

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING AMENDMENT NO. 2 TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF OLYMPIA AND MPH HOLDINGS, LLC FOR THE DEVELOPMENT OF REAL PROPERTY

WHEREAS, on July 10, 2007, the City of Olympia (the City) and MPH Holdings, LLC (the Developer) entered into a *Development Agreement for the Development of Certain Property* (the Agreement); and

WHEREAS, on March 31, 2009, the Parties entered into Amendment No. 1 to the Agreement, under which the time period of validity of the Agreement was extended; and

WHEREAS, pursuant to Section 22 of the Agreement, the parties wish to amend the terms of the Agreement in certain areas; and

WHEREAS, this amendment complies with RCW 6.70B.170 - .210; and

WHEREAS, pursuant to RCW 36.70B.200, the Olympia City Council held a public hearing on June 6, 2017, and considered testimony from the public and City staff on the proposed amendment to the Agreement's terms in certain areas; and

WHEREAS, this proposed amendment complies with RCW 6.70B.170 - .210;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. Approval of Amendment to Development Agreement. In accordance with RCW 36.70B.200, *Amendment No. 2 to the Development Agreement By and Between the City of Olympia and MPH Holdings, LLC for the Development of Certain Property* attached hereto and incorporated herein as Exhibit A, is hereby approved.
2. Conditions of Approval. The Development Agreement shall be null and void and no longer in legal effect unless the following occurs:

The Developer shall sign *Amendment No. 2 to the Development Agreement By and Between the City of Olympia and MPH Holdings, LLC for the Development of Certain Property* within ten (10) days of approval by the City of Olympia City Council. Also within ten (10) days of approval by the City of Olympia City Council, the Developer shall sign an acknowledgement that they have reviewed and agree to the terms in this Resolution. In addition, the Developer shall submit a request for deviation from the EDDS pertinent to Exhibit B to the City Engineer within ninety (90) days of their signature of *Amendment No. 2 to the Development Agreement By and Between the City of Olympia and MPH Holdings, LLC for the Development of Certain Property*. If an EDDS deviation request, consistent with Exhibit B to the Agreement, is not approved by the City Engineer within one hundred fifty (150) days of their signature (ninety days plus sixty days), the Development Agreement shall be null and void and of no legal effect. As part of the EDDS

deviation review, the City Engineer, in their discretion, may seek additional clarifications and more detail consistent with Exhibit B.

3. City Manager Authority. The City Manager is directed and authorized to execute on behalf of the City of Olympia Amendment No. 2 to the Development Agreement By and Between the City of Olympia and MPH Holdings, LLC for the Development of Certain Property, and to make any minor modifications as may be required and are consistent with the intent of the attached Amendment No. 2, or to correct any scrivener's errors.
4. Severability. The provisions of this Resolution are declared separate and severable. In any provision of this Resolution or its application to any person or circumstance is held invalid, the remainder of this Resolution or application of the provision to other persons or circumstances, shall be unaffected.
5. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and confirmed.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2017.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber
DEPUTY CITY ATTORNEY

**AMENDMENT NO. 2
TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF OLYMPIA
AND MPH HOLDINGS, LLC,
FOR THE DEVELOPMENT OF CERTAIN PROPERTY**

This Amendment No. 2 is effective as of the date of the last authorizing signature affixed hereto. The parties ("Parties") to this Amendment No. 2 are the CITY OF OLYMPIA, a Washington municipal corporation (the "City"), and MPH HOLDINGS, LLC, a Washington limited liability company (the "Developer").

RECITALS

1. On July 10, 2007, the City and the Developer entered into a Development Agreement for the Development of Certain Property (the "Agreement").
2. The Agreement covered certain properties and provided that the term of the Agreement was to run for a defined period, unless extended or terminated as provided in the Agreement.
3. Subsequent to approval of the Agreement, the Developer has applied for and has been granted various permits for installation of improvements upon the covered property, including street, water, sewer, and stormwater improvements (the "Permits"). That installation continues and these permits remain valid at this time. A list of the Permits is attached hereto as Exhibit C, said list being incorporated herein by this reference. The City Engineer has approved certain modifications to the Permits, which constitute a net upgrade to the public health, safety and welfare. This recital does not grant, expand or reduce any authority under these permits. It is simply an acknowledgment of permits already granted.
4. On March 31, 2009, the Parties entered into Amendment No. 1 to the Agreement, under which the time period of validity of the Agreement was extended.
5. Since execution of Amendment No. 1, in 2013 the Developer submitted certain conceptual documents which proposed a realignment of the streets within the covered property, including an element which through the inclusion of an additional property, would provide for extension of the north-south roadway to 7th Avenue. Thereafter, the Developer applied for an amendment to the then applicable City of Olympia Zoning Code (the "Zoning Code") so as to broaden the authorized uses within the general area of the covered property. Subsequent to that application, the City recommended that the Developer integrate its specific request with the zoning review for the entire area then under consideration by the City. The Developer did so.

6. Such review by the City of what has been referred to as the “Kaiser-Harrison Opportunity Area” led to the adoption of area-wide amendments to the Zoning Code and the Olympia Comprehensive Plan (the “Comprehensive Plan”).
7. These amendments to the Zoning Code implement the authorization of more extensive use classifications for the entire area. This expansion is believed by both Parties to be reflective of the goal to achieve the best uses of the properties subject to this Amendment, which includes the land subject to the Agreement.
8. With the finalization of zoning review, the Developer reactivated its review of potential modifications in the provisions of the Agreement, which would result in the most effective and mutually beneficial development of the covered property.
9. The Parties have discussed a variety of factors, including the basic road layout. It was agreed to add a parcel on the southerly boundary of the original site so as to assure a direct connection for the north-south main street to 7th Avenue.
10. Based upon all applicable factors, the City and the Developer find it appropriate to amend the Agreement’s terms in certain areas.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The following shall constitute amendments to the identified sections and provisions of the original Agreement and Amendment No. 1 thereto:

- A. Section 1 of the Agreement, *The Project*, is hereby replaced to read as follows:

Section 1: *The Project*. The Project is the development and use of the Property, consisting of approximately 24 acres in the City of Olympia. The Project is proposed to be a multi-use project consistent with the Zoning Code provisions in effect as of the date of the execution of this Amendment No. 2. It is anticipated that MPH will be seeking approval of one or more Binding Site Plans covering the property.

- B. Section 4 of the Agreement, *Exhibits*, is hereby replaced to read as follows:

Section 4: *Exhibits*. The exhibits to the Agreement adopted in 2007 shall be replaced and succeeded by the following exhibits reflecting the legal description

of the covered properties and one or more maps showing various elements of the anticipated layout of the Property:

Exhibit A - Provides the legal description of the property subject to this Agreement, including the additional parcel.

Exhibit B - Road system layout and street section views, including basic location of road improvements, the final construction of which shall be subject to approval of individual Binding Site Plans. This Amendment does not certify or pre-approve Exhibit B as a Binding Site Plan or for any other land use review or permits, except the Permits that have been previously approved.

Exhibit C - List of prior permits.

Exhibit D - Phasing.

- C. Section 7 of the Agreement, *Term of Agreement*, is hereby replaced to read as follows:

Section 7: Term of Agreement. This Agreement shall be deemed to have commenced upon the effective date of the adopting Ordinance approving the original of this Agreement, and upon signature of this Amendment No. 2 by both parties and shall continue in full force and effect until January 1, 2022, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement and the amendments thereto shall have no force and effect, subject, however, to post-termination obligations of the Developer or Landowner.

- D. Section 9 of the Agreement, *Permitted Uses, Development Standards*, is hereby replaced to read as follows:

Section 9: Permitted Uses, Development Standards, & Phasing. Whether developed in one phase or a series of phases as anticipated by Section 13, the property may be used for such uses and structure sizes as may be permitted within the development under the provisions of the Zoning Code provisions

in effect as of the date of the execution of this Amendment No. 2. Except for the agreed street improvements and any associated storm water and/or City of Olympia Engineering Design and Development Standards (the "EDDS") revisions required for said street improvements as set forth in this Amendment No. 2 and its Exhibits, the EDDS standards in effect as of the date of the Agreement and any permits or approvals previously granted, [a] the permitted uses, [b] the density and intensity of use, [c] the maximum height and size of proposed buildings, [d] provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, [e] as noted above, the existing Land Use Regulations relating to, among other items, the construction, installation and extension of public improvements, and [f] the development guidelines and standards for and applicable to the development of the Subject Property shall be those in effect as of the date of the approval of this Amendment No. 2 to the Agreement. This does not include any building or fire code that is state mandated (See RCW 19.27.031), impacts fees, mitigation fees, or any other fees or charges.

- E. A NEW SECTION 29, *Street and Roadway Improvements; Vesting*, is hereby added to the Agreement to read as follows:

New Section 29: *Street and Roadway Improvements; Vesting*. The parties agree to the street improvements shown in the attached Exhibit B. These administrative approvals are contingent upon approval by the Olympia City Council of this Development Agreement. These improvements differ from those previously approved in permits under the original Agreement; therefore, the Developer agreed as part of their administrative approval to submit revisions to those permits that are consistent with the attached Exhibit B. This Agreement also acknowledges the contingent administrative approval of these revisions to valid permits, which will not affect the vested rights of Developer to those permits. This Agreement simply acknowledges the vesting that is granted by permits that are not before the Olympia

City Council. This Agreement also acknowledges that the Permits were authorized to be amended in what is a City Engineer's deviation approval, because that deviation is an improvement to what the City of Olympia Community Planning and Development Department has determined to be already vested.

The parties acknowledge there is an existing ten-foot utility easement adjacent to the right-of-way on the west side of the north-south connector street (Smithfield Street) between Harrison Avenue and 7th Avenue, as shown in Exhibit B. Developer shall construct and maintain a four-foot wide hard surface suitable for pedestrian travel in the easternmost three feet of this easement immediately adjacent to the right-of-way, together with the westernmost one foot of the right-of-way. This area may be used as part of a small plaza, outdoor seating or other amenities provided for business customers and pedestrians. In combination with the four-foot sidewalk within the right-of-way, this will effectively create an eight-foot wide pedestrian walkway that will serve the adjacent businesses.

The remaining seven-foot wide portion of the utility easement may be used for landscaping and small commercial uses designed primarily to cater to pedestrians, as consistent with the terms of the easement. These uses may include, but are not limited to, vendors, newsstands, flowers, and cafes. This portion of the easement may not be used for fences or other features which form visual barriers or block views to street wall windows.

F. Section 17 of the Agreement, *Annexation & "Preferred Lease Zone"* shall be deleted.

2. All remaining provisions of the Development Agreement by and Between the City of Olympia and MPH Holdings, LLC, for the Development of Certain Property dated July 10, 2007, as modified by Amendment No. 1 dated March 31, 2009, and not here amended or

supplemented shall remain as written in said Agreement, and shall continue in full force and effect.

3. This Amendment No. 2 may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement; but in making proof of this Amendment, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Amendment may be combined to form multiple fully-executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, where permitted, shall be deemed to be an original signature for all purposes. All executed counterparts of this Amendment shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same agreement.

MPH HOLDINGS, LLC:	CITY OF OLYMPIA:
By _____	_____
Signature	Steven R. Hall, City Manager
Print Name _____	
Title _____	Date _____
Date _____	APPROVED AS TO FORM:
	<u>Darren Nienaber</u>
	Deputy City Attorney

EXHIBIT "A"

WESTCAP DESCRIPTION

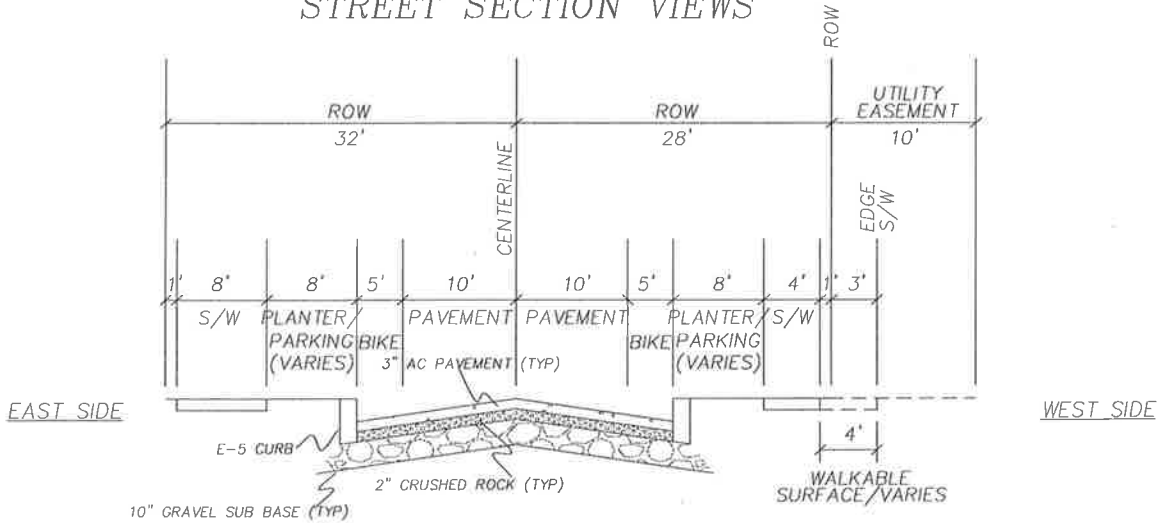
Parcel A of City of Olympia Boundary Line Adjustment No. BLA 08 0072 OL, as recorded June 26, 2008 under Auditor's File No. 4019857, records of Thurston County, Washington.
EXCEPTING THEREFROM that portion conveyed to the City of Olympia for Harrison Avenue per Auditor's File No. 4136288, records of Thurston County, Washington.

7th AVENUE PROPERTY DESCRIPTION

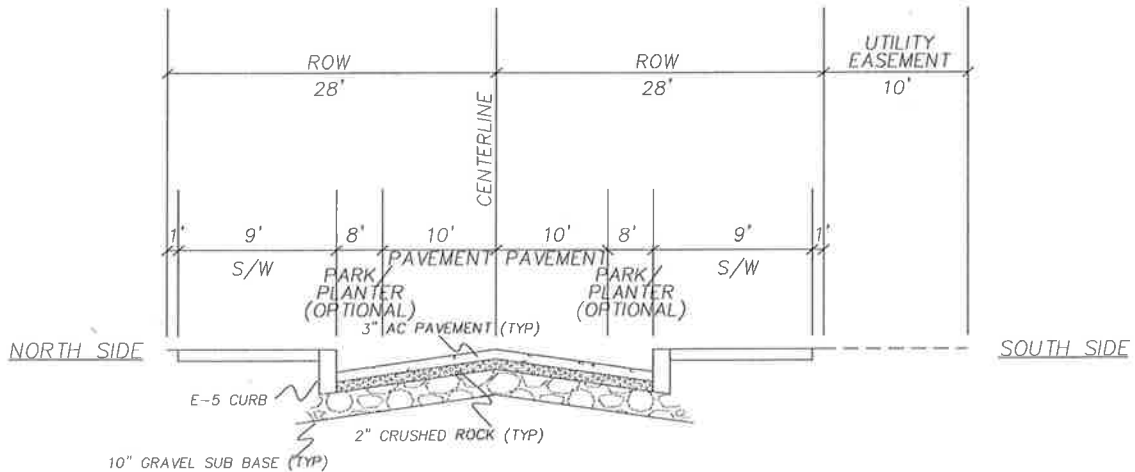
Parcel C of Boundary Line Adjustment No. BLA-0039, as recorded July 8, 1982 under Auditor's File No. 8207080043, records of Thurston County, Washington.

EXHIBIT "B"

STREET SECTION VIEWS



COMMERCIAL COLLECTOR
NORTH-SOUTH ROAD
SMITHFIELD ST.



COMMERCIAL COLLECTOR
EAST-WEST ROAD

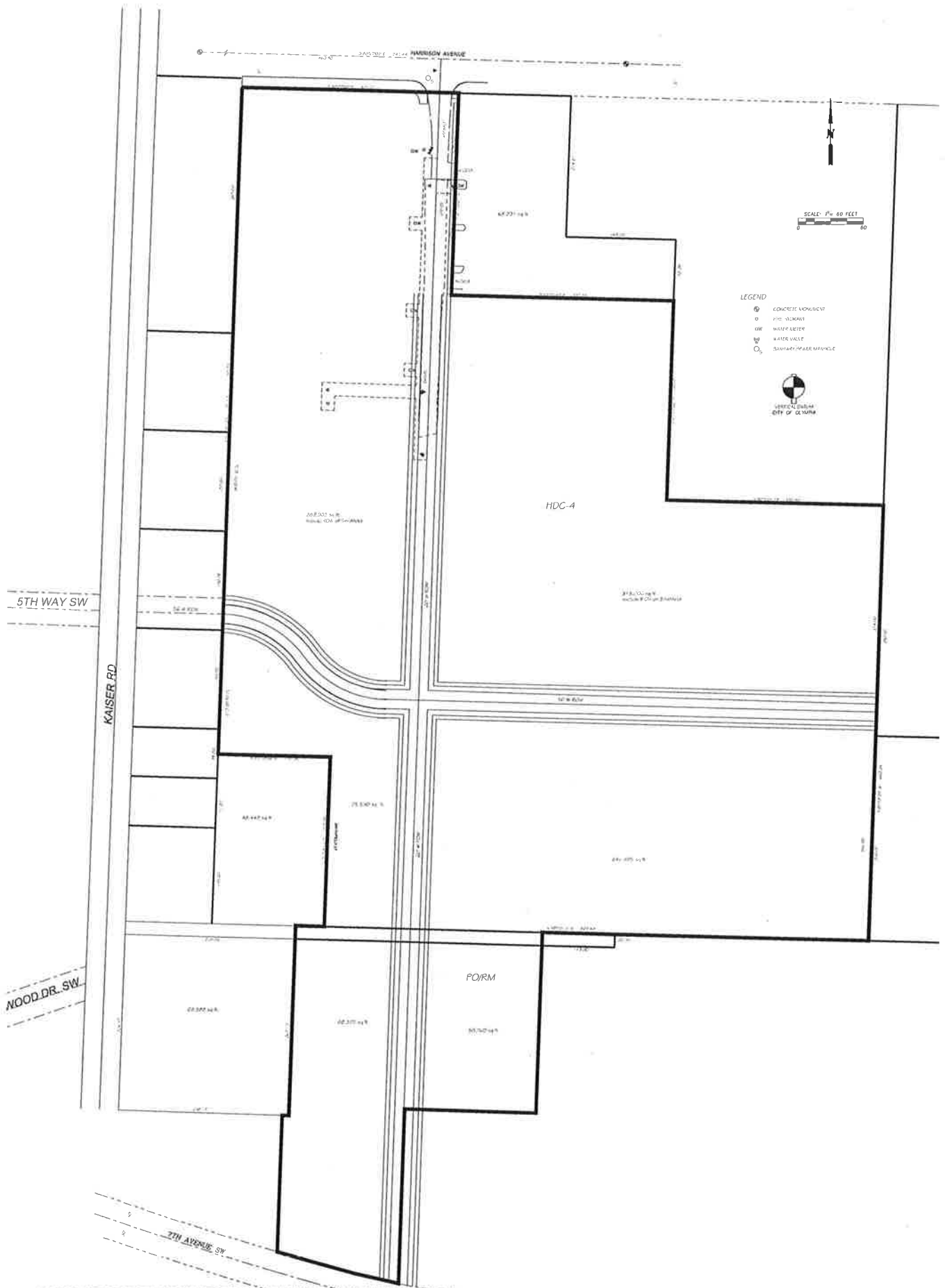


EXHIBIT "C"

The following permits are active for your project at 4501 Harrison Avenue NW:

08-2218-ACCC-0 –	Engineering application
08-2218-ENSP-	Engineering Plat
08-2218-SEWR-0-	Sewer Main Permit
08-2218-Site-0	Engineering Site Work
08-2218-STRE-0	Street Improvements
08-2218-STRM-0	Stormwater Improvements
08-2218-WATR-0	Water Main Permit

PHASING EXHIBIT "D"

