PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
FEBRUARY 13, 2019

COMMISSIONERS IN ATTENDANCE:

Vice-Chair John Phillips, Sarah Hall, John Kenworthy, Mark Sletten, Laura Suesser, Doug Thimm, Christin Van Dine

EX OFFICIO: Planning Director, Bruce Erickson; Kirsten Whetstone, Planner; Jody Burnette, Outside Counsel

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ROLL CALL

Vice-Chair Phillips called the meeting to order at 5:35 p.m. and noted that all Commissioners were present.

ADOPTION OF MINUTES

<u>January 23, 2019</u>

MOTION: Commissioner Sletten moved to APPROVE the Minutes of January 23, 2019 as written. Commissioner Hall seconded the motion.

VOTE: The motion passed. Commissioner Suesser abstained since she was absent from the January 23rd meeting.

PUBLIC COMMUNICATIONS
There were no comments.

STAFF/COMMISSIONER COMMUNICATIONS AND DISCLOSURES

Planning Director Erickson reported that Planning Commission needed to elect a new Chair and Vice-Chair. The Planning Department would do a public notice and prepare the agenda for an election at the next meeting.

Commissioner Kenworthy disclosed that he is a landlord to Deer Valley and has been for the past ten years; however, it would not affect his decision on the agenda items this evening. Commissioner Kenworthy also disclosed that he is a neighbor of JSSD. He was a previous Chair of the HPB when he sat on that Board.

Commissioner Sletten disclosed that at the State of Park City address he and John Phillips ran into Sally Elliott. Their conversation was very brief and they only asked her if she would be attending this Planning Commission meeting. Nothing substantive was discussed.

Commissioner Sletten disclosed that he owns property at Tuhaye, which is the sister development to the items on the agenda. It did not present a conflict and he would not recuse himself from the discussion.

REGULAR AGENDA - DISCUSSION/PUBLIC HEARINGS/ POSSIBLE ACTION

1. <u>8680 Empire Club Drive Residences at the Tower Conditional Use Permit.</u>

2. <u>8680 Empire Club Drive Tower Residences Condominium Plat.</u>

Planner Kirsten Whetstone reported that the two items were related and could be reviewed together and the public hearings for both could be combined. Each item requires a separate motion and vote.

Planner Whetstone stated that the first item was a request for a conditional use permit for 14 multi-family residential units, with one required ADA unit; a deed restricted employee unit; and a 500 square foot police station, which was required as part of the development agreement. The conditional use permit also includes expansion of the existing Talisker Club. The project is located at 8680 Empire Club Drive. Vehicle access is from Village Way to an underground parking structure. Pedestrian access is off of Empire Club Drive. Both are existing City streets and no additional streets would be constructed.

Planner Whetstone stated that the application was reviewed against the LMC for conditional use permit criteria, as well as the volumetrics of the Village at Empire Pass small scale MPD, which is a subset of the Flagstaff Development Agreement.

The Staff had prepared findings of fact, conclusions of law, and conditions of approval for Planning Commission consideration. The Staff recommended approval of the conditional use permit as conditioned.

Planner Whetstone reported that the second item was a request for a recommendation to the City Council on the condominium plat. She noted that the condominium plat would identify private, common, and limited common areas that would associated with the building constructed under the conditional use permit.

The Staff had prepared a draft ordinance, which included findings of fact, conclusions of law, and conditions of approval related to the condominium plat. She noted that

Conditions 4 and 5 address the issue that was raised at the previously public hearing related to achieving substantial compliance with the Flagstaff Development Preservation Plan.

Planner Whetstone noted that a draft agreement was attached to the Staff report as Exhibit L. After the Staff report was sent out, the Planning Department received the agreement that was signed by the Empire Pass Master Owners Association. Copies were provided to the Commissioners this evening.

Planner Whetstone reported on public input she received from Sandra Morrison, the Executive Director of the Park City Historical Society Museum. The Commissioners were given copies of the letter this evening and it was also provided to the applicants.

The Staff recommended that the Planning Commission conduct a public hearing and consider forwarding a positive recommendation to the City Council with the findings of fact, conclusions of law, and conditions of approval in the draft ordinance.

Planner Whetstone introduced Jeff Butterworth and Richard Wagner with Storied Development who were representing the applicant.

Commissioner Suesser understood that the 2008 approval of Phase 2 that had expired was for the residential building now being proposed with the CUP. She asked if the expansion of the Talisker Club was part of that CUP at the time. Planner Whetstone did not believe it was. The expansion came in as a separate CUP a couple of years ago and the expansion was built. Commissioner Suesser stated that if the intent is to expand the existing Talisker Club and build residences, she questioned why they were not amending the previous CUP for the expansion. Planner Whetstone replied that it could be considered an amendment because it is a new building as well as an expansion.

Jeff Butterworth stated that the applicant debated this issue with the City when they first started the process. He noted that parts of the new building are also part of the Club. The plat has pieces in the new building along with the expansion, and the Towers are on top. Therefore, it was determined best to do one CUP for both the expansion and the building.

Commissioner Suesser asked if they were only creating one building. Mr. Butterworth answered yes, it is all one building. The expansion goes out one way from the existing building and the Tower goes out the other way. Mr. Butterworth presented a slide showing the existing Tower Club and the expansion of the Club, as well as the location of the new Tower. He pointed out how it all becomes one large building with one plat.

Commissioner Suesser asked if there were residences in the existing building. Mr. Butterworth answered no. It is only a club amenity.

Commissioner Suesser understood from the history that the original Empire Club, which later had other names, was approved for 8800 square feet. She noted that the 8800 square feet was broken down as 2,264 square feet of resort support commercial and 6,616 square feet of residential and resort accessory uses. Commissioner Suesser wanted to know why the square footage was not broken down the same way now. She noticed that the current application focuses on the support commercial; but they do not talk about the 6,000+ square feet of accessory space that is also included in the expansion. She found the way it was presented to be deceptive. They talk about how the density and size of the proposed new building is a reduction of 25,000 square feet, but they were actually doubling the Club space. Commissioner Suesser pointed out that the Club space went from 8800 square feet to nearly 20,000 square feet. In her opinion, the reduction was only 5,000 square feet from the original proposal; not 25,000 square feet. She asked if the others agreed with her analysis.

Planner Whetstone stated that the CUP that was previously approved for the residential, and had expired, was for 11 units and 67,000 square feet of residential. The 25,000 square feet is a reduction in residential. Planner Whetstone referred to a chart on page 20 of the Staff report that showed the existing Tower Club at 3,379 square feet of kitchen, dining, and convenience; as well as the proposed expansion of 2,424 of kitchen, dining, and spa. That gives the total of 5,803 square feet for the resort support commercial. Everything else within that is considered resort support, which are not UEs because they are not required. Planner Whetstone clarified that resort support are lockers and identified amenities.

Commissioner Suesser pointed out that it was also the fitness center, the pools, the kid's facility, the conference, the lounge, and the club office space. She compared it to a similar situation with Treasure Hill in terms of accessory support space. It is vague and does not need associated EUs. Commissioner Suesser had concerns with the Code being vague on what can be considered accessory uses and that there is no limit on uses. She noted that this project went from 6,000 square feet of accessory space to 14,000 square feet of accessory space. Commissioner Suesser appreciated the reduction in the residential use, but there was a significant increase in the accessory use. She thought it was misleading in how it was presented, including how it was presented by the applicant in the letter dated September 25, 2018 on page 36 of the Staff report. Commissioner Suesser believed it should have been presented in a clearer fashion.

Commissioner Suesser referred to the Findings of Fact on page 28, and noted that the first line states, "…approximately 9200 square feet expansion of the private Talisker Club and underground parking". She was not comfortable with an approximate number. Commissioner Suesser thought it should be an exact number so the Commissioners know what they are approving.

Planner Whetstone replied that the exact number was in the condominium plat because every square foot of the condominium plat is identified as either private common or limited common.

Planner Whetstone noted that the previous CUP also had amenity space. The CUPS for One Empire Pass and the Empire Residences identified the square footage of amenity space; and the same was done with this application. Specific residential would have amenity space such as storage, exercise rooms, etc.

Commissioner Suesser referred to Finding of Fact #30 and noted that the finding only references guest amenity areas. She asked if the amenities mentioned in the Finding were in addition to accessory space in the Club, or whether it was part of the residential building. Planner Whetstone stated that it was part of the residential building.

Mr. Butterworth stated that it was difficult for the applicant to understand as well because it is specified in the Development Agreement; not the Code. In talking with the City, they determined that if the space makes money it is resort support commercial. Commissioner Suesser asked if the spa would be open to the public. She recalled some concern about the store being opened to the public in the past. She assumed if the spa was open to the public it would create the same concern. Planner Whetstone replied that it is the Montage Spa. It was included in the resort support square footage and it is open to the development. Mr. Butterworth clarified that their spa is private. Planner Whetstone noted that the spa is still income producing, the same as the private restaurant. The store Commissioner Suesser referenced was a requirement so the residents in the area would have a place to pick up various items. The store was not successful but it was open for a time. Commissioner Suesser asked if Planner Whetstone had kept the same condition for this CUP. Planner Whetstone answered yes. Commissioner Suesser did not think they would want the spa open to the public in this application. Planner Whetstone pointed out that the building is private but the store was to be public in case someone in the area needed essential items.

Vice-Chair Phillips asked if Commissioner Suesser was proposing amendments to the Findings of Fact. Commissioner Suesser reiterated her concern with having an approximate square footage for the expansion of the private Talisker Club. If she understood correctly, Commissioner Suesser thought Finding #30 needed to be revised to clarify that the guest amenity areas are part of the residential.

Director Erickson noted that Jody Burnett, Legal Counsel, had suggested that if the Planning Commission wanted to take action this evening, they could condition approval on the revisions to the Findings of Fact consistent with the comments and direction of Commission Suesser based on her notes. Mr. Burnett remarked that the motion should be to approve with all the revisions to the Findings of Fact and/or Conclusions.

Commissioner Sletten stated that Commissioner Suesser had mentioned a number of items that he would like to go through one by one.

Commissioner Thimm referred to the CUP and asked why there was not a condition of approval regarding the MOA concerning historic preservation, similar to what is on the condo plat on page 131 of the Staff report. Planner Whetstone replied what was drafted came from the Legal Department.

Mr. Burnett explained that the discussion with respect to historic preservation came up in the context of both applications, but ultimately that agreement will be approved by the City Council and not the Planning Commission. The Planning Commission was approving the conditional use permit separately. The condition was in the plat because the Planning Commission would forward the recommendation to the City Council, and the Council would approve the Memorandum Agreement. Commissioner Kenworthy asked if that would be done simultaneous with the plat. Mr. Burnett answered yes. He noted that Sandra Morrison and others would have the opportunity to make their comments and presentation before the City Council with respect to the plat. Mr. Burnett emphasized that the Planning Commission was not acting on the Memorandum Agreement.

Commissioner Thimm stated that in looking at the Plat and the CUP at the same time, he asked if the Planning Commission has the purview to comment on the MOA. Mr. Burnett replied that they could, but it would be part of their recommendation to the City Council. He clarified that the Planning Commission makes the decision on the CUP. Mr. Burnett stated that when he attended the December meeting, he understood that the legitimate concern was that this applicant may not be directly involved with the MOA; but at what point could they address the long term concerns about implementing the Flagstaff Development Agreement. He pointed out that the agreement is with the Empire Owners Association and not this applicant. The Owners Association has now signed the agreement and that conversation will take place with the City Council. Director Erickson recommended that the Planning Commission make recommendations to the City Council regarding the Agreement, but not actually edit the document.

Mr. Burnett stated that if the Commissioners had questions or comments they could submit them to Director Erickson for consideration and possible inclusion. He was only trying to emphasis that it was not relevant to either the CUP or the condominium plat. Mr. Burnett did not believe it was fair to the applicant to hold up this process while they deal with legitimate big picture issues regarding all of Flagstaff.

Commissioner Hall asked if they could add the Historic Preservation Plan to the Condition of Approval that talks about the Flagstaff Development Agreement. She also suggested changing “Memorandum of Agreement” to “proposed Memorandum of Agreement”. Mr. Burnett was comfortable with the changes; however, he reminded the Planning Commission that because this was only a recommendation, the conditions were draft conditions in the ordinance that would be approved by the City Council if they approve the plat. In reality, the Planning Commission was making a recommendation to the City Council as to what they should include as conditions in the ordinance to approve the plat.

Commissioner Hall stated that her recommendation to the City Council be would to amend the condition to include the Historic Preservation Plan, and to change “Memorandum of Agreement” to “Proposed Memorandum of Agreement”. Commissioner Hall understood that the Planning Commission was approving the CUP. Her suggested changes to the condition of approval was for the CUP and not the Plat. Mr. Burnett explained that he was responding to the earlier question about why it was not included in the CUP. His point was that neither this applicant nor the Planning Commission was involved in the MOA.

Commissioner Hall asked if they could add the Historic Preservation Plan to the CUP condition and not make reference to the MOA. Mr. Burnett replied that the Memorandum of Agreement is with the Empire Association and this applicant independently can do nothing. He was hesitant to impose a condition on a conditional use permit that the applicant could not control or fulfill.

Mr. Burnett noted that Director Erickson had a six-month timeframe to review the MOA before it goes to the City Council. He suggested that the Commissioners could recommend that the Planning Commission have the opportunity to review and comment on the Memorandum of Agreement before it is finally approved by the City Council.

Commissioner Hall asked Mr. Burnett to explain why they could not have a condition of approval saying that the Historic Preservation Plan will continue to apply. Mr. Burnett replied that it was not relevant to this particular property, which was the subject of the

CUP. He wanted a clear distinction between the CUP for this parcel and the broader concerns about the Flagstaff development as a whole.

Commissioner Thimm asked when the MOA would come back to the Planning Commission. Mr. Burnett stated that his role as Counsel to the Planning Commission was limited. He only relied on what Director Erickson had said about reviewing the Agreement and bringing it back to the Planning Commission before the City Council takes action on the MOA.

Director Erickson stated that the intent was to bring back the MOA for recommendation to the City Council. He would also come back with the science behind the technical reports for bringing them up to 2019 standards as opposed to the original recommendations.

Commissioner Suesser presented her proposed amendments to the Findings and Conditions as follows:

Last sentence of Finding #1 – remove the word “approximately”.

Conditions of Approval – Add Condition #29 stating, “The total MPD resort accessory use area for the combined building approved with this CUP is 14,021 square feet.

Commissioner Suesser clarified that Condition #24 specifies Resort Support Commercial area as 5803 square feet. She was proposing to add Condition #29 that states the total amount of the Resort Accessory Use area.

Director Erickson suggested tying Condition #29 to the plat stating, “The maximum size of the Resort Accessory Use area is as shown on the plat”. He understood Commissioner Suesser’s concern with respect to the accuracy between the conditions of approval, the findings of fact, and the plat. If she could find a way to tie it to the plat it would be better than changing the text. Commissioner Suesser remarked that she was not able to tie to the plat.

Mr. Butterworth agreed that it was confusing due to the Club unit. Resort Support Commercial and the Club unit were shown as one on the plat because they want to make sure the Condo Association could not own that piece. Commissioner Suesser clarified that she was not objecting to it. She just wanted the exact number to be clear.

Planner Whetstone noted that Commissioner Suesser had also asked a question regarding the residential and the difference from the previous approval to this application. To address the concern, Planner Whetstone revised Finding #21 to add, "The current CUP proposal represents a reduction in residential density and residential square footage by 11 units and 25,000 square feet". She had taken that language directly from the action letter for the residential unit. She was unsure whether the original CUP for the residential identified how much was amenity space for the residential units. However, they could say for a fact that the reduction was residential.

Planner Whetstone calculated the numbers and came up with 15,798 square feet of non-residential area. Mr. Butterworth noted that the plat identified all the areas and the total square footage of each. Mr. Burnett stated that they could refer to the plat as part of the CUP approval.

Commissioner Suesser referred to the last line of the table on page 20 of the Staff report, which identified "approximately" 14,021 square feet for Residential and Club Accessory area. Mr. Burnett suggested language stating, "Approximately 14,021 square feet as specified on the plat". He believed that would address the concern about using "approximately". Commissioner Suesser preferred to identify a specific number that the Commissioners would be approving. Planner Whetstone stated that she took the 14,021 square feet for Residential and Club Accessory Uses directly from the architectural plan. It would have been in addition to the 5803 square feet of Resort Support Commercial. Commissioner Suesser clarified that she was looking to separate the two and for both numbers to be clearly stated. Planner Whetstone was confident that the 14,021 square feet for Residential Club Accessory uses was correct, as referenced on the plat. She believed they already had a Finding for the 5803 square feet of Resort Support Commercial. She would also add the language regarding Residential into Finding #21.

Vice-Chair Phillips asked if the Commissioners were comfortable with the changes to the Findings and Conditions as discussed. There were no objections from the Commissioners or the applicants.

Vice-Chair Phillips opened the public hearing on the CUP and the plat.

Lynn Peyton stated that he was representing a development in Empire known as Empire Residences. He also has an interest in other property on Flagstaff Mountain. Mr. Peyton was present this evening to get some clarity on the process and understand what to expect moving forward. Mr. Peyton understood that the Planning Commission might approve the Plat this evening with a recommendation to the City Council. In terms of the MOA, he was unclear what that would mean if he were to bring forth an application on one of his properties. Mr. Peyton clarified that he had no specific comments on the Tower Residences. He only wanted someone to explain the process because it could have significant economic ramifications.

Vice-Chair Phillips informed Mr. Peyton that he could always talk to the Staff in the Planning Department when he has questions or needs clarification on any matter.

Vice-Chair Phillips closed the public hearing.

Director Erickson responded to the question regarding other properties inside the Development Agreement at Empire Pass, including Mr. Peyton's. He explained that the Memorandum of Agreement affects the Master Development Agreement. Once the agreement is signed and approved by the City Council, it should have no additional effect on other properties in Empire Pass because the Master Owners Association has taken certain responsibilities. Any additional properties would be members of that Master Association. If any additional parties have separate agreements, that would be independent from anyone else's property. Director Erickson summarized that the MOA affects the Master Agreement. However, this should not affect Mr. Peyton because there are no historic sites on the properties that Mr. Peyton referenced. The same applies to the Storied Development property because there are no historic sites on the property.

Director Erickson responded to some of the points in the letter from Sandra Morrison. He stated that the Memorandum of Agreement does not change the technical reports or the requirements inside the technical reports at this time. It changes the funding mechanism and it changes a certain level of responsibility for those properties within the Empire Pass Master Owners Association. Director Erickson believed there were other parties that have other responsibilities based on the land ownerships inside the conservation easements and inside the Development Agreement. He noted that they were not changing the relationship with the Judge Mining and Smelting Office until they conclude who owns it, who has the rights to change it, and in concert with the City and after public input, to determine whether it is the most expeditious use of the funds as opposed to a different site. Director Erickson remarked that the Development Agreement or Technical Report #6 does not make a distinction as to the level of restoration except on the Judge. The Judge Tunnel is on United Park land; not Empire Pass land. Director Erickson pointed out that some externalities needed to be resolved in the next six months as part of the Agreement. He pointed out that there was also the Naildrive Mine on Deer Valley land, and the Flagstaff Mine, which is not within the Development Agreement. The Daly West Tower is a separately owned parcel and not party to the Development Agreement.

Director Erickson explained that the MOA was structured such that funds inside the agreement could be used within Park City and not necessarily restricted to the development area in its current form. Provisions were made to do other things if they can get permission on someone else's land.

Commissioner Thimm asked if other parties are involved if there was a process to get them to fulfill the terms of the original development agreement. Director Erickson replied that stipulated agreements were being negotiated for one-time contributions for Little Belle back to the Museum. There was also a stipulated action on the part of Storied Development to compensate for re-roofing the Judge Mining and Smelting Building. Negotiations were ongoing with Deer Valley in terms of how they expend their conservation funds since they are responsible for all the open space not within the development area.

Commissioner Thimm asked if everyone who has responsibility had been identified. Director Erickson was not aware of the status of the Flagstaff Mine, which is outside of the development area. They had contacted all other potentially responsible parties.

Commissioner Suesser asked for clarification on Mr. Burnett's earlier comment about other parties becoming a part of the Master Association. Mr. Burnett clarified that he had not meant the Master Association because the Empire Association would not change. He was referring to other parties joining onto the Memorandum of Agreement to deal with components that are outside of the Empire Owners Association. Director Erickson stated that it would be possible to have a separate agreement with some of the parties if they did not want to blend funds with the Empire Pass Master Association. Some of the other parties are not signatories to the Development Agreement. Commissioner Suesser wanted to know how those parties would have responsibility. Director Erickson replied that those parties would stipulate to that responsibility and the City would have the authority to regulate. He used Deer Valley as an example to explain how it would work.

Commissioner Kenworthy understood that the Master Association and the Memorandum of Agreement would not pertain to Daly West. Daly West would be a separate agreement. Director Erickson replied that the Master Association, in conjunction with the City and other parties, could agree that the expenditure of money on the Daly West is appropriate after the Judge is stabilized. He pointed out that the Master Owners Association and the municipal contribution were not limited to only the conservation agreement areas. It is allowed to be transferred within the City, consistent with the City Oversight and Expenditure Policies.

Vice-Chair Phillips was confident that within the six-month timeframe the Agreements would all be worked out. Director Erickson stated that a benefit is that it could be changed annually.

Director Erickson remarked that the next question in Ms. Morrison's letter was the ten-year clause. Part of the discussion with the City Council will address the appropriate level of stabilization consistent with the technical reports on each site; and whether the ten years and $400,000 can be expended on the sites; or in the second year whether they will still need $400,000 in ten years or if a portion of the open space fee should go towards other concerns and activities inside the open space. That would be in coordination with Deer Valley spending the money on the remaining open space where they have liabilities.

Director Erickson explained that the intent was to have an off-ramp at the end of ten years. If they are done with the mine sites, they can expend fewer dollars for stabilization and choose to move some of the money to other activities that are required for the conservation easements. It also allows for a funding mechanism for additional funds going to the Summit Lands Conservancy who holds the easement. Summit Lands Conservancy is responsible for the annual audit consistent with the Conservation Agreement.

Regarding the concern of pitting open space against historic preservation, Director Erickson remarked that there is that potential. However, he did not believe it would happen because they are managed in conjunction with each other by the definition of protected open space and the conservation easement. Director Erickson pointed out that they wanted the ability to move money around for conservation if it becomes necessary.

Director Erickson thought the arguments would come down to moving beyond stabilization to restoration on any of the sites such as Daly West, the Judge, or Little Belle. The issue would be where the funding would come from and how to prioritize. He was proposing an annual report to the Planning Commission on the activities and how the money is expended.

Commissioner Sletten referred to Paragraph 6(a) of the Memorandum of Agreement and stated that he was having difficulty tracking the math; specifically, half of the annual amount required to establish the maintenance fund. He presumed it was on a net basis each year, subtracting the expenditures made, but he did not clearly understand how it would work.

Director Erickson stated that a portion of the open space and management fee is received on an annual basis and it is accounted for inside of the General Fund. The money is used for the expenditure and maintenance of the conservation agreement. Director Erickson explained that the Master Association would write a check and have a separate fund for this work of $20,000 annually. That $20,000 from the City would be withheld from the City's share of the open space and management agreement. The total would be $40,000 and that money would be expended in accordance with the terms of this Agreement. Commissioner Sletten wanted to know what would happen if there was a deficit in the second year caused by expenses. Director Erickson replied that the $40,000 the next year would make up the deficit. He did not anticipate the City spending in the negative.

Commissioner Sletten read from the second line of Paragraph 6(a), "The Association will contribute half of the annual amount required to establish a maintenance fund..." He asked how that half was defined. Planner Whetstone noted that he was referring to half of the $40,000. She explained that $20,000 comes from the Master Association and the other $20,000 comes from the City's portion.

Mr. Butterworth stated that the intent was to allow the Master Association to spend more than $40,000 in a given year, and go into debt doing so with a repayment. The money would be recouped in the future.

Commissioner Sletten referred to Paragraph 3(b), and the word "Director" which was capitalized but not defined. He assumed that referred to the Planning Director. Director Erickson replied that it is the Planning Director and he would make that clarification in the document.

Commissioner Hall asked if Director Erickson wanted to respond to the rest of Sandra Morrison's letter before she made her comments. Director Erickson would have another opportunity to comment on the MOA. He preferred to hear Commissioner Hall's comments first.

Commissioner Hall referred to Paragraph 3(a) of the MOA and noted that it does not specify where the money comes from. Director Erickson noted that the stipulated payment was specified in 3B. Commissioner Hall thought it should also be stipulated in 3A so there is no ambiguity.

Commissioner Hall referred to Exhibit 6 of the Technical Reports and asked if it could be attached to the MOA so it is easier to find. Planner Whetstone noted that there was a separate folder for Historic Preservation documents and Technical Reports 5 and 6 were pulled out. Commissioner Hall reiterated her request to have it attached to the MOA because it is important when the Planning Commission forwards their recommendation to the City Council.

Commissioner Hall noted that Ms. Morrison had questioned some of the numbers in her letter and she agreed with Ms. Morrison that the numbers were low for the amount of work required. She previously heard higher amounts. Director Erickson remarked that the discrepancies in the numbers were based on stabilization. The one-time stipulated payment was for the re-roof based on estimates. That number came from REDUS. Stabilization or restoration is another number. Whether or not the $40,000 was sufficient for the roof is a conversation they could have with the City Council.

Commissioner Hall remarked that holding money in escrow is always a good idea. Director Erickson explained that money was held in escrow for this fund so they could pay the bill. However, they would not want the rest of the money sitting in escrow because it should be with EMOA or with the other parties. Commissioner Hall requested that Director Erickson try to get a better number from the City Council before the Agreement is approved.

Commissioner Hall referred to Paragraph 6(s) and understood that the 1% transfer fee was not part of this agreement. Director Erickson explained that the money from the City is withholding a portion of the transfer fee that they have rights to in the Development Agreement. If EMOA chooses to use their portion of the open space and transit fund, that comes from their $20,000.

Commissioner Hall was concerned about reallocating money that was already designated for open space and transit management. Director Erickson noted that the number was done in conjunction with the City Budget Department. Since they were trying to catch up with the obligations of Technical Reports 5 and 6, they felt it was a reasonable contribution from the City on a ten-year basis in order to catch up on enforcement and moving historic properties forward according to the report.

Commissioner Hall referred to 6(e) and asked if waiving fees was standard. Director Erickson replied that it was consistent with the fee waiver policy for all public projects. He noted that fees and permits were waived for PCMR on California Comstock and Thaynes.

Commissioner Hall requested that they strike #14, no third party beneficiaries. Mr. Burnett stated that the concern is giving non-profits the same status as direct parties to an agreement, because their status could change over time. He suggested that she talk to City Attorney Harrington about that issue. Commissioner Hall thought it was an unnecessary clause. Mr. Burnett strongly disagreed. He has been in a number of lawsuits where people claim to be third party beneficiaries. Mr. Burnett noted that Ms. Morrison raised the issue in her letter but she was only referring to the Historical

Society. He thought the subject needed to be addressed; however, they could specify who would be privy to it.

Commissioner Hall thought the wording of 15(j) No Default, was confusing. She suggested rewording the language to say the fulfillment of the agreement rather than execution of the agreement. Mr. Burnett stated that the intent was to say that moving forward, they would find all the other parties substantially in compliance if they comply with the terms of this agreement.

Commissioner Kenworthy looked forward to seeing the report and prioritizing the restoration needs. It is winter and due to the heavy snowfall, he anticipated that it would take some time. Commissioner Kenworthy thought it was unfortunate that this was left in default for two decades. He thanked Mr. Butterworth and Mr. Wagner for their patience because he was certain they were blindsided. He respected Mr. Peyton's concern and stated that being transparent is critical. He understood the economic aspects of a delayed or unknown process and they would be respectful of that. Commissioner Kenworthy thanked Mr. Ogilvy for coming to the table and for working with them over the last couple of months.

Commissioner Sletten recognized that everyone, particularly REDUS, inherited this mess and he appreciated their willingness to clear it up.

MOTION: Commissioner Thimm moved to APPROVE the Conditional Use Permit for a multi-unit residential building and the expansion of the private Empire Club building at 8680 Empire Club Drive, based on the Findings of Fact, Conclusions of Law, and Conditions of Approval as amended per the discussion this evening. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Commissioner Thimm moved to forward a POSITIVE recommendation to the City Council for the 8680 Empire Club Residences at Tower Condominium Plat, according to the Findings of Fact, Conclusions of Law, and Conditions of Approval as outlined in the draft ordinance. Commissioner Sletten seconded the motion.

VOTE: The motion passed unanimously.

Jody Burnett stated that this would be his last meeting with the Planning Commission. Vice-Chair Phillips thanked Mr. Burnett for all his help over the past few months; as well as the hours he had spent with them on Treasure Hill.

Findings of Fact – Residences at the Tower CUP

1. The Residences at the Tower Conditional Use Permit (CUP) includes 14 private market rate multi-family residential units totaling 42,453 sf, utilizing 21.227 UE, as well as 1 ADA unit and 1 deed restricted affordable unit (EHU), a police sub-station, a 9,200 sf expansion of the private Talisker Club and underground parking.
2. The property is located at 8680 Empire Club Drive.
3. The CUP is proposed on Lot 9 of the First Amended Village at Empire Pass Phase I subdivision within Pod A of the Village at Empire Pass Master Planned Development (VEP MPD).
4. Lot 9 is located in the RD-MPD zoning district and contains 1.53 acres.
5. Lot 9 is currently partially developed with the private Talisker Club that includes a kitchen, dining, lounge and other indoor and outdoor amenities for members.
6. Access to the property is from Village Way and Empire Club Drive, which are both private streets.
7. The market rate multi-family residential units range in size from 1,806 sf to 4,229 sf with an average unit size of 3,032 sf. The 737 sf ADA unit is required to be platted as common area. The 737 sf EHU is also proposed to be platted as common area.
8. A 509 sf police sub-station is proposed on the lower level as a requirement of the Emergency Response Plan Exhibit #7 of the Flagstaff Development Agreement. The police sub-station will be delivered to the City as a "white box" with two parking spaces.
9. The property is subject to the Flagstaff Mountain Annexation and Development Agreement (Amended Agreement) approved by City Council per Resolution No. 99-30 on June 24, 1999 and amended on March 2, 2007, as well as associated Technical Reports and the Village at Empire Pass MPD.
10. The Amended Agreement is the equivalent of a Large-Scale Master Plan and sets forth maximum project densities, location of densities, and developer-offered amenities for the annexation area.
11. The Amended Agreement specifies that a total of 87 acres, within three development pods (A, B1 and B2), of the 1,750 acres of annexation property may be developed for the Mountain Village. The Mountain Village is further constrained to a maximum density of 785 unit equivalents (UE) configured in no more than 550 dwelling units as multi-family, hotel, or PUD units, provided that the number of PUD units (such as Belles, Paintbrush, Nakoma and Moon Shadow) does not exceed 60. PUD units are included in the totals for multi-family units.
12. To date (according to internal tabulations), 509 multi-family units (757.28 UE) (including 60 as PUD style units and the remaining as townhouse units and multi-family units within Lodge buildings) and 16 single family units have been approved, platted and/or built within Pods A, B1 and B2. This number includes the 70 units noted in the plat notes for the B2 East Subdivision, the Empire Residences CUP units currently

under construction as Building 3, and the Moon Shadow Condominiums for 8 PUD style units pending plat recordation. This number also includes all Larkspur Townhome units, including Larkspur Townhomes 6 (3 units), which condominium plat is currently under review.

13. Constructed Lodge buildings include Shooting Star, One Empire Pass, Silver Strike, Flagstaff, Arrow Leaf A and B, Grand Lodge and Ironwood. Lodge buildings still to be approved within Pod A are: Building 1- Residences at the Tower (subject property) and Building 4. Empire Residences (Lodge Building 3) are under construction.

14. There is sufficient density remaining within Amended Agreement and VEP MPD for the proposed 14 multi-family units (21.227 UE).

15. Amended Agreement requires a total of 118.9 AUE (Affordable Unit Equivalents) where 1 AUE is 800 sf. A total of 94.175 off-mountain AUE and 24.725 on-mountain AUE are required. Off-mountain housing has been satisfied. On-mountain housing is partially complete with 16.675 AUE built and 8.05 AUE remaining. These remaining AUE are assigned to Lodge Buildings 1, 3, 4 and B2 East.

16. Lodge Building 1 was assigned 0.75 AUE (600 sf) per the Developer at time of sale.

17. The proposed affordable unit consists of 737 sf (0.921 AUE) (not including dedicated storage areas located separate from the unit) platted as common area and shall be deed restricted per requirements of the Housing Resolution prior to plat recordation.

18. On July 28, 2004, the Planning Commission approved a Master Planned Development for the Village at Empire Pass (VEP MPD) (Pods A and B1) within the Flagstaff Mountain Annexation and Development area for Lodge buildings grouped around the Silver Strike lift and ski runs, various townhouses making up a second tier of units, with PUD style detached units and single family lots on the perimeter. A common amenity building, known as the Tower Club, was central to the VEP MPD. A common mail area, indoor and outdoor recreation facilities, pedestrian connections and transportation pick-up/drop-off area were included. The VEP MPD also approved heights and Volumetrics for the Lodge buildings.

19. On September 30, 2004, the City Council approved the Village at Empire Pass Phase 1 Subdivision that platted the east side lots of the Village at Empire Pass.

20. On April 13, 2005, the Planning Commission approved the Tower Club Phase I CUP for 8,880 square feet consisting of 2,264 sf of MPD Resort Support Commercial (private dining, kitchen, small convenience store), and 6,616 sf of residential and resort accessory uses (ski lockers, recreation amenities, meeting room, kids club, circulation, storage, mechanical, as well as outdoor amenities such as pool, hot tubs, etc.). The Club was constructed in 2005 and 2006.

21. On February 13, 2008, the Planning Commission approved the Tower Club Phase II CUP for residential units on Lot 9. The approval for 25 units totaling 67,625 sf (33.81 UE) and one (1) ADA unit was granted an extension to July 1, 2010, by the Planning Commission on March 11, 2009. A building permit for Phase II was not issued and the

CUP expired. This current CUP proposal represents a reduction in residential density and size by 11 units and 25,000 sf (12.58 UE) from the 2008 approval.
22. On January 6, 2011, the City Council approved an amendment to the VEP Phase 1 Subdivision amending Lot 9 to address access, parking, and trail easements. The amended plat was recorded on January 4, 2012.
23. On December 14, 2016, the Planning Commission approved an amendment to the Tower Club Phase I CUP to allow a 1,115 sf expansion of the private dining area, as well as expanded outdoor patio area, 1,000 sf of expanded basement area for accessory uses. The CUP expansion increased the MPD Resort Support Commercial on Lot 9 to 3,379 sf. Construction of the expansion was completed in 2018. The building currently consists of 10,995 sf per the architectural drawings.
24. On October 9, 2018, the Planning Department received a complete application for a Condominium plat and a Conditional Use Permit for a fourteen (14) multi-family unit residential building to be located on Lot 9 of the First Amended Village at Empire Pass Phase One Subdivision.
25. The property is subject to subdivision plat notes that require compliance with the Amended Flagstaff Annexation and Development Agreement, approval of a Conditional Use Permit for each Lodge building prior to issuance of a building permit, a declaration of condominium and a record of survey plat prior to individual sale of units, membership in the Empire Pass Master HOA, a 20' snow storage easement along the street frontages, water efficient landscaping, and various utility and maintenance provisions.
26. The Amended Agreement allows a maximum of 75,000 sf of MPD Resort Support Commercial uses. Lot 9 currently is approved, with the Amended Tower Club CUP for 3,379 sf (kitchen, dining, small store) of MPD Resort Support Commercial Uses. Montage Resort was approved for 63,059 sf of MPD Resort Support Commercial and Grand Lodge for 1,275 sf.
27. Total MPD Resort Support Commercial in this building with this CUP expansion is 5,803 sf, adding 2,424 sf of Resort Support Commercial uses.
28. There is sufficient MPD Resort Support Commercial remaining for the proposed private club expansion and 4,863 sf will remain if this project is approved. This space is identified on the plat as part of the Club Unit. A table of the Resort Support Commercial space will be included on the plat.
29. The Emergency Response Plan requires a police sub-state to be dedicated within the Empire Club building in Pod A. The Plan calls for a "facility with 3 office spaces, approximately 12' by 12' each, with a combined square footage of not less than 500 sf, plus two reasonably proximate parking spaces". The unit is to be made available to Park City as an empty "white box" for no cost, and not subject to HOA dues or other assessments, as soon as occupancy permits are ready to be issued for the rest of the building and residential units. This space will be identified as a Commercial Unit specifically for the police substation that can be transferred to the City.

30. Guest amenity areas (exercise and recreation areas, locker rooms, lobby and reception area, lounge/après ski, restrooms, etc.) are proposed on the first and second levels. Common accessory uses do not require use of UEs.
31. The Transit and Parking Management Plan approved with the VEP MPD requires a 25% reduction in parking from what would normally be required by the LMC. Based on unit sizes, twenty-nine (29) spaces would be required for the 14 units, affordable unit, and ADA unit. The 25% reduction rounds up to 22 spaces. The underground parking structure has 22 parking spaces. Two spaces are provided along Village Way for the police sub-station and 1 space is provided for short term pick-up and drop-off.
32. The maximum Building Height in the RD District is 28 feet (33 feet with a pitched roof). A height exception was approved with the Village at Empire Pass Master Plan Development. Specific volumetric diagrams were approved for each Building. For Building 1, 20% of the building (north side) was permitted to reach 74' above existing grade, 55% of the building (central) to reach 86' above existing grade, and 25% of the building (south side) to reach 74' above existing grade.
33. The proposed building does not exceed 86' in height with 20% (north) at or less than 74', and 55% at or less than 86', and 25% (south) is less than 74'. The building is consistent with the approved VEP MPD building heights and Volumetrics. All building heights will be verified at time of building permit review.
34. The building contains 6 levels of residential units within the new portion to be constructed east of the existing Club building. Four (4) levels of residential units are visible on the south elevation, with 6 levels are visible on the east and north elevations. The west elevation of the residential building is broken up by the 2 story club building and tower element. The north elevation is broken up with a one story element that ties the building to the open plaza and recreation uses of the club building. The maximum building height is located in the central section stepped back from eastern façade. There are visually one, two, four and six stories, in addition to the parking level, as one views the building from surrounding viewpoints. Building articulation and massing are consistent with previously approved Lodge buildings and the VE MPD volumetric.
35. The building complies with RD District zone setbacks maintaining a 20' front setback (25' to the garage door), 12' side setbacks and 15' rear setbacks. LMC exceptions to the setbacks are allowed as specified in LMC Section 15-2.13-3.
36. A Master Homeowners Association document and Maintenance Agreement for the Mountain Village were reviewed and approved by the City prior to issuance of initial building permits within the Mountain Village. This property is also subject to these documents, in addition to any declaration of condominium and CCRs recorded with the condominium plat.
37. Excavated soil will remain within the Flagstaff Annexation area unless an exception is approved by the City as allowed in the Amended Construction Mitigation Plan (Technical Report #15). A final Construction Mitigation Plan will be submitted with the building permit application to be approved by the Chief Building Official.

38. The property is part of a common development that exceeds one acre and thus has MS4 requirements to meet.
39. The Tower Club Phase I included a store as stated in the CUP approval condition, “The store will include a refrigerated case for milk, juice and sodas, and the shelves will have snacks commonly found in a convenience store”. A small store is included within the Club building (at the ski valet); however, according to the applicant, it has not seen much success, even when opened to the general public as per a condition of Tower Club Phase II. The store remains open in winter months, but merchandise sold is primarily ski accessories (hats, goggles, gloves, lip balm, sun screen etc.), kid’s camp provisions, snacks and drinks, along with other soft goods. The previous CUP approval included a condition that the store be open to the public.

Conclusions of Law – Residences at the Tower CUP

1. The CUP, as conditioned, is consistent with the Village at Empire Pass Master Planned Development and Flagstaff Mountain Resort Master Planned Development and Technical Reports, and the Park City Land Management Code.
2. The proposed use, as conditioned, is compatible with the surrounding structures in use, scale, mass and circulation.
3. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval – Residences at the Tower CUP

1. All standard conditions of approval apply to this Conditional Use Permit.
2. This Conditional Use Permit shall expire one year from the date of Planning Commission approval, if a building permit has not been issued prior to this date, unless an extension is requested in writing prior to expiration date and the extension is granted by the Planning Director.
3. The final building plans and construction details submitted with the building permit application shall substantially comply with the plans reviewed by the Planning Commission on December 12th, 2018, January 23rd and February 13th, 2019.
4. Final architectural design approval from the Empire Pass Design Review Board is a precedent to building permit issuance.
5. Materials and color samples and final design details shall be approved by staff prior to building permit issuance and shall be in substantial compliance with the elevations reviewed by the Planning Commission on December 12, 2018, January 23, 2019, and February 13, 2019. Plans reviewed by the Planning Commission reflect revisions to replace glass railings with metal railings similar to existing buildings, additional stonework and roof elements added to the north elevation to break up the vertical

plane, additional mullions added to the large east facing windows, and additional stone and architectural elements on the east façade.
6. All exterior lighting shall be shielded and down directed in compliance with the LMC and the Flagstaff Mountain Resort Design Guidelines. Final compliance with the City's Lighting Ordinance will be verified at the time of building permit plan review and prior to issuance of a certificate of occupancy.
7. Exterior signs require an approved sign permit prior to installation.
8. All exterior mechanical equipment shall be screened from public view with landscaping and/or fencing/grating materials. Exposed wall and roof top vents and protruding pipes and mechanical equipment shall be painted to match the adjacent wall or roof to minimize impacts on public view. Screening for noise reduction is required.
9. All utility facilities must be located on the property, unless specific easements have been provided on the recorded plat. A plan must be provided at the time of the building permit application showing all utility locations, including dry utilities. The applicant shall provide verification that the utility plan is viable and the utility boxes can be screened with landscaping and/or fencing.
10. An approved and recorded condominium plat is required prior to sale of individual units.
11. Final utility and grading plans, including storm water drainage plans, must be approved by the City Engineer prior to Building Permit issuance.
12. Affordable housing provided with this Conditional Use Permit shall comply with all requirements and stipulations of the Flagstaff Development Agreement prior to issuance of a certificate of occupancy for the building. The affordable unit (EHU) shall be indicated on the final condominium plat prior to recordation of such plat and shall be completed prior to issuance of a certificate of occupancy for the building.
13. A deed restriction for the EHU unit, acceptable to the City, shall be recorded with or prior to plat recordation. The deed restriction shall outline and resolve any issues or concerns regarding maintaining affordability of the unit.
14. The CCRs shall limit the HOA dues related to the deed restricted employee housing unit (EHU) in order to ensure the Unit remains affordable. The CCRs shall reflect a lower par-value to reflect the reduced cost of the unit (or exempt the unit from HOA fees) to ensure that the unit doesn't lose its affordability due to HOA fees.
15. The EHU and ADA units shall be available for occupancy at the same time as the entire building and when the market rate units are issued a certificate of occupancy.
16. Conditions of approval of the Village at Empire Pass MPD shall continue to apply.
17. Conditions of approval of the Flagstaff Annexation and Development Agreement and Technical Reports continue to apply, including the restrictions on solid wood burning fireplaces, removal of excavated materials, construction of pedestrian connections to the transit hub within the Village, reduced parking, provision of required ADA and affordable housing units, architectural design and building volumetric, and limits on residential density and Resort Support Commercial uses.

18. A Final Construction Mitigation Plan (CMP) shall be submitted for approval by the Planning, Building, and Engineering Departments prior to issuance of a building permit. The CMP shall indicate where and how excavated soils will be hauled and/or stored, hours of construction, truck routes, phasing and staging of construction, road closures, parking, lighting, and other items required by the Building Department and consistent with the Amended CMP Technical report.
19. Interior fire sprinklers are required for new construction and shall meet requirements of the Chief Building Official at the time of review of the building permit.
20. The property is located within a water source protection zone. All sewer construction must comply with State of Utah drinking water regulations.
21. All requirements and conditions of the Snyderville Basin Water Reclamation District shall be met prior to building permit issuance.
22. All requirements and conditions of the Park City Fire District regarding emergency egress, access, fire hydrants, etc. shall be met prior to building permit issuance.
23. The deed restricted unit shall be a minimum of 737 sf (0.921 AUE) as shown on the proposed condominium plat. One AUE is equivalent to 800 sf according to the Development Agreement.
24. The total MPD Resort Support Commercial area approved for this building, including the 2,424 sf approved with this CUP, is 5,803 sf and includes the kitchen, dining, lounge, store and spa. The store shall be open to the public, as previously conditioned.
25. This development is part of a common development that is greater than one acre. This development shall meet the MS4 storm water requirements. Prior to building permit issuance, the applicant shall verify that capacity exists in the existing detention pond utilized by Pod A and shall demonstrate that sufficient run-off will remain on site to support existing tree stands within the Pod.
26. Development of this property is subject to the conditions of approval, plat notes, easements and restrictions of the recorded First Amended Village at Empire Pass Phase 1 Subdivision plat.
27. A note shall be included on the condominium plat prior to recordation stating that the police substation commercial unit is restricted as a police substation. In the event that the police substation is vacated by the City, the HOA may apply to amend the condominium plat and the CUP for common or limited area storage, mechanical or other similar uses. No commercial, non-police office or residential uses are allowed unless additional density/UEs are acquired and the addition of such density and change of use is approved by plat and CUP amendment.
28. Pool and outdoor amenity hours are limited to 7AM to 10PM and compliance with the Park City noise ordinance is required. A sign shall be provided at the pool and outdoor recreation and amenity areas stating these hours of use and referencing the noise ordinance.

29. Total MPD Resort Support Commercial area is 5,803 sf (see condition #24 also) and total residential and club accessory uses area is 14,021 sf, as indicated on the plat.

Findings of Fact – Residences at the Tower Condominium Plat

1. Residences at the Tower condominium plat identifies 14 private market rate multifamily residential units totaling 42,453 sf, utilizing 21.227 UE, as well as 1 ADA unit and 1 deed restricted affordable unit, a police substation and the private Talisker Club located on Lot 9 of the First Amended Village at Empire Pass Phase I subdivision.
2. Lot 9 is located in the RD-MPD zoning district and contains 1.53 acres and is addressed as 8680 Empire Club Drive.
3. Access to the property is from Village Way and Empire Club Drive, which are both private streets.
4. Lot 9 is currently partially developed with the private Talisker Club that includes dining and other indoor and outdoor amenities for members.
5. The market rate multi-family residential units range in size from 1,806 sf to 4,229 sf with an average unit size of approximately 3,032 sf. The 737 sf ADA unit is required to be identified as common area. The 737 sf EHU is also platted as common area.
6. A 509 sf police sub-station, platted as commercial area, is proposed on the lower level as a requirement of the Emergency Response Plan Exhibit #7 of the Flagstaff Development Agreement.
7. The property is subject to the Flagstaff Mountain Annexation and Development Agreement approved by City Council per Resolution No. 99-30 on June 24, 1999 and amended on March 2, 2007, as well as associated Technical Reports.
8. The Amended Agreement is the equivalent of a Large-Scale Master Plan and sets forth maximum project densities, location of densities, and developer-offered amenities for the annexation area.
9. The Amended Agreement specifies that a total of 87 acres, within three development pods (A, B1 and B2), of the 1,750 acres of annexation property may be developed for the Mountain Village. The Mountain Village is further constrained to a maximum density of 785 unit equivalents (UE) configured in no more than 550 dwelling units as multi-family, hotel, or PUD units, provided the number of PUD units does not exceed 60, and PUD units are included in the totals for multi-family units.
10. To date approximately 509 multi-family units (757.28 UE) (of which 60 are PUD style units) and 16 single family units have been approved, platted and/or built within Pods A, B1 and B2. This number includes the 70 units noted in the plat notes for the B2 East subdivision and also includes Empire Residence CUP units currently under construction as Building 3 and Moon Shadow Condominiums for 8 PUD units pending plat recordation). This number also includes all of the Larkspur Townhomes, including Larkspur Townhomes 6 which condominium plat is currently under review.

11.Constructed lodge style buildings include Shooting Star, One Empire Pass, Silver Strike, Flagstaff, Arrow Leaf A and B, Grand Lodge and Ironwood. Lodge buildings still to be approved within Pod A are: Building 1- Residences at the Tower (subject property) and Building 4. The Empire Residences (Lodge Building 3) are currently under construction.
12.There is sufficient density remaining within Amended Agreement and VEP MPD for the proposed 14 multi-family units (21.227 UE).
13.Amended Agreement requires a total of 118.9 AUE (Affordable Unit Equivalents) where 1 AUE is 800 sf. A total of 94.175 off-mountain AUE and 24.725 on-mountain AUE are required. Off-mountain housing has been satisfied. On-mountain housing is partially complete with 16.675 AUE built and 8.05 AUE remaining. These remaining AUE are assigned to Buildings 1, 3, 4 and B2 East.
14.Lodge Building 1 was assigned 0.75 AUE (600 sf) per the Developer at time of sale.
15.The proposed affordable unit consists of 737 sf (0.921 AUE) (not including dedicated storage areas located separate from the unit) platted as common area and shall be deed restricted per requirements of the Housing Resolution prior to plat recordation.
16.On July 28, 2004, the Planning Commission approved a Master Planned Development for the Village at Empire Pass (VEP MPD) (Pods A and B1) within the Flagstaff Mountain Annexation and Development area for Lodge Buildings grouped around the Silver Strike lift and ski runs, various townhouses making up a second tier of units, with PUD style detached units and single family lots on the perimeter. A common amenity building, known as the Tower Club, was central to the VEP MPD. A common mail area, indoor and outdoor recreation facilities, pedestrian connections and transportation pick-up/drop-off area were included. The VEP MPD also approved heights and Volumetrics for the Lodge buildings.
17.On September 30, 2004, the City Council approved the Village at Empire Pass Phase 1 Subdivision that platted the east side lots of the Village at Empire Pass.
18.On April 13, 2005, the Planning Commission approved the Tower Club Phase I CUP for approximately 8,880 square feet consisting of 2,264 sf of MPD Resort Support Commercial (private dining, kitchen, small convenience store), and 6,616 sf of residential and resort accessory uses (ski lockers, recreation amenities, meeting room, kids club, circulation, storage, mechanical, as well as outdoor amenities such as pool, hot tubs, etc.). The Club was constructed in 2005 and 2006.
19.On February 13, 2008, the Planning Commission approved the Tower Club Phase II CUP for residential units on Lot 9. The approval for 25 units totaling 67,625 sf (33.81 UE) and one (1) ADA unit was granted an extension to July 1, 2010, by the Planning Commission on March 11, 2009. A building permit for Phase II was not issued and the CUP expired. This current CUP proposal represents a reduction in density and size by 11 units and 25,000 sf (12.58 UE) from the 2008 approval.
20.On January 6, 2011, the City Council approved an amendment to the VEP Phase 1

Subdivision amending Lot 9 to address access, parking, and trail easements. The amended plat was recorded on January 4, 2012.

21. On December 14, 2016, the Planning Commission approved an amendment to the Tower Club Phase I CUP to allow a 1,115 sf expansion of the private dining area, as well as expanded outdoor patio area, 1,000 sf of expanded basement area for accessory uses. The CUP expansion increased the MPD Resort Support Commercial on Lot 9 to 3,379 sf. Construction of the expansion was completed in 2018. The building currently consists of approximately 10,995 sf.
22. On October 9, 2018, the Planning Department received a complete application for a Condominium plat and a Conditional Use Permit for a fourteen (14) multi-family unit residential building to be located on Lot 9 of the First Amended Village at Empire Pass Phase One Subdivision.
23. The property is subject to subdivision plat notes that require compliance with the Amended Flagstaff Annexation and Development Agreement, approval of a Conditional Use Permit for each lodge building prior to issuance of a building permit, a declaration of condominium and a record of survey plat prior to individual sale of units, membership in the Empire Pass Master HOA, a 20’ snow storage easement along the street frontages, water efficient landscaping, and various utility and maintenance provisions.
24. The proposed condominium plat memorializes the density, size and configuration of units to be construction in one phase and identifies areas of private, common and limited common ownership, and private club area.
25. The Amended Agreement allows a maximum of 75,000 sf of MPD Resort Support Commercial uses. Lot 9 currently is approved, with the Amended Tower Club CUP for 3,379 sf (kitchen, dining, small store) of MPD Resort Support Commercial Uses. Montage Resort was approved for 63,059 sf of MPD Resort Support Commercial and Grand Lodge was approved with 1,275 sf.
26. Total utilized MPD Resort Support Commercial Uses for this building, including this CUP expansion, is 5,803 sf (adding approximately 2,424 sf of Resort Support Commercial uses for Spa, addition to kitchen, and lounge).
27. There is sufficient MPD Resort Support Commercial remaining for the proposed private club expansion and approximately 4,863 sf will remain if this project is approved. This space is identified on the plat as part of the Club Unit with additional lines and labels calling out the specific square feet of these areas. A table of the Resort Support Commercial space shall also be included on the plat.
28. The Emergency Response Plan requires a police sub-station to be dedicated within the Empire Club building in Pod A. The Plan calls for a facility with 3 office spaces, approximately 12’ by 12’ each, with a combined square footage of not less than 500 sf, plus two reasonably proximate parking spaces. The unit is to be made available to Park City as an empty “white box” for no cost, and not subject to HOA dues or other assessments, as soon as occupancy permits are ready to be issued for the

rest of the building and residential units. This space will be identified as a Commercial Unit specifically for the police substation that can be transferred to the City.
29.Guest amenity areas (exercise and recreation areas, locker rooms, lobby and reception area, lounge/après ski, restrooms, etc.) are proposed on the first and second levels. Common residential accessory uses do not require use of UEs.
30.Based on unit sizes, a minimum of 22 parking spaces are required when taking into consideration the 25% parking reduction (from the 29 required spaces) per the Flagstaff Development Agreement and MPD.
31.An underground parking structure provides 22 parking spaces, including 1 ADA spaces, as well as limited common storage areas for each unit. Two surface spaces are provided at the street for the police sub-station. One surface space will be provided for short term pick-up and drop-off.
32.Each unit has one assigned limited common parking space and the remaining spaces are common.
33.The plat is consistent with the approved Village at Empire Pass Master Planned Development and the Residences at the Tower Conditional Use Permit in terms of density, units, UE, building height, uses, setbacks, and parking.
34.The MPD requires Construction Mitigation Plans to be submitted with each CUP and building permit addressing all requirements of the Amended Agreement and Technical Reports.
35.A Master Homeowners Association document and Maintenance Agreement for the Mountain Village were reviewed and approved by the City prior to issuance of the initial building permits within the Mountain Village. This property is also subject to these documents, in addition to any declaration of condominium and CCRs recorded with the condominium plat.
36.The condominium plat allows for the sale of individual units.

<u>Conclusions of Law – Residences at the Tower Condominium Plat</u>

1. There is good cause for this condominium plat.
2. The condominium plat is consistent with the 2007 Amended Flagstaff Annexation and Development Agreement, the Village at Empire Pass MPD, the First Amended Village at Empire Pass Phase 1 Subdivision, the Park City Land Management Code and applicable State laws regarding condominium plats.
3. Neither the public nor any person will be materially injured by the proposed condominium plat.
4. Approval of the condominium plat, subject to the conditions stated below, does not adversely affect the health, safety and welfare of the citizens of Park City.

<u>Conditions of Approval – Residences at the Tower Condominium Plat</u>

1. The City Attorney and City Engineer will review and approve the final form and content of the condominium plat for compliance with State law, the Land Management Code, 2007 amended Flagstaff Development Agreement, Village at Empire Pass MPD and these conditions of approval, prior to recordation of the plat.
2. The applicant will record the condominium plat at Summit County within one year from the date of City Council approval. If recordation has not occurred within one year's time, this approval for the plat will be void, unless a request for an extension is submitted in writing and approved by the City Council.
3. City Engineer and SBWRD approval of the final infrastructure and utility plans is a condition precedent to plat recordation.
4. Development within Empire Pass is governed by that certain Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel, and Iron Mountain entered into by and between United Park City Mines Company, Deer Valley Resort Company, and Park City Municipal Corporation, a third class city of the State of Utah, and recorded on March 2, 2007, as Entry No. 806100 in Book 1850 at Page 1897 in the records of the Summit County Recorder, as amended or supplemented from time to time ("Development Agreement"). The Development Agreement required the Developer, as such term is defined in the Development Agreement, to develop a Historic Preservation Plan, which said 127-page Historic Preservation Plan was prepared by SWCA, Inc., on August 2000 and is entitled, Historic Preservation Plan for Flagstaff Mountain Association, Park City, Summit County, Utah, as amended or supplemented from time to time including by that certain Historic Preservation Plan, Exhibit 6 dated May 2001 (and subsequently Revised and Approved December 2001)(collectively, the "Historic Preservation Plan"). The Historic Preservation Plan, Exhibit 6 dated May 2001 (and subsequently Revised and Approved December 2001)("Exhibit 6") identified historic preservation work needed at 21 historic mining sites within the Flagstaff Mountain Annexation Boundary and specified that the master homeowner association was responsible for maintaining any site that was not part of an ongoing operation.
5. The Agreement between the Empire Master Owner's Association and Park City attached at Exhibit __ ("Agreement") to set forth a plan for the Association to address the Maintenance, as defined herein, needs of certain historic mining sites thereby achieving substantial compliance with the Historic Preservation Plan for the time periods set forth herein. The Agreement shall be executed in full and ratified by the City Council prior to recordation of the Twisted Road Subdivision or other REDUS plat, whichever comes first.
6. Conditions of approval of the Village at Empire Pass Master Planned Development (MPD), First Amended Village at Empire Pass Phase 1 Subdivision, and the Residences at the Tower Conditional Use Permit (CUP) apply to this plat.

7. All applicable required and recorded utility, access, snow storage, trails, etc. easements shall be indicated on this condominium plat prior to recordation and building permit issuance.
8. The plat shall note that public safety access and public utility easements are hereby dedicated for all private streets and that that the private streets shall be owned, operated, maintained and repaired by the Master Association for the use and benefit of the owners of property in Empire Pass at Deer Valley in accordance with the Master Declaration.
9. The plat shall note that a Construction Mitigation Plan, including truck routing, is a submittal requirement of the building permit application.
10.The deed restricted employee housing unit (EHU) shall be a minimum of 737 sf (0.921 AUE), exclusive of additional storage area to be dedicated to this unit. One AUE is equivalent to 800 sf according to the 2007 Development Agreement.
11.The EHU and ADA units shall be platted as common area.
12.A deed restriction for the EHU unit, acceptable to the City, shall be recorded with or prior to plat recordation. The deed restriction shall outline and resolve any issues or concerns regarding maintaining affordability of the unit. The plat shall note that the EHU is subject to a deed restriction. The EHU and ADA units shall be available for occupancy at the same time as the entire building and when the market rate units are issued a certificate of occupancy.
13.The CCRs shall limit the HOA dues related to the deed restricted employee housing unit (EHU) in order to ensure the Unit remains affordable. The CCRs shall reflect a lower par-value to reflect the reduced cost of the unit (or exempt the unit from HOA fees) to ensure that the unit doesn’t lose its affordability due to HOA fees.
14.The CCRs shall be submitted with the condominium plat for review and approval by the City prior to final condominium plat recordation.
15.Conditions related to the police sub-station unit shall be described in the CCRs, and/or by separate agreement with the City, prior to recordation, consistent with language in the Emergency Response Plan of the Amended Flagstaff Agreement.
16.The plat shall note that fire sprinklers are required for new construction on the Lot per the Chief Building Official at the time of review of building permits and all requirements for emergency access according to the Park City Fire District and Park City Building Department shall be addressed prior to building permit issuance.
17.The plat shall note the number and square footages of all residential units and shall indicate the total square footage and Unit Equivalents of the 14 market rate units.
18.The plat shall note the Resort Support Commercial square footage and a table of the Resort Support Commercial space shall be included on the plat.
19.The CC&Rs shall provide notice and process for the tracking and collection of the Real Estate Transfer Fee as required and defined by the Flagstaff Mountain Development Agreement, as amended.
20.A plat note shall restrict the Resort Support Commercial areas and associated Club

accessory areas as a Private Club for members and shall not be sold or used as a commercial or retail establishment for the public, with the exception of the store area.

21.A plat note shall restrict the police substation commercial unit as a police substation. In the event that the police substation is vacated by the City, the HOA may apply to amend this plat and the CUP for common or limited area storage, mechanical or other similar uses. No commercial, office or residential use is allowed unless additional density/UEs are acquired and the addition of such is approved by plat and CUP amendment.

The Park City Planning Commission Meeting adjourned at 7:00 p.m.

Approved by Planning Commission: ____