

AGREEMENT FOR GRANT OF EASEMENT AND DEDICATION

This Agreement for Grant of Easement and Dedication (this “**Agreement**”) is entered into by and between Horizon Community Church, an Oregon nonprofit corporation (“**Horizon**”), and The City of Tualatin, an Oregon municipal corporation (“**City**”). The effective date of this Agreement (the “**Effective Date**”) shall be the last date that this Agreement is signed by City and Horizon below.

RECITALS:

- A. WHEREAS, Horizon owns real property in the City of Tualatin, County of Washington, State of Oregon, located at 23370 SW Boones Ferry Road, and depicted on Exhibit A attached hereto and incorporated herein by this reference (the “**Real Property**”), which Real Property constitutes a portion of a larger parcel owned by Horizon;
- B. WHEREAS, Community Partners for Affordable Housing, an Oregon nonprofit corporation (“**Developer**”) owns property adjacent to the Real Property located at 23500 SW Boones Ferry Road, Tualatin, Oregon (such property, the “**Developer Property**”), and intends to develop the Developer Property as a multifamily residential affordable housing development (the “**Development**”).
- C. WHEREAS, as of the Effective Date, City requires use of a portion of the Real Property legally described on Exhibit B and depicted in green on Exhibit B-1 attached hereto and incorporated herein by this reference (the “**Dedication Property**”) for purposes of pedestrian and vehicular access to and ingress from SW Boones Ferry Road, including for construction activities related to the Development. In addition, subsequent to approval of the Development, Developer agreed to develop a part of the Dedication Property, for use as a pocket park with a trail and bench seating, all as more fully set forth in a separate agreement between Developer and the City (the “**Developer Agreement**”), a copy of which is attached hereto as Exhibit C.
- D. WHEREAS, Horizon intends to (i) dedicate the Dedication Property to the City (such dedication, the “**Dedication**”) as a non-standard right-of-way to facilitate construction of the Development on the Developer Property, and (ii) enter into an easement with the City (the “**Easement**”) over a portion of the Real Property depicted in blue on Exhibit B-1 (such area, the “**Easement Area**”), which Easement will permit the City to use the Easement Area for a roadway with related facilities and for the installation, maintenance, repair and replacement of public utilities, and which will permit the public to use the Easement Area for pedestrian, bicycle and vehicular access and egress, all upon and subject to the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. **Easement Consideration.** The consideration for the Easement shall be Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “**Easement Consideration**”). City acknowledges that Developer will, upon receipt of an invoice from the City, which invoice will be provided by City within 2 business days following the Effective Date, deliver the Easement Consideration to an escrow account with First American Title Insurance Company (the “**Title Company**”) located at 5335 Meadows Road, Suite 100, Lake Oswego, Oregon 97035, Attn: Joyce Jameson at jjameson@firstam.com, and (ii) deposit in escrow the Easement Consideration. City is not required to deposit any earnest money in connection with this Agreement.
2. **Closing Deliverables and Conditions.** The terms and conditions of this Section 2 shall apply to the recording of the Easement, completion of the Dedication and payment of the Easement Consideration

(collectively, the “**Closing**”). The date on which the Closing occurs is referred to herein as the “**Closing Date**”). At least one (1) business day prior to the Closing Date, (A) Horizon shall deliver in escrow to the Title Company the following: (i) an original of the Easement, executed and acknowledged by Horizon and City, (ii) an executed and acknowledged deed of dedication for the Dedication on such form as may be required by the City for the same (the “**Dedication Deed**”), and (iii) any additional documents that City or the Title Company may reasonably require for recording of the Easement and Dedication Deed and delivery of the Easement Consideration; and (B) City and Developer shall deliver in escrow to the Title Company any additional documents that Horizon or the Title Company may reasonably require for recording of the Easement and Dedication Deed and delivery of the Easement Consideration.

2.1 Horizon’s Conditions. In addition to all other applicable conditions set forth herein, the obligation of Horizon to consummate the Closing shall be contingent upon the following: (i) the Easement having been recorded (which recording may occur concurrently with the Closing, at Horizon’s election); (ii) City’s representations and warranties set forth herein shall be true and correct in all material respects as of the Closing Date; and (iii) City shall have performed all of its obligations under this Agreement to be performed by the Closing Date, including in accordance with this Section 2.

2.2 City’s Conditions. In addition to all other applicable conditions set forth herein, the obligation of City to consummate the Closing shall be contingent upon the following: (i) Horizon shall have performed all of its obligations under this Agreement to be performed by the Closing Date, including in accordance with this Section 2; (ii) and Horizon’s representations and warranties set forth herein shall be true and correct in all material respects as of the Closing Date.

So long as a party is not in default hereunder, if any condition to such party’s obligation to proceed with the Closing has not been satisfied as of the Closing Date, such party may, in its sole discretion, elect to: (i) postpone the Closing up to 5 days or until the condition has been satisfied by delivering written notice to the other party on or before the Closing Date; (ii) terminate this Agreement; or (iii) proceed to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition; provided that any such waiver of a condition shall NOT relieve a party from any liability it would otherwise have if the failure of a party to satisfy a condition also constitutes a default hereunder or breach of any other provision hereof by such party.

3. Closing. Subject to the conditions in Section 2 being met or waived, the Closing will occur not later than February 28, 2023.

3.1 Manner and Place of Closing. This transaction shall be closed by the Title Company, or at such other place as the parties may mutually select. Closing shall take place in the manner and in accordance with the provisions set forth in this Agreement.

3.2 Closing Costs.

3.2.1 Developer shall be responsible for the following closing costs: (i) the cost of recording the Easement and the Dedication Deed; and (ii) all escrow/closing fees and costs. Developer’s closing costs described in this Section 3.2.1 do not include attorney fees and costs or broker fees.

3.2.2 Neither City nor Horizon has authorized or employed, or acted by implication to authorize or to employ, any real estate broker or salesman to act for it in connection with this Agreement, and no other party is entitled to any finders, brokers, or similar fee or charge in connection with the Easement or the Dedication. City and Horizon shall indemnify, defend and hold the other harmless from and against any and all claims by any real estate broker or salesman for a commission, finder's fee or other compensation as a result of Horizon's granting of the Easement or the Dedication.

3.3 Events of Property Closing. Provided the contingencies contained within this Agreement are satisfied or waived, this transaction shall be closed on the Closing Date as follows:

3.3.1 Any liens required to be paid by Horizon at Closing shall be paid and satisfied of record at Horizon's expense.

3.3.2 The Title Company shall record the Dedication Deed.

3.3.3 The Title Company shall record the Easement.

3.3.4 The Title Company shall release the Easement Consideration, less any amounts paid under Section 3.3.1.

4. Default; Remedies; Failure to Close.

4.1 Default. Neither City nor Horizon shall be in default under this Agreement, and the non-defaulting party shall not be entitled to terminate this Agreement for any asserted nonperformance by other party, unless the non-defaulting party has given the other party notice specifying the asserted nonperformance, the defaulting party has in fact not performed, and the defaulting party has failed to remedy such non-performance within five (5) business days after receipt of such notice.

4.2 City's Remedies. In the event that the transaction fails to Close due to Horizon's default, City may either: (i) terminate this Agreement; or (ii) sue for specific performance.

4.3 Horizon's Remedies. In the event that Closing fails to occur due to City's or Developer's default under this Agreement or the Developer Agreement, City or Developer, as defaulting party, as the case may be, shall pay to Horizon as liquidated damages, as Horizon's exclusive remedy, the amount of \$25,000.00. Such amount has been agreed by the parties to be reasonable estimate of Horizon's damages because the precise amount of such compensation would be difficult to determine. CITY, DEVELOPER AND HORIZON HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT HORIZON WOULD SUFFER IN THE EVENT THAT CITY OR DEVELOPER DEFAULTS AND FAILS TO COMPLETE THE DEDICATION, PAYMENT OF THE EASEMENT CONSIDERATION, AND RECORDING OF THE EASEMENT IS AN AMOUNT EQUAL TO TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00). SUCH AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY CITY AND DEVELOPER, AND AFTER PAYMENT THEREOF TO HORIZON, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION TO OR RIGHTS AGAINST THE OTHER.

4.4 Material Condemnation. In the event all or a material part of the Dedication Property is taken by eminent domain prior to the Closing Date after Developer has failed to perform its obligations under the Developer Agreement or the provisions of this Agreement applicable to Developer such that Closing has not occurred by the scheduled Closing Date, either City or Horizon may elect to terminate this Agreement prior to the Closing Date by written notice to the other party, in which case the parties will have no obligations with respect to this Agreement; provided, however, neither Horizon nor City may terminate this Agreement if Horizon or City is in default of its obligations hereunder or if Closing has failed to occur by the scheduled Closing Date due to the acts of Horizon or City, as the case may be.

5. Horizon's Representations and Warranties. Horizon represents and warrants to City as follows:

5.1 Horizon has the full right and authority and has obtained any and all consents required to enter into this Agreement, perform all covenants of Horizon contained in this Agreement in accordance with its terms, and consummate or cause to be consummated the sale. This Agreement and all of the documents to be delivered by Horizon at Closing have been and will be duly authorized and properly executed and will constitute the valid and binding obligations of Horizon, enforceable in accordance with their terms.

5.2 Except as disclosed to City in writing prior to Closing, to the best of Horizon's knowledge, there is no litigation, lien, claim, or arbitration, pending or threatened, with regard to the Dedication Property, the Easement Area, or operation of the same.

5.3 Horizon has received no written notice of and has no knowledge of any material violations or investigations of violations of any applicable laws or ordinances affecting the Dedication Property or the Easement Area that have not been corrected or resolved.

5.4 There are no leases affecting all or any part of the Dedication Property or the Easement Area, and there are no written or oral promises, understandings, agreements or other commitments between Horizon and any tenant or other person affecting the Dedication Property or the Easement Area.

5.5 Except for the Easement and the Dedication, there are no outstanding agreements of sale, options or other rights of third parties to acquire the Dedication Property or the City Easement Area or any interest therein. There is no agreement to which Horizon is a party or that is binding on Horizon, the Dedication Property or the Easement Area which is in conflict with this Agreement.

“To the best of Horizon's knowledge,” as used in the above Horizon's representations and warranties, means “to the best of Horizon's actual knowledge” and does not include any inquiry or constructive knowledge or notice. The representations and warranties in this Section 5 are limited to the actual knowledge of Randy Campbell, without independent inquiry or investigation.

6. City's Representations and Warranties. Buyer represents and warrants to Horizon as follows:

6.1 City has the full right and authority and has obtained any and all consents required to enter into this Agreement and consummate or cause to be consummated the purchase. This Agreement and all of the documents to be delivered by City at Closing have been and will be authorized and properly executed and will constitute the valid and binding obligations of City, enforceable in accordance with their terms.

- 6.2** City acknowledges and agrees that, prior to the Closing, City will have made City's independent investigation and examination of the Dedication Property and the Easement Area. City expressly acknowledges and agrees that, upon the Closing, City's use of the Dedication Property and Easement Area will be in its "AS IS, WHERE IS" condition, except for such representations, warranties and covenants expressly made by Horizon in this Agreement. City has not relied and will not rely on, and Horizon is not liable for or bound by, any express or implied warranties, guaranties or representations pertaining to the Dedication Property and the Easement Area made or furnished by Horizon, any agent representing or purporting to represent Horizon, to whomever made or given, directly or indirectly, orally or in writing, unless such warranty, guaranty or representation is specifically set forth in this Agreement.
- 7. Survival.** All representations and warranties of City and Horizon contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and shall survive Closing for a period of nine (9) months and not otherwise be merged into any documents delivered at Closing.
- 8. Covenants of Horizon.** Horizon acknowledges that the covenants of Horizon contained in this Agreement, including the covenants contained in this Section, are material inducements to City to enter into this Agreement.
- 8.1 Timely Payments.** Horizon shall make timely payments of all mortgages, lines of credit and any other obligations in order to prevent the Dedication Property from going into default.
- 8.2 Maintenance/Waste.** Prior to Closing, Horizon shall maintain the Dedication Property and Easement Area in good repair and shall not cause or permit any waste on such properties.
- 9. Surviving Obligations.** In the event of any conflict between the provisions of this Section 9 and the terms of the Developer Agreement, the terms of this Section 9 will control. For and in consideration of Horizon granting to City the Easement and Horizon's agreement to dedicate the Dedication Property to the City to facilitate development of the Developer Property upon the terms set forth in this Agreement, City shall be responsible for performing the work set forth in this Section 9, which obligations shall survive Closing, and shall be binding upon City's and Horizon's successors in interest:
- 9.1 Public Road Improvements.** In connection with its completion of the Development, Developer shall be responsible, at City's sole cost and expense, for performing public road improvements required by the City within that portion of the Dedication Property located along SW Boones Ferry Road, with frontage improvements similar in type and quality to that required for the Development and existing at Horizon's church property along SW Boones Ferry Road. Horizon will have no liability for performing such improvements or paying any costs of the same.
- 9.2 Sanitary Sewer.** Following recording of the Easement and the Dedication Deed, Developer shall, at such time as Developer installs its own sanitary sewer lines within the Easement Area, stub a sanitary sewer line from the eastern edge of the Dedication Property to a point on Horizon's adjacent property in the location depicted on Exhibit B-1 to permit Horizon to connect its own sanitary sewer line in connection with Horizon's development of the balance of the Real Property.

9.3 Planned Projects. Developer agrees that it will not oppose (i) Horizon’s proposed sanctuary project on the Real Property, (ii) Horizon’s (or Horizon’s contract purchaser’s) proposed rezoning of a portion of the Real Property along SW Norwood Road for market-rate multifamily housing, or (iii) Horizon’s planned installation of overhead sports field lighting on a new baseball field to be constructed on the Real Property adjacent to the Developer Property.

10. Dedication. Upon completion of the Dedication, Horizon will have no liability for any maintenance, repair or replacement of the Dedication Property, nor will Horizon be obligated to maintain any insurance covering any activities of Horizon, its agents, employees, contractors, guests, or invitees (collectively, the “**Horizon Parties**”) on the Dedication Property. Horizon may also elect, in its sole discretion, to dedicate all or a portion of the Easement Area to the City, which dedication may occur concurrently with or subsequent to dedication of the Dedication Property, in which case all terms and provisions of this Section will apply to the Easement Area, and the Easement Area will be part of the Dedication Property for purposes of this Section 10. Except to the extent arising from the gross negligence or willful misconduct of the Horizon Parties, from and after the date of the Dedication, Developer and City waive any liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and other professional fees (collectively, “**Losses**”) related to the Dedication Property or past use of the same by the Horizon Parties. To the extent permitted by law and subject to the limits of the Oregon Tort Claims Act as applicable to City, City shall defend and indemnify the Horizon Parties for all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys’ fees and other professional fees (collectively, “**Claims**”) arising from City’s conduct on the Dedication Property except for to the extent arising from the Horizon Parties’ gross negligence or willful misconduct. Developer (which for purposes of this indemnification will include Developer’s agents, employees, contractors, guests and invitees) and the Horizon Parties agree to defend and indemnify the other party for all Claims arising from such party’s conduct on the Dedication Property except for to the extent the claims arise from the indemnified party’s own negligence or willful misconduct. Developer will have no right to use the Dedication Property for its construction or construction staging activities until the Dedication Deed is recorded. Following completion of the Dedication, including during the course of construction activities related to the Development, and continuing until such time as a new public right of way located to the south of the Dedication Property (the “**New ROW**”) is completed, dedicated and available for use by the public, Developer and City will use all commercially reasonable efforts to avoid restricting vehicular, bicycle and pedestrian access to and egress from the Real Property over the Dedication Property to SW Boones Ferry Road by the Horizon Parties, it being the intent of the parties that the Horizon Parties will have as much uninterrupted vehicular, bicycle and pedestrian access as possible to and from SW Boones Ferry Road over the Dedication Property until the New ROW is completed, dedicated and available for use by the public, and in no event will any frontage improvements installed at the intersection of the Dedication Property and SW Boones Ferry Road impede access from the Real Property to SW Boones Ferry Road until the New ROW is completed, dedicated and available for use by the public. City shall not develop (or permit to be developed) the New ROW and the SW Boones Ferry Road frontage improvements (i.e., curb cuts and similar frontage improvements located the intersection of the Dedication Property and SW Boones Ferry Road) to be completed at the intersection of the Dedication Property and SW Boones Ferry Road in such a manner that interferes with Horizon’s use of the Easement Area and so that Horizon may travel over the Easement Area and the New ROW to have continuous access to and egress from SW Boones Ferry Road to the Real Property owned by Horizon, and no rolled curbs will be installed along the Easement Area or the Dedication Property’s frontage along SW Boones Ferry Road until the New ROW is completed, dedicated and available for use by the public. To the extent Developer or City must temporarily impede access by the Horizon Parties from SW Boones Ferry Road over the Dedication Property or

the Easement Area until the New ROW is completed, Developer or City, as applicable, shall take commercially reasonable steps to provide Horizon with notice at least seven days prior to any temporary elimination of access setting forth the reason for and anticipated length of any such temporary elimination of access. Neither City nor Developer shall have any liability the Horizon Parties for any temporary elimination of access from SW Boones Ferry Road to the Real Property owned by Horizon except to the extent caused by City or Developer's gross negligence or willful misconduct. Horizon acknowledges that, subject to the foregoing provisions related to preservation of Horizon's access to and egress from its Real Property over the Dedication Property to SW Boones Ferry Road, Developer may develop the Dedication Property as a pocket park as set forth in the Developer Agreement. The terms of this Section 10 will survive Closing.

11. General Provisions.

11.1 Time of Essence; Force Majeure. Except as otherwise specifically provided in this Agreement, time is of the essence of each provision of this Agreement. Notwithstanding the foregoing, no party shall be deemed in default or be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused by circumstances beyond its reasonable control (which for all purposes hereof shall exclude the payment of any amounts due hereunder), including, without limitation, acts of God, earthquakes, fires, floods, wars, civil disturbances, acts of terrorism, sabotage, epidemics, pandemics, changes to laws or regulations, accidents, strikes, labor disputes, acts or closures of civil or military authority, closures of businesses, inability to obtain labor, material, equipment or transportation, or any other cause which could not have been prevented by such party with reasonable care. The time for performance of a party's obligations, and all related dates and deadlines herein, shall be extended for a period equal to the time lost by reason of the delay.

11.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns.

11.3 Notices. All notices shall (i) be in writing; (ii) be personally delivered, sent by mail, courier, email or facsimile transmission; and (iii) be effective on the date it is officially recorded as delivered. The address of each party to this Agreement for purposes of notice shall be as follows:

CITY:

Kim McMillan
Community Development Director
Tualatin City Services Building
10699 SW Herman Road
Tualatin, OR 97062-7092
Email: kmcmillan@tualatin.gov

HORIZON:

Horizon Community Church
Attn: Randy Campbell
23770 SW Boones Ferry Road
Tualatin, Oregon 97062
Email: rcampbell@horizoncommunity.church

Each party may change its address for notice by giving not less than fifteen (15) days prior notice of such change to the other party in the manner set forth above.

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

11.5 Further Assurances. The parties and the City shall reasonably cooperate with one another in order to fulfil and perform the transactions contemplated by this Agreement (including, without limitation, completing and submitting any applications or similar materials required by the City in connection with the Dedication), and shall provide such further assurances to one another, including after Closing (which obligations shall survive Closing), as shall be reasonable and appropriate under the circumstances, including without limitation the execution of such documents as may be desirable to implement the provisions of this Agreement fully and effectively.

11.6 Equitable Remedies. Except where this Agreement expressly limits a party's remedies, any party may apply to any court having jurisdiction for the issuance of any provisional process or other equitable remedy, including but not limited to specific performance, injunction, restraining order, attachment or appointment of receiver.

11.7 Attorneys' Fees. In the event suit, arbitration, action or appeal is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, each party will be responsible for their own attorneys' fees and costs.

11.8 Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

11.9 Integration; Amendment. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties and states the entire agreement of the parties. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11.10 Counterparts; Electronic Signatures. City or Horizon may execute this Agreement by electronic means or deliver executed signature pages to this Agreement by electronic means to the other party, and the electronic signature and/or copy will be deemed to be effective as an original. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which counterparts together will constitute one agreement with the same effect as if the parties had signed the same signature page. Horizon and City intend to be bound by the signatures on the PDF or facsimile document, are aware that the other party and third parties, including the Title Company, may rely upon the PDF or facsimile signatures and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

11.11 Invalidity of Provisions. In the event any provision of this Agreement, or any instrument to be delivered by either party at either Closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

11.12 Saturday, Sunday and Legal Holidays. If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal

holiday, then the time of such performance shall be extended to the next business day thereafter.

11.13 Confidentiality. The parties shall maintain the confidentiality of this transaction and its terms. Except with the consent of the other party, neither City nor Horizon, nor City's Agents or Horizon's Agents, shall disclose this transaction or its terms except to persons who have a need to know, such as the parties' brokers and agents, attorneys, consultants and governmental officials, when they have a need to know such information, and except as may be required by law.

11.14 Right to Assign. The City may not assign this Agreement without Horizon's prior approval, which may be granted or withheld in Horizon's sole discretion.

11.15 Waiver of Jury Trial. Each party waives the right to trial by jury in connection with any dispute, claim or action arising from or in connection with this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed this Agreement below.

HORIZON:

Horizon Community Church

By: _____

Name: _____

Title: _____

Date: _____

CITY:

City of Tualatin

By: _____

Name: _____

Title: _____

Date: _____

JOINDER OF DEVELOPER

The undersigned, Community Partners for Affordable Housing, joins in the execution of this Agreement for the sole and limited purpose of acknowledging its consent to and obligation to comply with the terms of Sections 2, 3.2.1, 4.3, 4.4, 9 and 10 of this Agreement.

Community Partners for Affordable Housing

By: _____

Name: _____

Its: _____

EXHIBIT A

Depiction of Real Property

[attached]

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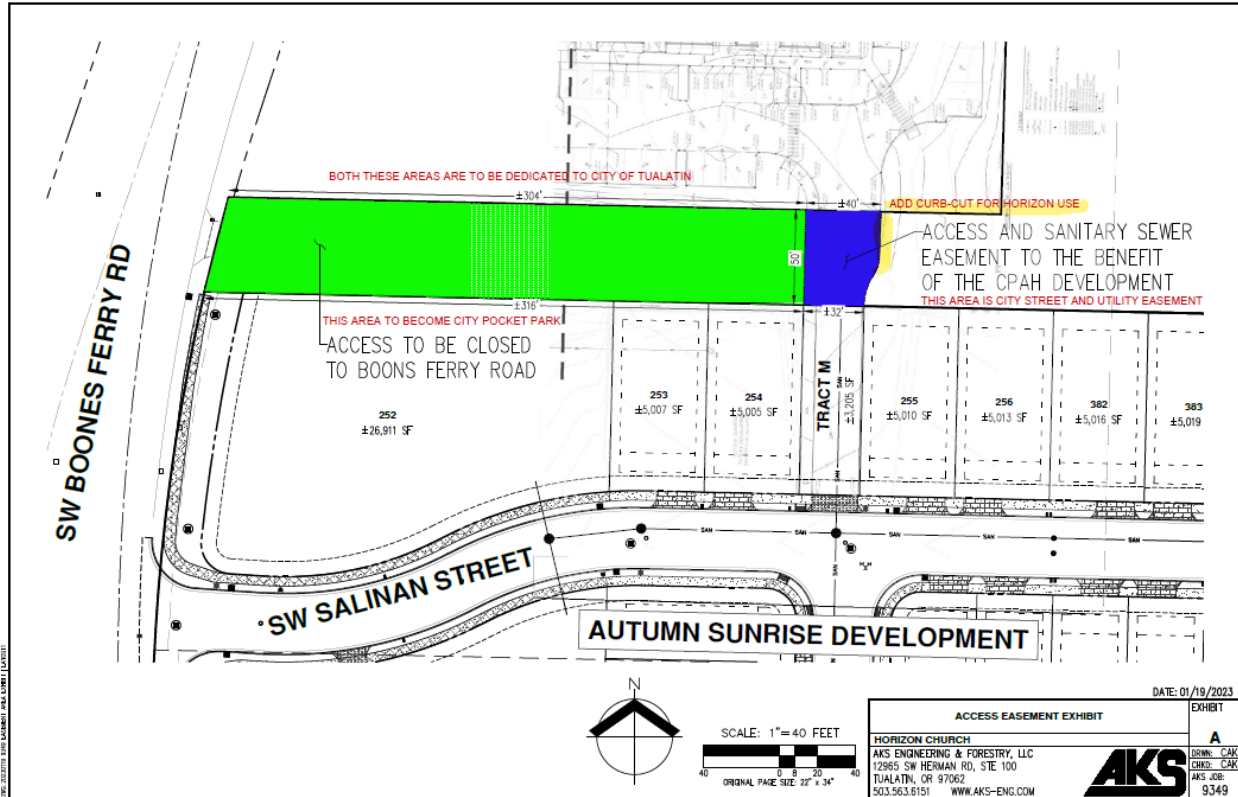
EXHIBIT B

Legal Description of Dedication Property

[To be provided by Horizon and attached hereto]

EXHIBIT B-1

Depiction of Dedication Property and Easement Area



{00834249; 1 } Exhibit B-1
to
Agreement for Grant of Easement and Dedication

EXHIBIT C

Developer Agreement

[To be attached]