

RETURN TO:

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BELLINGHAM, WA 98227
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DOCUMENT TITLE:

DEVELOPER EXTENSION AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTORS:

FAITH COMMUNITY CHURCH, a Washington nonprofit corporation

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN SE 1/4 OF SE 1/4, S23, T40N, R2E

Full legal descriptions at pages 14-15 hereto

ASSESSOR'S TAX PARCEL NUMBER(S):

400223 410070 0000
400223 410070 0001
400223 429064 0000
400223 466067 0000
400223 515031 0000

DEVELOPER EXTENSION AGREEMENT

THIS DEVELOPER EXTENSION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20__, by and between FAITH COMMUNITY CHURCH, a Washington nonprofit corporation (hereinafter “DEVELOPER”) and the CITY OF LYNDEN, a Washington municipal corporation (hereinafter “CITY”). Developer and City may be referred to herein individually as “Party” or collectively as “Parties.”

Recitals

WHEREAS, City is a Washington municipal corporation that is capable of supplying water for fire protection purposes to Whatcom County residents dwelling in close proximity to the City’s limits; and

WHEREAS, Developer is the sole owner of real property within Whatcom County legally described in Exhibit A attached hereto and fully incorporated herein by reference (hereinafter “Benefitted Property”); and

WHEREAS, CMF Farming Properties, L.L.C. is a Washington limited liability company (hereinafter “CMF”) which is the sole owner of real property within Whatcom County legally described in Exhibit B attached hereto and fully incorporated herein by reference (hereinafter “Burdened Property”); and

WHEREAS, Developer wishes to secure a source of water for fire protection purposes for the Benefitted Property by constructing an improvement—specifically entailing the installation of a water line providing fire flow (hereinafter “Fire Protection Facilities” or “Project”)—that will be connected to and supplied by City’s water main and run under and across a portion of the Burdened Property to a connection point on the Benefitted Property, said improvement being depicted in the Preliminary Site Plan attached hereto as Exhibit C and fully incorporated herein by reference; and

WHEREAS, in order to establish certain development conditions upon which both Parties can rely to insure that the development of the Project is consistent with City policies, plans, design standards and ordinances, City and Developer have agreed to enter into this Agreement; and

WHEREAS, these recitals are a material part of this Agreement; and

NOW, THEREFORE, in consideration of the promises and conditions herein, the Parties hereby covenant and agree as follows:

Terms

1. LOCATION OF IMPROVEMENT

The proposed improvement will be installed in approved easements, on approved public rights-of-way and/or on private property and shall be for the use and benefit of the

Benefitted Property described in Exhibit A.

2. DESCRIPTION OF IMPROVEMENT AND OWNERSHIP

The proposed improvement (i.e., Fire Protection Facilities) will consist of approximately 1375 lineal feet of 12 inch water line (providing fire flow) and appurtenances connected to the City water main, as shown in Exhibit C, and shall be installed in accordance with plans and specifications approved by the City, and in accordance with the standards and conditions set forth in the "Project Manual for Engineering Design and Development Standards" (hereinafter "Project Manual") as adopted by the Lynden Municipal Code, the terms and conditions of which are made a part hereof.

Developer represents, guarantees and warrants that Developer is the owner of the Benefitted Property and that Developer shall be responsible for construction of the Project in conformance with the terms of this Agreement.

3. PERMITS REQUIRED

Permits, approvals or agreements are required by the County and sometimes other jurisdictions, prior to initiating any construction or demolition work. Work covered by this Agreement may require multiple permit authority review and approvals. Several types of permits and approvals may require prior approval from authorities other than County, before a building or other substantial permit can be issued. Developer is responsible for submitting timely applications for and obtaining all required permits and approvals.

The following general categories describe the major permits, approvals and agreements:

A. Environmental Review

An Environmental Checklist is required for this Project: _____ (yes/no)

B. Permits required by City for Land Development Activities

- i. Fill and Grade Permit. A Fill and Grade Permit is required for all significant land alterations, including stockpiling, which is not covered by other permits and agreements. The City must be contacted prior to any contemplated clearing or grading activities.
- ii. Street Obstruction/Excavation Permit. A Street Obstruction/Excavation Permit is required for any work within the road right of way which is not covered by other permits and agreements. Such work may include utilities work, road or lane closures, frontage improvements, access and temporary uses.
- iii. Other permits/approvals as required by City or County ordinance.

C. Other Permits or Approvals from permitting agencies with jurisdiction.

Permits or approvals from outside authorities other than City may be required. Developer will coordinate with such other authorities and obtain all such permits. Copies of all permits from such outside authorities shall be given to City. Permits may include but are not limited to the following: Hydraulic Project approvals from the Washington State Department of Fish and Wildlife; Short Term Water Quality Modification Approval and/or Dam Safety Permit from the Washington State Department of Ecology; Section 404 Permit and Section 10 Permit/letter of permission from the U.S. Army Corps of Engineers; Baseline General Permit to Discharge Stormwater Associated With Construction Activities (NPDES) and/or Waste Discharge Permits from the Washington Department of Ecology; Developer/Local agency Agreement from the Washington State Department of Transportation.

County or the regulating governmental agency shall be contacted for further details.

4. FEES AND CHARGES

- A. An initial plan review deposit fee in accordance with Division 2, Section 2.A. of the Project Manual shall be paid by Developer to City. The initial fee, calculated by City, is \$_____.
- B. All costs incurred by City on construction of the Project of the shall be borne by Developer. The fee to cover all of City's costs shall be based upon actual time and expenses and shall include without limitation inspection, engineering, legal, administrative, financial or any other services performed by or for City in connection with the Project. The fee shall be adjusted by the City and an additional deposit required if actual costs incurred indicate that the deposits will not cover all costs. The fee shall be paid to City in consideration of administering this Agreement (the administration of which is outlined in Division 2 – Applicant's Checklist of the Project Manual).
- C. This Agreement shall not provide any vested rights to a particular general facilities charge. Any general facilities charges due and owing shall be paid at the rate in effect at the time each individual building/lot actually connects to the City system.

5. PAYMENT OF FEES

Developer shall pay all fees required by state and local agencies and City. City fees shall be paid at the times designated in Sections 2. A and 3. E of Division 2 of the Project Manual.

All of the charges detailed herein shall be and become a lien on the Benefitted Property.

6. PROFESSIONAL QUALIFICATIONS

Professionals in the technical fields of engineering, architecture or surveying who prepare or are responsible for the preparation of plans, drawings, specifications, calculations,

technical reports, etc., for the process of obtaining required permits or approvals shall currently be licensed or registered in the State of Washington.

7. STANDARD SPECIFICATIONS

All work and materials shall conform to the most current editions of: the STANDARD SPECIFICATIONS FOR ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION and APWA SUPPLEMENT as prepared by Washington State Department of Transportation, City of Lynden Ordinances, the City of Lynden "Project Manual for Engineering Design and Development Standards," applicable Whatcom County design and development standards, and according to the recommendations of the manufacturer of the material concerned.

All work and materials shall be subject to the approval of City.

8. PLANS AND SPECIFICATIONS

Developer shall submit three sets of the complete plans and specifications for the Project—prepared in accordance with Division 3 – Construction Plan Requirements of the Project Manual—to City for preliminary review. The plans shall be stamped "PRELIMINARY" and sealed by a Professional Engineer licensed in Washington. After City's preliminary review, comment, and corrections, Developer shall submit the corrected plans and specifications for the Project to the appropriate State Agencies for final review and action, if required. After approvals have been received, Developer shall submit a final set of Construction Contract Documents including reproducible plans to City for final review and approval. Upon final approval by City, a set of these plans stamped "APPROVED" shall be made available to Developer.

9. COMPREHENSIVE PLAN

Developer shall check the Project for compliance with the City of Lynden Comprehensive Plan (hereinafter "Comprehensive Plan").

If the Project is not in compliance the Comprehensive Plan, an engineering report is required. The report will consider the impact upon City's utilities and transportation systems. In certain cases, the Project may require an addendum to, or to be incorporated in, the Comprehensive Plan.

10. EVIDENCE OF INSURANCE

Developer or Developer's Contractor shall take out and maintain during the life of this Agreement Public Liability Insurance for bodily injury and property damage liability as specified in Section 1-07.18 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. The policy shall include without limitation, coverage for explosion, blasting, collapse and destruction of underground utilities (X.C.U.) and contingent liability, including products and completed operations and blanket contractual liability, as shall protect Developer or Developer's Contractor, City and City's outside consulting engineers (City's Engineers). Developer shall have City and City's

Engineers specifically added as additional named insureds in said policies, all at no cost to City or City's Engineers. The above insurance shall cover City, City's Engineers, Developer, Developer's Contractor and Subcontractors for claims or damages for bodily injury, including wrongful death, as well as other claims for property damage which may arise from operations under this Agreement whether such operations be by themselves or by any subcontractor or anyone directly or indirectly employed by either or them and Developer agrees, in addition, to indemnify and save harmless City and City's Engineers, either or both, from all suits, claims, demands, judgments, and attorney's fees, expenses or losses occasioned by the performance of this Agreement by Developer, Developer's Contractor, and subcontractor, or persons working directly or indirectly for Developer or Developer's Contractor, or on account of or in consequence of any neglect in safeguarding the work or failure to conform with the safety standards for construction work adopted by the Safety Division of the Department of Labor and Industry of the State of Washington.

The amount of such insurance shall be as follows: Bodily injury liability insurance in an amount not less than \$2,000,000.00 for injuries, including wrongful death, to any one person and subject to the same limit for each person, in an amount not less than \$2,000,000.00 on account of any one occurrence, and property damage liability insurance in an amount not less than \$2,000,000.00 for each occurrence/\$2,000,000.00 aggregate, and City shall be named as an additional insured.

Developer or Developer's Contractor shall not cause any policy to be canceled or permit it to lapse, and all policies shall include a clause to the effect that the policy or certificate shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance or any other material change until notice has been mailed to City stating when, not less than thirty (30) days thereafter, such cancellation or reduction or change shall be effective.

All certificates of insurance, authenticated by the proper officer of the insurer, shall state in particular those insured, the extent of the insurance, the location and operations to which the insurance applies, the expiration date, and the above-mentioned notice of cancellation clause. City may in its sole discretion accept insurance covering a Subcontractor in character and amounts less than the standard requirements set forth under this subsection where such standard requirements appear excessive because of the character or extent of the work to be performed by such Subcontractor.

A Certificate of Insurance evidencing coverage and a copy of the endorsement naming City and City's Engineer as additional insureds must be submitted to City prior to the commencement of the Project.

11. PERFORMANCE BOND

For work within City owned property or right of way, Developer shall provide a performance bond or cash bond between Developer and City as specified in Division 9 of the Project Manual and Section 1-03.4 of the WSDOT Standard Specifications. The bond shall be in an amount equal to 150% of the City's estimated cost of the Project, or 150% of actual cost, if known, prior to the commencement of the work. Cash bond shall be

approved by City Attorney.

The Performance Bond shall cover the faithful performance of Developer and the payment of all obligations arising thereunder in accordance with Section 1-03.4 of the APWA Supplement to the WSDOT Standard Specifications. This bond is submitted to comply with all requirements of RCW 39.08, as a statutory bond, and all the requirements of said statute are deemed incorporated herein by reference and shall control in case of any inconsistencies.

The Performance Bond shall require Developer to pay all persons furnishing labor and materials and shall hold City harmless from any claims thereof, whether any such claims would arise under the public works lien statutes, or the mechanic lien statutes of the State of Washington and compliance with the formal requirements of either or both of said statutes shall not be a condition to recovery upon said bond.

12. MAINTENANCE BOND

Developer shall provide a maintenance bond or a cash bond in the amount of ten percent (10%) of the Contract Construction Costs for improvements. Said bond shall guarantee maintenance for two (2) years after acceptance of the improvements by City and shall be in a form acceptable to City.

13. EASEMENTS

Developer shall obtain all necessary rights of way, easements and limits of construction permits without cost to City as specified in Section 1-07.24 of the APWA Supplement to the WSDOT Standard Specifications and as modified herein. Developer shall supply City with the supporting data necessary to verify the location of the rights of way or easements. If legal services are required by City in connection with the easement, the cost of such services shall be reimbursed by Developer to City on demand and before acceptance of the improvements.

In general, where construction will take place on private property other than Developer's, Developer shall obtain temporary construction easements and permanent easements subject to approval by the City. At the completion of construction and prior to City acceptance of the improvements, said temporary construction easements shall be released by the private property owner, and final signed permanent easements shall be recorded in City's name at the Whatcom County Auditor's Office. Copies of the recorded easements shall be delivered to City. The legal descriptions of said permanent easements shall be prepared and stamped by a licensed professional surveyor.

For the Project, as it is presently anticipated that a portion of the improvement will be constructed upon the Burdened Property owned by CMF, Developer shall obtain a temporary construction easement between itself and CMF authorizing and facilitating that portion of Project construction that will occur on the Burdened Property. In addition, Developer shall obtain from CMF a corresponding permanent easement in City's name per the conditions in the preceding paragraph.

Note that whenever a City utility is to be laid underground through private property, a permanent easement of not less than twenty feet (20') in width shall be provided for one utility line. For more than one utility line, a permanent easement shall be provided with a width of not less than ten feet (10') on each side of each utility line to edge of easement, and ten feet (10') of separation between each utility line. Easements shall be approved by the City and compatible with the City's Comprehensive Plan to insure continuation of a utility.

Developer is responsible for any encroachments on right of way, public property, or surrounding private property. Without any cost to City, Developer is required to remove or rebuild in an approved manner any portion of the construction that may have been constructed over property or setback lines.

Where work is done on easements, Developer shall obtain a written statement of satisfactory restoration from each property owner involved, and furnish a copy of the statement to City.

14. PERMITS AND BONDS

All permits and bonds necessary and effective during the prosecution of the Project works and subsequent guaranty period, shall be obtained and paid for by Developer. Developer shall give all notices required by such permits and provide all bonding and insurance required by such permits.

Developer shall provide City with a copy of all such permits before construction begins. Developer shall obtain and pay for all surveys, easements, rights of way and franchises required for the Project works.

15. REGULATIONS

Developer shall give all notices and comply with all Federal, State, and local laws, ordinances, rules and regulations bearing on the conduct of the Project works as outlined in Section 1-07 of the APWA Supplement to the WSDOT Standard Specifications. City will not consider any plea of misunderstanding or ignorance of such requirements.

16. COMMENCEMENT OF CONSTRUCTION

No work shall commence on improvements without construction plans stamped by City as "APPROVED" or without all necessary permits or approvals from the County.

17. RESPONSIBILITY FOR PROJECT MANAGEMENT

Developer shall be responsible for Project management and coordination. Project management includes but is not limited to preparation of construction contract plans and specifications, bidding of construction contract, and overall coordination of utility and road locations, elevations and conflicts of said. Developer shall save City harmless of any conflicts or disputes resulting from or in connection with the construction contract.

18. INSPECTIONS AND TESTS

Inspection and test of work and materials shall be strictly for the benefit of City and nothing contained herein shall be construed to relieve Developer of Developer's obligations under the Contract.

As a minimum, the following scheduled inspections and tests shall be conducted by City:

1. Start of construction inspection.
2. Test inspections.
3. Final inspections.
4. End of Warranty Period inspection (to be conducted at least two (2) weeks prior to expiration of Developer's maintenance bond).

Other scheduled inspections and tests may be required to comply with other sections of the Contract Documents, Engineer's instructions, laws or ordinances. Some inspections and tests may be conducted by an authority other than City.

Developer shall give City forty-eight (48) hours written notice prior to the time when the state of work is such that a scheduled inspection and test can be conducted.

19. CONNECTION TO CITY'S UTILITY SYSTEM

Not less than forty-eight (48) hours prior to the time that said utility extension is partially or fully completed and connection to City's system is desired, written application for permission to make the actual connection to City's system at a specified time shall be made by Developer or Developer's Contractor. All new connections to the existing system and all testing of the new line shall require authorization of City and shall be conducted in the presence of City's representatives.

20. AS-BUILTS

Before final acceptance, Developer shall provide City with all final as-built drawings in the form of two bonded copies and digital copies in portable document format (PDF) and in the current release of Autocad with external references bound and submitted to the City on a USD. Refer to Division 3—Construction Plan Requirements of the Project Manual.

21. FINAL ACCEPTANCE

Developer agrees to execute a bill of sale prepared or approved by the City Attorney within sixty (60) days of the approved and completed improvement. Said bill of sale will provide for transfer of title of the constructed improvement from Developer to City and will further include the following items and statements:

- a. Cost including administration, legal and engineering fees, for the

improvement construction.

- b. That Developer owns without encumbrance the improvement which constitutes the Project and, therefore, is solely able to transfer title of the improvement to City, free and clear of encumbrances by warranty bill of sale. That Developer will defend the title and right of possession of City against all third-party claims of title or encumbrance. That Developer has the right to construct and install the improvement in and upon the land area in which it is installed.
- c. That all bills for labor and material have been paid.
- d. That Developer has the right to transfer said title and will warrant and defend the same against lawful claims and demands of all persons from two (2) years of the date of the bill of sale.
- e. Consideration will be recited that Developer grants the improvement to City for the consideration of incorporating the improvement in the overall system of the City.
- f. That the improvement has been constructed in accordance with City's specifications and this Agreement and is readily operable as an integral part of the utility system and/or roadway, as applicable.
- g. That all copies and warranties or guarantees from Developer or Developer's Contractor (including subcontractors and suppliers) specifically required under this Agreement have been delivered to City.
- h. That Developer further warrants that for a period of two (2) years from the date of the bill of sale that the Project improvement will remain in perfect working order and condition except where abused or neglected by City and Developer will promptly repair or replace at Developer's own expense any work or material that may prove to be defective during said two (2) year period of warranty.

22. LATECOMER AGREEMENT EXECUTION AND RECORDING

Following receipt of any required bill of sale, as heretofore described, City may agree to execute and record a latecomer agreement for eligible projects subject to Chapter 13.28 of the Lynden Municipal Code and other applicable ordinances and state statutes.

23. TIME FOR COMPLETION

The Project shall be complete and accepted within two (2) years of the date of execution of this Agreement. If the Project is not completed and accepted within two (2) years from the date below, then Developer's rights under this Agreement shall cease and no additional services shall be connected, unless and until Developer shall make a new application or City consents to the renewal of the existing application and Developer shall

pay the additional administrative, legal and engineering costs involved, for the renewal of the existing application.

24. FAILURE TO COMPLY

Failure to comply with measures set forth herein shall result in revocation of permits and forfeiture of all rights to occupy or otherwise use the identified improvement. Should City determine that Developer has failed to so comply, City shall provide Developer with written notice of such failure, setting forth the specific item or items of failure, and provide Developer an opportunity to cure the defect or defects. All permits and rights shall be null and void if not cured within fifteen (15) calendar days of receipt of the notice from City by Developer. The Director of Public Works shall determine if Developer has cured such defect or defects and so notify Developer in writing within the fifteen (15) day opportunity to cure. Developer may appeal the determination of the Director of Public Works in writing to the City Administrator within five (5) days of receipt of such determination from the Director of Public Works. Developer shall set forth the specific item or items being appealed and shall have the opportunity to present information to the City Administrator supporting such appeal. Within ten (10) days of receipt of the appeal, the City Administrator shall issue a written decision. The Administrator's determination shall be final and binding. Nothing in this paragraph is intended as a waiver of either party's right to seek judicial review, as may be permitted by law, with regard to interpretation or enforcement of this Agreement after exhaustion of these administrative remedies.

25. ASSIGNMENT – BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned without the prior written consent of City; provided that, such consent shall not be unreasonably withheld. This Agreement shall run with the land and shall be binding on the successors and assigns of Developer.

26. WAIVER

Failure of either party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

27. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be Whatcom County Superior Court.

28. COMPLETE AGREEMENT

This Agreement constitutes the complete agreement between Developer and City. This Agreement may be modified in writing only, upon mutual agreement of Developer and City.

IN WITNESS WHEREOF, the Parties hereunto enter this Agreement on the date first

above written.

FAITH COMMUNITY CHURCH

By:
Its:

CITY OF LYNDEN

By:
Its:

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of **FAITH COMMUNITY CHURCH**, a Washington nonprofit corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

EXHIBIT A
Benefitted Property

Assessor's Tax Parcel Numbers: 400223 410070 0000 & 400223 410070 0001

THE WEST 210 FEET OF THE SOUTH 1245 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT RIGHT OF WAY FOR BIRCH BAY LYNDEN ROAD LYING ALONG THE SOUTHERLY LINE THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON,

Assessor's Tax Parcel Number: 400223 429064 0000

THE EAST 140 FEET OF THE WEST 350 FEET OF THE SOUTH 1245 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M., EXCEPT RIGHT OF WAY FOR BIRCH BAY LYNDEN ROAD ALONG THE SOUTHERLY LINE THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT B
Burdened Property

400223 466067 0000

Agr, Osag, Crop/Fruit/Tree/Nut/Vegs

Chasteen

19.59 Acres

The SE ¼ of the SE ¼ of Section 23, T40N, R2E, W.M., Whatcom County, Washington,
less roads.

EXCEPT: The West 350 feet of the South 1245 feet of said SE ¼ of SE ¼ of said Section 23.

EXCEPT: Beginning at the Southeast corner of Section 23, T40N, R2E, W.M., Whatcom County, Washington; thence North 1200 feet; thence West 363 feet; thence South 1200 feet; thence East 363 feet to the Point of Beginning. Less Roads. Containing 20 acres, more or less.

Situate in Whatcom County, Washington.

SUBJECT TO: Covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

400223 515031 0000

Chasteen

Agr, Osag, Crop/Fruit/Tree/Nut/Vegs

4.49 Acres

Beginning 600 feet North of the Southeast corner of said Section 23; thence West 363 feet; thence South 600 feet; thence East 363 feet; thence North 600 feet to the Point of Beginning. Less roads. Containing 5 acres.

Situate in Whatcom County, Washington.

SUBJECT TO: Covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

EXHIBIT C
Preliminary Site Plan

