AGENDA

CITY COUNCIL REGULAR MEETING

December 10, 2019

5:00 PM, City Council Chambers
130 S Galena Street, Aspen

CITY OF ASPEN

I. CALL TO ORDER

II. ROLL CALL

III. SCHEDULED PUBLIC APPEARANCES

IV. CITIZENS COMMENTS & PETITIONS

(Time for any citizen to address Council on issues NOT scheduled for a public hearing. Please limit your comments to 3 minutes)

V. SPECIAL ORDERS OF THE DAY

a) Councilmembers' and Mayor's Comments
b) Agenda Amendments
c) City Manager's Comments
d) Board Reports

VI. CONSENT CALENDAR

(These matters may be adopted together by a single motion)

VI.A. Resolution #129 and #131, Series of 2019 - Water Treatment Plant Basin Residuals Removal

VI.B. Resolution #132, Series of 2019 - Ruedi O&M Contract

VI.C. Resolution #123, Series of 2019 - Strategic Focus Areas

VI.D. Resolutions #144 & #145, Series of 2019 - Lease Extensions for City Office Space at 201 N. Mill Street
Approve lease extensions.

VI.E. Resolution #122, Series of 2019 - 2020 Mill Levy

VI.F. Resolution #138, Series of 2019 - Schematic Design Contract: Pedestrian Mall Project

VI.G. Minutes - November 26, 2019

VII. NOTICE OF CALL-UP

VII.A. Call Up Notice, HPC approval for 202 E. Main Street - Conceptual Major Development, Relocation, Setback Variations, and Floor Area Bonus

VIII. FIRST READING OF ORDINANCES

IX. PUBLIC HEARINGS

IX.A. Ordinance #33, Series of 2019 - Request to Continue to a Date Certain: 2nd Reading- 1001 Ute Subdivision/PUD: Major Amendment to a Planned Development & Associated Reviews to Memorialize Existing Improvements on this Property

IX.B. Resolution #136, Series of 2019 - 183 Red Mountain Road - Dimensional Variance - Floor Area Exemption
Staff recommends City Council Deny the requested dimensional variance.

X. ACTION ITEMS

X.A. Resolution #137, Series of 2019 - Grey Lady- Temporary Use Request

X.B. Resolution #139, Series of 2019 - Approving a Donation Agreement for 777 Gibson LLC

X.C. Resolution #143 of 2019 – Perpetual Deed Restriction for Centennial Rentals

XI. ADJOURNMENT

CITY OF ASPEN

MEMORANDUM

TO: **Mayor and City Council**

FROM: **Ryan Loebach, Senior Project Manager**

THROUGH: **Tyler Christoff, Utilities Director**

MEMO DATE: **December 2, 2019**

MEETING DATE: **December 10, 2019**

RE: **Water Treatment Plant Basin Residuals Removal Contracts**

REQUEST OF COUNCIL: Staff requests approval of a change order to an existing contract and a new contract with Velocity Plant Services, Inc to continue basin residuals removal in 2020.

SUMMARY AND BACKGROUND: The Aspen Water Treatment Plant (AWTP) operates continuously to provide potable water to customers. Suspended solids within the City's raw water supply are removed through the AWTP's sedimentation processes. Sediment or residuals build over time within these basins, requiring their removal. This removal is accomplished through draining the basin, washing the basins with a pressure washer to re-suspend the collected residuals, and allowing those residuals to flow to the WTP's backwash pond or removing those residuals using a vacuum truck.

DISCUSSION:
Phase I – 2019 Residuals Removal: Staff have utilized Velocity Plant Services, Inc. to remove residuals from process basins at the AWTP. Based on past operations, staff anticipated the need to remove ~75 cubic yards of residuals at a contracted cost of $41,250. On October 16-18th, 2019, a total of 227 cubic yards of residuals were discovered and removed. Based on the discrepancy of material found, staff is requesting an additional $35,705 for a total contract of $76,955, to pay for the work completed to remove residuals.

Phase II – 2020 Residuals Removal: Staff is requesting approval of a contract with Velocity Plant Services, Inc in the amount of $64,298 to pay for work in 2020 to remove 130 cubic yards of residuals from the AWTP, maintaining the drying area during residuals removal activities, and flush AWTP drain lines.

FINANCIAL IMPACTS: City Council has approved $300k to fund project 50745 – Backwash Pond Master Plan and Solids Mitigation that allows staff to plan/construct improvements and manage AWTP-generated residuals and associated processes.

Total Project Expenditures:

Phase I, 2019 Residual Removal		$ 76,955
Phase II, 2020 Residual Removal		$ 64,298
Contingency for Phase II Work		$ 15,000
	Total:	**$ 156,253**

Funding Budgeted – 50745 Backwash Pond Master Plan and Solids Mitigation:

Water Fund – 421.322.81200.52199.50745		$ 300,000
	Total:	**$ 300,000**

ENVIRONMENTAL IMPACTS: The backwash pond utilizes a permanent pool of water to settle out suspended solids prior to discharge. The discharge from this pond is regulated by required permitting with the EPA through the National Pollutant Discharge Elimination System (NPDES). This project is necessary to keep residuals volume storage in the backwash pond at a minimum to maintain full functionality of the backwash pond.

ALTERNATIVES: Staff will begin evaluating annual residuals production within the sedimentation basin to inform long-term solutions working with WTP produced residuals. Staff will continue to provide annual maintenance of the WTP residuals processes.

RECOMMENDATIONS: Staff requests approval of a change order to an existing contract and a new contract with Velocity Plant Services, Inc to continue residuals removal in 2020.

CITY MANAGER COMMENTS:

ATTACHMENTS:

Exhibit A - Resolution #129, Series of 2019: Phase I, 2019 Water Treatment Plant Residuals Removal Change Order
Exhibit B - Resolution #131 Series of 2019: Phase II, 2020 Water Treatment Plant Residuals Removal Contract
Exhibit C - Phase I 2019 Residuals Removal Change Order Invoice
Exhibit D - Phase II 2020 Removal: Velocity Plant Services, Inc Contract

RESOLUTION #129
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CHANGE ORDER TO AN EXISTING CONTRACT BETWEEN THE CITY OF ASPEN AND VELOCITY PLANT SERVICES, INC AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CHANGE ORDER ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract for Phase I, 2019 Water Treatment Plant Residuals Removal, between the City of Aspen and, a true and accurate copy of which is attached hereto as Exhibit "A",

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves that Contract Change Order for Phase 1, 2019 Residuals Removal between the City of Aspen and Velocity Plant Services, Inc a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th day of December 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10th, 2019.

_____
Linda Manning, City Clerk

RESOLUTION #131
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT BETWEEN THE CITY OF ASPEN AND VELOCITY PLANTS SERVICES, INC AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract for Phase II, 2020 Water Treatment Plant Residuals Removal, between the City of Aspen and, a true and accurate copy of which is attached hereto as Exhibit "A";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves that Contract for Phase II, 2020 Water Treatment Plant Residuals Removal, between the City of Aspen and Velocity Plant Services, Inc a copy of which is annexed hereto and incorporated herein, and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th day of December, 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10th, 2019.

_____
Linda Manning, City Clerk

VELOCITY PLANT SERVICES

2107 West College Ave
Englewood, CO 80110
303-984-7800

Invoice No. 201952-01B

INVOICE

Customer

Name	City of Aspen			
Address	500 Doolittle Drive			
City	Aspen	State CO	ZIP 81611	
Phone	970-309-9750			
Attn:	Ryan Loebach, P.E.			

Misc

Date	10/31/2019
Order No.	
Rep	
FOB	

Phase I, 2019 Water Treatment Plant Residuals Removal:
Task A: To be completed at a later date under separate contract per owner's direction.
Task B: Sed basin Sludge removal

Original Scope:
1. Aspen to drain water and provide bypass as needed to maintain plant operation.
-Item 1 was completed by Aspen as scheduled.

2. VPS to access sed basin at points of entry at Northwest corner and Northeast corner of basin as needed to address various chambers of the sedimentation basin and flocculation basins on the East end.
-Item 2 was completed by VPS & redi Services. 2 Access points were used on either side of the building to enter the sed basin.

3. Use flushing Equipment and water supplied by the city to loosen and remove approximately 50 CY of sludge from the sedimentation and flocculation basins. A vac truck will be used, and sludge transported to backwash basin area for drying. Sludge will not be removed from the site at this time. Hand labor is included as needed.
-Flushing was provided by VPS using Redi Service's equipment rather than the City's.
-Sed Basin Sludge Removed per the original scope: 50 CY @ $285 / CY.
-Sed Basin Sludge Additional Removed: 177 CY @ $285 / CY.
-Sludge was transported to drying area by pond.

4. Flush 12" drain line to backwash basin.
-This item of work was not completed, Deduct of $1,500 is applied.

Additional Scope:
Task B
1. Additional work was required to maintain the sludge drying bed for excess sludge quantities. Details are below.

2. Additional clear and grub work was requested to be performed at the backwash pond area. Details of work completed are below.

Description		Subs/Other	Labor	Material	Equipment	Total
Task B - Sed Basin Sludge Removal						**$ 63,195.00**
Base bid billed at $285 / CY	50 CY	$ 285.00				$ 14,250.00
Additional Sludge Removed billed at $285 / CY	177 CY	$ 285.00				$ 50,445.00
Delete scope item for flushing 12" line to backwash pond	1 LS	$ (1,500.00)				$ (1,500.00)
Task B - Additional Work for Maintenance of Sludge Drying Bed						**$ 10,480.00**
Loader	4 Days				$ 1,080.00	$ 4,320.00
Loader operator	32 HRS		$ 60.00			$ 1,920.00
Skidsteer	4 Days				$ 400.00	$ 1,600.00
Skidsteer operator	24 HRS		$ 60.00			$ 1,440.00
Additional hand labor for adding roadbase to berm	16 HRS		$ 50.00			$ 800.00
Additional hand labor for pumping supernatant from drying bed	8 HRS		$ 50.00			$ 400.00
Backwash Pond - Additional Clear and Grub T&M Work						**$ 3,280.00**
Superintendent with truck and tools	8 HRS		$ 115.00			$ 920.00
Craftsman 1 EA	8 HRS		$ 50.00			$ 400.00
Loader	1 Day				$ 1,080.00	$ 1,080.00
Skidsteer	1 Day				$ 400.00	$ 400.00
operator	8 HRS		$ 60.00			$ 480.00

TOTAL $ 76,955.00

CITY OF ASPEN

CONTRACT FOR CONSTRUCTION
(Short Form)

THIS CONTRACT, made and entered into on **December 10th , 2019**, by and between the **CITY OF ASPEN**, Colorado, hereinafter called the "City", and **Velocity Plant Services**, hereinafter called the "Contractor".

THEREFORE, in consideration of the mutual covenants and Contracts herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Construction of Project.** Contractor agrees to furnish all labor, materials, tools, machinery, equipment, temporary utilities, transportation and any other facilities needed therefor, and to complete in a good, workmanlike and substantial manner the Project as described in the Scope of Work and/or Proposal appended hereto as **Exhibit "A"** which is incorporated herein as if fully set forth (the "Project").

2. **Plans and Specifications; Compliance with Laws.** The Project is to be constructed and completed in strict conformance with the Scope of Work and/or Proposal appended hereto for the same approved in writing by the parties hereto. The Project shall also be constructed and completed in strict compliance with all laws, ordinances, rules, regulations of all applicable governmental authorities, and the City of Aspen Procurement Code, Title 4 of the Municipal Code, including the approval requirements of Section 4-08-040. Contractor shall apply for and obtain all required permits and licenses and shall pay all fees therefor and all other fees required by such governmental authorities.

3. **Payments to Contractor.** In consideration of the covenants and Contracts herein contained being performed and kept by Contractor, including the supplying of all labor, materials and services required by this Contract, and the construction and completion of the Project, City agrees to pay Contractor a sum not to exceed **Sixty Four Thousand Two Hundred Ninety Eight ($64,298.00) DOLLARS** or as shown on **Exhibit "A"**.

4. **Commencement and Completion.** Contractor agrees to commence work hereunder immediately upon execution hereof, to prosecute said work thereafter diligently and continuously to completion, and in any and all events to substantially complete the same not later than **December 1st, 2020**, subject to such delays as are permissible under the "Extension of Time for Completion" section of this Contract.

5. **Payment of Bills and Charges.** Contractor shall pay promptly all valid bills and charges for material, labor, machinery, equipment or any other service or facility used in connection with or arising out of the Project, and shall obtain periodic releases from all

subcontractors and material suppliers supplying labor or materials to the Project concurrently with Contractor's delivering any payment to such subcontractors and material suppliers. Contractor shall indemnify and hold City and City's officers, employees, agents, successors and assigns free and harmless against all expenses and liability suffered or incurred in connection with the claims of any such subcontractors or material suppliers, including but not limited to court costs and attorney's fees resulting or arising therefrom; provided that Contractor shall be excused from this obligation to the extent that City is in arrears in making the payments to Contractor. Should any liens or claims of lien be filed of record against the Property, or should Contractor receive notice of any unpaid bill or charge in connection with construction of the Project, Contractor shall immediately either pay and discharge the same and cause the same to be released of record, or shall furnish City with the proper indemnity either by title policy or by corporate surety bond in the amount of 150% of the amount claimed pursuant to such lien.

6. Releases. Contractor shall, if requested by City, before being entitled to receive any payment due, furnish to City all releases obtained from subcontractors and material suppliers and copies of all bills paid to such date, properly receipted and identified, covering work done and the materials furnished to the Project and showing an expenditure of an amount not less than the total of all previous payments made hereunder by City to Contractor.

7. Hierarchy of Project Documents. This Contract and the Proposal or Scope of Work appended hereto as **Exhibit "A"** are intended to supplement one another. In case of conflict, however, this Contract shall control both.

8. Changes in the Work. Should the City at any time during the progress of the work request any modifications, alterations or deviations in, additions to, or omissions from this Contract or the Proposal/Scope of Work, it shall be at liberty to do so, and the same shall in no way affect or make void this Contract; but the amount thereof shall be amortized over the remaining term of this Contract and added to or deducted, as the case may be, from the payments set forth in Paragraph 3 above by a fair and reasonable valuation, based upon the actual cost of labor and materials. This Contract shall be deemed to be completed when the work is finished in accordance with the original Proposal or Scope of Work as amended or modified by such changes, whatever may be the nature or the extent thereof. The rule of practice to be observed in fulfillment of this paragraph shall be that, upon the demand of either City or Contractor, the character and valuation of any or all changes, omissions or extra work shall be agreed upon and fixed in writing, signed by City and Contractor, prior to performance.

9. Contractor's Failure to Perform. Should Contractor, at any time during the progress of the work, refuse or fail to supply sufficient material or workmen for the expeditious progress of said work or fail to perform any other provisions of this Contract, City may, upon giving notice in writing to Contractor as provided herein and upon Contractor's failure to remedy any such failure within 3 days from receipt of such notice, terminate this Contract and provide the necessary material and workmen to finish the work and may enter upon the Property for such purpose and complete said work. The expense thereof shall be deducted from the payments remaining under Paragraph 3 above, or if the total cost of the work to City exceeds the amount of such remaining payments, ~~Contractor~~

~~shall pay to City upon demand the amount of such excess in addition to any and all other damages to which City may be entitled. In the event of such termination, City may take possession of all materials, equipment and appliances belonging to Contractor upon or adjacent to the Property upon which said work is being performed and may use the same in the completion of said work~~. Such termination shall not prejudice or be exclusive of any other legal rights which City may have against Contractor. Any excess amount shall be determined through arbitration/litigation.

10. Extension of Time for Completion. Time is of the essence of this Contract and Contractor shall substantially complete the work during the time provided for herein. However, the time during which Contractor is delayed in said work by (a) the acts of City or its agents or employees or those claiming under Contract with or permission from City, or (b) the acts of God which Contractor could not have reasonably foreseen and provided against, or (c) unanticipated stormy or inclement weather which necessarily delays the work, or (d) any strikes, boycotts or obstructive actions by employees or labor organizations and which are beyond the control of Contractor and which it cannot reasonably overcome, or (e) the failure of City to make progress payments promptly, shall be added to the time for completion of the work by a fair and reasonable allowance. Contractor recognizes, however, that the site of the work is in the Rocky Mountains at a high elevation where inclement whether conditions are common. This fact has been considered by Contractor in preparing its Proposal and or agreeing to the Scope of Work. Furthermore, Contractor shall have the right to stop work if any payment, including payment for extra work, is not made to Contractor as provided in this Contract. In the event of such nonpayment, Contractor may keep the job idle until all payments then due are received.

11. Unforeseen Conditions. It is understood and agreed that Contractor, before incurring any other expenses or purchasing any other materials for the Project, shall proceed to inspect the work site and all visible conditions and that if, at the time of inspection therefor, the Contractor finds that the proposed work is at variance with the conditions indicated by the Proposal, Scope of Work, or information supplied by City, or should Contractor encounter physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract or inherent in a work site located in the Rocky Mountains, Contractor shall so notify City, and City shall at that time have the right and option to immediately cancel and terminate this Contract or to instruct Contractor to continue the work and add the additional amount attributable to such unforeseen conditions to the payments due Contractor as set forth above.

It is agreed that in the event of any cancellation by City in accordance with this section, Contractor shall be paid the actual costs of the work done prior to the time of cancellation. In computing such costs, building permit fees, insurance and such financing and title charges as are not refundable shall be included; provided that supervision time, office overhead and profit shall not be included in such costs to be refunded to Contractor by reason of such cancellation.

12. Acceptance by City. No payment hereunder nor occupancy of said improvements or any part thereof shall be construed as an acceptance of any work done up to the time of

such payment or occupancy, but the entire work is to be subject to the inspection and approval of City at the time when Contractor notifies City that the Project has been completed.

13. Notice of Completion; Contractor's Release. City agrees to sign and file of record within five (5) days after the substantial completion and acceptance of the Project a Notice of Completion. If City fails to so record the Notice of Completion within said five (5) day period, City hereby appoints Contractor as City's agent to sign and record such Notice of Completion on City's behalf. This agency is irrevocable and is an agency coupled with an interest. Contractor agrees upon receipt of final payment to release the Project and property from any and all claims that may have accrued against the same by reason of said construction. If Contractor faithfully performs the obligations of this Contract on its part to be performed, it shall have the right to refuse to permit occupancy of any structures by City or City's assignees or agents until the Notice of Completion has been recorded and Contractor has received the payment, if any, due hereunder at completion of construction, less such amounts as may be retained pursuant to mutual Contract of City and Contractor under the provisions of Paragraph 3 above.

14. Indemnification. Professional agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, to the extent and for an amount represented by the degree or percentage such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the wrongful act, omission, error, professional error, mistake, negligence, or other fault of the Professional, any subcontractor of the Professional, or any officer, employee, representative, or agent of the Professional or of any subcontractor of the Professional, or which arises out of any workmen's compensation claim of any employee of the Professional or of any employee of any subcontractor of the Professional. The Professional agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Professional, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its officers, or its employees, the City shall reimburse the Professional for the portion of the judgment attributable to such act, omission, or other fault of the City, its officers, or employees.

15. Insurance.

a. The Contractor agrees to procure and maintain, at its own expense, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the terms of this Contract. Such insurance shall be in addition to any other insurance requirements imposed by this contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the terms of this Contract by reason of its failure to procure or maintain

insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, duration, or types.

b. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverages listed in the Supplemental Conditions. If the Supplemental Conditions do not set forth minimum insurance coverage, then the minimum coverage shall be as set forth below. Such coverage shall be procured and maintained with forms and insurance acceptable to City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to the terms of this Contract. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. *Workmen's Compensation* insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and *Employers' Liability* insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workmen's Compensation requirements of this paragraph.

2. *Commercial General Liability* insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000.00) each occurrence and ONE MILLION DOLLARS ($1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

3. *Comprehensive Automobile Liability* insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000.00) each occurrence and ONE MILLION DOLLARS ($1,000,000.00) aggregate with respect to each Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this Section 5.4.2.3 shall be met by each employee of the Contractor providing services to the City under this contract.

c. Except for any Contractor Liability insurance that may be required, the policy or policies required above shall be endorsed to include the City of Aspen and the City of Aspen's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City of Aspen, its officers or employees, or carried by or provided through any insurance pool of the City of Aspen, shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required above shall contain any exclusion for bodily injury or property damage

arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required above.

d. The certificate of insurance provided to the City of Aspen shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City of Aspen prior to commencement of the contract. No other form of certificate shall be used. The certificate shall identify this contract and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least *thirty (30) days* prior written notice has been given to the City of Aspen.

e. In addition, these Certificates of Insurance shall contain the following clauses:

Underwriters and issuers shall have no right of recovery or subrogation against the City of Aspen, it being the intention of the parties that the insurance policies so effected shall protect all parties and be primary coverage for any and all losses covered by the above-described insurance. To the extent that the City's insurer(s) may become liable for secondary or excess coverage, the City's underwriters and insurers shall have no right of recovery or subrogation against the Contractor.

The insurance companies issuing the policy or policies shall have no recourse against the City of Aspen for payment of any premiums or for assessments under any form of policy.

Any and all deductibles in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Proposer.

Location of operations shall be: "All operations and locations at which work in connection with the referenced project is done."

Certificates of Insurance for all renewal policies shall be delivered to the Architect at least fifteen (15) days prior to a policy's expiration date except for any policy expiring on the expiration date of this Contract or thereafter.

e. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which City may immediately terminate this contract, or at its discretion City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All moneys so paid by City shall be repaid by Contractor to City upon demand, or City may offset the cost of the premiums against moneys due to Contractor from City.

f. City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

16. Damage or Destruction. If the Project is destroyed or damaged by any accident or disaster, such as fire, storm, flood, landslide, earthquake, subsidence, theft or vandalism, any work done by Contractor in rebuilding or restoring the work shall be paid

for by City as extra work under Paragraph 8 above. If, however, the estimated cost of replacement of the work already completed by Contractor exceeds twenty (20%) percent of the insured sum set forth in Paragraph 14 above, City shall have the option to cancel this Contract and, in such event, Contractor shall be paid the reasonable cost, including net profit to Contractor in the amount of ten (10%) percent, of all work performed by Contractor before such cancellation.

17. Notices. Any notice which any party is required or may desire to give to any other party shall be in writing and may be personally delivered or given or made by United States mail addressed as follows:

To City:

City of Aspen

C/O Ryan Loebach, P.E.

130 South Galena Street

Aspen, Colorado 81611

To Contractor:

Velocity Plant Services

C/O Dan Hart

2107 West College Avenue

Englewood, CO 80110

subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given, delivered or made by United States mail, shall be deemed to have been given the same day as transmitted by telecopier or delivered personally, one day after consignment to overnight courier service such as Federal Express, or two days after the deposit in the United States mail as registered or certified matter, addressed as above provided, with postage thereon fully prepaid.

18. Inspections; Warranties.

(a) Contractor shall conduct an inspection of the Project prior to final acceptance of the work with City.

(b) Contractor shall schedule and cause to be performed all corrective activities necessitated as a result of any deficiencies noted on the final inspection prior to acceptance. The costs of material and/or labor incurred in connection with such corrective activities shall not be reimbursed or otherwise paid to Contractor.

(c) Contractor shall obtain, at City's expense, third party warranty contracts (to be entered into by City).

19. Licensure of Contractor. Contractor hereby represents and warrants to City that Contractor is duly licensed as a general contractor in the State of Colorado, and if applicable, in the County of Pitkin.

20. Independent Contractor. It is expressly acknowledged and understood by the parties that nothing in this Contract shall result in, or be construed as establishing an employment relationship. The Contractor shall be, and shall perform as, an independent the Contractor who agrees to use his best efforts to provide the Work on behalf of the City. No agent, employee, or servant of the Contractor shall be, or shall be deemed to be, the employee, agent or servant of the City. The City is interested only in the results obtained under the Contract Documents. The manner and means of conducting the Work are under the sole control of the Contractor. None of the benefits provided by the City to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from the City to the employees, agents or servants of the Contractor. The Contractor shall be solely and entirely responsible for its acts and for the acts of the Contractor's agents, employees, servants and subcontractors during the performance of the Contract.
THE CONTRACTOR, AS AN INDEPENDENT CONTRACTOR, SHALL NOT BE ENTITLED TO WORKERS' COMPENSATION BENEFITS AND SHALL BE OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED PURSUANT TO THE CONTRACT.

21. Assignment. This Contract is for the personal services of Contractor. Contractor shall not transfer or assign this Contract or its rights and responsibilities under this Contract nor subcontract to others its rights and responsibilities under this Contract, and any attempt to do so shall be void and constitute a material breach of this Contract.

22. Successors and Assigns. Subject to paragraph 22, above, this Contract shall be binding on, and shall inure to the benefit of, City and Contractor and their respective successors and assigns.

23. Entire Contract. This Contract contains the entire Contract between City and Contractor respecting the matters set forth herein and supersedes all prior Contracts between City and Contractor respecting such matters.

24. Waivers. No waiver by City or Contractor of any default by the other or of any event, circumstance or condition permitting either to terminate this Contract shall constitute a waiver of any other default or other such event, circumstance or condition, whether of the same or of any other nature or type and whether preceding, concurrent or succeeding; and no failure or delay by either City or Contractor to exercise any right arising by reason of any default by the other shall prevent the exercise of such right while the defaulting party continues in default, and no waiver of any default shall operate as a waiver of any other default or as a modification of this Contract.

25. Remedies Non-Exclusive. No remedy conferred on either party to this Contract shall be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy.

26. Governing Law. This Contract shall be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any action at law or equity shall be Pitkin County.

27. Attorneys' Fees. If either party to this Contract shall institute any action or proceeding to enforce any right, remedy or provision contained in this Contract, the prevailing party in such action shall be entitled to receive its attorneys' fees in connection with such action from the non-prevailing party.

28. Severability. Any provision in this Contract which is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of this Contract are declared to be severable.

29. Nondiscrimination. During the performance of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, sexual orientation, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, sex, age, sexual orientation, handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

30. Prohibited Interest. No member, officer, or employee of the City of Aspen, Pitkin County or the Town of Snowmass Village shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

31. Warranties Against Contingent Fees, Gratuities, Kickbacks and Conflict of Interest:

a. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

b. The Contractor agrees not to give any employee or former employee of the City a gratuity or any offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase

request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to this Contract or to any solicitation or proposal therefor.

c. It shall be a material breach of the Contract for any payment, gratuity, or offer of employment to be made by or on behalf of a Subcontractor under a contract to the prime Contractor or higher tier Subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. The Contractor is prohibited from inducing, by any means, any person employed under this Contract to give up any part of the compensation to which he/she is otherwise entitled. The Contractor shall comply with all applicable local, state and federal "anti-kickback" statutes or regulations.

32. Payments Subject to Annual Appropriations. If the contract awarded extends beyond the calendar year, nothing herein shall be construed as an obligation by the City beyond any amounts that may be, from time to time, appropriated by the City on an annual basis. It is understood that payment under any contract is conditional upon annual appropriation of funds by said governing body and that before providing services, the Contractor, if it so requests, will be advised as to the status of funds appropriated for services or materials and shall not be obligated to provide services or materials for which funds have not been appropriate.

33. <u>Illegal Aliens – CRS 8-17.5-101 & 24-76.5-101.</u>

a. <u>Purpose</u>. During the 2006 Colorado legislative session, the Legislature passed House Bills 06-1343 (subsequently amended by HB 07-1073) and 06-1023 that added new statutes relating to the employment of and contracting with illegal aliens. These new laws prohibit all state agencies and political subdivisions, including the City of Aspen, from knowingly hiring an illegal alien to perform work under a contract, or to knowingly contract with a subcontractor who knowingly hires with an illegal alien to perform work under the contract. The new laws also require that all contracts for services include certain specific language as set forth in the statutes. The following terms and conditions have been designed to comply with the requirements of this new law.

b. <u>Definitions</u>. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

b. <u>Definitions</u>. The following terms are defined in the new law and by this reference are incorporated herein and in any contract for services entered into with the City of Aspen.

"Basic Pilot Program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

"Public Contract for Services" means this Agreement.

"Services" means the furnishing of labor, time, or effort by a Contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

c. By signing this document, Contractor certifies and represents that at this time:

(i) Contractor does not knowingly employ or contract with an illegal alien; and

(ii) Contractor has participated or attempted to participate in the Basic Pilot Program in order to verify that it does not employ illegal aliens.

d. Contractor hereby certifies that:

(i) Contractor shall not knowingly employ or contract new employees without confirming the employment eligibility of all such employees hired for employment in the United States under the Public Contract for Services.

(ii) Contractor shall not enter into a contract with a subcontractor that fails to confirm to the Contractor that the subcontractor shall not knowingly hire new employees without confirming their employment eligibility for employment in the United States under the Public Contract for Services.

(iii) Contractor has verified or has attempted to verify through participation in the Federal Basic Pilot Program that Contractor does not employ any new employees who are not eligible for employment in the United States; and if Contractor has not been accepted into the Federal Basic Pilot Program prior to entering into the Public Contract for Services, Contractor shall forthwith apply to participate in the Federal Basic Pilot Program and shall in writing verify such application within five (5) days of the date of the Public Contract. Contractor shall continue to apply to participate in the Federal Basic Pilot Program and shall in writing verify same every three (3) calendar months thereafter, until Contractor is accepted or the public contract for services has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

(iv) Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the Public Contract for Services is being performed.

(v) If Contractor obtains actual knowledge that a subcontractor performing work under the Public Contract for Services knowingly employs or contracts with a new employee who is an illegal alien, Contractor shall:

(1) Notify such subcontractor and the City of Aspen within three days that Contractor has actual knowledge that the subcontractor has newly employed or contracted with an illegal alien; and

(2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the new employee who is an illegal alien; except that Contractor shall not terminate the Public Contract for Services with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

(vii) If Contractor violates any provision of the Public Contract for Services pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City of Aspen may terminate the Public Contract for Services. If the Public Contract for Services is so terminated, Contractor shall be liable for actual and consequential damages to the City of Aspen arising out of Contractor's violation of Subsection 8-17.5-102, C.R.S.

(ix) If Contractor operates as a sole proprietor, Contractor hereby swears or affirms under penalty of perjury that the Contractor (1) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS 24-76.5-101 *et seq.*, and (3) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

34. Electronic Signatures and Electronic Records This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one agreement binding on the Parties, notwithstanding the possible event that all Parties may not have signed the same counterpart. Furthermore, each Party consents to the use of electronic signatures by either Party. The Scope of Work, and any other documents requiring a signature hereunder, may be signed electronically in the manner agreed to by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic documents, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties agree hereto have executed this Contract for Construction on the date first above written.

ATTESTED BY:

_____

CITY OF ASPEN, COLORADO

By:_____

Title:_____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTESTED BY: Sara Brittney Nield

CONTRACTOR:

Velocity Plant Services

By: _____

Title: Project Manager

SARA BRITTNEY NIELD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194029612
MY COMMISSION EXPIRES AUGUST 5, 2023

Note: Certification of Incorporation shall be executed if Contractor is a Corporation. If a partnership, the Contract shall be signed by a Principal and indicate title.

CERTIFICATE OF INCORPORATION

(To be completed if Contractor is a Corporation)

STATE OF Colorado)
) SS.
COUNTY OF Arapahoe)

On this 27th day of November, 2019, before me appeared

Patrick Gledhill, to me personally known, who, being by me first duly sworn, did say that s/he is Project Manager of Velocity Plant Services LLC and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said deponent acknowledged said instrument to be the free act and deed of said corporation.

WITNESS MY HAND AND NOTARIAL SEAL the day and year in this certificate first above written.

Sara Brittney Nield
Notary Public

2107 West College Ave, Englewood, CO 80110
Address

My commission expires: August 5th, 2023

SARA BRITTNEY NIELD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194029612
MY COMMISSION EXPIRES AUGUST 5, 2023

City of Aspen
Attn: Ryan Loebach
500 Doolittle Drive
Aspen, CO 81611

11/20/2019

RE: 2020 Task A – Phase 2, 2020 Water Treatment Plant Residual Removal

Mr. Loebach,

Velocity Plant Services is pleased to provide pricing on the following items:

Scope - Clean Sludge from 2 domed clarifiers:

1. Aspen to drain water prior to VPS beginning work.
2. Mobilize / Demobilize.
3. Use water supplied by Aspen to loosen and remove approximately 130 CY of sludge from the 2 clarifiers combined. Vac truck will be used, and sludge transported to backwash basin area. Sludge will not be removed from site at this time. Hand labor included as needed.
4. Equipment and labor to maintain the sludge drying area during sludge dumping.
5. Flush Drain lines back to backwash pond.
6. Cleanup jobsite.

Itemized Pricing:

1.	**Mobilize / Demobilize**	**$5,000.00**
2.	**General conditions / subsistence**	**$7,648.00**
3.	**Superintendent**	**$4,600.00**
4.	**Sludge Removal & Flushing @ 285.00 per CY**	**$37,050.00**
5.	**Sludge drying bed maintenance**	**$10,000.00**

Total Price for Task A **$64,298.00**

Option 1:
If sludge quantities exceed the CY stated above, additional charges will apply for the vac-truck operations at the rate of $285.00 per Cubic Yard of material removed. This quantity will be calculated at one full truck equaling 16 CY. ***Additional superintendent, loader, and skidsteer time and velocity labor will also be applied at a T&M rate with subsistence to maintain the backwash basin area.

Velocity Plant Services excludes: bonds, specialty insurance, or permits to accomplish this project. If required, extra charges will be applied for any of these items.

Specific exclusions: Removal or replacement of any asphalt, work is assumed to be entirely in the dirt area. Landscaping, pressure test on existing pipe or valves, painting of pipe. Bypass pumping or overnight watch.

Respectfully,

Patrick E Gledhill

Patrick Gledhill
Project Manager / Estimator
Velocity Plant Services, LLC.

2107 West College Avenue. Englewood, CO 80110
Phone: (303) 984-7800, Fax: (303) 984-7802
Cell: (303) 880-3527

pgledhill@velocityci.com
www.velocityci.com

MEMORANDUM

TO: **Mayor and City Council**

FROM: **Rob Covington, Water Resources and Hydroelectric Supervisor**

THRU: **Tyler Christoff, Utilities Director**
Jim True, City Attorney

DATE OF MEMO: **December 2, 2019**

MEETING DATE: **December 10, 2019**

RE: **Resolution #132, Series 2019**
Ruedi Hydroelectric Plant, ABB Inc, Contract Extension

REQUEST OF COUNCIL: Staff recommends approval of a 3-year extension of the existing contract with ABB Inc for maintenance services at the Ruedi Hydroelectric Facility. The estimated annual contract amount of $186,802.20 is included in the Electric Operations budget for the contract period.

PREVIOUS COUNCIL ACTION: In December 1984 City Council approved a 20-year contract with General Electric Industrial Solutions for maintenance and replacement work at the Ruedi Hydroelectric Plant. This contract included provisions for extensions by mutual consent of the parties.

BACKGROUND: General Electric (G.E.) was selected as the design-build contractor for the construction of the Ruedi Hydroelectric Plant and has been involved in its operation and maintenance since the project start-up in the mid 1980's. The bonds for the Ruedi project have been paid off since 2002. A long-term capital improvement program has been developed by G.E. in conjunction with City staff to ensure that the facility is continuously available for operation and that the life of the facility is extended to the greatest extent feasible. General Electric Industrial Solutions was purchased by ABB Inc in 2017. ABB Inc assumed the conditions of the G.E. contract with no changes. The General Electric Industrial Solutions staff members that performed the maintenance and upkeep of the Ruedi Hydroelectric Plant for the past 35 years now work for ABB Inc. The current contract extension with ABB Inc expires at the end of December 2019.

DISCUSSION: G.E. was initially selected to design, construct and provide operational support of the Ruedi hydroelectric facility because of their specialized experience in the facilities of similar scale and complexity. City staff continues to perform daily operation and oversight of the Maroon Creek hydroelectric plant and the Ruedi facility. Coupled with the contractors 35-years plus hands-on experience with this facility, as well as their extensive hydroelectric facilities expertise worldwide, ensure Ruedi's facility performance and longevity.

The benefit of ABB Inc's experience and contract support include developing the design and specification for the equipment, overseeing installation and construction activities, responding to plant outages and emergency conditions, completing the annual inspection/maintenance program

and planning for and installation of upgraded components and compatibility with the current communication and control equipment. Replacement parts and spares are also extended by ABB Inc for specialized equipment at the site.

Individual ABB Inc staff who are currently assigned to the project have experience that stretches over the entire life of the project. ABB Inc staff members include individuals who have conducted the last 35 annual inspections. These contract staff members have responded to service outages under operating conditions since the plant was brought on line in the mid-1980's.

FINANCIAL IMPACTS: The proposed contract extension provides ABB Inc with an annual base compensation of approximately $186,802.20 per year. The annual adjustment of the 1985 base contract has been calculated according to a cost index formula that includes labor, materials and engineering costs (published by Engineering News Record). Additionally, ABB Inc may receive a production-based performance incentive payment for any energy produced over 18,000,000 kwh annually. These payments are set at $0.006/kwh for energy production in excess of the target.

For 2019, staff included these contract expenses in the Electric Operations budget.

RECOMMENDED ACTION: Staff recommends extension of the contract for a 3-year term with provisions to further extend the contract term.

PROPOSED MOTION: I move to approve Resolution#132.

CITY MANAGER COMMENTS:_____

ATTACHMENTS:

Exhibit A – Resolution #132, Series 2019
Exhibit B - Contract Amendment ABB Inc.

RESOLUTION #132
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CONTRACT AMENDMENT BETWEEN THE CITY OF ASPEN AND ABB, INC. AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, there has been submitted to the City Council a contract amendment for Operation, Maintenance and Repair of the Ruedi Hydroelectric facility, between the City of Aspen and ABB, Inc. a true and accurate copy of which is attached hereto as Exhibit "B";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves that Contract amendment for Operation, Maintenance and Repair of the Ruedi Hydroelectric facility, between the City of Aspen and ABB, Inc. A copy of which is annexed hereto and incorporated herein and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th day of December 2019.

_____

Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10, 2019.

_____

Linda Manning, City Clerk

AGREEMENT
BETWEEN THE
ABB INC.
AND
THE ASPEN ELECTRIC DEPARTMENT
FOR THE
OPERATION, MAINTENANCE, AND REPAIR OF
THE RUEDI HYDROELECTRIC FACITITY

This Agreement, entered into and effective this 24 day of October by and between the Aspen Electric Department of the City of Aspen, referred to hereinafter as the "Owner" and ABB Inc., , with a place of business at 305 Gregson Drive, Cary, NC 27511, hereinafter referred to as the "Contractor".

WITNESSETH

WHEREAS, the Owner distributed a Request for Proposals for the Ruedi Hydropower Project, dated September 1, 1983, said Request for Proposals soliciting, among other things, proposals for the Operation, Maintenance, and Replacement of said Project; and

WHEREAS, Contractor and others responded on November 1, 1983 with a proposal for, among other things, Operation, Maintenance, and Replacement of the Project as requested in the Request for Proposals; and

WHEREAS, upon review of all proposals received, the Owner identified the Contractor as the preferred contractor for the Operation, Maintenance and Replacement as well as the Design and Construction of the Ruedi Hydropower Project based on the proposals submitted by the Contractor; and

WHEREAS, Owner and Contractor entered into an agreement on the 15th of December 1984 providing for the Operation, Maintenance and Repair of the Ruedi Hydropower Project for a twenty (20) year period so as to provide for the proper and safe operation of the project, maintenance of the project in good working order, and repair or replacement of project components as may be required to provide for a facility which is intended for a service life of fifty (50) years; and

WHEREAS an additional line item has been added to this contract to provide for annual maintenance of the Maroon Creek 450 KW hydro ("Maroon Creek") for work to be completed during the annual Ruedi outage and billable on a T&M basis at the defined rates calculated in Appendix D; and

WHEREAS, the agreement dated 15th December 1984, was extended by agreements dated 11th November 2005, 29th July 2010, 23rd December 2013 and 1st September 2016 between Contractor and the City of Aspen, Colorado for the operation, maintenance and repair of the Ruedi Hydroelectric Facility. Pursuant to the provisions of Article #2 of the referenced original agreement, the parties wish to extend the contract for an additional 3 years in accordance with the terms of the original contract as modified herein.

.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. DEFINITIONS

Where used in this agreement, the following terms shall have these respective meanings:

a. "Owner" shall mean the Aspen Electric Department of the City of Aspen.

b. "Contractor" shall mean ABB Inc..

c. "Project" shall mean the equipment –located at the Ruedi Hydropower Plant, as well as at the Maroon Creek facility.

d. "Substantially Completed" shall mean that the Project as certified by the Owner, is sufficiently completed in accordance with construction contract documents so that the Project can be utilized for the purposes of generating hydroelectric power.

e. "Start Date" shall mean that date, to be agreed upon by the Owner and the Contractor, when substantial completion is achieved and when the Contractor's obligations for operations, maintenance and repair as described herein shall commence. That date will be appended to this definition and documented herein upon said agreement.

f. "Contract Date" shall mean the date of final execution of the Contract by both parties as noted in the first paragraph, above.

g. “Repairs” shall mean any single part or assembly of parts purchased as a single component for use on the equipment with a list purchase price of $1000 or more, and/or labor required to install a part or remedy a faulty component of equipment that requires more than twelve (12) hours of labor.

h. “Maintenance” shall mean routine labor such as cleaning, adjusting, lubrication and replacement of consumables commonly recommended to maintain efficient operation of the equipment and to minimize wear and tear and reduce risk of catastrophic failure of the equipment and/or parts with a cumulative annual total list purchase price less than $5000.

i. “Upgrades” shall mean replacing a part or component of the equipment with a different part or component that provides different or preferred operating capabilities at the request of the “Owner”.

2. TERM OF CONTRACT

This contract shall be for a period of three (3) years commencing upon its full execution as dated on the last signature applied hereunder. The Contract may be extended for

additional terms by mutual agreement of the parties. Upon expiration of the Contract, Contractor will turn over all Project facilities, including "As-Built" drawings, O&M manuals and maintenance records provided such have not already been delivered to the Owner, adjusted to original specification tolerance, excluding normal wear and tear.

OBLIGATIONS OF THE CONTRACTOR

3. GENERAL

a. The Contractor shall be responsible for operating and maintaining the Project in accordance with sound engineering practice, and with coordinating the operation of the Project with Holy Cross Energy, and with the United States Bureau of Reclamation in accordance with a Memorandum of Agreement dated August 13, 1984, between the Owner and the Bureau of Reclamation as said Agreement may be amended from time to time. Said Agreement shall be attached hereto as Appendix A and is incorporated herein by reference. Any charges by the Bureau of Reclamation imposed by said Agreement will be paid by the Owner. The Contractor shall also operate and maintain the Project in accordance with agreements between the Owner and other agencies or utilities responsible for facilities adjacent to the Project. The Contractor shall be notified of such agreements by the Owner no less than thirty (30) days prior to their execution. Any changes in Operations and Maintenance work or charges to the Owner necessitated by any such agreements with third parties will be negotiated and implemented according to the provisions of Paragraph 15, below. Contractor will design and implement a maintenance program for the plant based on the assumption that the Owner intends for the plant to have a fifty (50) year life. The Contractor shall be responsible for the testing of Project facilities for efficiency, wear, and power production, in accordance with Section 7 hereunder and Appendix E at a frequency not less than annually, in a manner consistent with the standards of the hydroelectric power industry, and Contractor shall correct any deficiencies or defects that exceed manufacturer's recommended tolerances or that otherwise result in efficiency losses as identified as a result of testing and maintenance activities. Efficiency losses and out of tolerance conditions due to normal wear and tear, or due to unusual operational requirements (such as emergency situations) are excluded and are the responsibility of the Owner. When plant upgrades are performed by ABB, one-Line diagrams and OEM Manual updates shall be provided to owner in a format standard to the Industry as part of the upgrade package. Repairs and upgrades are not included in the base scope of this Contract but will be performed on a time & material ("T&M") basis at the defined rates calculated in Appendix F as mutually agreed between Owner and Contractor.

b. Contractor shall maintain the Project so as to maintain the maximum power production and output at all times and under all circumstances, with the exception of Scheduled Outages as defined below. Significant reductions in power production efficiency shall be cause for reevaluation and revision of operations, maintenance and repair procedures so as to avoid any such losses in the future.

c. The Contractor shall be responsible for the payment of all monthly utility charges,

including, but not limited to, telephone and telemetry charges to the protection, control and metering system.

4. SITE PERSONNEL

The Contractor will employ or subcontract at least one individual based in or near the City of Aspen, Colorado, whose responsibilities will include, but not be limited to, tri-weekly Project system integrity checks, first level problem alert, and system restart in the event of the unit trip. Contractor will train said individual, or individuals as the case may be, in project system and equipment operation, and make available to said individual, as a guide for routine maintenance needs, Contractor's computerized maintenance planning program, providing scheduled task identified of all maintenance items to be accomplished on a daily, weekly, monthly and annual basis. The Aspen based individual identified herein may be an employee of the City of Aspen if agreed to by the Owner and Contractor in a separate agreement covering duties, compensation, benefits and the like for said individual, who will be otherwise subject to all current City and County hiring and personnel procedures and standards. The Owner may require the removal of any person employed on or about the Project facilities if the Owner determines that the employment of such person is detrimental to the performance of work required under this Agreement or, if both parties agree, the employee is not qualified to perform the work assigned or is guilty of improper conduct or for other just cause.

5. BACK-UP PERSONNEL

The Contractor's Denver-based service organization will provide management expertise and technical service back up for the operation, maintenance and replacement parts requirements of the Project.

6. SPARE PARTS

The Contractor will provide two levels of replacement parts management as follows:

a. On-site parts will include those required on a routine basis such as expendables, (lubrication materials, rags, etc.), indicator lamps, light bulbs, minor control parts, Input-Output boards, sensors, activators and the like.
b. Major replacement items, such as turbine and generator spares will be stocked at the site, based on needs identified during annual inspections.
c. A list of spare parts to be provided by the Owner onsite is attached as Appendix B and is incorporated herein.

7. OUTAGES

a. SCHEDULE OUTAGES
Scheduled outages will be those planned in advance for the purpose of carrying out anticipated regular maintenance procedures. These outages will be scheduled with minimum lead-time of two weeks during the first year of operation. After the first year of operation, these outages will be scheduled with a minimum lead-time of three (3) months. Such outages will be scheduled, in consultation with the Owner,

at such times as will minimize loss of power production and will be coordinated with the Bureau of Reclamation, Holy Cross Electric Association, and other agencies as may be required by agreement(s) with the Owner or as may otherwise be appropriate. Both the starting and ending times and dates of maintenance outages shall be scheduled and any deviation from such schedule not agreed to in advance by the Owner and Contractor shall be considered an unscheduled outage. When a scheduled outage time is changed by the Owner or other parties as noted above, the Contractor shall be entitled to reasonable charges in respect of such delay or suspension.

b. UNSCHEDULED OUTAGES

Unscheduled outages are those that result from a system failure. The Contractor will respond to any unscheduled outages not corrected by the operator by having a qualified technician or engineer on site within 24 hours after notification of the outage between the dates of May 2 and November 1 and within 48 hours after notification of the outage between the dates of November 2 and May 1, In the event of unscheduled outages, the Contractor shall act diligently to correct any problems within its control that led to the outage.

c. For any outage, the Contractor will be diligent in effecting repairs and service, and will manage his activities to minimize down time consistent with good engineering practices. The Contractor shall be responsible for contacting any other agencies whose facilities may have caused, or may be damaged by such outages in accordance with the provisions of Paragraph 3a, above. The Contractor shall further be responsible for coordinating its corrective actions with any such agencies.

8. REPORTING

The Contractor shall prepare and submit to the Owner monthly reports which shall contain, at a minimum, a status report on the plant's equipment, power output, power production efficiency and water releases calculated on a tri-weekly basis. Said report will be delivered to the Owner no later than ten (10) working days after the first of each month. Indicated in the report will be the various head and flow conditions for the month as well as the KWH production for the period. Daily or hourly information will be available if requested. Based on the maintenance inspections and tests, a monthly maintenance and test report will be prepared and included in said monthly reports. The Contractor will also provide annually:

a. A complete description of the efficiency, wear and performance test programs for the Project.

b. A description of the complete maintenance program for the project.

9. TITLE

Title to the product of all the work performed and replacement parts provided hereunder by the Contractor, its employees, agents, or subcontractors shall pass to and vest in the

Owner at the time the work is performed.

10. WARRANTY

Contractor warrants to the Owner that the operating, repair and maintenance services will be performed in a competent manner, in accordance with the work scope defined herein and will be performed in accordance with good engineering practices and accepted professional standards. The warranty for services shall expire one (1) year following completion of services. In the event the services do not conform, such nonconforming services shall be corrected by Contractor. Contractor warrants that products shall be delivered free from defects in material, workmanship and title. The warranty for products shall expire one (1) year from first use or eighteen (18) months from shipment, whichever occurs first. If products or services do not meet the above-warranties, City of Aspen shall promptly notify Contractor in writing prior to expiration of the warranty period. Contractor shall (i) at its option, repair or replace defective products and (ii) re-perform defective services. If despite Contractor's reasonable efforts, a non-conforming product cannot be repaired or replaced, or non-conforming services cannot be re-performed, Contractor shall refund or credit monies paid by City of Aspen for such non-conforming products and services. Warranty repair, replacement or re-performance by Contractor shall not extend or renew the original warranty period. The foregoing warranty applies to any defect which appears within the operating and maintenance period. Unless otherwise agreed to in writing by Contractor, Contractor assumes no responsibility hereunder for any equipment not supplied by Contractor. In the event this Contract is terminated or lapses and the maintenance of the equipment is no longer under Contractor's control, the warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of products, (b) City of Aspen keeping accurate and complete records of operation and maintenance during the warranty period and providing Contractor access to those records, and (c) modification or repair of products or services only as authorized by Contractor in writing. Failure to meet any such conditions renders the warranty null and void. Contractor is not responsible for normal wear and tear. This warranty provides the exclusive remedies for all claims based on failure of or defect in products or services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. In the event the products furnished by the Contractor under this Agreement are determined to be nonconforming, it will remain the responsibility of the Contractor to correct any and all nonconformance. Upon receiving notification that the products supplied are nonconforming, the Contractor shall correct all nonconformance in accordance with the terms of the Warranty herein and in a manner consistent with the project schedule requirements. If the Contractor elects to have City of Aspen perform field corrections on its behalf or if Contractor fails to take action to correct in a manner consistent with the project schedule requirements, the following shall apply: City of Aspen shall proceed to accomplish the corrective work with the Contractor remaining responsible for all actual costs associated with corrective work, plus a fixed rate for overhead, supervision and administration. Before proceeding on such backcharge work, City of Aspen shall furnish the Contractor with an estimate of the cost of performing the work and solicit the Contractor's authorization to proceed. The

warranties are exclusive and in lieu of all other warranties, whether written, oral, implied, or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

11. FORCE MAJEURE

Notwithstanding any other provision of the Contract concerning the Contractor's general obligation to operate, maintain, and repair the Project facilities during the term of this Contract, the Contractor's obligation shall not extend to maintenance and replacement requirements caused by act of God, riot, war, or vandalism unless, in the case of vandalism, the vandalism was caused by an employee or subcontractor of the Contractor (other than an employee of the City of Aspen should that employee be acting as a subcontractor pursuant to Paragraph 4, above) or could have been avoided by the Contractor through proper operation and maintenance of the security measures built into the plant. Nor shall the Contractor be liable for any inability to perform any of its obligations hereunder due to the following:

a. Acts of God.

b. Acts of the Owner, acts of civil or military authority, terrorism, fires, strikes, or other labor disturbances, flood, epidemics, war, riot, and delays beyond its reasonable control in transportation or car shortages.

c. Inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labor, material, or facilities required for the performance of the work describe in this Contract.

If any delay is caused by the Owner or other contractors under the Owner's control, or if the Owner suspends the work, the Contractor shall be entitled to reasonable charges in respect of such delay(s) or suspension(s).

12. PAYMENT

As consideration for the work performed by the Contractor pursuant to this Contract, Owner shall pay to the Contractor the sums set forth in the payment schedule attached hereto as Appendix C as adjusted in accordance with the provisions set forth in Appendix D.

13. TERMINATION BY THE OWNER

The Owner may, for cause or convenience, terminate this Contract upon ninety (90) days advance written notification. In the event of termination for convenience, the Contractor shall be paid its reasonable termination costs, including documented cancellation charges for committed material or services. In the event of termination for cause by the Owner, defined as material nonperformance of the requirements and terms of this Contract, which do not have a specified contractual remedy, and following thirty (30) days prior written notice to the Contractor, and failure of the Contractor to commence to cure and diligently pursue cure of such nonperformance, in the event of termination by Owner

for cause, the Owner will be liable for costs to the Contractor owing in consideration of work performed up to the termination date, which costs will be determined by applying the payment formulas defined in the Appendix C and D, below, as of the termination date.

14. TERMINATION BY THE CONTRACTOR

The Contractor may terminate this Contract for convenience, upon ninety (90) days advance written notification to the Owner. In the event of termination for convenience, the Contractor shall be paid its reasonable termination costs, including documented cancellation charges for committed material or services. In the event of termination for cause by Contractor, defined as material nonperformance of the requirements and terms of this Contract, which do not have a specified contractual remedy, and following thirty (30) days prior written notice to the Owner, and failure of the Owner to commence to cure and diligently pursue cure of such nonperformance, Owner shall pay Contractor for all products completed, lease fees incurred and services performed prior to the effective date of termination, plus expenses reasonably incurred by Contractor in connection with the termination for cause.

15. CHANGES, DELETIONS AND EXTRA WORK

The Owner, without invalidating the Contract, may order extra work or make changes by altering, adding to, or deducting from the work, the Contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original Contract.

The value of any such extra work or change shall be determined in one or more of the following ways:

a. By estimate and acceptance in one lump sum; or
b. By unit prices named in the Contract or subsequently agreed upon; or
c. By cost and percentage of cost or by cost and fixed fee.

16. INDEPENENT CONTRACTOR

Contractor shall at all times be deemed an independent contractor, and none of its employees or the employees of its subcontractors shall be considered employees of the Owner except as may otherwise be agreed to by the parties in writing.

17. APPLICABLE LAWS

a. The rights and obligations of the parties under this Contract shall be interpreted and governed in all respects by the laws of the State of Colorado.

b. In the performance of this Contract, the Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances including, but not limited to, Worker's Compensation and occupational disease acts, the Occupational Safety and Health Act of 1970 and laws relating to non-segregated facilities and equal opportunity employment (including the seven paragraphs appearing in 202 of Executive Order 11246, as amended) in effect on the date of the execution of this Contract. The Owner shall provide the Contractor information in

its possession on local and state laws, rules, and regulations pertaining to the operation of the Project.

c. Price and performance are based on the foregoing requirements in effect on the date of the Contractor's proposal. If any laws, rules, regulations, ordinances, codes, specification, or standards, or official interpretations become effective thereafter which necessitate modification of the work hereunder in order to comply therewith, such modification shall be deemed to be a change by the Owner. Contractor shall advise the Owner of requirements affecting the work to be performed hereunder resulting from the applicability of any changed law, rule, or regulation.

d. The Owner shall be responsible for obtaining all governmental permits, licenses, exemptions and approvals necessary to operate and maintain the Project.

18. INSURANCE

The Owner shall provide and maintain the following minimum insurance coverages as primary insurance coverage during the performance period of this Contract:

a. Comprehensive General Liability insurance with $5,000,000.00 combined single limit bodily injury and property damage coverage for each occurrence. All parties to this Contract shall be named as co-insured on said Comprehensive General Liability policy, and the policy shall include a cross-liability endorsement.

1.) Coverages under this policy shall include the following:

Premises I Operations
Broad Form Property Damage
XCU Hazards Liability
Blanket Contractual Liability

2.) Certificates of insurance reflecting the above shall be provided the Contractor prior to commencement of work. Thirty (30) days prior notice shall be provided if any significant or material change to such insurance is contemplated by the Owner.

b. The Owner shall provide and maintain such property and boiler and machinery insurance upon the Plant and Project as the Owner deems necessary. The Contractor shall provide statutory Worker's Compensation insurance for its employees, and employer's liability insurance in the amount of $5,000,000. Contractor shall ensure that its subcontractors provide like insurance for their employees.

c. The Contractor shall provide, for its protection, automobile liability insurance covering its owned and leased vehicles used in the performance of the work. Coverage shall be $5,000,000 combined single limit for bodily injury and property damage each occurrence.

19. LIMITATIONS OF LIABILITY

a. The Contractor's liability on all claims of any kind (excluding death or bodily injury), whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Contract or from the performance or breach thereof, or from any services covered by or furnished under this Contract or any extension or expansion thereof (including remedial warranty efforts), shall in no case exceed the Annual Contract Price which is defined as the total amount paid to the Contractor under the terms of this Contract during the most recent previous year.

Except as to title to any materials furnished, all such liability shall terminate upon the expiration of the warranty period specified in the paragraph 10 entitled "Warranty".

b. In no event, whether on contract, indemnity, warranty, tort (including negligence), Strict Liability, or otherwise, shall the Contractor or its subcontractors or its suppliers be liable for special, incidental, exemplary, indirect, or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of the Owner for such damages.

c. Any and all liability claims shall be based solely on performance or nonperformance of the duties and responsibilities as defined in this Contract.

d. If the Contractor, upon request or with the consent of the Owner, furnishes the Owner with advice or assistance concerning any products, systems, or equipment which is not required pursuant to this Contract, the furnishing of such advice or assistance will not subject Contractor to any liability whether in contract, warranty, tort (including negligence), strict liability, or otherwise.

20. NOTICE

All coordination under this Contract between the Owner and Contractor, and any notices given hereunder shall be between or to, as the case may be, the following:

For the Owner:
Tyler Christoff, Utility
Director City of Aspen
130 S. Galena Street
Aspen, Colorado 81611

For the Contractor:
Bill Hudson, Account Manager
ABB, Inc.
4900 Kingston Street
Denver, CO 80239

The persons designated in this paragraph may be changed by the Owner or the

Contractor upon notice to the other party.

21. ASSIGNMENT

The delegation or assignment by either party of any or all of its duties or rights hereunder without the other party's prior written consent shall be void. If the Owner is furnished services provide under this Contract by a third party by contract, the Owner shall obtain from such third party a provision affording the original Contractor the protection of Article 19, Section b. Notwithstanding anything to the contrary in the foregoing, Contractor may assign any of its accounts receivable under this Contract to any party without Owner's consent.

22. INVALIDITY OF CONTRACT PROVISIONS

The invalidity, in whole or part, of any of the foregoing paragraphs or articles of this Contract will not affect the remainder of such paragraphs or articles.

23. HEADINGS

Paragraph titles and subtitles contained in this Contract are for ease of reference only and are not intended to alter or modify in any way the meaning of paragraphs contained herein.

24. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto with regard to the subject matter hereof. It supersedes all previous representations, arrangements, agreements, and understandings, written or oral, expressed or implied, if any, by and between the parties hereto, and their respective representations, arrangements, agreements and understanding, if any, are hereby cancelled and terminated in all respects. Except as otherwise provided herein, this Contract may not be amended, changed or modified except by a writing duly executed by both parties hereto. Without limiting the foregoing and except as otherwise provided for herein with respect to Appendix A, no provisions of any contract between the Owner and any third party shall be deemed incorporated herein, unless such provision is set forth in full, in an amendment hereto.

25. ENVIRONMENTAL, HEALTH AND SAFETY

The parties shall comply with all United States, state and local environmental laws and regulations applicable to the site. Contractor shall only be responsible for Hazardous Materials brought, generated, produced or released on site by Contractor. The term "Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.").

IN WITNESS WHEREOF, the Owner and the Contractor have executed this Contract the day above first written.

ABB Inc.

By: Doug Stark *Douglas Stark*

Title: Sales Director

Date: 10/24/2019

ASPEN ELECTRIC DEPARTMENT
CITY OF ASPEN

By: _____

Title: Utility Director

Signature:_____

Date:

APPENDIX A

NOT USED

APPENDIX B

SPARE PARTS
LIST

I. TURBINE

Raw castings will be provided as follows:

1) Two - Spare Spear Tips

2) Two - Nozzles

3) One - Deflector Plate

II. GENERATOR

1) Set of Brushes

2) Brush Holders

III. OIL CIRCUIT BREAKERS

1) Trip Coil

2) Close Coil

IV. BALL VALVE

1) Seals

2) Seats

v. MONITOR SYSTEM

1) Input Boards- PLC

2) Output Boards - PLC

3) Phone Modem - Parts

VI. MISCELLANEOUS PARTS

1) Light Bulbs

2) Lube Oil Filters

3) Fuses

Payment of spare parts shall be in accordance with the use of the part in keeping with the Article 1 definitions g, h and i.

APPENDIX C

PAYMENT

SCHEDULE

Payments will be made on the following basis:

1. An annual Base Payment of $78,000 as adjusted per Appendix D will be due and payable within ten (10) working days of the receipt of an invoice from the Contractor, which invoice shall be submitted at the Contractor's convenience on or after the Start date of this Contract. Further Base Payments will be due and payable within ten working days of the receipt of annual invoices from the Contractor, which invoices shall be submitted at the Contractor's convenience on or after the annual Start Date anniversary, ending on the nineteenth such anniversary.

2. An annual Energy Payment will be due and payable within ten working days of the receipt of an invoice from the Contractor, which invoice shall be submitted at the Contractor's convenience on or after the annual anniversary of the Start Date, beginning with the first such anniversary,
in an amount calculated as follow:

   $.006 (6 mills) per kilowatt hour (KWH) for every KWH over a minimum of 18,000,000 KWH produced during the previous contract year and measured at the first meter beyond the generator.

APPENDIX D

PAYMENT ADJUSTMENT
FORMULAS

The prices included herein are firm as of the Contract Date. For services performed thereafter, the Base and Energy Payment amounts shall be adjusted upward or downward to reflect changes in labor, material or engineering costs, and to maintain a constant ratio between the two (2) payments. The adjustments described below will be made by the Contractor on or before the submission of annual invoices for services to the Owner. Copies of any and all calculations performed pursuant to said adjustments will be included with annual invoices and will be subject to the review and approval of the Owner. All payment adjustments will be made in accordance with the following further provisions:

1. DEFINITIONS

For the purpose of price adjustments, the following definitions apply:

a. "Labor Index" shall be the Skilled Labor Index for city geographically nearest the job site as determined and reported monthly in the second Engineering News Record (ENR) issue of each month (published weekly by McGraw-Hill, Inc., PO Box 430, Highstown, New Jersey 08520). A current sample ENR report including the Denver region is attached.

   i. ILS will represent the Labor Index as defined above as of the Contract Date.
   ii. ILA will represent the Labor Index as of the Start Date anniversary, fixed at "3,206."

b. "Material Index" shall be the Materials Price Index for the city geographically nearest the job site as determined and reported monthly in the second ENR issue of each month

   i. IMS will represent the Materials Index as defined above as of the Contract Date.
   ii. IMA will represent the Materials Index as of the Start Date anniversary, fixed at "1,562."

c. "Engineering Index" shall mean the Straight Time Hourly Rate of the ABB I&FS Field Engineer Standard Rate as published for the Continental US, attached in Appendix F.

   i. IES will represent the Engineering Index as defined above as of the Contract Date.
   ii. IEA will represent the Engineering Index as of the Start Date anniversary, fixed at "73."

d. "Base Indices" shall be the published Labor Material and Engineering Indices for the Base Month.

e. "Base Month" shall be the month of the Start Date.

Any of the Indices or references noted above may be changed or replaced in the future by mutual agreement of the parties to this Contract.

2. ADJUSTMENT OF BASE PAYMENTS

a. For the purpose of Base Payment adjustment, the following percentages shall be applied to the price components noted:

1.) 50% of the Base Payment will represent the labor content and will be expressed in the adjustment formula as PL.

2.) 24% of the Base Payment will represent the material content and will be expressed in the adjustment formula as PM.

3.) 26% of the Base Payment will represent the engineering content and will be expressed in the adjustment formula as PE.

The exception to the above shall be the first Base Payment adjustment, to be made on the Start Date, in which the percentages applied to labor, materials and engineering components shall be 50%, 40% and 10%, respectively.

b. The beginning Base Payment amount will be established at $78,000 as of the Contract Date. This amount will be adjusted on the Start Date and on every anniversary of the Start Date according to the following formula:

$78,000 * {PL * (ILA I ILS) + PM * (IMA I IMS) + PE * (IEA I IES)} =Revised Base Payment

3. GENERAL

a. In the event any change in the Contract specifications, prior to completion of the work, results in a change in the Base Payment, the new Base Payment shall be considered as having been in effect since the Base Month for the purposes of price adjustment.

b. Adjustments shall be calculated to the nearest one-tenth of one percent.

4. ADJUSTMENTS OF ENERGY PAYMENTS

Energy Payments will be adjusted as follows:

a. A beginning Target Payment amount of $103,000 will be established as of the Contract Date. This figure represents the theoretical annual total of Base and Energy Payments given projected energy production. For purposes of Energy Rate adjustment, the relationship between this amount and the beginning Base Payment amount is expressed as a ratio of 1.3205. This figure will be adjusted according to the following formula:

   1.3205 * Revised Base Payment Amount= Revised Target Amount

b. "Average Energy" will be established by averaging annual energy production, as measured at the first meter beyond the generator, for the years between the Start Date and the adjustment date.

c. "Threshold Energy" will be 80% of Average Energy.

d. Energy Payment amounts will be adjusted on the fifth, tenth, and fifteenth anniversaries of the Start Date according to the following formula, to take effect on the subsequent anniversary:

   (Revised Target Amount- Revised Base Amount) I Average Energy- Threshold Energy) = Revised Energy Payment per KwH

5. EXAMPLE OF PAYMENT ADJUSTMENT

Current indices are as of 9113184. Future indices are hypothetical.

$78,000 * { 50% * (430.80 I 406.42) + 24% * (353.22 I 333.23) + 26% * (77.38 I 73.00)}

ENR's 20-city average cost indexes, wages and material prices. Historical data and details for ENR's 20 cities can be found at ENR.com/economics

Construction Cost Index

ANNUAL INFLATION RATE

+1.3%

OCT. 2019

1913=100	INDEX VALUE	MONTH	YEAR
CONSTRUCTION COST	11326.10	+0.1%	+1.3%
COMMON LABOR	23822.00	0.0%	+1.4%
WAGE $/HR.	45.70	0.0%	+1.4%

The Construction Cost Index's annual escalation head steady at 1.3% this month, while the monthly component rose 0.1%.

Building Cost Index

ANNUAL INFLATION RATE

+1.2%

OCT. 2019

1913=100	INDEX VALUE	MONTH	YEAR
BUILDING COST	6168.75	+0.4%	+1.2%
SKILLED LABOR	10548.04	+0.2%	+1.6%
WAGE $/HR.	58.28	+0.2%	+1.6%

The Building Cost Index is up 1.2%, while the monthly component rose 0.4%.

Material Cost Index

MONTHLY INFLATION RATE

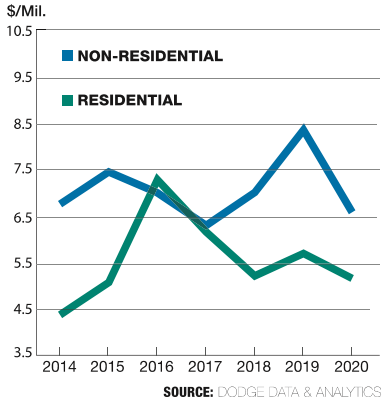
+0.7%

OCT. 2019

1913=100	INDEX VALUE	MONTH	YEAR
MATERIALS COST	3492.83	+0.7%	+3.1%
CEMENT $/TON	140.55	+0.4%	+22.3%
STEEL $/CWT	55.35	+0.6%	+2.9%
LUMBER $/MBF	591.33	+0.9%	–7.4%

The MCI rose 0.7%, while the annual escalation rate is 3.1%.

Construction starts in the Chicago metro area are expected to decrease 16.6% in 2020, to $11.7 billion, according to Dodge Data & Analytics. The non-residential market is the main catalyst for the drop, with an anticipated fall of 21.4%, Dodge says. Residential work is expected to fall 9.5%. Healthcare construction will see the largest decline, while warehouse, office and retail work are expected to see small increases.



SOURCE: DODGE DATA & ANALYTICS

ENR's Cost Indexes by City

1913=100
1967=100
R=REVISED

	CONSTRUCTION COST		BUILDING COST		COMMON LABOR		SKILLED LABOR		MATERIALS	
	OCT '19: 1913	% CHG. YEAR	OCT '19: 1913	% CHG. YEAR	OCT '19: 1967	% CHG. YEAR	OCT '19: 1967	% CHG. YEAR	OCT' 19: 1967	% CHG. YEAR
ATLANTA	6700.42	+0.8	4560.50	+2.1	825.83	0.0	710.67	+1.9	820.58	+2.4
BALTIMORE	8928.86	+0.8	5181.15	–6.4	1214.52	+7.2	865.76	+1.2	743.46	–15.3
BIRMINGHAM	7464.16	+0.7	4652.83	+1.4	978.68	0.0	811.63	+0.7	740.13	+2.4
BOSTON	14755.82	+0.3	7620.07	+1.1	1579.58	0.0	1393.17	+0.6	741.63	+2.2
CHICAGO	16889.70	+6.5	7951.90	+5.3	1690.57	+7.0	1418.94	+6.2	651.00	+3.1
CINCINNATI	10194.97	+0.4	5337.19	+1.4	1028.46	0.0	883.59	+0.9	741.31	+2.1
CLEVELAND	12417.45	–0.9	5877.44	–1.9	1094.27	0.0	923.51	+0.1	699.15	–5.1
DALLAS	5930.04	+0.4	4539.42	+0.5	742.23	0.0	738.08	0.0	721.90	+1.1
DENVER	7543.94	+0.6	5120.21	+5.0	818.18	0.0	847.28	+7.2	723.06	+2.1
DETROIT	12148.75	–0.6	6377.89	–0.5	1068.28	0.0	1002.14	+1.0	680.21	–3.1
KANSAS CITY	11489.75	+0.6	6202.28	+1.1	1297.51	0.0	1221.06	0.0	677.43	+3.4
LOS ANGELES	12027.07	+0.1	6360.90	+0.3	1111.66	0.0	1063.02	0.0	713.17	+0.8
MINNEAPOLIS	13026.31	+0.4	6480.05	+0.7	1339.26	0.0	1226.97	0.0	698.51	+2.3
NEW ORLEANS	6300.63	+1.4	4468.94	+2.0	749.82	0.0	712.17	0.0	765.50	+4.1
NEW YORK CITY	19533.62	+0.2	9369.41	+0.9	1552.23	0.0	1401.19	+0.7	763.52	+1.4
PHILADELPHIA	13344.69	+0.1	7189.36	+0.5	1495.20	0.0	1276.15	+0.3	771.65	+0.9
PITTSBURGH	10846.13	+3.9	6078.63	+0.3	1120.44	+6.0	982.82	+2.6	652.21	–3.9
ST. LOUIS	12359.98	–0.4	6207.29	–0.2	1096.32	0.0	999.94	+0.8	785.87	–2.0
SAN FRANCISCO	12524.93	+3.4	7341.15	+4.7	1025.93	0.0	1091.49	0.0	860.76	+19.6
SEATTLE	12095.09	+8.1	6368.36	+3.3	1141.84	+5.8	1129.54	+4.4	834.75	+1.2

APPENDIX E

Operation and Maintenance Scope of Work

1 Tri-Weekly Operation and Maintenance

Working in conjunction with High Country Hydro, ABB will perform the following work related to Operation and Maintenance of the equipment three times every week:

1. Take readings and compare with typical values
2. Check bearing oil levels
3. Record to-date KWH and KVARH values from utility meter
4. Check/record any "alert" or "alarm" conditions on SCADA and respond as needed
5. Check flow per USBR
6. Check to see if all cameras are operational
7. Check to see if internet access is normal
8. Check to see if dialer is plugged in
9. General checking for abnormal activity, visible or audible
10. Shovel snow if needed
11. General housekeeping as needed

2 Annual Inspection

Working in conjunction with the City of Aspen and High Country Hydro, ABB will perform the following work related to the annual maintenance outage for Ruedi hydro.

A Generator Mechanical

1. Open the turbine case portholes on left side of the unit (next to governor).
2. Provide adequate lights, access ladders and/or working platform inside turbine case/pit.
3. Check fixing of runner to shaft and that philidas nuts are secure.
4. Check for shaft leaks. Check fasteners and note clearances as required.
5. Inspect the deflector plates for excessive wear and ensure the plates are fully secured to the levers. Check for worn bearings and loose connections.
6. Use the hand pump on the governor hydraulic power unit ("HPU") to move the deflectors through their full range travel.
7. With the deflector setting template in place against the nozzle face verify the edge of template is just touching each deflector plate end turn. If adjustment are required, the deflector nearest the servo will be adjusted first.
8. Fully close spear/needle valves to check the seat in the nozzles.
9. With the spear/needle valves fully open, visually inspect the nozzle surfaces for wear. Record nozzle diameter in perpendicular planes.
10. Move spear rods to check the condition of the spear rod supports.
11. Examine spear tips for signs of sand erosion and wear.
12. Verify the spear actuator mountings, stop nut, and key are all secure.
13. Remove branch pipe hand hole covers and clean out debris. Inspect interior for corrosion, replace gaskets, covers, and tighten nuts.

14. Check calibration of inlet pressure gauges via dead weight test, clean out taps, and reinstall gauges on branch pipes.
15. Inspect if spear rod seals and flanged bushings are worn. Branch pipes must be dismantled if wear if replacement is required.
16. Clean and check spear actuator, lightly oil the exposed portion of the spear rod, grease nipples on both the branch pipe assemblies and threaded portion of the spear rod.
17. Inspect the governor hoses for cuts, bulges and signs of deterioration. Thoroughly clean any sludge from reservoirs.
18. All oil pumps and motors will be serviced to manufacturer's recommendations.
19. Lift turbine bearing cap and inspect for signs of deterioration. Open turbine end ("TE") and generator end ("GE") of generator bearings and inspect.
20. Drain the turbine bearing lubrication system and refill with new, clean oil. Replace filters as necessary.
21. Clean and check the deflector servo cylinder, rod, clevises, and mounting point on the turbine case. Lightly oil the rod and grease the clevises.
22. Ensure alternator and turbine grouting and foundation are in sound condition. Check inside of turbine case for signs of erosion or other issues. Remove debris from tailrace.
23. Remove all tools and equipment from inside the turbine case/pit. Inspect boards inside hole.
24. Replace turbine case porthole and appropriately tighten nuts.
25. Check that branch pipes, inlet vent, and drain pipe flanges are fully secure. Drain valves will be left fully closed.
26. Check the condition of the bearing cooling water system piping, connections and components. Verify strainers/filters are clean.
27. Verify all electrical equipment is appropriately grounded and all power cables are properly connected.
28. Verify proper electrical operation (AC/DC) of the turbine lube oil system. Check all protective devices for proper settings.
29. There is an existing crack in the runner that was first discovered in 1995. This condition was reported to the turbine manufacturer. The recommendation has been to measure the crack during each outage. Continue monitoring and reporting measurement of the crack.
30. Check O-rings of flow valve.
31. Remove switch module cover and inspect CPT mounting. Ensure bolts are tight.

B Governor/Hydraulic Power Unit

1. Drain oil from the governor unit and refill with new.
2. Drain oil from the HPU and refill with new.
3. Measure pre-charge in the accumulators of the HPU. Note readings as found and as left.
4. Verify protective devices on the HPU are operating properly.
5. Oil the operating motor bearings per the maintenance manual.
6. Check system operation of the turbine deflectors via both the electrics and hand pump. Verify that there are no system leaks. Note as found and as left pressure.
7. Inspect governor electrical panel.

C Generator Electrical

1. Remove both bearing caps and inspect.
2. Remove the end shields and vacuum the area around the stator windings.
3. Inspect stator windings for signs of cracking, looseness, or overheating. Ensure all packing, ties, wedges, and fillers are tight.
4. Inspect the collector ring brushes.
5. Open the terminal box, inspect, and vacuum.
6. Drain generator lube oil system and refill with new oil. Install new filters as necessary.
7. Verify that the protective and permissive systems on the lube oil system are operating properly.
8. Verify the lube oil system for proper operation in both the AC and DC mode.
9. Verify proper operation of the generator protective devices (lube & temp probes)
10. Verify the generator space heaters are operating as they should.
11. Fill the shaft brake oil reservoir to the proper level.
12. Record the generator air gap clearances.
13. Megger the stator windings from the HV cabinet. The neutral leads are to be separated in the generator junction box and the surge capacitors are to be disconnected. Each phase will be tested independently, with the remaining two phases grounded. Polarization Index readings recorded as A phase = XXX, B phase = XXX, C phase = XXX. Provide the data on a Megger and Polarization form for final report.

D Penstock

1. Dewater the main outlet penstock.
2. Open the manhole covers at the ball valve house and the USBR's tunnel access house. Note: At the Ball Valve House, USBR tunnel access house & each of the 36" pipes at the turbine.
3. Force air circulation throughout the penstock to dry wet areas.
4. Perform penstock visual inspection. Perform minor maintenance with dressing, if required.
5. Replace manhole covers and secure at completion.

E Ball Valve

1. Lubricate the Limitorque actuator per OEM recommendations.
2. Lubricate the ball valve with grease between the inner and outer ball valve to alleviate binding at the end of the travel.
3. Verify proper electrical operation of the ball valve.
4. Check the total travel time from full open to full close and record.
5. Inspect ball valve. Note any repairs.
    a. Lubricate ball valve.
        i. 3 tubes each on valve/ball
        ii. 2 tubes on each collar/stem
    b. Lubricate outside of ball both sides up/down stream while stroking.

F Ball Valve Controls (local and generator controls)

1. Verify proper electrical operation
2. Check timing of travel of full stroke from open and closed positions, record.

G Motor Control Center (480V)

1. Open MCC cabinet and vacuum.

2. Replace non-functioning indicator lights.
3. Check internal wiring for proper connection and tighten as needed.

H 5KV Compartment

1. Open up and thoroughly vacuumed and clean compartment.
2. Verify tightness of connections.
3. Verify space heaters are operating properly.

I Substation - Annual

1. Perform visual inspection
2. Pull oil samples from both the step-up transformer and the OCB. Test acidity level, dielectric strength, and DGA. Filter oil every other year, replace filters as necessary.
3. Verify proper operation of protective devices on the step-up transformer.
4. Check for loose wires and cable connections on step-up transformer and OCB (25KV, 5KV and control).
5. Lubricate the OCB per OEM recommendations.
6. Verify breaker contact resistance of the OCB and record.
7. Verify proper operation of OCB unit heaters
8. Verify proper operation of the cooling fans on the step-up transformer.
9. Recharge the nitrogen blanket on the step-up transformer.
10. Wipe Down & clean HV bushing on step-up transformer and OCB.

J Excitation Cubicle.

1. Inspect and vacuum the cubicle
2. Verify all connections for tightness.
3. Verify operation of space heaters.
4. Verify grounding.
5. Verify controls on restart.

K Relay Cubicle

1. Inspect and vacuum the cubicle.
2. Test relays very three years via secondary injection.
3. Verify tightness of all connections.
4. Verify that all light, heater, and receptacle circuits were working properly.
5. Verify operation of line side protective relays.
    a. Multilin G30
    b. SEL 700G
6. Verify operation of the generator protective relays.
    a. Multilin T35
7. Verify controls on restart.

L PLC Cubicle (Rx3i)

1. Inspect and vacuum cubicle.
2. Verify tightness of connections.
3. Verify all light and receptacle circuits were working properly.
4. Verify telemetry circuits are operating properly.
5. Controls to be checked on restart.

M 125V DC System

1. Clean and vacuum area around the batteries and chargers
2. Verify AC input and DC output (134.6VDC).
3. Verify liquid levels of battery cells.
4. Replace batteries as needed.
5. Record the specific gravity and voltages of each cell. This is logged in the maintenance record on site
6. Check for loose bolts or wire connections.

N General Facility

1. Clean general facility.
2. Verify powerhouse unit heater system for proper operation.
3. Verify ventilation system for proper operation.
4. Replace all indoor/outdoor lights that have failed and verify proper operation of all circuits.
5. Verify ball valve unit heater for proper operation.
6. Verify operation of building security system.
7. Verify operation of Automatic Dialing System.
8. Clean north pit pump.
9. Check water level in UPD battery.

O Pre-Excitation Checks

1. Verify operation of 52G Generator breaker trip circuit.
2. Verify operation of 86 Unit Lockout trip circuit
1. Check all enunciator circuits. Verify operation of site data logger and remote CRT system monitor.
2. Fill penstock per instructions.
3. Verify ball valve automatic operation.
4. Start flow thru the unit and verify flow monitoring system.

P Off-Line Checks

1. Bring unit manually up to FSNL and check the following:
    a. Speed monitor operation
    b. Field waveshape via controls 700G.
    c. Voltage control
    d. Governor motor transfer panel operation
    e. All auxiliary systems
2. Shut unit down and begin automatic start

Q On-Line Checks

1. Start unit in auto/local and auto-synchronize to the line.
2. Open 52G generator breaker to reject load. Verify unit auto-control and auto restart.
3. With unit fully loaded, shutdown the via 86 unit lock-out trip and verify that unit coast down.
4. Start the unit in auto/remote and auto-synchronize to the line.
5. Verify auto flow control via keyboard operation.
6. Set up underexciter limit with unit loaded.
7. Disable vibration trip devices and set them up a full load available.

8. Monitor lube oil system, bearing system, and generator stator temperatures.
9. Check for proper operation in power factor control.

Maintenance and repairs shall be performed in keeping with Article 1 definitions g, h, and i.

Commercial Rates - Effective: April 11, 2019

ABBs' field service engineers and consulting experts are on call to provide a wide range of service and repairs on both ABB and non-ABB equipment and engineered systems in Industrial and Balance-Of-Plant Power Plant Systems.

8-Hour Daily Rates U.S. Dollar

Service Description Field & Repair Services	Weekday	Saturday	Sunday / Holiday
Field Engineer or Repair Specialist	$2,156	$3,112	$4,068
Specialized Field Engineer	$2,620	$3,808	$4,996
Service Technician	$1,692	$2,416	$3,140

Phone Support	$1,300/case
Critical Power Emergency Standby Retainer	$2,200/month

Tooling Rates

IR Camera	$75/day, $300/week
Vibration Test Set	$125/day, $500/week
Online Motor Test Set	$250/day, $1,000/week
Offline Motor Test Set	$250/day, $1,000/week
Primary Current Injection Set	$350/day, $1,400/week
Relay Test Set	$500/day, $2,000/week
Power Factor Test Set	$500/day, $2,000/week
Vacuum Oil Processor	$2,500/day

Field Engineer

Service is technical advice and counsel from field personnel based on sound engineering, manufacturing, installation, and operation practices as applicable to the equipment. Such services may include analysis, adjustment, programming, and other similar services. They do not include supervision or management of purchaser's employees, agents or other contractors and do not include design effort.

Specialized Field Engineer

These services include installation, commissioning, repair, service, maintenance, and upgrade work associated with:

- Medium voltage motors, & generators
- Paralleling Switchgear
- Synchronous motors & generators, including excitation
- Medium voltage drives
- Legacy drive products, including: DC/AC2000, DC/DV/AC300, Innovation, Siltron & Valutrol
- Legacy control systems including: Series 5 & Series 6
- Specialty power system studies, including: Harmonic, Transient Switching & Grounding
- Shipboard and offshore work, with a minimum 14-hour / day billing. Platform work requires a pay differential.

Service Center

Service Technician: Craftsmen experienced in the inspection, test, installation, service, and repair of one or more of the following equipment types:

- Transformer (Mechanical, Electrical, Fluid & LTC)
- Motors, Drives & Controls Equipment
- Switchgear
- Mechanical
- Hydro (Electrical, Mechanical & Controls)

Service Center Specialist: Provides overall coordination and technical leadership on-site and in shop of service craftsmen and Work Leaders.

For more information contact your local ABB office or call our 24x7 customer service center at 888-434-7378 or 540-387-8617

Typical Installations, Services, Repairs, and Products:

- Transformer (Including Mechanical, Electrical, Fluid & LTC)
- Power Delivery Equipment
- Motors, Drives and Controls Equipment
- Distributed Control Systems and Programmable Logic Controls
- Instrumentation Related to Process Control and Automation Systems
- Marine Electrical Systems
- Power System Studies

Rate Terms

1. Work greater than 8 hours per day is billed per hour:

	Overtime	Double Time
Field Engineer or Repair Specialist	$358.50	$478.00
Specialized Field Engineer	$445.50	$594.00
Service Technician	$271.50	$362.00

For less than 24-hour response, a 1.35 multiplier is used for daily, overtime and double time rates.

Overtime applies to billable weekday hours 9-12. Double Time applies to: Billable weekday hours greater than 12, Saturday hours greater than 8, Sundays and holidays.

2. Preparation, travel, and report writing time will be charged at the applicable rate (i.e., daily rates, overtime and double time) on a round trip basis with point of departure based on the location of the ABB Representative's office/service center.
3. Additional travel and living expenses include:

Overnight stay	$160 per day
Air Travel / Rental Car charges	Cost + 20%

Notes: Additional T&L charges may apply for high cost of living areas.

4. Travel and living expenses outside the continental U.S.A., will be billed at a cost plus 20% minimum, or consult with your local ABB representative for a local per diem rate.
5. Materials, subcontract labor and equipment required to support ABB will be provided at cost + 35%.
6. All equipment is F.O.B. shipping point, seller's dock, with freight prepaid and charged 3% of material price (a minimum per shipment charge of $100.00 shall apply). Seller reserves the right to select the method of transportation provided for all products unless specified by the client not less than 72 hours prior to shipment. Any premium transportation or required special handling is in addition and shall be for the account of the Buyer.
7. Consult with local ABB office to determine applicable charges for other special tooling and/or test equipment or any taxes, fees or VAT that may be in addition to the above rates. Minimum daily billing of 8 hours for all services provided including standby time. A minimum order of $500.00 shall apply for a parts/material only order.
8. All rates are for hours worked, traveled, or on standby and are based on ABB's standard terms and conditions of sale (Form ES 104 Rev 4). Price and data subject to change without notice. This quotation is not valid for PCB services, off shore or confined locations.
9. Phone Support is a service provided on the phone by a Field Engineer for limited hardware and software troubleshooting services.
10. Employee screening costs as required by the customer will be provided as follows:

Custom drug screen or background check	$100
TWIC Card	$250
BOISET + HUET	$1,500

Notes: All travel time to complete the screenings will be billed at the applicable hourly rate as set forth in 1 above plus expenses. All other specialty training will be billed at cost + 20%.

11. All time to complete site specific training will be billed at the applicable hourly rate as set forth in 1 above plus expenses.
12. A Critical Power Emergency Standby Retainer provides access to a qualified ABB Field Engineer at the customer site on the same day the need is identified by the customer. All time to support the emergency service, including travel to and from the customer site, will be billed at the applicable hourly rate as set forth in 1 above, however the 1.35 multiplier applied to work with less than 24hrs notice is waived.

** The Standard and Applicable rates shown on this sheet assume that services are being performed at a location that is not subject to a Location Premium which is an additional charge/rate that may be assessed for remote, inconvenient, confined or offshore work sites. Please contact ABB to see if a Location Premium applies to your location.

CITY OF ASPEN

MEMORANDUM

TO:	Mayor and Council
FROM:	Raquel Flinker, Project Manager
THROUGH:	Sara Ott, City Manager
DATE of MEMO:	December 2, 2019
MEETING DATE:	December 10, 2019
RE:	Strategic Focus Areas

REQUEST OF COUNCIL:

Review Resolution 123 for final approval.

BACKGROUND:

During the November 4th Work Session, staff received feedback from Council on the City of Aspen Strategic Focus Areas. The Strategic Focus Areas have been revised to include a more active voice.

STAFF RECOMMENDATION:

Staff recommends the approval of Resolution 123.

EXHIBITS:
Attachment A – Resolution 123

RESOLUTION # 123
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, ADOPTING THE CITY OF ASPEN STRATEGIC FOCUS AREAS

WHEREAS, the City Council of the City of Aspen started to work on strategic initiatives during the July 1 and 2, 2019 Council Retreat;

WHEREAS, best management practices include creating strategic areas to prioritize community needs;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby adopts the following City of Aspen Strategic Focus Areas, and does hereby authorize the City Manager to pursue said Strategic Focus Areas:

Community Engagement: Foster a trusted dialogue and relationship in the community that encourages participation, consensus building, and meaningful engagement.

Fiscal Health & Economic Vitality: Promote economic sustainability of the Aspen community by advancing a healthy, diverse local economy while responsibly managing revenue streams, community investments, and financial reserves.

Protect Our Environment: Work to ensure that policy decisions, programs and projects manage impacts to the environment, climate, and public health and well-being.

Safe & Lived-in Community of Choice: Work to ensure Aspen is an attractive, diverse and safe city to live, work and visit year-round. This includes opportunities to access childcare, healthcare, housing, transit, parks, recreation, and technological connectivity.

Smart, Customer-Focused Government: Provide value to the community by continuously improving services and processes based on feedback, data, best practices, and innovation.

Organizational Culture & Development (Internal Focus Area): Advance the Aspen Idea through an organizational culture that:

- Supports employee engagement and development
- Delivers quality services to the community and
- Values a positive, ethical, inclusive and diverse work environment

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th day of December 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10, 2019.

_____
Linda Manning, City Clerk

CITY OF ASPEN

MEMORANDUM

TO: Mayor and City Council

FROM: Robert Schober, Capital Asset Project Manager

THROUGH: Jeff Pendarvis, Interim Capital Asset Manager

MEMO DATE: December 2, 2019

MEETING DATE: December 10, 2019

RE: Lease Extension at 201 N. Mill Street

REQUEST OF COUNCIL:
The Capital Asset Department requests that Council approve a lease extension for the City office space at 201 N. Mill for 2021. This is one year beyond the current lease term through 2020 and will be needed to allow for completion of the various phases of construction / renovation of City office spaces.

DISCUSSION:
Due to the construction schedule of the Galena City Offices, there is a need to extend the lease for the office space that the City does not own. The lease extension has been negotiated and Asset is ready to execute with Council's approval. This extension will allow for the current departments that are housed in this space to remain there until the new building is completed without further interruption.

FINANCIAL IMPACTS:
The original lease for units 101 / 201 at North Mill began in 2016 and was $21,000/mo. This amount has increased 3% annually and is reflected in the proposed lease extension at $24,344.76 ($292,137.12 annually). These spaces, plus the additional unit 203 rent of $3,930.88/mo ($31,447.04 for 8 months only), equates to $323,584.16 in total for 2021. Note, these amounts are base rent and exclude any common area maintenance fees.

Budget authority for lease payments has been appropriated annually since municipal office space has been in flux. While this request to extend the existing leases into 2021, there is no official appropriation for that year at this time. However, all long-range plans have incorporated this need into each proforma. Currently, there are three Funds responsible for these lease payments in 2020:

- General Fund (for Engineering)
- Stormwater Fund, and
- Parking Fund

ENVIRONMENTAL IMPACTS:
N/A

ALTERNATIVES:
This lease extension appears to be the only viable option at this time without a significant disruption to several City departments.

RECOMMENDATIONS:
Approve the lease extension at 201 N. Mill Units 101, 201 and 203.

CITY MANAGER COMMENTS:

RESOLUTION # 144

(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, DIRECTING THE CITY MANAGER OR ASSITANT CITY MANAGER TO TAKE SUCH ACTION NECESSARY TO EXECUTE A LEASE EXTENSION.

WHEREAS, there has been submitted to the City Council an extension to the lease for city staff office space at 201 N. Mill Street commercial units 101, 201 and 345SF of storage unit 102, a true and accurate copy of which is attached hereto as "Exhibit A".

WHEREAS, the City Council has determined that it is in the best interest of the City of Aspen to approve the lease extension pursuant to the terms thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

The City Council of the City of Aspen hereby approves the third amendment to the lease for city staff office space at 201 N. Mill Street commercial units 101, 201 and 345SF of storage unit 102 and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th, day of December 2019.

Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10th, 2019.

Linda Manning, City Clerk

RESOLUTION # 145

(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, DIRECTING THE CITY MANAGER OR ASSITANT CITY MANAGER TO TAKE SUCH ACTION NECESSARY TO EXECUTE A LEASE EXTENSION.

WHEREAS, there has been submitted to the City Council an extension to the lease for city staff office space at 201 N. Mill Street which comprises 21% of commercial unit 202, a true and accurate copy of which is attached hereto as “Exhibit B”.

WHEREAS, the City Council has determined that it is in the best interest of the City of Aspen to approve the lease extension pursuant to the terms thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

The City Council of the City of Aspen hereby approves the first amendment to the lease for city staff office space at 201 N. Mill Street which comprises 21% of commercial unit 202 and does hereby authorize the City Manager to execute said agreement on behalf of the City of Aspen.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th, day of December 2019.

Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held, December 10th, 2019.

Linda Manning, City Clerk

Exhibit A – Lease extension agreement between Bleeker Mill Development LLC and The City of Aspen

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE ("**Third Amendment**") is made and entered into as of September __, 2019, by and between BLEEKER MILL DEVELOPMENT LLC, a Delaware limited liability company ("**Landlord**"), and THE CITY OF ASPEN, a Home Rule Municipality ("**Tenant**").

R E C I T A L S :

A. Landlord and Tenant entered into that certain Lease Agreement dated as of January 4, 2016 (the "**Original Lease**", and as amended by amendments dated August, 2016 and July 10, 2017, the "**Lease**") whereby Landlord leases to Tenant, and Tenant leases from Landlord, approximately 4,780 rentable square feet of office space located in Commercial Unit 101 and Commercial Unit 201 and approximately 345 square feet of storage space in Storage Unit 102 of that certain building located at 201 N. Mill Street, Aspen, Colorado (the "**Building**").

B. By this Third Amendment, Landlord and Tenant desire to extend the Term as provided herein.

C. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Original Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

A G R E E M E N T :

1. Renewal Term. The date upon which the Term expires shall be extended such that the Lease shall expire on December 31, 2021 ("**New Expiration Date**"). The period from January 1, 2021 through the New Expiration Date shall be referred to herein as the "**Extended Term**."

2. Monthly Fixed Rent. In accordance with Section 29.2 of the Lease, from January 1, 2021 through December 31, 2021, Tenant shall pay Two Hundred Ninety-Two Thousand One Hundred Thirty-Seven and 07/100 Dollars ($292,137.07) per annum, payable to Landlord in equal monthly installments of $24,344.76, as Fixed Rent for the Premises.

3. No Further Renewal. Effective as of the date of this Third Amendment, Article 29 of the Original Lease (entitled "Renewal Term") is hereby deleted in its entirety, and Tenant shall have no further right to renew the Lease.

4. Brokers. Each party represents and warrants to the other that no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Third Amendment. Each party further agrees to defend, indemnify and hold harmless the other party from and against any claim for commission or finder's fee by any other person or entity who claims or alleges that they were retained or engaged by the first party or at the request of such party in connection with this Third Amendment.

5. No Further Modification. Except as set forth in this Third Amendment, all of the terms and provisions of the Lease shall apply during the Extended Term and shall remain unmodified and in full force and effect. Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this Third Amendment.

6. Counterparts. This Third Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Third Amendment may be executed by a party's signature transmitted by electronic (including by use of DocuSign (or similar) and/or by use of digital signatures) means via portable document format (pdf) ("**pdf signatures**"), and copies of this Third Amendment executed and delivered by means of pdf signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. Both parties hereto may rely upon pdf signatures as if such signatures were originals. Both parties hereto agree that a pdf signature page may be introduced into evidence in any proceeding arising out of or related to this Third Amendment as if it were an original signature page.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Third Amendment has been executed as of the day and year first above written.

"LANDLORD"

BLEEKER MILL DEVELOPMENT LLC,
a Delaware limited liability company

By: Rudin West I LLC, its manager

By:_____
Name: _____
Title: _____

"TENANT"

THE CITY OF ASPEN,
a Home Rule Municipality

By:_____
Name:
Title:

FIRST AMENDMENT TO
COMMERCIAL LEASE AGREEMENT

This FIRST AMENDMENT TO COMMERCIAL LEASE AGREEMENT (this "First Amendment") is made effective as of the __ day of November 2019, by and between 201 N. Mill Street Associates, LLC, a Colorado limited liability company ("Landlord"), and The City of Aspen ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Commercial Lease Agreement dated to be effective August 25, 2016 (the "Lease"), pursuant to which Tenant leases 21% of Unit 202 in The Mill Building located at 201 North Mill Street, Aspen, Colorado. Capitalized terms not otherwise defined herein shall have the meanings given them in the Lease;

WHEREAS, Landlord and Tenant desire to modify the terms of the Lease on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Term of Lease. The term of the Lease is extended to August 31, 2021.

2. Option to Extend. Tenant's Option to extend the term of the Lease is hereby deleted and of no further force of effect.

3. Application of Lease Terms. Unless expressly modified herein, all other terms and conditions of the Lease shall remain in full force and effect. To the extent of any inconsistency between the terms of this First Amendment and the terms of the Lease, the terms of this First Amendment shall control.

4. Counterparts; Facsimile or Email. This First Amendment may be executed in multiple counterparts and which so executed by all parties shall constitute one single instrument. Delivery by facsimile or electronic mail of any party's signature hereon shall be valid, binding and enforceable.

IN WITNESS WHEREOF**,** this First Amendment has been executed by Landlord and Tenant as of the effective date.

201 N. Mill Street Associates, LLC,
a Colorado limited liability company

By: _____
B. Joseph Krabacher, Manager

THE CITY OF ASPEN
A Home Rule Municipality

By: _____
Name:
Title:

LEASE

BLEEKER MILL DEVELOPMENT LLC,
a Delaware limited liability company,
Landlord

and

THE CITY OF ASPEN

a Home Rule Municipality
Tenant

for

Commercial Unit 101 and Commercial Unit 201
The Mill Building Condominium
201 N. Mill Street
Aspen, Colorado

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Exhibit A Definitions

LEASE

THIS LEASE is made as of the 4th day of January, 2016 (the "**Effective Date**"), between **BLEEKER MILL DEVELOPMENT LLC** ("**Landlord**"), a Colorado limited liability company, and **THE CITY OF ASPEN** ("**Tenant**"), a home rule municipality.

Landlord and Tenant hereby agree as follows:

ARTICLE 1
BASIC LEASE PROVISIONS

PREMISES	The units designated as "Commercial Unit 101" and "Commercial Unit 201" in the Declaration (as defined in **Article 30**).
BUILDING	The building, fixtures, equipment and other improvements and appurtenances now located or hereafter erected, located or placed upon the land known as 201 N. Mill Street, Aspen, Colorado.
REAL PROPERTY	The Building, together with the plot of land upon which it stands.
COMMENCEMENT DATE	The Permissible Date of Occupancy, as defined in Section 2.2.
EXPIRATION DATE	December 31, 2020.
TERM	The period commencing on the Commencement Date and ending on the Expiration Date.
PERMITTED USE	Tenant will use the Premises for general office use and ancillary uses associated with office use.
AGREED AREA OF PREMISES	Approximately 4,780 rentable square feet, with 4,057 allocated to Commercial Unit 101 and 723 allocated to Commercial Unit 201.
FIXED RENT	$252,000.00 per annum ($21,000.00 per month), with $200,000.00 per annum allocated to Commercial Unit 101 and $52,000.00 allocated to Commercial Unit 201, increasing by three percent (3%) on each January 1, throughout the Term.
ADDITIONAL RENT	All sums other than Fixed Rent payable by Tenant to Landlord under this Lease, including, without limitation, Tenant's Annual Share of Condominium Assessments, late charges, overtime or excess service charges, damages, and interest and other costs related to Tenant's failure to perform any of its obligations under this Lease.
RENT	Fixed Rent and Additional Rent, collectively.
INTEREST RATE	The lesser of (i) 4% per annum above the then-current Base Rate, (ii) eighteen percent per annum, and (iii) the maximum rate permitted by applicable law.
TENANT'S ADDRESS FOR	Until Tenant commences business operations from the Premises:

NOTICES	City of Aspen - Building and Engineering Departments 130 S. Galena Street Aspen, CO 81611 Attention: City Manager
WITH A COPY TO:	James R. True City Attorney 130 S. Galena Street Aspen, CO 81611 Thereafter: City of Aspen - Building and Engineering Departments 201 N. Mill Street Aspen, Colorado 81611 Attention: Jack Wheeler
WITH A COPY TO:	James R. True City Attorney 130 S. Galena Street Aspen, CO 81611
LANDLORD'S ADDRESS FOR NOTICES	Bleeker Mill Development LLC c/o Rudin Management Co., Inc. 345 Park Avenue, 33rd Floor New York, NY 10154 Attn: Michael Rudin and to Sherman & Howard L.L.C. 730 E. Durant, 2nd Floor Aspen CO 81611 Attn: B. Joseph Krabacher
BROKERS	TRU Real Estate and Aspen Snowmass Sotheby's International Realty
SECURITY DEPOSIT	$63,000.00
GUARANTOR	None.

All capitalized terms used in this Lease without definition are defined in Exhibit A or elsewhere in this Lease.

ARTICLE 2
PREMISES, TERM, RENT

Section 2.1 Lease of Premises. Subject to the terms of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. In addition, Landlord grants to Tenant the right to use, on a non-exclusive basis and in common with other tenants, the General Common Elements.

Section 2.2 Commencement Date. Upon the Effective Date, the terms and provisions hereof shall be fully binding on Landlord and Tenant prior to the occurrence of the Commencement Date. The Term of this Lease shall commence on the Commencement Date and, unless sooner terminated or extended as hereinafter provided, shall end on the Expiration Date. The "**Permissible Date of Occupancy**" shall be that date upon which Landlord provides notice to Tenant that **"Landlord's Work"** (as defined in the Construction Addendum hereto) is complete and that Tenant will have the non-exclusive right of possession to the Premises for purposes of "**Tenant's Work**" (as defined in the Construction Addendum hereto) and Initial Alterations (described in **Section 5.1**), and that the Landlord has obtained all certificates/letters of completion and occupancy which are necessary for Tenant to commence construction. If Landlord does not tender possession of the Premises to Tenant on or before the Permissible Date of Occupancy, for any reason whatsoever, Landlord shall not be liable for any damage thereby, and except as otherwise provided in this Lease, this Lease shall not be void or voidable thereby, and the Term shall not commence until Landlord tenders possession of the Premises to Tenant. If the Landlord is unable to satisfy all conditions to cause the Permissible Date of Occupancy to occur by January 15, 2016, Tenant shall have the option to terminate this Lease. In order to exercise the option to terminate the Lease, Tenant shall provide notice to Landlord by February 1, 2016 advising Landlord of Tenant's election to terminate; provided, however, if Landlord has satisfied all conditions to cause the Permissible Date of Occupancy to occur prior to Tenant providing notice of Tenant's election to terminate, Tenant's option to terminate shall lapse and shall be deemed extinguished.

Section 2.3 Payment of Rent. Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, in lawful money of the United States by check or wire transfer of funds, (i) Fixed Rent in equal monthly installments, in advance, on the first day of each month during the Term, commencing on the later of the Commencement Date or April 1, 2016, and (ii) Additional Rent, in advance, on the first day of each month during the Term, commencing on the later of the Commencement Date or April 1, 2016.

Section 2.4 First Month's Rent. Tenant shall pay one month's Fixed Rent upon the execution of this Lease ("**Advance Rent**"), in addition to the Security Deposit. The Advance Rent shall be credited towards the Fixed Rent payment(s) due immediately after the Commencement Date. If the Commencement Date is not the first day of a month, then the Advance Rent shall be credited towards Fixed Rent for the first partial month and the applicable portion of the next succeeding calendar month.

ARTICLE 3
USE AND OCCUPANCY

Section 3.1 Use. Tenant shall use and occupy the Premises for the Permitted Use and for no other purpose. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use. If Tenant uses the Premises for a purpose constituting a Prohibited Use, violating any Requirement, or causing the Building to be in violation of any Requirement, then Tenant shall promptly discontinue such use upon notice of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the Permitted Use in the Premises.

ARTICLE 4
CONDITION OF THE PREMISES

Section 4.1 Condition. Tenant agrees (a) to accept possession of the Premises vacant, broom clean and otherwise in a "cold, dark shell" condition (including Landlord's Work and as more fully defined in the Construction Addendum) existing on the Commencement Date "as is," and (b) that Landlord's only obligation is to perform Landlord's Work at Landlord's sole expense as necessary to permit Tenant to commence Tenant's Work (including construction of the Initial Alterations) and to be able to occupy the Premises for such purposes as of the Commencement Date. Except for the foregoing and except for any and all alterations and improvements necessary to cause the Building to be in compliance with all Regulations, Landlord shall not be required to make any other alterations or improvements to prepare the Premises for Tenant's occupancy. Tenant's occupancy of any part of the Premises shall be conclusive evidence, as against Tenant, that (i) Tenant has accepted possession of the portion of the Premises occupied in its then current condition and (ii) at the time such possession was taken, the Premises and the Building were in a good and satisfactory condition as required by this Lease.

ARTICLE 5
ALTERATIONS

Section 5.1 Tenant's Alterations.

(a) **Tenant's Alterations.** Tenant shall not make any alterations, additions or other physical changes in or about the Premises (collectively, "**Alterations**"), including: (a) initial tenant improvements (the "**Initial Alterations**"); or (b) decorative Alterations such as painting, wall coverings and floor coverings, the cost of which is estimated to exceed $25,000 (collectively, "**Decorative Alterations**"); without Landlord's prior consent, provided that Landlord's consent shall not be unreasonably withheld, conditioned or delayed with respect to Alterations that (i) are non-structural and do not affect any Building Systems, (ii) affect only the Premises and are not visible from outside of the Premises or the Building, (iii) do not affect any certificates/letters of occupancy issued for the Building or the Premises, and (iv) do not violate any Requirements.

(b) **Plans and Specifications**. Prior to making any Alterations, Tenant, at its expense, shall (i) submit to Landlord for its approval, detailed plans and specifications ("**Plans**") for each proposed Alteration (other than Decorative Alterations), and with respect to any Alteration affecting any Building System, evidence that the Alteration has been designed by, or reviewed and approved by, Landlord's designated engineer for the affected Building System, (ii) except for those permits consisting of City of Aspen building permits for the Building and the Premises, including 0076.2013.ACBK (demo), 0094.2013.ACBK (excavation and foundation) and 0021.2014.ARBK (construction), and except for those approvals, and consents, and certificates/letters of completion for the core and shell (the "**Core and Shell C.O.s**") necessary for Tenant to apply for and obtain permits to commence construction of the Initial Alterations, which Core and Shell C.O.s shall be the sole obligation of Landlord to obtain as provided in the Construction Addendum, Tenant shall obtain all other permits, approvals and certificates required by any Governmental Authorities, (iii) furnish to Landlord duplicate original policies or certificates of worker's compensation (covering all persons to be employed by Tenant and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder's Risk coverage (as described in **Article 11**) all in such form, with such companies, for such periods and in such amounts as Landlord may reasonably require, naming Landlord, and any Mortgagee as additional insureds, and (iv) furnish to Landlord reasonably satisfactory evidence of Tenant's ability to complete and to fully pay for such Alterations (other than Decorative

Alterations). With respect to Decorative Alterations only, Tenant shall give Landlord a description of such Decorative Alteration in lieu of the Plans required pursuant to clause (i) of the immediately preceding sentence.

(c) **Governmental Approvals**. Tenant, at its expense, shall, as and when required, promptly obtain all permits legally required in connection with the performance of Alterations and all certificates of partial and final approval of such Alterations required by any Governmental Authority and shall, within 30 days after completion of any Alterations, furnish Landlord with copies thereof, together with "as-built" Plans for such Alterations.

(d) **Core and Shell.** Landlord shall provide to Tenant, within three (3) business days after the Effective Date, a complete set of the architectural and engineering plans and specifications for the core and shell of the Building, specifically including those for the floors on which the Premises are located. As provided in the Construction Addendum, Landlord shall obtain, at its expense, all permits legally required to construct the core and shell of the Building and those interior areas of the Building as necessary for Tenant to be able to apply for and commence construction of the Initial Alterations.

Section 5.2 Manner and Quality of Alterations. All Alterations by Tenant (and all of Landlord's work on the core and shell as provided in the Construction Addendum) shall be performed (a) in a good and workmanlike manner and free from defects, (b) substantially in accordance with the Plans, and by contractors reasonably approved by Landlord, and (c) in compliance with all Requirements, the terms of this Lease and all construction procedures and regulations then prescribed by Landlord. All materials and equipment shall be of first quality, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance.

Section 5.3 Removal of Tenant's Property. Tenant's Property shall remain the property of Tenant and Tenant may remove the same at any time on or before the Expiration Date. On or prior to the Expiration Date, Tenant shall, at Tenant's expense, remove all of Tenant's Property from the Premises and the Building and close up any slab penetrations in the Premises. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Premises or the Building caused by Tenant's removal of any Alterations or Tenant's Property or by the closing of any slab penetrations, and upon default thereof, Tenant shall reimburse Landlord for Landlord's cost of repairing and restoring such damage. Any Tenant's Property not so removed shall be deemed abandoned and Landlord may retain or remove and dispose of same, and repair and restore any damage caused thereby, at Tenant's cost and without accountability to Tenant. All other Alterations shall become Landlord's property upon termination of this Lease.

Section 5.4 Mechanic's Liens. The interest of Landlord in the Real Property or any portion thereof shall not be made subject in any way to any liens, including construction liens, for Alterations made by or on behalf of Tenant. If any lien is filed against either condominium unit comprising the Premises, the Building or the Real Property for work or materials claimed to have been furnished to Tenant, Tenant shall cause it to be discharged of record or properly transferred to a bond, within 30 days after notice to Tenant. Further, Tenant shall reimburse Landlord for any damage or loss, including reasonable attorneys' fees, incurred by Landlord as a result of any liens or other claims arising out of or related to work performed in either condominium unit comprising the Premises, the Building or the Real Property by or on behalf of Tenant. Tenant shall notify every contractor performing Alterations to the Premises, the Building or the Real Property that the interest of the Landlord in the Premises, the Real Property or any portion thereof shall not be made subject to liens.

Section 5.5 Labor Relations. Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's sole judgment, such employment, delivery or use will unreasonably interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such unreasonable interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or laborers causing such interference or conflict to leave the Building immediately.

Section 5.6 Tenant's Costs. Tenant shall pay to Landlord, upon demand, all out-of-pocket costs actually incurred by Landlord in connection with Tenant's Alterations, including costs incurred in connection with review of Plans, provided that in no event shall Landlord impose any charge for its internal review of any Plans, nor shall Landlord charge any project management, supervisory or similar fees in connection with any Alterations.

Section 5.7 Tenant's Equipment. Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, "**Equipment**") into or out of the Building and shall pay to Landlord any costs actually incurred by Landlord in connection therewith. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) all work performed in connection therewith shall comply with all applicable Requirements and (c) such work shall be done only during hours designated by Landlord.

Section 5.8 Legal Compliance. The approval of Plans, or consent by Landlord to the making of any Alterations, does not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Plans, or Landlord's consent to Tenant's performing any Alterations. If any Alterations made by or on behalf of Tenant, require Landlord to make any alterations or improvements to any part of the Building in order to comply with any Requirements, Tenant shall pay all costs and expenses incurred by Landlord in connection with such alterations or improvements.

Section 5.9 Floor Load. Tenant shall not place a load upon any floor of the Premises that exceeds the "live load" of floors in the Building. Landlord reserves the right to reasonably designate the position of all Equipment which Tenant wishes to place within the Premises, and to place limitations on the weight thereof.

ARTICLE 6
REPAIRS

Section 6.1 Landlord's Repair and Maintenance. Landlord, shall, or to the extent an obligation of the Condominium, shall use reasonable efforts to cause the Condominium Association to, operate, maintain and, except as provided in **Section 6.2** hereof, make all necessary repairs to (i) the Building Systems, (ii) structural elements of the Building and the Premises, and (iii) the General Common Elements, in conformance with standards applicable to Comparable Buildings.

Section 6.2 Tenant's Repair and Maintenance. Tenant shall promptly, at its expense and in compliance with **Article 5**, make all nonstructural repairs to the Premises and the fixtures, equipment and appurtenances therein (including all electrical, plumbing, heating, ventilation and air conditioning, sprinklers and life safety systems in and serving the Premises from the point of connection to the Building Systems) (collectively, "**Tenant Fixtures**") as and when needed to preserve the Premises in good working order and condition, except for reasonable wear and tear and damage for which Tenant is not

responsible. Notwithstanding the foregoing, any damage to the Building or to any portion thereof, or to any Tenant Fixtures requiring structural or nonstructural repair caused by or resulting from, and any structural repairs to the Premises required by reason of, any act, omission, neglect or improper conduct of a Tenant Party or the moving of Tenant's Property or Equipment into, within or out of the Premises by a Tenant Party, shall be repaired at Tenant's expense by (i) Tenant, if the required repairs are nonstructural in nature and do not affect any Building System, or (ii) Landlord or Tenant (at Landlord's option), if the required repairs are structural in nature, involve replacement of exterior window glass or affect any Building System. All Tenant repairs shall be of good quality utilizing new construction materials.

Section 6.3 Reservation of Rights. Landlord, on behalf of itself and the Condominium Association, reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Building and Building Systems, including, without limitation, changing the arrangement or location of entrances or passageways, doors and doorways, stairs, corridors, and/or any other General Common Elements (collectively, "**Restorative Work**"), as such party deems necessary or desirable, and to take all materials into the Premises required for the performance of such Restorative Work provided that (a) the level of any Building service shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof (other than temporary changes in the level of such services during the performance of any such Restorative Work), (b) Tenant is not deprived of access to the Premises, and (c) there is no material adverse impact on Tenant's use of the Premises. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises during the performance of such Restorative Work and shall cause all Restorative Work to be made in accordance with all Requirements. There shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord or the Condominium Association by reason of inconvenience, annoyance or injury to business arising from Landlord, Tenant or others performing, or failing to perform, any Restorative Work. The Condominium Board may (i) grant third parties specific rights concerning portions of the General Common Elements, (ii) increase, reduce, improve, or otherwise alter the General Common Elements, (iii) otherwise make improvements, alterations, or additions to the Real Property, and (iv) change the name or number by which the Real Property is known. The Condominium Board may temporarily close General Common Elements to make repairs or improvements or temporarily close the Real Property and preclude access to the Premises in the event of casualty, governmental requirements, the threat of an emergency or other act of God, or if the Condominium Board otherwise reasonably deems it necessary in order to prevent damage or injury to person or property.

ARTICLE 7
TAXES AND OPERATING COSTS

Section 7.1 Tenant's Payment On Account of Condominium Assessments and Taxes.

(a) The Premises are condominium units within the Condominium regime. The Condominium Association has created or will create an annual budget of the operating costs and other costs for the Condominium regime. From such budget, the Premises will be allocated an annual share of those operating costs in the form of "Assessments" as defined in the Declaration and as allocated under the Declaration to the Premises (the "**Tenant's Annual Share of Condominium Assessments**"). Commencing on the Commencement Date, Tenant shall pay to Landlord, monthly, on the first calendar day of each month, an amount equal to one-twelfth of Tenant's Annual Share of Condominium Assessments. Landlord will deliver, within sixty (60) days after the expiration of each calendar year, a reasonably detailed statement showing Tenant's Annual Share of Condominium Assessments incurred during the preceding year. If Tenant's actual payments during the preceding year exceed Tenant's

Annual Share of Condominium Assessments as indicated on the statement, Tenant will be credited the amount of such over-payment against Tenant's Annual Share of Condominium Assessments next becoming due, unless Tenant is in default under this Lease, in which case the excess amount will be applied to Tenant's accrued obligations. If Tenant's actual payments were less than Tenant's Annual Share of Condominium Assessments, as indicated on such statement, Tenant will pay to Landlord the deficiency within thirty (30) days after Landlord gives notice to Tenant of the statement.

(b) As a municipal entity, Tenant anticipates that it may cause the Premises to be exempt from *ad valorem* property taxes. If Tenant is unable to obtain such an exemption, then commencing on the Commencement Date and continuing on the first calendar date of each month during the Term thereafter, Tenant shall pay to Landlord an amount equal to one-twelfth of the estimated annual real estate taxes applicable to the Premises. Each year, upon Landlord's receipt of the billing statement from the County of Pitkin for the actual real estate taxes applicable to the Premises, Landlord shall prepare a reconciliation of the estimated tax payments made by Tenant as compared to the actual taxes. In the event that the actual amount of taxes is more than the estimated payments made by Tenant, Tenant shall pay the shortfall to Landlord within 30 days. If the actual amount of taxes are less than the estimated payments made by Tenant, the overpayment shall be applied by Landlord to the next monthly tax payments owing by Tenant, or, if Tenant has no further obligation for tax payments (e.g. lease expired or the Premises become exempt from real estate taxes), the overpayment shall be refunded to Tenant by Landlord within 30 days.

(c) Tenant will pay directly for all utilities and services supplied to the Premises including but not limited to electricity, telephone, security, gas, cable tv, Internet access, cleaning, maintenance and repair of the Premises, together with any taxes thereon (collectively, "**Utilities**"). If any such Utilities or services are not separately metered or separately billed to the Premises, Tenant will pay to the Landlord a reasonable portion to be determined by Landlord of all such charges jointly metered or billed with other premises within the Building, in the manner and within the time periods specified in Section 7.1(a) for payment of Tenant's Annual Share of Condominium Assessments. Upon request, Tenant will furnish Landlord with evidence of such payments. Landlord may make inquiries to any provider of Utilities or service provider serving the Premises regarding the status of bills for Utilities or service bill obligations.

ARTICLE 8
REQUIREMENTS OF LAW

Section 8.1 Compliance with Requirements. Tenant, at its expense, shall comply with all Requirements applicable to the Premises; provided, however, that Tenant shall not be obligated to comply with any Requirements requiring any alterations to areas of the Building outside the Premises or structural alterations to the Premises unless the application of such Requirements arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general office use and use ancillary to general offices, (ii) Alterations made by or on behalf of Tenant, or (iii) a breach by Tenant of any provisions of this Lease. Any such repairs or alterations shall be made at Tenant's expense (1) by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural and do not affect any Building System, or (2) by Landlord if such repairs or alterations are structural or affect any Building System. If Tenant obtains knowledge of any failure to comply with any Requirements applicable to the Premises, Tenant shall give Landlord prompt notice thereof.

Section 8.2 Hazardous Materials. Except for Hazardous Materials in *de minimus* amounts pertaining to general office use (e.g., e.g., copier toner and household cleaning products), all of which shall be used and stored in compliance with all Requirements, Tenant shall not cause or permit (i) any

Hazardous Materials to be brought into the Building, (ii) the storage or use of Hazardous Materials in any manner other than in full compliance with any Requirements, or (iii) the escape, disposal or release of any Hazardous Materials within or in the vicinity of the Building. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from the presence of Hazardous Materials in the Building which is caused or permitted by a Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials, and/or any claims made in connection therewith. Landlord or its agents may perform environmental inspections of the Premises at any time.

Section 8.3 Landlord's Compliance with Requirements. Landlord shall comply with (or cause to be complied with) all Requirements applicable to the Building, including but not limited to those related to Hazardous Materials.

Section 8.4 Tenant's Compliance with Insurance Requirements. Tenant shall not cause or permit any action or condition that would (i) invalidate or conflict with Landlord's or the Condominium Association's insurance policies, (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Building, (iii) cause an increase in the premiums of fire insurance for the Building over that payable with respect to Comparable Buildings, or (iv) result in Landlord's or the Condominium Association's insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord or the Condominium, as the case may be. If fire insurance premiums increase as a result of Tenant's failure to comply with the provisions of this **Article 8**, Tenant shall promptly cure such failure and shall reimburse Landlord for the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant.

ARTICLE 9
SUBORDINATION

Section 9.1 Subordination and Attornment.

(a) Conditional upon each Mortgagee providing a non-disturbance agreement to Tenant in form and substance reasonably acceptable to Tenant, this Lease shall be subject and subordinate to all Mortgages, and, at the request of any Mortgagee, Tenant shall attorn to such Mortgagee, its successors in interest or any purchaser in a foreclosure sale.

(b) If a Mortgagee or any other person or entity shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord's written agreement to accept Tenant's attornment, to assume Landlord's obligations and to recognize Tenant's interest under this Lease, Tenant shall be deemed to have attorned to and recognized such successor landlord as Landlord under this Lease. The provisions of this **Section 9.1** are self-operative and require no further instruments to give effect hereto; provided, however, that Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request in confirmation of the foregoing, provided that such instrument does not increase the Rent, materially increase the other obligations, or adversely affect the rights or benefits of Tenant under this Lease. Notwithstanding clause (a) above, upon such attornment this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease except that such successor landlord shall not be:

(A) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such successor landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission);

(B) other than recognition of the security deposit posted by Tenant, subject to any defense, claim, counterclaim, set-off or offset which Tenant may have against Landlord, unless Mortgagee shall have received notice of same from Tenant in accordance with the terms of this Lease;

(C) bound by any prepayment of more than one month's Rent to any prior landlord;

(D) bound by any obligation to perform any work or to make improvements to the Premises except for (x) repairs and maintenance required to be made by Landlord under this Lease, and (y) repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation pursuant to the provisions of this Lease, but only to the extent that such repairs can reasonably be made from the net proceeds of any insurance or condemnation awards, respectively, actually made available to such successor landlord;

(E) bound by any modification, amendment or renewal of this Lease made without such Mortgagee's consent, except if Mortgagee's consent is not required under the applicable Mortgage; or

(F) liable for the payment of any unfunded tenant improvement allowance, refurbishment allowance or similar obligation.

(c) Subject to and conditioned upon the Mortgagee providing to Tenant a non-disturbance agreement in form and substance reasonably acceptable to Tenant, Tenant shall from time to time within 10 business days of request from Landlord execute and deliver any documents or instruments that may be reasonably required by any Mortgagee to confirm any subordination.

Section 9.2 Mortgage Defaults. Any Mortgagee may elect that this Lease shall have priority over the Mortgage and, upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the one or both of the Premises comprising the Premises, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not increase the Rent, materially increase the other obligations, or materially and adversely affect the rights of Tenant under this Lease.

Section 9.3 Tenant's Termination Right. As long as any Mortgage exists, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until (a) Tenant shall have given notice of such act or omission to all Mortgagees, and (b) a reasonable period of time shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time), during which period such Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or omission. If any Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Mortgagee is proceeding with reasonable diligence to effect such remedy.

Section 9.4 Provisions. The provisions of this Article 9 shall (a) inure to the benefit of Landlord, any future owner of the Building or one or both of the Premises, or Mortgagee and (b) apply

notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any such Mortgage.

ARTICLE 10
SERVICES

Section 10.1 Electricity.

(a) **Electricity**. Landlord has installed, or will install, a separate meter in the Premises to measure Tenant's consumption of electricity. Tenant shall contract directly with the public utility company furnishing electric service to the Building for electric service to the Premises. Tenant shall maintain the meter in good working order and repair. If Tenant fails to maintain such meter, Landlord may repair or replace such meter at Tenant's expense.

(b) **Compliance.** Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the capacity of the electrical equipment serving the Premises.

(c) **Lamps, etc**. Tenant, at Tenant's expense, shall purchase and install all lamps (including, but limited to, incandescent, LED, and fluorescent lamps), starters and ballasts used in the Premises.

Section 10.2 Heating, Ventilation and Air Conditioning. See Section 4 of the Construction Addendum.

Section 10.3 Cleaning; Refuse and Rubbish Removal. Tenant, at Tenant's sole cost and expense, shall (i) cause the Premises to be cleaned, in a manner satisfactory to Landlord, (ii) cause the Premises to be exterminated with such frequency and in such manner as to prevent the existence of vermin or other infestation, (iii) cause Tenant's garbage and other refuse to be removed from the Premises in accordance with rules and regulations regarding rubbish removal and/or recycling as Landlord and/or the Condominium Board may, from time to time, reasonably impose. The aforementioned services shall be performed by contractors approved by Landlord.

Section 10.4 Water. Landlord shall provide reasonable quantities of domestic water for ordinary office pantry, lavatory, and drinking purposes. Tenant shall pay, as a portion of Tenant's Annual Share of Condominium Assessments, a share of the cost attributed to the Premises of providing water to the Premises, or, if applicable, the full water charge assessed by the Condominium Association against the Premises comprising the Premises. Such payment shall be payable in monthly installments on the first day of each month, as assessed for the prior usage period.

Section 10.5 Loading. All deliveries or shipments to and from the Premises, including loading and unloading of goods, shall be made in accordance with rules and regulations as Landlord and/or the Condominium Board may, from time to time, reasonably impose. Trailers or trucks servicing the Premises shall remain parked in such designated areas only during those periods reasonably necessary to service Tenant's operations. In no event shall such trailers or trucks remain parked at the Real Property overnight. Tenant shall not use any forklift truck, tow truck or any other machine for handling freight, except as may be approved by Landlord. Tenant agrees that Landlord shall have no responsibility for the safety or security of Tenant's merchandise delivered to the Building and the risk of loss of or damage to such merchandise and supplies shall be borne solely by Tenant. Subject to the terms of this Lease,

Tenant's employees are granted a nonexclusive easement to use the public corridors on the ground floor for the purpose of receiving such merchandise and supplies at the Building and transporting the same to the Premises.

Section 10.6 Service Interruptions. Landlord reserves the right to suspend any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work which, in Landlord's reasonable judgment, are necessary or appropriate until such Unavoidable Delay, accident or emergency shall cease or such Restorative Work is completed and Landlord shall not be liable for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such interruption, curtailment or failure of or defect in such service, or change in the supply, character and/or quantity of electrical service, and to restore any such services, remedy such situation and minimize any interference with Tenant's business. The exercise of any such right or the occurrence of any such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, entitle Tenant to any compensation, abatement or diminution of Rent, relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or any Indemnified Party by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise. Landlord shall not be liable in any way to Tenant for any failure, defect or interruption of, or change in the supply, character and/or quantity of electric service furnished to the Premises for any reason except if attributable to the gross negligence or willful misconduct of Landlord.

Section 10.7 No Other Services. Except as otherwise expressly provided in this **Article 10**, Landlord shall not be required to furnish any services to the Premises.

Section 10.8 Telecommunications. If Tenant requests that Landlord grant access to the Premises to a telecommunications service provider designated by Tenant for purposes of providing telecommunications services to Tenant, Landlord shall use its good faith efforts to respond to such request within 24 hours. Tenant acknowledges that nothing set forth in this **Section 10.8** shall impose any affirmative obligation on Landlord to grant such request and that Landlord, in its sole discretion, shall have the right to determine which telecommunications service providers shall have access to Building facilities.

ARTICLE 11
INSURANCE; PROPERTY LOSS OR DAMAGE

Section 11.1 Tenant's Insurance. (a) Tenant, at its expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance, on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Building, under which Tenant is named as the insured and Landlord, the Condominium Association and any Mortgagees whose names have been furnished to Tenant are named as additional insureds (the "**Insured Parties**"). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties, and Tenant shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations set forth in **Article 25**. The minimum limits of liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than $5,000,000; provided, however, that Landlord shall retain the right to require Tenant to increase such coverage from time to time to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar office space in Comparable Buildings. The self insured retention for such policy shall not exceed $10,000;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "Special Form Causes of Loss" or "All Risk" property insurance policies with extended coverage, insuring Tenant's Property and all Alterations and improvements to the Premises (including the Initial Alterations) for the full insurable value thereof or replacement cost thereof, having a deductible amount, if any, not in excess of $25,000;

(iii) during the performance of any Alteration, until completion thereof, Builder's Risk insurance on an "all risk" basis and on a completed value form including a Permission to Complete and Occupy endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises;

(iv) Workers' Compensation Insurance, as required by law;

(v) Business Interruption Insurance;

(vi) Plate glass insurance covering all plate glass in the Premises, if any; and

(vii) such other insurance in such amounts as the Insured Parties may reasonably require from time to time.

(b) All insurance required to be carried by Tenant (i) shall contain a provision that (x) no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, and (y) such insurance shall be noncancellable and/or no material change in coverage shall be made thereto unless the Insured Parties receive 30 days' prior notice of the same, by certified mail, return receipt requested, and (ii) shall be effected under valid and enforceable policies issued by a Colorado municipal insurance pool, including but not limited to the Colorado Insurance Risk Sharing Agency aka CIRSA. Tenant insurance policies shall also be permitted to be issued by other reputable insurers permitted to do business in the State of Colorado and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "X" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time consider appropriate.

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate policies of insurance, including evidence of waivers of subrogation required to be carried pursuant to this **Article 11** and that the Insured Parties are named as additional insureds (the "**Policies**"). Evidence of each renewal or replacement of the Policies shall be delivered by Tenant to Landlord at least 10 days prior to the expiration of the Policies.

Section 11.2 Waiver of Subrogation. Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance covering any portion of the Real Property and personal property, fixtures and equipment located therein, wherein the insurer waives subrogation or consents to a waiver of right of recovery, and Landlord and Tenant agree to waive and not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire or other hazards to the extent covered by such property insurance; provided, however, that the release, discharge, exoneration and covenant not to sue contained herein shall be limited by and be coextensive with the terms and provisions of the waiver of subrogation or waiver of right of recovery. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible

for, (i) damage to any Tenant Alterations, (ii) Tenant's Property, and (iii) any loss suffered by Tenant due to interruption of Tenant's business.

Section 11.3 Restoration. If the Premises are damaged by fire or other casualty, or if the Building is damaged such that Tenant is deprived of reasonable access to the Premises, Landlord shall, to the extent of the insurance proceeds received therefor, restore the Premises, at its expense, to substantially the condition thereof as delivered to Tenant upon the Commencement Date and shall make reasonable efforts to cause the Condominium Association to repair the General Common Elements as necessary to provide Tenant with reasonable access to and use of the Premises, subject to the provisions of any Mortgage and the Condominium Documents, but Landlord shall have no obligation to repair or restore (i) Tenant's Property, or (ii) any Alterations made by or on behalf of Tenant or any party claiming by, through or under Tenant. This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty.

Section 11.4 Landlord's Termination Right. Notwithstanding anything to the contrary contained in **Section 11.3**, if the Building shall be so damaged that, in Landlord's reasonable opinion, the Building cannot be rendered tenantable within 120 days, then Landlord may, not later than 60 days following the date of the damage, terminate this Lease by notice to Tenant. If this Lease is so terminated, (a) the Term shall expire upon the 30th day after such notice is given, (b) Tenant shall vacate the Premises and surrender the same to Landlord, (c) Tenant's liability for Rent shall cease as of the date of the damage, and (d) any security deposit and prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant.

Section 11.5 Tenant's Termination Right. If the Premises are totally damaged and are thereby rendered wholly untenantable, or if the Building shall be so damaged that Tenant is deprived of reasonable access to the Premises, and if Landlord elects to restore the Premises, Landlord shall, within 60 days following the date of the damage, cause a contractor or architect selected by Landlord to give notice (the "**Restoration Notice**") to Tenant of the date by which such contractor or architect estimates the restoration of the Building shall be Substantially Completed. In addition, if the Premises are damaged such that the Premises are rendered wholly untenantable, Tenant shall cause a contractor or architect selected by Tenant and reasonably approved by Landlord to determine the date by which the Premises may be restored to tenantable condition (the "**Premises Restoration Date**"). The Premises Restoration Date shall be determined within 30 days after the Restoration Notice. If the date for restoring the Building, as set forth in the Restoration Notice, is more than 180 days from the date of such damage or if the Premises Restoration Date is more than 240 days (inclusive of the restoration period applicable to the Building) after such damage, then Tenant shall have the right to terminate this Lease by giving notice (the "**Termination Notice**") to Landlord not later than 30 days following delivery of the Restoration Notice to Tenant. If Tenant delivers a Termination Notice, this Lease shall be deemed to have terminated as of the date of the giving of the Termination Notice, in the manner set forth in the second sentence of **Section 11.4**.

Section 11.6 Final 6 Months. Notwithstanding anything to the contrary in this **Article 11**, if any damage during the final year of the Term renders the Premises wholly untenantable, either Landlord or Tenant may terminate this Lease by notice to the other party within 30 days after the occurrence of such damage and this Lease shall expire on the 30th day after the date of such notice. For purposes of this **Section 11.6**, the Premises shall be deemed wholly untenantable if Tenant shall be precluded from using more than 50% of the Premises for the conduct of its business and Tenant's inability to so use the Premises is reasonably expected to continue for more than 90 days.

Section 11.7 Landlord's Liability. No Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be liable for the loss of or any damage to such property. Unless arising from the gross negligence or willful misconduct of an Insured Party, none of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant's business resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in **Article 6**). No penalty shall accrue for delays which may arise by reason of adjustment of fire insurance on the part of Landlord or Tenant, or for any Unavoidable Delays arising from any repair or restoration of any portion of the Building, provided that Landlord shall use reasonable efforts to diligently complete repairs and restoration to the Building and to minimize interference with Tenant's use and occupancy of the Premises during the performance of any such repair or restoration.

ARTICLE 12
EMINENT DOMAIN

Section 12.1 Taking.

(a) **Total Taking**. If all or substantially all of the Real Property, the Building or the Premises shall be acquired or condemned for any public or quasi-public purpose (a "**Taking**"), this Lease shall terminate and the Term shall end as of the date of the vesting of title and Rent shall be prorated and adjusted as of such date.

(b) **Partial Taking**. Upon a Taking of only a part of the Real Property, the Building, or less than 50% of the Premises then, except as hereinafter provided in this **Article 12**, this Lease shall continue in full force and effect, provided that from and after the date of the vesting of title, Fixed Rent and Tenant's payment on account of taxes and operating costs (§7.1) shall be modified to reflect the reduction of the Premises as a result of such Taking.

(c) **Landlord's Termination Right**. If 50% or more of the Premises are affected, Landlord may, by notice to Tenant, within 60 days following the date upon which Landlord receives notice of the Taking of all or a portion of the Real Property, the Building, or the Premises, terminate this Lease, provided that Landlord elects to terminate a majority of the leases (including this Lease) in the portions of the Building owned or controlled by Landlord.

(d) **Tenant's Termination Right**. If the part of the Real Property so Taken contains more than 20% of the total area of the Premises occupied by Tenant immediately prior to such Taking, or if, by reason of such Taking, Tenant no longer has reasonable means of access to the Premises, Tenant may terminate this Lease by notice to Landlord given within 30 days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the 30th day following the giving of such notice, or if earlier, the vesting of title for the Taking. If a part of the Premises shall be so Taken and this Lease is not terminated in accordance with this **Section 12.1** Landlord, without being required to spend more than it collects as an award, shall, subject to the provisions of any Mortgage, restore that part of the Premises not so Taken to a self-contained rental units substantially equivalent (with respect to character, quality, appearance and services) to that which existed immediately prior to such Taking, but Landlord shall have no obligation to repair or restore (i) Tenant's Property, or (ii) any Alterations made by or on behalf of Tenant or any party claiming by, through or under Tenant.

(e) **Apportionment of Rent**. Upon any termination of this Lease pursuant to the provisions of this **Article 12**, Rent and Tenant's payment on account of taxes and operating costs (§7.1) shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

Section 12.2 Awards. Upon any Taking, Landlord shall receive the entire award for any such Taking applicable to the Building other than the Alterations, and Tenant shall have a claim for the Alterations and relocation costs. Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term; and Tenant hereby assigns to Landlord all of its right in and to such portion of the award. Nothing contained in this **Article 12** shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's Property, Tenant's Work or Alterations included in such Taking and for any moving expenses.

Section 12.3 Temporary Taking. If all or any part of the Premises is Taken temporarily during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Rent payable by Tenant without reduction or abatement and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use.

ARTICLE 13
ASSIGNMENT AND SUBLETTING

Section 13.1 Consent Requirements.

(a) **No Transfers**. Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet, or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's prior consent in each instance, which consent, may be granted or withheld in Landlord's sole discretion. Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this **Article 13** shall be void and shall constitute an Event of Default.

(b) **Collection of Rent**. If this Lease is assigned, or any part of the Premises is sublet or occupied by anyone other than Tenant or this Lease is encumbered (by operation of law or otherwise), in violation of this Lease, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this **Article 13**, an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder, and in all cases Tenant shall remain fully liable for its obligations under this Lease.

(c) **Further Assignment/Subletting**. Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's consent to any further assignment or subletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others.

Section 13.2 Tenant's Notice. If Tenant desires to assign this Lease or sublet the entire Premises, Tenant shall give notice thereof to Landlord, which shall be accompanied by (a) with respect to an assignment of this Lease, the date Tenant desires the assignment to be effective, and (b) with respect to a sublet of the entire Premises, the commencement date of such sublease.

Section 13.3 Conditions to Assignment/Subletting. (a) Landlord shall grant or deny consent within 45 days after Landlord's receipt of (i) a true and complete statement reasonably detailing the identity of the proposed assignee or subtenant (a "**Transferee**"), the nature of its business and its proposed use of the Premises, (ii) current financial information with respect to the proposed assignee or subtenant, including its most recent financial statements, and (iii) any other information Landlord may reasonably request.

(b) With respect to each and every subletting and/or assignment approved by Landlord under the provisions of this Lease:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date;

(iii) no Transferee shall take possession of any part of the Premises, until an executed counterpart of such sublease or assignment has been delivered to Landlord and approved by Landlord;

(iv) each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate; and Tenant and each Transferee shall be deemed to have agreed that upon the occurrence and during the continuation of an Event of Default hereunder, Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease, together with all modifications, extensions and renewals thereof then in effect and such Transferee shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (i) liable for any previous act or omission of Tenant under such sublease, (ii) subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such Transferee against Tenant, (iii) bound by any previous modification of such sublease not consented to by Landlord or by any prepayment of more than one month's rent, (iv) bound to return such Transferee's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such Transferee shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (v) obligated to make any payment to or on behalf of such Transferee, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this **Section 13.3(b)(iv)** shall be self-operative, and no further instrument shall be required to give effect to this provision, provided that the Transferee shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment; and

(v) Tenant shall, upon demand, reimburse Landlord for all reasonable out-of pocket expenses incurred by Landlord in connection with such assignment or sublease, including any investigations as to the acceptability of the proposed assignee or subtenant, reviewing any plans and specifications for Alterations proposed to be made in connection therewith, and all legal costs reasonably incurred in connection with the granting of any requested consent; and

(vi) The Premises shall be used for the Permitted Use and for no other purpose.

(c) Without limiting the rights of Landlord to reasonably withhold its consent to an assignment or sublease, Landlord may withhold its consent under any of the following conditions:

(i) The Transferee's financial condition is not reasonably satisfactory to Landlord or does not evidence the ability to pay Tenant's obligations under this Lease when due;

(ii) The Transferee's use of the Premises is not a Permitted Use described in this Lease;

(iii) A default exists under this Lease (or a condition exists which, with the passage of time or giving of notice, would become a default);

(iv) The Transferee is an occupant of, or Landlord is otherwise engaged in lease negotiations with the Transferee for other premises located in the Building; or

(v) The Transferee is or has been involved in a dispute with Landlord or any party affiliated with Landlord.

Section 13.4 Binding on Tenant; Indemnification of Landlord. Notwithstanding any assignment or subletting or any acceptance of rent by Landlord from any Transferee, Tenant shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any Transferee or anyone claiming under or through any Transferee shall be deemed to be a default under this Lease by Tenant. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any claims made against Landlord by the Transferee or anyone claiming under or through any Transferee or by any brokers claiming a commission or similar compensation in connection with the proposed assignment or sublease.

Section 13.5 Tenant's Failure to Complete. If Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver to Landlord such assignment or sublease within 90 days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of **Sections 13.2 and 13.3** before assigning this Lease or subletting all or part of the Premises.

Section 13.6 Profits. If Tenant enters into any assignment or sublease permitted hereunder or consented to by Landlord, Tenant shall, within 60 days of Landlord's consent to such assignment or sublease, deliver to Landlord a list of Tenant's reasonable third-party brokerage fees, legal fees and architectural fees paid in connection with such transaction and, in the case of any sublease, any actual costs incurred by Tenant in preparing the Premises for use by the assignee or subtenant or in separately demising the sublet space together with a list and fair market value or fair rental value of all of Tenant's Property to be transferred to such Transferee (collectively, "**Transaction Costs**"). The Transaction Costs shall be amortized, on a straight-line basis, over the term of any sublease. Tenant shall deliver to Landlord evidence of the payment of such Transaction Costs promptly after the same are paid. In consideration of such assignment or subletting, Tenant shall pay to Landlord:

(a) In the case of an assignment, on the effective date of the assignment, 50% of all sums and other consideration paid to Tenant by the Transferee for or by reason of such lease assignment (including sums paid for the sale or rental of Tenant's Property, less the then fair market or rental value thereof, as reasonably determined by Landlord) after first deducting the Transaction Costs; or

(b) In the case of a sublease, 50% of any consideration payable under the sublease to Tenant by the Transferee which exceeds on a per square foot basis the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (together with any sums paid for the sale or rental of Tenant's Property, less the then fair market or rental value thereof, as reasonably determined by Landlord), with deductions for the monthly amortized amount of Transaction Costs. The sums payable under this clause shall be paid by Tenant to Landlord monthly as and when paid by the Transferee to Tenant.

Section 13.7 Transfers.

(a) **Ownership Interests**. If Tenant is a legal entity, the transfer (by one or more transfers), directly or indirectly, by operation of law or otherwise, of a majority of the stock or other beneficial ownership interest in Tenant (collectively **"Ownership Interests"**) shall be deemed a voluntary assignment of this Lease. For purposes of this Article the term "transfers" shall be deemed to include (x) the issuance of new Ownership Interests which results in a majority of the Ownership Interests in Tenant being held by a person or entity which does not hold a majority of the Ownership Interests in Tenant on the Effective Date and (y) the sale or transfer of all or substantially all of the assets of Tenant in one or more transactions and the merger or consolidation of Tenant into or with another business entity.

(b) **Applicability**. The limitations set forth in this **Section 13.7** shall apply to any assignee or subtenant and guarantor(s) of this Lease, if any, and any transfer by any such entity in violation of this **Section 13.7** shall be a transfer in violation of **Section 13.1**.

Section 13.8 Assumption of Obligations. No assignment or transfer shall be effective unless and until the Transferee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee (a) assumes Tenant's obligations under this Lease and (b) agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

Section 13.9 Tenant's Liability. The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease.

Section 13.10 Lease Disaffirmance or Rejection. If at any time after an assignment by Tenant named herein, this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding, or upon a termination of this Lease due to any such proceeding, Tenant named herein, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that (i) the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons or entities claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and (iii) such

new lease shall require Tenant named herein to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein defaults in its obligations to enter into such new lease for a period of 10 days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

ARTICLE 14
ACCESS TO PREMISES

Section 14.1 Landlord's Access.

(a) Landlord, the Condominium Association and utility service providers servicing the Building may erect, use and maintain concealed ducts, pipes and conduits (collectively "**Ductwork**") in and through the void above the drop ceiling of the Premises or, only if the void above the drop ceiling cannot accommodate the Ductwork and provided such use does not cause the usable area of the Premises to be reduced beyond a *de minimis* amount then adjacent to exterior boundaries of the Premises, with Fixed Rent being proportionately reduced by the loss of rentable area caused by such use. Landlord shall promptly repair any damage to the Premises caused by any work performed pursuant to this **Article 14**.

(b) Landlord, any Mortgagee and any other party designated by Landlord and their respective agents shall have the right to enter the Premises at all reasonable times, upon reasonable notice (which notice may be oral) except in the case of emergency, to examine the Premises, to show the Premises to prospective purchasers, Mortgagees, or, during the last 18 months of the Term, to tenants and their respective agents and representatives or others to perform Restorative Work to the Premises or the Building.

(c) All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises, all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, mail chutes, conduits and other mechanical facilities, Building Systems, Building facilities, General Common Elements and Limited Common Elements (designated in the Declaration) are not part of the Premises, and Landlord shall have the use thereof and access thereto through the Premises for the purposes of Building operation, maintenance, alteration and repair.

Section 14.2 Building Name. Tenant acknowledges that the Condominium Association has the right at any time to change the name, number or designation by which the Building is commonly known.

Section 14.3 Light and Air. If at any time any windows of the Premises are temporarily darkened or covered over by reason of any Restorative Work, any of such windows are permanently darkened or covered over due to any Requirement or there is otherwise a diminution of light, air or view by another structure which may hereafter be erected, Landlord shall not be liable for any damages, and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.

ARTICLE 15
DEFAULT

Section 15.1 Tenant's Defaults. Each of the following events shall be an "**Event of Default**" hereunder:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for 5 days after written notice of such default is given to Tenant, except that if Landlord shall have given two such notices of default in the payment of any Rent in any 12-month period, Tenant shall not be entitled to any further notice of its delinquency in the payment of any Rent or an extended period in which to make payment until such time as 12 consecutive months shall have elapsed without Tenant having failed to make any such payment within 5 days of when due, and the occurrence of any default in the payment of any Rent within such 12-month period after the giving of 2 such notices shall constitute an Event of Default; or

(b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than 30 days after notice by Landlord to Tenant of such default, or if such default is of a nature that it cannot be completely remedied within 30 days, failure by Tenant to commence to remedy such failure within said 30 days, and thereafter diligently prosecute to completion all steps necessary to remedy such default, provided in all events the same is completed within 90 days; or

(c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails to deposit with Landlord the amount so applied or retained by Landlord, within 5 days after written notice by Landlord to Tenant stating the amount applied or retained; or

(d) Tenant files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or for all or any part of Tenant's property; or

(e) a court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) if Guarantor shall fail to perform any of its obligations when due under the Guaranty of Lease from the Guarantor in favor of Landlord, guarantying the payment and performance by Tenant of its obligations under this Lease; or

(g) Guarantor admits in writing its inability to pay its debts as they become due or is subject to the filing or a petition, case or proceeding in bankruptcy and Tenant fails to provide a substitute guarantor who is acceptable to Landlord, in Landlord's sole discretion, within 30 days.

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant 3 days' notice of cancellation of this Lease (or of Tenant's possession of the Premises), or such longer period of time as required by law, in which event this Lease and the Term (or

Tenant's possession of the Premises) shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice was the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15**.

Section 15.2 Landlord's Remedies.

(a) **Possession/Reletting**. If any Event of Default occurs and this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**:

(i) **Surrender of Possession**. Tenant shall quit and surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such termination, re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force (to the extent permitted by law) or otherwise in accordance with applicable legal proceedings (without being liable to indictment, prosecution or damages therefor), and may repossess the Premises and dispossess Tenant and any other persons or entities from the Premises and remove any and all of their property and effects from the Premises.

(ii) **Landlord's Reletting**. Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to accept any tenant offered by Tenant and shall not be liable for failure to relet or, in the event of any such reletting, for failure to collect any rent due upon any such reletting; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. However, to the extent required by law, Landlord shall use reasonable efforts to mitigate its damages but shall not be required to divert prospective tenants from any other portions of the Building. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) **Tenant's Waiver.** To the extent permitted by law, Tenant, on its own behalf and on behalf of all persons or entities claiming through or under Tenant, including all creditors, hereby waives all rights which Tenant and all such persons or entities might otherwise have under any Requirement (i) to the service of any notice of intention to re-enter or to institute legal proceedings, (ii) to redeem, or to re-enter or repossess the Premises, or (iii) to restore the operation of this Lease, after (A) Tenant shall have been dispossessed by judgment or by warrant of any court or judge, (B) any re-entry by Landlord, or (C) any expiration or early termination of the term of this Lease, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease.

(c) **Tenant's Breach**. Upon the breach or threatened breach by Tenant, or any persons or entities claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

Section 15.3 Landlord's Damages.

(a) **Amount of Damages.** If this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1**, then:

(i) Tenant shall pay to Landlord all items of Rent payable under this Lease by Tenant to Landlord prior to the date of termination;

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, a security deposit or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord;

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent, any Deficiency; it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iv) whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent during such period to be the same as was payable for the year immediately preceding such termination or re-entry, increased in each succeeding year by 3% (on a compounded basis)) exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to 2% below the then Base Rate) less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of **Section 15.3(a)(iii)** for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed *prima facie*, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Reletting.** If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this **Section 15.3**. Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceeds the Fixed Rent reserved in this Lease but the amount so collected shall constitute the prima facie evidence of the reasonable rental value of the Premises under Section 15.3(a)(iv). Nothing contained in **Article 15** shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this **Section 15.3**.

Section 15.4 Interest. If any payment of Rent is not paid when due, interest shall accrue on such payment, from the date such payment became due until paid at the Interest Rate. Tenant acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by a Mortgage covering the Premises. Therefore, in addition

to interest, if any amount is not paid when due, a late charge equal to 5% of such amount shall be assessed, provided, however, that on 2 occasions during any calendar year of the Term, Landlord shall give Tenant notice of such late payment and Tenant shall have a period of 5 days thereafter in which to make such payment before any late charge is assessed. Such interest and late charges are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any of Landlord's rights or remedies under any other provision of this Lease.

Section 15.5 Other Rights of Landlord. If Tenant fails to pay any Additional Rent when due, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any items Landlord sees fit, regardless of any request by Tenant. Landlord reserves the right, without liability to Tenant and without constituting any claim of constructive eviction, to suspend furnishing or rendering to Tenant any property, material, labor, utility or other service, whenever Landlord is obligated to furnish or render the same at the expense of Tenant, in the event that (but only for so long as) Tenant is in arrears in paying Landlord for such items for more than 5 days after notice from Landlord to Tenant demanding the payment of such arrears.

ARTICLE 16
LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES

Section 16.1. Landlord's Right to Cure. If Tenant defaults in the performance of its obligations under this Lease, Landlord, without waiving such default, may perform such obligations at Tenant's expense: (a) immediately, and without notice, in the case of emergency or if the default (i) materially interferes with the use by any other occupant or unit owner of the Building, (ii) materially interferes with the efficient operation of the Building, (iii) results in a violation of any Requirement, or (iv) results or will result in a cancellation of any insurance policy maintained by Landlord, and (b) in any other case if such default continues after 10 days from the date Landlord gives notice of Landlord's intention to perform the defaulted obligation. All costs and expenses incurred by Landlord in connection with any such performance by it and all costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord as a result of any default by Tenant under this Lease or in any action or proceeding (including any unlawful detainer proceeding) brought by Landlord or in which Landlord is a party to enforce any obligation of Tenant under this Lease and/or right of Landlord in or to the Premises, shall be paid by Tenant to Landlord on demand, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses which, pursuant to this Lease are incurred by Landlord and payable to Landlord by Tenant, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services which, pursuant to this Lease or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within 10 Business Days after receipt of Landlord's invoice for such amount.

ARTICLE 17
NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL

Section 17.1 No Representations. Except as expressly set forth herein, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Building, the Real Property or the Premises. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not embodied in this Lease.

Section 17.2 No Money Damages. Wherever in this Lease Landlord has agreed to not unreasonably withhold consent or approval, in connection with Tenant's claim or assertion that Landlord unreasonably withheld or delayed its consent or approval, Tenant's sole remedy shall be an action or proceeding to enforce such provision, by specific performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease.

Section 17.3 Reasonable Efforts. For purposes of this Lease, "reasonable efforts" shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses whatsoever.

ARTICLE 18
END OF TERM

Section 18.1 Expiration. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and Tenant shall remove all of Tenant's Property.

Section 18.2 Holdover Rent. Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law: (A) if the holdover is without Landlord's consent, Tenant (a) shall pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to 2 times the Rent payable under this Lease for the last full calendar month of the Term, (b) shall be liable to Landlord for damages relating to Landlord's loss of profits or business opportunity (including, but not limited to, the loss of a potential future leasing opportunity) in connection such holdover; or (B) if with Landlord's consent, Tenant shall pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date or sooner termination of this Lease, a sum equal to 1-1/2 times the Rent payable under the Lease for the last full calendar month of the Term. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2**.

ARTICLE 19
QUIET ENJOYMENT

Provided this Lease is in full force and effect and no Event of Default then exists, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Mortgages.

ARTICLE 20
NO SURRENDER; NO WAIVER

Section 20.1 No Surrender or Release. No act or thing done by Landlord or Landlord's agents or employees during the Term shall be deemed an acceptance of a surrender of the Premises, and no provision of this Lease shall be deemed to have been waived by Landlord or by Tenant, unless such waiver is in writing and is signed by the waiving party.

Section 20.2 No Waiver. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment, nor shall any indorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

ARTICLE 21
WAIVER OF TRIAL BY JURY; COUNTERCLAIM

Section 21.1 Jury Trial Waiver. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE.

Section 21.2 Waiver of Counterclaim. If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of any nature or description in any such proceeding (unless failure to interpose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

ARTICLE 22
NOTICES

Except as otherwise expressly provided in this Lease, all consents, notices, demands, requests, approvals or other communications given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed to Landlord and Tenant as set forth in **Article 1**, and to any Mortgagee who shall require copies of notices and whose address is provided to Tenant, or to such other address(es) as Landlord, Tenant or any Mortgagee may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this **Article 22**. Any such approval, consent, notice, demand, request or other communication shall be deemed to have been given on the date

of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given or 3 Business Days after it shall have been mailed as provided in this **Article 22**, whichever is earlier.

ARTICLE 23
RULES AND REGULATIONS

All Tenant Parties shall observe and comply with the Rules and Regulations, as supplemented or amended from time to time. Landlord reserves the right, from time to time, to adopt additional Rules and Regulations and to amend the Rules and Regulations then in effect. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other Building tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, provided that Landlord and the Condominium Association shall enforce any of the Rules and Regulations against Tenant in a non-discriminatory fashion.

ARTICLE 24
BROKERS

Landlord agrees to pay a commission to Brokers pursuant to a separate agreement. Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than Brokers. Landlord shall indemnify, defend, protect and hold Tenant harmless from and against any and all Losses which may incur by reason of any claim of or liability to any broker, finder or like agent (other than Brokers) arising out of any dealings claimed to have occurred between Landlord and the claimant in connection with this Lease. Other than any compensation owed to those Brokers identified in Article 1, Tenant shall pay any claim for compensation owing to any other person arising from any dealings claimed to have occurred between such person and Tenant.

ARTICLE 25
INDEMNITY

[Intentionally Deleted]

ARTICLE 26
SIGNAGE

Section 26.1 Directory Listing. Tenant shall be entitled to a listing on the Building's lobby directory.

Section 26.2 Exterior Signage. Tenant may install one (1) exterior identification sign at the entrance to Commercial Unit 101, subject to Landlord's review and approval of detailed plans and specifications therefor, including, without limitation, materials and means of attachment. In addition, the type and design of any exterior signage shall be subject to the prior written approval of Landlord and any applicable Governmental Authority. Tenant shall maintain all signage in a first-class condition throughout the Term. On or before the expiration or earlier termination of this Lease, Tenant shall remove all signs from the Premises and the Building.

ARTICLE 27
MISCELLANEOUS

Section 27.1 Delivery. This Lease shall not be binding upon Landlord or Tenant unless and until Landlord shall have executed and delivered a fully executed copy of this Lease to Tenant.

Section 27.2 Transfer of Interest. Except for the obligation to return to Tenant any portion of the Security Deposit to which Tenant is entitled upon Expiration of the Lease if the Security Deposit has not been delivered to the transferee, Landlord's obligations under this Lease shall not be binding upon the Landlord named herein after the sale, conveyance, assignment or transfer (collectively, a "**Transfer**") by such Landlord (or upon any subsequent landlord after the Transfer by such subsequent landlord) of its interest in the condominium units comprising the Premises, and in the event of any such Transfer, Landlord (and any such subsequent Landlord) shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder arising from and after the date of Transfer, and the transferee of Landlord's interest (or that of such subsequent Landlord) in the condominium units comprising the Premises shall be deemed to have assumed all obligations under this Lease arising from and after the date of Transfer.

Section 27.3 Limitation on Liability. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the condominium units comprising the Premises, and Tenant shall not look to any other property or assets of Landlord or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or agent of Landlord (collectively, the "**Parties**") in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations; and none of the Parties shall be personally liable for the performance of Landlord's obligations under this Lease.

Section 27.4 Rent. All amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Tenant's Tax Payment, Tenant's Common Charge Payment, Additional Rent or Rent, shall constitute rent for the purposes of Section 502(b)(6) of the United States Bankruptcy Code.

Section 27.5 Entire Document. This Lease (including any Schedules and Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Lease. All of the Schedules and Exhibits attached hereto are incorporated in and made a part of this Lease, provided that in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Schedules and Exhibits hereto, the terms and provisions of this Lease shall control.

Section 27.6 Governing Law. This Lease shall be governed in all respects by the laws of the State of Colorado, applicable to transactions for which Colorado would be deemed to have the most significant relationship.

Section 27.7 Unenforceability. If any provision of this Lease, or its application to any person or entity or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 27.8 Lease Disputes. (a) Tenant and Landlord each agree that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the State of Colorado seated in Pitkin County or the federal courts for the district in which the Building is situated, and for that purpose hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Tenant and Landlord each agree that so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court.

(b) To the extent that Tenant has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its contractual obligations under this Lease.

Section 27.9 Intentionally Omitted.

Section 27.10 Estoppel. Within 10 days following request from Landlord, Tenant, or any Mortgagee, if requested by Landlord or Mortgagee, Tenant shall deliver to Landlord or if requested by Tenant, Landlord shall provide to Tenant, a statement executed and acknowledged by the delivering party, in form reasonably satisfactory to the requesting party, (a) stating the Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (b) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional, Rent then payable, (c) stating whether or not, to the best of the delivering party's knowledge, the requesting party is in default under this Lease, and, if the requesting party is in default, setting forth the specific nature of all such defaults, (d) stating the amount of the security, if any, under this Lease, (e) stating whether there are any subleases or assignments affecting the Premises, (f) stating the address of the delivering party to which all notices and communications under the Lease shall be sent, and (g) responding to any other matters reasonably requested by the requesting party. Tenant acknowledges that any statement delivered pursuant to this **Section 27.10** by Tenant may be relied upon by any purchaser or owner of the condominium units comprising the Premises, the Real Property or the Building, or all or any portion of Landlord's interest in the condominium units comprising the Premises, the Real Property or the Building, or by any Mortgagee, or assignee thereof and Landlord acknowledges that any statement delivered pursuant to this **Section 27.10** by Landlord may be relied upon by any permitted assignee or subtenant of Tenant and by any accountant, auditor, or public rating agency of Tenant.

Section 27.11 Certain Interpretational Rules. For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation" and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

Section 27.12 Parties Bound. The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns.

Section 27.13 Memorandum of Lease. This Lease shall not be recorded; however, at Landlord's or Tenant's request, Landlord and Tenant shall promptly execute, acknowledge and deliver a memorandum with respect to this Lease sufficient for recording and may record the memorandum. Within 10 days after the end of the Term, Tenant shall enter into such documentation as is reasonably required by Landlord to remove the memorandum of record.

Section 27.14 Counterparts. This Lease may be executed in 2 or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument.

Section 27.15 Survival. All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, and with respect to any Rent and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

Section 27.16 Inability to Perform. This Lease and the obligation of Tenant to pay Rent and to perform all of the other covenants and agreements of Tenant hereunder shall not be affected, impaired or excused by any Unavoidable Delays. Landlord shall use reasonable efforts to promptly notify Tenant of any Unavoidable Delay which prevents Landlord from fulfilling any of its obligations under this Lease.

Section 27.17 Intentionally Omitted.

Section 27.18 Adjacent Excavation; Shoring. If an excavation shall be made, or shall be authorized to be made, upon land adjacent to the Real Property, Tenant shall, upon notice, afford to the person or entity causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as such person or entity shall deem necessary to preserve the wall of the Building from injury or damage and to support the same by proper foundations. In connection with such license, Tenant shall have no right to claim any damages or indemnity against Landlord, or diminution or abatement of Rent, provided that Tenant shall continue to have access to the Premises.

Section 27.19 No Development Rights. Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Real Property and Tenant consents, without further consideration, to any utilization of such rights by Landlord. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent.

Section 27.20 [Intentionally Omitted].

Section 27.21 OFAC Representation. Tenant represents and warrants to Landlord and Landlord represents and warrants to Tenant that it is not listed, nor is it owned or controlled by, or acting for or on behalf of any person or entity, on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, or any other list of persons or entities with whom Landlord is restricted from doing business with ("**OFAC List**"). Notwithstanding anything to the contrary herein contained, Tenant shall not permit the Premises or any portion thereof to be used, occupied or operated by or for the benefit of any person or entity that is on the OFAC List and Landlord shall not permit any portion of the Building to be used, occupied, or operated by or for the benefit of any person or entity that is on the OFAC List. Tenant shall provide

documentary and other evidence of Tenant's identity and ownership as may be reasonably requested by Landlord at any time to enable Landlord to verify Tenant's identity or to comply with any Legal request.

ARTICLE 28
SECURITY DEPOSIT

Section 28.1 Security. Tenant has deposited with Landlord the sum designated as Security Deposit in **Article 1**, as security for the full and faithful performance by Tenant of all obligations of Tenant under this Lease or in connection with this Lease. If an Event of Default by Tenant occurs, Landlord may use, apply or retain the whole or any part of the Security for the payment of: (i) any Rent or any other sums of money which Tenant has not paid or which has become due after the occurrence of an Event of Default; or (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease; or (iii) any sum which Landlord may expend or be required to expend by reason of such Event of Default, including any damages or deficiency in the re-letting of the Premises. The use, application or retention of the Security or any portion thereof by Landlord shall not prevent Landlord from exercising any other rights or remedies provided for hereunder or at law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. In the case of every such application or retention, Tenant shall on demand pay to Landlord the sum so applied or retained which shall be added to the Security so that the same shall be restored to its original amount. No interest shall accrue on the Security for the benefit of Tenant, and if legally permissible, Landlord shall hold the Security Deposit in a separate bank account designated as in trust for Tenant.

Section 28.2 Return of Security. If Tenant shall fully and faithfully comply with all of the provisions of this Lease, the Security or any balance thereof shall be returned to Tenant after the Expiration Date or upon any later date after which Tenant has vacated the Premises. On termination of this Lease, Landlord may return the Security to the then current Tenant from whom Landlord receives the payment of Fixed Rent for the last payment period of the Term and in such event, upon the return of the Security, or the balance thereof, to the then current Tenant, Landlord shall be completely relieved of liability hereunder.

Section 28.3 No Encumbrance. The Security shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior consent of Landlord in each instance, and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord.

Section 28.4 Bankruptcy. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant or Guarantor, if any, the Security shall be deemed to be applied first to the payment of any Rent or other charges due Landlord for all periods prior to the institution of such proceedings and the balance, if any, of the Security may be retained by Landlord in partial liquidation of Landlord's damages.

Section 28.5 Transfer of Security. Landlord shall deliver the Security to the purchaser of Landlord's interest in the Premises in the event that such interest be sold or transferred, and thereupon Landlord shall be discharged and released from all further liability with respect to the Security or the return thereof to Tenant. Tenant agrees to look solely to the new landlord for the return of the Security, and this provision shall also apply to any subsequent transferees. No Mortgagee shall be responsible for the return of the Security unless such Mortgagee shall have actually received the Security.

ARTICLE 29
RENEWAL OPTION

Section 29.1 Exercise of Option. Tenant shall have the right to renew the Term for all of the Premises for a renewal term (the **"Renewal Term"**) of three (3) years by irrevocable notice (the **"Renewal Notice "**) delivered to Landlord not less than 12 months prior to the Expiration Date, time being of the essence; provided, however, that (a) no Event of Default shall have occurred either on the date the Renewal Notice is given or on the Renewal Term Commencement Date (as hereinafter defined), and (b) the Tenant named herein, The City of Aspen, shall not have assigned this Lease and shall be in occupancy of the entire Premises. Upon the giving of the Renewal Notice, this Lease shall be deemed renewed for the Renewal Term with the same force and effect as if the Renewal Term had originally been included in the Term. The Renewal Term shall commence on the day after what would have been the Expiration Date had Tenant not exercised such option (the **"Renewal Term Commencement Date "**) and shall terminate on the day preceding the third (3rd) anniversary of the Renewal Term Commencement Date (such date, the **"Renewal Term Expiration Date"**) or such earlier date as this Lease shall terminate pursuant to any of the terms of this Lease.

Section 29.2 Terms. All of the terms, covenants and conditions of this Lease shall continue in full force and effect during the Renewal Term, except that the Fixed Rent for each year of the Renewal Term shall be increased by three percent (3%). Any termination, cancellation or surrender of the entire interest of Tenant under this Lease at any time during the Term shall terminate any right of renewal of Tenant hereunder.

Section 29.3 Agreement of Terms. Landlord and Tenant, at either party's request, shall promptly execute and exchange an appropriate agreement evidencing the extension of the Term for the First Renewal Term or the Second Renewal Term, and the terms thereof in a form reasonably satisfactory to both parties, but no such agreement shall be necessary in order to make the provisions hereof effective.

ARTICLE 30
CONDOMINIUM

Section 30.1 Condominium. Notwithstanding anything to the contrary contained in this Lease:

(a) Tenant acknowledges that it has reviewed the Declaration establishing a Plan for Condominium Ownership (the **"Declaration"**) known as **"**The Mill Building**"** (the **"Condominium"**) to be governed by the Association (the **"Condominium Association"**) and the by-laws in connection therewith (the **"By-Laws"**). The Premises is comprised of Commercial Unit 101 and Commercial Unit 201 in the Condominium. In accordance with the Declaration, this Lease and Tenant's interest in and to the Premises is subject and subordinate in all respects to the Declaration and the By-Laws (collectively, the **"Condominium Documents"**) and all of the terms, conditions and provisions thereof and, at Landlord's request, Tenant shall execute any documents reasonably requested by Landlord to confirm such subordination.

(b) Landlord may consent to a modification of the Condominium Documents without in any instance obtaining the consent of Tenant to such modification; provided, however, that Landlord, without Tenant's consent, shall not voluntarily modify the Condominium Documents if and to the extent that Tenant's rights or Landlord's obligations under this Lease would be decreased (except to a *de minimis* extent) or Tenant's obligations or Landlord's rights under this Lease would be increased (except to a *de minimis* extent), in each case as a result of such modification.

(c) Tenant acknowledges that Landlord may be required by the Condominium Documents to obtain from time to time the consent or approval of the Board of Managers of the Condominium (the "**Condominium Board**") with respect to various matters, including consent or approval regarding the exercise by Landlord or Tenant of certain obligations or rights under this Lease. In each instance during the Term where Tenant desires to take or permit an action which requires the consent or approval of the Condominium Board, (i) Landlord shall reasonably cooperate with Tenant, at Tenant's expense, in seeking such consent or approval (but in no event shall Landlord be required to commence any litigation in connection therewith or have any liability to Tenant if the Condominium Board fails to grant such consent or approval), (ii) if such action also requires Landlord's consent or approval hereunder, then the Condominium Board's consent shall first be obtained before the matter in question will be considered by Landlord, and (iii) if the Condominium Board fails to grant its consent or approval to any such matter (or has not yet granted such consent or approval by any outside date hereunder by which Landlord must grant or deny its consent or approval to such matter) then Landlord may withhold its consent or approval to such matter, even in instances where Landlord is required to be reasonable.

(d) Landlord and Tenant, at all times during the Term, shall fully comply with all of Landlord's obligations under the Condominium Documents. Without limiting the generality of the preceding sentence, neither Landlord nor Tenant shall do or cause to be done or suffer or permit to be done any act or thing that would or might constitute a default on Landlord's part under the Condominium Documents or cause the Condominium Documents or the rights of Landlord thereunder to be terminated or that would or might cause Landlord to become liable for any damages, costs, claims or penalties or that would or might adversely affect or reduce any of Landlord's rights or benefits under the Condominium Documents.

(e) Notwithstanding anything to the contrary contained in this Lease or at law or in equity, (a) the only services or rights to which Tenant is entitled hereunder are those to which Landlord is entitled under the Condominium Documents, and for all such services and rights, Tenant will look solely to the Condominium Association, and (b) Landlord assumes no obligation, liability or responsibility for any covenants, agreements, representations or warranties made by the Condominium Board under the Condominium Documents.

Section 30.2. Notwithstanding the provisions of **Section 30.1**, in the event that the Declaration has not been recorded with the Clerk and Recorder of Pitkin County, Colorado prior to the date of this Lease, then, until such time as the Declaration is so recorded, all rights and obligations of the Condominium Board shall be deemed to be rights and obligations of Landlord, and the parties agree that the fixed payment referred to in **Article 7** shall be applied to taxes and operating expenses of the Building. Immediately following the recording of the Declaration with the Clerk and Recorder of Pitkin County, Colorado, this **Section 30.2** shall be of no further force and effect.

ARTICLE 31
TABOR COMPLIANCE AND GOVERNMENTAL IMMUNITY

Section 31.1 Governmental Immunity. No term or condition of this Lease shall be construed or interpreted as a waiver by Tenant of any provision of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as now or hereafter amended. Landlord understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of Tenant, its departments, schools, agencies, boards, officials, agents, employees and assigns is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as now or hereafter amended. Any provision of this Lease,

whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of Tenant in accordance with such governmental immunity.

Section 31.2 Tabor Compliance.

(a) The parties acknowledge and agree that all payments of Tenant for any given Term during this Lease shall constitute currently appropriated expenditures payable from any legally available funds. Tenant's obligations for the payment of any amounts owing under this Lease does not constitute or give rise to a general obligation debt, indebtedness, or multiple year debt or financial obligation whatsoever within the meaning of any constitutional or statutory provision or limitation. Tenant's obligations to pay any amounts under this Lease does not constitute a mandatory charge against or liability or obligation in any ensuing fiscal year beyond the current fiscal year for which a sufficient amount has been appropriated for payments under this Lease. This Lease does not directly or indirectly obligate Tenant to make any payments beyond the funds legally available and designated for payment for any then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Tenant's funds or monies.

(b) Tenant agrees that Tenant will annually make request to the appropriate governing authority or its authorized representative by no later than December 15th of the then current year, for the appropriation of annual Fixed Rent for the next succeeding Lease Year. On or before December 31st of the then current year, Tenant shall provide to Landlord written notice that either: (i) appropriate governing authority or its authorized representative has effected or intends to effect on a timely basis an appropriation for the ensuing fiscal year which includes sufficient funds to be used to pay the annual Fixed Rent for the next Lease Year; or (ii) appropriate governing authority or its authorized representative has not appropriated the funds for the annual Fixed Rent for the next Lease Year, whereupon this Lease shall expire on the following December 31st.

ARTICLE 32
RIGHT OF FIRST OFFER

Section 32.1 Right of First Offer. The Tenant shall have the prior right (the "**Right of First Offer**") to purchase the Premises in accordance with the provisions of this Article 32 (but not otherwise), and the Landlord shall not sell or otherwise transfer the Premises without first complying with the provisions of this Article 32.

(a) If, at any time during the Lease Term, the Landlord shall desire to sell the Premises, Landlord shall give Tenant written notice stating the price and the terms on which Landlord in good faith desires to offer the Premises for sale (a "**Notice of Intent to Sell**"), which sale will be without payment of commissions to any cooperating broker or Tenant's broker. The Tenant shall have the right, for a period of thirty (30) days after the Landlord gives the Tenant the Notice of Intent to Sell (the "**Offer Period**"), to elect, by giving notice in writing to the Landlord, whether or not to purchase the Premises for the price and on the terms set forth in such Notice of Intent to Sell (a "**Conforming Offer**"). In the alternative, Tenant may, during the Offer Period, provide to Landlord an offer to purchase at a price or upon terms or conditions different than those set forth in the Notice of Intent to Sell (a "**Non-Conforming Offer**"). The Tenant's failure to respond within the Offer Period, time being of the essence, shall be deemed the Tenant's irrevocable election not to purchase the Premises pursuant to the Right of First Offer.

(b) (i) If the Tenant elects, in strict accordance with the provisions of Section 32.1(a), to purchase the Premises pursuant to the Right of First Offer pursuant to a Conforming Offer, the Landlord shall sell and the Tenant shall purchase the Premises for the price and on the terms and conditions set

forth in the Notice of Intent to Sell, or such other price and other terms and conditions on which the parties may otherwise agree in writing. If the Tenant fails to close the purchase for the price and on such terms and conditions, or such other price and other terms and conditions on which the parties may otherwise agree in writing, then, in addition to all other rights and remedies of the Landlord on account of such failure, all rights of the Tenant under this Right of First Offer shall terminate. (ii) If within the Offer Period, Tenant provides a Non-Conforming Offer, the Landlord agrees to negotiate exclusively with the Tenant for a period of fifteen (15) days (the "**Exclusive Negotiation Period**"). Landlord shall be under no obligation to accept any Non-Conforming Offer and may accept or reject any such Non-Conforming Offer in the Landlord's sole and absolute discretion. If Landlord and Tenant agree to price and terms for a sale and purchase of the Premises, and if Tenant fails to close at the agreed price, terms, and conditions, then, in addition to all other rights and remedies of the Landlord on account of such failure, all rights of Tenant under this Right of First Offer shall terminate.

(c) If the Tenant has been given a Notice of Intent to Sell and the Tenant elects not to so purchase the Premises pursuant to the Right of First Offer (or if the Tenant fails to make an election within the Offer Period, time being of the essence), or if Tenant has made a Non-Conforming Offer and Landlord and Tenant are unable to agree within the Exclusive Negotiation Period to price, terms, and conditions, then the Landlord may offer the Premises for sale to third parties, free of the right of Tenant to acquire the Premises pursuant to this Right of First Offer, for the price (or any higher price) and on the same terms and conditions or on other terms and conditions as contained in the Notice of Intent to Sell.

(d) If the Landlord has complied with the provisions of this Section 32.1, and the third party offer accepted by the Landlord complies with the provisions of this Section 32.1, the Tenant shall, within five (5) days after a request by the Landlord therefor, execute and deliver to the Landlord and to such third party a statement, in form and substance reasonably acceptable to Landlord, acknowledging such compliance. Upon the closing of the sale of the Premises to such third party pursuant to such offer, the Tenant shall, within five (5) days after any request therefor from the Landlord or such third party, execute and deliver to the requesting party a statement, in form and substance reasonably acceptable to the Landlord or such third party, acknowledging the termination of this Right of First Offer. The Tenant agrees not to interfere in the sale to any third party.

(e) This Right of First Offer is personal to the Tenant. The Tenant may not transfer or assign the Right of First Offer to any person, including, without limitation, any assignee or sublessee of the Tenant, other than the Tenant's parent company or a subsidiary or affiliate of the Tenant in connection with an assignment of this Lease, without the Landlord's prior written consent, which consent will be in the Landlord's sole and absolute discretion. This Right of First Offer shall terminate without notice upon any purported assignment of this Lease by the Tenant to any person, other than the Tenant's parent company or a subsidiary or affiliate of the Tenant, without such prior written consent, and upon the expiration or any earlier termination of the Lease.

(f) If, during the Lease Term, the Tenant exercises this Right of First Offer and purchases the Premises in accordance with the terms of this Right of First Offer, the Lease and this Right of First Offer shall, without notice, terminate at that time.

[Remainder of page intentionally blank; signature page immediately follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

BLEEKER MILL DEVELOPMENT LLC, a Delaware limited liability company

By: RUDIN WEST I LLC, its manager

By: _____
Name: Michael Rudin
Title: Managing Member

Date Executed: _____

TENANT:

THE CITY OF ASPEN,
a Home Rule Municipality

By:_____
Name:
Title:

Date Executed:_____

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

BLEEKER MILL DEVELOPMENT LLC, a Delaware limited liability company

By: RUDIN WEST I LLC, its manager

By: _____
Name: Michael Rudin
Title: Managing Member

Date Executed: 1/5/16

TENANT:

THE CITY OF ASPEN,
a Home Rule Municipality

By: _____
Name: Steve Barwick
Title: City Manager

Date Executed: 1-8-16

EXHIBIT A

DEFINITIONS

Base Rate: The annual rate of interest publicly announced from time to time by JPMorgan Chase Bank, N.A., or its successor, in New York, New York as its "base rate" (or such other term as may be used by JPMorgan Chase Bank, N.A. from time to time, for the rate presently referred to as its "base rate").

Building Systems: The mechanical, electrical, plumbing, sanitary, sprinkler, heating, ventilation and air conditioning, security, life-safety, elevator and other service systems or facilities of the Building up to the point of connection of localized distribution to the Premises (excluding, however, supplemental HVAC systems of tenants, sprinklers and the horizontal distribution systems within and servicing the Premises and by which mechanical, electrical, plumbing, sanitary, heating, ventilating and air conditioning, security, life-safety and other service systems are distributed from the base Building risers, feeders, panelboards, etc. for provision of such services to the Premises).

Business Days: All days, excluding Saturdays, Sundays and Observed Holidays.

Code: The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

Comparable Buildings: Buildings of comparable age and quality in the greater Aspen area.

Condominium Association: The entity defined in Section 30.1(a).

Condominium Board: The managing board for the Condominium Association, as defined in Section 30.1(c).

Deficiency: The difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term (assuming the Additional Rent for each year thereof to be the same as was payable for the year immediately preceding such termination or re-entry), and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all expenses incurred by Landlord in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, attorneys' fees and disbursements, and alteration costs).

General Common Elements: The Building elements designated as General Common Elements in the Declaration.

Governmental Authority: The United States of America, the City of Aspen, the County of Pitkin or the State of Colorado, or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Real Property.

Hazardous Materials: Any substances, materials or wastes currently or in the future deemed or defined in any Requirement as "hazardous substances," "toxic substances," "contaminants," "pollutants" or words of similar import.

HVAC System: The Building System designed to provide heating, ventilation and air conditioning.

Interest Rate: The rate specified in Article 1.

Losses: Any and all losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in

connection with any claim, proceeding or judgment and the defense thereof, and including all costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

Mortgage(s): Any mortgage, trust indenture or other financing document which may now or hereafter affect one or both of the condominium units comprising the Premises, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefor, and advances made thereunder.

Mortgagee(s): Any mortgagee, trustee or other holder of a Mortgage.

Observed Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, plus any holidays observed by the State of Colorado and/or the City of Aspen.

Prohibited Use: Any use or occupancy of the Premises that is prohibited by the Condominium Documents and/or that, in Landlord's reasonable judgment, would: (a) cause damage to the Building or any equipment, facilities or other systems therein; (b) impair the appearance of the Building; (c) interfere with the efficient and economical maintenance, operation and repair of the Premises or the Building or the equipment, facilities or systems thereof; (d) adversely affect any service provided to, and/or the use and occupancy by, any Building tenant or occupants; (e) violate the certificate of occupancy issued for the Premises or the Building; (f) materially and adversely affect the first-class condition of the Building.

Requirements: All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including the Americans With Disabilities Act, 42 U.S.C. §12101 (et seq.), and any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters and landmarks protection, (ii) any applicable fire rating bureau or other body exercising similar functions, affecting the Real Property or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, (iii) all requirements of all insurance bodies affecting the Premises, and (iv) utility service providers.

Rules and Regulations: The rules and regulations adopted pursuant to the Condominium Documents, as they may be modified from time to time.

Substantial Completion: As to any construction performed by any party, "**Substantial Completion**" or "**Substantially Completed**" means that such work has been completed in accordance with (a) the provisions of this Lease applicable thereto, (b) the plans and specifications for such work, and (c) all applicable Requirements, except for minor details of construction, decoration and mechanical adjustments, if any, the noncompletion of which does not materially interfere with Tenant's use of the Premises or which in accordance with good construction practice should be completed after the completion of other work in the Premises.

Tenant Delay: Any delay which results from any act or omission of any Tenant Party, including delays due to changes in or additions to, or interference with any work to be done by Landlord, or delays by Tenant in submission of information approving working drawings or estimates or giving authorizations or approvals.

Tenant Party: Tenant and any subtenants and occupants of the Premises and their respective agents, contractors, subcontractors, employees, invitees or licensees.

Tenant's Property: Tenant's movable fixtures and movable partitions, telephone and other equipment, computer systems, trade fixtures, furniture, furnishings, and other items of personal property which are removable without material damage to the Building.

Unavoidable Delays: Landlord's inability to fulfill or delay in fulfilling any of its obligations under this Lease expressly or impliedly to be performed by Landlord or Landlord's inability to make or delay in making any repairs, additions, alterations, improvements or decorations or Landlord's inability to supply or delay in supplying any equipment or fixtures, if Landlord's inability or delay is due to or arises by reason of strikes, labor troubles or by accident, or by any cause whatsoever beyond Landlord's reasonable control, including governmental preemption in connection with a national emergency, Requirements or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by Tenant or other tenants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty.

Year: The first Year shall commence on the Commencement Date and shall end on the first anniversary of the Commencement Date. Each succeeding Year shall commence on the day following the end of the preceding Year and shall extend for twelve consecutive months; provided, however, that the last Year shall expire on the Expiration Date.

CONSTRUCTION ADDENDUM

CONSTRUCTION ADDENDUM TO THAT LEASE DATED _____, 2015 (THE "LEASE") BETWEEN CITY OF ASPEN ("TENANT"), AND BLEEKER MILL DEVELOPMENT LLC ("LANDLORD")

Tenant agrees, at Tenant's sole cost and expense, to provide all work of whatsoever nature in accordance with its obligations set forth herein as **"Tenant's Work."** In the event of any conflict between the provisions of this Construction Addendum and the provisions of the Lease, the provisions hereof shall control.

1. Tenant's Drawings and Specifications. Tenant agrees to furnish to Landlord the drawings and specifications with respect to the Premises consistent herewith and consistent with Landlord's design and construction criteria relating to the construction of Tenant improvements set forth below. Tenant's initial submission of drawings and specifications to Landlord shall occur no later than thirty (30) days prior to the date the Tenant plans to submit to the City of Aspen for a building permit. No material deviation from the final set of drawings and specifications, once approved by the Landlord, shall be made by Tenant without Landlord's prior written consent, which Landlord shall not unreasonably withhold or delay; and if Landlord has not expressly granted or denied consent within five (5) business days after written request from Tenant, the request shall be deemed to have been granted. Landlord's review of Tenant's drawings and specifications shall be for the purpose of ascertaining compliance with the requirements of this Lease and Landlord's requirements, and shall in no event extend to any confirmation or authorization, express or implied, that Tenant's drawings and specifications have been prepared in accordance with the requirements of applicable laws, codes, ordinances and regulations, including, without limitation, the Americans with Disabilities Act, and Tenant shall be solely responsible to cause Tenant's Work to comply with all necessary compliance with such laws, codes, ordinances and regulations. Approval of the drawings and specifications by Landlord shall not constitute the assumption of any responsibility by Landlord or Landlord's architect for their accuracy, efficacy or sufficiency, and Tenant shall be solely responsible for such items.

(a) Intentionally Omitted.

(b) Until such time as Tenant's final drawings and specifications have been approved in writing by Landlord, and the City of Aspen has issued a building permit for Tenant's Work, the right of Tenant to enter upon the Premises shall be solely for the purpose of inspection, measurement and obtaining information necessary to prepare architectural drawings and construct Tenant's Work.

(c) Landlord shall construct "Landlord's Work" as described in Section 3 of this Construction Addendum.

(d) **LANDLORD'S INTEREST IN THE PREMISES AND THE BUILDING SHALL NOT BE SUBJECT TO ANY LIENS FOR LABOR OR MATERIALS FURNISHED OR DELIVERED IN CONNECTION WITH IMPROVEMENTS MADE IN OR TO THE PREMISES BY OR ON BEHALF OF TENANT OR AT ITS REQUEST ARISING FROM TENANT'S WORK. TENANT SHALL HAVE NO AUTHORITY OR POWER, EXPRESS OR IMPLIED, TO CREATE OR CAUSE ANY OTHER TYPE OF LIEN, OR TO CREATE OR CAUSE ANY CHARGE OR ENCUMBRANCE OF ANY KIND AGAINST THE PREMISES OR ALL OR ANY PART OF THE BUILDING. NOTWITHSTANDING THE FOREGOING, ANY MECHANIC'S OR OTHER LIEN FILED AGAINST THE PROJECT IN CONNECTION WITH TENANT'S WORK SHALL BE DISCHARGED OR BONDED BY TENANT, AT TENANT'S SOLE COST AND EXPENSE WITHIN THIRTY (30) DAYS AFTER NOTICE OF THE FILING ANY SUCH LIEN.**

(e) Tenant's leasehold interest in the Premises shall not be subject to any lien for labor or materials furnished or delivered in connection to improvements made in or to the Building by Landlord or at Landlord's request. Landlord shall post notice in a conspicuous place and in a manner consistent with CRS, § 38-22-105(2), advising that the Tenant's leasehold interest shall not be subject to any mechanic's lien for improvements made by Landlord to the Building or for Landlord's Work to the Premises. In the event that any

person files a lien purporting to effect Tenant's leasehold interest in the Premises arising out of any improvements made by Landlord, Landlord shall cause such lien to be discharged from Tenant's leasehold interest or bonded by Landlord, in the manner provided by CRS, § 38-22-131, at Landlord's sole cost and expense, within thirty (30) days after filing any such lien.

2. Delivery of the Premises to Tenant for Tenant's Work. The Premises shall be considered delivered to Tenant when Landlord determines that Landlord has completed Landlord's Work to the point where Tenant can commence and diligently pursue Tenant's Work and Landlord furnishes Tenant with a written notice to such effect.

(a) Tenant shall have access to the Premises for the purposes set forth under the Lease only after Landlord has delivered possession of the Premises to Tenant. Landlord and its contractor will have nonexclusive access to the Premises for completion of any work that may be necessary or reasonably required for compliance with City building permits or to obtain a Letter of Completion for the core and shell of the Building.

(b) Upon delivery of possession, Tenant accepts the Premises and acknowledges that the Premises are in the condition sufficient to commence Tenant's Work, the Premises shall be, subject to all field conditions existing at the time of delivery of possession, except for defects in Landlord's Work of which Tenant notifies Landlord in writing within ten (10) days from date of possession and (if the Premises have not previously been occupied) latent defects in Landlord's Work of which Tenant notifies Landlord in writing within thirty (30) days from the date of taking possession. Failure of Landlord to deliver possession of the Premises in the manner and condition as provided for in this Lease will not give rise to any claim for damages by Tenant against Landlord, or against Landlord's contractor, or, except as otherwise provided in the Lease, permit Tenant to rescind or terminate this Lease.

(c) Landlord agrees, if required by the City of Aspen, to submit a building permit for Tenant's Work in the name of Landlord in the event that Tenant does not have standing to make any such filings. Tenant will pay all costs and expenses associated with the preparation, submission, supplement or modification, and issuance of the building permit, including all building permit fees, exaction costs and impact fees resulting or imposed as a condition of Tenant's Work and provided, that (i) Landlord shall not incur any liability or any cost, charge and/or expense in connection with such cooperation and (ii) Tenant acknowledge and agrees that the filing of any such permits shall not be a condition to Closing hereunder and failure to make any such submissions shall not be a default by Landlord. In the event that this Lease is terminated due to a Tenant default, then in addition to any other remedies afforded Landlord, Tenant agrees (at its sole costs and expense), if requested by Landlord, to immediately withdraw any applications or permits submitted in connection with any Tenant's Work, which obligation shall survive the termination of this Lease.

(d) Tenant agrees to deliver to Landlord written notice of its intent to begin any approved Tenant's Work at least five (5) business days prior to the commencement of any work thereon, so as to allow Landlord to post an appropriate notice of non-liability pursuant to Section 38-22-105(2) of the Colorado Revised Statutes, which will remain in place for the duration of construction of Tenant's Work. In addition, Tenant shall present to Landlord, prior to entering the Premises or commencing any work, all permits and insurance certificates required by Landlord or Landlord's lender.

(e) All alterations, additions, trade fixtures and improvements made by Tenant after the date of the Lease shall be deemed to have attached to the Premises and to have part of the Premises upon such attachment. In the event of termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions, trade fixtures or improvements. Landlord may, however, designate by written notice to Tenant those alterations, decorations, additions, improvements, or trade fixtures which shall be removed by Tenant at the termination of the Lease, and Tenant shall promptly remove the same and repair any damage to the Premises caused by such removal. Landlord shall have the right to padlock or otherwise secure the Premises and shall also have the right, upon termination of this Lease, to immediately enter the Premises in order to remove any items which shall be reasonably determined by Landlord to constitute a violation of existing health, safety, security or other similar codes or regulations affecting or applicable to the Premises. Landlord shall provide prior notification to Tenant of such removal, subject to the then existing circumstances. In addition, Tenant hereby agrees to make all repairs and replacements, at its sole cost and expense, for any damage caused to the Building resulting from Tenant's Work.

(f) Tenant is a Colorado home-rule municipality and subject to the provisions of the Colorado Constitution as well as the Colorado Revised Statutes ("**CRS**"), specifically, CRS Sec. 29-1-110, "Local Government Budget Law" and CRS 24-10-101 *et seq.* "Colorado Governmental Immunity Act" and Articles X "TABOR" and XI "Public Indebtedness" of the Colorado Constitution and Article XI, Section 1 of the Colorado Constitution. To the greatest extent permitted by law but subject to such provisions, Tenant shall enter the Premises and perform Tenant's Work as its sole cost, expense and risk.

3. Landlord's Work. The following shall constitute the "**Landlord's Work**." The Premises will be delivered by Landlord at a level of completed "core and shell" construction sufficient for obtaining a Letter of Completion for the Premises, in accordance with all governing codes, regulations and the existing City of Aspen building permits for the Building and the Premises, including 0076.2013.ACBK (demo), 0094.2013.ACBK (excavation and foundation) and 0021.2014.ARBK (construction) (collectively, the "**Building Permits**"), sufficient for Tenant to be able to obtain a building permit for Tenant's Work and sufficient to permit Tenant, upon issuance of that building permit to commence Tenant's Work). Landlord is responsible for the installation of the primary Building equipment, systems and main runs to 'stub out' locations in or adjacent to the Premises as specified by the Building Permits and associated plans. Prior to delivery of possession of the Premises to Tenant for the commencement of Tenant's Work, Landlord shall remove all personal property currently located within the Premises and complete Landlord's Work, otherwise the Premises will be in its "AS IS" condition. Landlord's Work shall include the following list of items to be provided by Landlord, at Landlord's sole expense, in or adjacent to the Premises in locations generally consistent with the Building Permits and associated plans, including the permitted construction drawings for City of Aspen permit number 0021.2014.ARBK.

- Sanitary sewer stub.
- Plumbing vent stub.
- Domestic cold water stub.
- Basic fire protection sprinkler system grid within the Premises, for Tenant's modification.
- Central electric utility company connection point.
- Central telephone company connection point at distribution centers.
- Demising walls studs only as described above.
- Concrete floor with a structural loan capacity consistent with the Building Permits and associated structural plans.
- Connection point for chilled water system for Tenant.
- Central heating and ventilating (exclusive of fan coil units for the Premises plenums and duct work within the Premises, but inclusive of duct work)
- Provision of sound isolation from the center of the Premises's demising walls out to the space adjacent to the Premises in accordance with recommendations of Geiler and Associates dated May 20, 2014 and May 27, 2014.
- Provision of that portion of the minimum acoustical ceiling/floor specifications attached as Exhibit 2 pertaining to welded wire fabric, composite slab, and spraying of fire resistive material (for avoidance of doubt, Tenant's Work will include at a minimum, the wire suspended acoustical ceiling tile with minimum CAC 30 rating, or continuous gypsum board ceiling and insulation in the ceiling plenum).

4. Tenant's Work. Except for those portions to be completed as Landlord's Work, Tenant will be responsible for any HVAC, plumbing, electric, telephone and communications, cable television, security system and audio/visual system equipment serving the Premises from the 'stub out' locations provided by Landlord, and the Premises' interior walls, doors, floor coverings, ceiling systems, finishes, materials, appliances, hardware, cabinetry, trim, fixtures, amenities, security equipment, and A/V equipment. Tenant shall install demising walls, including metal stud framing, promptly after Landlord has performed any work necessary to accommodate installation of said framing. Such stud framing shall extend full height from the floor slab of the Premises to the underside of the floor or roof structure and be sealed air-tight (See Recommendation No. 7 of the May 27, 2014 Geiler and Associates report). Tenant shall install gypsum board on Tenant's side of stud framing to underside of structure as required by governmental requirements and the requirements of Landlord's insurance provider or underwriter.

Tenant's Work shall, at a minimum, conform to the following requirements and Tenant shall at all times comply with applicable governmental requirements, the requirements of Landlord's insurance underwriter, and the requirements of Landlord's lender:

(a) Field Conditions. Prior to the commencement of its construction, Tenant shall survey the site to inspect, verify and coordinate all existing conditions within the Premises. Any resultant revisions from such survey shall be incorporated into Tenant's working drawings and specifications and promptly submitted to Landlord for review as approved. Tenant shall verify conditions pertaining to the Premises from time to time after commencement of construction of its Premises. Tenant shall verify the accuracy of said installation and shall immediately advise Landlord of any discrepancies. Failure to so notify Landlord shall be deemed as acceptance by Tenant of said installation and layout. Tenant shall coordinate its work with the work of others or with existing conditions occurring above or below the Premises and shall make changes from time to time as required to accommodate such work or conditions.

(b) Structural. Any alterations and/or additions and reinforcements to the Building's structure required to accommodate Tenant's Work, must be designed by a certified structural engineer at Tenant's expense. Performance of such work is subject to prior written approval of Landlord.

(c) Mechanical. Tenant's Work may include, as desired by Tenant, all plumbing, heating, ventilating, and air conditioning systems within or directly related to the Premises, proceeding from the points of connection to utilities as listed above.

(d) Electrical. Tenant's Work may include, as desired by Tenant, all electrical and telephone systems within or directly related to the Premises proceeding from points of connection to utilities as listed under Landlord's Work, or modifications to existing systems.

(e) Fire Protection. Tenant's Work may include, as desired by Tenant, modification of the basic fire protection sprinkler grid installed by Landlord. All such work shall be performed, at Tenant's sole cost and expense, by a qualified sprinkler contractor acceptable to or designated by Landlord.

(f) Acoustic. Tenant's Work will comply with the recommendations of Geiler and Associates, LLC dated May 20, 2014 (mechanical noise recommendations) and May 27, 2014 (sound isolation recommendations) and comply with the minimum acoustical ceiling tile specification attached as **Exhibit 2** (1 Hr. Rated Floor Assembly – Typ.), but excludes that portion of Landlord's Work for the minimum acoustical ceiling/floor specifications attached as Exhibit 2 pertaining to welded wire fabric, composite slab, and spraying of fire resistive material.

(g) Project Manual. Tenant's Work will comply with the Project Manual for The Mill Building prepared by David Johnston Architects PC and dated November 4, 2014.

Landlord's approval of the foregoing shall not constitute the assumption of any responsibility by Landlord for the accuracy or sufficiency thereof, and Tenant shall be solely responsible therefor.

5. Procedure, Schedules and Obligations for the Construction of Tenant's Work.

(a) Commencement of Construction. Intentionally omitted.

(b) General Requirements. Tenant shall submit to Landlord, at least five (5) business days prior to the commencement of construction the following information: (1) the names and addresses of the general, mechanical and electrical contractors Tenant intends to engage in the construction of the Premises; (2) the date on which Tenant's construction work will commence, together with the estimated date of completion of Tenant's construction work and fixturing work; (3) evidence of insurance as called for hereinbelow; and (4) Tenant's contractors' performance and payment bonds, to insure the faithful performance of the work in accordance with the Drawings and Specifications approved by Landlord.

1. Tenant shall engage the services of such bondable, licensed contractors who will work in harmony with Landlord's contractors and the contractors employed by the other Tenants or tenants so that there shall be no labor disputes which would interfere with the operation, construction and completion of the Building or with any work being carried out therein.

2. Construction shall comply in all respects with applicable Federal, State, County and/or City statutes, ordinances, regulations, laws and codes. All required building and other permits in connection with the construction and completion of the Tenant's Work shall be obtained and paid for by Tenant.

3. Tenant's Work shall at all times and from time to time be subject to the inspection of Landlord, Landlord's lender and their respective consultants, and supervisory personnel. Specifically, Landlord's lender (and its construction consultant) will be entitled to review final set of drawings and specifications for Tenant's Work to confirm that Tenant's Work will have no adverse impact on the Building, and are in compliance with applicable laws, ordinances and building codes, and is being performed in a good and workmanlike manner. Landlord's lender and its construction consultant will be provided with timely copies of lien waivers, proof of payment, and any construction contracts and subcontractors for performance of the Tenant's Work and provide copies, upon request, of any draw applications, security, guarantees, bonds, permits, and the like related to Tenant's Work.

(c) Temporary Facilities During Construction.

1. Tenant shall pay for all temporary utility facilities, and the removal of debris in connection with the Tenant's Work. Storage of Tenant's contractors' construction material, tools, equipment and debris shall be confined to the Premises, or in areas which may be designated for such purposes by Landlord. In no event shall any material or debris be stored in service or exit corridors.

2. During construction, Tenant shall strictly comply with Landlord's directives for construction debris and waste removal. Landlord may designate particular contractors to provide such services. At any time, as determined by Landlord, Landlord may require Tenant to assume responsibility therefor. In any event, all such work shall be performed by contractors approved by Landlord.

(d) Insurance.

1. Tenant shall procure, pay for and maintain, or cause its Contractor(s) to procure, pay for and maintain during construction of Tenant's Work within the Premises, all of the insurance policies required herein, in the amounts as set forth below, and such insurance as may from time to time be required from city, county, state or federal laws, codes, regulations or authorities, together with such other insurance as is reasonably necessary or appropriate under the circumstances. Such policies may be placed with the Municipal or District self insurance pool. Tenant shall not permit its contractor(s) to commence any Tenant's Work until all required insurance has been obtained and certificates of such insurance have been delivered to Landlord.

2. Tenant's General Contractor's and Subcontractors' Required Minimum Coverages and Limits of Liability.

a. Worker's Compensation and including Employer's Liability Insurance with a limit of not less than $1,000,000, and any insurance required by any Employee Benefit Acts or other statutes

applicable where the work is to be performed as will protect the Contractor and Subcontractors from any and all liability under the aforementioned Acts.

b. Commercial General Liability Insurance in an amount not less than $2,000,000 for any one occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability or a combination thereof with an aggregate limit of $2,000,000. Such insurance shall provide for explosion, collapse and underground coverage.

c. Such insurance shall insure Tenant's General Contractor against any and all claims for personal injury, including death resulting therefrom and damage to or destruction of property of any kind whatsoever and to whomsoever belonging and arising from operations under the Lease and whether such operations are performed by Tenant's General Contractor, Subcontractors, or any of their Subcontractors, or by any one directly or indirectly employed by any of them.

d. Comprehensive Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, and non-owned, in the following amounts:

(1)	Bodily injury, per occurrence for personal injury and/or death	$2,000,000
(2)	Property Damage Liability	$2,000,000

3. Such insurance shall insure the General Contractor and/or Subcontractors against any and all claims for personal injury, including death resulting therefrom and damage to the property of others caused by accident and arising from its operations under the Lease and whether such operations are performed by the General Contractor, Subcontractors, or by anyone directly or indirectly employed by any of them.

4. Tenant's Liability Insurance. Tenant shall provide Commercial General Liability Insurance as will insure Tenant against any and all liability to third parties for damages because of personal injury liability (or death resulting therefrom) and property damage liability of others or a combination thereof which may arise from work in connection with the Premises, and any other liability for damages which Tenant's General Contractor and/or Subcontractors are required to insure against under any provisions herein. Said insurance shall be provided in minimum amounts as follows:

(1)	Bodily injury, per occurrence for personal injury and/or death	$2,000,000
(2)	Property Damage Liability	$2,000,000

5. Tenant's Builder's Risk Insurance. Tenant shall provide an "All Physical Loss" Builder's Risk insurance policy on the Tenant's Work to be performed for Tenant in the Premises. The policy shall include Tenant, its Contractor and Subcontractors, Landlord, and Landlord's lender, as insureds as their interests may appear. The amount of insurance to be provided shall be 100% of the replacement cost.

6. All such insurance policies required under this Construction Addendum, except as noted above, shall include Landlord, Landlord's lender, and any other parties in interest designated by Landlord, as additional insureds; except Worker's Compensation Insurance, which shall contain an endorsement waiving all rights of subrogation against Landlord, its owners and agents, and any other parties in interest designated by Landlord. All such insurance shall be primary and noncontributing with respect to any policies carried by Landlord, and any insurance provided by Landlord shall be carried on an excess basis.

7. Certificates of Insurance shall provide that no reduction in the amounts or limits of liability or cancellation of such insurance coverage shall be undertaken without prior thirty (30) day written notice to Landlord.

8. During any period during which Landlord is performing Landlord's Work or performing improvement work to the Building, Landlord shall procure, pay for, and maintain, or cause Landlord's contractors to procure, pay for, and maintain:

a. Worker's Compensation and including Employer's Liability Insurance with a limit of not less than $1,000,000;

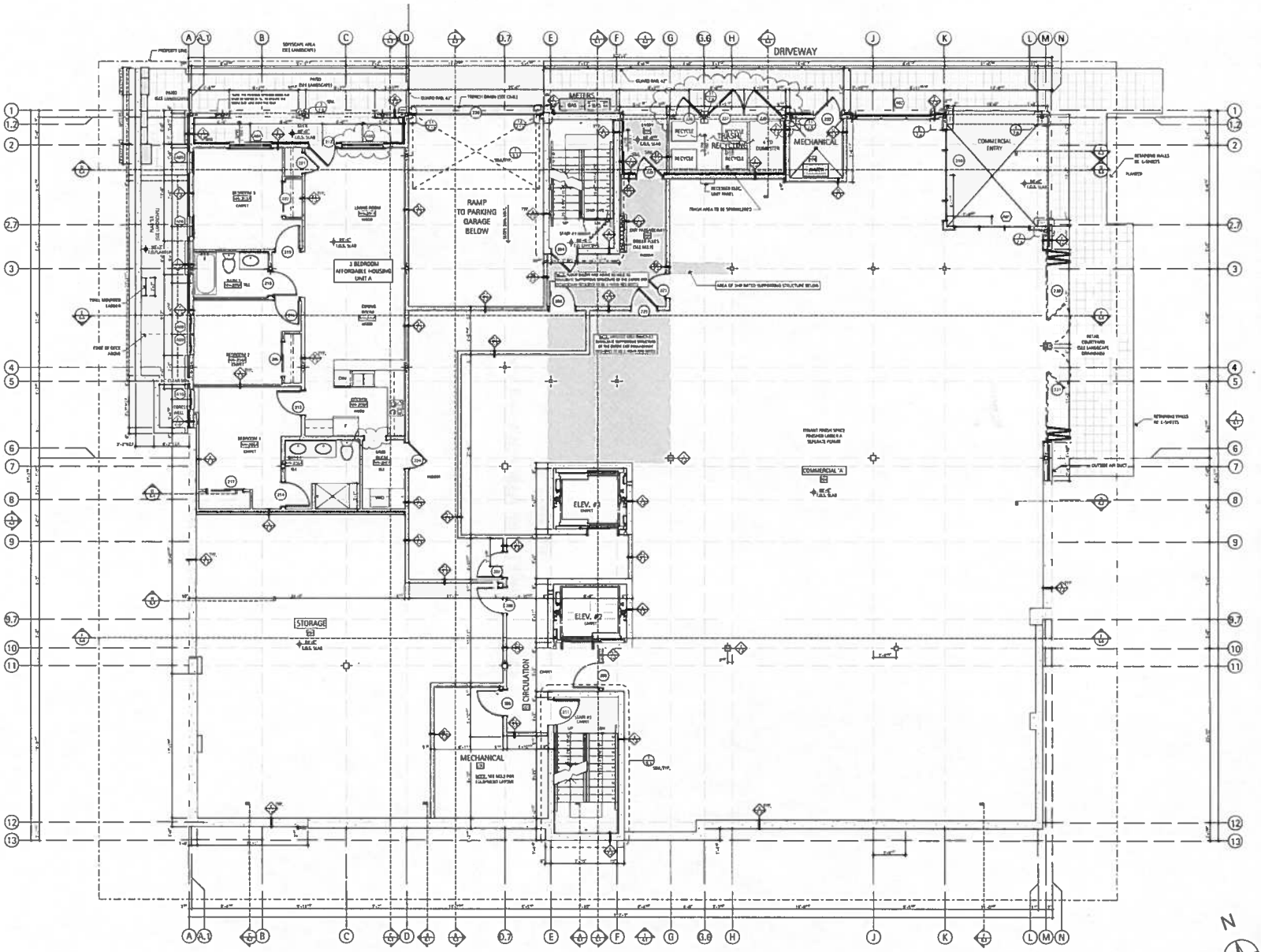
b. Commercial General Liability Insurance in an amount not less than $2,000,000 single combined limit for personal injury and property damage, without any exclusion from coverage for property damage occurring to the Premises arising out of the conduct by Landlord or Landlord's contractors of construction work in or to the Building.

c. Builder's All Risk insurance in an amount sufficient to cover the full replacement cost of the Building and, during the conduct of any improvement work by Landlord, the replacement cost of the Alterations, including the Initial Alterations then existing in the Premises at the time of any damage or destruction arising from Landlord performing construction activities. Such policy is not intended to cover and need not cover risks or claims for damage or destruction of the Initial Alterations arising from Tenant performing Tenant's Work, which claims and risks shall be insured by Tenant.

All such policies shall include Tenant as an additional named insured and shall waive rights of subrogation against Tenant.

Exhibit 1
(Unit 201 and Unit 101 Schematic Floor Plan)

DAVID JOHNSTON ARCHITECTS PC
1195 Spring St. Suite 203 Aspen, CO 81611 TEL 970-925-5444 FAX 970-920-2186
THE MILL BUILDING
201 NORTH MILL ST. | ASPEN, CO
ISSUE
DRAWING
LEVEL 3
SHEET No. 3.3
3 LEVEL 3
SITE 7894-9" = ARCH 100'-0"
N



2 LEVEL 2
SCALE: 3/16" = 1'-0"

SITE 7894-9" = ARCH 100'-0"

NOTE: ALL BATHROOM'S REQUIRED TO HAVE BLOCKING INSTALLED FOR ACCESSIBLE GRAB BARS. BLOCKING TO COMPLY WITH 604.5.1 & 604.5.2 PER ANSI A117.1-2003

DAVID JOHNSTON ARCHITECTS PC
119 S. Spring St.
Suite 203
Aspen, CO 81611
TEL 970-925-3444
FAX 970-920-2186

All ideas, designs, arrangements and plans indicated or represented by this drawing are owned by and are the property of David Johnston Architects, PC and developed for use and in connection with the specified project. None of the ideas, designs, arrangements or plans shall be used by or disclosed to any person whatsoever without the written authorization of David Johnston Architects, PC.

THE MILL BUILDING

201 NORTH MILL ST. | ASPEN, CO

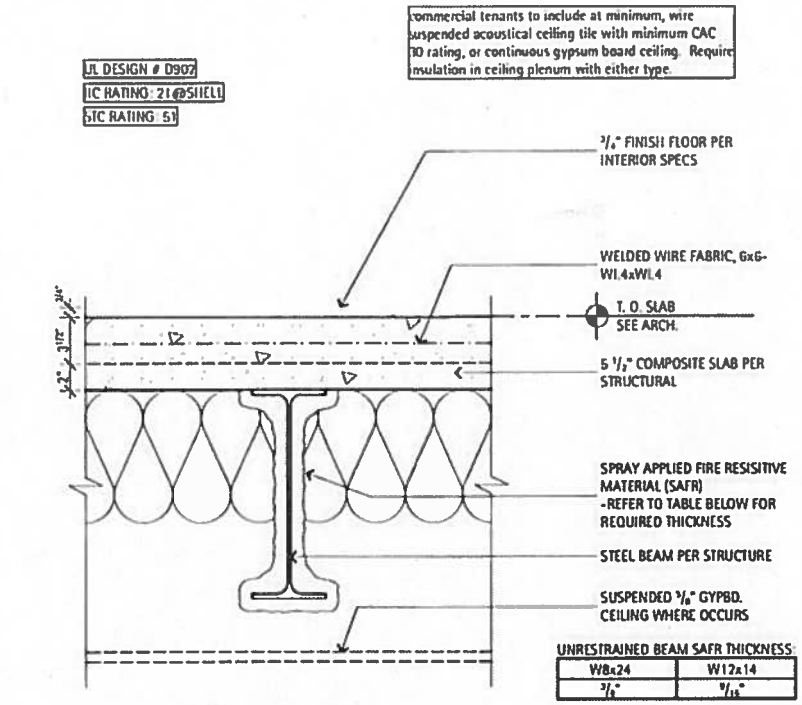
DRAWING	ISSUE
CONCEPTUAL DESIGN	02/18/13
PLANNING SUBMISSION	06/06/13
PERMIT SUBMITTAL	03/24/14
PERMIT ADDENDUM 1	07/14/14
PERMIT ADDENDUM 2	07/29/14
CONSTRUCTION DOCS	09/26/14
CONST. REVISIONS 1	01/22/15

LEVEL 2

PROJECT No. 1306
DRAWN BY: CPF

SHEET No.
3.2

Exhibit 2
(1 Hr. Rated Floor Assembly – Typ.)



F3 1 HR. RATED FLOOR ASSEMBLY-TYP.

1 ½" = 1'-0"

COMMERCIAL LEASE
(SUMMARY OF TERMS)

The parties agree to enter into a lease of the Premises as set forth herein. In addition to the other definitions appearing in the text of this Lease, when used herein the following terms shall have the respective meanings set forth opposite each such term.

1.1 **EXHIBITS**: Attached hereto are, the "**Map of Premises**" as Exhibit A, a "**Lease Option Addendum**" as Exhibit B, and a "**Construction Addendum**" as Exhibit C, all of which constitute a part of this Lease and are incorporated herein.

1.2 **RENT**: "Rent" shall include all Base Rent, Condominium Assessments and Insurance, and any Tax Impositions and any Additional Rent payable under this Lease as adjusted from time to time in accordance with the Lease.

1.2.1 **BASE RENT**: The sum of $47,170.50 per year payable $3,930.88 per month ("**Base Rent**") on the 1st day of each month commencing on the Commencement Date. If the Commencement Date is not the first day of a month, then the Base Rent shall be paid pro rata through the first day of the following month and thereafter on the 1st day of each month. This Lease provides for the Base Rent to be adjusted at the end of the first Lease Year and thereafter as provided in Section 3.3 hereof.

1.2.2 **TENANT'S SHARE OF CONDOMINIUM ASSESSMENTS AND INSURANCE**: "**Tenant's Share**" shall mean: (i) the "Common Allocation" as assigned to Unit 202 under Section 2.9 and Exhibit B of the Condominium Declaration for The Mill Building (the "**Declaration**"), which will be based on the square footage of the Premises and the square footage of the Building, as more fully provided in the Declaration; and (ii) which will then be allocated between the Premises and the adjacent Leased Unit 202 (as defined in Section 1.11 below) based on the relative square footage of the Premises and the adjacent Leased Unit 202. The current estimate of the allocation is 21% to the Premises and 79% the adjacent Leased Unit 202 (the subject Premises), and will be adjusted after computation of the actual square footage following completion of all tenant improvements as provided in Section 1.16 below, and appropriately adjusted after the actual square footage are determined. In addition, Tenant's Share is subject to adjustment as provided in Article 3 and shall be subject to reconciliation based on actual expenses.

1.2.3 **TAX IMPOSITIONS**. As a municipal entity, Tenant anticipates that it may cause the Premises to be exempt from *ad valorem* property taxes. If Tenant is unable to obtain such an exemption, then commencing on the Commencement Date and continuing on the first calendar date of each month during the Term thereafter, Tenant shall pay to Landlord an amount equal to one-twelfth of the estimated annual real estate taxes applicable to the Premises. Each year, upon Landlord's receipt of the billing statement from the County of Pitkin for the actual real estate taxes applicable to the Premises, Landlord shall prepare a reconciliation of the estimated tax payments made by Tenant as compared to the actual taxes. In the event that the actual amount of taxes is more than the estimated payments made by Tenant, Tenant shall pay the shortfall to Landlord within 30 days. If the actual amount of taxes are less than the estimated payments made by Tenant, the overpayment shall be applied by Landlord to the next monthly tax payments owing by Tenant, or, if Tenant has no further obligation for tax payments (e.g. lease expired or the Premises become exempt from real estate taxes), the overpayment shall be refunded to Tenant by Landlord within 30 days.

1.3 **COMMENCEMENT DATE**: September 1, 2016.

1.4 **GUARANTOR(S)**: None required for the named Tenant.

1.5 **LANDLORD**: 201 N. Mill Associates, LLC, a Colorado limited liability company.

1.6 **LANDLORD'S ADDRESS**: c/o B. Joseph Krabacher, 730 E. Durant, Suite 200, Aspen CO 81611.

1.7 **LEASE**: This Summary of Business Terms and the Commercial Lease attached hereto, including any Addenda and Exhibits.

1.8 **LEASE YEAR**: The first "**Lease Year**" shall be the period from the Commencement Date to and including August 31 of the following year. Each subsequent Lease Year will commence September 1 and end on the following August 31; provided that the last Lease Year will commence on September 1, 2020 and terminate on December 31, 2020, and Base Rent and Additional Rent for the last Lease Year will be payable only for the period of time from September 1, 2020 through December 31, 2020.

1.9 **PARKING**: Two (2) assigned vehicle parking spaces, for which Tenant agrees to pay $400.00 per month (or pro rata portion thereof) for each parking space, in addition to the Base Rent, and as a portion of Base Rent payable by Tenant hereunder.

1.10 **PERMITTED USE**: General office use and all related and incidental uses ("**Permitted Use**").

1.11 **PREMISES**: The Premises comprise a portion of Unit 202 as defined and described in the Declaration and Condominium Map for The Mill Building, which has been partitioned by Landlord into two units solely for leasing purposes and for purposes of this Lease. Unit 203 ("**Premises**" which may also be referred to herein as "**Unit 203**"), is the subject Premises under this Lease and is depicted on the map attached hereto as **Exhibit A** and comprises approximately 21% of Unit 202 as defined and described in the Declaration and Condominium Map for The Mill Building. The remainder adjacent portion comprises approximately 79% of Unit 202 as defined and described in the Declaration and Condominium Map for The Mill Building and is currently leased to an unrelated third party, and that adjacent portion may be referred to herein as "**Leased Unit 202**". The "**Building**" is that certain building containing the Premises and generally described as The Mill Building Condominiums, which consists of a five story mixed use (residential and commercial) building.

1.12 **EXTERIOR SIGNAGE**: Subject to the City of Aspen sign regulations, Tenant shall be permitted to install, at Tenant's sole expense, Tenant's name and logo on each door that provides access for entry directly into the Premises. The sign allotment will be based upon the net leasable square footage as provided in the City of Aspen Code Section 26.510.100.

1.13 **REAL ESTATE BROKERS**: Tenant's Broker: Andrew Ernemann and Aspen Snowmass Sotheby's International Realty and Landlord's Broker: Chris Striefel and Tru Real Estate.

1.14 **RENTAL PAYMENT PLACE**: B. Joseph Krabacher, 730 E. Durant, Suite 200, Aspen CO 81611.

1.15 **SECURITY DEPOSIT**: $11,792.63.

1.16 **SQUARE FOOTAGE OF PREMISES**: Approximately 800 square feet of rentable area which shall be measured consistent with the 1996 Standard of the Building Owners and Managers Association (the "**BOMA Standard**") upon completion of construction of the Premises. After confirmation of the rentable area using the BOMA Standard, the Base Rent and Tenant's Share of Condominium Assessments and Insurance will be adjusted retroactively to the Commencement Date based on the actual measured square footage.

1.17 **TENANT**: The City of Aspen, a home rule municipality ("**Tenant**").

1.18 **TENANT'S ADDRESS**: Until Tenant commences business operations from the Premises:

City of Aspen
Building and Engineering Departments
130 S. Galena Street
Aspen, CO 81611
Attention: City Manager

With Copy to:

James R. True

City Attorney
130 S. Galena Street
Aspen, CO 81611
Thereafter:

City of Aspen - Building and Engineering Departments
201 N. Mill Street
Aspen, Colorado 81611
Attention: Jack Wheeler

With Copy to:

James R. True
City Attorney
130 S. Galena Street
Aspen, CO 81611

("**Tenant's Address**").

1.19 **TERM**: The period of time ("**Term**") commencing as of the Commencement Date and ending December 31, 2020 ("**Expiration Date**"), unless this Lease shall be earlier terminated pursuant to the terms hereof.

1.20 **OPTIONS**. Tenant shall have Options to renew its lease for one additional term of two (2) years, subject to the terms and conditions of the Option Addendum ("**Option**"), attached hereto as Exhibit B.

[Remainder of this page is intentionally blank; signatures appear on following pages]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commercial Lease as of the day and year first above written.

Dated: August 25, 2016

LANDLORD:

201 N. Mill Street Associates, LLC
A Colorado limited liability Company

By: _____
B. Joseph Krabacher, Manager

[Remainder of this page is intentionally blank; signature appears on following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commercial Lease as of the day and year first above written.

Dated: August 25, 2016

TENANT:

THE CITY OF ASPEN
A Home Rule Municipality

By: _____
Name: Stephen H. Barwick
Title: City Manager

COMMERCIAL LEASE

THIS LEASE dated for reference purposes only as of the date set forth in the Summary of Terms, is made and entered into by and between **Landlord** and **Tenant** (collectively the "**Parties**" or individually a "**Party**").

ARTICLE 1
Basic Terms

1.1 **BASIC TERMS**. The provisions of this Commercial Lease (Summary of Lease) terms are incorporated herein.

ARTICLE 2
Grant and Term

2.1 **GRANT**. In consideration of the Rents agreed to be paid and of the covenants and agreements of the respective parties hereto, Landlord leases to Tenant and Tenant leases the Premises from Landlord on the terms set forth herein. The Rent and Tenant's Share of Condominium Assessments and Insurance, and any Tax Impositions, are subject to revision as provided in the Summary of Terms. This Lease is subject to covenants, restrictions and easements of record for The Mill Building Condominium. The Premises is a unit or portion of a unit within The Mill Condominium Association, Inc., a Colorado nonprofit corporation, of which Landlord is a member ("**Association**"). Tenant agrees that all voting, other membership rights and any similar rights arising out of the agreements and instruments of the Association, may be exercised only by Landlord as the owner of the Premises and are not in any manner assigned or delegated to Tenant. Tenant shall be subject to the Association's Rules and Regulations, if adopted. In addition to Tenant's rights to use and possess the Premises as specified herein, Tenant will have non-exclusive rights to the Common Areas (as defined in Section 5.4 below) as specified herein, but will not have any rights to the roof, exterior walls, or utility ways of the Building; except that Tenant shall have the right to install telecommunications, internet or other electronic or communications systems servicing the Premises, subject to the approval of the Landlord and the Association and upon the terms of the Construction Addendum.

2.2 **TERM**. The Commencement Date, Expiration Date and Term of this Lease are as specified in Section 1.3 and Section 1.19 in the Summary of Terms, attached hereto. The term of the Lease may be extended pursuant to the terms and conditions of the Option attached as Exhibit B hereto.

ARTICLE 3
Base Rent; Condominium Assessments and Insurance; Cost of Living Adjustments

3.1 **RENT**. On the Commencement Date, Tenant will pay to Landlord the fixed minimum monthly rental ("**Base Rent**") in Section 1.2.1 in the Summary of Terms, the Security Deposit, and one month of Tenant's Share of Condominium Assessments and Insurance in Section 1.2.2 in the Summary of Terms, and one month of any Tax Impositions in Section 1.2.3. If the Commencement Date is not the first day of a month, then the Base Rent and Tenant's Share of Condominium Assessments and Insurance shall be prorate for the first partial month, and subsequent payment on the first day of each subsequent month. On the first day of each subsequent calendar month and for the remaining Term of the Lease, Tenant will pay the Base Rent and Tenant's Share of Condominium Assessments and Insurance ("**Additional Rent**") as described below, as adjusted by cost of living increases. "**Rent**" hereunder will be comprised of Base Rent and Additional Rent. All Rent is payable when due during the Term hereof without prior demand. Rent will be paid without notice, demand, setoff, counterclaim, deduction, or defense and, except as otherwise expressly provided herein, without abatement or suspension. The obligations of Tenant hereunder will be separate and independent covenants and agreements and the Base Rent and Additional Rent will continue to be payable in all events and the obligations of Tenant hereunder will continue unaffected, unless the requirements to pay or perform the same will have been terminated pursuant to express provisions of this Lease. In the event a Rent installment (including any Additional Rent) is not received by Landlord on or before three (3) days after the due date, and the failure is not cured within five (5) business days after written notice to Tenant from Landlord, Tenant will add $250.00 to that Rent installment for a late payment penalty as Additional Rent. The accrual of such penalty (in the form of Additional Rent) will in no way be construed to limit Landlord's remedies in the event of such default (including the right to give a five-day notice hereunder), which remedies will in all cases hereunder be deemed to be cumulative. In the event that any payment required hereunder fails to clear the bank on which it is drawn or is deemed to be non-sufficient funds, a NSF charge in the amount of two hundred ($200.00) dollars ("**NSF Fee**") shall be paid by Tenant to Landlord. Upon receipt of notice of the NSF check, Tenant shall immediately pay to Landlord in certified funds, the payment due, the NSF Fee, together with any applicable late charges as set forth herein.

3.2 **CONDOMINIUM ASSESSMENTS AND TAX IMPOSITIONS**.

3.2.1 **Tax Impositions**. Subject to the provisions of the Summary of Terms regarding Tax Impositions, for the first Lease Year, Tenant agrees to pay to Landlord, as Additional Rent, the amount equal to the real estate taxes, assessments (whether general, special, ordinary or extraordinary), license fees, commercial rental tax, improvement bond(s), levy or tax, and other governmental or quasi-governmental levies and charges, general and special, which are assessed or imposed upon directly upon the Premises or the owner of the Premises (and not otherwise included in Condominium Assessments) by any authority having the direct or indirect power to tax, and which are incurred or

payable during the Term of this Lease (the "**Tax Impositions**"). Tenant will pay to Landlord the amount of such Additional Rent in monthly installments on the same day that each monthly installment of Base Rent is due. The Tax Impositions will be determined after the Building is subjected to the condominium regime established by the Declaration, and the Premises are established as a separately owned condominium with its own tax assessment schedule from the Pitkin County Assessor.

Subject to the provisions of the Summary of Terms regarding Tax Impositions, Tenant will continue to pay to Landlord, at the same time and in addition to each monthly payment of Base Rent, Landlord's estimate of the Tax Impositions for the then current Lease Year. Landlord will calculate the actual Tax Impositions incurred for every Lease Year or partial Lease Year during the Term after the close of such year, and Landlord will deliver a statement to Tenant setting forth the calculation. Within fifteen (15) days after Landlord gives notice of such statement, Tenant will pay Landlord the excess, if any, of the actual Tax Impositions over the estimated amount actually paid by Tenant for such period. If however, the actual Tax Impositions are less than the estimated amount actually paid by Tenant, the excess amount will be credited to Tenant, unless Tenant is in default under this Lease, in which case the excess amount will be applied to Tenant's accrued obligations. Tenant will have the right to audit, no more than once annually, at Tenant's expense, the records of Landlord in regard to taxes, Condominium Assessments and Insurance, and any Tax Impositions. Tenant will be liable for and promptly pay all taxes levied against Tenant's personal property and trade fixtures in the Premises or the Building during the Term. Tenant will have the right to contest such taxes in good faith and with proper proceedings.

3.2.2 **Condominium Assessments**. Tenant agrees to pay to Landlord, as Additional Rent, the amount equal to Tenant's Share (as defined in Section 1.2.2 in the Summary of Terms) of all "**Condominium Assessments**", as hereinafter defined, during the Term of this Lease, in accordance with the following provisions:

(a) "**Condominium Assessments**" are defined as "**Assessments**" of the Association as defined in the Declaration for costs incurred by the Association relating to the ownership and operation of the Building, including but not limited to, the following: (I) the operation, repair and maintenance, in neat, clean and good order and condition of the following: (A) the Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks (including snow removal), walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators and roofs, and bathrooms; (B) exterior signs and any tenant directories; (C) fire detection, sprinkler, heating, plumbing, ventilation, air conditioning, electrical, mechanical, and other utility or Building systems; (II) the cost of water, gas, electricity, heat, telephone and other utilities to service the Common Areas; (III) trash disposal, property management, security services, and the costs of any environmental inspections; (IV) reserves set aside for maintenance and repair of Common Areas; (V) the cost of insurance carried by Association with respect to the Common Areas and the Building; (VI) any deductible portion of an insured loss concerning the Common Areas or the Building; (VII) any other services to be provided by Landlord that are stated in the Declaration as an expense with respect to general or limited common areas and allocable to the Premises under the Declaration.

(b) The inclusion of the improvements, facilities and services set forth in Section 3.2.2 hereof, will not be deemed to impose an obligation upon Landlord or the Association to either have such improvements or facilities, or to provide those services, unless the Building already has such improvements or facilities, Landlord or the Association already provides the services, or Landlord has agreed elsewhere in this Lease to provide the same or some of them. Landlord retains the right, if exercised by the Association, to terminate or modify any such services, facilities, or improvements provided such action does not materially impair Tenant's use of the Premises. Tenant hereby acknowledges that the rental payable to Landlord does not currently include the cost of guard service or other securities measures, and that neither the Landlord nor the Association will have any obligation whatsoever to provide any guard service or security measures. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees, and their property from the acts of others or third parties.

(c) Except as set forth in Section 1.2.2 of the Summary of Terms, an amount may be estimated by Landlord from time to time of Tenant's Share of Condominium Assessments and Insurance. Except as set forth in Section 1.2.2 of the Summary of Terms, the Tenant's Share will be payable monthly by Tenant to Landlord during the Term, on the same day as the Base Rent is due hereunder. Landlord will deliver, within sixty (60) days after the expiration of each calendar year, a reasonably detailed statement showing Tenant's Share of the actual Condominium Assessments and Insurance incurred during the preceding year. Except as set forth in Section 1.2.2 of the Summary of Terms, if Tenant's actual payments during the preceding year exceed Tenant's Share as indicated on the statement, Tenant will be credited the amount of such over-payment against Tenant's Share of Condominium Assessments and Insurance next becoming due, unless Tenant is in default under this Lease, in which case the excess amount will be applied to Tenant's accrued obligations. If Tenant's actual payments were less than Tenant's Share, as indicated on such statement, Tenant will pay to Landlord the deficiency within fifteen (15) days after Landlord gives written notice to Tenant of the statement.

3.2.3 **Utilities**. Tenant will pay directly for all utilities and services supplied to the Premises including but not limited to electricity, telephone, security, gas, cable tv, Internet access, cleaning, maintenance and repair of the Premises, together with any taxes thereon (collectively, "**Utilities**"). If any such Utilities or services are not separately metered or separately billed to the Premises, Tenant will pay to the Landlord a reasonable portion to be determined by Landlord of all such charges jointly metered or billed with other premises within the Building, in the manner and within the time periods specified in Section 3.2.2 for payment of Tenant's Share of Condominium Assessments and Insurance. Upon request, Tenant will furnish Landlord with evidence of such payments. In the event Tenant is more than thirty (30) days in arrears on any payment of Utilities charges, Landlord may, upon three (3) days' notice, disconnect service for such

Utilities. Landlord may make inquiries to any provider of Utilities or service provider serving the Premises regarding the status of bills for Utilities or service bill obligations.

3.3 **COST OF LIVING ADJUSTMENTS**. The annual Base Rent payable hereunder will be adjusted three percent (3%) annually as of August 31 of each Lease Year commencing September 1, 2017. The period from August 31 [or if later the Commencement Date] of any year to August 31 of the following year is a "**Lease Year**". Each Lease Year immediately preceding the Lease Year for which an annual Base Rent adjustment is to be made is a "**Base Lease Year.**" Each Lease Year for which an annual Base Rent adjustment is to be made is an "**Adjusted Lease Year.**" The adjusted annual Base Rent for each Adjusted Lease Year will commence on September 1 of each Adjusted Lease Year and will continue for the remainder of each Adjusted Lease Year.

3.4 **SECURITY DEPOSIT**.

3.4.1 **Security**. Tenant has deposited with Landlord the sum designated as Security Deposit in the Summary of Terms, as security for the full and faithful performance by Tenant of all obligations of Tenant under this Lease or in connection with this Lease. If an event of default by Tenant occurs, Landlord may use, apply or retain the whole or any part of the Security Deposit for the payment of: (i) any Rent or any other sums of money which Tenant has not paid or which has become due after the occurrence of an event of default; or (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease; or (iii) any sum which Landlord may expend or be required to expend by reason of such event of default, including any damages or deficiency in the re-letting of the Premises. The use, application or retention of the Security Deposit or any portion thereof by Landlord shall not prevent Landlord from exercising any other rights or remedies provided for hereunder or at law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. In the case of every such application or retention, Tenant shall on demand pay to Landlord the sum so applied or retained which shall be added to the Security so that the same shall be restored to its original amount. No interest shall accrue on the Security Deposit for the benefit of Tenant, and Landlord shall not be required to hold the Security Deposit in a separate bank account for Tenant.

3.4.2 **Return of Security**. If Tenant shall fully and faithfully comply with all of the provisions of this Lease, the Security Deposit or any balance thereof shall be returned to Tenant within sixty (60) days after the Expiration Date or upon any later date after which Tenant has vacated the Premises. On termination of this Lease, Landlord will return the Security Deposit to the Tenant and in such event, upon the return of the Security Deposit, or the balance thereof, to the Tenant, Landlord shall be completely relieved of liability hereunder.

3.4.3 **No Encumbrance**. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior consent of Landlord in each instance, and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord.

3.4.4 **Bankruptcy**. In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant or Guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of any Rent or other charges due Landlord for all periods prior to the institution of such proceedings and the balance, if any, of the Security may be retained by Landlord in partial liquidation of Landlord's damages.

3.4.5 **Transfer of Security**. Landlord shall deliver the Security Deposit to the purchaser of Landlord's interest in the Premises in the event that such interest be sold or transferred, and thereupon Landlord shall be discharged and released from all further liability with respect to the Security Deposit or the return thereof to Tenant. Tenant agrees to look solely to the new landlord for the return of the Security Deposit, and this provision shall also apply to any subsequent transferees. No mortgagee shall be responsible for the return of the Security unless such mortgagee shall have actually received the Security Deposit .

ARTICLE 4
Construction of Leasehold Improvements; Condition of Premises

4.1. **No Alterations Without Landlord's Written Consent**. Subject to the terms of the Construction Addendum, Tenant will not make any alterations, improvements and/or additions to the Premises or the Building ("**Proposed Improvements**") without first obtaining Landlord's written consent. Proposed Improvements will be at Landlord's reasonable discretion. No Proposed Improvements (including any change orders to previously approved plans) will be undertaken without first providing plans, drawings and specifications to Landlord for such Proposed Improvements. If requested by Landlord, Tenant will also submit a cost breakdown, by construction unit, of the complete project costs, and substantiate all costs with contractor and/or architect contracts or bids. All approved Proposed Improvements must be accomplished by Tenant in a good and workmanlike manner and at Tenant's sole cost and expense. Tenant agrees to keep the Premises or the Building free of mechanic's liens and other claims in connection therewith. Landlord will have the right, at any time, to inspect the Premises and the construction of the Proposed Improvements, or may engage an engineer, at Landlord's sole cost and expense, to inspect the Premises and the Proposed Improvements. Except as set forth in Section 4.2 below, within fifty (50) days after all work has been completed on the Proposed Improvements, Tenant will provide to Landlord final lien waivers from all persons providing labor, materials and services in connection with the Proposed Improvements. Prior to commencement of construction of the Proposed Improvements, Tenant will provide to Landlord a policy of all-risk builder's risk insurance in the amount of at least $2,000,000, issued by a company or companies acceptable to Landlord and authorized to do business in the State of Colorado, with premiums prepaid and which names Landlord as an additional insured. Such policy will insure the Proposed Improvements, the

Premises, the Building and all materials and supplies in connection therewith against loss or damage by fire and other casualty, contractor or subcontractor negligence, and other risks typically insured in a builders' risk policy or required to be insured by Landlord in Landlord's sole discretion.

4.2. **Tenant's Responsibility for Mechanic's Liens**. In the case of the filing of any mechanic's lien because of work performed or materials furnished at the request of Tenant against any interest of Landlord or Tenant in the Premises or the Building, Tenant will cause the same to be discharged of record (whether by payment, filing a bond and thereafter contesting such lien, order of a court of competent jurisdiction or otherwise) within thirty (30) days after the filing of same. If Tenant will fail to discharge such mechanic's lien of record within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but will not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien in such other manner as may be permitted by law. Any amount paid by Landlord to discharge such mechanic's lien, or for the satisfaction of any other lien placed against the Premises or the Building during the Term that it is not caused by Landlord, and all reasonable legal and other expenses of Landlord, in defending any such action or procuring the discharge of such liens, with all necessary disbursements in connection therewith, will be paid as Additional Rent by Tenant to Landlord on demand, together with accrued interest on the amounts so paid at eighteen percent (18%) per annum.

4.3 **Notice of Intent Required**. Tenant agrees to deliver to Landlord written notice of its intent to begin construction of any Proposed Improvements at least five (5) business days prior to the commencement of any work thereon, so as to allow Landlord to post an appropriate notice of non-liability pursuant to Section 38-22-105(2) of the Colorado Revised Statutes. Landlord hereby designates Tenant as its agent for the sole purpose of posting, and directs Tenant to post prior to commencement of any work and keep posted in a conspicuous place upon the Premises, a notice containing substantially the following language:

> "Notice: 201 Mill Street Associates, LLC is the Landlord of the Premises upon which improvements will be made by the Tenant. The interest of the Landlord in these Premises will not be subject to any lien by virtue of work done or materials or equipment supplied by any contractor or other person, pursuant to this Notice and Colorado Revised Statutes Section 38-22-105, as amended."

4.4 **Acceptance of Condition**. The Premises shall be delivered by Landlord as provided in the Construction Addendum. Tenant acknowledges and agrees that (a) prior to entering into this Lease, Tenant has made a thorough and independent examination of the Premises and all matters related to Tenant's decision to enter into this Lease; (b) Tenant is thoroughly familiar with all aspects of the Premises and is satisfied that the Premises are in an acceptable condition and meet Tenant's needs; (c) Tenant is not relying upon any express or implied representations or warranties from Landlord or any representative of Landlord (and Landlord hereby disclaims all representations and warranties) as to any matters pertaining to the Premises and the Property, including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for Tenant's intended use, the likelihood of deriving business from the Building, the economic feasibility of the Tenant's business, or any other matter; (d) Tenant has satisfied itself as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease; (e) neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the suitability of the Premises for the conduct of Tenant's business; and (f) by taking possession of the Premises, Tenant shall be conclusively deemed to have confirmed that the Premises, the Building, any improvements therein, and the Common Area were at such time completed and in good, sanitary, and satisfactory condition and repair and without any obligation on Landlord's part to make any alterations, upgrades, or improvements. Tenant accepts the Premises or the Building "AS IS" in their present condition, except for latent defects. Landlord hereby disclaims all warranties, express or implied, with respect to the Premises or the Building (including, without limitation, any implied warranty of habitability, suitability, or compliance with building codes), except as expressly set forth herein. Tenant acknowledges that it is not relying on any warranties of Landlord, and has done its own investigation as to the suitability of the Premises or the Building for the conduct of Tenant's business, including without limitation, investigation of Applicable Laws. Tenant acknowledges that neither Landlord nor Landlord's agents have made any representation or warranty about the capacity, suitability for Tenant's proposed use, or compliance with Applicable Laws of the Premises or the Building or any fixtures or equipment located therein.

ARTICLE 5
Use of Premises and Common Areas

5.1 **USE**. The Premises will be occupied and used only for the Permitted Uses and for no other purpose whatever unless Landlord in its sole discretion, consents to a change of such uses. The Permitted Uses of the Premises set forth herein are a material term and actual and substantial detriment will result to Landlord in the event that a change or deviation in the Permitted Uses occurs or is permitted without the express written consent of the Landlord, which consent will be in Landlord's sole and absolute discretion. Tenant covenants and agrees with Landlord that: (a) Tenant will keep the Premises at a temperature compatible with comfortable occupancy during business hours and at all times sufficiently high to prevent freezing of fluids in pipes or fixtures; (b) the plumbing facilities will not be used for any other purpose than that for which they are designed, and no foreign substance of any kind will be deposited or discarded therein; (c) Tenant will not burn any trash or garbage of any kind in or about the Premises; (d) no auction, fire, bankruptcy, selling-out or going-out-of-business sales will be conducted on or about the Premises without the prior written consent of the Landlord, which will be at the Landlord's sole and absolute discretion; (e) Tenant will keep all windows on the Premises clean, and all window areas will be kept free from storage items and other unsightly uses; (f) all trash (boxes will be broken down) will be deposited in a dumpster. Landlord reserves the right to adopt additional reasonable rules and regulations in respect to the conduct of Tenant's activities in the Premises, which upon adoption will be deemed

incorporated herein, provided that Tenant is given written notice thereof and the rules and regulations do not materially impair Tenant's use of the Premises. Landlord agrees not to rent to any tenant providing wealth management, banking or financial services, or any of the foregoing, during the Term of the Lease, or any option periods, if exercised. This restriction will not prohibit a financial planner or advisor, insurance company or agency, or other third party from operating in the Building so long as such entity does not engage in retail banking activities. The restriction set forth in this Section 1.10 will continue to apply to any successors in interest or Affiliate of Landlord in this Lease, the Premises (as defined below) or any other portions of the Building (as defined below) owned or controlled by Landlord, any successors in interest, or Affiliate of Landlord.

5.2 **OPERATIONS**. Tenant agrees to keep the Premises open for business conducted therein. Tenant agrees to conduct Tenant's business consistent with reputable business standards and practices. Storage and office space in the Premises exists only to the extent required for the Permitted Uses conducted on the Premises. Tenant will pay in a full and timely manner all sales tax, withholding, unemployment insurance, worker's compensation insurance, Tenant's required insurance, personal property tax, business licenses, utilities, services, and income taxes arising out of or relating in any way to the business conducted by Tenant upon the Premises or the Building and will supply proof of payment of all such items upon written request from Landlord.

5.3 **VEHICLE PARKING.** Tenant will be entitled to use the number of Parking Spaces specified in Section 1.9 within the parking garage as designated from time to time by Landlord for parking. Tenant will not use more parking spaces than the number permitted. The parking spaces will be used for parking by vehicles no larger than full size passenger automobiles or pickup trucks, herein called "**Permitted Size Vehicles**." Vehicles other than Permitted Size Vehicles will be parked, loaded and unloaded as directed by the Association or as provided in the Declaration or any Rules and Regulations (as defined in Section 5.4.3) issued by Landlord. Tenant will not permit or allow any vehicle that belongs to or is controlled by Tenant's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Section 5.3, then Landlord will have the right, without notice, in addition to such other rights and remedies that Landlord may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost will be immediately payable by Tenant to Landlord upon Landlord's demand.

5.4 **COMMON AREAS.**

5.4.1 **Definition**. The terms "**Common Areas**" and "**Common Area**" are defined as all areas and facilities outside the Premises and within the Building designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Building and their respective employees, suppliers, shippers, customers, contractors and invitees, including without limitation: (a) loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, bathrooms, and landscaped areas, (b) the foundations, concrete floors, exterior walls, patios, walkways and roofs of the Building; (c) all ducts, conduits, piping, and similar items; (d) all cleaning, heating, ventilating, air conditioning, plumbing, electrical, mechanical, exterior lighting, security and fire protection equipment and systems; and (e) all storm and sanitary sewer, water and other utility equipment and systems, in each case not installed by or exclusively serving a single tenant of the Building.

5.4.2 **Tenant's Rights**. Landlord hereby grants to Tenant, for the benefit of Tenant and Tenant's employees, suppliers, shippers, contractors, customers and invitees, during the Term, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers and privileges reserved by Landlord herein or under the any Rules and Regulations governing the use of the Building. The rights herein granted to use the Common Areas do not include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage will be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage occurs, then Landlord will have the right without notice, in addition to any other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost will be immediately payable by Tenant to Landlord upon Landlord's demand.

5.4.3 **Rules and Regulations**. Landlord or the Association or any other persons as Landlord may appoint will have the exclusive control and management of the Common Areas, and will have the right from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto, or with respect to the management, safety, care and cleanliness of the grounds, the parking, loading and unloading of vehicles, the use of the dumpsters in the Common Areas, and the preservation of good order in the Building ("**Rules and Regulations**"). Tenant agrees to abide by all such Rules and Regulations and to cause Tenant's employees, suppliers, shippers, customers, contractors and invitees to so abide. Landlord will not be responsible to Tenant for any non-compliance with the Rules and Regulations by other tenants of the Building which are not tenants of the Landlord, or such other tenants' employees, suppliers, shippers, customers, contractors and invitees.

5.4.4 **Changes**. Landlord will have the right, at Landlord's sole discretion, from time to time: (a) to make changes or improvements to the Common Areas, including without limitation, changes in the location, size, shape and number of driveways, entrances, parking areas, parking spaces, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways, bathrooms, and utility raceways so long as such changes are compliant with all Federal, State and local laws; (b) to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (c) to add additional buildings and improvements to the Common Areas; (d) to use the Common Areas while engaged in making additional improvements, repairs, or alterations to the Building, or any portion thereof; and (e) to do and perform such other acts and make such other changes in, to, or with

respect to Common Areas as Landlord may deem to be reasonably appropriate. Any changes or improvements made pursuant to this Section 5.4.4 will be made in compliance with present or future laws, rules, requirements, orders, directions, ordinances, building codes or regulations of the United States of America (including the Americans With Disabilities Act), State of Colorado, County of Pitkin, City of Aspen, or other municipal, governmental, or lawful authority whatsoever having jurisdiction over the Premises or the use thereof.

5.5 **RESERVATIONS.** Landlord reserves the right, from time to time to grant, without the consent or joinder of Tenant, such easements, rights of way, utility raceways, and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

ARTICLE 6
Landlord's Right of Entry

6.1 **RIGHT OF ENTRY**. Tenant agrees that Landlord, and Landlord's agents, employees or servants, or any person authorized by Landlord may enter the Premises for the purpose of: (a) inspecting the condition of the same; (b) making any repairs required of Landlord; (c) serving, or posting any notices required or permitted under the provisions of this Lease; and (d) exhibiting the Premises to prospective purchasers, mortgagees and tenants. Any such entry will be made during Tenant's normal business hours upon reasonable notice to Tenant except in the case of emergency. In addition, any work required to be done by Landlord will be done so as not to unreasonably interfere with the conduct of Tenant's business in the Premises. Such entry will not constitute eviction of Tenant in whole or in part, and the Rent will in no way abate while such work is being done, notwithstanding loss or interruption of business of the Tenant, or otherwise. If Tenant or Tenant's agents or employees are not present to permit entry into the Premises at any time when for any reason entry therein will be necessary in the reasonable judgment of Landlord to prevent injury or damage, Landlord or Landlord's agents or employees may enter the Premises by master key or by forcible entry without liability therefor, and without in any manner affecting the obligations, covenants, terms, or conditions of this Lease. Nothing herein will be deemed or construed to impose upon Landlord any obligation or liability whatsoever for care, supervision, repair, improvement, addition, change, or alteration of the Premises other than as expressly provided herein.

6.2 **LANDLORD KEYS**. Upon the commencement of Tenant's occupancy of the Premises, Tenant will provide Landlord with a complete set of keys to each entrance and exit from the Premises. In addition, if Tenant at any time adds or changes any lock to any entrance or exit, Tenant will provide Landlord with a complete set of keys to such added or changed lock. If Tenant uses any other locking system, Tenant will provide Landlord with any combination, information, or other device necessary for Landlord to gain entrance to the Premises.

ARTICLE 7
Nuisance, Waste, Compliance with Laws

Tenant will not perform any acts or carry on any practices which may injure the Premises or the Building, violate any certificate of occupancy, constitute a public or private nuisance, a menace to the public, produce undue noise, or create noxious fumes or odors. Tenant agrees not to: (a) permit any unlawful or immoral practice to be committed on the Premises; (b) make or allow the Premises to be used for any purpose that might invalidate or increase the rate of insurance thereof; (c) keep, use, permit to be kept or used on the Premises any flammable fluids or explosives without the prior written consent of the Landlord, which consent will be at Landlord's sole and absolute discretion; or (iv) use the Premises for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, directions, ordinances, building codes or regulations of the United States of America (including the Americans With Disabilities Act), State of Colorado, County of Pitkin, City of Aspen, or other municipal, governmental, or lawful authority whatsoever having jurisdiction over the Premises or the use thereof. Tenant will promptly comply with all such laws and other directives affecting the Premises or the Building and the use, safety or cleanliness of the same, at Tenant's sole cost and expense (the "**Applicable Laws**").

ARTICLE 8
No Landlord Liability

Landlord will not be liable for: (I) injury or damage which may be sustained by Tenant, its agents, officers, directors, employees or invitees, or to their goods, wares, merchandise or property, caused by or resulting from the state of repair of the Premises or the Building; (II) injury or damage from fire, steam, electricity, gas, water, flood, or rain which may leak or flow from or into any part of the Premises or the Building, or (III) the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, lighting or other fixtures of the Premises or the Building. Tenant agrees to notify Landlord and the Association in writing of any conditions or situations pertaining to the Premises or the Building which may pose potential health or safety problems.

ARTICLE 9
Maintenance and Repair

9.1 **MAINTENANCE BY LANDLORD**. Landlord agrees to cause the Association to maintain in good order and repair the foundation and the structural soundness of the concrete floors, exterior walls and roof, and Common Areas of the Building, exclusive of any work required because of damage caused by any act, omission or negligence of

Tenant, any other tenant of the Building, any subtenant, or their respective employees, agents, invitees, licensees, or contractors. All such costs, whether related to repairs, replacements or improvements, shall be Condominium Assessments. Landlord will not be required to commence any repair until ten (10) days after written notice from Tenant that such repair is necessary, provided however, that if such repair constitutes an emergency or an immediate threat to health or safety, Landlord will make reasonable efforts to commence such repair immediately. The provisions hereof will not apply in the case of damage or destruction by fire or other casualty, or a taking under the power of eminent domain.

If Landlord is required to make repairs to the Premises by reason of Tenant's or its agents', officers', directors', employees' or invitees' acts, omissions, negligence or misconduct, or if Tenant refuses or neglects to repair as required under Section 9.2 below to the reasonable satisfaction of Landlord, after ten (10) days prior written notice to Tenant, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, business or other property by reason thereof. Upon completion thereof, Tenant will reimburse Landlord's costs for making such repairs plus an amount equal to twenty percent (20%) of such costs for overhead and supervision, upon presentation of a bill therefor.

9.2 **MAINTENANCE BY TENANT**. Tenant will at all times maintain the entire Premises in good order, condition and repair, subject to ordinary wear and tear (excluding only those portions of the Premises, if any, required to be maintained by the Association pursuant to Section 9.1 above), including maintenance of any exterior entrance, show window moldings, floors, ceilings, interior walls, partitions, doors, fixtures, equipment and appurtenances thereof (including lighting, plumbing fixtures and heating, ventilating, electrical and fire protection systems) installed by Tenant, in good order, appearance, condition and repair, including all necessary replacements of any of such facilities. Provided however that Tenant shall have no obligation to make any repairs if any third party has agreed to provide Landlord a written warranty or has otherwise agreed to correct any latent defects in the Building during the term of this Lease.

ARTICLE 10
Fixtures

All readily moveable furnishings, trade fixtures, and readily moveable equipment owned by Tenant in the Premises will at all times during the Term remain the property of Tenant without regard to the means by which they are installed in the Premises. Upon expiration of this Lease, Tenant will remove all such furnishings, fixtures and equipment and restore the Premises as provided in Section 17.1, provided that Tenant will not remove any Common Area equipment, conduits, or fixtures providing water, plumbing, electrical, heating, ventilation, air conditioning, lighting, and sewer service to the Premises, whether or not the same were furnished or installed by Tenant, all of which, together with any other furnishings, fixtures, and equipment not removed by Tenant as provided above, will become the property of Landlord upon expiration of the Term or termination of Tenant's right to possession of the Premises, unless Landlord, within sixty (60) days thereafter disclaims any ownership interest in such furnishings, fixtures, and equipment.

ARTICLE 11
Condemnation

11.1 **ALL OF PREMISES TAKEN**. If the whole of the Premises will be taken or condemned for any public or quasi-public use or purpose by any competent authority by the exercise of the right of eminent domain or by agreement or conveyance in lieu thereof (each of the foregoing being hereinafter referred to as "**Condemnation**"), this Lease will terminate as of the date possession will be taken by such authority, and Tenant will pay Rent and perform all of its other obligations under this Lease up to such date with a proportionate refund by Landlord of any Rent which will have been paid in advance for periods subsequent to such date.

11.2 **LESS THAN ALL OF PREMISES TAKEN**. If less than all of the Premises is taken by Condemnation, and if the remainder of the Premises cannot be used for Tenant's continued use or occupancy for Tenant's business in the reasonable judgment of Landlord or Tenant or if the portion of the Premises not taken cannot be feasibly restored to a leasable unit in the reasonable judgment of Landlord or Tenant, then in either such event Landlord or Tenant will each have the right to terminate this Lease upon notice to the other party within thirty (30) days after possession is taken by such Condemnation. If this Lease is so terminated, it will terminate as of the date possession will be so taken, and Tenant will pay Rent and perform all of its other obligations under this Lease up to such date with a proportionate refund by Landlord of any Rent which will have been paid in advance for periods subsequent to such date. If this Lease is not so terminated, it will, upon the mutual agreement of Landlord and Tenant, terminate only with respect to the parts of the Premises so taken, as of the date possession will be taken by such authority, and thereafter the Base Rent and Additional Rent will be reduced in direct proportion to the amount of square footage of the Premises taken.

11.3 **OWNERSHIP OF AWARD**. As between Landlord and Tenant, all compensation, awards, and damages for any Condemnation of all of any part of the Premises, including without limitation, all awards and damages as compensation for diminution in value of the leasehold, reversion and fee of the Premises, and any Tenant improvements (but not including Tenant's furniture or equipment), will belong to Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. Although all damages in the event of any Condemnation shall belong to Landlord, whether such damages are awarded as compensation for diminution in value of the leasehold, reversion or fee of the Premises, or the Tenant's improvements (but not including Tenant's furniture or equipment), Tenant will have the right to claim and recover from condemning authority, but not to claim and recover from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the Condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's merchandise, furniture and fixtures,

provided that the effect of such award is not to reduce the award otherwise payable to Landlord.

ARTICLE 12
Insurance; Waiver of Claims

12.1 **LIABILITY INSURANCE.**

12.1.1 **Tenant's Liability Insurance**. Tenant will obtain and keep in force during the Term of this Lease, a commercial general liability policy of insurance protecting Tenant, Landlord, and Landlord's lender(s) whose names have been provided to Tenant in writing (as additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance will be on an occurrence basis providing single limit coverage in an amount not less than $2,000,000.00 per occurrence. The policy will include coverage for liability assumed under this Lease as an "Insured Contract" for the performance of Tenant's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Tenant will not, however, limit the liability of Tenant nor relieve the Tenant of any obligation hereunder. All insurance to be carried by Tenant will be primary to and not contributory with any similar insurance carried by Landlord, whose insurance will be considered excess insurance only.

12.1.2 **Landlord's Insurance**. Landlord will also maintain liability insurance described in Section 12.1.1 in addition to and not in lieu of, the insurance required to be maintained by Tenant. Tenant will not be named as an additional insured therein and the cost of such insurance will be borne by the Landlord.

12.2 **PROPERTY INSURANCE**

12.2.1 **Building and Improvements**. The Landlord will cause the Association to obtain and keep in force during the Term of this Lease a policy or policies in the name of the Association, with loss payable to the Association insuring against any loss or damage to the Building. Such insurance will be for the full replacement cost of the common elements and Common Areas, as the same will exist from time to time, but no event more than the commercially reasonable and available insurable value thereof. Tenant's Work and Tenant's personal property, furnishings, trade fixtures and equipment will be insured by Tenant pursuant to Section 12.2.4. If the coverage is available and commercially appropriate, Landlord's policy or policies will insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, and including insurance providing protection against sprinkler damage, vandalism and malicious mischief. Said policy or policies will also contain an agreed valuation provision in lieu of any co-insurance clause, waiver of subrogation, and inflation guard protection, causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted US Department of Labor Consumer Price Index for All Urban Consumers for All Cities All Items.

12.2.2 **Rental Value**. Landlord will also obtain and keep in force during the Term of this Lease a policy or policies in the name of Landlord, with loss payable to Landlord and Landlord's lender(s) insuring the loss of the full rental and other charges payable by tenants of the Building to Landlord for one year (including Tenant's Share of Condominium Assessments and Insurance, and any Tax Impositions, and any scheduled rental increases). The insurance may provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage will be extended beyond the date of completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. The insurance will contain an agreed valuation provision in lieu of any co-insurance clause, and the amount of coverage will be adjusted annually to reflect the projected Rents, and Tenant's Share of Condominium Assessments and Insurance , and any Tax Impositions, and other expenses, if any, otherwise payable for the next 12-month period.

12.2.3 **Adjacent Premises.** If this Lease is assigned to an assignee pursuant to Article 14, Tenant will cause such assignee to pay for any increase in the premiums for the property insurance of the Building or the Common Areas, if said increase is caused by Tenant's acts, omissions, use or occupancy of the Premises.

12.2.4 **Tenants Improvements**. Landlord will not be required to insure Tenant owned furniture, fixtures, or equipment unless the item in question has become the property of Landlord under the Terms of this Lease. Tenant at its cost will either by separate policy or, at Landlord's option, by endorsement to a policy already carried, maintain insurance coverage on all of Tenant's personal property, furniture, trade fixtures, and equipment in, on or about the Premises similar in coverage to that carried by Landlord under Section 12.2.1. Such insurance will be full replacement cost coverage with a deductible not to exceed $1,000.00 per occurrence. The proceeds from any such insurance will be used by Tenant for the replacement of such personal property and the restoration of trade fixtures and Tenant owned alterations or utility installations. Upon request from Landlord, Tenant will provide Landlord with written evidence that such insurance is in force.

12.3 **WORKER'S COMPENSATION INSURANCE**. Tenant will at its sole cost and expense obtain and maintain in force workers' compensation insurance as required by law.

12.4 **INSURANCE POLICIES**. The insurance required hereunder will be issued by companies duly licensed

to transact business in Colorado, and maintaining during the policy term a "General Policy Holder's Rating" of at least A minus V or such other rating as may be required by Landlord's lender(s), as set forth in the most current issue of "Best's Insurance Guide". Tenant will not do or permit to be done anything which will invalidate the insurance policies referred to in this Article 12. Tenant will cause to be delivered to Landlord, within seven (7) days after the earlier of the date of possession of Premises or the Commencement Date and any renewal terms, certificates evidencing the existence and the amounts of the insurance required of Tenant under this Article 12. No such policy will be cancellable or subject to modification except after ten (10) days prior written notice to Landlord. At least ten (10) days prior to the expiration of such policies, Tenant will furnish Landlord with evidence of renewals or "insurance binders" evidencing renewal thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount will be payable by Tenant to Landlord upon demand. Each policy of insurance required of Tenant by this Lease shall be a primary policy, issued by an insurance company reasonably satisfactory to Landlord, and shall contain an endorsement requiring thirty (30) days' written notice from the insurer to Landlord before cancellation or change in the nature, scope, or amount of coverage.

12.5 **WAIVER OF SUBROGATION**. Without affecting any other rights or remedies, Landlord and Tenant each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other for loss or damage to their property arising out of incident to the perils required to be insured under this Article 12. The effect of such releases and waivers of the right to recover damages will not limited by the amount of insurance carried or required, or deductibles applicable thereto. Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

ARTICLE 13
Damage or Destruction

13.1 **DESTRUCTION OF PREMISES**. In the event that the Premises are totally or partially damaged or destroyed by fire or other casualty, the damage will be repaired and the Premises restored to the same condition as they were in immediately before such damage or destruction by Landlord at Landlord's expense; provided, however, if the cost of repair or restoration exceeds the amount of insurance proceeds received by Landlord and available for restoration of the Premises, or if the casualty loss occurs during the last six (6) months of the Term hereof, Landlord may elect to either repair or restore the Premises or to terminate this Lease upon giving notice of such election in writing to Tenant within sixty (60) days after the occurrence of the event causing the damage. If the Lease is terminated, the Rent and all other obligations will cease as of the date of destruction. If Landlord is required or elects to rebuild as herein provided, Landlord will rebuild the damaged or destroyed areas of the Premises within one hundred-eighty (180) days of the casualty. If the Premises cannot be rebuilt within such one hundred-eighty (180) days of the casualty, this Lease shall be automatically terminated, unless otherwise agreed upon by the Landlord and Tenant. If the casualty or the repairing or rebuilding will render the Premises untenantable in whole or in part, a proportionate abatement of the Rent will be allowed from the date when the damage occurred until the date when the Premises have been restored by Landlord, such proportion to be computed on the basis that the leasable area of the portion of the Premises rendered untenantable and not used by Tenant bears to the aggregate leasable area of the Premises. If Landlord elects not to rebuild as herein provided, this Lease shall automatically be terminated.

13.2 **TENANT'S COSTS AND INSURANCE PROCEEDS**. In the event of any damage or destruction of all or any part of the Premises, Tenant shall immediately: (a) notify Landlord thereof, and (b) deliver to Landlord all insurance proceeds received by Tenant with respect to the Tenant's Work to the extent such items are not covered by Landlord's casualty insurance obtained by Landlord (excluding proceeds for Tenant's furniture and other personal property), whether or not this Lease is terminated as permitted in this Section 13.2, and Tenant hereby assigns to Landlord all rights to receive such insurance proceeds. If, for any reason, Tenant fails to receive insurance proceeds covering the full replacement cost of any damaged Tenant's Work, Tenant shall be deemed to have self-insured the replacement cost of such Tenant's Work, and upon any damage or destruction thereto, Tenant shall immediately pay to Landlord the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Landlord's or Tenant's insurance with respect to such items.

13.3 **EFFECT ON LEASE**. Except as set forth in this Lease, unless this Lease is terminated by Landlord pursuant to Section 13.1, this Lease will remain in full force and effect and Tenant will have no right to terminate or cancel this Lease on account of any damage to or destruction of the Premises. There will be no reduction or abatement of Rent as a result of any damage to or destruction of the Premises (except as expressly provided in Section 13.1).

ARTICLE 14
Assignment, Subletting and Encumbrances

14.1 **ASSIGNMENT AND SUBLETTING**.

14.1.1 **Landlord's Consent Required**. Except as set forth in this Section 14, Tenant will not voluntarily or by operation of law assign, transfer, mortgage, or otherwise transfer or encumber (collectively "assign" or "assignment") this Lease or any interest therein or sublet the Premises or any portion thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld, although Landlord may: (i) reject any change of use of the Premises that may conflict with other exclusive rights in the Building or violate any of the restrictions in the Declaration; (ii) reject any sublease of less than the entire Premises; or (iii) require a personal guaranty, security deposit and/or a landlord's lien, and any such rejection will not be deemed to be unreasonable. No permitted assignment or subletting will relieve Tenant of Tenant's covenants and agreements hereunder. A change in the control of Tenant will

constitute an assignment requiring Landlord's consent. The assignment, on a cumulative basis of 50% or more of the voting control of Tenant will constitute a change in control for this purpose. In the event of any proposed sale of Tenant's business that includes the proposed assignment of this Lease by Tenant, Landlord agrees not to unreasonably withhold Landlord's consent to any proposed assignee of the Premises, except as provided above. Landlord agrees that in the event of such an assignment hereunder, all terms and provisions of this Lease will apply to the assignee.

If Tenant desires to assign this Lease or sublet the Premises or any part thereof, Tenant will notify Landlord not later than thirty (30) days prior to the proposed effective date of the assignment or sublease. Tenant's notice will include the name and address of the proposed assignee or subtenant, a true and complete copy of the proposed assignment or sublease, sufficient information as Landlord deems necessary to permit Landlord to determine the financial responsibility, experience, and character of the proposed assignee or subtenant, the terms and conditions of any sale of Tenant's business or assignment of the Lease, and the nature of any improvements to the Premises which the proposed assignee or sublessee or Tenant intends to make in connection with the assignment or sublease. Each such notice will also include complete financial statements of the proposed assignee or subtenant, a detailed description of the intended use of the Premises, and complete resume of past business experience. The request will be delivered together with a non-refundable deposit of $1,000, as reasonable consideration for Landlord's considering and processing the request for consent. Tenant agrees to provide Landlord with such other or additional information and/or documentation as may be requested by Landlord. Landlord as a condition of giving its consent to any assignment or subletting, may require a security deposit and a landlord's lien, depending on the financial viability of the proposed assignee.

The consent of Landlord to any one assignment or sublease pursuant hereto will not be deemed to be a waiver of the provisions hereof with respect to any subsequent assignment or sublease. Each permitted assignment or sublease must be made expressly subject to the provisions of this Lease, and the assignee or subtenant under such assignment or sublease must expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord at the time of such assignment or sublease. No assignment or sublease will impose any obligations on Landlord or otherwise affect any of the rights of Landlord under this Lease nor will it affect or reduce any of the obligations of Tenant hereunder, and all such obligations will continue in full effect as obligations of a principal and not as obligations of a guarantor or surety to the same extent as though no assignment or subletting had been made. Tenant will, concurrently with the execution and delivery of any such permitted assignment or sublease, deliver a duplicate original thereof to Landlord. Any assignment or sublease made in violation hereof is void. Tenant will pay all of Landlord's costs, charges, and expenses, including without limitation, reasonable attorney's fees incurred in connection with any assignment or sublease requested by Tenant. Landlord may accept any Rent or performance of Tenant's obligations from any person other than Tenant without being deemed to have approved or accepted any assignment or sublease. In the event of any default or breach, Landlord may exert any rights or remedies against any Tenant, Guarantor, assignee, or sublessee without first exhausting Landlord's remedies against any other person or entity responsible therefor, or any Security Deposit held by Landlord.

14.1.2 **Assignments Permitted Without Landlord's Consent**. Tenant and Landlord consent in advance to the assignment of this Lease to any wholly owned subsidiary of the Tenant.

14.2 **ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO SUBLETTING**. The following terms and conditions will apply to any subletting by Tenant of all or any part of the Premises and will be deemed included in all subleases under this Lease whether or not expressly incorporated therein and whether or not the sublease has been approved as required herein by Landlord. Tenant hereby assigns and transfer to Landlord all of Tenant's interest in all rents and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Tenant, and Landlord may collect such rents and income and apply same toward Tenant's obligations under this Lease. Landlord will not by reason of the foregoing, nor by reason of the collection of any rents from a subtenant be deemed liable to the subtenant for any failure of the Tenant to perform and comply with any of the Tenant's obligations to such subtenant under any sublease. Tenant hereby irrevocably authorizes and directs any subtenant upon receipt of a written notice from Landlord stating that a breach exists in the performance of the Tenant's obligations under this Lease, to pay the Landlord the rents and other charges due or to become due under any sublease. Landlord at its option and without any obligation to do so, may require any subtenant to attorn to Landlord in the event of a breach by Tenant in the performance of Tenant's obligations under this Lease, in which case, Landlord will undertake the obligations of the sublandlord under such sublease from the time of the exercise of said option to the expiration of such sublease; provided however, Landlord will not be liable for any prepaid rents or security deposits paid by such subtenant to such sublandlord or any other prior defaults or breaches of such sublandlord under such sublease. Any matter or thing requiring the consent of the sublandlord under a sublease will also require the consent of Landlord herein. No sublease approved by Landlord will further assign or sublet all or any part of the Premises without Landlord's prior written consent, which will be in the Landlord's sole and absolute discretion. Landlord's acceptance of rent, or any other payment directly from any third party, shall not be construed as a waiver of any of Landlord's rights or as Landlord's agreement to accept the attornment of any third party, in the event of a termination of this Lease. In no event shall Landlord's enforcement of any provision of this Lease against any third party be deemed a waiver of Landlord's right to enforce any provision of this Lease against Tenant or any other person.

14.3 **LANDLORD'S RIGHT TO TRANSFER OR ASSIGN**. In the event that Landlord transfers its interest in the Premises or the Building to any third party, and the transferee agrees to assume all of Landlord's rights and responsibilities hereunder, Landlord will thereafter be deemed to be fully and forever relieved of all further obligations hereunder and such transferee will thereafter be deemed to be Landlord hereunder.

ARTICLE 15

Default

15.1 **EVENTS OF DEFAULT**. The occurrence of any of the following will constitute an event of default: (I) delinquency by Tenant in the payment of any form of Rent (including Additional Rent) under this Lease and the failure is not cured within five (5) business days after written notice to Tenant from Landlord; (II) delinquency by Tenant in the performance of or compliance with any of the other obligations of Tenant contained in this Lease, for a period of fifteen (15) calendar days after written notice thereof from Landlord to Tenant; (III) filing by or against Tenant or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any state, of a petition of bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee, of all or a portion of Tenant's property, if within sixty (60) calendar days after the commencement of any such proceeding involving Tenant such petition will not have been dismissed; (IV) Tenant's vacation or abandonment of the premises; or (V) any guarantor of this Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under this Lease.

15.2 **REMEDIES**. In the event of default in non-payment of Rent as defined in Section 15.1(I) above, all of Tenant's rights to possession of the Premises will automatically terminate on the date specified in Landlord's five (5) day written notice for payment of Rent or surrender of possession of the Premises pursuant to Section 13-40-104(d), as amended, C.R.S., if Tenant fails to pay such Rent as demanded in said notice. In the event of a default by Tenant under the provisions of Sections 15.1(II) and 15.1(III) above, all of Tenant's rights to possession of the Premises, will automatically terminate on the date specified in Landlord's five (5) day written notice thereof pursuant to Section 13-40--104(e), as amended, C.R.S., if required, in the event Tenant does not cure the notice of default described above. Upon the termination of Tenant's possessory rights, Tenant will peacefully surrender the Premises to Landlord, and Landlord upon or at any time after any such termination may, without further notice, reenter the Premises and repossess them by force, summary proceedings, ejectment, self help, or otherwise, and may dispossess Tenant and remove Tenant and Tenant's property from the Premises and the Building and may have, hold and enjoy the Premises and the right to receive all rental income therefrom. At any time after such termination of Tenant's possessory rights, Landlord may relet the Premises or any part thereof, in the name of Landlord or otherwise for such term (which may be greater or less than the balance of the Term of this Lease) and on such conditions as Landlord, in Landlord's absolute discretion, may determine, and may collect and receive the rents therefor. Unless Landlord so elects as below provided, no such termination of Tenant's possessory rights will cause a termination of this Lease or otherwise relieve Tenant of its liability and obligations under this Lease and such liability and obligations will survive. The occurrence of any event of default under any obligation of Tenant with respect to Tax Impositions, utilities, insurance, Tenant's Share of Condominium Assessments and Insurance, or any obligations of Tenant to any third party will be deemed a default hereunder. The breach or default of any term, condition or provision hereof will be deemed a "material" breach or default. In the event Landlord prepares and serves a five day notice under this Section 15.2, Tenant agrees to pay liquidated damages of $250.00 for Landlord's preparation of such five day notice as a condition of Tenant's right to cure the default specified in the five day notice, and that the $250.00 is liquidated damages only for Landlord having to prepare and serve each five day notice, and will not constitute any election of remedies by Landlord, all of which will remain available to Landlord in the event of Tenant's uncured breach or default hereunder. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy given hereunder or now hereafter existing at law or in equity or by statute. The failure of Landlord to insist at any time upon strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Lease will not be construed as a waiver or relinquishment thereof for the future. The receipt by Landlord of any Rent or any other sum payable hereunder with knowledge of the breach of any covenant or agreement contained in this Lease will not be deemed a waiver of such breach, and no waiver by landlord of provision of this Lease will be deemed to have been made unless expressed in writing and signed by Landlord. In addition to the other remedies provided in this Lease, Landlord will be entitled, to the extent permitted by Applicable Laws, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions, or provisions of this Lease, or to a decree compelling performance of this Lease, or to any other remedy allowed to Landlord at law or in equity.

15.3 **LEGAL EXPENSES**. In the event either Landlord or Tenant will be in default in the performance of any of its respective obligations under this Lease, the party in default will pay to the other party all reasonable attorney's fees and litigation expenses incurred or paid by it in connection therewith.

15.4 **LANDLORD'S DEFAULT**. Landlord will be in default of this Lease if Landlord fails to perform any of Landlord's obligations hereunder, and such failure continues for a period of thirty (30) days after Tenant's written notice to Landlord of such failure; provided, however, if such failure cannot, in the exercise of reasonable diligence, be cured by Landlord within thirty (30) days of Tenant's written notice, Landlord will not be in default hereunder if Landlord commences its curative efforts within such thirty (30) day period and thereafter diligently prosecutes cure thereof until completion so long as such default is cured no later than sixty (60) days after such written notice.

ARTICLE 16
Subordination; Mortgagee Protection

16.1 **ESTOPPEL CERTIFICATES**. Within fifteen (15) calendar days after request therefor by Landlord, Tenant agrees to deliver a certificate in the form presented by Landlord to any proposed mortgagee or purchaser of the Premises, or to Landlord certifying (if such be the case or if not the case, specifying with particularity any exception) to matters requested by Landlord including without limitation the following: (a) that Tenant is in full and complete possession of the Premises, such possession having been delivered by Landlord and accepted by Tenant; (b) that any improvements required to be furnished by Landlord by the terms of this Lease have been completed in all respects to the

satisfaction of the Tenant; (c) that this Lease is in full force and effect and has not been amended, modified, supplemented, or superseded; (d) that there is no existing default on the part of Landlord in the performance of any covenant, agreement, or condition contained in this Lease to be performed by Landlord; (e) that the Tenant does not have any actual or pending claim against the Landlord; (f) setting forth any Rent or other charges that have been prepaid by Tenant, if any; and (g) that the addressee of such certificate may rely on the representations therein made; and certifying as to the dates of commencement and termination of the Term, the date on which Rent commenced to accrue under this Lease, and the date through which Rent and other charges hereunder have been paid.

16.2 **SUBORDINATION; ATTORNMENT; NON-DISTURBANCE.**

16.2.1 **Subordination**. This Lease will be subject and subordinate to any ground lease, mortgage, deed of trust or other hypothecation or security device (collectively "**Security Device**") now or hereafter placed by Landlord upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant agrees that the lender holding any such Security Device will have no duty, liability or obligation to perform any of the obligations of Landlord under this Lease, but that in the event of Landlord's default with respect to any such obligation, Tenant will give any lender whose name and address have been furnished to Tenant for such purpose, notice of Landlord's default. If any lender will elect to have this Lease superior to the lien of its Security Device and will give written notice thereof to Tenant, this Lease will be deemed prior to such Security Device notwithstanding the relative dates of the documentation or recording thereof.

16.2.2 **Attornment**. Subject to the non-disturbance provisions of Section 16.2.3, Tenant agrees to attorn to a lender or any other party who acquires ownership of the Premises by reason of a foreclosure of Security Device, and that in the event of such foreclosure, such new owner will not: (I) be liable for any act or omission of any prior lessor or with respect with events occurring prior to acquisition of ownership; (II) be subject to any offsets or defenses which Tenant might have against any prior lessor; or (III) be bound by prepayment of more than one month's rent.

16.2.3 **Non-Disturbance**. With respect to Security Devices entered into by Landlord, Tenant's subordination of this Lease will be subject to receiving assurance (a "**Non-Disturbance Agreement**") from the lender that Tenant's possession and this Lease will not be disturbed so long as Tenant is not in breach hereof, and attorns to the record owner of the Premises.

16.2.4 **Self Executing**. The agreements contained in this Section 16.2 will be effective without the execution of any further documents; provided however, that upon written request from Landlord or a lender in connection with a sale, financing or refinancing of the Premises, Tenant and Landlord will execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as provided for herein.

ARTICLE 17
Surrender and Holdover

17.1 **SURRENDER**. Upon the expiration or earlier termination of this Lease, Tenant will peaceably leave and surrender the Premises to Landlord broom-clean and otherwise in the condition in which the Premises are required to be maintained by this Lease, except for ordinary wear and tear and any uninsured damage caused by fire, earthquakes, acts of god or the elements not caused by the wrongful act or omission of Tenant. Tenant will surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and will inform Landlord of all combinations on locks, safes, and vaults, if any, in the Premises. Tenant will, at its expense, remove from the Premises on or prior to such expiration or earlier termination all furnishings, fixtures, and equipment situated thereon (including all exterior and interior signs) which are not the property of Landlord as provided in Section 10, and Tenant will, at its expense, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Any property not so removed may become the property of Landlord as provided in Section 10, and Landlord may thereafter cause such property to be removed from the Premises and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage causes by such removal will be borne by Tenant.

17.2 **HOLDOVER**. Should Tenant or any party claiming under Tenant hold over in possession at the expiration of Term by lapse of time or otherwise, such holding over will not be deemed to extend the Term or renew this Lease, and such holding over will be an unlawful detainer and such parties will be subject to immediate eviction and removal. Tenant will pay upon demand to Landlord during any period while Tenant will hold the Premises after expiration of the Term, as liquidated damages, a sum equal to double the monthly rate of Base Rent in effect for the last month of the Term plus double the amount of Tenant's Share of Condominium Assessments and Insurance, and any Tax Impositions, and Tenant will also pay all damages, consequential as well as direct, sustained by Landlord by reason of such holding over.

ARTICLE 18
Environmental Matters

18.1 **DEFINITIONS**. For purposes of this Article 18, the term "**Environmental Laws**" will have the following meanings: (I) any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing preservation, conservation or regulation of the environment, regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment including but not

limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C §9601 et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. ("TOSCA"); the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Clean Water Act, 33 U.S.C. §1251 et seq.; (II) any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment, including but not limited to the Colorado Hazardous Waste Cleanup Act, § 25-16-101, et seq., C.R.S.; the Colorado Hazardous Waste Act, § 25-15-101, et seq., C.R.S.; the Colorado Water Quality Control Act, § 25-8-101, et seq., C.R.S.; the Colorado Air Quality Control Act, § 25-7-101, et seq., C.R.S.; the Colorado Mined Land Reclamation Act, § 34-32-101, et seq., C.R.S.; and the Colorado Underground Storage Tank Law, § 8-20-501, et seq., C.R.S., all as amended; (III) any federal, state or local legislation enacted in the future pertaining to the protection, preservation, conservation or regulation of the environment, and all related amendments, implementing regulations and reauthorizations.

For purposes of this Article 18, the term "**Hazardous Substances**" will have the meaning as defined by CERCLA, the term "**Hazardous Wastes**" will have the meaning as defined by RCRA, and the term "**Environmental Actions**" will mean any notice of violation, correspondence, complaint, claim (including but not limited to claims based on negligence, trespass, strict liability, nuisance, ultrahazardous activity, toxic-tort or detriment to human health or welfare), citation, demand, inquiry or inquiries, report, action, assertion of potential responsibility, lien, encumbrance, or legal or administrative proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, body, or any person or entity respecting: (I) Environmental Laws; (II) public health risks; (III) the environmental condition of the Premises, or any portion thereof, or any Premises contiguous to the Premises, including actual or alleged damage or injury to wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or (IV) the use, exposure, release, generation, manufacture, transportation to or from, handling, storage, treatment, recycling, reclamation, reuse, disposal or presence of Hazardous Substances or Hazardous Wastes either on the Premises or transported off-site for sale, treatment, storage, recycling, reclamation, reuse or disposal; any violation or claim of violation by Tenant of any Environmental Laws by Tenant; any lien for damages caused by, or the recovery of any costs incurred for the investigation, remediation or cleanup of any release or threatened release of Hazardous Substances or Hazardous Wastes on or about the Premises or the Common Areas by Tenant; or (V) the destruction or loss of use of all or any portion of the Premises or the Common Areas, or the injury, illness or death of Tenant, any employee of Tenant, or invitee of Tenant or any other person arising from or caused by the environmental condition of the Premises. For purposes of this Article 18, the term "**Remedial Work**" will mean any investigation, preliminary assessment, site investigation, remedial investigation report, remedial action work plan, site monitoring, containment, cleanup, removal, restoration or other remedial work.

18.2. **COVENANTS**. Tenant hereby covenants and agrees with Landlord as follows:

18.2.1 **Compliance**. Landlord hereby covenants to Tenant that as of the date of this Lease, the Premises and the Common Areas comply with all Environmental Laws. Tenant will comply with all Environmental Laws and will cause the Premises to continue to comply with all Environmental Laws. Tenant shall, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approval required for Tenant's use of the Premises, including, without limitation, discharge of appropriately treated materials or wastes that may be discharged into or through any sanitary sewer serving the Premises. All governmental permits and licenses required under any Environmental Laws will remain in effect or will be renewed in a timely manner, and Tenant will comply therewith. Tenant will satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance and removal of all underground storage tanks on the Premises used in connection with Tenant's business, if any.

18.2.2 **Absence of Hazardous Substances and Hazardous Wastes**. Except for de minimus quantities of Hazardous Substances or Hazardous Wastes which are used, stored, present or handled in the ordinary course of Tenant's business and the use of the Premises and are in compliance with all applicable Environmental Laws, no Hazardous Substances or Hazardous Wastes will be introduced to or used, stored, generated, presented, or handled on the Premises.

18.2.3 **Environmental Actions**. Tenant will immediately notify Landlord of all Environmental Actions relating to the Tenant's occupancy of the Premises or the conduct of Tenant's business on the Premises and provide Landlord with copies of all written notices, complaints, correspondence and other documents relating thereto within three (3) days of Tenant's receipt of the same. Tenant will immediately and diligently pursue the cure and dismissal with prejudice of all Environmental Actions relating to the Tenant's occupancy of the Premises or the conduct of Tenant's business on the Premises to the satisfaction of Landlord, and Tenant will keep the Premises free of any encumbrance arising from any judgment, liability or lien imposed pursuant to any such Environmental Actions.

18.2.4 **Future Environmental Audits**. Tenant will provide such information and certifications which Landlord may reasonably request from time to time to insure Tenant's compliance with this Lease. Landlord will have the right, at any time, but no obligation, to enter upon the Premises, take samples, cause an environmental site assessment to be performed, and conduct such other reasonable activities as Landlord deems appropriate to ensure Tenant's compliance with this Section 18.

18.3 **REMEDIAL WORK**. If any Remedial Work is required, reasonably necessary or desirable under any applicable Environmental Law because of or in connection with the current or future presence, suspected presence, release

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or suspected release of a Hazardous Substances or Hazardous Wastes into the air, soil, ground water, surface water, or soil vapor on, under or about the Premises or any portion thereof by Tenant, Tenant will promptly commence and diligently prosecute to completion all such Remedial Work. In all events, such Remedial Work will be commenced within forty five (45) days after any demand therefor by Landlord or such shorter period as may be required under any applicable Environmental Law. All Remedial Work will be performed by contractors, and under the supervision of a consulting engineer, each approved in advance by Landlord. All costs and expenses of such Remedial Work and Landlord's monitoring or review of such Remedial Work (including reasonable attorneys' fees) will be paid by Tenant. If Tenant does not timely commence and diligently prosecute to completion the Remedial Work, Landlord may (but will not be obligated to) cause such Remedial Work to be performed. Tenant agrees to bear and will pay or reimburse Landlord on demand for all Advances and expenses (including reasonable attorneys' fees) relating to or incurred by Landlord in connection with monitoring, reviewing or performing any Remedial Work. Except with Landlord's prior written consent, Tenant will not commence any Remedial Work or enter into any settlement agreement, consent decree or other compromise relating to the Premises and any Hazardous Substances or Hazardous Wastes or Environmental Laws. Landlord's prior consent will not be required, however, if the presence or threatened presence of Hazardous Substances or Hazardous Wastes on, under or about the Premises poses an immediate threat to the health, safety or welfare of any person or is of such a nature that an immediate remedial response is necessary, and it is not possible to obtain Landlord's prior consent. In such event Tenant will notify Landlord as soon as practicable of all action taken.

ARTICLE 19
TABOR Compliance and Governmental Immunity

19.1 **Governmental Immunity.** No term or condition of this Lease shall be construed or interpreted as a waiver by Tenant of any provision of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as now or hereafter amended. Landlord understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of Tenant, its departments, schools, agencies, boards, officials, agents, employees and assigns is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as now or hereafter amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of Tenant in accordance with such governmental immunity.

19.2 **Tabor Compliance**.

19.2.1 The parties acknowledge and agree that all payments of Tenant for any given Term during this Lease shall constitute currently appropriated expenditures payable from any legally available funds. Tenant's obligations for the payment of any amounts owing under this Lease does not constitute or give rise to a general obligation debt, indebtedness, or multiple year debt or financial obligation whatsoever within the meaning of any constitutional or statutory provision or limitation. Tenant's obligations to pay any amounts under this Lease does not constitute a mandatory charge against or liability or obligation in any ensuing fiscal year beyond the current fiscal year for which a sufficient
amount has been appropriated for payments under this Lease. This Lease does not directly or indirectly obligate Tenant to make any payments beyond the funds legally available and designated for payment for any then current fiscal year. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Tenant's funds or monies.

19.2.2 Tenant agrees that Tenant will annually make request to the appropriate governing authority or its authorized representative by no later than December 15th of the then current year, for the appropriation of annual Base Rent and Additional Rent for the next succeeding Lease Year. On or before December 31st of the then current year, Tenant shall provide to Landlord written notice that either: (i) appropriate governing authority or its authorized representative has effected or intends to effect on a timely basis an appropriation for the ensuing fiscal year which includes sufficient funds to be used to pay the annual Base Rent and Additional Rent for the next Lease Year; or (ii) appropriate governing authority or its authorized representative has not appropriated the funds for the annual Fixed Rent for the next Lease Year, whereupon this Lease shall expire on the following December 31st.

ARTICLE 20
General Provisions

20.1 **SUCCESSORS**. Subject to Article 14, all of the provisions hereof will be binding upon and unsure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

20.2 **NOTICES**. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to other terms of this Lease will be in writing and will be deemed to have been properly given if personally served or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at Tenant's Address in Section 1.18 or Landlord at Landlord's Address in Section 1.6 in the Summary of Terms, as the case may be. Notice delivered in person will be effective on the date of delivery. Notice properly mailed will be deemed to have been delivered on the third business day following deposit in the US mail, postage prepaid and properly addressed. Any party may change its address upon five (5) days' advance notice thereof, similarly given, to the other party in writing at the Addresses set forth in Sections 1.6 and 1.18, respectively, in the Summary of Terms.

20.3 **BROKERS**. Landlord and Tenant each represent and warrant to other that it has had no dealings with any person, firm, Broker(s) or finder other than as named in Section 1.13 in the Summary of Terms in connection with negotiation with this Lease and/or the consummation of the transactions contemplated hereby, and that no broker or other person, firm or entity other than said named Broker(s) is entitled to any commission or finders fee in connection with said

transaction. Landlord and Tenant each agree to indemnify, protect, defend and hold the other harmless from and against any liability for compensation or charges which may be claimed by any such unnamed broker, finder or similar party, by reason of any dealings or actions of the indemnifying Party, including costs, expenses and/or attorneys' fees with respect thereto.

20.4 **HEADINGS AND CAPTIONS**. The headings and captions contained in this Lease are inserted for convenience of reference only, and are not to be deemed part of or to be used in constructing this Lease.

20.5 **JOINT AND SEVERAL LIABILITY**. If there is more than one person or entity named as Tenant, the liability of all such parties for compliance with and performance of the terms and covenants of this Lease will be joint and several.

20.6 **NO PERSONAL LIABILITY OF LANDLORD**. Landlord will not be personally liable to Tenant for the breach by Landlord of any covenant, representation or warranty made by Landlord in connection with this Lease; and Tenant agrees that any judgment for damages rendered in favor of Tenant for any such breach by Landlord will be satisfied only by levy or execution upon Landlord's interest in the Premises and that Tenant will not seek to hold Landlord personally liable for such breach or to levy execution upon any other property or assets of Landlord to satisfy such judgment.

20.7 **TIME OF ESSENCE**. Time is of the essence of this Lease, and all provisions herein relating thereto will be strictly construed.

20.8 **ACCORD AND SATISFACTION**. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated will be deemed to be other than on account of the stipulated Rent, nor will any endorsement or statement on any check or any letter or other communication accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

20.9 **ENTIRE AGREEMENT**. This Lease, the Option, the Construction Addendum, and the Exhibits attached hereto and forming a part thereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant except those herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change, or addition to this Lease will be binding upon Landlord or tenant unless reduced to writing and signed by them.

20.10 **NO RECORDING**. Tenant will not record this Lease or any memorandum of or other reference to this Lease, without the written consent of Landlord. Landlord may, at its option, require Tenant to execute a memorandum or short form of this Lease, suitable for recording purposes and may record such memorandum or short form lease in the real property records of the county in which the Premises are located.

20.11 **GOVERNING LAW**. This Lease will be construed and enforced in accordance with the laws of the State of Colorado. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action will be in Pitkin County, Colorado, at the option of the Landlord, and Tenant expressly consents to landlord's designation the venue of any such suit or action.

20.12 **INTERPRETATION**. Although the printed portions of this Lease were drawn by Landlord, this Lease will not be construed either for or against Landlord solely as a result of the Landlord's drafting of such Lease.

20.13 **ATTORNEYS' FEES**. If any legal action is instituted by either of the parties to enforce or construe any of the provisions, conditions, or covenants of this Lease, or the validity thereof, the party prevailing in any such action shall be awarded all court costs and reasonable attorneys' fees to be set by the court, and the costs and fees incurred in enforcing any judgment entered therein. Attorneys' fees and costs, whenever mentioned in this Lease, shall include those incurred with respect to arbitration proceedings, if any.

20.14 **PARTIAL INVALIDITY**. If any term or provision, in whole or in part, of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid, unenforceable, or inapplicable in the stated circumstances or for stated purposes, in any jurisdiction, then the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid, unenforceable, or inapplicable, shall not be affected thereby. Each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

20.15 **AUTHORITY**. If Tenant is not a natural person, each individual executing this Lease on Tenant's behalf represents and warrants to Landlord that (a) Tenant is duly formed, validly existing, and; in good standing in the State of Colorado, and (b) Tenant has full right and authority to execute and deliver this Lease, and (c) each person signing this Lease on Tenant's behalf is authorized to do so.

20.16 **FINANCIAL STATEMENTS**. Not Applicable.

20.17 **CONFIDENTIALITY OF LEASE**. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms hereof could adversely affect Landlord's ability to negotiate other leases with respect to the Building and impair Landlord's relationship with other

tenants of the Building. Tenant agrees that except with the prior written consent of Landlord, neither Tenant nor any of its partners, members, officers, directors, employees, and attorneys shall disclose the terms and conditions of this Lease to any person other than Tenant's lenders (including the Small Business Administration), investors, and professional advisors. A breach of this covenant by Tenant shall constitute a material default under this Lease that, by its nature, is not susceptible to cure by Tenant. It is understood and agreed that damages alone would be an inadequate remedy for the breach of this provision by Tenant. Landlord therefore shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach, as well as all other remedies available at law or in equity. This Section 20.17 shall not be deemed to prohibit disclosures: (a) required by applicable law, regulation, court order or subpoena, provided, however, that in the case of disclosures required by court order or subpoena, Tenant shall give Landlord written notice prior to making any such disclosure, and an opportunity to contest and/or seek a protective order with respect thereto; (b) to auditors or regulators; (c) to the professional advisors of Tenant; (d) to contractors or agents providing services to Tenant that are contemplated in this Agreement.

20.18 **SECURITY MEASURES**. Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Building. Tenant assumes all responsibility for the protection of Tenant and its agents, employees, and invitees, and the property of Tenant, and its agents, employees, and invitees, from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Building or any part thereof, in which event the cost thereof shall be included as an Operating Cost.

20.19 **CONSTRUCTION OF LEASE**. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against Landlord or Tenant.

20.20 **NEGATION OF JOINT VENTURE**. Nothing in this Lease shall cause Landlord in any way to be construed as an employer, employee, fiduciary, a partner, a joint venturer, or otherwise associated in any way with Tenant in the operation of the Premises. Nothing contained herein shall subject Landlord to any obligation, loss, charge, or expense connected with or arising from Tenant's operation in or use of the Premises.

20.21 **TRIPLE NET LEASE**. The parties agree that the general intent and purpose of this Lease is that this Lease shall be an absolute triple net lease with respect to Landlord, subject only to the specific limitations otherwise set forth in this Lease. Landlord and Tenant intend that the rental return to Landlord shall not be reduced, offset, or diminished directly or indirectly by any cost, charge, or expense due from Tenant and others in connection with the Premises, Building, or land upon which the Building is situated, nor subject to suspension or termination for any reason. Landlord and Tenant agree that all provisions of this Lease shall be interpreted in a manner consistent with and subordinate to such general intent and purpose. Tenant further acknowledges that all tenants of the Building may not be subject to triple net leases.

20.23 **COUNTERPARTS**. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20.24 **LIQUIDATED DAMAGES**. THE PARTIES AGREE THAT LATE OR INSUFFICIENT PAYMENT OF RENT OR OTHER CHARGES PAYABLE HEREUNDER, OR TENANT'S HOLDING OVER, WILL CAUSE LANDLORD TO INCUR COSTS NOT CONTEMPLATED BY THIS LEASE, THE EXACT AMOUNT OF SUCH COSTS BEING EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN. SUCH COSTS INCLUDE ADMINISTRATIVE EXPENSES AND LOST GOOD WILL TO THE BUILDING. THEREFORE, THIS LEASE PROVIDES FOR CERTAIN LATE CHARGES AND OTHER LIQUIDATED DAMAGES. SUCH LATE CHARGES AND DAMAGES REPRESENT FAIR AND REASONABLE ESTIMATES OF THE COSTS AND/OR DAMAGES THAT LANDLORD WILL INCUR UNDER THE CIRCUMSTANCES. ACCEPTANCE OF ANY SUCH LATE CHARGE OR DAMAGES SHALL CONSTITUTE NEITHER A WAIVER OF TENANT'S DEFAULT NOR AN ELECTION OF REMEDY.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commercial Lease as of the day and year first above written.

Dated: August 25, 2016

LANDLORD:

201 N. Mill Street Associates, LLC
A Colorado limited liability Company

By: _____
B. Joseph Krabacher, Manager

[Remainder of this page is intentionally blank; signature appears on following page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commercial Lease as of the day and year first above written.

Dated: August 25, 2016

TENANT:

THE CITY OF ASPEN
A Home Rule Municipality

By: _____
Name: Steve Barwick
Title: City Manager

Exhibit A
LEASED PREMISES

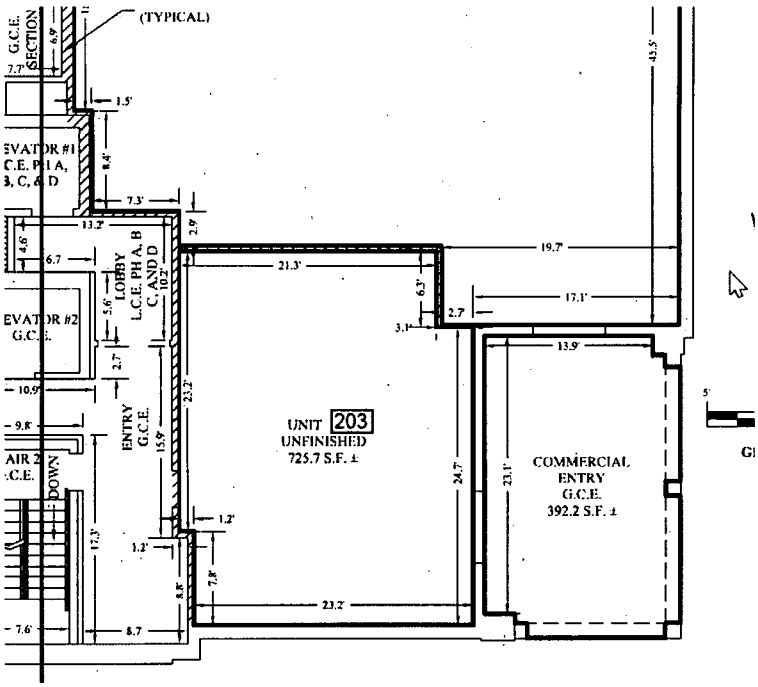


Exhibit B
LEASE OPTION ADDENDUM

In addition to the other provisions appearing in the text of this Lease, the following provisions will supersede any inconsistent provisions of the Summary of Terms or standard provisions.

A-1. **OPTION TO RENEW**: Provided that Tenant is not in material default under this Lease during the initial Term hereof, and provided that Landlord has not sooner provided Tenant with a notice of Landlord's intent to rebuild the Premises or the Building, Tenant is hereby given one option to extend the Term of this Lease (the "**First Option Term**") on the same terms and conditions as contained in this Lease (including adjustments for Rent and Condominium Assessments and Insurance, and any Tax Impositions) for one option period of two (2) additional years following expiration of the Term, by giving notice of exercise of the option (the " **Option Notice**") to Landlord no earlier than one hundred and twenty (120) days and no later than ninety (90) days prior to expiration of the initial Term. Any notice of exercise of the option to extend shall be irrevocable by Tenant once given, and for each Lease Year of the Option Term the Rent will be adjusted in accordance with the provisions of Section 3.3 of this Lease. If any event of material default by Tenant under this Lease will occur subsequent to the exercise of such option and said default is not cured prior to the commencement of the Option Term, then Landlord will have the right, in its sole discretion, to cancel and nullify such option, including any exercise thereof, by serving written notice of such cancellation and nullification on Tenant.

A-2. **ASSIGNMENT**. In the event of any proposed sale of Tenant's business that includes the proposed assignment of this Lease by Tenant, Landlord agrees not to unreasonably withhold Landlord's consent to any proposed assignee or change of use of the Premises although Landlord may: (i) reject any change of use of the Premises that may conflict with other exclusive rights in the Building or violate any of the restrictions in the Declaration; (ii) reject any sublease of less than the entire Premises; or (iii) require a personal guaranty, security deposit and/or a landlord's lien, and any such rejection will not be deemed to be unreasonable. Landlord agrees that in the event of such an assignment hereunder, all terms and provisions of this Lease, including the provisions relating to Option to Renew, will apply to the assignee, except as hereinafter provided to the contrary. Landlord further agrees that the Base Rent in effect at the time of such assignment shall remain in effect for the remainder of the then current Term (i.e., either the initial Term, the First Option Term or the Second Option Term), subject to annual cost of living adjustments and the other provisions of the Lease. Except for any assignment to any wholly owned subsidiary of the Tenant pursuant to Section 4.1.2 of the lease, at the end of the then current Term during which an assignment is made (i.e., either the initial Term, the First Option Term or the Second Option Term), Landlord and such assignee will renegotiate the Rent. If the assignee is a wholly owned subsidiary of the Tenant, the Rent will not be renegotiated. The renegotiated Rent will be at fair rental value (plus Condominium Assessments and Insurance, and any Tax Impositions as then in effect) as determined by Landlord. If the assignee disagrees with Landlord's determination of fair rental value Landlord agrees to negotiate exclusively with the assignee to attempt to reach an agreement for renewal of the Lease upon expiration of the then current Term. If no agreement for extension or renewal (including the new Rent) is reached by the date that is thirty (30) days prior to the expiration of the then current Term, all parties will be released from any further obligation to negotiate and the Lease will terminate at the end of the then current Term. The parties (including any assignee) agree to use best efforts in good faith the reach a mutually agreeable fair rental value for renewal of this Lease during the then current Term, which fair rental value may be determined using market surveys, appraisals and such other reasonable information in the possession of or otherwise available to Landlord and Tenant.

A-3. **DEFINITIONS**. Capitalized terms are defined in the Commercial Lease.

A-4. **CONFLICT.** To the extent of any conflict between the terms in this Addendum and the Commercial Lease, this Commercial Lease shall control.

Exhibit C
CONSTRUCTION ADDENDUM

Tenant agrees, at Tenant's sole cost and expense, to provide all work of whatsoever nature in accordance with its obligations set forth herein as "**Tenant's Work**." In the event of any conflict between the provisions of this Construction Addendum and the provisions of the Lease, the provisions hereof shall control.

1. Tenant's Drawings and Specifications. Tenant agrees to furnish to Landlord the drawings and specifications with respect to Unit 203 consistent herewith and consistent with Landlord's design and construction criteria relating to the construction of Tenant improvements set forth below. Tenant's initial submission of drawings and specifications to Landlord shall occur no later than ten (10) business days prior to the date proposed for submission to the City of Aspen for a building permit. Landlord agrees to immediately deliver such drawings and specifications to Landlord's lender, if required by the lender. Landlord and Landlord's lender shall have ten (10) business days to accept or reject in writing such drawings and specifications. In the event that Landlord and Landlord's lender fail to accept or reject such drawings and specifications in writing during such ten (10) business day period, the drawings and specifications shall be deemed to have been accepted by Landlord and Landlord's lender. No material deviation from the final set of drawings and specifications, once approved by the Landlord, shall be made by Tenant without Landlord's prior written consent. Landlord's review of Tenant's drawings and specifications shall be for the purpose of ascertaining compliance with the requirements of this Lease and Landlord's requirements, and shall in no event extend to any confirmation or authorization, express or implied, that Tenant's drawings and specifications have been prepared in accordance with the requirements of applicable laws, codes, ordinances and regulations, including, without limitation, the Americans with Disabilities Act, and Tenant shall be solely responsible with respect to all necessary compliance with such laws, codes, ordinances and regulations. Approval of the drawings and specifications by Landlord and Landlord's lender shall not constitute the assumption of any responsibility by Landlord or Landlord's architect for their accuracy, efficacy or sufficiency, and Tenant shall be solely responsible for such items.

(a) Unless Landlord otherwise directs in writing, Tenant shall not open Unit 203 for business until all construction has been completed pursuant to the provisions of this Construction Addendum and a certificate of completion has been issued by the City of Aspen with respect to Tenant's Work.

(b) Until such time as Tenant's final drawings and specifications have been approved by Landlord and Landlord's lender, and the City of Aspen has issued a building permit for Tenant's Work, the right of Tenant to enter upon Unit 203 shall be solely for the purpose of inspection, measurement and obtaining information necessary to prepare architectural drawings and construct Tenant's Work.

(c) **LANDLORD'S INTEREST IN UNIT 203 AND THE BUILDING SHALL NOT BE SUBJECT TO ANY LIENS FOR LABOR OR MATERIALS FURNISHED OR DELIVERED IN CONNECTION WITH IMPROVEMENTS MADE IN OR TO UNIT 203 BY OR ON BEHALF OF TENANT OR AT ITS REQUEST. TENANT SHALL HAVE NO AUTHORITY OR POWER, EXPRESS OR IMPLIED, TO CREATE OR CAUSE ANY OTHER TYPE OF LIEN, OR TO CREATE OR CAUSE ANY CHARGE OR ENCUMBRANCE OF ANY KIND AGAINST UNIT 203 OR ALL OR ANY PART OF THE BUILDING. NOTWITHSTANDING THE FOREGOING, ANY MECHANIC'S OR OTHER LIEN FILED AGAINST THE PROJECT IN CONNECTION WITH TENANT'S WORK SHALL BE DISCHARGED OR BONDED BY TENANT, AT TENANT'S SOLE COST AND EXPENSE WITHIN THIRTY (30) DAYS AFTER NOTICE OF THE FILING ANY SUCH LIEN.**

2. Delivery of Unit to Tenant for Tenant's Work. The Unit will be delivered to Tenant on the Commencement Date and subject to compliance with the requirements of this Construction Addendum, Tenant can commence and diligently pursue Tenant's Work on and after the Commencement Date.

(a) Tenant shall have access to Unit 203 for the purposes set forth under the Lease only after Landlord has delivered possession of Unit 203 to Tenant.

(b) Upon delivery of possession, Tenant accepts Unit 203 and acknowledges that Unit 203 is in the condition required by the Lease, subject to all field conditions existing at the time of delivery of possession. Failure of Landlord to deliver possession of Unit 203 in the manner and condition as provided for in this Lease will not give rise to any claim for damages by Tenant against Landlord, or against Landlord's contractor, or permit Tenant to rescind or terminate this Lease.

(c) Tenant agrees to deliver to Landlord written notice of its intent to begin any approved Tenant's Work at least five (5) business days prior to the commencement of any work thereon, so as to allow Landlord to post an appropriate notice of non-liability pursuant to Section 38-22-105(2) of the Colorado Revised Statutes, which will remain in place for the duration of construction of Tenant's Work. In addition, Tenant shall present to Landlord, prior to entering Unit 203 or commencing any work, all permits and insurance certificates required by Landlord or Landlord's lender.

(d) All alterations, additions, trade fixtures and improvements made by Tenant after the date of the Lease shall be deemed to have attached to Unit 203 and to have part of Unit 203 upon such attachment. In the event of termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions, trade fixtures or improvements. Landlord may, however, designate by written notice to Tenant those alterations, decorations, additions, improvements, or trade fixtures which shall be removed by Tenant at the termination of the Lease, and Tenant shall promptly remove the same and repair any damage to Unit 203 caused by such removal. Landlord shall have the right to padlock or otherwise secure Unit 203 and shall also have the right, upon termination of this Lease, to immediately enter Unit 203 in order to remove any items which shall be reasonably determined by Landlord to constitute a violation of existing health,

safety, security or other similar codes or regulations affecting or applicable to Unit 203. Landlord shall provide prior notification to Tenant of such removal, subject to the then existing circumstances. In addition, Tenant hereby agrees to make all repairs and replacements, at its sole cost and expense, for any damage caused to the Building resulting from Tenant's Work.

(e) Tenant shall enter Unit 203 and perform Tenant's Work as its sole cost, expense and risk and Tenant's contractor will agree to indemnify, defend, release and hold harmless the Landlord and its lender and their respective legal representatives, members, managers, agents and employees (each an "**Indemnified Party**") from and against any claim, suit, arbitration or proceeding, whether judicial or administrative in nature ("**Legal Action**"), and any and all claims, obligations, damages, losses, expenses, fines, penalties, fees, judgments, awards, amounts paid in settlement, reasonable legal fees and disbursements, engineering fees, consultant fees, investigation costs, costs of defense of Legal Actions, and any other liabilities of whatever kind or nature directly or indirectly arising out of or in any way relating to Tenant's Work, the performance of Tenant's Work, and/or any mechanics liens arising therefrom. All legal counsel and other professionals to be engaged by Tenant in connection with any defense or investigation required by this Addendum to the Lease shall be reasonably acceptable to Landlord. The Tenant's legal counsel shall control defense of the claim or proceeding, except that no settlement or compromise shall be accepted or entered into which binds an Indemnified Party unless such Indemnified Party has given its prior written consent thereto, which consent will not be unreasonably withheld.

3. Landlord's Work. The City of Aspen has issued a completed "core and shell" letter of completion for Unit 203. Landlord or the developer of the Building has installed the primary Building equipment, systems and main runs to 'stub out' locations in or adjacent to Unit 203. The Unit will be in its "AS IS" condition, less the personal property currently in the space. The following list of items have been provided by Landlord in a location determined by Landlord in or adjacent to Unit 203 or in locations generally consistent with the permitted construction drawings for City of Aspen Permit No. 0021.2014.ARBK.

- Two inch sanitary sewer stub.
- Domestic cold water stub.
- Cold and hot water stub for heat/cooling.
- Basic fire protection sprinkler system grid within Unit 203, for Tenant's modification.
- Central electric utility company connection point and panel.
- Central telephone company connection point at distribution centers.
- Demising walls studs only with insulation.
- Concrete floor.

4. Tenant's Work. Tenant will be responsible for any HVAC, plumbing (including installation of a new water meter in the water meter closet to connect the water feed to the stub out line installed in Unit 203 and if desired by Tenant, a plumbing vent for any sink or water fixture if required by applicable building code), electric, telephone and communications, cable television, security system and audio/visual system equipment serving Unit 203 from the 'stub out' locations provided by Landlord, and Unit 203's interior walls, doors, floor coverings, ceiling systems, finishes, materials, appliances, hardware, cabinetry, trim, fixtures, amenities, security equipment, and A/V equipment. Landlord has installed demising walls required to separate Unit 203 from the adjacent Leased Unit 202 as shown on **Exhibit A** to the Commercial Lease.

Tenant's Work shall, at a minimum, conform to the following requirements and Tenant shall at all times comply with applicable governmental requirements, the requirements of Landlord's insurance underwriter, and the requirements of Landlord's lender:

(a) Field Conditions. Prior to the commencement of its construction, Tenant shall survey the site to inspect, verify and coordinate all existing conditions within Unit 203. Any resultant revisions from such survey shall be incorporated into Tenant's working drawings and specifications and promptly submitted to Landlord for review as approved. Tenant shall verify conditions pertaining to Unit 203 from time to time after commencement of construction of its Unit. Tenant shall verify the accuracy of said installation and shall immediately advise Landlord of any discrepancies. Failure to so notify Landlord shall be deemed as acceptance by Tenant of said installation and layout. Tenant shall coordinate its work with the work of others or with existing conditions occurring above or below Unit 203 and shall make changes from time to time as required to accommodate such work or conditions.

(b) Structural. Any alterations and/or additions and reinforcements to the Building's structure required to accommodate Tenant's Work, must be designed by a certified structural engineer at Tenant's expense. Performance of such work is subject to prior written approval of Landlord.

(c) Mechanical. Tenant's Work may include, as desired by Tenant, all plumbing, heating, ventilating, and air conditioning systems within or directly related to Unit 203, proceeding from the points of connection to utilities as listed above.

(d) Electrical. Tenant's Work may include, as desired by Tenant, all electrical and telephone systems within or directly related to Unit 203 proceeding from points of connection to utilities as listed under Landlord's Work, or modifications to existing systems.

(e) Fire Protection. Tenant's Work may include, as desired by Tenant, modification of the basic fire protection sprinkler grid installed by Landlord. All such work shall be performed, at Tenant's sole cost and expense, by a qualified sprinkler contractor acceptable to or designated by Landlord.

(f) Acoustic. Tenant's Work will comply with the recommendations of Geiler and Associates, LLC dated May 20, 2014 (mechanical noise recommendations) and May 27, 2014 (sound isolation recommendations) and comply with the minimum acoustical ceiling tile specification attached as **Exhibit 1** (1 Hr. Rated Floor Assembly – Typ.).

(g) Project Manual. Tenant's Work will comply with the Project Manual for The Mill Building prepared by David Johnston Architects PC and dated November 4, 2014.

Landlord's approval of the foregoing shall not constitute the assumption of any responsibility by Landlord for the accuracy or sufficiency thereof, and Tenant shall be solely responsible therefor.

5. Procedure, Schedules and Obligations for the Construction of Tenant's Work.

(a) Commencement of Construction. Tenant shall commence construction of Tenant's Work in time to open by the Tenant's desired date of initial opening in Unit 203, and shall carry such construction to completion with all due diligence. The failure of Tenant to comply with procedures and requirements set forth in this Construction Addendum, or to commence or complete the construction of Unit 203 shall have no effect whatsoever upon the Tenant's obligations under the Lease.

(b) General Requirements. Tenant shall submit to Landlord, at least five (5) business days prior to the commencement of construction the following information: (1) the names and addresses of the general, mechanical and electrical contractors Tenant intends to engage in the construction of its Unit; (2) the date on which Tenant's construction work will commence, together with the estimated date of completion of Tenant's construction work and fixture work; (3) evidence of insurance as called for hereinbelow; and (4) Tenant's contractors' performance and payment bonds, to insure the faithful performance of the work in accordance with the Drawings and Specifications approved by Landlord.

1. Tenant shall engage the services of such bondable, licensed contractors who will work in harmony with Landlord's contractors and the contractors employed by the other Tenants or tenants so that there shall be no labor disputes which would interfere with the operation, construction and completion of the Building or with any work being carried out therein.

2. Construction shall comply in all respects with applicable Federal, State, County and/or City statutes, ordinances, regulations, laws and codes. All required building and other permits in connection with the construction and completion of the Tenant's Work shall be obtained and paid for by Tenant.

3. Tenant's Work shall at all times and from time to time be subject to the inspection of Landlord, Landlord's lender and their respective consultants, and supervisory personnel. Specifically, pursuant to Section 1 above, Landlord's lender (and any agents working on behalf of Landlord's lender) will be entitled to review final set of drawings and specifications for Tenant's Work to confirm that Tenant's Work will have no adverse impact on the Building, and are in compliance with applicable laws, ordinances and building codes, and is being performed in a good and workmanlike manner. Landlord's lender will be provided with timely copies of lien waivers, proof of payment, and any construction contracts and subcontractors for performance of the Tenant's Work and provide copies, upon request, of any draw applications, security, guarantees, bonds, permits, and the like related to Tenant's Work.

(c) Temporary Facilities During Construction.

1. Tenant shall pay for all temporary utility facilities, and the removal of debris in connection with the Tenant's Work. Storage of Tenant's contractors' construction material, tools, equipment and debris shall be confined to Unit 203, or in areas which may be designated for such purposes by Landlord. In no event shall any material or debris be stored in service or exit corridors.

2. During construction, Tenant shall strictly comply with Landlord's directives for construction debris and waste removal. Landlord may designate particular contractors to provide such services. At any time, as determined by Landlord, Landlord may require Tenant to assume responsibility therefor. In any event, all such work shall be performed by contractors approved by Landlord.

(d) Insurance.

1. Tenant shall secure, pay for and maintain, or cause its Contractor(s) to secure, pay for and maintain during construction of Tenant's Work within Unit 203, all of the insurance policies required herein, in the amounts as set forth below, and such insurance as may from time to time be required from city, county, state or federal laws, codes, regulations or authorities, together with such other insurance as is reasonably necessary or appropriate under the circumstances. Tenant shall not permit its contractor(s) to commence any Tenant's Work until all required insurance has been obtained and certificates of such insurance have been delivered to Landlord.

2. Tenant's General Contractor's and Subcontractors' Required Minimum Coverages and Limits of Liability.

a. Worker's Compensation and including Employer's Liability Insurance with a limit of not less than $1,000,000, and any insurance required by any Employee Benefit Acts or other statutes applicable where the work is to be performed as will protect the Contractor and Subcontractors from any and all liability under the aforementioned Acts.

b. Commercial General Liability Insurance in an amount not less than $2,000,000 for any one occurrence whether involving personal injury liability (or death resulting therefrom) or property damage liability or a combination thereof with an aggregate limit of $2,000,000. Such insurance shall provide for explosion, collapse and underground coverage.

c. Such insurance shall insure Tenant's General Contractor against any and all claims for personal injury, including death resulting therefrom and damage to or destruction of property of any kind whatsoever and to whomsoever belonging and arising from operations under the Lease and whether such operations are performed by Tenant's General Contractor, Subcontractors, or any of their Subcontractors, or by any one directly or indirectly employed by any of them.

d. Comprehensive Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, and non-owned, in the following amounts:

(1)	Bodily injury, per occurrence for personal injury and/or death	$2,000,000
(2)	Property Damage Liability	$2,000,000

3. Such insurance shall insure the General Contractor and/or Subcontractors against any and all claims for personal injury, including death resulting therefrom and damage to the property of others caused by accident and arising from its operations under the Lease and whether such operations are performed by the General Contractor, Subcontractors, or by anyone directly or indirectly employed by any of them.

4. Tenant's Liability Insurance. Tenant shall provide Commercial Liability Insurance as will insure Tenant against any and all liability to third parties for damages because of personal injury liability (or death resulting therefrom) and property damage liability of others or a combination thereof which may arise from work in connection with Unit 203, and any other liability for damages which Tenant's General Contractor and/or Subcontractors are required to insure against under any provisions herein. Said insurance shall be provided in minimum amounts as follows:

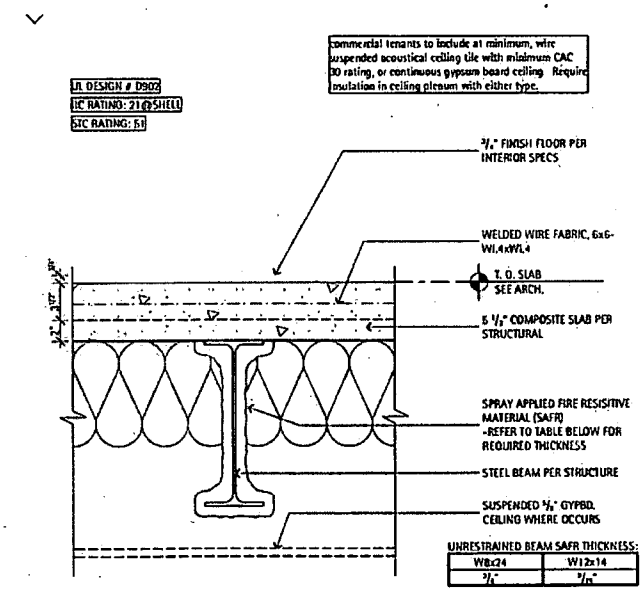
(1)	Bodily injury, per occurrence for personal injury and/or death	$2,000,000
(2)	Property Damage Liability	$2,000,000

5. Tenant's Builder's Risk Insurance. Tenant shall provide an "All Physical Loss" Builder's Risk insurance policy on the Tenant's Work to be performed for Tenant in Unit 203. The policy shall include Tenant, its Contractor and Subcontractors, Landlord, and the partners and agents of Landlord, as insureds as their interests may appear. The amount of insurance to be provided shall be 100% of the replacement cost.

6. All such insurance policies required under this Construction Addendum, except as noted above, shall include Landlord, Landlord's lender, and the owners and agents of Landlord, and any other parties in interest designated by Landlord, as additional insureds; except Worker's Compensation Insurance, which shall contain an endorsement waiving all rights of subrogation against Landlord, its owners and agents, and any other parties in interest designated by Landlord. All such insurance shall be primary and noncontributing with respect to any policies carried by Landlord, and any insurance provided by Landlord shall be carried on an excess basis.

7. Certificates of Insurance shall provide that no reduction in the amounts or limits of liability or cancellation of such insurance coverage shall be undertaken without prior thirty (30) day written notice to Landlord.

Exhibit 1 to Construction Addendum
(1 Hr. Rated Floor Assembly – Typ.)



F3 1 HR. RATED FLOOR ASSEMBLY-TYP.
1 ½" = 1'-0"

MEMORANDUM

TO:	Mayor and City Council
FROM:	Pete Strecker, Finance Director
MEETING DATE:	December 10, 2019
RE:	Resolution #122, Series of 2019 - 2020 Mill Levies

REQUEST OF COUNCIL: This memo outlines information for City Council to consider when adopting the general purpose and Stormwater property tax mill levies for 2020. Adoption of the proposed 2020 mill levy resolution is ***required*** to be submitted to Pitkin County no later than December 15, 2019.

PREVIOUS COUNCIL ACTION: City Council adopted the 2020 budget on November 25, 2019 which included revenue assumptions regarding property tax revenue for the General Fund, Asset Management Plan Fund and Stormwater Fund. These estimates were based on preliminary figures on assessed valuations from the County Assessor.

BACKGROUND: The General Fund and Asset Management Plan mill levy is, by law, subject to the TABOR restrictions. TABOR provides that the amount of revenue from property taxes cannot grow by more than the amount attributable to inflation plus new construction – this formula is intended to mitigate excessive fluctuation in total property tax revenue that could otherwise result from assessed valuations rising or falling. As assessed valuations rose in prior years, the City reduced its tax yield to the TABOR limits by implementing a temporary mill levy credit.

In years past, the Council also applied the TABOR restriction to the separate Stormwater mill levy. Beginning with the 2018 collection year, Council directed staff to assess the full 0.650 mills going forward, to provide the maximum revenue from this tax source as authorized by voters.

DISCUSSION: For 2020, the general-purpose mill levy is calculated at 4.279 mills, or 1.131 mills below the maximum 5.410 mills. For the stormwater mill levy, based on voter approval given at the inception of this taxing authority, the maximum levy of 0.650 mills will be enforced for 2019. The expected collections from the above mill levies equate to roughly $9.1 million and are closely mirrored by the values assumed in the 2020 Budget that was adopted on November 25, 2019.

	2020 Tax Rate	2020 Temporary Credit	2020 Mill Levy Rate
General Property Tax	5.410	1.131	4.279
Stormwater Fund	0.650	0.000	0.650
Total	6.060	1.131	4.929

	2019 Assessed Values	Updated Mill Levy Rate	2020 Property Tax
General Fund	$1,847,004,420	2.353	$4,346,001
Asset Management Fund	$1,847,004,420	1.926	$3,557,331
Total General Mill Levy		4.279	$7,903,332
Total Stormwater Mill Levy	$1,847,004,420	0.650	$1,200,553
Refund/Abatements	$1,847,004,420	0.015	$27,705
Total 2020 Property Tax		4.944	$9,131,590

RECOMMENDED ACTION: Staff proposes that the 2020 mill levies be adopted.

ALTERNATIVES: The proposed mill levies may be amended downward as City Council deems necessary.

PROPOSED MOTION: Move adoption of the resolution attached which approves the 2020 mill levies as proposed.

CITY MANAGER COMMENTS:

ATTACHMENTS:

RESOLUTON NO. 122
(SERIES OF 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO SETTING THE 2019 MUNICIPAL MILL LEVY RATES AND CERTIFYING SAME TO THE BOARD OF COUNTY COMMISSIONERS FOR PITKIN COUNTY.

WHEREAS, the City Manager, designated by Charter to prepare the budget, has prepared and submitted to the Mayor and City Council the Annual Budget for the City of Aspen, Colorado for the fiscal year beginning January 1, 2020 and ending December 31, 2020; and

WHEREAS, the net assessed valuation of the taxable property for the year 2019 in the City of Aspen returned by the County Assessor of Pitkin County was certified on December 2, 2019, is the sum of $1,847,004,420; and

WHEREAS, the net assessed valuation of taxable property in Aspen increased approximately 13.8% between 2018 and 2019 assessment years; and

WHEREAS, under section 9.9 of its Home Rule Charter, the City of Aspen shall constitute a levy of the property taxes incorporated into its adopted budget; and

WHEREAS, a general purpose mill levy has been established at an amount not to exceed 5.410 mills, and is calculated to produce gross ad valorem tax proceeds in the amount of $9,992,294 for collection year 2020; based upon the assessed valuation as determined by the County Assessor, and

WHEREAS, a temporary reduction in general property tax collections is desired by the City Council in order to reduce the tax burden on owners of taxable property within the City of Aspen while preserving the City's ability to increase property taxes to levels previously authorized by City of Aspen voters as described above, and

WHEREAS, C.R.S. section 39-1-111.5 authorizes a local government to certify a refund in the form of a temporary property tax credit or a temporary mill levy rate reduction, provided that the certification includes the gross mill levy, the temporary property tax credit or temporary mill levy rate reduction expressed in mill levy equivalents, and the net mill levy and under C.R.S. section 39-1-111.5(4), the Assessor shall, concurrent with delivery of tax warrants to the Treasurer, itemize duly certified temporary property tax credits or temporary mill levy rate reductions in the manner set forth in C.R.S. section 39-1-111.5(2), and under C.R.S. section 39-1-111.5(5) the tax statements shall indicate by footnote which local government mill levies reflect a temporary property tax credit or temporary mill levy rate reduction for the purpose of effecting a refund; and

WHEREAS, voter approval on November 6, 2007 established the separate City's Stormwater Fund mill levy rate at an amount not to exceed 0.650 mils upon each dollar of assessed valuation on all taxable property within the City annually with no date of

expiration, permitting collection of property tax revenues in excess of the mill levy limitation provided in Article X, Section 20 or the Colorado Constitution for property tax collection in all future years beginning in 2008; and

WHEREAS, said mill levy rate is calculated to produce gross ad valorem tax proceeds in the amount of $1,200,553 for collection year 2020; based upon the net assessed valuation of the City of Aspen as determined by the County Assessor;

SECTION 1

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF ASPEN, Colorado for the purpose of balancing the 2020 budget, and providing a reasonable closing fund balance for said fiscal year, levies the following taxes upon each dollar of the total valuation for assessment of all taxable property within the City of Aspen for the year 2019; that a temporary mill levy rate reduction is authorized; and that the individual mill levies are expressed in terms of the gross mill levy, the temporary mill levy rate reduction shown in mill levy equivalents, and the net mill levy as shown below, which includes a temporary credit of 1.131 mills for the General Purpose mill levy:

	2020 Tax Rate	2020 Temporary Credit	2020 Mill Levy Rate
General Property Tax	5.410	1.131	4.279
Stormwater Fund	0.650	0.000	0.650
Total	6.060	1.131	4.929

	2019 Assessed Valuation	Updated Mill Levy Rate	2020 Property Tax
General Fund	$1,847,004,420	2.353	$4,346,001
Asset Management Fund	$1,847,004,420	1.926	$3,557,331
Total General Mill Levy		4.279	$7,903,332
Total Stormwater Mill Levy	$1,847,004,420	0.650	$1,200,553
Refund/Abatements	$1,847,004,420	0.015	$27,705
Total 2020 Property Tax		4.944	$9,131,590

SECTION 2

The City Clerk is hereby directed to certify and deliver this Resolution to the Board of County Commissioners for Pitkin County on or before December 15, 2019.

ADOPTED THIS 10th day of December 2019,

_____

Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk of the City of Aspen, Colorado, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted by the City Council at its meeting held on December 10, 2019, which Resolution was adopted subsequent to public hearings on the City of Aspen's 2020 Municipal Budget and prior to the final day established by law for the certification of the tax levy to Pitkin County, all was required by the Sections 9.8 and 9.9 of the Aspen Home Rule Charter.

_____

Linda Manning, City Clerk

CITY OF ASPEN

MEMORANDUM

TO: Mayor Torre and Aspen City Council

FROM: Michelle Bonfils Thibeault, Project Manager, Capital Asset

THROUGH: Jeff Pendarvis, Interim Capital Asset Director

MEMO DATE: November 27, 2019

MEETING DATE: December 10, 2019

RE: Schematic Design Contract: Pedestrian Mall Project

REQUEST OF COUNCIL: This is a request to approve Change Order #1 of the Design Workshop contract for the Downtown Pedestrian Mall Improvements project per Resolution 138 of 2019. The purpose of this Change Order is to obtain the next level of detailed drawings (Schematic Design Documents) to guide future development projects and infrastructure improvements along the historic pedestrian malls.

The original Design Workshop contract was approved in 2016 and listed future work on Phases 3, 4, and/or 5 to be added services through Change Order approval.

SUMMARY AND BACKGROUND: The Aspen Pedestrian Mall surface is more than forty years old, and majority of the underground infrastructure has not been upgraded in sixty years. Not only are the bricks significantly deteriorating, but the uneven surface is not compliant with the Americans with Disabilities Act (ADA) regulations. Similarly, many of the trees along the mall are reaching maturity – the combination of their size and confined growing space is detrimental to their health. Significant public outreach and research have been conducted considering possible improvements to the aging Aspen Pedestrian Mall. The result is a Preferred Alternative Plan (see Attachment A). At the September 24, 2019 work session City Council discussed moving forward with a more limited design scope instead of going to detailed design.

DISCUSSION: Several land use applications/building permits/vested rights for redevelopment of buildings along the pedestrian malls add an additional challenge to the aging infrastructure (see Exhibit 1). As buildings are redeveloped, demands on the aging infrastructure will increase including stormwater management, water supply, electric demands, sanitary sewer demands and replacement of deteriorating bricks and leveling uneven ground. Similarly, land use code enforcement of issues such as building height measurement for redeveloping properties and stormwater draining requirements are difficult to manage without at least a Schematic Design level grading plan for the pedestrian mall.

Coordination of private development along the Pedestrian Malls optimizes utility infrastructure improvements. This coordination requires the current proposed Schematic Design as well as future documentation (i.e. construction documents).

High priority issues include:

1. GRADING & BRICKS (see Attachment B):
    a. Variable doorway elevations with entrances having steps or steep slopes from the mall to the building floor
    b. Finished surface to grade to conform to ADA design criteria; needs to match mall grade with the edge of existing right-of-way
    c. Grading trees wells to be ADA compliant with designated tree preservation and identified tree replacement; Rebuild bridges to conform to ADA design criteria
    d. Determine replacement bricks/pavers along malls (existing supply will not be enough)
    e. Existing paving to be re-built to match existing brick color, texture, size and pattern
    f. Rebuild gutter and rolled curb to match existing detail
2. STORMWATER (see Attachment C):
    a. Stormwater Management Master Plan to provide water quality treatment for stormwater runoff from the mall as well as from all private parcel rooftops adjacent to the mall
3. UTILITY UPGRADES (see Attachment D):
    a. Water line sizing to accommodate adequate fire flow recommendations and/or a looped water line
    b. Coordination with Aspen Consolidated Sanitation District to update 60-year old system
    c. Secondary electrical lines to service outdoor restaurant seating and outdoor events

Per Council direction at the September 24, 2019 work session the following items that are discussed in the Preferred Alternative are ***not*** part of the revised Design Workshop contract for Schematic Design documents:

- Redevelopment and/or relocation of the bathroom facility at Wagner Park
- Redevelopment of the playground at Wagner Park
- Redevelopment of the Sister Cities tribute area
- Improved connection at Durant and Mill Street to Pedestrian Mall
- New water features at the Galena and Cooper St intersection
- New Proposed Trees and Site furnishings
- Crossing Typology
- Identified decluttering and new signage & lighting
- Increased bike storage
- Ki Davis modification
- Snowmelt

Whereas the “architectural elements” are more tangible than the underground infrastructure, the underground infrastructure continues to be the bulk of the Preferred Alternative and requires the most public coordination regarding public access, construction phasing and scheduling.

FINANCIAL IMPACTS: The proposed contract for Design Workshop to produce Schematic Design documents for the repair of the Pedestrian Mall is $988,782.

- The spending authority of $1,135,530 was approved in 2016 for Phases I & 2 of which $942,282 was spent.
- The spending authority of an additional $3,688,300 was approved in 2019 for Phase 3, but was reduced during the fall supplemental for change in scope, to a net increase of $806,470 to the multi-year project budget.

Budget Year	Appropriation Amount	Obligated Amount	Balance
2016	$ 1,135,530	$ (72,212)	$ 1,063,318
2017		$ (698,544)	$ (698,544)
2018		$ (142,256)	$ (142,256)
2019	$ 806,470	$ (29,270)	$ 777,200
	$ 1,942,000	**$ (942,282)**	**$ 999,718**

- Of the available $999,718 balance previously approved for this project, the proposed Design Workshop contract for $988,782 will leave a balance of $10,936.

The project funding is through the following sources:

Funding Sources	Fund	Cost Center	% Allocation	2016 Amount	2019 Amount	Total Project Budget
AMP (000)	000	119	26.50%	$300,916	$213,714	**$514,630**
Parks (100)	100	572	35.50%	$403,113	$286,297	**$689,410**
Stormwater (160)	160	328	9.50%	$107,875	$76,615	**$184,490**
Water (421)	421	322	28.50%	$323,626	$229.844	**$553,470**
		Total	100.00%	$1,135,530	$806,470	**$1,942,000**

RECOMMENDED ACTION: "I recommend approval of Resolution #138 of 2019 for Change Order #1 to the Design Workshop Contract to complete Schematic Design Documents for the Downtown Pedestrian Mall Improvement project."

CITY MANGER COMMENTS:_____

EXHIBITS:

1. Map of Properties with land use applications/building permits/vested rights for redevelopment along the pedestrian malls.

ATTACHMENTS:

A: Preferred Alternative Plan
B: Grading Concept and Drawing; Accessibility Concept
C: Stormwater Management + Drainage Concept
D: Utilities + Infrastructure Concept
E: RFP Issued July 5, 2016 and Exhibits
F: Owner Architectural Services CMa
G: Design Workshop Proposal & Fee Schedule

RESOLUTION #138
(Series of 2019)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A CHANGE ORDER BETWEEN THE CITY OF ASPEN AND DESIGN WORKSHOP, LLC AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CHANGE ORDER ON BEHALF OF THE CITY OF ASPEN, COLORADO.

WHEREAS, a Request for Proposals procurement process has been completed to solicit proposals from architectural teams to create a site plan, architectural designs, and construction drawings, for City of Aspen Downtown Pedestrian Mall Improvements project and;

WHEREAS, Phases I: Investigation and Research and Phase II: Conceptual Planning of the contract were completed and continuation of services for future Phases is described in the contract via Change Orders and;

WHEREAS, submitted to the City Council is Change Order #1 for Professional Services between the City of Aspen and Design Workshop, LLC, a true and accurate copies of which is attached hereto as "Exhibit 1."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO,

That the City Council of the City of Aspen hereby approves Change Order #1 between the City of Aspen and Design Workshop, LLC and that the City Council of the City of Aspen hereby authorizes the City Manager to execute such Contract for Architectural Services between the City of Aspen and Design Workshop, LLC, copies of which are annexed hereto and incorporated herein.

INTRODUCED, READ AND ADOPTED by the City Council of the City of Aspen on the 10th of December 2019.

_____
Torre, Mayor

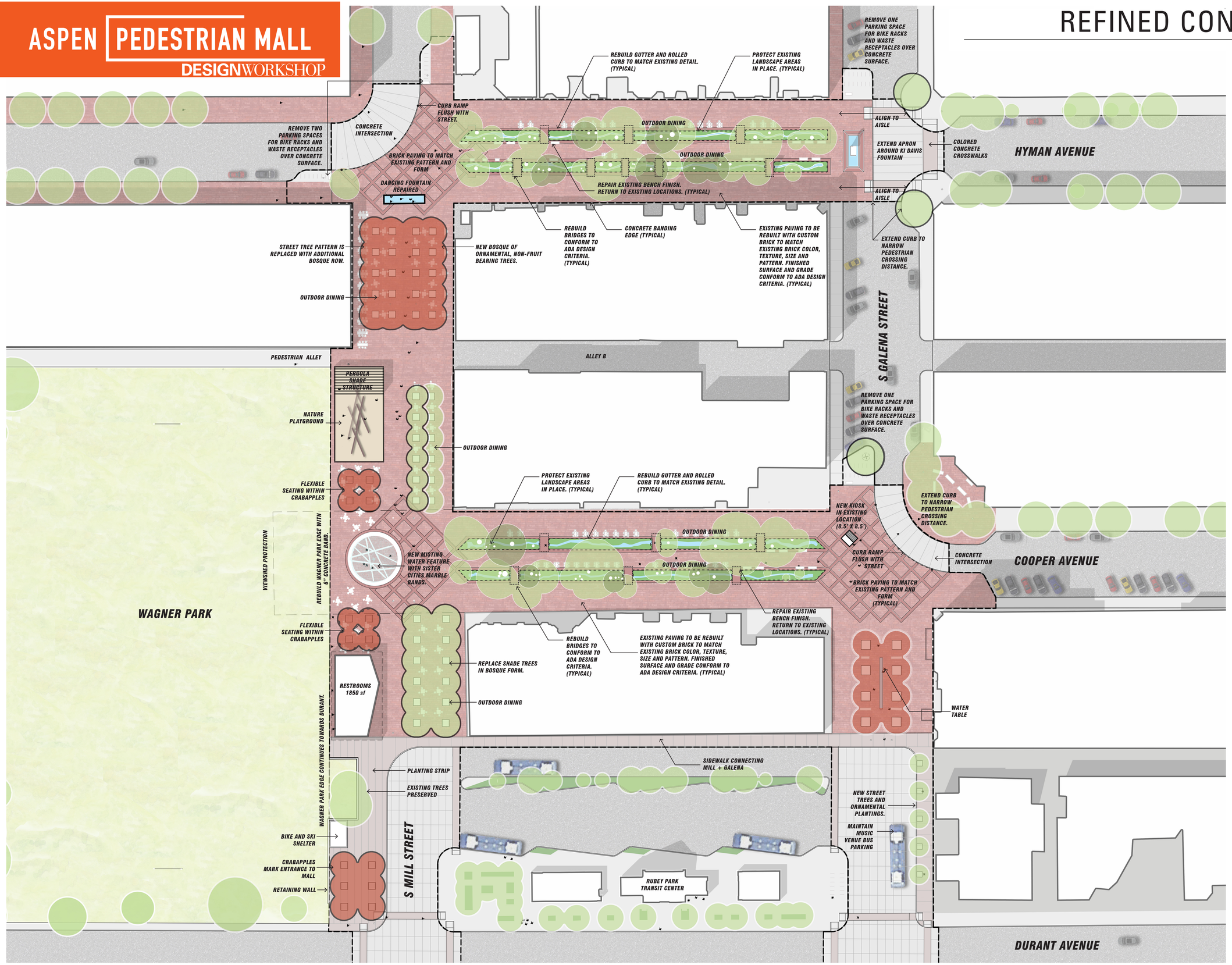
I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on the 10th of December 2019.

_____
Linda Manning, City Clerk

ASPEN PEDESTRIAN MALL

DESIGNWORKSHOP

REFINED CONCEPTUAL DESIGN



SHERWOOD
DESIGN ENGINEERS

58 MAIDEN LANE, 3RD FLOOR, SAN FRANCISCO, CA 94108
(415) 677-7300 | WWW.SHERWOODENGINEERS.COM

Basis of Design Narrative
Aspen Pedestrian Mall
2/1/18

Grading:

The project will replace the surface paving throughout the pedestrian mall up to the Right of Way to improve site accessibility. The existing site is primarily historic brick pavers that will be replaced with new pavers of similar aesthetic using both impermeable and permeable setting techniques.

Hyman and Cooper Avenues:
Hyman and Cooper Avenue have a very charming character, and it is an important goal of the project to preserve the historic nature with the improvements. A median is centered in the streets and the streets slope to two linear landscaped swales, which carry off-site surface water. There are mature trees planted within these landscape swale areas that will remain.

Generally, the streets drain away from the building face and door locations towards a flow line at the edge of the landscape swale. The flowlines created by the drainage pans in the streets will remain in approximately the same location as existing to preserve the watershed extents. The longitudinal slopes within the malls do not exceed more than 2%; however, there are challenges to creating consistent cross-slopes and conforming to the landscape in order to not stress the base of the trees by filling in these landscape areas.

The challenges within the site include the variable doorway elevations with entrances sometimes having steps or steep slopes from the mall to the building finished floor elevation. Therefore, the project has chosen to match the grading at the edge of the existing Right of Way.

From the conform, point a maximum 2% cross slope was held to edge of the pan. The flowline will be maintained as a 3 – 3.5 feet pan. The existing grade throughout the landscape area was held with another slope of maximum 2% in the brick paver median to flowline with mirrored conditions on the other side of each street.

Several sections were analyzed and while there are sections that require fill at the landscape strip, the tree trunk is far behind the edge of paving or mounded enough in the existing condition that it is not expected that additional fill will be required at the tree trunk.

Galena Street:
The Tree Bosque in Galena Street will likely remain with the existing trees in the near-term condition. For the grading plan, it was assumed that this area will be re-paved and designed to be ADA compliant with the existing trees remaining. When these trees have reached the end of their healthy life, the stormwater master plan recommends installing a Silva Cell system with new proposed trees.

The existing site has significant slopes around the base at each of the tree wells and the area is not currently ADA compliant. The improvements will maintain the flow line along the west side of the western row of trees and raise the elevations at the flowline in order to create 2% maximum cross slopes and longitudinal slopes. Due to elevating the flowline, the slopes around the base of the tree are less steep. The location of the tree is offset behind the edge of paving a few feet and will not require grading and filling directly over the tree base. Refer to typical section for Galena Street in the Conceptual Plans.

Mill Street:
Mill Street is intended to have a maximum 2% cross slope with varying longitudinal slopes, not exceeding 4%. Similar to the existing condition, two flow lines have been maintained in the center of the right of way to convey runoff from the east and west sides of the streets to stormwater treatment facilities. The grading extents in Mill Street maximize the areas of 2% slope in the Mall. However, further coordination is required to conform to door locations because each door is unique in its elevation and will need to be studied in more detail. It is assumed each of the doorways will connect to the grades at the Right of Way. At the southern end of Mill Street, in the location of the existing stairs, stairs will be. The proposed strategy assumes replacement of the trees at the southern end of Mill. However, there are two options proposed for the trees. 1) If the trees are replaced, then the elevations of the trees will be raised to work with the 2% sloped area. 2) If the trees must remain, then a designated width will need to be defined that will slope at 2%. This way, a portion of the street will have varying slopes to conform to existing grades. Along the west side of Mill Street, the existing landscape area at Wagner Park is used to conform to the proposed grades. At the intersection of Mill and Hyman, there is an existing fountain which will need to be raised by 0.5' +/- to achieve an accessible cross slope (2% max).

Stormwater Management + Drainage:

The stormwater management master plan provides a strategy to provide water quality treatment for stormwater runoff from the mall/project limits as well as from all private parcel rooftops adjacent to the mall. The strategy provides either surface drainage through interconnected pan systems or shallow concrete storm drain pipes. Stormwater is best treated and conveyed by keeping runoff as close to the surface as possible to maximize gravity flow through low impact development (LID) best management practices (BMPs) before being discharging to the larger municipal storm drain systems. The LID systems in place will improve the quality of stormwater runoff, capturing sediment and removing hard metals. Interspersed LID throughout the site located at low points, adjacent to drain inlets reduce transfer of these pollutants to downstream waters. The three major storm drain pipes located in Hyman Ave., Cooper Ave. and Mill St. convey off-site stormwater and will not receive any treatment. This project will treat all surface features within the Aspen Pedestrian Mall limit of work prior to runoff connecting to the larger City network.

Stormwater District:

The City of Aspen Engineering and City of Aspen Capital Assets department decided to develop the notion of a stormwater district for concept design. While the policy around the district development is not yet defined, the design intent for this project is that approved non-city owned parcels will be allowed to drain towards the publicly owned and maintained stormwater treatment BMPs within the Public Right of Way. This concept reduces encumbrances on private property and allows flexibility for future development. Additionally, this district maximizes the opportunities beyond the Mall by protecting the watershed from construction and improving water quality of the Roaring Fork River.

Low Impact Development Treatment Measures:

The stormwater runoff treatment for this project will be accomplished through a combination of permeable pavers, Silva Cells, high-rate tree well filters and hydrodynamic separators paired with media filters. These BMPs were selected primarily because of their suitability for an urban, mostly impervious area. Also, to preserve the historic character of the Mall, many at grade and above ground BMPs were determined unsuitable for this project site.

Permeable Pavement:
Pervious pavement is a common and practical LID measure used in areas constrained with urban uses because it does not require additional landscaped area. Additionally, it provides both water quality treatment and retention of stormwater which is preferred by the City of Aspen over treat and release methods. The feasibility of this strategy for this site was discussed with the geotechnical engineer, James Kellogg at CTL Thompson Inc., who supported this approach given the native soils on site.

The permeable pavers used in this area would be the same pavers manufactured for impermeable areas but set on a sand surface bedding. Because ADA compliant slopes are of concern, construction techniques were discussed with the vendor who confirmed both permeability and slope control could be met with this alternative subgrade. The permeable pavement section needs to be coordinated in more detail with the snowmelt system as the two should be located in the same areas. This will be further coordinated in the next phase of design to confirm feasibility of this BMP.

Silva Cells:
Silva Cells are modular, below ground structural systems that allow pavement to suspend over tree roots and extend closer to the base of trees. The ability to allow uncompacted fill within the Silva Cells promotes tree growth, and reduces pavement breaks and lifts. Silva Cells provide LID stormwater management when surface runoff is collected and drain directly to the Silva Cells.

Within Galena Street and Mill Street, stormwater runoff will drain into Silva cells that are placed at tree roots filled with amended soil. The runoff will receive treatment through the soil media and then infiltrate into the native soil below- providing both retention and water quality benefits for the larger watershed. The saturated soil will also passively irrigate the trees and the uncompacted soil will allow the tree roots more room for growth.

Silva Cells can either have a piped inlet into the cell chambers or be covered over with a pervious material that allows the water to drain directly into the top of the Silva Cells. The project proposes a combination of both inlets types to maximize collection of runoff into the cells.

The capacity of the water quality volume for the Silva Cells was calculated for each of the 3 Silva Cell sizes- 1x, 2x and 3x. One foot was subtracted from each system height based on an assumption of where the inlet pipe will enter the system. A

35% total available pore storage for loamy sands was assumed. The dimensions for each system are shown on the stormwater plan.

Hydrodynamic Separator & Media Filter:
For areas where LID treatment at grade is not possible, below ground mechanical filtration is proposed. The system will be installed within the existing storm drain system. The combination of the media filters and hydrodynamic separator create a treatment train for stormwater to trap particulates and absorb pollutants into the units. Hydrodynamic separation and media filtration alone do not meet the 90% TSS removal threshold required by the City of Aspen and are placed in series for greater pollutant removal rates. Media filters are cartridges that are placed directly into an existing inlet structure and are typically contracted with a proprietary manufacturer. Media filters are replaced once every few years. Similarly, a hydrodynamic separator will require a separate unit, placed in-line with the storm drain system. The systems also allow the project to treat a watershed beyond the current project limit of work.

High Rate Bioretention:
High rate bioretention, such as a proprietary Filterra or Tree-Pod system are recommended to treat two private parcels that will likely need to drain towards Galena Street. This system would capture only the water quality event and the larger storms would continue overland towards Galena Street. Because this treatment is required, a storm drain main will need to be extended in Galena Street and connect to a storm drain main at the intersection of Hyman and Galena. The storm drain main shall be extended to collect the runoff from these two private parcels.

Alley Conveyance:

The understanding is that it will be challenging to modify the alleyway drainage given the existing utilities in that location. If the alley will be improved to replace the sewer line, it is recommended a shallow storm drain should also be placed below ground. If the alley will remain unimproved with no new sewer system, it is recommended to keep existing surface drainage in place. The preferred alternative improves the existing flow line to be a more formal valley gutter/pan system.

Alternatives:

The stormwater management plan presented as the preferred alternative is a master plan for runoff treatment throughout the Mall. However, there are several areas which require further study in the next phase of design:

1) *Galena Street*: the preferred concept is for Silva Cells and new trees to replace the existing trees. The alternative solution for stormwater management would be a below ground filtration device installed at the location of the existing catch basin.
2) *Southern Mill Street*: the preferred concept is for Silva Cells and new trees to replace the existing trees. The alternative solution for stormwater management if the existing trees remain is to convey the runoff at grade or in a shallow storm drain pipe to the central Silva Cell basin, or to a below ground filtration device before it outlets into the existing 36” storm drain.
3) *Hyman/Cooper Avenue*: If permeable pavement is not feasible in Cooper Avenue, the runoff could potentially flow to the proposed central Silva Cell system. If it is not feasible in Hyman Avenue, the runoff could flow to the proposed filtration system further downstream in Mill Street.
4) *General*:
    a. If the City of Aspen does not accept shallow storm drain pipes, the system may need to include more below ground filtration than preferred low impact design BMPs.
    b. Several BMPs not selected for this site were considered in the concept alternatives phase. These include bioretention, flow through planters, tree well filtration, structural soil and underground infiltration galleries. For various reasons these BMPs were not appropriate or desired for the project site. However, they may be revisited in detailed design if the preferred treatment methods are not feasible.

Calculations:

All calculations for water quality volume were calculated in accordance with the City of Aspen Urban Runoff Management Plan (URMP). The soils on site were assumed to be Hydraulic Soil Group B per figure 3.1 in the URMP. The infiltration rate listed in the URMP is an initial rate of 4.5 in/hr and a final/saturated rate of 0.6 in/hr. The URMP guidance requires that infiltration rates shall be at 3 in/hr for some types of BMP to be suitable. As such, the design rate for all infiltration BMPs was considered to be 3 in/hr and BMPs are assumed to not require underdrains. It is recommended that soil infiltration testing be performed prior to detailed design and that the City be further engaged on minimum infiltration requirements and draw-down times.

All Water Quality Control Volume (WQCV) calculations are based on the formula provided within Chapter 8 of the URMP:

$$Volume\ (ft^3) = WQCV\ in\ Watershed\ inches\ x\ \frac{1ft}{12\ in} x\ Area\ (sf)$$

For a site that is 100 percent impervious, the WQCV corresponds to 0.26 watershed-inches (i.e. the storage volume required for a BMP is equivalent to 0.26 inches of runoff distributed over the area tributary to the BMP). A diagram provided within the URMP was used to determine the WQCV for each watershed and is included in the BMP summary table.

Utilities and Infrastructure

The aging infrastructure at Aspen Pedestrian Mall is inadequate for future development. Planned growth requires utility upgrades to improve the conditions of the utilities and some cases, increase the capacities of the systems. Primarily, the project will provide a new water line through the site and upgrade all of the secondary electrical.

The utilities under evaluation are located through the alleyway. These utilities include the sanitary sewer, gas, telecomm, and primary electrical. Should the sanitary sewer be replaced due to the need to increase capacity or due to age, the gas, fancies utilities and primary electrical can potentially be replaced as well. The determination of the replacement of these utilities will be developed further in the next phase of design.

Water

The existing water lines within the Mall were constructed over 60 years ago, with minimal planned upgrades over the years. The expected service life for the water system is imminent, so the project plans to upgrade these utilities. While there are no reported issues in existing capacity the water line in Cooper Avenue is undersized for current fire flow recommendations.

The water mains will be interconnected to provide a loop, which will increase the capacity of the system and provide redundancy to the system in the event of a shutdown. All existing laterals will connect to this new line. The looped water system was selected for many reasons including: protection of the existing large growth trees on Hyman and Cooper, the ability to impact the Mall less when there is redevelopment, and the limited impact to private buildings. The water lines will be placed as close to the building as possible to ease connection in future redevelopment, while remaining clearance of tree drip lines to the greatest extent feasible.

Storm Drain:

The capacity of all storm sewer infrastructure is assumed to be acceptable based on anecdotal information. Additionally, increased runoff is not expected with planned growth since the area is nearly 100% impervious. Runoff is anticipated to decrease in the future with the addition of LID BMPs discussed in the previous section.

The storm utilities were observed through video inspection by the City of Aspen. The storm drain in Cooper Avenue was unable to be fully viewed due to mud build-up. The City's preference is to maintain this line, but further investigate why the mud-build up is so severe and fix the primary issue. If the line needs to be replaced, alternatives to be considered include replacing the line on the southern edge of Cooper Avenue or removing the line and upsizing the main on Hyman Avenue.

The Hyman Avenue main is in good working condition with the exception of a few noted roots. It will be maintained in place, with improvements as needed to minimize further root intrusion due to tree impacts.

The 36 inch storm drain on Mill St. is in good condition and no improvements will be required as a part of the Aspen Pedestrian Mall project.

As previously discussed, there will be a select locations where small (6-12") storm drains are proposed to convey site drainage to treatment BMPs. Generally these are shallow pipe installations which follow the grade of the site in order to keep stormwater as close to the surface as possible.

Sewer:

There are concerns about the capacity of the existing sewer system within Mill Street due to surging from peak flow from the hotel. The sewer system was constructed over 60 years ago and its expected service life is coming to an end. While there are options for replacement, these will be coordinated with the Aspen Consolidated Sanitation District at the next design phase.

Electrical:

The primary electrical utilities are generally located in the east-west alleys with some additional lines within the Mall. The age of the existing primary electrical distribution is approximately 30-40 years. Due to this age, it is expected to need replacement soon- however, due to its location within the alley's it is proposed that all infrastructure in the alley be upgraded at the same time- likely whenever the sewer will be upgraded. Transformer replacements in the alleys for additional capacity may be needed and will need to be closely coordinated with the City.

The secondary electrical lines are under capacity and will be replaced with (2) 4-inch conduits throughout the Mall.

Gas:

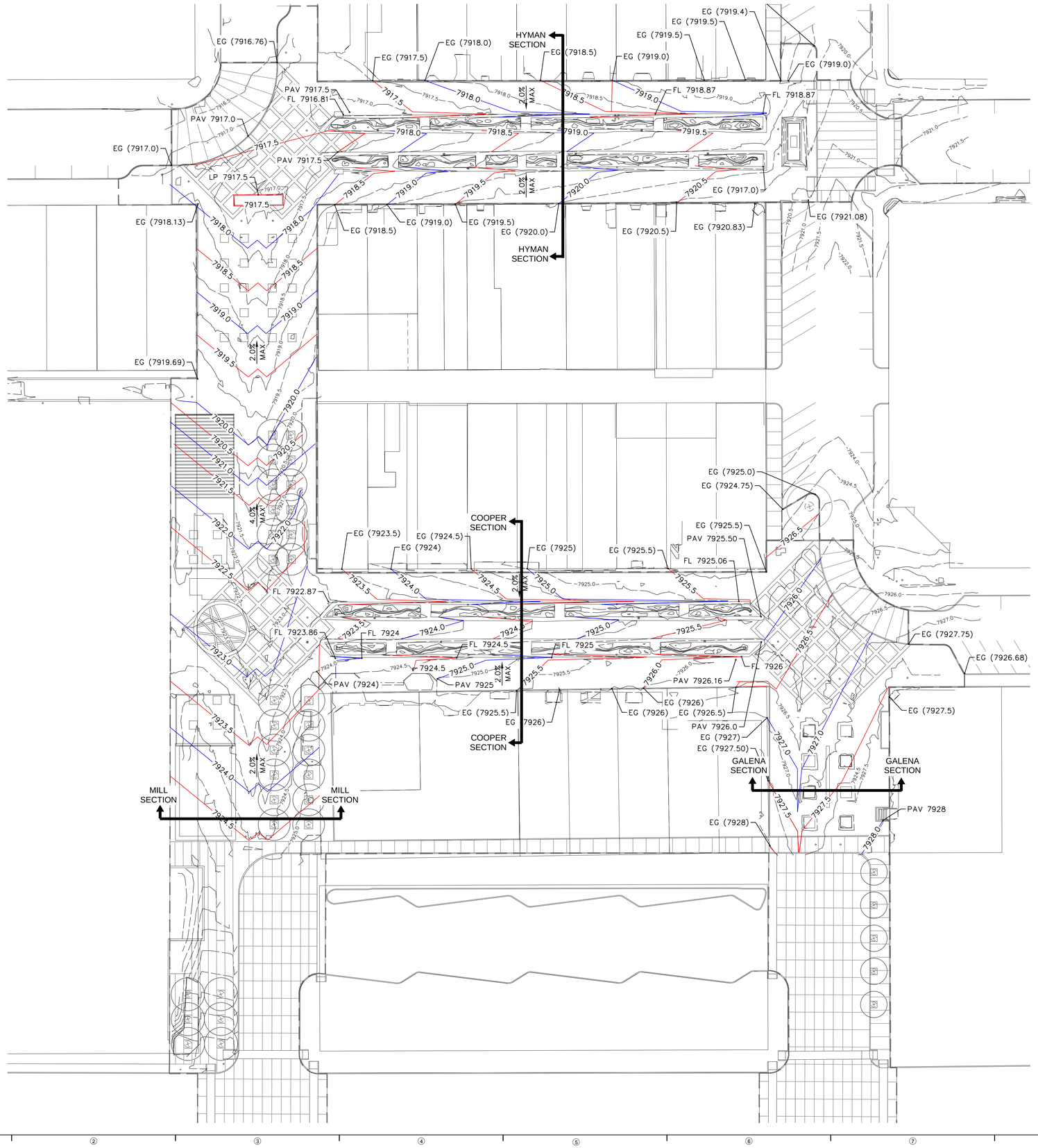
The age of the gas utility lines is unknown but is assumed to have been constructed at or around the same time as the storm and sewer infrastructure. While there are no planned improvements, replacement may be advantageous if other work within the alley is being completed as part of this Pedestrian Mall project.

Cable:

The cable utilities were constructed approximately 25 years ago and are located primarily within the east-west alleys. Comcast is the cable provider to this area and did not foresee immediate needs for replacement or capacity. This will be determined in coordination with Comcast at a later phase. Separately, the City of Aspen is considering a moratorium on utility improvements within the Mall following construction, so further coordination with the franchise utilities will be required in the next phase of design.

Fiber/Telephone:

The existing concrete duct bank for fiber/telephone is located below the Mall on S. Mill St. with distribution located in east-west alleys. Century Link is the telecom provider to this area and did not foresee immediate needs for replacement or capacity. Separately, the City of Aspen is considering a moratorium on utility improvements within the Mall following construction, so further coordination with the franchise utilities will be required in the next phase of design.



GRADING NOTES:

1. CONTOURS WILL CONFORM TO EXISTING GRADES AT RIGHT OF WAY.
2. GRADES AT DOOR ALONG MILL STREET WILL BE SLOPED AS REQUIRED TO PROVIDE ACCESSIBLE LANDINGS.

LEGEND

- LIMIT OF WORK
- EXISTING MAJOR CONTOUR — 7920.0
- EXISTING MINOR CONTOUR — 7920.5
- PROPOSED MAJOR CONTOUR — 7920.0
- PROPOSED MINOR CONTOUR — 7920.5

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SHERWOOD
DESIGN ENGINEERS

ASPEN PEDESTRIAN MALL REDEVELOPMENT

North

0 15' 30' 60'

ISSUE DATE: 2/8/18

REVISIONS

DRAWN: REVIEWED:

PREFERRED ALTERNATIVE

PROJECT NUMBER: 5657

SHEET NUMBER

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ASPEN PEDESTRIAN MALL REDEVELOPMENT

CONNECT TO EXISTING 12" WATER LINE

HYMAN SECTION

CONNECT TO EXISTING WATER LINE

12" DIP (E) W

8"

15"

8" W

8" DIP

CONNECT TO EXISTING ELECTRICAL

1

COOPER SECTION

(E) 6" DIP

EXISTING STORM DRAIN PIPE TO REMAIN

8" SD

(2) 4" ELECTRICAL CONDUITS (TYP. ALL)

MILL SECTION

GALENA SECTION

6"

CONNECT TO EXISTING 8" WATER LINE

CONNECT TO EXISTING ELECTRICAL

SHEET NOTES

1. SANITARY SEWER, GAS AND PRIMARY ELECTRICAL DISTRIBUTION WILL BE DETERMINED IN SCHEMATIC DESIGN.

GENERAL NOTES

1. ALL WATER AND ELECTRICAL MAINS WITHIN THE LIMIT OF WORK WILL BE DEMOLISHED UNLESS WITHIN EXISTING TREE ROOTS.
2. ALL BUILDING WATER SERVICE LATERALS TO BE RECONNECTED TO THE PROPOSED WATER MAINS.
3. WATER MAINS TO BE INSTALLED 10 FT CLEAR OF SANTIARY AND 4' CLEAR OF STORM SEWER MAINS.
4. BUILDING LATERALS NOT SHOWN.

LEGEND

- EXISTING WATER PIPE
- PROPOSED WATER PIPE
- EXISTING STORM DRAIN PIPE
- PROPOSED STORM DRAIN PIPE
- PROPOSED SECONDARY ELECTRICAL CONDUIT

NORTH

0 15 30 60
ORIGINAL SCALE: 1"=30'-00"

ISSUE DATE: 2/8/18

REVISIONS

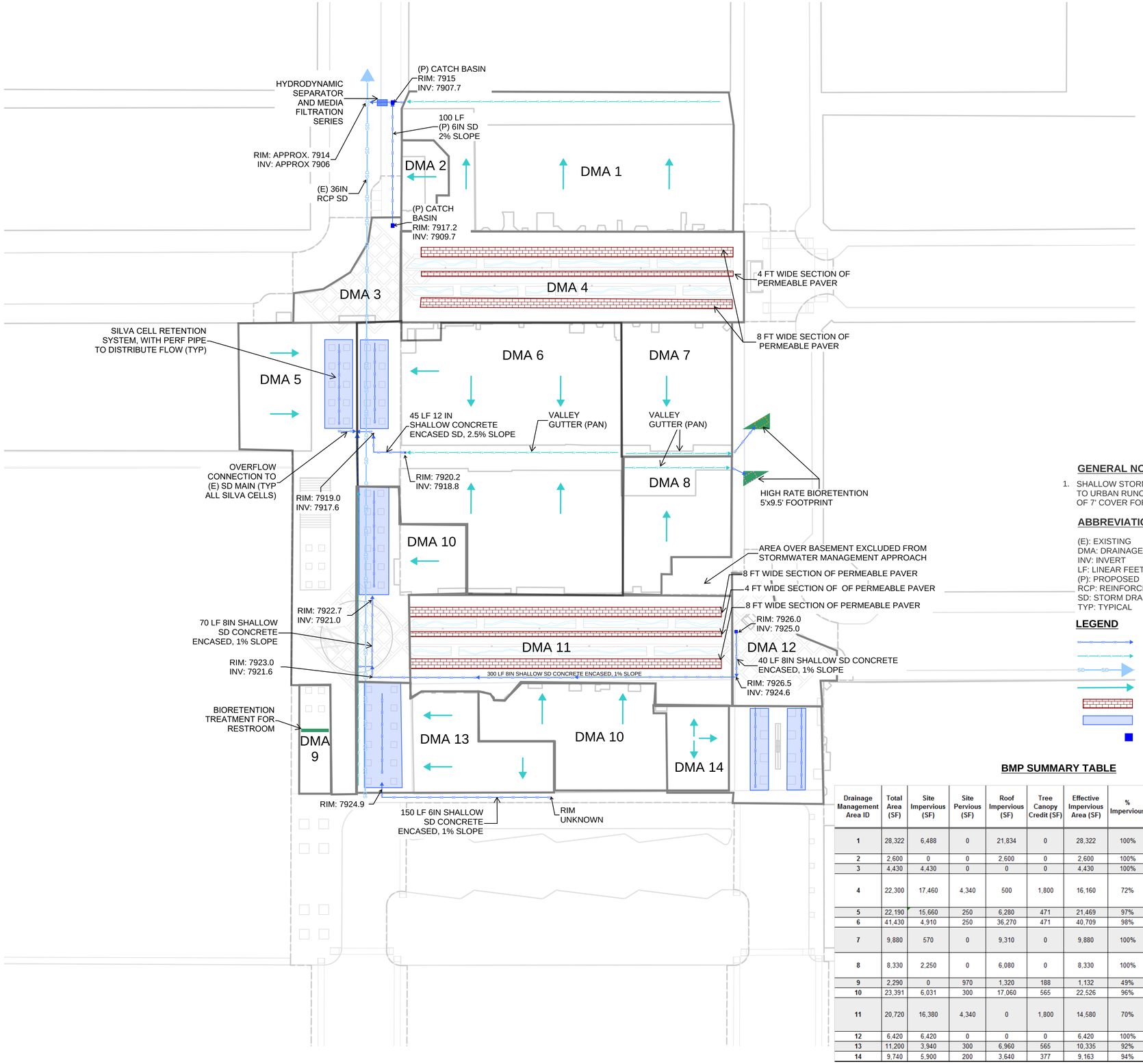
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GENERAL NOTES

1. SHALLOW STORM DRAIN REQUIRES A VARIANCE TO URBAN RUNOFF MANAGEMENT PLAN MINIMUM OF 7' COVER FOR STORM SEWERS

ABBREVIATIONS:

(E): EXISTING
DMA: DRAINAGE MANAGEMENT AREA
INV: INVERT
LF: LINEAR FEET
(P): PROPOSED
RCP: REINFORCED CONCRETE PIPE
SD: STORM DRAIN
TYP: TYPICAL

LEGEND

- PROPOSED STORM DRAIN
- PROPOSED FLOW LINE
- DIRECTION OF FLOW
- EXISTING STORM DRAIN PIPE
- PERMEABLE PAVEMENT
- SILVA CELL SYSTEM
- CATCH BASIN

BMP SUMMARY TABLE

Drainage Management Area ID	Total Area (SF)	Site Impervious (SF)	Site Pervious (SF)	Roof Impervious (SF)	Tree Canopy Credit (SF)	Effective Impervious Area (SF)	% Impervious	WQCV Coefficient	WQ Volume (CF)	Treatment Method
1	28,322	6,488	0	21,834	0	28,322	100%	0.26	614	Hydrodynamic Seperation & Media Filtration
2	2,600	0	0	2,600	0	2,600	100%	0.26	56	
3	4,430	4,430	0	0	0	4,430	100%	0.26	96	
4	22,300	17,460	4,340	500	1,800	16,160	72%	0.14	260	Two 8', One 5' sectionof Permeable Pavement
5	22,190	15,660	250	6,280	471	21,469	97%	0.24	444	Silva Cell - 2X
6	41,430	4,910	250	36,270	471	40,709	98%	0.25	863	Silva Cell - 3X
7	9,880	570	0	9,310	0	9,880	100%	0.26	214	Tree Pod -5'x9.5' Footprint, 4'X4' Tree Grate
8	8,330	2,250	0	6,080	0	8,330	100%	0.26	180	Tree Pod -5'x9.5' Footprint, 4'X4' Tree Grate
9	2,290	0	970	1,320	188	1,132	49%	0.1	19	TBD
10	23,391	6,031	300	17,060	565	22,526	96%	0.23	448	Silva Cell - 2X
11	20,720	16,380	4,340	0	1,800	14,580	70%	0.14	242	Two 8', One 5' sectionof Permeable Pavement
12	6,420	6,420	0	0	0	6,420	100%	0.26	139	DMA 10- Silva Cell
13	11,200	3,940	300	6,960	565	10,335	92%	0.21	196	Silva Cell- 2X
14	9,740	5,900	200	3,640	377	9,163	94%	0.22	179	Silva Cell - 2X

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ASPEN PEDESTRIAN MALL REDEVELOPMENT

NORTH

0 20 40 80
ORIGINAL SCALE: 1"=40'-00"

ISSUE DATE: 2/8/18

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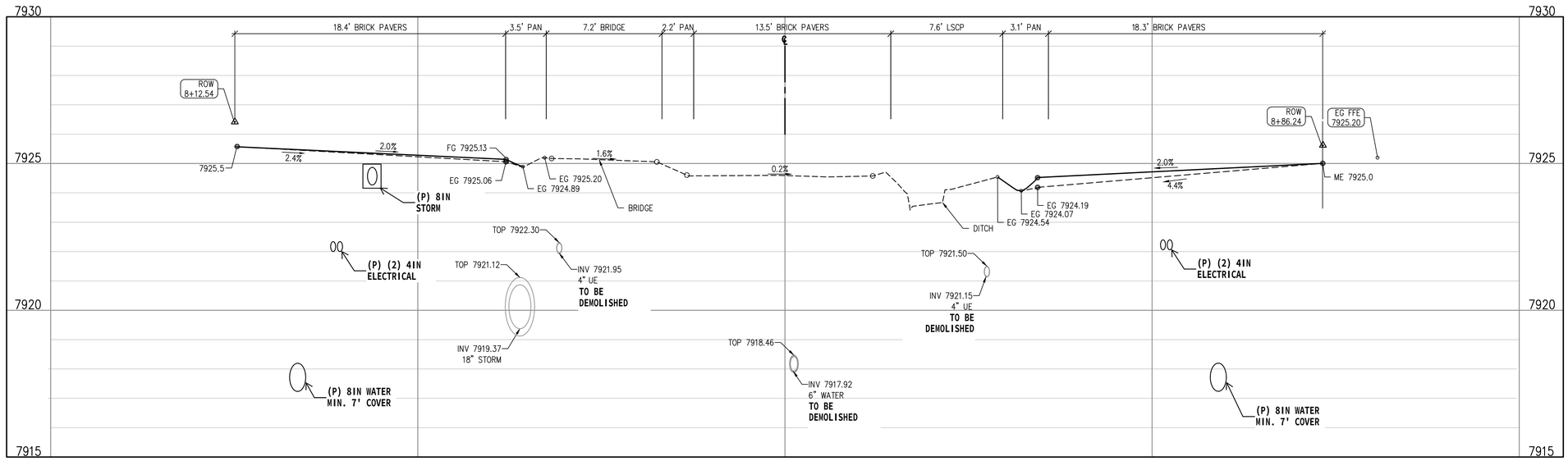
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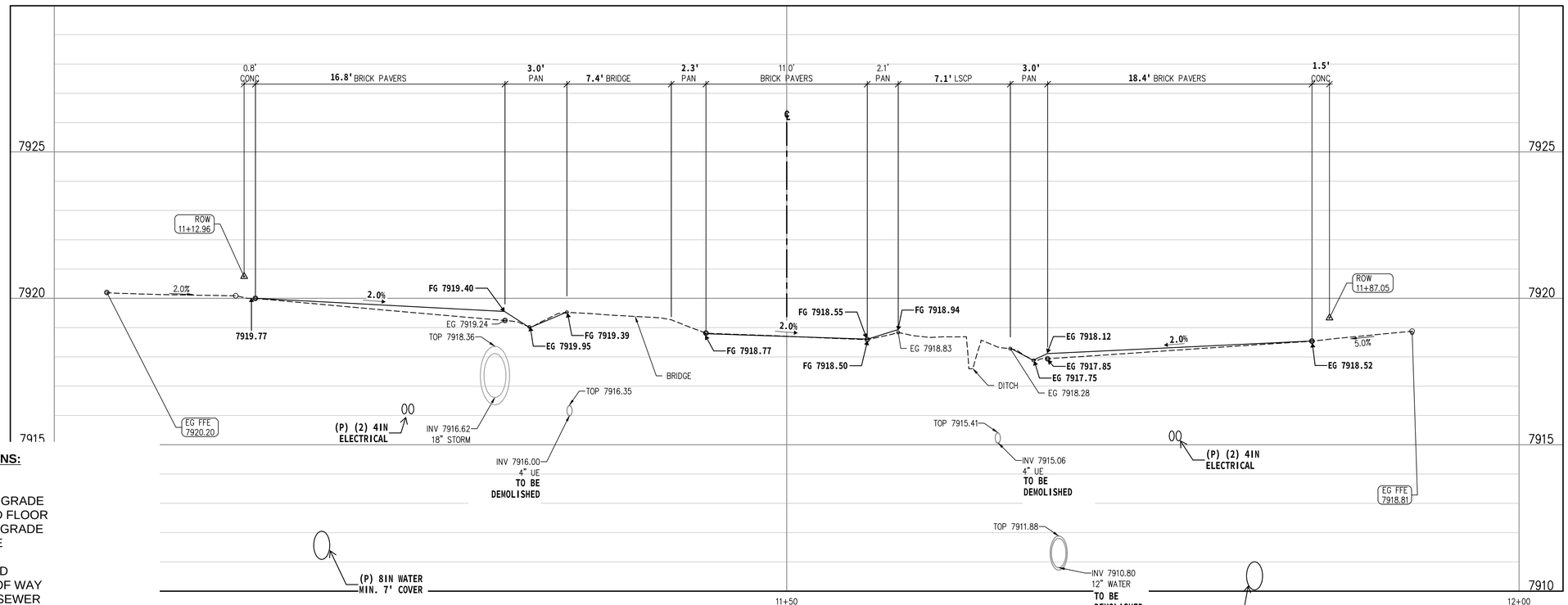
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COOPER

SCALE: 1"=4' HORIZ
1"=2' VERT



HYMAN

SCALE: 1"=4' HORIZ
1"=2' VERT

ABBREVIATIONS:

(E): EXISTING
EG: EXISTING GRADE
FFE: FINISHED FLOOR
FG: FINISHED GRADE
FL: FLOW LINE
INV: INVERT
(P): PROPOSED
ROW: RIGHT OF WAY
STM: STORM SEWER
TYP: TYPICAL
SSEW: SANITARY SEWER
UE: UNDERGROUND ELECTRIC
UFO: UNDERGROUND FIBER OPTIC

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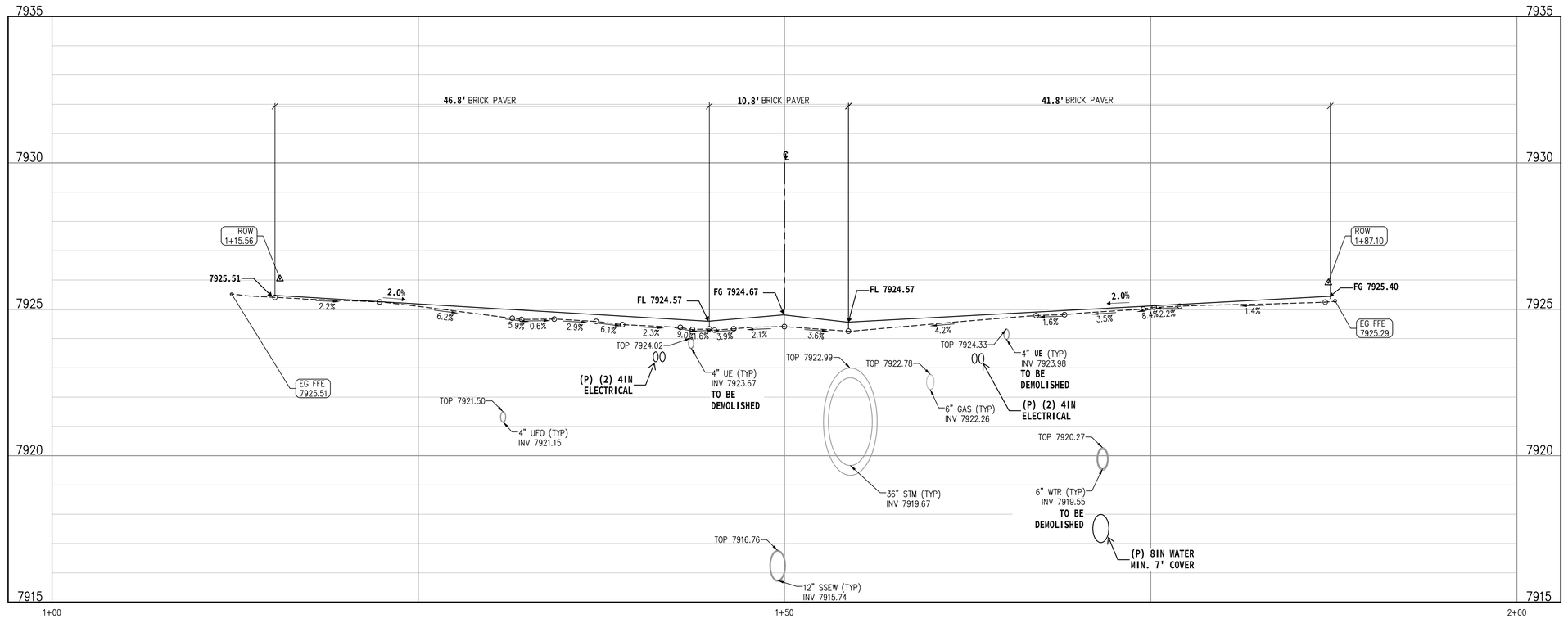
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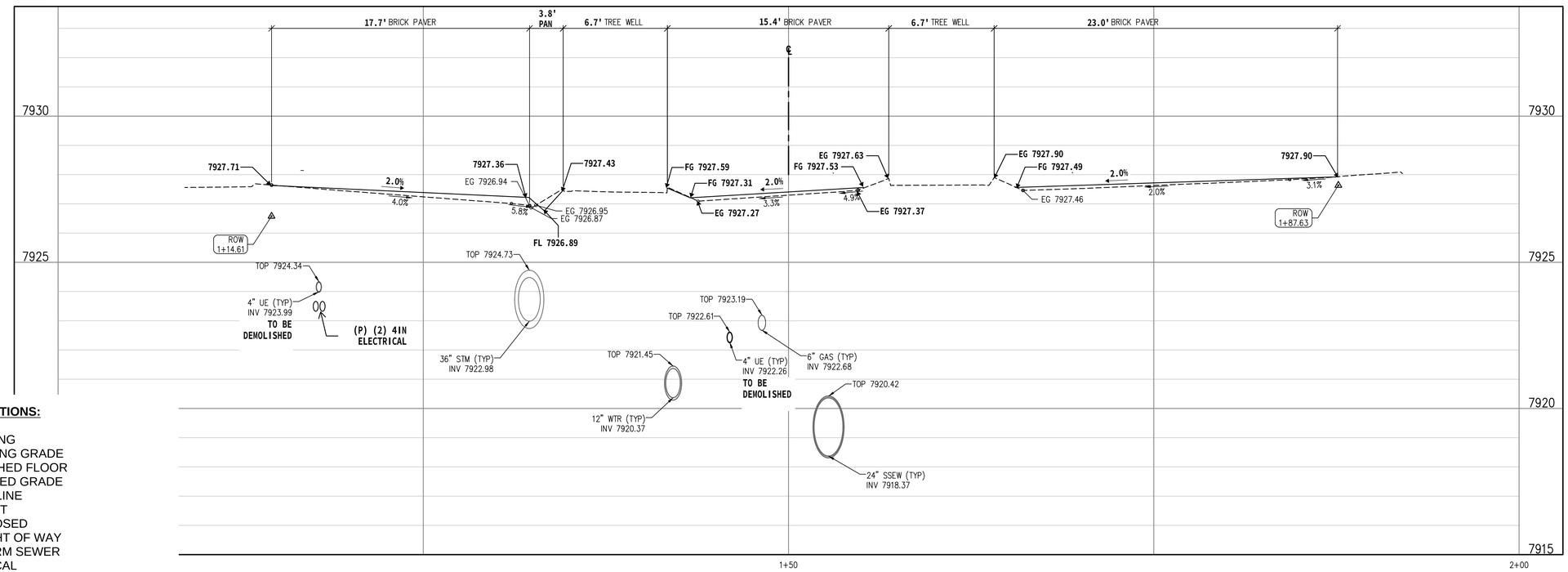
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MILL

SCALE: 1"=4' HORIZ
1"=2' VERT



GALENA

SCALE: 1"=4' HORIZ
1"=2' VERT

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Contract Exhibit C - Issued RFP including exhibits

REQUEST FOR PROPOSALS

Professional Design Services - Downtown Pedestrian Mall Improvements



City Project Number: 2016-001

ISSUE DATE: July 5, 2016
CLOSING DATE: August 18, 2016

THE CITY OF ASPEN

City of Aspen Purchasing Department
130 South Galena Street
Aspen, Colorado 81611
(970) 920-5079
(970) 920-5119
www.aspenpitkin.com

Contract Exhibit C - Issued RFP including exhibits

THE CITY OF ASPEN

REQUEST FOR PROPOSALS

The City of Aspen is accepting sealed proposals for **professional design services from highly qualified multi-disciplinary consultant teams** until **2:00PM, August 18, 2016** at which time the proposals will be opened and reviewed, for the following City of Aspen project:

2016-001 DOWNTOWN PEDESTRIAN MALL IMPROVEMENTS

The primary scope of work is to develop documentation that guides necessary future improvements to the underground utility, surface, vegetated and historical character infrastructure within the Downtown Pedestrian Mall located along Mill Street, Hyman Avenue, Cooper Avenue, and Galena Street in Aspen, CO. Disciplines of work will include, but are not limited to: planning, landscape architecture, civil engineering, electrical engineering, public outreach, construction phasing and business coordination. Multi-disciplinary consultant teams should form to have local and national partners and must have experience working within complex urban environments.

Complete RFP packages are available to download from www.rockymountainbidsystem.com Vendors must be registered to view the RFP packages. There is no charge to register. Call 1-800-835-4603 if you need assistance registering.

A pre-proposal conference will be held at 1:00 PM, Tuesday, July 12th, 2016, City Council Chambers, Aspen City Hall, 130 South Galena Street, Aspen, CO 81611, Attendance at the pre-proposal conference is mandatory if you intend to submit a proposal.

The City reserves the right to reject any or all Proposals or accept what is, in its judgment, the Proposal which is in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all Proposals submitted.

Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City of Aspen may be deemed public records subject to examination and inspection by third parties. The City of Aspen reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

The Proposal must be placed in an envelope securely sealed therein and labeled: “Proposal for 2016-001 Aspen Downtown Pedestrian Mall Improvements Professional Services”. The City cannot accept late, faxed, or emailed proposals.

Discussion may be conducted with responsible offerors who submit Proposals determined to be reasonably susceptible to be selected for award for purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements.

In addition to price, the criteria set forth in the included RFP document will be considered in judging which Proposal may be deemed to be in the best interests of the City of Aspen.

Contract Exhibit C - Issued RFP including exhibits

THE CITY OF ASPEN

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INTRODUCTION

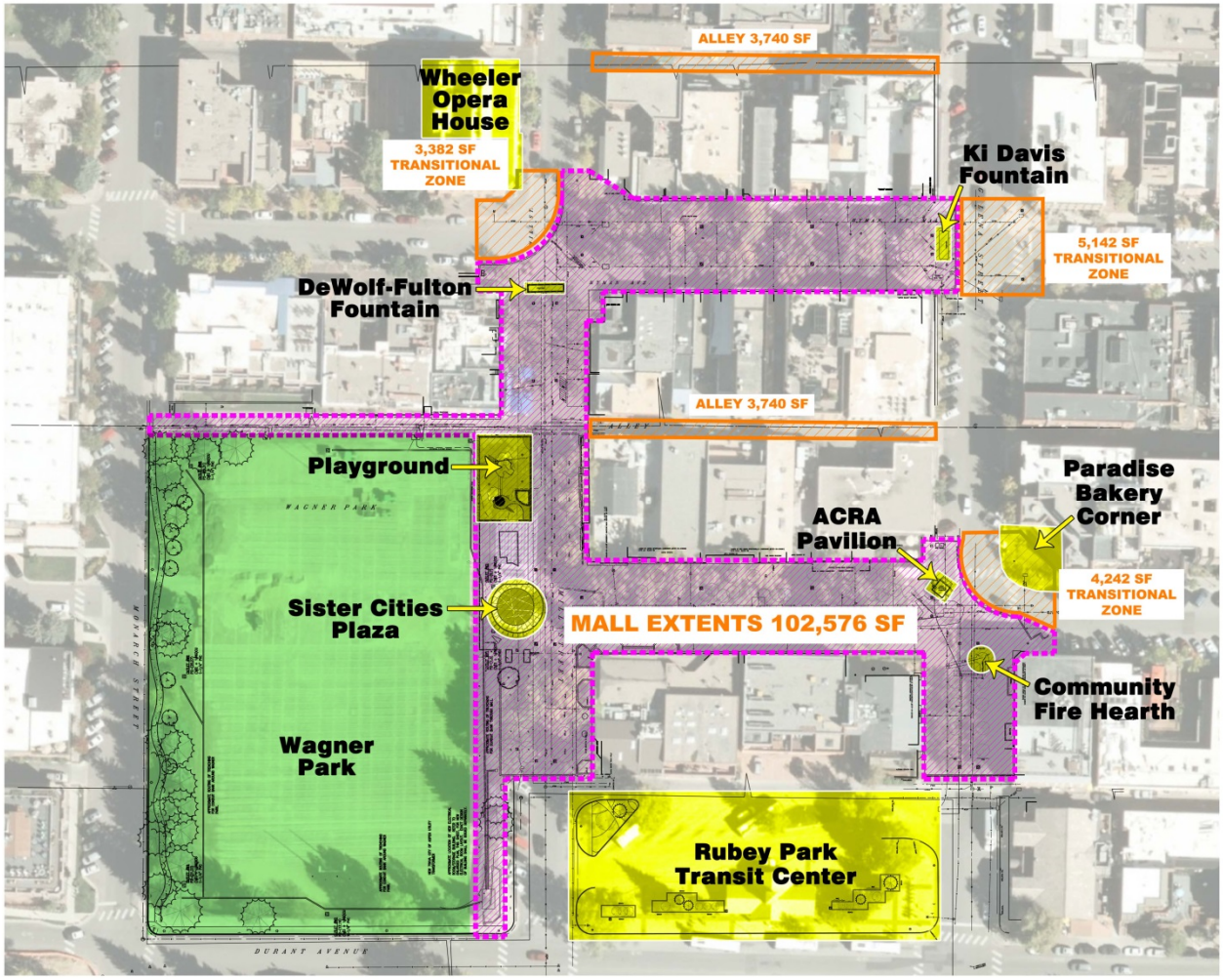
After being in place for 42 years, the Downtown Pedestrian Mall (Mall) has become an iconic landscape in Aspen. Bustling with activity that includes a playground, outdoor dining, movable tables and chairs, children playing in the gurgling streams, an outdoor fire hearth and a pioneering animated water fountain, the Mall is the heart of downtown Aspen. *This rich pedestrian character has to be retained*. The Mall is comprised of 3 distinct zones: the Cooper Avenue Mall, the Hyman Avenue Mall and the Mill Street Mall. The Cooper and Hyman Malls are each lined with two water courses and a mature urban forest of aspen, cottonwood and spruce trees, accented by masses of flowers. The Mill Mall contains a mature urban forest of small and medium sized ornamental trees and opens onto Wagner Park which contains a playing field, playground, plaza commemorating Aspen's Sister Cities and a public restroom building. This slice of nature in the city inspires and creates a place of reflection and relaxation for the public on what were once city streets. This bucolic scene was an original design goal 42 years ago but many issues are now threating the Mall's longevity. Improvements to the Mall should be planned to be in place for another 50 years.

The community has placed a high value on the existence and character of the Mall. The Mall contains numerous businesses and restaurants that significantly contribute to Aspen's economy. It is on the cusp of major changes due to private redevelopment of many commercial buildings that line the outdoor spaces. A high degree of sensitivity to the potential redevelopment change exists within the community. Currently, only a few properties are protected because of historic designation, while many others are in various states of renovation and redevelopment. The malls are an integral part of Aspen's downtown and the overall character of town. They are not currently historically designated, but are eligible for designation.

An inconsistent and aging underground utility infrastructure exists within the 3 blocks of Aspen's downtown core that were converted into a pedestrian street mall in 1973. Much of the utility infrastructure predates 1973. Significant utility upgrades are necessary to anticipate the next 50 years in downtown Aspen, which creates major challenge to achieve those upgrades while preserving the underlying character, historic integrity and business within the Mall for following generations to use and enjoy.

Proposed adjacent building construction projects (not within the remit of this RFP) mean that the timing is such that Mall utility and surface improvements must be coordinated with these adjacent separate building projects. Thoroughly considered approaches to business retention and construction means and methods at this site are paramount.

The project extent is basically 3 city blocks, approximately 123,000 sf of pedestrian mall, alley and street approaches and will include reconfiguration/replacement of ALL utilities in the limits of work (likely including some utility connection/transition zones beyond the Mall extents).



PEDESTRIAN MALL EXTENTS PLAN

PROJECT GOALS

The City of Aspen is seeking to develop documentation that guides necessary future improvements to the underground utility, surface, vegetated and historical character infrastructure within the Downtown Pedestrian Mall located along Mill Street, Hyman Avenue, Cooper Avenue, and Galena Street. That documentation must integrate the following goals:

DETERMINE AND RETAIN HISTORIC CHARACTER: Elements that contribute to the unique character of the Mall areas include the dark colored textured brick paving, linear ditches, mature tree canopy and variety of seating and 'people-watching' opportunities. Any project work should honor and preserve the character-defining elements of the original design and that changed historic elements should be restored where possible and appropriate.

UNDERSTAND URBAN DESIGN: The transformation of the Mall area from vehicle dominated streets into a pedestrian environment was a milestone change to the physical composition of the community. The spaces that comprise the Mall are varied and always provide year round interest in day and night. A series of "compression

and release" experiences are possible within the Mall. There are numerous circulation intersections that contribute to pedestrian vibrancy: (Paradise Bakery corner, Sister Cities Plaza, Wheeler Opera House, DeWolf-Fulton Fountain, Ki Davis Fountain, Wagner Park) These "release" intersections contrast with the (compression) linear spaces of the pedestrian streets. There is a continual sense of interest and progression, which is highlighted with an abstracted forest, running streams and meadow in the city. Rich seasonal flower plantings together with movable café style tables and chairs further promote desirable spaces to linger in. Specify high quality materials and systems that deliver comfortable, reliable, durable, efficient and sustainable solutions.

UPDATE UNDERGROUND UTILITY INFRASTRUCTURE: A recent potable water service line failure resulted in a significant and extended disturbance to the Hyman Mall. This failure was symbolic of the existing condition of underground utility infrastructure. Preliminary analysis by Utilities and Engineering staff indicate that water, electric, sanitary sewer utilities *all* are in dire need for replacement to meet the needs of the community and match the design lifecycle of new Mall infrastructure. Additional upgrades of private utility providers are also anticipated in this area as well. Coordination and phasing of utility infrastructure as it relates to above grade improvements is critical to the success of this project

INTEGRATE STORM WATER: Over the last decade, the community has supported implementation of a major new environmental initiative with the development of the City's storm water program and associated City of Aspen Engineering Department Urban Runoff Management Plan. The City has completed numerous projects that include storm water infrastructure as core design elements that reflect this environmental ethic. An opportunity exists to integrate storm water in creative and effective ways on the Mall that can promote a model of community sustainability, similar to the City's creation of a photovoltaic glass roof at the Wagner Park Restroom building on the Mall.

INTEGRATE COMMUNITY FOREST: Healthy, safe, and sustainable tree resources continue to be a valued part of the infrastructure on the Mall, and are constantly being managed as such. There are many construction techniques that can be employed for preservation efforts around desirable trees, though there are instances when other infrastructure changes will cause tree removal based upon root loss, overall tree health, and/or resource competition.

INTEGRATE UNIVERSAL ACCESSIBILITY: The existing surface conditions of the Mall areas are out of compliance in many ways with national law relative to accessibility. Access routes though the Mall areas and to businesses are compromised by some existing use zones and condition of physical infrastructure.

PARTNER WITH PRIVATE DEVELOPMENT: Numerous private properties that abut the Mall areas are anticipated to experience redevelopment in the short-term and long-term future. Planning for private property redevelopment and necessary utility connections can provide opportunity to achieve a more cohesive long-term solution to the existing infrastructure challenges and to ideally minimize short-term impacts to the community.

MAINTAIN SERVICE TO UTILITY CUSTOMERS: Exceptional reliability and service to customers is a hallmark of City of Aspen utilities. Significant effort in design, phasing, and material selection should be used to maintain safe, reliable and high quality service to all customers affected by the project.

MAINTAIN AND ENHANCE BUSINESS ACTIVITIES: There are uses of the Mall spaces that have evolved and grown over time, notably outdoor dining. Opportunities exist to improve the infrastructure and enhance the outdoor environment of the Mall that can contribute to better business for restaurants and retail stores. Business activity must be preserved during construction.

MANAGE CONSTRUCTION: Project work at any scale affects business in the Mall. A significant effort will be necessary to balance business retention with any site construction activities. Develop a viable construction phasing and sequencing plan that maximizes construction efficiency while minimizing the impact to the public.

ENGAGE THE PUBLIC: This complex project will require extensive public outreach to the residents and visitors of the community.

SCOPE OF WORK

The City is seeking a multidisciplinary project Consultant Team (Consultant) to provide professional site planning, urban design, public outreach/community engagement services, civil and utility design services that will also include a construction phasing expert. The composition of the Consultant Team, including a Construction Phasing Expert is intended to provide an open and collaborative process involving input from all parties – designers understand the ramifications of decisions when they are made to allow for cost feedback, early total project cost commitments and construction phasing. Professional Design Services will include but not be limited to the following:

1. Landscape Architectural and Planning services with specific experience working with historical landscapes and redeveloping complex urban pedestrian environments;
2. Professional Engineering services including Civil, Stormwater, Electrical, Dry Utilities and Water Systems Infrastructure design;
3. Public Outreach;
4. Construction Phasing Expert to develop construction mitigation and coordination plans;
5. Business Program Coordinator to work with business owners and managers throughout design and construction to contribute to project success;

The Consultant will prepare project documentation through five (5) distinct phases, with phase five being construction administration:

Phase 1	Inventory/Analysis
Phase 2	Planning
Phase 3	Design including Preliminary/30%, Design Development/60% and Construction Documents/90%
Phase 4	Final Design/Construction Documents (Incl. Permitting) (by future addendum)
Phase 5	Construction Administration (by future addendum)

PROJECT OBJECTIVES:

1. The project will be developed through multiple phases. Phase 1 will involve investigation into the existing infrastructure as well as developing community stakeholders and incorporating programming for the existing users and owners. Phase 2 will utilize Phase 1 data, public engagement and stakeholder input to develop a conceptual plan for the Mall that can be successfully achieved. Phases 3 and 4 will develop the design documents for the full renovation of the Downtown Pedestrian Mall;
2. Develop a Phase 1 report that will detail and summarize all programming for the users and owners within the Mall limits;
3. Develop a Phase 1 base drawing that will indicate all existing infrastructure within the Mall limits that is discovered during the investigation phase;

4. Plan surface and underground utility improvements for a 50-year+ design legacy within the pedestrian mall areas;
5. Integrate storm water infrastructure to support the City's Urban Runoff Management Plan;
6. Upgrade underground utility infrastructure including potable water, electric, storm sewer and coordinate with private utility providers as infrastructure updates and service require;
7. Coordinate and accommodate other utility upgrades including but not limited to sanitary sewer, gas and telephone;
8. Maintain and enhance business activities within the Mall areas;
9. Coordinate and accommodate utility upgrades with the existing and future community forest;
10. Minimize construction impacts to adjoining properties;
11. Involve the community and stake holders in the design process;
12. Incorporate ADA compliance for the Mall and adjacent building openings;
13. Maintain service to utility customers throughout construction;

Under this RFP, the Consultant shall initially be contracted only through the Phase 2 - Conceptual Planning stage. Later phases including construction administration/oversight may be negotiated and added by addendum at a later date.

PHASE 1 - INVENTORY/ANALYSIS

The Consultant shall document in a letter or report all the design criteria that will be used for the project. The design criteria shall be prepared prior to a pre-design meeting and shall be approved by all the entities involved with the project prior to the start of final design. As the project progresses, if revisions or clarifications are needed, they should be documented in project file memorandums. All further changes are to be submitted and approved by the City Project Manager.

FIELD SURVEY/BASE MAPPING**:** The project area will be field-surveyed and mapped, identifying all physical design elements and topographic information. Field survey work shall include non-destructive potholing to locate water, storm sewer, sanitary sewer, electric utilities and dry utilities that will be located within the limits of the project and begin upon notice to proceed for this project.

1. Compile a list of all utilities and associated contacts in the project area based on existing documents. Utility providers include but are not limited to: City Water, City Electric, City Engineering (storm water) Comcast (communications), Century Link (telephone), Black Hills Energy/Sourcegas (natural gas), and Aspen Consolidated Sanitation District (ACSD).

2. The Consultant shall obtain the most recent ownership information from the assessor's office that is necessary for preparing drawings. Drawings shall include property boundaries and all easements.

3. The design deliverable for Phase 1 Inventory/Analysis will include a drawing package that clearly indicates the location of all utility and existing information for the Mall that is produced from the investigation. This will include all easements, topography, structures, trees, benches and utilities with the known information discovered through the investigation. The Consultant will include in the drawing hatched areas where there is a potential conflict with utilities, such as proposed standard variances, proposed areas of excavation or areas in close proximity of any new underground utilities. The drawing will include notes for each utility providing an opinion as to the accuracy of the information obtained.

4. Consultant shall meet separately with each utility at their place of business to review their records to determine the location of mainlines and laterals. This meeting shall include discussion of optimal tie-in/connection points adjacent to the project area, and any deficiencies with the system. It is anticipated

a meeting with the gas, electrical, telecom, water, stormwater, and sanitary utility departments will need to be coordinated through the consulting team.

5. Consultant shall provide survey and base maps showing edge of pavements / pavers, curb & gutter, ditches, driveways, gates, structures, building entryway features, retaining walls, masonry structures, light poles, surface utility fixtures (boxes, cabinets, pedestals, etc.) and a tree inventory. Include all existing drainage features and gravity fed sanitary system inverts and all other utilities based on locates and verification efforts previously described. Information regarding size, type, alignment and condition shall be obtained and noted on the plans. The survey will be provided for the Phase 1 deliverables in the format required by the City of Aspen.

6. The surveying and mapping limits required for this project shall extend throughout the existing Mall area, including intersections with vehicular trafficked streets, drainage features, trees, buildings, utilities, site furnishings, pavement types, and other significant features. The Consultant's field survey shall provide the following information as part of the field survey:
    a. Establish horizontal and vertical control.
    b. Establish right-of-way along the project area.
    c. Topographic data gathered using conventional surveying practices shall meet the National Map Accuracy Standards for each one-inch equals ten feet (1"=10') with 6 inch contours. Cross-sections shall be taken at 20-foot intervals and at additional critical locations. Supplemental cross-sections are required at intersecting streets, driveways, pedestrian access ramps, and building entrances (show both edges and extend back as far as needed to accommodate the proposed regrading).
    d. The detail topographic 6 inch contour mapping shall extend 50 feet longitudinally beyond the project area at street intersections and 10' laterally to include building faces.
    e. The width of the field-surveyed cross sections (and associated mapping) will extend to the building lines.
    f. Prior to surveying on private property, Consultant will obtain permission from the property owner.
7. Understand all associated infrastructure in the Mall including the De-Wolf Fountain, Ki Davis Fountain, and irrigation ditches. The Consultant will be expected to research the historic design drawings for the Mall and the operations between the stakeholders.

8. Visit the project area to gather evidence of overlooked utilities and location of service laterals (pedestals, manholes, valve boxes, service shut-off, etc). The Consultant shall utilize utility locates and non-destructive potholes per #15 below to investigate the location, size and depth of all utilities with the Mall limits. The Consultant will coordinate with the City of Aspen for areas that will need to be closed to pedestrians during the subsurface investigation. All pavers are to be replaced matching the existing conditions prior to the pothole disturbance.

9. Visit the project area and conduct a walking study of the complete Mall. Prepare photo documentation of each face block that includes:
    a. Structure/building materials, colors and condition at sidewalk;
    b. Building doorways and windows locations and features;
    c. Awnings/flower boxes;
    d. Railings/fences/gates;
    e. Private signs;
    f. Regulatory signs;
    g. Bike racks/trash receptacles/benches;
    h. Holiday lighting needs and systems;

i. Loading and service needs and present locations;
j. Trees/grates/plantings;
k. Irrigation system point-of-connections (private/public);
l. Kiosks;
m. Sidewalk cafes and fencing (area, style of fence);
n. Stoops/stairs/grade changes;
o. Pavement materials (public/private installations, condition);

10. Consultant will coordinate all work with all utility providers, associations, agencies, and residents located within the project area.
11. Consultant will be responsible for the Method of Handling Traffic and complying with all City ordinances pertaining to work in the Right of Way and the City Water Distribution Standards.
12. Prior to the design locate work, Consultant will call for utility locates and will be responsible to remove any markings per the City's Construction and Excavation Standards for Work in the Public Rights-of-Way.
13. Consultant will incorporate the design locate information into the drawings, showing the location of the pothole and the elevation of the top of the utility. Consultant will identify , document and report on all conflicts or concerns that that can be ascertained from the potholed information that may have an impact of design work during Phase 2.
14. The City estimates that 10 days-worth of potholing will be needed. This utility potholing is only an estimate. The Consultant is to provide a unit cost for each day of utility potholing effort. The unit cost should include the cost to pothole for a utility greater than 4 feet below finished grade and a unit cost to provide a pothole between 1 foot and 4 feet of depth below finished grade.

Work Product:
1. Phase 1 Inventory/Analysis Drawings;
2. Memorandum of Design- Utility and Site Investigation;
3. Photo documentation of each Mall face block;
4. Meeting minutes.

ENGINEERING/OPERATIONS RESEARCH**:** The Consultant will meet with the City Engineer to review the potential drainage approach for the project work area that is consistent with the URMP as well as confirm if any off-site drainage needs to be managed in this project. The Consultant will also meet with the Manager of Parks and Recreation and City Forester to review public use activities that occur within the Mall, design character to be retained in the Mall and to understand the Mall's operations and urban forest resource. Minutes will be issued by the Consultant for confirmation.

Work Product:
1. Meeting minutes.

UTILITIES DESIGN RESEARCH**:** The Consultant will meet with the Director of Utilities and Environment and associated staff to review the utilities design approach for the project work area that is consistent with City Electric and Water distribution standards. Minutes will be issued by the Consultant for confirmation.

Work Product:
1. Memorandum of Design- Utility and Site Investigation.
2. Meeting minutes.

GEOTECHNICAL ANALYSIS: Review current geotechnical data available to establish general site conditions. Provide a geotechnical study to verify the soil requirements needed for recommendations on any structures, permeable pavers, and pavements located within the Pedestrian Mall Extents, including items required during construction involving excavation, trenches or embankments necessary for complete design of the project.

Work Product:

1. Geotechnical Report summarizing investigation findings;
2. Pavement design recommendations for pedestrian paving, permeable pavers and roadways within Pedestrian Mall Extents;
3. Basement vault roof recommendations.

PHASE 2 – CONCEPTUAL PLANNING

URBAN DESIGN: Develop conceptual plans of the Mall and alleys that retain the design character of linear pedestrian corridors with individual spatial, vegetative and water interests. Identify three (3) alternative comprehensive solutions that retain the project vision. Evaluate with the Phase 1 data to prepare complete conceptual plans. Develop one (1) Preferred Conceptual Plan from three (3) alternatives following the Public Involvement process outlined below.

Actions to occur as part of the Urban Design effort include:

1. Organize a workshop with City staff to identify design issues, conflicts and concerns (from Phase 1 Inventory/Analysis activities);
2. Develop ADA compliant circulation routes and cross connections;
3. Develop surface paving patterns;
4. Develop pedestrian lighting solutions;
5. Develop planting plans in tandem with existing trees to remain;
6. Determine pedestrian Mall site elements, furnishings (with options as necessary);
7. Evaluate public art locations;
8. Review City Standard Details and building code;
9. Submit to various City departments and agencies for specific comment and discussion;

Work Product:

1. Three (3) alternative comprehensive conceptual site and utility plan solutions for the City and Stakeholders to review and select from;
2. Plan, Perspective, & Section illustrative drawings to fully communicate three (3) alternative comprehensive solutions. Digital and/or physical models can also be utilized.

Other applicable reviews:

1. Implementation/Phasing;
2. Safe pedestrian interactions at intersection/transition zones;
3. Analyze any conflicts that are presented that interfere or preclude proper infrastructure improvements, including any existing conditions;
4. Street tree configuration;
5. Private improvements of adjacent properties;

UTILITIES DESIGN: Develop conceptual plans for the water mainline replacement, utilizing information provided through the Phase 1 Inventory/Analysis and Engineering/Operations/Utility research. The Consultant will work closely with the City of Aspen Water Department to estimate and identify maximum flow demands that will be required for each property and to estimate future demands. The Consultant will provide a conceptual document that identifies methodology for calculating service needs based on maximum buildout, current and future fire suppression standards. This document will outline all assumptions and demands being implemented prior to providing the system design. Once the assumptions are accepted, the Consultant will provide a full system analysis that meets the requirements in the City of Aspen Water Department 2014 Water Distribution System Standards and the result of the work will be documented in the Memorandum of Design- Mall Water Main Improvements. It is expected that the conceptual document will be provided and presented to the City of Aspen Water Department prior to the Phase 3 Design effort.

Develop conceptual plans for the electrical supply and pedestrian lighting system. An Electrical Master Plan for improved lighting and special event power supply infrastructure throughout the downtown pedestrian mall and adjacent Wagner Park was completed in August 2013. The Consultant shall review the recommendations contained within this master plan document and reconcile the electrical infrastructure recommendations with the other utility and project design needs. The Consultant will work closely with the City of Aspen Electric Department to estimate and identify maximum electrical demands that will be required for each property and to estimate future electrical demands.

Work Product:

1. Estimate of maximum flow demands/needs of water utility infrastructure within the project area;
2. Memorandum of Design-Mall Water Main Improvements;

COMMUNITY ENGAGEMENT: The project will require an extensive public involvement/outreach program. Outreach should utilize the City's Community Voice webpage: www.aspencommunityvoice.com, and could include an online and/or mailed survey, small group meetings, large group meetings, intercept interviews, GIS-based comment tools, Wikimaps, etc. Staff is able to assist in any of these efforts, but any small or large group meetings should be facilitated by the Consultant or other non-staff personnel. The Consultant is expected to identify the best public outreach and engagement strategies for project needs. The Consultant is expected to aid Staff in identifying different groups or organizations that would be important to engage in this project. Aspen has a history of robust community involvement, and the City is interested in engaging as many people as possible to help inform work on the Pedestrian Malls. The following groups should be specifically targeted for participation:

1. Historic Preservation Commission, Commercial Core and Lodging Commission, and Planning & Zoning Commission. The Consultant Team is expected to help determine how to best engage these citizen commissions. Staff is able to take the lead when working with these groups, but some participation from the Consultant may be needed;
2. Mall Users. This includes businesses located on the Mall, as well as locals and visitors who use the Mall. The Consultant is expected to help determine how to best engage these groups. Staff is able to take the lead when working with these groups, but some participation from the Consultant may be needed;
3. "Technical Experts." There are a number of community members who are highly involved and educated on topics related to development in the downtown area. The Consultant will help Staff identify these "experts," help Staff identify the correct format for the outreach, and help facilitate the engagement;
4. City Council. Aspen City Council is the final decision maker for project advancement. The Consultant Team should include at least one (1) work session meeting with City Council to present and be prepared to discuss three (3) alternative conceptual plan solutions for the project in order to progress to a preferred concept to further develop.

The Consultant should identify the specific type of outreach that should be used with each group to obtain the most effective results.

In addition to community engagement, the City Council must be consulted at key decision points throughout the process. A minimum of four (4)work session check-ins with City Council are expected:

1. Following documentation of Phase 1 – Inventory/Analysis to report findings and initial thoughts/direction;
2. Following community engagement on the three (3) Urban Design alternatives. The Consultant shall work with staff and City Council to establish one (1) Preferred Conceptual Plan and seek Council approval of the Preferred Conceptual Plan. The Preferred Conceptual Plan will become the basis of Phase 3-Design.
3. During Phase 3 – Design, Preliminary/30% stage. This work session will be a check-in with Council during the important, more detailed design effort following the Preferred Conceptual Plan.
4. During Phase 3 – Design, Design Development/60% stage. This work session will be a final check-in with Council before proceeding to Construction Documents/90% stage and building permit submittal. This work session is intended to ensure anticipated costs, phasing, and design are approved.

Work Product:

1. Individual Contacts;
2. Public and Stakeholder Workshops to determine project direction;
3. Four (4) City Council work session meeting presentations.

COST ESTIMATE: A cost estimate document will be generated for each of the three (3) alternative comprehensive conceptual stage solutions with a 20% contingency reflected in all estimates.

PHASE 3 – DESIGN

The Phase 3 Design will follow the Conceptual Planning Phase. Evaluate the Aspen Area Community Plan, Utility upgrade plans and any other relevant Masterplans, and Vision statements for the Mall. Review all components of relevant plans to identify conflicts and alternatives. A series of meetings with the public, Stakeholders, City Engineer, Utility staff, Parks staff, Project Manager, and Consultant Team will take place to discuss both physical and financial aspects of the various components in the design plans.

The Phase 3 Design work scope will include three (3) milestones/stages of progress:

1. Preliminary / 30%;
2. Design Development / 60%;
3. Construction Documents /90%

URBAN DESIGN: Develop design documentation of the Mall and alleys including all elements for engaging and interesting public space. Elements will include, but not be limited to: paving, materials, seating, furnishings, surface water conveyance, pedestrian lighting, wayfinding, plant materials and irrigation.

Actions to occur as part of the Urban Design effort include:

1. ~~Paving: Provide design and specification for paving materials throughout the Mall and alley areas. Utilize paving solutions wherever possible to improve and contribute to storm water mitigation.~~
2. ~~Materials: Provide design and specification for robust materials associated with seat walls, surface water conveyances, decorative curbs, etc.~~

3. Surface Water Conveyance: Provide design for conveying surface water that compliments Paving design solutions and Storm Drainage requirements. Design and detailing of surface water conveyance shall be pedestrian in scale and character.
4. Seating & Furnishings: Develop design and specification for seating and other furnishings solutions throughout the Mall areas. Furnishings will include, but not be limited to: benches, café tables/chairs, newspaper racks, bicycle storage, handrails, leaning rails, and planters.
5. Wayfinding: Provide design and specification for wayfinding/signage elements that direct visitors to significant destinations adjacent to and near the Mall areas including: Wagner Park, public restroom, playground, Wheeler Opera House, Aspen Mountain, Roaring Fork River and Information (ACRA/Aspen Chamber Resort Association).
6. Plant Materials: Develop a planting design for the Mall areas that includes street/shade trees, groundcovers, and perennial/annual plantings that contribute to comfortable and beautiful outdoor spaces and are inspired by the structure of the existing community forest and grid patterns within the Mall. Planting design shall integrate any existing trees that are identified for preservation during the Phase 2 - Conceptual Planning Phase or Phase 3 – Design Phase.
7. Irrigation: Develop a comprehensive irrigation design for the Mall areas that enables efficient maintenance, maintains plant vitality, provides future flexibility and employs a high level of digital controllability.
8. Pedestrian Lighting: Establish design and specification of lighting elements/luminaires appropriate and compatible with the Electrical/Lighting design identified in Civil/Utilities Design. Pedestrian lighting shall be complimentary to the downtown Aspen and Mall character.

Work Product:

1. Drawings and Details for Urban Design Preliminary/30% stage, Design Development/60% stage and Construction Documents/90% stage. Specifications and Project Special Conditions at Construction Documents/90% stage;
2. Detailed cost estimates at Urban Design Preliminary/30% stage, Design Development/60% stage and Construction Documents /90% stage with a 20% contingency reflected in all estimates;
3. Presentations to City Council at the Preliminary/30% stage and Design Development/60% stage;

CIVIL / UTILITIES DESIGN: Develop design documentation for Mall utility infrastructure that estimates/identifies maximum buildout for each property and maximum future utility needs. Develop utility infrastructure construction phasing solutions that eliminate utility outages.

Actions to occur as part of the Civil/Utilities Design effort include:

1. Water: Provide design for the water main replacement and connections within the identified project limits. The replacement of the water main will include the design for: replacement of all laterals connecting to the water main to each separate user, plan/profile, all fittings, valving, thrust restraint, standard cross section and identification and resolution of conflicts. The Consultant will provide a design and implementation plan that will replace the existing water system with no operation stoppages to the existing water and services. The Consultant will propose appropriate size and pressure to serve the Mall area for future needs and laterals will be sized to meet these future needs.

   Consultant shall hold review meetings with the utility provider at 30% Design Review, 60% Design Review and 90% Design Review. Consultant shall conduct the meetings and provide meeting minutes.

Consultant shall provide the utility providers with the proposed plan, profile and cross-section information prior to the 30% Design Review, 60% Design Review and 90% Design Review meetings (providing electronic files if requested). Consultant shall compile comments received for such utility companies and document their response to comment via Memorandum of Design revisions.

2. Gas/Telephone: Provide design for buried gas and telephone services including fiber optic conduits and cables. The Consultant is expected to contact, coordinate and gain approval with the separate utility companies involved in each dry utility. It is anticipated the Mall improvements will require the relocation and design for the dry utilities within the limits of the project.

3. Electrical/Lighting: Develop electrical supply and pedestrian lighting system design.

   Actions to occur during Electrical/Lighting Design include:
   a. Review existing Electrical Master Plan;
   b. Review existing electrical utility locations, including vaults, manholes, underground electric utilities;
   c. Review partial construction documentation for improved electrical infrastructure specific to special event and seasonal uses;
   d. Investigate and establish electrical service connections to affected structures and develop strategies to deal with the conflicts imposed on this work;
   e. Provide electrical plans that combine electrical needs of electrical building service upgrades with recommendations and design solutions established in the existing Electrical Master Plan and related partial construction documentation.

4. Utility Clearance: Consultant will send a Utility Clearance Letter accompanied by a profile exhibit to each utility and provide all project information. The Utility Clearance Letter will request a response from the utility company that:
   a. Project complies with the clearance requirements as shown in the City's Construction and Excavation Standards for Work in the Public Rights-of-Way;
   b. Permission is granted by the utility company to construct the proposed utility within the restricted area or;
   c. Relocation plan has been approved by the utility. When determining the relocation plan, City owned utilities will not be relocated if instead another utility can be relocated. Exhibit will be provided by the Consultant to the utility company as part of the Utility Clearance Letter. The Utility Clearance Letter will also state that if any unforeseen conflicts arise that the utility company will resolve the issue within 30 days.

5. Storm Drainage: Consultant will provide a Drainage Analysis and Report for the project which will include analysis of historic flows, developed flows, routing of developed flows, water quality features and locations and release rates as required for the project. This report will be prepared in accordance with City of Aspen Standards, including the Urban Runoff Management Plan and Engineering Design Standards. The drainage concept for the project will include designing for conveyance along with water quality for all impervious surfaces within the project area. The goal for the storm drainage design is to implement a strategy for water quality features that will enhance the site, the community and the environment. The water quality features should mimic a natural process of storm water quality utilizing surface features that limit the need for below grade storm mains. All impervious areas within the project boundaries will need to account for water quality capture including areas that are currently impervious that are replaced. Consultant will prepare design of proposed drainage improvements including storm

sewers, inlets, manholes, sidewalk chases, concrete pans, water quality features and outlet structures. It is anticipated that much of the existing storm sewer infrastructure within the Mall will require replacement.

6. Sanitary Sewer: Sanitary sewer mainlines and associated laterals are anticipated to be replaced within the Mall project limits. Design for this work scope will be under separate contract agreement with the Aspen Consolidated Sanitation District (ACSD) and coordinated with this work scope by the Consultant.
7. Accessibility: Detailed grading of ADA accessible routes. The coordination of ADA routes, code, and ADA compliance report/certification as it relates to site design elements and existing building entries.
8. Utility Easements: Easements for public utilities will be dedicated by the Consultant through deed or plat. Exhibits shall be produced and conceptual and after final acceptance for recording. Any easement which requires vacation will be dedicated by the Consultant.
9. Erosion Control: A Grading Erosion and Sediment Control plan will be created that will meet current City standards. It is anticipated the site will exceed one (1) acre in disturbance and Consultant will prepare both erosion control plans and a State of Colorado Storm Water Management Plan.
10. Report Documentation: The Consultant Project Manager and the City Project Manager will work together to develop the utilities design criteria to be utilized for the project. A Civil/Utilities Design Report should specify design criteria and document approved variances. This report shall be produced initially and maintained by the Consultant (throughout the project). Drawings will be prepared in accordance with the City's Design Standards.
11. Drawing Documentation: A site layout plan showing the horizontal location of proposed curb and gutter, utilities, drainage, and existing buildings. Also shown on this plan will be proposed types of pavement or pavers that are utilized within the project.

    Architectural cross sections for the mall site will be required for every 15 feet or in designated areas indicated by the City. The cross sections will depict all special features, elevations, Right-of-Way information, Easement information and below grade utilities.
12. ~~Special Provisions / Specifications Documentation: Prepare Project Special Provisions and Technical Specifications using CDOT format. The Consultant will tabulate quantities for paving materials, site elements, drainage and utility elements for the City Bid Tabulation.~~ The quantities will be reviewed during each Design Review meeting.
13. Submittals: The Consultant is required to prepare all submittals for review and approval under Building Code, City of Aspen Engineering standards and Special District regulations for utilities. All civil work shall be stamped by a Colorado Professional Engineer either employed by the Consultant or a subcontractor that was listed in Consultant's proposal.

Work Product:

1. Memorandum of Design- Mall Water Main Improvements;
2. Civil/Utilities Design Report, initiated at Preliminary/30% stage, refined at Design Development/60% stage, finalized at Construction Documents/90% stage.
3. Grading Erosion and Sediment Control Plan;
4. Drainage Analysis and Report;
5. Utility Clearance Letters;

6. Drawings and Specifications for Civil/Utilities Design Preliminary 30% stage, Design Development/60% stage and Construction Documents/90% stage. Specifications and Project Special Conditions at Construction Documents/90% stage.
7. Detailed cost estimates at Preliminary/30% stage, Design Development/60% stage and Construction Documents /90% stage with a 20% contingency reflected in all estimates;
8. Presentations to City Council at the Preliminary/30% stage and Design Development/60% stage;
9. Meeting minutes;

COST ESTIMATE: A cost estimate document will be generated for each of the three (3) Design Review stages (Preliminary/30%, Design Development/60% and Construction Documents/90%). This will evaluate all cost parameters of the project at each stage. A summary will be prepared to identify cost and savings alternatives. A formal meeting with the Consultant, Project Manager, Parks staff, and Engineering staff will take place to review costs. Priorities and design alternatives will be discussed and "next steps" will be identified.

COMMUNICATION/COORDINATION: The Consultant will have a designated Consultant Project Manager that will act as the lead coordinator between the City Project Manager. The Consultant Project Manager will lead Progress Meetings. It is anticipated that the Consultant Project Manager and the City will meet approximately every two to four weeks to discuss the project status. The Consultant Project Manager will be responsible to invite members of the Consulting Team that will be needed for the meeting. The notice and the agenda will be provided to the City by the Consultant Project Manager. The purpose of the meetings will be to review progress, coordinate work activities and to resolve outstanding problems.

The Consultant Project Manager will provide the following items:

1. Communication between the Consultant Project Manager and the City will require typed meeting minutes confirming decisions made during telephone conversations and at formal and informal meetings.
2. Meeting minutes will include the date, the attendees, discussion items, and any resolution or decisions that were made. When a definable task is discussed during a meeting, the minutes will identify the task as an "Action Item." Consultant will identify which agency is responsible for accomplishing it, and the proposed completion date. The following items will be reviewed during each meeting;
    a. Debriefing of issues brought up by the public;
    b. Update of activities completed since the last meeting;
    c. Problems encountered and recommended solutions;
    d. Review of design and any new alternatives to be considered;
    e. Discuss if any delays are anticipated in accomplishing various tasks and re-define necessary timelines for their completions;
    f. Schedule upcoming meetings and events;
    g. Discuss and update the Deliverable Schedule.
3. Consultant will distribute meeting minutes to all invited meeting attendees within two (2) working days of the meeting.
4. The City will endeavor to provide the Consultant with comments within five (5) working days from their dates of receipt by the City.
5. Consultant shall distribute copies of all pertinent information to the other agencies and copy the City Project Manager on all correspondences.

6. Consultant Project Manager shall document progress, utilizing a Deliverable Schedule / *Earned Value Tabulation* to illustrate and track what percentage of each task has been completed as part of the monthly progress reports (which shall be included with the monthly invoice and submitted to the City Project Manager)

PHASE 4 – FINAL DESIGN / CONSTRUCTION DOCUMENTATION

The Consultant will prepare a final construction documentation package in CDOT format using City standards appropriate for permit submittal. The Consultant will provide a tabulation of bid items in a unit price format.

Include the following sheets, as appropriate:

1. Title Sheet including Plans Index;
2. CDOT Standards Plan List;
3. Typical Sections;
4. General notes;
5. Grading Plans
6. Mall Plan and Profiles showing existing topography and proposed cut and fill;
7. Erosion Control Plan as a separate plan sheet(s).
8. Storm Water Management Plan as a separate sheet(s);
9. Survey Control;
10. Project Special Provisions with index sheets.
11. Summary of Approximate Quantities;
12. Appropriate Individual Quantities Tabulation;
13. Plan and Profiles (at 1”=20’);
14. Site Layout and Materials Plans;
15. Special Site Layout Plans for Mall (drainage conveyances, planters, wayfinding/signage, furnishings, etc.);
16. Special Site Details for Mall (drainage conveyances, planters, wayfinding/signage, furnishings, etc.);
17. Utility Plan and profile sheets;
18. Utility Details;
19. Site Paving Plans & Details;
20. Planting Plans & Details;
21. Irrigation Plans & Details;
22. Electrical infrastructure Plans & Details;
23. Lighting Plans & Details;
24. Mall Cross Sections;
25. Construction Staging and Phasing Plan;

In addition to the plan & detail sheets, Special Provisions shall be provided, written specifically for items, details and procedures not adequately covered by CDOT’s Standard Specifications.

PERMIT APPROVAL PROCESS - The Consultant will conduct a Permit pre-submittal meeting with the City Building and Engineering Department and compile a compliant package for submittal. The Consultant via the General Contractor will submit the Building Permit Package to the City of Aspen Building Dept. and follow all current processes for submittal (hardcopy is currently two (2) full size sets and one (1) 11”x17” including two (2) sets of all project manuals and reports such as the Drainage Report and one (1) compiled electronic copy. The Consultant will promptly respond to any design questions from the review authority having jurisdiction. The package submitted for permit is assumed to be the 99.99% package. Upon final confirmation and receipt of Building Permit, the construction document set will be issued as a comprehensive 100% package.

Upon final review, the 100% documents will be printed at 24"x36", 1"=20'. The Consultant shall prepare five (5) sets of drawings that are stamped by either a Colorado Professional Engineer or Colorado Professional Landscape Architect (based on discipline of work) and submit to the Project Manager.

PHASE 5 – CONSTRUCTION BIDDING & CONSTRUCTION ADMINISTRATION

CONSTRUCTION BIDDING: The Consultant shall perform and / or furnish the following services during the bid and award phase of this project:

1. If needed, assist in determining areas where construction plans can be modified (quantities adjusted) in order to stay within the construction budget for this project.
2. Prior to bid opening, assist the City in answering any questions, and prepare and distribute any addendum necessary to assure proper completion of the project. The Consultant shall be present at any pre-bid meetings and aid the City Project Manager in conducting the pre-bid meeting.
3. Provide advice as requested by the City in interpreting the requirements of the construction contract documents. The Consultant shall prepare drawings and/or details required to resolve problems due to actual field conditions encountered at the request of the City.

PRE-CONSTRUCTION SERVICES: The Consultant will conduct a pre-construction meeting in coordination with the City Project Manager to review project schedule, construction staging, subcontractors, pay schedules and outline other construction coordination requirements as necessary with the Contractor.

CONSTRUCTION OBSERVATION**:** Fees for this phase will not be included in the professional services contract but will be negotiated based upon the site and time schedule for the work. The Consultant will assign a full time project Field Inspector/ Resident Engineer to the project who is familiar with all aspects of the design and who will be available at a local Roaring Fork Valley office throughout the project to answer questions and approve or reject individual components of the project and observe construction. Full time site presence is required by a Civil Engineering representative for all utility installation in order to participate in prompt resolution of design and construction issues.

CONSTRUCTION ADMINISTRATION: Proposed revisions or design changes will be submitted in writing to the Project Manager for approval. The Consultant will also prepare all change order requests and obtain the Project Manager's approval prior to authorizing and changes which require a change in the schedule of values or substantially alter the project time table.

The Consultant will review and approve all shop drawings and submittals for compliance. The Consultant will make recommendations to the Project Manager. The Project Manager will make the final decision and convey this to the Consultant. The Consultant will prepare weekly field observation reports and weekly schedule updates for submittal to the Project Manager.

The Consultant will promptly issue ASIs (architectural or civil supplemental information) as required and promptly review all RFIs, shop drawings, submittals, and change order requests. At completion of the work the Consultant will conduct a full Punch of the site and issue punch lists as well as a final review to confirm Punch closure/completion so that all work is completed per the project documentation.

The Consultant will review and approve all requests for payment which are prepared by the Contractor on a monthly basis. These are then to be forwarded to the Project Manager for final approval and processing.

A weekly project OAC (owners, architects, contractor) meeting will be conducted by the Contractor, but participation is expected from the Consultant. Meeting notes will be prepared by the Contractor as a permanent record. A field progress review will also be included as part of this meeting.

The Contractor will be responsible to assure with the Project Manager that the appropriate materials testing is scheduled and occurs as specified. A testing Consultant will be retained by the City through a separate contract. The testing lab reports are to be submitted directly to the Project Manager.

The Punch inspection and final inspection is to be scheduled by the Consultant. This will include the Contractor, Consultant, Project Manager and a representative from the City of Aspen Parks, Engineering and Building Departments (assisting in an owner role, not regulator role). The Consultant will prepare a punch list of items for the Contractor to address and make a final review of Punch closure for recommendation of acceptance of project.

RECORD DRAWINGS: During construction the Consultant will assure that the Contractor records all revisions to the original plans and maintains that set on site. At the completion of construction, the Consultant will submit a set of reproducible construction drawings and Autocad r2015.dwg file format and specifications which reflect the "record" conditions of the project to the Project Manager. The Contractor is responsible for preparation of the "record" set of documents.

These shall include: revisions, deletions, additions, etc. which have been noted as indicated above and include field surveying required to complete final quantities or verify field dimensions and/or elevations.

GENERAL REQUIREMENTS

All proposals will include the following requirements:

CONSULTANT TEAM PROFILE: Submit composition of the Consultant Team, including the team's background and philosophies, location of office/offices from which the work on this project is to be performed. Include names and resumes of staff personnel who are proposed to be assigned to the project. Include respective roles and responsibilities, related experience and qualifications of staff personnel. Maintain a two (2) page limit per person for resumes.

SCHEDULE: A detailed scheduled shall be submitted that outlines both the time frames for the Phase 1 Inventory/Analysis and Phase 2 Conceptual Planning stages of the project. Phase 1 Inventory/Analysis and Phase 2 Conceptual Planning work is anticipated to occur from late 2016 through 2017. The Consultant is expected to review the project site prior to the submittal of the proposal.

EXPERIENCE: Present Consulting Team's relevant experience on similar projects. Retain a limit of five (5) projects for the Experience presentation. Include:

1. Location;
2. Description and size (include sketches, plans and photographs);
3. Project Cost;

4. Client;
5. Sub consultants used;
6. Experience of the Consultant Team members submitting proposal;
7. List of Client and Contractor contacts (with telephone numbers) who are familiar with the projects;

PROPOSAL PRESENTATION: Include any additional graphic illustration, photographs, articles, or other information that the Consultant Team feels is relevant to the proposal.

ADDITIONAL: Any other work to complete the design work, not specifically listed in this RFP, should be detailed in the proposal. Any work that is an addition to items listed within this RFP should be indicated as Additional Alternatives with the cost associated. The cost for the Additional Alternative should not be included in the final proposal sum and will be approved by the City separately.

COMPLIANCE: Designer shall ensure that the Work is in compliance with the City's Urban Runoff Management Plan, City Design Standards, City Water Distribution and Electric Standards, CDOT Specifications, AASHTO Specifications, 2015 International Building Code, 2015 International Plumbing Building Code, 2015 International Mechanical Code, 2014 National Electrical Code, 2014 International Fuel Gas Code, Americans with Disabilities Act, Contract Documents, and other applicable codes and specifications. In case of any discrepancy between any of these requirements, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the City's Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.

Relative to work discipline, all work shall be stamped by a Colorado Professional Engineer or Colorado Professional Landscape Architect either employed by the Consultant or a member of the Consultant Team that is listed in Consultant's proposal.

SUB-CONSULTANTS: Consultant will coordinate all contract activities between Consultant and sub-consultant(s) as well as ensure that the project work is completed on schedule and within budget. It is the responsibility of the consulting team to inform the City of any discrepancies between the proposal and design.

PROPOSAL PROCESS

A pre-proposal conference will be held at 1:00PM, Tuesday, July 12, 2016, City Council Chambers, Aspen City Hall, 130 South Galena Street, Aspen, CO 81611, Attendance at the pre-proposal conference is mandatory if you intend to submit a proposal.

Proposals are due before **2:00PM, August 9, 2016** at which time the proposals will be opened and reviewed, for the following City of Aspen project: **2016-001-Aspen Downtown Pedestrian Mall Improvements Professional Services.** Upon receipt of Professional Services proposals, City of Aspen staff will evaluate proposals, conduct interviews with Offerors and award the work to the Design Team who provides the most responsive and responsible proposal, subject to final approval by Aspen City Council.

PROCUREMENT TIMELINE

The City estimates the following procurement timeline and reserves the right to modify it at any time.

RFP Issued	July 5, 2016
Mandatory Pre-Proposal Conference	July 12, 2016
RFP Questions Close	August 1, 2016
Proposals Due	August 18, 2016, 2:00PM
Evaluation period	TBD
Notifications to Offerors	TBD

INTENT TO PARTICIPATE

Interested Offerors should attend the mandatory pre-proposal conference and must communicate their intent to participate in this procurement process to Rebecca.Hodgson@cityofaspen.com. *Submitting your intent to participate ensures that you will receive all communication and addenda for this project*.

QUESTIONS

Questions may be submitted directly to Rebecca.Hodgson@cityofaspen.com. Any request for additional contact with staff during the RFP process may be determined based upon the complexity of question(s) received and necessity of direct contact with staff. Questions received, answers and other clarifications will be distributed to all Offerors who have registered their intent to participate and/or posted to the Rocky Mountain Bid System website, www.rockymountainbidsystem.com.

PROPOSAL SUBMISSION AND FORMAT

Proposal submission requires four (4) hardcopies of the proposal, printed entirely on double-sided 8.5x11 paper, and one (1) electronic submittal on an accompanying USB flash drive. With the exception of a plastic binding

comb or spiral, please otherwise refrain from submitting unnecessary plastic binding materials. The electronic submittal must be compiled into one single pdf file and should be reduced to less than 15MB file size.

Proposal hardcopy and flash drive should be placed in a sealed envelope or box, labeled with your contact information and clearly labeled on the outside of the envelope or box: "Proposal for 2016-001 - Downtown Pedestrian Mall Improvements Professional Services." If using a carrier's envelope or box, it must be marked on the outside of it as well.

Proposals must be received by **2:00 pm August 18, 2016,** Rebecca Hodgson, Aspen City Hall, 130 South Galena Street, Aspen, Colorado, 81611.

The City cannot accept late, faxed, or emailed proposals. Weather conditions often delay carrier package delivery. It is your responsibility to allow sufficient time for package delivery and to verify that your proposal was received. Proposals received after the specified closing date may be returned unopened.

EVALUATION CRITERIA

The City reserves the right to select the Offeror that it deems, in its sole discretion, to have presented a proposal that is in the best interests of the City. Evaluation criteria may include and are not necessarily limited to:

Consultant Team Experience and Capabilities – 20%

- Depth of Consultant Team, experience and capabilities;
- Qualifications of the Consultant Team principals;
- Qualifications of the proposed Consultant Team members;

Project Approach – 25%

- Understanding of the scope of services requested;
- Project methodology including public interface, design process, quality assurance, construction approaches and phasing;
- Demonstrated responsiveness to City's goals and vision for the Downtown Pedestrian Malls;

Project Experience and Capabilities – 25%

- Experience working within complex urban environments that include layers of utility infrastructure design;
- Experience working within historic districts and/or landscapes;
- Experience working within the Rocky Mountain region;
- Experience working within multi-disciplinary site design efforts;
- Experience working within public facilitation processes;

Financial Stability & Capacity – 5%

- Financial Standing;
- Bankruptcies, lawsuits, liens;

- Staff capacity and ability to ensure that project is designed, developed and delivered on time and within budget;

Fee Proposal – 25%

INTERVIEWS

City of Aspen reserves the right to interview respondents to clarify proposals as deemed necessary. Notice will be provided when appropriate.

SELECTION / POST-SELECTION PROCESS

Offerors will be notified if their proposal is selected as a finalist. Specific terms may be created for any engagement, depending upon the nature of the selected proposal. Upon complete vetting of the selected Design Team proposal (and any negotiated additions, deletions, modifications), and upon execution of a negotiated contract agreement and associated notice to proceed, Design Team will be expected to promptly initiate analysis and design work.

CONTRACT/LEGAL

The selected Consultant Team will be required to execute and perform work subject to the AIA B101-2007 Agreement between Owner and Architect and A201-2007 General Conditions (without modifications).

CONFIDENTIALITY

Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City of Aspen may be deemed public records subject to examination and inspection by third parties. The City of Aspen reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

REFERENCE AND SUPPORTING DOCUMENTS

- Supplement 1-- AIA B101-2007 Agreement between Owner and Architect
- Supplement 2—AIA A201-2007 General Conditions for Construction Contract
- Supplement 3 – Downtown Pedestrian Mall Extents Plan
- Supplement 4– Electrical Master Plan, Aspen Pedestrian Mall, BCER Engineering, 2013
- Supplement 5—Tree Assessment Report, Aspen Pedestrian Mall, Aspen Tree Service, 2014

Design Workshop, Inc.
Landscape Architecture
Planning
Urban Design

120 East Main Street
Aspen, Colorado 81611
970.925.8354

designworkshop.com

January 23, 2018

Re: Design Criteria: Downtown Aspen Pedestrian Mall

To City of Aspen Partners:
Tim Thompson, Pete Rice, Kevin Dunnett, Jeff Woods, Barry Crook, Mitch Osur, Trish Aragon, Jessica Garrow, Tyler Christoff, Amy Simon, Jack Wheeler, April Long

Cc: Nate Torres, Tina Bishop, John Leys, Jessica Stanley, Meg Walker, Kathleen Wanatowicz, David Roederer, Nate Hines, Ed Price

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The following narrative is a refinement of the design criteria for the Downtown Aspen Pedestrian Mall project. The design criteria will be used as a framework for the preferred conceptual design. The purpose of developing such framework has two purposes. First, in ensures the right design criteria are captured from the concept alternatives moving forward and that the design team's efforts are focused and aligned with the city's vision and community input. Secondly, the framework serves as a means for detailed evaluation of the concept plan considering the public input received about the concept alternatives.

The design criteria are refined based on input received at these outreach events:

- City of Aspen Partnering Session II, October 27th, 2017
- Stakeholder Meeting II, October 31st, 2017
- Community Open House II, November 9th, 2017
- Council Work Session II, November 14th, 2017
- Aspen CCLC Presentation, December 6th, 2017
- City of Aspen Partners Infrastructure Workshop, December 11th, 2017
- Online Survey, November 22nd – December 22nd, 2017
- Historical Preservation Society, January 17th, 2018

EXECUTIVE SUMMARY

Hyman and Cooper Avenue Mall

Takeaways

- Streams and green spaces will remain.
- Bridges to be rebuilt to ADA standards.
- Rolled curbs will be adjusted to the proper elevation accounting for dining in this area.
- Gutters will be retested. Sections will be developed to show preserving versus omitting the gutters.
- Memorial benches will be restored and returned to existing locations.
- The Ki Davis fountain will remain with rebuilt edges for seating. The rolled curb will be incorporated in a way to improve seating potential. The water level will be lifted. The sculpture will remain.
- Outdoor dining will be further tested along the ditches and store fronts. Hyman and Cooper will not have dining in the center after completion of the project but the need to install infrastructure in all areas in mall will be done if future council decisions are made for dining programming changes.
- Existing “street trees” will be removed and not replaced. This will occur on the Northern side of Hyman and Cooper, and accounts for 14 trees.
- Intersections will be narrowed to a minimum distance following 1-way roadway standards. Galena is reviewing incorporated bike lanes for future planning.
- All crosswalks will be reconstructed with an intersection paving change.
- Bike racks will be proposed in the place of 2 adjacent parking spaces. Curb lines will be modified to allow for bike rack storage to be in the place of these parking spaces. The paving material will be different from the Mall.
- The team is reviewing safety concerns and potential design integration of vehicular traffic controls around the Mall.

Mill Street Mall

Takeaways

- The Wagner Park edge will be modified along the Mall edge. The playground’s concrete banding line will be used as a guide toward Durant Street.
- Seating will be added to edge along South Mill.
- A shade structure will be added north of playground.
- A flexible area for games (or similar programming) will be added. No permanent structures or features to conduct games will be shown.
- The playground theme will be continue to be tested, but the public overwhelmingly preferred a “natural” playground.
- Ornamental bosque will continue to be tested for:
    - Remove, box and salvage
    - Replace with non-fruiting trees of similar form and size.
- Outdoor dining will continue under trees.
- Replace shade trees with consistent species north and south of Wagner Node.
- Street tree pattern is replaced with additional bosque row on the Western side of North Mill.

Galena Street Mall

Takeaways

- Ornamental bosque will continue to be tested for:
    - Remove, box and salvage
    - Replace with non-fruiting trees of similar form and size.
- A water table will be further tested.

Wagner Node

Takeaways

- The sister cities bands will remain. The use of matching bricks will replace the stamped concrete to ensure the product matches the rest of the mall.
- The misting fountain idea will be developed further with flexibility for events area.
- A viewshed corridor from Cooper Avenue to Wagner Park will be improved.
- The current pavilion including the restrooms will be replaced with a larger building in a new location.
- The new pavilion location will be designed in the future and designed using many of the same features in green efficiency and potential exhibition area as previously in place on the existing building.

Wheeler Node

Takeaways

- The Dancing Fountain will be repaired in the same location.
- Bike racks will be proposed in the place of 2 adjacent parking spaces as represented in Conceptual Design Alternative 3. The bike rack storage area will not match the paving system of the Mall.
- No raised crosswalks are considered. All crosswalks will have a consistent design language at each intersection.

Independence Node

Takeaways

- The fire pit will be removed. The team will continue to review potential fire locations with council and committee input with conservation of energy in mind.
- The visitor kiosk will be reconstructed in its current location. The new information kiosk will be designed by a future architectural consultant with design input via ACRA and interested parties with future usability in mind.
- No raised crosswalks are considered. All crosswalks will have a consistent design language at each intersection.
- The intersection will be narrowed to minimum distance following 1-way roadway standards. The node is reviewing incorporating bike lanes for future planning.
- All crosswalks will be reconstructed with an intersection paving change.

Durant Connection

Takeaways

- The connection to Durant will be improved with an intersection paving change.
- No raised crosswalks are considered. All crosswalks will have a consistent design language at each intersection.
- Parking spaces will be removed.
- The existing bus turning movements around Rubey Transportation Center will be maintained. planes will be thoroughly reviewed with CoA Transit and RFTA in the next phase.
- The Durant connection will be designed in the spirit of “urban plaza”, and stormwater treatment areas will be integrated.
- Ski and bike storage will be integrated.

HISTORIC CHARACTER

URBAN PARKS – HYMAN/COOPER AVENUES

Feedback:

Hyman Avenue Mall and Cooper Avenue Mall retain integrity in many aspects. The form and arrangement of spaces and features on Hyman Avenue closely resemble the original construction with only minor modification. The original extent of brick paving and features remain, as do most original wood benches in original locations. Cooper Avenue is very similar to its original construction with some minor modifications, primarily the loss of a few original benches. The introduction of perennials as individualized plantings (vs along the entire length) disrupts the original linear character.

Incremental changes to each avenue are beginning to diminish integrity in design, materials and workmanship. These changes include:

- Existing asphalt patches to make brick bridges more accessible negatively impacts the integrity of brick gutters.
- Modifications at building entries to facilitate universal access impacts the flow of pedestrians and brick paving.
- Large temporary installations in the central walkway visually and physically disrupt the characteristic flow and pattern of pedestrians.

Takeaways

- Design should address current issues impacting integrity including: consider alternative methods to make bridges and buildings universally accessible in ways that do not impact integrity; consider locating temporary installations to not interrupt the characteristic form and pattern of the urban parks.
- Designs should orchestrate movement with placement of bridges into and between spaces instead of 'through' routes. Designs should allow movement through if outdoor dining is placed in the center.
- Designs should retain a consistency of ground plane (color, texture, scale) that match the original intent.
- Designs should emphasize a continuity of linear spaces, even if spaces need changes, versus creating a series of individual spaces.
- Designs should retain contributing features / details – channel, rolled curb – and relationships between features. The gutters will be further tested with the dining options.
- Designs should test solutions that work within the existing framework yet maximize the usage of Mall and the safety of pedestrians.
- Designs should retain the patterns and intent of contributing details, i.e., vegetation, and relationships.
- Designs must show conceptual sections of the proposed modifications.
- Designs should review possible integration of existing bricks to be re-used in areas not designated as ADA paths where possible.

URBAN PLAZA – MILL/GALENA STREETS

Feedback:

Mill Street North remains similar to original construction in certain areas and aspects – mainly as one linear space although the original continuity has been reduced / diminished. The north section retains the original pattern of a central walkway. Its bosque of trees in tree wells with original crabapple trees remains, except for two replacements that differ in character, diminishing the form of the bosque. The biggest change from the original construction is between Hyman and Cooper avenues where the west edge originally held a children's play structure that extended into Wagner Park and a small restroom building. The 2000s era replacements added larger features, organized in rectilinear patterns. The uses are the same but the change in the scale of the additions unintentionally separates the north section from the rest of the Mill Street and the park, and visually narrows the central walkway. The central space appears even narrower in summer months when outdoor uses line spaces adjacent to the buildings.

The south section of Mill Street remains similar to original construction and retains integrity. Original design drawings indicated silver maples as the tree species for this bosque. Today it is a mix of species of varied heights, forms and character, along with a missing tree. This mismatch of species diminishes the intent of having a cohesive grove of trees. Two trees at the northeast corner connecting to Cooper Avenue were eliminated during the 1976 construction to accommodate an underground tank. Adjacent to this on the east edge was a landscape area between the plaza and building. A series of concrete planters were added to this space after the original construction, resulting in a barrier and impassable edge.

Takeaways

- Designs should address integrity, considering that Mill Street North at the park has changed the most of all Mall spaces.
- Designs should consider potential for additional compatible change or new additions within areas with diminished integrity (i.e. South Mill where trees have been replaced). Designs could consider the potential of additional compatible change or new additions within areas with diminished integrity – this area might offer the most opportunity for modification as it has changed the most of all spaces.
- Designs should be accomplished holistically with modifications retaining spatial arrangements (of which paving helps to define) vs redesigning individual spaces on Galena and Mill.

- Designs should address integrity where small scale features (non-historic) interrupt visual character. Mixed tree species and mixed sized on Mill diminish the bosquets. Temporary installations interrupt the characteristic form and pattern of Mill Street.
- Designs should orchestrate movement and views using the original design intent.
- Designs should retain a consistency of ground plane in color, texture, scale, etc. that reflect original design and intent.
- Designs should emphasize connected linear spaces and connections at nodes.
- Designs should create cohesive spaces vs a series of individualized spaces.
- Designs should retain / repair contributing features / details – brick paving, fountains, brick tree wells, wood benches before replacement. The gutters will be further tested so as not to detrimentally impact dining.
- Design will remove the concrete planters to restore integrity to this area.
- Design will consider extensions of more safe and direct access to Durant Street on Mill Street.

NODES

Feedback – All Nodes

The connections between the Mall and downtown, and the linkages between urban parks and urban plazas are three nodes: Wheeler, Wagner and Independence. Each has its own individualized features including the fountain at Wheeler, Sister Cities plaza at Wagner and an information kiosk at Independence.

Takeaways – All Nodes

- Designs should consider holistic modifications to spatial, ground plane, plantings, etc., versus designing individual spaces.
- Designs should retain a consistency of ground plane in color, texture, scale, etc. that reflect the original design and intent.
- Designs should create cohesive connections vs a series of individualized spaces.
- Design should emphasis connections at nodes.
- Design should retain contributing features / details – brick paving, brick tree wells and views. The gutters will be further tested.
- If future expansion is considered (possibly in areas designed but not built) respect the original design intent but create spaces of their own time and place.
- Designs should consider consistency when adjacent to roads (curbs, flush, raised, accessibility)
- Designs should recognize the past investment in the recent improvements.
- Designs should recognize and maintain a continuity to small scale improvements/features (kiosk, etc.).

Feedback – Wheeler

The Wheeler Node remains very similar to the original construction. The brick paving is in place along with the Dancing Fountain, which has been repaired but retains its original grate and rectangular opening.

Takeaways – Wheeler

- All Designs should address current issues impacting integrity. Wheeler Node remains very similar to the original construction. Views and physical connections to the park have been modified from the original construction, diminishing integrity.
- Designs should consider Wheeler Node and Mill Street Mall together in any future modifications.
- Designs could alter the information kiosk and other temporary features. Features that interrupt the spatial pattern of the Wheeler Node slightly diminish its integrity and could be improved.

Feedback – Wagner

The introduction of the circular form of the Sister Cities Plaza, its change in materials and orientation to the side of the space interrupts the original continuity of the Wagner Node. The Wagner Node has diminished integrity in feeling, design and association.

Takeaways – Wagner

- Designs should address integrity. Designs could consider potential for additional compatible change or new additions within areas with diminished integrity. Wagner Node might offer the most opportunity for modification as it has changed the most of all spaces.
- Designs should address current issues impacting integrity. Views and physical connections to the park have been modified from the original construction, diminishing integrity.
- Design should consider Wagner Node and Mill Street Mall together in any future modifications.
- The design will consider a redesign of Sister Cities Plaza without losing the message.
- An expanded edge will be included.

Feedback – Independence

Independence Node remains similar to its original construction. Independence retains integrity, with only minor intrusions on the original character, including the scale, style and location of the information kiosk.

Takeaways – Independence

- Designs should address integrity. The information kiosk interrupts the spatial pattern of the Independence Node, slightly diminishing its integrity. Temporary installations interrupt the open character of this node. The information kiosk will be rebuilt in its existing location.

BRICK MATERIALS AND FEATURES

Feedback:

The most characteristic feature of the Mall is the consistent ground plane of brick paving that extends throughout all the Mall's spaces in similar repetitive patterns. In addition to the paving, brick is the primary material of gutters, rolled curbs and tree wells in all of areas of the Mall. This continuity of material, along with the linear built edge of multi-storied buildings, gives the Mall a distinctive spatial character.

The most important small-scale features (benches, lighting, gutter, rolled curbs, tree wells, etc.) of the Mall are those that are integrated with the spatial arrangement of each original space including urban parks and urban plazas. These features are the brick gutter, brick rolled curb and brick tree well. Each is an individual detail with a specific purpose, but each is also an integral component of the overall design.

Takeaways

- Designs should address current issues impacting integrity, including the small incremental changes to features. Removal of original features or replacement with very different styles of features (i.e., circular bench) and temporary installations along Cooper and Hyman Avenues, and Mill Street Mall threaten features. The clock tower and circular bench will be removed.
- Designs should acknowledge the original features as key components in patterns and the holistic character of the Mall should inform future modifications and design decisions.
- Designs should repair original features in a manner that retains original material first (replace in-kind second), maintains a consistency of ground plane (color, texture). The brick succession plan will include a replace in-kind. Use of existing brick integrated will continue to be evaluated.
- Designs should retain / repair contributing features / details – brick paving, brick tree wells, wood benches etc. The gutters will be further tested.
- Designs should consider long-term maintenance, availability and replacement of proposed materials.

Trees and Vegetation

Feedback:

The tree patterns and forms throughout the Mall are similar to the plantings at the end of construction (by circa 1980), and contribute to the integrity of the Mall. The linear patterns of deciduous trees interspersed with evergreen trees over a groundcover of lawn remain on Cooper / Hyman Avenues. In some areas, new crabapple trees have been added, disrupting the pattern. Tree bosquets on Mill and Galena streets remain very similar to the original construction with some missing trees. Galena trees are the

same crabapple trees. North Mill Street is primarily crabapple as originally intended but has infill trees of varied species. South Mill Street trees have the greatest mix of species and is not a cohesive bosque. The addition of annual plantings began in the Mall's early years (circa 1980s) and continues today.

Takeaways

- Designs should address integrity: addition / replacement of tree species that differ from original in scale, form, etc.
- Designs should address overgrown and mature vegetation in a manner that considers the original intent – replanting, thinning / pruning, new hardy species.
- Designs should acknowledge the original vegetation patterns (lawn, tree patterns, relationships) as key components that contribute to the character of the Mall, informing future modifications and design decisions.
- Designs should consider perennial plantings at grade. Annuals will be limited to planter pots.
- Designs should reduce the diversity of tree species, reinforcing the original intent.
- Designs should consider the long-term maintenance of trees in associated with future utility access.
- Boxing up of the existing crab apples will continue to be evaluated versus the replacement with a non-fruiting species of similar form and size.

PROGRAMMING + PLACEMAKING

PROGRAMMING

Feedback: 57% of workshop participants feel that the current level of programmed events/activities is satisfactory.

Regarding *temporary/flexible elements*, Partner Session participants shared greatest support for Outdoor Food and/or Beverage Service, followed by Art/Sculpture Displays and Additional Tables and Chairs. Community Workshop participants and Online Survey respondents both shared greatest support for Flower Displays, Art/Sculpture Displays and Outdoor Food and Beverage Service. Qualitative feedback focused on an openness to consider temporary elements, but limited to a small number.

Regarding *events/activities*, Partner Session participants shared greatest support for Small Musical Performances, followed by Outdoor Dining and Talks/Discussions/Spoken Word Events. Community Workshop participants also shared greatest support for Small Musical Performances, followed by Outdoor Dining and Farmer's Market. Community Workshop participants did not believe Large Musical Performances and Outdoor Movies are appropriate. At the placemaking exercise, additional winter events/activities were noted.

From the placemaking exercise, recommendations for *activities* include: More family activities; More welcoming to downtown workers; More opportunities and places for music students and others to perform (not amplified); Outdoor dining service with lower price point for commuters and families; Balance retail and restaurants on malls; Recruit more local businesses (as opposed to chains); More daytime hour food service (e.g. breakfast); Stronger connection to Wagner and its activities; Temporary art installations; Partner with Music and Ideas Festivals; Build sense of community through more than commercial activity; Balance programming with tranquility: Avoid notion of theme park; Flexible area for variety of programming; Christmas holiday decoration contest: trees and storefronts; and WIFI.

In regard to considering *additional elements for the Mall*, Partnering Session participants most supported Additional Outdoor Furniture, followed by Water Features and Lighting. Community Workshop participants shared greatest support for Plantings, Art and Water Features. Online Survey respondents shared greatest support for Outdoor Furniture, Water Features and At-Grade Plantings.

Takeaways

- Designs should integrate temporary/flexible elements of flower and ~~art displays.~~ Designs may consider places for art. Art will be decided by a separate board established by the City.
- Designs should integrate events/activity areas for small performances, outdoor dining and talks. The area under the pavilion could better facilitate flexible small performances.

- Designs should not integrate events/activity areas for large musical performance or outdoor movies (outside of Wagner Park).
- Designs should include additional outdoor furniture, water features and plantings.
- Designs should maintain current level of short-term lease outdoor dining space.
- Designs should create flexible areas with more programming options.
- Designs could add more daily, self-initiated activities such as games, interactive art, temporary play.
- Designs could consider a new zone at edge of Wagner Park with seating, games, etc.
- Designs could consider temporary stages on Sister Cities' Plaza.

OUTDOOR DINING

Feedback: Outdoor dining provides an additional layer of activation to the Mall and a critical source of revenue generation for restaurant owners. When asked if the quantity of short-term lease outdoor dining space is appropriate, 52% from partnership session and 65% of community workshop participants stated the current level as appropriate. However, the location and arrangement of such dining received mixed results.

Takeaways – **Hyman/Cooper**

- Designs will provide for necessary emergency access (identified in subsequent section)
- Designs should test alternative configurations to outdoor dining, recognizing the evolution of buildings serving as restaurants. Options include:
    - Designs should test dining against the water channels, maintaining 100% passage along both building frontages and the center walkway
    - Designs should test outdoor dining beside the building frontages.
    - Designs could consider the additions of temporary or retractable shade umbrellas in key locations.
    - Design should continue to test dining against water channels and along building frontages. Item needs consensus attention.

Takeaways – **Mill/Galena**

- Designs will provide for necessary emergency access.
- Designs should eliminate the need for platforms or temporary structures.
- Design should consider consistency for, furniture, or design palette.
- Designs should maintain outdoor dining beside the restaurants.
- Designs should complement outdoor dining with the Mall's patterns and relationships.

FOOD AND BEVERAGE

Feedback: Additional food and beverage options received mixed feedback. While additional reasonably food and beverage options are desired by many, and many believe there is enough market share to support both, many recognize the potential that seasonal food and beverage service provided by non-existing restaurants will compete with and reduce visitation to other restaurants.

Takeaways

- Designs should complement how existing restaurants could add outdoor food service, if desired. If integrated, this could be achieved every-day, one/two days a week.
- Designs should complement food and beverage with the Mall's patterns and relationships.

GROUNDPLANE + FURNISHINGS

HARDSCAPE SURFACES

Feedback: The use of bricks as a continuous element for horizontal surfaces is a fundamental design element of the Mall. Feedback suggests that opportunities to cross between different channels within the mall are too infrequent. When asked which landscape element best describes the Mall's identity, "Continuous use of bricks" ranked highly amongst Partnering Session participants, community workshop participants and online survey respondents. Building upon this, when asked if the future mall design should retain the current color, texture and pattern of paving, 94% of workshop participants and 82% of online survey respondents voted "agreed" or "strongly agreed." At the placemaking exercise, participants noted that the Sister City Plaza seems too new and different as compared to the larger Mall and may be worth reconsidering in the alternative.

Takeaways – **Bricks**

- Designs must maintain the continuous texture, color, pattern and material as the existing mall.
- Designs will consider permeable or non-permeable pavers options, tied to stormwater management regulations.
- Designs will consider sandset vs. mortar set options, tied to the stormwater strategy.
- Designs could accommodate minor areas of alternative paving, tied to accessibility strategy against building
- Designs should consider the integration of existing bricks to be reused in each alternative.

Takeaways – **Mall/Street/Sidewalk Transition**

- Designs could retain current material or propose new material change.
- Designs will examine Mill and Galena Malls to Durant Street to improve connectivity.

Takeaways – **Crosswalks**

- Designs should reconsider crosswalk locations using current COA standards.
- Designs should consider original mall "node" intent of connecting across streets.

Takeaways – **Sister City Plaza**

- Designs may reconsider the design of the plaza, while retaining current configuration (paving, seating, trees).
- Designs could reconsider paving, seating, and trees with new design.
- Designs should consider past investment and meaning of Sister Cities message.

SEATING

Feedback: The various seating options provide important opportunity for respite and social interaction – both central to the Mall's effectiveness and appeal. In addition, 64% of Community Workshop participants and 69% of Online Survey respondents believe that the Mall has enough seating opportunities while 35% of participants and 26% of respondents do not believe the Mall has enough. When asked about the future of the fixed benches, 47% of survey respondents believe they should remain on the Mall, but could be relocated; 18.5% feel they should remain in same location; and 9% feel they should be relocated off the Mall. In qualitative feedback, the public felt movable furniture was preferred over fixed benches.

Takeaways – **Fixed Benches**

- Designs should retain memorial benches on the Mall in their existing location

Takeaways – **Movable Tables/Chairs**

- Designs should consider diversification of seat types and locations.
- Designs should integrate move movable than fixed furniture options.
- Designs could consider additional seating along the edge of Wagner Park.
- Designs should create consistency in the seating/tables with a higher-level design.

WATER FEATURES

Feedback: The Dancing Fountain is a notable and recognized element of the Mall's design, and contributes to the Mall's historic character. Its location should be maintained although the surface could be enhanced. The Davis Fountain is not as recognizable according to Partnering Session participants, survey respondents and placemaking participants, and should be reconsidered. In addition, 61% of survey respondents would be interested in additional water features. At the

placemaking exercise, participants supported this idea and identified the intersection of Cooper and Galena as one potential location.

Takeaways

- Designs should retain the Dancing Fountain and repair or enhance its surface treatment, in keeping with the fountains original intent.
- Designs could propose enhancement/refurbishment for the Davis Fountain. Designs could propose smaller footprint.
- Designs should consider additional water features in other location(s) on the Mall, potentially at the Galena Node.
- Designs could consider how water features could act as barriers.

PUBLIC ART

Feedback: Public art has been a critical component of the Mall design since its creation, though many feel more public art is needed to reinforce this ideal. When asked of interest-adding elements to the Mall, 16 of 68 workshop participants supported additional public art (tied for the highest votes). In a follow-up question, 23 of 68 participants supported additional temporary art. Online survey respondents were more favorable of both ideas, with 27% voting for additional permanent and 71% for temporary art/sculpture displays.

Takeaways

- Designs may consider additional locations for temporary public art locations in areas that activate and complement the Mall's patterns and relationships.
- Designs should identify additional locations or programs for temporary/rotating public art exhibits in areas that activate and complement the Mall's patterns and relationships

FIREPIT

Feedback: Feedback indicates mixed feelings regarding the inclusion of a fire pit in the new design. At the Partnering Session, when asked "What, if any, individual elements should be rethought?" 22% of participants responded with the fire pit (second highest behind the Davis Fountain). At the community workshop, this feedback was reinforced with 22% of participants expressing concerns about the fire pit (the highest of any individual element). At the placemaking exercise, participants also commented that temporary or movable fire pits might be preferable to a permanent option. Finally, Aspen Police Department notes that many incidents (i.e. altercations, fights) occur at the current fire pit.

Takeaways

- Designs should be mindful of energy consumption.
- Designs should review potential removal or recreation of a more efficient and better thought out fire feature if wanted by council and the community
-

KIOSK / INFORMATION PANEL

Feedback: The existing kiosk provides an important opportunity to welcome and orient visitors to downtown Aspen. However, the placemaking exercise illustrated mixed feelings regarding the location and design of the kiosk. Some feedback was associated with recommendations which are relatively minor (i.e. the horizontal metal surfaces get too hot. Feedback regarding the information panel was not focused on the feature's design, but on the graphic layout of the information on the panels.

Takeaways – Kiosk

- A new kiosk will be built in its current location.
- Designs of the kiosk will incorporate the required needs from ACRA and end users for a better layout

Takeaways – Information Panel

- Designs may consider a relocation, redesign or additional informational panels in an area or areas that activate and complement the Mall's patterns and relationships.
- Designs may consolidate the panel with other elements, such as the restrooms.
- Designs should maintain a centralized location.

PAVILION RESTROOMS

Feedback: The existing restroom building is centrally located between Wagner Park, the Mall and the playground. Participants recognize the need for the facility, but commented that its location blocks views to/from Wagner Park. As an alternative perspective, others noted that its current location "contains" the Mall and helps creates an active corridor.

Takeaways

- Design will integrate a larger pavilion restroom in a new location.

Designs will review the existing green features and the exhibition features of the current pavilion restroom and looks to design a similar building with better use of space

PLAYGROUND

Feedback: The playground provides a popular social and recreational destination for visitors to Wagner Park and Mall. Its location triangulates nicely with the nearby restaurants. During the placemaking exercise, participants expressed the interest in expanding the size of the playground, to accommodate additional play features, should the restroom building be reconsidered.

Takeaways

- Designs should explore options for surface treatment (i.e. engineered wood fiber, synthetic material).
- The aesthetic approach does not have census. Further examples and ideas should be presented to the community.
- Designs could explore strategies to achieve wider range of ages in a manner that complements the Mall's patterns and relationships and its relationship to Wagner Park. Aesthetics could better relate to the Mall.
- Equipment updates worth exploring in one option.
- Designs could include toddler play or lawn area for temporary play elements for young kids.
- The amount of playground area is appropriate. Designs will consider the same amount of playground area.
- Designs could consider activities for older kids (for example the Aspen Swing Project).
- Designs should consider shade for summer and consistency in seating.

SIGNAGE

Feedback: Participants at the placemaking exercise noted that improved street and direction signage is desired.

Takeaways

- Designs will seek integrated design approaches to minimize the potential of clutter, ensuring placement and design complement the Mall's patterns, relationships and aesthetic. Very important.
- Designs will include locations for street signage at each node at the existing lighting.
- Designs will recognize the current update to the signage code.
- Designs will update mall directional and regulatory signage to be consistent in graphic design/branding.
- Designs will integrate wayfinding signage in a manner consistent with the city.
- Designs will consider opportunities to feature areas of historical significance, similar to Aspen Downtown Enhancement Plan
- Design must consider signage and views regarding placement and aesthetics.
- Design must consider site furnishings and infrastructure as part of overall signage, wayfinding and branding for accuracy and consistency.
- The project needs an overall plan/ layer addressing signage, wayfinding and branding cohesively.

BIKE RACKS

Feedback: 65% of workshop participants felt the Mall does not have enough bike storage on or adjacent to the Mall.

Takeaways

- Designs must plan for bike storage for Rubey Park.
- Designs should examine consolidation and expansion of existing racks on edge of or near the Mall.
- Designs should locate bike racks on edge of or near the Mall and at key areas of flow for bicycles.
- Designs should consider the Mall's patterns, relationships and views in addition to usability.
- Designs should consider ski storage AND bike storage. (Dual purpose).
- Designs could change design of racks, including sheltered racks or interior bike storage location

LIGHTING

Feedback: Overall public perception of outdoor lighting is that current conditions are satisfactory (57%) or very satisfactory (30%). The consultant team found the light levels adjacent to buildings meet recommended lighting levels, however, areas in the center aisles to be poorly lit. Feedback surrounding holiday lighting focused on not over-doing lighting and using white lights vs multi-colored lights. The poles and some fixtures are historic.

The 'antique lights' are original features of the Mall installed as integral components, and contribute to the Mall's integrity.

Takeaways – **Year-Round Lighting**

- All lighting designs will comply with the COA's dark sky requirements.
- Designs will test retrofitting existing posts/luminaires (including original 'antique lights') or new posts/luminaires designed to complement the Mall and its patterns and relationships.
- Designs should utilize LED luminaires to reduce energy consumption.
- Designs should explore alternatives for increasing light in the center aisles designed to complement the Mall and its patterns and relationships.
- Designs could explore creative or artistic interactive lighting displays.
- Designs should integrate the acorn style for historical reasons but replace heads for consistency.
- Designs will assume they will receive exception for dark-sky ordinance.
- Designs should integrate warmer lights

Takeaways – **Holiday**

- Designs will examine holistic aesthetic approach for holiday lighting, including location and appearance.
- Designs will utilize LED luminaires to reduce energy consumption.
- Designs will explore alternatives for increasing light in the center aisles.

TREES

Feedback: When asked "which elements contribute most to the Mall's Identity," workshop participations ranked the water channels and trees along Hyman and Cooper Avenues with the most votes. The existing crabapples on Mill and Galena also ranked highly.

Takeaways – **Hyman/Cooper**

- Designs will adhere to the 2007 Community Forestry Management Plan.
- Designs will assume that the removal trees 885, 206, 387, 182, 843, 882, 1390, and 1394 will be permitted for this project. These trees all have significant health issues that will lead to mortality. All of them would likely have been permitted for removal in the next 1-5 years.
- Designs will assume that the removal of trees 298, 354, 184, 853, 1326, 1334, 830, 2778, 1415, 1338, 893, 894, and 2779 may be permitted for removal for this project, but will be determined by construction requirements. These trees would likely have been permitted in the next 5-10 years because they are in confined growing spaces or have structural issues.
- Designs will consider that additional trees requested for hazard removal be evaluated on a case by case basis and may require mitigation.
- Designs will propose a succession plan with higher quantities of deciduous trees for additional sunlight.
- Designs should retain a diverse mixed forest, planted in designs that reflect the original design in intent, with adaptation for current best practices in tree and vegetation management, i.e., bosquets at Mill Street, linear plantings on Cooper, etc.

- Designs should maintain transparency to Wagner Park and historic views and view sheds.
- Designs could repair tree canopies and patterns, and add views through various methods (tree pruning, tree elimination, etc.)

Takeaways – Mill / Galena

- Designs will consider trees and utilities holistically.
- Designs must adhere to the designation of trees appropriate for the Mall as a starting point (spruce, aspen, cottonwood, crabapple), but alternative trees may be considered under special review. The review must consider aesthetic and character of original plan (replace in-kind).
- Boxing up of the existing crab apples will continue to be evaluated versus the replacement with a non-fruiting species of similar form and size.

PLANTINGS – AT GRADE

Feedback: The seasonal plantings provide an important burst of color throughout summer months. 58% of survey respondents would be interested in additional ground plane plantings. In addition, 75% of survey respondents are interested in temporary flower displays. Placemaking exercise participants expressed interest in additional plantings.

Takeaways

- Designs should retain current ground plane plantings.
- Designs could propose additional ground plane plantings.
- Designs could consider a hybrid of perennial and annual plantings. (Designs could consider plantings in line with "native park". (Annual plantings do not send that message.)
- Plantings must consider Aspen's water efficiency plan.
- Plantings could consider a more contemporary approach to planting design.

PLANTINGS – HANGING

Feedback: Seasonal hanging baskets provide an important burst of color throughout summer months. However, only 33% of survey respondents would be interested in additional hanging baskets.

Takeaways

- Designs should retain existing hanging baskets, but could be more of this time.
- Designs could propose additional hanging basket locations, if associated with other site elements, but must be balanced with goal of eliminating visual clutter.
- Designs should propose self-watering abilities to reduce daily maintenance.

LANDSCAPE FENCES

Feedback: The existing landscape fences prevent damage to seasonal plantings. To date, no targeted mention of the existing fences has been made by stakeholders or the public.

Takeaways

- Designs should consider alternative solutions for fence designs to be removed.

STREAM CHANNELS & BANKS

Feedback: The existing lawn along the stream channels receive notable wear and tear due to proximity to dining areas and pedestrian traffic; maintenance costs are high because of this. At the placemaking exercise, participants suggested that additional stones could be introduced to create additional ripples or moments of interest.

Takeaways

- Designs should maintain the channels and edges as lawn and provide 100% access.
- Designs could introduce additional stones to create additional ripples for moments of interest (but only at the bottom of the channel.
- Designs could propose underground structural grass solutions to alleviate wear/tear.

- Designs must maintain “ditch” aesthetic in terms of sides. Boulders on the sides does not meet the aesthetic.
- Stormwater must not be allowed to get into ditch. Legal issue.
- The cross section of the ditches is important; allowing stormwater into the ditches might change cross-section.

LAND USE + OWNERSHIP

LAND USE

Feedback: Land uses of the Mall have and will continue to evolve, including retail, hospitality, office and residential. The Mall will likely go through an evolution through the plans of various pending developments.

Takeaways

- Designs must consider tying into utilities as existing properties redevelop.
- Designs must consider flexibility to accommodate a mix of land uses.

EMERGENCY ACCESS

Feedback: Through meetings with Aspen Fire and Police Departments, we understand various existing factors influence the ability to provide life-safety measures to Mall businesses. For example, existing plantings near the southwest intersection with Mill and Cooper prohibit emergency vehicles from turning movements onto Cooper from Mill. In addition, the branches of the existing mature trees along Hyman and Cooper prohibit adequate access. As such, the center aisle Hyman and Cooper is undesirable for fire access with southern lanes preferred.

Takeaways

- Designs should provide access in both direction on Hyman, Galena and Mill.
- Designs should provide access from the east on Cooper.
- Designs should include fire lanes of 20’ widths – 16’ on case by case.
- Designs should provide direct access to 3-story buildings.
- Designs will consider integration of vehicle barriers for security (must be integrated with urban fabric).

PUBLIC VS. PRIVATE

Feedback: The Mall is considered and maintained as a public park. As such, the Mall should be able to be used by the public.

Takeaways

- Designs should maintain ability for leases on the Mall. Designs could consider additional programming locations. (food and beverage not the only lease being considered.)
- No raised, permanent platforms for any programming. (temporary might be considered).

HUMAN COMFORT

ACCESSIBILITY

Feedback: Some areas of the Mall exceed 5% slope, including the area along Wagner Park between the Mall and Durant Avenue as well as surrounding the Davis Fountain at the intersection of Hyman and Galena. Gaps between individual pavers exceed current standards. The existing bridges do not meet ADA standards due to inaccessibility across the brick channels.

Takeaways

- Designs might consider areas that exceed 5% slope, even if that means expanding the construction area.
- Designs will reconcile accessibility at the bridge crossings.
- A grading plan will be developed which makes as much of the mall as accessible as possible given existing constraints.
- Designs will consider ADA access to historic buildings which may never match the grades of the Mall.
- Designs will consider snowmelt in limited areas to improve accessibility.
- Designs will consider the pavers and joints for accessibility.
- Designs will review the existing pavers conformance to ADA regulatory requirements of what existing bricks can and cannot be re-used. Designs will look at the possibility of using existing bricks in patterns not in ADA designated areas.

SNOWMELT

Feedback Received: Today, the Mall's absence of snowmelt allows for a picturesque and nostalgic image of a mountain town. However, snowmelt is recognized as a strategy towards improving accessibility through the Mall and to individual businesses. It also serves to reduce maintenance. Concerns for its inclusion include energy consumption and aesthetic change. When asked their opinion of snowmelted surfaces on the Mall, 60% of survey respondents and 63% of workshop participants felt "snowmelt is acceptable, but in limited areas."

Takeaways

- Designs could examine the inclusion of snowmelt in limited areas. ~~Not all options should include snowmelt~~.
- Designs should be operated by renewable energy with high efficiencies.
- Designs should minimize impacts to the picturesque quality of snow-filled streets.
- Designs should align snowmelted areas to accessibility through the Mall and to business frontages.
- Designs should consider planning for infrastructure even if not desired at this time.
-

SHADE

Feedback: The existing vegetation throughout the Mall provides important areas of shade. When asked about comfort levels, 80% of survey respondents and 76% of workshop participants felt the Mall has an appropriate amount of shade during summer as compared to only 62.5% of survey respondents and 55% of workshop participants during winter months. In a separate question, only 58% of survey respondents would be interested in adding additional areas of shade.

Takeaways

- Designs should maintain the current level of shade throughout the Mall.
- Designs should maintain the diversity of shaded areas (i.e. Independence Node = less shade).
- Designs can examine how less shade could be provided during winter months.
- Designs will consider shade from the perspective that shaded surfaces affect stormwater strategies.
- Designs will consider that tree canopy is a credit towards stormwater. (existing only).
- Designs will consider quality of shade (dappled vs solid shade).

STORMWATER + UTILITIES

STORMWATER

Feedback: The Mall does not currently meet the City's stormwater code requirements. Participants of the Partnering Session, Stakeholder Meetings and Community Workshop expressed a willingness to update the Mall's stormwater design and best management practices if changes do not negatively impact the historic character and fabric.

Takeaways

- Designs will adhere to the City's Urban Runoff Management Plan.
- Designs will consider three approaches to stormwater:
  - Decentralized LID treatment within the mall with treatment for alleys and private parcels.
  - Decentralized LID treatment, along with hydrodynamic separators, within the mall with treatment for alleys and private parcels.
  - Treat the mall with decentralized LID, treat private parcels with hydrodynamic separators.
- Designs will consider use of hydrodynamic separators if systems meet Code specifications.
- Designs will consider how to balance stormwater best management practices with preservation of historic fabric.
- Designs will review the potential of a stormwater district to be created in the mall project boundary area.

IRRIGATION

Feedback: Due to the level of construction impacts, new irrigation and operating systems are anticipated by the City for the project.

Takeaways

- Designs will test alternatives for a raw water source, with a new booster pump at Cooper and Galena.
- Designs will adhere to the City's Efficient Landscape Ordinance, Aspen Parks Standards and current landscape best management practices by the irrigation association.
- Designs will consider how stormwater flows and soil moisture sensors can reduce irrigation needs.
- Designs will consider how stormwater improvements can be integrally designed with the Mall's historic character and features.
- Designs will consider irrigation for all planting areas (minimize hand-watering).

Aspen Pedestrian Mall



November 2, 2016

City of Aspen - 2012 Aerial Image

1 inch = 30 feet

0 30 60 120 180 240 Feet

ASPEN PEDESTRIAN MALL

Phase 3: Downtown Pedestrian Mall Improvement Project

Proposal for Professional Landscape Architecture Design, Engineering and Public Communication Services

Issue Date: November 14, 2019

PROJECT DESCRIPTION

The project extent is referenced in Exhibit A – Refined Conceptual Design for the pedestrian mall, alley and street approaches as referenced in the July 5th, 2016 request for proposals titled "Professional Design Services – Downtown Pedestrian Mall Improvements."

SCOPE OF SERVICES FOR PHASE 3 | DESIGN

The following narrative describes a comprehensive list of services required to prepare schematic design for Phase 3 of the Downtown Pedestrian Mall Improvements. Phase 3 Design follows Phase 1 and Phase 2 of the project and is based on the design direction of the following exhibits and City Council direction on September 24, 2019.

- Exhibit A - Refined Conceptual Design
- Exhibit B – Infrastructure BOD and Conceptual Plans
- Exhibit C – Issued RFP, Downtown Pedestrian Mall Improvements
- Exhibit D – Preferred Design Criteria
- Exhibit E – Study Area Boundary

Efficiently organizing the work will be essential to completing the work products in a timely fashion. While the following narrative is organized in a linear manner, many of the sub-tasks may actually proceed in a parallel or concurrent fashion. The Phase 3 Design scope is organized into the following tasks:

- Task 3.0 Architecture Conceptual Design
- Task 3.1 Schematic Design (30%)
- Task 3.2 Public Involvement Strategy
- Task 3.3 Preconstruction Services
- Task 3.4 Site Surveying
- Task 3.5 Tree Protection Toolkit
- Task 3.6 Progress Meetings, Special Topic Meetings and/ or Workshops
- Task 3.7 Redevelopment Project Coordination,

The scope of work to be performed by Design Workshop (DW) and subconsultants in connection with this agreement is as follows:

TASK 3.0 Architecture Conceptual Design

The general objective of this phase of work is to test program and design goals within the framework of the Refined Conceptual Design for the following architectural features.

- Information Kiosk
- Information Panel

*Playground Pavilion not included.
*Interpretive Multi-Use Building (restroom) not included.
* Bike + Ski Shelter not included.

The specific tasks and work products to be completed include:

Three Conceptual Design Schemes (Information Kiosk/ Information Panel)

- Kick-off Meeting with internal team and Project Control Team.
- CCY Internal Design Charette/ Competition
- Program and Building Summary Narrative for each Scheme.
- Conceptual Illustrative Plan (1 per structure)
- Conceptual Diagram (1 per scheme)
- 3-D visualizations of designs - digitally created, hand drawn, or other (1 per structure). To be coordinated and integrated into a site perspective context.
- Precedent Imagery to convey design and programming intent

Refined Conceptual Design (Information Kiosk/ Information Panel)

- Program Summary Narrative for each structure
- 1 Illustrative Plan of each structure
- 2 Illustrative Elevations of key facades per structure
- 2-3 Key Illustrative Section Diagrams to illustrate relationships to broader Mall context
- 1 Conceptual Diagram
- 1 3D Visualization for each structure – 2 images maximum total. (To be coordinated with Design Workshop. Design Workshop will integrate into a site perspective context.)
- Precedent Imagery to describe key programming or design features
- Conceptual Material Board (digital)
- Sustainability Concepts Board and/or bullet points

TASK 3.1 Schematic Design (30%)

The general objective for this phase of the work is to prepare infrastructure studies and develop an initial understanding of construction costs. Based on the Owner approved Exhibit A – Refined Conceptual Design and Exhibit B - Infrastructure BOD and Conceptual Plans, the DW team will prepare a Schematic Design Package. The specific tasks to be completed are as follows:

Infrastructure:

- Prepare civil engineering drawings including: Grading and Drainage Plan (including ADA improvements), Utility Plan, Stormwater Management Plan, Roadway Cross Sections, Site/Utilities Basis of Design Report and Drainage Report. An AutoCAD Civil 3D model will be provided and updated once per phase to coordinate constructability discussions and phasing. The model will include at-grade surface features (grading) and subsurface utilities only. The plans will take into account existing conditions including relationships to existing buildings. The plans will guide private redevelopment regarding tie-ins, grading and ADA improvements, brick replacement and estimated future domestic water, fire protection loads and utility sizing. Utility planning shall be coordinated with utility providers (including City of Aspen Water and Electric). All plans shall conform to the City of Aspen Water and Electric distribution standards and follow all applicable local, state and/or federal guidance.

- Prepare mechanical, electrical and plumbing drawings including medium and high voltage power, conveyance for future telecom/ data (Comcast, Century Link, Cedar Networks) and services to restroom building.
- The snowmelt system will be evaluated in schematic design only to help the design team, public and Council evaluate its impacts and relevance for the future.
- Estimate future natural gas loads and utility sizing (design development and construction documents by provider).
- Estimate future sanitary sewer loads and utility sizing (design development and construction documents by provider).
- Estimate future domestic water, fire protection loads and utility sizing.
- Prepare Preliminary Project Descriptions for materials and other infrastructure features.

Urban Design:

- Prepare an overall colored rendered site plan that clearly illustrates the impacts of infrastructure on site conditions, key relationships, planting concepts, site circulation, and the relative disposition of the program on the site. The urban design plan will be integrated with an overall grading and drainage strategy.
- Prepare color rendered illustrative enlargements that describes the detailed intent of each area of improvement:
    - Mill and Galena pedestrian connection to Durant.
    - Galena/Hyman Node and intersection.
    - Independence Node and intersection.
    - Wagner Node
    - Wheeler Node and intersection.
    - Transitions, edges and tie-in of adjacent areas.
- Prepare a materials diagram that documents the various typologies and layouts (i.e. brick on concrete, brick on sand, concrete, specialty concrete and stone). To ensure historic fabric is identified and reused where possible, and new or rebuilt features are compatible with the Mall's historic character, the existing brick pattern will be documented through aerial photography. From the documentation of existing conditions, the diagram will identify brick to remain, areas of reuse and areas for rebuild.
- Prepare a vegetation diagram that documents the various typologies and layouts (i.e. shade trees, ornamental trees, shrubs, perennials, rain gardens, annuals and lawn).
- Prepare a soil diagram that describes the anticipated improvements (i.e. airspade and amendments, full-depth amended soils, lawn profile, root tunnels and rain garden).
- Prepare a site-furnishings diagram that documents the various typologies and layouts (i.e. memorial bench, newspaper/trash/recycling receptacles).
- Prepare a lighting design strategy for pedestrian and holiday lighting and special events. Prepare a luminaire needs assessment, light pole condition review and coordinate holiday lighting needs with the Parks Department. Pedestrian bollard sketches will be prepared for Council to consider.
- Develop a narrative irrigation system approach including water source requirements, booster pumping electrical, sizing and installation requirements and equipment preferences. Review Aspen Water Efficient requirements. A schematic level plan will be developed for coordination of preliminary infrastructure requirements.

- In addition to technical drawings, the DW team anticipates updated illustrative graphics will be needed to continue to communicate the proposed infrastructure impacts. Six (6) illustrative sections, elevations and/ or perspectives total will be prepared.
- It is anticipated preliminary technical details will need to be prepared for some historic features early in the design process. Preliminary technical details will be developed for the stream bridge crossing, paving sections and rolled curbs/ gutters. These technical details will be rendered to communicate the components of the systems.
- A preliminary narrative will be developed to guide policies for private retail and restaurant site furnishings use on the Mall.
- A digital 3D model of the mall will be prepared in SketchUp to include grading impacts to urban design features, existing conditions and proposed landscape. Adjacent existing buildings will be depicted in scale and form only (no architectural details).
- Through a collaborative workshop and drawing review, the schematic design's site layout, grading, materials, vegetation and details will be reviewed for adherence to Secretary of Interior Standards to ensure the Mall retains integrity.
- Prepare Preliminary Project Descriptions for materials and other design features.

Task 3.1 Work Products

1. One (1) Digital Schematic Design Package (PDF, 11x17, prepared in InDesign):
    - Civil Site Plan
    - Grading and Drainage Plan
    - Utility Plan and Profiles (includes all utilities except ACSD sewer)
    - Stormwater Management Plan
    - Roadway Cross Sections (200 Sections)
    - Site/ Utilities Basis of Design Report
    - Drainage Report
    - Schematic Lighting Memorandum
    - Medium and Low Voltage Plan
    - Memorandum for Lighting Controls
    - Memorandum for conveyance for Future Telecom/ Data
    - Memorandum for future utility loads (natural gas, sanitary sewer, domestic water)
    - Snowmelt System Plan (if applicable)
    - (1) Overall Illustrative Site Plan
    - (6) Illustrative Site Plan Enlargements
    - Brick Pattern Plan
    - Materials Diagram (including recommended areas for brick to remain)
    - Vegetation Diagram
    - Soil Diagram
    - Site Furnishings Diagram
    - (6) Illustrative Sections, Elevations or Perspectives
    - (6) Schematic Level Technical Details
    - Schematic Irrigation Plan and Narrative Irrigation System Approach
    - Guidelines for Private Retail and Restaurant Site Furnishing Use
    - Preliminary Project Descriptions
2. One (1) Printed Illustrative Site Plan (36x48)
3. Three (3) Printed Illustrative Sections, Elevations or Perspectives (24x36)

4. Digital 3D Model (sketchup)
5. AutoCAD Civil 3D Model

TASK 3.2 PUBLIC COMMUNICATION AND INFORMATION STRATEGY

Phase 3 will focus on a more detailed analysis of the site plan and construability. Phase 3 will require creating opportunities for businesses, building owners and the general public to understand the site plan, construction impacts and phasing schedule in more detail. At the same time, our team must find new ways to continue public involvement in the project in a meaningful way. Gaining support for how the project team will address phasing, funding and Mall program elements will be extremely important to continue the momentum. The central focus of Mall is unique in that stakeholders range from direct businesses that will be affected to the local community and general public as well as perception of visitors – all user groups must be considered when we plan Mall construction impacts. Working with Design Workshop, PR Studio will serve two roles in this project: one as the Business Tenant Program Manager, coordinating Mall project activities with business and building owners and Communications and Outreach – these activities include media relations, website management and public participation activities. Project for Public Spaces will lead the public outreach efforts for outdoor dining (as referenced below). The public involvement strategy is based on 10 month of engagement activity. Should the public involvement strategy continue beyond 10 months, additional services will be required. The following public involvement activities and strategies will be grouped by three main outreach areas in Phase 3:

1) Mall Legacy Stakeholder Group (4 Meetings) This group is the main legacy stakeholder group, formed by combining the 6 different stakeholder focus groups into one main group. The Mall Legacy Stakeholder Group will be receiving information and feedback from topic specific focus group meetings. The Mall Legacy Stakeholder Group will provide overarching input, look at long-range implications, preserve Aspen's character and champion the project. Key pad polling will be utilized in meetings as an engagement tool.

2) Technical Review: Targeted Focused Topic Specific Meetings: (7 Meetings) These are meetings that will take place to dive deeper into the details of the plan to refine the design concepts. The focus participants will be ones that have direct impact in specific areas to provide technical insights. Example: Mall developers, Events, Environmental Etc.

3) Community Wide Project Education: (3 Large Scale Events) Community-wide outreach events will be planned to educate the general public on the schematic design. We are calling these events: Mall Crawls. The Mall Crawl will be an open house style but held in and around the Mall to walk and experience the schematic design at different stations throughout the Mall.

Ongoing Communication/Outreach Activities: (19 Hours a Month by PR Studio)

The following monthly ongoing communications activities are needed to maintain an open dialogue both internally and externally:

- Attendance and participation in internal progress meetings
- Business relations communications with owners and tenants, could include activities such as: phone calls, personal follow up, database management, tracking communications.
- Public relations and media relations: Working with media on project specific news articles and building understanding for project schedule and scope.
- Website and digital updates: Maintenance and management of website and digital platforms. Updating the most recent project information.
- Mall Newsletters (5)

Community Meeting Circuit: (4 Meetings: CCLC, ACRA Board, Aspen Rotary, Aspen Business Lunch)
The purpose of the Community Meeting Circuit is to bring the project to the people in a series of presentations to small groups throughout the community. The presentation will be a culmination of all work to date and will help to explain the purpose and the need and the project details as the City prepares for potentially public funding.

TASK 3.3 Preconstruction Services

To assist the Owner with planning for project implementation, preconstruction services will be provided to assess design and program, project costs, scheduling, constructability and phasing analysis. The specific tasks to be completed are as follows:

- Based on the schematic design package prepared by the design team, a report will be prepared to include recommendations for additional discovery, potholing or exploration of existing conditions, constructability and analysis of existing conditions, logistics and phasing visuals, project schedule, cost estimate and procurement planning recommendations. One option will be developed. If additional options are desired, additional services will be requested.
- Plans, diagrams and sections will be prepared to communicate with authorities having jurisdiction and the community about the constructability and phasing. Three (3) plans, diagrams and/ or sections will be prepared by DW for each report phase.
- A presentation will be prepared by DW to communicate the findings of the report to authorities having jurisdiction.

Task 3.3 Work Products
The following work products will be prepared, assembled and delivered to the Owner:

1. Schematic Design Schedule, Estimate, Constructability and Phasing Report
2. DW Schematic Presentation (summary of report, plans, diagrams and/ or sections)

TASK 3.4 Site Surveying

To complete the above design services, additional surveying will be needed to capture all areas of the project scope of work. The specific tasks include:

- Adding surface features, amending the contour surface and mapping the underground utilities for areas within the project scope of work. The underground utilities will be located by a private locating company and be shown on the survey. The new survey portion will have the same style and detail as the completed mapping.

Task 3.4 Work Products
The following work products will be prepared, assembled and delivered to the COA:

1. Digital survey and digital surface in AutoCAD format
2. Stamped survey sheets

TASK 3.5 Tree Protection Toolkit

Trees are living organisms and as a result their condition changes with the passage of time. Trees are also removed and planted. These changes could have an impact on the design decisions. Therefore, it is important that the current condition of the trees located within the project limits is periodically reviewed, updated and as accurate as practical. In anticipation this design process will take place over several growing seasons, we propose completing one (1) inventory update. Basic tree protection zones use the dripline as a limit for excluding excavation and construction activities in proximity to trees. The fact is tree roots extend well beyond the dripline of tree and other factors such as tree species, placement, health and structure are other factors that impact tree survivability on a construction project. Considering all of these factors in the design process will help guide design decisions and develop a plan that meets both design and tree preservation objectives. We propose developing tree protection zones (TPZ) for each tree and completing analysis of the impacts of proposed construction plans. The TPZ will be based on tree diameter and facilitate quantifying tree survivability if these tree protection zones are encroached by proposed construction activities. The TPZ for each tree will be a circle defined as a radius in feet and adjusted based on the tree species, health and structure of the tree. The TPZ will be overlaid on construction plans to provide impact assessments and a visual representation of those impacts.

The specific tasks to be completed are as follows:

- Inventory Update including field inspection, evaluation and update of the arboricultural information of each tree, trees removed, trees planted, tree diameters, tree health, tree structure, notable site condition changes, potential design/construction issues and update of tree mapping.
- Develop TPZ in the categories of high (poor tree health, root disturbance tolerance), moderate (fair tree health) and low risk qualification (good tree health). The placement of a TPZ around a tree may be adjusted based on the structure of the tree and the site conditions of the location of the tree.

Task 3.5 Work Products

The following work products will be prepared, assembled and delivered to the COA:

1. Excel spreadsheet with updated tree information.
2. PDF of site plan with trees labeled with City of Aspen tree ID#.
3. PDF of Tree Protection Zones (TPZ).

TASK 3.6 Progress Meetings, Special Topic Meetings and/or Workshops

PROGRESS MEETINGS: It is anticipated that DW, SDE and the City Project Control Team will meet every two to four weeks to discuss the project status and coordinate work activities. Other members of the design consultant team will be brought in as needed (maximum meeting attendance referenced in subconsultant proposals). The specific tasks to be completed are as follows:

- Prepare meeting agenda including, project management update, community engagement topics, urban and infrastructure design scope and deliverables update.
- Prepare typed meeting minutes and distribute to meeting attendees.
- 12 progress meetings are anticipated.

SPECIFIC TOPIC MEETINGS AND WORKSHOPS: The following additional meetings and workshops are anticipated. Any other meetings or workshops will be additional services.

1. Phase 3 Strategic Kick-Off (DW only)
2. Architectural Design Charrette (CCY, DW and Project Control Team)
3. Utility Provider Meetings (8 total)
    a. City of Aspen Water, City of Aspen Electric, City of Aspen Engineering – Stormwater, Comcast, Century Link, Black Hills Energy, Cedar Network
4. Infrastructure Workshop 1
5. Historic Preservation Workshop 1 (Brick Documentation)
6. Historic Preservation Workshop 2 (Schematic Design Charrette)
7. CoA Water Modeling Coordination Meeting (1)
8. Schematic Presentation to HPC
9. Schematic Presentation to Council
10. Schematic Constructability and Phasing Presentation (1)

* Additional presentations to P&Z, HPC or Council will be billed as additional services on a time and materials basis. Council or HPC meetings which are continued beyond meetings listed above are additional services.

TASK 3.7 Redevelopment Project Coordination

The general objective of this phase of work is to coordinate proposed private redevelopment projects with the proposed design of the malls. The purpose is to ensure compatibility in physical features. The specific tasks to be completed are as follows:

Define Coordination Protocols

Sherwood Design Engineers, in collaboration with Design Workshop and the City of Aspen, will prepare a memorandum defining protocols that redevelopment projects within the Aspen Pedestrian Mall district must follow until the time at which the Pedestrian Mall completes construction. This document will be used by the City to help ensure that redevelopment projects are fully coordinated with the ongoing design of the new improvements at the Pedestrian Mall. The memorandum will be shared with local property owners and include requirements that projects must follow as part of their entitlements and building permit approvals process. Detailed scope of work follows:

- **Week 1**: Sherwood, Design Workshop, and the City will assemble and share relevant information including current design review requirements and timelines.
- **Week 2**: Sherwood, Design Workshop, and the City will attend a one-day meeting in Aspen to discuss the various relevant issues and define protocols that redevelopment projects must follow. The goal of this meeting is to set the framework for the memorandum and define the majority of the Coordination Protocols. It is assumed this meeting will overlap with a City meeting as part of the Phase 3 scope of work.
- **Week 3**: Based on the outcome of the meeting, Sherwood will prepare a draft memorandum documenting an established protocol (flow chart and guideline document) and circulate for City review.
- **Week 5**: City to provide written comments. Sherwood to meet with City Staff via a Web/Video Meeting to resolve comments.
- **Week 6**: Sherwood to issue final coordination protocols to City.

Redevelopment Project Coordination

The City will engage Sherwood to begin coordination with active redevelopment projects adjacent to the Aspen Pedestrian Mall project area. Each redevelopment project varies in size and complexity but will follow the protocol established in coordination protocols. Fees for project coordination are structured as a time and materials with a cap amount not to exceed without prior authorization. The specific scope will be defined at the start of each project, but will entail:

- Initial Meeting to establish project scope and coordination.
- Up to three (3) project coordination meetings with redevelopment project representatives and City via video conference call.
- Review and comment on design documents prepared by redevelopment projects (to be provided by the City via Coordination Protocols) via PDF markup and/or Excel matrix format.
- Share current Pedestrian Mall designs with redevelopment project representatives.
- Refine design of Pedestrian Mall at interface with redevelopment projects where warranted.

Task 3.7 Work Products

1. Memorandum Summarizing Coordination Protocols
2. (3) Redevelopment Project Coordination Reviews

Additional Services Available Upon Request

Physical Model: A physical model can be produced from the digital 3D sketch up model upon request. Fees subject to model detail, scale and extents. http://www.lgm3d.com/

Brick Mockups, Replacement-in-Kind: For bricks identified as replacement-in-kind, a physical mockup can be coordinated upon request. Fees subject to detail and specification requirements, manufacturer and contractor costs.

Shoring Design: Should shoring against adjacent building be determined to be necessary, a shoring consultant may be added to the team.

Potholing: If additional subsurface information is requested, a proposal will be requested.

Additional Options for Construction Phasing and Sequencing: One phasing and sequencing approach is included in the scope of services, If additional phasing and sequencing options are desired, additional services will be requested.

CONDITIONS AND EXCLUSIONS

Owner shall provide the following information or services as required for performance of its services. Design Workshop assumes no responsibility for the accuracy of such information or services provided by Owner, and shall not be liable for errors or omissions therein. Should Design Workshop be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services. In order to begin services, we will require the following information - a copy of soils/geology reports.

SCHEDULE

Design Workshop is prepared to begin services upon receipt of a retainer and a signed copy of this proposal from an authorized owner's representative. A project schedule will be created utilizing Microsoft Project. The estimated schedule to complete the scope of work as described is anticipated to be approximately 6-8 months.

FEES AND EXPENSES

1. Basic services

   Compensation to Design Workshop for the services described herein and in accordance with the conditions of this agreement shall be for a lump sum fee of $988,782. A breakdown of the lump sum fee is included as Attachment "Fee Breakdown".

2. REIMBURSABLE EXPENSES

   Reimbursable expenses incurred by Design Workshop and consultants directly related to the project such as, but not limited to, travel, photography, telephone charges, video conference charges, and printing expenses shall be billed at Design Workshop's cost.

3. RETAINER

   In accordance with Design Workshop's policy, a retainer of $18,000 is payable upon acceptance of this proposal. The retainer will be applied to our final billing. All invoices must be paid prior to release of the final documents.

4. ADDITIONAL SERVICES

   Services in addition to those described above are to be compensated on a Time and Materials basis per Design Workshop's current published rate schedule. Additional services will include (but are not limited to) redesign of previously approved work, major revisions to program and/or expansion of scope of services. Whenever practical, changes, additions, or modifications to the scope of services shall be authorized by written change request; however, the absence of such a written change order shall not act as a bar to payment of fees due Design Workshop, provided the change was in fact approved and ordered by the Client.

PAYMENT TERMS

1. This is a lump sum contract and will be billed monthly as a percentage completed for each phase of the work.
2. Invoices will be mailed from Design Workshop's office by the 10th of each month. Invoices are payable within 30 days of the date of billing. Invoicing shall be specific to each major task and will describe the completed portion of the services.
3. Extensive itemized breakdowns of hourly activities or provision of detailed backup for reimbursed expenses for accounting purposes are not a normal procedure; however, at the Client's request, Design Workshop will provide this service at an hourly rate of $65 (sixty-five dollars) per hour.

ACCEPTANCE

4. This Agreement is entered into between Design Workshop, Inc. and City of Aspen, owner or reputed owner of the property to be benefited by Design Workshop's services.
5. If this contract meets with your approval, please sign below and return one (1) copy for our file.
6. The Client agrees that they have read and understood the Contract Provisions attached hereto and incorporated herein by reference.

DESIGN WORKSHOP, INC.

By: _____ Date: _____

Title: _____

APPROVED BY CLIENT:

By: _____ Date: _____

Title: _____

Aspen Pedestrian Mall - Fee Breakdown

Updated: 11/14/19

Aspen Tree Service		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Inventory Update (1)*	2,400.00	0.00	0.00		0.00	0.00	2,400.00
Phase 3	*Tree Protection Zone*	6,900.00	0.00	0.00		0.00	0.00	6,900.00
Phase 3	*Progress Meetings (2)*	1,800.00	0.00	0.00		0.00	0.00	1,800.00
Phase 3	*Consultation Hours (10)*	1,800.00	0.00	0.00		0.00	0.00	1,800.00
Phase 3	*Reimbursables*	500.00	0.00	0.00		0.00	0.00	500.00
SUBTOTAL Aspen Tree Service		13,400.00	0.00	0.00		0.00	0.00	*13,400.00*

Bookcliff		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Survey Update*	17,500.00	0.00	0.00		0.00	0.00	17,500.00
SUBTOTAL Bookcliff		17,500.00	0.00	0.00		0.00	0.00	*17,500.00*

Clanton		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Schematic Design*	9,465.00	0.00	0.00		0.00	0.00	9,465.00
SUBTOTAL Clanton		9,465.00	0.00	0.00		0.00	0.00	*9,465.00*

CCY		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Design Concept Alternatives - Design*	24,500.00	0.00	0.00		0.00	0.00	24,500.00
Phase 3	*Design Concept Alternatives - Process*	12,800.00	0.00	0.00		0.00	0.00	12,800.00
Phase 3	*Refined Design Concept - Design*	39,000.00	0.00	0.00		0.00	0.00	39,000.00
Phase 3	*Refined Design Concept - Process*	12,800.00	0.00	0.00		0.00	0.00	12,800.00
Phase 3	*Progress Meetings (5)*	4,500.00	0.00	0.00		0.00	0.00	4,500.00
Phase 3	*Reimbursables*	4,000.00	0.00	0.00		0.00	0.00	4,000.00
SUBTOTAL CCY		97,600.00	0.00	0.00		0.00	0.00	*97,600.00*

Hines		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Schematic Design*	5,725.00	0.00	0.00		0.00	0.00	5,725.00
Phase 3	*Progress Meetings*	2,950.00	0.00	0.00		0.00	0.00	2,950.00
Phase 3	*Reimbursables*	500.00	0.00	0.00		0.00	0.00	500.00
SUBTOTAL Hines		9,175.00	0.00	0.00		0.00	0.00	*9,175.00*

Geotech - to be contract by CoA directly		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*n/a*	0.00	0.00	0.00		0.00	#DIV/0!	0.00
SUBTOTAL Geotech		0.00	0.00	0.00		0.00	#DIV/0!	*0.00*

Maxson		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Schematic Design*	85,700.00	0.00	0.00		0.00	0.00	85,700.00
Phase 3	*Reimbursables*	2,000.00	0.00	0.00		0.00	0.00	2,000.00
SUBTOTAL Maxson		87,700.00	0.00	0.00		0.00	0.00	*87,700.00*

Mundus Bishop		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Schematic Design*	28,545.00	0.00	0.00		0.00	0.00	28,545.00
Phase 3	*Progress Meetings*	7,000.00	0.00	0.00		0.00	0.00	7,000.00
Phase 3	*Reimbursables*	6,000.00	0.00	0.00		0.00	0.00	6,000.00
SUBTOTAL Mundus Bishop		41,545.00	0.00	0.00		0.00	0.00	*41,545.00*

PR Studio		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Ongoing Outreach Activity*	60,070.00	0.00	0.00		0.00	0.00	60,070.00
Phase 3	*Reimbursables*	12,350.00	0.00	0.00		0.00	0.00	12,350.00
SUBTOTAL PR Studio		72,420.00	0.00	0.00		0.00	0.00	*72,420.00*

Sherwood		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*Schematic Design*	191,444.00	0.00	0.00		0.00	0.00	191,444.00
Phase 3	*Progress Meetings*	69,773.00	0.00	0.00		0.00	0.00	69,773.00
Phase 3	*Redevelopment Protocol*	30,000.00	0.00	0.00		0.00	0.00	30,000.00
Phase 3	*(3) Redevelopment Reviews*	21,000.00	0.00	0.00		0.00	0.00	21,000.00
Phase 3	*Reimbursables*	33,400.00	0.00	0.00		0.00	0.00	33,400.00
SUBTOTAL Sherwood		345,617.00	0.00	0.00		0.00	0.00	*345,617.00*

Weitz		Budget	7/1/18 date Inv. #	8/1/18 date Inv. #		TOTAL		BUDGET REMAINING
Phase 3	*SD Deliverable*	25,400.00	0.00	0.00		0.00	0.00	25,400.00
Phase 3	*Progress Meetings*	14,000.00	0.00	0.00		0.00	0.00	14,000.00
Phase 3	*Reimbursables*	1,760.00	0.00	0.00		0.00	0.00	1,760.00
SUBTOTAL Weitz		41,160.00	0.00	0.00		0.00	0.00	*41,160.00*
TOTAL SUBS			#REF!	#REF!		#REF!		735,582.00

DW		Budget	7/1/18	8/1/18		TOTAL Invoiced		BUDGET REMAINING
Phase 3	*Project Management*	25,000.00	0.00	0.00		0.00	0.00	25,000.00
Phase 3	*Integration of Architecture Concepts*	6,000.00	0.00	0.00		0.00	0.00	6,000.00
Phase 3	*Schematic Design*	125,000.00	0.00	0.00		0.00	0.00	125,000.00
Phase 3	*Public Involvement Strategy*	24,000.00	0.00	0.00		0.00	0.00	24,000.00
Phase 3	*Preconstruction Services*	9,000.00	0.00	0.00		0.00	0.00	9,000.00
Phase 3	*Site Survey*	1,200.00	0.00	0.00		0.00	0.00	1,200.00
Phase 3	*Tree Protection Toolkit*	4,000.00	0.00	0.00		0.00	0.00	4,000.00
Phase 3	*Redevelopment Protocol*	5,000.00	0.00	0.00		0.00	0.00	5,000.00
Phase 3	*(3) Redevelopment Reviews*	18,000.00	0.00	0.00		0.00	0.00	18,000.00
Phase 3	*Progress Meetings, Workshops, Project*	24,000.00	0.00	0.00		0.00	0.00	24,000.00
Phase 3	*Reimbursables*	12,000.00	0.00	0.00		0.00	0.00	12,000.00
SUBTOTAL DW		253,200.00	0.00	0.00		0.00	0.00	*253,200.00*

								988,782.00

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Change Order

PROJECT: *(Name and address)*
Downtown Pedestrian Mall Improvements
Aspen, Colorado

CONTRACT INFORMATION:
Contract For: Phase III
Date: November 27, 2019

CHANGE ORDER INFORMATION:
Change Order Number: 1
Date: November 27, 2019

OWNER: *(Name and address)*
City of Aspen
130 S Galena Street, Aspen, CO 81611

ARCHITECT: *(Name and address)*
Design Workshop, LLC
120 E Main St, Aspen, CO 81611

CONTRACTOR: *(Name and address)*
N/A

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)
Phases I & II are complete. This Change Order is to start Phase III for Schematic Design documents to address utility infrastructure improvements, stormwater management and grading and ADA design issues.

The original Contract Sum was	$	749,362.50
The net change by previously authorized Change Orders	$	0.00
The Contract Sum prior to this Change Order was	$	749,362.50
The Contract Sum will be increased by this Change Order in the amount of	$	988,782.00
The new Contract Sum including this Change Order will be	$	1,738,144.50

The Contract Time will be increased by Seven hundred thirty (730) days.
The new date of Substantial Completion will be December 15, 2022.

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Firm name)*	CONTRACTOR *(Firm name)*	OWNER *(Firm name)*
Design Workshop, LLC	N/A	City of Aspen
SIGNATURE	SIGNATURE	SIGNATURE
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
	N/A	Sara Ott, City Manager
DATE	DATE	DATE

SIGNATURE

Torre, Mayor
PRINTED NAME AND TITLE

DATE

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User Notes: (3B9ADA49)

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EXECUTIVE SESSION 13

At 5:00 p.m. Mayor Torre called the regular meeting to order with Councilmembers Richards, Hauenstein, Mullins and Mesirow present.

SCHEDULED PUBLIC APPEARANCES

Mayor Torre read a proclamation proclaiming December 3rd as John Hailey Day. Mayor Torre and Councilmembers thanked him for his dedication to the community.

John Kreuger, transportation, presented Council with the CASTA award for the implementation of the battery electric busses. He said it will be $125,000 in savings on maintenance and $300-400,000 in fuel savings.

COUNCIL COMMENTS

Councilman Hauenstein said it's skiing really well up there. Be safe.

Councilman Mesirow said Thanksgiving is upon us. Most of us have moved here from somewhere else. I'm super grateful for the family that is Aspen. Being here everyday is a blessing.

Councilwoman Mullins wished everyone a happy Thanksgiving and safe travels.

Councilwoman Richards wished everyone a happy Thanksgiving.

Mayor Torre talked about the warm and fuzzy coat drive. Drop off coats, sleeping bags and boots to health and human services at the Schultz building. Happy Thanksgiving and be safe on the roads.

BOARD REPORTS

Mayor Torre said several of us attended the ACRA tourism outlook forum last week. At the regular meeting we adopted the budgets.

CONSENT CALENDAR

Councilwoman Richards moved to approve the Consent Agenda as presented; seconded by Councilwoman Mullins.

Mayor Torre asked for an explanation on Resolutions 133 and 135.
Trish Aragon, engineering, said there is the master license agreement and neutral host contract. The 3rd component is the design guidelines which we are not talking about tonight. We got direction in August to proceed with the 3 items. This is a response to federal rules regarding small cells. These are the things we can do right now to respond to the rules. That is why we are here tonight. The MLA is not unusual to enter into with work in the right of way. It is the typical path for what you can and can't do in the right of way.

Mayor Torre said it is a 10 year term for the MLA, why. Andrea Bryan, assistant city attorney, said the provider requested a longer term. I looked at other municipalities and 10 years was very typical. This agreement is not approving specific sites. If they want a specific site approved they need to apply for that as a supplement to the MLA. Each supplement has a term of 5 years.

Councilwoman Mullins said the fee is $270 for each location. Where did that come from. Ms. Bryan said that is the presumptively reasonably fee we came up with. If the rules change we can change those amounts.

Councilwoman Richards said section 7.5 removal and relocation. Are these the only 2 reasons federally we can request removal. Ms. Bryan replied that would be covered in the design guidelines and land use code requirements. We would not approve a specific site if it did not comply with those.

Councilman Hauenstein said all providers will have the same terms. Ms. Bryan stated we would expect if another provider came and wanted to proceed we would provide the same terms.

Paul Schultz, IT, said the neutral host is an industry term for having a 3rd party build the infrastructure and have multiple carriers host on that infrastructure. We cannot require a carrier to become tenants on neutral host equipment.

Councilman Hauenstein said I would like to see incentives for single digs. Ms. Aragon replied this is one way to achieve that.

- Resolution #133, Series of 2019 – Consent for Master License Agreement with New Cingular Wireless PCS, LLC
- Resolution #135, Series of 2019 – Distributed Antenna System Facility Lease Agreement
- Resolution #134, Series of 2019 – School District Synthetic Turf Replacement
- Minutes – November 12, 2019

All in favor, motion carried.

NOTICE OF CALL UP – HPC approval for 333 W. Bleeker St – Conceptual Major Development, Relocation and Setback Variations

Sarah Yoon, community development, stated this is a 2 story historic victorian and relocated historic out building. It is a 6,000 square foot lot located in the R6 zone district. On April 24th, HPC granted approval for the proposed design at the 3rd public hearing with a 7 to 0 vote. There is a proposed 8 foot long connecting element. The actual addition is a 1 story above grade addition. The historic outbuilding is proposed to be rotated with the garage door facing the alley. Set back variations were granted in support of the historic pattern in the surrounding area. Council has the ability to call this up. Staff recommends council uphold HPCs decision for approval.

Councilwoman Mullins asked what were the conditions of the HPC approval. Ms. Yoon stated most were related to working with other city departments including parks and stormwater. A few were related to the proposed light wells. Some conditions were related to the relocation of the outbuilding. Councilwoman Mullins said the memo to HPC says 2,280 square feet are allotted to lot 1 but 2,435 is built there. She questioned the new addition. Ms. Yoon replied there was an approval related to the lot split that designated certain amounts of floor area to each lot. At the time the floor area was calculated there is a condition related to how the out building was factored in. With the relocation where the garage door is now facing the alley, it's calculated separately. It will meet the required floor area with the addition.

Mayor Torre asked what year was the original house built. Ms. Yoon replied 1880s.

Councilman Hauenstein said on the 1893 Sandborn map was the porch and side structure there. There seems to be some conflict. Is the FAR that is freed up from the enclose porch

being applied somewhere else. Amy Simon, community development, said part of the requirement of the garage facing the alley, if it doesn't, it doesn't get the usual exemptions. We are going to correct that situation by turning the garage to face the alley. There is an interior remodel that will also free up some square footage. Councilman Hauenstein said it seems like there is some conflicting statements as to if the outbuilding is historic. Ms. Yoon said it is historic but not original to this location. Councilman Hauenstein said the spruce trees being removed were planted by the owner after the 2002 approval. Ms. Simon said a previous owner planted at some point trees in the right of way. They will have an impact on the historic cottonwoods. They will not have to mitigate for the removal of the trees. They are assisting us in getting them out.

Councilwoman Richards said she sees no reason to call this up. Councilman Mesirow said he concurs. Councilwoman Mullins said she has no reason to call up. Councilman Hauenstein agreed.

ORDINANCE #24, SERIES OF 2019 – Title 25 Amendments

Tyler Christoff, utilities, said this is the annual update to utility rates. They were reviewed at the budget worksession and November 12th first reading. After first reading staff retracted proposed language in the affordable housing waiver section. Rates and fees support the utilities daily and on an ongoing basis. There is also deletion of redundant code language regarding storm water. There is a new fee structure to address affordable housing customers and water waste regulations.

Councilwoman Mullins said thanks for responding effectively and efficiently to some of the affordable housing owners who experienced high rates. She is interested in the one year pilot program.

Councilman Hauenstein said he is curious about the affordable housing waivers. Mr. Christoff said we removed the proposed language that would create a conflict with other sections of the code. Councilman Hauenstein said is that waiver just for new additions and tap fees. There is not a special rate for affordable housing. Mr. Christoff stated there is not. This section covers waivers based on category.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Richards moved to approve Ordinance #24, Series of 2019; seconded by councilwoman Mullins. Roll call vote. Councilmembers Mesirow, yes; Hauenstein, yes; Mullins, yes; Richards, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #29, SERIES OF 2019 – 2019 Fall Supplemental Budget

Pete Strecker, finance, said we've added additional resources since last time. This is a 9.6 million dollar increase due to the possible preservation of deed restrictions at Centennial. There is $7,500 for the chiller repair at the Wheeler as well as an additional request for census help. There is $8,300 for the cost of debt service while the new building is being built.

Councilman Hauenstein asked about the 120 fund, is the damage due to a power surge. Mr. Strecker replied he is not sure why the chiller has an issue. Sara Ott, city manager, said I don't believe it is due to an electrical issue. Councilman Hauenstein said for the LED lighting, what is

the capture time. It is a good project and core is contributing. On the 505 the $89,200 is that for employee housing. Is it owned units. Are there HOA reserves. Jeff Pendarvis, asset, stated we came to you for the 2020 budget to ask for a true up going forward. This extends to projects that are currently underway. This helps gets us to where we need to be. Capital replacement on roofs, mechanical, unit turn over and normal maintenance. There are 58 units with different HOAs that operate in different ways.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Mullins moved to approve Ordinance #29, Series of 2019; seconded by Councilman Mesirow. Roll call vote. Councilmembers Hauenstein, yes; Richards, yes; Mesirow, yes; Mullins, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #30, SERIES OF 2019 -2019 Fall Supplemental for the APCAH Fund
Mr. Strecker stated this is a reupping of resources in the 620 fund, which is the main operational fund. The roll forward is related to pc replacement as well as the large software solution. $250,000 is for the purchase and renovation of an Ajax unit.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Richards moved to approve Ordinance #30, Series of 2019; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Mullins, yes; Mesirow, yes; Richards, yes; Hauenstein, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #31, SERIES OF 2019 – 2019 Fall Supplemental for the Truscott Phase II Affordable Housing Fund
Mr. Strecker stated this is a $55,000 roll forward for the capital needs assessment.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Mullins moved to approve Ordinance #31, Series of 2019; seconded by Councilman Mesirow. Roll call vote. Councilmembers Richards, yes; Mullins, yes; Hauenstein, yes; Mesirow, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #32, SERIES OF 2019 – 2020 Municipal Fees
Mr. Strecker said at first reading there were questions around soccer and why the reduction in rate. It is a shorter season and less participation. The fee ordinance remains as is based on the budget conversations.

Mayor Torre opened the public comment.

1. Chris Bryan stated there appears to be a typo on page 222 of the packet, page 10 of 39 of the ordinance. 2.12.052 temporary occupation of the right of way there is a $17 per square foot per month fee where it is currently $6.93. That has a big impact.

Ms. Aragon replied the fee is correct in the ordinance. The fee is at $17 to be consistent with our construction parking rates, which are $100 a space per day. The units are different but when you equivalent them it is the same as what the parking rates are proposed to be. Mr. Bryan said I didn't see anything in the packet that justifies the increase of 245%. It is hard to justify the increase. Ms. Aragon said the current rate at $6.93 is based on $40 a day for parking. That rate of $6.93 has not been updated since 2016. Currently we are proposing to increase construction parking in the downtown core from $75 to $100 per day. This rate at $17 per square foot per month is equivalent to that. Mr. Bryan responded that there seems to be 2 elements of that analysis. The memo says a study will be conducted in 2020. I don't understand why the fee will be increased by 240% before the study is done. The ordinance says council has determined that certain fees currently in effect do not raise revenues sufficient to pay for the intended cost of providing programs and services. I think we need to study the issue before you make an increase of 240%. This is a per square foot fee per month. For example the Crystal Palace, just for one encroachment it will be $917,000 a year in addition to a parking fee that we already have to pay. I want to make sure we understand the impact of this fee.

Mayor Torre asked about the math. The conversation I've been a party to is the $75 to $100 a day. Ms. Aragon said the temporary encroachments are the occupation of the right of way. We separate out parking, sidewalk and different areas. It is up to the site. If the site doesn't occupy the right of way there is no fee. What we've found on encroachments in general, the size is directly related to the cost that we charge. Is a pedestrian area less valuable than a parking space. We thought we should be consistent on the pricing.

Mr. Mesirow said the intention of the fee is to deter behavior of taking up public space. Ms. Aragon replied correct. Mr. Mesirow said this would go into effect January 1. To me the public walking space is more valuable than that of a car. Yet I can understand a project that has been planned under one circumstance could be shocked to find a dramatic change in their overall financial picture. Has there been conversation about projects that are already approved. Ms. Aragon replied we charge the current fees. We don't lock in a rate.

Councilman Hauenstein said when a person applies for a building permit the mitigation fees are what are in effect at that time. If there are changes they are only liable for the fees in effect. These are fees for a project that are already in process. Is this by square foot for the sidewalk and the parking spaces are charged separately. They are paying $75 a day for parking spaces and $6.93 for the sidewalk. Ms. Aragon replied correct. We are not overlapping. The adjacent area is the encroachment and then the parking. This increases the sidewalk to $17 and the parking is separate.

Ms. Ott said there are a few options. Approve the ordinance as it stands. You could direct different rates. There is the option to strike the fee. The intent and direction we have been given is to aggressively manage the privatization of public spaces to limit the construction impacts to the community.

Councilwoman Richards asked is the current rate charged per square foot have a relationship to the $75. Ms. Aragon replied the current rate equivalent is $40. Councilwoman Richards said the public spaces have been underpriced. I think this should be increased. Public spaces are important. I don't like to see such a large increase in one year. The loss of public space is a lot. I like the incentive of trying to get that space back to the public as soon as possible. I would not leave it the way it is now.

Is there a 3rd path to pass the bulk of the ordinance tonight. Jim True, city attorney, said it would not go into effect January 1st. I see no reason to come up with a figure that would be changed later. The rate can be adjusted at any time but won't go into effect until 30 days.

Councilwoman Mullins said you are trying to create parity between street and sidewalk. Ms. Aragon said the $6.93 is the current rate. The equivalent to a parking space is $40. Councilwoman Mullins said the pedestrian space is even more important than vehicular space. I would support going ahead with the fee you suggested. Mr. Bryan said this is a drastic increase. I still don't understand why this fee is being considered when the staff memo says you need to conduct a study on this in 2020. The table that was circulated to the public had this section omitted. There was a lack of discussion about this. We are asking for more time to discuss the implications of this. It will have a million dollar impact on the crystal palace and 3 million on the city offices.

Councilman Mesirow said I don't have an issue with the increase in the fee if what we are trying to do is deter encroachment into the pedestrian area. What seems unfair is to add yet another layer of uncertainty. It would make sense to have a future where the fees are higher to generate the things we want. When you get your approval or building start maybe be locked into those rates at the time like mitigation rates.

Councilwoman Richards said I think it should be increased. Apparently the parity has been left behind a long time ago. The current charge is $40 a day for a parking space. I don't want to go the full amount. I don't think mitigation should be locked into the time of approval especially with vesting of 3 years or longer. I don't think it is valuable to talk about this in terms of individual projects. This is about public right of way across town.

2. Mark Hunt said when you hear these fees, $17, it doesn't sound like much money. When you do the math, using the right of way is necessary for building the building. When you do the math it is almost $240 a square foot. To say you want to disincentivize in order for development to happen, the permit fees here are 4000% more than most other places. The bigger conversation isn't the right of way and parking. If you plug the meter for every minute of the day it is $24. It is 400%. There are disincentives already built in. The bigger concern is the fees are not going to deter a building. At the end of the day it will affect what goes in the building. I've had buildings where to build was 6 million dollars and the fees were 12 million. It's crazy. I do believe there should be a study and a lot of conversation as to what are we trying to accomplish. This will all affect what is going into these buildings and what the town will look like. There is only so much you can do. It is more than just looking at 17 dollars a foot. To pay for that dirt, even in the alley and pay more than Gucci is a bit out of control.
3. Bob Morris said I've built 5 projects in town. The first time I got a permit it was a big surprise that a building permit isn't a final permit. Changes are made, mostly by the building department. Maybe this topic does need studied more. When you realize how it works a building permit is not final, things change. Changing the rules in the middle of the game is difficult. To be fair, I think Mark's comments are interesting and council should take them into account.

Mayor Torre closed the public comment.

Mayor Torre said we have a variety of opinions.

Councilwoman Richards moved to approve ordinance 32 with an amendment to the fee charged for use of public right of way to $10 a square foot. Seconded by Mayor Torre.

Councilwoman Richards said it is an increase that begins to seek that parity. It acknowledges there will be other applications and use of right of way in the coming year. It is important to move the fees forward and be reasonable.

Councilman Hauenstein asked what other fee increases in the middle of a project have taken effect in the past few years and what is the average percentage raise of these fees. I appreciate the loss of public amenities and right of way but I also am sympathetic of someone in the middle of the project and the rules have changed. It doesn't seem fair to change the rules in the middle of the game. I'm agreeing more with Skippy. It is important the fees be equitable and I don't see it when you increase the fees when a project has already begun. Normally development is given 3 years vesting. We've extended vesting but made the mitigation what it was when it changed. It doesn't seem right to change the rules when folks are in the middle of construction. Mr. True said fees are traditionally approved annually. They can change. Unless your approval set those, they would be subject to annual increases. It is fairly common. Mitigation is a little different. Councilman Hauenstein asked when was the last time there was an increase in this fee. Ms. Aragon replied 2016. It went from $6.50 to $6.93. Councilman Hauenstein said it would be equitable that the increase be in line with what other fees were.

Councilwoman Mullins said you refer to a 3rd party study. What is the schedule. Mr. Strecker said we will start the RFP shortly and hopefully get through the study before the next fee schedule. Councilwoman Mullins said it is a hardship and unpredictable and fees for public space are not as directly aligned with health and safety when building code changes. My guess is there are several other things in here that aren't on the surface fair to the developer and the city. My preference would be to pass this as is and get the study going as quickly as possible. If there is discussion at a subsequent meeting we can change it. Mark made a good point related to the economic stability of town.

Mayor Torre asked what are the terms of encroachment. What is your ability to limit encroachment. Does an applicant come in and say we want it for 12 months and that's the end of the discussion. Ms. Aragon replied it depends on the location. We have limitations to the mall and properties adjacent to the mall and how long you can occupy those areas.
Mayor Torre said I feel like the increase is a little much of a change for these projects. I'm having trouble comparing a parking space to the right of way. I'm also having a difficult time knowing what level of change would get the impact we are looking for. I can't support the $17 in the ordinance now. There is a motion and second for us to consider.

Councilman Hauenstein said going from 7 to 10 is still a pretty big hit. I think the water and electric fees were over 5 years. Maybe we go from 6.93 to 17 over 5 years.

Councilwoman Richards said I appreciate the approach but if it were projected out 5 years it would probably be a fee of $20. I like what you are trying to do though. I'm aware of the inequities but fees change annually.

Councilman Mesirow said I don't have enough information to make a decision on this right now. I don't feel I have the adequate information to say this fee will elicit a behavior against the square feet.

Councilwoman Richards said it feels to me like the issue has been ignored in the past. I do feel we should not make the jump all in one leap but it is important to fill the gap. I understand what Mr. Hunt said about cost and what goes into a building. I've seen it is what the market can bear is what will go into a building. I'm looking for some equity. I would consider reducing it to $9 and a 50% increase. We have a lot of projects and a lot of use of our sidewalks.

Councilwoman Richards amended the motion to decrease the fee to $9. Mayor Torre accepts that amendment.

Mr. True said I was not aware of the issue that Mr. Bryan brought up about the budget book and strike throughs. It has been properly noticed for 1st and 2nd reading at the 17 dollar figure.

Councilman Hauenstein said I would like to support the amendment as amended with the understanding that the study be undertaken as quickly as possible and developers are given notice the rate may be increased in the future.

Councilwoman Mullins said public space is more important than the vehicular space. Piecemealing solutions is not the way to go.

Councilman Mesirow asked that the study is not just the impact per square foot but broader as to what are the tradeoffs long term.

Roll call vote. Councilmembers Hauenstein, yes; Mesirow, yes; Richards, yes; Mullins, no; Mayor Torre, yes. Motion carried.

RESOLUTION #119, SERIES OF 2019 – 2020 City of Aspen Budget

Mr. Strecker said the proposed budget is 112 million dollars and change. It is a 6.6% decrease from the 2019 budget. It includes resources for the advancement of affordable housing spaces, childcare support, energy conservation and the recycling center.

Councilman Hauenstein said he is appreciative of the whole process and all the work sessions.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Mullins moved to approve Resolution #119, Series of 2019; seconded by Councilwoman Richards. Roll call vote. Councilmembers Mesirow, yes; Mullins, yes; Hauenstein, yes; Richards, yes; Mayor Torre, yes. Motion carried.

RESOLUTION #120, SERIES OF 2019 – 2020 Budget for the Housing Administration Fund, Smuggler Affordable Housing Fund and APCHA Development Fund

Mr. Strecker said both the city and county contribute 50 percent. This is $420,000 for the city for 2020.

Councilwoman Richards said we will be coming back for a request for outreach on the new guidelines as a supplemental request.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilman Hauenstein moved to approve Resolution #120, Series of 2019; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Mullins, yes; Richards, yes; Mesirow, yes; Hauenstein, yes; Mayor Torre, yes. Motion carried.

RESOLUTION #121, SERIES OF 2019 – 2020 Budget for the Truscott Phase II Affordable Housing Fund and Aspen Country Inn Affordable Housing Fund – Component Unit Funds of the City of Aspen

Mr. Strecker said this is for the affordable housing programs that the city is a partner in. ACI was recently renovated and that space and Truscott II have annual operating needs. This would support annual operations.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilwoman Richards moved to approve Resolution #121, Series of 2019; seconded by Councilwoman Mullins. Roll call vote. Councilmembers Richards, yes; Hauenstein, yes; Mesirow, yes; Mullins, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #28, SERIES OF 2019 – Revocation of Ordinance #58, Series of 1985

Phillip Supino, community development, said this ordinance is about ordinance 58 of 1985. The intent of that ordinance was to rezone from MU to commercial but maintain the MU dimensional standards. The Moore family was the owner at the time and sought to maintain existing uses at the time. The agreement to use the MU dimensional standards with the commercial use allowances was a concession by the Moore family negotiated by council in order to memorialize and ensure no nonconforming uses on the property by changing to commercial. There were 2 requirements in the ordinance including the filing of a deed restriction. It was intended to state they would have commercial uses and MU dimensional standards. The second condition was the recording of ordinance 58 with the county clerk. Neither of those steps happened. The zoning map was amended in error to show commercial zoning. The property remains MU despite the designation on the zoning map. The property was recently purchased and during staff research these issues were identified. Staff suggested the applicants come forward and ask council to revoke ordinance 58 to clarify the zoning on the property as MU. This ordinance would not change the development rights of either property.

Kim Raymond, representing applicant, we agree with staff. This is clean up.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilman Hauenstein said somehow this fell through the cracks in 1985. He would like to see some kind of crack filler. He would like to see protocol and follow up for things like this.

Councilwoman Mullins said if there is some way to ensure when zoning is changed they get recorded everywhere they should be.

Councilwoman Richards moved to approve Ordinance #28, Series of 2019; seconded by Councilman Hauenstein. Roll call vote. Councilmembers Hauenstein, yes; Mullins, yes; Richards, yes; Mesirow, yes; Mayor Torre, yes. Motion carried.

ORDINANCE #26, SERIES OF 2019 – 711 Pfister Drive – Minor Planned Development Amendment to a project review approval and residential design standards variation

Garrett Larimer, community development, stated this property is located in the Maroon Creek Club subdivision. It is zoned RR with a PD overlay. The lot is located at the end of Pfister Drive on an undeveloped lot. The applicant is requesting a minor PD amendment to amend the building and development envelope and a RDS variation to the garage dimension standard. The applicant has revised the drawings since the November 12th meeting. There is a reduction in overall size of the building envelope. It is the same extent of the development envelope. There is a reduction in floor area to 8,600 square feet. There is a revised garage door design to 3 garage doors. He showed images of the building and development site plan. Since last hearing, the applicant has further reduced the building envelope. They are converting sections of the building envelope to development envelope. There is additional development envelop proposed in the area of the driveway. The proposal is to reduce the overall building envelope by 3,300 square feet. There is a net increase of total developable area of 600 square feet. In order to meet the criteria there are 3 that need met. Meet the project review standards, be generally consistent with the approval and minor be insubstantial changes. Staff has found the application does not meet 2. It is not consistent with original approval due to the increase of development and it is not considered an insubstantial change. Staff and parks remain concerned with increased impacts to the site and the precedent this will set. For the RDS variation, allowable total garage door width is 24 feet. The revised design is 28 feet wide. To qualify for a variation there 2 standards that must be me, necessary for reasons of fairness due to site specific constraints. This is not a hardship request. It must meet the intent statements of the RDS. He showed images of the amended design. Staff believes the standards are met. The recommendation is council deny the request for a minor PD amendment and approve the RDS changes to the garage design standard.

Councilwoman Richards said I thought as we closed the last meeting we got to a point if there was no net increase between the building and development envelope this would be an insubstantial amendment. I that the goal was no net increase. Mr. Larimer replied if they are just moving around the square footage they were approved for it is an administrative amendment. It was my understanding they were going to try to reduce the ask.

Kim Raymond, representing the applicant, said the existing building envelop is 14,000 square feet. The original development envelop is 23,000 square ft. Our building fits nicely within the building envelop. The issue came from the access. We are offering to remove 3,300 square feet of building envelop. The development opportunity is being reduced. The net development is being reduced by 2,679 square ft. The reason we are having a hard time with the driveway is that area has a 33 % grade. The steepest driveway you can have is 12%. There is no way to put a driveway in the access we were given. What might have happened is when the cul de sac was built and the area flattened, it made a steeper embankment to get to the building envelop. We looked at driveway alternatives, like a bridge, but then we would not meet a lot of other RDS.

Councilman Hauenstein asked about the maximum height allowed. Ms. Raymond said if we tried to build narrower we still would not be able to get the driveway in the access portal. The allowable height is 28 feet. We thought it would be less impactful to the neighbors to keep the height lower.

Ms. Raymond said for the RDS, we reduced it to three garage doors. We meet the standard having just the three doors. You will see the angle of the garage door due to the way the site curves. Landscaping will help screen some of the house. We agree with staff that the RDS should be approved.

Mayor Torre opened the public comment. There was none. Mayor Torre closed the public comment.

Councilman Hauenstein asked Garret to walk us through the staff recommendation again. Mr. Larimer stated there are 3 review criteria. The first is to meet the project review standards. The application complies with this. Second is to be generally consistent with the allowances and limitations of a project review approval. It does not comply. Third is it generally considered an insubstantial change but does not qualify for an insubstantial amendment. This does not comply.

Councilman Hauenstein said I'm conflicted. I value staff and the criteria and am reluctant to do one offs that set a precedent. I look at the site constrains and don't see another way to have a driveway. Was the cul de sac there when the lot was designed. Mr. Larimer replied I'm not sure about the final grading plan that was contemplated. I don't know how detailed the plans were for the transition from the right of way.

Councilwoman Richards asked do you know when this was originally approved. Mr. Larimer replied 1993. It was annexed in 1996. Councilwoman Richards asked when were the RDS adopted. Jennifer Phelan, community development, said there has been some form since the 1990s. Councilwoman Richards said it's always been awkward to see the same design standards apply to lots in the rural areas. I'm comfortable with the exchange. There is precedent setting here. If everyone up there agreed to the reduction to 8,800 I might take it. That is important. The garage is not prominent. I'm ok with it. The size reduction is the reason why I am considering this. I would like a comment in the approval about native vegetation. I'm really worried about the night lighting.

Councilman Hauenstein said he would like staff to find the unintended consequences of the precedent we set here in future developments. Ms. Phelan stated every review is an individual review. We are looking at the particulars of this site and not creating precedent. Mr. True said I would tend to agree. The negative consequences are limited particularly with the FAR reduction. That is a significant request of the applicant in order to get this building designed. These are looked at as very site specific. To conclude it will have significant impact on other developments is limited. If someone wants their deal, they are talking about square foot reduction.

Mayor Torre asked what is located above the driveway. Is there another lot. Ms. Raymond said it abuts to the ski company. Mayor Torre asked about the front of the house. Ms. Raymond replied it will be as natural as it can.

Councilman Mesirow said all of these things that are allowed are not guaranteed. I don't like an applicant choosing their own zoning but moving parts of the lot to end up what they want. I understand the topography is challenging but I think another design could be accommodated. I do not support this.

Councilwoman Mullins said she is supportive of the changes to the garage. In terms of the building envelop, the development envelop and FAR, I do think we are talking about precedent, privatization of public space or compromising public space, I don't see a reduction in the building envelop. The impact on the environment is still increased with the increase in the development envelop. I thought you were coming back with a different shape not the increase. I'm concerned with the precedent even with the decrease in FAR. This is adjacent to public land and open space. We need to be very protective of the public space. It is laudable that he would accept the 8,600 square foot home. The bigger issue is precedent and increasing the impact of the development.

Councilman Hauenstein said page 328 of the packet, there are 4 building elements, I appreciate and like the layout of it. If you stacked 2 of them you could gain the decrease in the building envelop and development envelop. I'm trying to find a way to make this work. I'm sympathetic of the driveway and the access. Ms. Raymond said the building fits nicely in the topography. It is the driveway that doesn't work. There is no physical way to make the driveway work. Even if we make the house smaller we still need to get the driveway around the cul de sac.

Mayor Torre said I'm in favor of the changes I've seen here. I appreciate the reduction in square footage. To me this is a one off. In this particular case it is a unique situation. I would support this tonight.

Councilwoman Richards moved to approve Ordinance #26, Series of 2019; seconded by Councilwoman Mullins. Roll Call vote. Councilmembers Richards, yes; Mesirow, no; Hauenstein, yes; Mullins, no; Mayor Torre, yes. Motion carried.

EXECUTIVE SESSION

Mr. True said staff is recommending Council go into executive session pursuant to C.R.S. 24-6-402(a) The purchase, acquisition, lease, transfer, or sale of any real, personal or other property interests; (b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions; (e) determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations and instructing negotiators.

At 8:30 p.m. Councilman Mesirow moved to go into executive session; seconded by Councilwoman Mullins. All in favor, motion carried.

At 10:00 p.m. Councilman Mesirow moved to come out of executive session; seconded by Councilwoman Mullins. All in favor, motion carried. Councilman Mesirow moved to adjourn; seconded by Councilwoman Mullins. All in favor, motion carried.

Linda Manning
City Clerk

CITY OF ASPEN

MEMORANDUM

TO: Mayor Torre and Aspen City Council

FROM: Sarah Yoon, Preservation Planner; Community Development

THROUGH: Jennifer Phelan, Interim Community Development Director

MEMO DATE: December 2, 2019

MEETING DATE: December 10, 2019

RE: Call Up Notice, HPC approval for 202 E. Main Street – Conceptual Major Development, Relocation, Setback Variations, and Floor Area Bonus

APPLICANT:
Rocking Lazy J Properties, LLC; Jake Vickery and Della Pegolotti

REPRESENTATIVE:
Jake Vickery, Architect

LOCATION:
202 E. Main Street;
Legally described as Lot 1, Main Street Victorians Historic Landmark Lot Split Subdivision Exemption; PID# 2737-073-99-001

CURRENT ZONING & USE:
Mixed-Use Zone District;
Commercial Use

PROPOSED USE:
Single-Family Residential

SUMMARY: Certain land use approvals granted by HPC trigger a requirement to notify Council of the decision through a brief staff summary of the review. During this process, called Call Up Notice, City Council may uphold the HPC decision. Alternatively, Council may request more detailed information be provided through a presentation by staff and the applicant at a future meeting. Council may also remand it to HPC and require reconsideration of specific issues. HPC's decision on remand shall be final.

RECOMMENDATION: Staff recommended approval of the project with conditions, and HPC voted 6-0 in support. The approval included setback variations, a 500 sf floor area bonus, and conditions addressing stormwater mitigation and excavation requirements, design details, and staff and monitor requirements for the restoration of the historic resource. The proposal was redesigned after the first HPC hearing, and HPC found the applicant met all criteria for the setback variations and the floor are bonus. Staff recommends Council uphold HPC's decision.



Figure 1 – Site Context (from Main Street)

BACKGROUND: 202 E. Main Street is a designated landmark on a 3,000 sf lot that contains a one-story miner's cottage in its original location. The applicant proposes to demolish the non-historic addition, maintain the historic alignment along Main Street, construct a new basement, and construct a new above grade addition to the rear of the historic house. At the first Conceptual Major Development hearing on August 28th, the Historic Preservation Commission (HPC) recommended continuation to restudy the design compatibility of the new addition and how it connects and relates to the historic resource. The applicant returned to HPC on October 9th with revisions that incorporated HPC's comments and recommendations.

A preservation plan to restore the historic resource was provided with the request for a 500 sf floor area bonus, which was approved. The floor area for a single-family home is limited to 1,920 sf, whereas a commercial property could be 3,000 sf. The final allowable floor area for this property is 2,420 sf and the proposed design has a total floor area of 2,394 sf. The approved design will not allow any Transferable Development Rights (TDRs) to be severed from this site.

The approved design will provide two on-site parking spaces, which is the minimum requirement. Setback variations were granted in order to maintain the historic pattern of the district and mitigate adverse impacts to the historic structure. As outlined in the HPC resolution, setback variations were granted specifically for the existing historic building and elements of the proposed new addition.

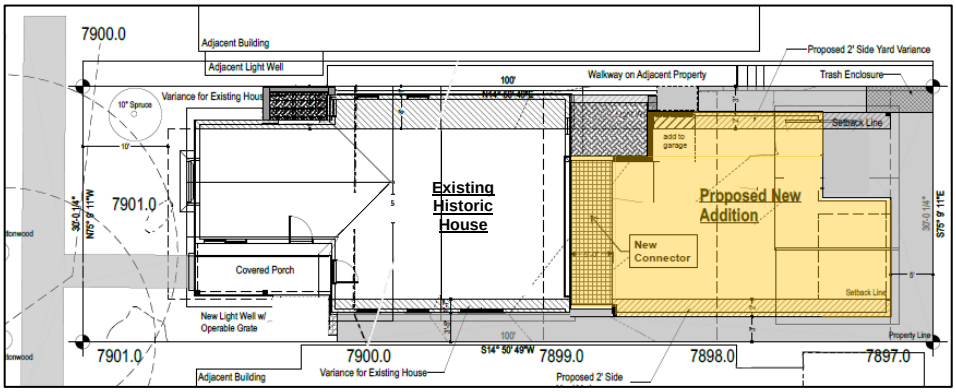


Figure 2 – Approved Site Plan

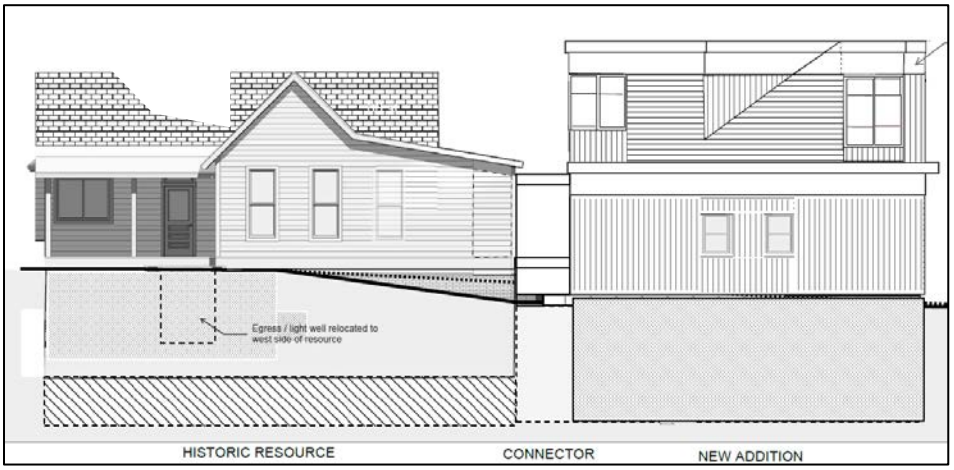


Figure 3 – Proposed East Elevation

FINANCIAL IMPACTS: N/A

ENVIRONMENTAL IMPACTS: N/A

ALTERNATIVES: N/A
RECOMMENDATION:
Staff recommended approval of the project with conditions, and HPC agreed by a vote of 6-0. Staff recommends Council uphold HPC's decision.

Recommended Motion
"I move to uphold HPC's approval for 202 E. Main Street – Conceptual Major Development, Relocation, Setback Variations and Floor Area Bonus."

CITY MANAGER COMMENTS:

_____
_____
_____.

EXHIBITS:
A – HPC memo, October 9, 2019
B – HPC approved plans
C – HPC meeting minutes, October 9, 2019
D – HPC Resolution #18, Series of 2019

CITY OF ASPEN

Memorandum

TO: Aspen Historic Preservation Commission

FROM: Sarah Yoon, Historic Preservation Planner

THROUGH: Amy Simon, Historic Preservation Officer

MEETING DATE: October 9, 2019

RE: **202 East Main Street** – Conceptual Major Development Review, Relocation, Dimensional Variations and Floor Area Bonus, PUBLIC HEARING, Continued from August 28th

APPLICANT /OWNER:
Rocking Lazy J Properties, LLC
Jake Vickery and Della Pegolotti

REPRESENTATIVE:
Jake Vickery, Architect

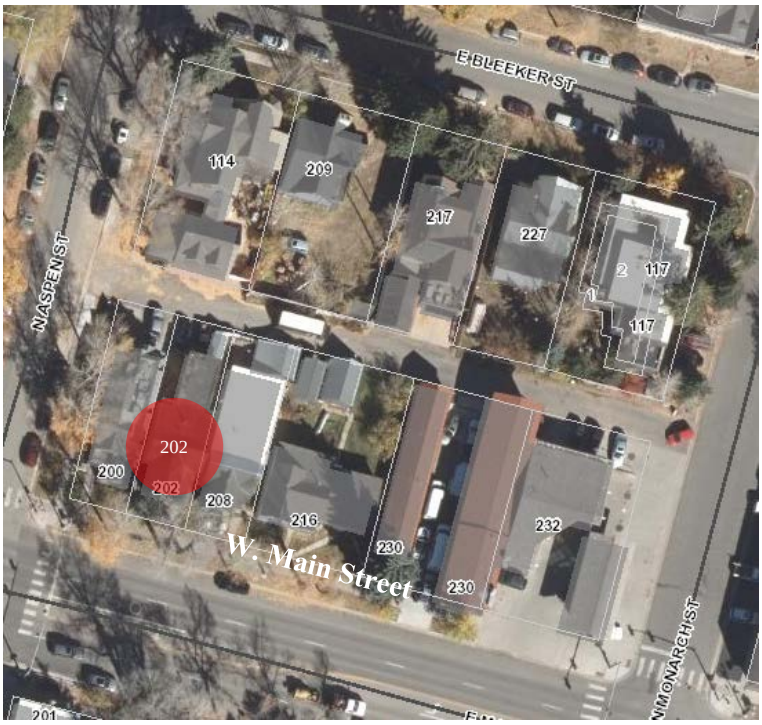
LOCATION:
Street Address:
202 E. Main Street
Legal Description:
Lot 1, Main Street Victorians Historic Landmark Lot Split Subdivision Exemption, According to the Plat thereof recorded November 9, 2012 in Plat book 100 at Page 92, City and Townsite of Aspen, Colorado.
Parcel Identification Number:
PID# 2737-073-99-001.

CURRENT ZONING & USE
MU – Mixed Use (Main Street Historic District)
Commercial Use

PROPOSED USE:
Single-Family Residential

SUMMARY:
The applicant has requested a Conceptual Major Development review for the demolition of non-historic additions, relocation of the historic building onto a new basement, and the construction of a new rear addition. Dimensional variations related to setbacks and parking, and a 500 sf floor area bonus are requested.

STAFF RECOMMENDATION:
Staff recommends approval with conditions identified on page 10 of this memo.



Site Locator Map – 202 East Main Street

BACKGROUND:

202 East Main Street is a designated landmark on a 3,000 square foot lot in the MU zone district. This property contains a one-story miner's cottage with a non-historic addition to the rear. The house appears to be in its original location according to the historic Sanborn maps. Historic photographs show that much of the original architectural details are intact. There is a small spruce tree in front of the historic resource and two large cottonwood trees towards the front of the property in the public right-of-way. The site slopes down towards the alley by approximately 3'-6".

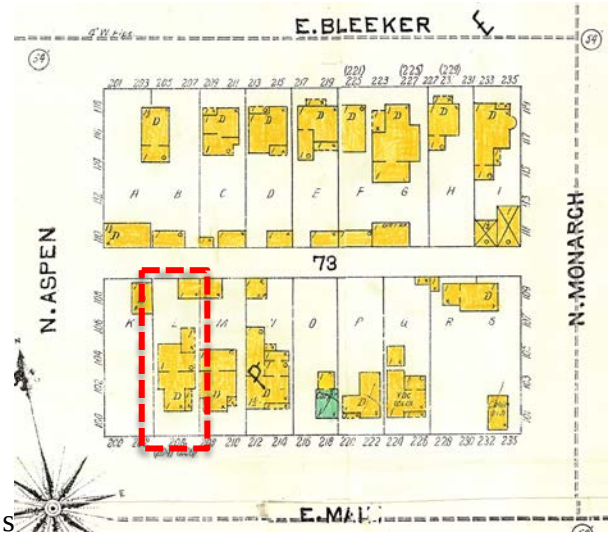


Figure 1 – Sanborn Map, 1904



Figure 2 – Historic Photograph, 1890
Image Credit: Aspen Historical Society

In 2012, Aspen City Council granted approval for a Historic Lot Split between 202 E. Main and 208 E. Main creating two (2) 3,000 sf parcels (Ordinance #14, Series of 2012). The Historic Preservation Commission (HPC) granted approvals for demolition of a storage room that linked the two historic structures together and setback variations for both parcels (Resolution #5, Series of 2012).

NOTE:

This project will be reviewed under the Land Use Code prior to the historic preservation benefits code amendments approved by City Council on May 13, 2019 because it was submitted and declared complete before the new code language went into effect on June 12, 2019.

REQUEST OF HISTORIC PRESERVATION COMMISSION (HPC)

The Applicant is requesting the following land use approvals:

- Major Development (Section 26.415.070.D) for demolition of non-historic additions and construction of a new addition towards the rear of the historic building.
- Relocation (Section 26.415.090) for the relocation of the historic residence onto a new basement.
- Setback Variation (Section 26.415.110.C) for the proposed design including the new addition and lightwells.

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- Parking Reduction and Waiver of fees (Section 26.415.110.D) request for a reduction of one (1) parking space and fee waiver.
- Floor Area Bonus (Section 26.415.110.F) request for a 500 sf bonus.

The HPC is the final review authority, however, this project is subject to Call-up Notice to City Council. The project, once approved, will be granted an Administrative Growth Management Exemption for Change in Use from commercial to residential with no affordable housing mitigation required.

PROJECT SUMMARY:

The applicant proposes to demolish the existing non-historic addition and construct a new above grade addition to the rear of the historic resource. A full basement is proposed and will require the temporary relocation of the historic structure during excavation. The proposed design changes the use from commercial to a single-family residence, which results in a 20% floor area reduction as required by underlying zoning. The applicant requests setback variations, parking reduction, fee waivers, and a floor area bonus of 500 sf as part of this proposal.

Following the August 28, 2019 continuation by HPC the applicant has revised the proposed design for the connecting element and the above grade addition. The revised connecting element is 5' in length and one-story. The proposed addition relates to the historic resource through building materials and fenestration but deviates in form. A flat roof with a rooftop deck and a green roof is proposed. The revised design proposes a new dormer to the rear of the historic resource that lines up with the existing historic cross gable.

STAFF COMMENTS:

Staff finds that the revised proposal addresses concerns regarding the connecting element and design compatibility of the proposed addition as it relates to the historic resource. The revised design proposes new fenestration that gestures to the size and proportion of the historic fenestration and utilizes materials are similar to the historic resource. The proposed connecting element is one-story, tucks under the eave of the historic resource and provides a 5' distance between the historic resource and the proposed new addition. Staff continues to support the applicant's plan to maintain the historic alignment along Main Street and the plan to pursue preservation/restoration work on the historic resource. Staff recognizes the site constraints presented on this lot due to maintaining this alignment and preserving the large cottonwood trees. Staff supports the request for setback variations with the revised design. Staff supports the applicant's request for a floor area bonus because it meets the criteria for a bonus.

The following points go into more detail regarding the revised proposal for HPC discussion:

1. **Site Planning & Relocation:** The Sanborn maps indicate the historic house is in its original location. To construct the basement design, the applicant plans to temporarily move the house on site, then onto the new foundation. Ultimately, the historic structure will be placed back in its

original location. The applicant will need to provide structural assessment and financial assurances in order to comply with Design Guideline 9.1.

Considering the lot size, the proposed subgrade addition, and the large cottonwood trees near the property, staff finds preliminary plans addressing stormwater mitigation is critical. The applicant has reached out to the relevant City Departments to discuss feasible options to address stormwater mitigation on the site. As part of the solution, a green roof is being proposed on the new addition. The applicant will need to continue working closely with relevant City Departments and staff and monitor for any future design changes.

Staff supports the removal of the spruce tree in the front yard of the historic property due to its proximity to the resource.

The final grading of the site will need to maintain the historic relationship of how the structure meets the ground while providing positive drainage (Design Guideline 1.8).

In order to provide natural light into the subgrade spaces, the applicant proposes two lightwells. Following the previous HPC meeting, the applicant has moved the proposed lightwell that was abutting the historic porch to the west elevation of the historic building. The new location will require a setback variation but is no longer immediately adjacent to the historic porch and main entrance to the Victorian. Staff recommends the applicant work with staff and monitor and the Building Department to discuss the options for a flat grate around the front most lightwell rather than a railing. A rail in this location is visually intrusive. The height of any curb needs to be 6" or less.

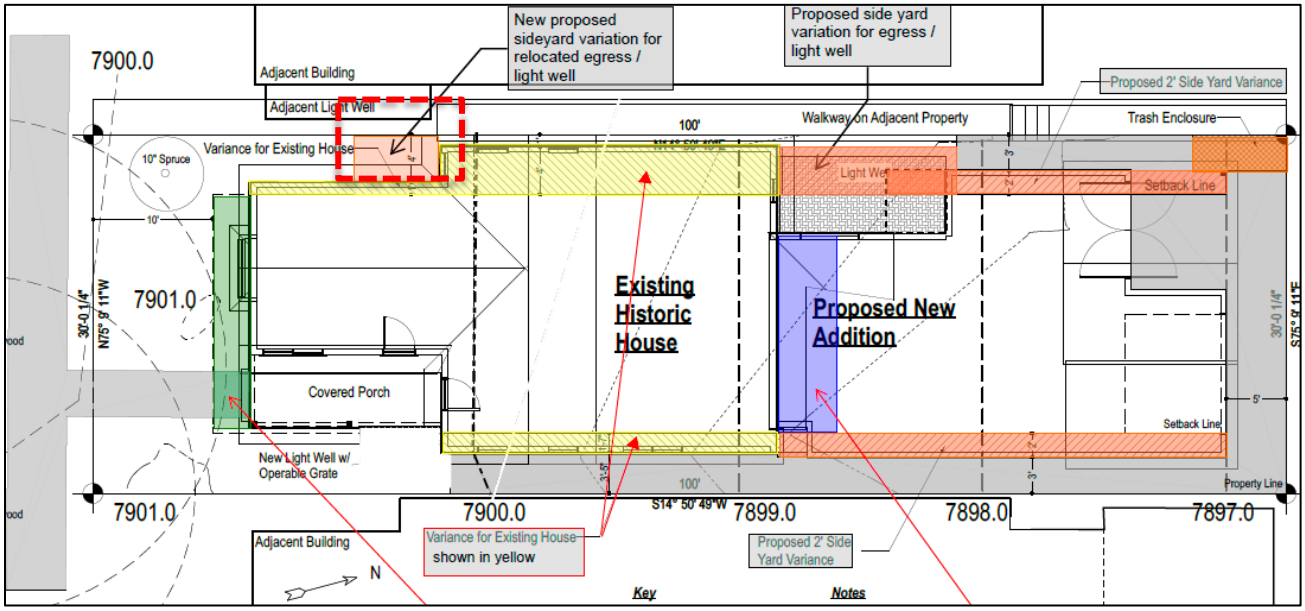


Figure 3 – Proposed Site Plan (revised)

Staff finds the criteria for relocation are met. Staff supports the new location of the front lightwell and the removal of the spruce tree to the front of the property. Staff recommends the applicant continue to work closely with other City Departments related to excavation staying within the property boundaries and obtaining the necessary permission at the time of before any work commences on site.

2. **New Addition – Connecting Element & Form/Materials/Fenestration & New Dormer:** The proposed addition has a flat roof, but is taller than the historic building and has an above grade floor area is not larger than the historic resource. The transitional space between the old and the new has been revised to a 5' long one-story connecting element. A new dormer is proposed on the rear of the historic roof.

   Connecting Element: When a new addition is taller than the historic resource, the guidelines call for a one-story connector with a minimum length of 10 feet that tucks under the eave of the historic building in order to provide a meaningful separation (Guideline 10.9). The revised design is a 5' long one-story connecting element that is minimal and subordinate to the historic eave. Although it is not the recommended 10' in length, the constraints on the lot creates a limited area for new development. Staff finds that the proposed connecting element is appropriate because of its minimal impact to the historic resource. It achieves separation between the old and new.

   According to Design Guideline 10.6, the new addition needs to be recognized as a product of its own time, but visually compatible with the historic resource. In order to promote compatibility, the Design Guidelines requires two of the following characteristics to relate back to the historic resource: form, material and fenestration.

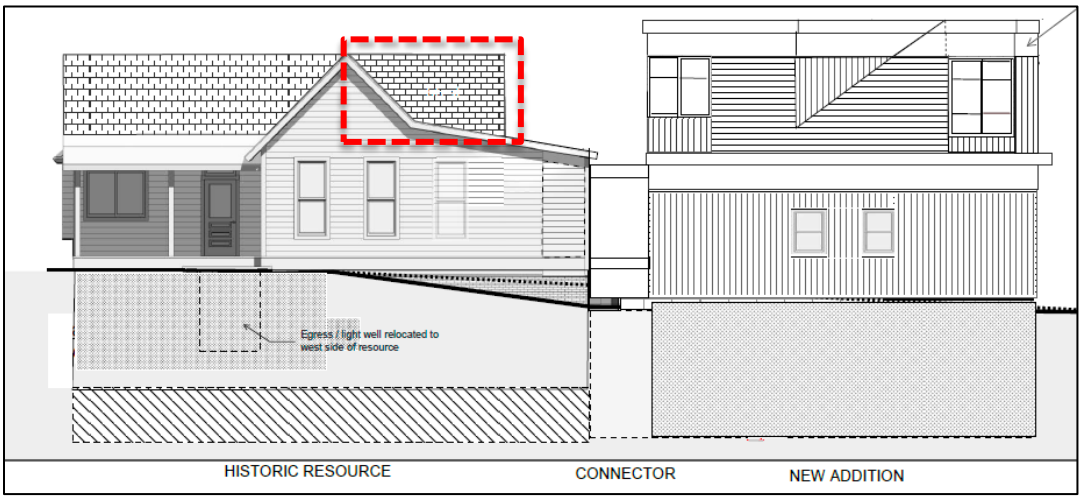


Figure 4 – Proposed East Elevation (revised)

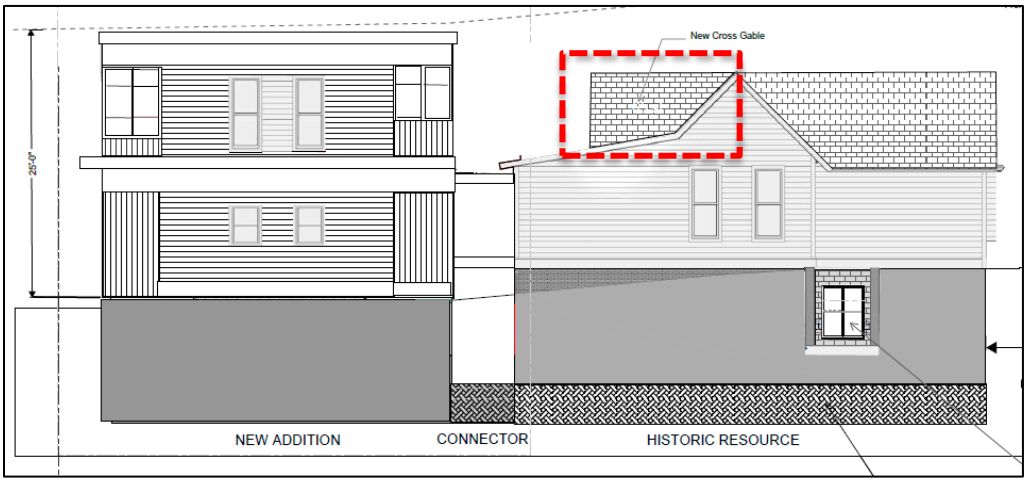


Figure 5 – Proposed West Elevation (revised)

Form: The revised form of the above grade addition is a two-story rectilinear massing located to the rear of the property. A flat roof is proposed with a rooftop deck and green roof for storm water mitigation purposes. The applicant is deviating from form and relating to the historic resource through fenestration and building materials. Guideline 10.11 calls for a compatible roof form for the new addition in relation to the historic resource. Typically, a gable roof is encouraged for an addition to a historic Victorian. In order to balance the request for an adequate connecting element, staff supports the proposed roof form because it does not visually compete with the historic resource and is considerably setback from the front of the property.

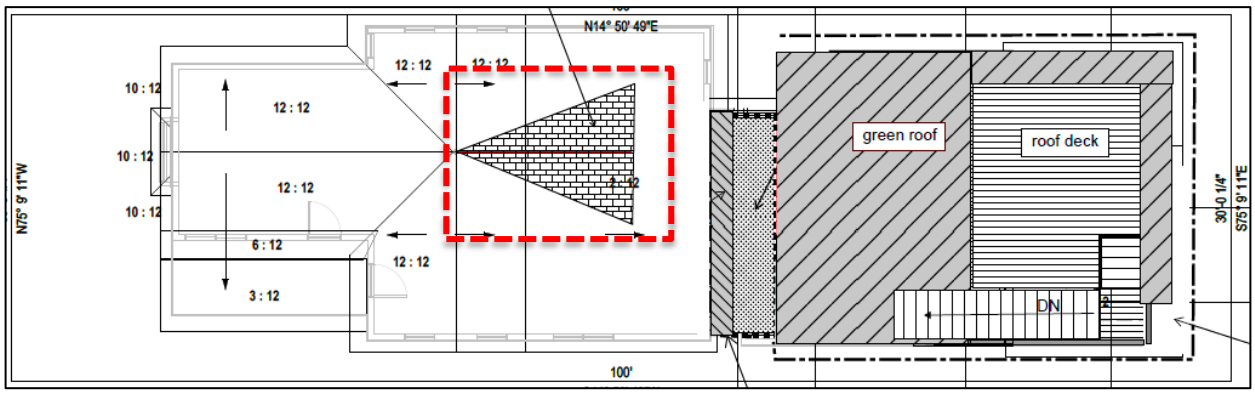


Figure 6 – Proposed Roof Plan (revised)

Materials: The historic miner's cottage is mostly clad with horizontal clapboard siding and decorative architectural detailing on the front façade and porch. The historic structure sits on a simple brick foundation. The applicant plans to restore the historic brick foundation. The revised addition is clad in horizontal wood siding as the primary building material. Staff supports the use of wood siding material for the new addition

Fenestration: The revised fenestration choices on the new addition are based on the proportions and dimensions of the historic fenestration, which is predominantly double-hung windows. The connecting element is mostly glass. Staff finds that the revised design for fenestration relates to the historic resource and meets the Design Guidelines.

New Dormer: In this restudy, the applicant introduced a new dormer element on the roof of the historic resource. Visually, it is a seamless continuation of the south facing historic cross gable. There is a large window opening at the northern gable end of the dormer. Design Guideline 7.6 addresses the addition of a new dormer to a historic roof. The proposed dormer is not providing livability to an upper story, as typical with these features, and the mass and scale of the dormer addition is not subordinate to the historic ridgeline. The original massing of the historic cross gable would be altered with this design. The extension of the cross gable causes confusion regarding the form of the historic building and covers a large portion of the historic roof. Staff finds that this dormer addition does not meet the Design Guideline and does not recommend approval.

Staff finds that the revised design of the new addition deviates from form but successfully relates to the historic resource through fenestration and materials. Staff finds the proposed 5' long one-story connecting element achieves the appropriate separation between new and old. Staff does not recommend approval of the proposed dormer addition.

3. **Dimensional Variations:** As a historically designated landmark, certain preservation benefits may be granted by HPC. As mentioned above, this application was submitted and deemed complete before the code amendments to the Historic Preservation Benefits went into effect, therefore, is subject to the old code.

   Setback Variations:
   With this project, the applicant requests additional setback variations for the project:
   - 2' setback reduction on the west and east sideyard above and below grade, for the addition
   - 5' setback reduction on the east sideyard above and below grade, for historic house and basement
   - 2' setback reduction on the west sideyard above and below grade, for the historic house and basement
   - Up to a 5' west sideyard setback reduction for the lightwells

   In granting a variance, the HPC must make a finding that such a variance:
   a) Is similar to the pattern, features and character of the historic property or district; and/or

b) Enhances or mitigates an adverse impact to the historic significance or architectural character of the historic property, an adjoining designated historic property or historic district.

Parking Reductions & Fee Waivers:
Underlying zoning requires two parking spaces for single-family residence. Due to the site configuration and the location of the historic resource, the applicant proposes one on-site parking spot and a potential compact car parking space, both accessed from the alley. A compact car parking space would not meet the code requirements, therefore, a parking reduction of one space is requested.

According to Section 26.415.110.D, HPC may approve the reduction of parking upon a finding that it will enhance or mitigate an adverse impact on the historic significance or architectural character of a designed historic property. As a designated property under the old code, exemptions for growth management and impact fees are available.

The revised design includes a rear loggia that functions as the entry to the compact car parking space. The applicant's design intent for the loggia is to break up the mass and scale of the addition and respond to the context of the ally. A restudy of this feature may provide the extra space needed to accommodate for a full parking space, and staff recommends restudy.

Staff supports the request for setback variations since it is a result of maintaining the historic location of the historic house which enhances the historic significance of the property. Staff recommends restudy of the loggia to the rear of the proposed addition in order to provide for an adequately sized parking space.

4. **Floor Area Bonus:** The applicant is requesting a floor area bonus to the amount of 500 sf. The proposal mentions undertaking any necessary restoration/preservation work. Following is the criteria for awarding a floor area bonus for this application (Section 415.110.F)

1. In selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties. To be considered for the bonus, it must be demonstrated that:

a) The design of the project meets all applicable design guidelines;
b) The historic building is the key element of the property and the addition is incorporated in a manner that maintains the visual integrity of the historic building;
c) The work restores the existing portion of the building to its historic appearance;
d) The new construction is reflective of the proportional patterns found in the historic building's form, materials or openings;
e) The construction materials are of the highest quality;

f) An appropriate transition defines the old and new portions of the building;
g) The project retains a historic outbuilding; and/or
h) Notable historic site and landscape features are retained.

2. Granting of additional allowable floor area is not a matter of right but is contingent upon the sole discretion of the HPC and the Commission's assessments of the merits of the proposed project and its ability to demonstrate exemplary historic preservation practices. Projects that demonstrate multiple elements described above will have a greater likelihood of being awarded additional floor area.

Staff recognizes that with the change in use from commercial to residential, the property is subject to a considerable floor area reduction. A single-family home is limited to 1,920 sf, whereas a commercial property could be 3,000 sf.

Staff finds that all of the applicable criteria for a floor area bonus are met with the revised design. The applicant provided a preservation plan to restore significant details related to the fenestration, foundation, and the historic chimney. Staff recommends the applicant work closely with staff and monitor on preservation details and supports the awarding of a floor area bonus.

REFERRAL COMMENTS:

The application was referred out to other City departments who have requirements that will significantly affect the permit review. The following is a summary of comments received. See Exhibit C for details.

Engineering Department:

1. The applicant will need to provide a conceptual level information regarding stormwater treatment and how onsite runoff will be captured and treated prior to HPC approval.
2. Excavation stabilization may require agreements with neighboring properties which must be submitted at the time of building permit. Micropile walls cannot impact neighboring properties.
3. Work with Parks and Engineering Departments to determine the best alignment for a new water service line that minimizes impact to the street trees.
4. Public improvements to the sidewalk and a new curb and gutter will be required.

Parks Department:

1. Clarifications for the tree removal request is needed.
2. Details regarding the proposed excavation need to be reviewed and approved by the City Forester.
3. Survey information about the size of the cottonwood trees need to be verified.
4. Public improvements such as sidewalks must be floating and no excavation is permitted in the dripline of the existing Cottonwood trees. All excavation work will require discussion with the City Forester.
5. Location for new waterline requires discussion with Parks and Engineering.

Building Department:

1. The historic building and parts of the proposed new addition along the East and West property lines must comply with fire separation and fire rating requirements. Please see Building comments for specific details (Exhibit B).
2. Emergency escape and rescue windows adjacent to walkways require guards.

RECOMMENDATION:

Staff recommends the HPC approve this application with the following conditions:

1.) Restudy of the proposed loggia on the rear of the new addition in order to provide an adequately sized parking space.
2.) Remove the proposed new dormer on the historic resource.
3.) Design curb heights around the lightwells to be 6" or less, and work with the Building Department and staff to discuss a flat grate option around the lightwells.
4.) The following variations are approved:
    - 2' setback reduction on the west and east sideyard above and below grade, for the addition
    - 5' setback reduction on the east sideyard above and below grade, for historic house and basement
    - 2' setback reduction on the west sideyard above and below grade, for the historic house and basement
    - Up to a 5' west sideyard setback reduction for the lightwells
5.) Continue to discuss the design of the storm water mitigation system with all relevant City Departments for compliance. Final design to be reviewed and approved by staff and monitor before building permit.
6.) Work closely with staff and monitor regarding the preservation plan and identifying areas for additional documentation and investigative demolition, to be reviewed and approved by staff and monitor.
7.) Provide necessary agreements from neighboring properties for site excavation stabilization prior to submission of Building permit.
8.) Provide details of the relocation plan, outlined by a structural engineer and housemover, at Final. The applicant will be required to provide a financial security of $30,000 until the house is set on the new foundation. The financial security is to be provided with the building permit application.
9.) A development application for a Final Development Plan shall be submitted within one (1) year of the date of approval of a Conceptual Development Plan. Failure to file such an application within this time period shall render null and void the approval of the Conceptual Development Plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a Conceptual Development Plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

ATTACHMENTS:
Resolution #__, Series of 2019

Exhibit A.1 – Historic Preservation Design Guidelines Criteria /Staff Findings
Exhibit A.2 – Dimensional Variations Review Criteria /Staff Findings
Exhibit A.3 – Relocation/Staff Findings
Exhibit A.4 – Floor Area Bonus/Staff Findings
Exhibit B – Referral Comments
Exhibit C – Application

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Sheet Index	
Label	Title
A0.0	Project Cover Sheet
A0.1	Reserved
A1.0	Existing Site Plan
A1.1	Existing Lower Floor Plan
A1.2	Existing Ground Floor Plan
A1.3	Reserved
A1.4	Existing Roof Plan
A1.5	Existing Elevations
A1.6	Existing Cross Sections
A3.0	Proposed Site Plan
A3.1	Proposed Lower Floor Plan
A3.2	Proposed Ground Floor Plan
A3.3	Proposed Upper Floor Plan
A3.4	Proposed Roof Plan
A3.5.1	Proposed Elevations
A3.5.2	Proposed Elevations
A3.5.3	Proposed Elevations
A3.6.1	Proposed Cross Sections
A3.6.2	Reserved
A3.6.3	Reserved
A3.6.4	Proposed Cross Sections
A3.6.5	Reserved



200 202 208 216

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202 E Main St

Project Cover Sheet

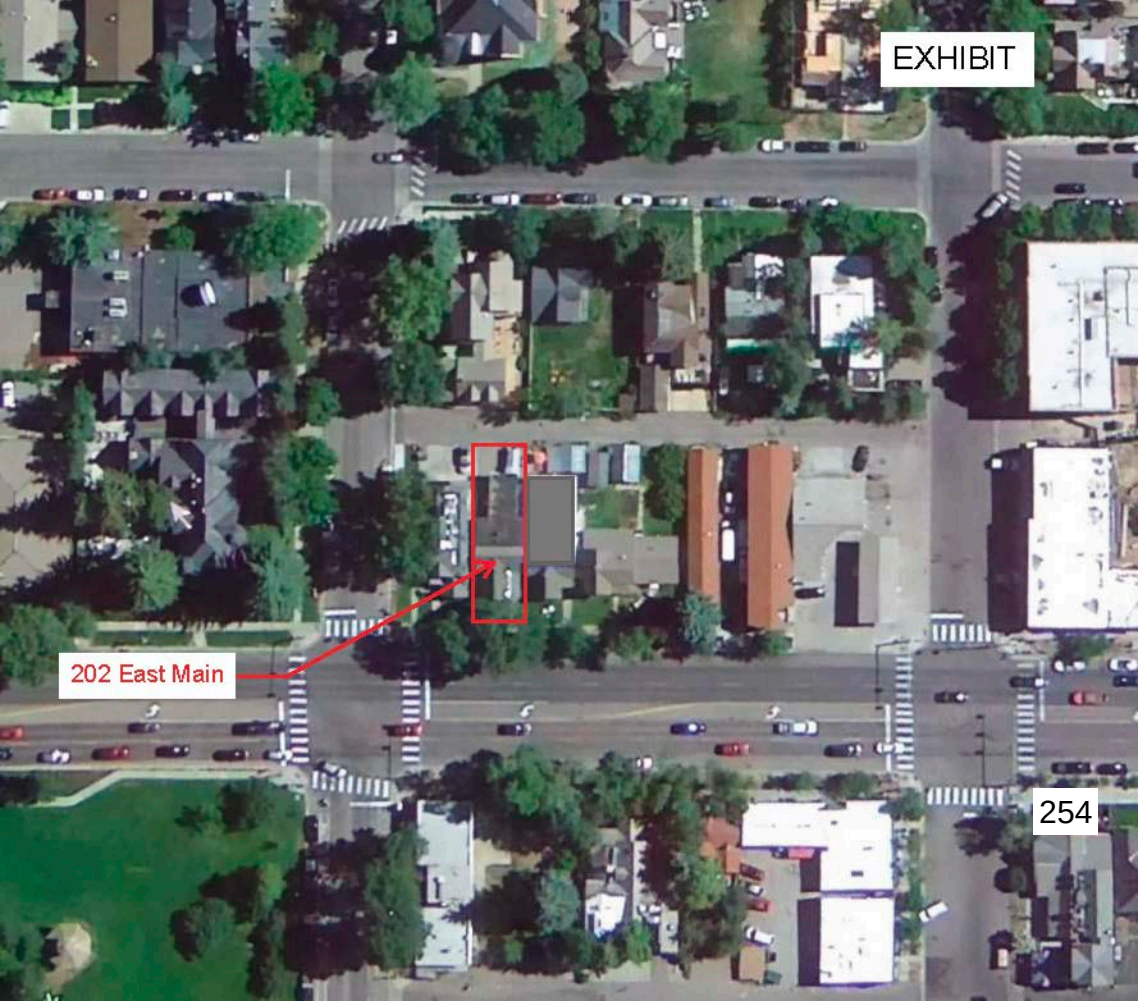
CHD Job #: 18-0081

253

Date: 5.28.19

Sheet:

A0.0


EXHIBIT
202 East Main
254

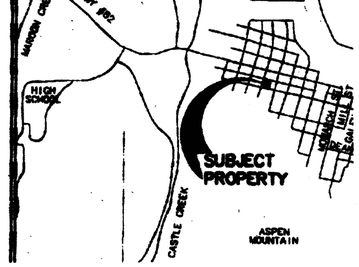
EXHIBIT

B100 P92

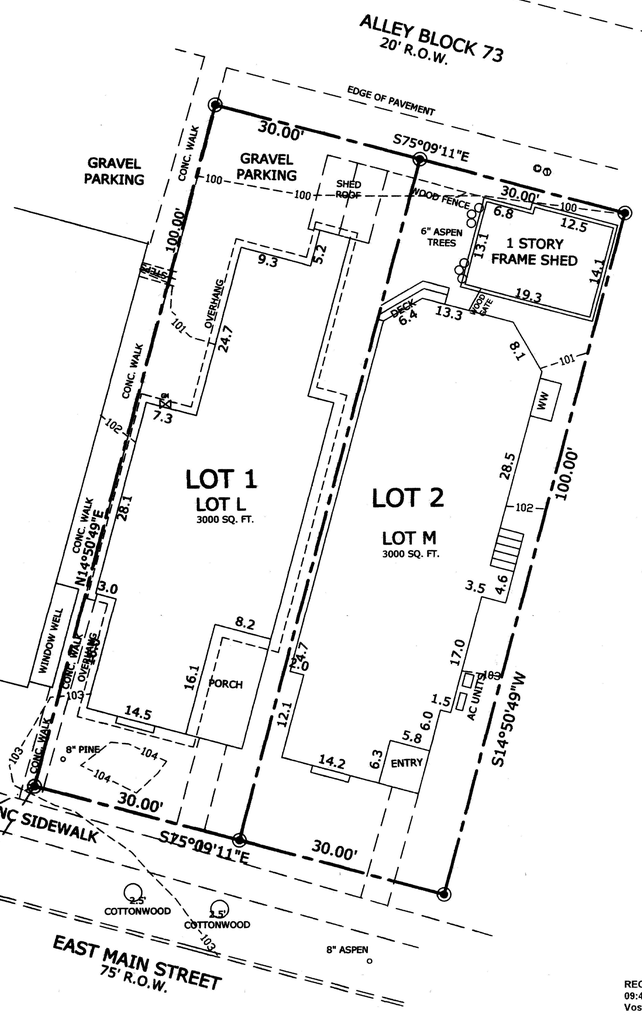
HISTORIC LANDMARK LOT SPLIT SUBDIVISION EXEMPTION PLAT

MAIN STREET VICTORIANS HISTORIC LANDMARK LOT SPLIT SUBDIVISION EXEMPTION

PURPOSE: SUBDIVISION OF LOTS L AND M, BLOCK 73, INTO LOTS 1 AND 2 OF THE MAIN STREET VICTORIANS HISTORIC LANDMARK LOT SPLIT SUBDIVISION EXEMPTION, PURSUANT TO CITY COUNCIL ORDINANCE # 14, SERIES OF 2012
LOTS L AND M, BLOCK 73, CITY AND TOWNSITE OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.



VICINITY MAP



NORTH

0 5 10 20

1" = 10'

BASIS OF BEARING = A BEARING OF S14°50'49"W BETWEEN THE NE CORNER OF LOT M BLOCK 73 AND A FOUND REBAR AND CAP LS# 16129 AT THE S.E. PROPERTY CORNER LOT M BLOCK 73 LS NO 16129 AND SHOWN HEREON.

Legend

- INDICATES FOUND MONUMENT AS DESCRIBED
- INDICATES MONUMENT LS 33645

OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, OWNERS OF LOTS L AND M, BLOCK 73, CITY AND TOWNSITE OF ASPEN, PITKIN COUNTY, COLORADO DO HEREBY SUBDIVIDE AND REPLAT THIS REAL PROPERTY UNDER THE NAME AND STYLE MAIN STREET VICTORIANS HISTORIC LANDMARK LOT SPLIT EXEMPTION, CITY OF ASPEN, PITKIN COUNTY, COLORADO.
EXECUTED THIS 2 DAY OF November 2012

ROCKING LAZY J PROPERTIES, LLC

BY: DELLA PEGOLOTTI

THE FORGOING OWNER'S CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS 2nd DAY OF November 2012 BY DELLA PEGOLOTTI FOR ROCKING LAZY J PROPERTIES, LLC
WITNESS MY HAND AND OFFICIAL SEAL
MY COMMISSION EXPIRES May 3, 2014

NOTARY PUBLIC

KARLA S. BACSANYI NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 05/03/2014

MICHAEL GIORDANO (OWNER)

THE FORGOING OWNER'S CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS 3 DAY OF NOV 2012 BY MICHAEL GIORDANO.
WITNESS MY HAND AND OFFICIAL SEAL
MY COMMISSION EXPIRES 1-25-2015

NOTARY PUBLIC

TODD A LAY NOTARY PUBLIC STATE OF COLORADO NOTARY ID 19994002108 MY COMMISSION EXPIRES JANUARY 25, 2015

TITLE CERTIFICATE

THE UNDERSIGNED, A DULY AUTHORIZED REPETITIVE OF A COOPERATE INSURER REGISTERED TO DO BUSINESS IN PITKIN COUNTY COLORADO DO HEREBY CERTIFY THAT THE PERSONS LISTED AS OWNER OF THIS PLAT DOES HEREBY HOLD FEE SIMPLE TITLE TO THE WITHIN DESCRIBED REAL PROPERTY ~~FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT THOSE LISTED ON THE OWNERS CERTIFICATE~~ ALTHOUGH WE BELIEVE THAT THE FACTS STATED ON THIS PLAT ARE TRUE , THIS CERTIFICATE IS NOT TO BE CONSTRUED AS AN ABSTRACT OF TITLE, NOR AN OPINION OF TITLE, NOR GUARANTEE OF TITLE AND IT IS UNDERSTOOD AND AGREED THAT ~~LAND TITLE GUARANTEE COMPANY, INC.~~ NEITHER ASSUMES NOR WILL BE CHARGED WITH ANY FINANCIAL OBLIGATION OR LIABILITY WHATSOEVER BASED ON ANY STATEMENT CONTAINED HEREIN. PITKIN COUNTY TITLE, INC.

PTIKIN COUNTY TITLE, INC.
601 HOPKINS AVENUE
ASPEN, COLORADO 81611
SIGNED:
BY: KIM SHULTZ TITLE OFFICER

THE FORGOING TITLE CERTIFICATE WAS ACKNOWLEDGED BEFORE ME THIS 5th DAY OF Nov 2012 BY Kim Shultz FOR LAND TITLE GUARANTEE COMPANY, INC. PITKIN COUNTY TITLE, INC.
WITNESS MY HAND AND OFFICIAL SEAL
MY COMMISSION EXPIRES 12-1-2013

NOTARY PUBLIC

C. WARNECKE NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 12/01/2013

Plat Notes

1. THIS MAIN STREET VICTORIANS HISTORIC LANDMARK LOT SPLIT SUBDIVISION EXEMPTION EXCEPTION PLAT HAS BEEN PREPARED IN ACCORDANCE WITH CITY COUNCIL ORDINANCE NUMBER 14 (SERIES OF 2012) AND HISTORIC PRESERVATION COMMISSION RESOLUTION NUMBER 5 (SERIES 2012). THE LANDS AFFECTED BY THIS PLAT ARE SUBJECT TO THE TERMS AND CONDITIONS OF SAID APPROVALS AND BY APPLICABLE LAND USE REGULATIONS OF THE CITY OF ASPEN.
2. NO FURTHER SUBDIVISION OF THESE LOTS MAY BE GRANTED NOR WILL ADDITIONAL UNITS BE BUILT WITHOUT RECIEPT OF SUBDIVISION APPROVALS AND GROTH MANAGMENT ALLOCATIONS AS MAY BE REQUIRED BY THE PROVISIONS OF THE ASPEN LAND USE CODE IN EFFECT AT THE TIME OF SUCH DEVELOPMENT APPLICATIONS.
3. ALL NEW DEVELOPMENT OF THESE LOTS WILL CONFORM TO THE DIMENSIONAL REQUIREMENTS OF ZONE DISTRICT UNLESS VARIANCES TO THESE REQUIRMENTS ARE GRANTED BY THE ASPEN HISTORIC PRESERVATION COMMISSON.
4. ALLOWABLE FAR WILL BE DETERMINED BY THE ZONE DISTRICT REGULATIONS IN EFFECT AT THE TIME OF DEVELOPMENT, ACCORDING TO THE USES PROPOSED FOR EACH LOT INDIVIDUALLY.
5. RECORDATION OF THIS SUBDIVISION EXEMPTION PLAT SHALL NULLIFY AND VACATE THE MAIN STREET VICTORIANS CONDOMINIUM SUBDIVISION EXEMPTION PLAT, RECORDED AS RECEPTION NO. 436571 BY THE PITKIN COUNTY CLERK AND RECORDER

SEAL PITKIN COUNTY COLORADO

RECEPTION#: 593852, 11/09/2012 at 09:49:37 AM, 1 OF 1, R $11.00 Janice K. Vos Caudill, Pitkin County, CO PLAT BK 100 PG 92

CLERK AND RECORDER'S CERTIFICATE

THIS PLAT OF THE MAIN STREET VICTORIANS HISTORIC LOT SPLIT SUBDIVISION EXCEPTION WAS ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY OF PITKIN, STATE OF COLORADO, AT 9:49 O'CLOCK A M. THIS 9 DAY OF NOV IN PLAT BOOK 100 AT PAGE 92 AS RECEPTION NUMBER. 593852

CLERK AND RECORDER

CITY COUNCIL APPROVAL

THIS PLAT OF THE MAIN STREET VICTORIANS LOT SPLIT SUBDIVISION EXEMPTION WAS REVIEWED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ASPEN ON THIS ___ DAY OF ___ 2012, PER ORDINANCE NO. 14 (SERIES OF 2012). RECORDED AS RECEPTION NO. 593107 OF THE REAL ESTATE RECORDS OF PITKIN COUNTY COLORADO.
SIGNED THIS 8 DAY OF NOV 2012

MAYOR 11-08-12

ATTEST: CITY CLERK

CITY ENGINEER REVIEW

THIS PLAT OF THE MAIN STREET VICTORIANS LOT SPLIT SUBDIVISION EXEMPTION WAS REVIEWED BY THE CITY ENGINEER OF THE CITY OF ASPEN ON THIS 7th DAY OF NOV 2012.

CITY ENGINEER

COMMUNITY DEVELOPMENT REVIEW

THIS PLAT OF THE MAIN STREET VICTORIANS LOT SPLIT SUBDIVISION EXEMPTION WAS REVIEWED BY THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF ASPEN ON THIS 7 DAY OF NOV 2012.

DIRECTOR

SURVEYOR'S CERTIFICATE

"I, STEVEN A. YELTON, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED UNDER THE LAWS OF THE STATE OF COLORADO; THAT THIS PLAT IS TRUE, CORRECT AND COMPLETE AS LAID OUT AND SHOWN HEREON; THAT THIS PLAT WAS MADE BY ME FROM AN ACCURATE SURVEY OF THE REAL PROPERTY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION ON JANUARY 14, 2012. THE LOCATION AND DIMENSIONS OF ALL BUILDINGS, IMPROVEMENTS, EASEMENTS, RIGHTS OF WAY IN EVIDENCE OR KNOWN TO ME AND ENCROACHMENTS BY OR ON THE REAL PROPERTY ARE SHOWN TO AN ACCURACY OF 1:15,000, AND THAT THIS PLAT MEETS THE REQUIREMENTS OF AN IMPROVEMENT SURVEY PLAT AS SET FORTH IN C.R.S. 38-51-102(9). "

STEVEN ALAN YELTON COLORADO REGISTERED 33645 LICENSED LAND SURVEYOR

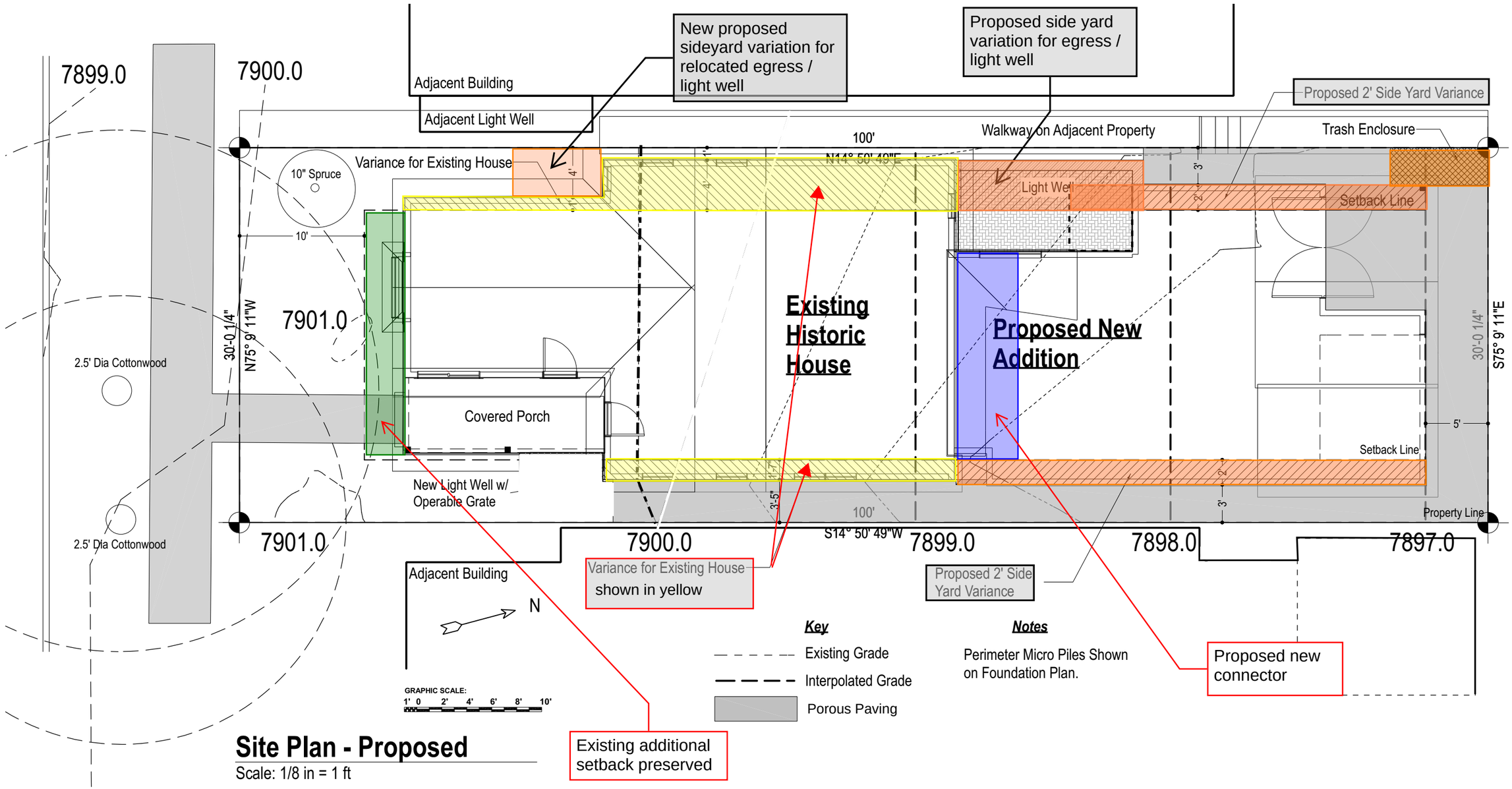
STEVEN A. YELTON PLS. # 33645
DATE: 10-23-12

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover 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.

HIRED GUN SURVEYING LTD.
P.O. BOX 9
SNOWMASS, COLORADO 81654
(970)923-2794

DATE SURVEYED: 12-4-2011
DATE DRAFTED: 1-20-2012
REVISED: 9-24-2012

DATA FILE NAME: 1106127
DRAWN BY: TY



Site Plan - Proposed

Scale: 1/8 in = 1 ft

202 East Main 9.24.19

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202 east main street aspen colorado 81611
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jakevickery@comcast.net

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970.309.7722
Parcel # - R021796

202 E Main St

Proposed Site Plan

CHD Job #: 18-0081

Date: 5.28.19

Sheet: **A3.0**

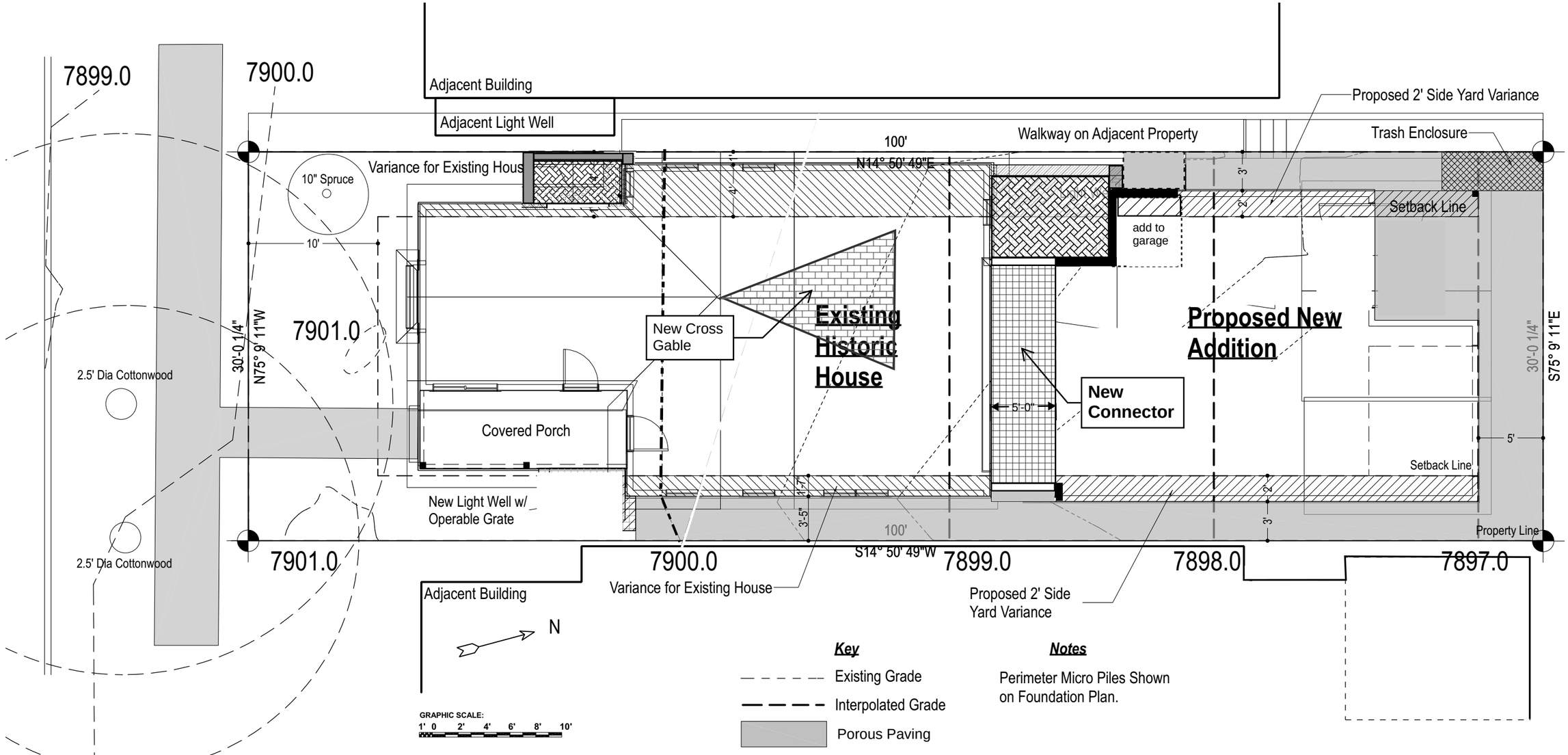
202 East Main St.
TOTAL FAR CALCULATION - PROPOSED
6.7.19 Revised 10.3.19

Above Grade		
Ground	1330	include 164 garage
Upper	665	deduct 90 stair
Total Above Grade	1995	* 75 over 1920
Below Grade		
Basement Calculation	218 *	
Subtotal FAR w/o decks	**2213**	
Decks		
Roof deck with stair	101	288 exempt
Loggia	80	
Total Decks add	181 *	
TOTAL FAR	**2394**	

garage 539 FAR= 164

ABOVE GRADE SQUARE FOOTAGE	
FLOOR AREA	
resource	945
addition 665+221=	886
NET(less)	59

* included in the 474 "bonus" for larger egress / light wells and additional decks



Site Plan - Proposed

Scale: 1/8 in = 1 ft

Key

- Existing Grade
- Interpolated Grade
- Porous Paving

Notes

Perimeter Micro Piles Shown on Foundation Plan.

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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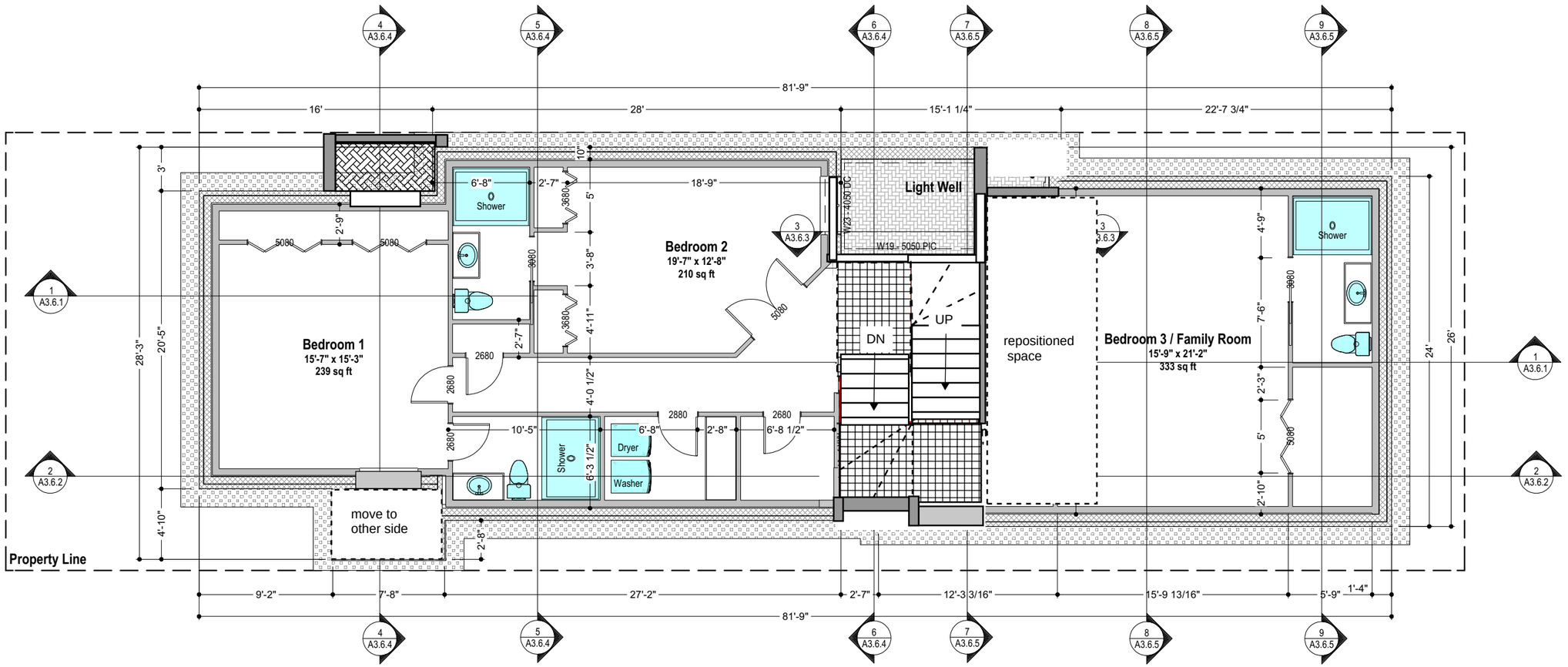
202 E Main St

Proposed Site Plan

CHD Job #: 18-0081

Date: 5.28.19

Sheet: ***A3.0***



Proposed Lower Floor Plan

Scale: 1/8 in = 1 ft

GRAPHIC SCALE:

1' 0 2' 4' 6' 8' 10'

RESTUDY 9.16.19

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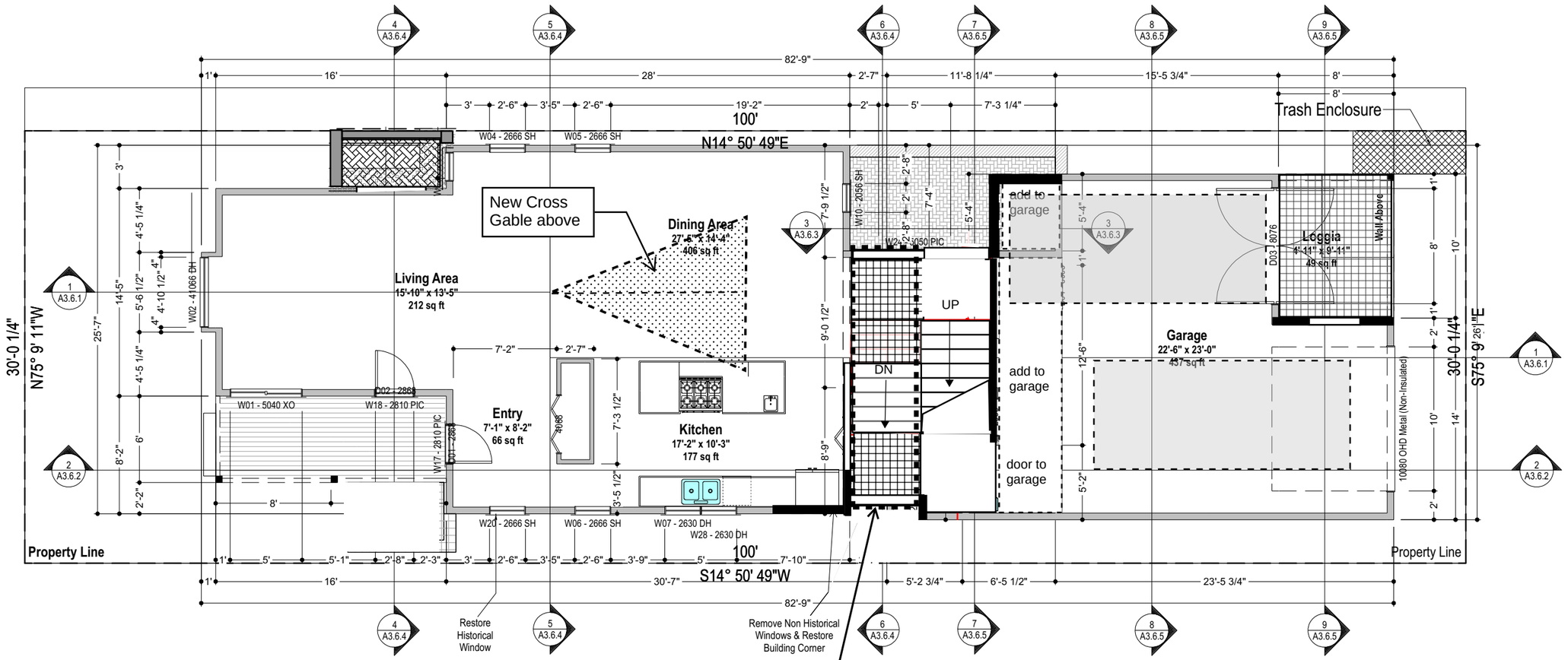
202 E Main St

Proposed Lower Floor Plan

CHD Job #: 18-0081

Date: 5.28.: 259

Sheet: ***A3.1***



Proposed Ground Floor Plan

Scale: 1/8 in = 1 ft

GRAPHIC SCALE:
1' 0 2' 4' 6' 8' 10'

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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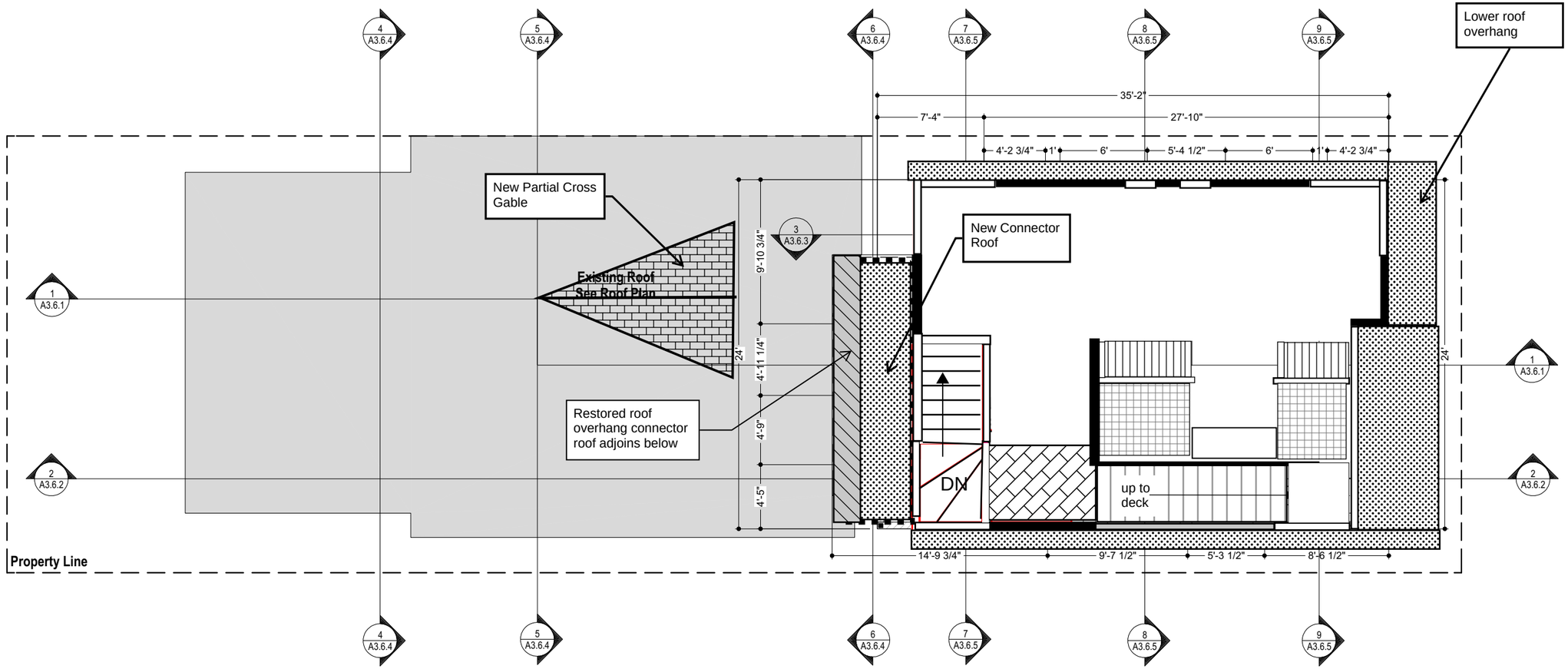
202 E Main St

Proposed Ground Floor Plan

CHD Job #: 18-0081

Date: 5.28.19

Sheet: *A3.2*



2nd Floor Plan - 202 E Main Proposed

Scale: 1/8 in = 1 ft

GRAPHIC SCALE:
1' 0 2' 4' 6' 8' 10'

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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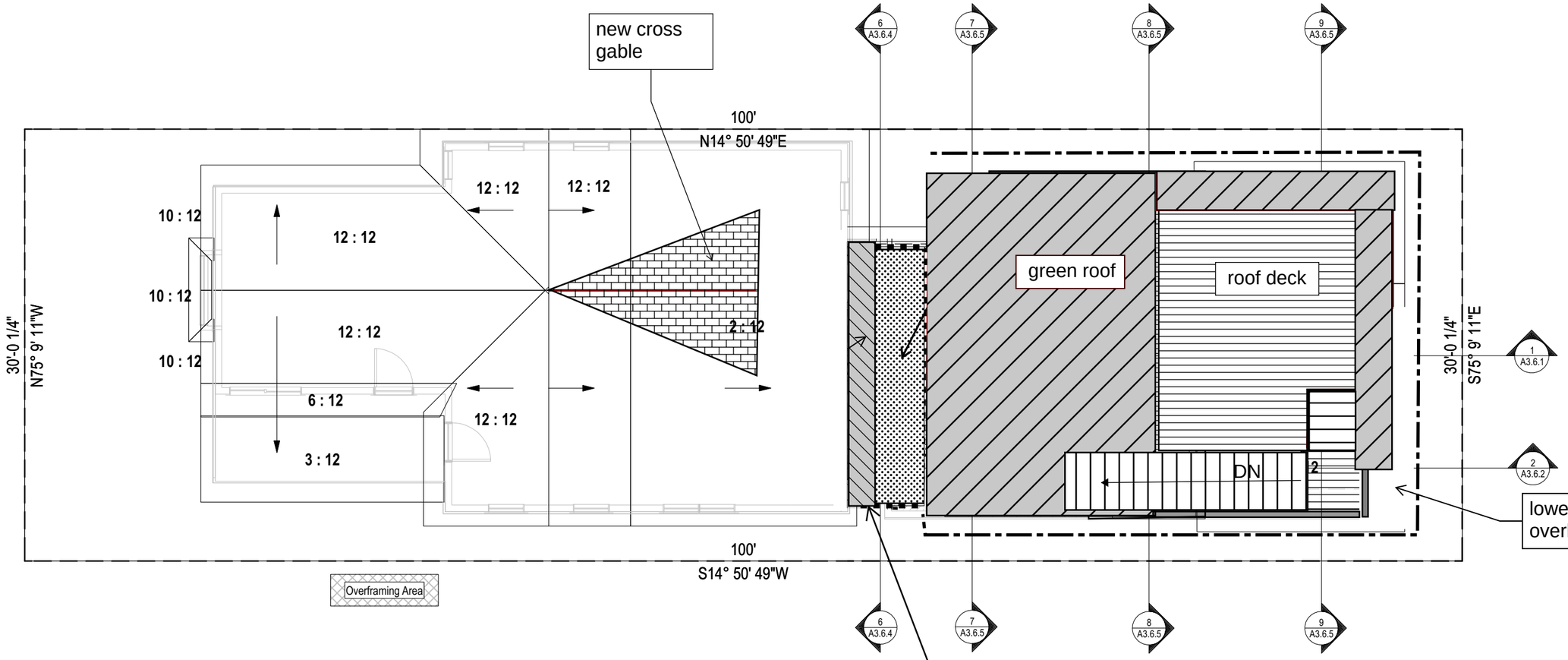
202 E Main St

Proposed Upper Plan

CHD Job #: 18-0081

Printed On: 2/14/2019 10:53:

Sheet: ***A3.3***



Proposed Roof Plan

Scale: 1/8 in = 1 ft

GRAPHIC SCALE:
1' 0 2' 4' 6' 8' 10'

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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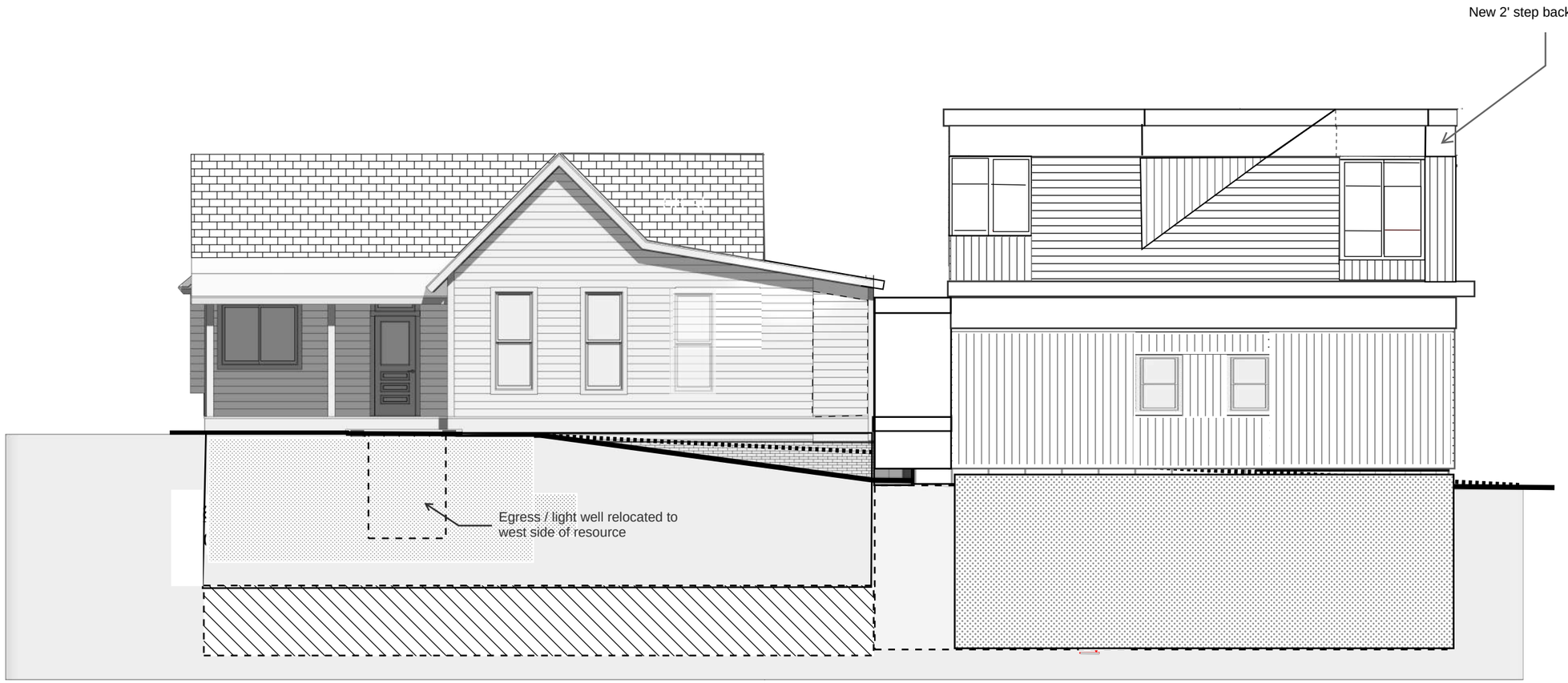
202 E Main St

Proposed Roof Plan

CHD Job #: 18-0081

Date: 5.28.19

Sheet: A3.4



Proposed East Elevation

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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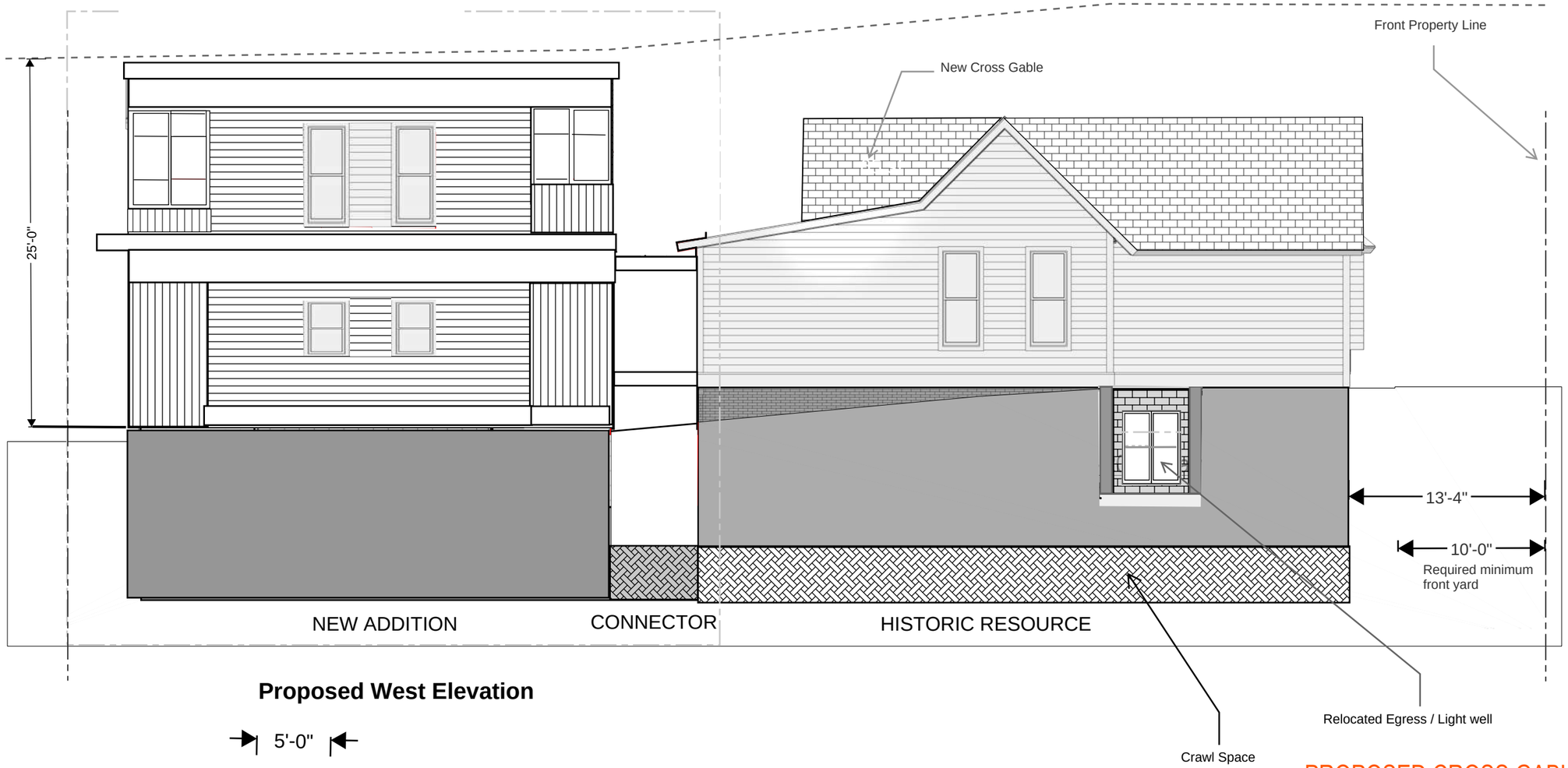
202 E Main St

Proposed West Elevation

CHD Job #: 18-0081

Date: 5.28.1

Sheet: A3.5.1



Proposed West Elevation

5'-0"

PROPOSED CROSS GABLE WILL BE REMOVED.

RESTUDY 9.16.19

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202 E Main St

Proposed West Elevation

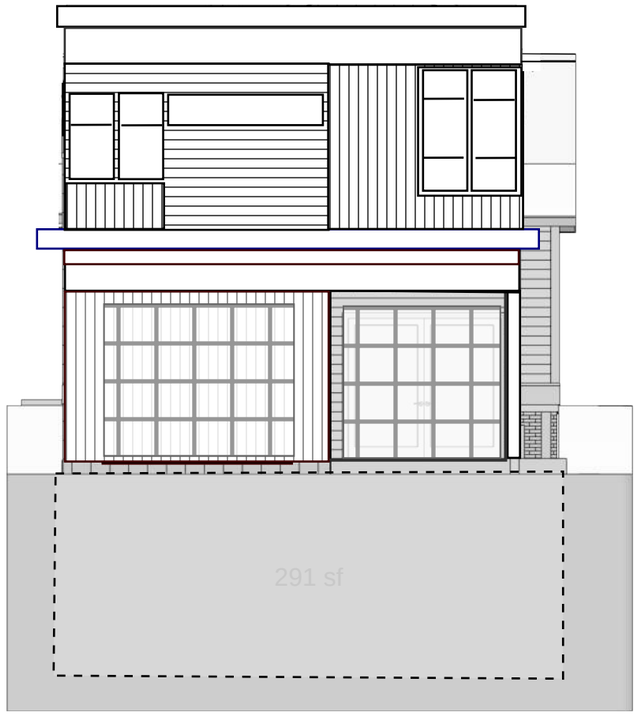
CHD Job #: 18-0081

Date: 5.28.1

Sheet: ***A3.5.2***



Proposed South Elevation (Main Street)



Proposed North Elevation (Alley)

RESTUDY 9.16.19

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202 E Main St

Proposed North & South Elevations

CHD Job #:
18-0081

265

Date: 5.28.19

Sheet:
A3.5.3

REVISED Flat roof differentiates from the gable roof of existing resource to **contrast in form** and to express the new addition as a product of its time. (10.6) Length of wall surfaces and massing of secondary forms utilize the dominant 14' module scale dominant in the historic resource (10.6) In addition, flat roof areas provide opportunity for private outdoor deck space and potential green roof for storm water management and sustainability. (1.8) The height of the new addition is minimized by the flat roof which is only 3' above the ridge height of the resource to be sympathetic. This relationship assure that the new addition can not be seen from Main Street so as to eliminate any visual impacts. (10.11)

Dominant exterior wall **material** of new addition is similar (but not exactly the same) as the existing wood siding on the resource for compatibility and continuity. (10.6)

Secondary exterior material and accents are contrasting color vertical flush wood siding (or similar material) to differentiate the new addition from the resource (but not compete) (10.6)

REVISED One story low profile glazed "connector" joins resource under the rebuilt eave and 5' long on both sides and 10' long at west side wall at grade level. The connector has been reduced to 14' wide (reduced from 18') and extends down into light wells both sides. (10.9) The reduced length of the connector (from 10') is offset by retention of the 3'4" additional front setback. (1.1).

NEW Pair of new windows with same proportions and spacing as existing windows on resource

REVISED Windows are modern low profile aluminum clad wood windows with traditional low profile construction similar to existing historic window construction for compatibility of **fenestration** and continuity with resource. Final window sizes and mullions will be based on the historic proportions (2'6" W x 6'6"H) of the windows and doors in the resource. (10.6)

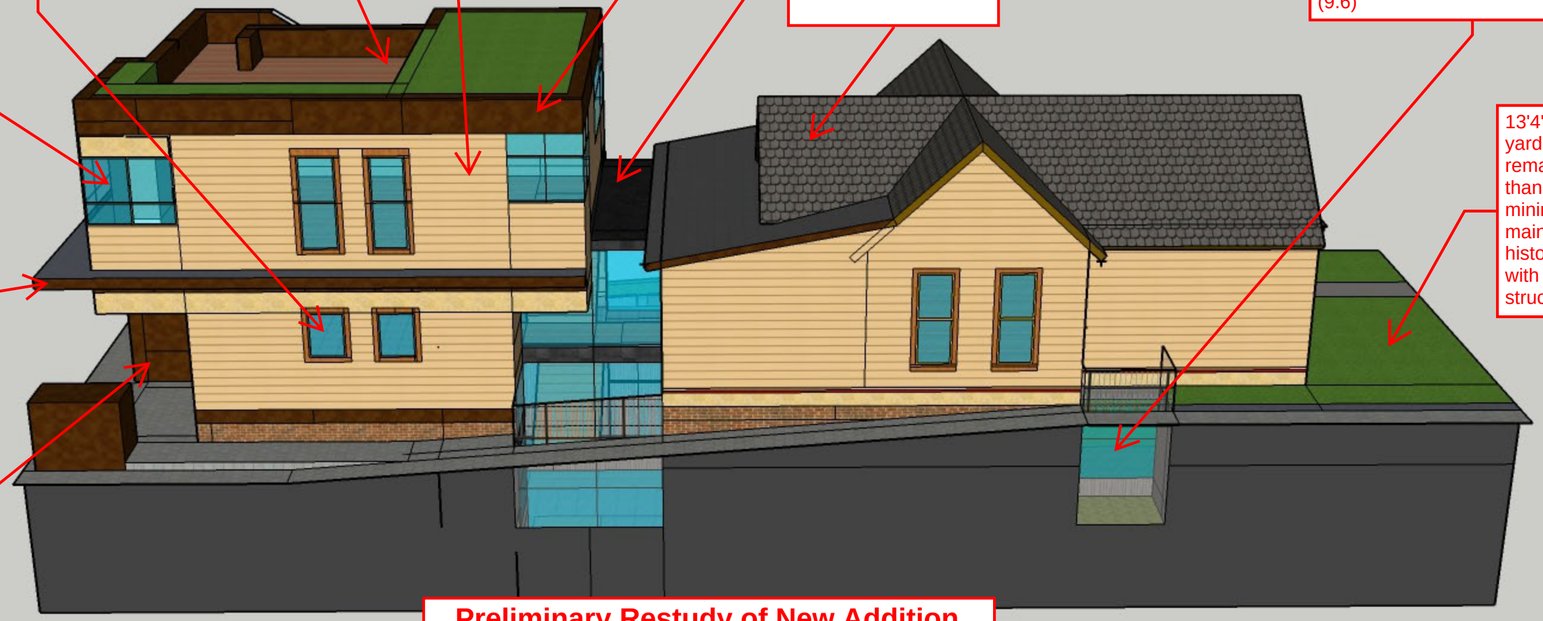
ADDED Cross Gable

Light / Egress well originally located next to existing porch of the resource is now proposed to be relocated to less prominent west side of the resource and setback from the front facade as far as possible to minimize visual impact (9.6)

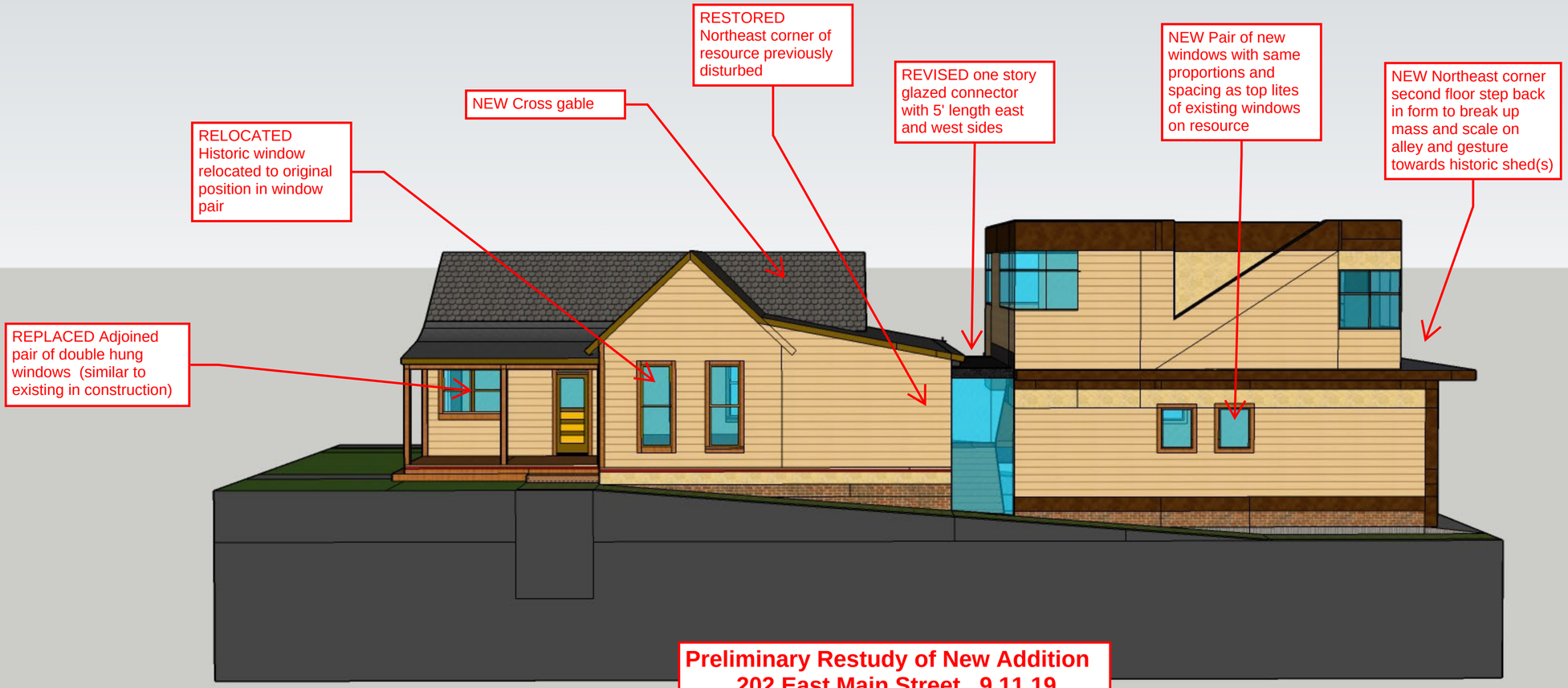
13'4" Existing front yard setback to remain (3'4" more than 10' required minimum) to maintain existing historical alignment with adjacent historic structures (1.1)

ADDED Lower story overhang to break up vertical scale of new addition and reinforce prominence of lower story

Recessed "lloggia" breaks up mass and scale of rear alley form and gestures towards Aspen St. and Sardy House arch and to alley "life".



Preliminary Restudy of New Addition
202 East Main Street 9.11.19
page 1 (West Elevation)



Preliminary Restudy of New Addition
202 East Main Street 9.11.19
page 2 (East Elevation)

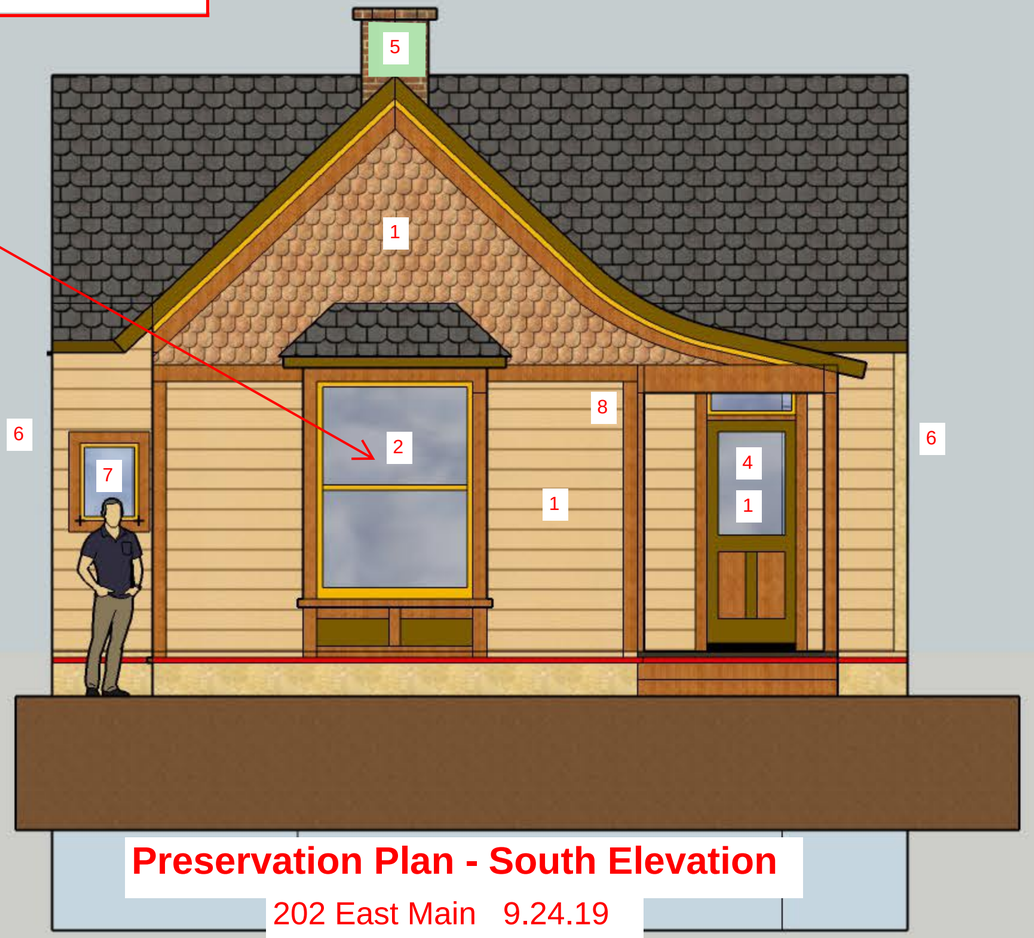
KEY

Solid green indicates disturbed areas

Rendered areas are preserved and restored

All significant character defining historic features are located in the front section of the resource and will be 100% restored to highest standards:

1. Front facade and gable
2. Bay Window
3. Front porch
4. Double front doors with transom windows
5. Chimney
6. Double hung side windows
7. Small side window
8. All existing historical siding and trim

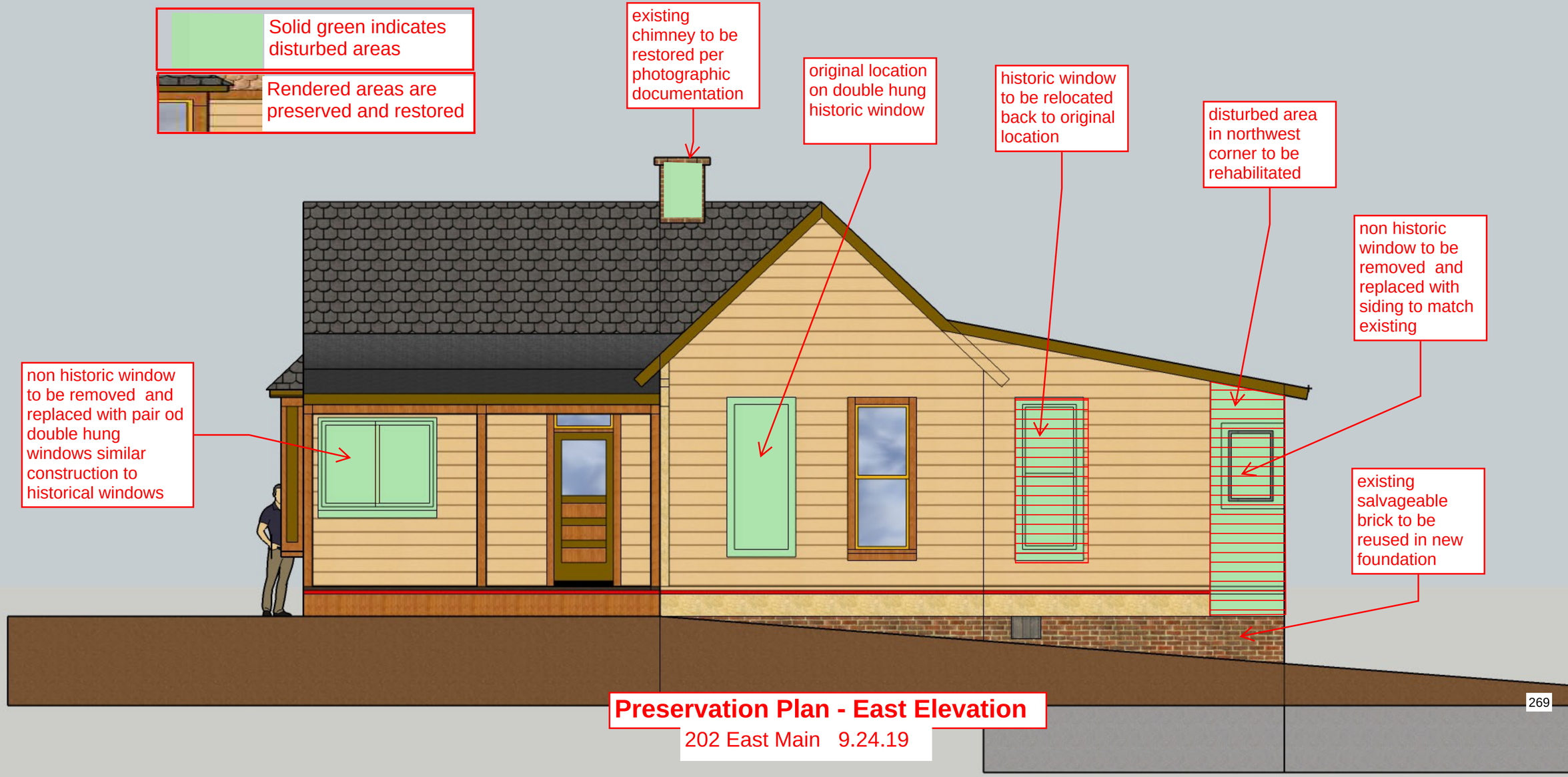


NOTES

1. Historical front yard alignment preserved
2. Historical grade relationship preserved
3. Historical cottonwood trees preserved and protected

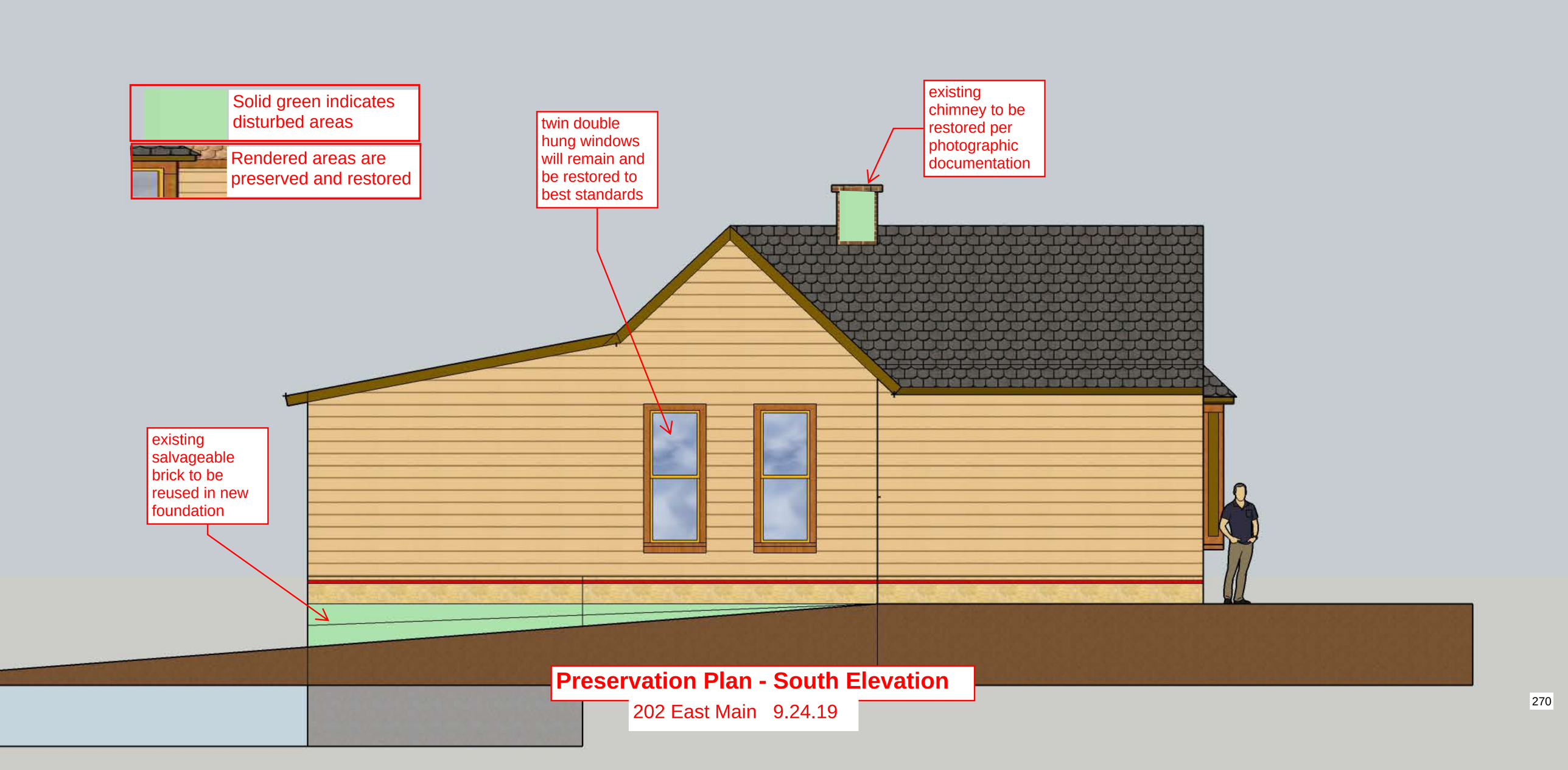
Preservation Plan - South Elevation

202 East Main 9.24.19



Preservation Plan - East Elevation

202 East Main 9.24.19



Preservation Plan - South Elevation

202 East Main 9.24.19

Solid green indicates disturbed areas

Rendered areas are preserved and restored

existing chimney to be restored per photographic documentation

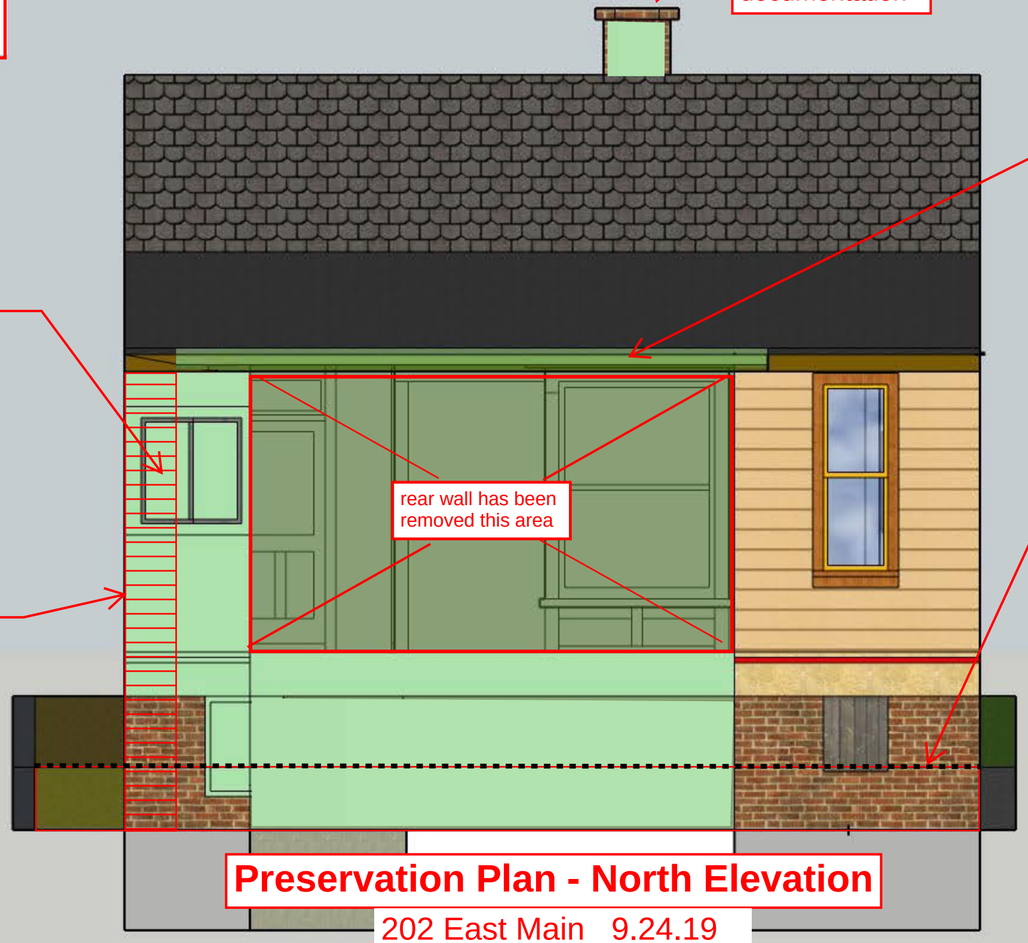
destroyed eave to be restored to match existing

non historic window to be removed and replaced with siding to match existing

rear wall has been removed this area

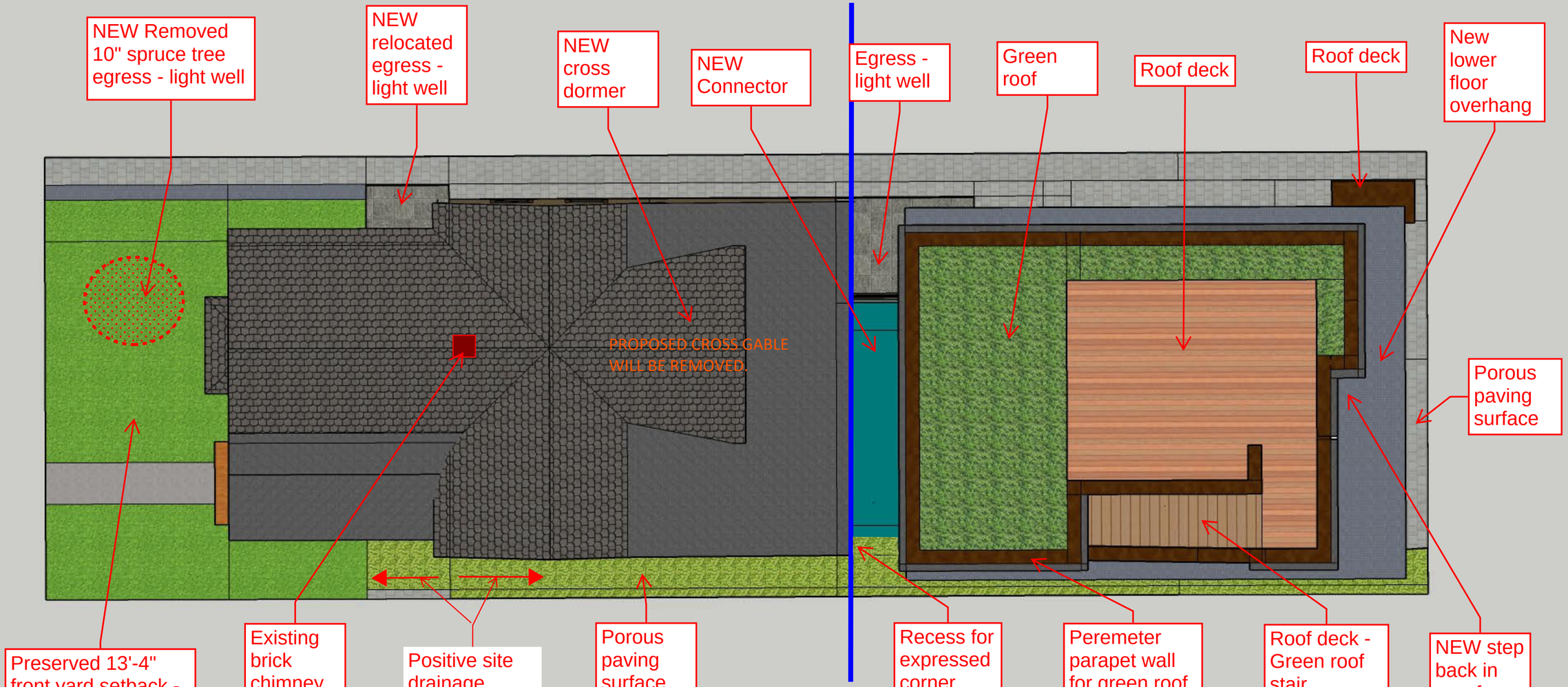
disturbed northwest corner to be rehabilitated and corner expressed by recess in new connector

new interpolated grade line at rear wall



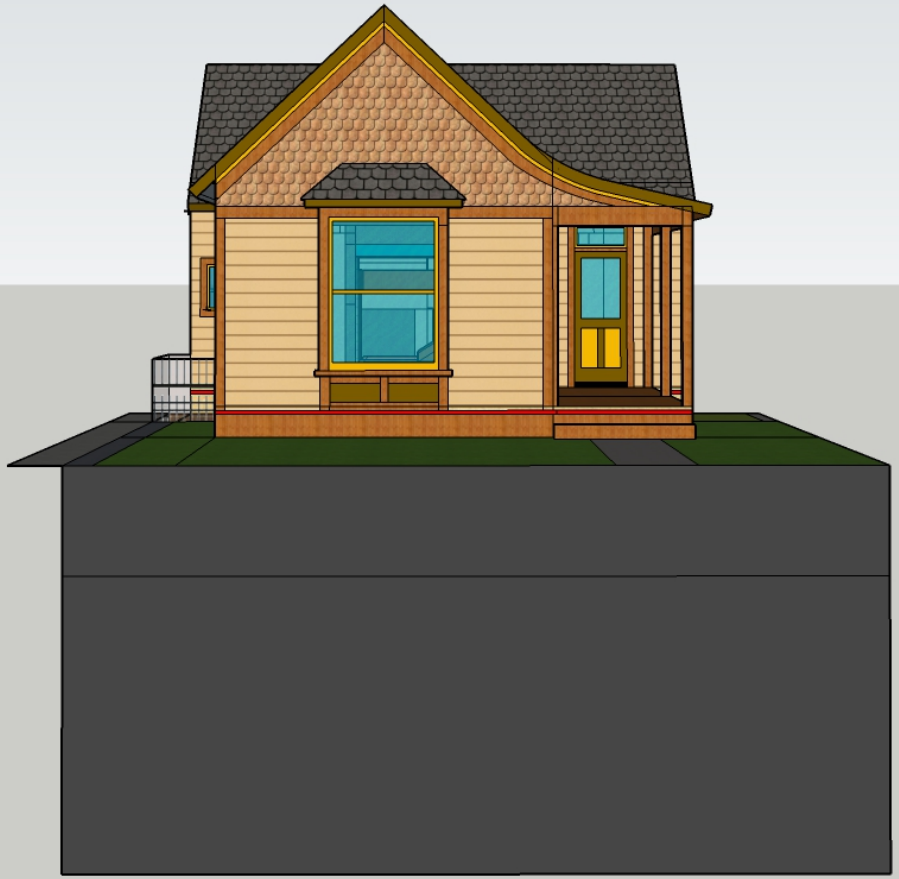
Preservation Plan - North Elevation

202 East Main 9.24.19



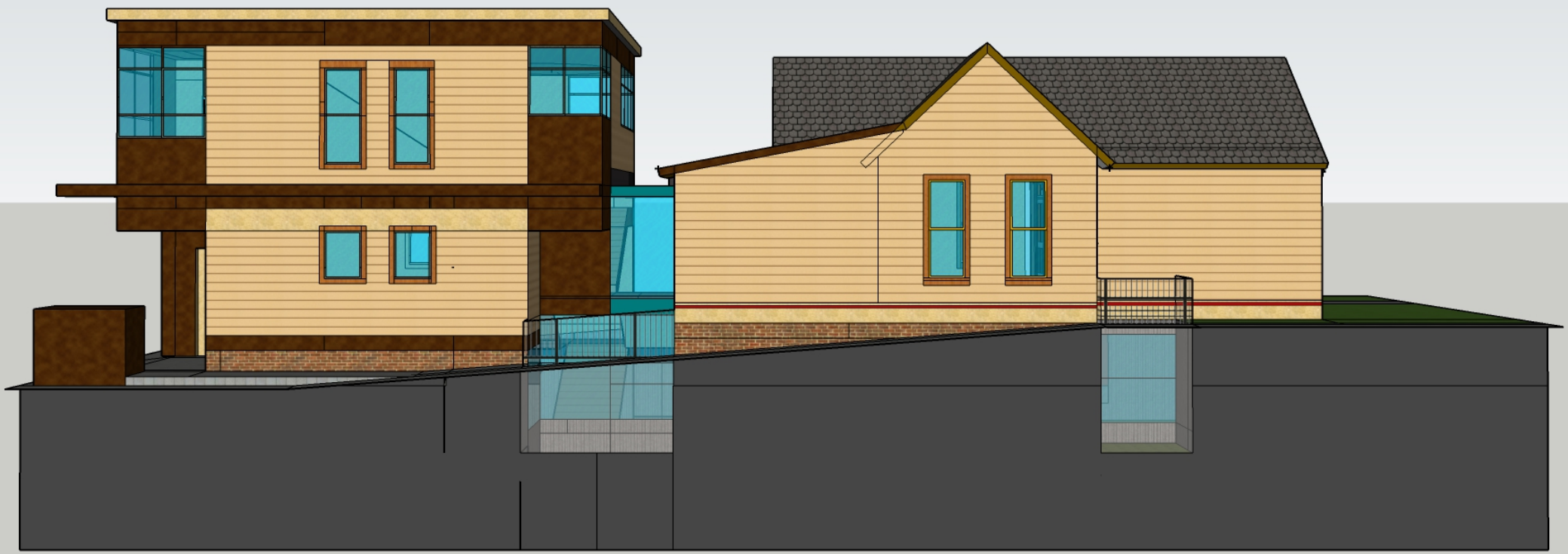
SITE-ROOF PLAN

202 East Main Revised 9.28.19

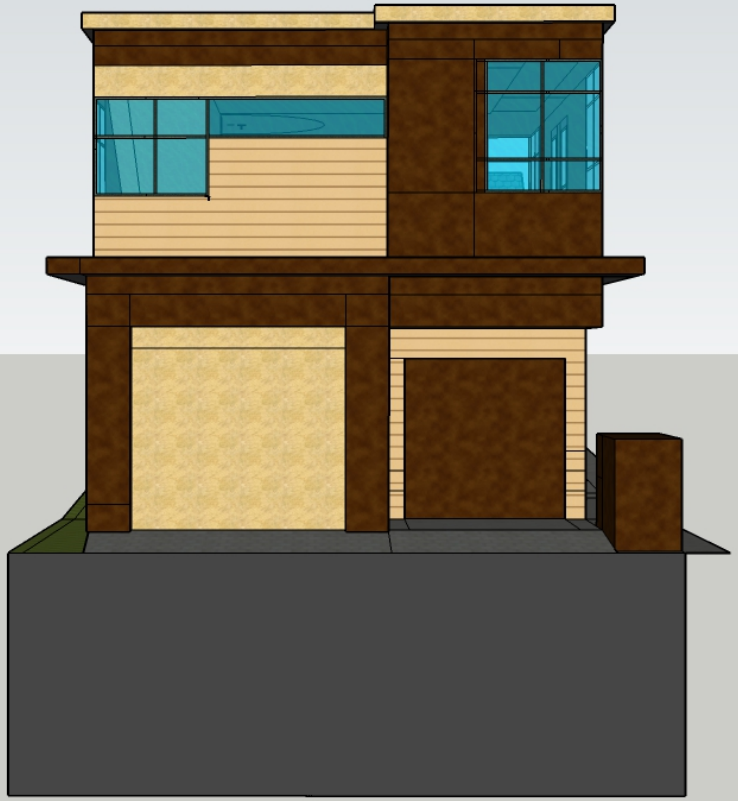


South Elevation – Main Street
Restudy 9.15.19

PROPOSED CROSS GABLE
WILL BE REMOVED.



East Elevation Restudy 9.15.19

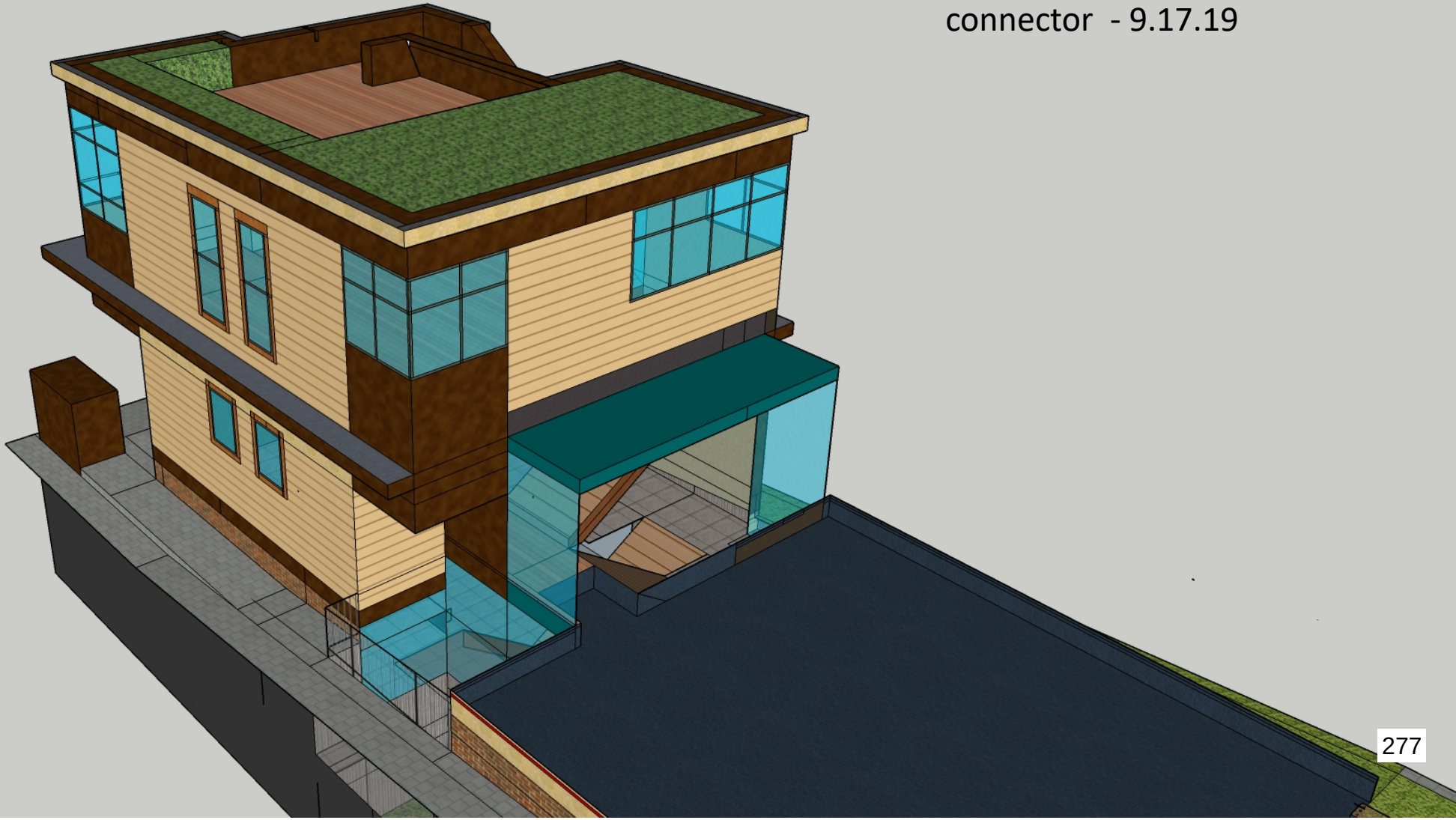


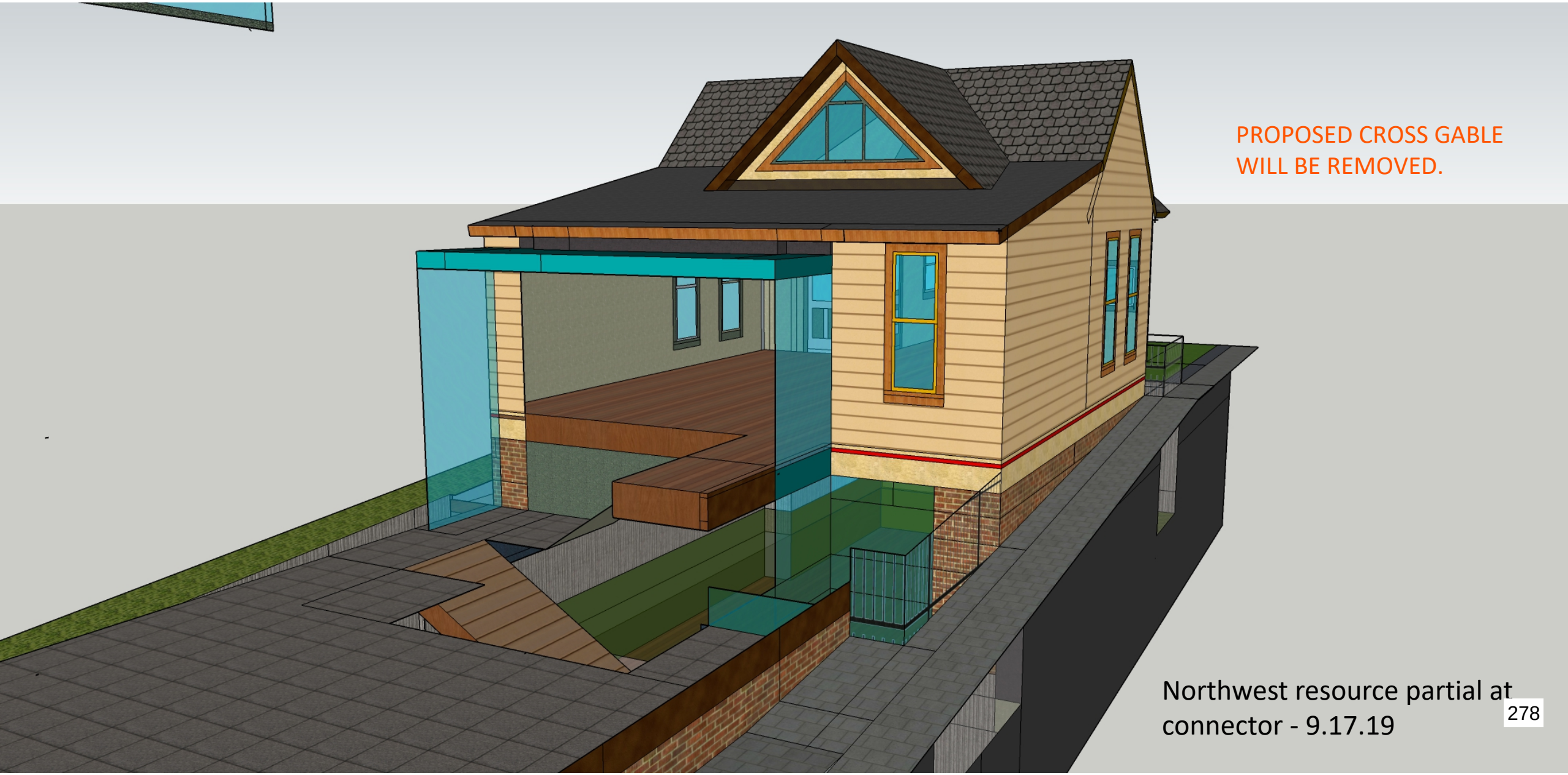
North Elevation Alley Restudy
9.15.19



East Elevation Restudy 9.15.19

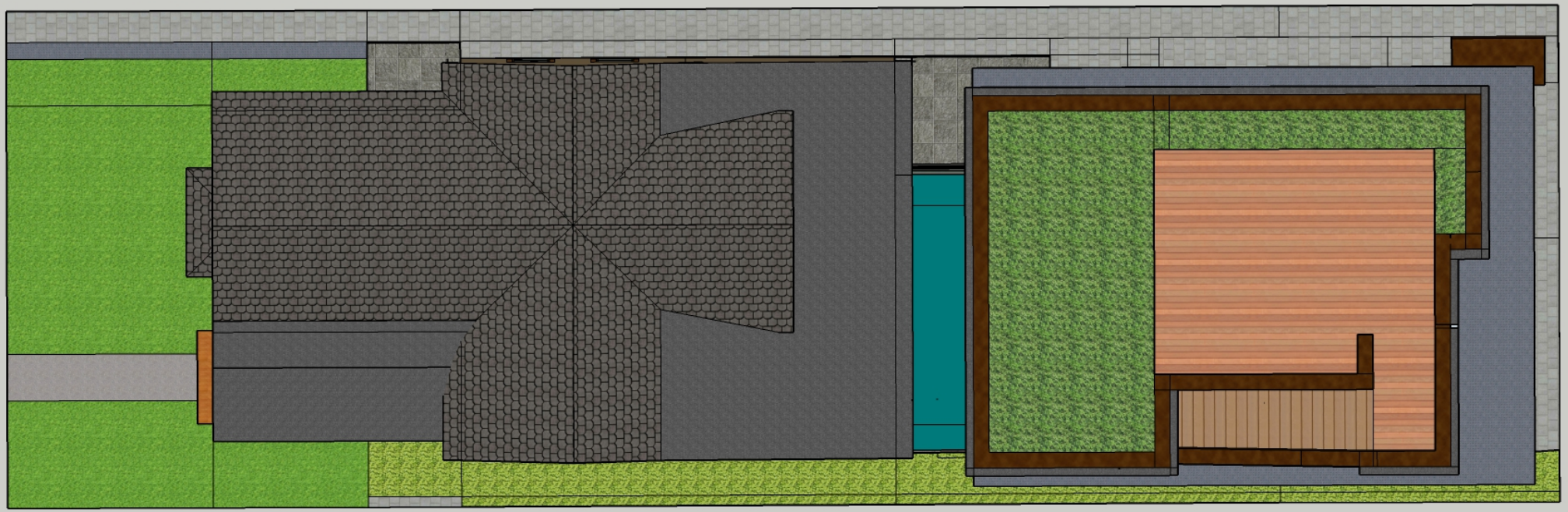
Northwest addition partial at connector - 9.17.19



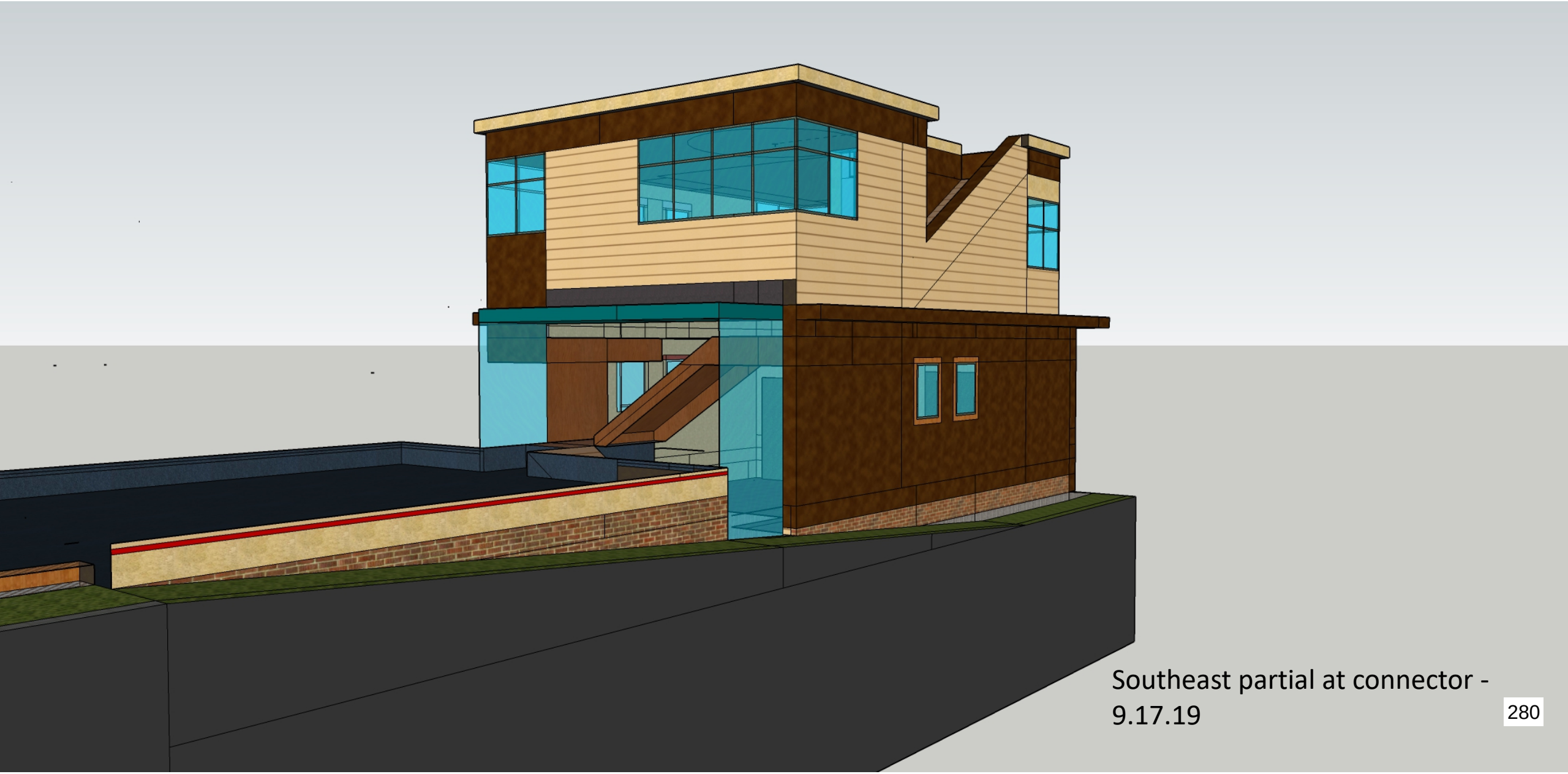


Northwest resource partial at connector - 9.17.19

PROPOSED CROSS GABLE
WILL BE REMOVED.

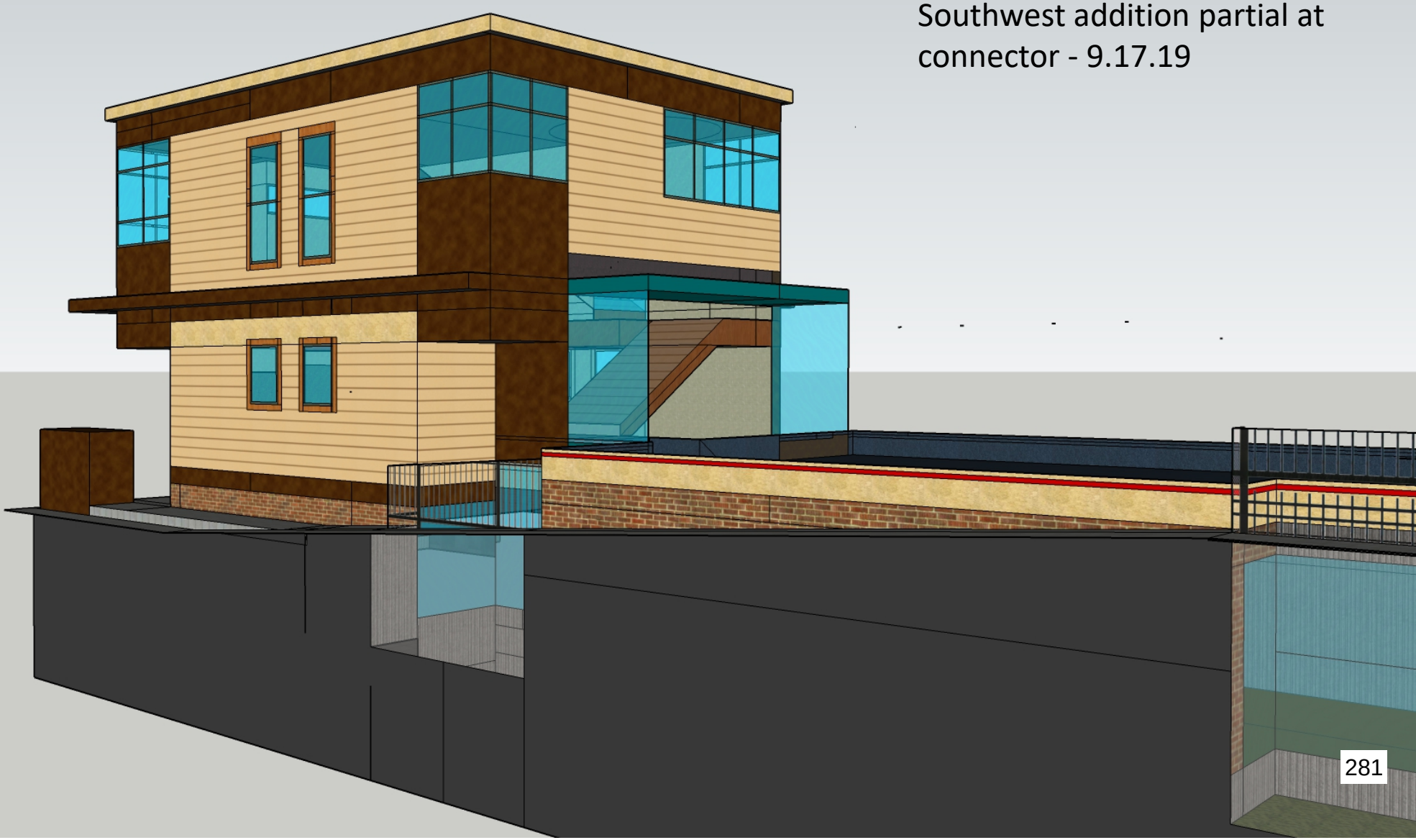


Site & roof plan - 9.15.19



Southeast partial at connector - 9.17.19

Southwest addition partial at connector - 9.17.19



Ms. Yoon apologized for missing the last meeting and said she was in London for a week. It was nice and the weather was ok. The architecture is fabulous.

PUBLIC NOTICE: Ms. Simon said Ms. Bryan has the notice on the first and last items and Mr. Larimer will be bringing the notice down for his item.

Ms. Sanzone exited the meeting.

OLD BUSINESS: 229 W. Smuggler
Amy Simon
Ms. Simon said this project received an HPC award last year. It's a really nice Victorian era home with a detached new house built next to it as a duplex. During HPC approval, there was a small deck allowed on the east side of the historic resource. The little deck provides an area off the kitchen for a barbecue grill and has steps that descend towards the east. It's fairly undersized and the owner would like something larger and would like to replace with larger platform and stairs which descend towards the north. This requires a setback variation. Staff supports the project.

APPLICANT PRESENTATION: John Schenck and Evan Barrett of CCY architects.
Mr. Schenck said that Ms. Simon did a great job of summarizing the proposal. One thing to add, is that the original design was meant not to look like a secondary entrance. What we've done, is taken the footprint of the existing deck and shifted it to the south and reoriented the stairs to the north. So, now, the owner/occupant can walk out and go towards the patio instead of walking out to the east and going down steps. He showed a couple of views of what it looked like in the spring and the existing condition. The front is not a competing entrance and raising the deck is a benefit to the owners for sure. He said he thinks the building department will be happy to see this change.

PUBLIC COMMENT: None.

MOTION: Mr. Blaich moved to approve resolution #17, Mr. Moyer seconded. All in favor, motion carried.

Ms. Sanzone reentered the meeting.

OLD BUSINESS: 202 E. Main
Sarah Yoon
Ms. Yoon said this property is currently the consignment shop on Main street and is located in the mixed-use zone district. The applicant is proposing for a single-family use. The application was accepted before the code changes were adopted. Ms. Yoon showed a historic photograph of the miner's cottage on screen. At the last meeting, the applicant took HPC's comments into consideration for the redesign of the new addition. Compatibility was pointed out with the historic resource. They have moved the lightwell that was in question. Staff supports the removal of the spruce tree. We recommend the applicant coordinate discussions with the relevant city departments regarding stormwater mitigation and site excavation. Staff is not in support of the new dormer addition. There is a five-foot connecting element, which is one story and tucks under the historic eave. Staff supports the request for setback variations because it meets the criteria. There is also a request for a parking reduction. The applicant has revised this to accommodate two parking spaces. It was provided

yesterday in an email. The revised design changes the design of the rear elosia. It now fully accommodates for the rear entrance and for the full space of two parking spaces for this residence. Staff is in support of the redesign. In terms of a floor area bonus request, this application is being reviewed under the old benefits requirements. Staff feels they meet all criteria for the floor area bonus and are in support of it. The applicant is also taking a floor area reduction with the change in use. Condition #1 can be removed, and staff is recommending approval with the following conditions:

2. removal of new dormer
3. flat grate and lightwells with a curb cut of less than six inches
4. variations – trash enclosure added
5. staff continue discussion with city departments regarding storm water mitigation
6. work with staff and monitor on details
7. excavation discussion with engineering
8. relocation, securities and monies
9. submit for final review within one year within conceptual approval

Ms. Greenwood asked them to clarify the granting of the 500 square foot bonus when a new roof has been added. Ms. Yoon said the bonus is granted without the proposed dormer. The roof wasn't presented in the previous application.

APPLICANT PRESENTATION: Jake Vickery, architect and owner
Mr. Vickery said he has a detailed preservation plan at this point. All the historic surfaces stay in place and even the window on the back is staying in place and there is nothing being disturbed. All of our windows, including the corner windows, are all proportioned on the proportion of the existing windows. The elevation has been revised and it became six feet instead of eight feet deep. We recessed the second-floor area. The idea in his mind, is that next door is the historic shed and he felt like this one-story element gestured to that shed. He's personally conflicted about the dormer. He'd like to keep the original form of the resource intact, and he respects that, but he believes this dormer, is minimally intrusive with the benefit of additional space and light.

Ms. Sanzone asked, regarding storm water concept, if they need to depress that to hold the water in the front yard and Mr. Vickery said the conversation with engineering didn't get into it that far.

Ms. Greenwood asked what the width of the connecting element is and Mr. Vickery said 16'8".

Ms. Thompson asked how far the connector element is set back and Mr. Vickery said 7'4".

PUBLIC COMMENT: Della Pegolotti, Co-owner. Mr. Vickery has put a lot of hard work and time into this to make it right. She has had her store there for over 20 years.

Ms. Greenwood said we have recommendations, but the 500 ft. bonus isn't part of the approval. It's a really excellent restoration except for the dormer, in her opinion. That is wrong for the preservation and not deserving of the bonus. She is in favor of everything except for this. She is in favor of approving the 500 ft. bonus with no dormer. That needs to be written differently in the resolution.

Mr. Halferty agrees and although lovely from the space and not very visible, it's taking away some of the historic record, so he is not in favor of the dormer.

Ms. Greenwood said she likes that the windows pay respect to the historic windows on the resource.

Mr. Blaich said that no one is taking a stance on approving the project without the 500 ft. bonus. Other than that, he shares opinions that have already been stated.

Ms. Greenwood said it's a little jewel, that house, the way it is.

Ms. Thompson is in favor of approving the 500 sq. ft bonus without the dormer and she said this is a much better project than what was presented before. She said it's much more developed and she thanked Mr. Vickery for his hard work.

Ms. Greenwood said this is exactly the kind of project we want to see. You might be the last to get a 500 sq. foot bonus. Without the dormer, it's perfect preservation. She thinks it's well done. She asked the board if they are in agreement about the dormer and everyone said yes.

MOTION: Mr. Moyer moved to approve the project to include a 500 sq. ft. bonus, a 2 ft. setback reduction, a 5 ft. setback reduction, a 2 ft. setback reduction and up to a 5 ft. side yard setback reduction, which involves the lightwells and trash enclosure and with the following conditions: 2, 3 5, 6, 7, 8, 9.

It might be clearer to write in a separate bullet point for the trash enclosure because that requires a rear setback variation.

Ms. Bryan said it would be easier to say they are approving resolution #18 as proposed with the following deletions or additions.

Ms. Sanzone made an amendment to #5. She would like the storm water design to come back to us for approval instead of being approved by staff and monitor.

MOTION: Mr. Moyer moved to approve resolution #18, allowing a 500 sq. foot bonus and with the five following variations regarding setbacks as listed in item #4 to include the trash enclosure. Along with the following conditions: 2, 3, 5, 6, 7, 8, 9 and #5 coming back to HPC for final review, Mr. Blaich seconded.

Roll call vote: Ms. Greenwood, yes; Mr. Blaich, yes; Ms. Moyer, yes; Mr. Halferty, yes; Ms. Thompson, yes; Ms. Sanzone, yes. 6-0 roll call vote. Motion carried.

Ms. Sanzone exited the meeting.

NEW BUSINESS: 314 w. Main St.
Garrett Larimer
Mr. Larimer said this is a special review for a parking waiver. It is located in the mixed-use zone district. The requests include a minor development review for an amendment to a site wall, a special review for a parking waiver, and a historic preservation benefit review for a waiver of the cash in lieu fee for the parking requirement. This is a historic carriage house associated with the Smith Elijah house located on west Main. A historic lot split was approved in 2002, which created two 4500 sq. ft. lots. During the lot split approval, 314 W. Main was a mixed-use building with a residential unit on the upper level. More recently, it has been used as a single-family residence. A change in use application was submitted to be a single-family home. Compliance with parking for a single-family residence in the mixed-use zone district is required. Two onsite parking spaces are required. The applicant submitted a potential parking

RESOLUTION #18, SERIES OF 2019

A RESOLUTION OF THE ASPEN HISTORIC PRESERVATION COMMISSION (HPC) GRANTING CONCEPTUAL MAJOR DEVELOPMENT REVIEW, RELOCATION, SETBACK VARIATION, AND FLOOR AREA BONUS FOR THE PROPERTY LOCATED AT 202 EAST MAIN STREET, LOT 1, MAIN STREET VICTORIANS HISTORIC LANDMARK LOT SPLIT SUBDIVISION EXEMPTION, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 9, 2012 IN PLAT BOOK 100 AT PAGE 92, CITY AND TOWNSITE OF ASPEN, COLORADO

PARCEL ID: 2737-073-99-001

WHEREAS, the applicant, Rocking Lazy J Properties, LLC, represented by Jake Vickery, has requested HPC approval for Major Development, Relocation, Setback Variations, and Floor Area Bonus for the property located at 202 East Main Street, Lot 1, Main Street Victorians Historic Landmark Lot Split Subdivision Exemption According to the Plat thereof recorded November 9, 2012 in Plat Book 100 at Page 92, City and Townsite of Aspen, Colorado; and

WHEREAS, Section 26.415.070 of the Municipal Code states that "no building or structure shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or district until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review;" and

WHEREAS, for Conceptual Major Development Review, the HPC must review the application, a staff analysis report and the evidence presented at a hearing to determine the project's conformance with the City of Aspen Historic Preservation Design Guidelines per Section 26.415.070.D.3.b.2 and 3 of the Municipal Code and other applicable Code Sections. The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny; and

WHEREAS, for approval of Relocation, the application shall meet the requirements of Aspen Municipal Code Section 26.415.090.C, Relocation of a Designated Property; and

WHEREAS, for approval of Setback Variations, the application shall meet the requirements of Aspen Municipal Code Section 26.415.110.C, Setback Variations; and

WHEREAS, for approval of Floor Area Bonus, the application shall meet the requirements of Aspen Municipal Code Section 26.415.110.F, Floor Area Bonus; and

WHEREAS, Community Development Department staff reviewed the application for compliance with the applicable review standards and recommends approval with conditions; and

RECEPTION#: 659920, R: $23.00, D: $0.00
DOC CODE: RESOLUTION
Pg 1 of 3, 10/25/2019 at 10:11:41 AM
Janice K. Vos Caudill, Pitkin County, CO

WHEREAS, HPC reviewed the project on August 28, 2019 and October 9, 2019. HPC considered the application, the staff memo and public comments, and found the proposal consistent with the review standards and granted approval with conditions by a vote of **6 to 0.**

NOW, THEREFORE, BE IT RESOLVED:
That HPC hereby approves Conceptual Major Development, Relocation, Setback Variations, and Floor Area Bonus for 202 E. Main Street, Lot 1, Main Street Victorians Historic Landmark Lot Split Subdivision Exemption, according to the Plat thereof recorded November 9, 2012 in Plat Book 100 at Page 92, City and Townsite of Aspen, CO as follows:

Section 1: Conceptual Major Development Review, Relocation, Setback Variations, and Floor Area Bonus.
HPC hereby approves Conceptual Major Development, Relocation, and Setback Variations, and a Floor Area Bonus as proposed with the with the following conditions:

1.) HPC herby grants a 500 sq. ft. Floor Area Bonus for the approved design presented at the HPC meeting with a revised garage, but not including the new dormer.
2.) Design curb heights around the lightwells to be 6" or less, and work with the Building Department and staff to discuss a flat grate option around the lightwells.
3.) The following setback variations are approved:
    - 2' setback reduction on the west and east sideyard above and below grade, for the addition
    - 5' setback reduction on the east sideyard above and below grade, for historic house and basement
    - 2' setback reduction on the west sideyard above and below grade, for the historic house and basement
    - Up to a 5' west sideyard setback reduction for the lightwells
    - 5' setback reduction on the west and rear sideyard, for the proposed trash enclosure
4.) Continue to discuss the design of the storm water mitigation system with all relevant City Departments for compliance. Final design to be reviewed by HPC at Final Design Review.
5.) Work closely with staff and monitor regarding the preservation plan and identifying areas for additional documentation and investigative demolition, to be reviewed and approved by staff and monitor.
6.) Provide necessary agreements from neighboring properties for site excavation stabilization prior to submission of Building permit.
7.) Provide details of the relocation plan, outlined by a structural engineer and housemover, at Final. The applicant will be required to provide a financial security of $30,000 until the house is set on the new foundation. The financial security is to be provided with the building permit application.

8.) A development application for a Final Development Plan shall be submitted within one (1) year of the date of approval of a Conceptual Development Plan. Failure to file such an application within this time period shall render null and void the approval of the Conceptual Development Plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a Conceptual Development Plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

Section 2: Material Representations
All material representations and commitments made by the Applicant pursuant to the development proposal approvals as herein awarded, whether in public hearing or documentation presented before the Community Development Department, the Historic Preservation Commission, or the Aspen City Council are hereby incorporated in such plan development approvals and the same shall be complied with as if fully set forth herein, unless amended by other specific conditions or an authorized authority.

Section 3: Existing Litigation
This Resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 4: Severability
If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

APPROVED BY THE COMMISSION at its regular meeting on the 9th day of October, 2019.

Approved as to Form:

Andrea Bryan, Assistant City Attorney

Approved as to Content:

Gretchen Greenwood, Chair

ATTEST:

Nicole Henning, Deputy City Clerk

CITY OF ASPEN

MEMORANDUM

TO:	**Mayor Torre and City Council**
FROM:	Kevin Rayes, Planner
THROUGH:	Jennifer Phelan, Interim Community Development Director
MEMO DATE:	November 26, 2019
MEETING DATE:	December 10, 2019
RE:	**Request to Continue Item to a Date Certain: 2nd Reading: 1001 Ute Subdivision/PUD: Major Amendment to a Planned Development & Associated Reviews to Memorialize Existing Improvements on this Property (Ordinance No. 33, Series of 2019)**

REQUEST OF COUNCIL:
Staff and the applicant request to continue this item for the Council hearing on December 17.

SUMMARY AND BACKGROUND:
The application requests approval to memorialize existing improvements that are inconsistent with the original PD approvals, including grading, mechanical equipment on open space parcels and development of two free-market units at an elevation of 8012 ft. City Council reviewed this request at first reading on November 12 and voted in favor of second reading by setting a public hearing date for December 10.

Only two Council members can review this case on December 10. To have a quorum, at least three council members should attend the hearing and review the request.

DISCUSSION:
Council can review this item at a future hearing when a quorum is present. It appears there will be a quorum on December 17. Staff recommends continuing the item for 2nd Reading on December 17.

FINANCIAL IMPACTS:
N/A

ENVIRONMENTAL IMPACTS:
N/A

RECOMMENDATIONS:
Staff recommends that Council continue this item to December 17th.

CITY MANAGER COMMENTS:
_____
_____
_____

130 South Galena Street Aspen, CO 81611-1975 | P: 970.920.5000 | F: 970.920.5197 | cityofaspen.com

CITY OF ASPEN

MEMORANDUM

TO: Mayor Torre and City of Aspen City Council

FROM: Garrett Larimer, Planner

THROUGH: Jennifer Phelan, Interim Community Development Director

MEMO DATE: December 2, 2019

MEETING DATE: December 10, 2019

Re: 183 Red Mountain Road – Floor Area Variance – Resolution No. 136, Series of 2019

Owner and Applicant:
Shady Red Mountain, LLC
c/o Aspen Real Estate, LLC
623 E Hopkins,
Aspen, CO 81611

Representatives:
Richard Y Neiley, Jr.
Neiley Law Firm, LLC
420 E Main Street, Suite 230
Aspen, CO 81611

Location:
183 Red Mountain Road

Current Zoning:
Low-Density Residential (R-30)

Summary:
The site received Stream Margin Review approval and a Setback Variance in 2017 to allow for the redevelopment of the site. The vehicular access and auto-court counted toward the floor area calculation for the redevelopment and was not originally included in the calculation. As a result, decks were eliminated so the design complied with the floor area maximum. The applicant is seeking a floor area variance of 545 square feet to allow for of decks to be reincorporated into the design.

Staff Recommendation:
Staff recommends City Council deny the requested floor area variance as a variance is not required to allow for reasonable use of the property and is not consistent with the goals, purposes and objectives of the land use code.



Figure 1: Aerial Image of Site

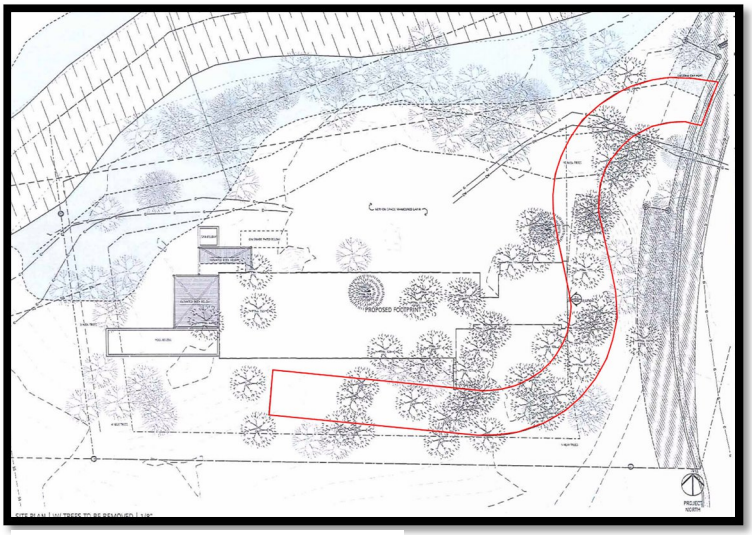
REQUEST OF COUNCIL: The applicant is requesting the following land use approval from City Council. **Council has the final decision-making authority on the request**.

- **Variance – Maximum Allowable Floor Area (Chapter 26.314: Variances)** to increase the maximum allowable floor area for the site by 545 square feet. City Council may grant a Dimensional Variance to allowable floor area.

SUMMARY AND BACKGROUND:
183 Red Mountain Road is located in the Low-Density Residential (R-30) zone district and is adjacent to Hunter Creek. In 2017 an application was submitted for Stream Margin Review and a Setback Variance to redevelop the property. The application was approved by the Planning and Zoning Commission via Resolution No. 8, Series of 2017. The Stream Margin Review was required due to the proximity of the site to Hunter Creek. The Setback Variance was requested to approve the concrete pier in the setback that provides connection of the driveway to Red Mountain Road.

The portion of the lot along Red Mountain Road contains significant steep slopes. As part of the 2017 Stream Margin Review, the applicant provided three vehicular access design alternatives:

- Option 1 wound the driveway through the site to accommodate the site's topography.
- Option 2 proposed terracing the land and building the driveway on the terraced ground.
- Option 3 proposed an elevated auto court using structural beams and footers to support the driveway.


Figure 2: Vehicular Access Option 1

Option 3 was the preferred design of the applicant and was preferred by the Parks and City Engineering departments because it reduced impacts to the site and required fewer trees be removed. Option 3 was approved by the Planning and Zoning Commission.


Figure 3: Vehicular Access Option 2

This design alternative results in the driveway and auto-court being included in the deck area calculation. When calculating floor area, up to 15% of the lot's allowable floor area is exempt for "decks, balconies, trellis, exterior stairways, non-street facing porches, gazebos and similar features." If those features exceed the 15% exemption, the excess floor area of those features is included in the floor area calculation. In this case, the allowable floor area of the

lot is 5,075 square feet[1], up to 761.25 square feet of features such as decks, balconies, ect., do not count towards the floor area allowance.

As a similar feature, the elevated auto court was included in the deck area calculation. The inclusion of the auto-court in the deck area calculation exceeded the 15% deck exemption so the excess square footage counted toward the total allowable floor area. The additional floor area resulted in the design exceeding the maximum allowable floor area, so the design had to be modified by reducing second story decks so a building permit could be issued.

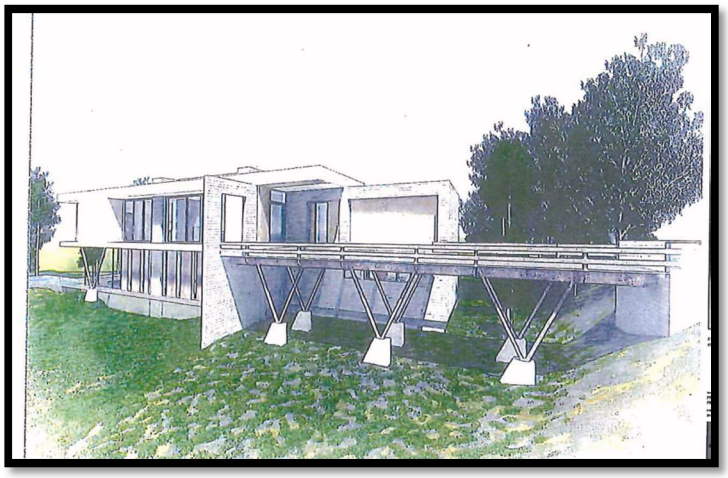


Figure 2: Vehicular Access Option 3

After approval of Resolution No. 8, Series of 2017, the applicant applied for an Administrative Determination regarding the vehicular access and auto-court's inclusion in the deck area calculation. The determination confirmed the areas in question should be included in the deck area calculation. The full determination is included in Exhibit D to this document. The area to be included in the deck area calculation as prescribed in the Administrative Determination is shown in yellow in Figure 5.

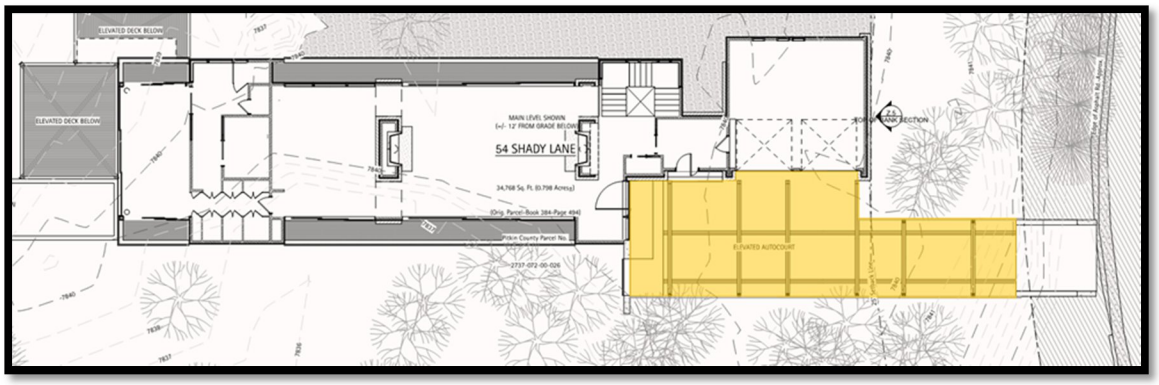


Figure 3: Area included in deck area calculation per City of Aspen Land Use Code and Administrative Determination

[1] A Transferable Development Right (TDR) was also purchased for the property which increased the allowable floor area by two-hundred and fifty (250) square feet. After landing a TDR, the total allowable floor area of the site is 5,325 square feet. Landing a TDR did not affect the deck area exemption.

A determination, once issued, can be appealed to the Administrative Hearing Officer. Another option is to apply for a Floor Area Variance. The applicant appealed the Administrative Determination. During the appeal process, a settlement was reached reducing the area that counts toward the deck area calculation. The settlement concluded only the portion shown in yellow in Figure 6 was included in the deck area calculation. This settlement resulted in a decrease in what was considered deck area by approximately 270 square feet.

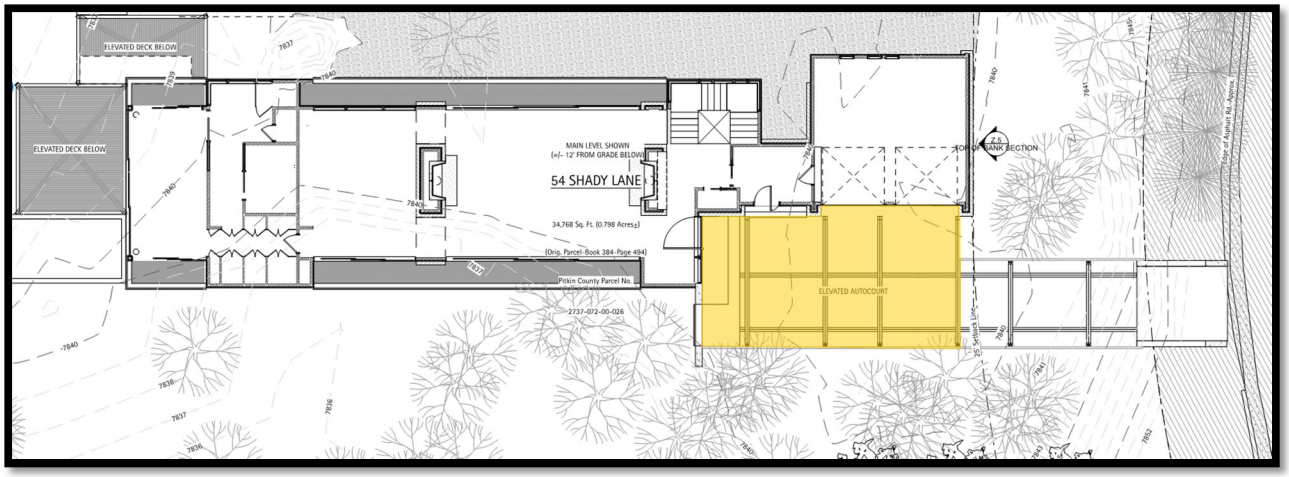


Figure 4: Area included in deck area calculation as a result of Appeal Settlement

The project has received a building permit and currently complies with the requirements of the Land Use Code, including floor area maximums.

Proposal:

The applicant is requesting a Floor Area Variance of 545 square feet in order to reincorporate decks that were included in the initial design but were removed as a result of the inclusion of the vehicular access in the deck area calculation. The applicant contends the Floor Area Variance is a consequence of steep slopes, areas of environmental concern, the City's preferred a design, and determination that the vehicular access and auto court are included in the floor area calculation.

The decks proposed to be reincorporated in the design are shown in green in Figure 7 below. All other areas with colored shading are currently included in the floor area or deck area calculations.

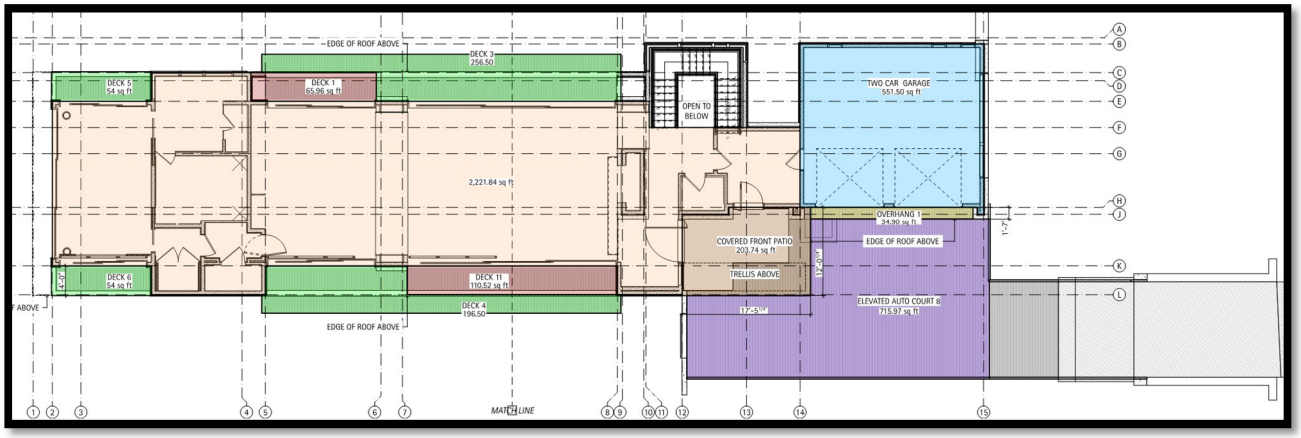


Figure 5: Proposed deck area shown in green

The applicant proposes to reincorporate additional second story decks removed prior to issuance of a building permit, which requires an increase in allowable floor area of 545 square feet. The 15% exemption for this property allows for 761.25 square feet of deck to be exempt from floor area calculations. The proposed design contains a total of 1,652.19 square feet of deck area, so 890.94 square feet of deck area counts toward the floor area totals. The total floor area, including deck area that counts toward the floor area calculation equals 5,870.05 square feet. The proposed design exceeds the allowable floor area by 545 square feet, hence the floor area variance request of 545 square feet of floor area.

DISCUSSION:
Variance to a Dimensional Standard –Floor Area (Exhibit A):

There are three standards that must be met to grant a dimensional variance:

1. *The variance must be generally consistent with the purposes, goals, objectives and policies of this Title and the Municipal Code; and*
2. *The variance is the minimum variance that will make possible the reasonable use of the property; and*
3. *Literal interpretation and enforcement of the terms and provisions of the code would deprive the applicant of rights commonly enjoyed by other properties in the same zone district and would cause the applicant unnecessary hardship, as distinguished from mere inconvenience.*

Staff determined the request does not meet all three review criteria required to be met for approval of a dimensional variance.

Dimensional limitations are established to determine the amount of development that is appropriate based on zone district and site conditions. These dimensional limitations are established based on community input and City Council approval. The steep slopes and areas of environmental concern reduce the amount of development that's appropriate on site. The request for additional floor area is inconsistent with the amount of development appropriate. A variance increasing the allowable floor area results in more development than is suitable for the site.

A building permit has been issued for the property meeting all building and zoning codes. The inclusion of the vehicular access and auto court in the floor area calculation does not prohibit reasonable use of the property. A setback variance was approved to provide relief from steep slopes and other site-specific constraints. If reasonable use of the property was prohibited, approval of a floor area variance, in addition to the setback variance, would have been required to allow for reasonable use of the property. The additional floor area is requested to accommodate the proposed design and is not required to allow reasonable use of the property.

Staff acknowledges support was given by City referral agencies and P&Z to design option 3, however, this was the applicants preferred design and alternatives exist that allow for access to the site, comply with the requirements of the code, and minimize impacts to the site. The request for additional floor area is based on convenience and is not required for reasonable use of the property. The existing design already contains second story decks and numerous patios that provide outdoor living spaces that contribute to the reasonable use of the property. Steep slopes and areas of environmental concern are not generally considered hardships.

If City Council determines justification exists for a floor area variance, staff recommends the 15% deck exemption be varied rather than the maximum allowable floor area. The applicant is

requesting the variance to allow for additional decks that were removed due to the inclusion of the vehicular access in the deck area calculation. Increasing the 15% deck exemption would restrict additional development to deck area. A floor area variance would result in an increased amount of habitable space allowed to be developed on site, in perpetuity. The proposed deck area equals 33% of the maximum allowable floor area, more than double what is permitted by the land use code.

REFERRAL DEPARTMENTS:
The application does not require review by referral agencies.

FINANCIAL IMPACTS:
The requested land use reviews are for a private development and the City bears no financial obligations for any development.

ENVIRONMENTAL IMPACTS:
The requested increase in floor area for the current design includes decks on the upper level and would not increase site disturbance. The proposed decks would increase the perceived mass of the structure, which would have a negative visual impact on a site that contains areas of environmental concern.

ALTERNATIVES:
The City Council could recommend additional conditions be included in the resolution. City Council could continue the hearing if additional documentation, studies, or information are needed.

STAFF RECOMMENDATION:
The resolution is written to approve the applicant's request.

Staff recommends City Council deny Resolution No. 136, Series of 2019 requesting a floor area variance. Staff has found the request does not meet the review criteria for Dimensional Variance. A variance is not consistent with the purposes or goals of the land use code, is not needed to allow for reasonable use of the property, and literal interpretation of the code does not deprive the applicant of rights enjoyed by other properties in the City or create an unfair hardship.

However, if City Council determines there is a basis for relief of the dimensional limitations, staff recommends City Council grant a variance to the 15% Deck Exemption provided in the code. Staff recommends City Council increase the Deck Exemption to 26% for the property.

CITY MANAGER COMMENTS: N/A

PROPOSED MOTION:
The draft Resolution is written in the affirmative, approving the requested land use review. If City Council does not wish to vary the maximum allowable floor area, but determines relief from the dimensional limitations is warranted, and agrees with Staff's recommendation the Deck Exemption be varied to 26%, the following motion should be used:

"I move to approve Resolution No. 136, Series of 2019 approving a Dimensional Variance to increase the Deck Exemption as provide for by Section 26.575.020.D.4 to 26%"

If City Council agrees with staff's recommendation, and seeks to deny the requested land use reviews, the following motion should be used:

"I move to deny Resolution No. 136, Series of 2019 requesting a Dimensional Variance the maximum allowable floor are for the site."

EXHIBITS:

A. Review Criteria – Dimensional Variance: Floor Area
B. Application
C. Affidavit of Public Notice
D. Administrative Determination

RESOLUTION NO. 136
(SERIES OF 2019)

A RESOLUTION OF THE CITY OF ASPEN CITY COUNCIL APPROVING A FLOOR AREA EXEMPTION VARIANCE AT 183 RED MOUNTAIN ROAD, LEGALLY DESCRIBED AS A METES AND BOUNDS PROPERTY LEGALLY DESCRIBED (IN PART) AS: A TRACT OF LAND SITUATED IN THE SW1/4 NW1/4 OF SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE SIXTH PRINCIPAL MERIDIAN, PITKIN COUNTY, STATE OF COLORADO.

Parcel ID: 2737-072-00-026

WHEREAS, the Community Development Department received an application from Neiley Law Firm LLC, on behalf of Shady Red Mountain, LLC., requesting a Dimensional Variance to increase the allowable floor area exemption for decks, staircases and similar features on site by five-hundred and forty-five (545) square feet; and

WHEREAS, all code citation references are to the City of Aspen Land Use Code in effect on the day of initial application – October 1, 2019, as applicable to this project's requests; and,

WHEREAS, pursuant to Chapter 26.314 of the Land Use Code, City Council may grant a Dimensional Variance to increase the allowable floor area of a given site; and,

WHEREAS, the Aspen Community Development Department reviewed the proposed Application and recommended denial of the Dimensional Variance; and

WHEREAS, the City Council has reviewed and considered the development proposal under the applicable provisions of the Municipal Code as identified herein, has reviewed and considered the recommendation of the Community Development Director, and has taken and considered public comment at a duly noticed public hearing on December 10, 2019; and,

WHEREAS, the City Council approves Resolution No. 136, Series of 2019 by a vote of _--- to --- (-- - --) approving a Floor Area Exemption increasing the allowable floor area by five-hundred and forty-five square feet; and,

WHEREAS, the City Council finds that the request for a Dimensional Variance to increase the allowable exemption to floor area at the property located at 183 Red Mountain Road to be in accordance with the applicable development standards associated with the request; and,

WHEREAS, the City Council finds that this resolution furthers and is necessary for the promotion of public health, safety and welfare.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, THAT:

Section 1: Dimensional Variance: Deck Area Exemption per Section 26.575.020.D.4:
Pursuant to the procedures and standards set forth in Title 26 of the Aspen Municipal Code, the City Council hereby approves a Dimensional Variance increasing the deck exemption for the site at 183 Red Mountain Road to 26%, not to exceed 1,318 square feet for the lot. The deck area shall be calculated according Section 26.575.020, as amended.

Section 2:
All material representations and commitments made by the Applicant pursuant to the temporary use proposal as herein awarded, whether in public hearing or documentation presented before the City Council, are hereby incorporated in such plan development approvals and the same shall be complied with as if fully set forth herein, unless amended by an authorized entity.

Section 3:
This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 4:
If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

APPROVED BY the City Council of the City of Aspen on this 10th day of December 2019.

Attest: **Approved as to content:**

Linda Manning, City Clerk **Torre, Mayor**

Approved as to form:

James R. True, City Attorney

26.314.040. Standards applicable to variances.

A. In order to authorize a variance from the dimensional requirements of Title 26, the appropriate decision-making body shall make a finding that the following three (3) circumstances exist:
    1. The grant of variance will be generally consistent with the purposes, goals, objectives and policies of this Title and the Municipal Code; and

Staff Response: A floor area variance is contrary to the purposes, goals, objectives, and policies of this title. Floor area maximums are established based on community goals that limit the amount of development that is acceptable in the community, while considering site conditions. The site conditions have not changed and the maximum allowable floor area for the site is determined based on steep slopes, areas of environmental concern and overall lot size. Allowing additional development and massing for a lot in an area of environmental concern with significant steep slopes is not consistent with stated community values expressed through the land use code. Staff finds this criterion to not be met.

    2. The grant of variance is the minimum variance that will make possible the reasonable use of the parcel, building or structure; and

Staff Response: Reasonable use of the property is not contingent upon the granting of a floor area variance. A building permit has been issued for a property that complies with the requirements of the land use code and municipal code. The requested floor area variance is to allow for additional second story decks that are desirable for the owners of the property. Staff finds this criterion to not be met.

    3. Literal interpretation and enforcement of the terms and provisions of this Title would deprive the applicant of rights commonly enjoyed by other parcels in the same zone district and would cause the applicant unnecessary hardship, as distinguished from mere inconvenience. In determining whether an applicant's rights would be deprived, the Board shall consider whether either of the following conditions apply:
        a) There are special conditions and circumstances which are unique to the parcel, building or structure, which are not applicable to other parcels, structures or buildings in the same zone district and which do not result from the actions of the applicant; or
        b) Granting the variance will not confer upon the applicant any special privilege denied by the terms of this Title and the Municipal Code to other parcels, buildings or structures, in the same zone district.

Staff Response: Steep slopes are not unusual nor considered a hardship. Numerous properties in this zone district and throughout Aspen have steep slopes or areas of environmental concern that may limit development potential and is not considered a hardship. Approving a variance would grant special privilege to this site. Other sites with environmental areas or steep slopes do not get dimensional limitations waived. The design alternative that was approved was the preferred design of the applicant. Staff finds this criterion to not be met.

APPLICATION TO ASPEN CITY COUNCIL FOR FLOOR AREA VARIANCE

183 Red Mountain Road
f/k/a 54 Shady Lane
Aspen, Colorado 81611

PROPERTY OWNER/APPLICANT:

Shady Red Mountain, LLC
c/o Aspen Real Estate, LLC
623 East Hopkins
Aspen, CO 81611
(970) 920-1280
aspenstarwood@gmail.com

REPRESENTATIVE:

Richard Y. Neiley, Jr.
Neiley Law Firm, LLC
420 East Main Street, Suite 230
Aspen, CO 81611
6800 Highway 82, Suite 1
Glenwood Springs, CO 81601
(970) 928-9393
aspenlaw@neileylaw.com

PROPERTY:

Metes and bounds parcel located at 183 Red Mountain Road, f/k/a/ 54 Shady Lane, City of Aspen, State of Colorado
Parcel ID No. 273707200026

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

LAND USE APPLICATION

Project Name and Address: 183 Red Mountain Road f/k/a 54 Shady Lane, Aspen, Colorado 81611

Parcel ID# (REQUIRED) 273707200026

APPLICANT:

Name: Shady Red Mountain, LLC

Address: c/o Aspen Real Estate, LLC, 623 East Hopkins, Aspen, CO 81611

Phone #: (970) 920-1280 email: aspenstarwood@gmail.com

REPRESENTIVATIVE:

Richard Y. Neiley, Jr., Neiley Law Firm, LLC
420 E. Main St., #230, Aspen, CO 81611
6800 Highway 82, #1, Glenwood Springs, CO 81601
(970) 928-9393 aspenlaw@neileylaw.com

Description: Existing and Proposed Conditions

Applicant seeks a Floor Area Variance to re-incorporate 545 square feet of floor area into the pre-existing approved plans for the residence at 183 Red Mountain Road. A Building Permit for the residence was issued on May 1, 2019. The approved plans include an elevated driveway and auto court designed to reduce impacts and removal of trees on the site. The Planning Director determined that the elevated driveway and auto court would be considered a "deck." The Applicant and Community Development subsequently reached agreement that the elevated driveway would not be considered a "deck." However, because the elevated auto court is considered a "deck" it has resulted in a reduction of floor area of 715.97 square feet. As a consequence, the Applicant had to remove four small decks adjacent to sliding glass doors on the residence to accommodate the elevated auto court. Applicant seeks to recover a portion of that square footage to allow the decks to be incorporated into the structure.

Review: Administrative or Board Review
Floor Area Variance considered by Aspen City Council

Required Land Use Review{s):

Growth Management Quota System {GMQS) required fields:

Net Leasable square footage_____ Lodge Pillows___ Free Market dwelling units _____

Affordable Housing dwelling units___ Essential Public Facility square footage_____

Have you included the following?

FEES DUE: $1,950.00

☒ Pre-Application Conference Summary
☒ Signed Fee Agreement
☒ HOA Compliance form
☒ All items listed in checklist on PreApplication Conference Summary

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

DIMENSIONAL REQUIREMENTS FORM
Complete only if required by the PreApplication checklist

Project and Location "Canopy House" 183 Red Mountain Road, Aspen, Colorado_____

Applicant: ____Shady Red Mountain LLC_____

Zone District: __R-30_____ Gross Lot Area: _34,768_____ Net Lot Area: 24,583.07

**Please refer to section 26.575.020 for information on how to calculate Net Lot Area

Please fill out all relevant dimensions

Single Family and Duplex Residential

	Existing	Allowed	Proposed
1) Floor Area (square feet)			
2) Maximum Height			
3) Front Setback			
4) Rear Setback			
5) Side Setbacks			
6) Combined Side Setbacks			
7) % Site Coverage			
8) Minimum distance between buildings			
Proposed % of demolition _____			

Multi-family Residential

	Existing	Allowed	Proposed
1) Number of Units			
2) Parcel Density (see 26.710.090.C.10)			
3) FAR (Floor Area Ratio)			
4) Floor Area (square feet)	5,314.05	5,325	5,870.05
4) Maximum Height			
5) Front Setback			
6) Rear Setback			
7) Side Setbacks			
Proposed % of demolition _____			

Commercial

Proposed Use(s)_____

	Existing	Allowed	Proposed
1) FAR (Floor Area Ratio)			
2) Floor Area (square feet)			
3) Maximum Height			
4) Off-Street Parking Spaces			
5) Second Tier (square feet)			
6) Pedestrian Amenity (square feet)			
Proposed % of demolition _____			

Lodge

Additional Use(s)_____

	Existing	Allowed	Proposed
1) FAR (Floor Area Ratio)			
2) Floor Area (square feet)			
3) Maximum Height			
4) Free Market Residential(square feet)			
4) Front setback			
5) Rear setback			
6) Side setbacks			
7) Off-Street Parking Spaces			
8) Pedestrian Amenity (square feet)			
Proposed % of demolition _____			

Existing non-conformities or encroachments:

Variations requested: **Floor Area Variance of 545 square feet for 4 small decks.**

APPLICATION TO ASPEN CITY COUNCIL FOR A FLOOR AREA VARIANCE

Introduction

In this Application Shady Red Mountain, LLC ("Applicant"), seeks a Floor Area Variance to recover 545 square feet of FAR lost as a consequence of the Community Development Director's Determination that an elevated auto court is considered a "deck" under the Land Use Code. The elevated auto court, comprised of 715.97 square feet, was conceived by Applicant as a means of reducing site disturbance and the loss of trees in connection with the development of a single family residence. Because the auto court is considered a deck by the Community Development Department, the entire 715.97 square feet counts against available FAR for the property.

The subject property is a unique parcel of land located at the base of Red Mountain adjacent to Hunter Creek. The access to the property is extremely steep, with grades in excess of 30%, that required approval of a setback variance for an elevated driveway from the City of Aspen Planning & Zoning Commission. Because of the property's proximity to Hunter Creek, the proposed development also required Stream Margin Review approval.

The Application for Stream Margin Review and Setback Variance was heard by the Planning & Zoning Commission on April 4, 2017, received unanimous approval and was memorialized in Resolution No. 8, Series of 2017, appended hereto as Attachment 1. The elevated auto court and the elevated driveway connecting the auto court to Red Mountain Road were approved as part of the Stream Margin Review and are depicted on Exhibit A to the Resolution.

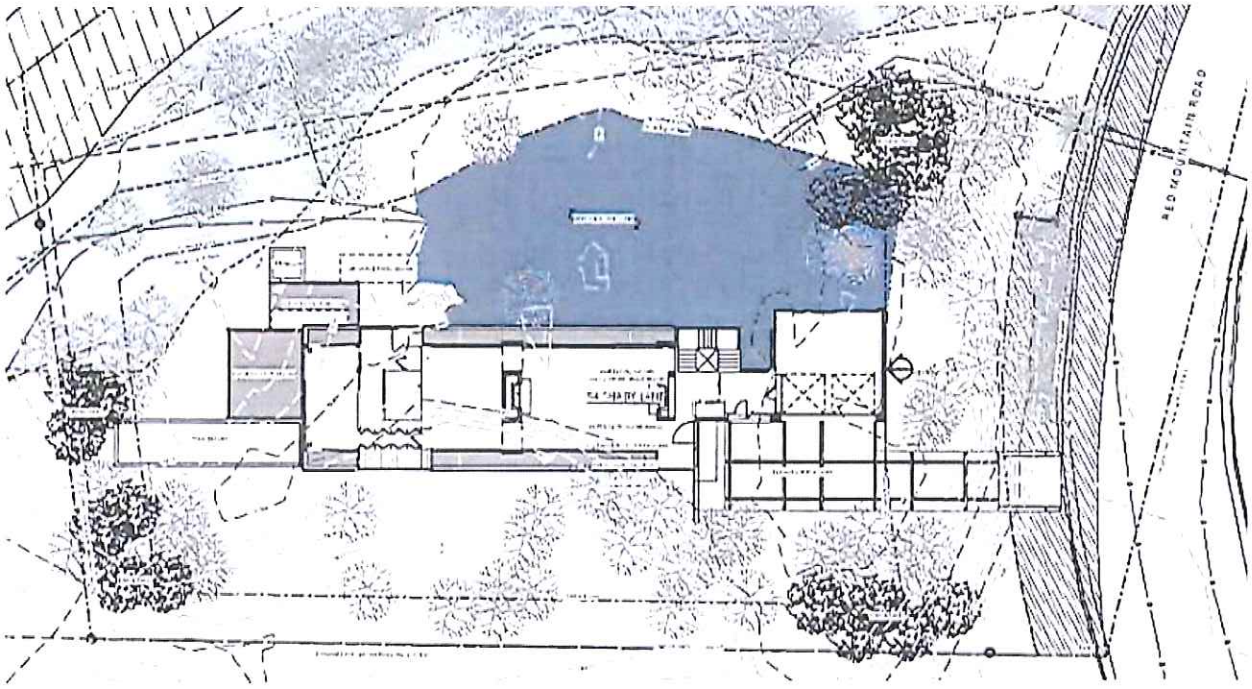
At the April 4, 2017 P&Z hearing, the Applicant presented various design alternatives for access from Red Mountain Road. The access is severely constrained by steep terrain resulting, in part, from the reconstruction of Red Mountain Road by Pitkin County in 1989. The difference in elevation between the edge of Red Mountain Road and the elevation building envelope located below is from approximately 8 to 12 feet over a distance of 25 feet. The elevated driveway and auto court were conceived as a way to avoid the removal of numerous mature trees and to minimize site disturbance and overall impacts to the property.

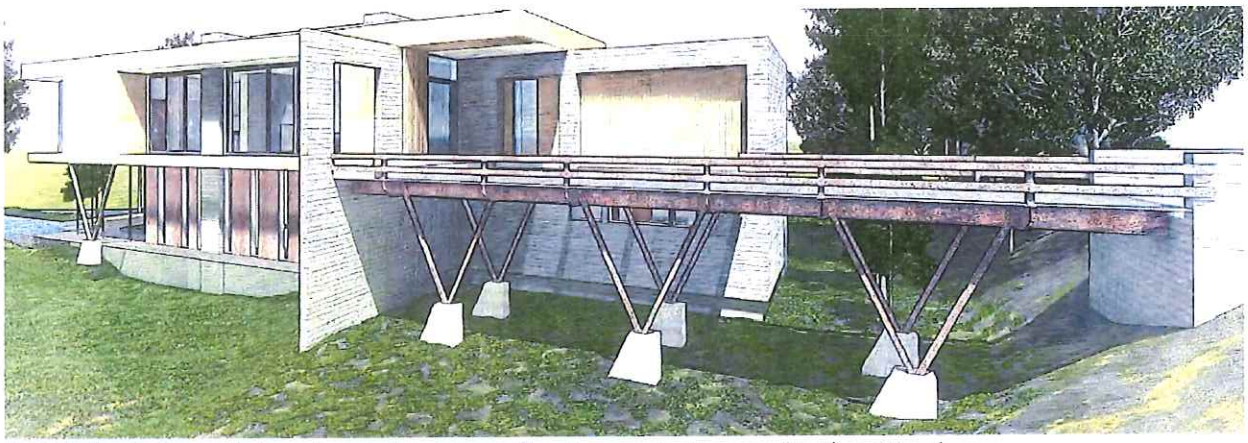
The City of Aspen Land Use Code allows limited development within setbacks. It permits "driveways not exceeding twenty-four (24) inches above or below finished grade within any setback of a yard facing a Street." Because the access plan for the subject property required a driveway substantially higher than twenty-four (24) inches above finished grade (approximately 8 to 12 feet across slopes in excess of 30%), the variance was necessary. The variance applies only to the section of the driveway within the front yard setback. A variance was not necessary for the auto court, as the auto court was not located within the front yard setback and did not otherwise exceed Land Use Code height limitations.

As part of the Stream Margin Review application, the Applicant submitted a survey of the property, a tree inventory, slope analysis, site plans and elevations for the residence and the depiction of three (3) access alternatives. That packet is appended as Attachment 2. Access

alternatives included: (1) an elevated driveway and auto court extending directly from Red Mountain Road to the residence minimizing site disturbance and the removal of trees (Attachment 2, pages 5, 6 and 7, Sheets 5.0, 5.1 and 5.2, and pages 19, 20 and 21, Sheets 11.1, 11.2 and 11.3); (2) a driveway and auto court with the finished grade built up to within 24 inches of the surface of the driveway/auto court using terraced retaining walls resulting in significant site disturbance and the removal of numerous mature trees (Attachment 2, pages 8, 9 and 10, Sheets 6.0, 6.1 and 6.2, and pages 22 and 23, Sheets 12.0 and 12.1); and (3) a circuitous driveway requiring substantial cut and fill, significant site disturbance and the removal of numerous mature trees (Attachment 2, pages 11 and 12, Sheets 7.0 and 7.2); and (3). Either options 1 and 2 could have been implemented by the Applicant but the Planning and Zoning Commission, Community Development, Engineering Department and the Applicant all preferred the first option because it minimized site disturbance and loss of trees.

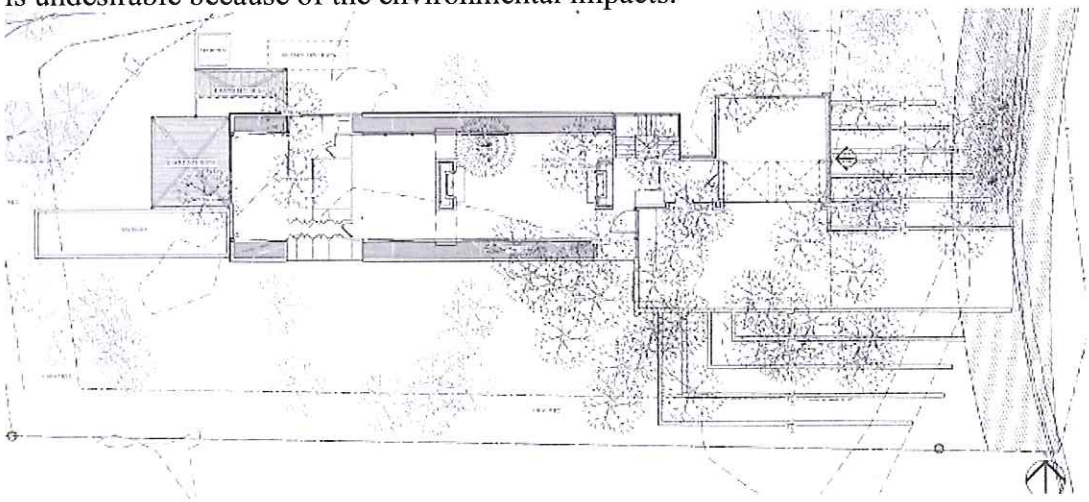
Access Option No. 1 – This access incorporates the elevated driveway and auto court into the site. Under the Community Development Determination the elevated auto court is considered a "deck" and results in the loss of 715.97 square feet of FAR. This is the preferred option of the City and the Applicant to minimize site disturbance and loss of trees. However, it penalizes the Applicant for the innovative, environmentally friendly design.





Artist depiction of elevated driveway and auto court, Access Option No. 1.

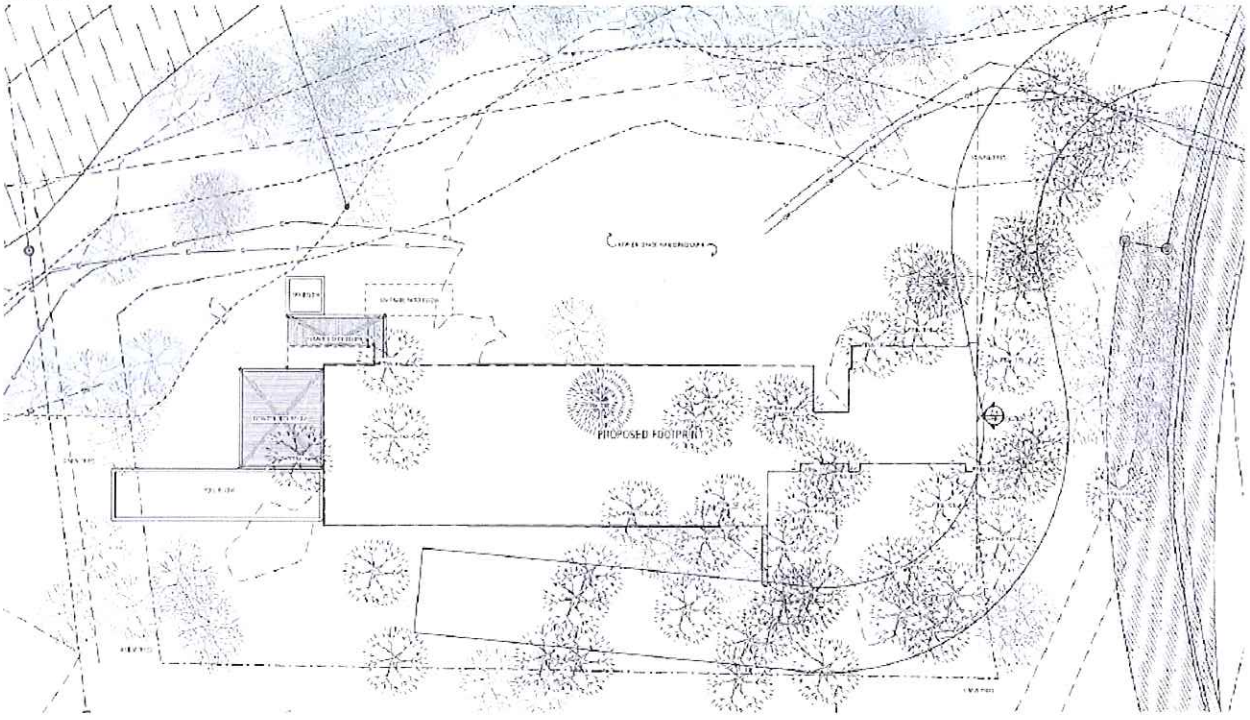
Access Option No. 2 – This option incorporates the elevated driveway and auto court and uses terraced retaining walls at 24 inch intervals to bring finish grade to within 24 inches of the auto court surface. This option does not result in the loss of FAR but does result in the loss of numerous large trees. This is a feasible option and could be implemented by the Applicant but it is undesirable because of the environmental impacts.





Artist depiction of elevated driveway and auto court with terracing.

Access Option No. 3 – This option depicts a driveway without the elevated driveway and auto court component. This option is infeasible because of topography and extensive loss of large trees.

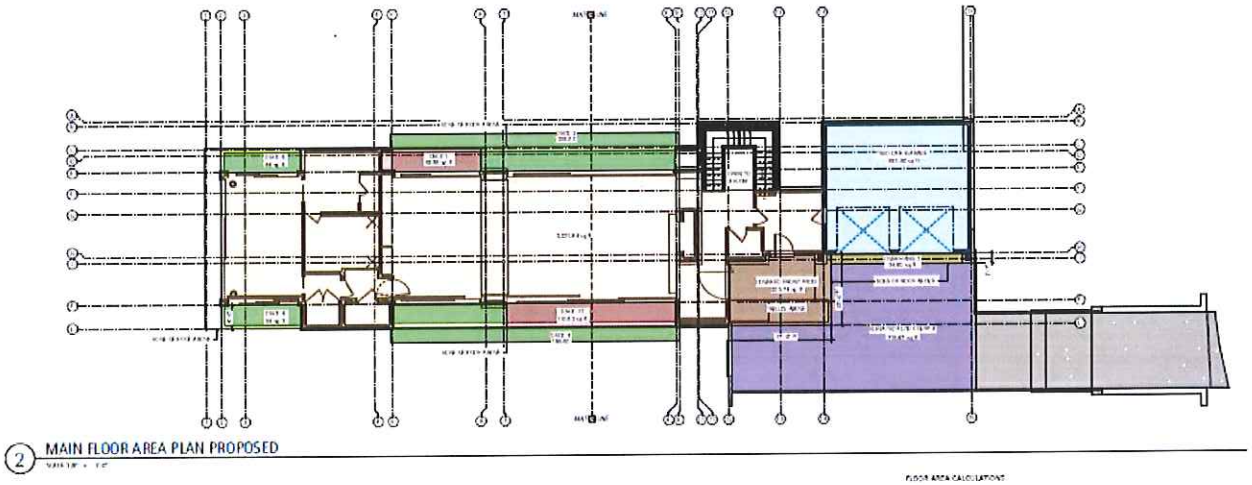


During the Stream Margin Review process, the Applicant was informed that Community Development considered the elevated driveway and auto court to be a "deck." The Applicant, therefore, requested a formal determination from the Planning Director which was issued on June 5, 2017 after the Stream Margin review approval. The Administrative Determination concluded that both the elevated driveway and the auto court were considered "decks" that would count against available FAR.

The Applicant appealed this determination to the Administrative Hearing Officer but before the appeal was concluded the City and the Applicant agreed that the elevated driveway would not count against available FAR while the auto court would. In the September 21, 2017 Memorandum to the Administrative Hearing Officer from the Community Development Director, the Applicant was advised "there is a path to request a Floor Area Variance from City Council for the site specific design." This is the path that the Applicant is now pursuing. The September 21, 2017 Memorandum that attaches the Administrative Determination as Exhibit A is appended hereto as Attachment 4.

The consequence of the Community Development Department's Determination that the elevated auto court constitutes a "deck" is the loss of 715.97 square feet of FAR with a corresponding loss of 4 small decks located on the perimeter of the main floor of the residence outside sliding glass doors that total approximately 550 square feet. Those decks are depicted on Attachment 3 in green. Attachment 3 also includes the floor area calculations for the residence. The allowed FAR for the residence is 5,325 square feet. The existing structure as designed, including the elevated auto court but excluding the 4 small decks, has a FAR of 5,314.05 square feet.

Proposed Main Floor Plan (decks in green; auto court in purple).



The Applicant could construct access option 2, with the terraced retaining walls, that does not result in a loss of FAR, but the impacts from that design are deemed undesirable. The Applicant prefers to proceed with construction of the elevated driveway and auto court as the least impactful and most environmentally friendly alternative. However, because the elevated auto court results in a loss of 715.97 square feet of FAR and the corresponding loss of the 4 small decks integral to the design of the residence, the Applicant feels it is being unfairly punished for developing an innovative, environmentally sensitive design that is preferred by both the City and the Applicant. In these circumstances, as discussed below, the Applicant believes that a Floor Area Variance to restore the 545 square feet of FAR for the decks is appropriate.

Criteria for Granting the Variance

Section 26.314.010 of the Land Use Code provides:

> Variances are deviations from the terms of this Title which would not be contrary to the public interest when, owing to special circumstances or conditions, the literal enforcement of the provisions of this Title would result in undue and unnecessary hardship. Variances shall only be granted in accordance with the terms of this Chapter.

To authorize a floor area variance from the dimensional requirements of Title 26, Section 26.314, City Council shall make a finding that the following three (3) circumstances exist:

1. The grant of variance will be generally consistent with the purposes, goals, objectives and policies of this Title and the Municipal Code;

RESPONSE: First, the granting of this variance would not be contrary to the public interest. It would encourage innovative, environmentally friendly designs which promote the public interest in maintaining large trees on home sites.

The grant of the variance requested herein will be substantially consistent with the Land Use Code and approvals granted during the Stream Margin Review process. The addition of the 4 small decks on the perimeter of the building will not increase the building mass or footprint, the decks will be located in areas presently approved for the construction of trellises. Granting the variance will avoid the need for substantial site disturbance and the loss of numerous mature trees that would otherwise be removed as a consequence of the implementation of Access Option No. 2.

Use of the elevated driveway and auto court will promote the goals and policies of the Land Use Code with respect to preservation of trees without retaining walls. Section 13.20.010 of the Land Use Code provides, in part, "trees provide important environmental, aesthetic and health benefits to the residents and guests of the City which extend beyond the boundaries of the property upon which trees may grow." That Section goes on to state "large trees are a resource that cannot be fully replaced if injured, damaged or removed." Access Option No. 1 implements these goals and policies.

Furthermore, the Applicant is only requesting the ability to utilize floor area to which it would be entitled if it implemented Access Option No. 2 which is desirable to neither the City nor the Applicant. The Applicant could build up the finished grade adjacent to the auto court to within 24 inches of the surface of the auto court through the use of terraced retaining walls. While this could be accomplished with aesthetically pleasing materials and plantings, it would nonetheless result in the loss of numerous large, mature trees. Thus, the Applicant is requesting the variance to implement an access design that furthers specific objectives of the Land Use Code without being penalized by loss of FAR.

2. The grant of variance is the minimum variance that will make possible the reasonable use of the parcel, building or structure;

RESPONSE: Because the Applicant could implement an access design that would restore the entire 715.97 square feet of FAR the proposal for the variance requested herein, to restore 545 square feet for use for 4 decks that were part of the original design of the residence approved through the Stream Margin Review process, should be deemed the minimum variance needed for the reasonable use of the parcel. The Applicant should not be requested to give up available FAR to implement an innovative and environmentally sensitive access plan depicted in Attachment 2, Sheets 5.0, 5.1, 5.2, 11.1, 11.2 and 11.3.

3. Literal interpretation and enforcement of the terms and provisions of this Title would deprive the applicant of rights commonly enjoyed by other parcels in the same zone district and would cause the applicant unnecessary hardship, as distinguished from mere inconvenience. In determining whether an applicant's rights would be deprived, the Board shall consider whether either of the following conditions apply:

a. There are special conditions and circumstances which are unique to the parcel, building or structure, which are not applicable to other parcels, structures or buildings in the same zone district and which do not result from the actions of the applicant; or

b. Granting the variance will not confer upon the applicant any special privilege denied by the terms of this Title and the Municipal Code to other parcels, buildings or structures, in the same zone district.

RESPONSE: The Applicant's proposal complies with both subsections a. and b. of the variance criteria. First, this request is made because of significant topographical constraints exacerbated by Pitkin County's reconstruction of Red Mountain Road which included raising the road surface. These conditions are unique to Applicant's property. The Applicant would be deprived of the right to utilize the FAR allowable under the zone district regulations for the property because of the topographical features that limit access alternatives. The significant change in elevation between Red Mountain Road and the building envelope is a unique feature of the property which does not result from any actions of the Applicant. Topographical conditions that restrict development are generally considered a hardship justifying a variance.

The Applicant would not be granted any special privilege not available to other parcels in the same zone district. The Applicant simply seeks a restoration of FAR permitted by the Land Use Code, which it will be denied if the preferred access alternative, Access Option No. 1 is pursued. Significantly, the Applicant can restore the full amount of the lost FAR and remain in compliance with the FAR limitations and all other provisions of the Land Use Code by raising the finished grade to within 24 inches of the surface of the auto court. However, this alternative would result in significant site disturbances and loss of many large trees which cannot readily be replaced and is, therefore, undesirable.

The Applicant believes that the City should grant the requested variance to promote the policies and objectives of the Land Use Code of reducing site disturbances and in conjunction therewith, preserving large trees.

The Applicant can satisfy the criteria of the Land Use Code for granting the floor area variance and respectfully requests that City Council approve the restoration of 545 square feet of FAR on the condition that the Applicant construct the elevated driveway and auto court depicted in Attachment 2, Sheets 11.1, 11.2 and 11.3.

ATTACHMENTS

1. Aspen Planning & Zoning Commission Resolution No. 8, Series of 2017, dated April 4, 2017

2. Original "Canopy House Plans" Depicting Elevations, Floor Plans, FAR Calculations and Driveway/Auto Court Options (Reduced Size Plans included in Application; Full Size Plans Submitted as Separate Documents)

3. Revised Sheet Z1.07 depicting Proposed Decks and FAR calculations (Reduced Size Plan included in Application; Full Size Plan Submitted as Separate Document)

4. Memorandum from Community Development Director to Administrative Hearing Officer dated September 21, 2017 attaching as Exhibit A Administrative Determination dated June 15, 2017

5. Authorization to Represent

6. Certification of Ownership, along with Deed and Certificate of Authority

7. Pre-Application Conference Summary

8. Homeowners Association Compliance Policy

9. Agreement to Pay Application Fees

ATTACHMENT 1

Resolution No. 8
(SERIES OF 2017)

RESOLUTION OF THE ASPEN PLANNING AND ZONING COMMISSION APPROVING A STREAM MARGIN REVIEW AND A SETBACK VARIANCE TO DEMOLISH AND REPLACE THE EXISTING RESIDENCE AND BUILD A DRIVEWAY AT 54 SHADY LANE CITY OF ASPEN, PITKIN COUNTY, COLORADO.

Parcel No. 273707200026

WHEREAS, the Community Development Department received an application from Alan Richman Planning Services, requesting Stream Margin Review Exemption approval, a Residential Design Standard Variation, and a Setback Variance for the demolition of the existing residence and construction of a new residence at 54 Shady Lane; and,

WHEREAS, the Applicant's property is zoned R-30, Low Density Residential in an Environmentally Sensitive Area as defined by the Land Use Code; and,

WHEREAS, the Community Development Department Staff reviewed the application for compliance with the Stream Margin Review Standards, Residential Design Review Standards, and Variance Review Standards; and,

WHEREAS, the Community Development Department Staff found that a Residential Design Variation was not needed due to the parcel being outside of the Infill Area with a slope greater than ten feet; and,

WHEREAS, upon review of the application, site visits, and the applicable Land Use Code standards, the Community Development Director recommended approval of the Stream Margin Review, and a denial of a Setback Variance finding that the review standards for the requests have been met; and,

WHEREAS, the Aspen Planning and Zoning Commission has reviewed and considered the development proposal under the applicable provisions of the Municipal Code as identified herein, has reviewed and considered the recommendation of the Community Development Director, and has taken and considered public comment at a duly noticed public hearing; and,

WHEREAS, the City of Aspen Planning and Zoning Commission finds that the development proposal meets or exceeds all applicable development standards and that the approval of the development proposal is consistent with the goals and objectives of the Aspen Area Community Plan; and,

WHEREAS, the Planning and Zoning Commission approves with conditions, the request for a Stream Margin Review and the request for a Setback Variance to demolish the existing residence and construct a new residence in the Stream Margin of Hunter Creek as shown in Exhibit A, by a vote of five to zero (5 – 0), and,

WHEREAS, the City of Aspen Planning and Zoning Commission finds that this Resolution furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE BE IT RESOLVED by the Commission:

Section 1: General Approval
Pursuant to the procedures and standards set forth in Title 26 of the Aspen Municipal Code, the Planning and Zoning Commission hereby approves the Stream Margin Review request and approves the Setback Variance request to allow for the development of a single-family residence and a driveway that exceeds the height limitations outlined in the Land Use Code. The driveway variance is specifically for the elevated driveway represented to the Commission both in materials and form.

These approvals, with conditions, will allow the Applicant to replace the existing residence at 54 Shady Lane with a new design and footprint further away from the Hunter Creek Stream Margin.

Section 2: Conditions of Approval

A. Parks Department Conditions

1. An approved tree permit is required before approval of the building permit. An approved tree permit requires a proposed landscape plan identifying trees for removal and means and schedule for mitigation.

2. A construction fence must be erected along the entire dripline of all trees on site and any tree canopy from neighboring property. This will serve as the tree protection zone (TPZ). This fence is to be constructed in such a manner that the area inside the dripline is protected. An inspection of this fence must be performed before any construction or demolition activities begin. please arrange this inspection with Ben Carlsen at 429-2034.

3. No materials may be stored in the TPZ, including but not limited to, construction backfill, construction traffic, or any other construction materials.

4. No excavation, grading or trenching may occur within the TPZ without the consent of the City of Aspen Forester or his designee.

5. No parking of vehicles or equipment may occur in the TPZ.

6. No dumping of any waste products may occur in the TPZ.

7. Any roots cut during excavation shall be pruned with sharp loppers/pruners back to the soil line. The roots will further be protected by burlap draped over the side of the excavation covering the exposed roots. This burlap shall be kept moist until the excavation is backfilled.

8. Pruning to provide clearance for construction activities shall only be done under the direction of an arborist.

9. Site inspections shall be performed on a weekly basis, to ensure the above listed conditions are met.

10. Any unapproved improvements or activities outside of those approved within this permit will be subject to mitigation in the form of restoration.

11. This permit must be posted on site during the construction process.

12. The Applicant shall submit a detailed plan for erosion control. Plans should detail location of fencing and type of fencing. This fencing, at a minimum, shall consist of barrier fencing at the top of slope. Beyond this barrier fencing shall be silt fencing installed to the City of Aspen standards. Additional erosion control measures may be necessary depending upon the site. Silt fencing shall be installed along the top of slope.

13. Demolition of the existing carport will require a permit from the City Forester,

14. Excavation for proposed garage must be 15 feet away from Tree 171 and 12 feet away from tree 102 with no fill permitted in this area.

15. Footers for car bridge must be 12 feet away from tree 102.

16. Special root excavation techniques will be required in along the southern perimeter of the proposed residence.

B. Engineering Department Conditions

1. No plantings other than native riparian plantings are permitted within the 15' top of slope setback.

2. Existing utilities run through the top of slope and top of slope setback. These utilities shall be abandoned and any new utilities must be installed outside of the top of slope and top of slope setback.

3. The driveway entrance must be a minimum of 25' from the Shady Lane turn off.

4. Vehicles must be able to turn around in the auto court to prevent backing out onto Red Mountain Rd.

5. The Applicant's design shall be compliant with all sections of the City of Aspen Municipal Code, Title 21 and all construction and excavation standards published by the Engineering Department. Additionally, the following items are required:
   a) A no rise certificate.

b) Any federal and state permits associated with development in the floodplain shall be submitted, as necessary.

C. Planning Department Conditions

1. The applicant shall submit a Site Improvement Survey/Plat for City of Aspen review and approval depicting the building envelope and top of slope within 180 days of this approval. This survey will be recorded prior to the submission of a building permit.

Section 3:
This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 4:
If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 5:
All material representations and commitments made by the Applicant pursuant to the development proposal approvals as herein awarded, whether in public hearing or documentation presented before the Planning and Zoning Commission, are hereby incorporated in such plan development approvals and the same shall be complied with as if fully set forth herein, unless amended by an authorized entity.

APPROVED by the Commission at its meeting on April 4, 2017.

APPROVED AS TO FORM:

James R True, City Attorney

PLANNING AND ZONING COMMISSION:

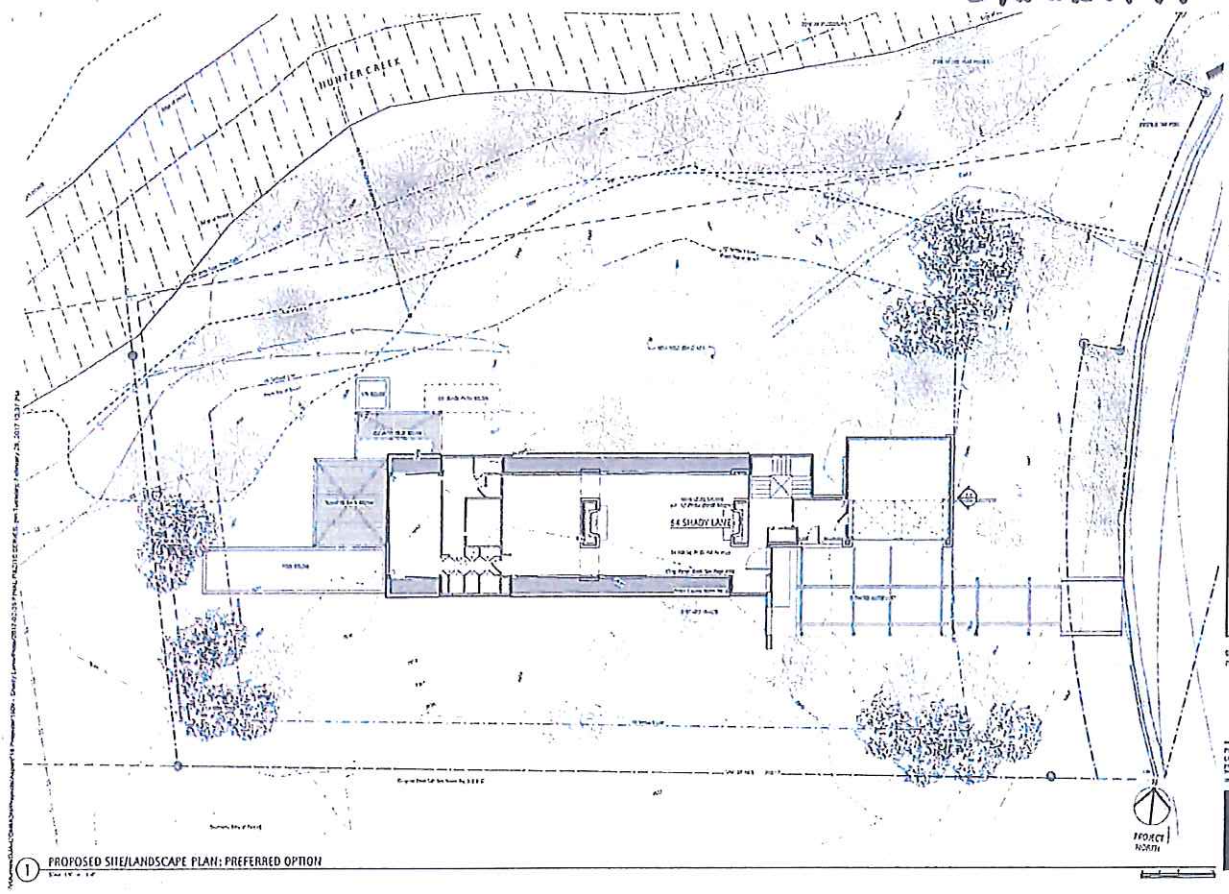
Skippy Mesirow, Chair

ATTEST:

Cindy Klob, Records Manager

Attachments:
Exhibit A Application Drawings

Exhibit A

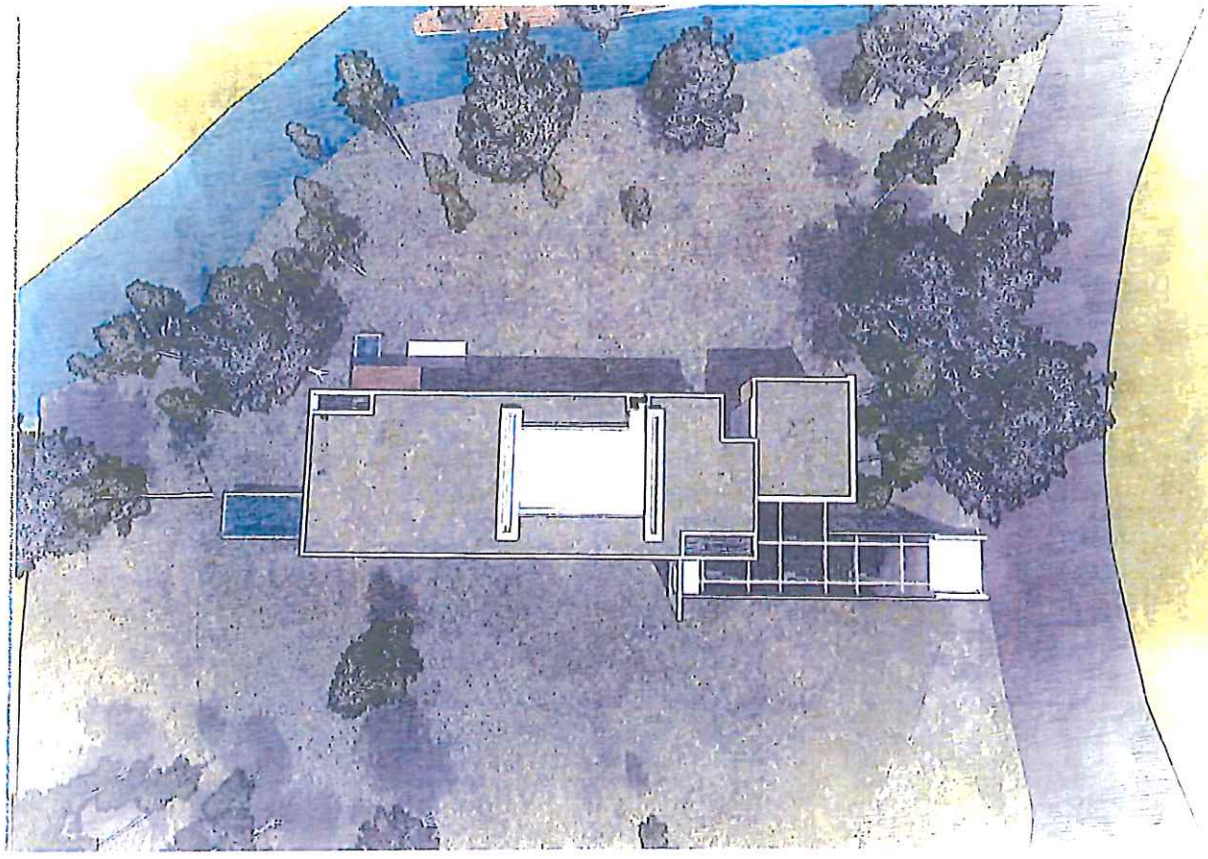


1 PROPOSED SITE/LANDSCAPE PLAN: PREFERRED OPTION

DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

SHEET No.
5.1

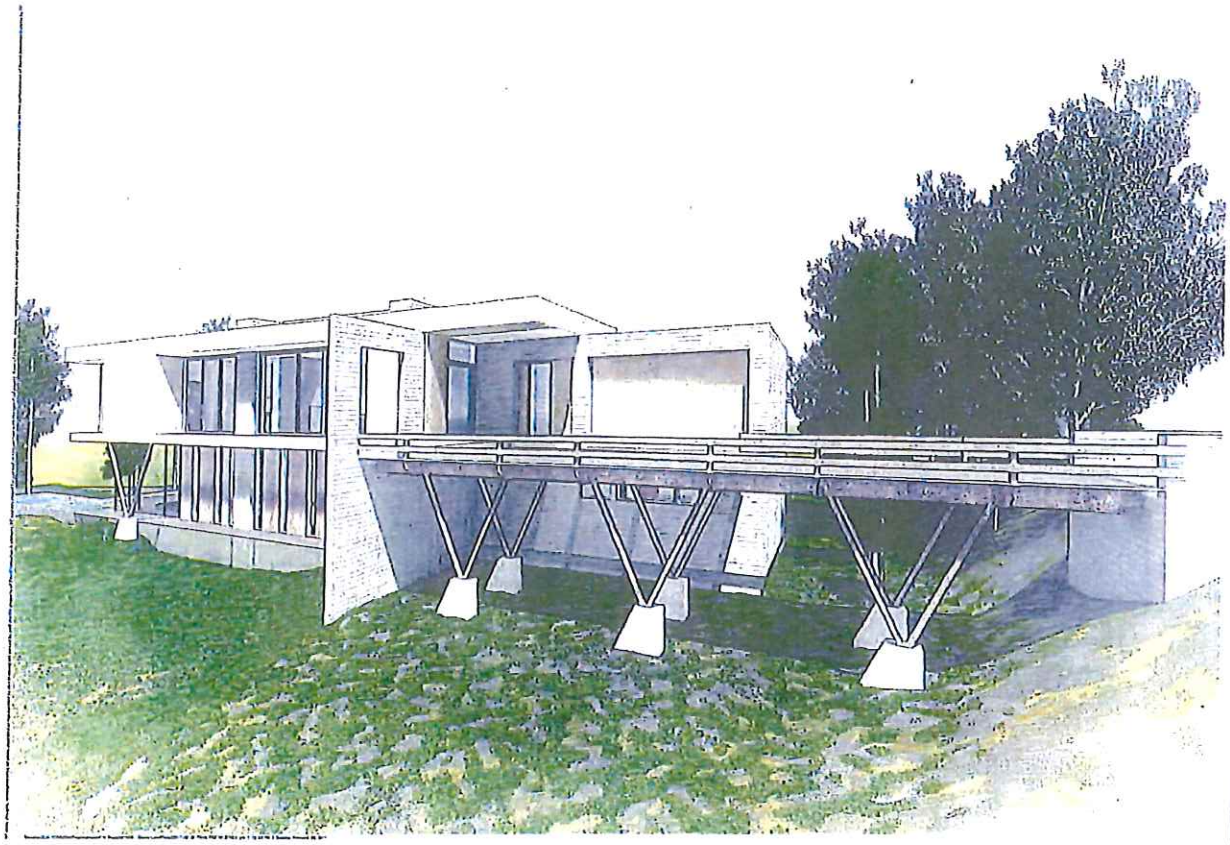


DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE
54 SHADY LN | ASPEN, CO

SHEET No.
11.1

Exhibit A



DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE
54 SHADY LN | ASPEN, CO

PROPOSED ELEVATIONS: FRONTED BRICK

SHEET
11.2



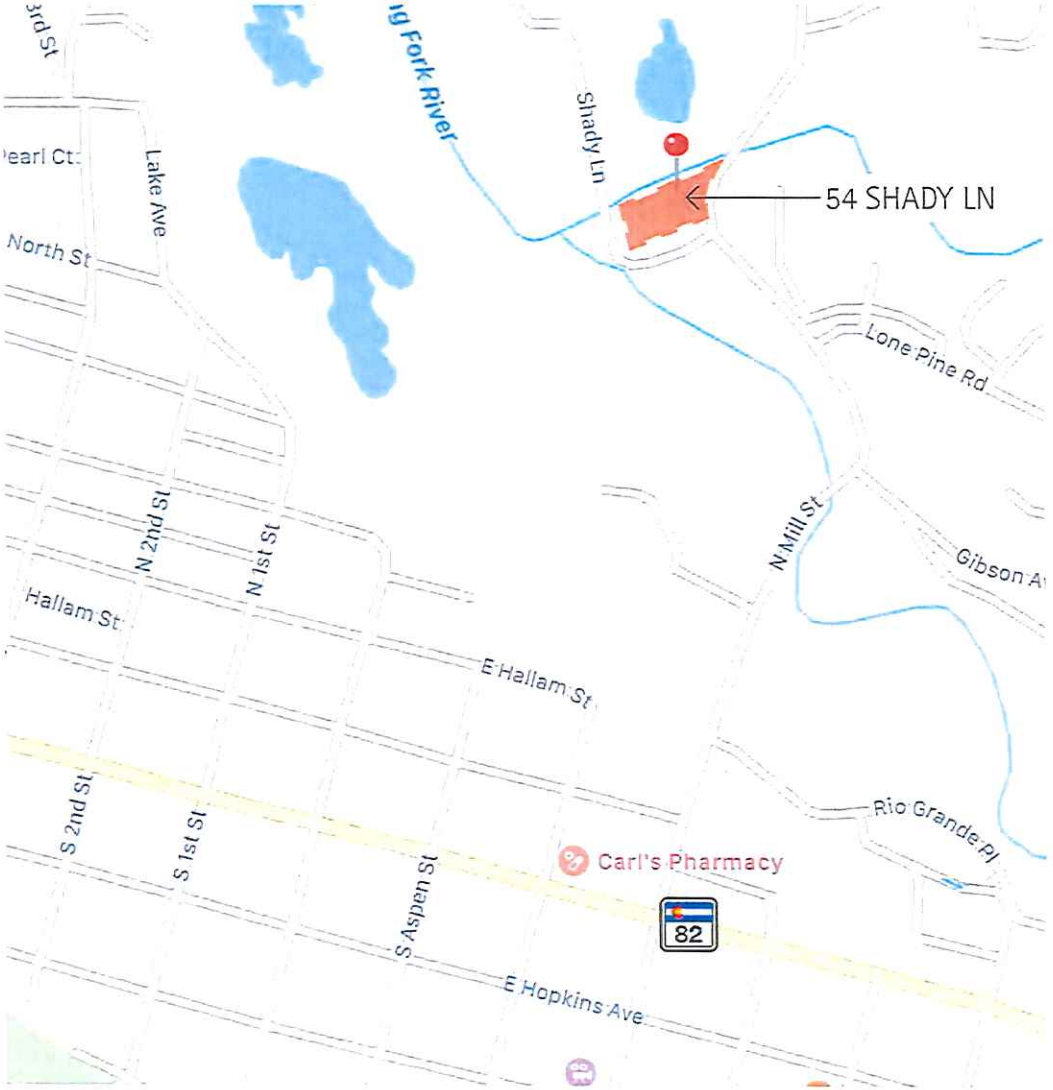
DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE
54 SHADY LN | ASPEN, CO

PROPOSED ELEVATIONS: END BRICK OPTION

SHEET
11.3

ATTACHMENT 2



1 VICINITY MAP

SCALE: 1:0.67

DAVID JOHNSTON ARCHITECTS
110 South Spring St.
Suite 203
Aspen, CO 81611
TEL 970-920-3444
FAX 970-920-2186

CANOPY HOUSE

54 SHADY LN | ASPEN, CO

DRAWING ISSUE

CONCEPTUAL 2/20/17

VICINITY MAP

PROJECT No. 1609

DRAWN BY CH

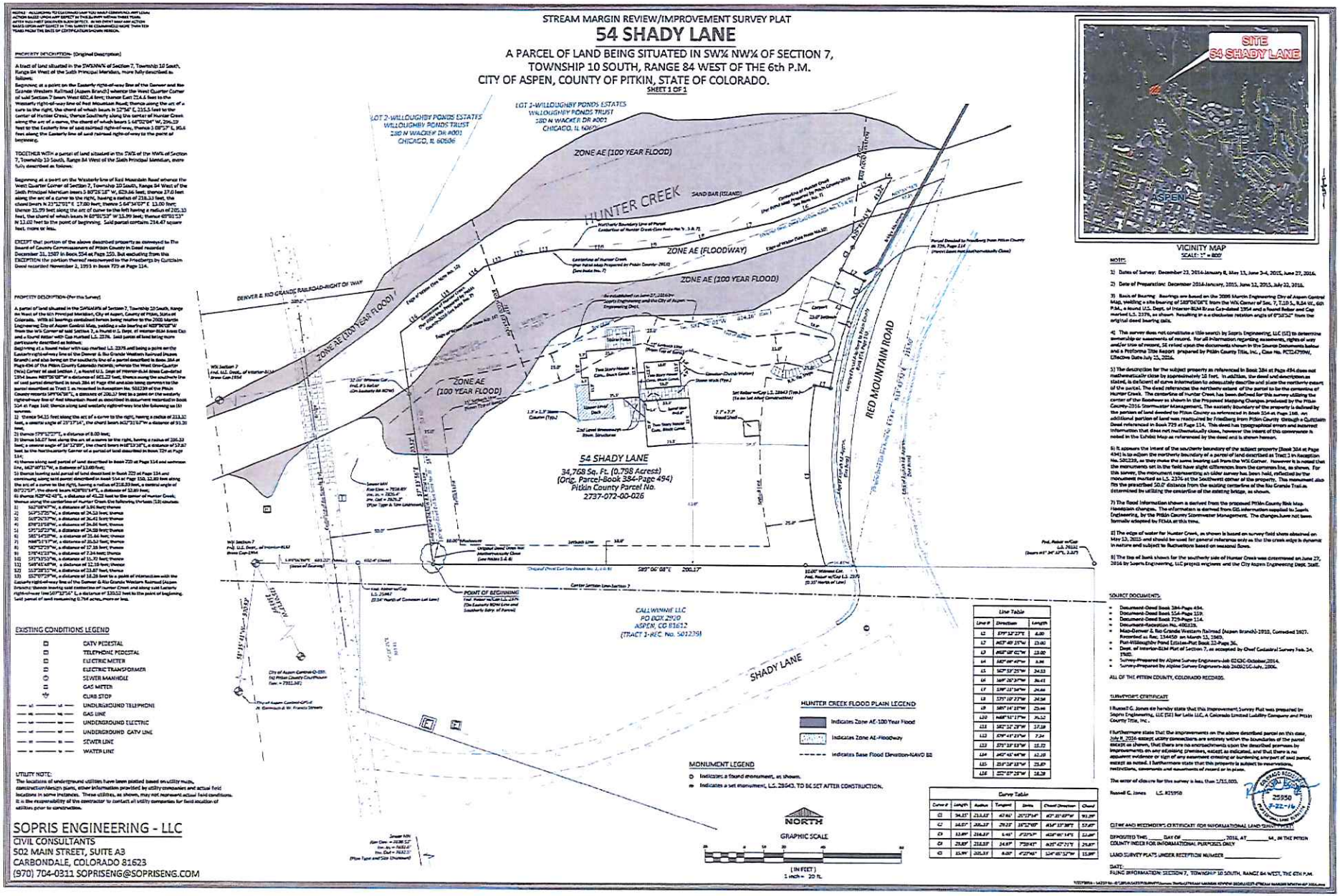
SHEET No. 1

STREAM MARGIN REVIEW/IMPROVEMENT SURVEY PLAT

54 SHADY LANE

A PARCEL OF LAND BEING SITUATED IN SW¼ NW¼ OF SECTION 7,
TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE 6th P.M.
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.

SHEET 1 OF 1



VICINITY MAP
SCALE: 1" = 800'

PROPERTY DESCRIPTION- (Original Description)

A tract of land situated in the SW¼NW¼ of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described as follows:

Beginning at a point on the Easterly right-of-way line of the Denver and Rio Grande Western Railroad (Aspen Branch) whence the West Quarter Corner of said Section 7 bears West 602.4 feet; thence East 224.6 feet to the Westerly right-of-way line of Red Mountain Road; thence along the arc of a curve to the right, the chord of which bears N 22°54' E, 215.5 feet to the center of Hunter Creek; thence Southerly along the center of Hunter Creek along the arc of a curve, the chord of which bears S 46°52'06" W, 294.19 feet to the Easterly line of said railroad right-of-way; thence S 68°37' E, 95.6 feet along the Easterly line of said railroad right-of-way to the point of beginning.

TOGETHER WITH a parcel of land situated in the SW¼ of the NW¼ of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described as follows:

Beginning at a point on the Westerly line of Red Mountain Road whence the West Quarter Corner of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian bears S 80°28'28" W, 829.66 feet; thence 37.6 feet along the arc of a curve to the right, having a radius of 213.33 feet, the chord bears N 21°12'01" E 37.60 feet; thence S 64°34'07" E 13.00 feet; thence 35.79 feet along the arc of curve to the left having a radius of 202.33 feet, the chord of which bears N 69°01'52" W 35.79 feet; thence 60°01'57" N 13.02 feet to the point of beginning. Said parcel contains 214.47 square feet, more or less.

EXCEPT that portion of the above described property as conveyed to The Board of County Commissioners of Pitkin County in Deed recorded December 21, 1987 in Book 554 at Page 220, but excluding from this EXCEPTION the portion thereof reconveyed to the Friedbergs by Quitclaim Deed recorded November 2, 1993 in Book 729 at Page 114.

PROPERTY DESCRIPTION-(For this Survey)

A parcel of land situated in the SW¼NW¼ of Section 7, Township 10 South, Range 84 West of the 6th Principal Meridian, City of Aspen, County of Pitkin, State of Colorado. With all bearings contained herein being relative to the 2006 Martin Engineering City of Aspen Control Mon, yielding a ratio bearing of N28°39'00"W from the W¼ Corner of said Section 7, a Found U.S. Dept. of Interior-BLM brass Cap and a found Rebar with Cap marked L.S. 2376. Said parcel of land being more particularly described as follows:

Beginning at a found rebar with cap marked L.S. 23576 and being a point on the Easterly right-of-way line of the Denver & Rio Grande Western Railroad (Aspen Branch) and also being on the southerly line of a parcel described in Book 384 at Page 494 of the Pitkin County Colorado records, whence the West One-Quarter (W¼) Corner of said Section 7, a Found U.S. Dept. of Interior-BLM brass Cap dated 1994 bears N85°26'08"W a distance of 602.22 feet; thence along the southerly line of said parcel described in book 384 at Page 494 and also being common to the parcel described as Tract 1 as recorded in Reception No. 502239 of the Pitkin County records S89°06'08"E, a distance of 200.17 feet to a point on the westerly right-of-way line of Red Mountain Road as described in document recorded in book 554 at Page 368; thence along said westerly right-of-way line the following six (6) courses:

1) thence 94.35 feet along the arc of a curve to the right, having a radius of 213.33 feet, a central angle of 25°19'56", the chord bears N22°21'57"W a distance of 93.59 feet;
2) thence S79°12'07"E, a distance of 8.00 feet;
3) thence 58.07 feet along the arc of a curve to the right, having a radius of 206.33 feet; a central angle of 16°07'09", the chord bears N18°39'28"E, a distance of 57.87 feet to the Northeasterly Corner of a parcel of land described in book 729 at Page 114;
4) thence along said parcel of land described in book 729 at Page 114 and extension line, N63°49'17"W, a distance of 13.00 feet;
5) thence leaving said parcel of land deed land in book 729 at Page 114 and continuing along the parcel described in book 554 at Page 368, 12.88 feet along the arc of a curve to the right, having a radius of 218.33 feet, a central angle of 03°22'53", the chord bears N28°58'14"E, a distance of 12.88 feet;
6) thence N29°40'48"E, a distance of 41.22 feet to the center of Hunter Creek;

Thence along the centerline of Hunter Creek the following (18) courses:

1) S62°18'47"W, a distance of 3.91 feet; thence
2) S62°27'25"W, a distance of 24.52 feet; thence
3) S69°26'37"W, a distance of 26.41 feet; thence
4) S78°21'58"W, a distance of 24.86 feet; thence
5) S71°16'25"W, a distance of 24.28 feet; thence
6) S85°14'28"W, a distance of 21.66 feet; thence
7) N68°51'17"W, a distance of 26.52 feet; thence
8) S82°52'29"W, a distance of 17.16 feet; thence
9) S78°41'23"W, a distance of 7.24 feet; thence
10) S71°43'53"W, a distance of 31.70 feet; thence
11) S68°41'48"W, a distance of 12.16 feet; thence
12) S63°28'51"W, a distance of 23.87 feet; thence
13) S52°07'29"W, a distance of 18.28 feet to a point of intersection with the Easterly right-of-way line of the Denver & Rio Grande Western Railroad (Aspen Branch); thence leaving said centerline of Hunter Creek and along said Easterly right-of-way line S69°37'50" E, a distance of 330.52 feet to the point of beginning. Said parcel of land containing 0.794 acres, more or less.

EXISTING CONDITIONS LEGEND

- CATV PEDESTAL
- TELEPHONIC PEDESTAL
- ELECTRIC METER
- ELECTRIC TRANSFORMER
- SEWER MANHOLE
- GAS METER
- CURB STOP
- UNDERGROUND TELEPHONE
- GAS LINE
- UNDERGROUND ELECTRIC
- UNDERGROUND CATV LINE
- SEWER LINE
- WATER LINE

UTILITY NOTE:
The locations of underground utilities have been plotted based on utility mark, construction/design plans, other information provided by utility companies and actual field locations in some instances. These utilities, as shown, may not represent actual field conditions. It is the responsibility of the contractor to contact all utility companies for field location of utilities prior to construction.

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311 SOPRISENG@SOPRISENG.COM

NOTE:

1) Dates of Survey: December 23, 2014-January 8, May 13, June 3-4, 2015, June 27, 2016.

2) Date of Preparation: December 2014-January, 2015, June 12, 2015, July 22, 2016.

3) Basis of Bearing: Bearings are based on the 2006 Martin Engineering City of Aspen Control Mon, yielding a ratio bearing of S28°39'00"E from the W¼ Corner of Sec. 7, T.10 S., R.84 W., 6th P.M., a found U.S. Dept. of Interior-BLM Brass Cap-dated 1994 and a found Rebar and Cap marked L.S. 23576, as shown. Resulting in a clockwise rotation angle of 0°30'52" from the original deed bearing data.

4) The survey does not constitute a title search by Sopris Engineering, LLC (SE) to determine ownership or easements of record. For all information regarding easements, rights-of-way and/or title of record, SE relied upon the documents shown in the Source Documents below and a Preliminary Title Report prepared by Pitkin County Title, Inc., Case No. PCTL47990V, Effective Date July 15, 2016.

5) The description for the subject property as referenced in Book 384 at Page 494 does not mathematically close by approximately 10 feet. In addition, the deed and description as stated, is deficient of curve information to adequately describe and place the northerly extent of the parcel. The deed references the northerly extent of the parcel to be the centerline of Hunter Creek. The centerline of Hunter Creek has been defined for this survey utilizing the center of the floodway as shown in the Proposed Mapping Changes produced by the Pitkin County-2016 Stormwater Management. The easterly boundary of the property is defined by the portion of land deeded to Pitkin County as referenced in Book 554 at Page 368. An additional portion of land was reacquired by Friedberg from Pitkin County through a Quitclaim Deed referenced in Book 729 at Page 114. This deed has typographical errors and incorrect information that does not mathematically close, however the intent of this conveyance is noted in the Exhibit Map as referenced by the deed and is shown hereon.

6) It appears the intent of the southerly boundary of the subject property (Book 384 at Page 494) is to adjoin the northerly boundary of a parcel of land described as Tract 1 in Reception No. 502239, as they make the same bearing call from the W¼ Corner. However it is noted that the monuments set in the field have slight differences from the common line, as shown. For this survey, the monument representing an older survey has been held, reflected by the monument marked as L.S. 23576 at the Southwest corner of the property. This monument also fits the prescribed 50.0' distance from the existing centerline of the Rio Grande Trail as determined by utilizing the centerline of the existing bridge, as shown.

7) The flood information shown is derived from the proposed Pitkin County Risk Map Floodplain changes. The information is derived from GIS information supplied to Sopris Engineering, by the Pitkin County Stormwater Management. The changes have not been formally adopted by FEMA at this time.

8) The edge of water for Hunter Creek, as shown is based on survey-field shots obtained on May 13, 2015 and should be used for general references only as the the creek edge is dynamic in nature and subject to fluctuations based on seasonal flows.

9) The top of bank shown for the southerly side of Hunter Creek was determined on June 27, 2016 by Sopris Engineering, LLC project engineers and the City Aspen Engineering Dept. Staff.

SOURCE DOCUMENTS:

- Document-Deed Book 384-Page 494.
- Document-Deed Book 554-Page 368.
- Document-Deed Book 729-Page 114.
- Document-Reception No. 502239.
- Map-Denver & Rio Grande Western Railroad (Aspen Branch)-1952, Corrected 1957. Recorded as Rec. 134450 on March 13, 1963.
- Plat-Hillsinghby Pond Estates-Plat Book 13-Page 36.
- Dept. of Interior-BLM Plat of Section 7, as accepted by Chief Cadastral Survey Feb. 24, 1960.
- Survey-Prepared by Alpine Survey Engineers-Job #2426C-October, 2014.
- Survey-Prepared by Alpine Survey Engineers-Job 2602G-July, 2006.

ALL OF THE PITKIN COUNTY, COLORADO RECORDS.

SURVEYOR'S CERTIFICATE

I Russell G. Jones do hereby state that this Improvement Survey Plat was prepared by Sopris Engineering, LLC (SE) for Lots LLC, a Colorado Limited Liability Company and Pitkin County Title, Inc.;

Furthermore state that the improvements on the above described parcel on this date, July 8, 2016 except utility connections are entirely within the boundaries of the parcel except as shown, that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easement crossing or burdening any part of said parcel, except as noted. I furthermore state that this property is subject to reservations, restrictions, covenants and easements of record or in place.

The error of closure for this survey is less than 1/15,000.

Russell G. Jones L.S. #25950

CLERK AND RECORDER'S CERTIFICATE FOR INFORMATIONAL LAND SURVEY PLAT

DEPOSITED THIS _____ DAY OF _____, 2016, AT _____ M., IN THE PITKIN COUNTY INDEX FOR INFORMATIONAL PURPOSES ONLY.

LAND SURVEY PLATS UNDER RECEPTION NUMBER _____

DATE:

FILING INFORMATION SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST, THE 6TH P.M.

Line Table

Line #	Direction	Length
L1	S79°12'07"E	8.00
L2	N63°49'17"W	13.00
L3	N68°39'42"W	13.00
L4	S85°09'42"W	3.98
L5	S62°18'25"W	24.53
L6	S69°26'37"W	26.41
L7	S78°21'58"W	24.86
L8	S71°16'25"W	24.28
L9	S85°14'28"W	25.66
L10	N68°51'17"W	26.52
L11	S82°52'29"W	17.16
L12	S78°41'23"W	7.24
L13	S71°33'53"W	31.72
L14	S68°41'48"W	12.16
L15	S63°28'51"W	23.87
L16	S52°07'29"W	18.28

Curve Table

Curve #	Length	Radius	Tangent	Delta	Chord Direction	Chord
C1	94.35'	213.33'	47.86'	25°19'56"	N21°21'57"W	93.59'
C2	58.07'	206.33'	29.22'	16°07'09"	N18°39'28"E	57.87'
C3	12.88'	218.33'	6.46'	3°22'53"	N28°58'14"E	12.88'
C4	29.80'	213.33'	14.97'	7°59'41"	N25°40'27"E	29.80'
C5	35.79'	202.33'	8.99'	9°58'46"	S34°45'54"W	35.75'

TREE INVENTORY

54 SHADY LANE

A PARCEL OF LAND BEING SITUATED IN SW¼ NW¼ OF SECTION 7,
TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE 6th P.M.
CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.

SHEET 1 OF 1

DECIDUOUS TREES:

Pt. No.	DIAMETER (in)	DRIPLINE (ft)	NOTES
100	18.4	25	
101	18.6	28	
102	24.5	30	
103	6.5	15	
104	11.1	15	
105	12.6	15	
106	6.1	8	
107	10.7	16	
108	8.1	12	
109	7.2	10	
110	5.5	8	
111	6.2	10	
112	7.4	10	
113	5.5	8	
114	9.1	16	
115	20.7	30	
116	4.1	7	
117	9.1	11	
118	9.1	15	
119	9.1	15	
120	6.8	9	
121	8.1	12	
122	6.5	10	
123	6.2	10	
124	6.8	9	
125	9.1	15	
126	8.1	11	
127	9.1	12	
128	11.1	15	
129	9.1	15	
130	6.1	10	
131	14.1	15	
132	6.1	10	
133	6.1	8	
134	6.1	10	
135	5.2	8	
136	5.0	8	
137	14.6	25	
138	8.1	12	
139	6.8	10	
140	6.1	10	
141	8.1	8	
142	8.1	20	
143	6.1	10	
144	6.9	15	
145	6.9	15	
146	9.0	15	
147	18.8	25	
148	8.1	15	
149	12.1	25	
150	8.5	15	
151	6.8	15	
152	7.5	12	
153	16.7	25	
154	12.5	20	
155	11.1	15	
156	8.5	8	
157	20.1	30	
158	14.1	30	
159	8.1	20	
160	12.1	25	
161	14.1	15	
162	9.8	25	
163	9.1	20	
164	11.7	25	
165	16.8	30	
166	11.1	25	
167	15.7	30	
168	8.1	15	
169	5.8	10	
170	5.8	12	
171	10.7	15	
172	9.8	20	
173	14.8	25	
174	9.7	20	
175	11.7	20	
176	17.4	25	
177	13.1	25	

Pt. No.	DIAMETER (in)	DRIPLINE (ft)
178	9.6	20
179	13.1	25
180	16.6	25
181	12.1	20
182	17.8	25
183	15.5	20
184	8.7	15
185	21.4	30
186	18.4	25
187	13.6	25
188	8.1	15
189	7.9	15
190	8.1	15
191	7.7	14
192	11.2	25
193	8.9	15
194	14.4	20
195	18.4	25
196	8.1	5
197	13.6	25
198	11	15
199	15.4	20
200	16.3	20
201	9.5	20	3 TRUNKS
202	6.7	15	
203	6.7	15	
204	18.9	25	
205	5.9	12	
206	15.6	20	2 TRUNKS
207	9.1	25	
208	22.3	30	
209	7.6	15	
210	9.1	16	
211	8.5	15	3 TRUNKS
212	13.6	25	
213	6.5	15	
214	14.1	25	
215	15.5	18	
216	7.9	14	
217	13.1	20	
218	11.7	25	
219	20.2	30	
220	14.4	20	
221	14.7	25	
222	13.6	25	
223	18.8	30	
224	18.1	25	
225	7.2	15	
226	15.4	20	
227	6.9	12	
228	6.9	14	
229	6.4	12	
230	14.2	30	2 TRUNKS
231	6.1	8	
232	5.6	10	
233	6.9	12	
234	7.7	15	
235	16.6	25	
236	9.1	15	
237	14.5	25	
238	7.5	15	
239	5.4	8	
240	8.8	16	
241	8.8	8	
242	7.5	14	
243	7.2	14	
244	9.1	15	
245	15.2	20	
246	11.6	25	
247	23.4	30	
248	8.8	12	
249	5.5	12	
250	8.4	20	
251	11.7	25	
252	20.4	30	
253	17.1	25	
254	14.1	30	
255	19.6	30	

Pt. No.	DIAMETER (in)	DRIPLINE (ft)
256	6.6	20
257	4.2	6
258	4.5	20
259	6.4	12
260	8.4	15
261	4.3	15
262	7.0	18
263	13.1	20
264	8.4	15
265	8.5	17
266	5.1	10
267	4.0	8
268	4.2	8



TREE INVENTORY SUMMARY 2016

DECIDUOUS TREES—155

CONIFEROUS TREES—13

TREE DISCLAIMER

SOPRIS ENGINEERING PERSONNEL ARE NOT TRAINED ARBORISTS OR LANDSCAPE PROFESSIONALS. THE TREE INFORMATION SHOWN HEREON WAS FIELD SURVEYED BY SOPRIS ENGINEERING TO THE BEST OF OUR ABILITY AS PART OF THE PROJECTS SCOPE. DATA WAS ACQUIRED PER PROCEDURES OUTLINED IN THE CITY OF ASPEN ENGINEERING DEPARTMENT'S SUBMITTAL CHECKLIST.

NOTES:

1) Date of Survey—August 15 & 16, 2016

2) Date of Preparation—August 19-20.

3) Refer to the Improvement Survey & Stream Margin review for this property for more information on boundary and flood plain information.

SURVEYOR'S STATEMENT

I, Mark S. Becker, as a hereby state that this survey was prepared by Sopris Engineering, LLC for Leila, LLC, A Colorado Limited Liability Company, and that it is true and correct to the best of my knowledge and belief.

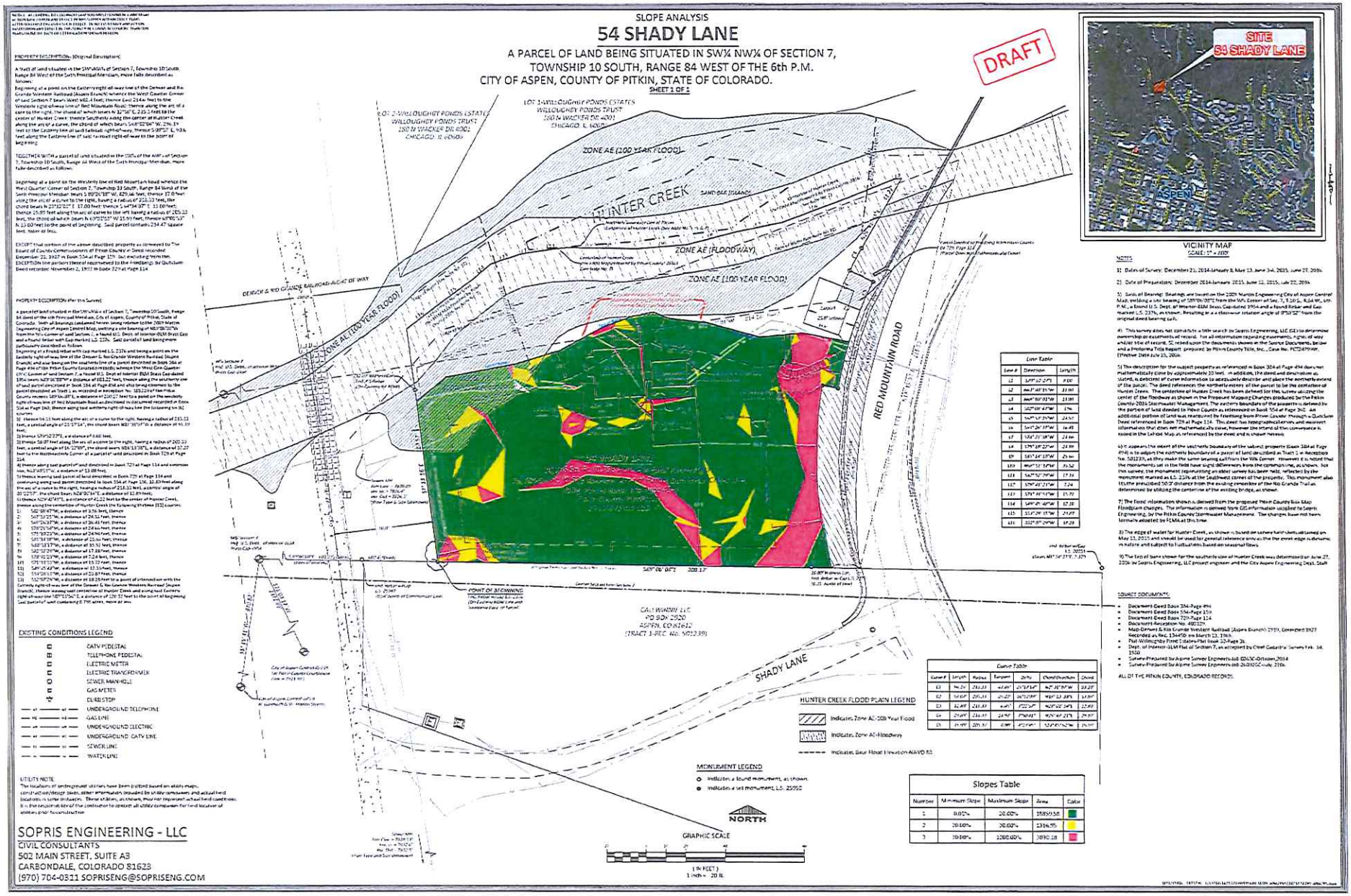
Mark S. Becker, PE, No. 29643

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311 SOPRISENG@SOPRISENG.COM

NORTH

GRAPHIC SCALE

1 IN FEET
1 inch = 20 ft



PROPERTY DESCRIPTION: (Original Description)

A tract of land situated in the SW¼NW¼ of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described as follows:

Beginning at a point on the Easterly right-of-way line of the Denver and Rio Grande Western Railroad (Aspen Branch) whence the West Quarter Corner of said Section 7 bears West 682.4 feet; thence East 214.46 feet to the Westerly right-of-way line of Red Mountain Road; thence along the arc of a curve to the right, the chord of which bears S 2°56'E, 235.5 feet to the center of Hunter Creek; thence Southerly along the center of Hunter Creek along the arc of a curve, the chord of which bears S44°02'04" W, 276.19 feet to the Easterly line of said railroad right-of-way; thence S 09°57' E, 436 feet along the Easterly line of said railroad right-of-way to the point of beginning.

TOGETHER WITH a parcel of land situated in the SW¼ of the NW¼ of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described as follows:

Beginning at a point on the Westerly line of Red Mountain Road whence the West Quarter Corner of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian bears S 89°26'38" W, 829.46 feet; thence 37.0 feet along the arc of a curve to the right, having a radius of 216.33 feet, the chord bears N 25°12'02" E, 37.00 feet; thence S 64°34'27" E, 11.00 feet; thence 25.99 feet along the arc of curve to the left having a radius of 205.33 feet, the chord of which bears N 67°52'22" W, 25.99 feet; thence N 9°00'53" E, 13.60 feet to the point of beginning. Said parcel contains 214.47 square feet, more or less.

EXCEPT that portion of the above described property as conveyed to The Board of County Commissioners of Pitkin County in Deed recorded December 22, 1927 in Book 334 at Page 329. But excluding from the EXCEPTION the portions thereof reconveyed to the Holdings by Quitclaim Deed recorded November 2, 1970 in Book 327 at Page 114

PROPERTY DESCRIPTION: (Per this Survey)

a parcel of land situated in the SW¼NW¼ of Section 7, Township 10 South, Range 84 West of the 6th Principal Meridian, City of Aspen, County of Pitkin, State of Colorado. Basis of Bearings: Bearings herein are referred to the 2009 Martin Engineering City of Aspen Control Map, yielding a bearing of N89°26'38"W from the NW¼ corner of said Section 7, a found U.S. Dept. of Interior-BLM Brass Cap and a Found Rebar with Cap marked LS. 2376, to the NW corner of said Section 7, a found U.S. Dept. of Interior-BLM Brass Cap and a Found Rebar with Cap marked LS. 2376, said parties and being the basis of said bearing as described herein, said parcel being more particularly described as follows:

Beginning at a Found rebar with cap marked LS. 2376 and being a point on the Easterly right-of-way line of the Denver & Rio Grande Western Railroad (Aspen Branch) and also being on the southerly line of a parcel described in Book 334 at Page 494 of the Pitkin County Recorded records; whence the West One-Quarter (W¼) Corner of said Section 7, a found U.S. Dept. of Interior-BLM Brass Cap dated 1964 bears N89°26'38"W a distance of 682.40 feet, thence along the southerly line of said parcel described in Book 334 at Page 494 and also being common to the parcel described as Tract 1, as recorded in Reception No. 501239 of the Pitkin County records S89°26'38"E, a distance of 200.17 feet to a point on the westerly right-of-way line of Red Mountain Road as described in instrument recorded in Book 334 at Page 260; thence along said westerly right-of-way line the following (6) courses:

1) thence 36.13 feet along the arc of a curve to the right, having a radius of 215.33 feet, a central angle of 23°57'54", the chord bears N02°38'09"W a distance of 35.89 feet;

2) thence S79°20'23"E, a distance of 0.60 feet;

3) thence 58.07 feet along the arc of a curve to the right, having a radius of 205.33 feet, a central angle of 16°12'00", the chord bears N28°33'36"E, a distance of 57.87 feet to the Northeasterly Corner of a parcel of land described in Book 729 at Page 154;

4) thence along said parcel of land described in Book 729 at Page 154 and continuing along said parcel described in book 334 at Page 156, 32.80 feet along the arc of a curve to the right, having a radius of 216.33 feet, a central angle of 20°23'57", the chord bears N36°26'54"E, a distance of 32.80 feet;

5) thence N26°45'41"E, a distance of 40.22 feet to the center of Hunter Creek, thence along the centerline of Hunter Creek the following thirteen (13) courses:

1) S82°08'47"W, a distance of 3.76 feet, thence
2) S60°53'25"W, a distance of 26.51 feet, thence
3) S60°04'37"W, a distance of 26.43 feet, thence
4) S78°25'54"W, a distance of 24.66 feet, thence
5) S75°30'22"W, a distance of 24.96 feet, thence
6) S85°34'18"W, a distance of 25.56 feet, thence
7) N68°58'37"W, a distance of 35.92 feet, thence
8) S82°52'39"W, a distance of 17.18 feet, thence
9) S78°05'20"W, a distance of 17.24 feet, thence
10) S71°55'57"W, a distance of 15.72 feet, thence
11) S84°25'48"W, a distance of 32.16 feet, thence
12) S54°08'15"W, a distance of 23.87 feet, thence
13) S52°59'29"W, a distance of 18.28 feet to a point of intersection with the Easterly right-of-way line of the Denver & Rio Grande Western Railroad (Aspen Branch); thence leaving said centerline of Hunter Creek and along said Eastern right-of-way line S09°57'56" E, a distance of 128.52 feet to the point of beginning. Said parcel of land containing 0.791 acres, more or less.

UTILITY NOTE

The locations of underground utilities have been plotted based on visible maps, construction/design sheets, other information provided by utility companies and actual field locations in some instances. These utilities, as shown, may not represent actual field conditions. It is the responsibility of the contractor to contact all utility companies for field location of utilities prior to construction.

NOTES

1) Dates of Survey: December 21, 2014-January 8, May 13, June 3rd, 2015, June 29, 2016.

2) Date of Preparation: December 2014-January 2015, June 12, 2015, July 22, 2016.

3) Basis of Bearings: Bearings are based on the 2009 Martin Engineering City of Aspen Control Map, yielding a line bearing of S89°26'38"E from the NW¼ Corner of Sec. 7, T.10S., R.84 W., 6th P.M., a found U.S. Dept. of Interior-BLM Brass Cap dated 1964 and a found Rebar and Cap marked L.S. 2376, as shown. Resulting in a clockwise rotation angle of 0°50'22" from the original deed bearing call.

4) This survey does not constitute a title search by Sopris Engineering, LLC (SE) to determine ownership or easements of record. For all information regarding easements, rights of way and/or title of record, SE relied upon the documents shown in the Source Documents, Recital and a Preliminary Title Report prepared by Pitkin County Title, Inc., Case No. PITC4979-HP, Effective Date July 15, 2016.

5) The description for the subject property as referenced in Book 334 at Page 494 does not mathematically close by approximately 10 feet. In addition, the stated and described as stated, is deficient of curve information to adequately describe and place the northerly extent of the parcel. The deed references the northerly extent of the parcel to be the centerline of Hunter Creek. The centerline of Hunter Creek has been defined for this survey utilizing the center of the floodway as shown in the Proposed Mapping Changes produced by the Pitkin County 2016 Stormwater Management. The eastern boundary of the property is defined by the portion of land deeded to Pitkin County as referenced in book 334 at Page 260. An additional portion of land was reacquired by Holdings from Pitkin County through a Quitclaim Deed referenced in Book 729 at Page 154. This deed has topographical errors and incorrect information that does not mathematically close, however the intent of the conveyance is noted in the Lehlbe Map as referenced by the deed and is shown hereon.

6) It appears the extent of the southerly boundary of the subject property (Book 334 at Page 494) is to adjoin the northerly boundary of a parcel of land described as Tract 1 at Reception No. 501239, as they make the same bearing call from the NW Corner. However it is noted that the monuments set in the field have slight differences from the conversions, as shown. For this survey, the monument representing an older survey has been held, reflected by the monument marked as L.S. 2376 at the Southwest corner of the property. This monument also results the prescribed 50.0' distance from the existing centerline of the Rio Grande Trail as determined by utilizing the centerline of the existing bridge, as shown.

7) The flood information shown is derived from the proposed Pitkin County 100 Year Floodplain changes. The information is derived from GIS information supplied to Sopris Engineering, by the Pitkin County Stormwater Management. The changes have not been formally adopted by FEMA at this time.

8) The edge of water for Hunter Creek, as shown is based on survey field shots obtained on May 13, 2015 and should be used for general reference only as the the exact edge is dynamic in nature and subject to fluctuations based on seasonal flows.

9) The toe of berm shown for the southerly side of Hunter Creek was determined on June 27, 2016 by Sopris Engineering, LLC project engineer and the City Aspen Engineering Dept. Staff.

SOURCE DOCUMENTS:

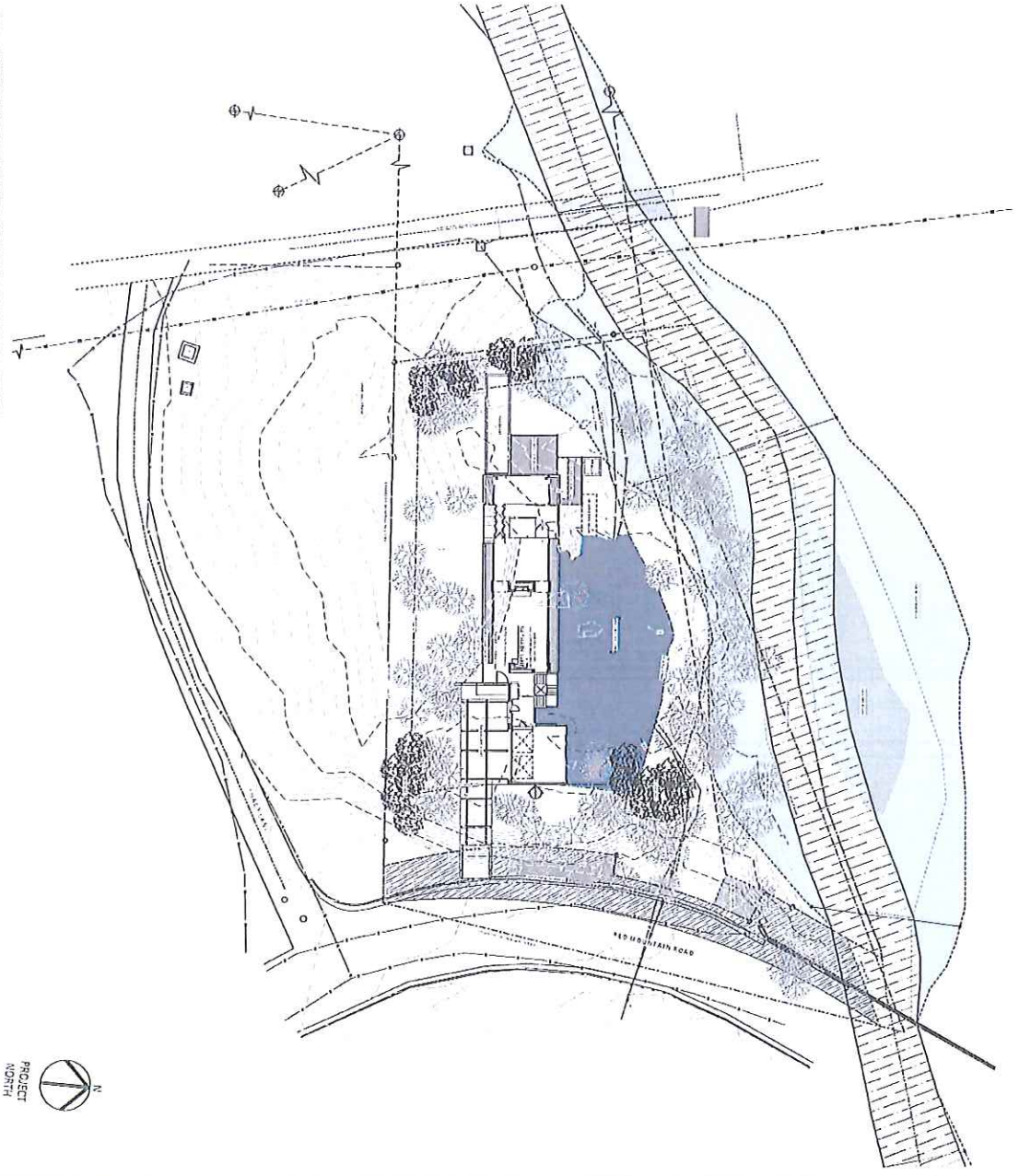
- Document-Deed Book 334-Page 494
- Document-Deed Book 334-Page 156
- Document-Deed Book 729-Page 154
- Document-Reception No. 501239
- Map-Denver & Rio Grande Western Railroad (Aspen Branch)-1919, Corrected 1927 Recorded as Rec. 134470 on March 23, 1965
- Plat-Willoughby Pond Estates-Plat Book 10-Page 26
- Dept. of Interior-GLM Plat of Section 7, as accepted by Chief Cadastral Survey Feb. 18, 1920
- Survey-Prepared by Aspene Survey Engineers-Job 02636-October, 2014
- Survey-Prepared by Aspene Survey Engineers-Job 2626SC-July, 2016.

ALL OF THE PITKIN COUNTY, COLORADO RECORDS.

SOPRIS ENGINEERING - LLC
CIVIL CONSULTANTS
502 MAIN STREET, SUITE A3
CARBONDALE, COLORADO 81623
(970) 704-0311 SOPRISENG@SOPRISENG.COM

V:\Admin\DJA-COMMON\Projects\Aspen\16 Projects\1609 - Shady Lane\Plots\2017-02-28 FINAL PAZ\10 SERIES .pln Tuesday, February 28, 2017 12:37 PM

1 PROPOSED SITE/LANDSCAPE PLAN: PREFERRED OPTION



PROJECT NORTH

SHEET No. 5.0

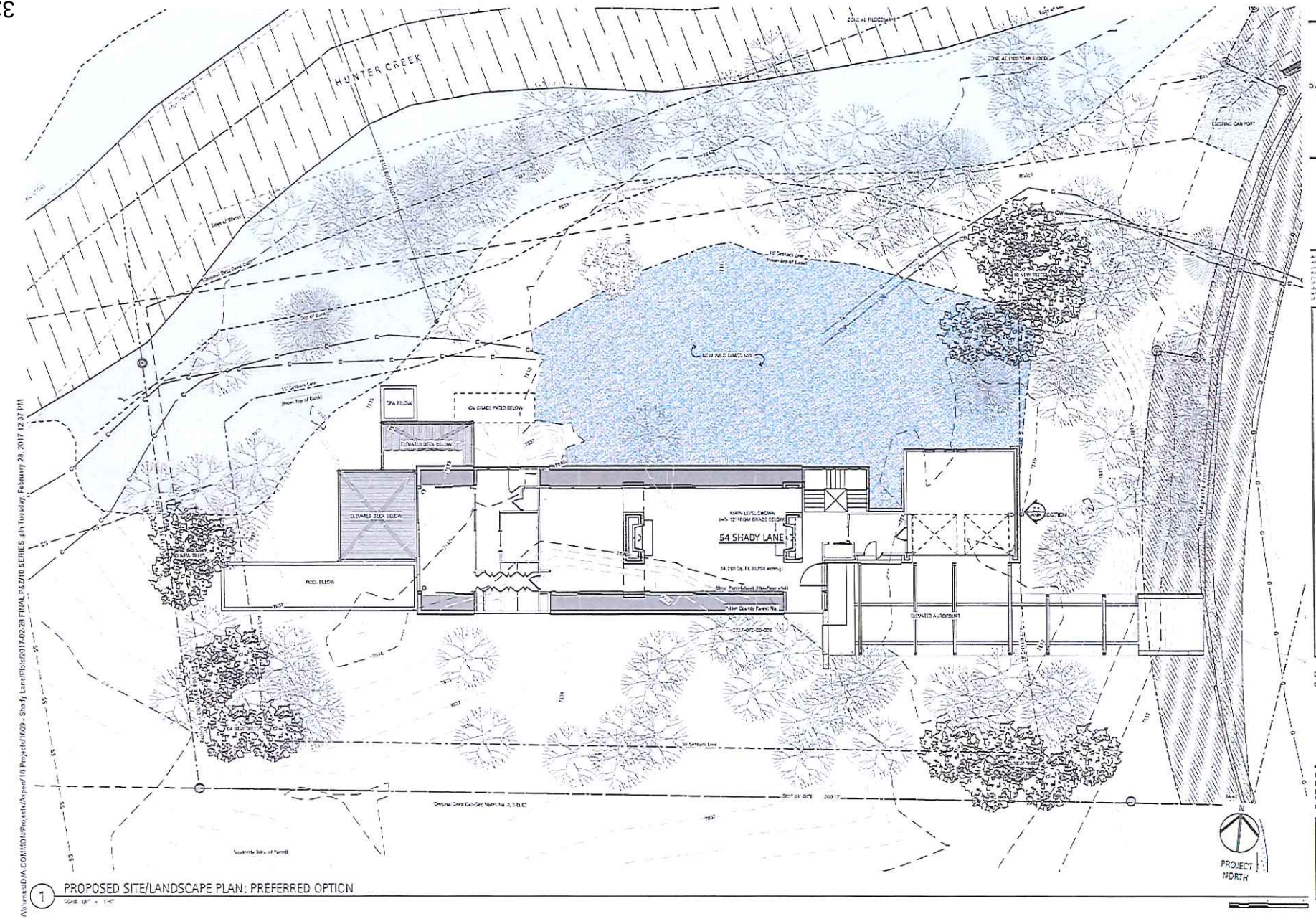
PROPOSED SITE/ LANDSCAPE PLAN: PREFERRED OPTION

DRAWING CONSTRUCTION SET/ISSUE 2/28/17

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DAVID JOHNSTON ARCHITECTS



1 PROPOSED SITE/LANDSCAPE PLAN: PREFERRED OPTION

SCALE: 1/8" = 1'-0"

DAVID JOHNSTON ARCHITECTS

115 South Spring St
Suite 203
Aspen, CO 81611
TEL 970-925-3444
FAX 970-925-2186

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DRAWING	ISSUE
CONCEPTUAL DESIGN	2/28/17

PROPOSED SITE/ LANDSCAPE PLAN: PREFERRED OPTION

PROJECT No: 1605

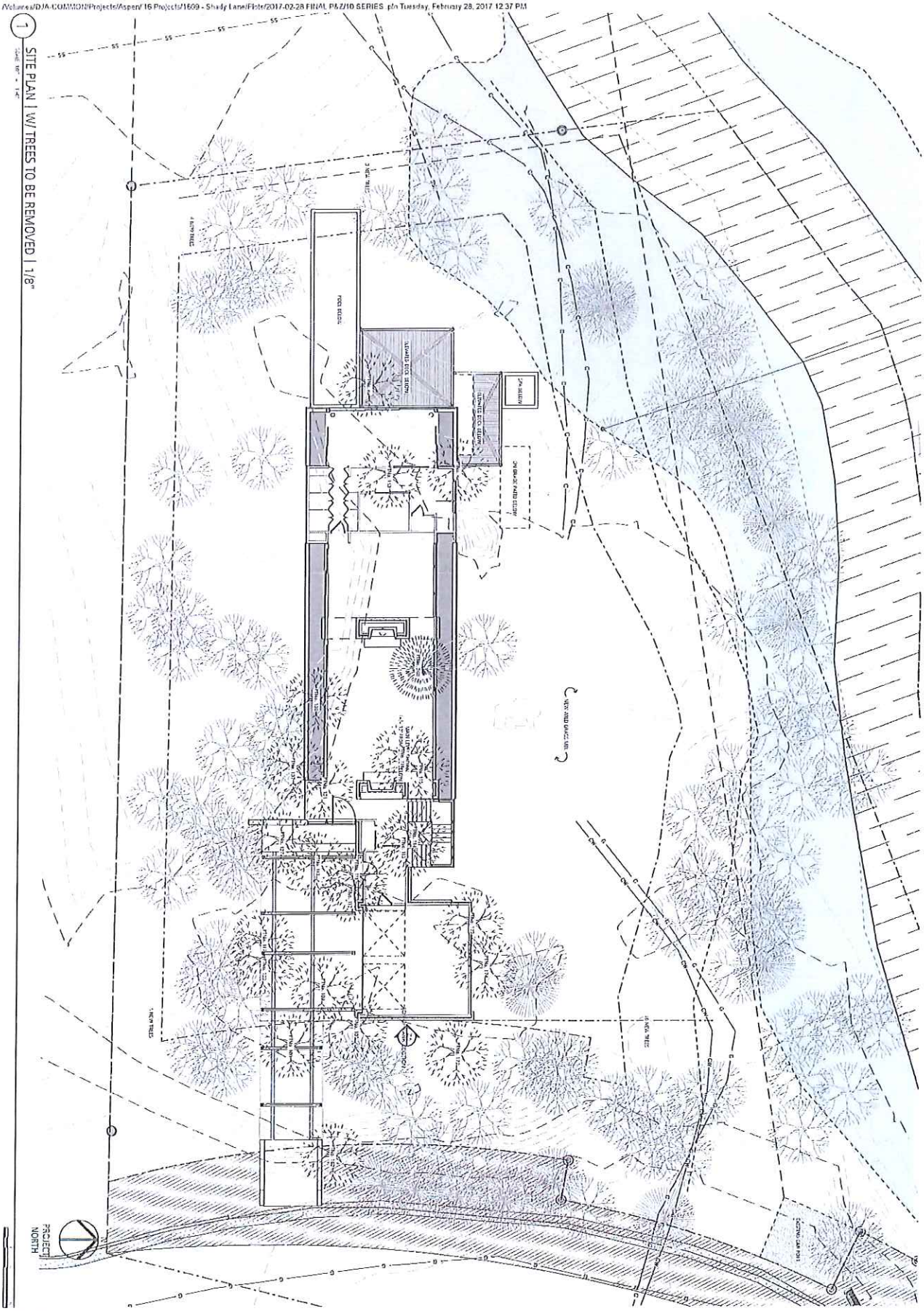
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SHEET No.

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SHEET No. 5.2

PROPOSED SITU LANDSCAPE PLAN: PREFERRED OPTION

DRAWING CONCEPTUAL SECTION

ISSUE

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DAVID JOHNSTON ARCHITECTS

/Users/colt.shark/Desktop/SHADY LN_2017-02-20_E.pln Tuesday, February 28, 2017 1:32 PM

1 SITE PLAN | CONCEPTUAL RETAINED DRIVE & AUTOCOURT

SHEET No. 6.0

PROPOSED SITE/ LANDSCAPE PLAN

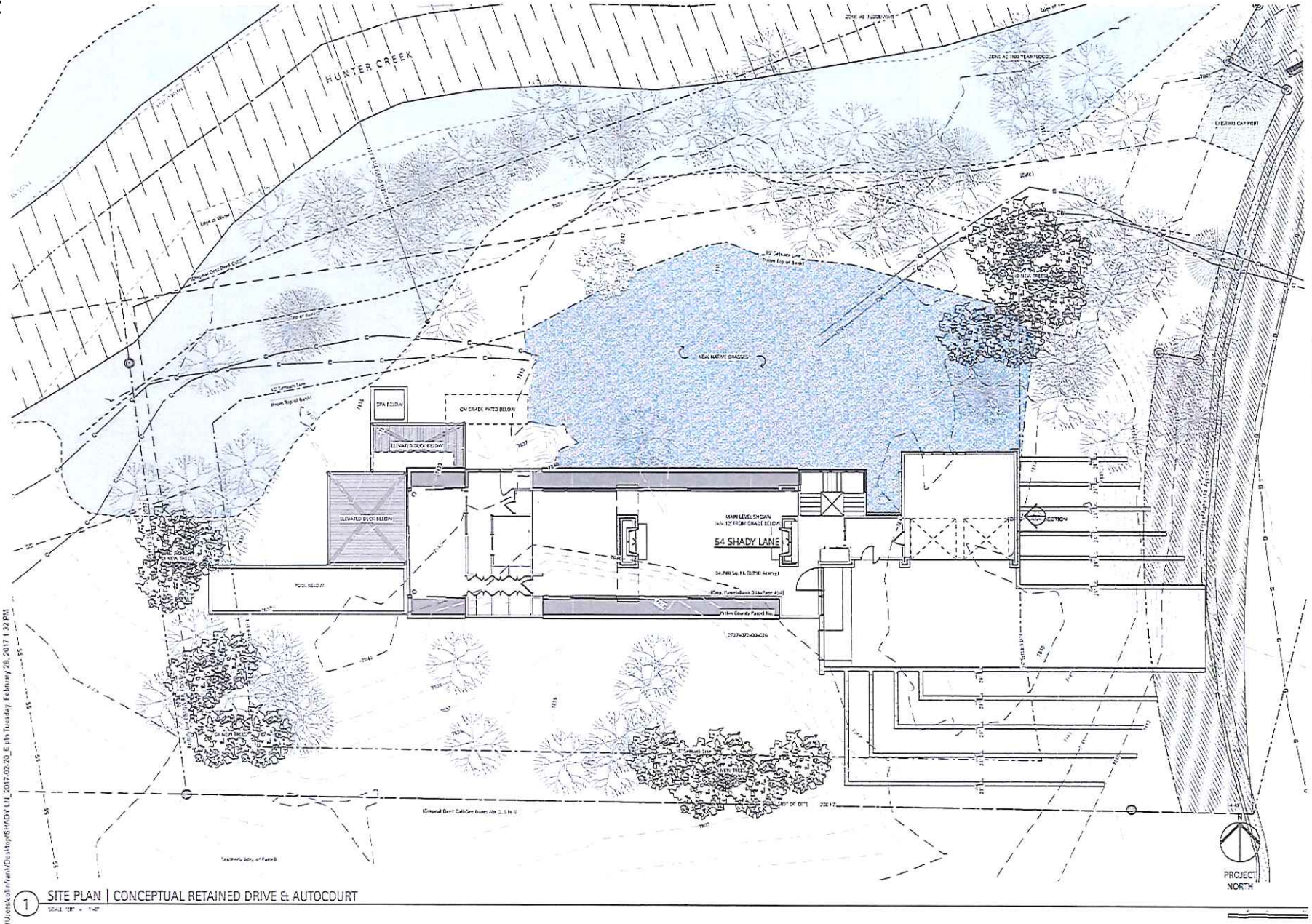
DAVID JOHNSTON ARCHITECTS

DRAWING

ISSUE

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO



1 SITE PLAN | CONCEPTUAL RETAINED DRIVE & AUTOCOURT

SCALE: 1/8" = 1'-0"

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DAVID JOHNSTON ARCHITECTS, PC
117 South Galena St.
Suite 203
Aspen, CO 81611
TEL 970-920-3444
FAX 970-920-2186

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DRAWING	ISSUE
CONCEPTUAL DESIGN	2/20/17

PROPOSED SITE/ LANDSCAPE PLAN: ALTERNATIVE A (1)

PROJECT No. 1609

DRAWN BY CW

SHEET No. 6.1

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1 SITE PLAN | W/ TREES TO BE REMOVED | 1/8"

SHEET No. 6.2

PROPOSED SITE/ LANDSCAPE PLAN

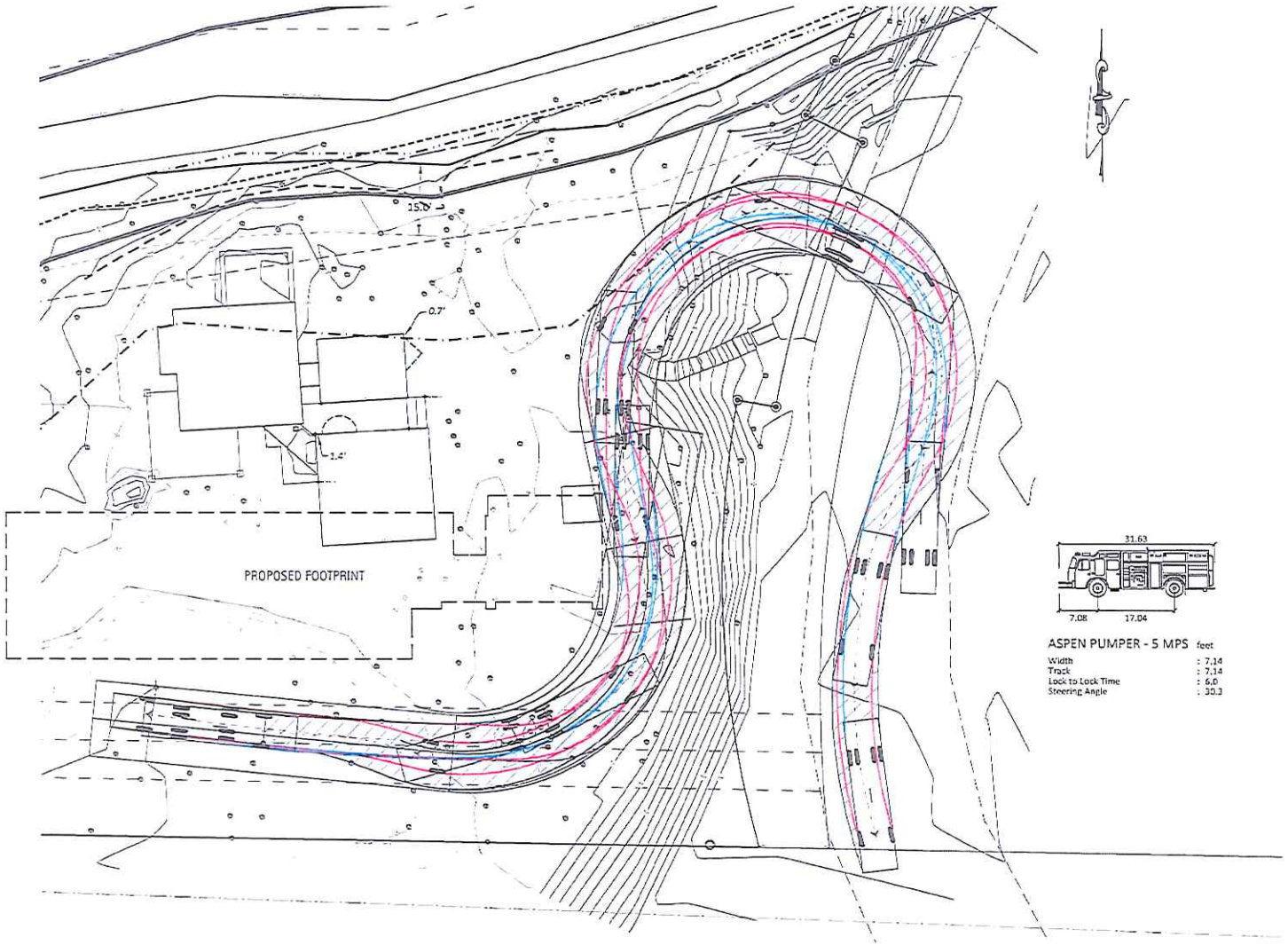
DRAWING CONCEPTUAL DESIGN

ISSUE

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DAVID JOHNSTON ARCHITECTS



ASPEN PUMPER - 5 MPS feet

Width	: 7.14
Track	: 7.14
Lock to Lock Time	: 6.0
Steering Angle	: 30.3

1 SITE PLAN | PROPOSED | DRIVEWAY CONFIGURATION

SCALE: 1" = 10'

DAVID JOHNSTON ARCHITECTS PC
119 South Spring St.
Suite 203
Aspen, CO 81611
TEL 970-925-5444
FAX 970-925-2186

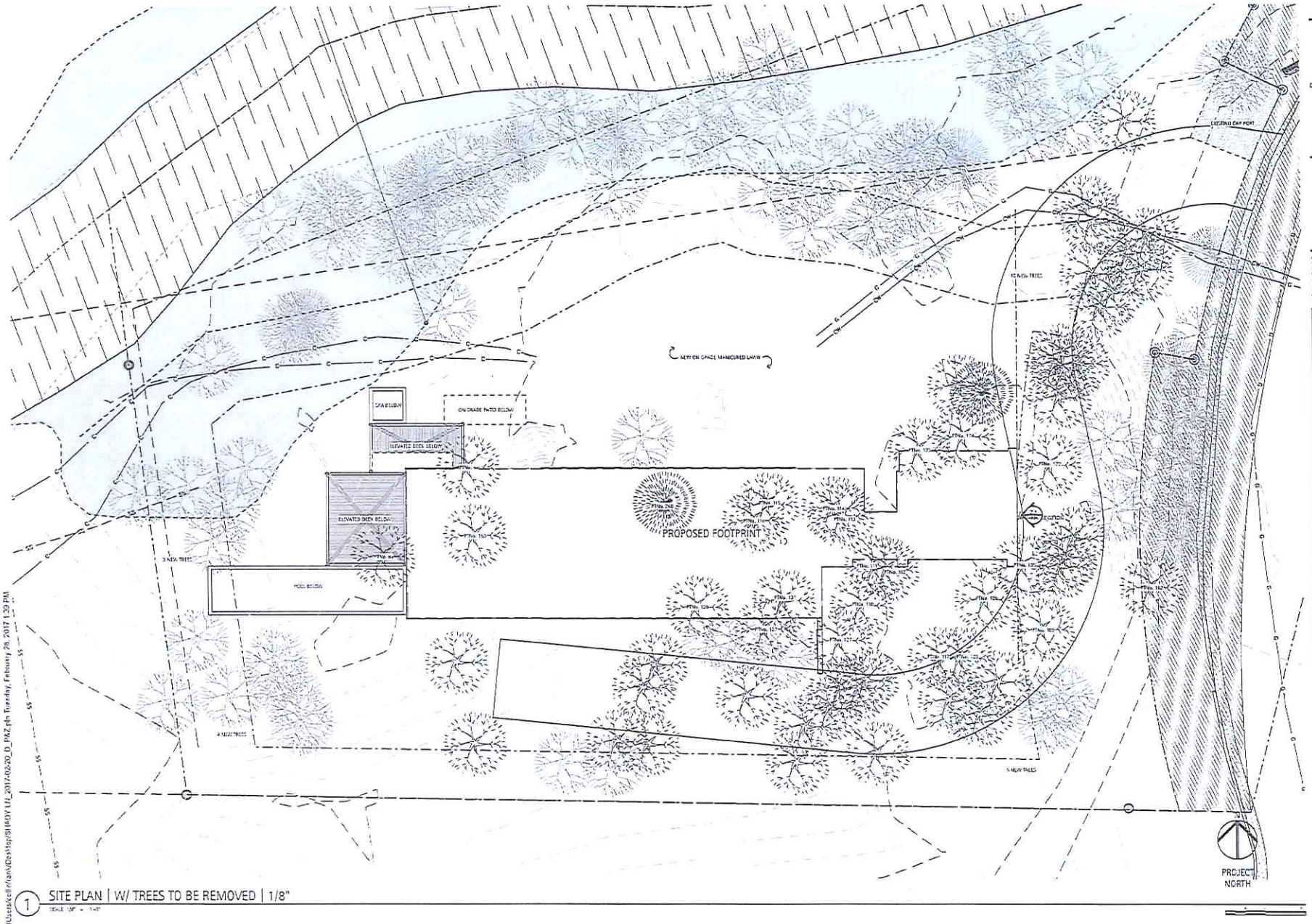
CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL SESSION 2/28/17

PROPOSED SITE/ LANDSCAPE PLAN: ALTERNATIVE 3
PROJECT No. 1620
DRAWN BY CH

SHEET No.
7.0

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1 SITE PLAN | W/ TREES TO BE REMOVED | 1/8"

SCALE: 1/8" = 1'-0"

DAVID JOHNSTON ARCHITECTS, PC
115 South Spring St.
Suite 202
Aspen, CO 81611
TEL 970-925-3441
FAX 970-920-2186

CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL DESIGN 2/28/17

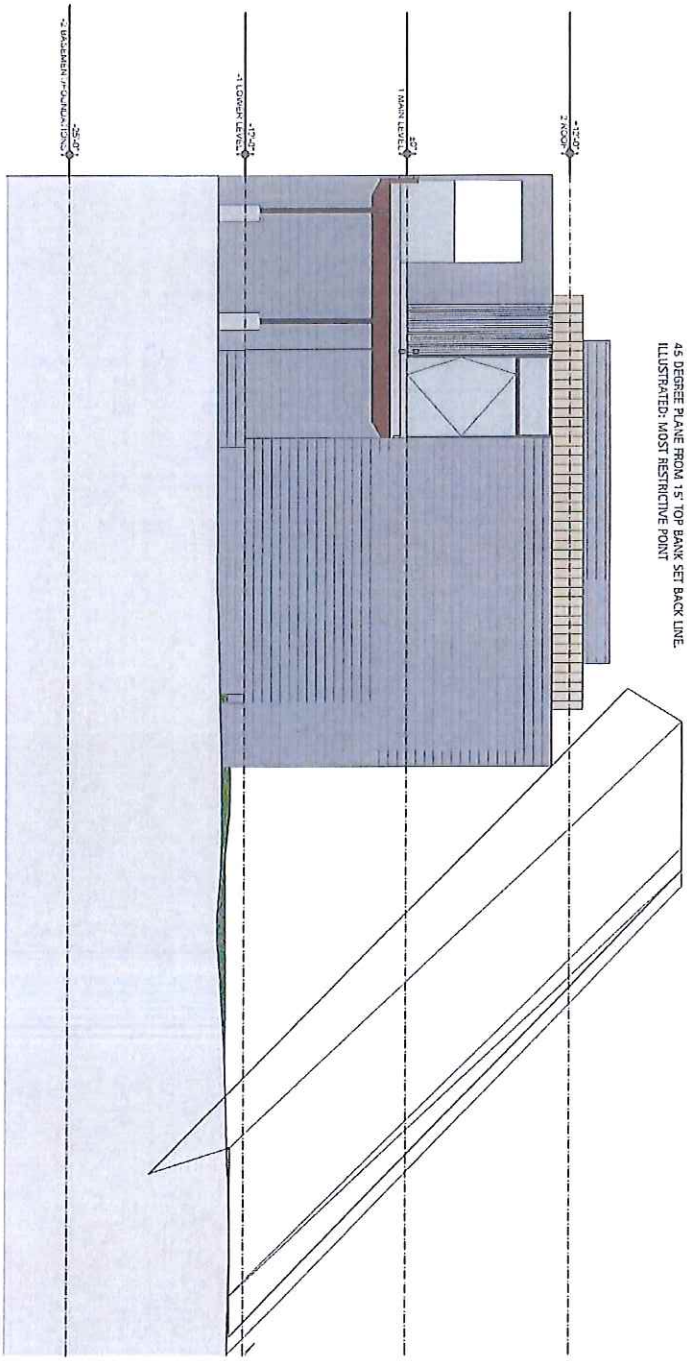
PROPOSED SITE/ LANDSCAPE PLAN: ALTERNATIVE B
PROJECT No. 1629
DRAWN BY CPH

SHEET No.
7.2

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1 TOP OF BANK SET BACK | ZONING SECTION



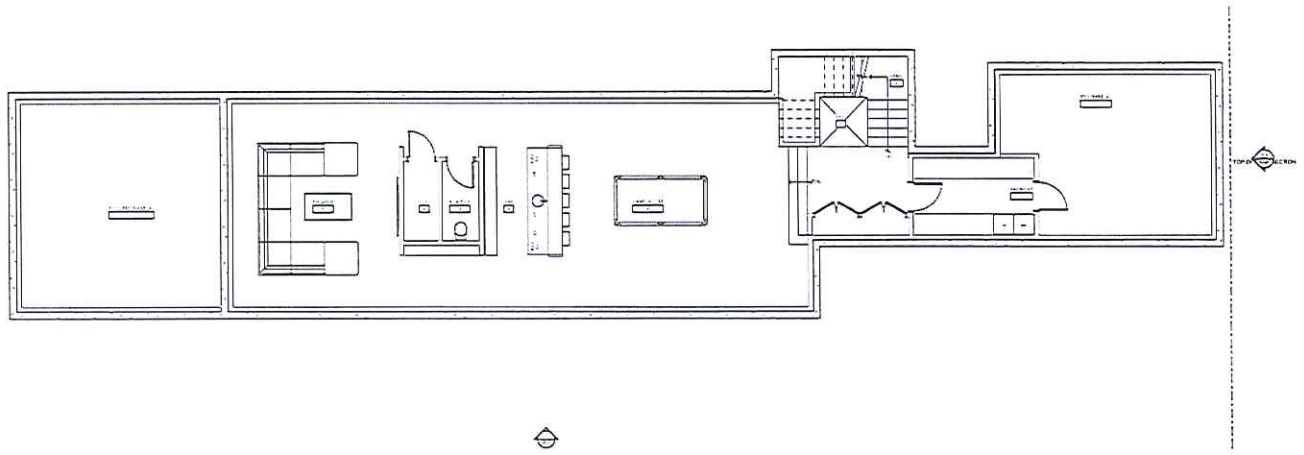
DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

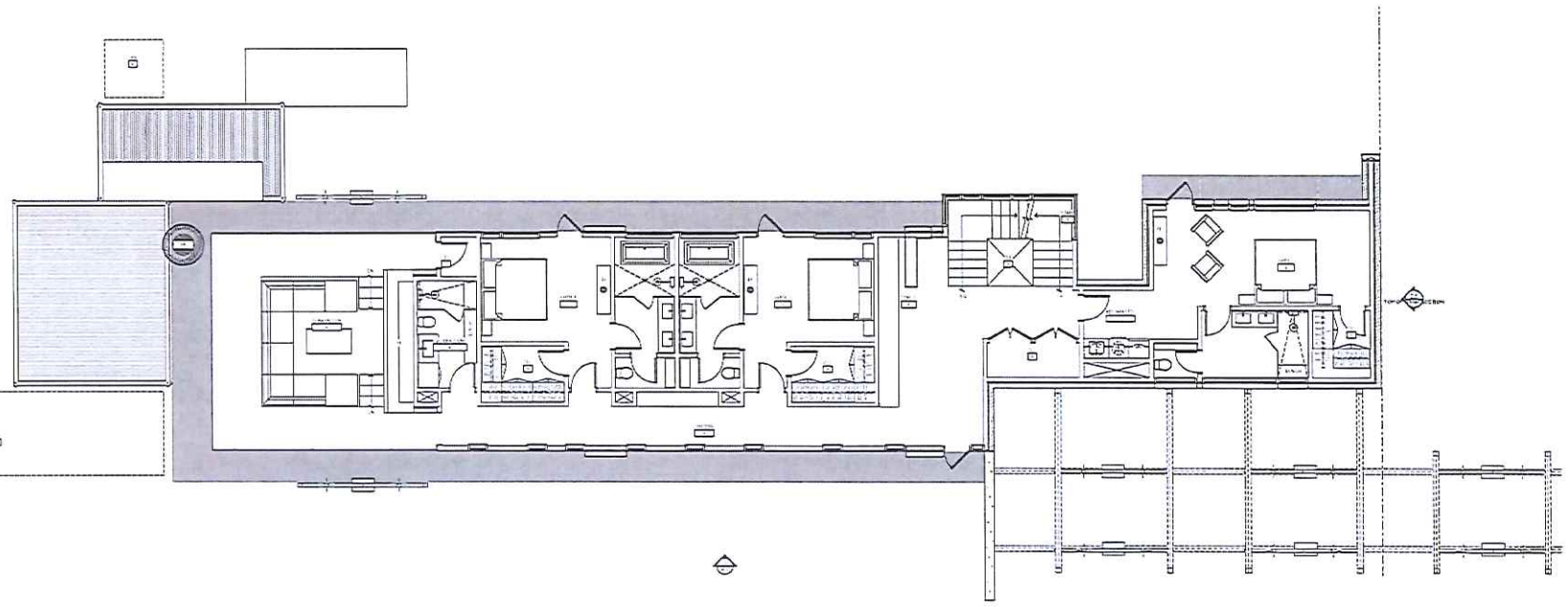
TOP OF BANK SECTION (45 DEGREE ANGLE)

SHEET NO. 8.0



-1 BASEMENT/FOUNDATIONS

SCALE: 3/16" = 1'-0"



1 LOWER LEVEL

SCALE: 3/16" = 1'-0"

DAVID JOHNSTON ARCHITECTS PC
109 South Spring St.
Suite 201
Aspen, CO 81611
TEL 970-925-2444
FAX 970-925-2166

CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING: DEVELOPED DESIGN
ISSUE: 2/28/17

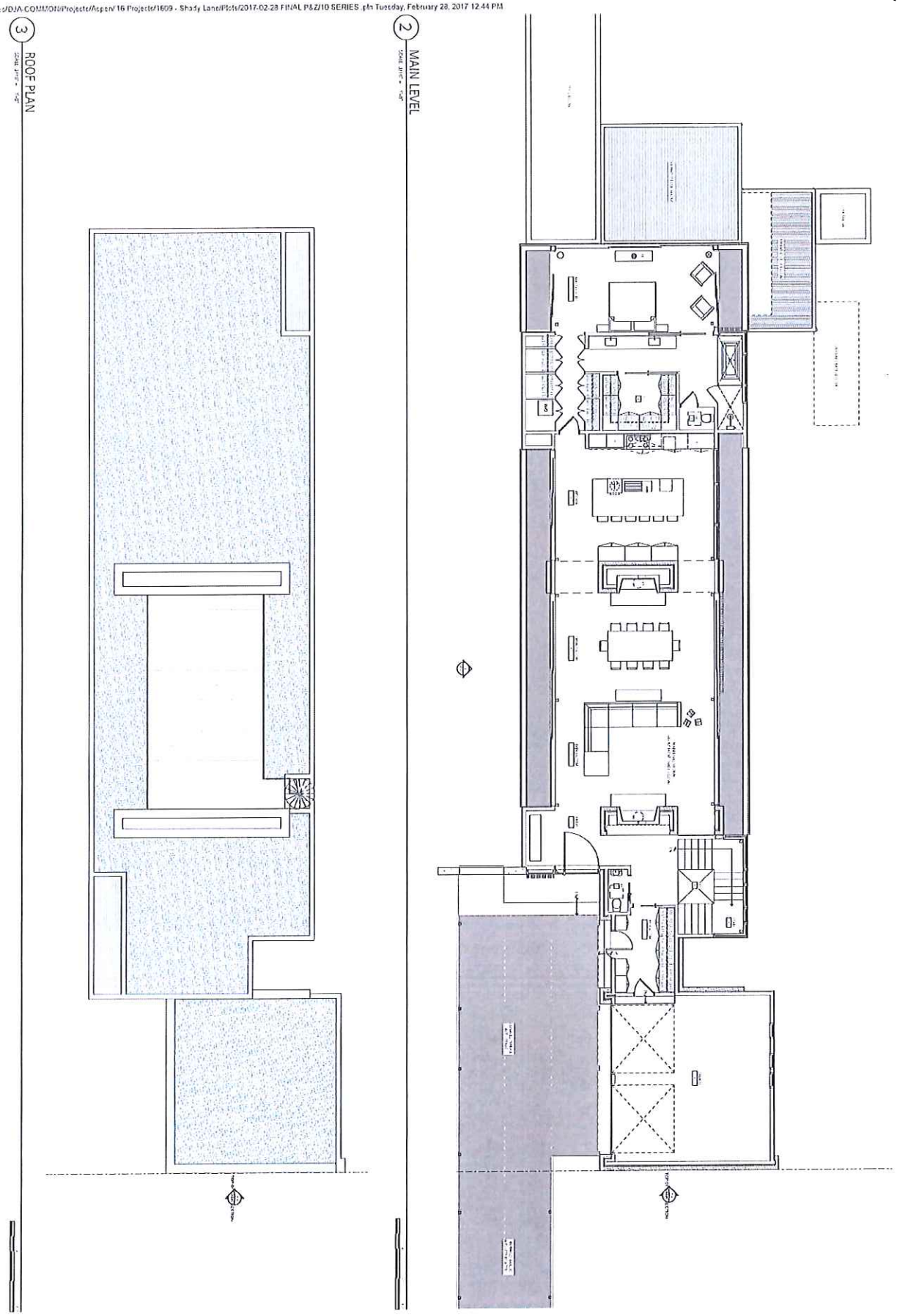
PROPOSED FLOOR PLANS: PREFERRED OPTION

PROJECT No. 1609
DRAWN BY: DPF

SHEET No.
9.0

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SHEET No. 9.1

PROPOSED FLOOR PLANS
PREFERRED OPTION

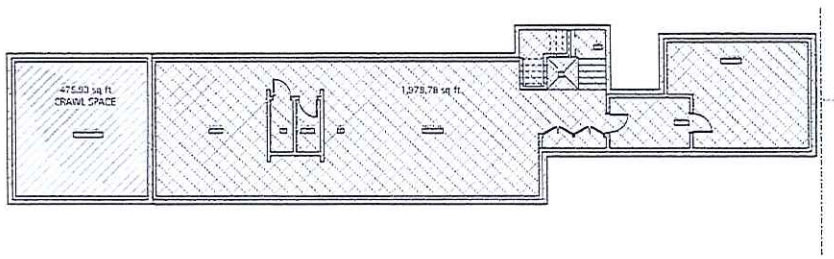
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CONDITIONAL REVIEW

ISSUE

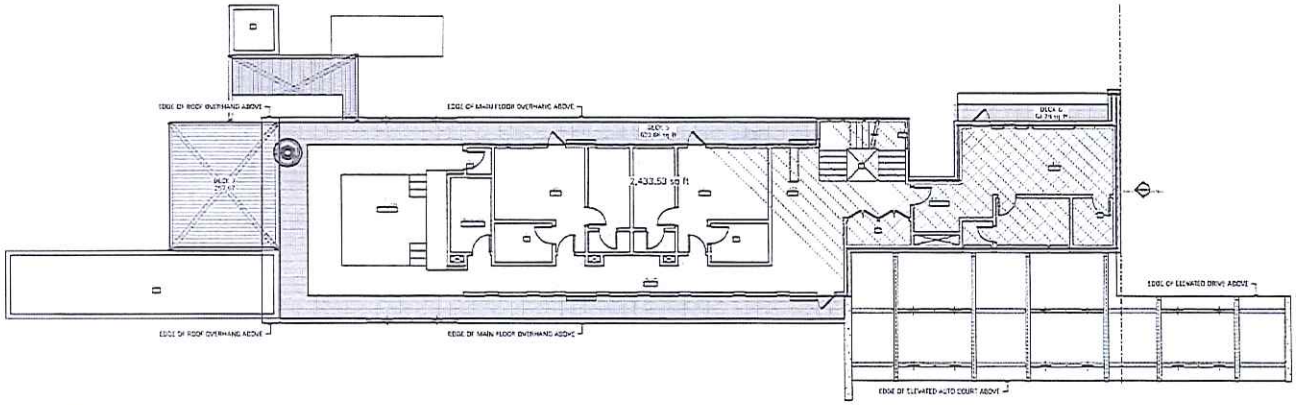
CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

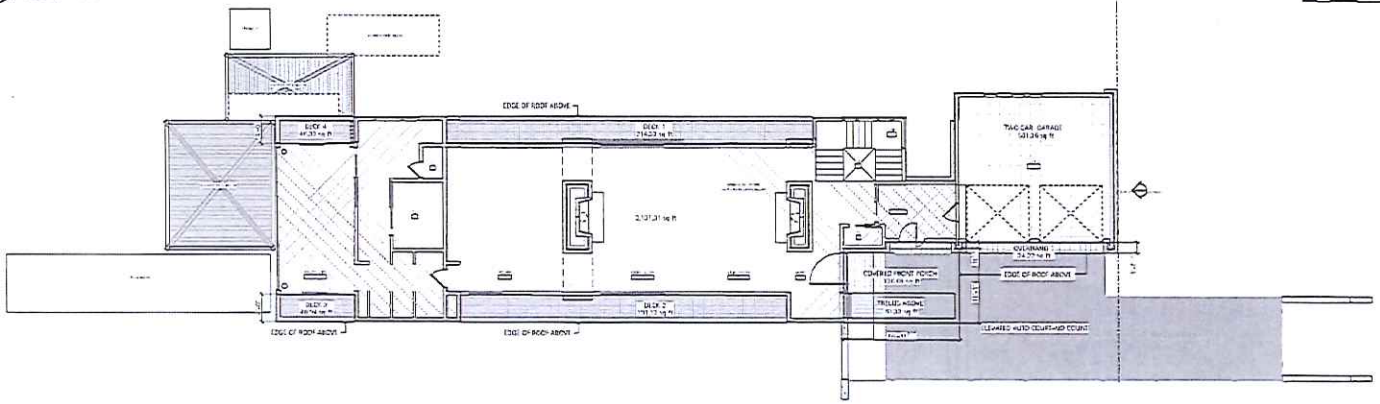
DAVID JOHNSTON ARCHITECTS



-1 BASEMENT AREA FLOOR PLAN PROPOSED



1 LOWER LEVEL AREA PLAN PROPOSED



2 MAIN FLOOR AREA PLAN PROPOSED

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Suite 202
Aspen, CO 81611
TEL 970-925-2444
FAX 970-920-2186

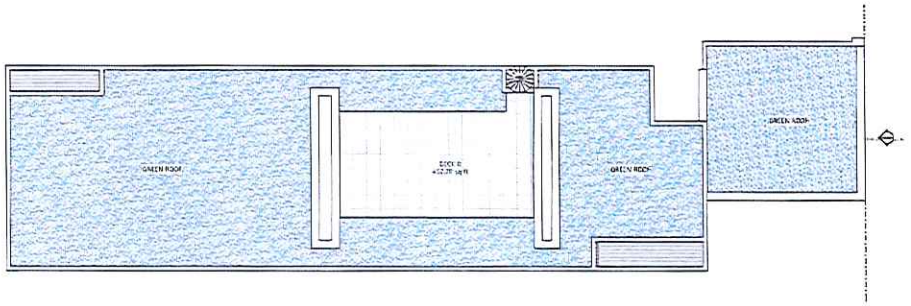
CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL DESIGN 2/28/17

PROPOSED FLOOR AREA CALCULATIONS:
PREFFRED OPTION
PROJECT No 1609
DRAWN BY CH

SHEET No.
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3 ROOF AREA PLAN PROPOSED

SCALE: 1/32" = 1'-0"

FLOOR AREA CALCULATIONS
CITY OF ASPEN ZONING SUBMISSION
54 SHADY LN
ZONE: R-20
PARCEL NUMBER: 2737072000
LOT AREA: 13,490 SF
ALLOWABLE FLOOR AREA: 4,790

PROPOSED BASEMENT LEVEL EXPOSED WALL CALCULATIONS		
MAIN LEVEL WALL LABEL	TOTAL WALL AREA (SQ FT)	EXPOSED WALL AREA (SQ FT)
1		100
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
TOTAL (SQ FT)	2,004	100
EXPOSED WALL AREA PERCENTAGE	5%	

BASEMENT LEVEL FLOOR AREA CALCULATIONS	Sq Ft	FAR
BASEMENT LEVEL (Sq Ft)	1,539.79	68.14
CRAWL SPACE	475.99	0.00
BASEMENT LEVEL COUNTABLE FLOOR AREA (SQ FT)	1,539.79	68.14
LOWER LEVEL FLOOR AREA CALCULATIONS		
LOWER LEVEL (Sq Ft)	2,477.53	2,477.53
LOWER LEVEL COUNTABLE FLOOR AREA (SQ FT)	2,455.53	2,455.53
MAIN LEVEL FLOOR AREA CALCULATIONS		
MAIN LEVEL (Sq Ft)	2,727.51	2,727.51
GARAGE (TWO STALL)	504.96	324.68
MAIN LEVEL COUNTABLE FLOOR AREA (SQ FT)	2,672.47	2,256.99
DECK/PATIO ABOVE GRADE FLOOR AREA (Sq Ft)		
1	214.72	0
2	493.52	0
3	46.62	0
4	46.62	0
5	633.06	0
6	94.79	0
7	267.42	267.42
8 FRONT DECK	452.79	452.79
DECK COUNTABLE FLOOR AREA (SQ FT)	1,960.50	720.21
100sf OF ALLOWABLE FAR (TWO STALL)		
OVERHANG		
COVERED FRONT PORCH	126.68	0
OVERHANG 1	34.22	0
TOTAL EXISTING FLOOR AREA CALCULATIONS		
BASEMENT LEVEL FLOOR AREA (Sq Ft)	1,079.79	68.14
LOWER LEVEL FLOOR AREA (Sq Ft)	2,455.53	2,455.53
MAIN LEVEL FLOOR AREA (Sq Ft)	2,672.47	2,256.99
BED/ROOM FLOOR AREA (Sq Ft)	0.00	0
TOTAL FLOOR AREA CALCULATIONS	7,045	4,758.65

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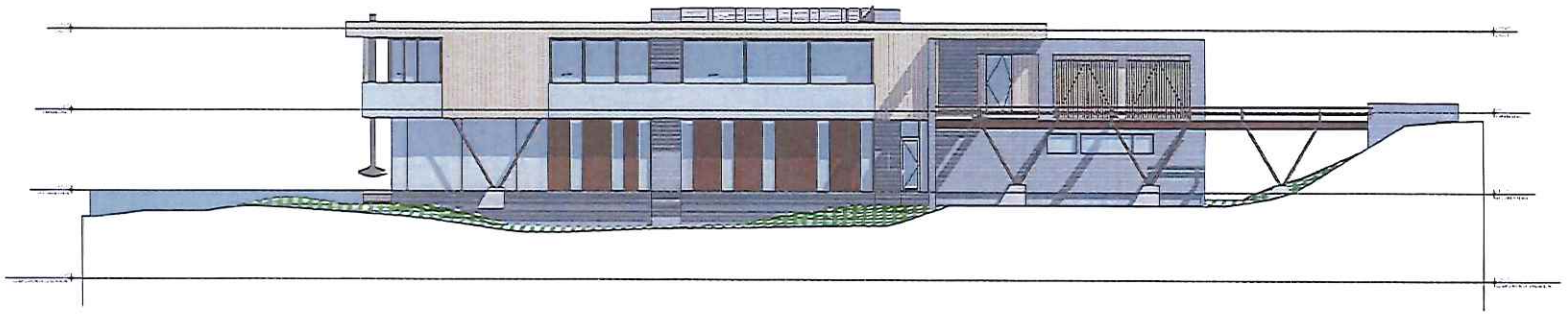
CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL DESIGN 2/20/17

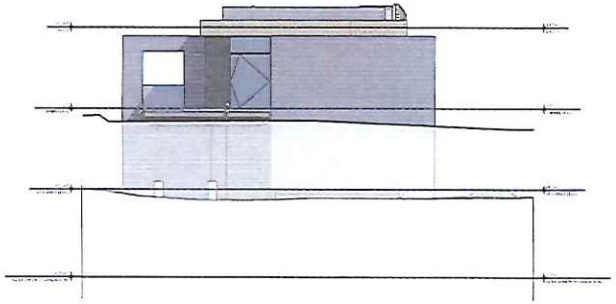
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PREFERRED OPTION
PROJECT No. 1609
DRAWN BY: DPY

SHEET No.
10.1

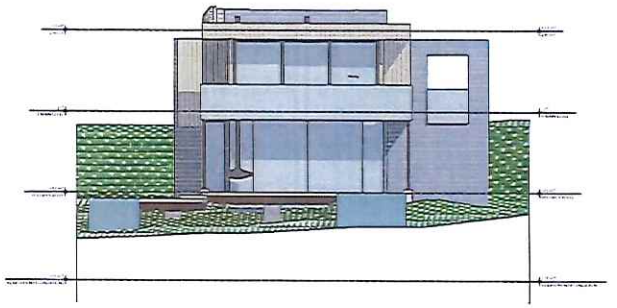
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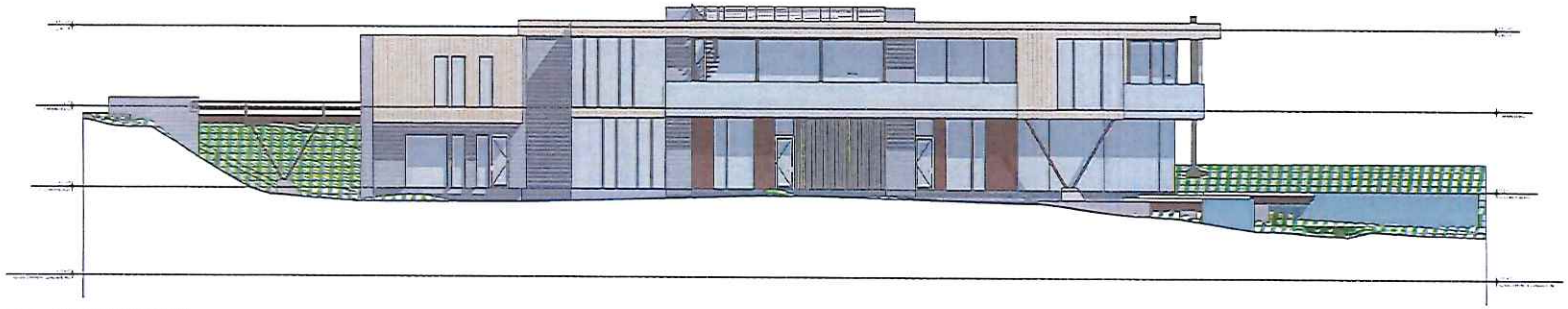
1 NORTH ELEVATION



3 WEST ELEVATION



2 EAST ELEVATION



4 SOUTH ELEVATION

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CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

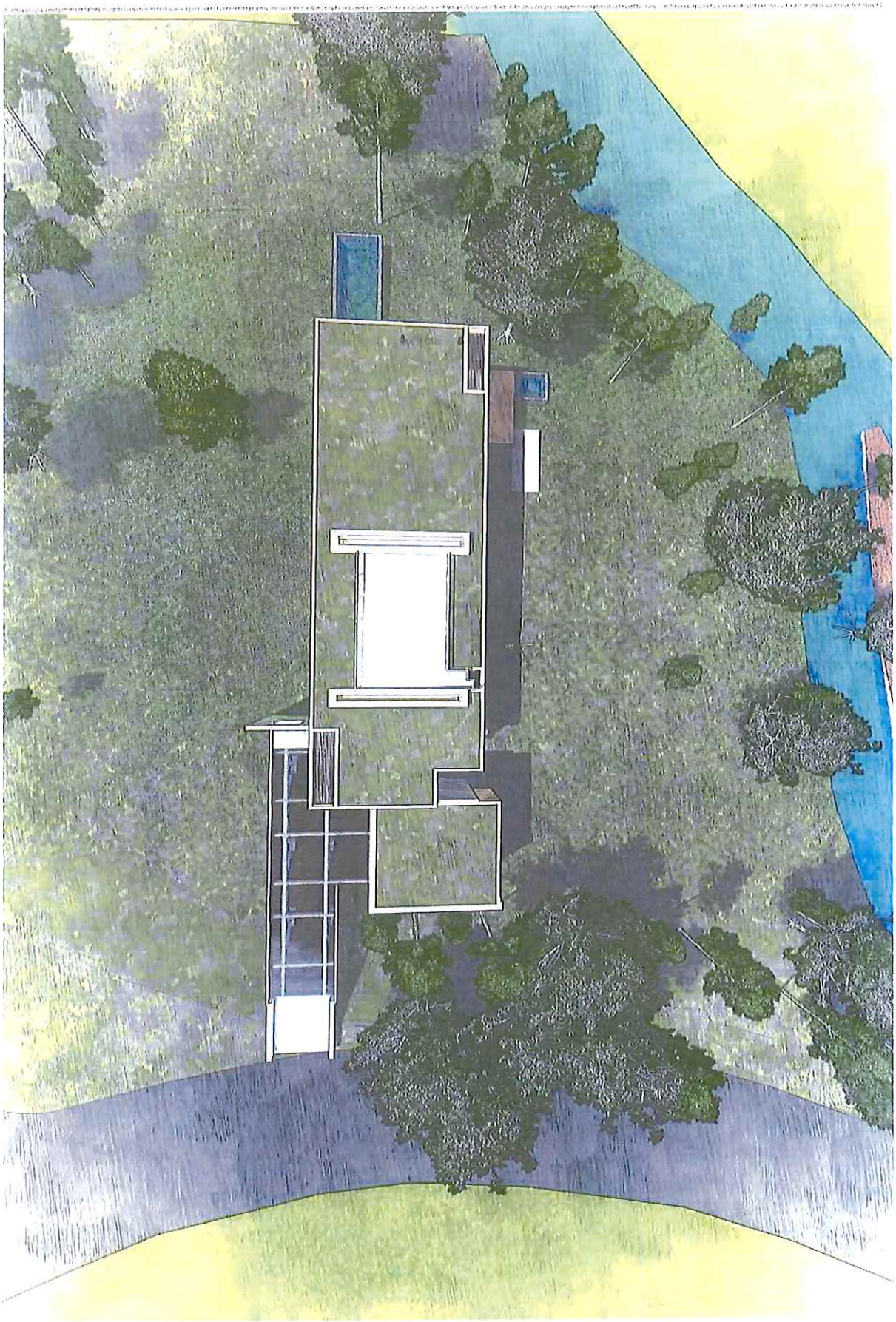
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CONCEPTUAL DESIGN

PROPOSED ELEVATIONS: PREFERRED OPTION

PROJECT No.
DRAWN BY

SHEET No.
11.0

Volumes\DJA-COMMON\Projects\Aspen\16 Projects\1609 - Shady Lane\Files\2017-02-28 FINAL PAZ\10 SERIES .pln Tuesday, February 28, 2017 12:35 PM



SHEET No.
11.1

PROPOSED ELEVATIONS:
PREFERRED OPTION

PROJECT No. 1015
DRAWN BY JM

DRAWING
CONCEPTUAL

ISSUE
PLANNING

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54 SHADY LN | ASPEN, CO

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DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE

54 SHADY LN | ASPEN, CO

DRAWING: CONCEPTUAL

ISSUE:

PROPOSED ELEVATIONS- PREFERRED OPTION

PROJECT No. 1920

DRAWN BY: DJ

SHEET No. 11.2

SHEET NO.
11.3

PROPOSED ELEVATIONS:
PREFERRED OPTION
SCALE: As noted
DRAWN BY: DH

DRAWING
CONCEPTUAL

ISSUE
2/20/17

CANOPY HOUSE

54 SHADY LN | ASPEN, CO

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SHEET No.
12.0

PROPOSED ELEVATIONS:
OPTION 3

DRAWING
CONCEPTUAL

ISSUE

CANOPY HOUSE

54 SHADY LN | ASPEN, CO

DAVID JOHNSTON
ARCHITECTS

DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE

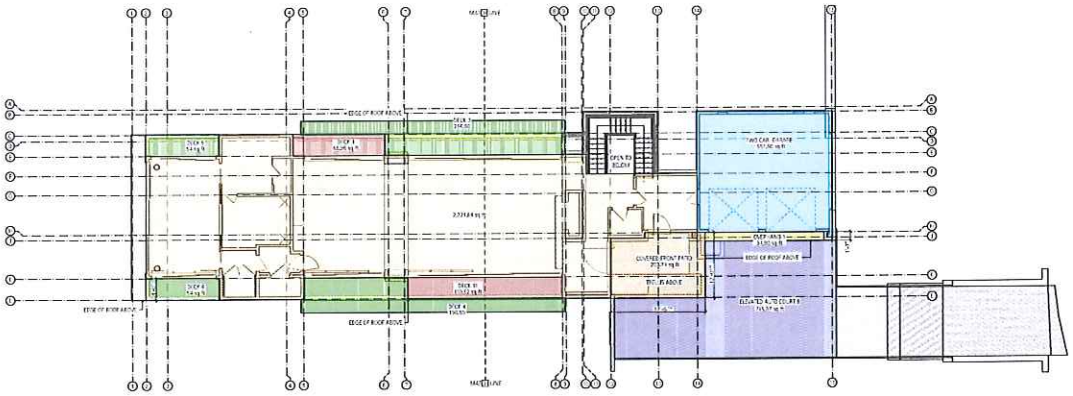
54 SHADY LN | ASPEN, CO

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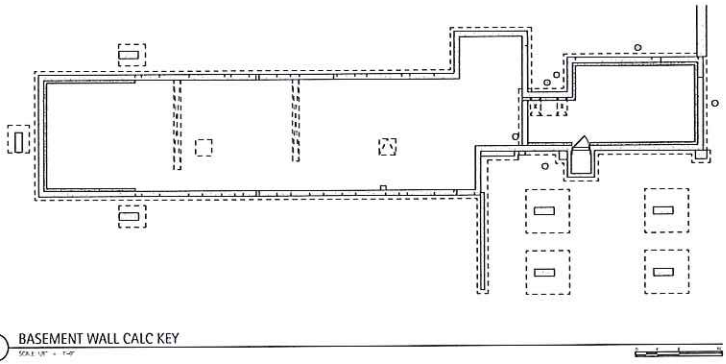
PROPOSED ELEVATIONS: OPTION B

SHEET No. 12.1

ATTACHMENT 3



2 MAIN FLOOR AREA PLAN PROPOSED



0 BASEMENT WALL CALC KEY

FLOOR AREA CALCULATIONS

DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE

183 RED MOUNTAIN RD | ASPEN, CO

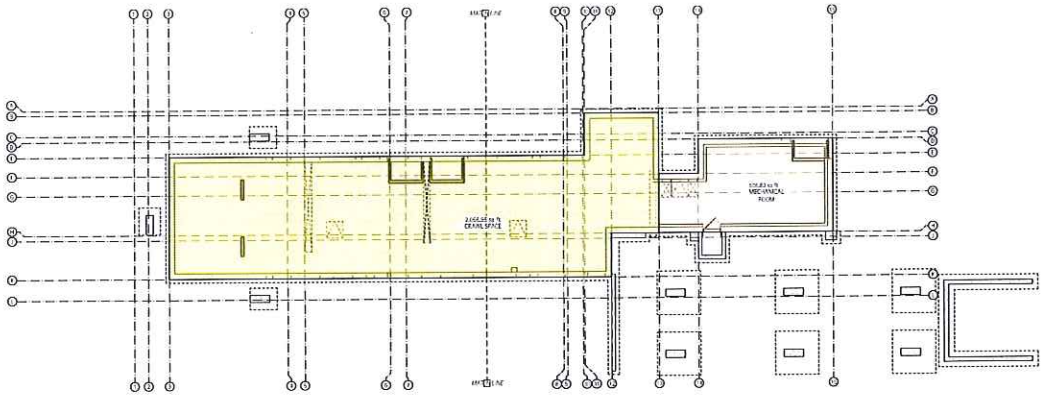
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FAR

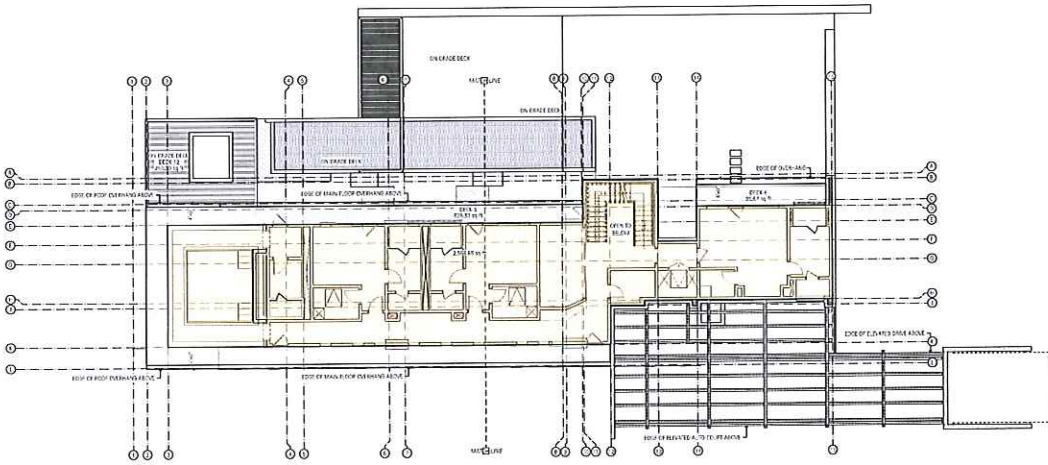
Sheet No.

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-1 BASEMENT AREA FLOOR PLAN PROPOSED



1 GROUND LEVEL AREA PLAN PROPOSED

DAVID JOHNSTON ARCHITECTS

CANOPY HOUSE

183 RED MOUNTAIN RD | ASPEN, CO

DRAWING ISSUE

FAR

Z1.06

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FLOOR AREA CALCULATIONS

CITY OF ASPEN ZONING SUBMISSION

183 RED MOUNTAIN RD

ZONE: R-30

PARCEL NUMBER: 273707200026

LOT AREA: 34,768 SF

ALLOWABLE FLOOR AREA 5,075 + (1) TDRs @ 250 soft each = 5,325

	AREA OF PROPERTY SQFT	LOT AREA SQFT
LANDS OF LESS THAN 20% SLOPE	23,383.68	23,383.68
LANDS OF 20%-30% SLOPE	2,398.77	1,199.39
LANDS OF GREATER THAN 30%	4,522.35	0
LANDS BELOW HIGH WATER LINE	4,463.2	0
TOTAL	34,768	24,583.07

PROPOSED BASEMENT LEVEL EXPOSED WALL CALCULATIONS		
MAIN LEVEL WALL LABEL	TOTAL WALL AREA (SQ FT)	EXPOSED WALL AREA (SQ FT)
1	149.31	0
2	294.63	20.93
3	94.16	0
4	63.32	0
5	55.15	0
6	216.98	0
TOTAL (SQ FT)	873.55	20.93
EXPOSED WALL AREA PERCENTAGE	2%	

BASEMENT LEVEL FLOOR AREA CALCULATIONS	Sq Ft	FAR
BASEMENT LEVEL (Sq Ft)	505.83	12.12
CRAWL SPACE	2,056.95	0.00
BASEMENT LEVEL COUNTABLE FLOOR AREA (SQ FT)	2,562.78	12.12
GROUND LEVEL FLOOR AREA CALCULATIONS		
GROUND LEVEL (Sq Ft)	2,568.65	2,568.65
GROUND LEVEL COUNTABLE FLOOR AREA (SQ FT)	2,568.65	2,568.65
MAIN LEVEL FLOOR AREA CALCULATIONS		
MAIN LEVEL (Sq Ft)	2,221.84	2,221.84
GARAGE (TWO STALL)	551.50	176.50
MAIN LEVEL COUNTABLE FLOOR AREA (SQ FT)	2,773.34	2,398.34
DECK/PATIO ABOVE GRADE FLOOR AREA (Sq Ft)		
1	65.96	65.96
2	110.52	110.52
3	256.50	256.50
4	191.50	191.50
5	54.00	54.00
6	54.00	54.00
	556.00	
8 ELEVATED AUTO COURT	715.97	715.97
COVERED FRONT PORCH	203.74	203.74
DECK AREA (SQ FT)		1,652.19
15% OF ALLOWABLE FAR (761.25)		890.94
OVERHANG		
OVERHANG 1	34.90	0
OVERHANG 2	25.91	0.00
OVERHANG COUNTABLE FLOOR AREA (SQ FT)	34.90	0.00
TOTAL FLOOR AREA CALCULATIONS		
BASEMENT LEVEL FLOOR AREA (Sq Ft)	2,562.78	12.12
LOWER LEVEL FLOOR AREA (Sq Ft)	2,568.65	2,568.65
MAIN LEVEL FLOOR AREA (Sq Ft)	2,773.34	2,398.34
DECK/PORCH FLOOR AREA (Sq Ft)	0.00	890.94
OVERHANG FLOOR AREA (Sq Ft)	34.90	0.00
TOTAL FLOOR AREA CALCULATIONS	7,904.77	5,870.05
GROSS AREA (NO CRAWL SPACE COUNTED)	5,882.72	
GROSS AREA [NO CRAWL SPACE OR OVERHANG COUNTED(HABITABLE OVERHANG COUNTED IN DECKS]	5,847.82	

ATTACHMENT 4

MEMORANDUM

TO: Brooke Peterson, City of Aspen Administrative Hearing Officer

FROM: Jessica Garrow, Community Development Director
Hillary Seminick, Planner

RE: **Appeal of Administrative Determination – Definition of Deck**
54 Shady Lane

HEARING DATE: September 21, 2017

COPY TO: Richard Y. Neiley Jr. Esq., Neiley Law Firm, LLC
James R. True Esq., City Attorney

APPLICANT:
Shady Red Mountain LLC, c/o Aspen Real Estate, LLC 623 E Hopkins Avenue, Aspen CO 81611. 970.320.1280 (collectively referred to as "The Applicant")

REPRESENTED BY:
Richard Y. Neiley Jr., Esq. of Neiley Law Firm, LLC

STAFF RECOMMENDATION:
Staff recommends that the Administrative Determination issued by the Community Development Director on June 15, 2017, regarding the elevated driveway and auto court at 54 Shady Lane be affirmed.

SUMMARY:
City of Aspen Land Use Code (LUC) authorizes a party affected by the application of a provision of the LUC to request an Administration Determination regarding the Code or the site specific approval. If the applicant requesting the determination does not agree with the issued determination, the applicant may appeal the decision to the City of Aspen's Administrative Hearing Officer.

An application for an Administrative Determination with regard to the application of the Land Use Code to an elevated auto court and driveway was requested by Richard Y. Neiley Jr., Esq., on behalf of Shady Red Mountain LLC, owner of property known as 54 Shady Lane. Planning and Zoning Commission Resolution No. 8, Series 2017 granted Stream Margin Review and a Variance for the development of a new residence on the property. The Applicant requested that the Commission determine the auto court, driveway and similar features not count towards Floor Area. However, the Planning and Zoning Commission does not have the authority to interpret the Land Use Code nor grant a Variance from Floor Area. The variance granted by the Planning and Zoning Commission involved a variance to set back regulations.

Following the Planning and Zoning approval, the Applicant requested a formal Determination that the definition of Deck does not apply to the elevated driveway and auto court pursuant to 26.575.020.D.4; *Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.* In this request for the determination, the applicant asserted that the elevated auto court does not fall within the Land Use Code definition of Deck, because the elevated auto court is not appended to a living space. The applicant asserted that on one side, the auto court is appended to the garage, which is not considered a living space, while on the other side, the auto court is appended to a porch, which is also not considered a living space.

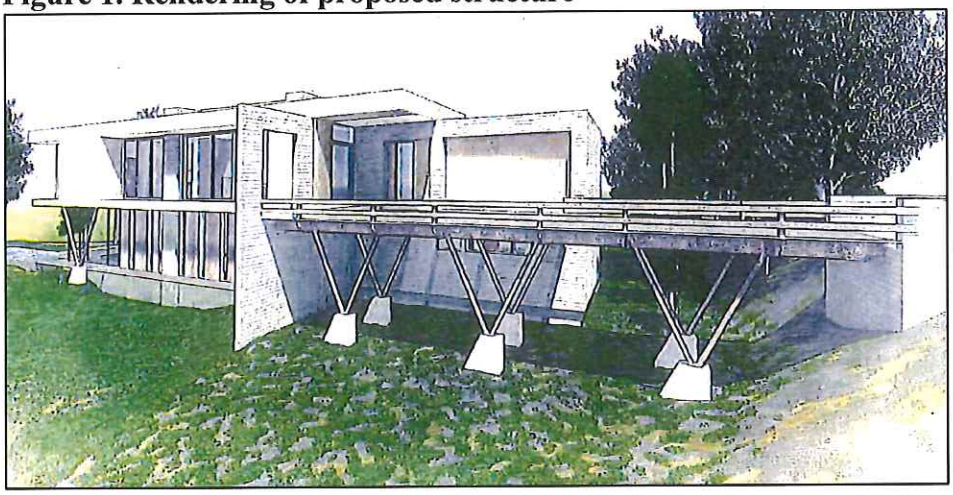
The Determination (Exhibit A), issued on June 15, 2017, stated the following:

a. Staff recognized the site conditions that led to this unique design solution of the elevated driveway and auto court, and P&Z Resolution No. 8, Series of 2017 that granted approval of Stream Margin Review and a Variance for a feature in the setback. However, neither of these approvals preclude the project from complying with other aspects of the Land Use Code, and there is a path to request a Floor Area Variance from City Council for the site-specific design.

b. Staff found that regardless of the application of the specific definition of Deck to all three of the elements in question, the elevated driveway, auto court, and similar features, and that these features remain subject to the 15% exemption and Floor Area calculation methods that apply to all exterior and above-grade features.

c. Specific to the site design, staff determined that the entirety of the continuous surface of the elevated driveway and auto court count toward the 15% Exemption and Floor Area Calculation. Specifically, the driveway begins to count toward these features at the point that it leaves the solid concrete pier that creates the connection to Red Mountain Road, depicted in Figure 1. The entirety of the elevated platform, including the driveway, the auto court, and the covered front porch area are included toward the 15% exemption and Floor Area Calculations based on the plain language of the Code.

Figure 1. Rendering of proposed structure



An Application for an Appeal of the Administrative Determination was deemed complete on June 27, 2017.

BASIS FOR ADMINISTRATIVE DETERMINATION:
The following findings established the basis for the Determination.

1. The elevated driveway and auto court are to be calculated as "Deck"
   The Administrative Determination relied on the following definitions found in the LUC

   26.104.100. Definitions, Deck. An outdoor, unheated area appended to a living space but not intended for living.

   The Determination assessed, based on the plans provided, that the surface of the elevated driveway and auto court attach to several portions of the primary structure, including the garage, two exterior walls that define the main entry to the house, and a mudroom. Therefore, Staff found the auto court and driveway, which are both unconditioned outdoor spaces not intended for living are appended to a living space, as meeting the plain language of the definition of Deck.

   26.575.020.D.4 Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.
   (a) The calculation of the Floor Area of a building or a portion thereof shall not include decks, balconies, trellis, exterior stairways, non-Street facing porches, gazebos and similar features, unless the area of these features is greater than fifteen percent (15%) of the allowable floor area for the property and the use and density proposed, or as otherwise exempted by this Section. (Emphasis added.)

   In subsection (a), Staff determined that because the auto court and driveway are unconditioned areas appended to a living space, that while the elements may not be a Deck in the traditional sense, that they are certainly a "similar feature".

26.575.020.5 Front Porches. Porches on Street-facing façade(s) of a structure developed within thirty (30) inches of the finished ground level shall not be counted towards allowable Floor Area. Otherwise, these elements shall be attributed to Floor Area as a Deck.

The front porch on the proposed structure is not within 30" of grade; therefore, it is calculated as Deck, based on the plain language in the Code.

STANDARD OF REVIEW:
Section 26.316.030(E) reads as follows:

Standard of review. Unless otherwise specifically stated in this title, the decision-making body authorized to hear the appeal [Administrative Hearing Officer] shall decide the appeal based solely upon the record established by the body from which the appeal is taken [Community Development Director]. A decision or determination shall not be reversed or modified unless there is a finding that there was a denial of due process, or the administrative body has exceeded its jurisdiction or abused its discretion.

The Land Use Code does not define the terms: "a denial of due process", "exceeded its jurisdiction," or "abused its discretion." Court cases, however, have helped define these terms as follows and may be used by Council in its deliberation of the appeal:

A denial of due process may be found if some procedural irregularity is determined to have occurred that affected a significant right of the appellant, or the administrative body otherwise acted in violation of the appellant's constitutional or statutory rights. *Ad Hoc Executive Committee of Medical Staff of Memorial Hospital v Runyan*, 716 P. 2d 465 (Colo. 1986.)

A decision may be considered to be an abuse of discretion if the "decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority." *Ross v Fire and Police Pension Ass'n.,* 713 P.2d 1304 (Colo. 1986); *Marker v Colorado* Springs, 336 P.2d 305 (Colo. 1959).

A decision may be considered to be in excess of jurisdiction if the decision being appealed from "is grounded in a misconstruction or misapplication of the law," *City of Colorado Springs v Givan*, 897 P.2d 753 (Colo. 1995); or, the decision being appealed from was not within the authority of the administrative body to make. *City of Colorado Springs v SecureCare Self Storage, Inc., 10 P.3d 1244 (Colo.* 2000).

STAFF COMMENT:

1) ***Due Process*** – A Stream Margin Review and a Setback Variance were granted by the Planning and Zoning Commission to demolish and replace an existing residence and construct a driveway. The plan for the site-specific review was submitted with a raised driveway and auto court and were determined by Staff to be calculated as Deck pursuant to the LUC at that time. The Planning and Zoning Commission does not have the authority to interpret the LUC; nor grant a Variation to floor area requirements. Therefore, the Applicant formally requested an Administrative Determination regarding Staff's initial assessment of the elevated driveway and auto court

elements. The issue was researched and the requirement in the Code to calculate these features as Deck was confirmed by the Determination. The Determination was issued and publicly noticed. Information regarding the Appeal Process was forwarded to the Applicant. The Application for the Appeal was received within 14 days of the issuance of the determination. The Appeal was publicly noticed. *Staff asserts that proper procedural due process has been provided.*

The Administrative Determination referred to the LUC provisions regarding the definition of Deck and the calculation of Deck in place at the time the Determination was deemed complete. The Administrative Determination confirmed this decision. *Staff asserts that use of applicable code language, timeline of approvals, and expiration of vested rights, provide substantive due process.* This was not an arbitrary decision.

2) ***Discretion*** – The Determination issued by the Community Development Director were based on the interpretation of the LUC in effect at the time of the Application. *The Determination was not arbitrary or capricious in the exercise of authority.*

3) ***Jurisdiction*** – The Director's jurisdiction includes the ability to make decisions regarding the Measurements and Calculation section (26.575.020). This function is at the heart of all zoning reviews of development projects. *Staff asserts that the Determination issued by the Director confirming the interpretation of how these elements are to be calculated pursuant to the LUC are both necessary components of the Director's authority and disagrees that the determination was "in excess of jurisdiction."*

ACTIONS FOLLOWING APPEAL HEARING:
Section 26.316.030(F) reads as follows:

> Action by the decision-making body hearing the appeal. The decision-making body hearing the appeal may reverse, affirm, or modify the decision or determination appealed from, and, if the decision is modified, shall be deemed to have all the powers of the officer, board or commission from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the appellant. The decision shall be approved by resolution. All appeals shall be public meetings.

CONCLUSION:
Staff believes the Director's Administrative Determination was rendered appropriately, provided procedural and substantive due process, and did not exceed jurisdiction or abuse discretion. **Staff recommends the Administrative Hearing Officer affirm the Director's determination. Additionally, it should be noted that the Code provides a path for an applicant needing a variation to the Floor Area requirements. In this instance the Code authorizes an Applicant to apply to City Council for a variation from this Floor Area requirement.**

EXHIBITS:
Exhibit A: 54 Shady Lane Administrative Determination
Exhibit B: 54 Shady Lane Appeal Application
Exhibit C: Resolution No. 8, Series 2017
Exhibit D: Public Notice

CITY OF ASPEN
COMMUNITY DEVELOPMENT DEPARTMENT

AN ADMINISTRATIVE DETERMINATION FOR THE PROPOSED REDEVELOPMENT OF A MEETS AND BOUNDS PARCEL AT 54 SHADY LANE, CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.

PARCEL ID:	2735-131-06-002
JURISDICTION:	City of Aspen
APPLICABLE CODE SECTIONS:	26.575.020.D.4.a-b Measurements and Calculations, Measuring Floor Area 26.104.100 Definition of "deck"
EFFECTIVE DATE:	June 15, 2017
WRITTEN BY:	Ben Anderson, Planner
APPROVED BY:	Jessica Garrow, Community Development Director
	June 15, 2017 Jessica Garrow
COPIES TO:	City Planning Staff, City Attorney

SUMMARY:
This administrative determination clarifies if an elevated driveway and auto court as proposed in the design for a site specific, single family residential redevelopment at 54 Shady Lane shall count toward the allowable Floor Area exemption and calculation of exterior features as described by the *Measurements and Calculations* (26.575.020) section of the City of Aspen Land Use Code. The determination is requested by Shady Red Mountain LLC, represented by Richard Y. Neiley Jr., Esq. of Neiley Law Firm, LLC.

On April 4, 2017, the Planning and Zoning Commission, in Resolution No. 8, Series of 2017, approved a Stream Margin review of the full project and a Variance for a feature in a setback. A focus of the P&Z approval was the mechanism for vehicle access to the property from Red Mountain Road. Supported by referral comments from the Engineering and Parks Department, the Applicant's proposal for an elevated driveway and auto court was the preferred alternative for vehicle access and was a central feature of the approval. The question of the floor area calculation of the driveway/auto court was raised by the Applicant in the Land Use Application. As the P&Z Commission is not authorized to interpret the code or grant a Variance to increase Floor Area as

that power rests solely with City Council, staff determined that this issue should be handled separately from the P&Z review.

Specifically, this application requests a Determination as to whether the driveway and auto court fall into the category of deck and other external features that receive an exemption of up to 15% of the allowable Floor Area for a property before any excess to the 15% is included in the calculation towards allowable Floor Area. In preliminary meetings for the P&Z hearing, Staff conveyed the position that the elevated drive and auto court would be counted toward the 15% exemption and Floor Area calculation. The Applicant disagrees with this position and presents an argument within the application against the inclusion of the driveway and auto court in this calculation.

BACKGROUND:

Section 26.575.020.D.4; *Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street–facing porches,* is a frequently referenced section of the Land Use Code that provides specific definition to how exterior and above-grade features are calculated towards allowable Floor Area. Usually labeled the "deck exemption" by Staff and the development community, this section allows an exemption of up to 15% of the allowable Floor Area for a property for the combined square footage of these features before any excess beyond the 15% is counted in total towards the allowable Floor Area. The intent of this section is to allow a reasonable addition of these exterior and above-grade features. It is also meant to discourage excessive exterior, attached features that would fundamentally change the massing of a house beyond that which is intended by the allowable Floor Area in a particular zone district. The language of Section 26.575.020.D.4.a-b; is as follows:

> 4. Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.
>
> a. The calculation of the Floor Area of a building or a portion thereof shall not include decks, balconies, trellis, exterior stairways, non-Street facing porches, gazebos and similar features, unless the area of these features is greater than fifteen percent (15%) of the allowable floor area for the property and the use and density proposed, or as otherwise exempted by this Section.
>
> b. If the area of these features exceeds fifteen percent (15%) of the property's allowable Floor Area (for that use and density proposed) only the areas in excess of the fifteen percent (15%) shall be attributed towards the allowable Floor Area for the property. The allowable Floor Area for the purpose of this calculation refers to the Floor Area calculation based on the Net Lot Area, as defined in this chapter or as prescribed by a site specific approval, with the following exceptions: Floor Area bonus, or established or extinguished Transferrable Development Right certificates are not included.

The above-grade nature of the features described in this section is of particular importance to the subject of this Determination. Elsewhere in 26.575.020.D, the code allows for total exemption of the area of an at-grade patio from allowable Floor Area calculations. The reasoning behind this is that at-grade features do not contribute to the perceived massing of the house. Per code, once a patio reaches six inches above grade or is covered by roof overhangs of greater than four feet, the patio feature then begins to count toward the 15% exemption and calculation toward allowable Floor Area. Again, the reasoning behind this is that the above-grade nature of the patio and the roof overhangs add to the massing of the house – and thus should be calculated towards the

exemption and/or Floor Area. Like at-grade patios, at-grade driveways are not calculated toward allowable Floor Area.

In the Application for the Determination, the Applicant contends that the elevated driveway and auto court does not meet the definition of a "deck" as presented in the Land Use Code – and therefore should not be subject to the code language describing the 15% exemption to Floor Area and Floor Area calculation. The definition from 26.104.100 for "deck" is as follows:

> "An outdoor, unheated area appended to a living space but not intended for living."

In Exhibit A, the site plan shows the continuous surface of the elevated driveway and auto court attaching to the garage, and two, exterior walls that define the main entry to the house and a mudroom.

DETERMINATION:
Staff recognizes the site conditions that led to this unique design solution of the elevated driveway and auto court, and P&Z Resolution No. 8, Series of 2017 that granted approval of Stream Margin Review and a Variance for a feature in the setback. However, neither of these approvals preclude the project from complying with other aspects of the Land Use Code.

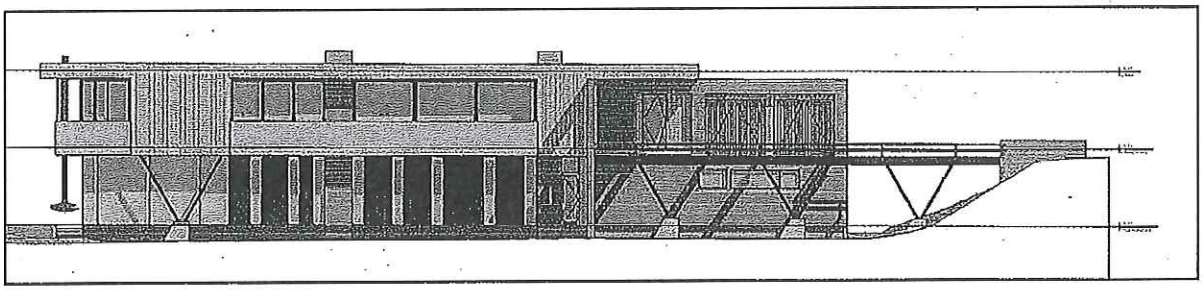


Figure 1. North Elevation of the proposed design for 54 Shady Lane. At the right of the image is the driveway and auto court as it leaves Red Mountain Rd. before connecting to the garage and front entry of the home. Courtesy of David Johnston Architects.

Staff finds that regardless of the application of the specific definition of "deck" to the elevated driveway and auto court, these features remain subject to the 15% exemption and Floor Area calculation methods that apply to all exterior and above-grade features. In the language in 26.575.020.D.4.a (specified above), a list of the specific features that are subject to this calculation ends with the less precise term "similar features." What makes this list of features similar are these qualities: exterior and above-grade. Staff finds that the driveway and auto court have these qualities and if not under the definition of "deck", are certainly subject under the term, "similar features".

One of the most important aspects of any land use code, and certainly of Aspen's Land Use Code, is the proscription of floor area limitations that reflect community desires for the scale and massing of buildings that are appropriate to a particular zone or parcel size. In this specific case, the elevated driveway and auto court create significant, additional massing to a design that has already

maximized allowable floor area and exhausted the 15% exemption with the primary form of the house.

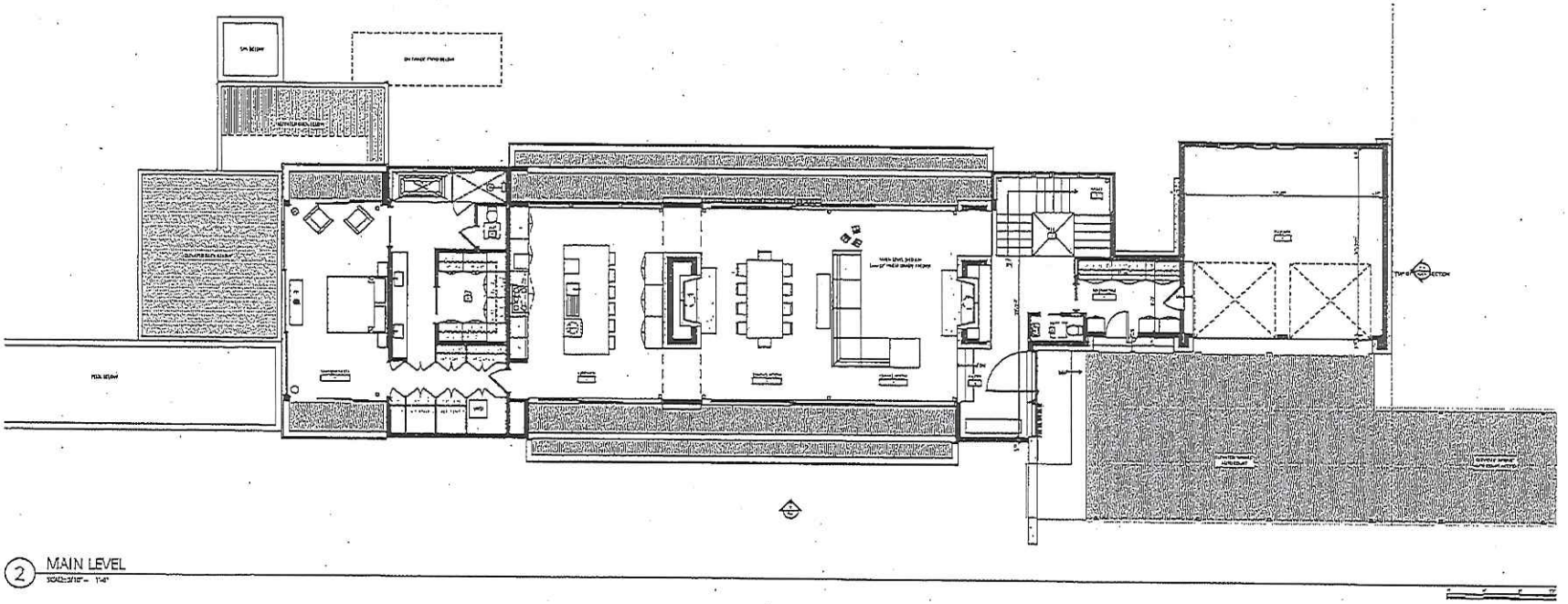
Specific to the site design, staff determines that the entirety of the continuous surface of the elevated driveway and auto court shall count toward the 15% Exemption and Floor Area Calculation. Precisely, the driveway begins to count toward these features at the point that it leaves the solid concrete pier that creates the connection to Red Mountain Road. The entirety of the elevated platform, including the driveway, the auto court and the covered front porch area (as it is greater than 30" above grade) and shall be included toward the exemption and Floor Area calculation.

APPEAL OF DECISION:
Any person with a right to appeal an adverse decision or determination shall initiate an appeal by filing a notice of appeal on a form prescribed by the Community Development Director. The notice of appeal shall be filed with the Community Development Director and with the City office or department rendering the decision or determination within fourteen (14) days of the date of the decision or determination being appealed. Failure to file such notice of appeal within the prescribed time shall constitute a waiver of any rights under this Title to appeal any decision or determination.

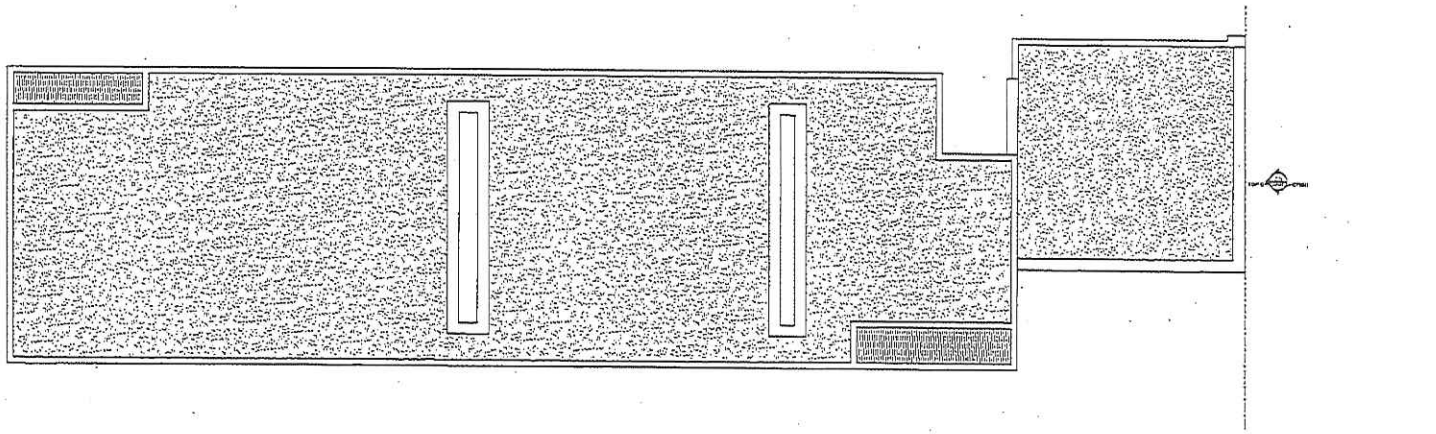
This administrative determination was issued and becomes effective on June 15, 2017.

ATTACHMENTS:
Exhibit A - Site Plan for the Entry Level of the Residence

Exhibit A



2 MAIN LEVEL



3 ROOF PLAN

DAVID JOHNSTON ARCHITECTS PC

110 South Spring St.
Suite 203
Aspen, CO 81611
TEL 970-925-3444
FAX 970-925-3446

CANOPY HOUSE

54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL DESIGN 4/11/17

FLOOR PLANS

PROJECT No: 1603
DRAWN BY: DM

SHEET No.
3.2

Alsers\ofnirash\Desktop\SHADY LN_2017-02-20_CptA Tuesday, April 11, 2017 9:52 AM

ATTACHMENT 5

SHADY RED MOUNTAIN, LLC
c/o Aspen Real Estate LLC
623 East Hopkins Avenue
Aspen, Colorado 81611
(970) 920-1280

September 18, 2019

City of Aspen Community Development
130 South Galena Street
Aspen, Colorado 81611

Re: 183 Red Mountain Drive, f/k/a 54 Shady Lane, City of Aspen
State of Colorado – Parcel ID No. 273707200026

Dear Sir/Madam:

Please accept this letter as authorization for Richard Y. Neiley, Jr. and the Neiley Law Firm, LLC, aspenlaw@neileylaw.com and David Johnston and David Johnston Architects, david@djarchitects.com to represent Shady Red Mountian, LLC in connection with a Land Use Application for a Floor Area Variance and related land use reviews and approvals for the above-referenced property.

SHADY RED MOUNTAIN, LLC

By: _____
Mark Friedland, Manager
Aspen Real Estate LLC, Manager
of Shady Red Mountain, LLC

ATTACHMENT 6

CERTIFICATION OF OWNERSHIP

The undersigned, Richard Y. Neiley, Jr., an attorney licensed to practice law in the State of Colorado, Colorado Attorney Registration No. 9878, hereby certifies as follows:

1. The owner of the real property located at 183 Red Mountain Road f/k/a 54 Shady Lane is Shady Red Mountain, LLC, a Colorado limited liability company. The Deed vesting title to the owner was recorded on April 18, 2017, as Reception No. 637693, is appended hereto.

2. There are no mortgages, judgments, liens, easements, contracts or agreements affecting the use and development of the subject real property or that could conflict with the approvals requested for the property.

3. The address of the property is 183 Red Mountain Road, Aspen, Colorado 81611. The Parcel ID No. is 273707200026.

4. There are no mineral reservations and there are no third parties who own any mineral interests in the subject real property.

5. There is legal access to the subject real property via Red Mountain Road, a public right of way.

6. The manager and authorized representative for Shady Red Mountain, LLC is Aspen Real Estate, LLC. The manager and authorized representative of Aspen Real Estate, LLC is Mark Friedland. A Certificate of Authority is appended hereto.

RICHARD Y. NEILEY, JR.

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing Certificate of Ownership was acknowledged and signed before me this 18th day of September, 2019, by RICHARD Y. NEILEY, JR.

WITNESS my hand and official seal.

My commission expires: March 1, 2022

ANDREA JO CROUSE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20184009874
My Commission Expires March 1, 2022

Notary Public

RECEPTION#: 637693, R: $28.00, D: $836.00
DOC CODE: WD
Pg 1 of 4, 04/18/2017 at 04:21:52 PM
Janice K. Vos Caudill, Pitkin County, CO

After recording return to:
Attorneys Title Insurance Agency of Aspen, LLC
715 West Main Street, Suite 202
Aspen, Colorado 81611

Doc fee $835.00

GENERAL WARRANTY DEED

THIS DEED is dated 18 April 2017, is granted and made by and between **LEILA LLC**, a Colorado limited liability company (the "Grantor") and **SHADY RED MOUNTAIN LLC**, a Colorado limited liability company, whose mailing address is: c/o Aspen Real Estate LLC, 623 East Hopkins Avenue, Aspen, Colorado 81611 (the "Grantee").

WITNESS, that the Grantor, for and in consideration of the sum of Eight Million, Three Hundred Fifty Thousand, and 00/100 U.S. Dollars ($8,350,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys and confirms unto the Grantee and the Grantee's successors and assigns forever, all the real property, together with any improvements thereon, located in the City of Aspen, Colorado, described as:

A tract of land situated in the SW1/4 NW1/4 of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described as follows:

Beginning at a point on the Easterly right-of way line of the Denver & Rio Grande Wester Railroad (Aspen Branch) whence the West Quarter corner of said Section 7 bears West 602.4 feet;
thence East 214.6 feet to the Westerly right-of-way line of the Red Mountain Road;
thence along the arc of a curve to the right, the chord of which bears N 12°56' E 215.5 feet to the center of Hunter Creek;
thence Southerly along the center of Hunter Creek, along the arc of a curve, the chord of which bears S 68°02'04" W 296.19 feet, to the Easterly line of said railroad right-of-way;
thence 08°57' E 90.6 feet along the Easterly line of said Railroad right-of-way to the point of beginning.

EXCEPT that portion of the above described property as conveyed to The Board of County Commissioners of Pitkin County in Deed recorded December 31, 1987 in Book 554 at Page 159.

TOGETHER WITH a parcel of land situated in the SW1/4 of the NW1/4 of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, more fully described in the Quit Claim Deed, dated November 2, 1993, and recorded November 2, 1993, in Book 729 at Page 114, as Reception No. 462765.

Beginning at a point on the Westerly line of Red Mountain Road whence the West Quarter Corner of said Section 7, Township 10 South 84 West of the Sixth Principal Meridian bears S 80°26'18" W 829.66 feet;
Thence 17.0 feet along the arc of a curve to the right, having a radius of 218.33 feet, the chord of which bears 23°12'01" E 17 feet;
thence S 64°34'07" E 13.00 feet; thence 15.99 feet along the arc of a curve to the left, having a radius of 205.33 feet, the chord of which bears N 69°01'53" W 15.99 feet;
thence 69°01'53" N 13.00 feet to the point of beginning, Pitkin County, Colorado.

Also known as: 54 Shady Lane, Aspen, Colorado 81611

Attorneys Title Agency of Aspen- 16-3652

CITY OF ASPEN
WRETT PAID
REP
DATE 4/18/17 MH
NO. 52612

CITY OF ASPEN
WRETT PAID
REP
DATE 4/18/17 MH
NO. 52612

GENERAL WARRANTY DEED

Pitkin County, Colorado

Leila LLC
to:
Shady Red Mountain LLC

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, rights, titles, interests, claims and demands whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee and the Grantee's successors and assigns forever.

The Grantor, for itself and its successors and assigns, covenants, grants, bargains, and agrees to and with the Grantee, and the Grantee's successors and assigns that at the time of the ensealing and delivery of these presents, the Grantor is well seized of the premises above conveyed; has good, sure, perfect, absolute and indefeasible estate of inheritance, in law and in fee simple; and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except taxes for 2017, not yet due and payable, and:

1. Right of way for electric wires across the S1/2 NW1/4 and the NE1/4 SW 1/4 of Section 7, as granted to James H. Devereu, as described in the Quit Claim Deed, dated October 18, 1886, and recorded January 20, 1887, in Book 29 at Page 582, as Reception No. 018020.

2. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as described in the United States Patent dated October 28, 1902, and recorded December 24, 1902, in Book 55 at Page 116, as Reception No. 067875.

3. Terms, conditions, provisions, agreements and obligations specified under the Easement for Right of Way, dated March 30, 1904, and recorded April 25, 1904, in Book 143 at Page 52.

4. Terms, conditions, provisions, agreements and obligations specified under the Private Way License, dated February 1, 1949, and recorded in Book 180 at Page 360, as Reception No. 102374.

5. Easement for the Little Williams Ditch as set forth in the Agreement for Partition of Water Rights dated August 1, 1955, and recorded August 2, 1955, in Book 180 at Page 387, as Reception No. 102731.

6. Terms, conditions, provisions, agreements and obligations specified under the Private Way License, dated July 15, 1959, and recorded August 20, 1959, in Book 188 at Page 366, as Reception No. 108447, and re-recorded December 17, 1987, in Book 553 at Page 346, and Approval and Grant of Assignment of Private Way Easement, recorded December 17, 1987, in Book 553 at Page 343, as Reception No. 295895.

7. Any and all notes, easements and recitals as disclosed on the recorded Plat of Survey, recorded May 5, 1964, in Plat Book 2A at Page 315, as Reception No. 117650.

GENERAL WARRANTY DEED

Pitkin County, Colorado

Leila LLC
to:
Shady Red Mountain LLC

8. Mineral reservations are contained in the Deed, dated June 18, 1969, and recorded September 11, 1969, in Book 243 at Page 217, as Reception No. 136967, and in the Deed recorded in Book 310 at Page 340, and in the Quitclaim Donation Deed, recorded June 2, 1976, in Book 312 at Page 560, as Reception No. 184209.

9. Terms, conditions, provisions, agreements and obligations specified under the Agreement for the Construction of Road Improvements, dated December 29, 1987, and recorded December 31, 1987, in Book 554 at Page 161, as Reception No. 296212.

10. Terms, conditions, provisions, agreements and obligations specified under the Emergency Ordinance of the Board of County Commissioners of Pitkin County, Colorado, Approving Friedberg Land Donation (Ordinance No. 87-42) recorded December 31, 1987, in Book 554 at Page 185, as Reception No. 296222, and an Ordinance of the Board of County Commissioners of Pitkin County, Colorado, Approving Friedberg Boundary Adjustment (Ordinance No. 93-03) recorded March 24, 1993, in Book 706 at Page 872, as Reception No. 355180.

11. Terms, conditions, provisions, agreements and obligations specified under the Quit Claim Deed, dated November 2, 1993, and recorded November 2, 1993, in Book 729 at Page 114, as Reception No. 362765, and re-recorded November 3, 1993, in Book 729 at Page 337, as Reception No. 362829.

12. Terms, conditions, provisions, agreements and obligations specified under the Resolution of the Aspen Planning and Zoning Commission Approving a Stream Margin Review to Construct a 470 Square Foot Addition to the Single-Family Residence Located at 54 Shady Lane, City of Aspen, Pitkin County, Colorado (Resolution No. 26 - Series of 2004) recorded August 10, 2004, as Reception No. 500597.

13. Any increase or decrease in the area of the land and any adverse claim to any portion of the land which has been created by or caused by accretion or reliction, whether natural or artificial; and the effect of the gain or loss of area by accretion or reliction upon marketability of the title of the land.

14. Any rights, interests or easements in favor of the United States, the State of Colorado or the public, which exists or are claimed to exist in and over the present and past bed, banks or waters of The Roaring Fork River and Hunter Creek.

And the Grantor shall and will WARRANT AND FOREVER DEFEND the above described premises, in the quiet and peaceable possession of the Grantee and the successors and assigns of the Grantee, against all and every person or persons claiming the whole or any part thereof.

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

GENERAL WARRANTY DEED

Pitkin County, Colorado

Leila LLC
to:
Shady Red Mountain LLC

LEILA LLC,
a Colorado limited liability company

Jean-Pierre L. Conte, Managing Member

State of California)
) ss
County of San Francisco)

The foregoing **Warranty Deed**, was executed and acknowledged before me on this 17th day of April 2017, by Jean-Pierre L. Conte, as Managing Member of Leila LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: NOV. 20, 2019

Notary Public

JUDY A. ROSSI
Commission # 2134509
Notary Public - California
San Francisco County
My Comm. Expires Nov 20, 2019

JUDY A. ROSSI
Commission # 2134509
Notary Public - California
San Francisco County
My Comm. Expires Nov 20, 2019

RECEPTION#: 637692, R: $13.00, D: $0.00
DOC CODE: AUTH
Pg 1 of 1, 04/18/2017 at 04:21:51 PM
Janice K. Vos Caudill, Pitkin County, CO

After recording return to:
Attorneys Title Insurance Agency of Aspen, LLC
715 West Main Street, Suite 202
Aspen, Colorado 81611

Attorneys Title Agency of Aspen 16-3652

STATEMENT OF AUTHORITY

1. This *Statement of Authority* is for the entity named: **SHADY RED MOUNTAIN LLC.**

2. **SHADY RED MOUNTAIN LLC**, is a Colorado limited liability company.

3. The current mailing address for: **SHADY RED MOUNTAIN LLC**, is: c/o Aspen Starwood LLC, 623 East Hopkins Avenue, Aspen, Colorado 81611.

4. Mark Friedland is duly authorized by **SHADY RED MOUNTAIN LLC**, without limitation, to execute instruments encumbering, acquiring or otherwise affecting title to certain real property to be purchased by it in Pitkin County, Colorado, described as metes and bounds:

Also known as: 54 Shady Lane, Aspen, Colorado 81611.

5. This *Statement of Authority* is executed and delivered pursuant to C.R.S. §38-30-172, by the undersigned on behalf of: **SHADY RED MOUNTAIN LLC.**

6. This *Statement of Authority* amends, supercedes and replaces in all respects any prior *Statement of Authority* given by **SHADY RED MOUNTAIN LLC.**

7. The undersigned intends and understands that the representations contained in this *Statement of Authority* will be relied upon by third-parties, expressly including, but not limited to Attorneys Title Insurance Agency of Aspen, LLC, relating to the purchase of the described real property.

SHADY RED MOUNTAIN LLC,
a Colorado limited liability company

By: **Aspen Real Estate LLC,**
a Colorado limited liability company,
Its Manager

Mark Friedland, Manager

State of Colorado)
) ss
County of Pitkin)

The foregoing **Statement of Authority** was executed and acknowledged before me on 14 April 2017, by Mark Friedland, as Manager of Aspen Real Estate LLC, a Colorado limited liability company, the Manager of Shady Red Mountain LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires:

NICOLE LESBY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084004424
MY COMMISSION EXPIRES FEB. 6, 2020

Notary Public

ATTACHMENT 7

CITY OF **ASPEN**

PRE-APPLICATION CONFERENCE SUMMARY

DATE: August 28, 2019
PLANNER: Bob Narracci, 429.2754
PROJECT NAME AND ADDRESS: 183 Red Mountain Road / fka 54 Shady Lane
PARCEL ID#: 273707200026
OWNER: Shady Red Mountain, LLC
REPRESENTATIVE: Richard Y. Neiley, Jr., Neiley Law Firm, LLC

DESCRIPTION: (Existing and Proposed Conditions)
An application for an Administrative Determination regarding the applicability of the Land Use Code to an elevated auto court and driveway was requested by Richard Y. Neiley Jr., Esq., on behalf of Shady Red Mountain, LLC, owner of the subject property. Planning and Zoning Commission Resolution No. 8, Series of 2017 granted Stream Margin Review and a Variance for the development of a new residence on the property. The Applicant requested that the Commission determine the auto court, driveway, and similar features not count towards Floor Area. However, the Planning and Zoning Commission does not have the authority to interpret the Land Use Code nor grant a Variance from Floor Area.

Following the Planning and Zoning approval, the Applicant requested a formal Administrative Determination that the definition of Deck does not apply to the elevated driveway and auto court pursuant to 26.575.020.D.4, *Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.*

The Administrative Determination was issued on June 15, 2017 reaffirming that the elements in question, the elevated driveway, auto court, and similar features, are equivalent to 'deck' area and count toward the 15% Exemption and Floor Area Calculations. The applicant appealed the Administrative Determination to the City of Aspen Administrative Hearing Officer. The outcome of the appeal is that the portion of the elevated driveway does not count towards 'deck' area; however, the elevated auto court does. Based on this outcome, the applicant applied for a building permit for the new single-family residence and the permit was issued on May 1, 2019.

The applicant is now requesting a variance for Floor Area by City Council. In support of this request, the applicant states that, *"The site is unique in that there is a significant difference in elevation between Red Mountain Road and the building envelope. To avoid site disruption and minimize the removal of trees, we came up with the concept of an elevated driveway and auto court. Because the City considered the auto court to be a deck, it counts against available FAR. As a consequence, we lost over 700 square feet. The property owner feels that the elevated auto court was the best design for the property because it preserved the site and the trees. However, my client does not feel it should be penalized for developing an innovative, environmentally friendly access. We would like to recover 400 square feet to be used for an exterior deck on the property".*

To authorize a floor area variance from the requirements of Title 26, City Council shall make a finding that the following three (3) circumstances exist:

1. The grant of variance will be generally consistent with the purposes, goals, objectives and policies of this Title and the Municipal Code; and
2. The grant of variance is the minimum variance that will make possible the reasonable use of the parcel, building or structure; and
3. Literal interpretation and enforcement of the terms and provisions of this Title would deprive the applicant of rights commonly enjoyed by other parcels in the same zone district and would cause the applicant unnecessary hardship, as distinguished from mere inconvenience. In determining whether an applicant's rights would be deprived, the Board shall consider whether either of the following conditions apply:
    a. There are special conditions and circumstances which are unique to the parcel, building or structure, which are not applicable to other parcels, structures or buildings in the same zone district and which do not result from the actions of the applicant; or

130 South Galena Street Aspen, CO 81611-1975 | P: 970.920.5000 | F: 970.920.5197 | cityofaspen.com

b. Granting the variance will not confer upon the applicant any special privilege denied the terms of this Title and the Municipal Code to other parcels, buildings or structures, in the same zone district.

RELEVANT LAND USE CODE SECTIONS:

Section Number	Section Title
26.304	Common Development Review Procedures
26.314	Variances

For your convenience – links to the Land Use Application and Land Use Code are below:
Land Use Application Land Use Code

REVIEW BY:
- Staff for complete application
- City Council for approval (Public Hearing)

REQUIRED LAND USE REVIEW:
- Variance Request

PLANNING FEES: $1,950.00 deposit for six hours of staff time.

TOTAL DEPOSIT: $1,950.00 (additional/lesser planning hours are billed/refunded at a rate of $325/hour).

APPLICATION CHECKLIST – These items should first be submitted in a paper copy.

☐ Completed Land Use Application and signed fee Agreement.

☐ Pre-application Conference Summary (this document).

☐ Street address and legal description of the parcel on which development is proposed to occur, consisting of a current (no older than 6 months) certificate from a title insurance company, an ownership and encumbrance report, or attorney licensed to practice in the State of Colorado, listing the names of all owners of the property, and all mortgages, judgments, liens, easements, contracts and agreements affecting the parcel, and demonstrating the owner's right to apply for the Development Application.

☐ Applicant's name, address and telephone number in a letter signed by the applicant that states the name, address and telephone number of the representative authorized to act on behalf of the applicant.

☐ HOA Compliance form (attached to application).

☐ An 8 ½" by 11" vicinity map locating the parcel within the City of Aspen.

☐ Site improvement survey (no older than a year from submittal) including topography and vegetation showing the current status, certified by a registered land surveyor, licensed in the state of Colorado.

☐ A written description of the proposal and an explanation in written, graphic, or model form of how the proposed development complies with the review standards relevant to the development application and relevant land use approval associated with the property. While complete architectural drawings for the proposed work are not required, the applicant must adequately demonstrate the need for variances and the location of the variances.

☐ Written responses to all review criteria in section 26.314.040.

☐ A proposed scaled site plan. Existing and proposed.

Once the application is deemed complete by staff, the following items will then need to be submitted:

☐ **2 copies** of the complete application packet and drawings.

- ☐ **1 digital PDF copy** of the application.
- ☐ Total deposit for review of the application.

Disclaimer:
The foregoing summary is advisory in nature only and is not binding on the City. The summary is based on current zoning, which is subject to change in the future, and upon factual representations that may or may not be accurate. The summary does not create a legal or vested right.

ATTACHMENT 8

Homeowner Association Compliance Policy

All land use applications within the City of Aspen are required to include a Homeowner Association Compliance Form (this form) certifying the scope of work included in the land use application complies with all applicable covenants and homeowner association policies. The certification must be *signed by the property owner or Attorney representing the property owner*.

Property Owner ("I"):	Name: Shady Red Mountain, LLC	
	Email:	Phone No.: 970-920-1280
Address of Property: (subject of application)	183 Red Mountain Road Aspen, CO 81611	

I certify as follows: (pick one)

☒ This property is not subject to a homeowners association or other form of private covenant.

☐ This property is subject to a homeowners association or private covenant and the improvements proposed in this land use application do not require approval by the homeowners association or covenant beneficiary.

☐ This property is subject to a homeowners association or private covenant and the improvements proposed in this land use application have been approved by the homeowners association or covenant beneficiary.

I understand this policy and I understand the City of Aspen does not interpret, enforce, or manage the applicability, meaning or effect of private covenants or homeowner association rules or bylaws. I understand that this document is a public document.

Owner signature: _____ date:_____

Owner printed name: _____

or,

Attorney signature: _____ date: 9/13/19

Attorney printed name: Richard Y. Neiley, Jr.

ATTACHMENT 9

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

Agreement to Pay Application Fees

An agreement between the City of Aspen ("City") and

Please type or print in all caps

Address of Property: 183 Red Mountain Road f/k/a 54 Shady Lane, Aspen, CO 81611

Property Owner Name: Shady Red Mountain, LLC Representative Name (if different from Property Owner) Richard Y. Neiley, Jr.

Billing Name and Address - Send Bills to:

Neiley Law Firm LLC, 6800 Highway 82, Suite 1, Glenwood Springs, CO 81601

Contact info for billing: e-mail: aspenlaw@neileylaw.com Phone: (970) 928-9393

I understand that the City has adopted, via Ordinance No. 30, Series of 2017, review fees for Land Use applications and payment of these fees is a condition precedent to determining application completeness. I understand that as the property owner that I am responsible for paying all fees for this development application.

For flat fees and referral fees: I agree to pay the following fees for the services indicated. I understand that these flat fees are non-refundable.

$._____ flat fee for _____. $._____ flat fee for _____

$._____ flat fee for _____. $._____ flat fee for _____

For Deposit cases only: The City and I understand that because of the size, nature or scope of the proposed project, it is not possible at this time to know the full extent or total costs involved in processing the application. I understand that additional costs over and above the deposit may accrue. I understand and agree that it is impracticable for City staff to complete processing, review and presentation of sufficient information to enable legally required findings to be made for project consideration, unless invoices are paid in full.

The City and I understand and agree that invoices mailed by the City to the above listed billing address and not returned to the City shall be considered by the City as being received by me. I agree to remit payment within 30 days of presentation of an invoice by the City for such services.

I have read, understood, and agree to the Land Use Review Fee Policy including consequences for no-payment. I agree to pay the following initial deposit amounts for the specified hours of staff time. I understand that payment of a deposit does not render and application complete or compliant with approval criteria. If actual recorded costs exceed the initial deposit, I agree to pay additional monthly billings to the City to reimburse the City for the processing of my application at the hourly rates hereinafter stated.

$1,950.00 deposit for 6 hours of Community Development Department staff time. Additional time above the deposit amount will be billed at **$325.00 per hour**.

$_____ deposit for _____ hours of Engineering Department staff time. Additional time above the deposit amount will be billed at **$325.00 per hour**.

City of Aspen:

_____

Jessica Garrow, AICP
Community Development Director

City Use:
Fees Due: $_____Received $_____
Case #_____

Signature: _____ 9/18/19

PRINT Name: Richard Y. Neiley, Jr.

Title: Representative for

AFFIDAVIT OF PUBLIC NOTICE
REQUIRED BY SECTION 26.304.060 (E), ASPEN LAND USE CODE

ADDRESS OF PROPERTY:
183 Red Mountain Rd, **Aspen, CO**

SCHEDULED PUBLIC HEARING DATE:
December 10th, **20** 19

STATE OF COLORADO)
) **ss.**
County of Pitkin)

I, Lillian Culver (name, please print) being or representing an Applicant to the City of Aspen, Colorado, hereby personally certify that I have complied with the public notice requirements of Section 26.304.060 (E) of the Aspen Land Use Code in the following manner:

✓ *Publication of notice:* By the publication in the legal notice section of an official paper or a paper of general circulation in the City of Aspen at least fifteen (15) days prior to the public hearing. *A copy of the publication is attached hereto.*

_____ *Posting of notice:* By posting of notice, which form was obtained from the Community Development Department, which was made of suitable, waterproof materials, which was not less than twenty-two (22) inches wide and twenty-six (26) inches high, and which was composed of letters not less than one inch in height. Said notice was posted at least fifteen (15) days prior to the public hearing on the ___ day of _____, 20___, to and including the date and time of the public hearing. *A photograph of the posted notice (sign) is attached hereto.*

_____ *Mailing of notice.* By the mailing of a notice obtained from the Community Development Department, which contains the information described in Section 26.304.060(E)(2) of the Aspen Land Use Code. At least fifteen (15) days prior to the public hearing, notice was hand delivered or mailed by first class postage prepaid U.S. mail to all owners of property within three hundred (300) feet of the property subject to the development application. The names and addresses of property owners shall be those on the current tax records of Pitkin County as they appeared no more than sixty (60) days prior to the date of the public hearing. *A copy of the owners and governmental agencies so noticed is attached hereto.*

_____ *Neighborhood Outreach:* Applicant attests that neighborhood outreach, summarized and attached, was conducted prior to the first public hearing as required in Section 26.304.035, Neighborhood Outreach. *A copy of the neighborhood outreach summary, including the method of public notification and a copy of any documentation that was presented to the public is attached hereto.*

(continued on next page)

_____ *Mineral Estate Owner Notice.* By the certified mailing of notice, return receipt requested, to affected mineral estate owners by at least thirty (30) days prior to the date scheduled for the initial public hearing on the application of development. The names and addresses of mineral estate owners shall be those on the current tax records of Pitkin County. At a minimum, Subdivisions, PDs that create more than one lot, and new Planned Developments are subject to this notice requirement.

_____ *Rezoning or text amendment.* Whenever the official zoning district map is in any way to be changed or amended incidental to or as part of a general revision of this Title, or whenever the text of this Title is to be amended, whether such revision be made by repeal of this Title and enactment of a new land use regulation, or otherwise, the requirement of an accurate survey map or other sufficient legal description of, and the notice to and listing of names and addresses of owners of real property in the area of the proposed change shall be waived. However, the proposed zoning map shall be available for public inspection in the planning agency during all business hours for fifteen (15) days prior to the public hearing on such amendments.

Lillian Cathey
Signature

The foregoing "Affidavit of Notice" was acknowledged before me this 25 day of November, 2019, by Lauren Litchet.

NOTICE OF PUBLIC HEARING
RE: 183 Red Mountain Road

Public Hearing: Tuesday, December 10th, 2019; 5:00PM

Meeting Location: City Hall, City Council Chambers 130 S. Galena St., Aspen, CO 81611

Project Location: 183 Red Mountain Rd. (F.k.a. 54 Shady Ln.) A metes and bounds property legally described (in part) as: A tract of land situated in the SW1/4 NW1/4 of Section 7, Township 10 South, Range 84 West of the Sixth Principal Meridian, Pitkin County, State of Colorado. For full legal description contact Garrett Larimer at Garrett.Larimer@cityofaspen.com. PIDs# 2737-072-00-026.

Description: The applicant requests a floor area variance of 545 square feet to allow for the installation of decks that existed previously but were removed during a renovation of the property. The decks were removed to comply with the floor area maximum for the site and to accommodate additional development at that time.

Land Use Reviews: Variance – Allowable Floor Area

Decision Making Body: City Council

Applicant: Shady Red Mountain, LLC; c/o Aspen Real Estate, LLC; 623 E. Hopkins, Aspen, CO 81611

More Information: For further information related to the proposal contact Garrett Larimer at the City of Aspen Community Development Department, 130 S. Galena St, Aspen, CO; 970.429.2739; garrett.larimer@cityofaspen.com.

Published in the Aspen Times on November 21, 2019. 0000512463

WITNESS MY HAND AND OFFICIAL SEAL

My commission expires: January 23, 2023

Notary Public

LAUREN LITCHET
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194003051
MY COMMISSION EXPIRES JANUARY 23, 2023

ATTACHMENTS AS APPLICABLE:

- ***COPY OF THE PUBLICATION***
- ***PHOTOGRAPH OF THE POSTED NOTICE (SIGN)***
- ***LIST OF THE OWNERS AND GOVERNMENTAL AGENCIES NOTICED BY MAIL***
- ***APPLICANT CERTIFICATION OF MINERAL ESTATE OWNERS NOTICE AS REQUIRED BY C.R.S. §24-65.5-103.3***

CITY OF ASPEN
COMMUNITY DEVELOPMENT DEPARTMENT

AN ADMINISTRATIVE DETERMINATION FOR THE PROPOSED REDEVELOPMENT OF A MEETS AND BOUNDS PARCEL AT 54 SHADY LANE, CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO.

PARCEL ID:	2735-131-06-002
JURISDICTION:	City of Aspen
APPLICABLE CODE SECTIONS:	26.575.020.D.4.a-b Measurements and Calculations, Measuring Floor Area 26.104.100 Definition of "deck"
EFFECTIVE DATE:	June 15, 2017
WRITTEN BY:	Ben Anderson, Planner
APPROVED BY:	Jessica Garrow, Community Development Director
	June 15, 2017 Jessica Garrow
COPIES TO:	City Planning Staff, City Attorney

SUMMARY:
This administrative determination clarifies if an elevated driveway and auto court as proposed in the design for a site specific, single family residential redevelopment at 54 Shady Lane shall count toward the allowable Floor Area exemption and calculation of exterior features as described by the *Measurements and Calculations* (26.575.020) section of the City of Aspen Land Use Code. The determination is requested by Shady Red Mountain LLC, represented by Richard Y. Neiley Jr., Esq. of Neiley Law Firm, LLC.

On April 4, 2017, the Planning and Zoning Commission, in Resolution No. 8, Series of 2017, approved a Stream Margin review of the full project and a Variance for a feature in a setback. A focus of the P&Z approval was the mechanism for vehicle access to the property from Red Mountain Road. Supported by referral comments from the Engineering and Parks Department, the Applicant's proposal for an elevated driveway and auto court was the preferred alternative for vehicle access and was a central feature of the approval. The question of the floor area calculation of the driveway/auto court was raised by the Applicant in the Land Use Application. As the P&Z Commission is not authorized to interpret the code or grant a Variance to increase Floor Area as

that power rests solely with City Council, staff determined that this issue should be handled separately from the P&Z review.

Specifically, this application requests a Determination as to whether the driveway and auto court fall into the category of deck and other external features that receive an exemption of up to 15% of the allowable Floor Area for a property before any excess to the 15% is included in the calculation towards allowable Floor Area. In preliminary meetings for the P&Z hearing, Staff conveyed the position that the elevated drive and auto court would be counted toward the 15% exemption and Floor Area calculation. The Applicant disagrees with this position and presents an argument within the application against the inclusion of the driveway and auto court in this calculation.

BACKGROUND:

Section 26.575.020.D.4; *Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street–facing porches,* is a frequently referenced section of the Land Use Code that provides specific definition to how exterior and above-grade features are calculated towards allowable Floor Area. Usually labeled the "deck exemption" by Staff and the development community, this section allows an exemption of up to 15% of the allowable Floor Area for a property for the combined square footage of these features before any excess beyond the 15% is counted in total towards the allowable Floor Area. The intent of this section is to allow a reasonable addition of these exterior and above-grade features. It is also meant to discourage excessive exterior, attached features that would fundamentally change the massing of a house beyond that which is intended by the allowable Floor Area in a particular zone district. The language of Section 26.575.020.D.4.a-b; is as follows:

> 4. Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.
>
> a. The calculation of the Floor Area of a building or a portion thereof shall not include decks, balconies, trellis, exterior stairways, non-Street facing porches, gazebos and similar features, unless the area of these features is greater than fifteen percent (15%) of the allowable floor area for the property and the use and density proposed, or as otherwise exempted by this Section.
>
> b. If the area of these features exceeds fifteen percent (15%) of the property's allowable Floor Area (for that use and density proposed) only the areas in excess of the fifteen percent (15%) shall be attributed towards the allowable Floor Area for the property. The allowable Floor Area for the purpose of this calculation refers to the Floor Area calculation based on the Net Lot Area, as defined in this chapter or as prescribed by a site specific approval, with the following exceptions: Floor Area bonus, or established or extinguished Transferrable Development Right certificates are not included.

The above-grade nature of the features described in this section is of particular importance to the subject of this Determination. Elsewhere in 26.575.020.D, the code allows for total exemption of the area of an at-grade patio from allowable Floor Area calculations. The reasoning behind this is that at-grade features do not contribute to the perceived massing of the house. Per code, once a patio reaches six inches above grade or is covered by roof overhangs of greater than four feet, the patio feature then begins to count toward the 15% exemption and calculation toward allowable Floor Area. Again, the reasoning behind this is that the above-grade nature of the patio and the roof overhangs add to the massing of the house – and thus should be calculated towards the

exemption and/or Floor Area. Like at-grade patios, at-grade driveways are not calculated toward allowable Floor Area.

In the Application for the Determination, the Applicant contends that the elevated driveway and auto court does not meet the definition of a "deck" as presented in the Land Use Code – and therefore should not be subject to the code language describing the 15% exemption to Floor Area and Floor Area calculation. The definition from 26.104.100 for "deck" is as follows:

> "An outdoor, unheated area appended to a living space but not intended for living."

In Exhibit A, the site plan shows the continuous surface of the elevated driveway and auto court attaching to the garage, and two, exterior walls that define the main entry to the house and a mudroom.

DETERMINATION:
Staff recognizes the site conditions that led to this unique design solution of the elevated driveway and auto court, and P&Z Resolution No. 8, Series of 2017 that granted approval of Stream Margin Review and a Variance for a feature in the setback. However, neither of these approvals preclude the project from complying with other aspects of the Land Use Code.

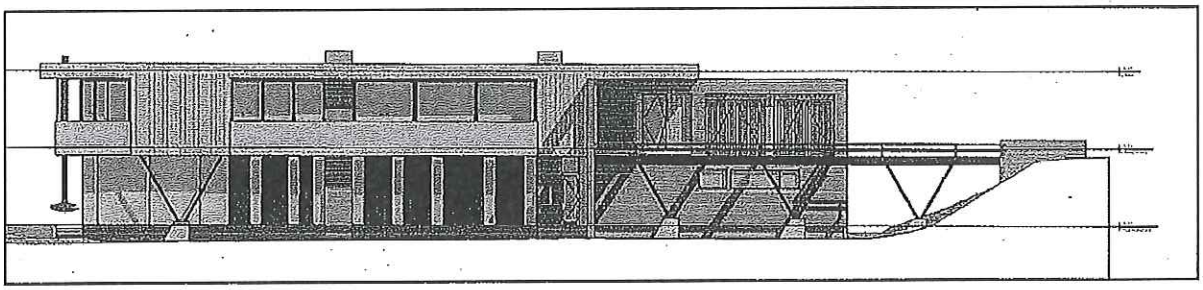


Figure 1. North Elevation of the proposed design for 54 Shady Lane. At the right of the image is the driveway and auto court as it leaves Red Mountain Rd. before connecting to the garage and front entry of the home. Courtesy of David Johnston Architects.

Staff finds that regardless of the application of the specific definition of "deck" to the elevated driveway and auto court, these features remain subject to the 15% exemption and Floor Area calculation methods that apply to all exterior and above-grade features. In the language in 26.575.020.D.4.a (specified above), a list of the specific features that are subject to this calculation ends with the less precise term "similar features." What makes this list of features similar are these qualities: exterior and above-grade. Staff finds that the driveway and auto court have these qualities and if not under the definition of "deck", are certainly subject under the term, "similar features".

One of the most important aspects of any land use code, and certainly of Aspen's Land Use Code, is the proscription of floor area limitations that reflect community desires for the scale and massing of buildings that are appropriate to a particular zone or parcel size. In this specific case, the elevated driveway and auto court create significant, additional massing to a design that has already

maximized allowable floor area and exhausted the 15% exemption with the primary form of the house.

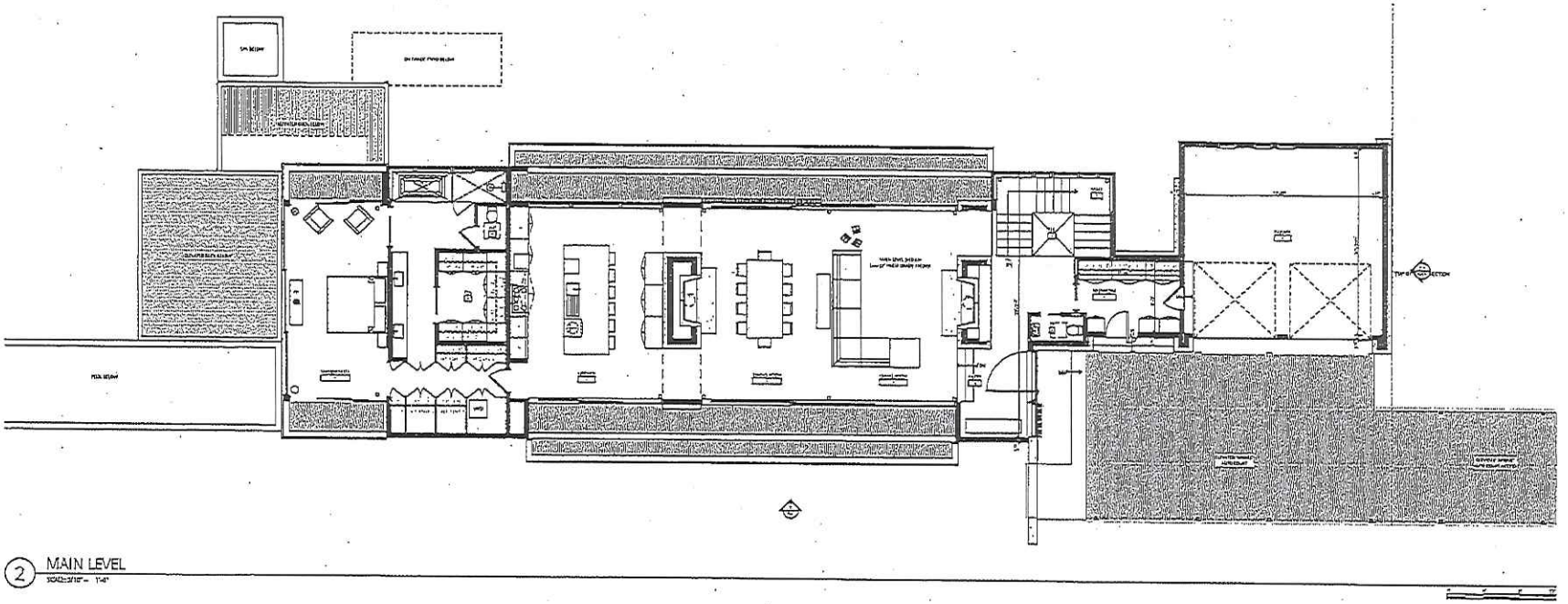
Specific to the site design, staff determines that the entirety of the continuous surface of the elevated driveway and auto court shall count toward the 15% Exemption and Floor Area Calculation. Precisely, the driveway begins to count toward these features at the point that it leaves the solid concrete pier that creates the connection to Red Mountain Road. The entirety of the elevated platform, including the driveway, the auto court and the covered front porch area (as it is greater than 30" above grade) and shall be included toward the exemption and Floor Area calculation.

APPEAL OF DECISION:
Any person with a right to appeal an adverse decision or determination shall initiate an appeal by filing a notice of appeal on a form prescribed by the Community Development Director. The notice of appeal shall be filed with the Community Development Director and with the City office or department rendering the decision or determination within fourteen (14) days of the date of the decision or determination being appealed. Failure to file such notice of appeal within the prescribed time shall constitute a waiver of any rights under this Title to appeal any decision or determination.

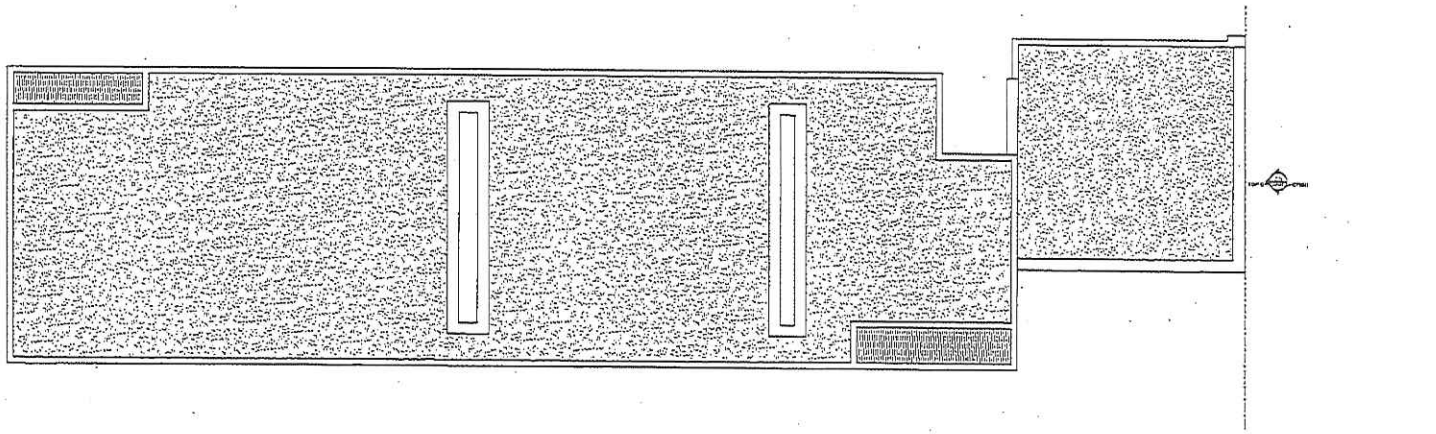
This administrative determination was issued and becomes effective on June 15, 2017.

ATTACHMENTS:
Exhibit A - Site Plan for the Entry Level of the Residence

Exhibit A



2 MAIN LEVEL



3 ROOF PLAN

DAVID JOHNSTON ARCHITECTS PC

110 South Spring St.
Suite 203
Aspen, CO 81611
TEL 970-925-3444
FAX 970-925-3446

CANOPY HOUSE
54 SHADY LANE | ASPEN, CO

DRAWING ISSUE
CONCEPTUAL SKETCH 4/11/17

FLOOR PLANS

PROJECT No: 1603
DRAWN BY: DM

SHEET No.
3.2

All ideas, designs, arrangements and plans indicated or represented by this drawing are owned by and the property of David Johnston Architects, PC and shall not be used in whole or in part for any purpose whatsoever without the written permission of David Johnston Architects, PC

C:\Users\kohlrab\Desktop\SHADY LN_2017-02-20_CptA Tuesday, April 11, 2017 9:52 AM

CITY OF ASPEN

MEMORANDUM

TO: **Mayor Torre and Aspen City Council**

FROM: Kevin Rayes, Planner

THRU: Jennifer Phelan, Interim Community Development Director

MEMO DATE: November 20, 2019

MEETING DATE: December 10, 2019

RE: **Temporary Use Request** – Grey Lady, 305 S. Mill, Resolution No. 137, Series of 2019

APPLICANT:
Ryan Chadwick, 426 E. Hyman Ave. #301, Aspen, CO 81611

LOCATION:
305 S. Mill, Grey Lady

CURRENT ZONING:
Commercial Core (CC, Commercial Core Historic District)

REQUEST OF COUNCIL:
The applicant is seeking temporary use approval for Grey Lady restaurant to place a plastic/canvas tent over the site's public amenity space from December 18, 2019 through March 31, 2020, a total of one hundred and five (105) days.

STAFF RECOMMENDATION:
Staff recommends that City Council deny the applicant's request for a one hundred and five (105) day temporary use approval. Staff finds the structures is out of character with the historic district and does not wish to encourage structures constructed of such impermanent materials for such a length of time.



Figure 1: Grey Lady Restaurant, north view



Figure 2: Grey Lady Restaurant, west view-trellis structure



Figure 3: Grey Lady Restaurant, south view-trellis structure

REQUEST OF COUNCIL:
The applicant is requesting the following land use approvals:

Temporary and Seasonal Use Review (26.450.030)
The applicant is requesting Temporary Use approval related to a temporary structure in accordance with Chapter 26.450 of the Land Use Code for a period of one hundred and five (105) days. The Code allows City Council to grant temporary use approval for up to 180 consecutive days within a calendar year, for no more than ten years. ***City Council is the final review authority.***

SUMMARY AND BACKGROUND:
The subject site is located within the historic Commercial Core zone district, at the corner of the Mill Street pedestrian mall and E. Hyman Avenue. The applicant has requested and received temporary use approval for the tent on this site during the 2014-2015 winter season, the 2015-2016 holiday season, the 2017-2018 winter season, and now the 2019-2020 winter season. The history of requests are as follows:

- 2013- City Council granted a former restaurant owner of the subject location seasonal temporary use approval for a temporary custom fabric airlock from January through March of the same year. At Staff's recommendation Council granted this as a one-time approval and directed the applicant to find a permanent solution for future needs.
- December 2014- staff approved a seven-day tent permit for the site. The tent was erected over the trellis, covering the site's public amenity space, and was fully-enclosed with roll-down walls. After the tent was not removed the matter was directed to Council for review.
- January 2015- Council granted temporary seasonal approval for the tent to be erected on-site through April 15th of the same year. At the hearing Council was clear that this was a one-time approval and that the applicant should not return to renew this request.
- October 2015- Council denied the request to erect the tent for the duration of the winter season. Council was concerned with the tent's use of plastic and canvas materials and questioned the temporary nature of a structure that kept reappearing seasonally.
- December 2015- Council granted an 11-day temporary use approval (December 24, 2015- through January 3, 2016) to erect the tent over the site's public amenity space.
- December 2016- City Council granted the applicant a 14-day, temporary use approval. The approved days were not required to be used consecutively. The applicant also requested an exterior airlock, which was not approved.
- November 2017- Council granted a 120-day temporary use approval for a significant portion of the winter season (Resolution 157, Series 2017). A winter market was also approved on Saturdays within the tent structure.
- August 2018- Council granted a 120-day temporary use approval for a significant portion of the winter season (Resolution 122, Series 2018). A winter market was also approved on Saturdays within the tent structure. The tent, including walls and roof were required to be removed by April 21, 2019.

DISCUSSION & STAFF FINDINGS

The applicant is requesting temporary use approval to cover the existing trellis with a grey canvas and plastic covering on the subject site for a period of one hundred and five (105) days, to begin on December 18, 2019 and end on March 31, 2019. The covering has been placed on the site's trellis over various durations by the applicant throughout the past three winter seasons. The temporary covering will be utilized by the restaurant during evening operating hours, and by a winter market on Saturdays/and or Sundays during the late morning and afternoon.

This application is the sixth annual request for a covering of the trellis during the winter season at the Grey Lady. The Grey Lady is located in a prominent location at the intersection of the Mill Street and Hyman Avenue Pedestrian Malls within the Commercial Core Historic District. Staff does not support the request for a temporary enclosure over the trellis structure. A full analysis of the applicable review criteria can be found in Exhibit A.

Commercial Design

The Grey Lady is in a highly visible location at the intersection of two pedestrian malls within a historic district. The Commercial Core Historic District requires improvements that respect the 19th-century historic context. The trellis covering in years past, and as proposed this year, is essentially a canvas and plastic tent. The materials of the trellis covering do not reinforce the historic context and are not appropriate for this Character Area in the Commercial Design Standards and Guidelines. Furthermore, the tent would cover Pedestrian Amenity space for nearly one-third of the year.

Temporary Use

While Staff is appreciative of the applicant's representation that the space would be used as an indoor winter market on Saturdays during the winter season, Staff has recommended in past reviews of this temporary use request that the applicant should consider pursuing a more permanent solution for their winter operations. This would allow for a design that is cohesive to the existing building, meets the Commercial Design Guidelines, and is constructed of durable, high-quality materials, rather than a temporary tent.

GMQS

The canvas tent will generate 788 sq. ft. of Net Leasable floor area for one hundred and five (105) days of the year. The applicant will be required to pay $4,770.58 (estimate) to mitigate for the covered area. The applicant is required to verify the size of the covered area prior to payment.



Figure 4: Previously approved temporary cover

Because the tent does not meet the applicable criteria within the Commercial Design Standards and Guidelines for the Commercial Core character area and Pedestrian Amenity spaces, staff is recommending denial of the temporary use request.

While staff clearly understands the value of this area to the Grey Lady Restaurant, and that the covered and enclosed condition allows the area to be used year round, the Land Use Code and the Commercial Design Standards and Guidelines were written to reflect the community's desire to generally prohibit, and if allowed, permit only the temporary use of fabric or tent-like enclosures. This is a very prominent location in the CC Historic District and continues to serve as precedent for the many other establishments that may desire this type of "temporary" structure over Pedestrian Amenity spaces.

RECOMMENDATION:
Staff recommends denial of the temporary use request. If Council desires to approve the temporary use, the resolution has been worded in the affirmative for a 105-day approval.

PROPOSED MOTION:
"I move to approve Resolution 137, Series of 2019 to allow the erection of a canvas/plastic tent over the public amenity space at 305 S. Mill St. from December 18, 2019 through March 31, 2020." (note: the draft resolution also carries forward conditions from the 2018 approval related to the winter market)

FINANCIAL IMPACTS: N/A

ENVIRONMENTAL IMPACTS: N/A

CITY MANAGER COMMENTS:

_____
_____
_____

ATTACHMENTS:
Exhibit A – Staff Findings

RESOLUTION NO. 137
(SERIES OF 2019)

A RESOLUTION OF THE CITY OF ASPEN CITY COUNCIL APPROVING A TEMPORARY USE OF AIRLOCKED TENT STRUCTURE AT 305-7 S. MILL STREET, ASPEN COMMERCIAL CONDOMINIUMS UNIT A AND COMMON AREA, BLOCK 19, CITY AND TOWNSITE OF ASPEN, COLORADO.

Parcel ID: 2737-182-17-004

WHEREAS, the Community Development Department received an application from Ryan Chadwick requesting Temporary Use approval to maintain a plastic and canvas tent structure covering the trellis over the public amenity space at the north end of the existing commercial building from December 18, 2019 through March 31, 2020; and

WHEREAS, pursuant to Chapter 26.450.050 of the Land Use Code, City Council may grant a temporary use approval for up to 180 days; and

WHEREAS, the City Council reviewed the application and considered the Temporary Use proposal under the applicable provisions of the Municipal Code as identified herein, has reviewed and considered the recommendation of the Community Development Director, and has taken and considered public comment at a duly noticed public hearing; and,

WHEREAS, The City Council considered the application during public hearing at a regular scheduled meeting on December 10, 2019 and by a X – X (X - X) vote approves Resolution No. 137, Series of 2019; and,

WHEREAS, the City Council approves the tent structure, allowing for a temporary use for one hundred and five (105) days; and,

WHEREAS, the City Council finds that this resolution furthers and is necessary for the promotion of public health, safety and welfare.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, THAT:

Section 1:
Pursuant to the procedures and standards set forth in Title 26 of the Aspen Municipal Code, the City Council hereby approves a Temporary Use request to allow the erection of a plastic and canvas tent on the subject site, over the existing trellis, measuring approximately 788 sq. ft., from December 18, 2019 to March 31, 2020, for a period of one hundred five (105) days. The tent, including walls and roof, shall be removed in its entirety by April 1, 2020.

Section 2:
The temporary structure shall be made available as a "Local Vendor Market" on Saturdays and/or Sundays, for a minimum of one day per week until March 31, 2020, or until the tent enclosure is removed; whichever comes first. The additional conditions shall apply:

a. The Applicant shall attend an ACRA Board meeting to discuss the Saturday Market concept.

b. The Applicant shall contact Aspen Entrepreneurs and Maker + Place to discuss the Saturday Market concept.

c. The Applicant shall contact Aspen Tree to discuss the Saturday Market, with the intent that the CSAs associated with Aspen Tree will be made privy to the Saturday Market.

Section 3:
Temporary structures that are approved on a site for a period greater than fourteen (14) days are subject to growth management review, resulting in affordable housing mitigation. The applicant is required to provide housing mitigation for each day above 14 that the tent is up. The estimated amount of affordable housing due for this site is $4,7770.58 (based on methodology in LUC, 26.470.090.I).

This fee must be paid prior to the placement of the structures on the site. Staff requires verification of the size of the structures prior to payment.

Section 4:
A tent permit approval, including verification from the Aspen Fire Department that the structure meets all necessary safety requirements, is required prior to the erection of the temporary structure.

Section 5:
All material representations and commitments made by the Applicant pursuant to the temporary use proposal as herein awarded, whether in public hearing or documentation presented before the City Council, are hereby incorporated in such plan development approvals and the same shall be complied with as if fully set forth herein, unless amended by an authorized entity.

Section 6:
This resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 7:
If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

APPROVED BY the City Council of the City of Aspen on this 10th day of December 2020.

Approved as to form: **Approved as to content:**

_____ **_____**

James R. True, City Attorney **Torre, Mayor**

Attest:

_____Linda Manning, City Clerk

Exhibit A
Review Criteria

Temporary and Seasonal Uses:

Section 26.450.030. Criteria applicable to all temporary uses.

When considering a development application for a temporary use or an insubstantial temporary use, the Community Development Director or City Council shall consider, among other pertinent factors, the following criteria as they or any of them, relate thereto:

A. Location, size, design, operating characteristics and visual impacts of the proposed use.

Staff Response: *The proposed tent measures approximately 788 sq. ft. This structure has been erected on the site in the same location for some period over the past five winter seasons, giving Staff and the community the benefit of viewing the structure and its operational characteristics on-site. The proposed tent is adjacent to the indoor commercial space and will cover the outdoor trellis. The tent has been designed from a heavyweight gray canvas with clear plastic windows and sides that can be rolled up. The applicant intends to use the tent as an extension of the indoor heated seating space for the restaurant and for a Saturday winter market.*

The proposed structures will be highly visible with materials that would not be permitted by Commercial Design Review. The proposed tent will cover the approved public amenity space that was a requirement for the development of the commercial building on the site. In 2013, a former tenant of the space received approval from HPC (via Resolution No. 15, Series of 2013) to construct a wooden trellis over the public amenity space as a shade structure. Reviews included Minor Development Review and View Plane approval. The approval was granted in part on the trellis' design - spaced wooden posts with no sides. The tent in the current proposal covers this light, airy structure with solid, opaque fabric which represents an increase in the commercial space of the restaurant using a material that would not be permitted as a permanent structure within the historic Commercial district.

Temporary structures of this nature are considered by Staff for short-term approval (7 days); however, overall they are found to detract from the permanent architecture of the historic Commercial Core district, and therefore are not supported for longer periods of time.

Staff finds this criterion not met.

B. The compatibility of the proposed temporary use with the character, density and use of structures and uses in the immediate vicinity.

Staff Response: *The proposed tent will increase the commercial space of the Grey Lady restaurant. A restaurant is compatible with the character of the Commercial Core zone district and its historic overlay. However, the covered space is intended as public amenity space for the parcel, and in this sense, is incompatible with the approved use for this area of the site. The Code requires Pedestrian Amenity spaces to be open to the sky, open to view, and to contribute to an active street vitality. The closed sides of the tent create a private space that is neither open to the sky, nor contributing to the vitality of the area.*

Canvas and plastic structures are not materials that would be approved through Commercial Design review and are out of character with the surrounding architecture.

Staff finds this criterion not met.

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C. The impacts of the proposed temporary use on pedestrian and vehicular traffic and traffic patterns, municipal services, noise levels and neighborhood character.

Staff Response: *The proposed structures will be located on private property adjacent to the S. Mill St. pedestrian mall and E. Hyman Ave. Staff does not anticipate any impacts on pedestrian or traffic patterns, or on municipal services. Noise levels may increase in this particular area since the tent is made of fabric and not a permanent structure; however, the structure is generally compatible with the nature of commercial businesses in the surrounding area. The City's noise ordinances will continue to apply.*

Staff finds these types of temporary structures negatively impact the neighborhood character, particularly when used for a longer period of time (more than seven days). Staff has worked with business owners to eradicate these temporary structures on other properties, from airlocks to awnings with sides, and encourages permanent solutions. The Commercial Core is a historic district and all buildings and structures are required to pass a heightened review process involving commercial design guidelines and historic preservation review. This fabric and plastic structure do not fit with the character of the district, particularly for a use that is greater than a short (one week) duration.

Staff finds this criterion not met.

D. The duration of the proposed temporary use and whether a temporary use has previously been approved for the structure, parcel, property or location as proposed in the application.

Staff Response: *The Applicant is proposing to maintain the tent on the site for a period of one hundred five (105) days - from December 18, 2019 through March 31, 2020.*

The applicant has requested and received temporary use approval for the tent on this site starting in 2013. It is important to note that a request for the duration of the winter season was denied in 2015 but approved in 2017 & 2018. The history of requests is as follows.

- *In 2013 City Council granted a former restaurant owner of the subject location seasonal temporary use approval for a temporary custom fabric airlock from January through March of the same year. At Staff's recommendation Council granted this as a one-time approval and directed the applicant to find a permanent solution for future needs.*
- *In December 2014, Staff approved a seven-day tent permit for the site. The tent was erected over the trellis, covering the site's public amenity space, and was fully-enclosed with roll-down walls. After the tent was not removed the matter was directed to Council for review.*
- *In January 2015 Council granted the applicant temporary seasonal approval for the tent to be erected on-site through April 15th of the same year. At the hearing Council was clear that this was a one-time approval and that the Applicant should not return to renew this request.*

- *In October of 2015, City Council denied the applicant's request to erect this tent on the site for the duration of the winter season. Council was concerned with the tent's use of plastic and canvas materials and questioned the temporary nature of a structure that kept reappearing seasonally.*
- *In December of 2015 City Council granted the applicant an 11-day temporary use approval (December 24, 2015- through January 3, 2016) to erect the tent over the site's public amenity space.*
- *In December of 2016 City Council granted the applicant a 14-day temporary use approval (December 24, 2016 - through January 4, 2017) to erect the tent over the site's public amenity space.*
- *In November of 2017, City Council granted the applicant a 120-day temporary use approval for a significant portion of the winter season. (Resolution No. 157, Series of 2017). The inclusion of a winter market on Saturdays within the tent structure was an addition to the 2017 request and approval.*
- *In August of 2018 Council granted a 120-day temporary use approval for a significant portion of the winter season (Resolution 122, Series 2018). A winter market was also approved on Saturdays within the tent structure. The tent, including walls and roof were required to be removed by April 21, 2019.*

E. The purposes and intent of the zone district in which the temporary use is proposed.

Staff Response: *The purpose of the Commercial Core (CC) Zone District is to allow the use of land for retail, service commercial, recreation and institutional purposes within mixed-use buildings to support and enhance the business and service character in the historic central business core of the City. This mix of uses is to encourage a high level of vitality throughout this district. Restaurant use fits the purpose of the zone district.*
Staff finds this criterion to be met.

F. The relation of the temporary use to conditions and character changes which may have occurred in the area and zone district in which the use is proposed.

Staff Response: *The use of the tent as an extension of the restaurant is in itself not an incompatible use within the zone district. However, these types of temporary structures (fabric/plastic tents, airlocks, etc.) have been generally disallowed in the Commercial and Commercial Core zone districts. Staff encourages the applicant to explore a permanent solution to this issue of outdoor seating during the winter season.*
Staff finds this criterion not met.

G. How the proposed temporary use will enhance or diminish the general public health, safety or welfare.

Staff Response: *The proposed tent over the outdoor space will allow patrons of the Grey Lady restaurant to use the outdoor dining area during the cold weather months. The applicant has indicated that this space will continue to be used as a Saturday winter market.* ***Staff finds this criterion to be met.***

Growth Management Quota System:

26.470.040.I; Temporary uses and structures. The development of a temporary use structure shall be exempt from growth management, subject to the provisions of Chapter 26.450, Temporary and Seasonal Uses. Temporary external airlocks shall only be exempt from the provisions of this Chapter if compliant with the applicable sections of Commercial Design Review – Chapter 26.412, and approved pursuant to Chapter 26.450 Temporary and Seasonal Uses. Tents, external airlocks, and similar temporary or seasonal enclosures located on commercial properties and supporting commercial uses shall only be exempt from the provision of this Chapter, including affordable housing mitigation requirements, if compliant with the applicable sections of Commercial Design Review – Chapter 26.412, if erected for 7 consecutive days or less in a 12-month period, and approved pursuant to Chapter 26.450 – Temporary and Seasonal Uses. Erection of these enclosures for longer than 7 consecutive days in a 12-month period shall require compliance with the Commercial Design Review – Chapter 26.412, and compliance with the provisions of this Chapter including affordable housing mitigation.

Staff Response: *The applicant is requesting a 105-day temporary use approval, requiring compliance with Commercial Design Guidelines (below), and affordable housing mitigation. Staff has calculated the appropriate affordable housing mitigation for 90 days (less the 14 day exemption) as $4,770.58 for the proposed use. This figure was calculated using updated cash-in-lieu figures for Category 4 – and the methodology described in 26.470.090.F; Temporary Uses and Structures.*

Commercial Design Guidelines:
Commercial Core Historic District

NOTE: Responses are only for the applicable review criteria for this project.

1.23 Building materials shall have these features:

- Convey the quality and range of materials found in the current block context or seen historically in the Character Area.
- Convey pedestrian scale.
- Enhance visual interest through texture, application, and/or dimension.
- Be non-reflective. Shiny or glossy materials are not appropriate as a primary material.
- Have proven durability and weathering characteristics within Aspen's climate.
- A material with an integral color shall be a neutral color. Some variation is allowed for secondary materials.

Staff Response: *The applicant is proposing two structures made from canvas and plastic materials. These are not high quality materials typically found within the district. These are not a part of the block context nor are they seen historically in the area. The tent is appropriately scaled and generally non-reflective. As a temporary material, it does not have proven durability nor weathering characteristics suitable for a mountain climate. The tent is grey, which is a suitable neutral color.* ***Staff finds this criterion not met.***

1.24 Introducing a new material, material application, or material finish to the existing streetscape may be approved by HPC or P&Z if the following criteria are met:

- Innovative building design
- Creative material application that positively contributes to the streetscape.
- Environmentally sustainable building practice.
- Proven durability

Staff Response: *The proposed material is not considered to be an innovative design nor a creative material that provides a positive contribution to the street scape. The canvas and plastic materials do not comply with any energy efficient building codes because they are temporary materials. As such, they are not durable because they are not intended for permanent structures.*
Staff finds this criterion not met.

2.14 Architectural details should reinforce historic context and meet at least two of the following qualities.

- Color or finish traditionally found downtown.
- Texture to create visual interest, especially for larger buildings.
- Traditional material: Brick, stone, metal and wood.
- Traditional application: for example, a running bond for masonry.

Staff Response: *Canvas and plastic are not traditionally found downtown, nor are they traditional material. There is no traditional application of said materials. The tent is grey, which is occasionally found downtown.*
Staff finds this criterion not met.

CITY OF ASPEN

MEMORANDUM

TO: Mayor and City Council

FROM: James R. True, City Attorney

MEMO DATE: December 2, 2019

MEETING DATE: December 10, 2019

RE: 777 Gibson Donation and Settlement

REQUEST OF COUNCIL: The City's Open Space and Trails Board passed a resolution on November 21, 2019 recommending the expenditure of Open Space and Trails funds for the acquisition of property known as 777 Gibson Ave. The actions necessary to complete the transaction and expenditure are before the Council in three separate resolutions.

SUMMARY AND BACKGROUND: This is a complicated matter that involves a small piece of property on Gibson Avenue. The property was acquired by Doug Allen and Nick Coates in the 1990's and sold to a limited liability company represented by Peter Fornell in 2018 for $750,000. The lot is highly constrained, and the circumstances of its very existence is disputed. In addition, the Oklahoma Flats Trail crosses the property and would be significantly impacted by any construction on the property.

Due to the severe constraints on the property, Mr. Fornell sought set back variances from the Board of Adjustment. The variance request was granted. This resulted in a litigation challenge from neighboring property owners together with an appeal of various decisions of the City.

During settlement discussions with the parties following commencement of the litigation, an agreement was reached whereby Mr. Fornell would convey the property to the City for $300,000 with the balance of the value of the property being donated to the City. The City would pay the $300,000 through $150,000 of Open Space and Trails funds and the balance from donations from neighbors. Mr. Fornell and the neighbors would receive tax benefits for their donations. A deed restriction would be placed on the property preventing any development, which is consistent with the intent of the Open Space and Trails Board's recommendation for the use of Open Space and Trails funds.

DISCUSSION: Although the underlying circumstances of this matter and the settlement in many respects is quite complicated, the ultimate solution is simple from the City's perspective. Rather than the owner, the neighbors and the City being mired in litigation for years, and rather than have a popular, heavily used trail being severely impacted from development of a single-family home, the parties have reached an agreement that resolves all issues.

FISCAL IMPACTS: Spending authority for this $300,000 acquisition was not incorporated into the 2019 budget. Therefore, to facilitate this transaction in 2019, the Parks and Open Space Fund would utilize existing spending authority from other 2019 capital projects that have been delayed until 2020. This will provide enough authority to repurpose for this acquisition on the needed timeline, and will not inhibit progress on these other projects, provided that Council supports new authority for these anticipated roll forward projects in the 2020 Spring Supplemental.

RECOMMEND ACTION: Move to approve Resolutions #139, #140 and #141, Series of 2019 to complete the transaction.

ALTERNATIVES: Choose not to acquire the property.

PROPOSED MOTION:

CITY MANAGER COMMENTS:

ATTACHMENTS:

RESOLUTION NO. 139
Series of 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A DONATION AGREEMENT BY AND BETWEEN 777 GIBSON LLC, A COLORADO LIMITED LIABILITY COMPANY AND THE CITY OF ASPEN DONATING TO THE CITY OF ASPEN PROPERTY DESCRIBED WITHIN SUCH AGREEMENT AND KNOWN AS 777 GIBSON AVENUE.

WHEREAS, there has been submitted to the City Council a proposed Donation Agreement by and between 777 Gibson LLC, A Colorado Limited Liability Company and the City of Aspen donating to the City of Aspen property described within such Agreement and known as 777 Gibson Avenue.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

That the City Council of the City of Aspen hereby approves the entry into a Donation Agreement by and between 777 Gibson LLC, A Colorado Limited Liability Company and the City of Aspen donating to the City of Aspen property described within such Agreement and known as 777 Gibson Avenue, a draft of which is attached hereto and does hereby authorize the City Manager of the City of Aspen to execute a final agreement on behalf of the City of Aspen in substantially the form attached hereto, subject to the approval of the City Manager and the City Attorney.

Dated _____, 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held December 10, 2019.

_____
Linda Manning, City Clerk

RESOLUTION NO. 140
Series of 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A SETTLEMENT AGREEMENT IN *VOLK EVERGREEN LLC, A COLORADO LIMITED LIABILITY COMPANY, ET AL.,V. THE CITY OF ASPEN, ET AL.*, CIVIL ACTION NUMBER 19CV30078, SPECIFICALLY INVOLVING PROPERTY KNOWN AS 777 GIBSON AVENUE.

WHEREAS, there has been submitted to the City Council a proposed Settlement Agreement in *Volk Evergreen LLC, a Colorado limited liability company, et al., v. the City of Aspen, et al.*, Civil Action Number 19CV30078, specifically involving property known as 777 Gibson Avenue.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section One

That the City Council of the City of Aspen hereby approves the entry into a Settlement Agreement in *Volk Evergreen LLC, a Colorado limited liability company, et al., v. the City of Aspen, et al.*, Civil Action Number 19CV30078, specifically involving property known as 777 Gibson Avenue, a draft of which is attached hereto and does hereby authorize the City Manager of the City of Aspen to execute a final agreement on behalf of the City of Aspen in substantially the form attached hereto, subject to the approval of the City Manager and the City Attorney.

Dated _____, 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held December 10, 2019.

_____
Linda Manning, City Clerk

RESOLUTION NO. 141
Series of 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING A DEED RESTRICTION AND DECLARATION OF RESTRICTIVE COVENANTS TO BE PLACED UPON PROPERTY ACQUIRED BY THE CITY AND KNOWN AS 777 GIBSON AVENUE THAT IS AN INTEGRAL ELEMENT OF THE SETTLEMENT AGREEMENT IN *VOLK EVERGREEN LLC, A COLORADO LIMITED LIABILITY COMPANY, ET AL.,V. THE CITY OF ASPEN, ET AL.*, CIVIL ACTION NUMBER 19CV30078, APPROVED PURSUANT TO RESOLUTION NO. 140, SERIES OF 2019.

WHEREAS, there has been submitted to the City Council a proposed Deed Restriction and Declaration of Restrictive Covenants to be placed upon property acquired by the city and known as 777 Gibson Avenue that is an integral element of the proposed Settlement Agreement in *Volk Evergreen LLC, a Colorado limited liability company, et al., v. the City of Aspen, et al.*, Civil Action Number 19CV30078, approved pursuant to Resolution No. 140, Series of 2019.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

That the City Council of the City of Aspen hereby approves the entry into a Deed Restriction to be placed upon property acquired by the city and known as 777 Gibson Avenue, which proposed Deed Restriction and Declaration of Restrictive Covenants is an integral element of the proposed Settlement Agreement in *Volk Evergreen LLC, a Colorado limited liability company, et al., v. the City of Aspen, et al.*, Civil Action Number 19CV30078, approved pursuant to Resolution No. 140, Series of 2019, a draft of which Deed Restriction and Declaration of Restrictive Covenants is attached hereto and does hereby authorize the City Manager of the City of Aspen to execute a final Deed Restriction and Declaration of Restrictive Covenants on behalf of the City of Aspen in substantially the form attached hereto, subject to the approval of the City Manager and the City Attorney.

Dated _____, 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held December 10, 2019.

_____
Linda Manning, City Clerk

DONATION AGREEMENT

THIS DONATION AGREEMENT (the "**Agreement**") is made as of November __, 2019 ("**Effective Date**"), by and between 777 GIBSON, LLC, a Colorado limited liability company ("**Donor**"), and the CITY OF ASPEN, a Colorado home rule corporation duly organized and existing under and by virtue of the laws of the State of Colorado (hereinafter referred to as "**City**").

RECITALS

A. Donor desires to donate to City and City desires to accept from Donor the Property (as defined below) which is owned by Donor and located in the City at (Street address T.D.B.) Gibson Avenue, Aspen CO 81611.

B. The City desires to accept of the Property from the Donor and desires to pay the Donor the sum of Three Hundred Thousand and no/100 Dollars ($300,000.00) ("**Partial Cash Payment**"), acknowledging that the Partial Cash Payment is substantially less than the fair market value of the Property.

C. As a condition of the donation, the Donor desires to donate the Property as set forth in the Gift Deed attached hereto as Exhibit A.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and representations herein set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Donor and City hereby covenant and agree as follows:

1. **The Property**. The property which is the subject of this Agreement is legally described in the Gift Deed as set forth on **Exhibit A**, together with (i) all right, title and interest of Donor, if any, in any easements, rights-of-way or other interests in, on, under or to any land, highway, street, road, right-of-way or avenue, open or proposed, in, on, under, across, in front of, abutting or adjoining the land, and all right, title and interest of Donor, if any, in and to any awards for damage thereto; (ii) all improvements and structures situated thereon; and (iii) all accessions, rights, privileges, appurtenances and all the estate and rights of Donor, if any, in and to the foregoing or otherwise appertaining to the foregoing.

2. **Donation.** Subject to the terms and conditions of this Agreement, the Donor hereby donates to City and City hereby accepts from the Donor, the Property described in detail in Section 1 above and in the Gift Deed. As partial consideration for the donation of the Property, City agrees to pay the Donor the Partial Cash Payment. The Donor will provide any necessary information for the City to file IRS Form 1099-S with respect to the Partial Cash Payment.

3. **Substantiation Requirements**. The City, upon recording of the Gift Deed, will provide the Donor with: (i) the contemporaneous written acknowledgment of the contribution as required by and in compliance with the provisions of Internal Revenue Code Section 170(f)(8), disclosing the amount of the Partial Cash Payment, confirming that the City has not provided any other goods or services in consideration, in whole or in part, for the donation of the Property; and (ii) the City's acknowledgment on Part IV of IRS Form 8283 for the contribution.

4. **Disclosures Regarding Prior Use and Condition of the Property.** The Donor hereby discloses and the City hereby acknowledges that the Property may be located in the EPA Superfund Site designated for Smuggler Mountain, and that the Donor has not conducted any environmental assessment of the Property or its site conditions, and accordingly hereby disclaims any and all liability for any Hazardous Substances that may be located on under or in the vicinity of the Property, and the City hereby waives any claims against the Donor related thereto. The term "Hazardous Substances" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, mold, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives. The term "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental

authority or other person or entity, whether or not in connection with transfer of title to or interest in property; or imposing conditions or requirements in connection with permits or other authorization for lawful activity.

5. **AS IS Donation**. City acknowledges and agrees that except as otherwise set forth herein, Donor is donating the Property to City in an "AS IS – WHERE IS" condition. Donor has not made, does not make, and specifically negates and disclaims any representations, warranties, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning, or with respect to (a) any improvements on the Property; (b) the value, nature, quality, or condition of the Property (including the past or current environmental condition of the Property), including, without limitation, the water (surface and groundwater), soil, and geology relative to the Property; (c) the income to be derived from the Property; (d) the suitability of the Property for any and all activities and uses which City may consider thereon; (e) the compliance of or by the Property or its operation, or any activities previously or currently conducted on the Property, with laws, ordinances, rules, or regulations of any applicable governmental authority or body (including any environmental laws); (f) the potential for liability (including liabilities arising under environmental laws) arising from or relating to the past or present condition of the Property or any past or present activities conducted on the Property; or (g) any other matter with respect to the Property. City acknowledges that it has undertaken or will undertake all inspections (physical, environmental or otherwise) of the Property and surrounding properties as City deems necessary or appropriate, and that based on the same, and except for representations and warranties by Donor expressly set forth in this Agreement, City is and will be relying upon such inspections and examinations and the advice and counsel of its own agents.

6. **Title Insurance**. The Donor will not be required to purchase any title insurance for the City, although the Donor will cooperate with the City in the event the City desires to purchase title insurance, and will execute any affidavits or other instruments as may be required to confirm that the Property is free and clear of all monetary liens and encumbrances, including mechanics liens, but subject to the lien for real property taxes and assessments for 2019 and subsequent years.

7. **Inspection**. The City acknowledges that it has had the opportunity to enter and inspect the Property and to have the Property inspected by professionals of the City's choice, including but not limited to, an examination of all existing improvements on the Property, the actual lot size, environmental (such as the presence on the Property of mold, radon gas, asbestos, petroleum products, methamphetamine and/or byproducts from the production of methamphetamine or other hazardous substances or materials) or soils matters, the presence or absence on or about the Property of electromagnetic fields, termites or other infestations, and other similar matters.

8. **Closing.** The closing date of this transaction shall be at a mutually

agreeable time and place in Pitkin County, Colorado, but in any event shall occur no earlier than December 22, 2019 and no later than December 30, 2019 ("**Closing Date**"). At the closing, Donor shall deliver to the City an executed Gift Deed in a form substantially similar to the form annexed hereto as Exhibit A and, by this reference, incorporated herein.

9. **Closing Fees**. All closing fees shall be the responsibility of the City, including all transfer and recording fees due and payable to the Pitkin County Clerk and Recorder's office.

10. **Possession.** City may assume possession of the Property on the Closing Date.

11. **Commissions.** The parties represent that they have not engaged the services of a real estate broker, agent or salesperson in connection with the transaction contemplated hereby, and that no broker's, agent's, salesperson's or finder's fees are due as a result hereof.

12. **Effective Date**. The last day a party executes this Agreement shall be its Effective Date.

13. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given (i) on the date delivered personally, or (ii) three (3) business days after being deposited with the United States Postal Service, postage prepaid, registered or certified, return receipt requested, or (iii) on the first business day after being deposited with a national courier guaranteeing overnight delivery, and addressed as follows:

If to Donor:	777 Gibson, LLC Attn: Peter Fornell, Manager 625 S. West End Street #4 Aspen CO 81611
With a copy to:	Sherman & Howard LLC Attn: B. Joseph Krabacher, Esq. 730 E Durant Avenue, Suite 200 Aspen CO 81611
If to City:	City of Aspen Attn: City Manager 130 S. Galena Street Aspen CO 81611
With a copy to:	City Attorney City of Aspen

Attn: James R. True
130 S. Galena Street
Aspen CO 81611

14. **Binding Effect**. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, administrators, successors and permitted assigns.

15. **Severability.** Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under Colorado law; but, if any provisions of any of the foregoing shall be invalid or prohibited under such applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of such documents.

16. **Waiver.** No claim of waiver, consent, or acquiescence with respect to any provisions of this Agreement shall be made against any party hereto except on the basis of a written instrument executed by or on behalf of such party.

17. **Further Actions**. Donor and City agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

18. **Attorney's Fees**. In the event either party brings an action to enforce or remedy a breach under this Agreement, in addition to any other damages or relief awarded, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees and any court costs incurred in such action.

19. **Survival.** The covenants, conditions and provisions of this Agreement shall survive the closing and the consummation of the transactions contemplated hereunder.

20. **Assignment.** The City shall not assign any of its rights or interests under this Agreement without the express written consent of Donor, which Donor may provide or refuse to provide in its sole discretion.

21. **Integration.** This writing and the exhibits hereto represent the entire Agreement to donate between the parties and there are no other oral or collateral agreements or understandings of any kind or character between the parties regarding its subject matter. The provisions hereof may be modified only by agreement in writing between the parties. The parties are not relying on any representation that is not contained herein.

22. **Counterparts.** This Agreement may be executed in any number of

counterparts, and signature to any one counterpart shall be deemed signature to all counterparts, which, when taken together, shall constitute one contract.

IN WITNESS WHEREOF, the parties hereto have caused this Donation Agreement to be executed the day and year shown below.

DONOR:

777 GIBSON, LLC
A Colorado limited liability company

By: _____
Peter Fornell, Manager

[Insert page break as needed.]

IN WITNESS WHEREOF, the parties hereto have caused this Donation Agreement to be executed the day and year shown below.

THE CITY OF ASPEN, COLORADO
A Municipal Corporation and Home Rule City

ATTEST:

By_____
City Clerk

By_____
City Manager

APPROVED AS TO FORM:

CITY:

_____
Aspen City Attorney

EXHIBIT A
GIFT DEED

THIS DEED OF GIFT, dated December ___, 2019, is made between 777 GIBSON, LLC, a Colorado limited liability company "Donor" in favor of City of Aspen, a Colorado home rule corporation duly organized and existing under and by virtue of the laws of the State of Colorado, "Donee", whose legal address is 130 S. Galena Street, Aspen CO 81611.

WHEREAS, the term Donor and Donee shall mean and include their representatives heirs, successors, executors, administrators, trustees, legal representatives and assigns.

WHEREAS, the Donor herein, is the sole and absolute owner of the real property located in the County of Pitkin and State of Colorado described as follows and does bargain, sell, convey and confirm unto the Donee, all the real property, together with improvements, if any, situate, lying and being in the County of Pitkin, State of Colorado, described as follows (the "Property"):

PARCEL 1 (EASTERN PARCEL)

PARCEL OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE 6TH P.M. BEING A PORTION OF PROPERTY DESCRIBED IN QUIET TITLE JUDGMENT CIVIL ACTION NO. 3483 OF PITKIN COUNTY LYING NORTHERLY OF LOT 1, CREEKTREE SUBDIVISION AS FOLLOWS:

COMMENCING AT THE B.L.M. BRASS CAP "EAST ASPEN TOWNSITE CORNER 28". THENCE N 38° 51'42" E 456.79 FEET TO A NO. 5 REBAR WITH AN ORANGE PLASTIC CAP "PLS 26643" SET FOR THE SOUTH CORNER OF THE PITKIN COUNTY RIGHT OF WAY PARCEL AS DESCRIBED IN DEED RECORDED AS RECEPTION NO. 113812 & PLAT AS RECEPTION NO. 113811. SAID CAP ALSO BEING ON THE NORTHERLY LINE OF LOT 1, CREEKTREE SUBDIVISION THE POINT OF BEGINNING.
THENCE S 23°12'01" E 53.93 FEET ALONG THE NORTHERLY LINE OF SAID LOT 1 TO THE NORTHEAST CORNER (#5 REBAR WITH ALUM CAP "PLS 16129");
THENCE S 18°09'53" W 130.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 1 TO AN ANGLE POINT (#5 REBAR WITH ALUM CAP GVS PLS 16129);
THENCE S70°51'28" E 15.80 FEET CONTINUING ALONG THE EASTERLY LINE OF SAID LOT 1 TO THE WESTERLY BOUNDARY OF THE RIVER'S EDGE ONDOMINIUMS (#5 REBAR WITH ALUM CAP "GVS PLS16129");
THENCE N 19°31'00" E 162.80 FEET ALONG THE WESTERLY BOUNDARY OF THE RIVER'S EDGE CONDOMINIUMS TO THE CONCRETE CURB AS

CONSTRUCTED ON THE SOUTHWESTERLY SIDE OF GIBSON AVENUE;
THENCE NORTHWESTERLY ALONG SAID CURB THE FOLLOWING 5 COURSES:
N 30°48'03" W 12.49 FEET
N 21°27'56" W 13.08 FEET;
N 08°24'37" W 32.02 FEET;
N 10°07'06" W 20.26 FEET;
N 12°02'39" W 23.39 FEET TO THE EASTERLY BOUNDARY OF SAID PITKIN COUNTY RIGHT OF WAY PARCEL;
THENCE S 19°31'00" W 77.01 FEET ALONG SAID EASTERLY BOUNDARY TO THE POINT OF BEGINNING.

PARCEL 2 (WESTERN PARCEL)

A PARCEL OF LAND LOCATED IN THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE QUARTER OF SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE 6TH P.M., AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" OF QUIT CLAIM DEED RECORDED OCTOBER 9, 1991 IN BOOK 658 AT PAGE 784.
COMMENCING AT THE B.L.M. BRASS CAP "EAST ASPEN TOWNSITE CORNER 28". THENCE N 38° 51'42" E 456.79 FEET TO A NO. 5 REBAR WITH AN ORANGE PLASTIC CAP "PLS 26643" SET FOR THE SOUTH CORNER OF THE PITKIN COUNTY RIGHT OF WAY PARCEL AS DESCRIBED IN DEED RECORDED AS RECEPTION NO. 113812 & PLAT AS RECEPTION NO. 113811. SAID CAP ALSO BEING ON THE NORTHERLY LINE OF LOT 1, CREEKTREE SUBDIVISION THE POINT OF BEGINNING.
THENCE N 23°06'08" W 109.26 FEET ALONG THE NORTHERLY LINE OF SAID LOT 1 TO THE NORTHWEST CORNER (#5 REBAR WITH ALUM CAP "GVS PLS 16129");
THENCE N 15°30'00" E 45.06 FEET ALONG THE NORTHERLY EXTENSION OF THE WESTERN BOUNDARY OF SAID LOT 1 TO THE SOUTHWESTERLY BOUNDARY OF SAID PITKIN COUNTY RIGHT OF WAY PARCEL;
THENCE SOUTHEASTERLY 148.43 FEET ALONG THE ARC OF A NON-TANGENTIAL CURVE WHOSE RADIUS POINT BEARS S 64°59'39" W 329.26 FEET (CHORD BEARS S 12°05'29" E 147.18 FEET TO THE POINT OF BEGINNING.
COUNTY OF PITKIN, STATE OF COLORADO

Being the same property as described in: (i) the Special Warranty Deed recorded December 20, 2018 as Reception No. 652817 and (ii) the Special Warranty Deed recorded December 21, 2018 as Reception No. 652836 of the records of Pitkin County, Colorado

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the Donor, either in law or equity, of, in, and to the above described Property, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said Property, together with the hereditaments and appurtenances, unto the Donee and the Donee's successors and assigns forever; and Donor herein hereby binds itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the said Property unto the above named Donee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Donor.

This conveyance is made and accepted subject to the following matters, to the extent same are in effect at this time: Any and all restrictions, covenants, conditions and easements, if any, relating to the hereinabove described Property, but only to the extent they are still in effect, shown of record in the hereinabove mentioned County and State; and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to the hereinabove described Property.

IN WITNESS WHEREOF, the Donor has caused this Deed of Gift to be executed by its duly authorized officer on the date set forth above.

777 GIBSON, LLC
A Colorado limited liability company

By: _____
Peter Fornell, Manager

STATE OF COLORADO)
) ss:
COUNTY OF PITKIN)

The foregoing instrument was acknowledged before me this __ day of December, 2019 by Peter Fornell, Manager of 777 Gibson, LLC, a Colorado limited liability company.

_____, Notary Public

Print Name_____, SEAL
My commission expires: _____

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement") is entered into by and between Volk Evergreen LLC, a Colorado limited liability company; Aspen Stream LLC, a Colorado limited liability company; Frontier, LLC, a Colorado limited liability company; Ninfa LLC, a Colorado limited liability company; Edward Bradley, trustee of the EQT Aspen 18 Trust, Janie G. Bradley, Trustee of the JQT Aspen 18 Trust, Aspen Joy LLC, a Colorado limited liability company; William Budinger, Trustee of the B&Z 2010 Revocable Trust, and 470 Holding Company LLC, a Colorado limited liability company ("Plaintiffs"), and the City of Aspen, a Colorado home rule municipality ("City"). The above entities are hereinafter sometimes collectively referred to as the "Parties," or individually as "Party."

RECITALS

A. WHEREAS, a dispute arose between the Parties relating to the City's approval of a variance application by 777 Gibson LLC, a Colorado limited liability company (the "Developer");

B. WHEREAS, as the result of the dispute Plaintiffs filed a lawsuit in Pitkin County District Court, Civil Action No. 2019CV30078 (the "Lawsuit");

C. WHEREAS, the Parties desire to resolve and settle all disputes between them, including all claims or counterclaims that were or could have been asserted in the Lawsuit.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements, promises, covenants, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The above recitals are material to this Agreement and are incorporated herein by this reference.

2. Contribution. Plaintiffs agree to donate to the City the sum of One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00)(the "Donation") by 5:00 p.m. on or before December 24, 2019. The donation will be made in the form of a check or checks made payable to "The City of Aspen."

3. City Acquisition of Property. The City will acquire fee title to the property located at 777 Gibson Ave., Aspen Colorado (the "Property") from the Developer and place a deed restriction on it the form attached hereto as Exhibit A. Nothing herein will curtail the rights of Frontier, LLC to acquire a portion of the Property in its lawsuit for quiet title based on adverse possession. That lawsuit is currently pending in Pitkin County District Court as 2019CV30060 (the "Adverse Possession Suit").

4. Dismissal of Claims. The City is hereby authorized at any time following Plaintiffs' delivery of the Settlement Payment set forth in paragraph 2 to cause to have filed with

the Court a Stipulation of Dismissal With Prejudice in the form annexed hereto as Exhibit B.

5. Mutual Releases. In consideration of the agreements and conditions in this Agreement, each and every Plaintiff and their past, present and future parents, subsidiaries and affiliates, shareholders, officers, directors, agents, employees, attorneys, advisors, representatives, successors, predecessors and assigns agree to release, discharge and forever hold harmless the City and its past, present and future parents, subsidiaries, affiliates, members, managers, agents, employees, attorneys, advisors, representatives, successors, predecessors and assigns from any and all claims, demands, rights of action, damages, liabilities, causes of action, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not presently asserted or claimed, past, present or future, including but not limited to those which were or could have been asserted in the Lawsuit, excepting therefrom the Adverse Possession Suit.

In consideration of the agreements and conditions in this Agreement, the City and its past, present and future parents, subsidiaries, affiliates, members, managers, agents, employees, attorneys, advisors, representatives, successors, predecessors and assigns agree to release, discharge and forever hold harmless each and every Plaintiff and its past, present and future parents, subsidiaries, affiliates, shareholders, officers, directors, agents, employees, attorneys, advisors, representatives, successors, predecessors, heirs and assigns from any and all claims, demands, rights of action, damages, liabilities, causes of action, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not presently asserted or claimed, past, present or future, including but not limited to those which were or could have been asserted in the Lawsuit.

6. Unknown Facts. The releases of claims herein include claims of every nature and kind, known or unknown, suspected or unsuspected. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know to be or believe to be true with respect to the Agreement, and they agree that this Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery thereof.

7. Non-Disparagement. Each Party agrees on behalf of itself and its respective affiliates, members, managers, shareholders, officers, directors, employees, agents, attorneys, advisors, representatives and assigns that it shall not criticize, ridicule or make any statement which disparages or is derogatory of the other Party or its affiliates, members, managers, shareholders, officers, directors, employees, agents, attorneys, advisors, representatives and assigns.

8. Attorneys' Fees and Costs. Attorneys' fees and costs incurred by any Party in connection with their dispute, the Lawsuit or this Agreement shall be borne by the respective Party incurring such attorneys' fees and costs.

9. No Admission of Liability. The Parties agree that nothing contained herein, and no action taken by any party hereto with regard to the Agreement, shall be construed as an admission by any party of liability for any purposes whatsoever.

10. Governing Law. This Agreement shall be interpreted using the laws of the State of Colorado.

11. Amendments. This Agreement may only be amended in writing signed by all Parties.

12. Complete Agreement. This Agreement is the complete agreement of the Parties and supersedes, merges, and voids any and all prior agreements or understandings, written or verbal. Anything that does not plainly and expressly appear in writing in the text of the Agreement has not been agreed upon.

13. Severability. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

14. Authority. The Parties represent that each claim, right or interest asserted is owned by them and have not been assigned, transferred or sold.

15. Advice of Counsel. The Parties acknowledge that they have had the opportunity to obtain the advice of counsel prior to entering into this Agreement.

16. Execution in Counterparts. This Agreement may be executed in counterparts, including by facsimile or other means of electronic transmission and each counterpart shall constitute an original.

17. Construction of the Agreement. In the event that this Agreement must be construed or interpreted, it shall not be construed or interpreted against either party as the author.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release on the dates written below.

Volk Evergreen, LLC _____ By: _____ Title: _____ Dated: December ____, 2019	**Aspen Stream LLC** _____ By: _____ Title: _____ Dated: December ____, 2019
Frontier, LLC _____	**Ninfa, LLC** _____

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By: _____ Title: _____ Dated: December ____, 2019	By: _____ Title: _____ Dated: December ____, 2019
Edward Bradley, Trustee of the EQT Aspen 18 Trust _____ By: _____ Title: _____ Dated: December ____, 2019	**Janie G. Bradley, Trustee of the JQT Aspen 18 Trust** _____ By: _____ Title: _____ Dated: December ____, 2019
Aspen Joy LLC _____ By: _____ Title: _____ Dated: December ____, 2019	**William Budinger, Trustee of the B&Z 2010 Revocable Trust** _____ By: _____ Title: _____ Dated: December ____, 2019
470 Holding Company LLC _____ By: _____ Title: _____ Dated: December ____, 2019	**City of Aspen** _____ By: _____ Title: _____ Dated: December ____, 2019

EXHIBIT B

District Court, Pitkin County, Colorado 506 E. Main Street, Aspen, Colorado 81611 Tel: (970) 925-7635 _____ **Plaintiff:** Volk Evergreen LLC, a Colorado limited liability company, et al., v. **Defendant:** City of Aspen, a Colorado home rule municipality; and, Gibson 777, LLC, a Colorado limited liability company.	**^COURT USE ONLY^** _____ Case Number: 19 CV 30078 Division: 1 Courtroom
Attorneys for Defendant: Kenneth E. Citron, Atty. Reg. #: 43083 Lance R. Coté, Atty. Reg. #: 18194 KLEIN, COTÉ & EDWARDS, LLC 201 N. Mill Street, Suite 203 Aspen, Colorado 81611 Phone Number: 970-925-8700 Fax Number: 970- 925-3977 E-mail: lrc@kcelaw.net; kcitron@kcelaw.net	
STIPULATION OF DISMISSAL WITH PREJUDICE	

NOTICE IS HEREBY GIVEN by Plaintiffs and defendants the City of Aspen and 777 Gibson, LLC, by and through their respective undersigned attorneys, that the parties hereto hereby stipulate to dismissal with prejudice of all claims and counterclaims asserted herein pursuant to C.R.C.P. 41(a)(1), with each party to bear its own costs and attorneys' fees.

Dated this _____ day of December, 2019

BALCOMB AND GREEN, P.C.

By: /s/ *Original Signature on File*
Lucas Van Arsdale

KLEIN, COTÉ & EDWARDS, LLC

By: /s/ *Original Signature on File*
Lance R. Coté

CITY OF ASPEN

By: */s/ Original Signature on File*
James R. True

CERTIFICATE OF SERVICE

I certify that on December ____, 2019 this Stipulation of Dismissal with Prejudice was filed in paper format or electronically filed via ICCES and the following parties were to be notified of the service this date via ICCES and/or via United States mail, first class postage prepaid, to:

Balcomb & Green, P.C.
Lucas Van Arsdale
lvanarsdale@balcombgreen.com
133 Prospector Rd
Suite 4102L
Aspen, CO 81611
Attorney for Defendant 777 Gibson

City of Aspen
James R. True
130 S Galena St,
Aspen, CO 81611
(970) 920-5055
Attorney for Defendant City of Aspen

/s/ original signature on file
Gracie Wright

DEED RESTRICTION AND DECLARATION OF RESTRICTIVE COVENANTS

THIS DEED RESTRICTION AND DECLARATION OF RESTRICTIVE COVENANTS (the "Deed Restriction") is made and entered into this _____ day of December, 2019, by and between the **CITY OF ASPEN**, a Colorado home rule municipal corporation (hereinafter referred to as "Owner"), and Volk Evergreen LLC, a Colorado limited liability company; Aspen Stream LLC, a Colorado limited liability company; Frontier, LLC, a Colorado limited liability company; Ninfa LLC, a Colorado limited liability company; Edward Bradley, trustee of the EQT Aspen 18 Trust, Janie G. Bradley, Trustee of the JQT Aspen 18 Trust, Aspen Joy LLC, a Colorado limited liability company; William Budinger, Trustee of the B&Z 2010 Revocable Trust, and 470 Holding Company LLC, a Colorado limited liability company, (hereinafter referred to as "Donors").

RECITALS

A. Owner owns in fee simple certain real property known as 777 Gibson Ave., Aspen, Colorado 81611 and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"); and

B. Donors are individuals who have made donations to the City of Aspen for its acquisition of the Property conditioned upon the recordation of this Deed Restriction limiting development of the Property on terms set forth herein. The properties owned by Donors are described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Donor Properties**").

AGREEMENT

NOW THEREFORE, Owner and the Donors hereby covenant and agree that the Property shall be held and transferred, subject to the covenants, conditions and restrictions set forth below:

The Property will be permanently and perpetually retained in its natural, scenic, open space and park-like condition. The City will retain the right to: (a) construct paths, trails, and walkways on the Property provided any such paths, trails, or walkways, other than the existing trail (presently, commonly known as the "Oklahoma Flats Trail") through the property, will not be paved with asphalt, concrete, or other hard surfaces; (b) remove, trim, cut, or prune trees and brush, and to plant trees and plants that are native species and suitable to the open space condition of the Property; (c) repair and replace existing fences and construct new fences provided such fences do not have a material adverse impact on the natural, scenic, open space and park-like condition of the Property; (d) control rodents and other problem animals by the appropriate use of legal control techniques; (e) develop and maintain water resources on the Property which are necessary or desirable for wildlife and flood control; and (f) maintain the existing trail that is paved including by snow removal and upgrade from time to time, including through the installation of safety lighting. The City shall have the responsibility to control noxious weeds. Any activity or use of the Property inconsistent with the foregoing is prohibited.

The terms and provisions of this Deed Restriction shall constitute covenants running with the Property as a burden thereon for the benefit of, and shall be specifically enforceable by, the Donors as a group or individually (with respect to each Donor, for so long as the Donor is an owner of a Donor Property), and by their respective successors and assigns in the ownership of the Donor Properties as a group or individually, by any appropriate legal action including, but not limited to, injunction, abatement, or eviction of non-qualified tenants.

In the event the any party hereto shall institute any action or proceeding against Owner or any subsequent owner or user of the Property relating to the provisions of this Deed Restriction, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant for all reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including reasonable attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

All rights provided in this Deed Restriction may be exercised only to the extent that the exercise thereof does not violate then applicable law and shall be limited to the extent necessary to render the remaining covenants valid and enforceable. If any term, provision, covenant or agreement or the application thereof to any person or circumstance shall be held illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected.

The failure of the City or a Donor or a successor or assign of a Donor to insist upon strict performance of any of the terms, covenants or conditions shall not be deemed a waiver of any rights or remedies which that party may have or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

This Deed Restriction may be amended or terminated by, and only by, a written agreement which shall be deemed effective only when recorded in the real estate records of the Pitkin County Clerk and Recorder's Office. No such amendment or termination shall be binding upon the owner of a Donor Property unless such amendment is executed by the owner of such Donor Property and the City.

IN WITNESS WHEREOF, the Parties have executed this Deed Restriction on the dates written below.

Volk Evergreen, LLC By: _____ Title: _____ Dated: December ____, 2019	Aspen Stream LLC By: _____ Title: _____ Dated: December ____, 2019
Frontier, LLC By: _____ Title: _____	Ninfa, LLC By: _____ Title: _____

Dated: December ____, 2019	Dated: December ____, 2019
Edward Bradley, Trustee of the EQT Aspen 18 Trust By: _____ Title: _____ Dated: December ____, 2019	Janie G. Bradley, Trustee of the JQT Aspen 18 Trust By: _____ Title: _____ Dated: December ____, 2019
Aspen Joy LLC By: _____ Title: _____ Dated: December ____, 2019	William Budinger, Trustee of the B&Z 2010 Revocable Trust By: _____ Title: _____ Dated: December ____, 2019
470 Holding Company LLC By: _____ Title: _____ Dated: December ____, 2019	City of Aspen By: _____ Title: _____ Dated: December ____, 2019

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2019, by _____, as _____ of the City of Aspen, a Colorado home rule municipal corporation, on behalf of said City.

WITNESS my hand and official seal.

_____
Notary Public

MEMORANDUM

TO:	Mayor and Council
FROM:	Chris Everson, Affordable Housing Project Manager
CC:	Scott Miller, Director of Public Works
DATE:	December 2, 2019
MEETING DATE:	December 10, 2019
RE:	Resolution #143 of 2019 - Perpetual Deed Restriction for Centennial Rentals

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REQUEST OF COUNCIL: Staff is requesting that Council consider approval of Resolution #143 and the attached revised perpetual deed restriction for the Centennial affordable rental units.

BACKGROUND: On November 12, 2019, Council approved an agreement under Resolution #128 of 2019 which would extend the deed restrictions on the 148 units at the Centennial affordable rental facility in perpetuity at a cost of $10 million. That agreement included the following provision:

> *10) City Approval Condition. The City shall have until thirty (30) days after the Effective Date of this Agreement to negotiate with the Owner the final terms of the Deed Restriction and perform such due diligence as it deems appropriate. Either party may terminate this agreement, at its sole subjective discretion, by providing written notice of termination to the other party pursuant to paragraph 11. f), below, within such 30-day period. If notice of termination is not received by the other party prior to the end of such 30-day period, then this Agreement will continue in full force and effect and the parties shall proceed with the Closing subject to other express terms of this Agreement.*

DISCUSSION: Since November 12, staff has revised the proposed deed restriction to include language from APCHA's most up-to-date standard deed restriction, to further ensure that the perpetual deed restriction is sufficiently thorough.

RECOMMENDATION: Considering the revisions to the attached deed restriction and considering also the information contained in staff's November 12 memo on this topic, staff recommends that Council consider approval of Resolution #143 and the attached revised perpetual deed restriction for the Centennial affordable rental units.

BY APPROVING RESOLUTION #143 OF 2019, COUNCIL IS AGREEING TO CONTINUE THE EXISTING AGREEMENT, INCLUDING THE OBLIGATION TO FUND PAYMENT AS DESCRIBED.

ALTERNATIVES: Council may alternatively pass a motion to direct staff to terminate the agreement which was approved by Council on November 12, 2019 under Resolution #128 of 2019. This would remove the City's financial obligation and would provide an opportunity for staff stop work and/or renegotiate as directed by Council.

FINANCIAL/BUDGET IMPACTS: A $10 million investment could be funded with cash from the 150 Fund and spending authority of this amount was included in the 2019 Fall Supplemental, to allow this transaction to move forward, if desired.

This expenditure plus the $11 million needed for the purchase of the Aspen Mini Storage property may necessitate the use of debt to continue the housing development projects currently in process – staff would need to further research this.

ATTACHMENTS: Exhibit A: Revised Perpetual Deed Restriction for Centennial Rental Facility

RESOLUTION NO. 143
Series of 2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, APPROVING THE DEED RESTRICTION BY AND BETWEEN CENTENNIAL-ASPEN II LIMITED PARTNERSHIP AND THE CITY OF ASPEN REGARDING PROPERTY KNOWN AS CENTENNIAL APARTMENTS.

WHEREAS, there has been submitted to the City Council a proposed Deed Restriction by and between Centennial-Aspen II Limited Partnership and the City of Aspen Regarding Property known as the Centennial Apartments, the purchase of which was approved pursuant to Resolution No. 128, Series of 2019.

NOW, WHEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

That the City Council of the City of Aspen hereby approves the entry into the proposed Deed Restriction by and between Centennial-Aspen II Limited Partnership and the City of Aspen Regarding Property known as the Centennial Apartments, a copy of which is attached hereto and does hereby authorize the City Manager of the City of Aspen to execute the agreement on behalf of the City of Aspen.

Dated _____, 2019.

_____
Torre, Mayor

I, Linda Manning, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held December 10, 2019.

_____
Linda Manning, City Clerk

DEED RESTRICTION

This DEED RESTRICTION (the "**Agreement**") is made this_____day of _____, 2019 by and between CENTENNIAL-ASPEN II LIMITED PARTNERSHIP, a Colorado limited partnership ("**Owner**") and the CITY OF ASPEN, a Colorado home rule municipal corporation (the "**City**").

RECITALS

A. Owner owns in fee simple certain real property known as 100 Luke Short Ct, Aspen, Colorado 81611 and more particularly described on **Exhibit A** (the "**Property**");

B. The Property is encumbered by certain affordable housing covenants, conditions and restrictions agreed to by World Class Housing, Inc., Owner's predecessor in interest, for the benefit of the Board of County Commissioners of Pitkin County, Colorado (the "**County**"); and

C. Owner and the City wish to impose certain affordable housing covenants, conditions and restrictions on the Property as set forth below that will run to the benefit of the City commencing upon the expiration of the existing covenants, conditions and restrictions for the benefit of the County.

NOW THEREFORE, Owner and the City agree that the Property shall be held, transferred, sold, conveyed, or occupied subject to the covenants, conditions and restrictions set forth below:

1) Definitions:

a) The term "**Centennial Apartments**" used herein shall refer to that 148-unit rental apartment complex located on the Property. **Centennial Apartment** shall refer to an individual unit with the **Centennial Apartments.**

b) The term Disposition and Development Agreement ("**DDA**") used herein shall refer to that certain agreement dated May 10, 1983 encumbering the Property for the benefit of the County and all its various amendments (including, without limitation, the incorporated Rent Resolution No. 84-32 recorded in the real property records of the Clerk and Recorder of Pitkin County, Colorado (the "**Records**) at Book 465 and Page 348) between County and Owner and its various predecessors (together, "**Centennial**") for development and subsequent use of the Centennial Apartments.

c) The term "**Deed Restriction**" used herein shall refer to any duly recorded restrictions, covenants, or similar devices contained in or affecting agreements, deeds or similar instruments conveying or affecting the Property or any portion thereof.

d) The term "**Urban Index**" used herein shall refer to the Consumer Price Index - All Urban Consumers (CPI-U), U.S. City Average, All Items (1982-84=100) compiled by the United

States Department of Labor, Bureau of Labor Statistics. By way of identification, the parties agree that the CPI-U index number for August 2019 is 256.558. If at the time of computation of rental increases as provided below the Urban Index as defined is not then being currently published, Centennial (and/or its then successor-in-interest) and the City shall agree on a substitute index which has historically approximated the Urban Index as defined. The parties further agree that the methodology they will use for calculating index changes in the Urban Index is that described in the instruction sheet from the Bureau of Labor Statistics, U.S. Department of Labor, which reads as follows:

CALCULATING INDEX CHANGES

Movements of the indexes from one month to another are usually expressed as percent changes rather than changes in index points, because index point changes are affected by the level of the index in relation to its base period while percent changes are not.

The example in the accompanying box illustrates the computation of index point and percent changes.

Percent changes for 3-month and 6-month period are expressed as annual rates and are computed according to the standard formula for compound growth rates.

These data indicate what the percent change would be if the current rate were maintained for a 12- month period.

INDEX POINT CHANGE

CPI	315.5
Less previous index	303.5
Equals index point change	12.0

PERCENT CHANGE

Index Point difference	12.0
Divided by the previous index	303.5
Equals	0.040
Results multiplied by one hundred	0.040 x 100
Equals percent change	4.0

e) The term "**Regulations**" used herein shall refer to the published Aspen/Pitkin County Affordable Housing Regulations or Guidelines, however described and as amended from time to time before or after the Effective Date (as defined below) of this Agreement. The term Regulations shall include, without limitation, any existing or future recorded resolution, ordinance, or enactment of the (i) the City of Aspen, Colorado or its City Council; (ii) the Aspen/Pitkin County Housing Authority (or any successor thereto

("**APCHA**") or its Board of Directors; (iii) or any successor or assignee of such governmental entities or their governing bodies replacing, amending, or serving a purpose or function similar to that of the Regulations as presently constituted.

2) Term. The terms and conditions of restrictions set forth in this Agreement shall automatically become effective immediately upon the termination of the DDA pursuant to Section 2.01 of the DDA, as amended pursuant to Section 1 of the Third Amendment to the Disposition and Development Agreement recorded in the Records in Book 508 at Page 910 (the "**Effective Date**") and shall remain in full force and effect in perpetuity.

3) Unit Designations. Commencing on the Effective Date, and for the duration of this Agreement, all 148 rental units within the Centennial Apartments shall be categorized or designated as "category 3", or such equivalent category as may be set forth in the Regulations as amended from time to time, for all purposes under the Regulations and the Deed Restrictions and shall not be recategorized or redesignated without the written mutual consent of the owner or owners of the Property and those then holding legal authority to so categorize or designate units under the Regulations or the Deed Restrictions as applicable.

4) Rental Rates.

   a) The maximum per square foot monthly rental rate for each of the 148 rental units in the Centennial Apartments may be increased over the maximum per square foot monthly rental rate permitted for such units during the prior calendar year, whether actually rented at such rate or not during the prior calendar year, by a percentage amount equal to the percentage change in the Urban Index during the twelve months ending on July 31 of the prior calendar year.

   b) Centennial shall be in compliance with the maximum permitted monthly rental limitations of this Agreement, even if certain individual units in the Centennial Apartments exceed such maximum limitations, so long as the per square foot rental rate for any unit does not exceed the maximum per square foot monthly rental rate by more than fifteen percent (15%) and the aggregated average monthly rent of all rental units in the Centennial Apartments, taken as a whole, does not exceed such maximum limitations.

   c) The provisions of this Section 4 supersede and shall govern over any and all conflicting or inconsistent provisions of the Regulations or any Deed Restrictions pertaining to the

maximum monthly rents chargeable for the 148 rental units in the Centennial Apartments.

5) Unit Sizes and Number of Bedrooms. Neither the number of bedrooms contained within the Centennial Apartments nor the unit sizes of any of the 148 rental units within the Centennial Apartments shall be reduced without the consent of the City.

6) The use and occupancy of the Centennial Apartments shall be limited exclusively to housing for employees and their families who are employed in Pitkin County and who meet the definition of "qualified employee" as that term is defined by the qualification Regulations established and indexed by APCHA on an annual basis, and as they are amended from time to time. The Owner shall have the right to lease the Centennial Apartments to "qualified employees" of its own selection.

7) No Centennial Apartments shall be occupied by the Owner or members of the immediate family ("Immediate Family" shall mean a person related by blood or marriage who is a first cousin [or closer relative] and his or her children) or any principal of Owner, nor shall a Centennial Unit be used as a guesthouse or guest facility. For the sake of clarity, employees of Owner may occupy the Centennial Apartments so long as such employees otherwise meet the definition of "qualified employee" under the qualification Regulations and whose employment and other qualifications are verified pursuant to the requirements set forth herein.

8) Written verification of employment of employee(s) proposed to reside in the Centennial Apartments shall be completed and filed with APCHA by the Owner of the Centennial Apartments prior to occupancy thereof, and such verification must be reasonably acceptable to APCHA.

9) Prior to occupancy of the Centennial Apartments, APCHA must qualify the tenant. All verification required under the Regulations must be provided. The tenant must provide the owner/landlord with proof of verification and qualification by APCHA prior to occupancy.

10) The owner shall be required to provide a copy of the lease agreement to APCHA for approval. Leases shall meet occupancy standards and allowable rental rates and shall be for a minimum term of six (6) consecutive months. Owner shall provide an executed copy of the lease to APCHA prior to occupancy. APCHA's review period for the information submitted pursuant to this Agreement or the Regulations shall be as provided for in the APCHA guidelines. In the event APCHA has not responded within such review period, the request shall be deemed approved by APCHA.

11) Rent shall be verified and approved by APCHA upon submission and approval of the lease. Employees shall be qualified by APCHA as to employment, maximum income and asset limitations.

12) Each unit of the Centennial Apartments must meet minimum occupancy; i.e., one person per bedroom.

13) Upon vacancy of a Centennial Apartment, the Owner is granted forty-five (45) days in which to locate a qualified employee. If an employee is not placed by the Owner, APCHA or the City may rent the vacant Centennial Apartment to a qualified employee.

14) Owner agrees to provide to APCHA or the City upon request all information reasonably necessary to determine if there is full compliance with this Deed Restriction Agreement.

15) In the event that APCHA has reasonable cause to believe the Owner and/or tenant is violating the provisions of this Agreement, APCHA, by its authorized representative, may inspect the Property or Centennial Apartments between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice.

16) APCHA, in the event a violation of this Agreement is discovered, shall send a notice of violation to the Owner and/or tenant, as may be applicable, detailing the nature of the violation and following the Notice of Violation policy as stated in the Regulations.

17) There is hereby reserved to the parties' hereto any and all remedies provided by law for breach of this Deed Restriction or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Deed Restriction, the prevailing party shall recover damages and costs, including reasonable attorney's fees, as well as any fees that may be instituted within the Regulations and as they are amended from time to time.

18) In the event a Centennial Unit is leased without compliance herewith, such lease shall be wholly null and void and shall confer no title whatsoever upon the purported tenant. Each and every lease, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Deed Restriction.

19) The terms and provisions of this Deed Restriction shall constitute covenants running with the title to the Centennial Apartments as a burden thereon for the benefit of, and shall be specifically enforceable by, the Managing Agent, the Association and/or Owner, by APCHA, the City of Aspen, Colorado, and by their respective successors and assigns, by any appropriate legal action including, but not limited to, injunction, abatement, or eviction of non-qualified tenants.

20) When the option to convert any unit to a sale unit is exercised, the owner must adopt a new deed restriction in the form adopted by APCHA that is applicable to sale units.

21) In the event of a direct conflict between this Agreement and the Regulations, the terms and conditions of this Agreement shall control. In the event APCHA or its successor agency no longer exists, the City shall be deemed a successor agency with all the authority of APCHA as set forth herein.

22) InjunctiveRelief. In the event of a default, the City shall be entitled to all remedies in law or in equity and by decree to compel performance of any such terms, covenants, or conditions, it

being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

23) Default. In the event the City shall institute any action or proceeding against Owner or any subsequent owner or user of the Property relating to the provisions of this Agreement, the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant for all reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including reasonable attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

24) Rent Control. Owner and the City stipulate and agree that, in accordance with CRS 38-12-301(2)(a) and (b), this Agreement constitutes a voluntary agreement and deed restriction to limit rent on the Property and to otherwise provide affordable housing stock. Owner waives any right it may have to claim that this Agreement violates CRS 38-12-301.

25) Severability. All rights provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate then applicable law and shall be limited to the extent necessary to render the remaining covenants valid and enforceable. If any term, provision, covenant or agreement or the application thereof to any person or circumstance shall be held illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected.

26) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

27) Time. Time is of the essence of this Agreement.

28) Non-Waiver. The failure of the City to insist upon strict performance of any of the terms, covenants or conditions shall not be deemed a waiver of any rights or remedies which that party may have or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

29) Effect of Agreement. This Agreement shall constitute a covenant running with, and shall be appurtenant to the Property and be binding upon and inure to the benefit of the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title.

30) Amendments. This Agreement may be amended by, and only by, a written agreement which shall be deemed effective only when recorded in the Records. No such amendment (i) shall be binding upon the Property unless such amendment is executed by the owner of the Property and the City.

31) No Merger. Notwithstanding that Owner owns the fee simple estate to the Property, it is the express intention of Owner that the obligations declared under this Agreement shall burden

and benefit the Property and shall not be extinguished by the operation of the doctrine of merger of estates as a result of such common ownership.

Owner and the City have executed this Agreement under seal on the date stated above.

CENTENNIAL-ASPEN II LIMITED PARTNERSHIP,
a Colorado limited partnership

By: Centennial-Aspen, a Limited Partnership,
a Colorado limited partnership,
its General Partner

By: World Class Housing, Inc.,
a Delaware corporation,
its General Partner

By:_____
Sam W. Brown, Jr., President

STATE OF COLORADO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me on_____, 2019, by Sam W. Brown, Jr, .as President of World Class Housing, Inc., a Delaware corporation, on behalf of said corporation.

WITNESS my hand and official seal.

_____
Notary Public

[remainder of page intentionally blank]

ATTEST:

By:_____
Name:_____
Its:_____

THE CITY OF ASPEN,
a Colorado home rule municipal corporation

By:_____
Name:_____
Its:_____

APPROVED AS TO FORM:

By:_____
Name: James R. True, Esq.
Its: City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me on_____, 2019, by_____, as _____of the City of Aspen, a Colorado home rule municipal corporation, on behalf of said City.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBITA

Legal Description of the Property

LOT 3, THE CENTENNIAL CONDOMINIUM SUBDIVISION AND CONDOMINIUM PLAT, ACCORDING TO THE SECOND AMENDED PLAT OF THE CENTENNIAL CONDOMINIUM SUBDIVISION AND CONDOMINIUM PLAT, RECORDED JUNE 3, 1985 IN PLAT BOOK 17 AT PAGE 30.

TOGETHER WITH THOSE EASEMENTS WHICH ARE A BENEFIT TO ABOVE SAID LOT 3, AS SET FORTH IN THE CONDOMINIUM DECLARATION FOR CENTENNIAL CONDOMINIUMS RECORDED OCTOBER 3, 1984 IN BOOK 474 AT PAGE 479 AS AMENDED JANUARY 25, 1985 IN BOOK 480 AT PAGE 510 AND MARCH 7, 1985 IN BOOK 482 AT PAGE 455.

TOGETHER WITH THOSE EASEMENTS WHICH ARE A BENEFIT TO ABOVE SAID LOT 3, AS SET FORTH IN PERMANENT EASEMENT RECORDED JANUARY 13, 1986 IN BOOK 503 AT PAGE 253.

TOGETHER WITH THE AIRSPACE AS SET FORTH IN PARTIAL RELEASE OF EASEMENT RECORDED FEBRUARY 12, 1986 IN BOOK 505 AT PAGE 225.

TOGETHER WITH THOSE EASEMENTS WHICH ARE A BENEFIT TO ABOVE SAID LOT 3, AS SET FORTH IN PARKING AGREEMENT, LEASE, AND EASEMENT RECORDED APRIL 4, 1986 IN BOOK 508 AT PAGE 380.

TOGETHER WITH THAT CERTAIN LEASEHOLD ESTATE FOR PARKING SPACES, AS CREATED BY PARKING AGREEMENT, LEASE, AND EASEMENT RECORDED APRIL 4, 1986 IN BOOK 508 AT PAGE 380, FOR A TERM ENDING APRIL 4, 2084