

AGENDA ITEM FOR ADMINISTRATIVE MEETING ( X ) Discussion only  
( ) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Juvenile/CDDP Facility Access

|   |  |
|---|--|
| <p>Background:</p> <p>The access to the juvenile and CDDP facility from SE 10<sup>th</sup>, crossed property formerly owned by the City of Pendleton. The property is now being developed by Horizon Project for housing. To provide access to the county property, Horizon will provide an access easement. The proposed agreement for the easement is before the Board for review and approval.</p> | <p>Requested Action:</p> <p>Approve terms of easement and authorize signing of agreement</p> |
|---|--|

ATTACHMENTS: Proposed Easement Agreement

\*\*\*\*\*For Internal Use Only\*\*\*\*\*

Checkoffs:

- ( ) Dept. Head (copy)
- ( ) Human Resources (copy)
- ( X ) Legal (copy)
- ( ) (Other - List:)

To be notified of Meeting:

Needed at Meeting:

\*\*\*\*\*

Scheduled for meeting on: July 6, 2022

Action taken:

\*\*\*\*\*

Follow-up:

AFTER RECORDING RETURN TO:

Chresten J. Gram  
Bateman Seidel  
1000 S.W. Broadway, Suite 1910  
Portland, Oregon 97205

## EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and among Horizon Project Inc., an Oregon nonprofit corporation ("Horizon") and Umatilla County, a political subdivision of the state of Oregon ("County").

### RECITALS:

A. Horizon is the owner of the real property located in Umatilla County, Oregon that is described in Exhibit A-1 (the "South Hill Property"). Horizon intends to partition by plat the Property into two lots; one lot consisting of approximately 172,202 square feet ("Parcel 1") and the other lot consisting of approximately 8,585 square feet ("Parcel 2") as shown on Exhibit D hereto.

B. County is the owner of the real property is the owner of the real property located in Umatilla County, Oregon that is described in Exhibit A-2 (the "County Property"). County currently accesses the County Property through a driveway located on the Horizon Property.

C. Horizon intends to convey Parcel 1 to South Hill Commons LLC ("South Hill"). South Hill intends to construct a multifamily housing project on Parcel 1. Horizon intends to construct improvements on Parcel 2. County has agreed to relinquish any rights it has in the South Hill Property in exchange for an access easement through the South Hill Property as described herein.

D. Parcel 2 requires access and utility easements for the development and operation of improvements on Parcel 2.

### AGREEMENT:

Based on the mutual promises of the parties contained in this Agreement, the parties hereby agree as follows:

#### 1. Drive Aisle Access Easement

(a) Horizon hereby grants to the owner of Parcel 1, the owner of Parcel 2 and the County a nonexclusive perpetual access easement over and across the portions of the South Hill Property (that is the portion of Parcel 1 and Parcel 2) legally described in Exhibit B-1 and depicted in Exhibit D (the "Drive Aisle Easement Area"). The Drive Aisle Easement Area shall be conformed without further action for any "as built" discrepancies. No above-ground structures, barriers, fences, buildings, or other improvements of any kind will be installed in the Easement Area other than roadway surfaces and related improvements.

(b) Horizon hereby grants to the owner of Parcel 2 a nonexclusive access easement over and across the real property legally described in Exhibit B-2 and depicted in Exhibit D (the "Drive Aisle Extension Area").

(c) As used herein, the "Drive Aisle Extended Easement Area" means collectively the Drive Aisle Easement Area and the Drive Aisle Extension Area. No owner of the South Hill Property (i.e. Parcel 1 and Parcel 2) or the County Property (nor such owner's tenants, agents or invitees)) shall block or otherwise obstruct the free passage of vehicles from the use of the Drive Aisle Extended Easement Area.

2. **Utility Easement.** Horizon grants the owner of Parcel 2 a perpetual and non-exclusive easement over and across the portion of the South Hill Property legally described on Exhibit C-1 and depicted on Exhibit C-2 (the "Utility Easement"). Utility easement for County.

3. **Construction Obligations.** The owner of Parcel 1 shall at its sole cost and expense construct the Drive Aisle Easement Area in a good and workmanlike manner and in accordance with all applicable laws and approvals. During construction of the Drive Aisle Easement Area, the owner of Parcel 1 shall ensure that the County has reasonable and uninterrupted access to the County Property. County recognizes that during construction, the access way to the County Property may be relocated from time to time. Immediately prior to the execution of this Easement Agreement, the County shall execute and record a quitclaim deed releasing any interest in the South Hill Property.

4. **Maintenance, Repair and Replacement.**

(a) The owner of Parcel 1 shall maintain in good condition and repair and replace as necessary the Drive Aisle Extended Easement Area.

(b) The owner of each lot or parcel that is the subject of this Agreement shall maintain in good condition and repair and replace as necessary the utilities located on its lot or parcel without reimbursement from any other party.

5. **Sign Easement.** Horizon grants to the County a perpetual easement to locate a directional sign at the entrance point to the Drive Aisle Easement Area as shown on Exhibit D hereto.

6. **Mailbox Easements.**

(a) Horizon grants to the owner of the County Property a nonexclusive and perpetual easement to locate a United States Post Office mailbox within the area shown on Exhibit D hereto.

(b) Horizon grants to the owner of Parcel 2 a nonexclusive and perpetual easement to locate a United States Post Office mailbox within the area shown on Exhibit D hereto.

7. **Taxes.** The owner of each lot or parcel that is subject of this Agreement shall timely pay all real property, taxes and assessments imposed on its lot or parcel without reimbursement from any other owner.

8. **Tenants and Invitees.** For avoidance of doubt, the easements created in this Agreement benefit the tenants (and their invitees) of the owner of each lot and parcel benefited by such easement.

9. **Miscellaneous.**

9.1 **Dispute Resolution.** The parties agree to resolve any dispute arising out of this Agreement by binding arbitration. If the parties do not mutually agree to an arbitration process, then the parties shall use the commercial arbitration rules of the American Arbitration Association ("AAA"). If the AAA shall no longer exist, then the parties shall submit to the Circuit Court of Umatilla County, Oregon, the issue for determination of a substitute arbitration process. Notwithstanding the foregoing, in the event of any violation or threatened violation of any of the agreements set forth in this Agreement, if the nondefaulting parties believes in good faith that it will suffer damage which would be irreparable and not fully compensable by money damages, said party may, in addition to the right to collect damages and other rights and remedies as provided herein by law, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Each party shall have all remedies available at law and equity for enforcement of this Agreement. A party shall be in default under the terms of this Agreement if the party fails to cure a breach of any term of this Agreement within thirty (30) days after written notice specifying the breach with reasonable particularity. Provided, however, the breaching party shall have an additional reasonable period to cure such breach if the cure cannot reasonably be completed within such thirty (30) day period and the breach party diligently pursues such cure.

9.2 **Indemnification.** To the extent allowed and limited by Oregon law, including the Oregon Constitution and the Oregon Tort Claims Act, each owner benefiting from the easement shall defend, indemnify and hold the other lot owner(s) and their tenants, lessees, employees, agents, invitees, licensees, mortgagees and customers harmless from and against any and all claims, costs, damages or liability with respect to and arising from the use of the easements created herein.

9.3 **Estoppel Certificates.** Each owner agrees, upon the written request of another owner, to provide an estoppel certificate to any prospective mortgagee or purchaser concerning the status of the easements, payments, reimbursements and obligations set forth in this Agreement.

9.4 **Attorney Fees.** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "action" shall be deemed to include any arbitration action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

9.5 **Time is of the Essence.** Time is expressly made of the essence of each provision of this Agreement.

9.6 **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon.

9.7 **Non-Merger.** The easements created by this Agreement shall not be deemed merged by reason of the common ownership of any of the properties described herein. Notwithstanding such common ownership, the easements granted herein shall survive and continue in full force and effect for the benefit of the owners of the properties described herein and for the benefit of any successor in interest to the owner of said properties.

9.8 **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or seventy-two (72) hours after having been deposited in the United States mail as certified or registered mail, return receipt requested, postage prepaid, and addressed to the address shown by the Umatilla County tax assessor's records as the address for the owner of such property.

9.9 **Nonwaiver.** Failure by any party at any time to require performance by any other party of any of the provisions hereof shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

9.10 **Amendment.** This Agreement may be amended, modified or extended without new consideration but only by written instrument executed by the then owner(s) of each of the lots and parcels subject of this Easement.

9.11 **Compliance with Laws.** Each party shall comply with all federal, state, county, city and other applicable governmental laws, statutes, codes, ordinances and regulations in connection with the use of the easement areas that are the subject of this Agreement and in performing the agreements provided for herein.

9.12 **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

9.13 **Binding Effect.** This Agreement and the easements granted herein are subject to all prior easements or other encumbrances of record. The rights, covenants and obligations contained in this instrument shall run with the land and shall bind, burden and benefit the parties and their respective successors, assigns, lessees, invitees, agents and mortgagees (or beneficiaries under a deed of trust) without further action by the parties, bind and inure to the benefit of the heirs, assigns, personal representatives, transferees and successors of the parties. Upon the conveyance of Parcel 1 to a third party (and for avoidance of doubt, the conveyance to South Hill Commons LLC), Horizon Project Inc. shall be released from any liability under this Agreement as to any Parcel 1 obligations arising after the date of such conveyance.

9.14 **Exhibits.** The Exhibits referenced herein and attached hereto are incorporated herein by reference.

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## 5 – EASEMENT AGREEMENT

K:\60838 Horizon Project Inc\011 - South Hill Commons\CG\Easement Agreement (South Hills Commons) V2.Doc

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year first above written.

**HORIZON PROJECT INC.**

By: \_\_\_\_\_  
Terri H. Silvis, Chief Executive Officer

**UMATILLA COUNTY,  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
\_\_\_\_\_, Chair

\_\_\_\_\_  
\_\_\_\_\_, Commissioner

\_\_\_\_\_  
\_\_\_\_\_, Commissioner

REVIWED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_  
Umatilla County Counsel

[INSTERT NOTARTY BLOCKS]

**EXHIBIT A-1**

Legal Description of South Hill Property



## **EXHIBIT A-2**

### **Legal Description of County Property**

All of Block 253, RESERVATION ADDITION (platted as Reserve Addition) to the Town, now City of Pendleton, Umatilla County, Oregon;

Also including the South Half of vacated SE Isaac Avenue as described in the City of Pendleton Ordinance No. 2978 (recorded in Microfilm Reel 43, Page 158, Office of Umatilla County Records);

Also including the East Half of vacated SE 12th Street as described in the City of Pendleton Ordinance No. 3280 (recorded in Microfilm Reel 108, Page 1432, Office of Umatilla County Records).

**EXHIBIT B-1**

Legal Description of Drive Aisle Easement Area

**EXHIBIT B-2**

Legal Description of Drive Aisle Extended Easement Area

## **EXHIBIT C**

### Legal Description of Parcel 2 Utility Easement

**EXHIBIT D**

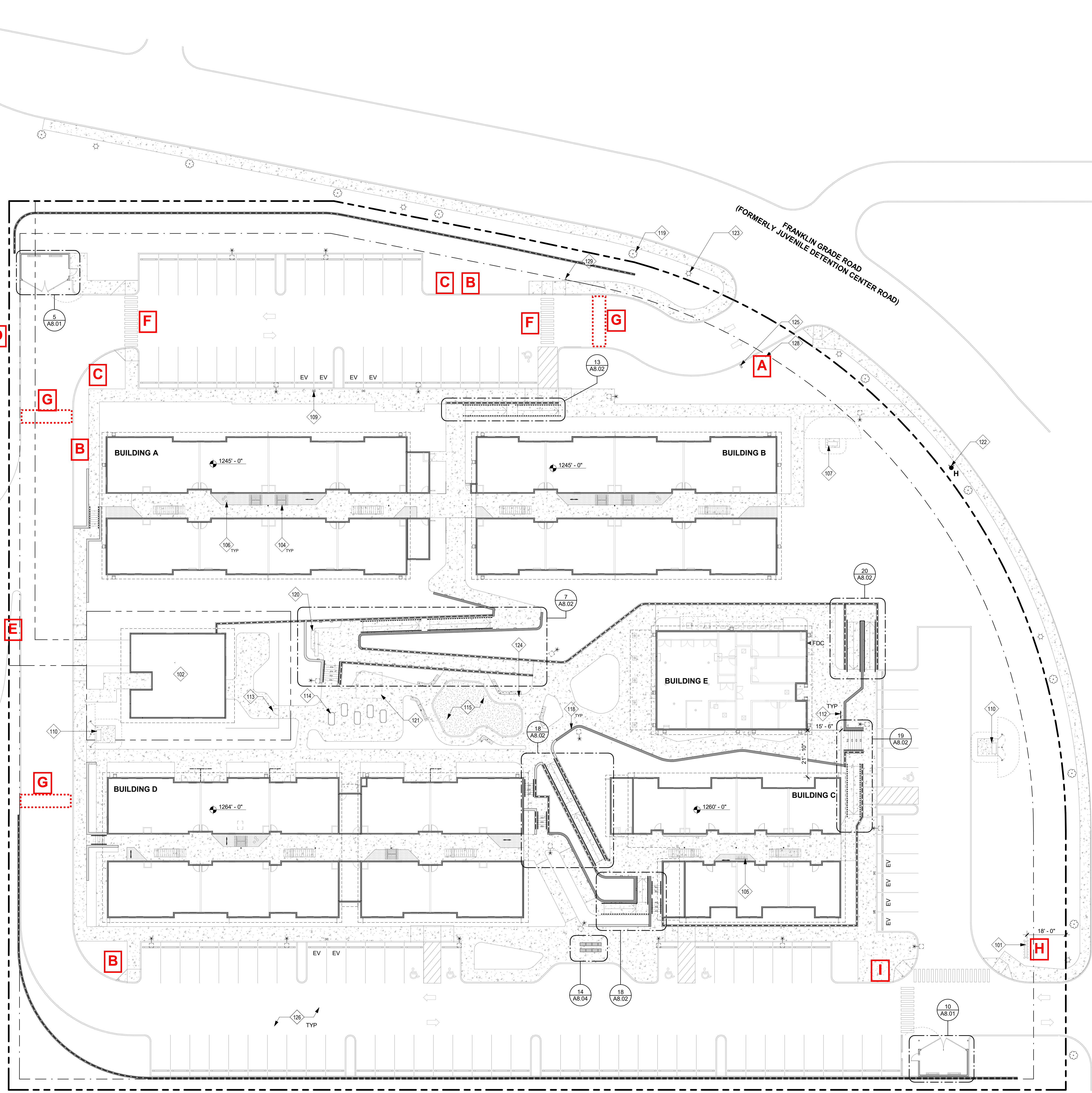
Depiction of Parcels and Easements

**TRAFFIC CALMING MEASURES FOR ADJACENT COUNTY PROPERTY:**

- A** "UMATILLA COUNTY JUVENILE DIVISION ACCESS - NOT A THROUGH STREET" DIRECTIONAL SIGN
- B** "10 MPH" POSTED SPEED SIGN
- C** "CAUTION: CHILDREN AT PLAY" SIGN
- D** "UMATILLA COUNTY JUVENILE DIVISION" WITH DIRECTIONAL SIGNAGE
- E** "PRIVATE PROPERTY - SOUTH HILL COMMONS RESIDENTS ONLY BEYOND THIS POINT" SIGNAGE
- F** PAINTED CROSSWALKS
- G** SUGGESTED SPEED BUMP
- H** "SOUTH HILL COMMONS" MAIN ENTRANCE MONUMENT SIGN
- I** "SOUTH HILL COMMONS OFFICE / MAIN ENTRANCE" DIRECTIONAL SIGN

**OTHER CONSIDERATIONS:**

1. MULTIFAMILY DEVELOPMENT ACTIVITY AND PARKING IS FOCUSED AT THE CENTER OF THE SITE. ONLY 14 OF 106 TOTAL PARKING SPACES HAVE NEED TO CROSS THE DRIVE.
2. COUNTY SERVICES HOURS OF OPERATION (DURING THE DAY) ARE LOW-TRAFFIC HOURS FOR THE MULTIFAMILY DEVELOPMENT (DAYS ARE QUIET WITH HIGHER TRAFFIC IN EVENING HOURS).
3. MULTIFAMILY MAIN ENTRANCE IS AT THE SOUTH PROPERTY ENTRANCE. THE MAJORITY OF RESIDENTIAL TRAFFIC WILL BE FOCUSED NEAR THIS LOCATION.
4. DRIVE AISLE IS 24 FT WIDE WHICH IS AMPLE WIDTH FOR TWO-WAY TRAFFIC.



- GENERAL NOTES:**
- A. MAINTAIN A POSITIVE SLOPE AWAY FROM BUILDING LINE. PROVIDE SLOPE TO AREA DRAINS OR OPEN AREAS.
  - B. ALL EXISTING CONDITIONS AND DIMENSIONS TO BE FIELD VERIFIED BY CONTRACTOR. NOTIFY ANY ARCHITECT OF ANY DISCREPANCIES.
  - C. HARDSCAPED AREAS WILL BE SLOPED A MINIMUM OF 1/4" PER FOOT AWAY FROM THE FOUNDATION AND HAVE A MAXIMUM CROSS SLOPE OF 2%.
  - D. ALL LANDSCAPE AREAS WITHIN 5-FEET OF THE BUILDING PERIMETER WILL SLOPE AWAY FROM THE FOUNDATION - 5% MINIMUM SLOPE.
  - E. LANDSCAPED AREAS WILL BE SLOPED A MINIMUM OF 1/2" PER FOOT TO AREA DRAINS OR OPEN AREAS. MAINTAIN A POSITIVE SLOPE AWAY FROM BUILDING LINE.
  - F. LIMITS OF WORK DEFINED WITHIN PROPERTY LINES DESCRIBED IN THESE DRAWINGS AND COORDINATED WITH CIVIL AND SURVEY DRAWINGS.
  - G. CONTRACTOR TO COORDINATE DATUM INFORMATION WITH CIVIL AND SURVEY INFORMATION.
  - H. DIMENSIONS ARE TO GRIDLINE OR FACE OF STUD, UNLESS OTHERWISE NOTED.
  - I. REFER TO CIVIL, LANDSCAPE, ELECTRICAL, MECHANICAL AND PLUMBING FOR ADDITIONAL WORK NOT INDICATED ON THIS DRAWING.

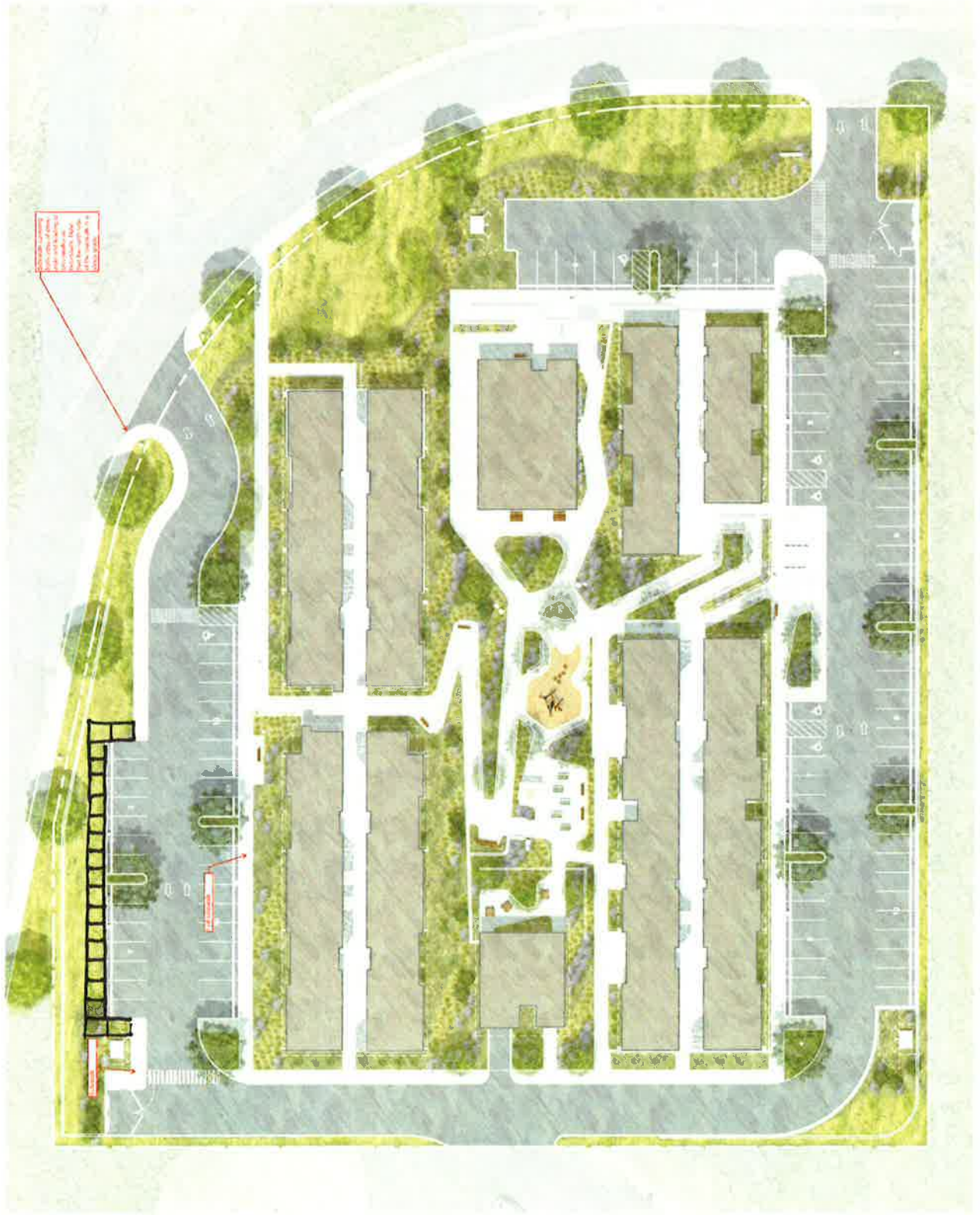
- KEYNOTES:**
- 101 MONUMENT SIGNAGE - REFER TO DETAIL 6/A8.05
  - 102 RESIDENTIAL CARE HOME, SITE PREP BY CONTRACTOR, UNDER SEPARATE PERMIT.
  - 104 ACCESSIBLE TABLE - REFER TO DETAIL 5/A8.05
  - 105 BENCH - REFER TO DETAIL 10/A8.05
  - 106 LOG STEPPERS - REFER TO DETAIL 4/A8.05
  - 107 POWER UTILITY VAULT - REFER TO ELECTRICAL DRAWINGS
  - 109 FUTURE EV CHARGER LOCATIONS, TYPICAL
  - 110 PAD-MOUNTED TRANSFORMER - REFER TO ELECTRICAL DRAWINGS
  - 112 BIKE PARKING - REFER TO LANDSCAPE DRAWINGS
  - 113 FENCE AND GATE FOR RESIDENTIAL CARE HOME, UNDER SEPARATE PERMIT
  - 114 COMMUNITY GARDEN - REFER TO LANDSCAPE DRAWINGS
  - 115 PLAY AREA - REFER TO LANDSCAPE DRAWINGS
  - 118 SKATE STOPS EVERY 18' ALONG WALL - REFER TO LANDSCAPE DRAWINGS
  - 119 STREET TREE - REFER TO OFF-SITE LANDSCAPE DRAWINGS
  - 120 SITE FURNISHINGS - REFER TO LANDSCAPE DRAWINGS
  - 121 SHADE SHELTER (ALTERNATE) - REFER TO SPEC SECTION 01 23 00
  - 122 FIRE HYDRANT - REFER TO CIVIL DRAWINGS
  - 123 STREET LAMP - REFER TO OFF-SITE CIVIL DRAWINGS
  - 124 CONCRETE SEAT WALL - REFER TO LANDSCAPE DRAWINGS
  - 125 POST-MOUNTED MAILBOX FOR COUNTY SERVICES
  - 126 PARKING LOT - REFER TO CIVIL DRAWINGS
  - 128 COUNTY SERVICES SIGNAGE
  - 129 PROVIDE "SPEED LIMIT (10 MPH)" SIGNAGE

- LEGEND:**
- PROPERTY LINE
  - BUILDING & PARKING SETBACK LINE
  - CONCRETE WALK/PAD - REFER TO LANDSCAPE & CIVIL DRAWINGS
  - UNIT PAVERS - REFER TO LANDSCAPE DRAWINGS
  - PLAYGROUND SURFACING - REFER TO LANDSCAPE DRAWINGS
  - CROSSWALK STRIPING - REFER TO CIVIL DRAWINGS
  - ROOF/BUILDING EXTENTS ABOVE
  - BIKE RACK & CLEARANCES - REFER TO LANDSCAPE DRAWINGS
  - ACCESSIBLE PARKING SPACES & SIGNAGE
  - WHEEL STOP
  - POLE LIGHT - REFER TO ELECTRICAL DRAWINGS
  - HIGH-LUMEN WALL PACK - REFER TO ELECTRICAL DRAWINGS
  - STEP LIGHT - REFER TO ELECTRICAL DRAWINGS
  - FUTURE EV CHARGER LOCATION, REFER TO ELECTRICAL
  - 42" METAL GUARDRAIL - CURB MOUNT 20 / A8.03
  - 36" HANDRAIL - SIDEWALK MOUNT - 18 / A8.03
  - 42" GUARDRAIL - SIDEWALK MOUNT - 19 / A8.03
  - 36" HANDRAIL - MOUNT TO WALL OR GUARDRAIL - 8 / A8.03
  - RETAINING WALL - 42" TYP. ABOVE PATH GRADE
  - RETAINING WALL BELOW - 6" CURB

**1 SITE PLAN**  
SCALE: NTS

# SOUTH HILL COMMONS

823 SE 15TH ST  
PENDLETON, OREGON 97801



CARLETON HART ARCHITECTURE P.C.  
820 NW 10TH AVENUE #202 PORTLAND, OREGON 97208

SOUTH HILL COMMONS  
HORIZON PROJECT  
823 SE 15TH ST  
PENDLETON, OREGON 97801

COVER SHEET  
PROJECT NO  
20068  
05-27-20  
REVISIONS

G0.01