

**ORDINANCE NO. 2
SERIES OF 2019**

**AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF CARBONDALE, COLORADO
APPROVING AN APPLICATION OF PACIFICA SENIOR LIVING RE FUND
LLC TO AMEND THE 2013 COMPREHENSIVE PLAN FOR PURPOSES OF
INCLUDING PROPERTY IN THE “DOWNTOWN NORTH” DESIGNATION,
TO REZONE THIS PROPERTY AS PART OF THE RESIDENTIAL HIGH
DENSITY (R/HD) ZONE DISTRICT, AND FOR MAJOR SITE PLAN REVIEW
APPROVAL TO DEVELOP A 78-UNIT ASSISTED LIVING FACILITY**

WHEREAS, Pacifica Senior Living RE Fund, LLC, a Colorado limited liability company (“Applicant”) has submitted a combined land use application for 3.867 acres of land consisting of two parcels located at 295 Rio Grande Lane (the “East Parcel”) and 297 Rio Grande Lane (the “West Parcel”), both legally described on attached *Exhibit A* (the “Property”), in order to: (1) amend the 2013 Comprehensive plan such that the Property will be re-designated as part of the “Downtown North” designation instead of the “Developed Neighborhood designation; (2) rezone the Property (portions of which are presently zoned as part of the Nieslanik Mini P.U.D. or the Residential/Medium Density (R/MD) zone district) as part of the residential high density (R/HD) zone district; and (3) obtain major site plan approval to develop a 78-unit assisted living facility upon the Property; and

WHEREAS, after all required notices, the Town’s Planning and Zoning Commission (P&Z) conducted a public hearing on November 16, 2017, and January 25, 2018, at which time various elements of these requests were discussed and public input was taken; and

WHEREAS, the P&Z subsequently recommended to the Town’s Board of Trustees that these requests be approved; and

WHEREAS, after all required notices, the Town’s Board of Trustees conducted a public hearing on February 27, 2018, at which time the Board heard and considered the statements of town staff and the public and reviewed and considered all relevant documents and information presented at such hearing, all as required by law; and

WHEREAS, the Board of Trustees finds that is appropriate to approve an amendment to the 2013 Comprehensive Plan for purposes of re-designating the entire Property as part of the “Downtown North” designation in order that the Property may be re-developed as an assisted living facility—such redevelopment would extend the traditional town form, scale and mixture of uses, and add to and support critical elements of the downtown, as contemplated by the Comprehensive Plan;

WHEREAS, the Board of Trustees also finds that it is appropriate to approve the rezoning of the Property as recommended by the Planning and Zoning Commission pursuant to Chapter 17 of the Carbondale Municipal Code (the UDC), as the rezoning is consistent with the overall purpose statement described in Section 1.3 of the UDC, the 2013 Comprehensive Plan, and also complies with the specific rezoning criteria set forth in UDC sub-sections 2.4.2.C.3.b.i through –vi, inclusive, as follows:

- i. The proposed rezoning will promote the public health, safety, and general welfare;
- ii. The proposed rezoning is consistent with the 2013 Comprehensive Plan, as amended, as it will provide senior housing options near downtown;
- iii. The proposed rezoning is consistent with the stated purposes of the R/HD zoning Applicant; specifically, the rezoning will provide a well-planned mix of assisted living units close to commercial centers and near downtown;
- iv. The proposed rezoning will not result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;
- v. The proposed rezoning is not likely to result in material adverse impacts to other property adjacent to or in the vicinity of the Property; and
- vi. Facilities and services (including roads and transportation, water, gas, electricity, police and fire protection, and sewage and waste disposal, as applicable) are available to serve the Property while maintaining adequate levels of service to existing development; and

WHEREAS, the Board of Trustees also finds and determines that the application for major site plan review also meets the following site plan approval criteria set forth in Municipal Code Chapter 17, Article 2, Sub-Sections 2.5.3.C.1 through 4, inclusive, including:

- i. The site plan is consistent with the 2013 Comprehensive Plan, as amended, as it will optimize the use of land in Town, function as infill development, and will expand the inventory of senior housing available in Town;
- ii. The site plan is consistent with the purposes of the R/HD zone district;
- iii. The site plan complies with all applicable development and design standards set forth in the Municipal Code; and

iv. Traffic generated by the proposed development will be adequately served by existing streets within Carbondale, or such impacts will be sufficiently mitigated; and

WHEREAS, the Board of Trustees also finds and determines that certain conditions of approval should be imposed, as set forth herein and a related Development Improvements Agreement to be entered into by the Applicant and the Town contemporaneously with the finalization of these approvals, which terms and conditions include that the Applicant will pay certain fees to the Town, construct certain required public improvements (including water and sewer service system components, street improvements, and stormwater improvements), and dedicate certain associated public utility easements to the Town for purposes of future operation, maintenance, repair and replacement of these public improvements.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO as follows:

1. **Comprehensive Plan Amendment.** The 2013 Comprehensive Plan is hereby amended so that the Property shall be included in the “Downtown North” designation instead of the “Developed Neighborhood” designation, and the Future Land Use Plan included in the 2013 Comprehensive Plan is hereby amended accordingly.

2. **Rezoning.** The Property (including both parcels that comprise the “Property”) shall be and is hereby re-zoned as part of the Residential High Density (R/HD) zone district within the Town of Carbondale. Upon this Ordinance becoming effective, the Property shall no longer be within Nieslanik Mini PUD or the R/MD zone district, as applicable, and the Town’s Zone District Map shall be amended to reflect as such in accordance with Section 3.1.2. of Chapter 17 of the Carbondale Municipal Code. Should the Applicant not commence development of the project contemplated by these approvals within two years of the date of adoption of this Ordinance, this rezoning approval shall be deemed to have lapsed pursuant to Chapter 17.02, Section 2.3.9 of the Municipal Code (Lapse of Approval). If, however, development is diligently commenced within this timeframe, the Nieslanik Mini PUD shall be considered terminated and of no further force or effect, as no other property within Town was zoned as part of such PUD.

3. **Major Site Plan Review.** The Board of Trustees hereby grants Major Site Plan Review approval to allow development of a 78-unit assisting living facility, which facility shall include one building (Building A) to include up to 24 memory care (MC) units and 24 assisted living (AL) units, and a second building (Building B) to include up to 30 assisted/independent (IL) units. A copy of the approved site plan is attached to this Ordinance as *Exhibit B*. Site plan approval is conditioned upon all terms and conditions of this Ordinance and the associated Development Improvements Agreement. Pursuant to Chapter 17.02, Section 2.5.4.G.2 of the Municipal Code, site plan approval shall remain in effect for a period of three years, provided that this approval shall lapse if 50%

of the total square footage of the approved project is not initiated within this three-year period.

4. **Development Improvements Agreement.** Prior to any construction on the Property, the Town and the Applicant shall enter into a Development Improvements Agreement in the form attached to this Ordinance as *Exhibit C*. All terms of such Agreement are incorporated as terms and conditions of this Ordinance.

5. **Dedication of Public Access and Utility Easements.** Upon completion of construction of all public improvements required by the Development Agreement, and prior to applying for certificates of occupancy from the Town or the State, or otherwise allowing Buildings upon the Property to be occupied, the Applicant shall survey the as-built locations of the public improvements required by the Development Improvements Agreement and shall thereafter execute and deliver to the Town an easement deed or deeds conveying customary public easements to the Town for purposes of future operation, maintenance, repair and replacement of the public improvements (including principally a new water main easement, and a public ingress/egress across all paved driveways, parking areas, and sidewalks for use by emergency service providers and law enforcement). The utility easement for the water main shall be 20 feet in width, extending 10 feet on either side of the surveyed as-built centerline of the underground water main. The trail easement shall be in same dimensions as the as-built concrete surfaced trail. Prior to dedication of these easements, the Applicant shall provide the Town Attorney with a current title commitment showing that such dedications and conveyances shall be free and clear of all encumbrances, or subject only to such exceptions as may be approved by the Town Attorney. The easement deed(s) shall also include a title warranty from the Applicant, and any lender with a lien against the Property shall sign consents and lien subordinations for these easements. Upon delivery of the easements, the Applicant shall also pay the required fee for the title company to issue owner's title insurance coverage to the Town for the easements (with coverage amount of no less than \$250,000). The form of the easement deed(s) shall be subject to review and approval by the Town attorney, and the location and scope of the easements shall be subject to review and approval by the Town's public works director.

6. **Fees.** The following fees shall be paid by the Applicant prior to the recordation of this Ordinance, the Town's execution of the DIA, or the commencement of construction:

- a. A \$68,843.00 fee in lieu of water rights dedication shall be paid by Applicant prior to recordation of the Development Improvements Agreement or issuance of any building permits.
- b. The Applicant shall reimburse the Town for any outstanding reimbursable legal or engineering expenses incurred through the date of recordation.

7. **Additional Conditions of Approval.** The Board of Trustees imposes the following additional conditions of approval:

- a. Approval of the Major Site Plan Review is contingent upon Town approval of the engineering plans. All of the comments in the Public Works Director's memo dated January 5, 2018 shall be addressed during the preparation of the engineering plans.
- b. This Ordinance shall not take effect until RFTA's approval and execution of access license agreements to include principal access to the Property, as well as the utility crossings and proposed trail connection shown on the Site Plan. There are two utility crossings, one for a fiber optic cable which will go to Pacifica and the other for a water main to be dedicated to and owned by the Town. Thereafter, should these license agreements ever terminate, the Town may require the Assisted Living Facility approved herein to cease operations pending the establishment of alternate legal and physical access sufficient to accommodate emergency vehicles, and provisions for adequate public utility service to the Property.
- c. All required public utility and access easements shall be dedicated to the Town of Carbondale pursuant to the Development Improvements Agreement prior to release of security held to guarantee completion of required public improvements or issuance of any certificates of occupancy. The location, size and terms of the easements shall be subject to review and approval of Town Staff. The Applicant shall have its surveyor prepare as-built legal descriptions for all required easements with form and content acceptable to the Town's public works director.
- d. Prior to issuance of any building permits, the Applicant shall confirm a drainage easement agreement upon adjacent property owned by Paul R. Nieslanik and Celia R. Nieslanik to the extent that all stormwater is not being detained or retained on site. The easement shall be subject to review and approval of the Town Attorney.
- e. The Applicant has entered into a Livestock Easement agreement with Paul and Celia Nieslanik for purposes of defining the Nieslaniks' future right to drive cattle across the Property dated February 1, 2017 and recorded on February 2, 2017 at Reception No. 888484. All development shall be consistent with this agreement.

- f. All project lighting shall be in compliance with Chapter 17.05, Section 5.10 of the Municipal Code (Exterior Lighting).
- g. Except to the extent inconsistent with this Ordinance or the related Development Improvements Agreement, all representations of the Applicant in written submittals to the Town or during public hearings concerning this project shall also be binding as conditions of approval.
- h. The Applicant shall pay and reimburse the town for all other applicable professional and Staff fees pursuant to the Carbondale Municipal Code.
- i. The Applicant shall submit a digital map to the Town that shows the boundaries of the Property being rezoned and the R/HD zone Applicant designation in order to facilitate the Town's update to its Zoning District Map.
- j. This project presently contemplates the construction of 78 multi-family housing units for occupancy exclusively by older adults, or others with special needs, in memory assisted, assisted living, or assisted independent living units, as set forth above, all as part of a Assisted Living Facility licensed by the State of Colorado. As a part of the approval of the Application, the Town has found and determined that the use of these units as part of an Assisted Living Facility does not trigger inclusionary housing requirements. If, however, the Applicant should ever determine to allow the occupancy of these units by persons other than qualified residents of an Assisted Living Facility, to sell all or any portion of the Property except to another State-licensed operator of an Assisted Living Facility, or to subdivide or condominiumize any portion of the Property, the Applicant acknowledges that it shall be required to come into compliance with the Town's then-applicable affordable housing regulations (presently codified as Section 5.11 of Chapter 17.05 of the Municipal Code), and that the Town may withhold or condition any further development approvals accordingly. Any use of the Property in violation of this condition may also be processed by the Town as a violation pursuant to Chapter 17.01, Section 1.8.2.B of the Municipal Code, in which case the Town may pursue any or all of the remedies and penalties set forth in Chapter 17.01, Section 1.8.3.
- k. No more than 28,801 square feet of landscaping may be irrigated upon the Property. Ditch water from the ditch that traverses the

Property shall not be utilized upon the Property unless expressly approved by the Town in the future.

1. The only public improvement for this project as to which the Town is going to accept maintenance responsibility after completion and acceptance is the proposed new water main that will serve the Property. All other improvements, public and private, that will be constructed pursuant to the Development Improvements Agreement shall be privately operated, maintained, repaired and replaced by the owner of the Property in perpetuity.

8. **Other representations.** All other representations of the Applicant and its representatives made in written submittals to the Town or during Town public hearings shall be considered additional conditions of approval.

9. **Effective Date.** This Ordinance shall not be effective until RFTA's approval of licenses for access and utilities to the Property for the development contemplated hereby pursuant to Section 7.b, above, and until 30 days' after posting and publication of this Ordinance in accordance with the Town's Home Rule Charter. If RFTA approval does not issue within 90 days of the date of passage of this Ordinance, this Ordinance shall be null and void and of no further force or effect.

INTRODUCED, READ AND PASSED this ____ day of _____, 2018.

THE TOWN OF CARBONDALE

By: _____
Dan Richardson, Mayor

ATTEST:

Cathy Derby, Town Clerk

EXHIBITS:

- A. Legal Description of Property.
- B. Approved Site Plan.
- C. Development Improvements Agreement.

EXHIBIT A

A tract of land situated in Lots 10 and 11 of Section 34, Township 7 South, Range 88 West of the 6th P.M., lying Northerly of the Denver and Rio Grande Western Railroad (Aspen Branch) right-of-way described as follows:

Beginning at a point on the Northerly right-of-way line of said railroad whence the survey monument of the intersection of 4th street and Main street in the Town Carbondale, Colorado, bears S. 30' 23'05" W. 699.58 feet; thence N. 16' 05'31" E. 201.11 feet to a point on a fence as constructed and in place; thence N. 87'44'35" E. 127.35 feet along said fence; thence S. 03' 54'30" E. 305.74 feet along a fence as constructed and in place to a point on Northerly right-of-way line of said railroad; thence N. 62' 21' W. 230.11 feet along the Northerly right-of-way of said railroad to the point of beginning, and containing 0.97 of an acre, more or less, said property being described in Deed recorded July 28, 1967, as Reception No. 238541 in Book 386 of Page 421 of the Garfield County records.

And;

A parcel of land situate in Lots 6, 7, 10 and 11 of Section 34, Township 7 South, Range 88 West of the Sixth Principal Meridian County of Garfield, state of Colorado, said parcel being more particularly described as follows:

Beginning at the Northwest Corner of the Patch subdivision as filed in the Records of the Clerk and Recorder of Garfield County as Reception No. 300707; thence S. 21'05'00" W. (S 21'05'00" W), along the Westerly boundary of said Patch Subdivision a distance of 199.66 feet to a point on the Northerly right-of-way line of the Denver and Rio Grande Railroad, thence N. 62'21'01" W. (N 62'21'01" W), along said right-of-way a distance of 93.97 feet to a point on the East line of a parcel of land described in Book 480 at Page 353 of said records of the Clerk and Recorder of Garfield County; thence N. 03'54'29" W. (N 03'54'29" W). along said East line a distance of 456.34 feet; thence departing said East line on a bearing of S. 56'40'28" E. (S. 58'40'28" E), a distance of 241.76 feet; thence S. 05'02'09" W. (S 05'02'09" W), a distance of 180.46 feet to the POINT OF BEGINNING. County of Garfield, state of Colorado

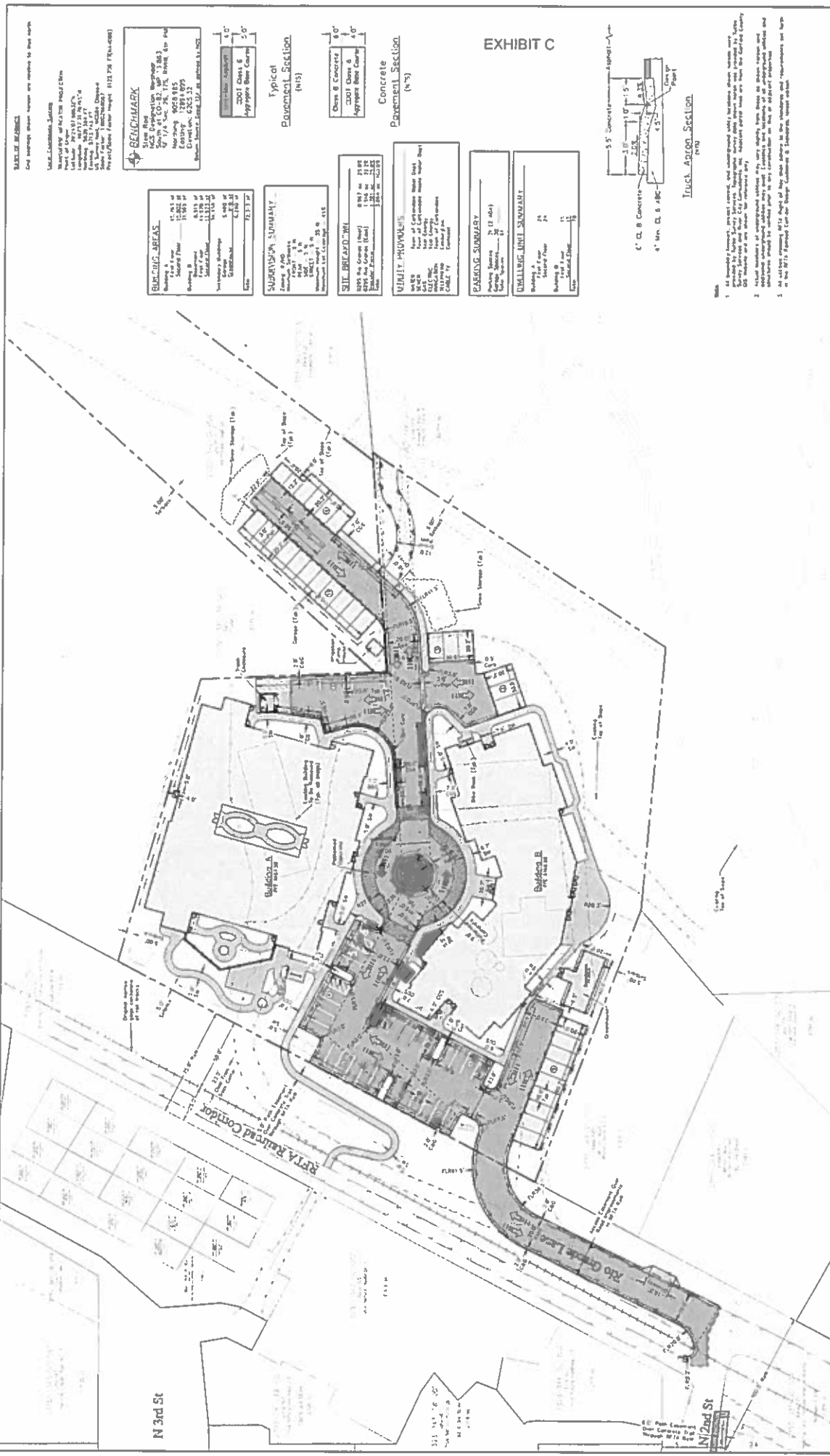
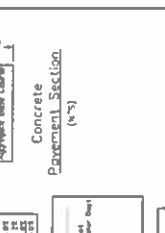
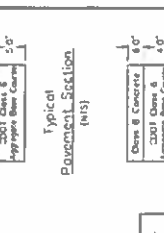


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BENCHMARK
 Station: 100+00.00
 Elevation: 6255.33'
 Station: 100+00.00
 Elevation: 6255.33'



BUILDING AREAS

Building A	15,000 sq ft
Building B	15,000 sq ft
Building C	15,000 sq ft
Building D	15,000 sq ft
Building E	15,000 sq ft
Building F	15,000 sq ft
Building G	15,000 sq ft
Building H	15,000 sq ft
Building I	15,000 sq ft
Building J	15,000 sq ft
Building K	15,000 sq ft
Building L	15,000 sq ft
Building M	15,000 sq ft
Building N	15,000 sq ft
Building O	15,000 sq ft
Building P	15,000 sq ft
Building Q	15,000 sq ft
Building R	15,000 sq ft
Building S	15,000 sq ft
Building T	15,000 sq ft
Building U	15,000 sq ft
Building V	15,000 sq ft
Building W	15,000 sq ft
Building X	15,000 sq ft
Building Y	15,000 sq ft
Building Z	15,000 sq ft

SUBDIVISION SUMMARY

Area	15,000 sq ft
Permit	15,000 sq ft
Lot	15,000 sq ft
Block	15,000 sq ft
Section	15,000 sq ft
County	15,000 sq ft
State	15,000 sq ft

SITE BREADTH

Width	15,000 sq ft
Depth	15,000 sq ft
Area	15,000 sq ft
Volume	15,000 sq ft

UTILITY PROVISIONS

Water	15,000 sq ft
Sewer	15,000 sq ft
Gas	15,000 sq ft
Electric	15,000 sq ft
Telecom	15,000 sq ft

PARKING SUMMARY

Capacity	15,000 sq ft
Area	15,000 sq ft
Volume	15,000 sq ft

DEVELOPING UNIT SUMMARY

Units	15,000 sq ft
Area	15,000 sq ft
Volume	15,000 sq ft

EXHIBIT C

Notes:

- All building, parking, and utility details shall be shown on the site plan.
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REVISIONS

NO.	DATE	DESCRIPTION
1	10/15/2024	ISSUED FOR PERMIT



SCALE
 1" = 100'

North Arrow

UNCC
 UNCC is a 501(c)(3) non-profit organization.
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811
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REVISIONS

NO.	DATE	DESCRIPTION
1	10/15/2024	ISSUED FOR PERMIT

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