVENUE S.E.; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 02°09'47" WEST, 745.00 FEET; THENCE CONTINUING ON SAID RIGHT-OF-WAY LINE, SOUTH 47°12'02" WEST, 36.97 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID BOONE ROAD S.E.; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 87°45'22" WEST, 1075.89 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE NAD83/CORS, OREGON NORTH STATE PLANE COORDINATE SYSTEM.

CONTAINING 914,906 SQUARE FEET OR 21.00 ACRES MORE OR LESS.



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T 8 S, R 3 W, S 11 & 12, W.M.

SHEET NUMBER

1 of 1

**EXHIBIT "C"**

**UGA FUTURE PHASE**

M & T PARTNERS INC.

KUEBLER DEVELOPMENT - MARION COUNTY, OREGON

DRAWING INFO

034829

34829-V-EXPHIII

1" 200'

SHEET INFO

DRAWN SMO

CHECKED BA

LAST EDIT 2/1/2013

PLOT DATE 2/1/2013

**WHPacific**

**REEL: 3471**

**PAGE: 126**

**February 08, 2013, 12:51 pm.**

CONTROL #: 332725

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: \$ 86.00

BILL BURGESS  
COUNTY CLERK

THIS IS NOT AN INVOICE.

