AGENDA

ASPEN PLANNING & ZONING COMMISSION

December 7, 2021

4:30 PM, WebEx Virtual Meeting (See agenda packet for instructions to join the meeting)

CITY OF ASPEN

I.WEBEX MEETING INSTRUCTIONS

TO JOIN ONLINE:
Go to www.webex.com and click on "Join a Meeting"
Enter Meeting Number: 2559 858 0190
Enter Password: 81611
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-- OR --

JOIN BY PHONE
Call: 1-408-418-9388
Enter Meeting Number: 2559 858 0190
Enter Password: 81611

II.ROLL CALL

III.COMMENTS

IV.MINUTES

IV.A. November 16, 2021 Meeting Minutes - DRAFT
minutes.apz.20211116.docx

V.DECLARATION OF CONFLICT OF INTEREST

VI.PUBLIC HEARINGS

VI.A. 809 S Aspen Street GMQS-Multifamily Replacement Review
Memo 809 S Aspen St GMQS MF Replacement Review.docx
Resolution_No.___Series_2021_809 S Aspen St #17 and #18.docx
Exhibit A_Review Criteria.docx
Exhibit B_Memo.Referral.809 S Aspen St.docx
Exhibit C_Application.809 S Aspen St.pdf
Exhibit D_Planning and Zoning Letters of Support.docx

VII.OTHER BUSINESS

VII.A. End of Year Review - Presentation by staff

VIII.ADJOURN

Typical Proceeding Format for All Public Hearings

1) Conflicts of Interest (handled at beginning of agenda)
2) Provide proof of legal notice (affidavit of notice for PH)
3) Staff presentation
4) Board questions and clarifications of staff
5) Applicant presentation
6) Board questions and clarifications of applicant
7) Public comments
8) Board questions and clarifications relating to public comments
9) Close public comment portion of bearing
10) Staff rebuttal/clarification of evidence presented by applicant and public comment
11) Applicant rebuttal/clarification

End of fact finding.
Deliberation by the commission commences.
No further interaction between commission and staff, applicant or public

12) Chairperson identified the issues to be discussed among commissioners.
13) Discussion between commissioners*
14) Motion*

*Make sure the discussion and motion includes what criteria are met or not met.

Revised January 8, 2021

Chairperson McKnight called the regular Planning and Zoning (P&Z) meeting for November 16th, 2021 to order at 4:30 PM.

Commissioners in attendance: Ruth Carver, Sam Rose, Teraissa McGovern, and Spencer McKnight.

Commissioners not in attendance: Brittanie Rockhill and Scott Marcoux

Staff in Attendance:
Amy Simon, Planning Director
Ben Anderson, Principal Long-Range Planner
Kate Johnson, Assistant City Attorney
Cindy Klob, Records Manager

COMMISSIONER COMMENTS

None

STAFF COMMENTS

Ms. Simon will send out an email to all members with calendar updates through the end of the year. Ms. McGovern stated she will not be able to attend the December 7th meeting.

PUBLIC COMMENTS

None

APPROVAL OF MINUTES

None

DECLARATION OF CONFLICT OF INTEREST

None

PUBLIC HEARINGS

Land Use Code Amendment Resolution – P&Z Recommendation for Single-Family and Duplex Affordable Housing Mitigation

Mr. McKnight opened the hearing and turned the floor over to staff.

Mr. Ben Anderson, Principal Long-Range Planner, stated he would be reviewing a proposed code amendment in process with City Council at this time. This code amendment originated out of several discussions with City Council over the last couple of years around growth management and affordable housing. As part of the outreach for the proposed amendment, staff is asking for a recommendation from the commission. He reviewed the options for approving the draft resolution provided in the agenda packet or not making a recommendation at all.

Mr. Anderson reviewed the origins of the proposed code amendment around Council's concerns regarding a lot of development pressure in town. He stated staff performed an analysis of the growth management allotments of which most of the affordable housing mitigation requirements are connected with the allotment system. The analysis indicated approximately 90% of the allotments year

to year were not being utilized for all different types of development even though there is a lot of development pressure in town. He added as a consequence, the affordable housing mitigation is not being produced in proportion to the development pressure the community is feeling. He stated the systems designed in the 1970's no longer allow for growth management and affordable housing to function together.

Mr. Anderson stated some changes were made this summer including increases to the fee-in-lieu (FIL), lodging mitigation requirements and affordable housing credits. He stated Council asked staff to work on single-family and duplex residential development and mitigation requirements since it is felt this is currently driving the development context in town. He then explained the areas believed not to providing expected mitigation. He stated the proposed amendment will eliminate the credit for existing floor area and move from a net floor area to a gross floor area calculation for the affordable housing mitigation. This will bring areas including basements, garages and vertical circulation areas of the development currently exempted from the calculation to be included in the calculation of the affordable housing mitigation.

Mr. Anderson then identified the review criteria when considering code amendments. He also reviewed what the Aspen Area Community Plan (AACP) states. He described the content applicable to the proposed code amendments.

Mr. Anderson next reviewed the two ways growth management is handled for residential development.

He described the first way uses triggers for the demand for a growth management allotment such as when a new subdivision or lot is created, a change in development type occurs or when multi-family units are developed or redeveloped. He noted these types of developments have not been happening in Aspen for some time even though it has been the community expectation for affordable housing.

He stated the second way the code mitigates residential development is with single-family and duplex development and redevelopment on existing residential lots. It is currently based on the floor area calculation in the land use code based on an employee generation study from 2015. The study looked at impacts of construction on employee generation and looked at operations and maintenance. He noted the big piece is how the floor area is measured noting when an existing home is torn down, the floor area is credited towards their eventual mitigation requirements and the calculation utilizes net floor area instead of gross floor area and excludes basements, garages, and vertical circulation elements.

Mr. Anderson displayed graphics comparing the current code versus the proposed code amendments.

Ms. McGovern wanted to clarify the credit is for existing floor area not existing square footage (SF). She gave an example of a home that is 2,000 SF, but the floor area is only 1,500 SF based on the excluded elements such as the garage and vertical circulation. She feels this could be explained better in the code.

Mr. Anderson agreed the definitions are not always clear and different professions such as a realtor and the Pitkin County Assessor, view the terms differently as well. He added the amendments would look at gross floor area of all horizontal surfaces between exterior walls of the structure instead of net floor area.

Mr. Anderson explained examples of the impacts to the calculation based on the proposed code amendments.

Mr. Anderson then further described the difference between net and gross floor area calculations. He noted currently, the City is seeing gigantic basements being added to homes, often setback to setback which have very significant construction impacts. The subgrade areas hold mechanical equipment which

have long-term maintenance and operational impacts as well. He then displayed a slide showing an example of the current and proposed floor area calculations with a basement as part of the example.

He added another amendment would acknowledge the findings of the 2015 Generation study which showed that as homes increase in size, their long-germ operation and maintenance generation is more significant. The proposed changes include a higher FTE generation rate for homes over 4,500 SF in size.

Mr. Anderson next displayed a table showing examples of six actual projects between 2015 and 2020. The table included the mitigations base on the current code and the impacts to the projects based on the proposed code amendments. He stated construction on these sites can go on for a couple of years with 20 people on site during that time which he believes the community is stating they feel impacts from these construction sites.

Mr. Anderson stated City Council has asked staff to work on the affordable housing mitigation parity between commercial and residential projects. He displayed a graphic providing an example of the Full Time Equivalents (FTEs) for 6,000 SF of commercial (18.33 FTEs) and the same SF for residential (1.26 FTEs) based on the proposed code amendments.

Mr. Anderson next reviewed the code changes. One change will be in the definition of floor area. Another change identifies three kinds of development scenarios under growth management in terms around credit. Another area to be changed includes the reconstruction limitations under growth management to provide clarity to what happens to allotments and floor area credit for a demolition.

Mr. Anderson then reviewed the deferral of mitigation requirements currently allowed for property owners qualified as a full-time, local working resident. He also clarified this would not change any other dimensional rights for a piece of property.

Mr. Anderson concluded stating the proposed schedule for the ordinance review with Council with the first reading on November 23rd and the second reading and public hearing on December 14th. He stated staff recommends approval of the resolution as provided.

Mr. McKnight asked for any questions from the commission members.

Mr. Rose asked what Pitkin County has in place for the exact topic.

Mr. Anderson replied the City and County had a unified system which started in the late 1970's but over the years, the County's concept of growth management and affordable housing mitigation has diverged from the City's concept. The County's most recent proposed changes were really about reducing the maximum home size. The proposed changes did not talk as much about their mitigation requirement. He doesn't believe they compare all that much at this time.

Mr. Rose stated he worries about the unintended consequences of doing something like this having it effects property values and taxes.

Mr. Rose asked where the money generated from the proposed changes would be used.

Mr. Anderson replied the reason they have the study is to help show the impacts on affordable housing mitigation generated. He noted people may have different opinions regarding if the proposed changes are fair or not. He also not the City does not currently collect a lot of FIL money because mitigation is encouraged through affordable housing credits. He added hopefully these requirements incentivize private sector developers to produce affordable housing units so the City can give them affordable housing credits which can then be purchased from the developers. Developers may also mitigate by going to City Council and ask to pay a FIL which if allowed by Council would go into the 150 fund which is

dedicated to building and maintaining affordable housing projects such as Truscott, Burlingame, and the Lumber Yard.

Mr. Rose asked for an example of a private developer buying these credits.

Ms. McGovern noted Mr. Anderson identified the FIL in his examples to simply see the possible changes in dollars. She added what they're actually talking about is recalculating the FTE. She added credits are purchased to offset FTEs, not the FIL.

Mr. Anderson stated the most recent project completed was at 210 W Main St and is a mix of category units. The project generated 18 FTEs which were handed over when the certificate of occupancy was issued. The developer may now sell them in a private transaction to other developers who need them for mitigating their projects. He believes the certificate system is unique to Aspen.

Ms. McGovern stated this is a great idea, but she wants some of the details clarified. She asked with the proposed increase of FTE load doubling, could it be possible to get into a situation where there are not enough FTEs available in certificates to offset the development.

Mr. Anderson responded potentially that situation could occur but there are multiple ways to mitigate a project including deed restricting a unit, buy down a unit to create a mini credits project or the FIL option.

Ms. McGovern stated she is concerned developers with credits will not sell them in smaller chunks and will only sell them larger projects. This could make credits cost prohibitive for a single-family homeowner. It is also costly and time sensitive to go before Council to ask about the FIL.

Mr. Anderson stated the first credits project came online in 2012 and there has not been a single person come to City Council to request to pay the FIL. He believes the market for credits ebbs and flows over time and it was an intentional decision to make it difficult to do anything other than credits and to have the FIL process a little bit arduous so the market could kind of sort it out.

Ms. McGovern feels because we are running out of room to build affordable housing and therefore FTEs, the proposed changes will tip the balance even faster.

Mr. Anderson hopes the proposed changes would drive a more consistent demand for affordable housing mitigation. He added developers building for credits are currently having to wait three to five years to get their revenue back from credits.

Ms. McGovern asked if the code could be updated to clarify the definitions of net floor area, gross floor area and gross SF. She uses gross SF and floor area.

Mr. Anderson replied to really fix everything would require a fairly major undertaking to pull apart a huge section of the land use code. He added it is a topic he would like to engage at some point. Mr. Anderson stated he would look further into it.

Ms. Carver is concerned for the resident of Aspen who has finally afforded to buy a house and wants to put in a basement that the cost of the smaller homes will be raised for anybody dreaming of buying a home. She stated she sees the other end of the spectrum every day in Aspen with the large basements and constant construction and understands why this is being proposed. She asked if residents living in town for a period of time and were continuing to live in town wouldn't have a larger mitigation requirement, even if they were to sell. She doesn't believe it's fair to the working class Aspenite who is able to buy a home.

Mr. Anderson responded she has a valid point. Mr. Anderson noted Mr. Mike Maple is attending the hearing tonight and he made similar comments last week. He added the average single-family home price in Aspen is now between $10 and $11 million dollars at a conservative SF estimate of $3,000 per SF. He continued stating staff and City Council acknowledge there are long time working locals who have contributed significantly to the community. He explained if they want to stay in their homes and never pay a dollar of mitigation, they can do a huge remodel as long as they don't add SF. And if they want to do a bigger project on their property, the deferment program is available to them. He added there's been a real transformation of the functions of homes that once dominated the community so it's challenging to operate in this economic reality, address the affordable housing crisis and provide protections for the folks described by Ms. Carver.

Ms. Carver acknowledged there has been a shift but there are still locals who may want to improve their homes.

Mr. McKnight asked the commissioners for their current positions.

Ms. McGovern thinks it's a good idea and reiterated her concerns regarding the availability of credits for homeowners.

Mr. Rose thinks it a great idea but wondered if the mitigation percentages could be scaled more instead of the 0.16 to the 0.36 based on the SF.

Ms. Johnson wanted to clarify the FTE numbers were developed after several studies were conducted to look at the impact of development and the numbers correlate to the data.

Ms. Carver stated she can see the point of the proposed changes but wanted to see how the other members felt about her example of a local homeowner.

Ms. McGovern does not feel this is unfairly burdening the local who already owns their home because of the deferral program.

Mr. McKnight agreed with Ms. McGovern.

Mr. McKnight opened the floor for public comment.

Mr. Maple does not feel the City is not doing enough to create affordable housing and noted the Lumber Yard project as an example where only 300 units are planned will be built on an expensive site and dedicating $20 million dollars for underground parking. He encouraged everyone to demand to be part of the review of these projects. He does not feel the City has been doing a good job for decades. He does not believe staff's interpretation of the 2015 study to apply the mitigation to different numbers is valid, proper, or fair and probably illegal.

Mr. Maple stated he is an Aspen homeowner, and his family has lived here since 1968. He has owned his home for 25 or 26 years and his house is now 53 years old. One day he would like to be able to rebuild his home but feels the proposed changes will push the possibility over the edge. He stated there is no way he would consider participating in the deferral program because you are deferring what might be due in the future and the deferment program does not recognize the residents in the house as credit for mitigating FTE units. He would also like residents to be recognized for the time they have been living in the home.

Mr. McKnight closed public comment.

Mr. McKnight asked staff if he wanted to respond to Mr. Maple's comment.

Mr. Anderson believes he made valid points with the increasing difficultly for working locals to live in non-deed restricted housing in this town. Mr. Anderson noted the 2015 study is about new construction activity and the impacts of this activity in new homes. He noted there have been people who have taken advantage of the deferral program with smaller additions and in full redevelopment projects.

Mr. McKnight asked if there are some negative impacts of the deferral program he is missing.

Mr. Anderson believes Mr. Maple is most concerned about the uncertainty of future mitigation requirements but noted if the home is sold in the future to a local, the deferral continues.

Ms. McGovern asked what section of code covers the deferral program.

Mr. Anderson replied it's in the growth management section. Mr. Anderson added when a homeowner uses the deferral program, essentially a deed restriction is placed on the property. He continued stating the Aspen Pitkin County Housing Authority (APCHA) handles the placement of the deed restriction.

Ms. McGovern is interested to read the language how the agreement is added.

Ms. Johnson stated she is not sure there are more specifics in the code, but there may be some direction in the APCHA forms and agreements required as part of the deferral program.

Ms. McGovern asked if there was a way to work with APCHA outside of this process to change the deferred costs calculated based on the time of development versus the time of sale to see if would provide long-time locals more certainty.

Mr. McKnight feels it is important to have this conversation as well and understands Mr. Maples's concerns.

Mr. Anderson responded staff could include an addition to the recommendation if the commissioners want to add it.

Ms. Carver stated in the past the commission has passed on similar recommendations to Council and feels the Council only sees the commission approved it. She is not willing to approve the resolution without these points regarding the long-time owner clarified more.

Mr. Spencer is not sure he wants to move it forward as well.

Ms. McGovern stated because it is not defined in the code, she does not feel she has a position to not pass it until what is being asked for is defined and she doesn't believe the commission has purview over these items. She feels it is appropriate to add it as a recommendation to the condition.

Ms. Simon stated there is language in the APCHA guidelines defining exactly how the deferral process works. She then summarized the section to the commissioners.

Mr. Anderson stated he has seen three of these agreements in the past six years but understands they may become more regular under the proposed code changes.

Mr. Rose feels it's a tough one and feels Mr. Maples's real life example was very moving. He is concerned about the negative effects for locals on something that is supposed to be positive.

Ms. McGovern stated although she does not own a free market residence, she considers herself a local.

Mr. Rose responded he does not want to have one good thing at the cost of another.

They both agreed they want a balanced solution.

Mr. Rose asked Mr. Maple what he would change about it.

Mr. Maple feels staff's proposal is fundamentally flawed. He does not feel the study supports staff's proposal. He thinks the deferral program should be defined in the code and not in APCHA guidelines. He believes the deferral program should recognize the occupancy of a local homeowners as mitigation and mitigation should not be calculated at the time of the sale which is an unknown.

Mr. Rose believes some credit should be available for locals in free market housing.

Mr. Anderson stated he hears those points but noted on all the mitigation requirements, it is for the generation of new development activity. He added if Mr. Maple wanted to renovate his home without tearing it down, there would not be a single dollar of affordable housing mitigation. The mitigation would be assessed on new SF added as part of a redevelopment. Considering Mr. Maples's suggestions would necessitate a whole different kind of mitigation requirements.

Ms. McGovern reiterated she believes this is not in the purview of this commission and if changes to the deferral program are to be deliberated further, it should be done with the APCHA Board.

Ms. Johnson stated the commission could make a recommendation to suggest a study of the deferral program and the provisions to address certain concerns. The issue before the commission at this hearing is the proposed amendment by staff and whether or not the commission makes recommendation with or without conditions for the amendments to be adopted by Council.

Mr. Anderson added his suggestion for a recommendation would be to acknowledge the issue and the concern.

Ms. Carver feels it is a great start but is not a complete product so she will not recommend it tonight.

Ms. McGovern would vote to forward this to Council with comments to review the code section regarding the deferral program.

Mr. Rose and Mr. McKnight both agreed with Ms. McGovern.

Mr. Anderson asked to confirm their action will be a recommendation of support with the condition for staff to evaluate the relationship of the deferral agreement and the notion of the deferral amount being assessed at the time of the building permit rather than the time of the future sale.

Ms. McGovern feels it is too specific and perhaps it should be an overall review of the deferral program.

Mr. McKnight agreed with Ms. McGovern and wants to evaluate unforeseen consequences of proposed amendments.

Ms. Carver is concerned Council will approve the proposed amendments and not really consider the Commission's conditions.

Mr. McKnight agreed he is frustrated at times with how much Council does or does not listen to the commission, but this is the process available.

Ms. McGovern stated another condition she would like is to really drill down on the definition of net floor area versus gross floor area.

Ms. McGovern understands Ms. Carver's concerns as well.

Ms. McGovern motioned to approve Resolution #12, Series 2021 with the conditions of further review of the net and gross floor area and the deferral program for housing mitigation. Mr. Rose seconded the

motion. Mr. McKnight asked for a roll call: Ms. Carver, no; Mr. Rose, Ms. McGovern, yes; Mr. McKnight, yes; for a total of three (3) in favor – one (1) not in favor. The motion passed.

Ms. McGovern motioned to adjourn and was seconded by Ms. Carver. All in favor and the meeting was adjourned at 6:30 pm.

Cindy Klob, Records Manager

CITY OF ASPEN

MEMORANDUM

TO: City of Aspen Planning and Zoning Commission

FROM: Michelle Bonfils Thibeault, AICP, Planner II

THRU: Amy Simon, Planning Director

MEMO DATE: November 28, 2021

MEETING DATE: December 7, 2021

RE: 809 S. Aspen Street, Units 17 & 18, GMQS Review – Multi-Family Replacement

APPLICANT:
Allison and David Ratajczak

REPRESENTATIVE:
Sara Adams, BendonAdams

LOCATION:
809 S. Aspen Street, Units 17 & 18

CURRENT ZONING & USE
This property is located in the Lodge (L) zone district and is developed with an existing 21-unit free market multi-family residential building.

PROPOSED LAND USE:
The Applicant is requesting a Growth Management Quota System (GMQS) Review – Multi-Family Replacement to allow for combining of units 17 and 18 into a single unit.

SUMMARY: The Shadow Mountain Village Condominium Apartments property is located in the Lodge (L) zone district. The proposed combining of free market units 17 and 18, both owned by the applicant, requires affordable housing mitigation in a form to be approved by P&Z. Mitigation is deemed necessary due to the impacts of decreasing the City's overall housing stock and reducing opportunities for diverse, and in particular smaller residential units throughout the City. The applicant is requesting to provide affordable housing credits to satisfy the mitigation requirement.

STAFF RECOMMENDATION: The land use code expresses a preference for mitigation to be in the form of new deed restricted units on the subject site. Per the applicant, no interior space in the Shadow Mountain Village Condominium Apartments is available to locate an affordable housing unit. Expanding the building to construct an on-site affordable housing unit would require a change of the existing footprint of the building, creating some negative impacts discussed later in the memo. Staff finds the use of affordable housing credits as an appropriate mitigation in this case.

Figure 1. 809 S. Aspen Street, Street view Image

LAND USE REQUEST AND REVIEW PROCEDURES:
The Applicant is requesting the following land use approval from the Planning and Zoning Commission:

- Growth Management Quota System (GMQS) Review – Multi-Family Replacement (Pursuant to Land Use Code Section 26.470.100.D): An application requesting a GMQS Multi-Family Replacement Review requires review by the Planning and Zoning Commission. The Planning and Zoning Commission is the final review body.

STAFF COMMENTS:
The subject properties are located within the 21-unit multi-family free-market housing complex known as the Shadow Mountain Village Condominium Apartments, located at 809 S. Aspen Street, Units 17 & 18. The owner of units 17 and 18 seeks to combine both units into a single unit.

The proposed combination of the two units will not change the existing total square footage or floor area of the building. Each unit is approximately 929 sq.ft. The combining of two 929 sq.ft. units will result in a single 1,858 sq.ft. unit. The Lodge Zone district restricts single lodge units to a maximum of 1,500 sq.ft. The applicant proposes to extinguish a Transferable Development Right to increase the allowable unit size to 2,000 sq.ft. in order to accommodate the proposed 1,858 sq.ft. unit. The process of landing a TDR is conducted by Community Development during building permit review.

Combination of two multi-family units into a single unit is considered demolition of a unit and requires affordable housing mitigation. The applicant proposes to provide affordable housing credits to satisfy the mitigation requirement as is provided for in Section 26.470.100.D.1. While the code indicates that mitigation should be in the form of an on-site deed restricted unit, the applicant contends that on-site development is not appropriate within the existing structure, or by means of an addition which might conflict with the 8040 Greenline Environmentally Sensitive Area regulations affecting this property. Further, the structure is a candidate for historic designation through the City's voluntary AspenModern program and an addition may reduce the integrity of the original design.

Staff finds that the applicant's request to provide the required mitigation without impact on the exterior of the building, or an increase in on-site parking demand is consistent with the City's goals to both preserve the architectural integrity of the property and to limit development in the 8040 Environmentally Sensitive area. Additionally, the Aspen Pitkin County Housing Authority supports the use of affordable housing credits as mitigation for this project as described in the APCHA Referral Letter (Exhibit B).

RECOMMENDATION: The Community Development Department Staff recommends the Planning and Zoning Commission approve the proposed request for GMQS Multi-Family Replacement Review requesting use of affordable housing credits as mitigation for demolition of a multi-family residential unit. Approval of use of affordable housing credits as mitigation will allow the applicant to then land a Transferable Development Right to permit a single unit of up to 2,000 sq.ft.

RECOMMENDED MOTION: The draft resolution is written in the affirmative. If the P&Z agrees with Staff's recommendation and wishes to approve the current request for GMQS Review for Multi-Family Replacement, the following motion should be used. "I move to approve Resolution #__, Series of 2021 granting approval for GMQS Multi-Family Replacement Review for the combining of two free-market multi family residential units into a single unit, and approving affordable housing credits as the form of satisfying the required mitigation."

ATTACHMENTS:
Resolution #__, Series of 2021
Exhibit A – GMQS Multi-Family Replacement Review Criteria
Exhibit B – APCHA Referral Letter
Exhibit C – Application

RESOLUTION #_____
(SERIES OF 2021)

A RESOLUTION OF THE ASPEN PLANNING AND ZONING COMMISSION GRANTING GROWTH MANAGEMENT QUOTA SYSTEM – MULTI-FAMILY REPLACEMENT REVIEW FOR THE PROPERTY LOCATED AT 809 SOUTH ASPEN STREET, UNITS 17 & 18, SHADOW MOUNTAIN VILLAGE CONDOMINIUM APARTMENTS, CITY AND TOWNSITE OF ASPEN, COLORADO

PARCEL ID: 2737-131-24-021 & 2735-131-24-019

WHEREAS, the Community Development department received an application from BendonAdams representing Allison and David Ratajczak, requesting Growth Management Review, Multi-Family Housing Replacement approvals related to the combining of two multi-family units located at 809 South Aspen Street, Unit 17 and Unit 18 of the Shadow Mountain Village Condominium Apartments; and,

WHEREAS, the Community Development department reviewed the application for compliance with the applicable review standards; and,

WHEREAS, upon review of the application and the Land Use Code standards, and referral of the application to other City Departments for comments, the Community Development Director recommends Growth Management Multi-Family Replacement Review approval to accept the use of affordable housing credits as mitigation provided for in section 26.3540 of the Land Use Code; and,

WHEREAS, the City of Aspen Planning and Zoning Commission reviewed and considered the application under the applicable provisions of the Land Use Code as identified herein, in particular Section 26.470.100.D, reviewed and considered the recommendation of the Community Development Director and took and considered public comment at a duly noticed public hearing on December 7, 2021; and,

WHEREAS, the City of Aspen Planning and Zoning Commission finds that the development proposal meets the applicable review criteria and that approval of the request is consistent with the goals and objectives of the Land Use Code; 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, and,

WHEREAS, the City of Aspen Planning and Zoning Commission approves Resolution #___, Series of 2021, by a ____ to ___ (x - x) vote, recommending approval as identified herein.

NOW, THEREFORE, BE IT RESOLVED the City of Aspen Planning and Zoning Commission finds as follows:

Section 1: Multi-Family Replacement Affordable Housing Mitigation.
Pursuant to the procedures and standards set forth in Title 26 of the Aspen Municipal Code, the Planning and Zoning Commission hereby approves the following land use review: Growth Management Multi-Family Replacement allowing for the combination of units 17 and 18 and allowing for the use of affordable housing credits to satisfy the mitigation requirement for this project. The final determination of affordable housing mitigation due shall occur during building permit review. Approval of the landing of a TDR to increase the unit size above the maximum net livable area stated in the zone district will also occur as part of the permit process.

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 Planning and Zoning Commission, are hereby incorporated in such site development approvals and the same shall be complied with as if fully set forth herein, unless amended by an authorized entity.

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 meeting on December 7, 2021.

APPROVED AS TO FORM:

_____
Katharine Johnson, Assistant City Attorney

PLANNING AND ZONING COMMISSION:

_____
Spencer McKnight, Chair

ATTEST:

_____
Cindy Klob, Records Manager

Attachment:
Exhibit A- Existing and proposed floor plans (applicant not bound to proposed unit interior layout)

Exhibit A
GMQS Review – Multi-Family Replacement
809 S. Aspen Street, Units 17 & 18

GMQS – Multi-Family Replacement: 26.470.100.D.1.b

The combining, demolition (see definition of *demolition.*), conversion, or redevelopment of multi-family housing shall be approved, approved with conditions or denied by the Planning and Zoning Commission. The applicant may select one of three methods for mitigation and P&Z conducts a review to determine compliance with the requirements.

To ensure the continued vitality of the community and a critical mass of local working residents, no net loss of density (total number of units) between the existing development and proposed development shall be allowed. The method of mitigation proposed for the combination of subject two multi-family units is:

Fifty percent (50%) replacement. In the event of the demolition of free-market multi-family housing and replacement of less than one hundred percent (100%) of the number of previous units, bedrooms or net livable area as described above, the applicant shall be required to construct affordable housing consisting of no less than fifty percent (50%) of the number of units, bedrooms and the net livable area demolished. The replacement units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. In summary, this option replaces the free-market units - with fifty percent (50%) of the new units, bedrooms and net livable area allowed as free market units and fifty percent (50%) of the new units, bedrooms and net livable area required as deed-restricted, Category 4, affordable housing units. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Paragraph 26.470.100(c), Affordable housing.

When this fifty percent (50%) standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Section 26.470.080 - General Requirements, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection H or I, Residential Development - sixty percent (60%) or seventy percent (70%) affordable as required.

Staff Findings: *The Shadow Mountain Village Condominium Apartments property is located in the Lodge (L) zone district. The combining of free market units 17 and 18, both owned by the applicant, is defined as demolition of those free-market units. The applicant cannot demonstrate that these units have never been occupied as full-time residences for working locals, and therefore, for the proposal to proceed, mitigation of the impacts that a reduction in free-market multi-family housing inventory and dispersed housing opportunities in Aspen is necessary. Three mitigation options are provided in the land use code, and the one the applicant has selected, requires 50% of new units, bedrooms and net livable area to be deed-restricted as*

Category 4 affordable housing units. Given the size of the two units proposed to be combined, this criterion would be met with the provision of an on-site Category 4, two-bedroom affordable housing unit of at least 464 square feet of net livable area.

The land use code describes that this mitigation is to be developed on the subject property, unless an alternative is approved by the Planning and Zoning Commission.

26.470.100.D.3 Location requirement. Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission, or may replace the units by extinguishing the requisite number of affordable housing credits, pursuant to Chapter 26.540, Certificates of Affordable Housing Credit.

When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. For example, for an applicant proposing to replace a one-thousand (1,000) square foot three-bedroom unit at the fifty percent (50%) rate using credits, the following calculations shall be used:

• Fifty percent (50%) of one thousand (1,000) square feet = five hundred (500) square feet to be replaced. At the Code mandated rate of one (1) FTE per four hundred (400) square feet of net livable area, this requires the extinguishments of 1.25 credits; or

• A three-bedroom unit = 3.0 FTE's. Fifty percent (50%) of 3.0 FTE's = 1.50 credits to be extinguished.

Therefore, in the most restrictive application, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the fifty percent (50%) rate. The credits to be extinguished would be Category 4 credits.

Staff response: *Affordable housing is only permitted in the Lodge zone district if it is accessory to a lodging or timeshare operation, and for employees of the operation. The Shadow Mountain Lodge is not in fact a lodge, but rather is used as free-market multi-family housing, permitted by zoning. Given the lack of lodge function on the property, on-site affordable housing is only permitted through a Conditional Use approval by P&Z.*

The applicant has not requested Conditional Use review because they represent that no interior space in the Shadow Mountain Village Condominium Apartments is available to locate an affordable housing unit. Construction of an on-site affordable housing unit would require a change of the existing footprint of the building, which might have negative outcomes, including impacting the potential for the property to be designated historic in the future as an excellent

example of Aspen's early ski era architecture. Designation in the AspenModern program is voluntary and the HOA has been encouraged to apply for many years.

Another reason why expansion of the existing structure may be undesirable is that the property is located in the 8040 Greenline Environmentally Sensitive Area and in the mountain view plane.

Staff finds the use of affordable housing credits as an appropriate mitigation in contrast to potential impacts of onsite construction of an affordable housing unit and associated parking.

Mitigation requirements for the proposed combining of the two subject two free market unit must be calculated by bedroom and by net livable square feet to determine the highest FTE generation number:

One 2-bedroom unit = 2.25 @50% = 1.13 FTEs

929 SF net livable @ 50% = 464.5 SF/400 SF per FTE = 1.16 FTEs

The more restrictive/higher mitigation requirement is by calculation of net livable square feet resulting in a mitigation requirement of 1.16 FTEs.

Staff finds the use of *affordable housing credits for 1.16 FTEs is an appropriate mitigation for the combination of two free market units.*

Staff finds this criterion to be met. *Please note that the application indicates that approximately 18 square feet of new net livable will be created through the project, perhaps through the elimination of demising walls. The new net livable space must be mitigated like any expansion of a free market unit, at a rate of 0.18 FTEs to be mitigated per 1,000 square feet of new development. This calculation will be confirmed during permit review but may very slightly increase the required mitigation.*

Finally, the combination of the two units exceeds the maximum unit size allowed for free-market multi-family units in the Lodge Zone district. The cap can be increased from 1,500 to 2,000 square feet from through the landing of a Transferable Development Right removed from a landmarked property. Landing of a TDR is an administrative review and does not require approval by the Planning and Zoning Commission. The TDR is to be provided to Community Development during permit review, after all calculations to ensure that the combined units are within the limits has occurred.

LAND USE MEMORANDUM

TO: Michelle Thibeault, Community Development Department
FROM: Cindy Christensen, Deputy Director - APCHA
DATE: September 21, 2021
RE: Proposed Mitigation for 809 South Aspen Street

PROJECT

The applicant for the property located at 809 South Aspen Street, Shadow Mountain Village Condominiums, is requesting to combine Units 17 and 18 into one unit.

BACKGROUND

The City requires affordable housing mitigation when multi-family residential units are combined. The code considers the reduction as a demolition of a unit and requires provisions of replacement unless the unit qualifies for an exemption.

DISCUSSION

The City adopted amendments to the multifamily replace code section of the Land Use Code in 2021.

> 26.470.100.D.1.b *Fifty percent (50%) replacement. In the event of the demolition of free-market multi-family housing and replacement of less than one hundred percent (100%) of the number of previous units, bedrooms or net livable area as described above, the applicant shall be required to construct affordable housing consisting of no less than fifty percent (50%) of the number of units, bedrooms and the net livable area demolished. The replacement units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. In summary, this option replaces the free-market units - with fifty percent (50%) of the new units, bedrooms and net livable area allowed as free market units and fifty percent (50%) of the new units, bedrooms and net livable area required as deed-restricted, Category 4, affordable housing units. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Paragraph 26.470.100(c), Affordable housing.*
>
> *When this fifty percent (50%) standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Section 26.470.080 - General Requirements, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection H or I, Residential Development - sixty percent (60%) or seventy percent (70%) affordable as required.*

The property is located in the Lodge (L) Zone District which does not allow affordable housing units within a free-market multi-family residential building as a permitted use and are allowed in

the Lodge Zone District if specifically associated to a lodge use; therefore, the applicant is requesting the ability to use the provisions of affordable housing credits as mitigation pursuant to Section 26.470.100.D.3.

In calculating the required mitigation it is the most restrictive of the two methods as shown below:

> *When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. For example, for an applicant proposing to replace one thousand (1,000) square foot three-bedroom unit at the fifty percent (50%) rate using credits, the following calculations shall be used:*
>
> > *Fifty percent (50%) of one thousand (1,000) square feet = five hundred (500) square feet to be replaced. At the Code mandated rate of one (1) FTE per four hundred (400) square feet of net livable area, this requires the extinguishments of 1.25 credits; or*
> >
> > *A three-bedroom unit = 3.0 FTE's. Fifty percent (50%) of 3.0 FTE's = 1.50 credits to be extinguished.*
>
> *Therefore, in the most restrictive application, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the fifty percent (50%) rate. The credits to be extinguished would be Category 4 credits.*

Based on the applicant's calculation, by combining two units, the mitigation requirement is calculated as follows based on the Code and is the greater of each number:

1. One 2-bedroom unit = 2.25 @ 50% = 1.13 FTE's, OR
2. 929 square feet of net livable @ 50%= 464.5 square feet ÷ 400 square feet per FTE = 1.16 FTE's

RECOMMENDATIONS

Based on the Land Use Code, the applicant has the right to mitigate via the Affordable Housing Credit Program and APCHA Staff is recommending approval with the following conditions:

1. The applicant's required mitigation is 1.16 FTE's, of which needs to be verified by the Community Development Department prior to building permit approval.
2. Proof must be provided of the required mitigation to the Building Department prior to building permit approval of the verified mitigation requirement at Category 4 has been satisfied.

BendonAdams

July 26, 2021

City of Aspen
Community Development Department
c/o Jeffrey Barnhill
130 South Galena Street
Aspen, CO 81611

Request to combine units at Shadow Mountain- 809 South Aspen Street

Dear Jeffrey and Aspen Planning & Zoning,

We respectfully request the ability to combine Units 17 and 18 of the Shadow Mountain Village Condominium located at 809 South Aspen Street. The property is zoned Lodge (L) which allows free market residential uses. Within the Lodge Zone District, net livable area (essentially interior heated space) has a cap of 1,500sf that can be increased to 2,000sf per residential unit. The 500sf net livable increase is achievable through the purchase and extinguishment of a Transferrable Development Right (TDR). TDRs are sold on the open market in increments of 250sf of Floor Area or 500sf of n livable area.

Units 17 and 18 are roughly 927 sf and 929 sf of net livable, respectively. The combination of these units with a total of 1,874 sf is achievable through the purchase and landing of 1 TDR and approval of housing mitigation via affordable housing credits for multi-family replacement (aka growth management review).

Figure 1: 1965 photograph of Shadow Mountain just after construction.

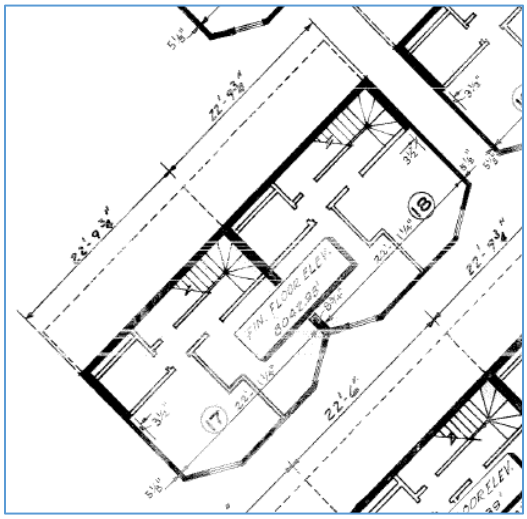

Figure 2: Lower level of units 17 and 18 at Shadow Mountain Village Condominium Plat recorded in 1965. Pitkin County Clerk and Recorder, Bk 3, Page 33.

Background

Lift 1 opened in 1946 along South Aspen Street becoming the world's longest chair lift. The neighborhood was transformed into tourist centered development around the ski lift. The Shadow Mountain Village Condominium Apartments (then Shadow Mountain Condominiums) is located at the western end of South Aspen Street, across from the Lift 1 terminus. The condos are built into the hillside, stepping up the steep mountain slope. Designed in the Modern Chalet style by Donald W. Kirk of Texas, the iconic condos have a traditional chalet aesthetic mixed with modern construction techniques such as large windows in the gable end. Shadow Mountain was originally condominiumized in 1965 and contains 21 individually owned units.

Growth Management/ Multifamily Replacement

The City requires affordable housing mitigation when multi-family residential units are combined. The Land Use Code considers the reduction of overall density or number of units as the "demolition" of one unit and requires the provision of multifamily replacement unless the units qualify for an exemption.

The Land Use Code (26.470.100.8.c) exempts units that have been used exclusively as tourist accommodations or by non-working residents. Occupancy records, leases, affidavits, or other documentation to demonstrate that the units never housed a working resident are not available to the current owners. Considering the 50+ years of occupancy on the property it is virtually impossible to prove exempt status – the documentation just is not available.

The newly adopted 2021 amendments to the multifamily replacement section of the Land Use Code are addressed below.

> *26.470.100.D.1.b Fifty percent (50%) replacement. In the event of the demolition of free-market multi-family housing and replacement of less than one hundred percent (100%) of the number of previous units, bedrooms or net livable area as described above, the applicant shall be required to construct affordable housing consisting of no less than fifty percent (50%) of the number of units, bedrooms and the net livable area demolished. The replacement units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. In summary, this option replaces the free-market units - with fifty percent (50%) of the new units, bedrooms and net livable area allowed as free market units and fifty percent (50%) of the new units, bedrooms and net livable area required as deed-restricted, Category 4, affordable housing units. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Paragraph 26.470.100(c), Affordable housing.*
>
> *When this fifty percent (50%) standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Section 26.470.080 - General Requirements, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection H or I, Residential Development - sixty percent (60%) or seventy percent (70%) affordable as required.*

Response – This project proposes to combine 2 units, 4 bedrooms (2 per unit), and 1,856 sf of existing net livable area. The Lodge (L) Zone District does not allow affordable housing units within a free market multi-family residential building as a permitted use. As such, this application requests the ability to use the provision of affordable housing credits as mitigation pursuant to Section 26.470.100.D.3.

> *26.470.100.D.3 Location requirement. Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.*
>
> *When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission, or may replace the units by extinguishing the requisite number of affordable housing credits, pursuant to Chapter 26.540, Certificates of Affordable Housing Credit.*
>
> *When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. For example, for an applicant proposing to replace one thousand (1,000) square foot three-bedroom unit at the fifty percent (50%) rate using credits, the following calculations shall be used:*
>
> > *Fifty percent (50%) of one thousand (1,000) square feet = five hundred (500) square feet to be replaced. At the Code mandated rate of one (1) FTE per four hundred (400) square feet of net livable area, this requires the extinguishments of 1.25 credits; or*
> >
> > *A three-bedroom unit = 3.0 FTE's. Fifty percent (50%) of 3.0 FTE's = 1.50 credits to be extinguished.*
>
> *Therefore, in the most restrictive application, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the fifty percent (50%) rate. The credits to be extinguished would be Category 4 credits.*

Response – Shadow Mountain is located in the Lodge Zone District which does not allow affordable housing in a multi-family residential project as a permitted use. This area has historically always been intended for Tourist and Lodge accommodations (a complete zoning history for the neighborhood is provided as Exhibit A). As such, multi-family affordable housing units are only allowed as a Conditional Use.

Conditional Use review standards address consistency with the intent of the zone district, compatibility with surrounding land uses, visual impacts, parking, and infrastructure impacts. Affordable housing units in the Lodge Zone District are specifically only permitted when accessory to a Lodge Use. The purpose of the Lodge Zone District is to "*encourage construction, renovation and operation of lodges, tourist-oriented multi-family buildings through short term vacation rentals, high occupancy timeshare facilities and ancillary uses compatible with lodging*

to support and enhance the City's resort economy. The City encourages high-occupancy lodging development in this zone district." Onsite affordable housing for a residential multi-family building is inconsistent with the purpose of the zone district.

The existing free market building is condominiumized and there is no available limited common element to construct an onsite deed restricted affordable housing unit. It is physically inconceivable to add another unit to this condominiumized property which is perched on the side of Aspen Mountain with high visibility, extra layers of review as an identified Environmentally Sensitive Area through 8040 greenline and mountain view plane, and lack of parking and circulation.

David and Allison propose affordable housing credit certificates as mitigation for the combination of two free market units equal to 1.16 FTEs which is the higher mitigation requirement as shown below.

Option 1) One 2-bedroom unit = 2.25 @ 50% = 1.13 FTEs

Option 2) 929 sf of net livable @ 50% = 464.5 sf/400 sf per FTE = 1.16 FTEs

The affordable housing credit certificate program supports offsite affordable housing projects that meet APCHA and citywide goals. The Lift One neighborhood has focused on tourist accommodations through free market residential unit rentals or lodge rooms. Affordable housing units in this neighborhood within a wholly free market residential building conflict with the purpose of the Lodge Zone District and APCHA's preference for rental affordable housing units in 100% deed restricted buildings.

We look forward to presenting this project. Please reach out with any questions or additional information to aid in your review.

Kind Regards,

Sara Adams, AICP
BendonAdams, LLC

Exhibits

A – Neighborhood History
B – Application
C – Authorization to Represent
D – Proof of Ownership #17 and #18
E- Agree to Pay
F – HOA approval
G – Pre-application Summary
H – Vicinity Map
I- Land Use Drawings

Zoning History

These modern chalet style buildings are recognized through the Aspen Modern Program. There is limited documentation available regarding land use review, zoning, or construction. The building permit file offers some insight into upgrades and changes but primarily contains documents from the last thirty years.

While the original plats and maps of Aspen illustrate the town's initial grid pattern (Figure 2), Aspen's zoning maps provide further clarification of the intent of use of the terminus of South Aspen Street. The zoning in this area has changed over time but has kept a consistent intent.

Figure 2: 1896 City of Aspen Map

The City of Aspen's first zoning ordinance was adopted in July of 1956 which focused on separating industrial and residential uses. Aspen's first comprehensive planning document was published subsequent to its first zoning map in 1963 (Figure 3) and focused on lodging and commercial development downtown in Aspen's core and at the base of the mountain.

In 1963, the Shadow Mountain Village Condominium Apartments parcel was zoned Tourist. The City of Aspen formalized its downtown and paved 14 blocks. The zoning was subsequently changed in the 1964, to Accommodations Recreation.

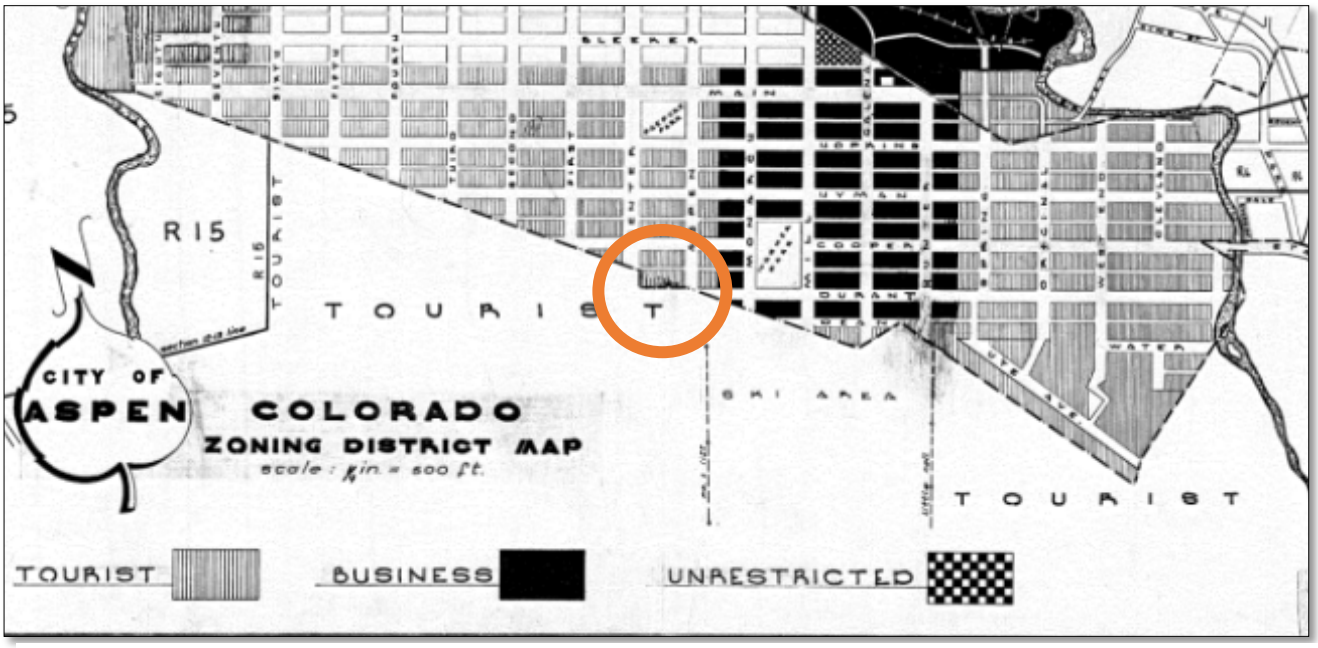

Figure 3: 1963 Zoning Map

The 1967 zoning map shows the inclusion of the ski areas across the southern side of town – in response to the recently published planning documents – all of which was zoned AR-1 Accommodation Recreation (Figure 4). This includes an entire area surrounding the parcel that would eventually be conservation area. There is a significant shift in the 1967 map to distinguish between different types of residential, commercial, and lodging zones.

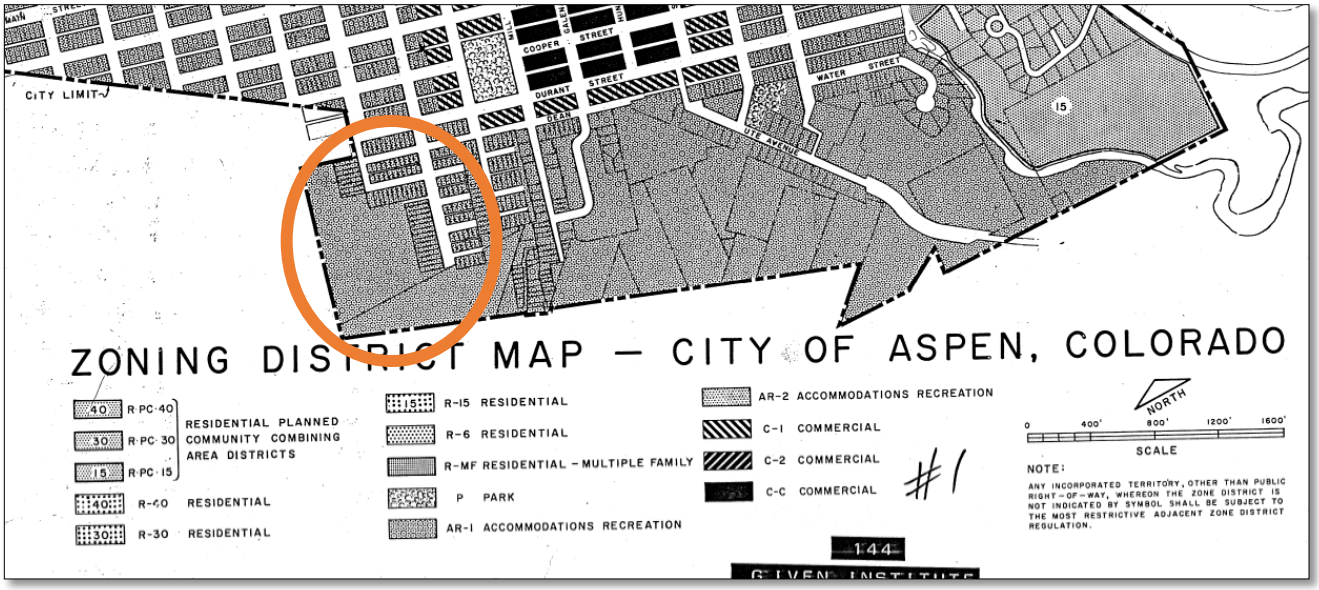

Figure 4: 1967 Zoning Map

In 1975, the zoning map indicates that the parcel where Shadow Mountain Village Condominium Apartments is located was changed to Planned Unit Development Overlay District with a Lodge Designation. The 1975 map also introduces the 8040 Greenline and Conservation zoning on lands adjacent to the townhomes. The designation of this land as conservation begins to shift the use at the end of the South Aspen Street to a restricted access point for adjacent properties and skiers for Lift 1A.

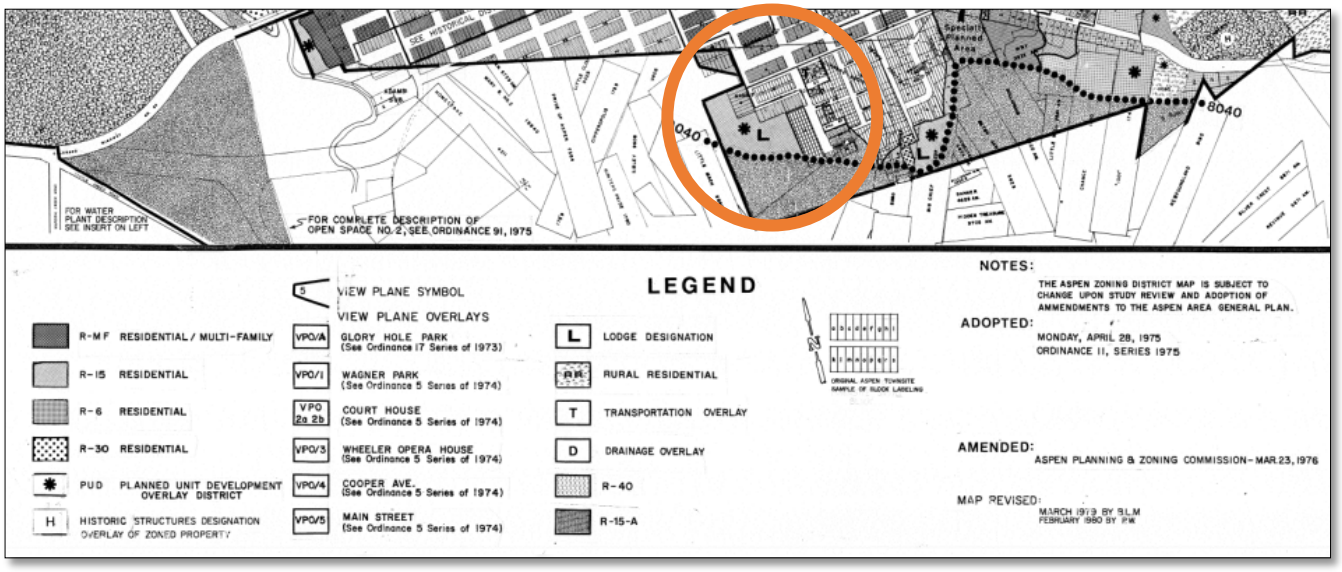

Figure 5: 1975 Zoning Map

The 1983 zoning map represents one of the more significant changes to South Aspen Street with the expansion of the Conservation Zone encroaching into the eastern portion of the right-of-way significantly narrowing the remainder of the street.

Figure 6: 1983 Zoning Map

The 1993 and 2000 AACP and associated zoning maps identify this narrowed area for year-round trail access and recreation, which is illustrated by the green line in today's zoning map below (Figure 7).

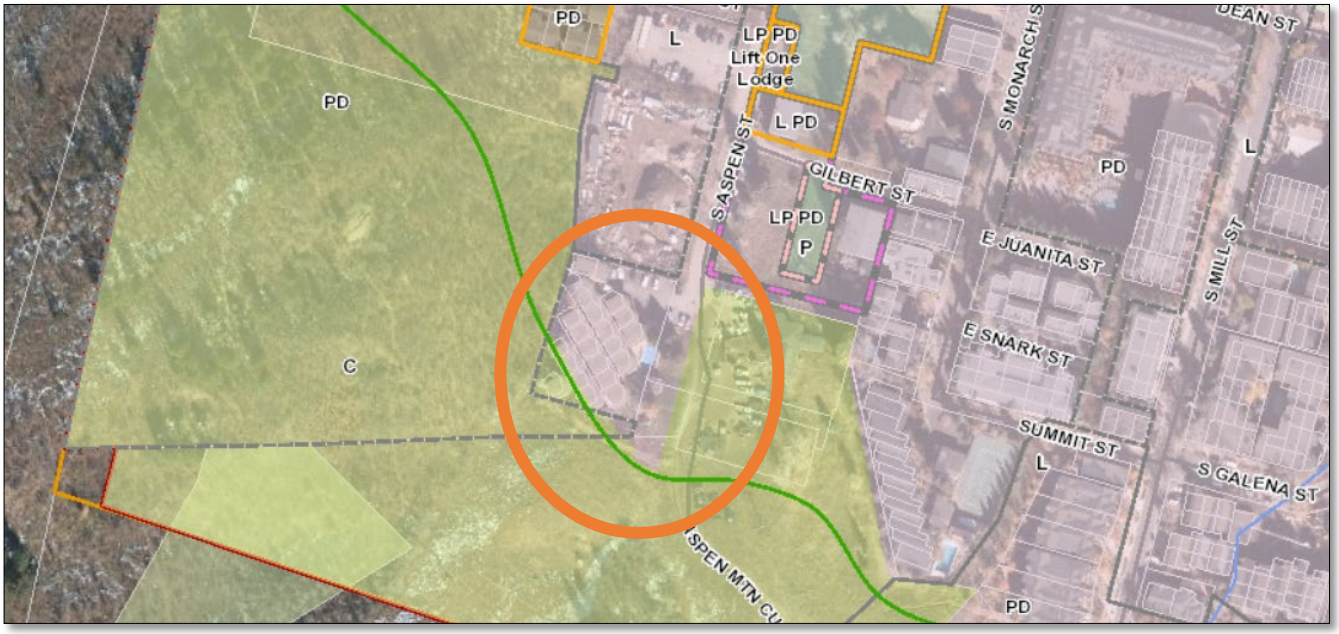

Figure 7: 2019 Zoning Map

The changes to zoning over time create a cohesive narrative of the intent of use for South Aspen Street, focusing on the tourist and ski economy and offering access points for year-round recreation for the greater Aspen community.

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

LAND USE APPLICATION

Project Name and Address: Units 17 & 18 Shadow Mountain Village Condominium Apartments

Parcel ID # (REQUIRED) 2735-131-24-021 & 2735-131-24-019

APPLICANT:

Name: Allison and David Ratajczak

Address: 809 S. Aspen Street, Units 17 and 18, Aspen, CO 81611

Phone #: 202-549-2243 email: allisonratajczak@gmail.com

REPRESENTATIVE:

Name: Sara Adams/BendonAdams

Address: 300 S. Spring Street, #202, Aspen, CO 81611

Phone#: 970-925-2855 x2 email: sara@bendonadams.com

Description: Existing and Proposed Conditions

21 unit condomiumized free market multi-family property. Proposal to combine units 17 and 18. No exterior changes proposed. Request approval to mitigate for multi-family replacement requirements off-site through affordable housing credit certificates.

Review: Administrative or Board Review

Required Land Use Review(s): Growth Management Review

Growth Management Quota System (GMQS) required fields:

Net Leasable square footage n/a **Lodge Pillows** n/a **Free Market dwelling units** no new FMR

Affordable Housing dwelling units n/a **Essential Public Facility square footage** n/a

Have you included the following?

FEES DUE: $ 3,575

- [X] **Pre-Application Conference Summary**
- [X] **Signed Fee Agreement**
- [X] **HOA Compliance form**
- [X] **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 809 South Aspen Street, Units 17 & 18 , Aspen CO 81611

Applicant: Allison and David Ratajczak

Zone District: Lodge (L) **Gross Lot Area:** no change **Net Lot Area:** no change

**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	n/a		
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	21	n/a	20
2) Parcel Density (see 26.710.090.C.10)	n/a		
3) FAR (Floor Area Ratio)	no change to FAR		
4) Floor Area (square feet)			
4) Maximum Height	no change to height		
5) Front Setback			
6) Rear Setback	no change to setbacks		
7) Side Setbacks			
Proposed % of demolition	0%, but "removal" of 1 FMR unit		

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	n/a		
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)	n/a		
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:

BendonAdams

July 23, 2021

Phillip Supino
Community Development Director
City of Aspen
130 So. Galena Street
Aspen, Colorado 81611

RE: Shadow Mountain Village, Units 17 and 18

Mr. Supino:

Please accept this letter authorizing BendonAdams LLC to represent our ownership interests in Units 17 and 18 of the Shadow Mountain Village Condo and act on our behalf on matters reasonably associated in securing land use approvals for the property.

If there are any questions about the foregoing or if I can assist, please do not hesitate to contact me.

Property – 809 South Aspen Street

Legal Description – Condominium Unit 17 and Condominium Unit 18 of the Shadow Mountain Village Condominium Apartments, according to the condominium map thereof recorded July 12, 1965 in Plat Book 3 at Page 33, and as further defined and described in the condominium declaration for Shadow Mountain Village Apartments recorded July 12, 1965 in Book 214 at Page 28, County of Pitkin, State of Colorado

Parcel ID – Unit #17: 2735-131-24-021
Unit #18: 2735-131-24-019

Owner – David Ratajczak and Allison Ratajczak

Kind Regards,

Allison Ratajczak
809 S. Aspen Street, #17 and #18
Aspen, CO 81611

LAND TITLE GUARANTEE COMPANY

Date: March 11, 2021

Subject: Attached Title Policy DAVID RATAJCZAK AND ALLISON RATAJCZAK for 809 S ASPEN ST # 18, ASPEN, CO 81611

Enclosed please find the Owner's Title Insurance Policy for your purchase of the property listed above.

This title policy is the final step in your real estate transaction, and we want to take a moment to remind you of its importance. Please review all information in this document carefully and be sure to safeguard this policy along with your other legal documents.

Your owner's policy insures you as long as you own the property and requires no additional premium payments.

Please feel free to contact any member of our staff if you have questions or concerns regarding your policy, or you may contact Land Title Policy Team at (303) 850-4158 or finals@ltgc.com

As a Colorado-owned and operated title company for over 50 years, with offices throughout the state, we take pride in serving our customers one transaction at a time. We sincerely appreciate your business and welcome the opportunity to assist you with any future real estate needs. Not only will Land Title be able to provide you with the title services quickly and professionally, but you may also be entitled to a discount on title premiums if you sell or refinance the property described in the enclosed policy.

Thank you for giving us the opportunity to work with you on this transaction. We look forward to serving you again in the future.

Sincerely,

Land Title Guarantee Company

OWNER'S POLICY OF TITLE INSURANCE

ANY NOTICE OF CLAIM AND ANY OTHER NOTICE OR STATEMENT IN WRITING REQUIRED TO BE GIVEN TO THE COMPANY UNDER THIS POLICY MUST BE GIVEN TO THE COMPANY AT THE ADDRESS SHOWN IN SECTION 18 OF THE CONDITIONS.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS,OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, (the "Company"), insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the title; This covered Risk includes but is not limited to insurance against loss from
    a. A defect in the Title caused by
        (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
        (ii) failure of any person or Entity to have authorized a transfer or conveyance;
        (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
        (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
        (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
        (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
        (vii) a defective judicial or administrative proceeding.
    b. The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
    c. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
    (a) the occupancy, use or enjoyment of the Land;
    (b) the character, dimensions, or location of any improvement erected on the Land;
    (c) the subdivision of land; or
    (d) environmental protection

    if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
    (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
    (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    (i) to be timely, or
    (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880

Senior Vice President

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By _____ President
Attest _____ Secretary

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY Adopted 6-17-06

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

(1)(a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5. (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

(2) Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

(3) Defects, liens, encumbrances, adverse claims, or other matters
- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

(4) Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

(5) Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.
- (i) The term "Insured" also includes
  - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
  - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
  - (C) successors to an Insured by its conversion to another kind of Entity;
  - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
    - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured.
    - (2) if the grantee wholly owns the named Insured,
    - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
    - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes
- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defensed as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenue, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A. "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be

liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligation to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in the subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expensed incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay. Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or
(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and
(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons, Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim or loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law; The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum; Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: 400 Second Avenue South, Minneapolis, Minnesota 55401 (612)371-1111.

ANTI-FRAUD STATEMENT: Pursuant to CRS 10-1-128(6)(a), it is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

This anti-fraud statement is affixed to and made a part of this policy.

Old Republic National Title Insurance Company

Schedule A

Order Number: Q62012172

Policy No.: OX62012172.3430946

Amount of Insurance: $1,705,000.00

Property Address:

809 S ASPEN ST # 18, ASPEN, CO 81611

1. Policy Date:

February 01, 2021 at 5:00 P.M.

2. Name of Insured:

DAVID RATAJCZAK AND ALLISON RATAJCZAK

3. The estate or interest in the Land described in this Schedule and which is covered by this policy is:

A FEE SIMPLE

4. Title to the estate or interest covered by this policy at the date is vested in:

DAVID RATAJCZAK AND ALLISON RATAJCZAK

5. The Land referred to in this Policy is described as follows:

CONDOMINIUM UNIT 18, SHADOW MOUNTAIN VILLAGE CONDOMINIUM APARTMENTS, ACCORDING TO THE CONDOMINIUM MAP THEREOF RECORDED JULY 12, 1965 IN PLAT BOOK 3 AT PAGE 33, AND AS FURTHER DEFINED AND DESCRIBED IN THE CONDOMINIUM DECLARATION FOR SHADOW MOUNTAIN VILLAGE APARTMENTS RECORDED JULY 12, 1965 IN BOOK 214 AT PAGE 28, COUNTY OF PITKIN, STATE OF COLORADO.

Old Republic National Title Insurance Company

(Schedule B)

Order Number: Q62012172 **Policy No.:** OX62012172.3430946

This policy does not insure against loss or damage by reason of the following:

1. **Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.**
2. **Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.**
3. **Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.**
4. **Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.**
5. **(a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.**
6. 2021 TAXES AND ASSESSMENTS NOT YET DUE OR PAYABLE.
7. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED AUGUST 26, 1949, IN BOOK 175 AT PAGE **208**.
8. TERMS, CONDITIONS AND PROVISIONS OF CONTRACT FOR WATER SERVICE BETWEEN THE CITY OF ASPEN AND SHADOW MOUNTAIN VILLAGE RECORDED JANUARY 11, 2063 IN BOOK 211 AT PAGE **158** AS RECEPTION NO. **119704**.
9. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED JULY 12, 1965, IN BOOK 214 AT PAGE **28** AND AMENDED AND RESTATED CONDOMINIUM DECLARATION RECORDED APRIL 1, 2009 UNDER RECEPTION NO. **557704** AND FIRST AMENDMENT TO THE AMENDED AND RESTATED CONDOMINIUM DECLARATION RECORDED SEPTEMBER 11, 2009 UNDER RECEPTION NO. **562681** AND SECOND AMENDMENT THERETO RECORDED AUGUST 26, 2020 AS RECEPTION NO. **667409**.
10. TERMS, CONDITIONS AND PROVISIONS OF ARTICLES OF INCORPORATION RECORDED JULY 26, 1965 IN BOOK 214 AT PAGE **178**.
11. EASEMENTS AND RIGHTS OF WAY AS SET FORTH ON THE MAP FOR SHADOW MOUNTAIN VILLAGE CONDOMINIUM APARTMENTS RECORDED JULY 12, 1965 IN PLAT BOOK 3 AT PAGE **33**.
12. TERMS, CONDITIONS AND PROVISIONS OF NOTICE OF HOUSE RULES RECORDED JULY 30, 1979 IN BOOK 373 AT PAGE **343**.
13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN REVOCABLE ENCROACHMENT LICENSE RECORDED OCTOBER 31, 2007 UNDER RECEPTION NO. **543674**.
14. TERMS, CONDITIONS AND PROVISIONS OF STATEMENT OF ELECTION TO ACCEPT COLORADO COMMON INTEREST OWNERSHIP ACT RECORDED APRIL 01, 2009 AT RECEPTION NO. **557703**.
15. EASEMENTS, NOTES, RIGHTS OF WAY AND ALL MATTERS AS SHOWN ON IMPROVEMENT & TOPOGRAPHIC SURVEY RECORDED DECEMBER 20, 2018 IN PLAT BOOK 124 AT PAGE **59**.
16. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS AS SET FORTH IN NOTICE OF APPROVAL RECORDED SEPTEMBER 4, 2020 AS RECEPTION NO. **667844**.

Old Republic National Title Insurance Company

(Schedule B)

Order Number: Q62012172 **Policy No.:** OX62012172.3430946

17. DEED OF TRUST DATED JANUARY 29, 2021, FROM DAVID RATAJCZAK AND ALLISON RATAJCZAK TO THE PUBLIC TRUSTEE OF PITKIN COUNTY, COLORADO FOR THE USE OF REGIONS BANK D/B/A REGIONS MORTGAGE, TO SECURE THE SUM OF $1,000,000.00 RECORDED FEBRUARY 01, 2021, UNDER RECEPTION NO. **673088**.

    ANY EXISTING LEASES AND TENANCIES.

    ITEM NOS. 1 THROUGH 4 OF THE STANDARD EXCEPTIONS ARE HEREBY DELETED.

Endorsement 107.12-06
Change Date of Policy

Endorsement
Attached to Policy No. LTJI62009624.992444
Our Order No. 62009624
Issued By Old Republic National Title Insurance Company

The effective Date of Policy is hereby changed from DECEMBER 21, 2018 to JUNE 18, 2021.

The Company hereby insures:

1. That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the Public Records, affecting said estate or interest, other than those shown in said policy, except:
   RELEASE OF DEED OF TRUST RECORDED AUGUST 11, 2020 UNDER RECEPTION NO. 666898.

   NOTICE OF APPROVAL RECORDED SEPTEMBER 4, 2020 UNDER RECEPTION NO. **667844**.

   DEED OF TRUST RECORDED FEBRUARY 12, 2021 UNDER RECEPTION NO. **673532**.
2. That, as shown by the Public Records, the Title to said estate or interest is vested in the vestees shown in Schedule A.
   ALLISON RATAJCZAK AND DAVID RATAJCZAK

Dated: JUNE 18, 2021

This endorsement is issued as part of the Policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the Policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the Policy and of any prior endorsements.

Old Republic National Title Insurance Company

By: LAND TITLE GUARANTEE COMPANY

By: CB Rants
Craig B. Rants, Senior Vice President

exhibit D

Return To:
Post Closing Department
Regions Bank d/b/a/ Regions Mortgage
2050 Parkway Office Circle, RCN-6, Mail Code: ALBH40602B
Birmingham, AL 35244

Prepared By:
Tracie L Patterson
303 Jesse Jewel Pwy Suite 400
Gainesville, GA 30501
(770)503-2524

620123 29

[Space Above This Line For Recording Data]

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 12, 2021 , together with all Riders to this document.
(B) "Borrower" is David Ratajczak and Allison Ratajczak;

Borrower is the trustor under this Security Instrument.
(C) "Lender" is Regions Bank d/b/a Regions Mortgage

Lender is a State chartered association
organized and existing under the laws of State of Alabama .
Lender's address is 2050 Parkway Office Circle, Birmingham, AL 35244

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Lender is the beneficiary under this SePitkin
(D) "Trustee" is the Public Trustee of Pitkin County, Colorado.
(E) "Note" means the promissory note signed by Borrower and dated February 12, 2021 .
The Note states that Borrower owes Lender five hundred ten thousand four hundred and 00/100 Dollars
(U.S. $ 510,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2051 .
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Condominium Rider	☒ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY
This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **County** [Type of Recording Jurisdiction]
of **Pitkin** [Name of Recording Jurisdiction]:
See Exhibit A attached hereto and made a part hereof for all purposes.

Parcel ID Number:
809 S ASPEN ST UNIT 17
ASPEN
("Property Address"):

which currently has the address of
[Street]
[City], Colorado **81611-1896** [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or

more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of

insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted

limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and

opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be

entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall request that Trustee release this Security Instrument and shall produce for Trustee, duly canceled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

_____ *(Seal)*
David Ratajczak **-Borrower**

_____ *(Seal)*
Allison Ratajczak **-Borrower**

_____ *(Seal)*
-Borrower

_____ *(Seal)*
-Borrower

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.

State of Colorado
County of Pitkin

This record was acknowledged before me on by **David Ratajczak and Allison Ratajczak**

My Commission Expires: 3/16/22 Melissa Rivera
Signature of Notarial Officer

MELISSA RIVERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184012281
MY COMMISSION EXPIRES MARCH 16, 2022

Loan origination organization **Regions Bank d/b/a Regions Mortgage**
NMLS ID **174490**
Loan originator **Stephene Major**
NMLS ID **546448**

Exhibit A

Escrow No. **62012329**

CONDOMINIUM UNIT 17, SHADOW MOUNTAIN VILLAGE CONDOMINIUM APARTMENTS, ACCORDING TO THE CONDOMINIUM MAP THEREOF RECORDED JULY 12, 1965 IN PLAT BOOK 3 AT PAGE 33, AND AS FURTHER DEFINED AND DESCRIBED IN THE CONDOMINIUM DECLARATION FOR SHADOW MOUNTAIN VILLAGE APARTMENTS RECORDED JULY 12, 1965 IN BOOK 214 AT PAGE 28, COUNTY OF PITKIN, STATE OF COLORADO.

SECOND HOME RIDER

THIS SECOND HOME RIDER is made this **12th** day of **February, 2021**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower" whether there are one or more persons undersigned) to secure Borrower's Note to **Regions Bank d/b/a Regions Mortgage**

(the "Lender") of the same date and covering the Property described in the Security Instrument (the "Property"), which is located at:

809 S ASPEN ST UNIT 17, ASPEN, CO, 81611-1896
[Property Address]

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree that Sections 6 and 8 of the Security Instrument are deleted and are replaced by the following:

6. Occupancy. Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the Property to any timesharing or other shared ownership arrangement or to any rental pool or agreement that requires Borrower either to rent the Property or give a management firm or any other person any control over the occupancy or use of the Property.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's second home.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Second Home Rider.

_____ (Seal)	_____ (Seal)
David Ratajczak -Borrower	Allison Ratajczak -Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this **12th** day of **February, 2021** , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to **Regions Bank d/b/a Regions Mortgage**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

809 S ASPEN ST UNIT 17, ASPEN, CO, 81611-1896
[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

Shadow Mountain Village
[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in

Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

_____ (Seal)	_____ (Seal)
David Ratajczak -Borrower	Allison Ratajczak -Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

Agreement to Pay Application Fees

An agreement between the City of Aspen ("City") and

Address of Property: 809 S. Aspen Street, Units 17 & 18, Aspen, CO 81611 **Please type or print in all caps**

Property Owner Name: Allison & Davis Ratajczak Representative Name (if different from Property Owner) BendonAdams

Billing Name and Address - Send Bills to:
Allison Ratajczak 809 S. Aspen St. #17, Aspen, CO 81611

Contact info for billing: e-mail: allisonratajczak@gmail.com Phone: 202- 549-2243

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.

$. 325 flat fee for APCHA. $._____ 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.

$ 3,250 deposit for 10 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:

_____
Phillip Supino, AICP
Community Development Director

City Use:
Fees Due: $_____ Received $_____
Case #_____

Signature: _____

PRINT Name: Allison Ratajczak

Title: Owner

CITY OF ASPEN COMMUNITY DEVELOPMENT DEPARTMENT

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: Allison and David Ratajczak	
	Email: allisonratajczak@gmail.com	Phone No.: 202-549-2243
Address of Property: (subject of application)	809 South Aspen Street, #17 and #18 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: 7/20/21

Owner printed name: Allison Ratajczak

or,

Attorney signature: _____ date: _____

Attorney printed name: _____

From:	Sara Adams
To:	Sara Adams
Subject:	HOA consent for Land Use App
Date:	Tuesday, July 20, 2021 1:00:44 PM

From: Susan Spalding <susan@spaldingmgt.com>
Sent: Tuesday, July 20, 2021 12:57 PM
To: Karen Hartman <karen@kabert.com>; Allison Ratajczak <allisonratajczak@gmail.com>
Cc: Sara Adams <sara@bendonadams.com>
Subject: RE: HOA consent for Land Use App

Dear Sara:

The Shadow Mountain Homeowners Association understands that Allison and David Ratajczak are interested in combining Units 17 and 18. The City of Aspen requires verification from the HOA that the proposed application is not in conflict with the HOA governing documents. While the HOA is not prepared to approve the combination of Units until the City of Aspen has granted approval for the project through the land use review process, the HOA is consenting to the application with the understanding that HOA approval will occur after the City of Aspen review process. The HOA governing documents do not preclude combining of units, as Units 5 and 6 were combined years ago.

Please let me know if you have further questions.

Regards,

Susan W. Spalding
Association Manager for Shadow Mountain Homeowners Association
Spalding Management Services, LLC
P.O. Box 49
Aspen, CO 81612
(970) 925-9131 (office)
(970) 948-1044 (cell)
Susan@SpaldingMgt.com

CITY OF ASPEN

PRE-APPLICATION CONFERENCE SUMMARY

Pre-21-077

DATE: June 11, 2021
PLANNER: Jeff Barnhill, 970.429.2752
PROJECT NAME AND ADDRESS: 809 S. Aspen Street | GMQS Review – Multi-Family Replacement
PARCEL ID#: Unit 17 – 273513124021 / Unit 18 – 273513124019
REPRESENTATIVE: Sara Adams, BendonAdams | sara@bendonadams.com

DESCRIPTION: 809 S. Aspen Street is located in the Lodge (L) zone district & within the 8040 Greenline review area. The property contains twenty-one condominium units and common area improvements including decks, an inground pool, walkways, landscaped areas and retaining walls. The applicant plans to combine units 17 and 18 at the Shadow Mountain Townhomes. The applicants expect the combination of units 17 and 18 to require the landing of a TDR. According to the applicant, the units cannot prove that they were only used as tourist accommodation or by non-working locals so are expecting multi-family replacement requirements to combine units. The applicant states that this will be an interior only project and will not affect the exterior of the building. An updated condo plat will be included as a condition of approval.

The maximum allowable net livable area per unit in the Lodge zone district is 1,500 square feet. The extinguishment of a TDR would allow the maximum net livable area to increase from 1,500 square feet to 2,000 square feet for the unit. Additionally, the applicant would like to request P&Z to consider the use of housing credits to meet the affordable housing mitigation requirements. That option is provided for in Section 26.470.100.100.d(4) *Location requirement.* The applicant must demonstrate, and the Planning and Zoning Commission determine that the replacement of units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

RELEVANT LAND USE CODE SECTIONS:

Section Number	Section Title
26.304	Common Development Review Procedures
26.470	GMQS
26.470.100.D	GMQS – Multi-Family Replacement
26.710.190	Lodge (L) Zone District
26.575.020	Miscellaneous Supplemental Regulations

For your convenience – links to the Land Use Application and Land Use Code are below:

Land Use Application Land Use Code

REVIEW BY: Community Development Staff for complete application and recommendation

APCHA for recommendation on Mitigation request

P&Z for Decision

PUBLIC HEARING: Yes

PLANNING FEES: $3,250 deposit for 10 hours of staff time (additional hours will be billed at $325/hr)

REFERRAL FEES: $325 deposit for 1 hour APCHA review (additional hours will be billed at $325/hr)

TOTAL DEPOSIT: **$3,575.00**

130 South Galena Street Aspen, CO 81611-1975 | P: 970.920.5000 | F: 970.920.5197 | cityofaspen.com

APPLICATION CHECKLIST – PLEASE EMAIL THESE ITMES IN A PDF FORMAT TO:
JEFFREY.BARNHILL@CITYOFASPEN.COM

- ☐ Completed Land Use Application and signed Fee Agreement.
- ☐ Pre-application Conference Summary (this document).
- ☐ HOA Compliance form (Attached to Application)
- ☐ Applicant's name, address and telephone number, contained within a letter signed by the applicant stating the name, address, and telephone number of the representative authorized to action on behalf of the applicant.
- ☐ 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.
- ☐ An 8 1/2" by 11" vicinity map locating the parcel within the City of Aspen.
- ☐ Existing and proposed floor plans including existing and proposed net livable calculations.
- ☐ A written description of the proposed work.
- ☐ An explanation in written, graphic, or model form of how the project complies with the review standards relevant to the development application and relevant land use approvals associated with the property.

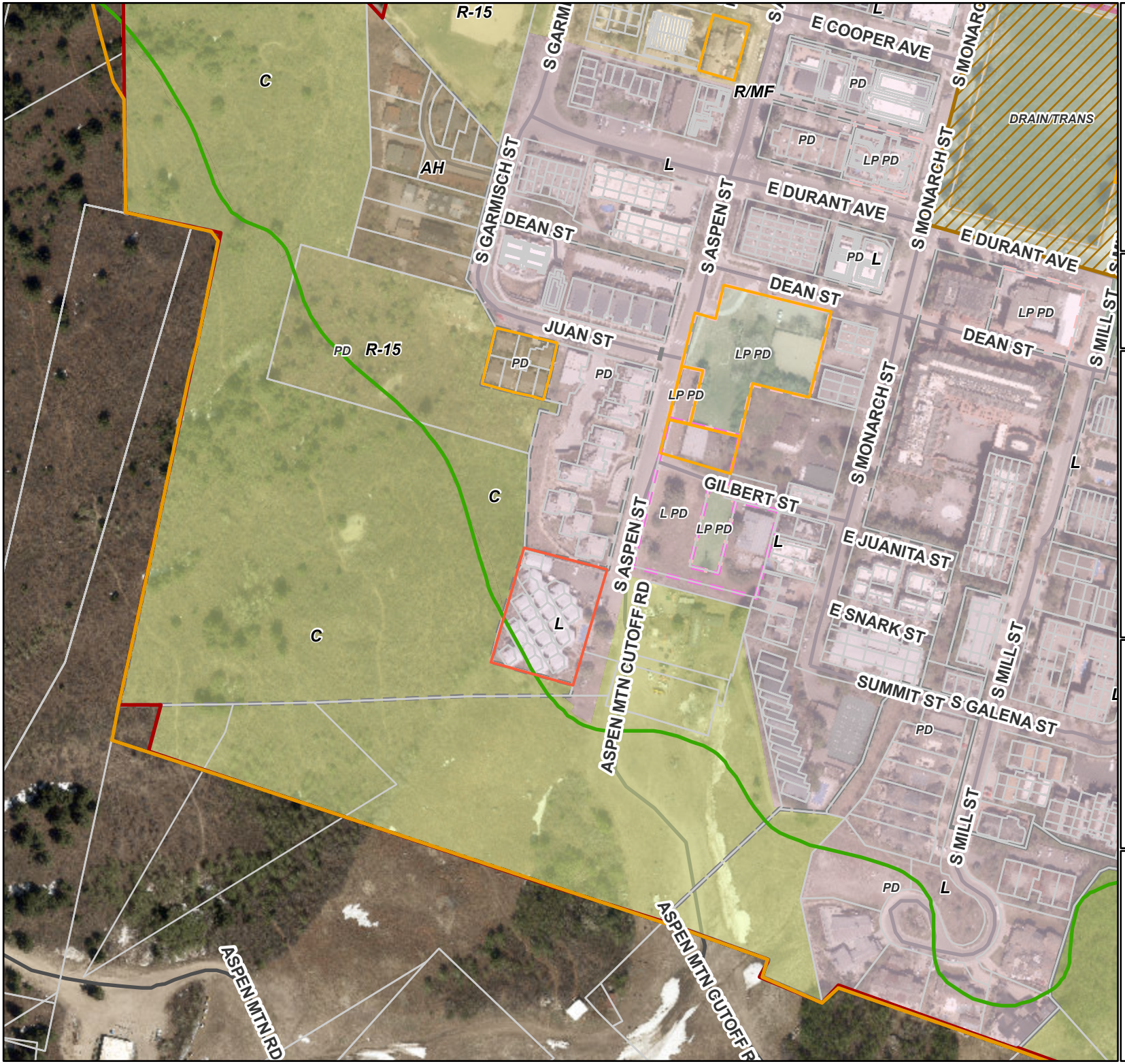
If the copy is deemed complete by staff, the following items will then need to be submitted:

- ☐ Total deposit for review of the application.

Depending on further review of the case, additional items may be requested of the application. Once the application is deemed complete by staff, the applicant/applicant's representative will receive an e-mail requesting submission of an electronic copy of the complete application and the deposit. Once the deposit is received, the case will be assigned to a planner and the land use review will begin.

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.

exhibit H



Shadow Mountain Vicinity Map

Legend

- Urban Growth Boundary (UGB)
- Emissions Inventory Boundary (EIB)
- City of Aspen
- Greenline 8040
- Stream Margin
- Hallam Bluff ESA
- Historic Sites
- Historic Districts
- Parcels

Zone Overlay
- DRAINAGE
- LP PD
- DRAIN/TRANS
- GCS PD
- L PD
- LP
- PD

Zoning
- R-3 High Density Residential
- AH Affordable Housing
- R/MF Residential/Multi-Family
- R/MFA Residential/Multi-Family
- R-6 Medium Density Residential
- R-15 Moderate Density Residential
- R-15-A Moderate Density Residential
- R-15B Moderate Density Residential
- R-30 Low Density Residential
- RR Rural Residential
- L Lodge
- CL Commercial Lodge
- CC Commercial Core
- C-1 Commercial
- SCI Service Commercial Industrial
- NC Neighborhood Commercial
- MU Mixed Use
- SKI Ski Area Base
- C Conservation
- OS Open Space
- P Park

N W E S

Scale: 1:3,535

When printed at 8.5"x11"

0 0.02 0.04 0.07

mi

CITY OF ASPEN

Geographic Information Systems

This map/drawing/image is a graphical representation of the features depicted and is not a legal representation. The accuracy may change depending on the enlargement or reduction.

Date: 7/20/2021

exhibit I

SHADOW MOUNTAIN - UNITS 17 + 18

VICINITY MAP - ASPEN, COLORADO

UNITS 17 + 18, SHADOW MOUNTAIN CONDOMINIUM

NORTH

CONDOMINIUM EXTERIOR - CURRENTLY UNDER RENOVATION

UNIT INTERIOR

PROJECT INFORMATION

ADDRESS
809 S ASPEN ST, UNITS 17 + 18

ZONE DISTRICT
LODGE

SCOPE OF WORK
THE INTENT OF THIS REMODEL IS TO:

- COMBINE UNITS 17 + 18
- MAINTAIN EXISTING FLOOR AREA BY KEEPING BOTH INTERIOR STAIRS
- INTERIOR REMODEL OF ALL FINISHES, FIXTURES, MILLWORK AND APPLIANCES
- ALL EXTERIOR DECKS, ENTRY DOORS, WINDOWS TO REMAIN

PROJECT DIRECTORY

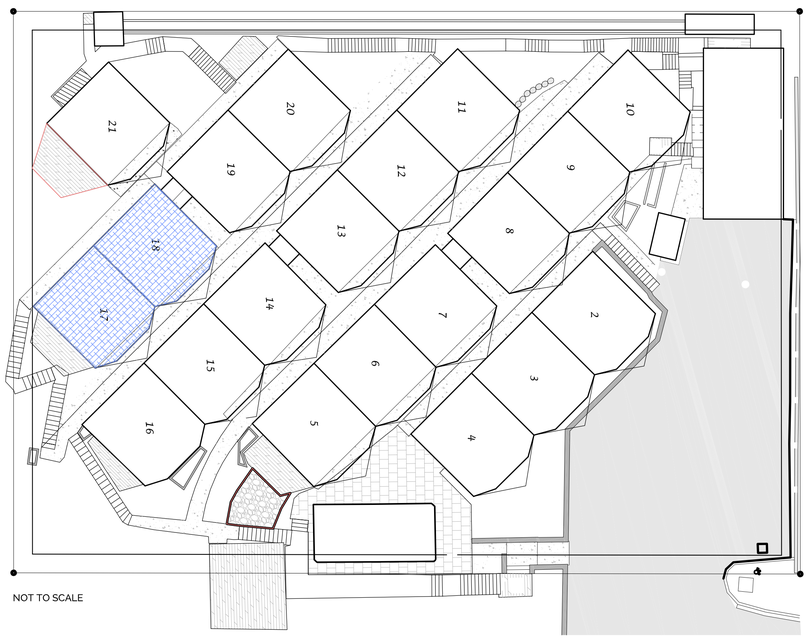
OWNER
ALLISON + DAVID RATAJCZAK
809 S ASPEN ST, UNITS 17 + 18
ASPEN, CO 81611

ARCHITECT
THE OUTPOST STUDIO LLC
453 LIONS RIDGE RD
CARBONDALE, CO 81623
CONTACT:
DANA ELLIS, AIA
203-610-7633 CELL
DANA@OUTPOSTSTUDIOCO.COM

CONTRACTOR
TBD

LAND USE PLANNER
BENDON ADAMS
300 S SPRING ST, UNIT 200
ASPEN, CO 81611
CONTACT:
SARA ADAMS
610-246-3236 CELL
SARA@BENDONADAMS.COM

CONDOMINIUM MAP



NOT TO SCALE

THE SCOPE OF WORK EFFECTS ONLY UNITS 17 + 18, INTERIOR.

SHEET INDEX

THE OUTPOST STUDIO
architecture | interiors | environment
453 lions ridge road
carbondale, colorado 81623

CONSULTANTS

ISSUE
07.13.2021
LAND USE APPLICATION

COLORADO LICENSED
DANA ELLIS
00404960
ARCHITECT

PROJECT INFORMATION

809 S ASPEN ST
UNITS 17 + 18
ASPEN, CO 81611

PROJECT NUMBER

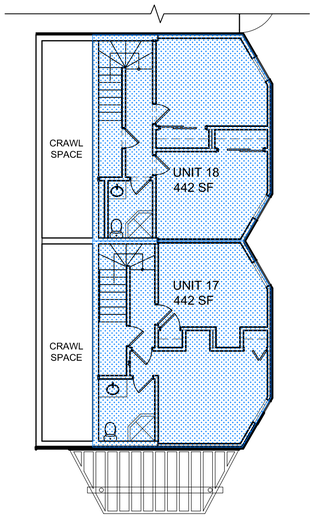
2021-004

SHEET NAME
COVER SHEET

SCALE: NOT TO SCALE

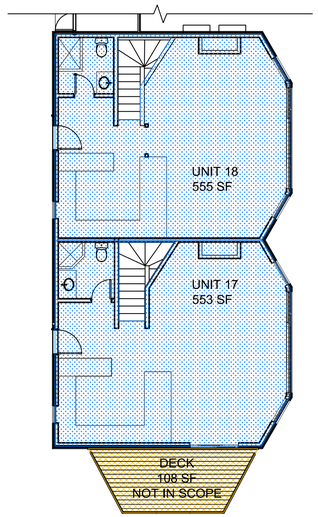
A0.0

EXISTING



1 A0.2z EXISTING LOWER LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

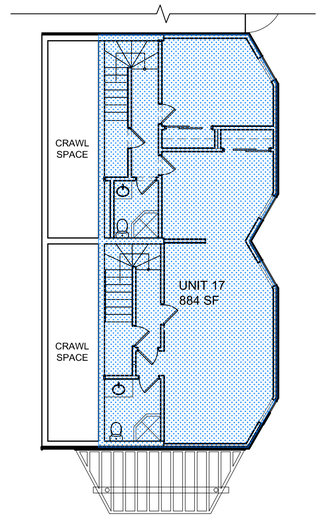
EXISTING



2 A0.2z EXISTING MAIN LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

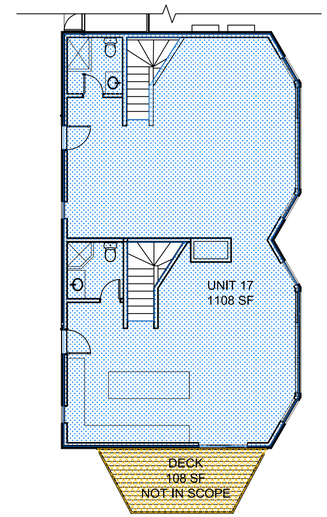
LEGEND	
RESIDENTIAL FLOOR AREA	
DECK AREA > 30" ABOVE GRADE	
NET LIVABLE AREA	

PROPOSED



1 A0.2z PROPOSED LOWER LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

PROPOSED



2 A0.2z PROPOSED MAIN LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

CODE SUMMARY:
CITY OF ASPEN LAND USE CODE *SECTION 26.575.020 CALCULATIONS AND MEASUREMENTS. MEASURING FLOOR AREA.*

(D)MEASURING FLOOR AREA. IN MEASURING FLOOR AREAS FOR FLOOR AREA RATIO AND ALLOWABLE FLOOR AREA, THE FOLLOWING APPLIES:(1)GENERAL. FLOOR AREA SHALL BE ATTRIBUTED TO THE LOT OR PARCEL UPON WHICH IT IS DEVELOPED. IN MEASURING A BUILDING FOR THE PURPOSES OF CALCULATING FLOOR AREA RATIO AND ALLOWABLE FLOOR AREA, THERE SHALL BE INCLUDED ALL AREAS WITHIN THE SURROUNDING EXTERIOR WALLS OF THE BUILDING. WHEN MEASURING FROM THE EXTERIOR WALLS, THE MEASUREMENT SHALL BE TAKEN FROM THE EXTERIOR FACE OF FRAMING, EXTERIOR FACE OF STRUCTURAL BLOCK, EXTERIOR FACE OF STRAW BALE, OR SIMILAR EXTERIOR SURFACE OF THE NOMINAL STRUCTURE EXCLUDING SHEATHING, VAPOR BARRIER, WEATHERPROOFING MEMBRANE, EXTERIOR-MOUNTED INSULATION SYSTEMS, AND EXCLUDING ALL EXTERIOR VENEER AND SURFACE TREATMENTS SUCH AS STONE, STUCCO, BRICKS, SHINGLES, CLAPBOARDS OR OTHER SIMILAR EXTERIOR VENEER TREATMENTS. (ALSO, SEE SETBACKS.)

(2)VERTICAL CIRCULATION. WHEN CALCULATING VERTICAL CIRCULATION, THE CIRCULATION ELEMENT SHALL BE COUNTED AS FOLLOWS:A.FOR STAIRS AND ELEVATORS, THE AREA OF THE FEATURE SHALL BE PROJECTED DOWN AND COUNTED ON THE LOWER OF THE TWO (2) LEVELS CONNECTED BY THE ELEMENT AND NOT COUNTED AS FLOOR AREA ON THE TOP-MOST INTERIOR FLOOR SERVED BY THE ELEMENT.B.WHEN A STAIRWAY OR ELEVATOR CONNECTS MULTIPLE LEVELS, THE AREA OF THE FEATURE SHALL BE COUNTED ON ALL LEVELS AS IF IT WERE A SOLID FLOOR EXCEPT THAT THE AREA OF THE FEATURE SHALL NOT BE COUNTED AS FLOOR AREA ON THE TOP-MOST INTERIOR LEVEL SERVED BY THE ELEMENT.C.MECHANICAL AND OVERRUN AREAS ABOVE THE TOP-MOST STOP OF AN ELEVATOR SHALL NOT BE COUNTED AS FLOOR AREA. AREAS BELOW THE LOWEST STOP OF AN ELEVATOR SHALL NOT BE COUNTED AS FLOOR AREA.(3)ATTIC SPACE AND CRAWL SPACE. UNFINISHED AND UNINHABITABLE SPACE BETWEEN THE CEILING JOISTS AND ROOF RAFTERS OF A STRUCTURE OR BETWEEN THE GROUND AND FLOOR FRAMING WHICH IS ACCESSIBLE ONLY AS A MATTER OF NECESSITY IS EXEMPT FROM THE CALCULATION OF FLOOR AREA AS DESCRIBED BELOW. DROP CEILINGS ARE NOT INCLUDED IN THE HEIGHT MEASUREMENT FOR CRAWL SPACES.

CRAWL SPACES THAT MEET THE FOLLOWING ARE EXEMPT FROM FLOOR AREA CALCULATIONS:

A.FIVE (5) FEET SIX (6) INCHES OR LESS IN HEIGHT MEASURED BETWEEN THE HARD FLOOR STRUCTURE AND FLOOR FRAMING; AND
B.ACCESSIBLE ONLY THROUGH AN INTERIOR FLOOR HATCH, EXTERIOR ACCESS PANEL, OR SIMILAR FEATURE; AND C.ARE THE MINIMUM HEIGHT AND SIZE REASONABLY NECESSARY FOR THE MECHANICAL EQUIPMENT. STACKED CRAWL SPACES DO NOT QUALIFY FOR THE FLOOR AREA EXEMPTION. CRAWL SPACES GREATER THAN FIVE (5) FEET SIX (6) INCHES IN HEIGHT COUNT TOWARD FLOOR AREA IN ACCORDANCE WITH SECTION 26.575.020(D)(8) SUBGRADE AREAS.

IF ANY PORTION OF THE ATTIC OR CRAWL SPACE OF A STRUCTURE IS TO BE COUNTED, THEN THE ENTIRE ROOM SHALL BE INCLUDED IN THE CALCULATION OF FLOOR AREA.

FLOOR AREA SUMMARY

EXISTING FLOOR AREA - LOWER LEVEL (UNIT 17)	442 SF
EXISTING FLOOR AREA - MAIN LEVEL (UNIT 17)	*553 SF
TOTAL EXISTING FLOOR AREA (UNIT 17)	995 SF
EXISTING FLOOR AREA - LOWER LEVEL (UNIT 18)	442 SF
EXISTING FLOOR AREA - MAIN LEVEL (UNIT 18)	*555 SF
TOTAL EXISTING FLOOR AREA (UNIT 18)	997 SF
TOTAL EXISTING FLOOR AREA (UNIT 17 + UNIT 18)	1,992 SF

FLOOR AREA SUMMARY

PROPOSED FLOOR AREA - LOWER LEVEL	884 SF
PROPOSED FLOOR AREA - MAIN LEVEL	1,108 SF
TOTAL PROPOSED FLOOR AREA	1,992 SF

CALCULATION SUMMARY

ZONE DISTRICT - LODGE (L)
CURRENT USE - RESIDENTIAL

ALLOWABLE FLOOR AREA - REFERENCE EXTERIOR REMODEL BUILDING PERMIT

THE INTENT OF THIS PROJECT IS TO MAINTAIN THE EXISTING FLOOR AREA, NO EXTERIOR SCOPE OF WORK. DECK AREA TO REMAIN.

THE OUTPOST STUDIO
architecture | interiors | environment
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carbondale, colorado 81623

CONSULTANTS

ISSUE
07.13.2021
LAND USE APPLICATION

COLORADO LICENSED
CHINA ELLIS
00404960
ARCHITECT

PROJECT INFORMATION

809 S ASPEN ST
UNITS 17 + 18
ASPEN, CO 81611

PROJECT NUMBER

2021-004

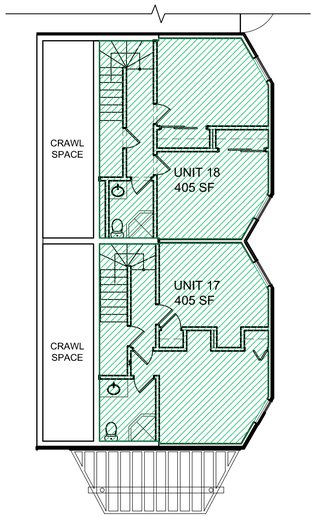
SHEET NAME

FLOOR AREA CALCULATIONS

SCALE: 1/8" = 1'-0"

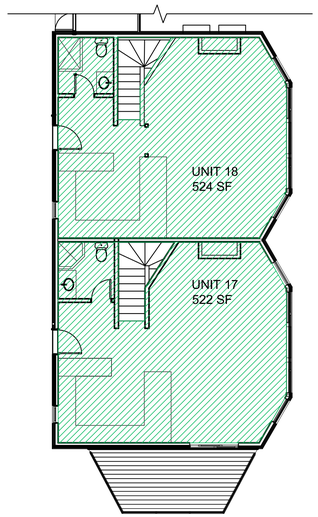
A0.2z

EXISTING



1 A0.2z EXISTING LOWER LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

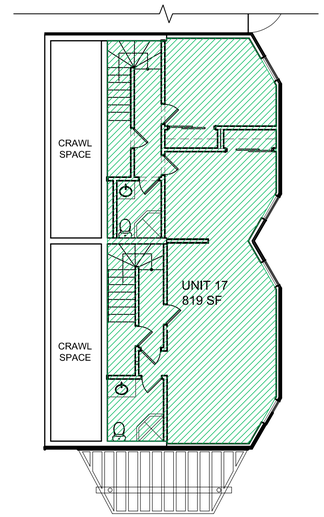
EXISTING



2 A0.2z EXISTING MAIN LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

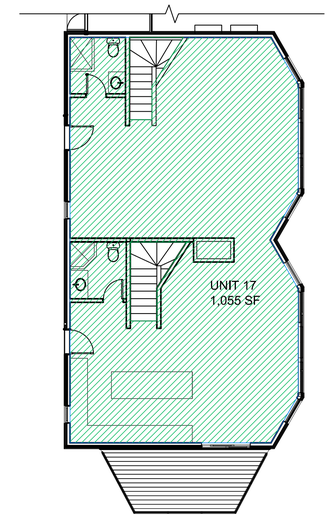
LEGEND	
RESIDENTIAL FLOOR AREA	
DECK AREA > 30" ABOVE GRADE	
NET LIVABLE AREA	

PROPOSED



1 A0.2z PROPOSED LOWER LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

PROPOSED



2 A0.2z PROPOSED MAIN LEVEL FLOOR AREA
SCALE: 1/8" = 1'-0"

CODE SUMMARY:
CITY OF ASPEN LAND USE CODE *SECTION 26.575.020 CALCULATIONS AND MEASUREMENTS. MEASUREMENT OF NET LEASABLE AND NET LIVABLE.*

MEASUREMENT OF NET LEASABLE AREA AND NET LIVABLE AREA. THE CALCULATION OF NET LEASABLE AREA AND NET LIVABLE AREA SHALL INCLUDE ALL INTERIOR SPACE OF A BUILDING MEASURED FROM INTERIOR WALL TO INTERIOR WALL, INCLUDING INTERIOR PARTITIONS. NET LEASABLE AREA AND NET LIVABLE AREA SHALL BE ATTRIBUTED TO THE LOT OR PARCEL UPON WHICH IT IS DEVELOPED. NET LEASABLE AREA INCLUDES ALL INTERIOR AREAS WHICH CAN BE LEASED TO AN INDIVIDUAL TENANT WITH THE EXCEPTIONS NOTED BELOW. NET LIVABLE AREA INCLUDES THOSE AREAS OF A BUILDING THAT ARE USED OR INTENDED TO BE USED FOR HABITATION WITH THE EXCEPTIONS NOTED BELOW. GARAGES AND CARPORTS ARE EXEMPT FROM NET LEASABLE AREA AND NET LIVABLE AREA CALCULATIONS.(1)PERMANENTLY INSTALLED INTERIOR AIRLOCK SPACES ARE EXEMPT FROM THE CALCULATION OF NET LEASABLE SPACE UP TO A MAXIMUM EXEMPTION OF ONE HUNDRED (100) SQUARE FEET. SEASONAL AIRLOCKS OF MORE THAN TEN (10) SQUARE FEET, INSTALLED ON THE EXTERIOR OF A BUILDING, SHALL BE CONSIDERED NET LEASABLE AREA AND SHALL BE SUBJECT TO ALL REQUIREMENTS OF THE LAND USE CODE, INCLUDING EMPLOYEE MITIGATION, PRORATED ACCORDING TO THE PORTION OF THE YEAR IN WHICH IT IS INSTALLED.(2)UNLESS SPECIFICALLY EXEMPTED THROUGH OTHER PROVISIONS OF THIS TITLE, OUTDOOR DISPLAYS, OUTDOOR VENDING, AND SIMILAR COMMERCIAL ACTIVITIES LOCATED OUTSIDE (NOT WITHIN A BUILDING) SHALL ALSO BE INCLUDED IN THE CALCULATION OF NET LEASABLE AREA. THE CALCULATION OF SUCH AREA SHALL BE THE MAXIMUM FOOTPRINT OF THE DISPLAY OR VENDING APPARATUS. FOR VENDING CARTS OR SIMILAR COMMERCIAL ACTIVITIES REQUIRING AN ATTENDANT, THE CALCULATION SHALL ALSO INCLUDE A REASONABLE AMOUNT OF SPACE FOR THE ATTENDANT. EXTERIOR DECKS AND EXTERIOR SEATING ARE NOT INCLUDED IN THE CALCULATION OF NET LEASABLE AREA. VENDING MACHINES, GAS PUMPS, AND SIMILAR DEVICES WITHOUT AN ATTENDANT SHALL NOT BE CONSIDERED NET LEASABLE AREA.

THE CALCULATION OF NET LEASABLE AREA AND NET LIVABLE AREA SHALL EXCLUDE AREAS OF A BUILDING THAT ARE INTEGRAL TO THE BASIC PHYSICAL FUNCTION OF THE BUILDING. ALL OTHER AREAS ARE ATTRIBUTED TO THE MEASUREMENT OF NET LEASABLE COMMERCIAL SPACE OR NET LIVABLE AREA. WHEN CALCULATING INTERIOR STAIRWAYS OR ELEVATORS, THE TOP-MOST INTERIOR LEVEL SERVED BY THE STAIRWAY OR ELEVATOR IS EXEMPT FROM NET LIVABLE OR NET LEASABLE AREA CALCULATIONS.

SHARED AREAS THAT COUNT TOWARD NET LEASABLE AREA AND NET LIVABLE AREA SHALL BE ALLOCATED ON A PROPORTIONATE BASIS OF THE USE CATEGORY USING THE PERCENTAGES THAT ARE GENERATED PURSUANT TO SECTION 26.575.020(D)(14) ALLOCATION OF NON-UNIT SPACE IN A MIXED USE BUILDING.

EXAMPLES:

A.A BROOM CLOSET OF A MINIMUM SIZE TO REASONABLY ACCOMMODATE THE STORAGE OF JANITORIAL SUPPLIES FOR THE ENTIRE BUILDING IS CONSIDERED INTEGRAL TO THE PHYSICAL FUNCTION OF THE BUILDING AND DOES NOT COUNT TOWARD NET LEASABLE AREA.B.A SHARED COMMERCIAL STORAGE AREA THAT IS LARGER THAN NEEDED FOR THE BASIC FUNCTIONALITY OF THE BUILDING COUNTS TOWARD NET LEASABLE AREA BECAUSE IT IS USEABLE BY THE BUSINESSES.C.A SHARED STAIRWAY AND A SHARED CIRCULATION CORRIDOR (THAT ACCESS MORE THAN ONE (1) USE) ARE INTEGRAL TO THE PHYSICAL FUNCTION OF THE BUILDING AND DO NOT COUNT IN THE MEASUREMENT OF NET LIVABLE AREA OR NET LEASABLE AREA.D.A STAIRWAY THAT IS ENTIRELY WITHIN ONE (1) RESIDENTIAL UNIT COUNTS TOWARD THE MEASUREMENT OF NET LIVABLE AREA.E.A PRIVATE ELEVATOR THAT SERVES MORE THAN ONE (1) RESIDENTIAL UNIT, AND DOES NOT PROVIDE ACCESS TO OTHER USES, DOES NOT COUNT TOWARD THE MEASUREMENT OF NET LIVABLE AREA.F.A PRIVATE ELEVATOR THAT SERVES ONLY ONE (1) RESIDENTIAL UNIT, AND DOES NOT PROVIDE ACCESS TO OTHER USES, COUNTS TOWARD THE MEASUREMENT OF NET LIVABLE AREA.G.A SHARED MECHANICAL ROOM THAT IS LARGER THAN THE MINIMUM SPACE REQUIRED TO REASONABLY ACCOMMODATE THE MECHANICAL EQUIPMENT COUNTS TOWARD THE MEASUREMENT OF NET LIVABLE AREA OR NET LEASABLE AREA AS APPLICABLE. THE AREA OF THE MECHANICAL ROOM THAT IS THE MINIMUM SIZE REQUIRED FOR THE MECHANICAL EQUIPMENT DOES NOT COUNT IN NET LIVABLE AREA OR NET LEASABLE AREA.

NET LIVABLE SUMMARY

EXISTING LIVABLE AREA - LOWER LEVEL (UNIT 17)	405 SF
EXISTING LIVABLE AREA - MAIN LEVEL (UNIT 17)	+522 SF
TOTAL EXISTING LIVABLE AREA (UNIT 17)	927 SF
EXISTING LIVABLE AREA - LOWER LEVEL (UNIT 18)	405 SF
EXISTING LIVABLE AREA - MAIN LEVEL (UNIT 18)	+524 SF
TOTAL EXISTING LIVABLE AREA (UNIT 18)	929 SF
TOTAL EXISTING LIVABLE AREA (UNIT 17 + UNIT 18)	1,856 SF

NET LIVABLE SUMMARY

PROPOSED LIVABLE AREA - LOWER LEVEL	819 SF
PROPOSED LIVABLE AREA - MAIN LEVEL	1,055 SF
TOTAL PROPOSED LIVABLE AREA	1,874 SF

CALCULATION SUMMARY

ZONE DISTRICT - LODGE (L)
CURRENT USE - RESIDENTIAL

NET LIVABLE DIFFERENCE:

EXISTING:	1,856 SF
PROPOSED:	1,874 SF
	18 SF ADDITIONAL NET LIVABLE

THE OUTPOST STUDIO
architecture | interiors | environment
453 lions ridge road
carbondale, colorado 81623

CONSULTANTS

ISSUE
07.13.2021
LAND USE APPLICATION

COLORADO LICENSED
DANA ELLIS
00404960
ARCHITECT

PROJECT INFORMATION

809 S ASPEN ST
UNITS 17 + 18
ASPEN, CO 81611

PROJECT NUMBER

2021-004

SHEET NAME

NET LIVABLE CALCULATIONS

SCALE: 1/8" = 1'-0"

A0.3z

Planning and Zoning Committee –

I would like to voice my support for Allison and David Ratajczak to combine Units 17 and 18 at Shadow Mountain Townhomes, located at 809 S. Aspen Street.

My family is an original owner in this complex from the 1960's, purchased another unit in 1995, and I have served as HOA Board President for many years. Allison and David immediately worked to become part of our community upon their purchase of Unit 17 a few years ago. They got to know their neighbors, and their home has now become a wonderful gathering spot for our complex. Additionally, Allison now serves on the HOA Board of Managers and has spearheaded several projects on behalf of our community. We are thrilled they now live at Shadow Mountain full time.

She and David plan to live in Shadow Mountain for many years and we support combining these two units to make it possible for them to continue to be our neighbors in a slightly larger space. Units 5 and 6 in the complex were combined over 10 years ago with pleasing results for both the owners and the HOA. The combined square footage would be approximately 1800 sq ft – a fair size for a full-time residence.

Thank you for your consideration. Please don't hesitate to contact me if you would like to discuss further.

Regards,

Karen Hartman

Units 3 and 4
President
Board of Managers
Shadow Mountain Townhome Association
809 S. Aspen St.
Home – 970-429-8553
Mobile - 630-988-2230
karen@kabert.com

Members of the Aspen Planning and Zoning Committee;

We are writing to express our enthusiastic support for permitting Allison and David Ratajczak to combine units 17 and 18 at Shadow Mountain Townhomes. We have owned unit 12 at the complex for over 13 years.

Since moving to Aspen, the Ratajczaks have become "locals" -- stalwart members of the Shadow Mountain and larger Aspen communities, joining clubs like the Smuggler Racquet Club and volunteering their time at local organizations. Allison serves on the boards of the Aspen Historical Society and our HOA. Unlike many who pop in and out of town seasonally, Allison and David have truly made Aspen their year-around home.

Aspen draws people like the Ratajczaks to make their home here in part because it is not a constructed mountain resort town... it is a real town inhabited by engaged, active people committed to ensuring that Aspen remains first and foremost an exceptional community in which to live. But that attraction depends in part on the ability of people like the Ratajczaks to acquire or create a normal-sized home in a town that is increasingly overrun with overbuilt second and third "homes" for the ultra, ultra rich, which are unoccupied for most of the year.

Allowing Allison and David to combine two tiny condos to create one modest home (one that will be in the ballpark of 1800 square feet at best) is an entirely reasonable and smart decision... one that acknowledges the importance of full-time residents in maintaining Aspen's unique position in the world.

Sincerely,

Kevin Messina and James R. Brown, Jr.
Unit 12, Shadow Mountain Town Homes
809 S. Aspen St.

Dear P&Z Commissioners,

We understand that our neighbors the Ratajczaks want to combine two adjacent units they own in our Shadow Mountain Town Homes complex.

We are delighted at the prospect of this! It will go a long way to curing the major downside of our units, which is their extremely small size!

I've owned my unit at Shadow mountain for just under 40 years, and my only regret is it's lack of space!

We know we are extremely fortunate to live high on Ajax Mountain; by granting this request we believe the Commission will enhance the experience of *all* the owners in the complex by reducing the number of people living in an extremely limited space.

There is, for example, likely to be a little less pressure on our under-capacity parking lot as well as other shared amenities of the complex.

But there is more: from day one of their arrival, the Ratajczaks have been *active* participants in the life of Shadow Mountain town homes.

Allison has served as chair of our Rules and Regulations Committee, and she and David provided important analytic counsel as we worked through the economics of a Façade renovation for the complex.

She most recently won a seat on our Board.

We would hate to lose Allison and David as owners in our complex!

We urge the P&Z to approve their plans to join their two units.

Sincerely,

Alex Biel,
Unit 21
Board Member

November 23, 2021

PLANNING AND ZONING COMMISSION
City of Aspen
130 S Galena Street
Aspen, CO 81611

To the Commission Members:

We are writing in full support of the application of Allison and David Ratajczak to combine units #17 and #18 of Shadow Mountain Village Condominiums at 809 S. Aspen Street. We own unit #16 in the same complex and can truthfully say that Allison and David are exceptional neighbors who have brought a new sense of community to Shadow Mountain since they moved in.

As some of the only full-time residents of Shadow Mountain, they truly are the "glue" that keeps our little community feeling connected to each other and that make the rest of us want to figure out a way to become full-time residents! Having recently sold their home in Atlanta, Allison and David are definitely committed to making Aspen their permanent home, so we believe that combining their two small units into a single modest sized unit is extremely reasonable.

We are unable to attend the public hearing on December 7 but felt it was important to share our views prior to the meeting. Please don't hesitate to reach out if you have any questions.
Sincerely,

Rania & Pat Dempsey
Unit 16, Shadow Mountain Town Homes
809 S. Aspen St.
262.719.3037
raniadempsey@gmail.com
pkdempsey63@gmail.com

To the P&Z Committee:

I am the owner of Shadow Mountain #15 and I am writing on behalf of Allison and David Ratajczak and their desire to combine units 17 and 18 at Shadow Mountain.

My parents bought our unit when it was under construction in 1963 and my family has been coming to Aspen for multiple weeks every year since. As such, we are the longest owners at Shadow Mountain and out townhome and Aspen holds a very special place in our hearts.

I have known Allison, and her husband David, for several years, they are great people and I am in complete support of their desire to combine units 17 and 18.

Allison and David live year-round in Aspen and each unit is very small (around 900 square feet), especially for someone living there almost full time.

Allison and David have been great neighbors and Shadow Mountain residents and Allison is a member of our homeowners Association board, as am I, and she and David have been a great addition to the Shadow Mountain family.

Being an end unit, combining these units would fit in very well and have just 1 neighbor, as it does today. One other owner, who also spends a large amount of time in Aspen, previously combined 2 units (with one unit also being an end unit) and this has worked out very well and fits in well with the rest of the complex.

For all of these reasons, I am in total support of Allison's plan to combine units 17 and 18 and believe that the other residents of Shadow Mountain feel similarly.

Thank you very much,

Bill Seelbach
Unit 15
Shadow Mountain Town Home
809 S. Aspen St.