PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 15, 2007

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, City Council Chambers, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, February 15, 2007.

Closed Session – City Council Chambers
4:00 p.m. Property and litigation

Work Session – City Council Chambers
5:00 p.m. Council questions/comments
5:10 p.m. Legislative update
5:30 p.m. Review of regular meeting:
PCMC and UPCM water agreement
Other meeting questions/comments
5:50 p.m. Break

Regular Meeting – City Council Chambers
6:00 p.m.

I ROLL CALL

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

III PUBLIC INPUT *(any matter of City business not scheduled on agenda)*

IV WORK SESSION NOTES AND MINUTES OF MEETING OF FEBRUARY 1, 2007

V CONSENT AGENDA PUBLIC HEARINGS *(items listed will be open for public hearing prior to consideration for adoption or rejection; hearings may also be continued by vote of the Council)*

1. Consideration of an Ordinance Accepting the Public Improvements at Eagle Pointe Subdivision - Phase 4

2. Consideration of an Ordinance approving the Third Amended Record of Survey of the Lowell Record of Survey Plat Amendment, located at 1335 Lowell Avenue, Park City, Utah

VI CONSENT AGENDA *(items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not*

imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")

1. Ordinance Accepting the Public Improvements at Eagle Pointe Subdivision - Phase 4

2. Ordinance approving the Third Amended Record of Survey of the Lowell Record of Survey Plat Amendment, located at 1335 Lowell Avenue, Park City, Utah

VII OLD BUSINESS *(continued items with presentations and/or anticipated detailed discussions)*

Consideration of adoption of the 2007 Water Agreement between Park City Municipal Corporation and United Park City Mines Company relating to the United Park City Mines/Park City Mountain Resort Annexation Agreement

VIII ADDITIONAL DISCUSSION – AGENDA ITEMS

IX ADJOURNMENT

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting.

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 22, 2007

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will **not** hold its regularly scheduled meeting on Thursday, February 22, 2007.

Posted: 02/12/07
See: www.parkcity.org

Note: This future meeting schedule is TENTATIVE and subject to change.
PARK CITY COUNCIL TENTATIVE MEETING SCHEDULE

February 2007
22 **No meeting**

March 2007
1 Closed session personnel (90 min)
Legislative update
Aerie Drive improvements/realignment costs - work
LMC Chapters 2.2 HR-1, 2.7, ROS; 2.23, CT; 4, Supplemental; 5, Architectural Review; 15 Definitions
MFL and street closure lower Main between 9th and Heber April 6 – Rossignol
Golf course cart purchase - consent
100th Anniversary Celebration "Rock n Rail"
Ordinance - 255 Ridge Avenue, King Ridge Estates-Plat amendment BR
Ordinance - 1160 Park Avenue – Plat Amendment RM
Ordinance - 447 Main Street, No Name Saloon – CUP RM
Ordnance - 7570 Royal Street East – Plat Amendment RM
Ordinance - 1045 Woodside Avenue-Plat Amendment KC(JW)
Water District Meeting
Consideration of Weber Basin Water Conservancy District Water Sales Agreement for 2500 acre feet of district and non-district water
Consideration of Mountain Regional Special Service District Agreement for 3,100 gpm

8 **No meeting**
15 Closed session - property
Golf course update – work
SR224 signal update - work
Continuation of Ordinance – 654 Woodside Avenue plat amendment
Ordinance - 621 Woodside Avenue-Plat amendment KW
Ordinance - The Cove at Eagle Mtn Phase III (Forsey Parcel) Subdivision –RM
Ordinance – 1049 Park Avenue plat amendment - RM
Municipal Code Title 3, Chapter 3, Campaign Disclosure Amendment
Resolution adopting an emergency preparedness and response program
22
29

April 2007
5
12 **No meeting**
19
26

May 2007

3
10 **No meeting**
17
24
31

Pending Items:
General Plan - Park/Bonanza
Electronic voting
Main Street/Historic District solid waste update - Jerry
Noise/outdoor decks
Strategic plan for ice arena
MOU between Park City and Summit County for Animal Control Services
Air quality discussion
Brewpub lease assignment – RDA
Regional bus service SLC

Tentative "no meeting" dates:
June 14
July 26
August 16
September 6
October 18
December 27

PARK CITY COUNCIL WORK SESSION NOTES
SUMMIT COUNTY, UTAH
FEBRUARY 1, 2007

Present: **Mayor Dana Williams; Council members, Marianne Cone; Candace Erickson; Roger Harlan; Jim Hier; and Joe Kernan**

Tom Bakaly, City Manager; Mark Harrington, City Attorney; Max Paap, Special Events Manager; Phyllis Robinson, Project Manager; Eric DeHaan, City Engineer; Seth Atkinson, Budget Analyst; and Gary Hill, Budget Manager

Blake Chambliss, affordable housing consultant

1. Council questions/comments. Joe Kernan expressed his appreciation of the solutions reached regarding the Delta Airlines negotiations. Marianne Cone thanked the Water Department staff for their help with her frozen water pipes which has been a problem throughout town. In response to comments from Marianne Cone regarding Sundance's Thursday concert, Max Paap explained that the concert was moved from Saturday to Thursday night, and is considered *a gift* to the community. Ms. Cone commented on the large number of attendees from Salt Lake and Mr. Paap acknowledged that entertainment was geared toward a high school audience, recognizing there were problems. Mr. Paap explained that Sundance may consider a better way to *give back to the locals* for future festivals, which would be preferred by the lower Main Street merchants. Ms. Cone suggested considering the *Best of the Festival* event for the locals and suggested that it be two days rather than one, because it is so popular.

Jim Hier noted that he attended the Summit Land Conservancy meeting on Tuesday where the conservation easement language was rejected on the annexation parcel at PCMR. A set of criteria was adopted setting forth parameters for review. Candace Erickson commented on her working experience during Sundance. She spoke about working with the ULCT on potential legislation and explained a concern voiced by Recycle Utah on the rising costs of the hazmat collection. Insa Riepen will be addressing the Council and other entities about contributions to cover this service. She asked if she could attend Habitat for Humanities' meetings, recognizing that a liaison role has not been established with this non-profit. Council members supported her request. Mayor Williams spoke about participating on a public policy environmental panel the end of the month and invited other members to attend.

2. Affordable housing – City-owned properties. Phyllis Robinson introduced consultant Blake Chambliss. She explained that staff is looking for direction from Council on proceeding with an RFP for three City-owned parcels, Snow Creek 9B, Park Avenue Fire Station and the Pechnik Parcel. Through illustration of a slide presentation, Ms. Robinson discussed the eight acre Snow Creek parcel, located behind the new police facility. Mr. Chambliss provided footprint illustrations, taking into account setbacks and site constraints and Stantec has performed some preliminary geo-technical studies to determine potential infrastructure costs. She stated that initial estimates for off-site and site infrastructure costs could support an affordable housing product and felt this option is worth pursuing. She disclosed that all of the site plans are strictly illustrative, the purpose is estimating density and infrastructure costs and do not represent a desired design or layout. The City has not sought entitlements nor received any at this point. Ms. Robinson explained that the parcel is zoned RDM which permits eight acres per unit and with an affordable-MPD overlay could be 20 units per acre. The footprint designs include between 12 and 48 units, depending upon the site design. Potential layouts were illustrated, including single family homes. The geo-technical information supported initial concept studies for a variety of configurations. She stated that staff is recommending pursuing an RFQ or RFP. She continued to explain the number of developers with outstanding affordable housing obligations and anticipated interest in this approach. She asked if Council would support considering this and if the ratio would be 1:1 or something less. It is staff's recommendation that it not be 1:1 and perhaps for every one affordable unit equivalent, the credit would be half, acknowledging that the City has the land. Ms. Robinson asked Council if it would consider contributing the underlying land to the project in some form of a land trust or other long term deed restriction to remove the land cost equation and achieve a more affordable product. Council members have discussed affordable home ownership and this site represents an opportunity, either on a single family or townhouse type of model. She anticipated placing some owner/occupancy restrictions later on the project and asked if it is desired to solicit alternate uses for the site in the bidding including seasonal housing.

Jim Hier preferred that the City construct affordable housing rather than using it to fulfill a developer's obligation because it could decrease the potential number of affordable opportunities in town. He supported contributing the underlying land and placing owner/occupancy restrictions on the sales so that the project doesn't become rental property. He didn't feel it helpful to explore seasonal housing needs because he feels the City's obligation is to meet the needs of residents of the community not businesses. Ms. Erickson stated that she agrees with Council member Hier on point one and suggested that one or two units be identified as property the City could retain a first right of refusal option. She continued to explain that she doesn't care if a couple of units are offered at market price so that the project has a mix and is not negatively perceived as an affordable housing complex.

Marianne Cone believed seasonal housing should not be built on this parcel and supported a mix of condominiums and houses. She suggested perhaps offering these units for sale to other employees of entities like the School District. Ms. Robinson explained that when Silver Meadows was constructed, the School District was contacted but declined to an offer to partner in the project. However, District employees would qualify under local preference options. There was discussion about a 99 year lease option which is basically a land trust, separating the improvement from the parcel.

Ms. Robinson explained that buyers purchase the structure and the product is a collective community land trust. Ms. Cone felt that if a City-owned parcel is sold to a developer, it should be at market value. Joe Kernan agreed that the City should build the housing itself and contribute the land to make the project more affordable. He supported owner/occupancy restrictions and offering units to the School District. He felt that the City should focus on for sale stock, not seasonal housing. Roger Harlan supported comments made and strongly agreed that the City not provide seasonal housing; he would like more information on the land trust concept. He urged the elimination or reduction of home owner fees associated with condominium type projects. Mayor Williams expressed basic agreement, and does not support using this property to fulfill a developer's requirement. He is willing to contribute the land to enhance the project's affordability and is fine with owner/occupancy restrictions. With regard to the term, *essential employees*, he believed that all positions are essential to this town. Dana Williams noted the importance of promoting diversity and a neighborhood feeling. The design should *go out of the box* so that it is a showcase development. Because of the likelihood of young families occupying the housing, he suggested providing a green common area. The City has an opportunity to make a statement.

Phyllis Robinson asked Council if it would like to include the Park Avenue Fire Station in an RFP. Staff is encouraged that all three parcels fit within the parameters of the LMC with regard to existing zoning requirements. Roger Harlan observed the steepness of the Pechnik Parcel compared to the other parcels and there was discussion about this parcel not being available until the summer of 2008 when the Holiday Ranch fire station is operational. She asked about alternative uses on the site and seasonal housing. Jim Hier felt it appropriate to conduct an RFQ and RFP for the property. He has the same concern with the Snowcreek Parcel, where he favors a for sale project built by the City. Seasonal housing prompts a number of management problems but he would consider a rental option. Phyllis Robinson acknowledged that seasonal housing could require on-going monitoring. There was discussion about providing surface parking and the difficulties and expense of building an underground garage in a flood plain. Marianne Cone felt staff should proceed with an RFQ and encouraged open space as part of the project. Candace Erickson also did not support seasonal housing on the site and pointed out the large vacant lot behind the house. Joe Kernan felt this parcel should go through the process and that it not be seasonal housing. Owner/occupied housing will provide for a stronger sense of community and he believed there are already a fair number of rental units available. Mr. Harlan believed that seasonal housing prompts potential challenges relating to management and maintenance. He felt that this parcel and the Snowcreek site may provide an option for growing families. Ms. Erickson stated that she is not in favor of someone buying a unit with no intention of living there and then renting it, which defeats the affordable housing initiative. The housing needs to be owner/occupied. Dana Williams expressed his agreement with comments made and feels that seasonal housing needs to be addressed by the major employers in town.

Phyllis Robinson continued that in 1999, the City acquired the Pechnik property for $205,000. The site is zoned HRL with minimum lot sizes of 3,750 square feet which would allow for a two lot subdivision, accommodating up to four units with an affordable housing-MPD. One option is selling the property at fair market value and allocating the sale proceeds to other affordable housing projects. Blake Chambliss discussed the constraints of the lot, including its small size and steepness, and requiring the inclusion of part of platted and unbuilt Marsac Avenue. He described a three story structure providing for a garage, living area, and bedroom area. Building four units requires substantial structural work and excavation, adding about $30,000 per lot in costs. However, two units may result in better compatibility with the scale of existing dwellings in the area and would provide for better drainage. The Pechnik property is a metes and bounds parcel which would need to be subdivided. Jim Hier suggested marketing the property as one lot for one unit, so the density is minimal. It's not important to maximize the return on this and elements of the development could be deed restricted. Mr. Williams agreed with Mr. Hier. Candace Erickson questioned how readily the sales proceeds could be allocated to an affordable housing project. Tom Bakaly understood Council direction to be that rather than including this piece in the RFQ with the other two properties, to return with geo-technical information. Marianne Cone and Joe Kernan indicated that they would like it also included in an RFQ. Jim Hier cautioned that the property has inherent limitations and suggested gathering more data before soliciting proposals so that it is better defined.

Mayor Williams agreed with Ms. Erickson's points but felt that affordable housing revenue could be used for enhancements to other associated projects. Candace Erickson agreed with Mr. Hier about obtaining geo-technical information first, and other members then concurred with that approach.

3. Potential use of Aerie Drive Parcel. Phyllis Robinson explained that this 4.58 acre parcel was purchased from Royal Street in September 2005 with a deed restriction that the property could only be used for open space or affordable housing. In June 2006, staff recommended to City Council that the land not be purchased with affordable housing funds, but with open space bonds and protecting the land as open space. Council asked staff to analyze development potential for affordable housing on the site before making a final determination of funding source. She explained that Blake Chambliss was contracted to conduct a third party analysis and his findings are outlined in the staff report. If open space bonds are used, the parcel is permanently restricted and if Council wishes to reserve the option for development for future councils, another revenue source must be identified.

Mr. Chambliss relayed that parcel is located on a steep slope and the LMC prohibits access from a road in excess of 10% grade. There is no access from Aerie Drive with the possible exception of the section of road where Aerie Drive meets Deer Valley Drive if there is an adequate front setback. Housing would need to be located 45 to 50 feet above the intersection which translates into 45 to 50 feet of driveway, which would have to be cut into the hillside. Through a slide presentation, Mr. Chambliss displayed a rendering of the project and explained the need for retaining walls. He felt that the parcel could accommodate one dwelling but not affordable housing because of related significant costs of construction. Joe Kernan invited architect Craig Elliott to make some comments.

Craig Elliott explained that he walked the site with Mr. Kernan and acknowledged that he didn't apply LMC conditions. He agreed that accessing it in the lower area is not a good idea and cost prohibitive and suggested providing for access higher up on the site where there is more space. He suggested that if there is a way to build, to request that developers arrive at an acceptable concept.

In response to a question from Jim Hier, Eric DeHaan stated that Aerie Drive's grade is 14.85% which will not comply with provisions of Park City's Subdivision Ordinance. The parcel would need to go through the subdivision process. The two houses above the site are accessed from a 10% grade section. He added that the Aerie is a sensitive area where there was a fatal traffic accident, and the subdivision process may prompt concerns in the neighborhood about the City following its own ordinances. The reason this land has remained vacant is likely because of its constraints with the 10% grade requirement for access. Jim Hier stated that he would like to review this further in a couple of weeks. It was clarified that a zone change is not necessary. Joe Kernan believed that there might be creative solutions for the site, and Ms. Robinson pointed out infrastructure costs could range from $300,000 to $400,000 and asked if the City would be willing to cover those costs. It will be a challenge to create a project within the affordable housing parameters; an affordable housing-MPD provides the ability for the Planning Commission to recommend a density bonus of up to 20 units per acre.

Joe Kernan envisioned bungalows or cottages on the site available at under market value prices. Mark Harrington interjected that the City must meet the letter of the law and advised Council that it can not amend the Code for the benefit of developing one particular property. Jim Hier believed that the Board of Adjustment would be involved in ruling on access from a 14% slope. Access in the lower area is dangerous and not acceptable. He questioned if it is feasible to identify an access point that complies with the LMC. Eric DeHaan stated that in his opinion there is no way to serve this property with a safe driveway. Joe Kernan asked if there is a way to bring portions of the Aerie Drive up to the 10% standard or to realign it, making the road safer for the neighborhood. Tom Bakaly explained that if the City is willing to cover the infrastructure costs to accommodate development, the property becomes affordable. Council member Kernan strongly believed that there are creative solutions to these challenges.

Phyllis Robinson explained that staff is requesting direction in the event another funding source for the purchase needs to be identified for review during the upcoming budget process. Jim Hier felt it would be great to have affordable housing on the site, but is not willing to commit to the infrastructure costs. Realigning Aerie Drive could cost in the millions. He asked for an estimate of the cost of creating a compliant access point and that staff return to Council in a couple of weeks, so a final determination can be rendered. Candace Erickson liked the idea of the look of bungalows or cottages there, but is strongly opposed to making an exception for the City. Joe Kernan asked that once the costs are provided that an RFP process begin; Jim Hier felt that decision can be made once staff returns more information.

4. Legislative updates. Seth Atkinson explained that HB233 is a new bill which the ULCT is opposed to, which is designed to invalidate all geological hazards and wildfire protection ordinances, including construction on steep slopes. It also opposes the Governor's geological hazards task force recommending greater enforcement of local land regulation. Gary Hill explained the ULCT policy committee took a strong position on Monday to oppose HB282, sales tax on food. There is no support to try to explore a buy-out option. Concerns include perceiving this is the first step toward removing sales tax on food and the impact to the communities is too significant. For instance, passage would result in a $17 million state-wide reduction in funding for transportation. He is hopeful that there may be more success in the Senate to oppose this initiative. Jim Hier felt this bill may impact other communities more significantly than Park City. He felt the charge should be shouldered by those communities rather than using City resources. Mr. Hill noted that not everyone shares that opinion and the bulk of staff's time has been used to educate others about potential impacts, recognizing that it will affect Park City with the loss of $500,000 to $600,000 in funding. Mr. Hill feels this effort is necessary because if other cities are not informed, it is likely that the bill will pass. Candace Erickson believed the City needs to uphold its pledge to the ULCT to oppose this bill and personally offered to work with other cities to oppose the legislation.

There was discussion regarding a bill prohibiting running as a non-partisan candidate on the County level; the Mayor asked that Park City formally oppose this bill. Gary Hill acknowledged Council direction rendered on SB41, forms of government. The bill was considered on Monday and passed with amendments, however at the Legislative Policy Meeting later, a subsequent recommendation was proposed to consider this by a task force because there is so much internal debate on the issues. The policy committee voted overwhelming to support this approach which was appreciated by ULCT. Candace Erickson discussed the benefit of more time to work with other cities on a unified position. Mr. Atkinson reported that HB105 proposes authorizing local police departments to enforce federal immigration law, and the City Council unanimously opposed this bill.

5. Liaison appointments – roles and protocol. Kent Cashel asked that Council review the draft protocols for task forces outlined in his staff report. During the Visioning Session in January, Council asked for direction from staff on procedural matters enabling more than two members to attend task force meetings. The open meetings law requires that all meetings be noticed. Another question raised was dealing with public input, and he recommended that these task force meetings be held similar to work sessions where there is typically no public input, and that should be clarified for the benefit of the public. Task meetings are open to the public and must be recorded. Accommodations need to be provided upon request to comply with ADA requirements. Liaison roles remain the same but creating non-liaison roles is a new concept which enables the member to attend meetings as an observer and not actively engage in the meeting. Task force liaisons are charged to report back to Council members.

He citied the transportation task force with the School District as an example of a governmental task force where agencies work together to solve an issue or make recommendations on a topic. The noticing and conduct of meetings is straight forward. The role of the inter-agency task force is not recommended to be modified. The new section addresses the non-liaison concept providing consistent guidelines for implementation. The City Council supported staff's recommendation.

Prepared by Janet M. Scott, City Recorder

PARK CITY COUNCIL MEETING
SUMMIT COUNTY, UTAH
FEBRUARY 1, 2007

I ROLL CALL

Mayor Dana Williams called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, February 1, 2007. Members in attendance were Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; Mark Harrington, City Attorney; Tom Daley, Deputy City Attorney; and Brooks Robinson, Planner.

II COMMUNICATIONS AND DISCLOSURES FROM COUNCIL AND STAFF

Candace Erickson stated that she is employed by Park City Mountain Resort and her husband does some consulting for a firm doing work for Talisker. Joe Kernan disclosed that Royal Street, Deer Valley, Talisker, and PCMR are among his recycling customers. Jim Hier stated that his wife works for PCMR.

III PUBLIC INPUT *(any matter of City business not scheduled on agenda)*

<u>Vision of Old Town</u> - Jim Totora stated that he has lived in Old Town for 33 years and has watched it grow. He commented that in the past he had no neighbors but now there are a variety of families that live there full and part time. He understands that Ms. Cone believes people are leaving Old Town because of the proliferation of second homes. He would not want that to happen either but pointed out that in the late 1980s and early 1990s Old Town was *falling apart*. His kids now have other kids in the neighborhood to play and he feels it is the best it has ever looked. He urged Council not to change regulations for the Historic District.

IV CONSENT AGENDA PUBLIC HEARINGS *(items listed will be open for public hearing prior to consideration for adoption or rejection; hearings may also be continued by vote of the Council)*

<u>Continuation of hearing on consideration of an Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey</u> – Brooks Robinson explained that this is a request to plat four Old Town lots into two lots; an existing duplex straddles the property line. The Planning Commission forwards a positive recommendation and there was no public input at that public hearing held on January 10, 2007. The title report reveals five parcels; the applicant has agreed to quit-claim the *ghost* parcel to the City to resolve the internally conflicted title. The Mayor opened the public hearing, and hearing no comments from the audience, closed the hearing.

V CONSENT AGENDA *(items that have previously been discussed or are perceived as routine and may be approved by one motion. Listed items do not imply a predisposition for approval and may be removed by motion and discussed and acted upon under "Additional Discussion – Agenda Items")*

Marianne Cone, "I move that we approve Consent Agenda Items 1, 2, and 3". Candace Erickson seconded. Motion unanimously carried.

1. Ordinance approving the 255 Deer Valley Drive Replat, an amendment to Lots 7, 8, 22 and 23 on Block 66 of the amended plat of the Park City Survey – See pubic hearing and staff report.

2. Cooperative Corridor Preservation Agreement with UDOT for SR248 – See staff report.

3. Street Lighting Agreement with UDOT for Street Lighting at the Park City High School Crosswalk on SR248 – See staff report.

VI OLD BUSINESS *(continued items with presentations and/or anticipated detailed discussions)*

Consideration of an Ordinance approving the United Park City Mines/Park City Mountain Resort Annexation Agreement and amending the Official Zoning Map – Planner Brooks Robinson referred to the meeting packet containing the development agreement, annexation agreement, and an ordinance approving the annexation. There have been a number of discussion points and the staff report is an attempt to describe modifications to the development agreement, the background on the annexation agreement, and the update from PCMR on financial issues. The conservation easement, acceptable to the City was not acceptable to the Summit Land Conservancy contemplated as the third party holder of the easement. He stated that the applicant has been advised to find another entity to hold the conservation easement with the same language.

The subsequent water agreement was discussed at the last meeting where there was discussion of alternatives. Other possible options have been suggested from the time the meeting packet was prepared, but it is still staff's recommendation to place the responsibility of obtaining a discharge permit for the Judge Tunnel to the mining company.

David Smith, attorney for Talisker, expressed that a lot of progress has been made on Paragraph 7 in the water agreement. He explained that Talisker is proposing that the determination of permanent responsibility is decided by an independent third party selected by a state or federal agency or the courts. He emphasized that United Park City Mines will assume 100% of its responsibility if determined by the third party with no dollar amount cap. In the interim between the time a determination is made by an independent party, there are protections in place for the City. He explained that if the

City is required to obtain the permit, UPCM will assume 50% of the cost of the permit up to a maximum of $750,000 until the time the determination of permanent responsibility is made. This provides an interim economic protection to the City. Mr. Smith continued that in the meantime, UPCM will work diligently with the City to implement a solution which obviates the need for the permit. If UPCM is identified as the responsible party, it will assume the obligation.

Deputy City Attorney Tom Daley explained that the biggest distinction is agreeing to taking the permit up front or agreeing to reimburse the City if an agency requires a permit before a determination is reached internally. The indemnification language distributed to Council earlier today and the proposal that neither the City nor Taliskser would seek a permit for three years concerns him. Mr. Smith explained that this was proposed because of statements from the Department of Environmental Quality that a permit might not be required and an indication from EPA that it is not inclined to take enforcement action. *Why stir the pot if it is not necessary?* He encouraged continuing to work together to implement a solution. In the meantime, if a permit is required, there is a solution. Tom Daley acknowledged a letter from the DEQ dated August 2006 stating that it is not anticipated that a permit is required at this time. Joe Kernan commented on the possibility of the permit issues resurfacing in ten years. Tom Daley explained Talisker's proposal is that if this happens before a determination is made internally, the City would buy the permit and be reimbursed 50% of the cost by Talisker up to $750,000. Mr. Smith stated that is not quite accurate and explained that either party will have the ability to request a determination at that point, but in the interim if the permit becomes a requirement, then Talisker steps in with 50% of the costs up to $750,000. This agreement would also provide for retroactive reimbursement.

Tom Bakaly asked if there is should be a provision from the mining company that if something happens in 20 to 30 years from now unrelated to this discharge that they take some responsibility. Mark Harrington explained that UPCM needs to assume liability for impacts resulting from mining which is the fundamental sticking point. Staff feels strongly about this and is the reason for recommending Alternative 1 which places 100% responsibility on Talisker. David Smith confirmed for the benefit of Jim Hier, that Talisker takes exception to the new indemnity language and in place of the indemnity they are proposing the third party determination mechanism. Mr. Smith distributed a redlined version of Paragraph 7. Jim Hier asked if the Deputy City Attorney has other concerns. Mr. Daley stated that any money contributed by Talisker under this scheme becomes part of the capital contribution in the agreement so the City will be reimbursing it through seven equal payments. If liability winds up with the City, the City reimburses Taliskser for the money spent in pursuing these options. Mr. Daley emphasized the number of drafts exchanged after the packet was distributed and the only element remaining the same is Option 3, where the balance of the water agreement is silent on the permit issue. Mayor Williams re-opened the public hearing. There were no comments.

Marianne Cone did not believe that state or federal agencies would exempt the Judge Tunnel portal *perpetually* as worded. Tom Daley explained that even if there is internal agreement, no one knows the landscape in 20 to 40 years from now. He stated that the real difficulty is negotiating a water deal in a public meeting. The Mayor again invited the audience to speak. Brooks Robinson reminded the Council that the CUP and MPD are being processed by the Planning Commission and these actions can be appealed or called-up by the Council.

Bob Wheaton, President and General Manager of Deer Valley Resort, described the complexity of the project. He pointed out that the Council goals displayed in the Council Chambers include transportation, parking systems, community amenities, events, and economic development. He emphasized that this project encompasses all of these top priorities. The Montage Hotel is significantly superior to the condominium project originally approved for the site.

Marianne Cone agreed that The Montage is a better choice than condominiums and if Council was just considering land use as a part of this approval, it would be a lot easier for her. The Mayor closed the public hearing.

Roger Harlan asked if there is case law addressing the length of time a governmental agency can be held accountable. Mark Harrington explained that the problem is ancillary impacts from an environmental activity that then interacts with a municipal water system and the potential responsible party for is no longer present. Often, the regulatory agency will seek to hold the public body accountable because it exists and the situation relates to its water system. He emphasized that the City intends to cooperate with the EPA, TMDL and watershed groups in mitigating any impacts. However, the City is unwilling to assume liability with other potential responsible parties and pass the burden to the community because it may be a more efficient process. There are so many unknowns with the Judge Tunnel and mining and reclamation activities. Mr. Harrington stated that it is prudent to hold Talisker responsible on a long-term basis. There has been a lot of progress on the agreement, but he feels we need to plan for any contingency.

David Smith stated that Talisker is concluding a lengthy process with the EPA and this mitigation project is a success story. Rather than pursuing a broad-based indemnity, he recommended having the courts and/or agencies decide and Talisker will live by the determination. Mandy Scully explained that they are willing to go to a third party, but the reason Talisker believes that the City carries responsibility is because it is the beneficiary of the water. Dana Williams responded that the City is also the beneficiary of the lead, arsenic, cadmium, and zinc in the water resulting from mining operations. Mr. Smith again discussed agencies or courts rendering a determination. Marianne Cone felt that the City taking responsibility is unfair to the public. Tom Bakaly discussed the 30 day window to record the annexation plat from the date of approval and suggested approving the annexation agreement contingent upon water being addressed within that time period and if resolution can not be reach, the water agreement will return to Council. Mayor Williams asked if there are other outstanding issues.

Jim Hier felt that Option 3 (staff report) doesn't define a resolution to the water issues and understood the City Managers suggestion of 30 days to resolve the water. Mr. Bakaly explained that if water is not resolved in 30 days, the annexation approval is null and void and asked for Council direction on this issue.

There was discussion about the flurry of recent drafts of the water agreement after the staff report was distributed creating confusion David Smith explained that the nature of the indemnity drafted is not something United Park can agree on and he believes the solution is the third party independent determination with regard to the discharge permit. Brooks Robinson described the location of the conservation easement area for Marianne Cone. Mayor Williams further explained that Summit Land Trust felt there was not enough value on the property to accept the easement because of mine waste. SLT was concerned about accepting any liability for remediation. Mark Harrington clarified that there will be 30 days to either obtain another holder or work out language acceptable to SLT. If those changes are substantial, the Legal Department would return to Council to review and approve those modifications. Doug Clyde, consultant, added that Talisker will maintain its environmental clean-up responsibilities in the Silver King area and Dave Smith stated that Talisker is still the property owner. There is also indemnity language included for the easement holder.

Candace Erickson explained her confusion in understanding the corporate structure. When the Flagstaff development is built out and the mining company goes away, who assumes the obligations assigned to UPCM; is it passed on to Talisker? Mandy Scully emphasized that UPCM would not be dissolved and David Smith stated that he can't imagine the dissolution of the entity. Joe Kernan interjected that he is pleased that the Silver King area will be reclaimed. Mayor Williams pointed out that Talisker could sell its properties tomorrow. Mr. Smith commented that they are bound by a number of extraneous documents that would not allow that to happen. There was consensus that the easement language is acceptable and the City Attorney noted that the holder must be a third party, unless the Council wants to amend the agreement so the City is the conservation agent.

There was discussion about the wording of the motion, specifically Option 3. Mark Harrington referred to the ordinance in the packet, and recommended an amendment to the draft development agreement to replace the last sentence on Page 116 with "*The 2007 Agreement shall include No. 7 as distributed by the Deputy City Attorney, unless otherwise agreed by both parties by February 15, 2007*". Tom Bakaly clarified that the Council will be agreeing to everything in the agreement except water and if there is not agreement on water by February 15, the 30 days will expire. The City Recorder suggested providing for a different effective date in the Ordinance allowing for more time. Mark Harington responded that the City has done that on one occasion but the state statute is not clear if this is permissible. The applicant assumed that risk and there were no protests and he clarified that the date of adoption is preferred.

Mandy Scully pointed out that Talisker can not accept Tom Daley's version of No. 7 and was confused how the process would work. Mark Harrington explained that if the

Council adopts the motion as suggested and if Talisker accepts No. 7, staff would not return. If that doesn't happen, Talisker needs to propose a water agreement acceptable to the City Council by February 15. The Mayor hoped something could be worked out in two weeks. David Smith clarified that the annexation would not be effective unless the water issue is resolved.

Jim Hier, "I move that we approve the UPCM Annexation at PCMR, the amendment to the Park City Zoning Map, the amendment to the Flagstaff Development Agreement, as conditioned or amended in the packet, subject to the amendment regarding the 2007 water agreement with the amendments as proposed by staff earlier today, Item No. 7 (a) through (f), unless otherwise approved or modified between now and the expiration of the agreement time period". Joe Kernan seconded. Motion unanimously carried.

VII ADDITIONAL DISCUSSION – AGENDA ITEMS

VIII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

MEMORANDUM OF CLOSED SESSION

The City Council met in closed session at approximately 2:30 p.m. Members in attendance were Mayor Dana Williams, Marianne Cone, Candace Erickson, Roger Harlan, Jim Hier, and Joe Kernan. Staff present was Tom Bakaly, City Manager; and Mark Harrington, City Attorney. Joe Kernan, "I move to close the meeting to discuss property and litigation". Jim HIer seconded. Motion carried unanimously. The meeting opened at approximately 3:50 p.m. Jim Hier, "I move to open the meeting". Joe Kernan seconded. Motion unanimously carried.

The meeting for which these minutes were prepared was noticed by posting at least 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

Janet M. Scott, City Recorder

City Council
Agenda Report

CITY ENGINEER

Author: Eric DeHaan, P.E.
Subject: Acceptance of public Improvements @ Eagle Pointe Phase IV Subdivsion
Date: February 15, 2007
Type of Item: Legislative

Summary Recommendations:
The City Council should approve the ordinance accepting the public improvements at Eagle Pointe Subdivision Phase IV.

Topic:
Eagle Pointe Phase IV was duly approved by the Planning Commission and City Council. The subdivision is a bi-headed cul-de-sac west of Meadows Drive near its high point above Park Meadows. The lots look down toward the Snyderville Basin from the side of Quarry Mountain. Construction of the relevant public improvements has been completed and inspected by the City Engineer. The action will transfer ownership of the public improvements to the City in a timely manner.

Background:
The original Park Meadows Master Plan was originally approved in the early 1980's. The final subdivision plat for the Eagle Pointe Phase IV, containing 16 lots, was approved by the Planning Commission on November 12, 2003. A sketch of Eagle Pointe Phase IV is attached. The streets in the subdivision are named Normans Way and Marilyn Court. Several houses are under construction within the subdivision. This is the last subdivision within the original Park Meadows master plan.

Analysis:
The public improvements consist of roads, storm drain systems, public trails, and the water system. The Norman Rossman Trail, shown on the attached sketch, is an easy, popular trail that winds through Gambel Oak groves and along colorful rock ledges, with uninterrupted views of the mountains. At the cul-de-sac end of both roads private driveways extend into the private property to the west of Eagle Pointe Phase IV, which is unincorporated Summit County. There has been considerable discussion about the possible annexation of one or more of the Summit Count parcels into Park City. The action of accepting the public improvements within Eagle Pointe Phase IV would not affect consideration of any annexation petitions.

Department Review:
This report has been reviewed by Public Works (streets and water) and Executive.

Alternatives:

- Approve the Agreements: Approving the ordinance will transfer ownership of the public improvements at Eagle Pointe Phase IV to Park City in an orderly fashion.
- Continue the Agreements: If the Council needs more information the item can be continued.

Significant Impacts:
There are very few significant impacts to Park City. Additional snow removal costs for plowing the two streets will accrue to the City when 50% of the lots in Eagle Pointe Phase IV have obtained certificates of occupancy. The water department will assume maintenance of the water system, but our exposure to repair costs is mitigated by the one-year warranty period which commences with acceptance by the Council. Significant financial guarantees are in place for the one-year period to protect the City against any failures of the public improvements.

Consequences of not taking the recommended action:
Not accepting the public improvements at Eagle Pointe Phase IV would leave the maintenance responsibility for important services in limbo until the acceptance occurs.

Recommendation:
Staff recommends that Council approve the Ordinance Accepting the Public Improvements at Eagle Pointe Phase IV Subdivision.

Attachments:
Exhibit A – Eagle Pointe Subdivision, Phase IV
Ordinance

When recorded please return to:
Park City Municipal Corporation
Attn: City Engineer
PO Box 1480
Park City UT 84060

ORDINANCE NO. 07-

AN ORDINANCE ACCEPTING THE PUBLIC IMPROVEMENTS AT EAGLE POINTE PHASE IV SUBDIVISION

WHEREAS, Eagle Pointe Phase IV was approved by the Park City Council on December 4, 2003; and

WHEREAS, construction of the public improvements has been accomplished by the developer, including the public streets known as Marilyn Court and Normans Way; and

WHEREAS, Park City has adopted Land Management Code Section 15-7.2-3, which provides for the City Council to accept (by Ordinance) those public improvements which are dedicated and built in accordance with the requirements of Title 15 Chapter 7 of the Land Management Code; and

WHEREAS, the public improvements within the developments described above were installed in accordance with the ordinances in effect at the time of plat recordation, and have been duly inspected by the City Engineer.

NOW THEREFORE BE IT ORDAINED by the Park City Council as follows:

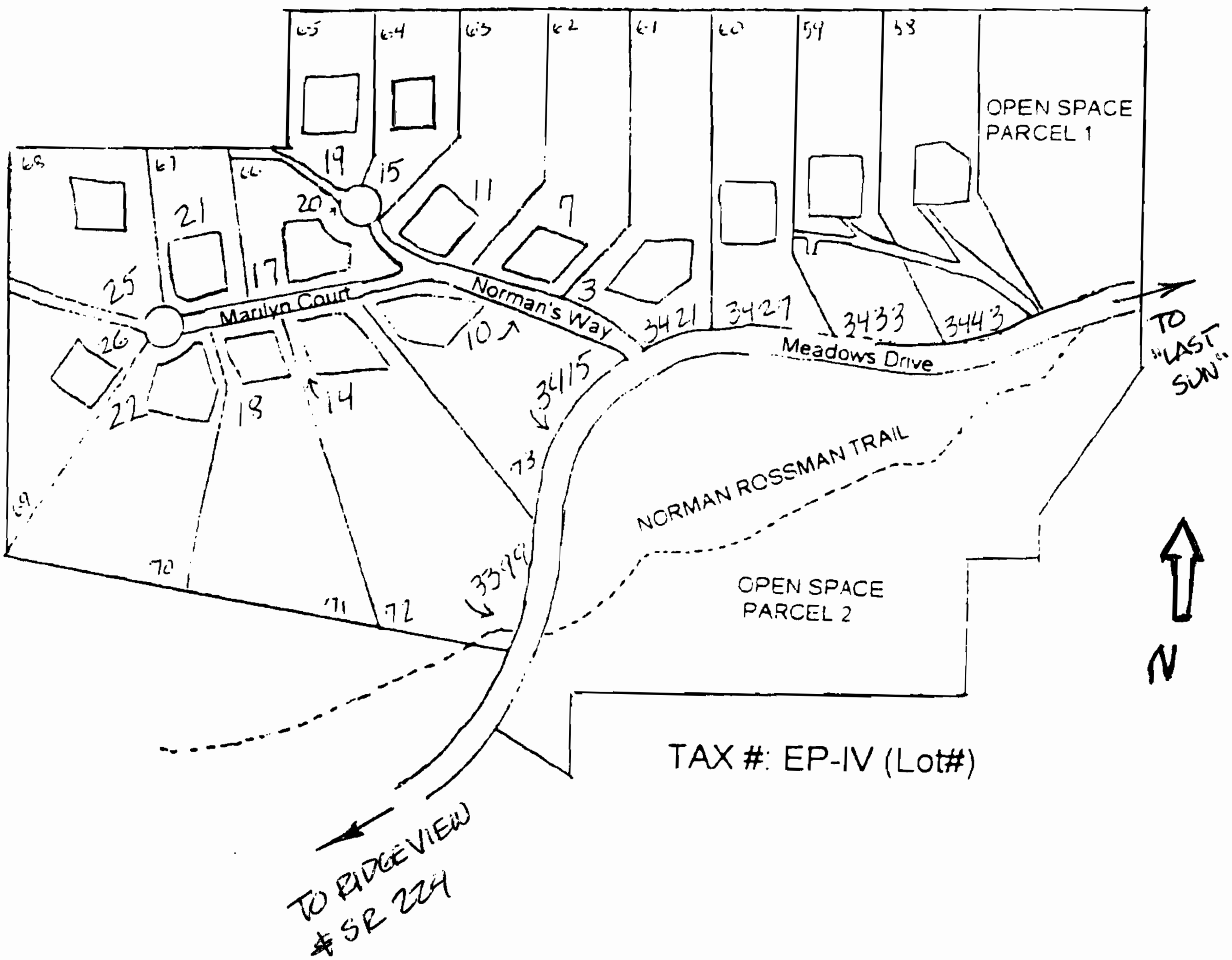
SECTION 1. PUBLIC IMPROVEMENTS. The City hereby accepts from the developer public improvements at Eagle Pointe Phase IV, which were offered for dedication to the City, subject to the developer's warranty of these improvements for one year following the adoption of this ordinance. A financial guarantee shall remain in place for the one-year guarantee period as follows: Eagle Pointe Phase IV, $77,045.50. The form of the financial guarantee shall be acceptable to the City Attorney.

SECTION 2. SNOWPLOWING AND LANDSCAPE MAINTENANCE. The City shall plow snow on Marilyn Court and Normans Way only when 50% of the lots in the Eagle Pointe Phase IV subdivision contain houses with a Certificate of Occupancy, and only as a Third Priority. The City shall not plow or otherwise maintain any private roads.

SECTION 3. EFFECTIVE DATE. This ordinance shall be effective upon publication.

PASSED AND ADOPTED this 15th day of February, 2007.

EAGLE POINTE SUBDIVISION
PHASE IV



RD-MPD

City Council
Staff Report

Author:	**Ray Milliner**
Subject:	**Third Amended Record of Survey of The Lowell**
Date:	**February 15, 2007**
Type of Item:	**Administrative – Plat Amendment**

PARK CITY 1884
PLANNING DEPARTMENT

Summary Recommendations
Staff recommends the City Council hold a public hearing for the Third Amended Record of Survey of The Lowell and consider approving the amended record of survey according to the findings of fact, conclusions of law and conditions of approval as found in the draft ordinance.

Topic

Applicant:	David Zatz
Location:	1335 Lowell Avenue
Zoning:	Recreation Commercial (RC)
Adjacent Land Uses:	Resort Commercial, Multi-Unit Residential and Single Family
Reason for Review:	Record of Survey Plat amendments require Planning Commission review and City Council approval

Background
On November 3, 2006, the applicant submitted a complete application for the Third Amended Record of Survey of The Lowell condominiums. The purpose of the record of survey is to create 12 condominium units in the building that will enable the individual sale of each unit. Currently there are 20 units the existing building is currently under construction.

The City Council, on August 24, 2006 approved the Second Amendment to this record of survey. Subsequent to this approval, the applicant on December 19, 2006 received a Special Exception from the Board of Adjustment to increase the height of the structure to accommodate the enclosure of two decks on the roof to create more living space. Therefore, the applicant has returned with this new record of survey application to accommodate these enclosures. No physical changes to the building between the August City Council approval and the new proposal other than the expansion of the floor area on the roof are proposed.

Analysis
Staff finds good cause for this record of survey amendment, as it will update the architecture and interior design of an aging building. The Lowell is located in a prominent location (the entrance to Park City Mountain Resort), and staff finds that this amendment will enhance the purpose of the RC zone, which is to “promote the development of buildings with designs that reflect traditional Park City architectural

patterns." Because the applicant received a Special Exception for the height increase, staff finds that the proposed deck enclosures are appropriate for the site.

Land Management Code Compliance

	Permitted	Proposed
Height	35' (+5' for pitched roof)	Complies, received Special Exception from Board of Adjustment
Front setback	20'	No changes to existing footprint proposed
Rear setback	10'	No changes to existing footprint proposed
Side setbacks	10' both sides	No changes to existing footprint proposed
Lot size	N/A	13,375 square feet
Parking	24	62

The existing building is a four story structure with three levels of underground parking. The main level will have mixed residential and retail uses, and the upper levels will have residential condominium units. The proposed changes will modify the original structure (prior to any renovations) in the following ways:

- Convert the condominium units into larger units (reducing the density from 20 units to 12).
- Reduce the amount of retail by half (half of the main floor would become a residential unit)
- Resurface exterior architecture
- Replace existing deck on east side (the Planning Director has made a determination that as proposed, the decks are in compliance with the LMC)
- Enclose fourth floor decks to accommodate expansion of upper units (received Special Exception).

<u>Department Review</u>
This project has gone through an interdepartmental review. No further issues were brought up at that time.

<u>Notice</u>
The property was posted and notice was mailed to property owners within 300 feet. Legal notice was also put in the Park Record.

<u>Public Input</u>
No public input has been received by the time of this report.

Alternatives

- The City Council may approve the Third Amended Record of Survey of The Lowell plat amendment as conditioned or amended, or
- The City Council may deny the Third Amended Record of Survey of The Lowell plat amendment and direct staff to make Findings for this decision, or
- The City Council may continue the discussion on Third Amended Record of Survey of The Lowell plat amendment.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

The applicant would be unable to make the proposed changes to the building or sell each unit separately.

Recommendation

Staff recommends the City Council hold a public hearing for the Third Amended Record of Survey of The Lowell and consider approving the amended record of survey according to the findings of fact, conclusions of law and conditions of approval as found in the draft ordinance.

Ordinance No. 07-

AN ORDINANCE APPROVING THE THIRD AMENDED RECORD OF SURVEY OF THE LOWELL RECORD OF SURVEY PLAT AMENDMENT LOCATED AT 1335 LOWELL AVENUE, PARK CITY, UTAH

WHEREAS, the owners of the property located at 1335 Lowell Avenue have petitioned the City Council for approval of the Third Amended Record of Survey of the Lowell record of survey plat amendment; and

WHEREAS, the property was properly noticed and posted according to the requirements of the Land Management Code; and

WHEREAS, proper legal notice was sent to all affected property owners; and

WHEREAS, the Planning Commission held a public hearing on February 14, 2007, to receive input on the record of survey plat amendment;

WHEREAS, the Planning Commission, on February 14, 2007, forwarded a positive recommendation to the City Council; and,

WHEREAS, on February 15, 2007, the City Council approved the record of survey plat amendment; and

WHEREAS, it is in the best interest of Park City, Utah to approve the record of survey plat amendment.

NOW, THEREFORE BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. APPROVAL. The above recitals are hereby incorporated as findings of fact. The Third Amended Record of Survey of the Lowell record of survey plat amendment as shown in Exhibit A is approved subject to the following Findings of Facts, Conclusions of Law, and Conditions of Approval:

Findings of Fact:

1. The property is located in the Recreation Commercial (RC) zone.
2. The purpose of the RC zone is to promote the development of buildings with designs that reflect traditional Park City architectural patterns.
3. The amendment will amend the existing The Gables record of survey plat.
4. The proposed application will convert the condominium units into larger units (reducing the density from 20 units to 12).
5. Although it was approved and built as a compliant building, subsequent changes to the LMC, limiting allowed height and setbacks, since 1976 have made the structure a legal non-complying structure.
6. On September 26, 1989, the Board of Adjustment approved an application for the

expansion of a non-conforming use enabling the expansion of the decks along the side yard.

7. On December 19, 2006 the Board of Adjustment approved an application for a special exception to grant additional height on the building to accommodate the enclosure of two roof decks on the building.
8. On August 24, 2006 the City Council approved a record of survey amendment to amend the Gables condominium to reduce the number of units from 20 to 12. The proposed height increase was not approved at that time.
9. No physical changes to the building, from the August 24, 2006 approval other than the deck enclosures are proposed as part of this application.
10. Staff finds good cause for this record of survey amendment, as it will update the architecture and interior design of an aging building.
11. The proposed changes do not expand the existing footprint of the building.
12. Access to the property is from Lowell Avenue.

Conclusions of Law:

1. There is good cause for this record of survey amendment.
2. The record of survey amendment is consistent with the Park City Land Management Code and applicable State law.
3. Neither the public nor any person will be materially injured by the proposed record of survey amendment.
4. As conditioned the record of survey amendment is consistent with the Park City General Plan.

Conditions of Approval:

1. The City Attorney and City Engineer review and approval of the final form and content of the record of survey amendment for compliance with the Land Management Code and conditions of approval is a condition precedent to recording the amendment.
2. The applicant will record the record of survey amendment at the County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval and the amendment will be void.
3. All decks and retaining walls and fences shall be in compliance with LMC criteria prior to plat recordation.

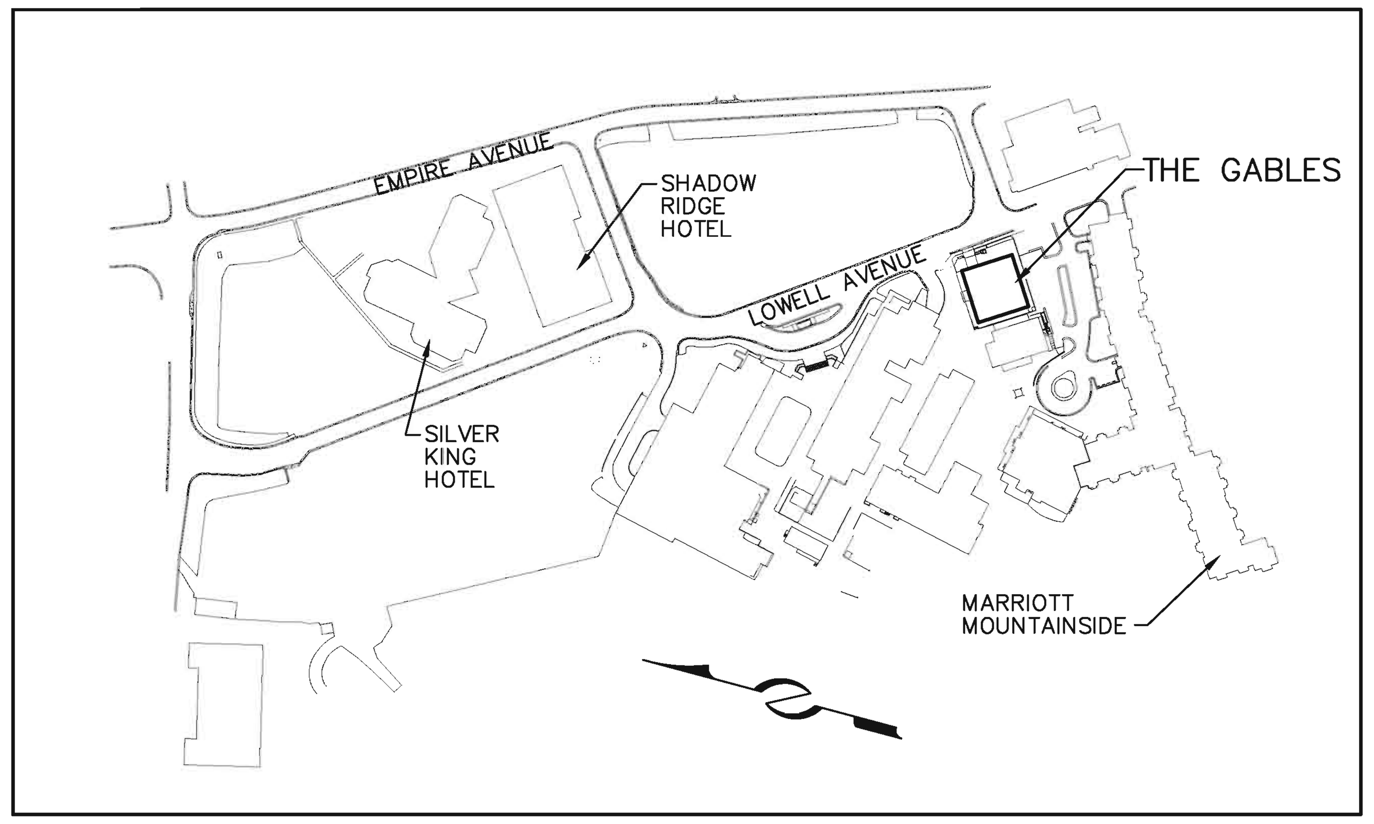
SECTION 2. EFFECTIVE DATE. This Ordinance shall take effect upon publication.

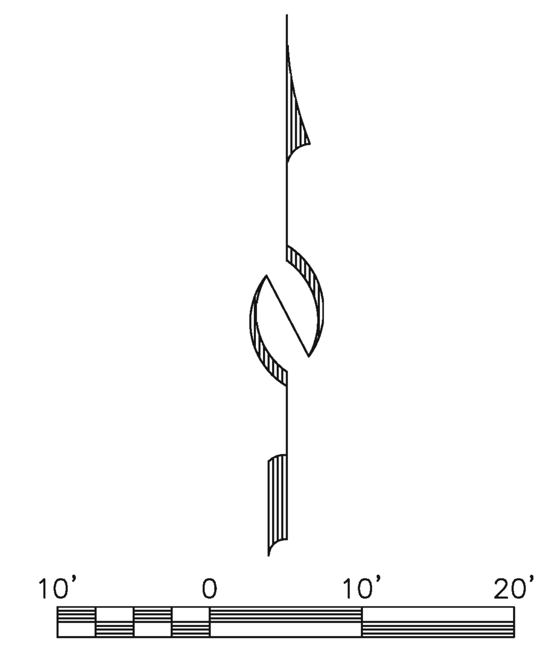
PASSED AND ADOPTED this 15th day of February, 2007.

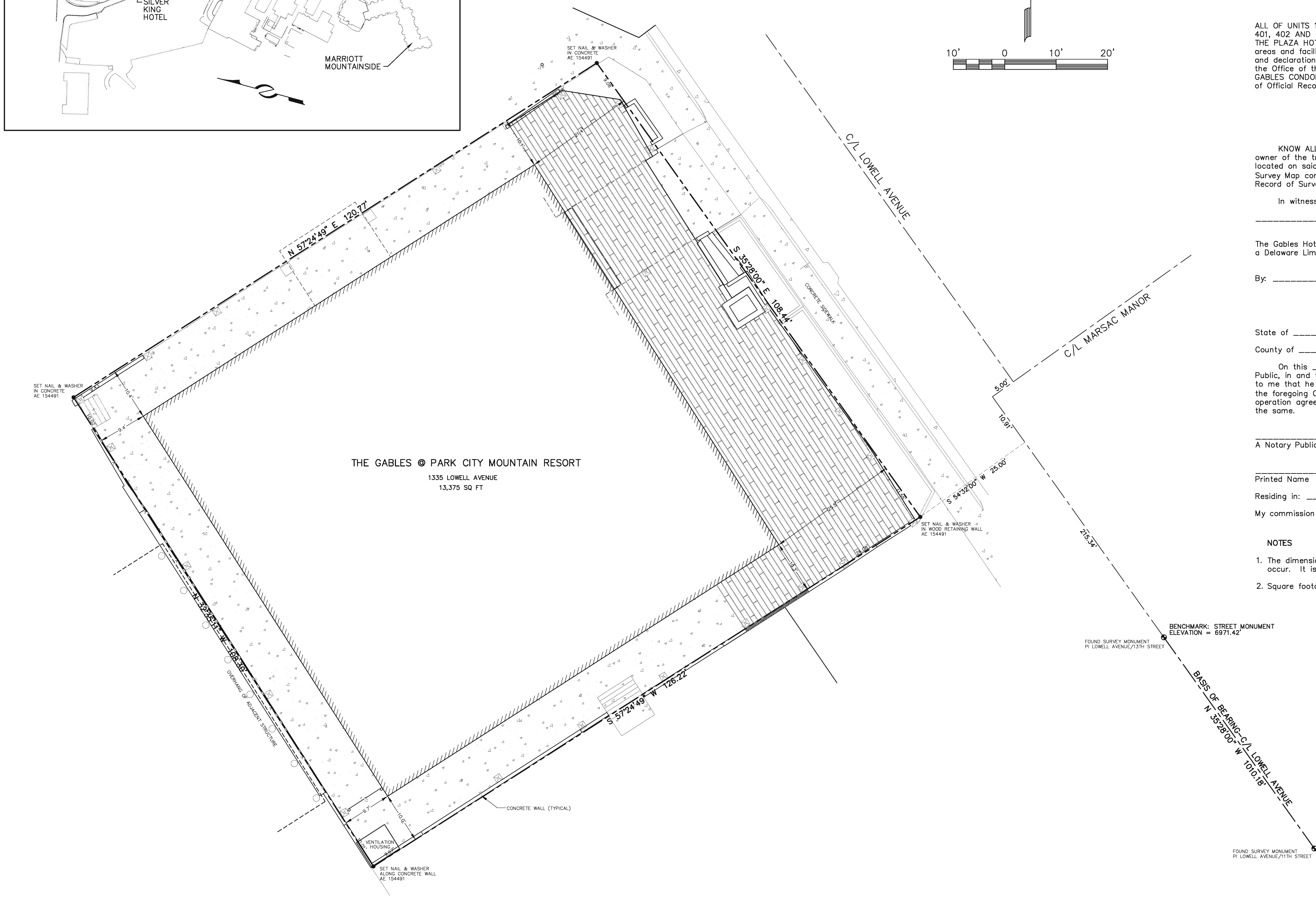
Exhibits

Exhibit A – Record of Survey plat

VICINITY MAP







SURVEYOR'S CERTIFICATE

REGISTERED LAND SURVEYOR No. 154491 JOHN DEMKOWICZ State of Utah

I, John Demkowicz, do hereby certify that I am a Registered Land Surveyor and that I hold Certificate No. 154491 as prescribed by the laws of the State of Utah, and that I have caused to be made under my direction and by the authority of the owner, this Record of Survey Map of the THE GABLES, a Utah Condominium Project in accordance with the provisions of the Utah Condominium Ownership Act.

______________________ John Demkowicz, L.S. #154491   __________ Date

LEGAL DESCRIPTION

ALL OF UNITS 100–106, INCLUSIVE, 200 THROUGH 207, INCLUSIVE, 300 THROUGH 307, INCLUSIVE AND 400, 401, 402 AND 403, contained within THE GABLES CONDOMINIUMS, a Utah condominium project, also known as THE PLAZA HOTEL CONDOMINIUMS, together with an undivided 100% ownership interest in and to the common areas and facilities of the project, as the same are indentified and established in the Record of Survey Map and declaration of Condominium recorded March 19, 1992, as Entry Nos. 355911 and 355912 respectively, in the Office of the Summit County Recorder, as amended by that certain Affirmation and Ratification of THE GABLES CONDOMINIUMS instrument recorded January 24, 1994, as Entry No. 396568 in Book 782 at Page 236 of Official Records.

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL MEN BY THESE PRESENTS THAT, THE GABLES HOTEL, L.P., a Delaware Limited Partnership, the owner of the tract of land described herein as THE GABLES CONDOMINIUMS, a Utah Condominium project located on said tract of land, hereby certify that it has caused this survey to be made and this Record of Survey Map consisting of six (6) sheets to be prepared, and does hereby consent to the recordation of this Record of Survey Map and submit this property to the Utah Condominium Ownership Act.

In witness whereof the undersigned has executed this certificate and dedication this ____ day of ______________, 2006.

The Gables Hotel, L.P.,
a Delaware Limited Partnership

By: ____________________, Managing Member

ACKNOWLEDGMENT

State of ______________:
ss:
County of _____________:

On this ______ day of _______________, 2006, personally appeared before me, the undersigned Notary Public, in and for said County and State, _______________, being duly sworn, acknowledged to me that he is the Managing Member of The Gables Hotel, L.P., a Delaware Limited Partnership, and that the foregoing Owner's Certificate and Dedication was signed on behalf of said company by authority of its operation agreement, and said ____________________ acknowledged to me that said company executed the same.

____
A Notary Public commissioned in Utah

____
Printed Name

Residing in: _______________________

My commission expires: _______________

NOTES

1. The dimensions of the private spaces are based on drawings supplied by IBI Group. Minor variations may occur. It is the intent that the private ownership areas of the units will be as constructed.
2. Square footages are provided by the architect.

SECOND AMENDED RECORD OF SURVEY OF

THE GABLES

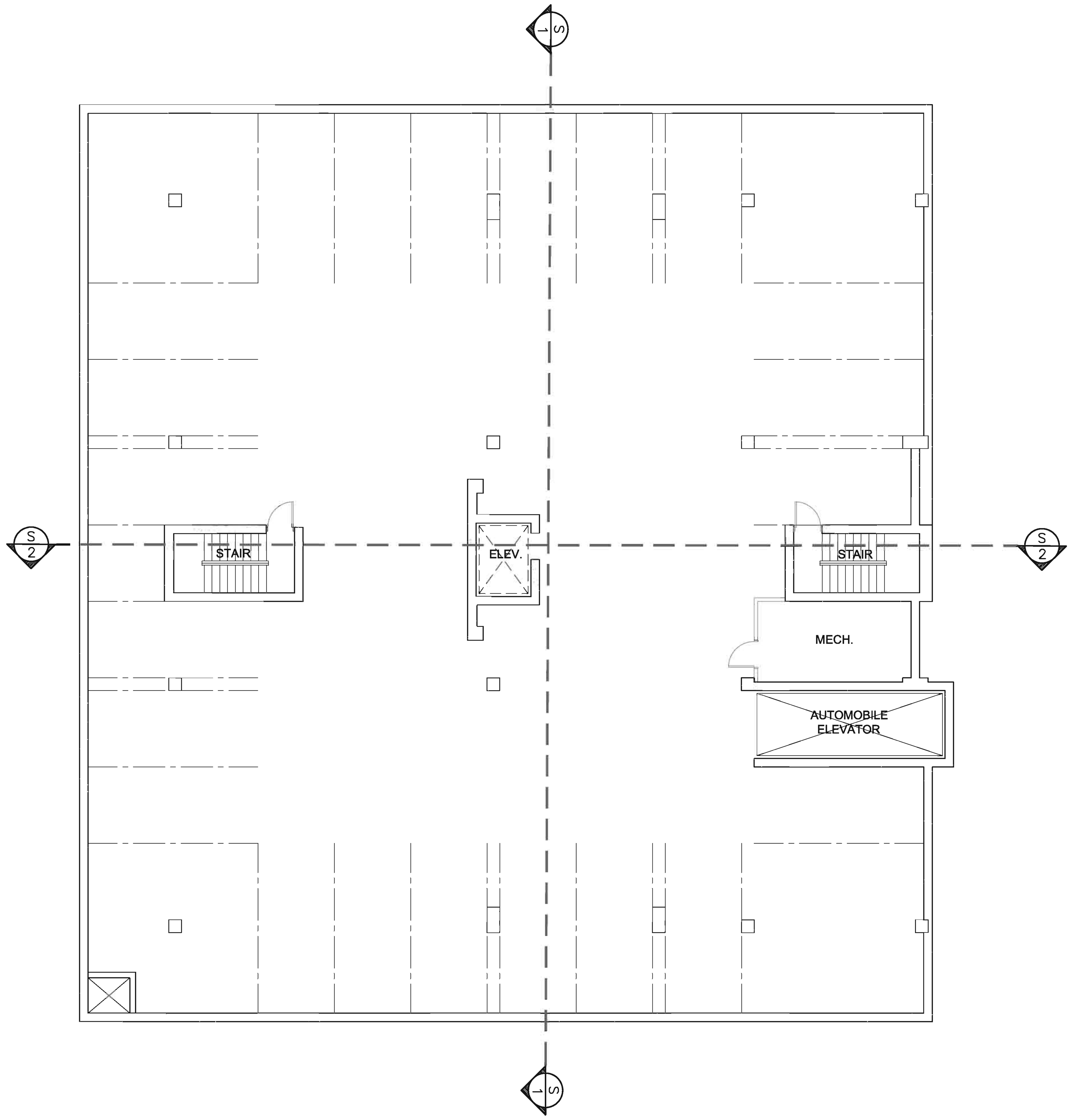
FORMERLY THE PLAZA HOTEL CONDOMINIUMS
A UTAH CONDOMINIUM PROJECT

LOCATED IN THE NORTHWEST ¼ OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH

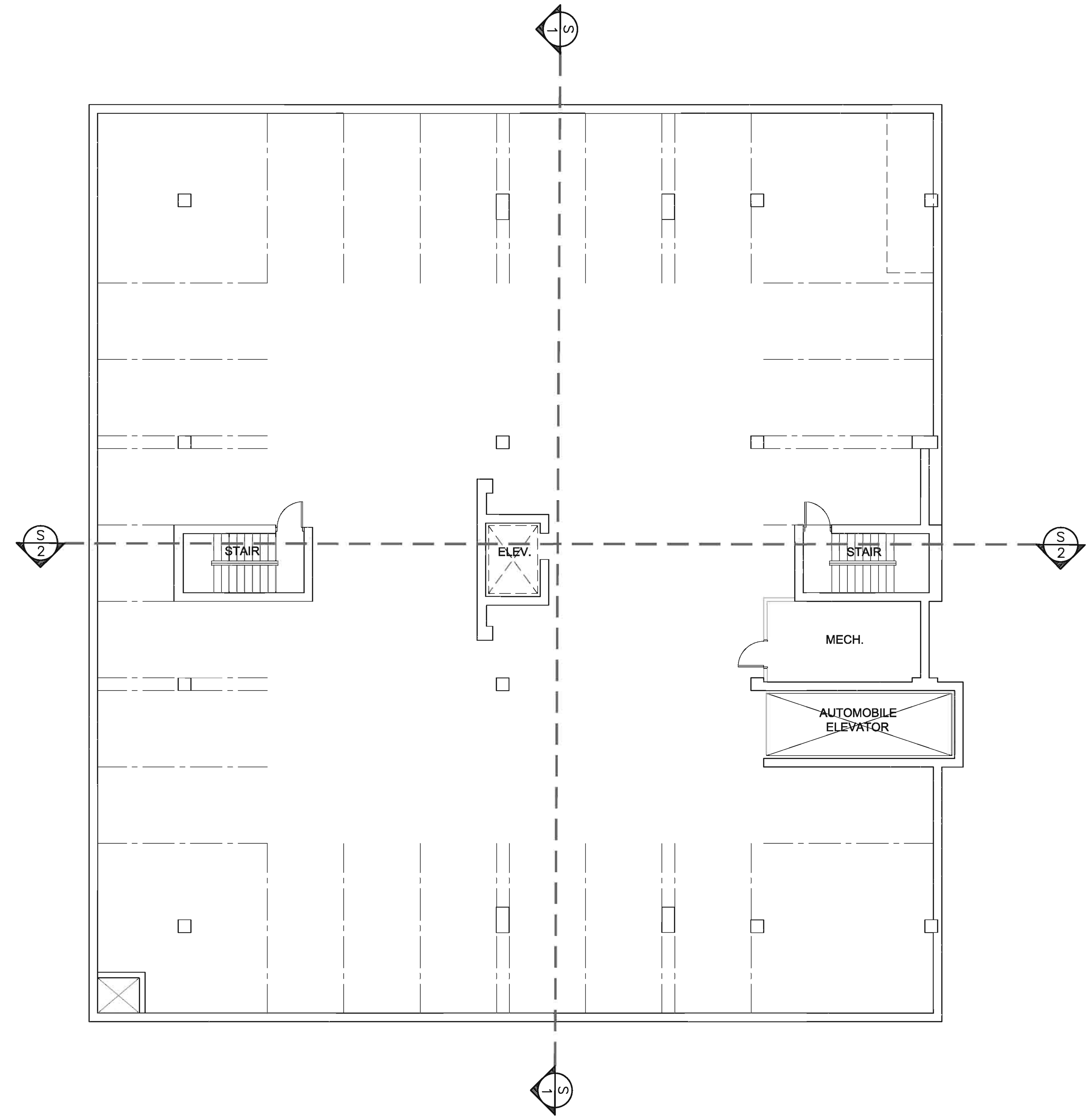
SHEET 1 OF 6

7/13/06 JOB NO.: 5-4-06   FILE: X:\ParkCityMtnResort\dwg\TheGables\Condo Plat\sht01.dwg

(435) 649-9467 Alliance Engineering Inc CONSULTING ENGINEERS LAND PLANNERS SURVEYORS 323 Main Street P.O. Box 2664 Park City, Utah 84060-2664	SNYDERVILLE BASIN WATER RECLAMATION DISTRICT	PLANNING COMMISSION	ENGINEER'S CERTIFICATE	APPROVAL AS TO FORM	CERTIFICATE OF ATTEST	COUNCIL APPROVAL AND ACCEPTANCE	RECORDED
	REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS ______ DAY OF __________, 2006 A.D. BY ______________ S.B.W.R.D.	APPROVED BY THE PARK CITY PLANNING COMMISSION THIS ____ DAY OF __________, 2006 A.D. BY ______________ CHAIRMAN	I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS _____ DAY OF __________, 2006 A.D. BY ______________ PARK CITY ENGINEER	APPROVED AS TO FORM THIS _____ DAY OF __________, 2006 A.D. BY ______________ PARK CITY ATTORNEY	I CERTIFY THIS RECORD OF SURVEY MAP WAS APPROVED BY PARK CITY COUNCIL THIS ______ DAY OF __________, 2006 A.D. BY ______________ PARK CITY RECORDER	APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS ______ DAY OF __________, 2006 A.D. BY ______________ MAYOR	STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF ____________________ DATE _______ TIME _____ BOOK _____ PAGE _____ __________ FEE ____________ RECORDER



PARKING LEVEL 3

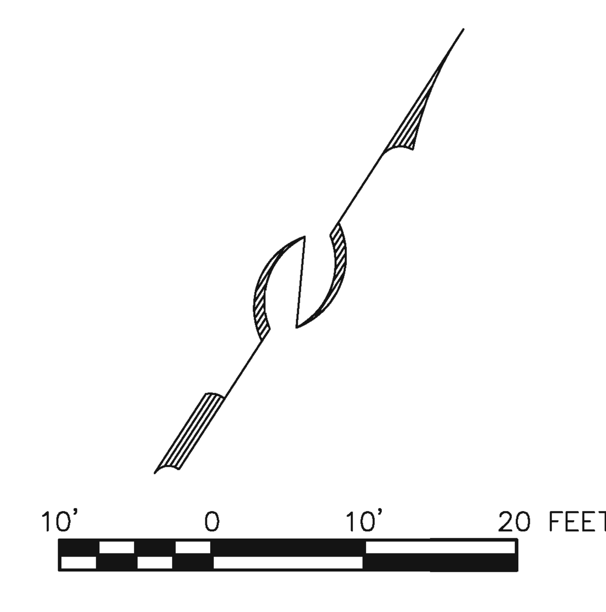


PARKING LEVEL 2

LEGEND

S.F. - REPRESENTS SQUARE FEET
FP - REPRESENTS FIRE PLACE
U - REPRESENTS UNIT
C - REPRESENTS CEILING HEIGHT

COMMON OWNERSHIP
PRIVATE OWNERSHIP
LIMITED COMMON OWNERSHIP



SECOND AMENDED RECORD OF SURVEY OF

THE GABLES

FORMERLY THE PLAZA HOTEL CONDOMINIUMS
A UTAH CONDOMINIUM PROJECT

LOCATED IN THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH

SHEET 2 OF 6

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STATE OF UTAH, COUNTY OF SUMMIT, AND FILED
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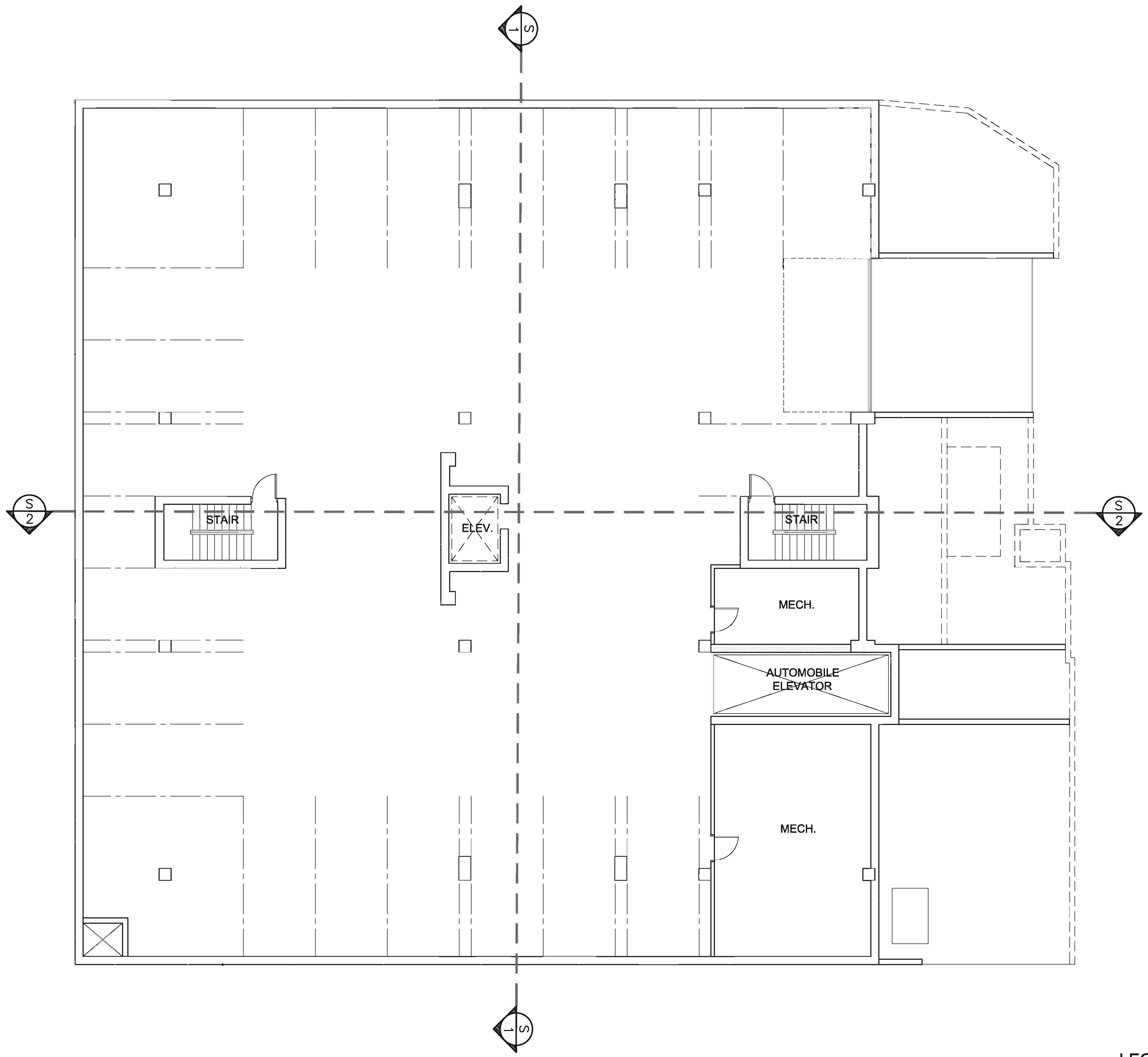
FEE RECORDER

7/13/06



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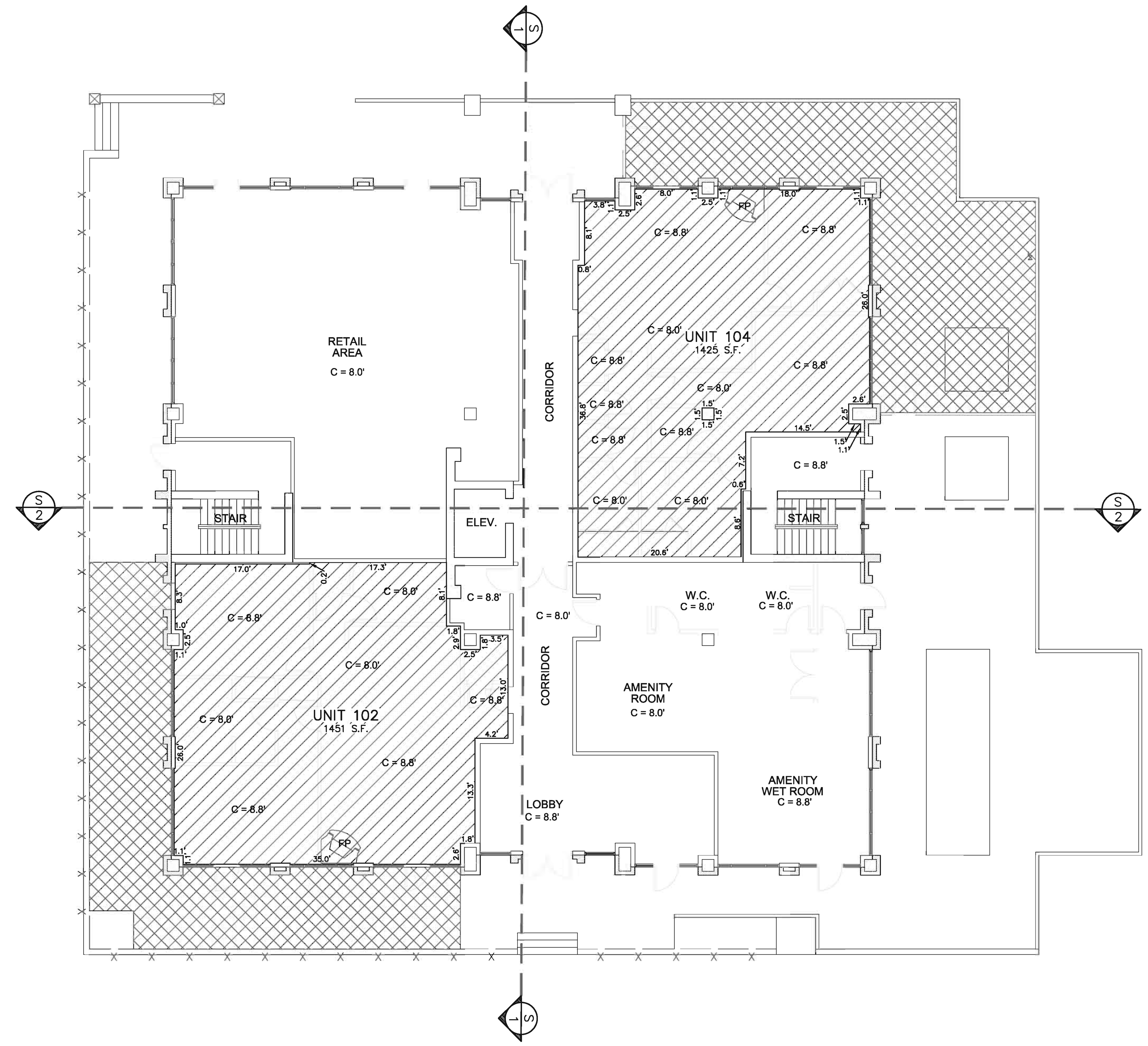

RESIDENTIAL LEVEL 1

LEGEND

S.F. - REPRESENTS SQUARE FEET
FP - REPRESENTS FIRE PLACE
U - REPRESENTS UNIT
C - REPRESENTS CEILING HEIGHT

UNIT SQUARE FOOTAGE TABLE

UNIT NUMBER	SQUARE FOOTAGE	ELEVATION
102	1,451	6,963.0'
104	1,425	6,963.0'

COMMON OWNERSHIP

PRIVATE OWNERSHIP

LIMITED COMMON OWNERSHIP

SECOND AMENDED RECORD OF SURVEY OF

THE GABLES

FORMERLY THE PLAZA HOTEL CONDOMINIUMS
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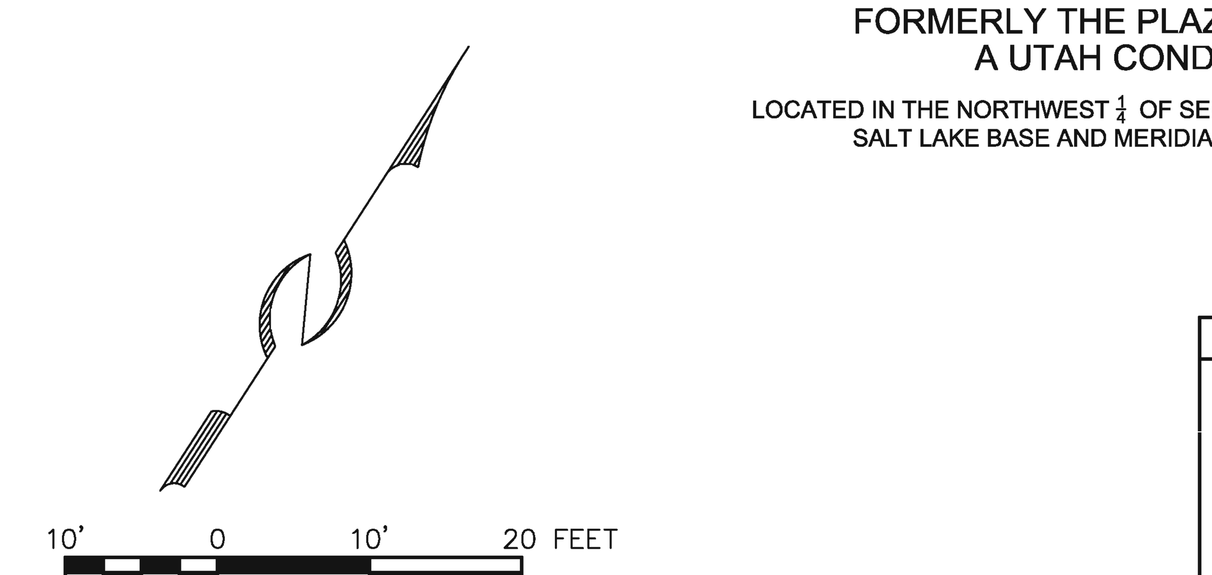
LOCATED IN THE NORTHWEST 1/4 OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALT LAKE BASE AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH



SHEET 3 OF 6

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STATE OF UTAH, COUNTY OF SUMMIT, AND FILED
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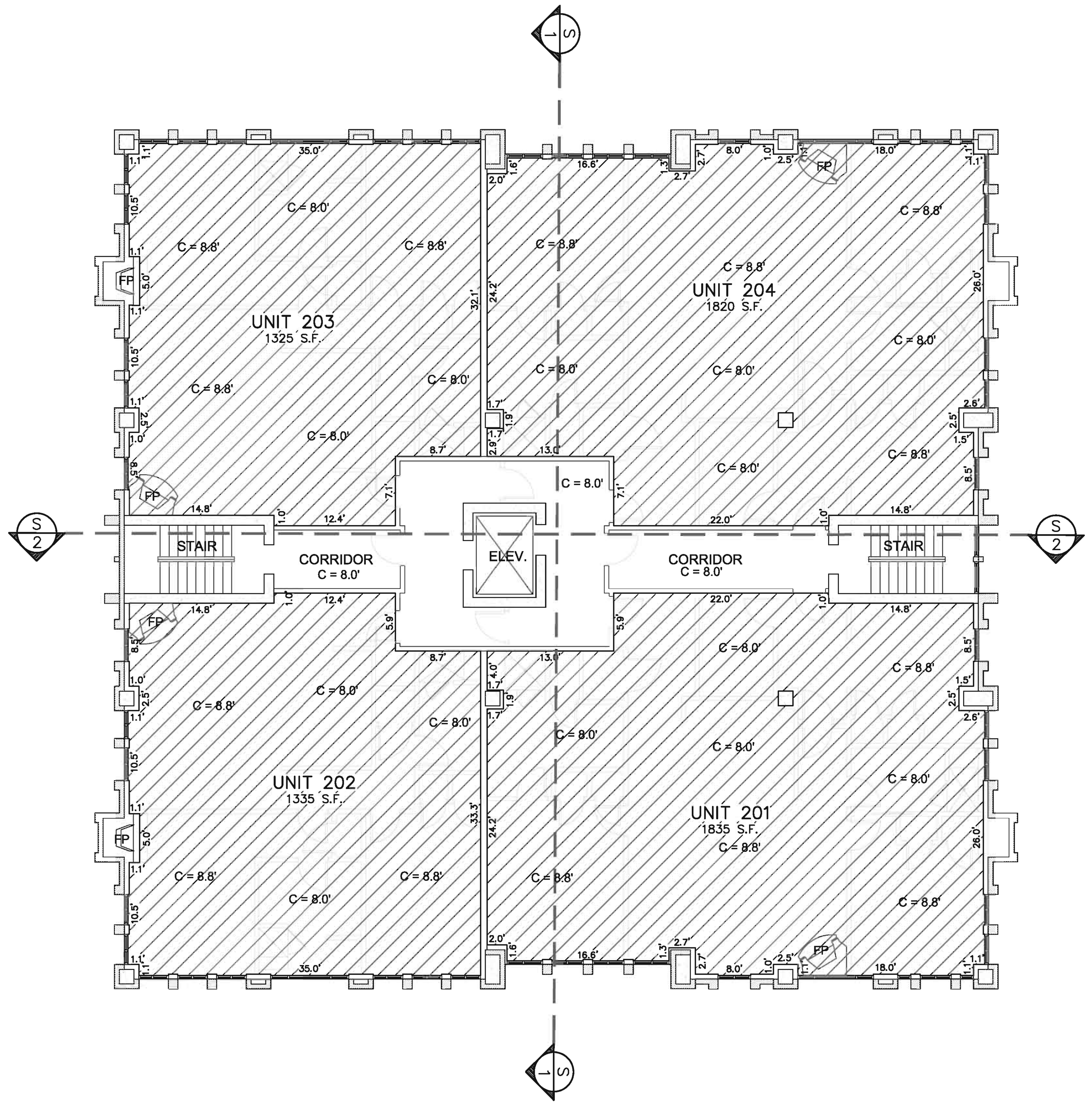
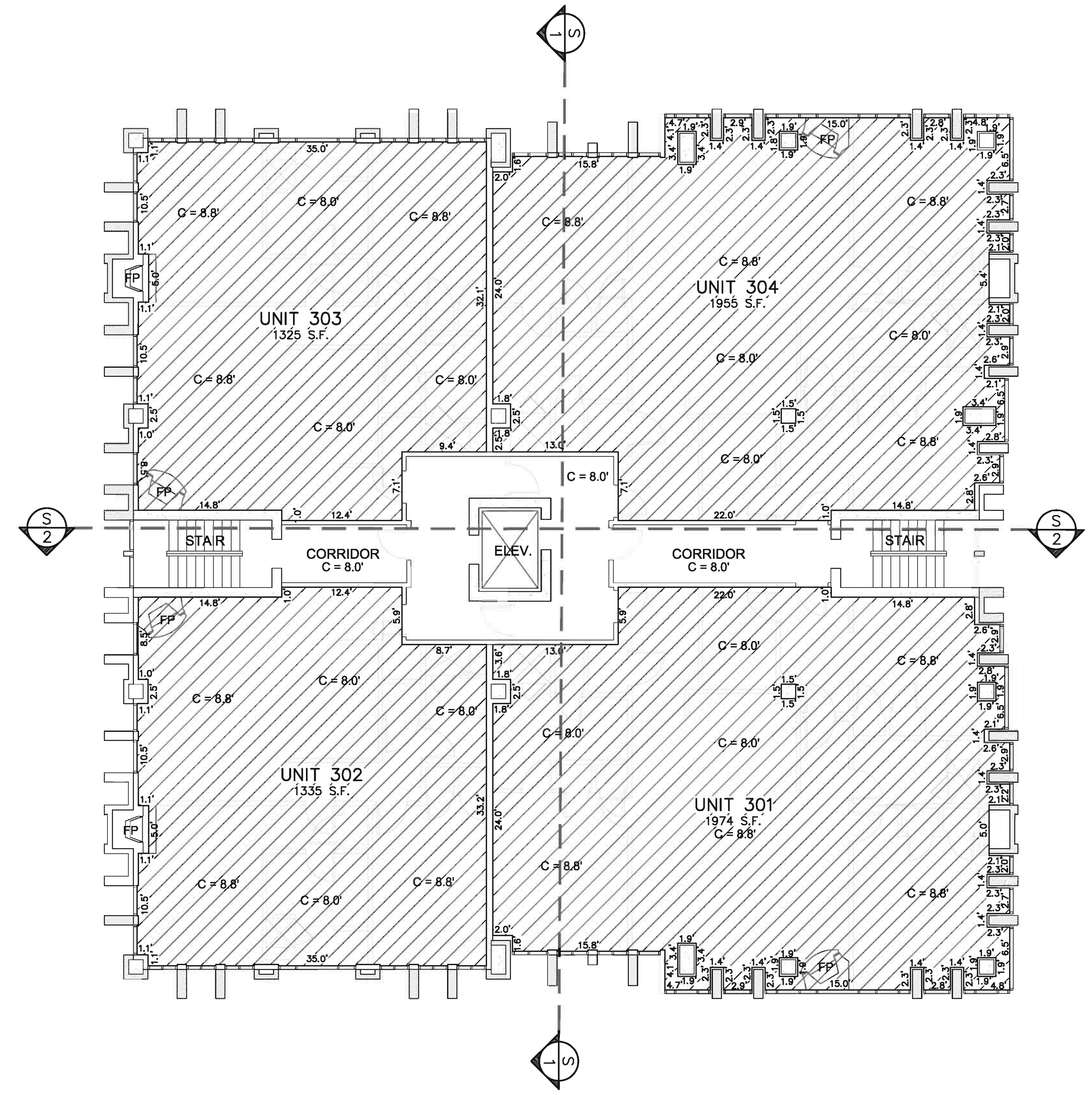
FEE RECORDER

6/21/06



RESIDENTIAL LEVEL 2



RESIDENTIAL LEVEL 3

LEGEND

S.F. - REPRESENTS SQUARE FEET
FP - REPRESENTS FIRE PLACE
U - REPRESENTS UNIT
C - REPRESENTS CEILING HEIGHT

UNIT SQUARE FOOTAGE TABLE

UNIT NUMBER	SQUARE FOOTAGE	ELEVATION
201	1,835	6,973.6'
202	1,335	6,973.6'
203	1,325	6,973.6'
204	1,820	6,973.6'

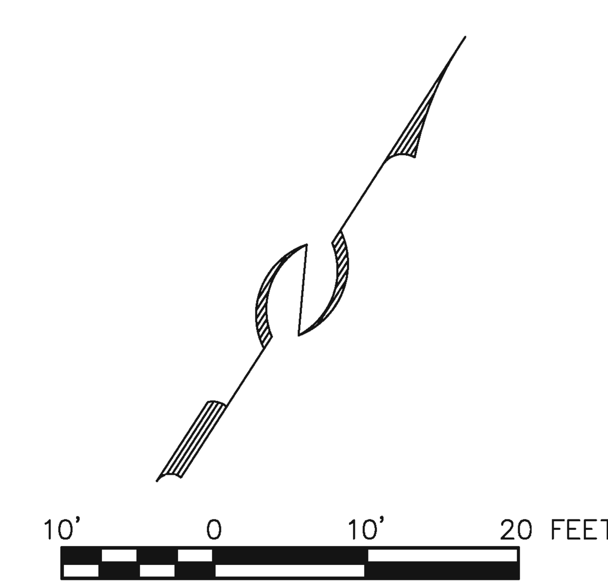
UNIT SQUARE FOOTAGE TABLE

UNIT NUMBER	SQUARE FOOTAGE	ELEVATION
301	1,974	6,983.3'
302	1,335	6,983.3'
303	1,325	6,983.3'
304	1,955	6,983.3'

COMMON OWNERSHIP

PRIVATE OWNERSHIP

LIMITED COMMON OWNERSHIP



SECOND AMENDED RECORD OF SURVEY OF

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FORMERLY THE PLAZA HOTEL CONDOMINIUMS
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SHEET 4 OF 6

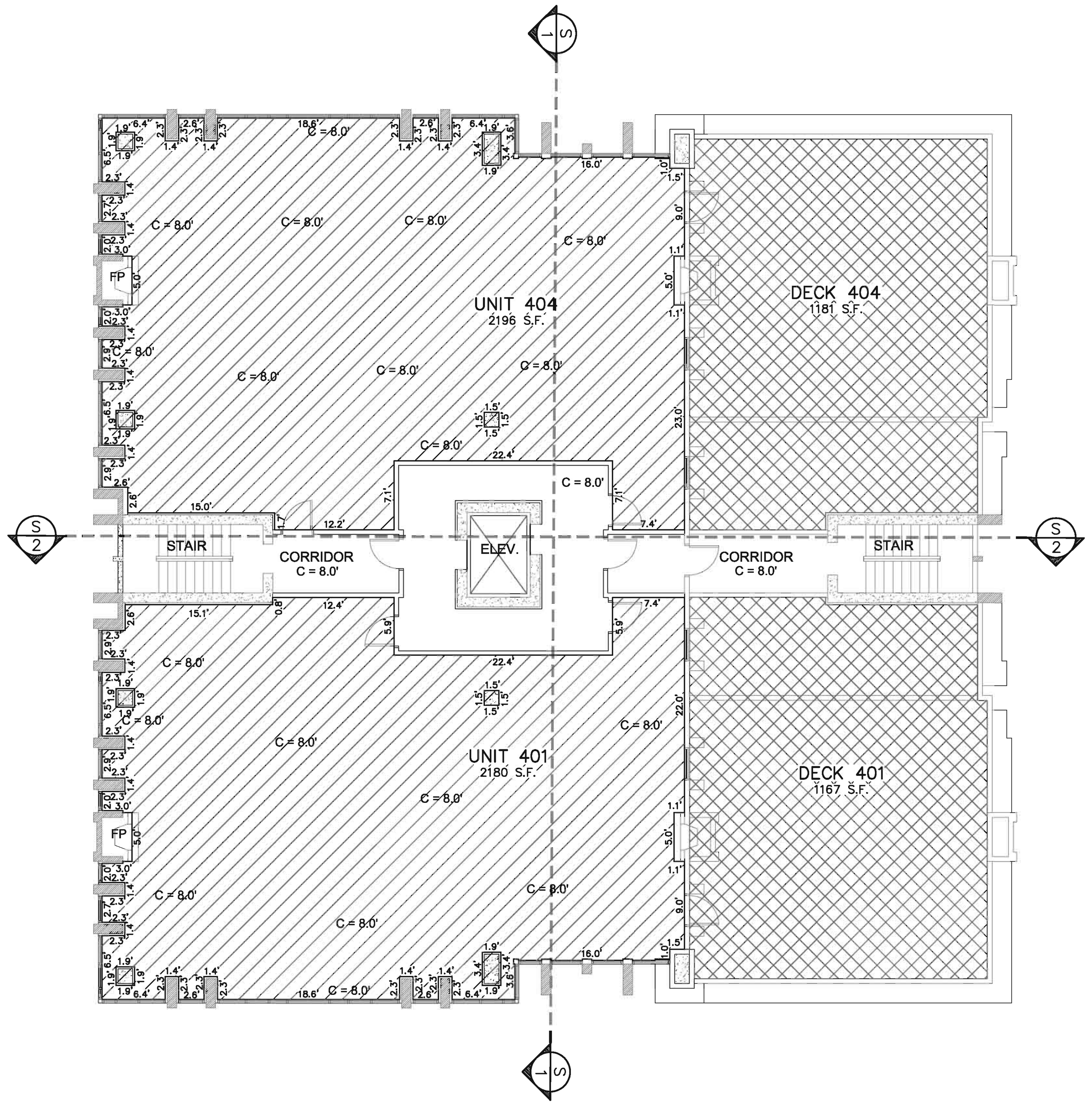
JOB NO: 5-4-06 X:\PCMR\DWG\THEGABLES\PLAT\SHT04.DWG

RECORDED

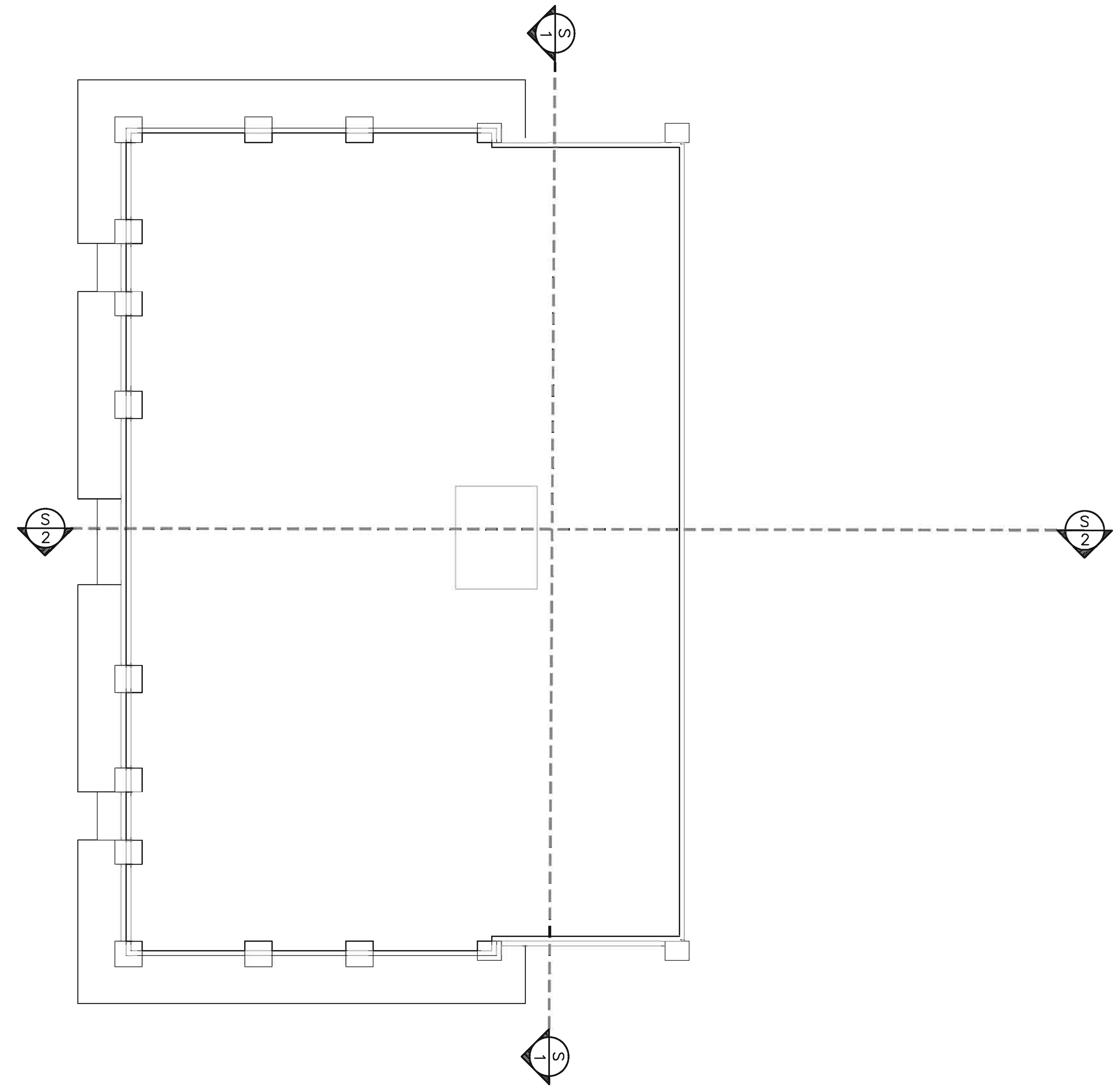
STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF ______
DATE: ______ TIME: ______ BOOK: ______ PAGE: ______

FEE RECORDER

7/13/06



RESIDENTIAL LEVEL 4



ROOF LEVEL 5

LEGEND
S.F. - REPRESENTS SQUARE FEET
FP - REPRESENTS FIRE PLACE
U - REPRESENTS UNIT
C - REPRESENTS CEILING HEIGHT

UNIT SQUARE FOOTAGE TABLE

UNIT NUMBER	SQUARE FOOTAGE	ELEVATION
401	2,180	6,993.2'
402	2,196	6993.2'

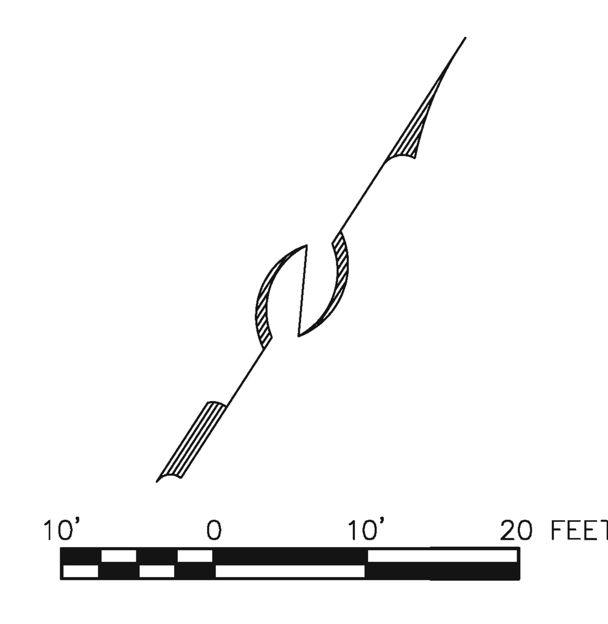
COMMON OWNERSHIP
PRIVATE OWNERSHIP
LIMITED COMMON OWNERSHIP

SECOND AMENDED RECORD OF SURVEY OF

THE GABLES

FORMERLY THE PLAZA HOTEL CONDOMINIUMS
A UTAH CONDOMINIUM PROJECT

LOCATED IN THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH



SHEET 5 OF 6

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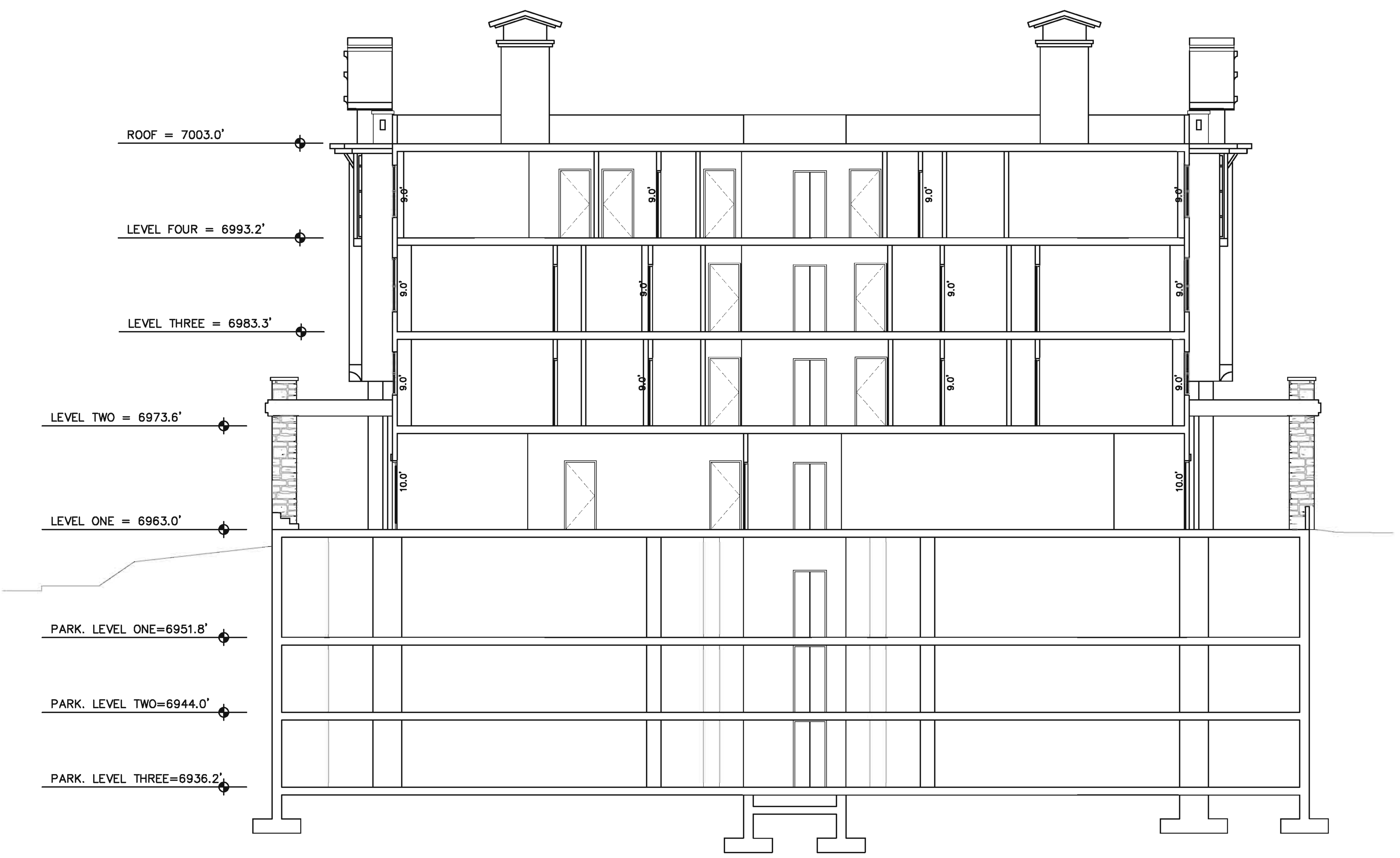
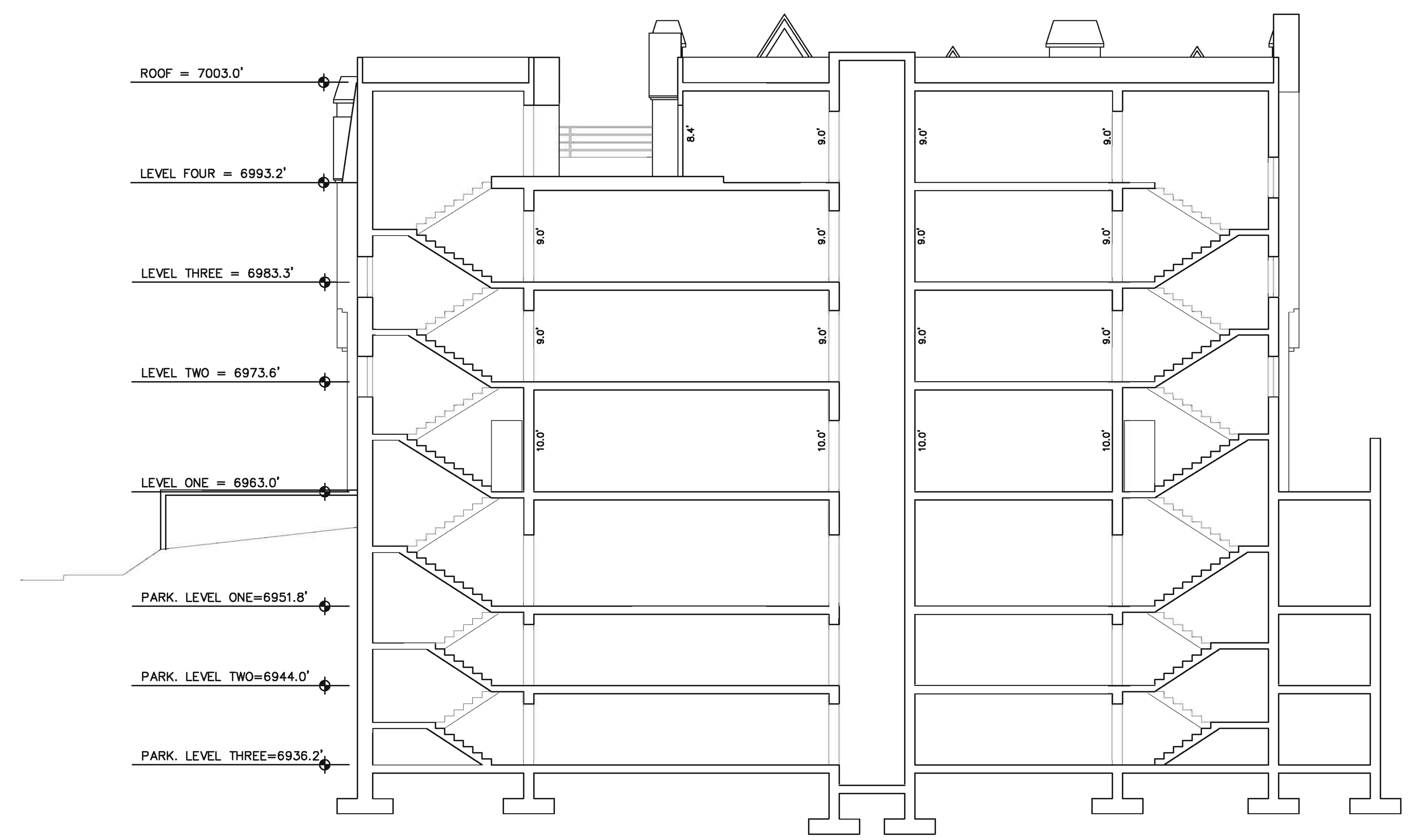


BUILDING SECTION 1



BUILDING SECTION 2

COMMON OWNERSHIP

PRIVATE OWNERSHIP

LIMITED COMMON OWNERSHIP

SECOND AMENDED RECORD OF SURVEY OF

THE GABLES

FORMERLY THE PLAZA HOTEL CONDOMINIUMS
A UTAH CONDOMINIUM PROJECT

LOCATED IN THE NORTHWEST $\frac{1}{4}$ OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALT LAKE BASE AND MERIDIAN, PARK CITY, SUMMIT COUNTY, UTAH

10' 0 10' 20 FEET

SHEET 6 OF 6

JOB NO: 5-4-06 X:\PCMR\DWG\THEGABLES\PLAT\SHT06 OPT B.DWG

RECORDED

STATE OF UTAH, COUNTY OF SUMMIT, AND FILED
AT THE REQUEST OF ______
DATE: ______ TIME: ______ BOOK: ______ PAGE: ______

FEE RECORDER

City Council
Staff Report

PARK CITY 1884 PLANNING DEPARTMENT

Author: **Brooks T. Robinson, Principal Planner**
Jerry Gibbs, Public Works
Subject: **2007 United Park City Mines Company Water Agreement; Conservation Easement**
Date: **February 15, 2007**
Type of Item: **Administrative – 2007 Water Agreement**

Summary Recommendations:

If the City Council determines that the compromise language on Judge Tunnel and other water issues is acceptable, Council should approve the amended water agreement with United Park City Mines Company (UPK). Taking this action would finalize the approval of the UPK-PCMR Annexation. No further action by the City regarding the Conservation Easement/Deed Restriction is recommended.

Topic and Background:

Talisker and UPK found it necessary to revise their water agreements with the City to enable construction of units with a water demand in excess of the 150 gpm that the City originally committed to provide as part of the 1999 Flagstaff Annexation and associated water agreements. As a result of a series of meetings over the past couple of years, agreement was reached on most issues with the exception of resolving which entity would be required by a state or federal agency to obtain a discharge permit for water generated within UPK's mine workings and discharged from the portal of the Judge Tunnel.

[Note: UPK is separately responsible for the preservation and stabilization of the Judge surface/portal structures under the 1999 Annexation Agreement. The City previously agreed that for the short term, UPK did not need to proceed with its original obligation to restore the structures, nor address future use issues, and installation of security and access control was all that was required at the time of adoption of the Technical Reports. A long-term preservation plan still needs to be addressed.]

City Staff recommended, as set out in the Feb 1, 2007, staff report on this topic, that a determination of which entity was responsible for a permit should be a part of the amended water agreement. The rationale supporting this recommendation, as stated in that staff report, was that "[w]hen the City allows important agreements such as this to get delayed and handled in piecemeal fashion at a timing advantageous to the applicant, the City loses the ability to negotiate the best possible solution in a comprehensive manner with regard to the impacts of the overall development." (Staff Report, Feb. 1, 2007, p.79). Accordingly, staff recommended that the amended development agreement and the Annexation Agreement require UPK to accept responsibility for the discharge permit. (It is worth pointing out that another option offered in the February 1, 2007 staff report – and not supported by staff – was having

UPK obtain the permit with the understanding that the entities would work toward a determination of which entity had actual responsibility). The City Council chose not to follow staff's recommendation. Instead, the council directed staff to negotiate compromise language which provided the City and taxpayers the closest thing to having UPK obtain the discharge permit. The goal, however, remained one of securing protection from exposure to future environmental liability related to mine operations and workings (not attributed to City use or development of its water rights) and fulfilling the City's responsibility to timely address its responsibilities with regard to the development of culinary water.

In diligent prosecution of the city council directive, the Public Works and Legal Departments worked with representatives of UPK toward crafting language that would provide as many of the safeguards inherent in staff's recommendation without actually requiring UPK to obtain the permit. The starting point of the discussion was two sets of deal points: The first, distributed to the city council in closed session on the afternoon of February 1, was the city's response to an e-mail Talisker's CEO sent to the City Manager on January 31; the second set UPK drafted subsequently to the city's response to Talisker's e-mail and UPK distributed it to the city council at the February 1, 2007, council meeting. No agreement was reached on discharge permit liability at the public hearing. In fact, UPK representatives emphatically rejected any language obligating UPK to indemnify Park City for any impacts on the quantity and quality of water discharged from UPK's Judge Tunnel portal provided the impacts could be attributed to UPK's ownership or operation of its mine.

Placed in the unenviable position of having to choose between staff's recommendation – which UPK rejected - and two sets of deal points - UPK's and the city's (which UPK also rejected), the City Council approved the UPK/PCMR annexation, amendments to the Park City Official Zoning Map, amendments to the Flagstaff Mountain Development Agreement, and the amended water agreement with the inclusion of the deal points crafted by staff in response to Talisker's January 31, 2007, e-mail. These deal points are intended to comprise Section 7 of the amended water agreement . The Council's motion provided that the applicant could either accept staff's language or propose a deal acceptable to the city council prior to the expiration of the annexation approval (30 days). Accordingly, this item was scheduled for additional consideration on February 15, 2007.

The attached draft of the Amended Water Agreement, upon approval by the city council, would be incorporated by reference into the approved amended development agreement. (See Attachment A). The language appearing in Section 7 of the attached draft reflects the result of discussions between city staff and UPK representatives which ended on the evening of the Wednesday, February 7, 2007 deadline. The draft of Section 7 attached hereto departs materially from the compromise deal points approved by the city council on February 1, 2007, as follows:

Compromised Language Approved February 1, 2007	**The Language Negotiated through the February 7, 2007 Deadline**
Paragraph a: UPK and City to work cooperatively with state and federal agencies toward getting an exemption from the permit; parties will share all maps, records, etc relevant to the "purposes of this agreement;" UPK to provide access to all its mine workings.	Included, with the following changes: The goal of "exempting" the Judge Tunnel from a discharge permit requirement changed to "obtaining and maintaining some form of exemption or variance[.]" Sharing of records limited to non-privileged material and to information "relevant to the purposes of this Section 7." UPK to provide access to all it mine workings but does not need to open mine workings that have become inaccessible.
Paragraph b: Concurrently with pursuing the exemption, UPK and City will seek to engineer the diversion of water to an alternative, mutually agreeable, point. The agreed goal is to eliminate the need for a permit or reduce its scope.	Included, with the following changes: "Exemption" changed to "some form of exemption or variance[.]"
Paragraph c: UPK and City agree to equally share in costs of pursuing the exemption from state and federal agencies.	Incorporated in paragraph providing for the selection of a third party. (Set out in table below).
Paragraph d: All alternatives to be pursued without interfering with city's water delivery system or water rights.	Included.
Paragraph e: UPK to convey site for possible Judge Tunnel treatment plant by warranty deed; if city needs to condemn site, UPK would reimburse city.	Included, with the following changes: An exhibit is to be attached to the amended water agreement addressing the conveyance of the site to city. The reimbursement provision is deleted.
Paragraph f: UPK and city acknowledge that conditions may change; UPK agrees to indemnify city for discharge permit liability that would arise in the future; the indemnification would be limited to liability arising from activity within UPK's existing mine workings or from mining activity or from a change in the water quality that was not caused by the city. Talisker would accept assignment of this indemnification obligation if UPK were to dissolve.	Talisker found this paragraph unacceptable.

Additionally, there is language in the February 7, 2007, draft that did not appear in the February 1, 2007 language approved by the city council.

Language Included in the February 7, 2007, Draft that is Not Included in the February 1, 2007, Compromise Language	**Comment / Response / Explanation**
Paragraph a: UPK and City will select a third party to determine liability for the discharge permit by December 31, 2007; determination is non-binding; determination not to be used by either party without written consent of other party in eventual pursuit of a permit. Once the determination is made, the non-responsible party will cooperate with the responsible party in alternative solutions, or either party may proceed to agencies or court for a determination of liability. UPK and city to share equally in costs of the third party.	This is the closest UPK will get to accepting responsibility for the permit as a condition of approval of the amended development agreement. Proceeding this way may help preserve the status quo, i.e. no agency is requiring a permit at this time. The success of this alternative turns on the parties' respective levels of cooperation and the performance of an unidentified third party. This option will probably require more than one individual to address the myriad facts, and may not produce a determination unanimously supported by its authors. A determination under this option will address existing conditions, and changes in quality or quantity of water or in the regulatory landscape would most likely be the responsibility of the entity determined to be responsible in 2007.
Paragraph f: If either party does not agree with the third party's determination, or if a permit is required by an agency, either party can proceed with the agencies or courts in getting a determination. Upon a final determination by an agency or court, the responsible party will reimburse the non-responsible party for costs incurred from the date on which a permit was first sought.	The purpose of this paragraph is to acknowledge the agreement to wait until a determination is reached by the parties before pursuing a permit with outside agencies.
Paragraph g: Provides that this Section 7 shall not limit the City's obligation to indemnify UPK as provided in the 1975 agreement; adds that neither party offers an interpretation of the 1975 agreement at the present time.	Park City's position, which has been communicated clearly to UPK, is that the indemnification language found in the 1975 agreement addressed potential personal injury, property damage, and workers compensation liability related to

	the work the city did in the tunnel in 1975. The agreement clearly did not address environmental liability. UPK deleted Park City's proposed language making this point.

The February 8, 2007, language set out above marks that point closest to UPK agreeing to obtain the discharge permit. It is important that this language be viewed from the perspective that the language was not crafted to solve the problem, but to respond to council's direction to find the closest thing to the solution while allowing UPK to go forward with the Montage development. This perspective is supported by the fact that there is a negligible difference between the proposed language and Option 4 in the February 1, 2007, staff report (UPK obtains the permit and thereafter the parties reach a determination of liability). Obviously, had UPK and Park City been working together over the last couple of years, there would be no need to force a resolution now, and the parties would, in fact, have proceeded exactly down the course now proposed. The exigencies of UPK's Montage development schedule, however, invite the need to resolve the permit issue now.

It is equally important for council to continue to recognize that the city is not asserting that UPK is entirely responsible for the discharge permit. Rather, UPK has steadfastly asserted that the city is responsible for obtaining the permit, and the city has consistently responded that while it does not have enough information to answer the question in full, it does have enough information to refute UPK's assertion. UPK, on the other hand, claims to have information sufficient to answer question in full, but has not, to date, shared that information with Park City.

It is also worth noting that this is not, as the local newspaper described, a "last-minute" issue that amounts to a "technicality." The resolution of the discharge permit issue was first raised by staff when the city and UPK negotiated the 1999 development agreement and it has been on the table since that time. (See timeline attached as Attachment B). Far from being a technicality, staff has consistently recognized the significance of the permit and its ramifications, including a possible increase in treatment plant costs of several million dollars, a significant annual treatment cost, and exposure to fines for non-compliance.

Finally, the city council should note that the facts and conditions to be considered by city council have not changed since staff first presented the issue. The law is clear. The facts are not. The law asks: Who is discharging what into the stream? The facts needed to answer that question are not now known. As far as "*who*" is diverting water, clearly, the city has participated in the development of water from within UPK's mine works. However, the city's development was expressly limited by UPK's interests. For example, while the 1975 agreement – on which UPK relies heavily in staking its position – provided for Park City to convey water from the Judge Tunnel, that conveyance was subject to a reservation of 150 gpm of water by UPK. There were also other water rights in the tunnel owned by other entities with which the city could not interfere. Furthermore, there is anecdotal information indicating UPK constructed the diversion structure at the portal with Park City's cooperation based on a design that met both entities' needs: It diverted some of the water into the city's system while diverting the balance of water away from the portal. As far as "*what*" is being diverted, city staff is not certain where the water is being made and at what point pollutants, if any, are being added to the water. The city has raised these questions throughout the TMDL process.

Conservation Easement

The Summit Land Conservancy Board of Directors voted not to accept the proposed Conservation Easement around the Silver King mine site (see attached letter). The City Council has several alternatives:

- Suggest that Summit Land work directly with the applicant and PCMR to amend the language in the Conservation Easement as they deem necessary in a time frame that allows the applicant to finalize the annexation as required within 30 days of February 1, and in a manner that is substantially the same as approved 2/1 as approved by the City Attorney. **This is the recommended option.**

- Require the applicant to find another suitable 501-C(3) non-profit organization to accept the easement as currently written.

Department Review:

This matter has been reviewed by the Legal Department.

Recommendation:

Staff recommends the Council evaluate the language proposed by the applicant/UPK to comprise Section 7 of the amended water agreement. If this language meets with council's direction, council should approve this Agreement. Such approval would constitute fulfillment of the amendments to the Flagstaff Development Agreement. Council should be very clear that staff's recommendation has not changed: this agreement should be approved on the condition that UPK accept responsibility for obtaining the discharge permit for water being discharged from Judge Tunnel portal.

Staff further recommends that the Council take no further action regarding the Conservation Easement and encourage Summit Land to work with the applicant and PCMR as outlined in Option 1 above.

If the Council agrees to this water language and decides to not amend the conservation easement language, then the annexation, etc., would be complete as long as it is executed and recorded by the end of the month.

Exhibits

Exhibit A – Water Agreement
Exhibit B – Timeline

AMENDED WATER AGREEMENT

This Water Agreement (2006) (“Agreement”) is made and entered into effective as of the ___ day of ________________, 2007, by and between United Park City Mines Company, a Delaware corporation (“UPK”) and Park City Municipal Corporation, a Utah municipal corporation (the “ City”). UPK and the City are sometimes hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”.

RECITALS

A. The Parties have a long history of contractual and other dealings with each other involving water and related matters.

B. Such contracts include, without limitation,: (i) the February 10, 1975 Agreement among UPK, the City, and other parties regarding the Judge Tunnel; (ii) the June 2, 1981 Spiro Tunnel Water System Agreement; (iii) the October 8, 1991 Agreement Consenting to a Sale of Surplus Salt Lake City Water; (iv) the September 11, 1992 Agreement regarding Woodside Gulch; (v) the June 24, 1999 Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-acre Quinn’s Junction Parcel and Iron Mountain (the “Development Agreement”); (vi) An Agreement for a Joint Well Development Program dated January 14, 2000 (the “Well Agreement”); and (vii) the January 14, 2000 Memorandum of Understanding (the “MOU”). All of the foregoing are collectively referred to herein as the “Contracts”.

C. In connection with recent and anticipated real estate development activity involving UPK and its affiliates including UPK’s parent, subsidiary and sister entities (collectively, the “UPK Entities”), discussions have arisen among the UPK Entities and the City involving water and other matters, and the Parties desire to address certain issues related thereto as provided herein.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

TERMS AND CONDITIONS OF AGREEMENT

1. **Capital Contribution**. Within ninety days of commencement of construction of the Capital Improvements described below, UPK will pay to the City a capital contribution in the amount of $4,208,600 (the “Capital Contribution”). The Capital Contribution (i) is for a portion of the cost of capital improvements including the Rockport Importation project, the Boothill water tank, Boothill transmission line, Boothill pump station, and Fairway Hills PRV (the “Capital Improvements”), and (ii) together with the Capital Contribution reimbursement provisions, below, is in lieu and in satisfaction of the Rockport Pipeline participation and reimbursement provisions in the Well Agreement (including Section 9 thereof) as acknowledged under Section 9 of the MOU.

2. **Reimbursement of Capital Contribution**. The City shall reimburse UPK for the amount of the Capital Contribution (also referred to herein as the “Reimbursement Amount”). Unless

otherwise reimbursed or paid as contemplated under Section 5, below, the Reimbursement Amount shall be paid to UPK in seven equal annual installments beginning October 1, 2007. Each annual installment of the Reimbursement Amount shall be adjusted annually to reflect interest imputed at the greater of the City's then current cost of funds or the then prevailing non-credit enhanced municipal bond rate, as established by the City's bond rating agency.

3. **Water Reservations**. UPK will pay to the City a water reservation fee of $100 per acre foot per year for 433 acre feet of water (the "Initial Reservation Fee"). The Initial Reservation Fee shall be paid to the City annually beginning October 1, 2007, and shall be reduced each year based on the cumulative total of water, in excess of 333 GPM, utilized by completed developments and improvements for which building permits have been issued by the City and which are constructed in, on and around the area known as Empire Pass and Bonanza Flats on lands owned, developed, sold or transferred by UPK or a UPK Affiliate. The foregoing water utilization shall be computed on the basis of 1 acre foot per 1.2 GPM of peak day capacity.

For purposes of providing water source capacity (above the 850 GPM referenced in this Agreement) for future developments and improvements within the Park City Water Service District boundaries on lands owned, developed, sold or transferred by UPK or a UPK Affiliate, the City will, on or before October 1, 2007, provide UPK with a written option to reserve between 100 and 250 acre feet of additional water for an additional fee (the "Additional Reservation Fee") that is substantially similar to the per-acre foot amount that is the basis for the Initial Reservation Fee above. Said option shall expire five years after the date it is executed by the Parties. After the option is exercised by UPK, the Additional Reservation Fee will be reduced as the water associated therewith is actually utilized by such completed developments and improvements and UPK will be responsible for any incremental infrastructure costs required to deliver such additional water.

4. **Financing**. Both UPK's Capital Contribution and the City's portion of approximately $15,000,000 for Judge Tunnel water treatment facilities and the Rockport Importation project can be paid and financed through Zions Bank or another financing source (e.g., the issuance of revenue bonds at the prevailing Zion's Bank Insured Municipal Revenue Bond rate for a period of 20 years). In the event such financing occurs or such bonds are issued after UPK has paid the Capital Contribution to the City, UPK's Capital Contribution shall be reimbursed upon the occurrence of such event, and the Reimbursement Amount shall be reduced by the amount of such reimbursement.

5. **Satisfaction of Source Capacity Requirement**. Based upon UPK's agreement to pay the Capital Contribution, and based further, in part, upon (i) the 333 GPM in source capacity credited to UPK for the Divide Well, and (ii) some of the consideration given to the City under Section 2 of the MOU, the 150 GPM source capacity limitation referenced in Section 2 of the MOU will no longer apply and UPK will be deemed to have satisfied a source capacity requirement of 850 GPM (which subsumes the source capacity requirement referenced in the Well Agreement as acknowledged under Section 9 of the MOU). Beyond the Capital Contribution, there will be no other cost to UPK to deliver any of such 850 GPM to any development in Empire Pass; delivery to any other area (e.g., Bonanza flats culinary) will require

an agreement between the Parties as to the allocation of infrastructure costs associated with any such delivery.

6. **Wells; Remaining Group II Rights**. UPK shall have the right to develop additional source capacity by drilling one or more wells on UPK property including Bonanza Flats and/or Richardson Flats to satisfy future water demands on UPK property including Richardson Flats, Iron Mountain, Bonanza Flats (including irrigation), and the 20 acre Quinn's Parcel. The Parties acknowledge, however, that under the MOU, the City has the obligation to provide culinary water to the Quinn's Parcel as described in the MOU. Any source capacity developed through any such well can be used to divert water from the Remaining Group II Water Rights, as defined in Exhibit A attached hereto and incorporated herein by reference, if the required change applications for such are approved by the State Engineer.

In relation to the Remaining Group II Water Rights, UPK shall have the right to elect, by written notice to the City within the thirty (30) year period following execution of this Agreement, to proceed as follows:

(a) UPK may endeavor to move the Remaining Group II Water Rights to one or more points of diversion (including the wells referred to above) by filing one or more change applications, in which event (i) the City shall support and cooperate in the filing and prosecution of any such change applications, and (ii) upon change application approval, the City shall reimburse UPK for its 50% share of the amount of Remaining Group II water actually delivered through any such point of diversion at the rate of $1,000 per acre foot, provided that such water meets applicable treatable culinary and irrigation standards. The quantity of water that qualifies for such reimbursement shall be based on the amount of flow sustainable for a reasonable operating period of time of not less than 72 continuous hours during a pump test conducted by the City in consultation with UPK; or

(b) In the event the change application(s) referenced above are not approved, or in the event UPK does not elect to proceed as outlined in (a) above, UPK may require the City to convey to UPK either:

(i) UPK's 50% interest in the Remaining Group II Water Rights, in which event the Parties shall split the Remaining Group II Water Rights into two equivalent portions such that the City conveys one of those 50% portions to UPK; or

(ii) all of the City's right, title and interest in and to all of the Remaining Group II Water Rights to UPK, in which event the City's purchase and payment obligations related thereto shall terminate and UPK shall pay for the City's 50% portion of such rights at the rate of $1,000 per acre foot.

In the event UPK does not elect option (a) or (b) above, or in the event UPK elects option (a) and the change application(s) are not approved, UPK will maintain its 50% equitable lien on the Remaining Group II Water Rights and will be paid or reimbursed for such as provided under the Contracts.

7. **Water Treatment**.

(a) Within sixty (60) days of the date of this Agreement, the Parties will select a mutually acceptable third party to make a determination ("Determination") as to whether, and to what extent, each of the Parties has responsibility for a UPDES discharge permit under the Clean Water Act in relation to any discharges from the portal of the Judge Tunnel (a "Permit"), presuming a Permit is required. The Determination shall be made by December 31, 2007, and shall be non-binding such that once the Determination is made, either Party may, if it so chooses, proceed as described in subparagraph (f), below. In the event either Party so chooses to proceed as described in subparagraph (f), the Determination shall not, without the Parties' mutual written consent, be admissible or utilized for any purpose in any submittal, process or proceeding involving any agency or court. Once the Determination has been made, the Parties will fully cooperate with each other to allow the responsible Party (to the extent said Party is determined to be responsible under the Determination and does not elect to proceed under subparagraph (f), below) to comply with and satisfy such responsibility. Such compliance and satisfaction may include, for instance, efforts by the responsible Party to mitigate or altogether eliminate the need for a Permit. By way of example, if the Determination were to place full responsibility for the Permit on the City, UPK would, at the City's request, give the City such additional tunnel access (at the City's expense) as is necessary to facilitate the City's actual implementation of diversionary works or other infrastructure or installations that would eliminate or mitigate the need for a Permit, and if the Determination were to place full responsibility for the Permit on UPK, the City would, at UPK's request, upsize its Judge Tunnel water treatment plant (at UPK's expense), should a treatment plant be built, to treat excess water discharges. The Parties agree to share equally in the cost of the third party.

(b) Although no Permit is presently required by any state or federal agency, the Parties agree to work cooperatively with the Utah Department of Environmental Quality and the U.S. Environmental Protection Agency, and any other necessary entities, toward the goal of obtaining and maintaining some form of exemption or variance for the Judge Tunnel portal from any requirement for a Permit (without actually applying for a Permit except as provided under subparagraph (f), below). UPK and the City each agrees to share with the other all maps and records (except those protected as attorney-client communication or attorney work product) under its respective possession or control and relevant to the purposes of this Section 7. UPK further agrees to provide City (at the City's expense) with access to all mine workings owned by or under the control of UPK, but UPK shall not be required to undertake to re-open mine workings that have become inaccessible.

(c) Concurrently with the pursuit of some form of exemption or variance as described in subparagraph (b) of this Section 7, the Parties will work cooperatively with each other to implement a solution that would eliminate any need that may exist for a Permit. Such a solution may include, for example, engineering and implementing the diversion of water from the Judge Tunnel to other treatment facilities or to another mutually agreeable diversion point approved by the appropriate agencies. The Parties acknowledge and agree that the goal of any such diversion would be to eliminate any need that may exist for a Permit (or to reduce the scope of a Permit for the Judge Tunnel discharge should one be required).

(d) UPK and the City agree that all alternatives explored pursuant to subparagraphs (b) and (c) of this Section 7 shall be implemented in a manner calculated to avoid interference with the City's existing water rights or water delivery capacity and to avoid reduction of the amount of water presently available to City.

(e) UPK has identified and offered to dedicate an acceptable site for the proposed Judge Tunnel Water Treatment Plant (see attached Exhibit). The Parties acknowledge and agree that said site is the subject of litigation. In the event UPK's title to said site is found to be impaired, City will likely exercise its power of eminent domain to acquire title to said site. UPK agrees to not oppose such action. In the event UPK is found to hold unimpaired title to the site, UPK will convey the property to City by warranty deed.

(f) If (i) either Party is not in agreement with the Determination, or the Parties have not successfully implemented a diversion or other solution that eliminates the need for a Permit, or (ii) a Permit is at any time required as a result of action instigated by any state or federal agency, then either Party may seek a determination from the agencies or the courts to ascertain who would be responsible for the Permit. If and to the extent UPK is finally determined to be responsible in whole or in part (including, for example, through the expiry of all appeal rights or the exhaustion of all appeals with the courts), UPK will assume and be responsible for its ratable share of all costs (excluding any City legal fees) related to obtaining and implementing the Permit retroactive to the date that the Agency first sought to require the Permit following adoption of the Amended & Restated Development Agreement executed concurrent with this Agreement. If and to the extent the City is finally determined to be responsible in whole or in part (including, for example, through the expiry of all appeal rights or the exhaustion of all appeals with the courts), the City will assume and be responsible for its ratable share of all costs (excluding any UPK legal fees) related to obtaining and implementing the Permit retroactive to the date that the Agency first sought to require the Permit following adoption of the Amended & Restated Development Agreement executed concurred with this Agreement.

(g) Notwithstanding anything to the contrary in this Agreement, nothing in this Section 7 shall operate or be construed to modify, limit or eliminate the City's indemnification of UPK or any of the other City obligations to UPK as stated in Paragraph 14 of the existing 1975 Agreement. By entering into this Agreement, neither of the Parties makes any admission or agreement regarding the interpretation of Paragraph 14 of the existing 1975 Agreement.

8. **Miscellaneous**.

(a) ***Assignment***. UPK may assign its rights and interests in and under this Agreement to a UPK affiliate.

(b) ***Waiver***. Waiver by either Party of any breach of any condition or provision of the Agreement shall be limited to the particular instance and shall not operate or be deemed to waive any future breach or breaches of said condition or provision; the failure of either Party to insist, in any one instance or more, upon the performance of any of the conditions or provisions of this Agreement or the exercise of any right or privilege herein conferred, shall not be construed as thereafter waiving any such condition, provision, right or privilege, but the same shall continue and remain in full force and effect.

(c) ***Severability***. The provisions of this Agreement are severable. If any of the provisions of this Agreement are determined by appropriate legal authority to be invalid or unenforceable for whatever reason, the remaining provisions shall continue in full force and effect.

(d) ***Prior and Existing Agreements; Entire Agreement; Modification***. To the extent any term, condition or provision of any of the Contracts is inconsistent with any term, condition or provision of this Agreement, this Agreement shall control with respect to the rights and obligations of the Parties relative to each other. This Agreement, together with the Contracts, represents the entire integrated agreement between the City and UPK relative to the matters discussed herein and therein. This Agreement may be amended only by written modification signed by the Parties.

(e) ***Notices***. All notices shall be deemed to have properly given when sent by certified United States mail, addressed to the City or UPK at the addresses appearing below; the date of such service shall be the date on which the notice is deposited in the United States Post Office; all notices shall be sufficient within the terms of the Agreement when signed by any one or more of the notifying parties or their agents and mailed to any one or more of the other parties; personal deliver of such written notice shall have the same effect as notice given by mail; the attached addresses may be changed for the purposes of this agreement by notification of the

(f) ***Headings***. The headings of the paragraphs, sections and subsections of this Agreement are for convenience only and shall not be used to interpret or construe this Agreement or the application of any term, provision or condition hereof.

(g) ***Disputes***. In the event of any dispute arising under this Agreement, the prevailing Party shall be entitled to its attorneys' fees and costs related thereto.

(h) ***No Third Party Beneficiaries***. The execution and deliver of this Agreement shall not be deemed to confer any rights upon, no obligate any of the parties hereto, to any person or entity other than the Parties.

(i) ***Choice of Law***. This Agreement in all respects shall be governed by the laws of the State of Utah. Nothing contained herein shall be construed so as to require the commission of any act contrary to state or federal law. Wherever there is any conflict between any provision contained herein and any present or future state or federal statute, law, ordinance or regulation, the latter shall prevail and the provision of this Agreement which is affected shall be curtailed and limited to the extent necessary to bring it within the requirements of such law.

(j) ***Notices***. All notices shall be deemed to have properly given when sent by certified United States mail, addressed to the City or UPK at the addresses appearing below; the date of such service shall be the date on which the notice is deposited in the United States Post Office; all notices shall be sufficient within the terms of the Agreement when signed by any one or more of the notifying parties or their agents and mailed to any one or more of the other parties; personal deliver of such written notice shall have the same effect as notice given by mail; the attached addresses may be changed for the purposes of this agreement by notification of the opposite party in writing.

Park City Municipal Corporation c/o City Manager
445 Marsac Avenue
P. O. Box 1480
Park City, UT 84060

With a copy to the City Attorney 445 Marsac Avenue P. O. Box 1480 Park City, UT 84060

United Park City Mines Company
c/o David J. Smith 900 Main Street, Suite 6107
P. O. Box 1450
Park City, UT 84060

With a copy to Jeff Levine
Talisker Corporation
145 Adelaide Street West, Suite 500
Toronto, Ontario M5H 4ES

IN WITNESS WHEREOF, the Parties hereto have set their hands the day and year first set forth above.

PARK CITY MUNICIPAL CORPORATION
445 Marsac Avenue
Post Office Box 1480
Park City UT 84060-1480

____
Dana Williams, Mayor

Attest:

____
City Recorder’s Office

Approved as to form:

____
City Attorney's Office

UNITED PARK CITY MINES, Inc.
Address:

____
Signature

____
Printed name

____
Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _________________, 2007, personally appeared before me ________________________________, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the ___________________________ (*title or office*) of United Park City Mines Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _________________________ *(title)* for United Park City Mines, a Delaware corporation.

____
Notary Public

Exhibit A

To That Water Agreement Entered Into On
____________________, 2007 By and Between
United Park City Mines Company and
Park City Municipal Corporation

The "Remaining Group II Water Rights" shall consist of the following water and water rights situated in Summit County, Utah, as evidenced by the records of the Utah Division of Water Rights and as quantified by the Utah State Engineer in the Memoranda Decisions approving the applicable Change Applications for these water rights as set forth below:

Water Right Numbers and Name of Source	Use by State Engineer
Water Right Nos. 35-2709 and 35-10287: Hannauer Tunnel	723.80 acre feet as quantified in the State Engineer's Memorandum Decision, dated May 19, 2000, as amended, approving Change Application No. a21858
Water Right Nos. 35-2713 and 35-10285: Jeannette or Thaynes Tunnel	289.5 acre feet diversion and 144.75 acre feet depletion as quantified in the State Engineer's Memorandum Decision, dated May 4, 2001, approving Change Application No. a21847
Water Right Nos. 35-1660 and 35-10284: Lady Morgan Spring	28.95 acre feet as quantified in the State Engineer's Memorandum Decision, dated May 19, 2000, as amended, approving Change Application No. a21858
Water Right Nos. 35-2712 and 35-10281: California Tunnel	72.4 acre feet diversion and 36.2 acre feet depletion as quantified in the State Engineer's Memorandum Decision, dated May 4, 2001, approving Change Application No. a21847
Water Right Nos. 35-2714 and 35-4704: Alliance Tunnel (as modified by approved Change Application No. a7899)	1,447.80 acre feet as quantified in the State Engineer's Memorandum Decision, dated May 19, 2000, as amended, approving Change Application No. a21858

Attachment B

TIMELINE OF DISCUSSIONS

March 5, 2003: PCMC letter to UDEQ regarding the need for a discharge permit for the Judge Tunnel. PCMC requests in this letter for Utah Dept. of Environmental Quality (UDEQ) to set out the factual and legal bases for U.S. EPA's position. This letter states: *"It is Park City's understanding that the tunnels are owned by UPCMC, and while Park City's diversion of water from the tunnels are subject to drinking water standards and regulations, there is no basis for regulating Park City in connection with discharge from the tunnels."*

April 12, 2004: Meeting between PCMC and all division heads in UDEQ wherein it was agreed: 1) UDEQ would get U.S. EPA's position on whether a UPDES permit was required and, if so, which entity should obtain it; 2) the September 1, 2004, deadline for either obtaining a UPDES permit for the Judge Tunnel was lifted; and 3) UDEQ would bring UPCM to the table. [UDEQ only followed through with item 2].

July, 2004: U.S. EPA approves the TMDL prepared and submitted by UDEQ.

October 27, 2004: Letter from UDEQ to PCMC stating that PCMC should not pursue a UPDES permit for the Judge Tunnel because: 1) the TMDL showed the Judge Tunnel portal was a non-point source and that it loaded minimal amounts of cadmium and zinc; and 2) PCMC would complete a treatment plant by mid-2006 which would result in less cadmium and zinc being discharged into Silver Creek.

April 28, 2005: A memorandum reflecting Park City's position that the treatment of Judge Tunnel water not diverted into the municipal system would be Talisker's responsibility.

May 17, 2005: A proposal matrix citing the permit issue as unresolved.

October 10, 2005: Letter from PCMC to Talisker regarding the imminent enforcement of the TMDL standards contained the following: *"Specifically, UPCM may have UPDES risk when Park City Water Department does not accept water from the tunnel that exceeds a 1 NTU standard and it is bypassed into the existing water channel. The city would appreciate your review of the UPDES standards and provide the city with UPCM's position."*

April 25, 2006: E-mail from Jerry Gibbs setting out Park City's proposed water agreement and Talisker's counter proposal; the e-mail cites the dispute over Judge Tunnel environmental liability as a major concern.

June 2, 2006: A redlined agreement outline e-mailed to Dave Smith reflecting the opposing views of Park City and Talisker with regard to the Judge Tunnel treatment obligation.

July 7, 2006: Notes from meeting between Dave Smith, Jerry Gibbs, and Tom Daley reflecting Park City's disagreement with Talisker's June 2, 2006 "Water Agreement Summary" which placed UPDES responsibility with Park City.

August 3, 2006: Letter from UDEQ to Park City stating that 1) no UPDES permit required for the tunnel based on findings in the TMDL; and, 2) EPA signed off on the TMDL, so EPA must concur.

August 24, 2006: Protected / Privileged Memorandum to Park City Council discussing the unresolved Judge Tunnel UPDES issue.

September 1, 2006: Memorandum prepared by Talisker legal counsel setting out Talisker's counter to Park City's position that Talisker would be required to obtain a UPDES permit.

September 7, 2006: Action Memorandum Amendment from U.S. EPA Region 8 stating that PCMC would obtain a UPDES discharge permit for water discharged from the tunnel to Silver Creek. [This position is inappropriately based on all of PCMC's actions with regard to *drinking* water quality, ie U.S. EPA's Kathy Hernandez thought that PCMC's response to required flushing of the PCMC system (2001) and MPA testing of Judge Tunnel water (2002-03) supported PCMC's responsibility for all water discharged from the Judge Tunnel.

September 13, 2006: Protected / Privileged Memorandum to Park City Council discussing the unresolved Judge Tunnel UPDES issue.

September 14, 2006: Letter from Dave Smith to Tom Daley citing "differing views as to the responsibility for a discharge permit."

September 28, 2006: Protected / Privileged Memorandum to Park City Council discussing the unresolved Judge Tunnel UPDES issue.

December 4, 2006: Protected / Privileged Memorandum to Park City Council discussing the unresolved Judge Tunnel UPDES issue.