

120501 - 18

**LARAMIE COUNTY CLERK
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM PROCESSING FORM**

1. **DATE OF PROPOSED ACTION:** MAY 1, 2012

2. AGENDA ITEM:	<input type="checkbox"/> Appointments	<input type="checkbox"/> Bids/Purchases	<input type="checkbox"/> Claims
	<input checked="" type="checkbox"/> Contracts/Agreements/Leases	<input type="checkbox"/> Grants	<input type="checkbox"/> Land Use: Variances/Board App/Plats
	<input type="checkbox"/> Proclamations	<input type="checkbox"/> Public Hearings/Rules & Reg's	<input type="checkbox"/> Reports & Public Petitions
	<input type="checkbox"/> Resolutions	<input type="checkbox"/> Other	

3. **DEPARTMENT:** Planning and Development

APPLICANT: Col-Ind LLC/ Read Co. **AGENT:** Brad Emmons

4. **DESCRIPTION:**
Consideration of an development agreement between Laramie County, City of Cheyenne, Col-Ind LLC and Read Company to identify improvements for the construction of the Niobrara Energy Park.

RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
LARAMIE COUNTY ATTORNEY

Amount _____ From _____

5. **DOCUMENTATION:** 4 Originals 4 Copies

<u>Commissioner</u>		<u>Clerks Use Only:</u>		<u>Signatures</u>	
Humphrey	_____			Co Attny	_____
Woodhouse	_____			Assist Co Attny	_____
Thompson	_____			Grants Manager	_____
Action	_____			Outside Agency	_____

burg recorded 5-310

120501-18

Approved as to
form onlyD. WhiteDate: April 30, 2012

DEVELOPMENT AGREEMENT

This Development Agreement ("Development Agreement") is entered into by and between the Board of County Commissioners of Laramie County, Wyoming, 309 W. 20th Street, Cheyenne, WY 82001 ("County"), the City of Cheyenne, a municipal corporation organized under the laws of the State of Wyoming, 2101 O'Neil Avenue, Cheyenne, WY 82001 ("City"), COLL-IND, LLC, a Wyoming limited liability company, 255 Storey Blvd, Cheyenne, WY 82009, ("Developer"), and Read Company and Read Mining Company, c/o Christine C. Read, ("Owner"). This Development Agreement specifies standards for the development of an industrial park, known as the "Niobrara Energy Park," that is located within the service area boundaries of the South Cheyenne Water and Sewer District, Laramie County, Wyoming. In consideration of the promises set forth below, the parties agree as follows.

Status of COLL-IND, LLC: It is mutually understood and agreed that COLL-IND, LLC, is not presently the record owner of the property subject to this Development Agreement and that COLL-IND, LLC, will become the record owner of the property following the execution of this Development Agreement and the recording of a final plat for Niobrara Energy Park.

Legal Description of Property.

This agreement covers all of the land owned by Developer as depicted in Exhibit A which is the Final Plat of Niobrara Energy Park. This area shall be referred to in this Agreement as the Niobrara Energy Park Area.

The following is a description of lands included in a development agreement and final plat more particularly described as follows:

LEGAL DESCRIPTION OF A PARCEL OF LAND BEING SITUATED IN THE NORTH ONE HALF OF SECTION 9, TOWNSHIP 13 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, LARAMIE COUNTY, WYOMING AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOW:

COMMENCING AT THE CENTER ONE-QUARTER CORNER OF SAID SECTION 9 ; THENCE S89°48'14"W ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 9 A DISTANCE OF 1320.38 FEET TO A POINT ; THENCE N00°04'23"W A DISTANCE OF 720.09 FEET TO A POINT ; THENCE N00°04'23"W A DISTANCE OF 600.24 FEET TO A POINT ; THENCE S89°59'34"E A DISTANCE OF 659.06 FEET TO A POINT ; THENCE N89°52'32"E A DISTANCE OF 659.32 FEET TO A POINT ; THENCE S89°58'23"E A DISTANCE OF 1746.75 FEET TO A POINT; THENCE S00°01'37"W A DISTANCE OF 215.00 FEET TO A POINT; THENCE S61°33'40"E A DISTANCE 240.36 FEET TO A POINT; THENCE S00°28'16"W A DISTANCE OF 539.00 FEET TO A POINT ; THENCE N89°19'58"E A DISTANCE OF 320.30 FEET TO A POINT ; THENCE S89°19'02"E A DISTANCE OF 554.93 FEET TO A POINT ; THENCE S00°40'21"W A DISTANCE OF 119.99 FEET TO A POINT ; THENCE N89°19'06"W A DISTANCE OF 224.94 FEET TO A POINT ; THENCE N89°19'00"W A DISTANCE OF 330.02 FEET TO A POINT ; THENCE S89°19'36"W A DISTANCE OF 319.86 FEET TO A POINT ; THENCE S00°28'55"W A DISTANCE OF 329.20 FEET TO A POINT ; THENCE N89°58'05"W A DISTANCE OF 318.58 FEET TO A POINT ; THENCE S89°57'30"W A DISTANCE OF 330.03 FEET; THENCE N89°56'21"W A DISTANCE OF 1297.52 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 100.10 ACRES MORE OR LESS.

Intent of the Parties. It is the intent of the parties to this Development Agreement to clarify and specify the development standards regarding initial infrastructure installed which is being overseen by Wyoming Business Council Grant and administered by the County. All improvements contemplated by this Development Agreement will be designed at the expense of the Developer. Owner's representations, warranties, and obligations under this agreement shall extend only to the representations, warranties, and obligations made by Owner under that certain paragraph titled "**Kickbacks**" under this agreement; and furthermore, only the paragraphs titled "**Kickbacks**" and "**Indemnification**" under this agreement shall apply to Owner, and all other paragraphs under this agreement shall have no legal or binding effect upon Owner.

Duration of Agreement. This Development Agreement shall become effective when it is fully executed by the parties hereto and shall remain in full force and effect until such time as the parties revoke, cancel, or amend this agreement through a written instrument executed with the same formalities as this Development Agreement.

Recitations. The County, City and Developer commit the following:

1.) **Roadway Design:**

- a.) Allison Road is to be platted as a 70' ROW and constructed as a 36' roadway with curb and gutter. As Allison road approaches College Drive, it shall be constructed as a 40' roadway with curb and gutter. The remaining ROW shall be graded for future parkway landscape strips (6') and sidewalks (6'). Parkway strips are located between the back of curb and the sidewalk. The City may require the installation of sidewalk adjacent to Allison Road in conjunction with development actions being pursued in the City as required by City Code at time of development. Allison Road shall be constructed from College Drive to a point not more than 400' east of the western boundary of the Final Plat for Niobrara Energy Park and a cul-de-sac shall be constructed at the western terminus of the constructed portion of Allison Road. The cul-de-sac shall be removed when Allison Road is constructed along the platted ROW to connect to Avenue C.
- b.) Energy Drive and Hinkley Avenue are to be platted as 60' ROW and, when constructed, shall be constructed as a 36' roadway with curb and gutter. The remaining ROW shall be graded for future parkway landscape strips (6') and sidewalks (6'). Parkway strips are located between the back of curb and the sidewalk. The City may require the installation of sidewalk adjacent to Energy Drive and Hinkley Avenue in conjunction with development actions being pursued in the City as required by City Code at time of development.
- c.) Avenue C-2 will be treated with Mag-Chloride when connected to Hinkley Drive.

2.) **Regional Detention:**

Detention facilities will be designed to help alleviate drainage concerns not only within the Niobrara Energy Park, but also for adjacent properties and public ROW's. Detention facilities will be designed in accordance with current detention standards of the City and the County. Detention standards include, but are not limited to, ensuring that slopes are no greater than 4:1 and that the release rates will not be increased over the historic rates. The design of detention facilities shall incorporate as much of the regional basin as possible. Regional Detention goals shall be developed in conjunction with the City and the County and shall take into consideration future uses of the Niobrara Energy Park and parcels surrounding the Park. Regional Detention facilities shall be dedicated to the County and the County shall assume maintenance responsibility in accordance with Wyoming Business Council grant conditions. The regional detention pond to be constructed within Niobrara Energy Park will be designed to accommodate upstream detention and will comply with the following design criteria. The design criteria in Subparagraphs a, b, c, and d of this Section may be modified only upon the joint written approval of the City Engineer and County Planner.

- a.) Adjacent to Energy Drive, a usable, buildable land area that is, at a minimum, of one acre and no less than 100' in any direction shall be provided in order to accommodate potential future construction of maintenance facilities, restrooms, parking areas and picnic shelters if so desired by the governmental agency with jurisdiction over the regional pond.
 - b.) Water and sanitary sewer service shall be supplied to the one acre site, if the developer is only required to provide the taps and not the development fees, and electric shall be stubbed out to the property line at a mutually agreeable location to avoid future cuts to the roadway.
 - c.) Within the detention pond a "flat" area with a minimum area of 160' by 360' shall be graded to prevent water from settling within the pond.
 - d.) An area shall be graded to provide vehicle access for maintenance to the detention pond. In addition, an area shall be graded to provide future pedestrian access to the detention pond from Energy Drive. An access easement shall be recorded to provide access from South College Drive to the northeast corner of the area subject to the Final Plat for Niobrara Energy Park.
- 3.) **Greenway and Pedestrian Connectivity:** All greenway paths will be built concurrently with the initial construction of road infrastructure through the park.
- a.) The Developer agrees to dedicate to the County along the southern boundary of the Niobrara Energy Park final plat a 20' strip for a 10' greenway path.
 - b.) The developer agrees to dedicate a 20' strip from the south boundary of the final plat to Allison Road along the alignment of Energy Drive and to concurrently construct an 8' greenway path to Fox Farm Road at the time of initial construction of road infrastructure through the park.
 - c.) The Developer agrees to dedicate a 20' easement along the easterly boundary of the final plat from the south greenway dedication to Allison Road and construct an 8' greenway path. This easement may be vacated if

the green way continues along Allison Draw to College Drive on LCCC property.

- d.) If for some reason Greenway cannot be installed sidewalks will be required on all frontages.

4.) Site Plans & Landscaping:

Site Plan applications will be reviewed by the governing entity at the time of application and will direct individual lot design. However, the following criteria shall be followed in conjunction with the governing landscape and site plan design regulations.

- a.) Tree lawns are required to include street trees at a maximum spacing of 40' for large canopy trees varieties. Street trees are to be located in the treelawn between the sidewalk and back of curb. Ornamental trees will be used when overhead power lines impede vertical growth. Large canopy tree species shall be used where there are no overhead lines. In all cases street trees are required to be irrigated with a drip irrigation system.
- b.) Of the required internal trees 25% may be placed along greenway sections dedicated to the County instead of on private property.
- c.) Lots adjacent to the existing school parcel will be required to place a 3' landscape berm with a 4:1 slope with a 6' privacy fence placed on the top of the berm. Landscaping will also be placed along the berm.

5.) Utilities:

- a.) Water and Sewer utilities will be installed and connected to the South Cheyenne Water and Sewer District system in accordance with its regulations. Water, storm sewer and sanitary sewer mains shall be located within the curb to curb section of the street. Fire hydrants will be located within 5' of back of curb. The intent of these parameters is to keep these infrastructures in the public right of way in order to maximize developable land outside the right of way and preserve the area within the right of way for future installation of detached sidewalk section and tree lawn. Modifications may be made to these parameters provided the intent of the subsection is met and mutually agreed to by the City Engineer and the County Planner.
- b.) All other utilities not otherwise addressed in this agreement shall be located in the right-of-way, but not within the 6' treelawn located between the back of curb and detached sidewalk location or on private property within appropriate utility easements. All new phone, fiber optic, and cable lines are to be installed underground. Cheyenne Light Fuel and Power has recommended overhead electric.

- c.) Developer will provide approved water plans and an electronic copy (AutoCad) of the plat to the City of Cheyenne Fire Department and Laramie County Fire District #1.

6.) Maintenance Agreement:

Allison Road, Energy Drive and Hinkley Drive will be maintained by the commercial properties that will be using the roadways until such time as the ROW's are annexed to the City, except for Allison Road which may be maintained by the County if at any time it is extended to Avenue C. The attached maintenance plan will be implemented until such time the development is annexed into the city. Monies collected and not used for roadway maintenance shall be returned to the property owners.

Amendments. Any changes, modifications, revisions or amendments to this Agreement that are mutually agreed upon in writing by the parties hereto shall be incorporated by written instrument, signed by all parties to this Agreement.

Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

Notices. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the addresses provided at the front of this Agreement, either by regular U.S. mail or delivery in person. Delivery shall be deemed to have occurred 3 days following deposit in the U.S. mail or upon delivery in person.

Remedies and Enforcement. Except as provided in that certain paragraph titled "Intent of the Parties" if any party defaults in the performance of this Agreement, any other party shall have the right to exercise all remedies provided by law or in equity.

Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect as if the illegal or unenforceable term was omitted.

Sovereign Immunity. The City and County do not waive sovereign immunity by entering into this general agreement and specifically retain all immunities and defenses available pursuant to Wyo. Stat. § 1-39-104(a) and all other state laws.

Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between and for the benefit of the parties to this Agreement.

Kickbacks. Developer/Owner warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. In addition:



- i. Developer/Owner shall comply with the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58, as supplemented in the Department of Labor Regulations 29 C.F.R., § 3. This Act provides that Developer/Owner is prohibited from inducing by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
- ii. No staff member or other personnel of the City or the County shall engage in any Agreement or activity which would constitute a conflict of interest as related to this Agreement.

Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to Developer and to County in executing this Agreement. This provision is not intended nor shall it be construed to waive County governmental immunity as provided in this Agreement.

Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

Indemnification: To the fullest extent permitted by law, Developer agrees to indemnify and hold harmless, Owner, County and the City, and their elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with this Agreement except to the extent liability is caused by the sole negligence or willful misconduct of County or its employees.

Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

Entirety of the Agreement. This Agreement, consisting of eight (8) pages, and Exhibit A consisting of one (1) page, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations and agreements, whether written or oral.

THIS SPACE LEFT INTENTIONALLY BLANK SIGNATURE PAGES TO FOLLOW

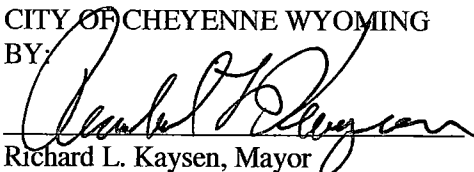


RECORDED 5/03/2012 AT 1:12 PM REC# 590582 BK# 2273 PG# 1182
DEBRA K. LATHROP, CLERK OF LARAMIE COUNTY, WY PAGE 7 OF 11

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

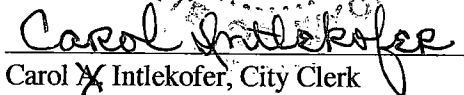
CITY OF CHEYENNE WYOMING

BY:


Richard L. Kaysen, Mayor

(SEAL)

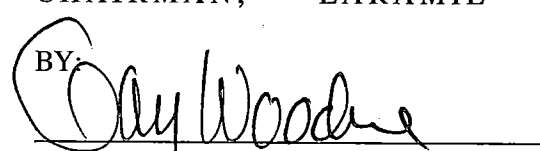
ATTEST:


Carol X Intlekofer, City Clerk

COMMISSIONERS

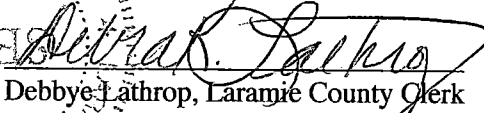
CHAIRMAN, LARAMIE COUNTY

BY:


Gay Woodhouse

(SEAL)

ATTEST:


Debbye K. Lathrop, Laramie County Clerk

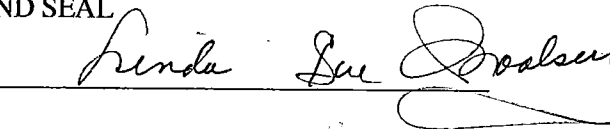
Kent Jespersen, MANAGING MEMBER, COLL-IND, LLC

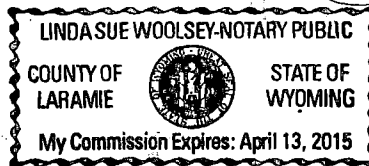
BY:

STATE OF Wyoming) SS
COUNTY OF Laramie)

The foregoing instrument was acknowledged before me by Kent Jespersen this 30th day of April, 2012.

WITNESS MY SIGNATURE AND SEAL





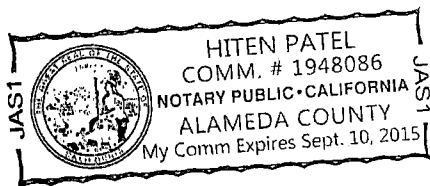
*Christine Read, Managing Partner of
Read Company and Read Mining Company*
Christine Read, Managing Partner of Read Company and
Read Mining Company

STATE OF California)
) SS
COUNTY OF Alameda)

The foregoing instrument was acknowledged before me by Christine C. Read this 27th
day of April, 2012.

WITNESS MY SIGNATURE AND SEAL

Hiten Patel
Notary Public



ANNEXATION COVENANT

KNOW ALL MEN BY THESE PRESENTS

That, the undersigned, being the owners of the following described property situated in Laramie County, Wyoming, to wit:

LEGAL DESCRIPTION OF A PARCEL OF LAND BEING SITUATED IN THE NORTH ONE HALF OF SECTION 9, TOWNSHIP 13 NORTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, LARAMIE COUNTY, WYOMING AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOW:

COMMENCING AT THE CENTER ONE-QUARTER CORNER OF SAID SECTION 9 ; THENCE S89°48'14"W ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 9 A DISTANCE OF 1320.38 FEET TO A POINT ; THENCE N00°04'23"W A DISTANCE OF 720.09 FEET TO A POINT ; THENCE N00°04'23"W A DISTANCE OF 600.24 FEET TO A POINT ; THENCE S89°59'34"E A DISTANCE OF 659.06 FEET TO A POINT ; THENCE N89°52'32"E A DISTANCE OF 659.32 FEET TO A POINT ; THENCE S89°58'23"E A DISTANCE OF 1746.75 FEET TO A POINT; THENCE S00°01'37"W A DISTANCE OF 215.00 FEET TO A POINT; THENCE S61°33'40"E A DISTANCE 240.36 FEET TO A POINT; THENCE S00°28'16"W A DISTANCE OF 539.00 FEET TO A POINT ; THENCE N89°19'58"E A DISTANCE OF 320.30 FEET TO A POINT ; THENCE S89°19'02"E A DISTANCE OF 554.93 FEET TO A POINT ; THENCE S00°40'21"W A DISTANCE OF 119.99 FEET TO A POINT ; THENCE N89°19'06"W A DISTANCE OF 224.94 FEET TO A POINT ; THENCE N89°19'00"W A DISTANCE OF 330.02 FEET TO A POINT ; THENCE S89°19'36"W A DISTANCE OF 319.86 FEET TO A POINT ; THENCE S00°28'55"W A DISTANCE OF 329.20 FEET TO A POINT ; THENCE N89°58'05"W A DISTANCE OF 318.58 FEET TO A POINT ; THENCE S89°57'30"W A DISTANCE OF 330.03 FEET; THENCE N89°56'21"W A DISTANCE OF 1297.52 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 100.10 ACRES MORE OR LESS.

in consideration of the mutual promises do hereby consent to the annexation of the above property to the City of Cheyenne in the event said property qualifies, and do hereby covenant and agree to do and execute such further acts, conveyances and assurances as may reasonably be required by the City of Cheyenne.

This consent to annexation shall constitute a covenant appurtenant to the above-described property and shall bind the undersigned, their heirs, legal representatives and assigns to the full performance thereof.

Dated 4/27/12

State of California, County Of Alameda

Subscribed & sworn before me

On 27 day of April, 2012

By Christine Read

Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature [Signature]

State of _____)
) ss.

Christine Read, Managing Partner
of Read Company and
Read Mining Company
Christine Read, Managing Partner of
Read Company and Read Mining
Company
HITEN PATEL
COMM. # 1948086
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
My Comm Expires Sept. 10, 2015

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of CALIFORNIA

County of ALAMEDA

On 4/27/12 before me, HITEN PATEL (NOTARY PUBLIC)

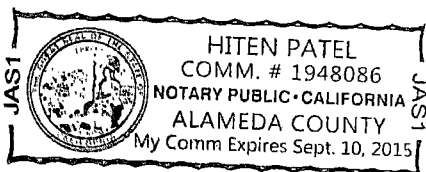
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Christine Reed

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)