



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 7, 2024

AGENDA TITLE

Public hearing and consideration of the following items related to a petition to annex a property at 2801 Jay Rd. with an initial zoning designation of Residential – Mixed 2 (RMX-2):

Consideration of a motion to change the Boulder Valley Comprehensive Plan (BVCP) land use map designation of the 2801 Jay Rd. property from Public (PUB) to Mixed Density Residential (MXR) (case no. LUR2023-00019).

AND

Consideration of a motion to adopt Resolution 1355 setting forth findings of fact and conclusions regarding the annexation of approximately 4.86 acres of land generally located at 2801 Jay Road and including areas of public street to the City of Boulder (LUR2023-00018).

AND

Second reading and consideration of a motion to adopt Ordinance 8659 annexing to the City of Boulder approximately 4.86 acres of land generally located at 2801 Jay Road, and including areas of public street, with an initial zoning designation of Residential – Mixed 2 (RMX-2) as described in Chapter 9-5, “Modular Zone System,” B.R.C. 1981; amending the Zoning District Map forming a part of said Chapter to include the property in the above-mentioned zoning district; and setting forth related details (LUR2023-00018).

Applicant: Margaret Freund, Fulton Hill Properties
Owner: MJF 2801 Jay Road Development LLC

PRESENTER/S

Planning & Development Services

Nuria Rivera-Vandermyde, City Manager

Brad Mueller, Director Planning & Development Services

Charles Ferro, Senior Planning Manager

Shannon Moeller, Planning Manager

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider a request to annex approximately 4.86 acres at 2801 Jay Road, including areas of public street, into the City of Boulder with an initial zoning designation of Residential – Mixed 2 (RMX-2). The land is located within Planning Area II of the BVCP and is eligible for annexation consideration. Refer to [Attachment A](#) for the annexation map and [Attachment C](#) for the ordinance and zoning map.

On September 19, 2024, council adopted Resolution 1352 finding the annexation petition in compliance with state statutes and establishing November 7, 2024 as the date for a public hearing. At the same hearing Council considered the first reading of the ordinance to annex and initially zone the property. On November 7, 2024, in addition to holding a public hearing, Council will be considering Resolution 1355 proposed to find and conclude that the property is eligible for annexation under state law and second reading and adoption of the annexation ordinance.

The proposal also includes a BVCP land use map change request. Council is asked to consider a motion on the proposed change of the Boulder Valley Comprehensive Plan (BVCP) land use map designation of the property from Public (PUB) to Mixed Density Residential (MXR).

Planning Board reviewed the proposed annexation and initial zoning and BVCP land use map change for the 2801 Jay Road property on August 27, 2024. The Board voted unanimously (7-0) to approve the proposed BVCP land use map change to Mixed Density Residential. The Board also voted unanimously (7-0) to recommend to Council approval of the proposed annexation with initial zoning of Residential – Mixed 2, subject to the terms and conditions in the proposed annexation agreement, and recommended two amendments to the proposed agreement.

A summary of the board's discussion and action on the land use map change and annexation and initial zoning can be found below under 'Board and Commission Feedback'. The staff memorandum to the Planning Board, meeting audio, and other related background materials are available on the [Records Archive for Planning Board](#). Draft minutes from the hearing can be found in [Attachment G](#).

Annexations which comply with state annexation statute requirements and BVCP policies may be approved by City Council through adoption of an ordinance annexing the property to the city. The ordinance to annex the property is provided for second reading in [Attachment C](#).

BVCP land use map change requests require approval by the Planning Board and City Council. There is no Boulder County call-up requirement because the site is less than 5 acres in size. The land use map change request may be considered concurrently with the annexation.

STAFF RECOMMENDATION

Suggested Motion Language: *(Staff recommends consideration of a motion to change the land use of the property prior to the annexation as the recommended zoning and annexation assume approval of the land use map designation change to MXR.)*

Motion to approve Boulder Valley Comprehensive Plan (BVCP) land use map change for the property located at 2801 Jay Road from Public (PUB) to Mixed Density Residential (MXR).

AND

Motion to adopt Resolution 1355 setting forth findings of fact and conclusions regarding the annexation of approximately 4.86 acres of land generally located at 2801 Jay Road, and including areas of public street, to the City of Boulder.

AND

Motion to adopt Ordinance 8659 annexing to the City of Boulder approximately 4.86 acres of land generally located at 2801 Jay Road, and including areas of public street, with an initial zoning classification of Residential – Mixed 2 (RMX-2) as described in Chapter 9-5, “Modular Zone System,” B.R.C. 1981; amending the Zoning District Map forming a part of said Chapter to include said land in the above-mentioned zoning district; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – None identified.
- Environmental – None identified.
- Social – The community benefit package proposed in the annexation agreement requires that of 30% of the units on the property in a future redevelopment be for-sale permanently affordable units priced for households earning between 100% and 120% of the area median income (AMI). This addresses Boulder’s middle-income housing affordability challenge, a major focus area of the Boulder Valley Comprehensive Plan (BVCP).

OTHER IMPACTS

- Fiscal – None identified. Future redevelopment will be subject to standard city development fees.
- Staff time – None identified. Processing of the BVCP land use map change and annexation applications is within normal staff work plans.

BOARD AND COMMISSION FEEDBACK

Planning Board

On August 27, 2024, the Planning Board reviewed a request for a proposed BVCP land use map designation change from Public to Mixed Density Residential (MXR) and a request for a proposed annexation and initial zoning of Residential – Mixed 2 (RMX-2) for the property at 2801 Jay Road. At the public hearing the Board heard staff and applicant presentations and discussed the key issues identified by staff. The board agreed that the proposal is consistent with state statutes and BVCP policies, that the proposed land use map change is consistent with applicable review criteria, and that the proposed initial zoning is consistent with the BVCP, assuming the land use map designation change is approved, and appropriate for the subject property.

The Board discussed and asked questions about the proposal and the terms of the annexation agreement. As part of the motion to recommend approval of the annexation and initial zoning request, the Board discussed and recommended two amendments to the agreement. The amendments included:

- Removing paragraph 22.c “Shared Useable Open Space” which required placement of useable open space adjacent to the eastern property line unless otherwise approved at the time of a future Site Review. The Board expressed a desire for the useable open space to be designed primarily for the needs of future residents rather than also serving as an area of relief from the properties to the east in the county.
- Reducing the maximum permitted square-footage of market rate units listed in paragraph 19 “Market Unit Size and Tenure” by 500 square-feet. This change would permit market rate unit sizes of up to 2,500 square-feet of floor area (excluding 500 square-feet of garage), rather than 3,000 as previously proposed; and if 78 or fewer units are approved through a future site review, would permit market rate unit sizes of up to 3,000 square-feet (excluding 500 square-feet of garage) rather than 3,500 as previously proposed. The Board noted that these maximum square-footage numbers were still in excess of what the applicant had indicated they would construct and that smaller market rate unit sizes would better align with BVCP policies.

The board passed the following motions:

- (1) **Land Use Map Change Request:** **M. McIntyre** made a motion seconded by **K. Nordback** to approve the proposed Boulder Valley Comprehensive Plan land use map change for the property located at 2801 Jay Road to Mixed Density Residential (MXR), incorporating this staff memorandum as findings of fact, pertaining to case number LUR2023-00019. Planning Board voted 7-0. Motion passed.

- (2) **Recommendation on Proposed Annexation and Initial Zoning: M. McIntyre** made a motion seconded by **K. Nordback** to recommend to City Council approval of the proposed annexation of the property located at 2801 Jay Road, including adjacent right-of-way, with an initial zoning of Residential – Mixed 2 (RMX-2) under case number LUR2023-00018, incorporating the staff memorandum as findings of fact, and subject to the terms and conditions in the proposed annexation agreement. The Planning Board considered several amendments to this motion, relating to the recommended terms of the annexation agreement:

C. Hanson Thiem made a motion seconded by **L. Kaplan** to amend the Annexation Agreement to strike Paragraph 22 (c) Shared Useable Open Space. Planning Board voted 5-2 (Robles, Boone dissenting). Motion passed.

J. Boone made a motion seconded **ml Robles** by to amend Paragraph 19 of the Annexation Agreement to read, “Market Unit Size and Tenure: No dwelling unit on the property shall have more than 2,500 sq. ft. floor area, excluding 500 sq. ft. in the garage, provided, however, that if the total number of dwelling units allowed on the property pursuant to an approved Site Review Application is 78 or fewer, then the maximum square footage for each market unit shall increase to 3,000 square feet. The floor area requirements for the market rate units shall be based on the floor area definition found in Section 9-16-1 General Definitions, B.R.C. 1981.” Planning Board voted 5-2 (Kaplan, McIntyre dissenting). Motion passed.

The Planning Board then voted 7-0 to approve M. McIntyre’s motion, as amended by the motions to amend from Board Member Claudia Hanson Thiem and Board Member Jorge Boone. The motion passed unanimously.

Following the Planning Board hearing, staff and the applicant amended the draft Annexation Agreement consistent with the Board’s recommendations. Refer to [Attachment D](#).

PUBLIC FEEDBACK

Required public notice was given in the form of written notification mailed to all property owners within six hundred feet of the subject property and a sign posted on the property for at least 10 days prior to the public hearing. All notice requirements of Section 9-4-3, B.R.C. 1981, have been met. Written comments were received from neighbors including concerns regarding transportation and traffic, access to the property, and compatibility with the area. Written comments were also received in support of the proposed permanently affordable housing. Written comments are included in [Attachment F](#).

Additionally, three community members spoke at the public hearing before Planning board; two members of the public spoke against the proposed annexation in regards compatibility, the permitted density of the proposed zoning district, and concerns

regarding impacts of a future development on the surrounding area; and one member of the public supported the annexation but recommended changes to the agreement.

BACKGROUND

Existing Conditions: As shown in **Figure 1**, the subject property is located at 2801 Jay Rd. in unincorporated Boulder County near the intersection of 28th Street and Jay Road. The approximately 4.58-acre property is located immediately east of city limits.

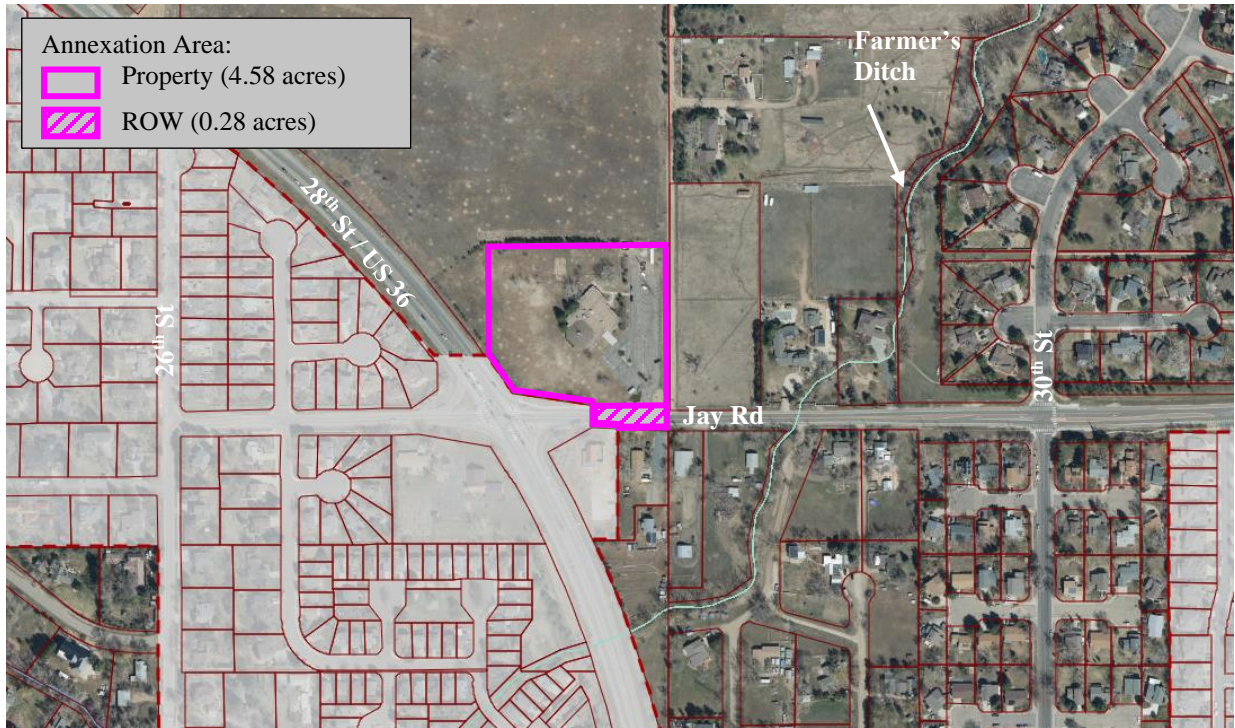


Figure 1: Vicinity Map



Figure 2: Existing Site

As shown in **Figure 2**, the property contains a church building and a parking lot. City Church Boulder currently operates on the property, and the property was previously used by the Boulder First Church of the Nazarene for many years. In 2021, the property was sold by the Colorado District of the Church of the Nazarene to the current owner. The property is served by city water per an out of city utility agreement and revocable permit signed in 1987 (Rec. No. 00849223). The property contains a 42 foot tall monopole for telecommunications and associated equipment.

The property is mostly flat with some gentle slopes. It contains an active prairie dog colony and some limited mature landscaping and trees.

Surrounding Area: The site is located at the edge of current city limits, with properties to the north, east, and southeast located primarily in unincorporated Boulder County (city annexed areas are shown “ghosted” and surrounded by a red dashed line in **Figure 1**). Accordingly, the residential lots immediately to the east and south in unincorporated Boulder County are large with a semi-rural character. The Farmer’s Ditch flows through this area approximately 350 feet east of the subject property. Further to the east along Jay Rd. are the Orange Orchard, Palo Park and Four Mile Creek neighborhoods (refer to **Figure 3**, Surrounding Residential Neighborhoods). Orange Orchard and Palo Park, both located in unincorporated Boulder County, are suburban-style developments, with half-acre and quarter-acre lots, respectively. Further to the southeast, the Four Mile Creek development is annexed to the city and zoned Residential – Low 2 (RL-2), with approximately quarter-acre lots with primarily single-family homes and some duplexes.

To the west of the site, across 28th St. (U.S. 36), is land annexed into the city, including areas currently zoned RL-2 with low-density residential land use. The Arbor Glen and Woodside developments are comprised of lots between approximately 0.15 and 0.25 acres and suburban style homes. The Sundance neighborhood to the southwest is characterized by small lots (0.10 acre or less) and modest homes.

In addition to nearby residential, a variety of uses exists in the immediate area, near the intersection of U.S. 36 and Jay Road. A building permit has been issued for the single-story worship building (Lubavitch Synagogue) immediately to the south across Jay Road (2810 Jay Rd). The Peace Lutheran Church is located cattycorner to the site on the southwest corner of the intersection of Jay Road and 28th Street.

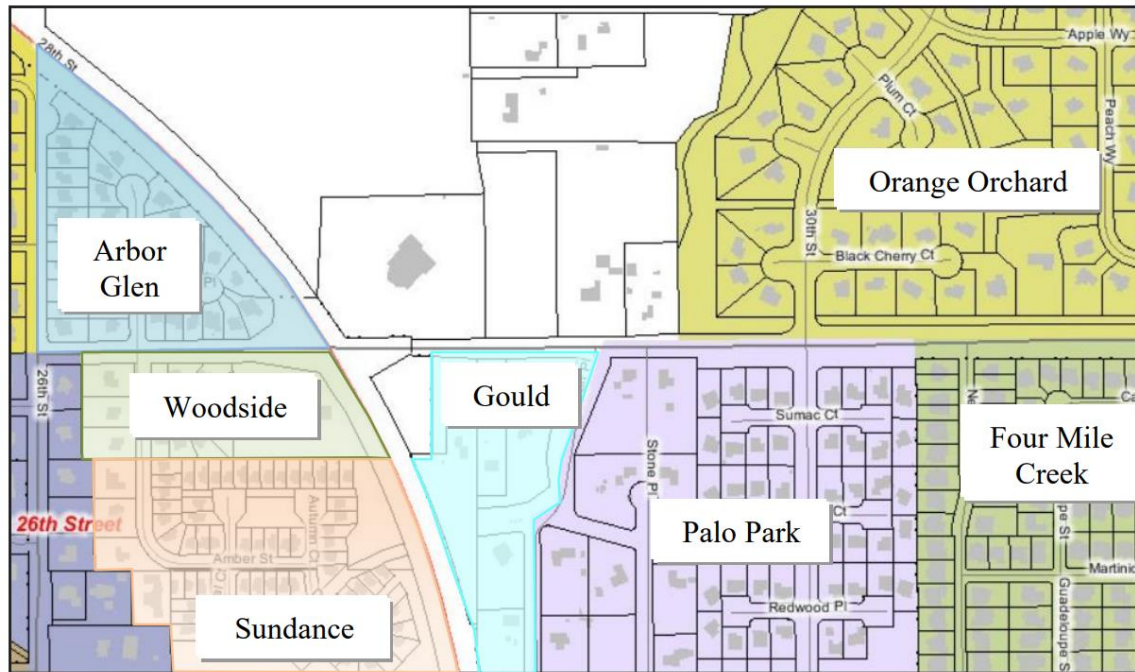


Figure 1: Surrounding Residential Neighborhoods

BVCP Planning Areas: The subject property is located in Area II in the BVCP, which is the “area now under county jurisdiction where annexation to the city can be considered consistent with Policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.17 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services. Master plans project the provision of services to this area within the planning period.”

The north and east boundaries of the subject property are adjacent to the Area III Planning Reserve (refer to **Figure 4**). The Area III Planning Reserve is rural land uses where the city intends to maintain the option of limited service area expansion. As part of the Major Update to the 2015 BVCP, City Council directed staff not to move forward with a Service Area Expansion Assessment into this area. Since then, City Council has prioritized the initiation of the Urban Services Study. This work is a preliminary step to help the community and decision makers understand the scope and extent of providing city services to this area and weigh the potential costs and benefits of expanding services here for future generations. The Urban Services Study is currently underway in 2024.

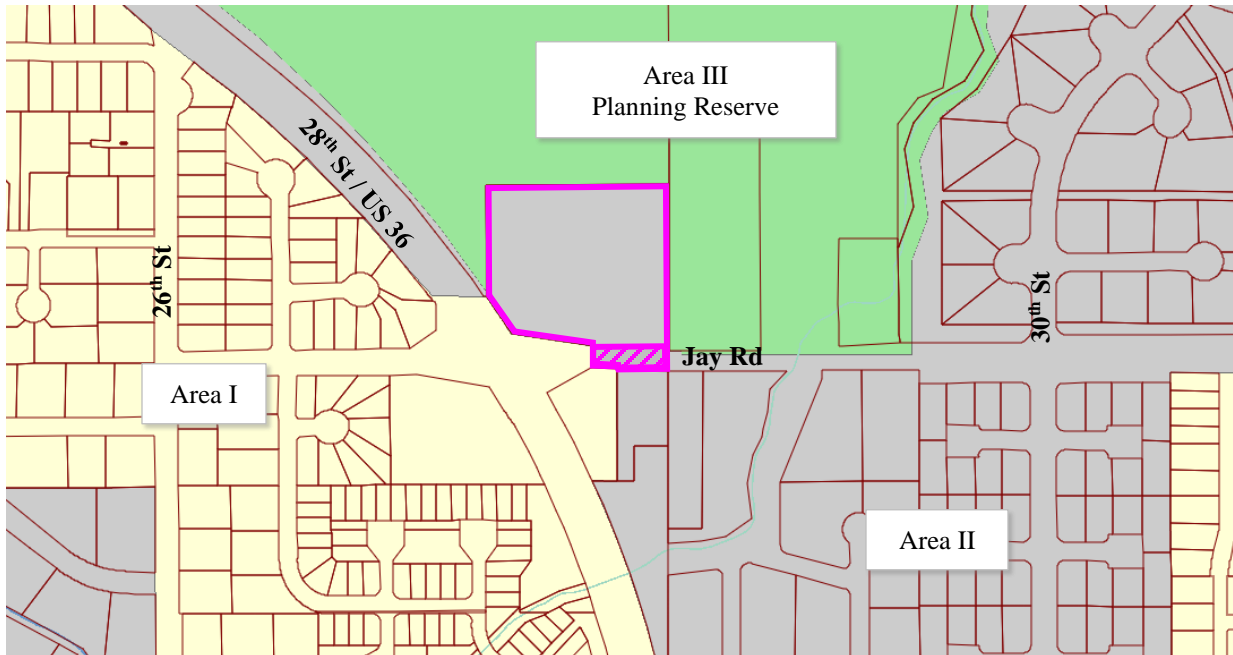


Figure 4: BVCP Planning Areas

Existing BVCP Land Use Designation: As shown in **Figure 5**, the underlying Boulder Valley Comprehensive Plan (BVCP) land use designation is Public / Semi-Public (PUB), which reflects the current religious assembly use. Public land use designations encompass a wide range of public and private nonprofit uses that provide a community service.

Public / Semi-Public (PUB)	<p>Characteristics and Location: PUB land use designations encompass a wide range of public and private non-profit uses that provide a community service. They are dispersed throughout the city.</p> <p>Uses: This category includes municipal and public utility services (e.g., the municipal airport, water reservoirs and water and wastewater treatment plants). It also includes: educational facilities (public and private schools and the university); government offices, such as city and county buildings, libraries and the jail; government laboratories; and nonprofit facilities (e.g., cemeteries, places of worship, hospitals, retirement complexes) and may include other uses as allowed by zoning.</p>
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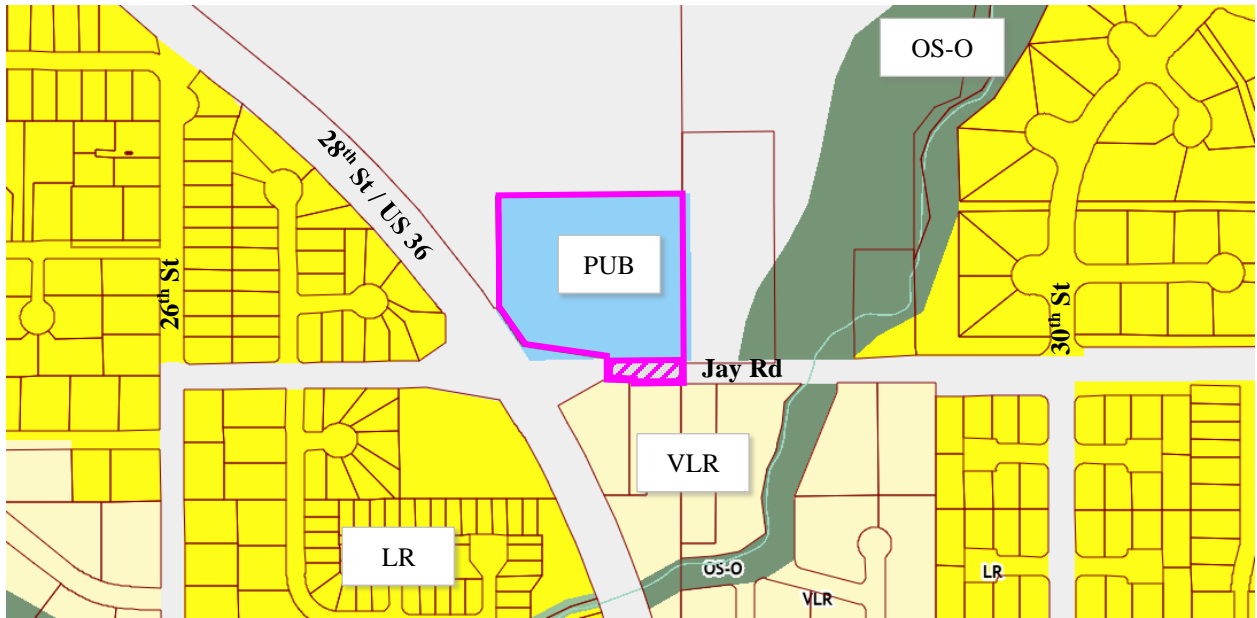


Figure 5: BVCP Land Use Designations

Existing Zoning: The property is located in unincorporated Boulder County with a county zoning of RR – Rural Residential, which is defined as “Residential areas developed at a density and character compatible with agricultural uses” (Article 4-103, Boulder County Land Use Code). Nearby properties under Boulder County zoning are primarily also zoned RR – Rural Residential, with the exception of the Palo Park 2 Subdivision to the south, which is SR – Suburban Residential.

Surrounding city zoning districts are shown in **Figure 6**. Annexation of the subject property provides an opportunity to consider the appropriate zoning and land use designation for the area proposed to be annexed. The applicant’s specific proposal for annexation, land use change, and initial zoning is discussed later in the memo.

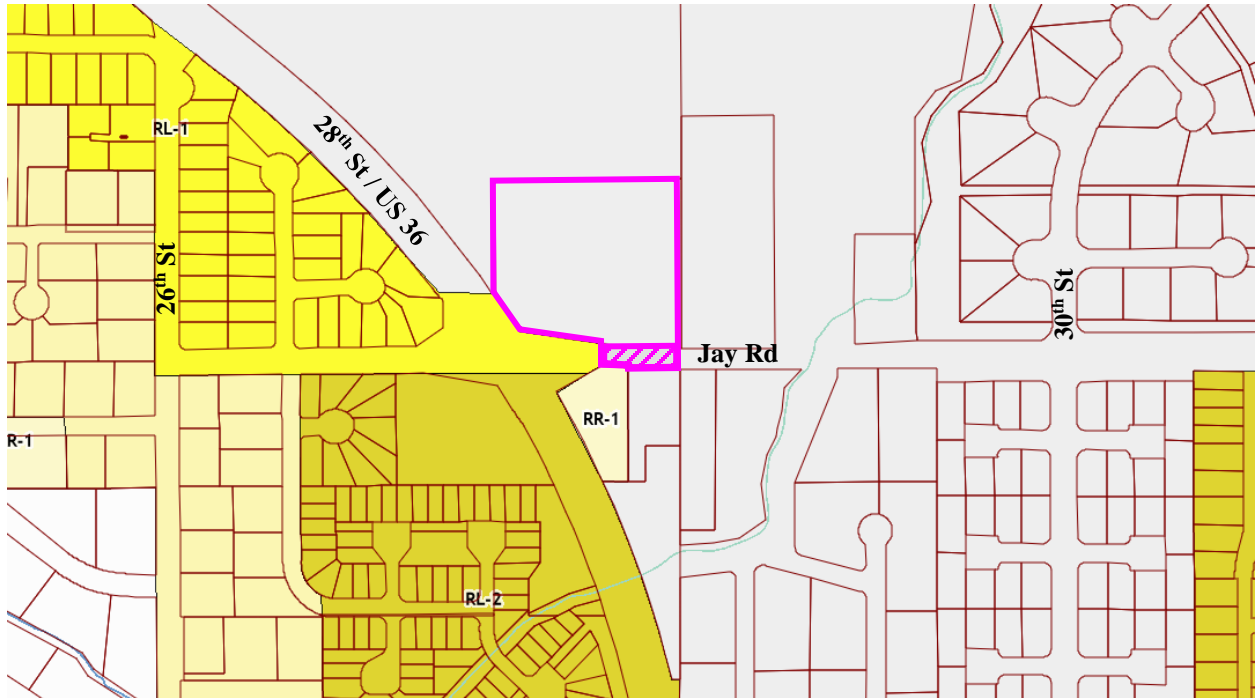


Figure 6: Surrounding City Zoning Districts

Parks Master Plan: As shown in **Figure 7**, a large property to the north within the Area III Planning Reserve area is owned by the city and included in the [2022 Boulder Parks and Recreation Master Plan Update](#), which is shown on the map to the right. The 187 acres of land are planned for long-term future park needs. At this time there are no development plans for this park space.



Figure 7: Future Park to the North

Prior Review History:

2022 Concept Plan Review: On [December 6, 2022](#), the Planning Board considered a Concept Plan Review (LUR2022-00038) proposing a residential development with 84 for-sale dwelling units consisting of townhome, duplex, and triplex housing types with 40% of the units (34) proposed to be middle income affordable units; a change to the BVCP land use map designation from PUB to MXR; annexation of the property; and initial zoning of the property as RMX-2.

Planning Board heard presentations from staff and the applicant team, and 18 community members spoke on the proposal. Regarding the proposed land use designation change, a majority of board members were less concerned with whether the property would be designated with an MR (staff recommended) or MXR (applicant proposed) land use

designation, but were primarily concerned with the design of the proposal in addressing issues such as transportation, quality open space and providing a desirable development.

Regarding the proposed initial zoning, a majority of board members agreed that the proposed RMX-2 zoning district would be appropriate and consistent with the goals of the BVCP in support of allowing for a wide range of housing within the city.

Additionally, board members discussed the proposed conceptual design and its compatibility with the surrounding area. The board provided helpful feedback. Refer to the [December 6, 2022](#) Planning Board archive for packet materials and meeting minutes.

On January 5, 2023, City Council “called-up” the Concept Plan for a public hearing, which was held on [February 16, 2023](#). Council heard presentations from staff and the applicant team, and nine community members spoke on the proposal. Council unanimously supported the proposed land use map designation change to MXR and an annexation with an initial zoning of RMX-2, and supported the overall proposal to provide “missing middle” housing on this site. Council agreed the proposal would be compatible with the surrounding area and provided feedback on the conceptual design. Council referred the item to the Transportation Advisory Board (TAB) and Design Advisory Board (DAB); the boards’ feedback on the proposed architectural and transportation design will take place during the Site Review process under a future application.

2015 Concept Plan Review: On [October 1, 2015](#), the Planning Board considered a Concept Plan Review (LUR2015-00074) for a residential proposal consisting of 94 permanently affordable dwelling units (51 row houses in seven buildings and 38 apartments in one building). At the time, staff and the Planning Board supported a lower density residential development than the 94 units proposed.

2016 Annexation and Site Review: In 2016, following the Concept Plan Review, a petition for Annexation and Initial Zoning (LUR2016-00077) and Site Review (LUR2016-00078) were reviewed by staff, but the items were subsequently withdrawn by the applicant; therefore no decision for approval or denial was made. The proposal at the time included an initial zoning of RMX-2 and a site plan with 66 units, a neighborhood daycare and a café.

2016 BVCP Update Request: In 2016, as part of the 2015 BVCP Update, the city reviewed a request to amend the Comprehensive Plan Land Use Designation of the site to MXR. At the time, city staff recommended a land use map designation change to MR, Medium Density Residential. The proposed land use designation request was subsequently withdrawn; the site remains designated PUB – Public.

PROCESS

Annexation:

The property is not currently within City limits and to allow for future redevelopment of the property under city jurisdiction, the land would have to be annexed. Land may be

considered for annexation to the City, if the annexation would comply with state annexation statutes and the policies of Boulder Valley Comprehensive Plan (BVCP). The property borders the Boulder city limits with sufficient contiguity per state statute and is located within Area II of the BVCP, the area that may be considered for annexation. If a property is annexed, zoning is established consistent with to the goals and land use designations of the Boulder Valley Comprehensive Plan.

The city's annexation policies are located within Policy 1.17 of the BVCP. An annexation agreement is required to establish the terms and conditions of the annexation. Standard terms and conditions, such as right-of-way dedication requirements, affordable housing contributions, and fees are established through city codes and policies.

Most annexations involve two public hearings. The first is conducted by the Planning Board, who makes a recommendation to the City Council whether or not the annexation should be approved, and the terms and conditions of annexation, and initial zoning that should be applied. The City Council then holds a second public hearing before making a decision.

Land Use Map Change:

The BVCP land use designation for the 2801 Jay property is Public / Semi-Public (PUB), reflective of the existing church use. The applicant requests a land use designation change to Mixed Density Residential (MXR) to allow for future redevelopment of the property with residential uses. The change must be found to be consistent with criteria for land use map changes established in the Boulder Valley Comprehensive Development Plan IGA attached to the BVCP as Appendix B. The amendment procedures can be found in Section A.1 of Exhibit B to the IGA). The process to change the land use map designation for this property requires approval by the Planning Board and City Council. There is no Boulder County call-up requirement because the site is less than 5 acres in size. The land use map change request may be considered concurrently with the annexation application.

The Planning Board approved the land use map change at the hearing on August 27, 2024. Refer to [Attachment G](#) for the draft meeting minutes from the hearing. City Council will consider the land use map change at the public hearing on November 7, 2024.

PROJECT DESCRIPTION

BVCP Land Use Map Change: The applicant is requesting a BVCP land use map change from Public / Semi-Public (PUB) to Mixed Density Residential (MXR). A land use map change to a residential category would allow for an initial residential zoning of the property to allow for future redevelopment of the property with residential uses.

Annexation and Initial Zoning: The applicant is requesting annexation by petition into the City of Boulder with an initial zoning of Residential – Mixed 2 (RMX-2). The existing church building is proposed to remain until such time as the property is redeveloped. Any redevelopment of the property would be required to go through a future Site Review process.

Annexation Terms

The proposed Annexation Agreement ([Attachment D](#)) contains terms and conditions for this annexation. The applicant wishes to proceed with annexation and establish annexation agreement terms prior to entering the Site Review process for a specific design proposal. Thus, the terms of the annexation agreement are intended to provide a balance that enables flexibility and creative solutions in a future Site Review process for a site design and density that can realize a residential project with significant amounts of on-site permanently affordable housing, while also establishing minimum standards to ensure that the site design is compatible with the surrounding area and that the proposal will meet city affordable housing goals and transportation requirements. The specific terms of the annexation agreement, which has been amended to incorporate the changes recommended by Planning Board, include:

Right-of-Way Dedications, Quit Claim, and Public Improvements:

- Quit claim a 306 square-foot area within Jay Road to the city to “clean up” title to a portion of Jay Road adjacent to the property.
- Quit claim a 561 square-foot area of public right-of-way to the city for an additional five-foot wide portion of Jay Road to accommodate future streetscape improvements along Jay Road.
- Future public improvements to the right-of-way adjacent to the property in Jay Road and US 36/28th Street, as determined through a future Site Review process, including:
 - Detached sidewalks and landscape along Jay Road and US 36/28th Street;
 - Intersection improvements to the Jay Road and US 36/28th Street intersection;
 - Jay Road improvements including a new left-turn lane to enter the site and a new left turn lane approaching the intersection with US 36/28th Street; a center median; a raised pedestrian/bike crossing across the channelized right turn lane on westbound Jay Road at the intersection with US 36/28th Street; and reconstruction of the existing transit stop with standard boarding area and concrete shelter pad behind the detached sidewalk.
- Construction of a multi-use path or other improvements called for on the Transportation Master Plan or adopted connections plans at the time the site review is filed. The city may also require payment to allow for the city to construct the improvement at a later time. This is intended to ensure that the timing and design of the path is properly coordinated with properties to the north of the site.
- Dedication of the eastern 30 feet of the property for public right-of-way which will be established as a two-way vehicular access, tree lawn, and detached sidewalk. Dedication of this right-of-way resolves an earlier concern from the adjacent property owners and Boulder County regarding use of the property to the east to access the subject property. Dedication also ensures that potential future through access to the Area III properties to the north is included in the design of any future development on the subject property.

Allowance for Existing Uses:

- Allowance for the existing church and existing telecommunication tower and equipment pad to remain. The church is expected to remain until redevelopment of the property; any changes to the church use would be reviewed through the city's standard review processes. Any changes to the telecommunication tower and equipment would be limited to the eligible facilities request process consistent with federal law. The tower would be required to be removed upon termination of the existing lease.

Utility Connections and Fees:

- Requirement for the existing structure on the property to connect to the city's wastewater utility within 365 days of the effective date of the annexation ordinance. The property is currently served by city water.
- Payment of \$135,300 in Stormwater Plant Investment Fees (PIF's) prior to first reading of the annexation ordinance.

Community Benefit:

- Community benefit requirements for residential development of the property would require that no less than 30% of the new dwelling units on the property be for-sale, deed restricted permanently affordable units. This may be achieved either through construction of the affordable units by the developer concurrently with construction of market rate units, or through conveyance of fee simple lots to the city or an entity designated by the city. Any land so conveyed to the city or its designated entity must be roughly graded and provided with utility service stub outs street connections, and large enough to allow for construction of the number of permanently affordable units required to be constructed pursuant to the annexation agreement. Cash-in-lieu is not an option for meeting the community benefit requirements.
- Construction standards of the affordable units are specified in terms of type (minimum of 18% of three bedroom, two bath units with the remaining units being a minimum of two bedrooms, one bath); parking (all affordable units shall provide at least one vehicular parking space, and at least 45% shall have a carport or garage); size (two bedroom units shall be at least 1,000 square-feet and three-bedroom units shall be at least 1,250 square-feet); and with design quality equal to that of market-rate units. This is intended to ensure that the sizes and types of affordable units and parking provided meets the needs of expected residents.
- Pricing for two-bedroom affordable units shall be affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes shall be set at a maximum of 120%; and three-bedroom units shall be affordable to households earning no more than 120% of the AMI and qualifying household incomes shall be set at a maximum of 150% of the AMI. This is intended to ensure that the affordable units are priced to meet the "middle income" tier of the city's affordable housing goals.
- Access to any amenities provided on the annexation property to owners of market rate units shall be provided equally to owners of affordable units.

Design and Compatibility:

- The future development proposal shall be required to be reviewed through the Site Review process.
- The design of the eastern right-of-way is specified as two travel lanes, tree lawn, and detached sidewalk and is intended to serve as both a vehicular access as well as a physical separation between the future redevelopment and the residential properties in the east in unincorporated Boulder County.
- Buildings along the eastern property line and eastern half of the northern property line are limited to two stories above grade and required to have sloped roof forms. This requirement is intended to ensure that the development will be compatible with adjacent properties in unincorporated Boulder County while allowing for more design flexibility and a variety of forms and heights toward Jay Road and 28th Street.
- The proposal would not be subject to any subcommunity or area plans or design guidelines if the site review application is submitted before January 1, 2027. Note that currently no subcommunity or area plans are adopted for the area nor is their creation part of the city's workplan. The applicant requested this to have a period of relative certainty of what design requirements will apply to the property. The applicant expressed this was important to ensure financial feasibility of a development that meets the community benefit requirements of the annexation agreement.

Density Calculations and Total Units:

- Density calculations for determining the maximum number of units per acre shall be measured prior to the dedication of right-of-way. This is to ensure that required right-of-way dedications along the eastern property line and Jay Road, and any possible additional right-of-way dedications as part of the development review process will not reduce ability of the property to provide an adequate number of total dwelling units necessary to support the financial viability of a residential development where 30% of units are permanently affordable to middle income households.
- The percentage numbers of permanently affordable units required for a density bonus under Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C. 1981, is not being modified with the annexation agreement.
- Market units are limited in size to 2,500 square-feet (excluding garage), but may be increased to 3,000 square-feet if less than 78 total units are approved on the property. This is to encourage more total market rate dwelling units of smaller sizes, while recognizing that if fewer total units are constructed on the site, larger market rate units may be necessary to support the financial viability of the development and the 30% on-site affordable units.

Design Flexibility through Site Review:

- Private streets may be permitted by the approving authority through the site review process. This is to allow for potential flexibility in the ownership structure and subdivision of the property, allowing the property to be developed as a

- condominium proposal or as fee-simple private lots fronting onto either public or private streets, if approved through site review.
- Solar access provisions may be modified by the approving authority through the site review process to ensure that townhomes on individual lots are allowed when constructed at a zero setback from lot lines.

ANALYSIS

The applicant is requesting annexation by petition as provided by state law. Annexations must comply with Colorado Revised Statutes (C.R.S.), Article 12 of Title 31.

Additionally, annexations must comply with city policies *1.08 Adapting to Limits on Physical Expansion*, *1.10 Growth Requirements* and *1.17 Annexation* in the BVCP. Staff finds that the proposed annexation is consistent with state statutes and city policies. A discussion of staff's analysis follows:

1. Compliance with State Annexation Statutes

Staff has reviewed the annexation petition for compliance with Sections 31-12-104, 31-12-105, and 31-12-107, C.R.S. and finds that the petition is consistent with the statutory requirements, as affirmed by the criteria below (refer to [Attachment E](#) for the Annexation Petition):

- An annexation petition was filed meeting the requirements of Section 31-12-107, C.R.S.
- Landowners of more than 50 percent of the area proposed for annexation, excluding streets, have petitioned to annex.
- The annexation petition has been filed with the City Clerk of the City of Boulder.
- There is a community interest between the property proposed for annexation and the city of Boulder. As more than one-sixth of the perimeter of the area proposed to be annexed is contiguous, a community of interest is presumed.
- The subject property does not include any area included in another annexation proceeding involving a municipality other than the city of Boulder.
- The annexation would not remove the property from one school district and add it to another.
- The property has more than one-sixth contiguity with the City of Boulder. The annexation has approximately 19% (approximately one-fifth) contiguity.
- The annexation would not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing City boundaries in any one year.

2. Compliance with BVCP Policies

Annexations must comply with city policies *1.08 Adapting to Limits on Physical Expansion*, *1.10 Growth Requirements* and *1.17 Annexation* in the BVCP. Staff finds that the proposal is consistent with these city policies, as well as consistent with the general

goals, objectives, and recommendations of the BVCP, particularly housing related policies. The proposal creates opportunities for permanently affordable housing that supports a mixture of housing types and provides for the integration of affordable housing on-site. Overall, staff finds that the proposal is consistent with the following BVCP policies:

- 1.08 Adapting to Limits on Physical Expansion
- 1.10 Growth Requirements
- 1.11 Jobs: Housing Balance
- 1.13 Definition of Comprehensive Planning Areas I, II & III
- 1.15 Definition of New Urban Development
- 1.17 Annexation
- 2.03 Compact Development Pattern
- 2.15 Compatibility of Adjacent Land Uses
- 2.34 Design of Newly Developing Areas
- 7.07 Mixture of Housing Types
- 7.11 Balancing Housing Supply with Employment Base
- 7.12 Permanently Affordable Housing for Additional Intensity
- 7.15 Integration of Permanently Affordable Housing

Refer to [Attachment H](#) for staff's summary of the proposal's consistency with these policies.

3. Land Use Designation

As noted earlier in the memo, at the time of the public hearing on the annexation, City Council is to consider a BVCP land use map change for the property. The applicant proposes a land use map change in order to allow for higher density residential development of the property. While Public zoning would be consistent with the Public land use designation, development of residential units under Public zoning is limited to a density of no more than 6.2 dwelling units per acre and would require a Use Review. A land use map change may be considered concurrent with a request for annexation. Land use map changes for properties located in Area II require approval of the Planning Board and City Council. Since the property is less than five acres in size, the city's decision is not subject to call-up by the Board of County Commissioners of Boulder County. Applications for land use designation changes that are made outside of a mid-term or five-year BVCP update must be found to be consistent with BVCP policies and satisfy several other factors listed in Appendix B of the BVCP.

The proposed Mixed Density Residential designation for new development (outside of Pre-WWII neighborhoods) is characterized by the goal of providing a substantial amount of affordable housing in mixed-density neighborhoods that have a variety of housing types and densities. Refer to description in the BVCP:

Land Use Category	Characteristics, Uses & BVCP Density/Intensity
Mixed Density Residential (MXR)	<p>Characteristics and Locations: MXR areas surround downtown in the Pre-World War II older neighborhoods and are located in some areas planned for new development. Additionally, in older downtown neighborhoods that were developed with single-family homes but for a time were zoned for higher densities, a variety of housing types and densities are found within a single block. The city's goal is to preserve the current neighborhood character and mix of housing types and not exacerbate traffic and parking problems in those older areas. Some new housing units may be added.</p> <p>For areas designated for new development (outside of the Pre-WWII neighborhoods), the goal is to provide a substantial amount of affordable housing in mixed-density neighborhoods that have a variety of housing types and densities.</p> <p>Uses: Consists of single-family and multi-family residential units. May include some complementary uses implemented through zoning.</p> <p>BVCP Density/Intensity: 6 to 20 dwelling units per acre</p>

The criteria for a Land Use Map change are found in Appendix B to the BVCP. To be eligible for a Land Use Map change, the city must find that that the proposed change:

- ✓ a) on balance, is consistent with the policies and overall intent of the comprehensive plan;

Staff finds that the proposed Land Use Map change is, on balance, consistent with the policies and overall intent of the comprehensive plan, as detailed in the staff summary of consistency with BVCP policies ([Attachment D](#)).

The site was historically designated "Public" reflective of the existing church use. The proposal for a Land Use Map change from "Public" to "Mixed Density Residential" is consistent with comprehensive plan policies and the overall intent of the comprehensive plan to address Boulder's increasing need for housing and housing affordability challenge, particularly for middle income households.

- ✓ b) would not have significant cross-jurisdictional impacts that may affect residents, properties or facilities outside the city;

The subject property is a developed site containing an existing church building, parking lot, and other site improvements. The land use map change would allow for future redevelopment with residential dwelling units. Staff finds that the proposal to change the land use map designation from "Public" to "Mixed Density Residential" will not have significant cross-jurisdictional impacts. To that end, the following items were included in the review of the proposal:

- The proposal was updated during the review process to provide dedication of the eastern 30 feet of the subject property as right-of-way to ensure adequate transportation access is provided for the subject property from Jay Road. This is intended to ensure that access to the property does not create impacts on adjacent property in the county.*
- The annexation agreement requires the applicant to construct transportation improvements upon redevelopment.*

- *The applicant has coordinated with Boulder County Public Works regarding review of utility main placements to ensure the proposal is acceptable. Due to the location at the edge of the city, some utility mains may pass through unincorporated county areas. The county has reviewed and approved the preliminary alignments and will review construction documents at the time of a future design proposal.*
- *The terms of the annexation agreement also include design and compatibility requirements to further ensure a future design is compatible with surrounding properties.*

- ✓ c) would not materially affect the land use and growth projections that were the basis of the comprehensive plan;

The Boulder Valley Comprehensive Plan (adopted 2021), page 9, states: “As of January 2015, the City of Boulder (Area I) had approximately 44,725 housing units, 104,800 residents and 98,500 jobs. The remainder of the Service Area (Area II) had approximately 5,700 housing units, 12,000 residents and 3,000 jobs. About 30,000 students attend the University of Colorado.

“Over the next 25 years, Area I is projected to add about 6,500 housing units, 19,000 residents and 19,000 jobs. CU student enrollment could increase by a range of 5,000 to 15,000 additional students by 2030. Most of the growth that will occur in Area II will be preceded by annexation to the city; therefore, it is included in the projection numbers for Area I. Since there is little vacant land left in the city’s Service Area, most of this growth will occur through redevelopment.”

The proposal involves a land use map change affecting 4.58 acres that is expected to yield approximately 15-20 dwelling units per acre, or between 68 and 91 units, which would equate to approximately 1.05 to 1.40% of the 6,500 additional housing units projected for the 25 years beginning in 2015. Given the relatively small size of the property and number of units that could be permitted, staff finds the proposal will not materially affect the land use and growth projections.

- ✓ d) does not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder;

Staff finds the proposal does not materially affect adequacy or availability of urban facilities and services. The proposed land use map change would allow the property to be annexed and initially zoned for mixed-density residential uses and a future redevelopment to take place. The proposed land use map change and annexation have been reviewed by applicable city

departments to ensure adequate public facilities and services. The proposal will be required to construct necessary improvements to serve the redevelopment, such as utility connections and transportation improvements, consistent with the annexation agreement, Boulder Revised Code, and Design and Construction Standards.

- ✓ e) would not materially affect the adopted Capital Improvements Program of the City of Boulder; and

Staff finds that the proposal will not materially affect the adopted Capital Improvement Program. As noted above, the applicant for a redevelopment proposal would be responsible for improvements consistent with annexation agreement, Boulder Revised Code, and Design and Construction Standards.

- ✓ f) would not affect the Area II/Area III boundaries in the comprehensive plan.

The proposal is located in Area II, the area where annexation may be considered. The proposal would not alter the Area II/Area III boundaries.

Based on the analysis above, city staff have determined that the BVCP land use map change is appropriate.

The Planning Board approved the land use map change at the hearing on August 27, 2024. Refer to [Attachment G](#) for the draft meeting minutes from the hearing.

4. Initial Zoning

Initial zoning is established pursuant to Section 9-2-18, “Zoning of Annexed Land,” B.R.C. 1981. If a property is annexed, zoning will be established consistent with the goals and Land Use Map of the BVCP. As described above, the application proposes a land use designation change for the property to Mixed Density Residential, which is characterized by provision of a substantial amount of affordable housing and a variety of housing types and density, ranging from six to 20 units per acre. As described above, staff finds that the proposed Land Use Map change meets the criteria for such change. The proposed zoning assumes approval of the Land Use Map change to Mixed Density Residential.

The proposed zoning of Residential Mixed - 2 is consistent with a land use map designation of Mixed Density Residential. The RMX-2 zoning district is described as: “Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted.” (Section 9-5-2(c)(1)(E), B.R.C. 1981).

Per Chapter 6, “Use Standards,” of the Boulder Revised Code, the RMX-2 zone district requires a variety in housing types; properties between one and five acres in size must

provide at least two housing types, and no more than 50% of the development may be one housing type.

Per Chapter 8, “Intensity Standards,” of the Boulder Revised Code, a minimum of 15% of the site must be provided as usable open space. The RMX-2 zoning district permits a maximum of 10 dwelling units per acre, with density bonuses possible depending on the percentage of affordable units provided on site, up to a maximum of 20 dwelling units per acre. A density bonus may be requested through the Site Review process pursuant to 9-8-4, Housing Types and Density Bonuses Within an RMX-2 Zoning District, B.R.C. 1981, subject to the discretion of the approving authority. The annexation agreement requires a minimum of 30% on-site affordable units, which would be consistent with a 5 unit per acre density bonus, allowing a density of up to 15 units per acre. The proposal could provide a higher percentage of on-site affordable units (e.g. 35% or 40%) at the time of site review to achieve a higher density bonus to allow up to 18 or 20 units per acre, respectively. Given the property size of 4.579 acres prior to right-of-way dedications, the chart below provides potential unit counts in various scenarios.

RMX-2 Density Bonus Calculations			
Percent On-Site Affordable	30%	35%	40%
Density Permitted with Density Bonus per 9-8-4, B.R.C. 1981	15 du/acre	18 du/acre	20 du/acre
Maximum Number of Units	68	82	91

Historically, the RMX-2 zoning district has been used for newly developing or redeveloping properties where affordable housing is provided on-site, often at the edges of the city. Refer to **Figure 8** for map of existing RMX-2 zoned properties. The proposal would be consistent with this zoning practice. Examples include:

- Holiday: Annexed in 1990, portions of the Holiday neighborhood have a land use designation of MXR and an associated zoning district of RMX-2. The Site Review approval (LUR2001-00030) included a density bonus to allow development of up to 20 dwelling units per acre in RMX-2 as the proposal included over 40% permanently affordable housing as a Boulder Housing Partners project and part of the North Boulder Subcommunity Plan.
- 4525 Palo Parkway: Annexed in 2016, the 3.2-acre property has a land use designation of MR and is zoned RMX-2. The Site Review approval (LUR2016-00027) included a density bonus for up to 14 dwelling units per acre. The proposal was a 100% permanently affordable housing project by Boulder Housing Partners and Habitat for Humanity.
- Northfield Village and Northfield Commons: Annexed in 2004, the properties have land use designations of MR and LR and are zoned RMX-2. The Site Review approval (LUR2003-00033) averaged 8-9 dwelling units per acre. The proposal included 45% permanently affordable housing.

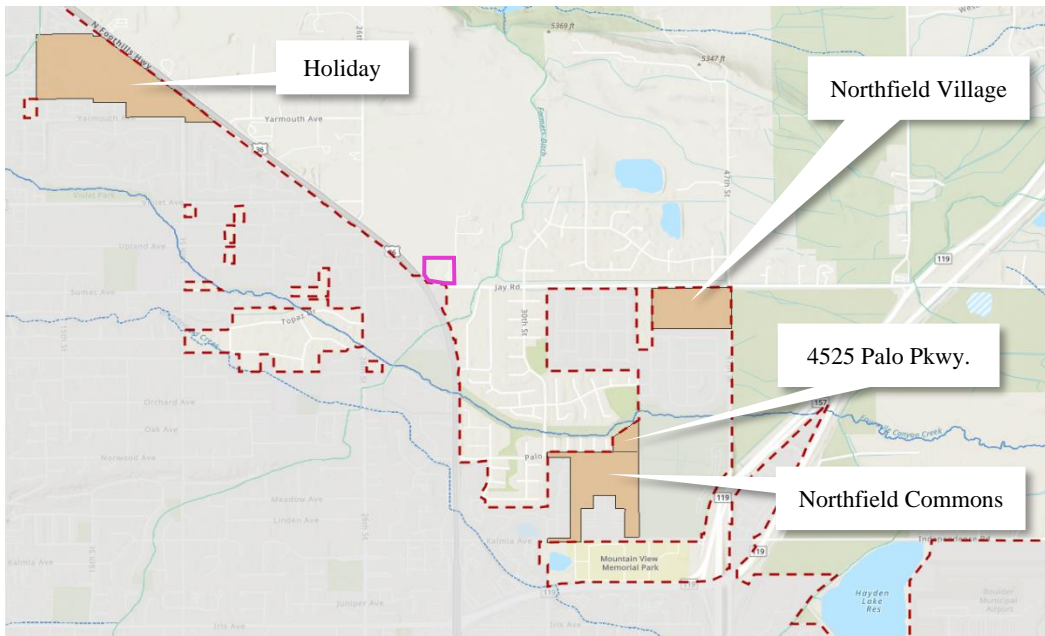


Figure 8: Properties Zoned RMX-2

Staff finds that the RMX-2 zoning district, including the allowed residential uses, emphasis on provision of permanently affordable housing, and controls on density and design through the Site Review process, is appropriate for the site, helps ensure compatibility with the surrounding area, and is consistent with the proposed Mixed Density Residential land use and with the goals, policies, and objectives of the BVCP.

ATTACHMENTS

Attachment A	Annexation Map
Attachment B	Proposed Resolution 1355
Attachment C	Proposed Ordinance 8659
Attachment D	Proposed Annexation Agreement
Attachment E	Annexation Petition
Attachment F	Public Comments
Attachment G	August 27, 2024 Draft Planning Board Minutes
Attachment H	Staff Analysis of State Statutes and BVCP Policies
Attachment I	Deed of Dedication (easterly 30-foot portion of the Property)
Attachment J	Quitclaim Deed (306 sf portion of Property)
Attachment K	Quitclaim Deed (561 sf portion of Property)
Attachment L	Subordination Agreement

RECEIVED
By Central Records/City Clerk's Office at
9:12 am, March 8, 2024

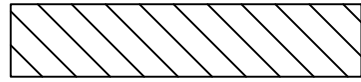
ANNEXATION MAP

2801 JAY ROAD
A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 17,
TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M.,
COUNTY OF BOULDER, STATE OF COLORADO
TOTAL AREA = 4.8565 ACRES

LEGEND



PUBLIC LAND CORNER FOUND



PROPERTY CONTIGUOUS TO EXISTING CITY
OF BOULDER LIMITS

TOTAL PERIMETER OF AREA TO BE ANNEXED = 1888.16 FEET
ONE SIXTH OF TOTAL PERIMETER = 314.69 FEET
PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS = 358.30 FEET

OWNER: MJF 2801 JAY RD DEVELOPMENT LLC.
A VIRGINIA LIMITED LIABILITY COMPANY
1000 CARLISLE AVENUE
RICHMOND, VIRGINIA 23231

SURVEYOR: SITEWORKS
2101 PEARL STREET
BOULDER, COLORADO 80302

LEGAL DESCRIPTION

(FOR AREA TO BE ANNEXED)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;
THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;
THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;
THENCE N87°05'28"W, A DISTANCE OF 70.19 FEET;
THENCE N00°28'13"W, A DISTANCE OF 62.37 FEET;
THENCE N81°46'13"W, A DISTANCE OF 217.87 FEET;
THENCE 119.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 02°20'00", A RADIUS OF 2925.00 FEET AND A CHORD WHICH BEARS N34°16'08"W, A DISTANCE OF 119.11 FEET;
THENCE N00°22'12"W, A DISTANCE OF 293.23 FEET;
THENCE N89°32'02"E, A DISTANCE OF 484.78 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17;
THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;
THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES MORE OR LESS.

SURVEY NOTES

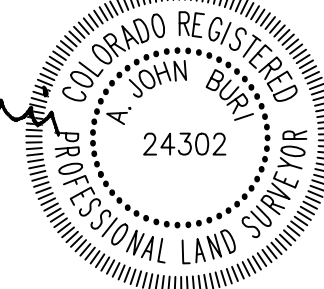
- THIS MAP IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT, THE PURPOSE OF THIS MAP IS TO SHOW THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO.
- THIS ANNEXATION IS BASED ON AN IMPROVEMENT SURVEY PLAT PREPARED BY FLATIRON, INC., JOB NUMBER 16-66,821, DATED 02/29/16.
- NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. CRS-13-80-105 (3)(c).

CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP WAS MADE UNDER MY DIRECT RESPONSIBILITY, SUPERVISION AND CHECKING AND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO, AND THAT AT LEAST ON SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT CITY OF BOULDER, COLORADO.

A. John Burr

A. JOHN BURR, PLS 24302
FOR AND ON BEHALF OF
SITEWORKS



Scale: 1" = 30'
0 15 30 60

siteworks
creativity for
the built environment

2801 Jay Road

Boulder, Colorado 80301

#	Date	Description
1	05/01/23	Initial Submittal
2	08/14/23	City Comments
3	10/16/23	City Comments
4	11/03/23	City Comments
5	02/12/24	City Comments
6	03/07/24	City Comments

Project No: 23142A
By: MRF/JAS/DPA
File: 23142A-1.dwg

Annexation Map

Sheet

V-101

RESOLUTION 1355

A RESOLUTION OF THE COUNCIL OF THE CITY OF BOULDER SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS REGARDING THE ANNEXATION OF APPROXIMATELY 4.86 ACRES OF LAND GENERALLY LOCATED AT 2801 JAY ROAD AND INCLUDING AREAS OF PUBLIC STREET.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY FINDS AND RECITES THAT:

A. On September 19, 2024, the City Council of the City of Boulder adopted Resolution 1352 and thereby initiated annexation proceedings for a property generally located at 2801 Jay Road, and including areas of public street, and more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”); and

B. Following notice given, as required by law, the City Council duly held a hearing on said annexation on November 7, 2024.

BASED ON THE FINDINGS MADE IN THIS RESOLUTION, ABOVE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

Section 1. The City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. The Petition to Annex the Property complies with the Municipal Annexation Act (the “Act”), Section 31-12-101, *et seq.*, Colorado Revised Statutes, as amended.

Section 3. MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, is the owner of the Property, excluding the areas of public street.

Section 4. All owners of 100% of the area proposed for annexation, excluding areas of public street, have petitioned for annexation of the Property with an initial zoning of Residential – Mixed 2 (RMX-2).

Section 5. The Property is not embraced within any city, city and county, or incorporated town.

Section 6. The Property abuts, and is contiguous to, the City of Boulder by at least one-sixth of its perimeter.

Section 7. A community of interest exists between the Property proposed for annexation and the City of Boulder.

Section 8. The Property is urban or will be urbanized in the near future, and the Property is integrated with or capable of being integrated with the City of Boulder.

Section 9. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

Section 10. This annexation will not result in the detachment of the area from one school district and the attachment of same to another school district.

Section 11. This annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

Section 12. The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within 12 months preceding the filing of the above petition.

Section 13. The City Council further determines that the applicable parts of the Act have been met, that an election is not required under the Act, and that there are no other terms and conditions to be imposed upon said annexation.

Section 14. The City Council further finds that the notice was duly given, and a hearing was held regarding the annexation in accordance with the Act.

Section 15. The City Council concludes that the Property is eligible for annexation to the city and may be so annexed by ordinance.

ADOPTED this 7th day of November 2024.

Aaron Brockett, Mayor

Attest:

Elesha Johnson, City Clerk

EXHIBIT A
LEGAL DESCRIPTION
(2801 Jay Road)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;
THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;
THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;
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THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;
THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;
SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES.

ORDINANCE 8659

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 4.86 ACRES OF LAND GENERALLY LOCATED AT 2801 JAY ROAD, AND INCLUDING AREAS OF PUBLIC STREET, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL – MIXED 2 (RMX-2) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, is the owner of the parcel(s) which comprise the real property more particularly described in **Exhibit A** attached hereto (the "Property"), excluding areas of public street.

B. The owners of 100% of the area proposed for annexation comprising 100% of the land owners of said area, excluding areas of public street, have petitioned for annexation of the Property with an initial zoning of Residential – Mixed 2 (RMX-2) for the Property; the Property is not embraced within any city, city and county, or incorporated town; and the Property abuts, and is contiguous to, the City of Boulder by at least one-sixth of its perimeter.

C. A community of interest exists between the Property proposed for annexation and the City of Boulder; the Property is urban or will be urbanized in the near future; and the Property is capable of being integrated into the City of Boulder.

D. The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.

1 E. This annexation will not result in the detachment of the area from one school district
2 and the attachment of same to another school district.

3 F. This annexation will not have the effect of extending the City of Boulder's
4 boundaries any further than three miles from any point of the existing city boundaries.
5

6 G. The Property does not include any area which is the same or substantially the same
7 area in which an election for the annexation to the City of Boulder was held within twelve months
8 preceding the filing of the above petition.
9

10 H. The Planning Board duly proposed that the Property be annexed to the City of
11 Boulder and that the zoning district map adopted by the City Council be amended to zone and
12 include the Property in the Residential – Mixed 2 (RMX-2) zoning district, as provided in Chapter
13 9-5, "Modular Zone System," B.R.C. 1981.
14

15 I. A public hearing on the proposed annexation and initial zoning of the Property
16 annexed and zoned hereby was duly held before the City Council on November 7, 2024.

17 J. The initial zoning designation of Residential – Mixed 2 (RMX-2) for the Property
18 is consistent with the Boulder Valley Comprehensive Plan and bears a substantial relation to and
19 will enhance the general welfare of the Property and of the residents of the City of Boulder.
20

21 K. The requirements of Section 30 of Article II of the State Constitution and Sections
22 31-12-104 and 31-12-105, C.R.S. have been met, no election is required under Section 30 of
23 Article II of the State Constitution and Section 31-12-107(2) C.R.S., and no additional terms and
24 conditions are to be imposed upon the Property to be annexed other than what is agreed to in the
25 agreement associated with this annexation.

1 L. The City Council has jurisdiction and the legal authority to annex and zone the
2 Property.

3 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
4 COLORADO:
5

6 Section 1. The territory more particularly described in Exhibit A is hereby annexed to and
7 included within the corporate boundaries of the City of Boulder.

8
9 Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district map
10 forming a part thereof is hereby amended to include the Property within the Residential – Mixed
11 2 (RMX-2) zoning district.

12 Section 3. The City Council adopts the recitals in this ordinance and incorporates them
13 herein by this reference.

14 Section 4. The City Council approves any variations or modifications to the Boulder
15 Revised Code or other City ordinances that are in the agreement associated with this annexation.
16

17 Section 5. The City Council authorizes the city manager to implement the terms of the
18 agreements associated with this annexation.

19
20 Section 6. The annexation and zoning of the Property is necessary for the protection of the
21 public health, safety, and welfare.

22 Section 7. The City Council deems it appropriate that this ordinance be published by title
23 only and orders that copies of this ordinance be made available in the office of the city clerk for
24 public inspection and acquisition.
25

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 19th day of September 2024.

3
4 _____
5 Aaron Brockett
6 Mayor

7 Attest:

8 _____
9 Elesha Johnson
10 City Clerk

11
12 READ ON SECOND READING, PASSED AND ADOPTED this 7th day of November
13 2024.

14
15 _____
16 Aaron Brockett
17 Mayor

18 Attest:

19 _____
20 Elesha Johnson
21 City Clerk

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EXHIBIT A
LEGAL DESCRIPTION
(2801 Jay Road)

LEGAL DESCRIPTION

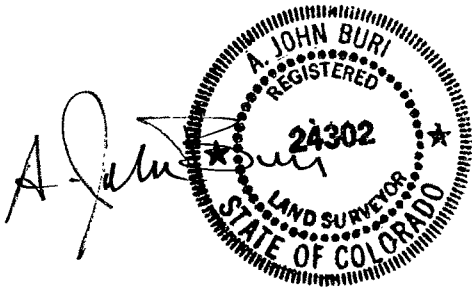
(FOR AREA TO BE ANNEXED)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

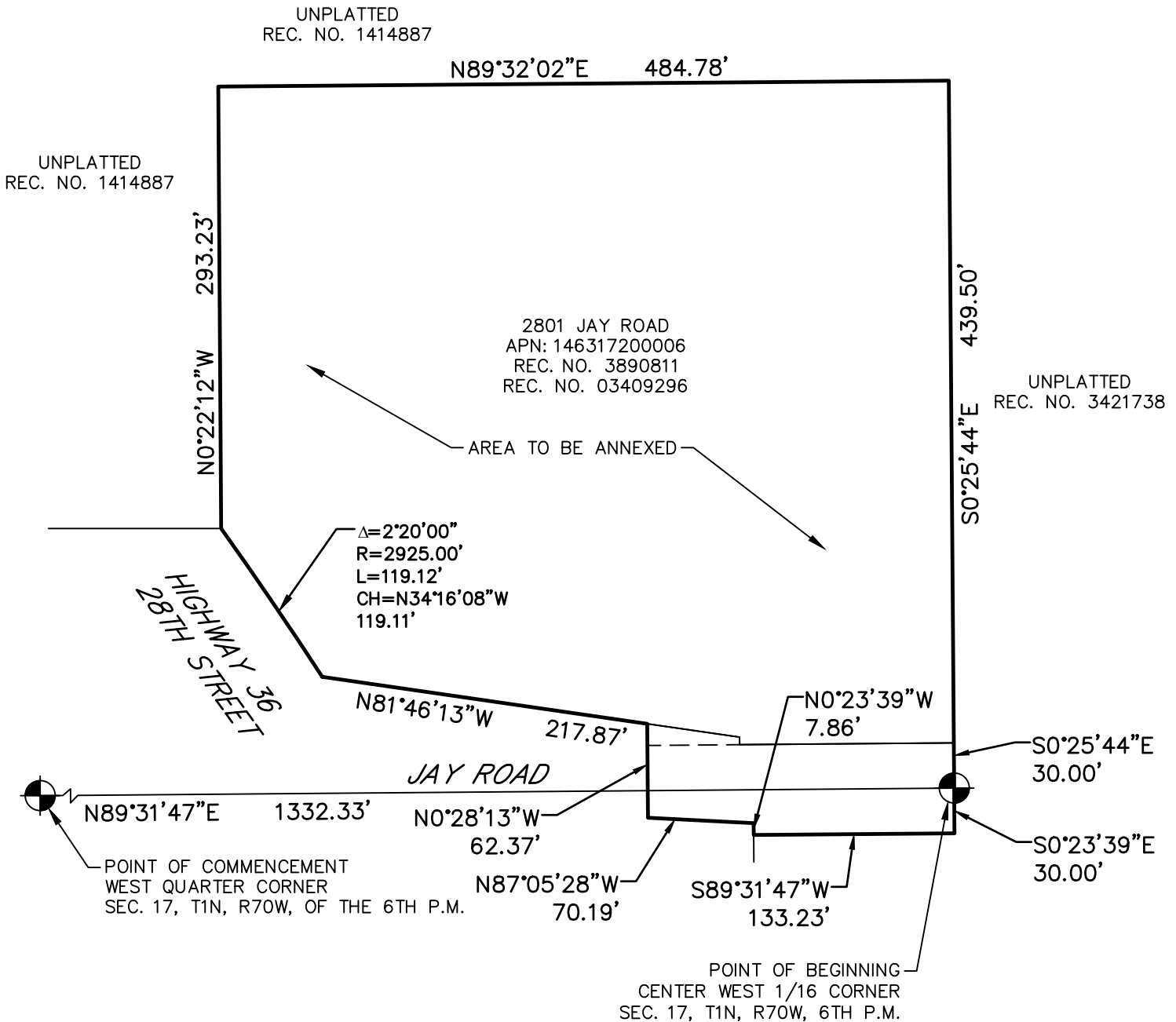
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;
THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;
THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;
THENCE N87°05'28"W, A DISTANCE OF 70.19 FEET;
THENCE N00°28'13"W, A DISTANCE OF 62.37 FEET;
THENCE N81°46'13"W, A DISTANCE OF 217.87 FEET;
THENCE 119.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 02°20'00", A RADIUS OF 2925.00 FEET AND A CHORD WHICH BEARS N34°16'08"W, A DISTANCE OF 119.11 FEET;
THENCE N00°22'12"W, A DISTANCE OF 293.23 FEET;
THENCE N89°32'02"E, A DISTANCE OF 484.78 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17;
THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;
THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
03/07/24
PROJECT NO. 23142



ANNEXATION EXHIBIT

1

SCALE: 1" = 100'



siteworks
creativity for
the built environment

2801 Jay Road

2801 Jay Road
Boulder, CO 80301

Project: 23142A
File: 23142A-3.dwg
Date: 10/02/23

For Administrative Use Only

Grantor: City of Boulder and MJF 2801 Jay RD Development LLC

Grantee: MJF 2801 Jay RD Development LLC and City of Boulder

Case No. LUR2023-00018

ANNEXATION AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2024, by and between the CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City," and MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, hereinafter referred to as "Applicant."

RECITALS

- A. The Applicant is the owner of the real property generally described as 2801 Jay Road and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").
- B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property with an initial zoning designation of Residential - Mixed 2 (RMX-2).
- C. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

COVENANTS

1. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the Applicant shall:

- a) sign this Agreement.
- b) provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance.
- c) Pay the following to the City:

i)	<u>Plant Investment Fees (PIF's)</u>	
	Stormwater	\$2.46/square foot of impervious area
		Existing Impervious Area: 55,000 sf:
		<u>\$135,300</u>
	Total Due Prior to First Reading	\$135,300

- d) Execute the following documents, at no cost to the City, the final forms of which are subject to approval of the City Manager:
 - i) A deed of dedication substantially in the form attached hereto and incorporated herein as Exhibit B conveying to the City, in fee and clear of monetary liens and encumbrances, the easterly 30-foot portion of Property for the extension of Violet Avenue as generally shown on Exhibit B attached hereto and incorporated herein (the “2801 ROW”).
 - ii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit C conveying to the City, in fee and clear of monetary liens and encumbrances, the 306 square foot portion of Property as generally shown on Exhibit C attached hereto and incorporated herein.
 - iii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit D conveying to the City, in fee and clear of monetary liens and encumbrances, the 561 square foot portion of Property as generally shown on Exhibit D attached hereto and incorporated herein.

2. Water and Wastewater Connection Requirements. Within 365 days of the effective date of the annexation ordinance, any existing structures on the Property required to be connected to the water utility, wastewater utility, or both under the Boulder Revised Code shall be connected to the City’s utilities to which connection is required or be demolished. The City Manager, in her discretion, may grant one or more 180-day extensions of the 365-day compliance deadline for good cause shown by the Applicant. The City Manager will consider, among other factors, pending development projects and/or applications for the Property, the Property’s current and/or future use, the status of ongoing vertical or infrastructure construction on portions of the Property, and environmental concerns in her decision. If the Applicant connects any existing structures on the Property, then the Applicant agrees to perform the following:

- a) For connection to the City’s water utility:
 - a. Submit an application that meets the requirements of Chapter 11-1, “Water Utility,” B.R.C. 1981, and obtain City approval to connect to the City’s water utility.
 - b. Pay all applicable fees and charges associated with a service line connection to the City’s water utility, including but not limited to the water plant investment fee and all applicable water utility connection and inspection fees.
 - c. Construct the individual service lines to the Property and connect the existing structures required to be so connected to the City’s water utility.

- b) For connection to the City's wastewater utility:
 - a. Submit an application that meets the requirements of Chapter 11-2, "Wastewater Utility," B.R.C., 1981, and obtain City approval to connect to the City's wastewater utility.
 - b. Pay all applicable fees and charges associated with a service line connection to the City's wastewater utility, including but not limited to the wastewater plant investment fee and all applicable wastewater utility connection and inspection fees.
 - c. Construct the individual service line to the Property and connect the existing structures required to be so connected to the City's wastewater utility.
- 3. Existing Wells. The City agrees that it will not prohibit the Applicant from using existing wells for irrigation purposes, even if served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to city water utility. No person shall make any cross connections to the City's municipal water supply system from any well on the Property.
- 4. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.
- 5. Ditch Company Approval. If the Property is abutting or crossed by an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.
- 6. Existing Nonstandard Buildings and/or Nonconforming Uses. There are no nonstandard buildings or structures on the Property. The only nonconforming use on the Property that will be recognized by the City and temporarily allowed to continue to exist is a freestanding wireless communications facility tower and equipment pad and enclosure that is currently on the Property and more particularly identified in Exhibit E, attached hereto and incorporated herein, that was approved under Boulder County Land Use Docket #SU-05-004 (the "County Approval") (the "Tower"). No changes other than "eligible facilities requests", as defined under the Boulder Revised Code shall be made to the Tower and, for purposes of eligible facilities requests, the Tower shall be considered a "legal nonconforming tower structure" as referenced in the definition for "substantial change" in Section 9-16-1, "Definitions," B.R.C. 1981. Notwithstanding the foregoing, the City Manager shall have the authority to process and review any eligible facilities request for this Tower consistent with federal laws, rules, regulations, and orders applicable to the request. The Tower shall be removed upon termination of the Option and Lease Agreement dated April 8, 2005, as amended by the First Amendment to Option and Lease Agreement dated March 3rd, 2015, for the Tower between Church of the Nazarene and New Cingular Wireless, PCS, LLC (the "Lease") and in no event later than by February 28, 2045. The Lease shall not be renewed or extended in time if terminated for any reason before February 28, 2045.
- 7. Existing Church Use. There is also an existing church on the Property. A church use requires a use review within the RMX-2 zoning district. The existing church use may be

continued, without a use review, upon annexation of the Property. Any changes to the church use, except connection to City utility services as required under this Agreement, shall be made in accordance with the applicable standards and processes for the use under the Boulder Revised Code.

8. New Construction. All new construction commenced on the Property after annexation shall comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.
9. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.
10. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Property as set forth in this Agreement.
11. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold (and not record) such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that Applicant withdraws from this Agreement pursuant to the terms of this Agreement, or the City does not annex the Property, the City agrees that it will not record any such documents and will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.
12. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.
13. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City

may collect the monies due in the manner provided for in Section 2-2-12, B.R.C., 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.

14. Failure to Annex. In the event that the Property is not annexed to the City: (a) this Agreement and any document executed pursuant hereto shall be null and void and of no consequence; and (b) the City shall promptly return to Applicant all monies tendered to the City pursuant to this Agreement, including, without limitation, the stormwater PIF fee pursuant to Section 1(c)(i) above.
15. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's successors and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.
16. Right to Withdraw. The Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicant. The City agrees, within 30 days of a request by the Applicant after a withdrawal, to return all previously submitted fees, application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.
17. Community Benefit. The Applicant agrees that this is a voluntary agreement. Prior to a building permit application for any new dwelling unit on the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder covenants and deed restrictions that will require and secure construction of permanently affordable dwelling units on the Property consistent with the terms of this Agreement.
 - a) Affordable Units. The Applicant agrees that a certain percentage of the total number of new dwelling units constructed on the Property shall be developed and sold as for-sale deed restricted permanently affordable units ("Affordable Units"). The required percentage of Affordable Units depends on the number of dwelling units that will be constructed on the Property, except that the Applicant agrees that in any event no less than 30 percent (30%) of new dwelling units constructed on the Property shall be Affordable Units. If a density bonus is approved for the Property under Section 9-8-4, "Housing Types and Density Bonuses Within the RMX-2 Zoning District," B.R.C. 1981, the Applicant shall provide the percentage of Affordable Units on the

Property that is required under Section 9-8-4, B.R.C. 1981, for the bonus that is approved. The Applicant may satisfy the affordable housing requirement of this Agreement through any combination of the following means:

1. Concurrent On-site Construction. Construction of Affordable Units consistent with the terms of this Agreement and concurrently with construction of the Market Units. To ensure concurrency, a final certificate of occupancy may not be issued for a Market Unit unless at least an equivalent number of final certificates of occupancy has been issued for Affordable Units as Market Units on the Property. For purposes of this Agreement, "Market Units" means dwelling units that are intended to be sold at a price determined by the Property owner based on market conditions and demand and not subject to a deed restricting covenant establishing pricing requirements for the units.
2. Conveyance of Fee Simple Title. Conveyance of fee simple title to the City of Boulder, or an entity designated by the City of Boulder, at no cost to the City of Boulder or the designated entity, in one or more platted lots of the Property for construction of the required percentage of Affordable Units consistent with a site review approval for the development of the Property (the "Affordable Lot"). The Affordable Lot shall be platted consistent with the standards of Chapter 9-12, "Subdivision," B.R.C. 1981, except as may be expressly modified by this Agreement. The Affordable Lot shall meet the requirements described in the balance of this Section 17(a)(2) below to the City Manager's satisfaction.
 - i. The Affordable Lot shall be in an environmentally acceptable condition as supported by a Phase I Environmental Assessment, to be provided by the Applicant at no cost to the City. The City Manager may require other studies or assessments to make this determination, at no cost to the City.
 - ii. Satisfactory proof of title is provided to the City Manager within thirty days before the effective date of conveyance to the City or its designee. The Affordable Lot shall be free of all monetary liens and encumbrances and free of encumbrances other than: (a) this Agreement and other City development approvals and easements necessary for the development of the Property consistent with this Agreement and City approvals for the Property; and (b) those listed as exceptions in Exhibit F, but excluding those exceptions in Exhibit C that affect only that portion of the Property other than the Affordable Lot. All property taxes and special taxes will be current before the title for the "Affordable Lot" is conveyed. The Affordable Lot will be conveyed by special warranty deed before application of any building permit for a new dwelling unit on the Property. The conveyed Affordable Lot will be fully owned by the City or its designee.
 - iii. The Affordable Lot shall be of a size and include all rights to adequately and reasonably allow for construction of all Affordable Units required to be constructed on the Property pursuant to the terms of this Agreement and site

review approval. Any lot conveyed for this purpose shall be a finished lot. A lot shall be considered finished if, consistent with technical documents approvals for such improvements and City of Boulder Design and Construction Standards and the Boulder Revised Code standards, the lot has been roughly graded and provided with the underground water, sanitary sewer, and stormwater mains and service stub outs to the property line for the lot (service lines are not required) necessary to serve the Affordable Units and the streets required for the construction of the Affordable Units under the site review approval and/or this Agreement. Any future development of the lot conveyed under this paragraph with permanently affordable dwelling units shall meet the requirements of this Agreement for Affordable Units.

3. No cash-in-lieu. Cash-in-lieu shall not be an option for meeting the Community Benefit requirements of this Agreement nor for the Applicant's inclusionary housing obligation set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981 .
- b) Type. All of the Affordable Units must be for-sale units. A minimum of eighteen percent (18%) of the Affordable Units shall have three bedrooms and two baths. The remainder of the Affordable Units shall have a minimum of two bedrooms and one bath.
 - c) Parking. Each Affordable Unit shall have at least one parking space for an automobile. At least 45 percent (45%) of the Affordable Units shall include a carport or garage of adequate size to store one automobile. The remaining Affordable Units may have any type of parking, including at grade uncovered parking.
 - d) Design Quality. The Affordable Units shall be of comparable quality in design, construction, workmanship and materials to the Market Units.
 - e) Location. There is no requirement as to where Affordable Units are located within the development; Affordable Units may be evenly distributed or concentrated in one or more locations within the development.
 - f) Pricing and size. The total number of Affordable Units shall be divided into two pricing categories:
 - a. All two-bedroom Affordable Units on the Property shall have a minimum size of 1,000 square feet and be priced to be affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes shall be set at a maximum of 120% of the AMI.
 - b. All three-bedroom Affordable Units on the Property shall have a minimum size of 1,250 square feet and be priced to be affordable to households earning no more than 120% of the AMI and qualifying household incomes shall be set at a maximum of 150% of the AMI.

- c. The initial sales price of an Affordable Unit shall be based on the affordable pricing sheet established by the City Manager as in effect at the time of building permit issuance for the Affordable Unit. Pricing of future Affordable Unit resales shall be permanently restricted based on the initial sale price of the Affordable Unit and as described in the individual final permanently affordable deed restricting covenant executed by individual purchasers.
- g) Rounding. Any percentage requirement in this Paragraph 17 that results in a fraction is subject to standard rounding (0.5 and above rounds up).
- h) Housing Inspections. The City will retain a housing construction inspector (the "Inspector") to inspect and monitor construction of the Affordable Units. These inspections are to ensure the Affordable Units meet all contractual requirements and result in high quality, well-constructed housing. All costs for the time of the Inspector and any other costs incurred shall be borne by the Applicant.
- i) Affordable Agreement. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder an on-site agreement ("On-site Agreement") which includes but is not limited to details concerning required housing inspections, and specific requirements for a homeownership association.
- j) Covenants. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder a permanently affordable deed restricting interim covenant ("Interim Covenant") and related required documents to permanently secure the affordability of the Affordable Units. Upon the sale of an Affordable Unit to an affordable purchaser, a permanently affordable deed restricting covenant shall be executed by the individual purchasers and recorded with the Boulder County Clerk and Recorder. Upon sale of all Affordable Units to affordable purchasers, the Interim Covenant shall be released.
- k) Modification of Affordable Housing. The Applicant and the City Manager, or her delegate, may agree to modify the requirements set forth in this Paragraph 17 for developments with dwelling units provided that the City Manager finds the proposed development or land conveyance would provide an affordable housing benefit that provides a community benefit at least equivalent to the housing benefit provided by the Affordable Units required herein. The City Manager may not accept cash-in-lieu to satisfy the requirement for any of the on-site Affordable Units required under this Agreement.
- l) Consistency with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Administrative Regulations. Except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.

- m) Amenities. Access to any amenities provided to the Market Unit owners, including but not limited to open space and parks, shall equally be provided to the Affordable Unit owners.
- 18. Community Benefit for Nonresidential Development. For any nonresidential development of the Property requiring payment of the capital facility impact fee for affordable housing under Section 4-20-62, "Capital Facility Impact Fee," B.R.C. 1981, as may be amended from time to time, the Applicant agrees to pay the fee for affordable housing at a rate two-times the rate otherwise required to be paid for such development. This increased fee shall be paid in accordance with the standards applicable at the time of the development requiring payment of said fee.
- 19. Market Unit Size and Tenure. No dwelling unit on the Property shall have more than 2,500 square feet of floor area, excluding 500 square feet in a garage; provided, however, that if the total number of dwelling units allowed on the Property pursuant to an approved site review application is seventy-eight (78) or fewer, then the maximum square footage for each Market Unit shall increase to 3,000 square feet. The floor area requirements for the Market Units shall be based on the "floor area" definition found in Section 9-16-1, "General Definitions," B.R.C 1981.
- 20. Zoning. The Property shall be annexed to the City with an initial zoning classification of Residential - Mixed 2 (RMX-2), and except as otherwise set forth herein, shall be subject to all of the rights and restrictions associated with that zoning. Nothing in this Agreement shall limit the city's police power to zone and regulate this Property.
- 21. Subordination. Prior to second reading of the annexation ordinance, the Applicant shall obtain and submit to the City an agreement between any lender with a security interest in the Property and the City, executed by the mortgagee, in which the mortgagee consents to this Agreement and subordinates any interest in the Property to this Agreement in a form subject to approval of the City Manager and essentially as attached in Exhibit G.
- 22. Compatibility and Site Review. Prior to any application for a building permit for a new dwelling unit or a new principal use on the Property, the Applicant shall file with the City, and obtain approval of, a site review application which shall be reviewed and approved in accordance with the standards of Section 9-2-14, "Site Review," B.R.C. 1981, as in effect at the time such application is filed. A site review will be required regardless of whether the proposal meets the minimum thresholds for a required site review under Section 9-2-14, B.R.C. 1981, or whether the proposal would otherwise require a site review application. In order to address the compatibility criteria in Section 9-2-14(h)(3), B.R.C. 1981, the site review application shall include, without limitation, the following:
 - a) Eastern Right-of-Way Design. The Applicant's site review plans shall provide a public street along the eastern Property line that includes only two motor vehicle travel lanes (two-way travel) with a combined width of 20 feet, curb and gutter on the east and west side of the travel lanes and an eight-foot wide tree lawn and five-foot wide detached sidewalk on the west side of the street only (collectively, the "2801 ROW

Improvements”). The Applicant agrees that, as part of a site review approval, it will dedicate to the City a public access easement immediately to the west of the 2801 ROW as may be necessary to accommodate the eight-foot wide tree lawn and five-foot wide detached sidewalk noted above, but the parties agree that the public access easement for said improvements will not extend more than one foot beyond the edge of the sidewalk. The parties further agree that for the initial redevelopment of the Property no in-fee right-of-way dedication will be required along the eastern Property line for this public street in addition to the 2801 ROW dedication.

- b) Maximum Stories and Building Design. The Applicant’s site review plans may show buildings of up to three stories above finished grade, except that buildings along the entire eastern Property line and along no less than the eastern half of the northern Property line shall be no more than two-stories in height above finished grade and shall have sloped roof forms . This requirement shall not apply if the site review application is filed in 2030 or later and the City of Boulder has at that time adopted a subcommunity or area plan or design guidelines that apply to the Property. If such a plan or guidelines have been adopted at that time, the Property shall be developed consistent with the character established for the area in such plan or guidelines.
 - c) Future Adopted Plans. If a site review application for the Property is submitted before January 1, 2027, then development of the Property shall not be subject to any subcommunity plan, area plan, or design guidelines then in effect.
23. Public Improvements. As part of the required site review approval for the initial redevelopment of the Property, the Applicant agrees to provide or improve, at no cost to the City, certain public improvements on and off the Property. The specific improvement requirements will be determined in the site review process and may include, without limitation, dedication of rights-of-way and easements for and construction of the following consistent with applicable standards of the Boulder Revised Code and City of Boulder Design and Construction Standards (“DCS”):
- a) Detached sidewalks and landscape areas along both Jay Road and US 36/28th Street in the locations where the Property directly abuts the public right-of-way or public easements for Jay Road and US 36/28th Street;
 - b) Intersection improvements at the intersection of Jay Road and US 36/28th Street;
 - c) Jay Road improvements including:
 - a. A new left turn lane to enter the Property and a new left turn lane approaching the intersection with US 36/28th Street;
 - b. A center median;
 - c. A raised pedestrian/bicycle crossing across the channelized right turn lane on westbound Jay Road at the intersection with 28th Street; and
 - d. Reconstruction of a standard RTD boarding area and concrete shelter pad behind the detached sidewalk meeting RTD standards;
 - d) The 2801 ROW Improvements; and
 - e) A multi-use path and other improvements that may be anticipated in the City of Boulder Transportation Master Plan or an adopted connections plan for the area at the time the

site review application is filed. Instead of requiring construction of any such public improvement at the time of the development of the approved site review plans, the City may require payment, to the City, of the cost of construction of the improvement to allow for construction thereof by the City at a later time.

24. Solar Access. The approving authority of a site review for the Property shall have the authority to modify under the site review process, the solar access standards of Section 9-9-17, "Solar Access," B.R.C. 1981, for lots developed with townhouses where the modification is required to allow for townhouses to be built on individual lots, for example, to allow a zero setback from lot lines where two townhouses are attached.
25. Density Calculation. In the initial redevelopment of the Property with dwelling units meeting the Affordable Unit requirements under Paragraph 17 of this Agreement, when determining the maximum number of dwelling units allowed per acre pursuant to such standards in Section 9-8-1, "Schedule of Intensity Standards," B.R.C., 1981, and pursuant to the standard in Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C., 1981, the size of the Property, as measured prior to any dedications, will be considered the basis, or more particularly, the "lot or parcel" for such analysis. However, in no event shall the density of the Property exceed the maximum density allowed (pursuant to the same methodology) under the land use map designation of the Boulder Valley Comprehensive Plan for the Property.
26. Density Bonus. In a site review or amendment thereto for the development or redevelopment of the Property, when determining for purposes of a density bonus under Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C. 1981, whether permanently affordable dwelling units on the Property meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, any Affordable Units meeting the requirements set forth in Paragraph 17 shall be considered meeting the requirements of Chapter 9-13 for this particular purpose. This paragraph does not modify the required percentage numbers of units that are permanently affordable units for any of the density bonuses available under Section 9-8-4, B.R.C. 1981.
27. Stormwater Requirements. Any development of the Property shall meet drainage and stormwater quality requirements of the Boulder Revised Code and City of Boulder Design and Construction Standards ("City Stormwater Requirements"). The Applicant will design and construct, at no cost to the City, any on-site and off-site drainage or stormwater quality systems that are necessary to meet City Stormwater Requirements for the development of the Property, as determined by the City Manager, which may include without limitation modifications to the Farmer's Ditch. The Applicant shall be responsible for obtaining any required approval(s) from the Farmer's Ditch for stormwater generated or discharged from or modified by the Applicant's Property.
28. Private Streets. The approving authority of a site review for initial redevelopment of the Property with Affordable Units meeting the requirements of Paragraph 17 of this Agreement, shall have the authority to modify the standards of the Boulder Revised Code

and DCS to allow for approval of a subdivision of the Property under Chapter 9-12, "Subdivision," B.R.C. 1981, with private streets and lots that do not front on or have direct access to a public street, but rather solely front on and have frontage on a private street, if the approving authority finds that the application meets the site review criteria.

(signature page follows)

EXECUTED on the day and year first above written.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: _____

Margaret J. Freund, Manager

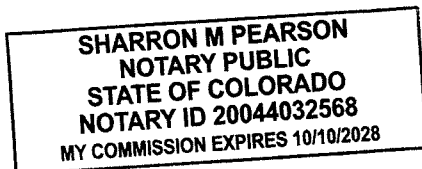
STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 22nd day of October, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10-10-2028

[Seal]



Sharron M. Pearson
Notary Public

CITY OF BOULDER, COLORADO

By: _____
Nuria Rivera-Vandermyde, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Date: _____

Exhibits

Exhibit A	Legal Description of Property
Exhibit B	Deed of Dedication
Exhibit C	Quitclaim Deed
Exhibit D	Quitclaim Deed
Exhibit E	Map of Tower
Exhibit F	Title Exceptions
Exhibit G	Subordination Agreement

EXHIBIT A

LEGAL DESCRIPTION

2801 Jay Road

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 FEET PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING,

EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE 80 AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. 264461, COUNTY OF BOULDER, STATE OF COLORADO.

EXHIBIT 1 (PAGE 1 OF 2)

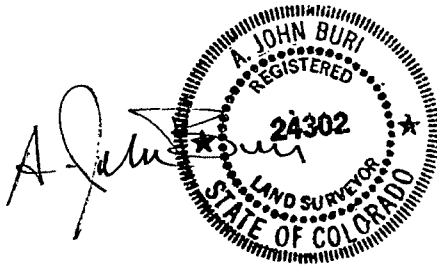
LEGAL DESCRIPTION – ROW DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS, THE POINT OF BEGINNING.

THENCE S89°31'47"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE N00°25'44"W, A DISTANCE OF 439.50 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL; THENCE N89°32'02"E ALONG THE NORTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE S00°25'44"E ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 439.50 FEET TO THE POINT OF BEGINNING.

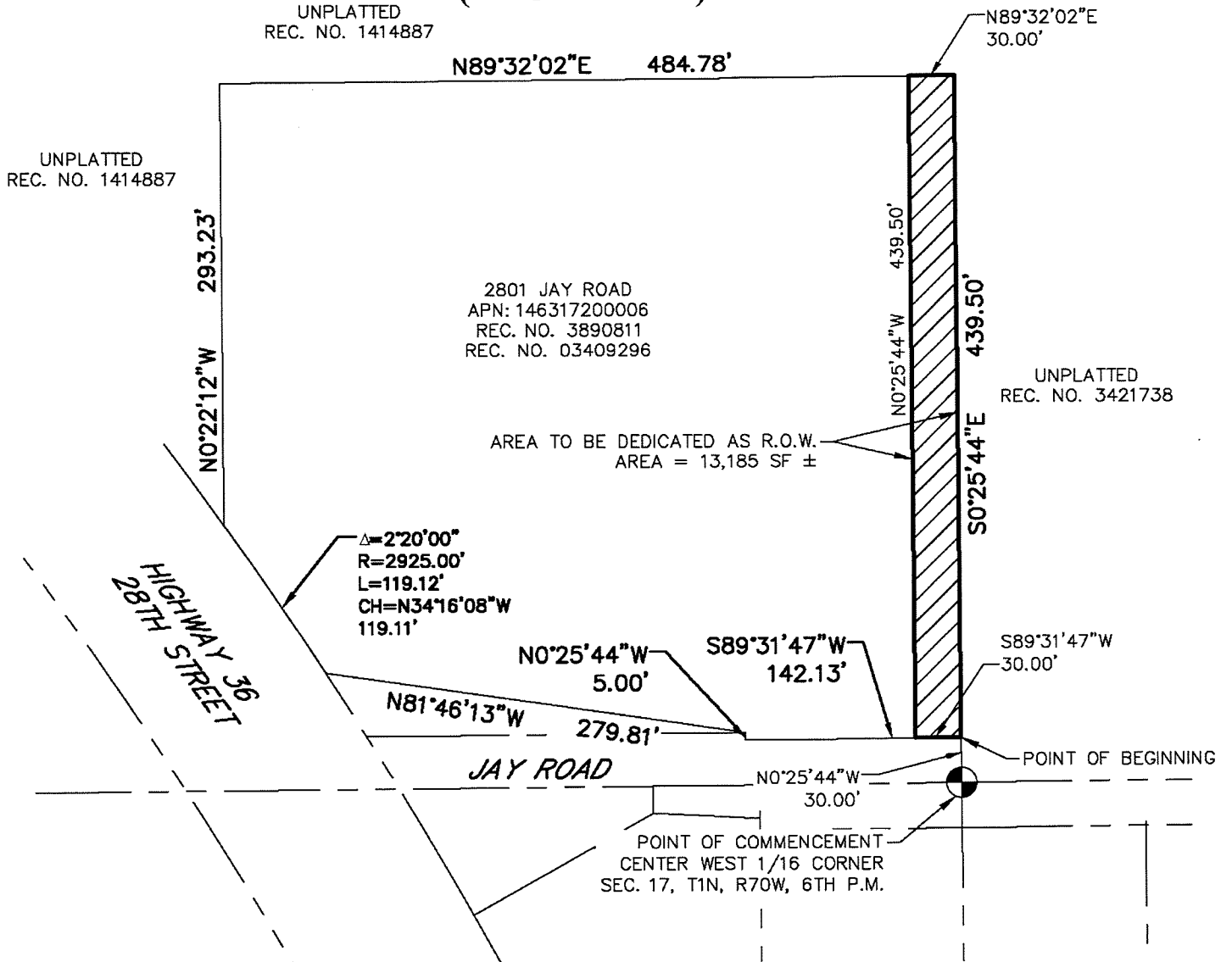
SAID PARCEL CONTAINS 13,185 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

Exhibit B – Page 2

EXHIBIT 1 (PAGE 2 OF 2)



1 ROW DEDICATION

SCALE: 1" = 100'

N

EXHIBIT C

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

WITNESS, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

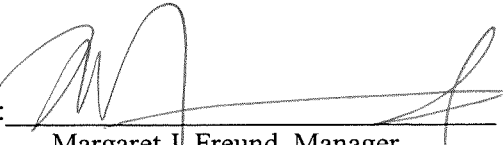
SEE EXHIBIT 1 ATTACHED

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

(signature page follows)

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Margaret J. Freund, Manager

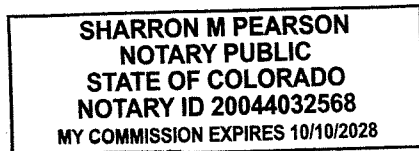
STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 22nd day of October, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10-10-2028

[Seal]





Notary Public

EXHIBIT 1 (PAGE 1 OF 2)

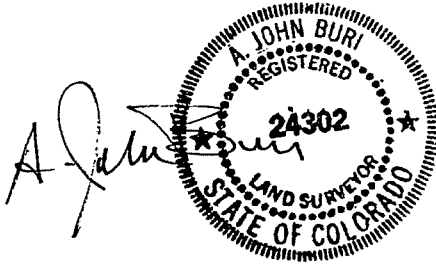
LEGAL DESCRIPTION – QUITCLAIM DEED

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 142.13 FEET TO THE POINT OF BEGINNING.

THENCE S89°31'47"W, A DISTANCE OF 61.11 FEET; THENCE N00°15'49"W, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 61.09 FEET; THENCE S00°25'44"E ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 306 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

EXHIBIT 1 (PAGE 2 OF 2)

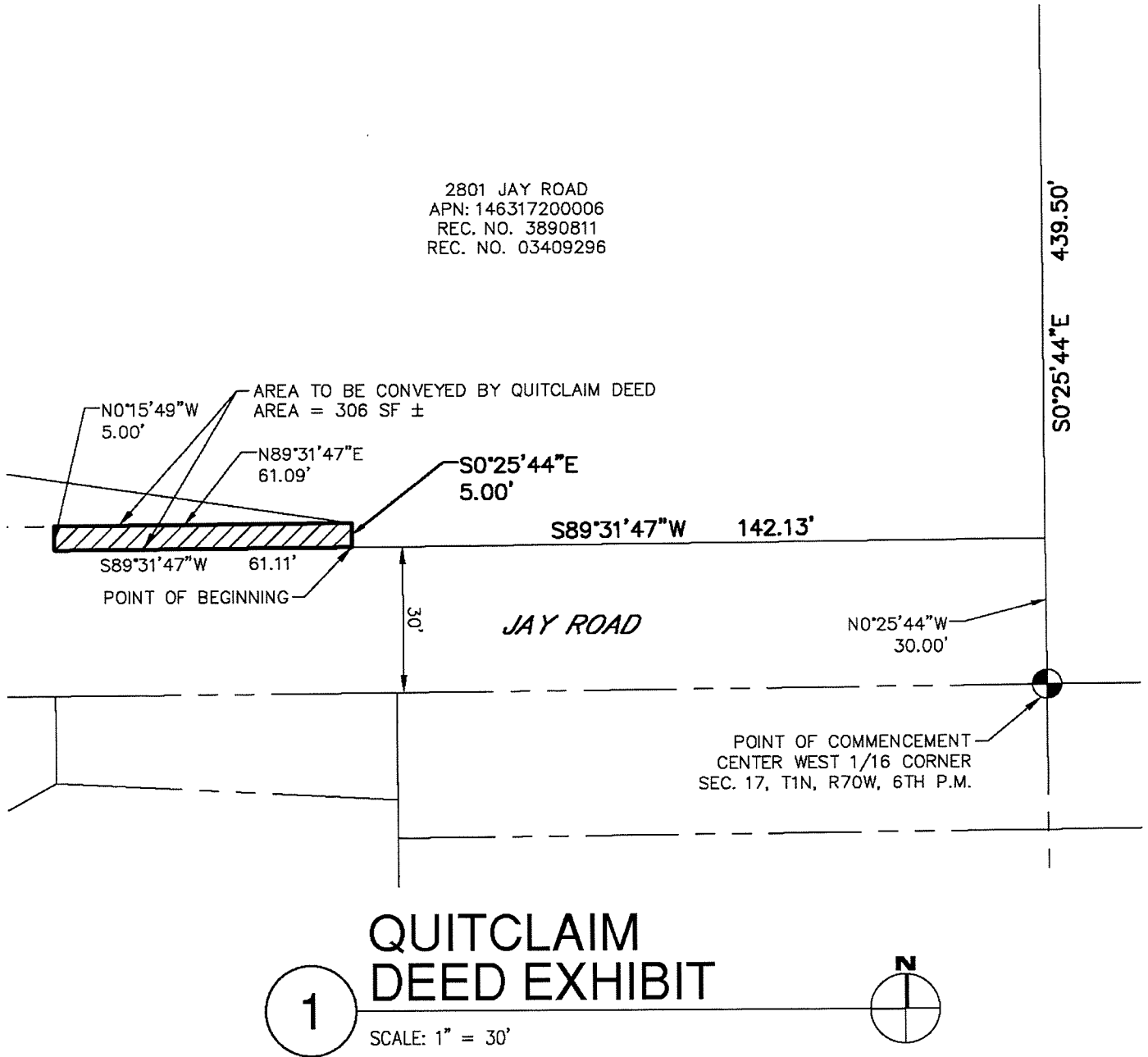


EXHIBIT D

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

WITNESS, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT 1 ATTACHED

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

(signature page follows)

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Margaret J. Freund, Manager

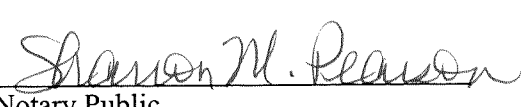
STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 22nd day of October, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10-10-2028

[Seal]


Notary Public

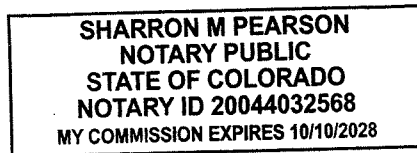


EXHIBIT 1
(PAGE 1 OF 2)

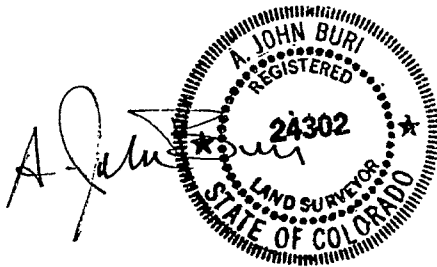
LEGAL DESCRIPTION – R.O.W. DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

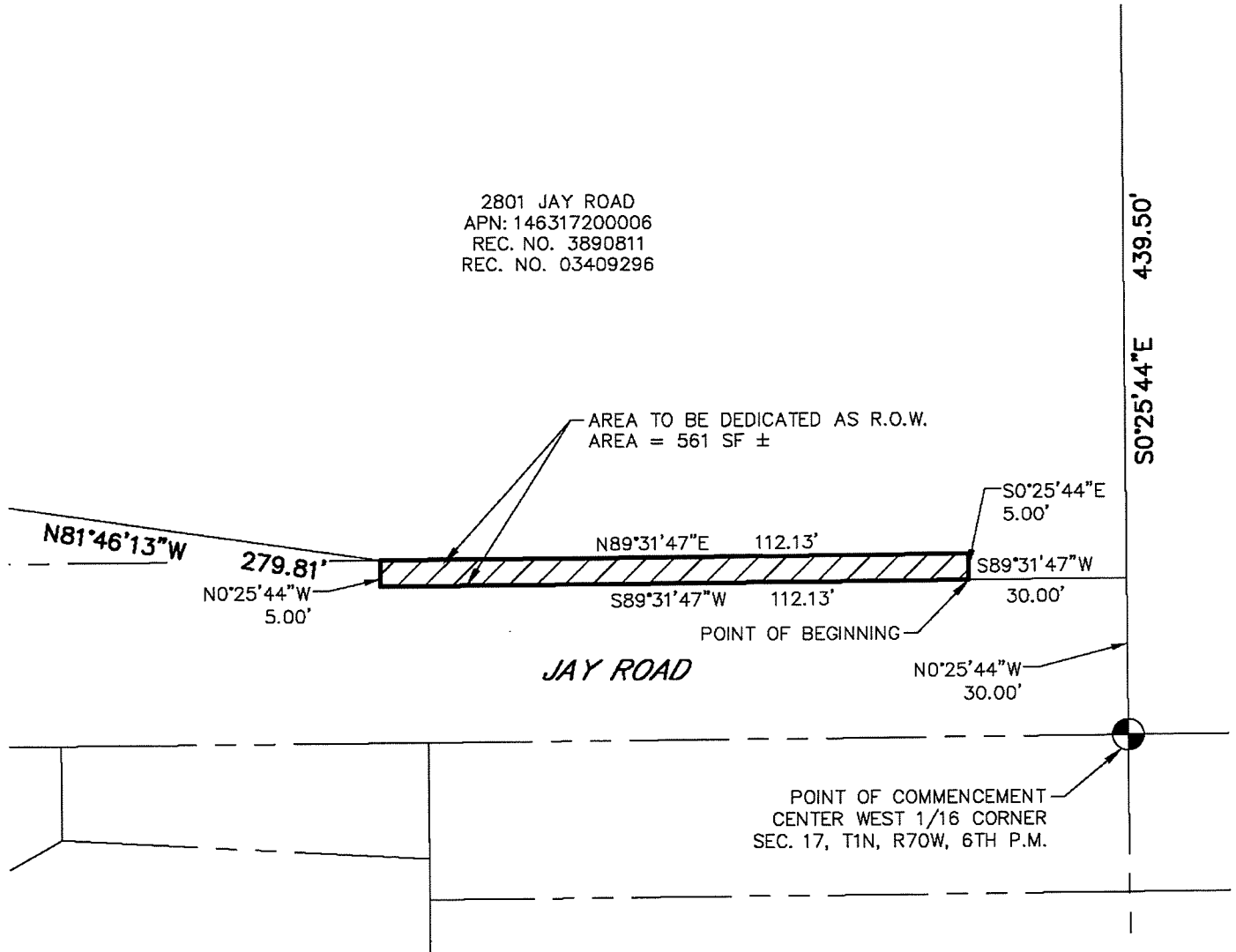
THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 112.13 FEET; THENCE N00°25'44"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 112.13 FEET; THENCE S00°25'44"E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 561 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

EXHIBIT 1 (PAGE 2 OF 2)



1 R.O.W. DEDICATION

SCALE: 1" = 30'

EXHIBIT E

MAP OF TOWER

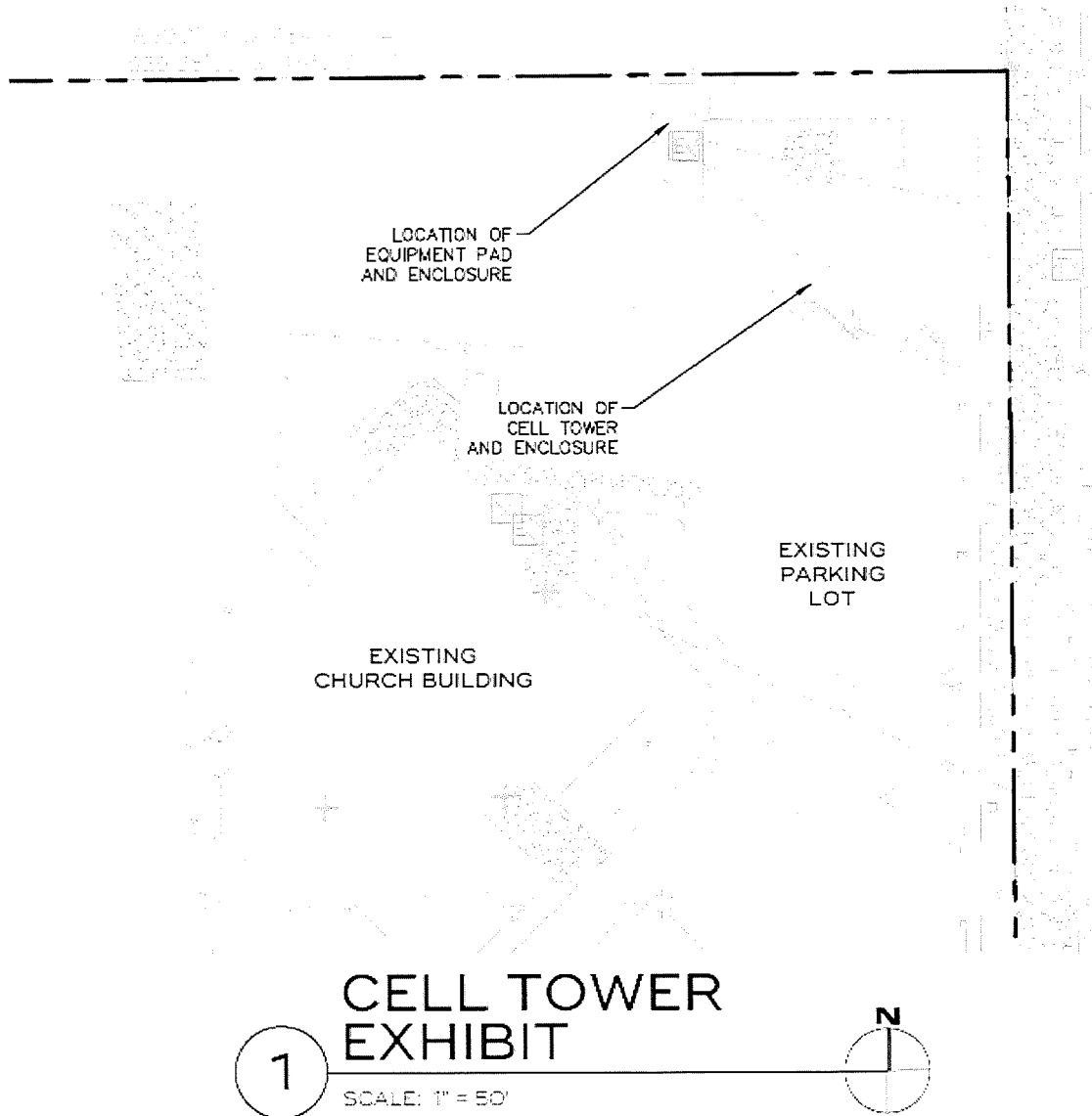


EXHIBIT F
TITLE EXCEPTIONS

1. TAXES FOR THE YEAR OF CONVEYANCE, PAYABLE JANUARY 1 THE FOLLOWING YEAR, A LIEN NOT YET DUE AND PAYABLE.
2. RIGHT OF THE PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 08, 1902 IN BOOK 167 AT PAGE 59.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN DECREE RECORDED JANUARY 17, 1975 UNDER RECEPTION NO. **126971**.
4. RIGHTS OF THE PUBLIC IN AND TO ANY PORTION OF SUBJECT PROPERTY FOR ROAD RIGHT OF WAY PURPOSES, AS SET FORTH IN DECREE RECORDED JANUARY 17, 1975 UNDER RECEPTION NO. **126971**.
5. ANY TAX, LIEN, FEE, OR ASSESSMENT FOR THE YEAR OF CONVEYANCE AND NOT YET DUE AND PAYABLE BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED JANUARY 13, 1989, UNDER RECEPTION NO. **00962510**.
6. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DECLARATION OF COVENANTS RECORDED SEPTEMBER 30, 1993 UNDER RECEPTION NO. **01343144**.
7. LEASE BETWEEN FIRST CHURCH OF THE NAZARENE, LANDLORD, AND NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TENANT, AS SHOWN BY MEMORANDUM OF LEASE RECORDED FEBRUARY 14, 2006, UNDER RECEPTION NO. **2756479**.

MEMORANDUM OF AGREEMENT BY AND BETWEEN COLORADO DISTRICT OF THE CHURCH OF THE NAZARENE, AND NEW CINGULAR WIRELESS PCS, LLC, IN CONNECTION WITH SAID LEASE WAS RECORDED MAY 22, 2015 UNDER RECEPTION NO. **03447476**.

NOTE: THE PRESENT OWNERSHIP OF THE LEASEHOLD CREATED BY SAID LEASE AND OTHER MATTERS AFFECTING THE INTEREST OF THE LESSEE ARE NOT SHOWN HEREIN.

8. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPMENT AGREEMENT RECORDED FEBRUARY 16, 2006 UNDER RECEPTION NO. **2756996**.

EXHIBIT G

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (“Agreement”) is executed by The Colorado District of the Church of the Nazarene, a Colorado nonprofit corporation, whose address is PO Box 76570, Colorado Springs, Colorado 80970-6570 (“Mortgagee”) for the benefit of MJF 2801 Jay RD Development LLC, a Virginia limited liability company, whose mailing address is c/o Fulton Hill Properties, 1000 Carlisle Avenue, Richmond, VA 23231 (“Mortgagor”), and by the City of Boulder, a Colorado home rule city (“the City”).

A. Mortgagor is the owner of that certain real property in Boulder County, State of Colorado, generally known as 2801 Jay Road and more particularly described in **Exhibit 1** (“Property”); and

B. Mortgagee and Mortgagor are parties to that certain Loan Agreement dated as of June 4, 2021 (the “Loan Agreement”), pursuant to which Mortgagor financed the original principal amount of \$2,440,000 (the “Loan”) for the purchase by Mortgagor from Mortgagee of that certain real property located at 2801 Jay Road, Boulder, Colorado (as more particularly defined in the Loan Agreement, the “Property”). Pursuant to the Loan Agreement the Mortgagor executed a Promissory Note Secured by First Lien Deed of Trust dated June 1, 2021, for the principal sum of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) (“Original Promissory Note”) payable to the order of Mortgagee, with interest at the rate of 5% per annum, payable in accordance with the terms of Original Promissory Note. The Original Promissory Note was secured by that certain First Lien Deed of Trust dated as of June 4, 2021, recorded June 8, 2021 in the Land Records for the County of Boulder, State of Colorado, at Reception No. 03890812 (“Deed of Trust”); and

C. Pursuant to that certain Loan Modification Agreement between Mortgagor and Mortgagee dated as of October 7, 2024 (“Loan Modification Agreement”), (i) Mortgagee is the holder of an amended and restated promissory note made by Mortgagor, dated as of October 7, 2024, in the original principal amount of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) (“Note”), which amends and restates in its entirety the Original Promissory Note, and (ii) Mortgagor has executed an Amendment to First Lien Deed of Trust dated as of October 7, 2024 (“Deed of Trust Amendment”), which Deed of Trust Amendment is to be recorded prior to this Agreement and a copy of which Deed of Trust Amendment is attached hereto as **Exhibit 2** and incorporated herein by this reference. The Deed of Trust as amended and restated in the Deed of Trust Amendment is hereafter referred to as “Mortgage”; and

D. Concurrently with this Agreement, Mortgagor is entering into an annexation agreement with the City, which is more particularly described in **Exhibit 3** attached hereto and incorporated herein by this reference (“Annexation Agreement”); and

E. Upon Mortgagor’s request, Mortgagee has consented to and agreed to subordinate the Mortgage to the terms of the Annexation Agreement, which Mortgagee has reviewed and approved; and

F. The Annexation Agreement, which would not otherwise be agreed to by the City, is being agreed to by the City in reliance on this Agreement; and

G. The parties agree that the Annexation Agreement provides a benefit to the Property.

NOW THEREFORE in consideration of the above and mutual covenants and promises contained herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is represented and agreed as follows:

1. The Mortgage is subordinated and hereafter shall be junior to the Annexation Agreement to the extent necessary to permit the City to enforce the purposes and terms of the Annexation Agreement in perpetuity and to prevent any modification or extinguishments of the Annexation Agreement by the exercise of any right of Mortgagee.

2. The priority of the Mortgage with respect to any valid claim on the part of Mortgagee to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases, rents, and profits of the Property, is not affected hereby, and any lien that may be created by the City's exercise of its rights under the Annexation Agreement shall be junior to the Mortgage.

3. Mortgagee shall not be joined as a defendant in any action to enforce the Annexation Agreement, or seeking damages, fees, or costs of any kind pursuant to the Annexation Agreement, and the Mortgage shall have priority over any judgment entered for any costs, fees, or damages under the Annexation Agreement, unless the violation representing the grounds for the action was caused by Mortgagee or its agents or employees or the Mortgagee is a fee owner of the Property.

4. If at any time in an action to enforce the Annexation Agreement, the City obtains injunctive relief requiring that the Property be restored in any respect, Mortgagee shall not be held liable for any costs of restoration, regardless of who is in possession of the Property, unless Mortgagee or its agents or employees is responsible for the condition requiring restoration or Mortgagee is the fee owner of the Property.

5. In the event of a foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Annexation Agreement shall not be extinguished but shall survive and continue to encumber the Property.

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

7. This Agreement shall be recorded immediately after the Annexation Agreement.

Entered into this _____ day of _____, 2024.

[SIGNATURE BLOCKS ON THE FOLLOWING PAGES]

Mortgagee:

The Colorado District of the Church of the Nazarene,
a Colorado nonprofit corporation

By: _____

Printed Name: _____

Title: _____

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2024, by _____, as _____ of
The Colorado District of the Church of the Nazarene.

Witness my hand and official seal.

My commission expires _____.

Notary Public

CITY OF BOULDER, COLORADO

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

Approved as to form:

City Attorney's Office

Date: _____

EXHIBITS

Exhibit 1	Legal Description for Property
Exhibit 2	Deed of Trust Amendment
Exhibit 3	Annexation Agreement

EXHIBIT 1

to Subordination Agreement

Legal Description

2801 Jay Road

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 FEET PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING, EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE 80 AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. 264461, COUNTY OF BOULDER, STATE OF COLORADO.

EXHIBIT 2

to Subordination Agreement

Amended and Restated First Lien Deed of Trust

[to be attached to the Subordination Agreement]

EXHIBIT 3
to Subordination Agreement
Annexation Agreement

[to be attached to the Subordination Agreement]

Annexation Information

Size of property: 4.8565 ac Requested Zoning: RMX-2

Districts

<input checked="" type="checkbox"/> _____	Boulder Valley School District	<input type="checkbox"/> _____	Left Hand Water District
<input type="checkbox"/> _____	St. Vrain School District	<input type="checkbox"/> _____	Other (list)
<input checked="" type="checkbox"/> _____	Boulder Rural fire District	<input type="checkbox"/> _____	
<input type="checkbox"/> _____	Rocky Mountain Fire District	<input type="checkbox"/> _____	

1. MJF 2801 Jay Rd Development LLC
2. The Colorado District of the Church of Nazarene (Lender)
- 3.
- 4.

Please Note:

No person shall petition to the city of Boulder for annexation of any real property until he has first read and thereafter follows these instructions in the execution of the within petition:

1. Every person signing the within annexation petition must personally insert the information required on the signature page(s) attached to the petition.
2. The person or persons who circulate the within petition must witness the signatures of every person signing this petition and so certify by executing the affidavit attached on the last page of this petition.
3. The following definitions of terms shall be applicable throughout this petition and every subsequent step of the annexation proceeding commenced pursuant to this petition:

- a. Landowner: means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an individual interest in the surface estate and not the owner in fee of an individual interest in the mineral estate. In the case of multiple landowners, such as tenants in common or joint tenants, only one such landowner need petition for annexation, and the signature of one such landowner shall be sufficient, provided however, that said signing landowner had become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes, and provide further, that no other owner in fee of an individual interest of the same property objects to the annexation of the said property within 14 days after the filing of the annexation petition by submitting a written statement of his objections to the City Council.

A purchaser of real property shall be deemed a landowner for the purpose of an annexation petition if:

- (1) The said purchaser is purchasing the land pursuant to a written contract duly recorded, and
- (2) The said purchaser has paid the taxes thereon for the next preceding tax year.

A corporation, non-profit, owning land shall be deemed a landowner, and the same persons authorized to convey land for the corporation shall sign the within petition on behalf of such corporation.

- b. Nonresident Landowner: means any person owning property in the area proposed to be annexed, who is not a qualified elector as herein below defined, and who is at least eighteen (18) years of age as attested to by a sworn affidavit.
- c. Identical Ownership: means a situation where each owner has exactly the same degree of interest in a separate parcel of two or more parcels of land.
- d. Contiguous: means that one-sixth of the boundary of the territory proposed for annexation and the city limits must coincide. Contiguity as referred to in this petition or subsequent annexation proceedings is not affected by the existence of a platted street or alley, public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the city limits of the city of Boulder and the territory to be annexed.

4. This petition must be filed with the City Clerk of the city of Boulder.

5. This petition should be filed in the following manner:
- a. All blanks herein contained should be filled out and completed.
 - b. Each signer shall, before signing said petition, carefully read the contents hereof.
 - c. The signatures attached to this petition must have been signed within 180 days immediately preceding the filing of the said petition with the City Clerk.
 - d. After filing of the petition, no person having signed said petition shall thereafter be permitted to withdraw his/her signature from said petition.
 - e. This petition shall be accompanied by at least four copies of an annexation map containing the following information:
 1. A written legal description of the boundaries of the area proposed to be annexed.
 2. A map showing the boundaries of the area proposed to be annexed.
 3. Within the boundaries of the area proposed to be annexed, the location of each ownership tract in unplatted land and, if part or all of the area has been platted, the boundaries and the plat numbers of the plots or of the lots and blocks shall be shown.
 4. The portion of the boundaries of the area proposed to be annexed which is contiguous to the city limits of the city of Boulder, as the same exist at the time this annexation petition is to be filed, must be shown and the dimensions thereof indicated.

Submit with your application.

TO THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, GREETINGS:

The undersigned hereby petition(s) the city of Boulder to annex to the city of Boulder the territory shown on the map(s) attached hereto and described on the attachment hereto:

This Petition is signed by landowners qualified to sign. It is intended that this Petition be a one hundred percent (100%) petition for annexation as described in C.R.S. 1973, Section 31-12-107(l)(g), (as amended).

In support of this petition, the undersigned state(s) and allege(s) as follows, to wit:

1. That it is desirable and necessary that the above described territory be annexed to the city of Boulder.
2. That petitioners are landowners of one hundred percent (100%) of the territory, excluding streets and alleys, herein proposed for annexation to the city of Boulder.
3. That no less than one-sixth of the aggregate external boundaries of the above described territory hereby petitioned to the city of Boulder is contiguous to the city limits of the city of Boulder.
4. That a community of interest exists between the above described territory and the city of Boulder, And that the same is urban, or will be urbanized in the near future, and further that the said territory is integrated or is capable of being integrated in the city of Boulder.
5. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, except and unless such tracts or parcels are already separated by a dedicated street, road or other public way.
6. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty acres or more which, together with the buildings and improvements situate thereon, have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the filing of the within petition for annexation, has been included within the above.
7. That the above described territory does not include any area which is the same or substantially the same area in which an election for an annexation to the city of Boulder was held within the twelve months preceding the filing of this petition.
8. That the above described territory does not include any area included in another annexation proceeding involving a city other than the city of Boulder.

9. That at least four copies of an annexation map setting forth with reasonable certainty a written legal description of the boundaries of the area proposed to be annexed, a delineation of the outer boundaries of the above described territory, and the location of each ownership, tract and/or the boundaries and the plat numbers of plats and lots and blocks, the portion of the boundary contiguous with the existing city limits of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, accompany, have been attached hereto and hereby constitute a part of this petition.
10. That the above described territory is not presently a part of any incorporated city, city and county, or town.
11. That the above area described will (not) result in the detachment of area from any school district and the attachment of the same to another school district (and the resolution of school board of the district to which the area will be attached approving this annexation request).


ANNEXATION PETITION

Signature of petitioners requesting
annexation of property to the city of
Boulder, Colorado

Date of
signature
of each
petitioner

Mailing address of
each petitioner

Description of property included within the area proposed for
annexation owned by each person signing this petition. (Attach
separate sheet, if necessary).

 3/7/24

MJF 2801 Jay Rd Development LLC
1000 Carlisle Avenue
Richmond, VA 23231

Entire Parcel
(see attached legal description)

— Margaret J. Freund
Manager of
MJF 2801 Jay Rd Development LLC

CIRCULATOR'S AFFIDAVIT
CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
 COUNTY OF BOULDER)

Donald P. Ash

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

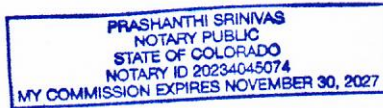


Donald P. Ash

Circulator

Subscribed and sworn to before me this 7 day of March, A.D. 20 24.

Witness my hand and official seal. My commission expires: 11/30/2027.




Notary Public

CIRCULATOR'S AFFIDAVIT

STATE OF COLORADO)
) ss.
 COUNTY OF BOULDER)

being first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing petition and that the signatures on said petition are the signatures of the persons whose names they purport to be.

 Circulator

Subscribed and sworn to before me this _____ day of _____, A.D. 20_____.

Witness my hand and official seal. My commission expires:_____.

LEGAL DESCRIPTION

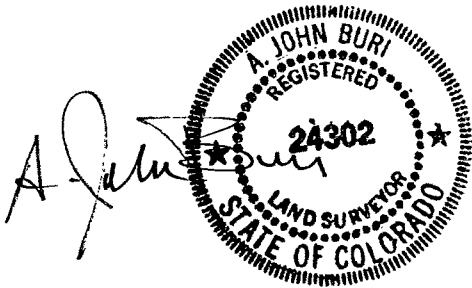
(FOR AREA TO BE ANNEXED)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

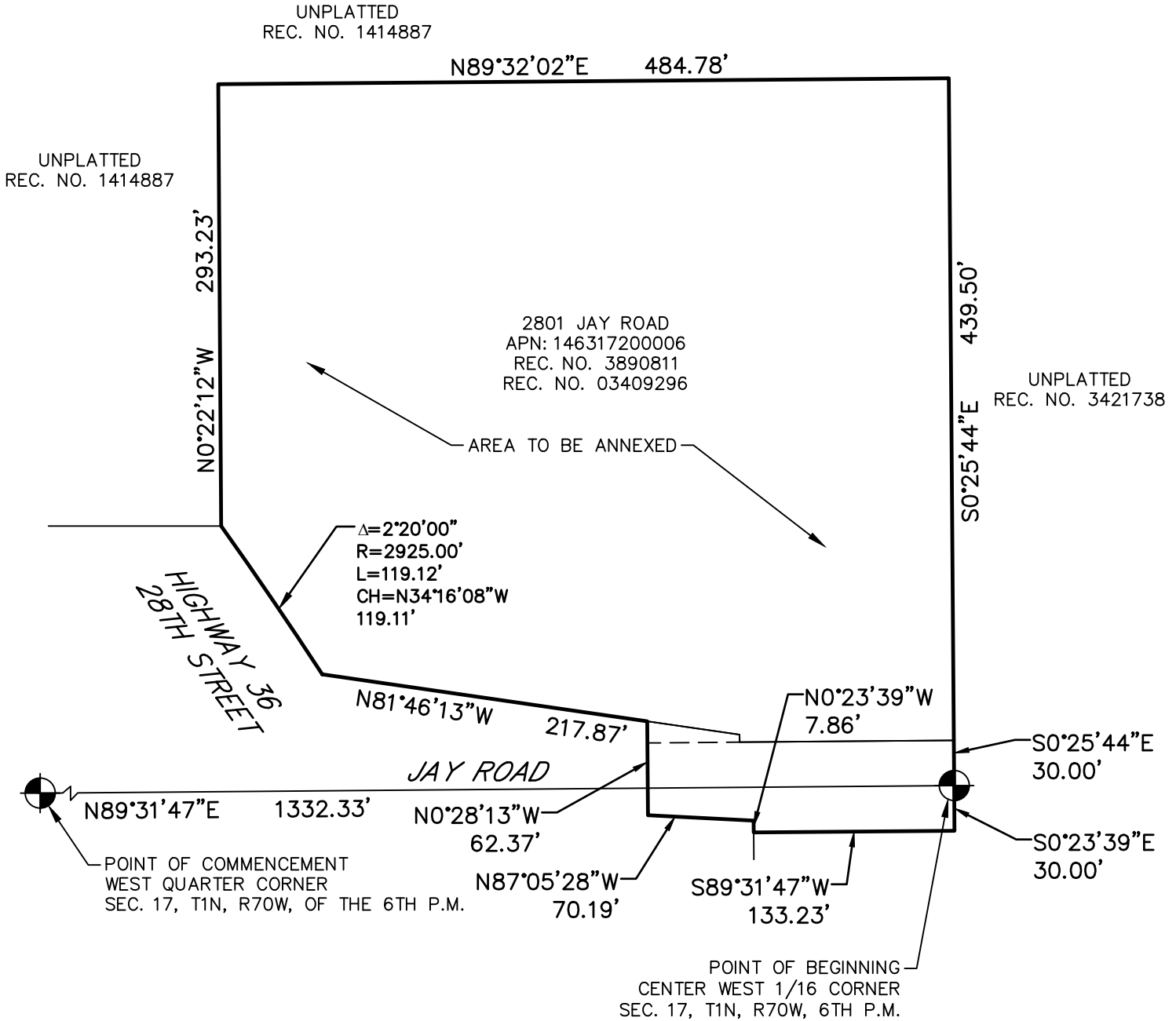
COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;
THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;
THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;
THENCE N87°05'28"W, A DISTANCE OF 70.19 FEET;
THENCE N00°28'13"W, A DISTANCE OF 62.37 FEET;
THENCE N81°46'13"W, A DISTANCE OF 217.87 FEET;
THENCE 119.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 02°20'00", A RADIUS OF 2925.00 FEET AND A CHORD WHICH BEARS N34°16'08"W, A DISTANCE OF 119.11 FEET;
THENCE N00°22'12"W, A DISTANCE OF 293.23 FEET;
THENCE N89°32'02"E, A DISTANCE OF 484.78 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17;
THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;
THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
03/07/24
PROJECT NO. 23142



ANNEXATION EXHIBIT

1

SCALE: 1" = 100'



siteworks
creativity for
the built environment

2801 Jay Road

2801 Jay Road
Boulder, CO 80301

Project: 23142A
File: 23142A-3.dwg
Date: 10/02/23

Public Comments

From: Ariella Futral <ariella.futral@gmail.com>
Sent: Tuesday, July 25, 2023 1:41 PM
To: Moeller, Shannon <MoellerS@bouldercolorado.gov>
Subject: LUR2022-00038 - 2801 Jay Road

Hello Shannon,

I hope you are well. I got your email from Pete L'Orange whom I had written to regarding the proposed development at 2801 Jay Rd. He thought you might be the person handling this and directed me to you.

I am writing in response to the proposed redevelopment at 2801 Jay Rd LUR2022-00038. which is to include 84 for-sale dwelling units ranging from 1,050 SF to 1,800 SF, consisting of townhome, duplex, and triplex housing types.

As a Boulder resident since 1978, I have seen a lot of change occur. What was once a small town is now a crowded city. When my husband and I returned here to raise our child after living abroad, we chose to live on the edge of town as Boulder had become so dense. We wanted to live in what is currently called "Rural North Boulder" for the quick access to nature and to get away from the hectic traffic and density within the city. We have loved living here with wide-open spaces so close. It is quiet, there is breathing room, and wildlife seem to flourish here.

The proposed 84 unit condo is going to destroy the rural aspect of our neighborhood and increase greenhouse gasses. Currently there is a church there and a farm across the street. It really is the 'edge of town'. This development will ruin that. Having a high-density development will mean tons of construction, noise, traffic, and ultimately an end to our experience of being 'rural'. This property is currently in unincorporated Boulder County, the proposed redevelopment would be part of a proposal to annex it into the City of Boulder. This expands the city and greatly reduces the natural surroundings.

In addition, there are already multiple accidents at Jay and 28th weekly. Having this type of density in this area will only increase these. There are few ways for someone coming from Jay heading west to get into town, they either have to go left on 28th or take Jay to 26th street and head south. Having this type of increase in residents will make it impossible to drive on 26th - which is a quieter residential street. The traffic will increase noise and the risk of accidents, especially as 26th is used by many kids who go to Centennial Middle School via bike and walking.

We absolutely believe in equitable housing and while the proposed development will have a fraction used for this (as per city requirements) it isn't enough to feel that this type of development is solving the housing crisis. This type of project would be better suited at Iris and 28th - a huge expanse of dying business and parking lots. The perfect place for high-density condo living.

I do hope the planning board will consider opposing this development.

I look forward to hearing from you.

Thank you for your time.
Ariella Futral

From: Robyn Kube <robkube@dietzedavis.com>
Sent: Wednesday, August 2, 2023 9:53 AM
To: Moeller, Shannon <MoellerS@bouldercolorado.gov>
Subject: 2801 Jay Road/LUR2023-00018-19

Shannon,

I understand that Margaret Freund submitted a formal annexation and initial zoning application in connection with the subject property.

I wanted to make sure that I am on the email list for this application and wondered where in the process this is. As you may recall, I am especially concerned about Ms. Freund's assumption, as evidenced by the drawings she has submitted in connection with the application, that she will be able to access the project via a narrow dirt track located to the east on private land within the County and not part of her annexation request. This track, even if it might somehow be available for use for this project, is irregularly shaped and not wide enough to support access for this development if the development were located in the County. I have had conversations with the County Attorney's office regarding this issue and suggest that County Transportation should be included in any referrals for this application.

Thank you for your consideration,

Robyn Kube



Robyn W. Kube, President
Dietze and Davis, P.C.
2060 Broadway, Suite 400
Boulder, CO 80302
(303) 447-1375

Serving the West from Boulder since 1972

From: [Kay Bingham](#)
To: [boulderplanningboard](#)
Subject: 28th/Jay Project
Date: Monday, August 26, 2024 5:16:41 PM

External Sender Notice This email was sent by an external sender.

Planning Board:

My husband and I are long term Boulder homeowners. We are distressed by the lack of middle income housing and hopeful that the proposed project at 28th and Jay will go forward.

We know the intersection is busy and will require improvements like sidewalks, or maybe an underpass for pedestrians and bikes?

I hope this and more middle income projects will be improved. We have more than enough luxury housing.

Kay and Larry Bingham
3235 6th. St.
Boulder

From: [Robyn Kube](#)
To: [boulderplanningboard](#)
Cc: [Moeller, Shannon](#)
Subject: 2801 Jay Rd (LUR2023-00018, LUR2023-00019)
Date: Friday, August 23, 2024 4:10:18 PM
Attachments: [20240822 Crittenden email.docx](#)

External Sender Notice This email was sent by an external sender.

I have lived in the Woodside subdivision southwest of 2801 Jay Road for 35 years. I am also a long-time cyclist and real estate attorney in Boulder, so am very familiar with the proposed redevelopment that has been working its way through the City's Planning Department for almost 10 years. Its primary appeal has always been the prospect of affordable housing.

In 2016 the Applicant proposed to use the site to satisfy the affordable house component for a related development now under construction at Iris and Broadway. That proposal anticipated 94 units. The high density and its expected impact on Jay Road, in general, and at its intersection with US 36/28th Street, specifically, derailed those efforts.

The 2022 proposal reduced the density to 84 units, with 40% for middle income affordable housing, but density, transportation and traffic issues remained a problem. Still, the project's timing and the possibility of affordable housing made it appealing, especially to City Council, whose members were so enthused they incorrectly reinterpreted the Boulder Valley Comp Plan standard of compatibility with the neighborhood to mean compatible with the neighborhood ***as it might be in the future***, not at the time of review.

The Applicant is now seeking annexation separate from Site Review. This allows the Applicant to leave concerns about the ultimate design of the project for a later date, while still dangling the prospect of affordability housing as an incentive.

My concerns about the proposed redevelopment have always been tied to the related impact on Jay Road, especially near its intersection with US 36/28th Street. Jay is highly used by cyclists like me and for competitive events. I generally support the annexation of this site because it provides the only opportunity to improve Jay Road and make it safer. But I cannot support the proposed upzoning precisely due to its likely adverse impacts on Jay Road and because, with the possibility of more than 100 units on the site, it is too incompatible with the neighborhood. This was noted by Staff in their November 3, 2023 comments and in the attached comments of Jennifer Crittenden. It is completely unclear as to what changed between November 2023 and August 2023, such that Staff now takes the position that the proposed zoning is compatible with the neighborhood.

I want to thank Staff for all of its hard work on this matter, but am also compelled to take issue

with following provisions in the proposed Annexation Agreement because they do not further the goals of the Comp Plan or the interests of the City in providing affordable housing:

- **Section 17 Community Benefit.** This is the most objectionable provision because it **does not** require the Applicant to construct **any** affordable housing. Section a).1 is quite appealing, but Section a).2 allows the Applicant, with limited restrictions, to convey a portion of the property to the City and leave the City to bear the cost of building the affordable housing, while the Applicant reaps the benefits of selling the market rate units. This is even worse that what occurred with the developer of The Academy project on 4th Street, who failed to construct the related affordable housing at the old Fruehauf's site on 33rd, and then agreed to donate the Fruehauf site to the City **and** pay a substantial sum into the City's Affordable Housing Fund. See, <https://boulderreportinglab.org/2023/07/31/developers-abandon-affordable-senior-housing-project-at-fruehaufs-property-amid-rising-costs/>.
- **Section 19 Market Unit Size/Section 20 Zoning.** Units of 3,000 or up to 3,500 square feet, exclusive of the garage, are larger than the units in the Arbor Glen, Woodside and Sundance subdivisions across US 36/28th Street. Those larger unit sizes, especially when coupled with the high density allowed by the proposed zoning discussed above, will further exacerbate this project's incompatibility with the neighborhood.
- **Section 25 Density Calculations.** To the extent this provision is intended to allow the Applicant to build the same number of units on a tract of land made smaller by required dedications, it is objectionable because it would effectively result in higher density, which would further increase the incompatibility with the neighborhood. This provision was also initially rejected by Staff.
- **Conveyance of the eastern 30' for a public road.** This conveyance is appropriate, but the additional verbiage indicating that the street may be used as a continuation of the non-existent Violet Avenue and thereby be used to access future developments to the north is problematic because it fails to take into the impact of that future use on Jay Road.

In conclusion, I urge Planning Board to support the proposed annexation, but not the proposed zoning because that zoning violates the Comp Plan requirement of compatibility with the neighborhood. For the same reasons, I believe that Sections 19 and 20 of the Annexation Agreement should be amended (to reduce the allowable size of the units and the density), and Section 25 should be eliminated (as originally proposed by Staff), and the conveyance provision should be revised to eliminate any reference to Violet Avenue. Lastly, and most

importantly, option a).2 in Section 17 of the Agreement should be deleted as it incentivizes the Applicant to avoid the obligations associated with the affordable housing component of this redevelopment - its key selling point – and push those obligations onto the City. This is unacceptable and should not be allowed to set a precedent for future annexations.

Thank you for your consideration.

Robyn Kube
4160 Amber Place
Boulder 80304

From: Jennifer Crittenden <geojennie1@yahoo.com>
To: "MoellerS@bouldercolorado.gov" <MoellerS@bouldercolorado.gov>
Date: 08/22/2024 12:20 PM MDT
Subject: 2801 Jay Road/LUR2023-00018-19

Shannon,

Contrary to the information presented in Figure 8 on page 17 of 117 of the attached document, the proposed land use change for the subject property is not compatible with the immediately adjacent properties. The example RMX-2-zoned properties of the Holiday, Northfield Village, 4525 Palo Parkway, and Northfield Commons neighborhoods are not adjacent to the subject property and do not have similar traffic-related issues as those presented by the Jay Rd and Highway 36 intersection that directly abut the property to the south and west.

Placing up to 20 units per acre on this tiny parcel of land that is allowed by the RMX-2 code is inconsistent with the actual adjacent surrounding neighborhoods. Site review comments dated November 3, 2023 determined that the Land Use Map change from PUB to the requested RMX-2 “could represent a significant change in character to the area” and the site review comments dated May 26, 2023 (Pg 82 of 117; Attachment E – Staff and Referral Comments) remarked that the MXR designation is not compatible with the character of the surrounding area. Nothing has physically changed since the factually detailed description that the May 26, 2023 review provides. That review included the following comments.

Land Use

The location and characteristics of this land make it potentially suitable for new development with urban services. This is based on the apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, to maintain a compact community.

However, the requested BVCP land use map change to a Mixed Density Residential (MXR) designation is not compatible with the character of the surrounding area, which primarily consists of low-density single-family developments, as either large rural /estate lots or formal subdivisions. Mixed Density Residential allows up to 20 dwelling units per acre. This is significantly higher than neighboring subdivisions that range from 1.1 to 9.2 dwelling units per acre (refer to Table 1 below):

TABLE 1

	Subdivision	Estimated Density (Dwelling Units Per Acre)
Proposal		20
Northeast	Orange Orchard	2.1
South	Gould	1.1
Southeast	Palo Park	5.9
Southeast	Four Mile Creek	5.6
West	Arbor Glen	5.6
West	Sundance	9.2

Average Density of Select Subdivisions	4.9
--	-----

Notes; Residential density is reflected in dwelling units per acre; Calculations reflect select sum of select subdivision's area that includes lots with housing units; Common area shared ownership lots without housing units and rights of way were excluded from the calculations? with the exception of the Palo Park townhomes (south side of Subdivision - 0 above) which have individual lots for townhome units and shared open space; Subdivision boundaries based on city's GIS database;

Several BVCP policies were created to protect residential neighborhoods from overly intense or incompatible development, which could destabilize the established neighborhood character. Per the vision and recommendations in the BVCP, redevelopment projects should become a coherent part of the neighborhood in which they are placed (see policy 2.41(b) Enhanced Design for All Projects).

Staff believe the proposed mass, scale and density of development is not appropriate within the established character of the neighborhoods surrounding the site. Without the benefit of a concurrent Site Review application, staff is not able to confirm that an appropriate transition is provided to adjacent more rural properties.

On balance, staff finds the Land Use Map change proposal inconsistent with the policies and overall intent of the comprehensive plan. A concurrent Site Review or Major Update to the BVCP in 2025 would provide a better opportunity for the applicant, city staff and the community to determine a more defined future for the area and assign the land use and zoning that is most consistent with the surrounding neighborhoods.

Staff Recommendation

Staff finds that the proposed Land Use Map change from Public (PUB) to Mixed Density Residential (MXR) represents a significant change in character to the area and is inconsistent with the policies and overall intent of the comprehensive plan. Staff recommends avoiding the use of and any impacts to Area III-Planning Reserve lands- and a more suitable Boulder Valley Comprehensive Plan (BVCP) land use designation change to Medium Density Residential (MR) to accompany the applicant's proposed annexation and RMX-2 zoning designation.

The traffic at Jay and Highway 36/28th is still heavy, fast, and dangerous and a development of this magnitude will likely only exacerbate an already hazardous intersection.

Please consider limiting the size of this development to a less dense format that is in line with a maximum density of that of the Sundance neighborhood.

Sincerely,

Jennifer Crittenden
4176 Amber Pl
Boulder CO, 80304

From: [Macon Cowles](#)
To: [boulderplanningboard](#); [Moeller, Shannon](#)
Subject: Annexation of the Church of the Nazarene property, 28th & Jay Road
Date: Monday, August 26, 2024 8:27:21 AM

External Sender Notice This email was sent by an external sender.

Dear Planning Board and Staff:

This development is giving us what we say we want: 84 for sale units, of which 34 are permanently affordable for sale middle income units. There have not been more than a handful of for-sale permanently affordable middle income units built in our town since the [Middle Income Housing Strategy](#) was adopted in 2016. We say we want for sale units, and that we want permanently affordable *middle income* units as part of the development: well here it is. Please support the annexation with the proposed zoning of RMX-2. Boulder makes it so easy to build big expensive single family homes, but so very difficult to build housing for middle income folks. This project has been in the planning department pipeline now for 2 years.

In February 2023, planning board failed to wholeheartedly endorse this plan because of the complaints from adjacent neighbors about the things that adjacent wealthy homeowners always complain about: Height, density, traffic, parking, compatibility with the neighborhood. Here is a quote still from an opponent on p. 116 of 117 of the packet. “The proposed 84 unit condo is going to destroy the rural aspect of our neighborhood and increase greenhouse gasses.” This is the statement of someone who lives at 4060 Crystal Ct., ½ mile southwest of the proposed project, adjacent to the Elks park, on *the other side of 28th Street*.

Council called up the project and, contrary to Planning Board’s tepid reception, expressed support, unanimously, for the project I September 2023.

We have a tight urban growth boundary in Boulder. Good for us. It has brought many benefits. This site has been in Area II, available for annexation, for 40 years. We cannot allow the rural residents of the County to think that compatibility with rural lots is going to limit our meeting housing needs of Boulder in this project, or in the Planning Reserve. So let’s start practicing that here: by standing up for these 84 new homes.

Thank you.

Macon Cowles
 1726 Mapleton Ave.

Boulder, Colorado 80304
macon.cowles@gmail.com
(303) 447-3062

**CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
August 27th, 2024
Virtual Meeting**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

Mark McIntyre, Vice Chair
ml Robles
Jorge Boone, Chair
Kurt Nordback
Laura Kaplan
Mason Roberts
Claudia Hanson Thiem

PLANNING BOARD MEMBERS ABSENT:

STAFF PRESENT:

Shannon Moeller, Planning Manager
Charles Ferro, Development Review Planning Senior Manager
Sloane Walbert, Inclusionary Housing Manager
Brad Mueller, Director Planning & Development Services
Thomas Remke, Board Specialist
Hella Pannewig, Senior Counsel
Vivian Castro-Wooldridge, Planning Engagement Strategist

1. CALL TO ORDER

2. PUBLIC PARTICIPATION

Virtual: No one spoke.

3. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS

4. PUBLIC HEARING ITEMS

A. AGENDA TITLE: Public hearing and consideration of the following related to an area of land at 2801 Jay Rd.:

1. Boulder Valley Comprehensive Plan (BVCP) land use map designation change from Public (PUB) to Mixed Density Residential (MXR) (LUR2023-00019); and

2. Recommendation on a petition to annex an approximately 4.86-acre area of land at 2801 Jay Rd., including adjacent right-of-way, with an initial zoning designation of Residential – Mixed 2 (RMX-2) (LUR2023-00018).

Staff Presentation:

S. Moeller introduced the item and presented it to the board.

Board Questions:

S. Moeller and **C. Ferro** answered questions from the board.

Applicant Presentation:

Margaret Freund and **Daniel Rotner** introduced and presented the item to the board.

Applicant Questions :

Margaret Freund and **Daniel Rotner** answered questions from the board.

Public Comment:

Virtual:

- 1) Lynn Segal
- 2) Robyn Kube
- 3) Matthew Karowe

Board Discussion:

Key Question #1: Is the proposed annexation consistent with State statutes and BVCP policies, including BVCP Policy 1.17, Annexation?

Key Question #2: Does the proposed change to the BVCP land use map to Mixed Density Residential (MXR) meet the applicable criteria?

Key Question #3: Is the proposed initial zoning of Residential – Mixed 2 (RMX-2) consistent with the initial zoning standards in the Boulder Revised Code?

M. McIntyre answered yes to all three questions. He noted that it is consistent with community goals and the application of land in Area 2 and expressed his full support for the project.

L. Kaplan agreed with M. McIntyre and answered yes to all three questions. She noted that the city is usually looking for a community benefit, such as an affordable housing benefit in order to annex a property, which is maximized by higher density. She addressed objections that the project will be largely car-dependent, expressing her hope that the City will take a broader look at connecting nearby bike, pedestrian, and multimodal transit networks to complement the project.

K. Nordback agreed with his colleagues that the project satisfies the criteria outlined in the Key Questions, with an exception of a left turn lane on Jay at 28th St. He noted that this would aid in making the area even more car dependent, and plans to draft an amendment to strike that provision.

C. Hanson Thiem also answered yes to all three questions. She suggested revisiting paragraph 22 (c), which requires that the usable open space in any subsequent development be placed on the eastern border of this parcel.

M. Roberts also answered yes to all three questions. He noted that he struggled with the reduction of affordability in the project.

ml Robles had no disagreements with any of the Key Issues.

J. Boone is in general agreement with all three questions. He warned about approving projects based on stated intent, noting unfulfilled promises in the past, and encouraged staff to think about how to ensure that this is developed as affordable housing.

M. McIntyre made a motion seconded by **K. Nordback** to approve the proposed Boulder Valley Comprehensive Plan land use map change for the property located at 2801 Jay Road to Mixed Density Residential (MXR), incorporating this staff memorandum as findings of fact, pertaining to case number LUR2023-00019. Planning Board voted 7-0. Motion passed.

M. McIntyre made a motion seconded by **K. Nordback** to recommend to City Council approval of the proposed annexation of the property located at 2801 Jay Road, including adjacent right-of-way, with an initial zoning of Residential – Mixed 2 (RMX-2) under case number LUR2023-00018, incorporating the staff memorandum as findings of fact, and subject to the terms and conditions in the proposed annexation agreement. The Planning Board proposed several amendments to this motion.

K. Nordback made a motion seconded **M. McIntyre** to amend the Annexation Agreement section 23(c)(a) to read:

a. A new left turn lane to enter the Property;. Planning Board voted 3-4 (Kaplan, Robles, Hanson Thiem, Boone dissenting). Motion failed.

C. Hanson Thiem made a motion seconded by **L. Kaplan** to amend the Annexation Agreement to strike Paragraph 22 (c) Shared Useable Open Space. Planning Board voted 5-2 (Robles, Boone dissenting). Motion passed.

J. Boone made a motion seconded **ml Robles** by to amend Paragraph 19 of the Annexation Agreement to read, “Market Unit Size and Tenure: No dwelling unit on the property shall have more than 2,500 sq. ft. floor area, excluding 500 sq. ft. in the garage, provided, however, that if the total number of dwelling units allowed on the property pursuant to an approved Site Review Application is 78 or fewer, then the maximum square footage for each market unit shall increase to 3,000 square feet. The floor area requirements for the market rate units shall be based on the floor area definition found in Section 9-16-1 General Definitions, B.R.C. 1981.” Planning Board voted 5-2 (Kaplan, McIntyre dissenting). Motion passed.

M. McIntyre made a motion seconded by **J. Boone** to recommend to City Council approval of the proposed annexation of the property located at 2801 Jay Road, including adjacent right-of-way, with an initial zoning of Residential – Mixed 2 (RMX-2) under case number LUR2023-00018, incorporating the staff memorandum as findings of fact, and subject to the terms and conditions in the proposed annexation agreement, as amended by the motions to amend from Board Member Claudia Hanson Thiem and Board Member Jorge Boone. Planning Board voted 7-0. Motion passed unanimously.

B. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

6. DEBRIEF MEETING/CALENDAR CHECK

7. ADJOURNMENT

The Planning Board adjourned the meeting at 10:11 p.m.

APPROVED BY

Board Chair

DATE

Attachment H
Staff Analysis of BVCP Policies, Boulder Revised Code, and State Statutes

BOULDER VALLEY COMPREHENSIVE PLAN POLICIES

Policy 1.08 Adapting to Limits on Physical Expansion

As the community expands to its planned physical boundaries, the city and county will increasingly emphasize preservation and enhancement of the physical, social and economic assets of the community. Cooperative efforts and resources will be focused on maintaining and improving the quality of life within defined physical boundaries, with only limited expansion of the city.

The proposal enhances the assets of the community by providing much needed additional land for residential uses. Any redevelopment of the property with dwelling units requires a substantial provision of permanently affordable, on-site, for-sale middle income housing. Any nonresidential redevelopment requires payment of an increased capital facility impact fee for affordable housing. The proposal is limited expansion of the city to within Area II, the area which may be considered for annexation.

Policy 1.10 Growth Requirements

The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment to provide significant community benefits, achieve sustainability goals for urban form and maintain or improve environmental quality as a precondition for further housing and community growth.

The proposal is consistent with urban growth requirements that require redevelopment to provide significant community benefit, in particular, the annexation agreement requires significant support for the creation of permanently affordable housing.

Policy 1.11 Jobs: Housing Balance

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

The proposal provides the opportunity to improve the balance of jobs and housing as the proposed annexation would increase the residential development potential of the property.

Policy 1.13 Definition of Comprehensive Planning Areas I, II & III

The Boulder Valley Planning Area is divided into three major areas:

...

Area II is the area now under county jurisdiction where annexation to the city can be considered consistent with Policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.17 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services. Master plans project the provision of services to this area within the planning period.

The proposed annexation and land use map change is within Area II and can be considered for annexation and redevelopment consistent with these policies.

Policy 1.15 Definition of New Urban Development

It is intended that ‘new urban development’, including development within the city, not occur until and unless adequate urban facilities and services are available to serve the development as set out in Chapter VII Urban Service Criteria and Standards. ‘New urban development’ is defined to include: a. All new residential, commercial and industrial development and redevelopment within the city; or b. Any proposed development within Area II (subject to a county discretionary review process before the Board of County Commissioners) that the county determines exceeds the land use projections and/or is inconsistent with maps or policies of the Boulder Valley Comprehensive Plan in effect at that time.

The annexation and land use map change will allow the proposed redevelopment to occur within the city consistent with this policy. Staff has determined that adequate urban facilities and services will be available to serve a development on this property, including:

Public water: The existing structure is connected to city water services via an out of city utility agreement.

Public sewer: The applicant will be responsible for extension of public sanitary sewer main to serve the property consistent with City of Boulder Design and Construction Standards.

Stormwater and flood management: The applicant will be responsible for meeting all standards for stormwater and flood management, including discharge of stormwater runoff and compliance with adopted flood plain regulations.

Urban fire protection and emergency medical care: The property will be served by Boulder Fire Rescue. Fire Station 5 is located less than 1 mile to the west.

Urban police protection: The property will be served by Boulder Police. The station at 1805 33rd Street serves the overall community.

Multi-modal transportation (streets, sidewalks, multiuse paths): The proposal includes dedication of right-of-way for transportation improvements and requirements for the construction of transportation improvements to streets, sidewalks, and multiuse paths upon redevelopment as required in the annexation agreement.

Urban parks: The property is served by the 8-acre Elks neighborhood park less than one-half mile to the southwest and the 65-acre Foothills Community Park located 1.5 miles to the northwest.

Schools: BVSD has the existing capacity to serve this development at all grade levels.

Policy 1.17 Annexation

The policies in regard to annexation to be pursued by the city are:

- ☒ **a.** Annexation will be required before adequate facilities and services are furnished.

City services will be available to the property with annexation. The property is served by city water per an out of city utility agreement and revocable permit signed in 1987. Per the terms of the annexation agreement, the existing structure on the property would be required to connect to wastewater utilities within 365 days of the effective date of annexation. The applicant has demonstrated that adequate access, water, wastewater, and stormwater utilities can be provided to the site. Payment of appropriate fees and installation of infrastructure is the responsibility of the applicant.

- n/a b.** The city will actively pursue annexation of county enclaves, substantially developed properties along the western boundary below the Blue Line and other substantially developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city. Terms of annexation will be based on the amount of development potential as described in (c), (d) and (e) of this policy. Applications made to the county for development of enclaves and Area II lands in lieu of annexation will be referred to the city for review and comment. The county will attach great weight to the city's response and may require that the landowner conform to one or more of the city's development standards so that any future annexation into the city will be consistent and compatible with the city's requirements.

Not applicable; the property is not a county enclave, along the western boundary or a fully developed Area II property.

- n/a c.** In 2016, the city adopted Ordinance 8311 which changed the location of the Blue Line. This change to the Blue Line was intended to clarify the location of the Blue Line and permit water service to existing development in the area, while reinforcing the protection of the foothill's open space and mountain backdrop. Both entire properties which and properties where the developed portions (1) are located in Area II and (2) were moved east of the Blue Line in 2016 shall be considered substantially developed and no additional dwelling units may be added. No water services shall be provided to development west of the Blue Line.

Not applicable; the property is not west of the Blue Line.

- n/a d.** Annexation of existing substantially developed areas will be offered in a manner and on terms and conditions that respect existing lifestyles and densities. The city will expect these areas to be brought to city standards only where necessary to protect the health and safety of the residents of the subject area or of the city. The city, in developing annexation plans of reasonable cost, may phase new facilities and services. The county, which now has jurisdiction over these areas, will be a supportive partner with the city in annexation efforts to the extent the county supports the terms and conditions being proposed.

The annexation allows for continuation of the existing uses of the property. However, while the property is developed with an existing church building, it is intended to be wholly redeveloped in the future as residential and, if annexed with RMX-2 zoning, the property will have significant redevelopment potential. Refer to criterion "e." below.

- ✓ e. In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation consideration, emphasis will be given to the benefits achieved from the creation of permanently affordable housing. Provision of the following may also be considered a special opportunity or benefit: receiving sites for transferable development rights (TDRs), reduction of future employment projections, land and/or facilities for public purposes over and above that required by the city's land use regulations, environmental preservation or other amenities determined by the city to be a special opportunity or benefit. Parcels that are proposed for annexation that are already developed and which are seeking no greater density or building size would not be required to assume and provide that same level of community benefit as vacant parcels unless and until such time as an application for greater development is submitted.

The property is located in Area II and significant redevelopment potential exists for the property if it is annexed with RMX-2 zoning. The annexation will allow for significant redevelopment of the property with residential dwelling units. The proposal includes terms of the annexation agreement requiring a minimum of 30% of the dwelling units on the Property to be for-sale, permanently affordable middle-income housing. Staff finds that the creation of this permanently affordable housing is a special opportunity and benefit to the city and provides community benefit. Nonresidential development is required to pay the capital facility impact fee for affordable housing at a rate two-times otherwise required, thereby also providing an affordable housing benefit.

Additionally, the proposal will allow for additional benefits, including:

- Following annexation, the property will be connected to city utilities including wastewater, reducing the public health threats from the possibility of failing septic systems.*
- Upon annexation, the proposal dedicates the eastern thirty feet of the subject property to the city as public right-of-way, ensuring access is available to the subject property as well as to the properties to the north in Area III.*
- Upon redevelopment, the proposal will be required to upgrade transportation infrastructure within and adjacent to the site consistent with the terms of the annexation agreement; e.g. sidewalks, bike lanes, vehicle turn lanes, intersection improvements, transit stop facilities, etc.*
- A redevelopment proposal will be subject to the terms of the annexation agreement which include compatibility requirements of the proposed design to adjacent residential properties in unincorporated Boulder County and will be required to undergo the Site Review process, ensuring that the future redevelopment is designed to respect existing lifestyles and densities.*

- n/a f. Annexation of substantially developed properties that allow for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts. Further, annexations that resolve an issue of public health without creating additional development impacts should be encouraged.

Not applicable; if annexed with RMX-2 zoning, the property will have significant development potential. Criterion “e.” would apply to the proposal.

- ✓ g. There will be no annexation of areas outside the boundaries of the Boulder Valley Planning Area, with the possible exception of annexation of acquired open space.

The subject property is within Area II of the Boulder Valley Planning Area.

- n/a h. Publicly owned property located in Area III, and intended to remain in Area III, may be annexed to the city if the property requires less than a full range of urban services or requires inclusion under city jurisdiction for health, welfare and safety reasons.

The property is not publicly owned and no portion of Area III is proposed to be annexed.

- n/a i. The Gunbarrel Subcommunity is unique because the majority of residents live in the unincorporated area and because of the shared jurisdiction for planning and service provision among the county, city, Gunbarrel Public Improvement District and other special districts. Although interest in voluntary annexation has been limited, the city and county continue to support the eventual annexation of Gunbarrel. If resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.

Not applicable, property not located within Gunbarrel Subcommunity.

Policy 2.03 Compact Development Pattern

The city and county will, by implementing the comprehensive plan (as guided by the Land Use Designation Map and Planning Areas I, II, III Map), ensure that development will take place in an orderly fashion, take advantage of existing urban services, and avoid, insofar as possible, patterns of leapfrog, noncontiguous, scattered development within the Boulder Valley. The city prefers redevelopment and infill as compared to development in an expanded Service Area to prevent urban sprawl and create a compact community.

The proposal allows for compact redevelopment of an existing developed property. The proposed right-of-way dedications along the eastern property line and in Jay Road and proposed transportation improvements help ensure that existing and future development will take place in an orderly fashion.

Policy 2.15 Compatibility of Adjacent Land Uses

To avoid or minimize noise and visual conflicts between adjacent land uses that vary widely in use, intensity or other characteristics, the city will use tools such as interface zones, transitional areas, site and building design and cascading gradients of density in the design of subareas and zoning districts. With redevelopment, the transitional area should be within the zone of more intense use.

The proposal avoids conflicts between the proposed mixed density residential redevelopment and less intense residential uses in unincorporated Boulder County by providing compatibility

standards in the annexation agreement that create an area of transition. These include requirements for a maximum of two stories above grade and sloped roof forms for residences at the northeast and east edges of the property and the creation of visual and physical separation at the east edge of the property via a dedicated right-of-way and location of shared open space.

Policy 2.34 Design of Newly Developing Areas

The city will encourage a neighborhood concept for new development that includes a variety of residential densities, housing types, sizes and prices, opportunities for shopping, nearby support services and conveniently sited public facilities, including roads and pedestrian connections, parks, libraries and schools.

The proposal supports a neighborhood concept through the proposed MXR land use and RMX-2 zoning which require a mix of housing types on the property and will provide a mix of prices including market-rate and middle-income permanently affordable for-sale housing. The proposed annexation agreement includes requirements for infrastructure improvements to Jay Road and the intersection of Jay Road and US 36/28th Street and a multi-use path connection.

Policy 7.07 Mixture of Housing Types

The city and county, through their land use regulations and housing policies, will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities to meet the housing needs of the low-, moderate- and middle-income households of the Boulder Valley population. The city will encourage property owners to provide a mix of housing types, as appropriate. This may include support for ADUs/OAUs, alley houses, cottage courts and building multiple small units rather than one large house on a lot.

The proposed MXR land use designation and RMX-2 zoning require a mixture of housing types (at least two housing types on a property less than 5 acres in size). The minimum 30% on-site middle-income permanently affordable housing required by the annexation agreement ensures both market-rate and middle-income price points are provided on the property.

Policy 7.11 Balancing Housing Supply with Employment Base

The Boulder Valley housing supply should reflect, to the extent possible, employer workforce housing needs, locations and salary ranges. Key considerations include housing type, mix and affordability. The city will explore policies and programs to increase housing for Boulder workers and their families by fostering mixed-use and multi-family development in proximity to transit, employment or services and by considering the conversion of commercial- and industrial-zoned or -designated land to allow future residential use.

The proposal will increase the supply of permanently affordable middle-income housing, a key focus area of the Boulder Valley Comprehensive Plan. The proposal will convert an existing non-residential property to residential uses.

Policy 7.12 Permanently Affordable Housing for Additional Intensity

The city will develop regulations and policies to ensure that when additional intensity is provided through changes to zoning, a larger proportion of the additional development potential for the

residential use will be permanently affordable housing for low-, moderate- and middle-income households.

The proposed MXR land use designation and RMX-2 zoning are designed to provide additional intensity (bonus density) when higher percentages of affordable housing is provided on-site. The proposal will provide a minimum of 30% on-site permanently affordable housing per the terms of the annexation agreement. The terms of the annexation agreement accommodate additional intensity to support the required on-site for sale permanently affordable middle income housing.

Policy 7.15 Integration of Permanently Affordable Housing

Permanently affordable housing, whether publicly, privately or jointly developed and financed will be dispersed throughout the community. Where appropriate, the city will encourage new and affordable units provided on the site of and integrated into new housing developments.

Redevelopment of the property with dwelling units will provide on-site permanently affordable housing and market-rate housing.

BOULDER REVISED CODE

ANNEXATION REQUIREMENTS SECTION 9-2-17

- ✓ (a) **Compliance with State Statutes and Boulder Valley Comprehensive Plan:** All annexations to the city shall meet the requirements of 31-12-101 et seq., C.R.S., and shall be consistent with the Boulder Valley Comprehensive Plan and other ordinances of the city.

See checklists above and below.

- ✓ (b) **Conditions:** No annexation of land to the city shall create an unreasonable burden on the physical, social, economic, or environmental resources of the city. The city may condition the annexation of land upon such terms and conditions as are reasonably necessary to ensure that this requirement is met. Such terms and conditions may include, without limitation, installation of public facilities or improvements, dedication of land for public improvements, payment of fees incidental to annexation, or covenants governing future land uses. In annexations of hillside areas, the city council may impose conditions designed to mitigate the effects of development on lands containing slopes of fifteen percent or greater. In annexations of more than ten acres, the applicant shall provide the information necessary to enable the city to prepare an annexation impact report when required by section 31-12-108.5, C.R.S.

The proposed annexation will not create an unreasonable burden on the city. The conditions of the annexation agreement include terms and conditions to ensure that this requirement is met, including dedication of land for public improvements/rights-of-way, requirements for installation of transportation improvements upon redevelopment, payment of Stormwater Plant Investment Fees (PIFs), and requirements for community benefit in the form of on-site permanently affordable housing, among other requirements.

- ✓ (c) **Annexation Agreement**: Owners of land petitioning the city for annexation of their property shall enter into an annexation agreement with the city stating any terms and conditions imposed on said property, prior to the first reading of the annexation ordinance. Upon annexation, such agreements shall be recorded to provide notice to future purchasers of said property. Where the annexation agreement provides that the city may install public improvements and that the owners of the annexed property will pay for such improvements, the costs of such improvements constitute an assessment against the annexed property as they accrue. If, after notice, any such assessment is not paid when due, the city manager shall certify the amount of the principal, interest, and penalties due and unpaid, together with ten percent of the delinquent amount for costs of collection to the county treasurer to be assessed and collected in the same manner as general taxes are assessed and collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer for Collection," B.R.C. 1981.

The annexation agreement shall be signed by the owners of land petitioning the city for annexation prior to the 1st Reading of the annexation ordinance. The agreement does not involve any city installation of public improvements.

ZONING OF ANNEXED LAND

SECTION 9-2-18

- ✓ (a) **Generally**: Zoning of annexed land or land in the process of annexation shall be considered an initial zoning and shall be consistent with the goals and land use designations of the Boulder Valley Comprehensive Plan.

Initial zoning is established pursuant to Section 9-2-18, "Zoning of Annexed Land," B.R.C. 1981. If a property is annexed, zoning will be established consistent with the goals and Land Use Map of the BVCP. As described in the staff memo, the application proposes a land use designation change for the property to Mixed Density Residential, which is characterized by provision of a substantial amount of affordable housing and a variety of housing types and density, ranging from six to 20 units per acre. The proposed zoning assumes approval of the Land Use Map change to Mixed Density Residential.

The proposed zoning of Residential Mixed - 2 is consistent with a land use map designation of Mixed Density Residential. The RMX-2 zoning district is described as: "Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted." (Section 9-5-2(c)(1)(E), B.R.C. 1981).

Staff finds that the RMX-2 zoning district, including the allowed residential uses, emphasis on provision of permanently affordable housing, and controls on density and design through the Site Review process, is appropriate for the site, helps ensure compatibility with the surrounding area, and is consistent with the proposed Mixed Density Residential land use and with the goals, policies, and objectives of the BVCP, including those noted above in this checklist.

- ✓ (b) **Public Notification:** When zoning of land is proposed in the process of annexation, the city manager will provide notice pursuant to [section 9-4-3](#), "Public Notice Requirements," B.R.C. 1981.

Public notice has been provided consistent with 9-4-3, "Public Notice Requirements," B.R.C. 1981. A public notice has been sent to property owners within 600 feet and notice posted on the property.

- ✓ (c) **Sequence of Events:** An ordinance proposing zoning of land to be annexed shall not be finally adopted by the city council before the date of final adoption of the annexation ordinance, but the annexation ordinance may include the zoning ordinance for the annexed property.

The city will follow the required sequence of events for adopting an ordinance proposing zoning of land.

- ✓ (d) **Placement on Zoning Map:** Any land annexed shall be zoned and placed upon the zoning map within ninety days after the effective date of the annexation ordinance, notwithstanding any judicial appeal of the annexation. The city shall not issue any building or occupancy permit until the annexed property becomes a part of the zoning map.

The city will follow the requirements for placing the zoning upon the zoning map.

- ✓ (e) **Nonconformance:** A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of [section 9-7-1](#), "Schedule of Form and Bulk Standards," B.R.C. 1981, may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Boulder County jurisdiction prior to annexation.

There is no minimum lot area in the RMX-2 zoning district and there are no dwelling units currently on the property.

- n/a (f) **Slopes:** Notwithstanding the provisions of Subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies of the Boulder Valley Comprehensive Plan.

Not applicable; the slope of the site does not exceed fifteen percent slope.

COLORADO REVISED STATUTES

COLORADO STATE STATUTES TITLE 31, ARTICLE 12

Staff has reviewed the annexation petition for compliance with Sections 31-12-104, 31-12-105, and 31-12-107, C.R.S. and with section 30 of article II of the state constitution and finds that the application is consistent with the statutory and constitutional requirements, as affirmed by the findings below.

ELIGIBILITY FOR ANNEXATION § 31-12-104

- (1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

The conditions of the state constitution have been met. The applicant has filed a petition for annexation that is signed by persons comprising more than fifty percent of landowners in the area and owning more than fifty percent of the area, excluding public streets, and alleys and any land owned by the City of Boulder.

- ✓ (a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1) (e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

The property has more than 1/6th contiguity to the city limits. The perimeter of the area being annexed is 1,888.16 feet. A minimum of 314.69 feet must be contiguous to city limits to meet the 1/6 requirement. 358.3 feet are contiguous.

- ✓ (b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the

basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

The contiguity required by paragraph (a) satisfies the finding that a community of interest exists.

n/a (I) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.
Not applicable; the property is non-residential and there are no residents.

n/a (II) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.
Not applicable; the property is not agricultural.

n/a (III) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.
Not applicable; it is physically practicable to extend to the area urban services.

✓ (2) (a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

Not applicable; the area previously annexed that establishes contiguity does not meet the description above.

✓ (b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be

provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1) (e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

Proposal does not create or expand any disconnected municipal satellite.

- ✓ (c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

Proposal meets all contiguity requirements.

LIMITATIONS

§ 31-12-105

- (1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:

- ✓ (a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

The entire property is proposed to be annexed, and no land held in identical ownership is divided.

- ✓ (b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

The property is not twenty acres or more. The written consent of the landowner has been obtained for this annexation.

- ✓ (c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

No annexation proceedings have been commenced for the annexation of the property to another municipality.

- ✓ (d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12- 106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

The annexation will not result in a change to the school district.

- ✓ (e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1) (a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.

The annexation will not extend the municipal boundary by more than three miles. The Boulder Valley Comprehensive Plan and city departmental plans establish a plan for the area to be annexed. Any public improvements required to develop the area proposed for annexation and connect to city services will be provided by the applicant.

- n/a (II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

Not applicable; the proposal does not achieve contiguity pursuant to subparagraph (I) of paragraph (e).

n/a (A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

n/a (B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12- 107; and

n/a (C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

n/a (e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12- 108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

n/a (e.3) In connection with any annexation in which the contiguity required by section 31-12- 104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12- 108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

- ✓ (f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

Neither Jay Road nor Highway 36 are platted streets or alleys. A portion of Jay Road adjacent to the property is proposed to be annexed. The entire width of the street is included in the annexation.

- ✓ (g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

The proposal does not involve denying reasonable access to any street or alley.

- ✓ (h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

The proposal does not involve power of attorney.

PETITIONS FOR ANNEXATION AND FOR ANNEXATION ELECTIONS

§ 31-12-107

- (1) Petition for annexation in accordance with section 30 (1) (b) of article II of the state constitution:

- ✓ (a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and

31-12-105 may petition the governing body of any municipality for the annexation of such territory.

Landowners of more than 50 percent of the area who comprise more than 50 percent of the landowners in the area have petitioned to annex, excluding any public streets and alleys and any land owned by the annexing municipality.

- ✓ (b) The petition shall be filed with the clerk.

The annexation petition has been filed with the City Clerk of the City of Boulder.

- ✓ (c) The petition shall contain the following:

The petition meets the following requirements.

- (I) An allegation that it is desirable and necessary that such area be annexed to the municipality;
- (II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;
- (III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;
- (IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;
- (V) The signatures of such landowners;
- (VI) The mailing address of each such signer;
- (VII) The legal description of the land owned by such signer;
- (VIII) The date of signing of each signature; and
- (IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.

- ✓ (d) Accompanying the petition shall be four copies of an annexation map containing the following information:

An annexation map has been received that contains this information.

- (I) A written legal description of the boundaries of the area proposed to be annexed;
- (II) A map showing the boundary of the area proposed to be annexed;
- (III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

- ✓ (e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

The petition meets this limitation.

- ✓ (f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

The city manager has determined that the petition is in compliance with this section and the clerk and city council are taking these required steps.

- ✓ (g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.

This procedure is being followed by the City of Boulder.

EXHIBIT 1 (PAGE 1 OF 2)

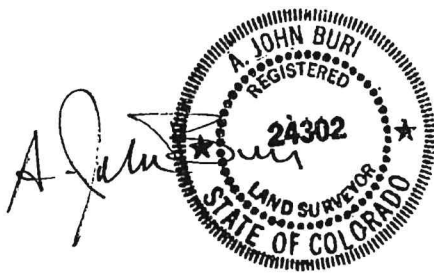
LEGAL DESCRIPTION – ROW DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS, THE POINT OF BEGINNING.

THENCE S89°31'47"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE N00°25'44"W, A DISTANCE OF 439.50 FEET TO A POINT ON THE NORTHLINE OF SAID PARCEL; THENCE N89°32'02"E ALONG THE NORTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE S00°25'44"E ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 439.50 FEET TO THE POINT OF BEGINNING.

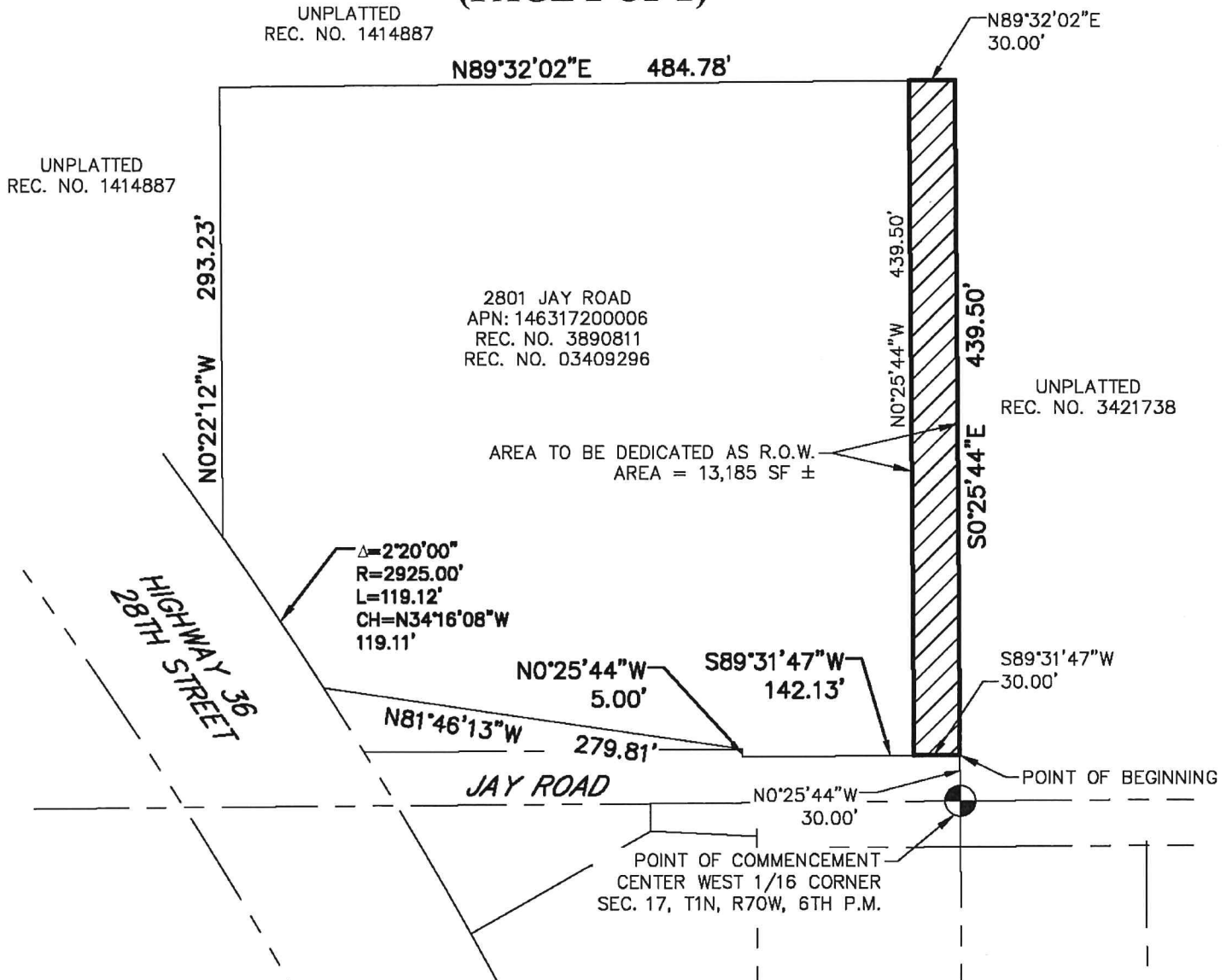
SAID PARCEL CONTAINS 13,185 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

Exhibit B – Page 2

EXHIBIT 1 (PAGE 2 OF 2)



1 ROW DEDICATION

SCALE: 1" = 100'

N

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

WITNESS, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT 1 ATTACHED

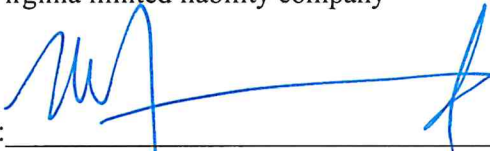
TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

(signature page follows)

Exhibit C – Page 1

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Margaret J. Freund, Manager

Comm. of Virginia

STATE OF ~~COLORADO~~)
) ss.
COUNTY OF ~~BOULDER~~)

The foregoing instrument was acknowledged before me this 10th day of September, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10/31/2025

[Seal]

Carol Moore
Notary Public



EXHIBIT 1 (PAGE 1 OF 2)

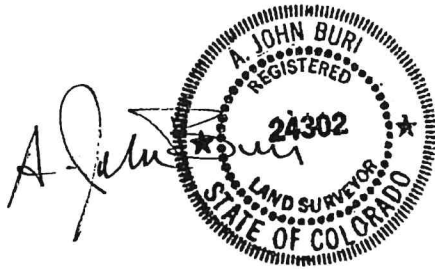
LEGAL DESCRIPTION – QUITCLAIM DEED

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 142.13 FEET TO THE POINT OF BEGINNING.

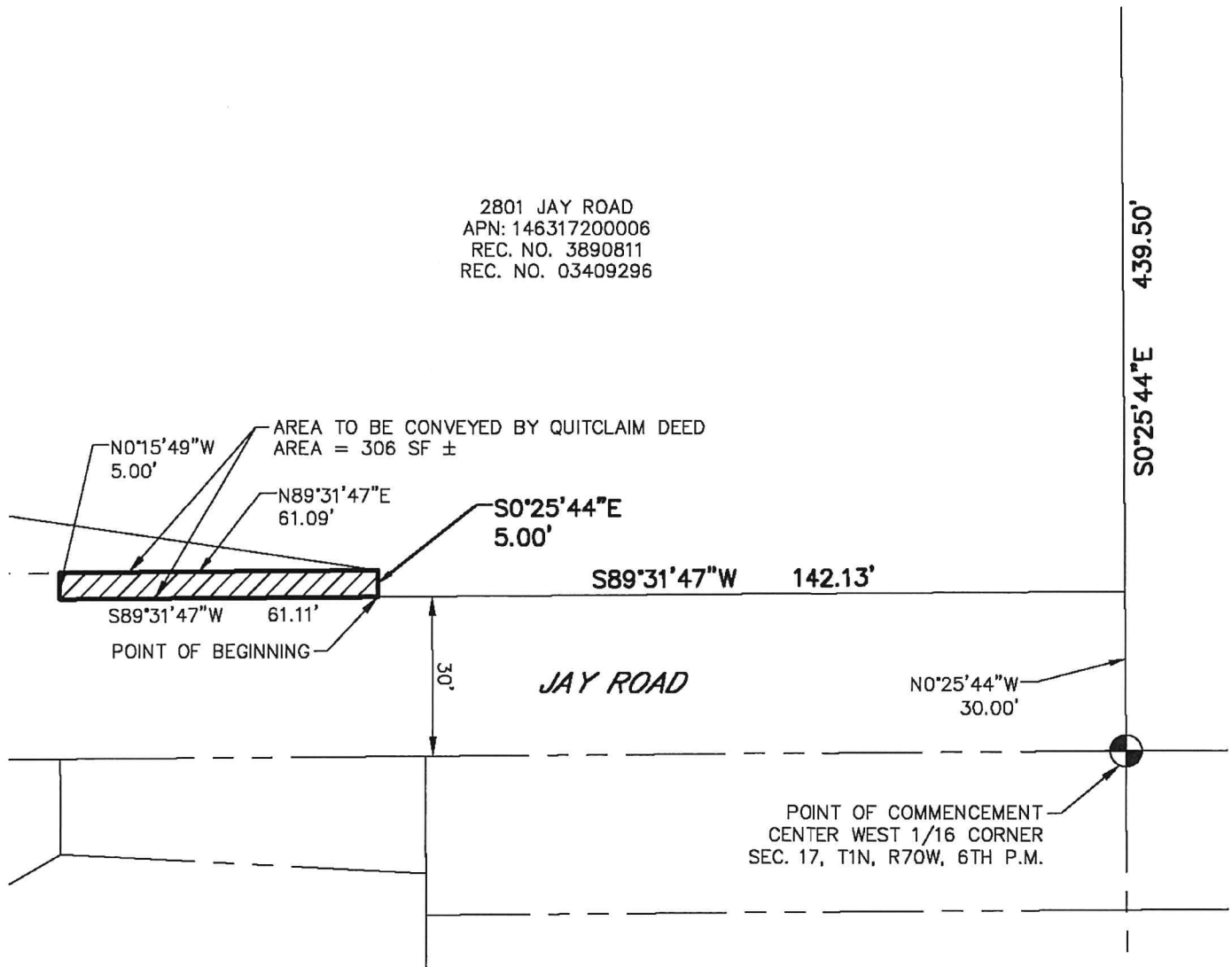
THENCE S89°31'47"W, A DISTANCE OF 61.11 FEET; THENCE N00°15'49"W, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 61.09 FEET; THENCE S00°25'44"E ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 306 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

EXHIBIT 1 (PAGE 2 OF 2)



**QUITCLAIM
DEED EXHIBIT**

1

SCALE: 1" = 30'

N

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

WITNESS, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT 1 ATTACHED

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

(signature page follows)

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

Exhibit D – Page 1

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Margaret J. Freund, Manager

Comm. of Virginia

~~STATE OF COLORADO~~)
) ss.
~~COUNTY OF BOULDER~~)

The foregoing instrument was acknowledged before me this 10th day of September,
2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10/31/2025

[Seal]

Carol Moore
Notary Public



EXHIBIT 1 (PAGE 1 OF 2)

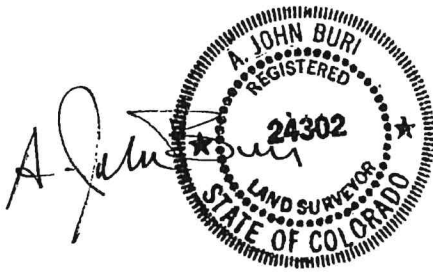
LEGAL DESCRIPTION – R.O.W. DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

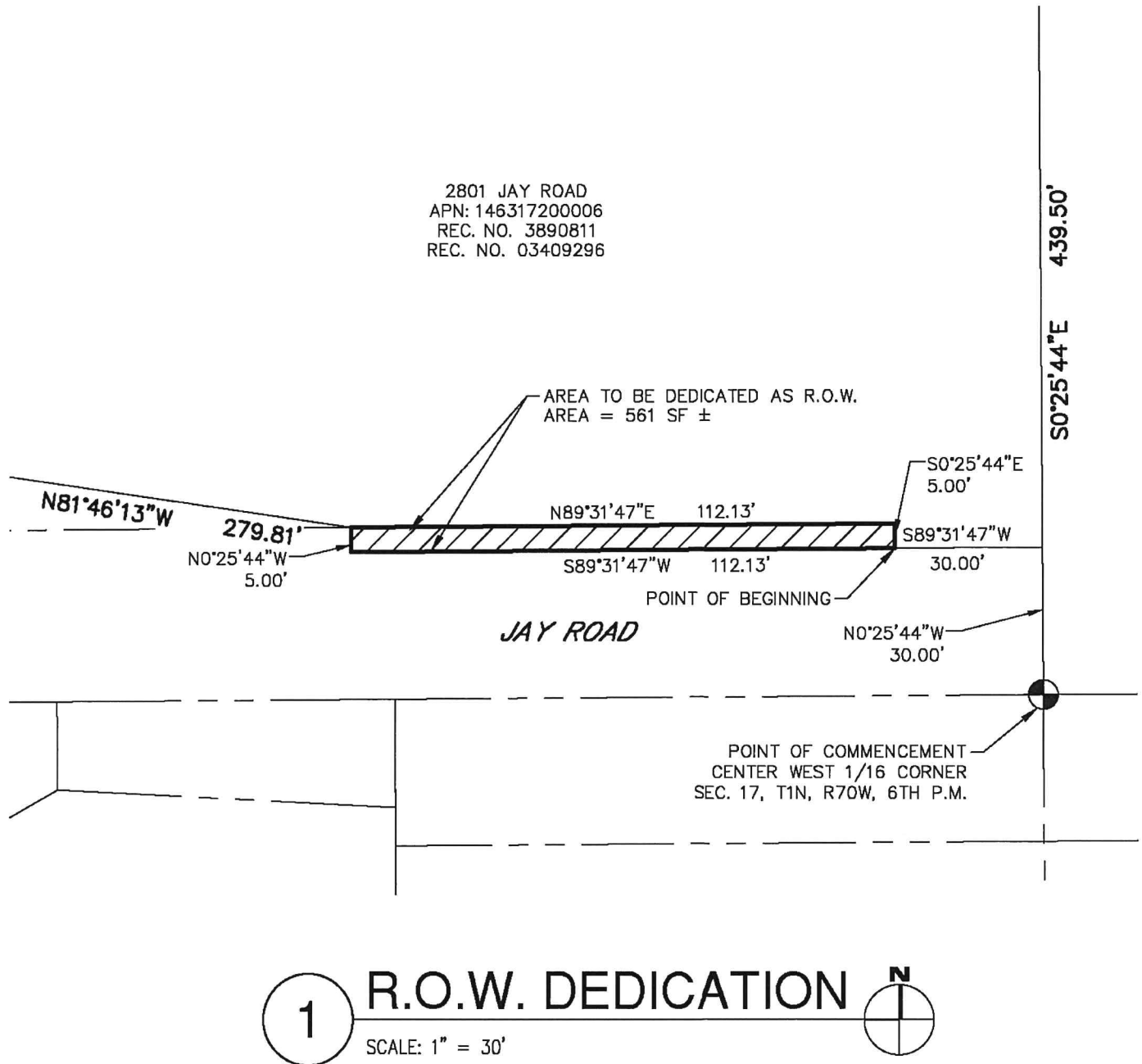
THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 112.13 FEET; THENCE N00°25'44"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 112.13 FEET; THENCE S00°25'44"E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 561 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302
FOR AND ON BEHALF OF
SITEWORKS
10/16/23
PROJECT NO. 23142

EXHIBIT 1 (PAGE 2 OF 2)



SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is executed by The Colorado District of the Church of the Nazarene, a Colorado nonprofit corporation, whose address is PO Box 76570, Colorado Springs, Colorado 80970-6570 ("Mortgagee") for the benefit of MJF 2801 Jay RD Development LLC, a Virginia limited liability company, whose mailing address is c/o Fulton Hill Properties, 1000 Carlisle Avenue, Richmond, VA 23231 ("Mortgagor"), and by the City of Boulder, a Colorado home rule city ("the City").

A. Mortgagor is the owner of that certain real property in Boulder County, State of Colorado, generally known as 2801 Jay Road and more particularly described in **Exhibit 1** ("Property"); and

B. Mortgagee and Mortgagor are parties to that certain Loan Agreement dated as of June 4, 2021 (the "Loan Agreement"), pursuant to which Mortgagor financed the original principal amount of \$2,440,000 (the "Loan") for the purchase by Mortgagor from Mortgagee of that certain real property located at 2801 Jay Road, Boulder, Colorado (as more particularly defined in the Loan Agreement, the "Property"). Pursuant to the Loan Agreement the Mortgagor executed a Promissory Note Secured by First Lien Deed of Trust dated June 1, 2021, for the principal sum of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) ("Original Promissory Note") payable to the order of Mortgagee, with interest at the rate of 5% per annum, payable in accordance with the terms of Original Promissory Note. The Original Promissory Note was secured by that certain First Lien Deed of Trust dated as of June 4, 2021, recorded June 8, 2021 in the Land Records for the County of Boulder, State of Colorado, at Reception No. 03890812 ("Deed of Trust"); and

C. Pursuant to that certain Loan Modification Agreement between Mortgagor and Mortgagee dated as of October 7, 2024 ("Loan Modification Agreement"), (i) Mortgagee is the holder of an amended and restated promissory note made by Mortgagor, dated as of October 7, 2024, in the original principal amount of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) ("Note"), which amends and restates in its entirety the Original Promissory Note, and (ii) Mortgagor has executed an Amendment to First Lien Deed of Trust dated as of October 7, 2024 ("Deed of Trust Amendment"), which Deed of Trust Amendment is to be recorded prior to this Agreement and a copy of which Deed of Trust Amendment is attached hereto as **Exhibit 2** and incorporated herein by this reference. The Deed of Trust as amended and restated in the Deed of Trust Amendment is hereafter referred to as "Mortgage"; and

D. Concurrently with this Agreement, Mortgagor is entering into an annexation agreement with the City, which is more particularly described in **Exhibit 3** attached hereto and incorporated herein by this reference ("Annexation Agreement"); and

E. Upon Mortgagor's request, Mortgagee has consented to and agreed to subordinate the Mortgage to the terms of the Annexation Agreement, which Mortgagee has reviewed and approved; and

F. The Annexation Agreement, which would not otherwise be agreed to by the City, is being agreed to by the City in reliance on this Agreement; and

G. The parties agree that the Annexation Agreement provides a benefit to the Property.

NOW THEREFORE in consideration of the above and mutual covenants and promises contained herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is represented and agreed as follows:

1. The Mortgage is subordinated and hereafter shall be junior to the Annexation Agreement to the extent necessary to permit the City to enforce the purposes and terms of the Annexation Agreement in perpetuity and to prevent any modification or extinguishments of the Annexation Agreement by the exercise of any right of Mortgagee.

2. The priority of the Mortgage with respect to any valid claim on the part of Mortgagee to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases, rents, and profits of the Property, is not affected hereby, and any lien that may be created by the City's exercise of its rights under the Annexation Agreement shall be junior to the Mortgage.

3. Mortgagee shall not be joined as a defendant in any action to enforce the Annexation Agreement, or seeking damages, fees, or costs of any kind pursuant to the Annexation Agreement, and the Mortgage shall have priority over any judgment entered for any costs, fees, or damages under the Annexation Agreement, unless the violation representing the grounds for the action was caused by Mortgagee or its agents or employees or the Mortgagee is a fee owner of the Property.

4. If at any time in an action to enforce the Annexation Agreement, the City obtains injunctive relief requiring that the Property be restored in any respect, Mortgagee shall not be held liable for any costs of restoration, regardless of who is in possession of the Property, unless Mortgagee or its agents or employees is responsible for the condition requiring restoration or Mortgagee is the fee owner of the Property.

5. In the event of a foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Annexation Agreement shall not be extinguished but shall survive and continue to encumber the Property.

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

7. This Agreement shall be recorded immediately after the Annexation Agreement.

Entered into this 22 day of October, 2024.

[SIGNATURE BLOCKS ON THE FOLLOWING PAGES]

Attachment L - Subordination Agreement (signed)

Mortgagee:

The Colorado District of the Church of the Nazarene,
a Colorado nonprofit corporation

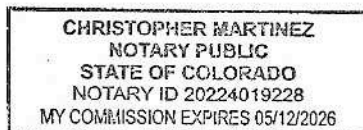
By: *Kevin Compton*
Printed Name: Kevin Compton
Title: Assistant District Superintendent

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this 2nd day of October,
2024, by Kevin Compton, as Asst. District Superintendent of
The Colorado District of the Church of the Nazarene.

Witness my hand and official seal.

My commission expires 5/12/2026



[Signature]
Notary Public

CITY OF BOULDER, COLORADO

By: _____
Nuria Rivera-Vandermyde, City Manager

ATTEST:

City Clerk

Approved as to form:

City Attorney's Office

Date: _____

EXHIBITS

Exhibit 1	Legal Description for Property
Exhibit 2	Deed of Trust Amendment
Exhibit 3	Annexation Agreement

EXHIBIT 1
to
Subordination Agreement

Legal Description

2801 Jay Road

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 FEET PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING, EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE 80 AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. 264461, COUNTY OF BOULDER, STATE OF COLORADO.

EXHIBIT 2
to
Subordination Agreement
Amendment to First Lien Deed of Trust

Exhibit 2 – Page 1

After Recording Return To:
The Colorado District Church of the Nazarene
12021 Pennsylvania Street, #206
Thornton, Colorado 80241



10721202.1

**AMENDMENT TO
FIRST LIEN DEED OF TRUST**

THIS AMENDMENT TO FIRST LIEN DEED OF TRUST ("Amendment") is dated as of October 7, 2024, between MJF 2801 JAY ROAD DEVELOPMENT, LLC, a Virginia limited liability company, whose mailing address is c/o Fulton Hill Properties, 101 South 15th Street, Suite 104 Richmond, VA 23219 ("Grantor"), and the Public Trustee of the County of Boulder in the State of Colorado ("Trustee") for the benefit of THE COLORADO DISTRICT CHURCH OF THE NAZARENE, whose address is PO Box 76570, Colorado Springs, Colorado 80970-6570 ("Lender").

WHEREAS, Grantor and Lender are parties to that certain Loan Agreement dated as of June 4, 2021 (the "Loan Agreement"), pursuant to which Borrower financed the original principal amount of \$2,440,000 (the "Loan") for the purchase by Borrower from Lender of that certain real property located at 2801 Jay Road, Boulder, Colorado (as more particularly defined in the Loan Agreement, the "Property"). Pursuant to the Loan Agreement the Grantor executed a Promissory Note Secured by First Lien Deed of Trust dated June 1, 2021, for the principal sum of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) ("Original Promissory Note") payable to the order of Lender, with interest at the rate of 5% per annum, payable in accordance with the terms of Original Promissory Note. The Original Promissory Note was secured by that certain First Lien Deed of Trust dated as of June 4, 2021, recorded June 8, 2021 in the Land Records for the County of Boulder, State of Colorado, at Reception No. 03890812 ("Deed of Trust"), a copy of which is attached hereto at Attachment 1.

WHEREAS, pursuant to that certain Loan Modification Agreement between Grantor and Lender dated as of October 7, 2024 ("Loan Modification Agreement"), Grantor has executed an Amended and Restated Promissory Note Secured by First Lien Deed of Trust dated October 7, 2024 ("Promissory Note"), which amends and restates in its entirety the Original Promissory Note.

AND WHEREAS, pursuant to the Loan Modification Agreement, the Grantor is desirous of amending the Deed of Trust as provided in this Amendment.

NOW, THEREFORE, the Deed of Trust, in consideration of the premises and for the purpose aforesaid, is hereby amended as follows:

1. Amendment. Section 3 of the Deed of Trust is deleted in its entirety, and a new Section 3 is hereby inserted as follows:

3. Transfer; Release. If any part of the Property or any interest therein is sold or transferred by the Grantor without Lender's prior written consent ("Prohibited Transfer"), Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable. Such Prohibited Transfer shall include any transfer of

more than a 25 percent interest in the Grantor such as the sale or transfer of more than a 25 percent beneficial interest in Grantor, more than a 25 percent change in either the identity or number of members of a partnership or similar entity, or change in the ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity; provided, notwithstanding the foregoing, that a transfer for estate planning purposes by Margaret J. Freund ("MJF") of an interest in Grantor to a trust or estate planning entity controlled by her or to a family member where MJF controls the voting rights transferred to such family member shall not be considered a Prohibited Transfer.

2. Timing of Satisfaction of Promissory Note and Loan; Release of Deed of Trust. As provided in the Promissory Note and Loan, as amended by the Loan Modification Agreement, the entire unpaid principal amount of the Promissory Note and all accrued but unpaid interest under the Promissory Note shall be due and payable in full on the earlier of (i) June 4, 2026, or (ii) one hundred and twenty (120) days after the final legislation approving the annexation of the Property into the City of Boulder (the "Maturity Date"). Upon, but not prior to, payment in full of the Promissory Note and Loan, as amended by the Loan Modification Agreement, the Lender and Trustee shall promptly execute and deliver to Grantor (i) a certificate of satisfaction of the Promissory Note and Loan and release and satisfaction of the Deed of Trust in recordable form to be recorded in the Land Records for the County of Boulder or City of Boulder (as applicable), and (ii) the original of the Promissory Note marked as "CANCELLED".

3. Ratification of Loan Documents; Re-Grant of Deed of Trust; No Impairment of Lien. Grantor specifically hereby confirms, ratifies and reaffirms the obligations set forth in the Loan Agreement as amended by the Loan Modification Agreement, Promissory Note and this Amendment. Grantor does hereby grant and regrant, convey and reconvey the Property to Trustee (as defined in the Deed of Trust) upon the same terms, covenants, liens, security interests, representations, indemnities and warranties as are contained in the Deed of Trust as amended by this Amendment, and does hereby grant to Lender and Trustee a continuing assignment and security interest in the Property and the proceeds thereof, all on the same terms as are set forth in the Deed of Trust as amended by this Amendment to secure the Indebtedness (as defined in the Deed of Trust) and to secure all of the other obligations of payment performance secured by the Deed of Trust. Nothing set forth in this Agreement shall affect the priority or extent of the lien or encumbrance and/or assignment of the Deed of Trust or any of the other Loan Documents, nor release or change the liability of any party who may now be or after the date of this Agreement become liable, primarily or secondarily, under the Promissory Note, the Deed of Trust and the other Loan Documents. Except as expressly modified hereby, the promissory Note, the Deed of Trust and the other Loan Documents remain unchanged, are hereby ratified and reaffirmed in all respects and shall remain in full force and effect. Nothing herein shall be construed to constitute a novation of the Loan, the Promissory Note, the Deed of Trust or any of the other Loan Documents.

4. Governing Law; Severability. The Promissory Note, the Deed of Trust and this Amendment shall be governed by the law of Colorado. In the event that any provision or clause of this Amendment, the Deed of Trust or the Promissory Note conflicts with the law, such conflict shall not affect other provisions of this Amendment, the Deed of Trust or the Promissory Note

which can be given effect without the conflicting provision, and to this end the provisions of this Amendment, the Deed of Trust and Promissory Note are declared to be severable.

ATTACHMENT 1
To Amendment to First Lien Deed of Trust
Copy of Recorded Original Deed of Trust

12573646.5 043758.00001

03890812

06/08/2021 07:40 AM

RF: \$48.00

DF: \$0.00

Page: 1 of 8

Electronically recorded in Boulder County Colorado. Recorded as receiver

After Recording Return To:
The Colorado District Church of the Nazarene
12021 Pennsylvania Street, #206
Thornton, Colorado 80241

FIRST LIEN DEED OF TRUST

THIS FIRST LIEN DEED OF TRUST is dated as of June 4, 2021, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, whose mailing address is c/o Fulton Hill Properties, 1000 Carlisle Avenue, Richmond, VA 23231 ("Grantor"), and the Public Trustee of the County of Boulder in the State of Colorado ("Trustee") for the benefit of THE COLORADO DISTRICT CHURCH OF THE NAZARENE, whose address is 12021 Pennsylvania Street, #206, Thornton, Colorado 80241 ("Lender").

WHEREAS, the Grantor has executed a Promissory Note Secured by First Lien Deed of Trust dated June 1, 2021, for the principal sum of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) ("Promissory Note") payable to the order of Lender, with interest at the rate of 5% per annum, payable in accordance with the terms of Promissory Note.

AND WHEREAS, the Lender is desirous of securing payment of the principal and interest and all other obligations of the Promissory Note in whose hands soever the Promissory Note may be.

NOW, THEREFORE, the Grantor, in consideration of the premises and for the purpose aforesaid, does hereby grant, bargain, sell and convey unto the Trustee in trust and for the benefit of Lender, the following described Property, situate in the County of Boulder, State of Colorado, to-wit:

See attached EXHIBIT A

also known as street and number 2801 Jay Road, Boulder, Colorado

together with all and singular the privileges and appurtenances thereunto belonging (the "Property").

1. Security. This Deed of Trust is given and accepted on the terms set forth herein and to secure (a) payment of the Promissory Note and (b) performance of any and all obligations under the Promissory Note. Loan Agreement and this Deed of Trust.

2. Taxes and Insurance. During the continuance of said Promissory Note or any part thereof, the Grantor will in due season pay all taxes and assessments levied on said Property; all amounts due on account of principal and interest on prior encumbrances, if any; and will keep all buildings that may at any time be on said lands, insured against loss by fire with extended coverage endorsements in such company or companies as the holder of said Note may, from time to time direct, for such sum or sums as such company or companies will insure for, not less than the amount of said Promissory Note, with loss, if any payable to the Lender hereunder, as its interest

may appear, and will deliver the policy or policies of insurance to the Lender hereunder, as further security for the Promissory Note aforesaid. And in case of the failure of Grantor to thus insure and deliver the policies of insurance, or to pay such taxes or assessments or amounts due or to become due on any prior encumbrances, if any, then the holder of said Note, or any of them, may procure such insurance or pay such taxes or assessments or amount due upon prior encumbrances, if any, and all monies thus paid, with interest thereon at eighteen percent (18%) per annum, shall become so much additional indebtedness, secured by this Deed of Trust, and shall be paid out of the proceeds of the sale of the Property aforesaid, if not otherwise paid by Grantor and may for such failure declare a violation of this covenant and agreement. Upon request, Grantor shall provide Grantee with evidence of such payment within ten (10) days after payment is made.

3. Due on Sale or Transfer; Release. In the event Grantor at any time receives an offer to purchase any part or parcel of the Property that Grantor intends to accept, Grantor shall notify Lender of such potential sale within fifteen (15) days of the date of the contract to purchase but in no event later than thirty (30) days prior to the closing of the sale of such property ("Closing"). At Closing, Grantor shall pay to Lender principal in an amount equal to fifty percent (50%) of the gross sales price received by Grantor for the part or parcel of the Property sold at Closing. Lender shall release that part or parcel of the Property sold at Closing upon receipt of such payment. If any part of the Property or any interest therein is sold or transferred by the Grantor without Lender's prior written consent ("Prohibited Transfer"), Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable. Such Prohibited Transfer shall include any transfer of more than a 25 percent interest in the Grantor such as the sale or transfer of more than a 25 percent beneficial interest in Grantor, more than a 25 percent change in either the identity or number of members of a partnership or similar entity, or change in the ownership of more than 25 percent of the voting stock of a corporation, partnership, limited liability company or similar entity; provided, notwithstanding the foregoing, that a transfer for estate planning purposes by Margaret J. Freund ("MJF") of an interest in Grantor to a trust or estate planning entity controlled by her or to a family member where MJF controls the voting rights transferred to such family member shall not be considered a Prohibited Transfer. At the maturity of the Note, this Deed of Trust shall be released only when the following amounts are paid in full: (i) the entire unpaid principal amount of the Note and all accrued but unpaid interest PLUS (ii) additional funds in the amount of fifty percent (50%) of the Net Sale Proceeds, defined as follows: Net Sales Proceeds shall be the gross consideration paid to Grantor by any and all purchasers, collectively, of any part or parcel of the Property that exceeds an aggregate of \$5,000,000.00, if any. For example, if the purchaser or purchasers of any part or of all of the Property pay Grantor an aggregate of \$5,100,000.00 in consideration for the purchase of any part or of all of the Property, then Grantor shall pay to Lender an additional \$50,000.00.

4. Right to Receiver. In case of any default, whereby the right of foreclosure occurs hereunder, the Trustee or the holder of said Note or certificate of purchase, shall at once become entitled to the possession, use and enjoyment of the Property aforesaid, and to the rents, issues and profits thereof, from the accruing of such right and during the pendency of foreclosure proceedings and the period of redemption, if any there be; and such possession shall at once be delivered to the Trustee or the holder of said Note or certificate or purchase by any appropriate civil suit or proceeding, and the Trustee, or the holder if said Note or certificate of purchase, or any thereof, shall be entitled to a receiver for said Property, and of the rents, issues and profits thereof, after

such default, including the time covered by foreclosure proceedings and the period of redemption, if any there be, and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of the party of the first part or of the then owner of said Property and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice - notice being hereby expressly waived - and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver to the payment of the indebtedness hereby secured, according to the law and the orders and directions of the court.

5. Acceleration and Attorney Fees. In case of default in any of said payments of principal or interest or any other obligation of the Promissory Note or this Deed of Trust or any other instrument securing the Promissory Note, according to the tenor and effect of said Promissory Note aforesaid, or any of them, or any part thereof, or a breach or violation of any of the covenants or agreements herein, by the party of the first part, their executors, administrators or assigns, then and in that case the whole of said principal sum hereby secured, and the interest thereon to the time of the sale may at once, at the option of the legal holder thereof, become due and payable, and the said Property to be sold in the manner and with the same effect as if said Promissory Note had matured, and that if foreclosure be made by the Public Trustee, an attorney fee in a reasonable amount for services in connection with said foreclosure proceedings shall be allowed by the Public Trustee as part of the cost of foreclosure, and if foreclosure be made through the courts, a reasonable attorney fee shall be taxed by the court as part of the costs of such foreclosure proceedings.

6. Assignment of Leases and Rents. Grantor hereby assigns to Lender all right, title and interest in and to all present and future leases associated with the Property and all rents payable in connection therewith as security for payment of the Promissory Note. This assignment is given to secure payment of the indebtedness evidenced by the Promissory Note and performance of all of Grantor's obligations hereunder. In the event of any default by Grantor, Lender may provide notice to any tenant under any lease on the Property of this assignment and demand payment, in which event, such tenant(s) shall be entitled to make all payments of rent due Grantor directly to Lender and such payments shall not entitle Grantor to declare a default under the leases, evict the tenants or otherwise take any adverse action against either tenant or Lender. All payments received by Lender in connection with this assignment shall be applied to amounts due under the Promissory Note in accordance with the terms thereof.

7. Possession and Maintenance of the Property. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

a. Possession and Use. Until the occurrence of an event of default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the rents from the Property.

b. Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

c. Compliance with Environmental Laws. During the period of Grantor's ownership of the Property, there will have been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance by any person on, under, about or from the Property; Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance on, under, about or from the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any hazardous substance on, under, about or from the Property, except in strict compliance with all laws and regulations; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including, without limitation, all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate, to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. Grantor hereby releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws as a consequence of Grantor's noncompliance under such laws. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the Promissory Note and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

8. Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent. Lender hereby consents to the removal of any soil or rock in connection with any grading, foundation or site work or in connection with any environmental cleanup.

9. Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

10. Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Property at all reasonable times to attend to Lender's interests and to inspect the Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

11. Compliance with Governmental Requirements. Except as disclosed to and authorized by Lender in writing, Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or

occupancy of the Property, including, without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so, and so long as, in Lender's sole opinion, Lender's interest in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

12. Duty to Protect. Grantor agrees neither to abandon nor leave the Property unattended. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

13. Taxes and Liens. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

a. Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property and shall pay when due all claims for work done and for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

b. Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

14. Acceleration; Foreclosure; Other Remedies. Upon Grantor's breach of any covenant or agreement of Grantor in this Deed of Trust, at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable. To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Grantor of Grantor's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated and shall mail copies of such notice of sale to Grantor and other persons as prescribed by law. After at least four (4) weeks' public notice, Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence;

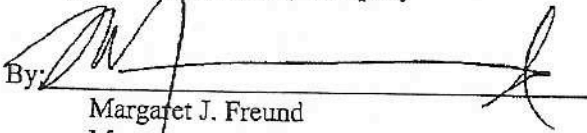
(b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Governing Law; Severability. The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

[Signature Page Next Page]

IN WITNESS WHEREOF, the Grantor hereunto has executed its signature the day and year first above written.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 
Margaret J. Freund
Manager

COMMONWEALTH OF VIRGINIA)

CITY of Richmond)

) ss.
)

The foregoing instrument was acknowledged before me this 3rd day of June, 2021, by Margaret J. Freund, Manager of **MJF 2801 Jay Rd Development LLC**, a Virginia limited liability company.

My Commission Expires 5/31/2022

Notarial Registration No. 113577

WITNESS my hand and official seal.

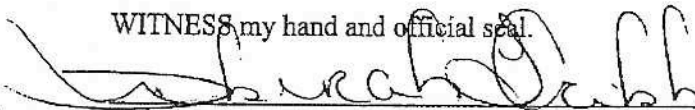

Notary Public



EXHIBIT A
To Deed of Trust

LEGAL DESCRIPTION OF THE PROPERTY

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M. DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING,

EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE 80 AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. 264461,

(TRACT 3086 SEC 17-IN-70 4.99 AC M/L)

COUNTY OF BOULDER, STATE OF COLORADO

13652064.2 043758.00001

[Signature Page to Amendment to First Lien Deed of Trust]

IN WITNESS WHEREOF, the Grantor hereunto has executed its signature the day and year first above written.

MJF 2801 Jay Road Development, LLC,
a Virginia limited liability company

By: [Signature]
Name: Margaret J. Freund
Its: Manager

STATE OF Virginia)
~~COLOMADO~~) ss.
City of Richmond)
COUNTY OF _____)

The foregoing Deed of Trust was acknowledged and signed before me this 17th day of October 2024, by Margaret J. Freund, as Manager of MJF 2801 Jay Road Development, LLC, a Virginia limited liability company.

WITNESS my hand and official seal.

My commission expires: 10.31.2025



Carol Moore
Notary Public

EXHIBIT 3
to
Subordination Agreement
Annexation Agreement

Exhibit 3 – Page 1

For Administrative Use Only

Grantor: City of Boulder and MJF 2801 Jay RD Development LLC
Grantee: MJF 2801 Jay RD Development LLC and City of Boulder
Case No. LUR2023-00018

ANNEXATION AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2024, by and between the CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City," and MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, hereinafter referred to as "Applicant."

RECITALS

- A. The Applicant is the owner of the real property generally described as 2801 Jay Road and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").
- B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property with an initial zoning designation of Residential - Mixed 2 (RMX-2).
- C. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

COVENANTS

1. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the Applicant shall:

- a) sign this Agreement.
- b) provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance.
- c) Pay the following to the City:

i)	<u>Plant Investment Fees (PIF's)</u>	
	Stormwater	\$2.46/square foot of impervious area
		Existing Impervious Area: 55,000 sf:
		<u>\$135,300</u>
	Total Due Prior to First Reading	\$135,300

- d) Execute the following documents, at no cost to the City, the final forms of which are subject to approval of the City Manager:
 - i) A deed of dedication substantially in the form attached hereto and incorporated herein as Exhibit B conveying to the City, in fee and clear of monetary liens and encumbrances, the easterly 30-foot portion of Property for the extension of Violet Avenue as generally shown on Exhibit B attached hereto and incorporated herein (the "2801 ROW").
 - ii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit C conveying to the City, in fee and clear of monetary liens and encumbrances, the 306 square foot portion of Property as generally shown on Exhibit C attached hereto and incorporated herein.
 - iii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit D conveying to the City, in fee and clear of monetary liens and encumbrances, the 561 square foot portion of Property as generally shown on Exhibit D attached hereto and incorporated herein.

2. Water and Wastewater Connection Requirements. Within 365 days of the effective date of the annexation ordinance, any existing structures on the Property required to be connected to the water utility, wastewater utility, or both under the Boulder Revised Code shall be connected to the City's utilities to which connection is required or be demolished. The City Manager, in her discretion, may grant one or more 180-day extensions of the 365-day compliance deadline for good cause shown by the Applicant. The City Manager will consider, among other factors, pending development projects and/or applications for the Property, the Property's current and/or future use, the status of ongoing vertical or infrastructure construction on portions of the Property, and environmental concerns in her decision. If the Applicant connects any existing structures on the Property, then the Applicant agrees to perform the following:

- a) For connection to the City's water utility:
 - i) Submit an application that meets the requirements of Chapter 11-1, "Water Utility," B.R.C. 1981, and obtain City approval to connect to the City's water utility.
 - ii) Pay all applicable fees and charges associated with a service line connection to the City's water utility, including but not limited to the water plant investment fee and all applicable water utility connection and inspection fees.
 - iii) Construct the individual service lines to the Property and connect the existing structures required to be so connected to the City's water utility.

- b) For connection to the City's wastewater utility:
 - i) Submit an application that meets the requirements of Chapter 11-2, "Wastewater Utility," B.R.C., 1981, and obtain City approval to connect to the City's wastewater utility.
 - ii) Pay all applicable fees and charges associated with a service line connection to the City's wastewater utility, including but not limited to the wastewater plant investment fee and all applicable wastewater utility connection and inspection fees.
 - iii) Construct the individual service line to the Property and connect the existing structures required to be so connected to the City's wastewater utility.
- 3. Existing Wells. The City agrees that it will not prohibit the Applicant from using existing wells for irrigation purposes, even if served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to city water utility. No person shall make any cross connections to the City's municipal water supply system from any well on the Property.
- 4. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.
- 5. Ditch Company Approval. If the Property is abutting or crossed by an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.
- 6. Existing Nonstandard Buildings and/or Nonconforming Uses. There are no nonstandard buildings or structures on the Property. The only nonconforming use on the Property that will be recognized by the City and temporarily allowed to continue to exist is a freestanding wireless communications facility tower and equipment pad and enclosure that is currently on the Property and more particularly identified in Exhibit E, attached hereto and incorporated herein, that was approved under Boulder County Land Use Docket #SU-05-004 (the "County Approval") (the "Tower"). No changes other than "eligible facilities requests", as defined under the Boulder Revised Code shall be made to the Tower and, for purposes of eligible facilities requests, the Tower shall be considered a "legal nonconforming tower structure" as referenced in the definition for "substantial change" in Section 9-16-1, "Definitions," B.R.C. 1981. Notwithstanding the foregoing, the City Manager shall have the authority to process and review any eligible facilities request for this Tower consistent with federal laws, rules, regulations, and orders applicable to the request. The Tower shall be removed upon termination of the Option and Lease Agreement dated April 8, 2005, as amended by the First Amendment to Option and Lease Agreement dated March 3rd, 2015, for the Tower between Church of the Nazarene and New Cingular Wireless, PCS, LLC (the "Lease") and in no event later than by February 28, 2045. The Lease shall not be renewed or extended in time if terminated for any reason before February 28, 2045.

7. Existing Church Use. There is also an existing church on the Property. A church use requires a use review within the RMX-2 zoning district. The existing church use may be continued, without a use review, upon annexation of the Property. Any changes to the church use, except connection to City utility services as required under this Agreement, shall be made in accordance with the applicable standards and processes for the use under the Boulder Revised Code.
8. New Construction. All new construction commenced on the Property after annexation shall comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.
9. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.
10. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Property as set forth in this Agreement.
11. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold (and not record) such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that Applicant withdraws from this Agreement pursuant to the terms of this Agreement, or the City does not annex the Property, the City agrees that it will not record any such documents and will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.
12. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.
13. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein

described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C., 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.

14. Failure to Annex. In the event that the Property is not annexed to the City: (a) this Agreement and any document executed pursuant hereto shall be null and void and of no consequence; and (b) the City shall promptly return to Applicant all monies tendered to the City pursuant to this Agreement, including, without limitation, the stormwater PIF fee pursuant to Section 1(c)(i) above.
15. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's successors and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.
16. Right to Withdraw. The Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicant. The City agrees, within 30 days of a request by the Applicant after a withdrawal, to return all previously submitted fees, application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.
17. Community Benefit. The Applicant agrees that this is a voluntary agreement. Prior to a building permit application for any new dwelling unit on the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder covenants and deed restrictions that will require and secure construction of permanently affordable dwelling units on the Property consistent with the terms of this Agreement.
 - a) Affordable Units. The Applicant agrees that a certain percentage of the total number of new dwelling units constructed on the Property shall be developed and sold as for-sale deed restricted permanently affordable units ("Affordable Units"). The required percentage of Affordable Units depends on the number of dwelling units that will be constructed on the Property, except that the Applicant agrees that in any event no less than 30 percent (30%) of new dwelling units constructed on the Property shall be Affordable Units. If a density bonus is approved for the Property under Section 9-8-4,

"Housing Types and Density Bonuses Within the RMX-2 Zoning District," B.R.C. 1981, the Applicant shall provide the percentage of Affordable Units on the Property that is required under Section 9-8-4, B.R.C. 1981, for the bonus that is approved. The Applicant may satisfy the affordable housing requirement of this Agreement through any combination of the following means:

1. Concurrent On-site Construction. Construction of Affordable Units consistent with the terms of this Agreement and concurrently with construction of the Market Units. To ensure concurrency, a final certificate of occupancy may not be issued for a Market Unit unless at least an equivalent number of final certificates of occupancy has been issued for Affordable Units as Market Units on the Property. For purposes of this Agreement, "Market Units" means dwelling units that are intended to be sold at a price determined by the Property owner based on market conditions and demand and not subject to a deed restricting covenant establishing pricing requirements for the units.
2. Conveyance of Fee Simple Title. Conveyance of fee simple title to the City of Boulder, or an entity designated by the City of Boulder, at no cost to the City of Boulder or the designated entity, in one or more platted lots of the Property for construction of the required percentage of Affordable Units consistent with a site review approval for the development of the Property (the "Affordable Lot"). The Affordable Lot shall be platted consistent with the standards of Chapter 9-12, "Subdivision," B.R.C. 1981, except as may be expressly modified by this Agreement. The Affordable Lot shall meet the requirements described in the balance of this Section 17(a)(2) below to the City Manager's satisfaction.
 - i. The Affordable Lot shall be in an environmentally acceptable condition as supported by a Phase I Environmental Assessment, to be provided by the Applicant at no cost to the City. The City Manager may require other studies or assessments to make this determination, at no cost to the City.
 - ii. Satisfactory proof of title is provided to the City Manager within thirty days before the effective date of conveyance to the City or its designee. The Affordable Lot shall be free of all monetary liens and encumbrances and free of encumbrances other than: (a) this Agreement and other City development approvals and easements necessary for the development of the Property consistent with this Agreement and City approvals for the Property; and (b) those listed as exceptions in Exhibit F, but excluding those exceptions in Exhibit C that affect only that portion of the Property other than the Affordable Lot. All property taxes and special taxes will be current before the title for the "Affordable Lot" is conveyed. The Affordable Lot will be conveyed by special warranty deed before application of any building permit for a new dwelling unit on the Property. The conveyed Affordable Lot will be fully owned by the City or its designee.

- iii. The Affordable Lot shall be of a size and include all rights to adequately and reasonably allow for construction of all Affordable Units required to be constructed on the Property pursuant to the terms of this Agreement and site review approval. Any lot conveyed for this purpose shall be a finished lot. A lot shall be considered finished if, consistent with technical documents approvals for such improvements and City of Boulder Design and Construction Standards and the Boulder Revised Code standards, the lot has been roughly graded and provided with the underground water, sanitary sewer, and stormwater mains and service stub outs to the property line for the lot (service lines are not required) necessary to serve the Affordable Units and the streets required for the construction of the Affordable Units under the site review approval and/or this Agreement. Any future development of the lot conveyed under this paragraph with permanently affordable dwelling units shall meet the requirements of this Agreement for Affordable Units.
3. No cash-in-lieu. Cash-in-lieu shall not be an option for meeting the Community Benefit requirements of this Agreement nor for the Applicant's inclusionary housing obligation set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981 .
 - b) Type. All of the Affordable Units must be for-sale units. A minimum of eighteen percent (18%) of the Affordable Units shall have three bedrooms and two baths. The remainder of the Affordable Units shall have a minimum of two bedrooms and one bath.
 - c) Parking. Each Affordable Unit shall have at least one parking space for an automobile. At least 45 percent (45%) of the Affordable Units shall include a carport or garage of adequate size to store one automobile. The remaining Affordable Units may have any type of parking, including at grade uncovered parking.
 - d) Design Quality. The Affordable Units shall be of comparable quality in design, construction, workmanship and materials to the Market Units.
 - e) Location. There is no requirement as to where Affordable Units are located within the development; Affordable Units may be evenly distributed or concentrated in one or more locations within the development.
 - f) Pricing and size. The total number of Affordable Units shall be divided into two pricing categories:
 - a. All two-bedroom Affordable Units on the Property shall have a minimum size of 1,000 square feet and be priced to be affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes shall be set at a maximum of 120% of the AMI.
 - b. All three-bedroom Affordable Units on the Property shall have a minimum size of 1,250 square feet and be priced to be affordable to households earning no

- more than 120% of the AMI and qualifying household incomes shall be set at a maximum of 150% of the AMI.
- c. The initial sales price of an Affordable Unit shall be based on the affordable pricing sheet established by the City Manager as in effect at the time of building permit issuance for the Affordable Unit. Pricing of future Affordable Unit resales shall be permanently restricted based on the initial sale price of the Affordable Unit and as described in the individual final permanently affordable deed restricting covenant executed by individual purchasers.
- g) Rounding. Any percentage requirement in this Paragraph 17 that results in a fraction is subject to standard rounding (0.5 and above rounds up).
- h) Housing Inspections. The City will retain a housing construction inspector (the "Inspector") to inspect and monitor construction of the Affordable Units. These inspections are to ensure the Affordable Units meet all contractual requirements and result in high quality, well-constructed housing. All costs for the time of the Inspector and any other costs incurred shall be borne by the Applicant.
- i) Affordable Agreement. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder an on-site agreement ("On-site Agreement") which includes but is not limited to details concerning required housing inspections, and specific requirements for a homeownership association.
- j) Covenants. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder a permanently affordable deed restricting interim covenant ("Interim Covenant") and related required documents to permanently secure the affordability of the Affordable Units. Upon the sale of an Affordable Unit to an affordable purchaser, a permanently affordable deed restricting covenant shall be executed by the individual purchasers and recorded with the Boulder County Clerk and Recorder. Upon sale of all Affordable Units to affordable purchasers, the Interim Covenant shall be released.
- k) Modification of Affordable Housing. The Applicant and the City Manager, or her delegate, may agree to modify the requirements set forth in this Paragraph 17 for developments with dwelling units provided that the City Manager finds the proposed development or land conveyance would provide an affordable housing benefit that provides a community benefit at least equivalent to the housing benefit provided by the Affordable Units required herein. The City Manager may not accept cash-in-lieu to satisfy the requirement for any of the on-site Affordable Units required under this Agreement.
- l) Consistency with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Administrative Regulations. Except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be

consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.

- m) Amenities. Access to any amenities provided to the Market Unit owners, including but not limited to open space and parks, shall equally be provided to the Affordable Unit owners.
- 18. Community Benefit for Nonresidential Development. For any nonresidential development of the Property requiring payment of the capital facility impact fee for affordable housing under Section 4-20-62, "Capital Facility Impact Fee," B.R.C. 1981, as may be amended from time to time, the Applicant agrees to pay the fee for affordable housing at a rate two-times the rate otherwise required to be paid for such development. This increased fee shall be paid in accordance with the standards applicable at the time of the development requiring payment of said fee.
- 19. Market Unit Size and Tenure. No dwelling unit on the Property shall have more than 2,500 square feet of floor area, excluding 500 square feet in a garage; provided, however, that if the total number of dwelling units allowed on the Property pursuant to an approved site review application is seventy-eight (78) or fewer, then the maximum square footage for each Market Unit shall increase to 3,000 square feet. The floor area requirements for the Market Units shall be based on the "floor area" definition found in Section 9-16-1, "General Definitions," B.R.C 1981.
- 20. Zoning. The Property shall be annexed to the City with an initial zoning classification of Residential - Mixed 2 (RMX-2), and except as otherwise set forth herein, shall be subject to all of the rights and restrictions associated with that zoning. Nothing in this Agreement shall limit the city's police power to zone and regulate this Property.
- 21. Subordination. Prior to second reading of the annexation ordinance, the Applicant shall obtain and submit to the City an agreement between any lender with a security interest in the Property and the City, executed by the mortgagee, in which the mortgagee consents to this Agreement and subordinates any interest in the Property to this Agreement in a form subject to approval of the City Manager and essentially as attached in Exhibit G.
- 22. Compatibility and Site Review. Prior to any application for a building permit for a new dwelling unit or a new principal use on the Property, the Applicant shall file with the City, and obtain approval of, a site review application which shall be reviewed and approved in accordance with the standards of Section 9-2-14, "Site Review," B.R.C. 1981, as in effect at the time such application is filed. A site review will be required regardless of whether the proposal meets the minimum thresholds for a required site review under Section 9-2-14, B.R.C. 1981, or whether the proposal would otherwise require a site review application. In order to address the compatibility criteria in Section 9-2-14(h)(3), B.R.C. 1981, the site review application shall include, without limitation, the following:
 - a) Eastern Right-of-Way Design. The Applicant's site review plans shall provide a public street along the eastern Property line that includes only two motor vehicle travel lanes

(two-way travel) with a combined width of 20 feet, curb and gutter on the east and west side of the travel lanes and an eight-foot wide tree lawn and five-foot wide detached sidewalk on the west side of the street only (collectively, the "2801 ROW Improvements"). The Applicant agrees that, as part of a site review approval, it will dedicate to the City a public access easement immediately to the west of the 2801 ROW as may be necessary to accommodate the eight-foot wide tree lawn and five-foot wide detached sidewalk noted above, but the parties agree that the public access easement for said improvements will not extend more than one foot beyond the edge of the sidewalk. The parties further agree that for the initial redevelopment of the Property no in-fee right-of-way dedication will be required along the eastern Property line for this public street in addition to the 2801 ROW dedication.

- b) Maximum Stories and Building Design. The Applicant's site review plans may show buildings of up to three stories above finished grade, except that buildings along the entire eastern Property line and along no less than the eastern half of the northern Property line shall be no more than two-stories in height above finished grade and shall have sloped roof forms. This requirement shall not apply if the site review application is filed in 2030 or later and the City of Boulder has at that time adopted a subcommunity or area plan or design guidelines that apply to the Property. If such a plan or guidelines have been adopted at that time, the Property shall be developed consistent with the character established for the area in such plan or guidelines.
- c) Future Adopted Plans. If a site review application for the Property is submitted before January 1, 2027, then development of the Property shall not be subject to any subcommunity plan, area plan, or design guidelines then in effect.

23. Public Improvements. As part of the required site review approval for the initial redevelopment of the Property, the Applicant agrees to provide or improve, at no cost to the City, certain public improvements on and off the Property. The specific improvement requirements will be determined in the site review process and may include, without limitation, dedication of rights-of-way and easements for and construction of the following consistent with applicable standards of the Boulder Revised Code and City of Boulder Design and Construction Standards ("DCS"):

- a) Detached sidewalks and landscape areas along both Jay Road and US 36/28th Street in the locations where the Property directly abuts the public right-of-way or public easements for Jay Road and US 36/28th Street;
- b) Intersection improvements at the intersection of Jay Road and US 36/28th Street;
- c) Jay Road improvements including:
 - i) A new left turn lane to enter the Property and a new left turn lane approaching the intersection with US 36/28th Street;
 - ii) A center median;
 - iii) A raised pedestrian/bicycle crossing across the channelized right turn lane on westbound Jay Road at the intersection with 28th Street; and
 - iv) Reconstruction of a standard RTD boarding area and concrete shelter pad behind the detached sidewalk meeting RTD standards;
- d) The 2801 ROW Improvements; and

- e) A multi-use path and other improvements that may be anticipated in the City of Boulder Transportation Master Plan or an adopted connections plan for the area at the time the site review application is filed. Instead of requiring construction of any such public improvement at the time of the development of the approved site review plans, the City may require payment, to the City, of the cost of construction of the improvement to allow for construction thereof by the City at a later time.
24. Solar Access. The approving authority of a site review for the Property shall have the authority to modify under the site review process, the solar access standards of Section 9-9-17, "Solar Access," B.R.C. 1981, for lots developed with townhouses where the modification is required to allow for townhouses to be built on individual lots, for example, to allow a zero setback from lot lines where two townhouses are attached.
25. Density Calculation. In the initial redevelopment of the Property with dwelling units meeting the Affordable Unit requirements under Paragraph 17 of this Agreement, when determining the maximum number of dwelling units allowed per acre pursuant to such standards in Section 9-8-1, "Schedule of Intensity Standards," B.R.C., 1981, and pursuant to the standard in Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C., 1981, the size of the Property, as measured prior to any dedications, will be considered the basis, or more particularly, the "lot or parcel" for such analysis. However, in no event shall the density of the Property exceed the maximum density allowed (pursuant to the same methodology) under the land use map designation of the Boulder Valley Comprehensive Plan for the Property.
26. Density Bonus. In a site review or amendment thereto for the development or redevelopment of the Property, when determining for purposes of a density bonus under Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C. 1981, whether permanently affordable dwelling units on the Property meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, any Affordable Units meeting the requirements set forth in Paragraph 17 shall be considered meeting the requirements of Chapter 9-13 for this particular purpose. This paragraph does not modify the required percentage numbers of units that are permanently affordable units for any of the density bonuses available under Section 9-8-4, B.R.C. 1981.
27. Stormwater Requirements. Any development of the Property shall meet drainage and stormwater quality requirements of the Boulder Revised Code and City of Boulder Design and Construction Standards ("City Stormwater Requirements"). The Applicant will design and construct, at no cost to the City, any on-site and off-site drainage or stormwater quality systems that are necessary to meet City Stormwater Requirements for the development of the Property, as determined by the City Manager, which may include without limitation modifications to the Farmer's Ditch. The Applicant shall be responsible for obtaining any required approval(s) from the Farmer's Ditch for stormwater generated or discharged from or modified by the Applicant's Property.

and DCS to allow for approval of a subdivision of the Property under Chapter 9-12, "Subdivision," B.R.C. 1981, with private streets and lots that do not front on or have direct access to a public street, but rather solely front on and have frontage on a private street, if the approving authority finds that the application meets the site review criteria.

(signature page follows)

EXECUTED on the day and year first above written.

MJF 2801 JAY RD DEVELOPMENT LLC,
a Virginia limited liability company

By: 

Margaret J. Freund, Manager

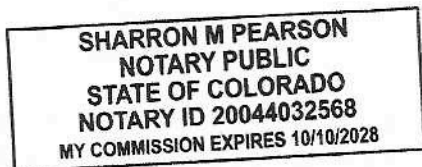
STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 22nd day of October, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: 10-10-2028

[Seal]




Notary Public

CITY OF BOULDER, COLORADO

By: _____
Nuria Rivera-Vandermyde, City Manager

Attest:

City Clerk

Approved as to form:

City Attorney's Office

Date: _____

Exhibits

Exhibit A	Legal Description of Property
Exhibit B	Deed of Dedication
Exhibit C	Quitclaim Deed
Exhibit D	Quitclaim Deed
Exhibit E	Map of Tower
Exhibit F	Title Exceptions
Exhibit G	Subordination Agreement