

## **Type Three Special Event License and City Services Agreement**

This Type Three Special Event License and City Services Agreement is entered into as of December 19, 2016 between Park City Municipal Corporation, a political subdivision of the State of Utah ("Park City" or "City") and Kimball Art Center, a Utah nonprofit corporation ("KAC").

### **Recitals**

WHEREAS, KAC has staged the Park City Kimball Arts Festival ("Arts Festival") in Park City under the regulation and authority of annual Master Event Licenses issued by Park City;

WHEREAS, Park City and KAC wish to enter into a long term contract establishing Park City Main Street as the Festival headquarters and to maximize planning efficiencies, pool resources and improve event management to ensure the continued success of the event with minimal impacts to the residents of the City;

WHEREAS, KAC, a non-profit entity, desires to use certain facilities owned or controlled by Park City and to obtain certain municipal services, fee waivers, and other nonmonetary assistance from Park City and others as appropriate in connection with the Arts Festival, all under the terms hereinafter provided;

WHEREAS, Park City desires to contract with KAC to implement additional closures of Main Street, perform marketing and event management services of the Arts Festival as specified pursuant to the terms herein;

WHEREAS, Park City is authorized by Section 10-7-85 of the Utah Code Annotated to provide for and appropriate funds and services for the support of the arts for the purpose of enriching the lives of its residents;

WHEREAS, pursuant to Sections 10-8-2(1) and 10-2-84 of the Utah Code Annotated, the City Council hereby finds that the provision of City funds, property and services is for a corporate purpose consistent with the Park City General Plan, particularly the Community Economic Element, and provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the city; and

WHEREAS, Park City reviewed the direct economic benefits of the Arts Festival to Park City, and the Summary of Revenue Impacts to Park City is incorporated herein by reference. The City Council also finds that, in addition to the services contracted for herein, the Arts Festival has numerous additional indirect and intangible benefits which create an additional overall positive economic, artistic and quality of life impact on the City, its residents and its visitors, and nothing herein shall be determined to be a gift or charitable contribution by the City.

## Agreement

In consideration of the recitals listed above, which are incorporated herein, and of the terms and mutual covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

### **A. PRINCIPLES AND RESPONSIBILITIES.**

#### **1. General Principles.**

**1.1 Mutual Cooperation and Flexibility.** Park City and KAC mutually acknowledge and agree to proceed through all stages of planning and operations for the Use Areas identified in Exhibit A of this Agreement and each Arts Festival in the spirit of mutual cooperation and flexibility, recognizing that circumstances may change between the date of execution of this Agreement and the commencement of each annual Arts Festival. Park City and KAC agree that the purpose for cooperation and flexibility is the successful operation of the Arts Festival. Both Parties understand that plans may change each year, subject to final approval by the City Council.

**1.2 Supplemental Plans.** This Agreement outlines the terms for the respective duties and obligations of Park City and KAC with respect to the Use Areas and the other items covered by this Agreement. The Parties agree that implementation of the specific terms outlined in this Agreement will require the development of supplemental implementation and operational plans (referred to herein as the "Supplemental Plans") with respect to those functions of the Use Areas, that may change with each annual Arts Festival. The Supplemental Plans and any modifications are incorporated herein and a material part of this Agreement. Supplemental Plans for the future years are incorporated within this Agreement; changes that promote the efficient and successful operation of the Arts Festival may be considered. Failure to agree on changes to existing Plans will result in use of the Existing Supplemental Plans. Any substantial changes in material terms, as determined by City Staff, shall require an amendment to this Agreement and City Council approval. The City Council reserves full authority to approve or reject changes in accordance with Title 4, Chapter 8 (as amended) and any other applicable ordinances.

**1.3 KAC General Responsibilities.** In addition to the responsibilities of KAC set forth in the balance of this Agreement, KAC is responsible for the timely submission to City of all annual plans related to the Arts Festival, and producing and providing all official information related to the Arts Festival to the City. Both parties will agree to mutually agreed upon timeline.

**1.4 Park City General Responsibilities.** In addition to the responsibilities of Park City set forth in the balance of this Agreement, Park City is responsible for producing and providing to KAC or its designee by April 1<sup>st</sup> of each year all official Park City information relevant to the Arts Festival and the Use Areas, including internal staff communication, and promoting positive support for Park City's involvement in the Arts Festival and the opportunities provided thereby. Park City shall cooperate with KAC by using its best efforts to notify KAC of any pending City ordinance changes or city right of way projects which could have a negative impact on KAC and its sponsorship relationships, including those relating to marketing and signage.

**B. TERM AND LEASE OF USE AREAS DURING USE PERIODS.**

**2. Term.** KAC hereby agrees to hold the Park City Kimball Arts Festival in Park City. Accordingly, this agreement shall be effective from November 4, 2016 to August 15, 2021.

**2.1 Dates of Festival.** The dates of the Arts Festival shall be held on the first full weekend of August as mentioned below unless both parties agree to a date change in writing.

- August 4 - 6, 2017
- August 3 - 5, 2018
- August 2 - 4, 2019
- July 31 - August 2, 2020
- August 6 - 8, 2021

The Supplemental Plan must be submitted to City staff no later than June 15 and must have Council approval by the first City Council meeting in July of each year for the Arts Festival to begin on the planned date.

**2.2 Hours.** The event will be held from Friday from 5pm to 9pm, Saturday from 10am to 8pm, and Sunday 10 am to 6pm. Street closures for load in, load out, set up and delivery would be allowed starting on Friday at 3:00 am. Park City shall consider expanded or reduced hours based on performance and feedback from Historic Park City Alliance (HPCA), City Council and the Public as part of the consideration of annual Supplemental Plans.

**2.3 Location.** The event will be held on Historic Main Street. Park City shall consider expanded venue areas based on performance and feedback from the HPCA, City Council and the Public as part of the consideration of Supplemental Plan.

**2.4 Expanded Marketing.** Expanded Marketing, Media, Cross Promotional and Public Relations activity is required and shall be further defined in Section D.9.

**2.5 Additional Conditions of Approval.** The following apply unless specifically modified by Supplemental Plans:

1. KAC at its cost, shall incorporate such measures as directed by Staff in order to ensure that any safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted with due regard for safety are provided.

2. Unless specifically approved by the Supplemental, Expanded Arts Festival Activities or Expanded Location on Main Street shall terminate by 6:00 pm on Sunday. Main Street shall reopen by 10:00 pm. Should the applicant not be able to open the street by that time, the closing time of the

Arts Festival shall be adjusted to meet stated time limits.

3. A Fire Lane approved by the Fire Marshall will be maintained to provide access across Heber Avenue and Main Street at all times of festival operation. City shall provide signage to indicate closures and detour options.

4. Applicant must obtain Relief from Noise Restrictions (6-3-11), as amended, for any set- up activity occurring before 9:00 am on any given day.

5. Applicant shall comply with all UDABC regulations and obtain applicable approvals for the beer garden area and all other areas of compliance.

6. Applicant shall meet with Park City Police to create a security plan that will ensure the health, safety, and wellness of all staff, vendors, and visitors is maintained, as approved by the Chief of Police. The cost of additional, private security will be the responsibility of the KAC.

7. A base operational plan footprint and sign plan shall be submitted as part of the Supplemental Plan process outlining placement of no less than 80% of the Arts Festival. This will be used as the Approved Operational Arts Festival Footprint. All plans for tents, stages and other temporary structures and activities shall be submitted to the Building Department and the City Representative for review. All changes from the Approved Operational Arts Festival Footprint must be submitted by June 15<sup>th</sup> and approved by the first week in July

8. The applicant will orient all temporary stages so as to minimize sound impacts to the neighborhood. Monitoring of the amplified shall be consistent with 4-8A-7, as amended; regulations for Public Outdoor Music Plazas. The General Regulations of this section indicate the following:

4-8A-7. GENERAL REGULATIONS.

(A) The program manager, or his/her designee, shall provide on-site management for each event.

(B) A sound technician shall provide on-site monitoring for each event with music, amplified or otherwise, and any amplified event.

(C) Except as otherwise provided at Subsection 6(A) herein, for amplified events or music, the program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in front of the stage. The data currently available to the City indicates that a maximum decibel

level of 90 satisfies the purpose of this ordinance. The City may amend this ordinance consistent with newly acquired data.

(D) The Police Department or other proper City official shall have access at all times to all Public Outdoor Music Plazas under this Chapter, and may make periodic inspection of said premises whether the officer or official is in uniform or plain clothes.

(E) All events shall take place only on authorized Stages and shall have clean-up services directly following the event so as to leave the plazas in a clean and litter free manner.

9. As part of the Special Event License, the applicant shall provide Utah State Tax Commission and the City Representative a list of all participating vendors containing the following information: Name, address and contact information, Utah State Tax Identification number. KAC shall also provide a list of all participating not-for-profit organizations. Consistent with section 4-8-7 of the Municipal Code, concessions directly related to the event do not require a regular business license. The Utah State Tax Commission does require a Temporary Special Events Sales Tax License. Utah State Tax Commission will provide each vendor a Utah State Tax ID Number. KAC shall require all participating vendors to provide and display their Special Event Permit provided by the State of Utah Tax Commission.

10. Nothing herein shall limit use of Coalition Park by non-vendors in accordance with the Art in the Park Ordinance PCMC § 4-3A-7, as amended.

11. The applicant shall annually review the vendor list to ensure the participants reflect the integrity of the Arts Festival's purpose and mission, and limit sales of mass produced goods.

12. Organizers shall return to Council no later than November 1<sup>st</sup> each year to conduct a debrief of that year's Arts Festival.

**3. Grant of Lease.** Park City hereby grants to KAC and its designees and assigns, and KAC hereby accepts, the right for the occupancy and use of the Use Areas for the purposes further described on Exhibit A along with the use all available utilities, services and related incidental rights in such Use Areas, all upon the terms, and subject to the conditions set forth in this Agreement. The relationship between Park City and KAC with respect to the Use Areas is that of landlord and tenant, and may be further be defined by Lease Agreement. However, the Lease Agreements shall not conflict with this Agreement or any Exhibit attached hereto. Park City makes no express or implied warranties regarding the Use Areas and KAC hereby acknowledges it has inspected the Use Areas and accepts the Use Areas "as is."

**4. Non-Exclusive Use; Right to License.** The Use Areas are public rights of way and KAC has Non-Exclusive Use as granted herein. During Arts Festival Hours, KAC shall have the

exclusive right to jury, select and authorize Arts Festival vendors pursuant to KAC's internal guidelines and contracts. Otherwise, no right to exclude is hereby granted except as may be required by applicable law (UDABC alcohol areas). Businesses adjacent to and within the Use Areas shall remain eligible for outdoor/sidewalk sales as otherwise provided for in the Municipal Code.

**4.1 Access Prior to Use Periods.** Unless otherwise set forth herein, Park City and KAC shall cooperate to arrange times that KAC and its designees may have non-exclusive access to the Use Areas prior to the Use Periods for the purpose of inspections, planning, preparations, testing and design work, surveys, examinations, and other activities that are necessary for Use Area planning and preparatory functions and advance preparations for and (if necessary) advance construction of certain Temporary Improvements such as installation of cables, conduits, curb cuts, signage and substructure; provided that such access shall not materially interfere with ordinary and customary Park City operations and that such advance construction shall be consistent with the requirements outlined herein.

**4.2 Lawful Use.** During the applicable Use Periods, KAC will not use, operate or maintain the Use Areas improperly, carelessly, in violation of any applicable law or in any manner contrary to that contemplated by this Agreement.

**4.3 Permitted Uses.** KAC is granted use of the Use Areas and may authorize or license others to use the Use Areas at any time during the applicable Use Periods, with City Approval, for the purposes indicated on Section B 2.1 and 2.2 in this agreement; including for the moving in and out, and the construction, erection and staging of decorations, trash, recycling and other temporary facilities and installations and other Temporary Improvements, lighting, sound systems, booths, stages, tents, fencing and other equipment; for the sale of food, beverages, novelties, souvenirs and other merchandise to persons attending the Arts Festival; for advertising, marketing and promotion; and for any other purpose related to the Arts Festival.

**4.4 Restoration.** KAC shall return the Use Areas to Park City at the conclusion of their respective Use Periods in clean, orderly condition and in good repair and working order, taking into consideration reasonable wear and tear. Prior to the end of the Use Periods, KAC shall, at its sole cost and expense, remove all Temporary Improvements and modifications located in or on the Use Areas, unless otherwise agreed upon in writing by the Parties.

## **5. Permits and Licenses.**

**5.1 Permits and Licenses.** KAC shall be solely responsible for any building or other permits necessary for its temporary improvements or food operations.

**5.2 Special Event License.** The City hereby finds the Arts Festival to comply with the Municipal Code of Park City Section 4-8-5. Upon execution of this Agreement, Park City shall issue to KAC a Special Event License that covers all activities of KAC described in this Agreement that may require such a license. Approval of Annual Supplemental Plans will be necessary to obtain building permits, temporary beer and liquor licenses, sign plan approval and all

other required permits, approvals, variances, etc. that may be encompassed by the Special Event License for each Arts Festival. The City will issue no other Special Festival licenses during the dates of the festival until the KAC has provided a recommendation on the effects other events may have on the festival. The Park City Council will take into consideration the recommendations of the KAC in their decision to either approve or deny any other event applications.

**5.3 Permits and Licenses Issued by Other Governmental Authorities.** KAC shall have sole responsibility for obtaining and paying for any and all certificates, permits, licenses and approvals that are required to be obtained from governmental authorities other than Park City for the operations of the Use Areas that are unique to KAC's use of the Use Areas during the Use Periods. Park City shall support and cooperate with KAC in obtaining any necessary permits for the activities associated with the operations of the Use Areas during the Use Periods, and shall authorize KAC to apply in the name of Park City (or Park City will apply for such permits in its own name) with respect to any necessary permits from other governmental authorities that must be issued in the name of Park City.

**5.4 Governmental Ordinances.** The Special Events and Facilities Department shall support and cooperate with KAC in obtaining permits as necessary concerning any local, city, county or state ordinances, rules, laws and regulations to assist KAC in hosting and staging the operations of the Arts Festival and related activities in Park City.

## **C. PARK CITY FACILITIES AND SERVICES.**

### **6. City Services.**

**6.1 Basic City Services.** Park City will provide the following City Services to KAC at no cost after KAC meets all financial obligations as outlined in Section E of this agreement:

1. KAC shall be entitled to a waiver of the following fees:
  - a. Parking fees for any approved Use Areas.
  - b. Building Permit fee and inspection fees for all tents and temporary structures.
  - c. Transit Department fees (labor and operational costs).
  - d. Transit Department for re-routing Main Street Trolley.
  - e. Parks Department for street banner installation (does not include banner costs).
  - f. Street and sidewalk cleaning, as well as trash can placement.
  - g. Application fees for the Special Event License.
  - h. Use of city-owned type 1 and bicycle barricades, if available. Park City will rent additional barricades as needed.
  - i. Enhanced Police patrols as determined necessary by the Park City Police Department. KAC to be involved in these discussions if additional resources are deemed necessary.
  - j. Extended transit service. All extended service must be part of

existing transit routes and be deemed necessary by Park City Transportation Department. KAC to be involved in these discussions if additional resources are deemed necessary.

- k. Use of three (3) municipal electronic signs as otherwise agreed in accordance with mutually acceptable Supplemental Plans concerning traffic control as well as the approval of Utah Department of Transportation.
- l. Installation and two (2) municipal mobile electronic text signs, as otherwise agreed in accordance with mutually acceptable Supplemental Plans concerning Traffic Control.
- m Park City to update and continue existing terms of Dining Deck agreement through the term of this Agreement.

**6.2 Additional City Services and Work Order Process.** KAC may, in consultation with Park City, request adjustments in the priorities or timing or intensity of maintenance and other City Services to be provided by Park City to promote the efficiency and success of the Arts Festival. KAC may request services from Park City in addition to Basic City Services under this agreement, either due to quantity, frequency or type of service requested (collectively, "Additional City Services"). If such adjustments require Park City to provide services which exceed one hundred and eighty thousand dollars (\$180,000), then the two parties will meet to negotiate an amendment to this agreement to address the payment of these additional costs.

### **6.3 City Services Financials.**

1. Park City agrees to keep accurate books and records of expenditures related to City Services provided to the Arts Festival. Park City shall provide these financials City Services for the Council debrief due by November 1. KAC or its independent auditor reserves the right to conduct its own annual audit of books and records at reasonable times and places during ordinary business hours.

2. All expenses must be included in Supplemental Plan and provided to KAC for review by June 30<sup>th</sup>.

**6.4 Event Survey.** KAC shall conduct a limited survey of festival attendees geared at measuring event impact as well as benefit to local community. Park City will have the right to provide input to said survey and methodology, and changes shall be mutually agreed upon by both parties. KAC will be responsible for any costs to complete this survey.

## **7. City Representative.**

**7.1 Event Representative.** Prior to and during the Use Periods, Park City shall designate at least one full-time employee to serve as its "City Representative" for the Arts Festival, who shall be the operational liaison between Park City and KAC and who shall be authorized by Park City to (a) ensure that the Use Areas are operated and maintained as set forth in this Agreement,



(b) ensure that, at KAC's request, access to and street closure(s) (if applicable) of the Use Areas is provided to KAC upon commencement of the Use Periods, (c) serve as Park City's representative for the services of any Park City personnel provided pursuant to this agreement, and (d) give or obtain any necessary consents, approvals or authorizations on behalf of Park City in relation to the Supplemental Plan. The City Representative shall generally be Special Events staff for the City, unless otherwise approved in advance by KAC, which such approval shall not be unreasonably withheld or delayed.

**7.2 Management Representative.** Park City shall also designate at least one Departmental Manager who shall be authorized to speak on behalf of the City Manager and City Council, and to act for the City Representative if the City Representative is not available. The costs of providing the City Representative and the Management Representative to provide services under this agreement shall be borne solely by Park City. The Management Representative shall, if requested by KAC, assist KAC with the formation of a logistics coordination team.

**7.3 Management Meetings.** The Event Representatives and Manager shall meet to review Arts Festival operation, Supplemental Plan and terms of this Agreement. Any changes to this Agreement or Supplemental Plan shall be approved by City Council by June 30th.

## **8. Parking and Transportation.**

**8.1 Transportation Plans.** KAC, with coordination from PCMC, shall develop and implement plans for traffic control around Main Street, as part of the Supplemental Plan to meet the transportation and parking needs of the public during the Use Periods, including provisions for parking, road closings and any enhanced transit service to off-site shuttle lots. Park City shall modify and as necessary expand the public City Transit service, to be included in Park City's Basic City Services, to meet the increased public demand during the Arts Festival consistent with the purposes of the Agreement and the needs of the public, including patrons of the Arts Festival. The system will remain open to the public and will service the existing transit routes. The transportation plans contemplated by the paragraph are intended as an enhancement to Park City's public transportation to meet the needs of the public during the Use Periods and are not to be construed as the provision of "charter" services.

**8.2 Cooperation in Main Street Closing.** Consistent with the requirements to develop plans for traffic as part of the Supplemental Plans, Park City and KAC both agree to support and cooperate with one another when both Parties agree to close all or a portion of Main Street for pedestrian use only.

**8.3 Parking Areas.** Park City shall make available to KAC for non-exclusive use the upper and lower Sand Ridge parking lots and the top level of the China Bridge Parking Structure for KAC Vendors and Staff in accordance with Exhibit A.

## **D. KAC SERVICES.**

**9. KAC Obligations.** As consideration for the City support herein, KAC agrees to the

following:

1. Annual Review(s) – KAC agrees to:
  - a. Approval of supplemental plan & review of specific operational plan
  - b. Debrief of Arts Festival - is Arts Festival being operated consistently with service contract and Council goals?
  - c. Arts Festival Profit & Loss information and business plan made available to City Hall upon request. KAC will have up to 10 business to fulfill request.
  - d. Economic Impact study on the festival to the local economy.
  
2. Demonstrated & Measurable success – The following performance measures will be considered as part of the annual Supplemental Plans:
  - a. Attendance – average attendance targets shall be established and verified annually by staff and KAC to monitor the growth of the event.
  
  - b. Traffic impacts – Work with Park City to review and create an incentive program for attendees that take alternative modes of transportation. This will include the addition of a bike valet located in close proximity to the event. Work with Park City to track alternative forms of transportation to the event as an absolute number and a percentage of event attendees. KAC and Park City to determine a traffic baseline in 2017 and provide plan to lessen vehicle impacts by 10% annually, beginning in 2018.
  
  - c. Reduced impacts to local business – KAC shall present a variety of promotional opportunities for local businesses and HPCA members to participate in. KAC will summarize efforts and participation in a report to the City at the annual review.
  
  - d. Community support – KAC shall report at the annual review, the year-round efforts to support the community at-large, non-profits and Park City youth art programs.
  
  - e. Environmental impacts – KAC will work with Park City on reduction of the Arts Festival's carbon footprint, after an initial baseline is determined in 2017, and include:
    - Identify position that will be in charge of managing waste for day-of contact and support.
  
    - Track waste diversion rate for trash, recycling, and compost. Provide plan to increase diversion rate 15% annually, beginning in 2018.
  
    - Recycling is required for all event areas. All trash cans

must also have recycling container.

- Create a plan to increase annually the use of reusable or recyclable event materials (banners, signage, brochures, etc.).
- Eliminate single use plastic bags (KAC to recommend recyclable bags/packaging for all artists and vendors) and Styrofoam.
- Enforce No idling policy for vendors, staff, and attendees. Include contact person who will oversee this enforcement.

3. Limitation on use of funds – KAC shall provide Profit & Loss reports at the annual review that will outline the use of funds tied directly to operation, expansion of the programming and promotion of the festival.

**9.1 Park City, Main Street Venue.** Park City's Main Street shall be recognized as the venue of the Arts Festival.

**9.2 Marketing and Public Relations; Press Releases and Promotional Materials.** KAC shall include a reference to "Historic Main Street, Park City, Utah" in all press releases made; and all promotional materials, and shall cooperate where possible in releasing joint public statements with the City and the Historic Main Street Business Alliance promoting the City generally. KAC agrees to aggressively market to local residents to attend the Arts Festival and utilize alternative modes of transportation by using the following mechanisms:

1. [www.kimballartcenter.org](http://www.kimballartcenter.org);
2. On-site event promotions; and
3. Weekly radio and TV spots; and
4. Weekly email blast and social media updates

**9.3 Cooperation with Chamber Bureau and Business Associations.** KAC and Park City Shall use best reasonable efforts to coordinate with Park City Chamber Bureau, Historic Main Street Business Alliance, and Park City Restaurant Association, and other business associations as the City staff may from time to time suggest, to solicit business support and minimize adverse impacts on the community.

## **E. FINANCIAL**

**10. Service Contract.** KAC hereby agrees to make the following annual contribution to Park City towards the cost of the City Services for the term of this contract:

- Annual cash payment for the following services not to exceed \$10,000

**10.1** KAC agrees to keep accurate books and records of expenditures related to its operation. The City or its independent auditor reserves the right to conduct its own annual audit of books and records at reasonable times and places during ordinary business hours. If the contributions have not been used as agreed herein, the City shall be entitled to a full or partial refund of the amount. KAC agrees to turn in all Profit & Loss statements, updated business plans, and other similar financial information as otherwise requested by the City by November 1 of each year of this Agreement.

## **F. INSURANCE AND RISK MANAGEMENT.**

### **11. Indemnifications.**

**11.1 Indemnity.** Each party (each an "Indemnifying Party") shall indemnify and hold the other party and its affiliates, together with their respective agents, employees, officers, members, directors, trustees and other representatives (the "Indemnified Parties") harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature (collectively, the "Claims"), brought against the Indemnified Parties arising out of, in connection with, or incident to the Indemnifying Party's gross negligence or willful misconduct and/or the Indemnifying Party's defective performance or failure to perform any material aspect of this Agreement; provided, however, that if such Claims are caused by or result from the concurrent negligence of the parties, their agents, employees, and officers, this indemnity provision shall be valid and enforceable against a party only to the extent of the negligence of that party; and provided further, that nothing herein shall require either party to hold harmless or defend the other party, its agents, employees and/or officers from any Claims arising from the sole negligence of the other party, its agents, employees, and/or officers. KAC expressly agrees that the indemnification provided herein constitutes KAC's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of KAC claims or recovers compensation from the City for a loss or injury that KAC would be obligated to indemnify the City for under this Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement. Nothing herein shall waive any provision, defense or limitation of the Utah Government Immunity Act.

**11.2 Waiver of Claims Against Park City.** Except as provided for in Section 11.1 (Indemnity) above, KAC shall not make any claim against Park City or its officers, employees and agents with respect to any liability incurred by KAC to any third person on account of bodily or personal injury or damage to or loss of property arising out of this Agreement, use of the Use Areas, or the Arts Festival.,

### **12. Insurance.**

**12.1 Insurance.** KAC shall procure and maintain at its own expense throughout the Exclusive Use Periods the following insurance:

- (a) Workers' compensation insurance for KAC employees, including statutorily required limits and other requirements of law.
- (b) All employee benefit programs and overages required under ERISA, unemployment insurance and any other insurance required by state or federal laws.

**12.2 KAC Liability Insurance.** Prior to commencement of any activity in Park City under this Agreement, KAC shall procure and thereafter maintain during the entire period of such activity one or more policies of insurance providing all of the following coverage, whether by separate policies or by endorsement:

- (a) Commercial general liability policy, with combined single limits of Two Million dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in aggregate;
- (b) Liquor Liability Coverage of One Million dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate;
- (c) Proof of Workers Comp. w/statutory limits – (\$500,000, PC does not have to be named as additionally insured, but organization must show proof.);
- (d) Auto Liability required with limits no less than \$2,000,000 combined single limit per accident for bodily injury and property damage;
- (e) KAC shall require any hired security company to provide a policy of liability insurance and name KAC and Park City as name insured on the policy with limits set forth in 12.2(1).

**12.3 Additional Requirements.** The insurance provided by KAC pursuant to Section 12.2:

- (a) Shall be written on an occurrence basis, and with respect to any coverage provided on a claims-made basis, shall be supplemented by a two (2) year tail policy for the limits applicable to the policy periods covered by such tail policy, which are approved by Park City, such approval not to be unreasonably withheld or delayed;
- (b) Except as provided for in Section 12.2(c) above, shall provide that Park City be named as additional insured with respect to liability arising out of or in connection with KAC's activities under this Agreement, including those claims, set-offs, losses, damages, liabilities, fines and expenses that arise out of or in connection with the acts or omissions of Park City incident to KAC's above-referenced activities, but not including the willful misconduct of Park City or its respective officers, employees or agents;
- (c) Shall provide if reasonably possible that with respect to any covered claim arising under this Agreement, such insurance shall be primary coverage without reduction or right of set-off or contribution on account of any insurance provided by Park City for itself or for its officers or employees; and
- (d) Shall provide if reasonably possible that such insurance shall not be altered or canceled without thirty (30) days' prior written notice to Park City.

**12.4 Park City Liability.** Nothing herein shall waive any provision, defense or limitation of the Utah Government Immunity Act.

12.5 All requirements and obligations set forth in paragraphs 11 and 12 above shall apply to Supplemental Plans, Existing Supplemental Plans, and any Amendments or Addenda to this Agreement.

**G. MISCELLANEOUS.**

**13. License for Use of KAC Marks.** KAC grants to Park City a license to use KAC's emblem(s) and other trademarks for any non-commercial, governmental purpose, press release, and in internal Park City communications/reports. Such license shall be subject to KAC approval and to restrictions prohibiting any commercial use of such marks.

**14. License of Park City of Utah Logo, Name and Marks.** Park City hereby grants KAC a non-exclusive license to use for the effective term of this Agreement, any Park City-related symbols, emblems, marks, logos, trademarks, service marks, or pictures, paintings or likeness of the City, including without limitation the use of the (i) the name "Park City", and any variations thereof, (ii) the names of any officials of Park City, and (iii) the name and likeness of any buildings or grounds owned by Park City, in every case solely for the purposes of (a) broadcasting the Arts Festival, (b) providing map and way finding information, and (c) advertising or promoting the Arts Festival; but specifically excluding the Park City Olympic logo and any license for the sale of any novelties or merchandise.

**15. Photography and Broadcast Rights.** KAC shall have the non-exclusive right to arrange, conduct or permit commercial and noncommercial photography, filming, videotaping, television and radio transmission, and similar activities in and above the Use Areas during the Use Periods. KAC shall have the non-exclusive right to record, to broadcast, and to permit media coverage of KAC's activities in Park City with a Film Permit.

**16. Sponsorships.** KAC shall have the exclusive right to sell sponsorships and suppliers of and other rights of affiliation with the Arts Festival and events staged or conducted by KAC in the Use Areas.

**17. Representations and Warranties.**

**17.1 Representations and Warranties of KAC.** KAC hereby represents and warrants that (a) KAC is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Utah, (b) KAC has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, (c) the execution of this Agreement by KAC and the performance by KAC of its obligations hereunder have been duly authorized by all necessary corporate action, and (d) this Agreement has been duly executed and delivered by KAC and is a valid and binding obligation of KAC.

**17.2 Representations and Warranties of Park City.** Park City hereby represents and warrants to KAC that (a) Park City validly exists, and is in good standing under the laws of the State of Utah, (b) Park City has all necessary power and authority to enter into this Agreement and to

perform its obligations hereunder, and (c) the execution of this Agreement by Park City and the performance by Park City of its obligations hereunder have been duly authorized by all necessary action, including all reviews and approvals required by the City Council of Park City.

**18. Unforeseen Circumstances.** Either Party may terminate or suspend its obligations under this Agreement if such obligations are rendered impossible of performance by any of the following events to the extent such event is beyond the reasonable control of the party whose performance is prevented: Fire, flood, riot, earthquake, civil commotion, insurrection, Act of God, war or any law or supervening illegality. In any such event, such party shall not be liable to the other for delay or failure to perform its obligations.

**19. Dispute Resolution.** The Parties agree that any dispute arising in connection with the interpretation of this Agreement or the formulation or implementation of any of the Supplemental Plans or the performance of any party under this Agreement or otherwise relating to this Agreement shall be treated in accordance with the procedures set forth in this Section, prior to the resort by any party to arbitration or litigation in connection with such dispute. The dispute shall first be referred for resolution to Park City's City Representative and KAC's Manager or other person designated by KAC as exercising authority over the Use Areas. If such persons are unable to resolve the dispute, it shall then be referred for resolution to Park City's Manager Representative and KAC's Managing Director. Either Party may invoke such procedures by presenting to the other party a "Notice of Request for Resolution of Dispute" (a "Dispute Resolution Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone conference of such officers shall be held within three (3) days, or if an emergency meeting is requested, within eight (8) hours, after delivery of the Dispute Resolution Notice. In the event that such officers are unable to resolve the dispute, then upon delivery of a further Dispute Resolution Notice, either Party may require that the matter be referred for resolution to the City Manager of Park City and the Managing Director of the Arts Festival. A telephone conference of the City Manager of Park City and the Managing Director shall be held within (2) two days, or if an emergency meeting is requested, within eight (8) hours, after delivery of the further Dispute Resolution Notice. If the City Manager of Park City and the Managing Director are unable to resolve the dispute, then the Parties shall engage in nonbinding mediation with a mutually acceptable mediator to resolve the issue within three (3) days of the delivery of a further Dispute Resolution Notice. Both Parties shall share the costs of such mediation equally. In the event that the parties are unable to agree on a mediator, then each Party shall select one (1) mediator and the two mediators shall select a third mediator. Each Party shall bear the cost of the mediator chosen by that Party and the Parties shall share the costs of the third mediator. If the dispute involves the formulation or implementation of any of the Supplemental Plans contemplated under this Agreement, the parties agree that the persons outlined above who are authorized to attempt to resolve disputes shall consider the minimum requirements for each of the Supplemental Plans outlined in this Agreement along with reasonable supplementation of such minimum requirements in order to meet the purposes outlined in this Agreement.

**20. Other Miscellaneous Terms.**

**20.1 Governing Law.** This Agreement shall be construed in accordance with, and governed by the substantive laws of, the State of Utah, without reference to principles governing

choice or conflicts of laws.

**20.2 Severability.** If any provisions or portions thereof of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such provisions or portions thereof shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law, so long as the intent of the parties can be maintained.

**20.3 Assignment and Delegation.** Neither party may assign nor in any manner transfer the benefits of this Agreement or delegate its obligations under this Agreement without the prior written consent of the other party. Subject to the foregoing limitation, this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, agents, heirs and assigns.

**20.4 Waiver.** No action taken by either party shall be deemed to constitute a waiver of compliance by such party with any representation, warranty or covenant contained in this Agreement. Any waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver by such party of any subsequent breach.

**20.5 Headings.** The article and section headings herein are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

**20.6 Consent.** Unless otherwise specifically noted herein, the consent of any party to any action may be made in such party's sole discretion. All consents or approvals hereunder shall be given without delay by either party.

**20.7 Entire Agreement.** This Agreement, together with any attached Exhibits, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than set forth or referred to herein. This Agreement supersedes all prior agreements between the parties relating to all or part of the subject matter herein.

**20.8 No Third Party Beneficiaries.** This Agreement is intended for the sole benefit of Park City and KAC and there are no third party beneficiaries to this Agreement.

**20.9 Notice.** Unless otherwise specified herein, all Notices, requests, consents and demands required to be in writing, including any Dispute Resolution Notice (collectively referred to herein as a "Notice" or "Notices") shall be given to or made upon the parties at their respective addresses set forth below, or at such other address as a party may designate in writing delivered to the other parties. Unless otherwise agreed in this Agreement, all Notices, requests, consents and demands shall be given or made by personal delivery, by confirmed air courier, by facsimile transmission ("fax") (with a copy sent the same day by first-class mail), or by certified first-class mail, return receipt requested, postage prepaid, to the party or parties addressed as aforesaid. If sent by confirmed air courier, such Notice shall be deemed to be given upon the earlier to occur of the



date upon which it is actually received by the addressee or the business day upon which delivery is made at such address as confirmed by the air courier (or if the date of such confirmed delivery is not a business day, the next succeeding business day). If mailed, such Notice shall be deemed to be given upon the earlier to occur of the date upon which it is actually received by the addressee or the second business day following the date upon which it is deposited in a first-class postage-prepaid envelope in the United States mail addressed as aforesaid. If given by fax, such Notice shall be deemed to be given upon the date it is actually received by the addressee.

**If to Park City:**

Economic Development Manager  
Park City Municipal Corporation  
PO Box 1480  
445 Marsac Avenue  
Park City, UT 84060-1480  
Tel 435-615-5000  
Fax 435-615-4901

**With copies to:**

City Attorney  
Park City Municipal Corporation  
PO Box 1480  
445 Marsac Avenue  
Park City, UT 84060-1480

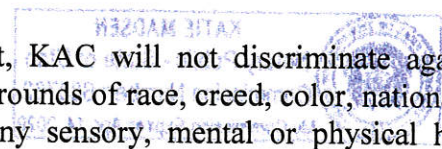
**If to KAC:**

Kathy Kennedy  
Managing Director  
P.O. Box 1478  
1401 Kearns Blvd  
Park City, UT 84060

**20.10 Reserved Police Power.** The City expressly reserves, and KAC expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

**20.11 Nondiscrimination.**

- A. The City is an equal opportunity employer.
- B. In the performance of this Agreement, KAC will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap;



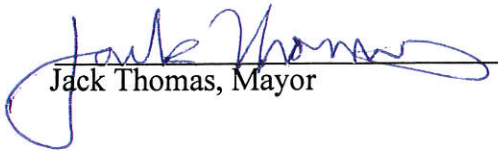
provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. KAC shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

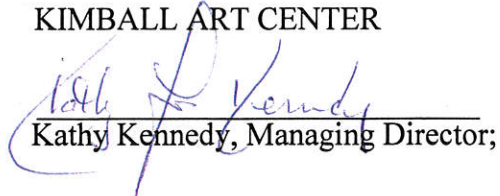
C. KAC will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

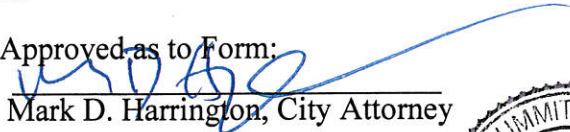
PARK CITY MUNICIPAL CORP

KIMBALL ART CENTER

  
Jack Thomas, Mayor

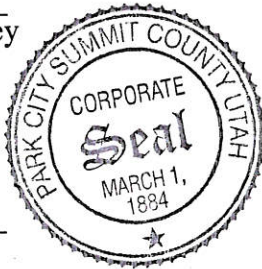
  
Kathy Kennedy, Managing Director;

Approved as to Form:

  
Mark D. Harrington, City Attorney

Attest:

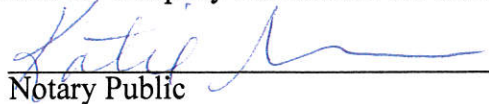
  
Michelle Kellogg  
City Recorder



**ACKNOWLEDGMENT**

STATE OF UTAH            )  
  : ss.  
COUNTY OF SUMMIT    )

On this 19<sup>th</sup> day of Dec, 2016, personally appeared before me Kathy Kennedy, who being duly sworn, did say that he is the Managing Director for Kimball Art Center, and acknowledged to me that the preceding Agreement was signed on behalf of the Kimball Art Center, a Utah non-profit corporation, and he/she acknowledged that the company did execute the same for its stated purpose.

  
Katie Madsen  
Notary Public

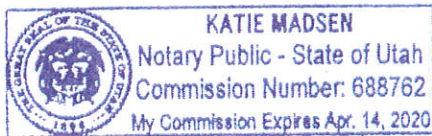
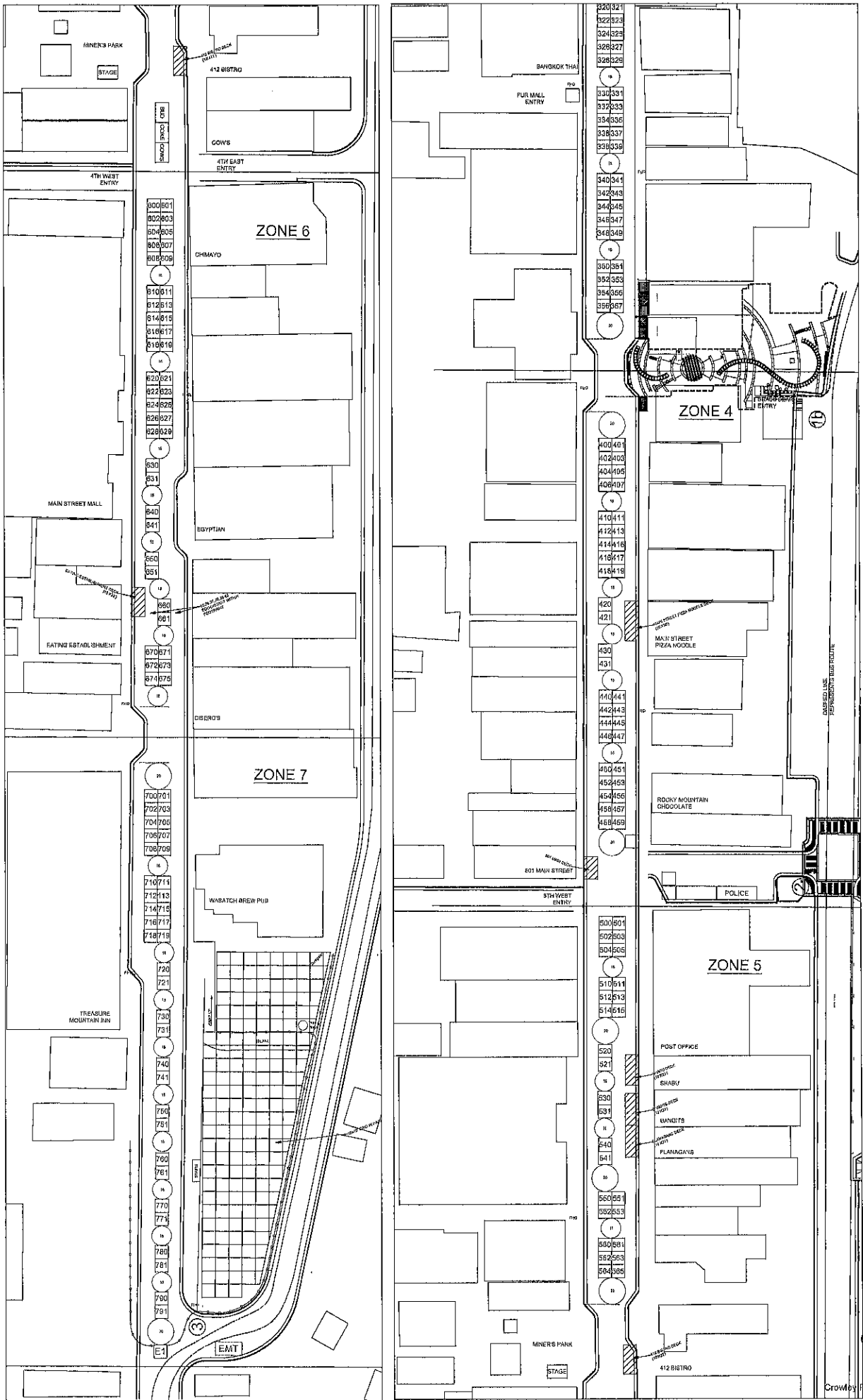
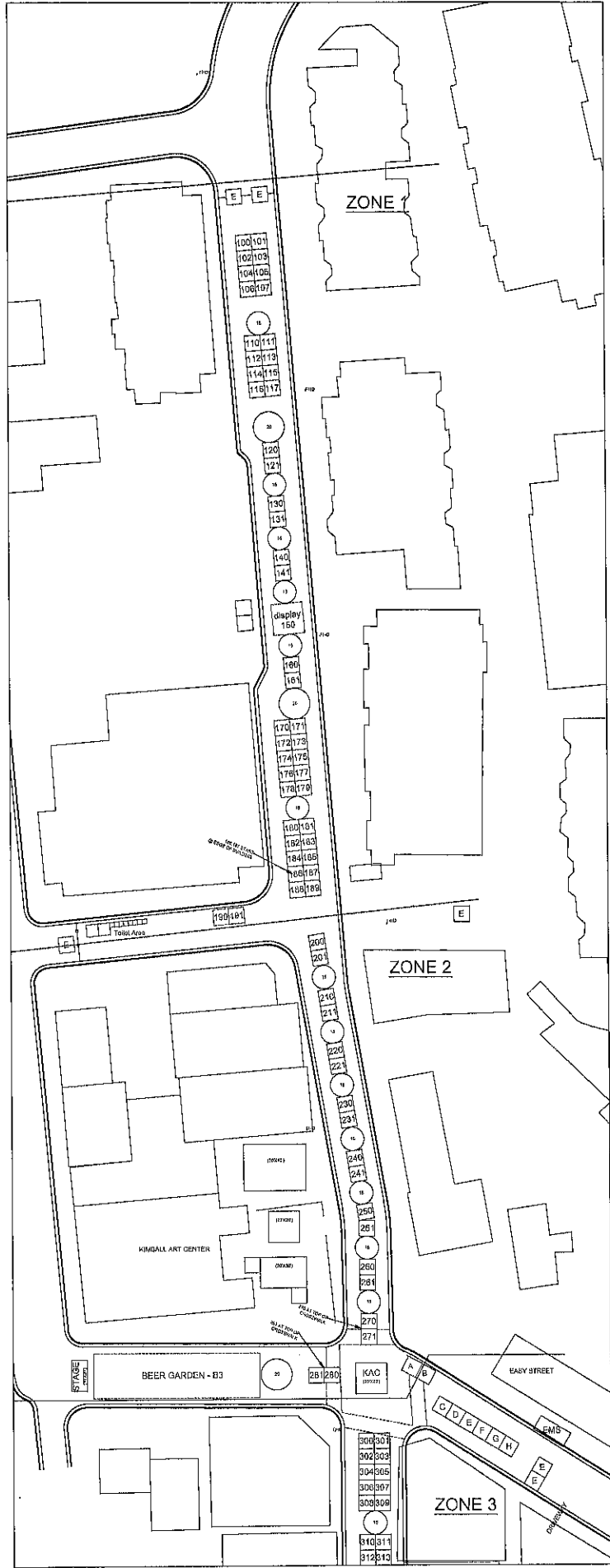
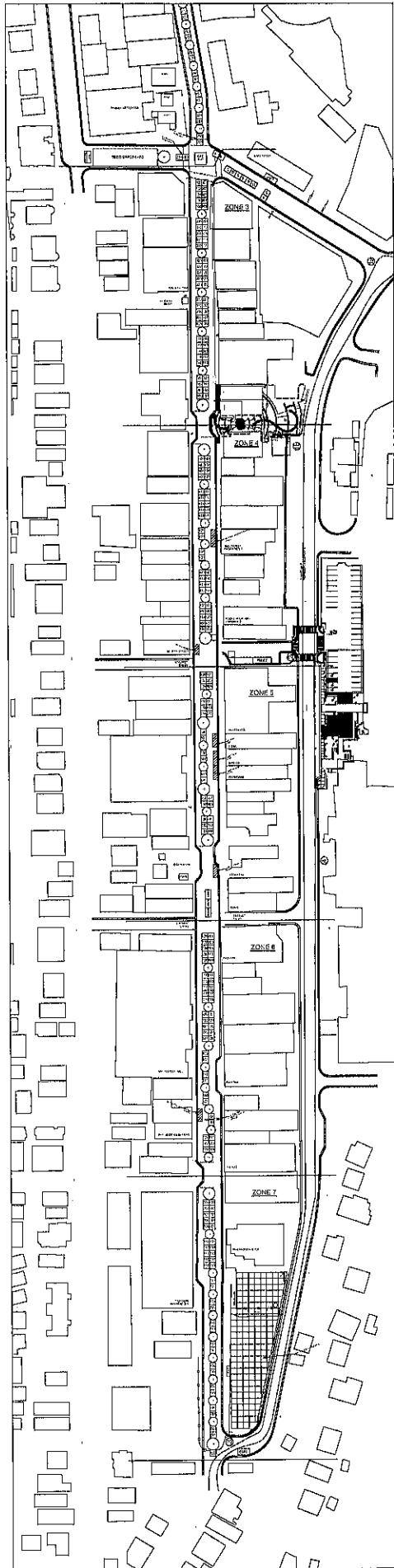


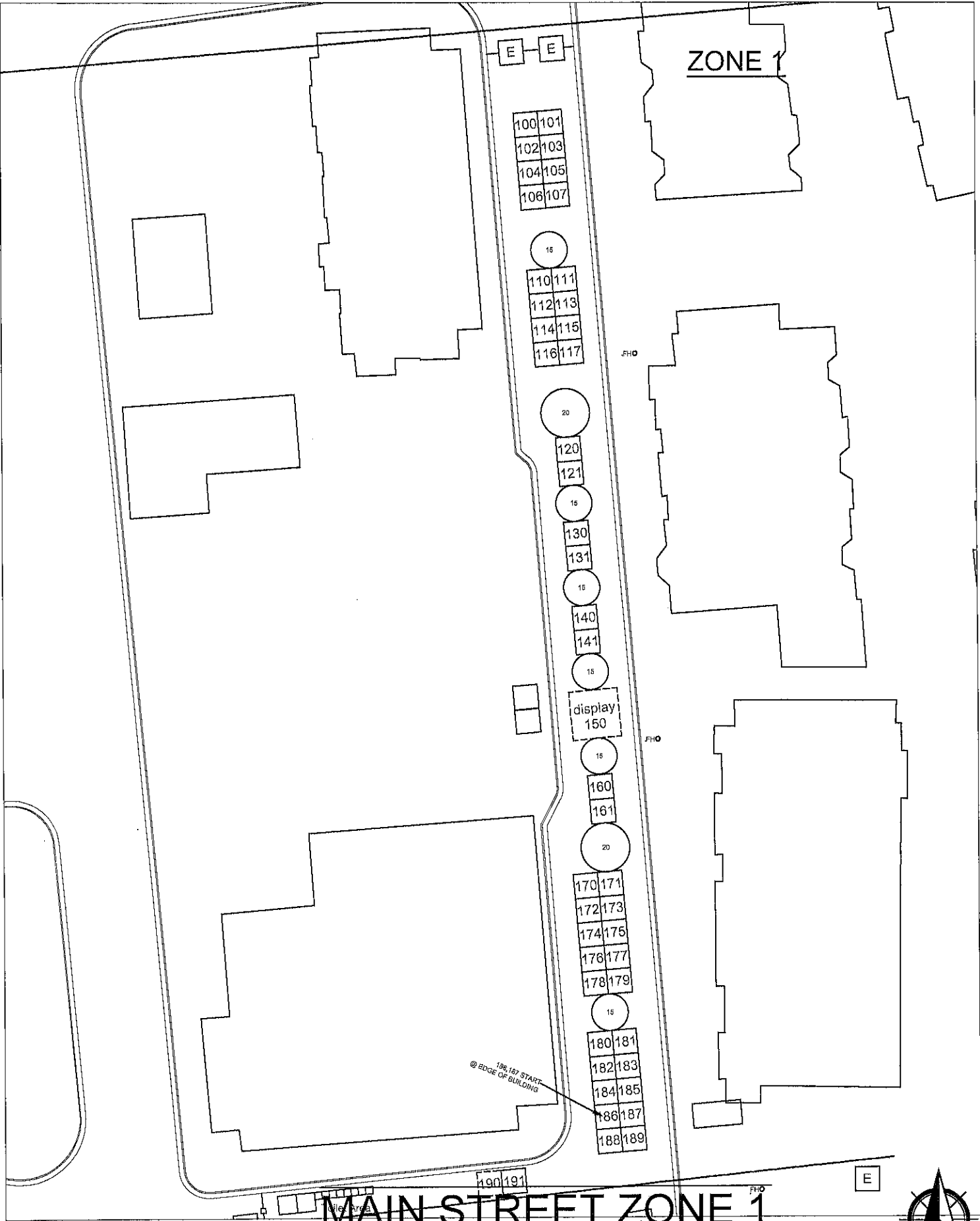
Exhibit A – KAC 2017 Use Areas







STREETSCAPE 1"=30"



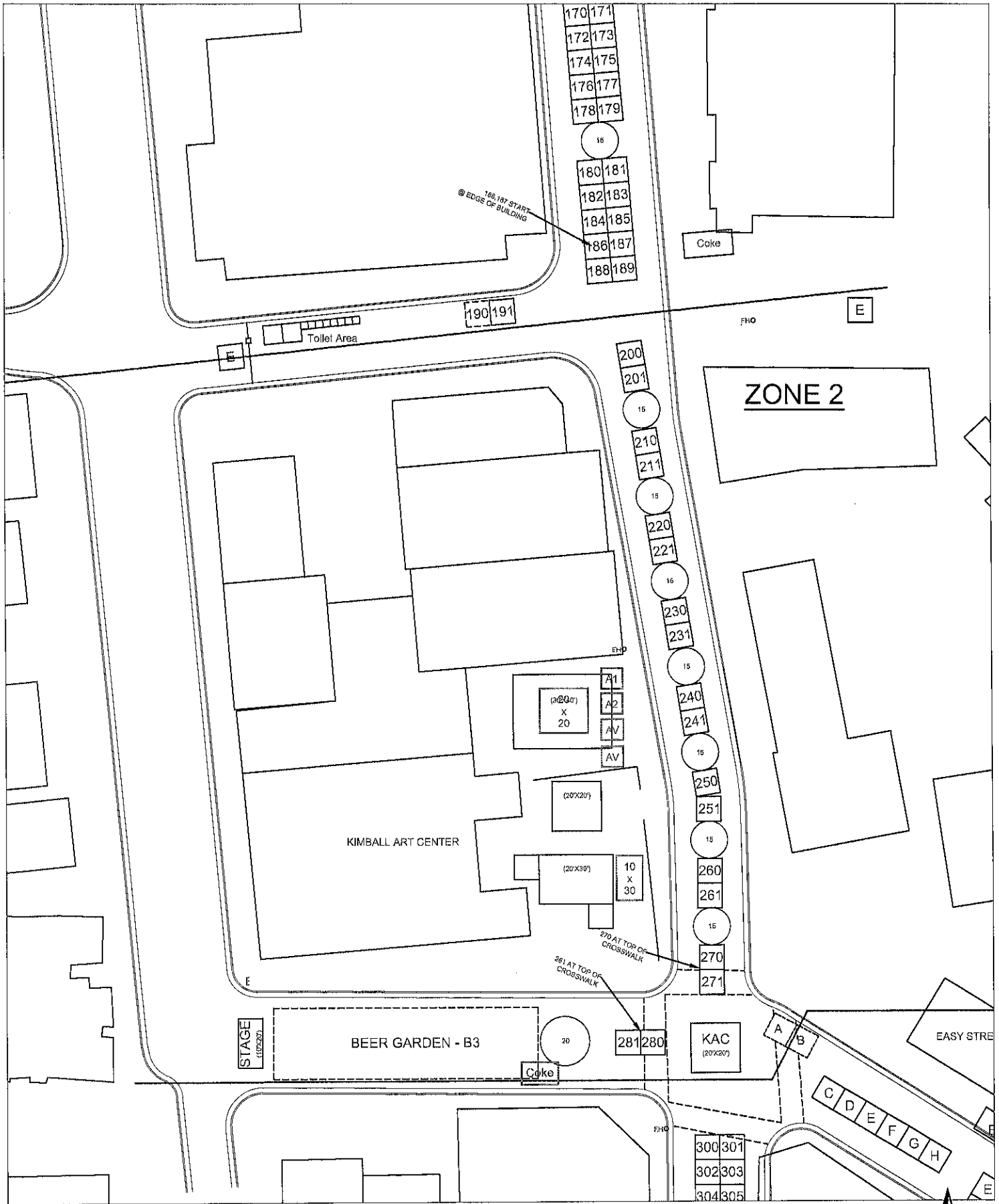
# MAIN STREET ZONE 1

## 2016 PARK CITY KIMBALL ARTS FESTIVAL



Scale : 1"=50'-0"  
Crowley Productions LLC - 2016

\*Accuracy based on plan provided by Park City Planning Department

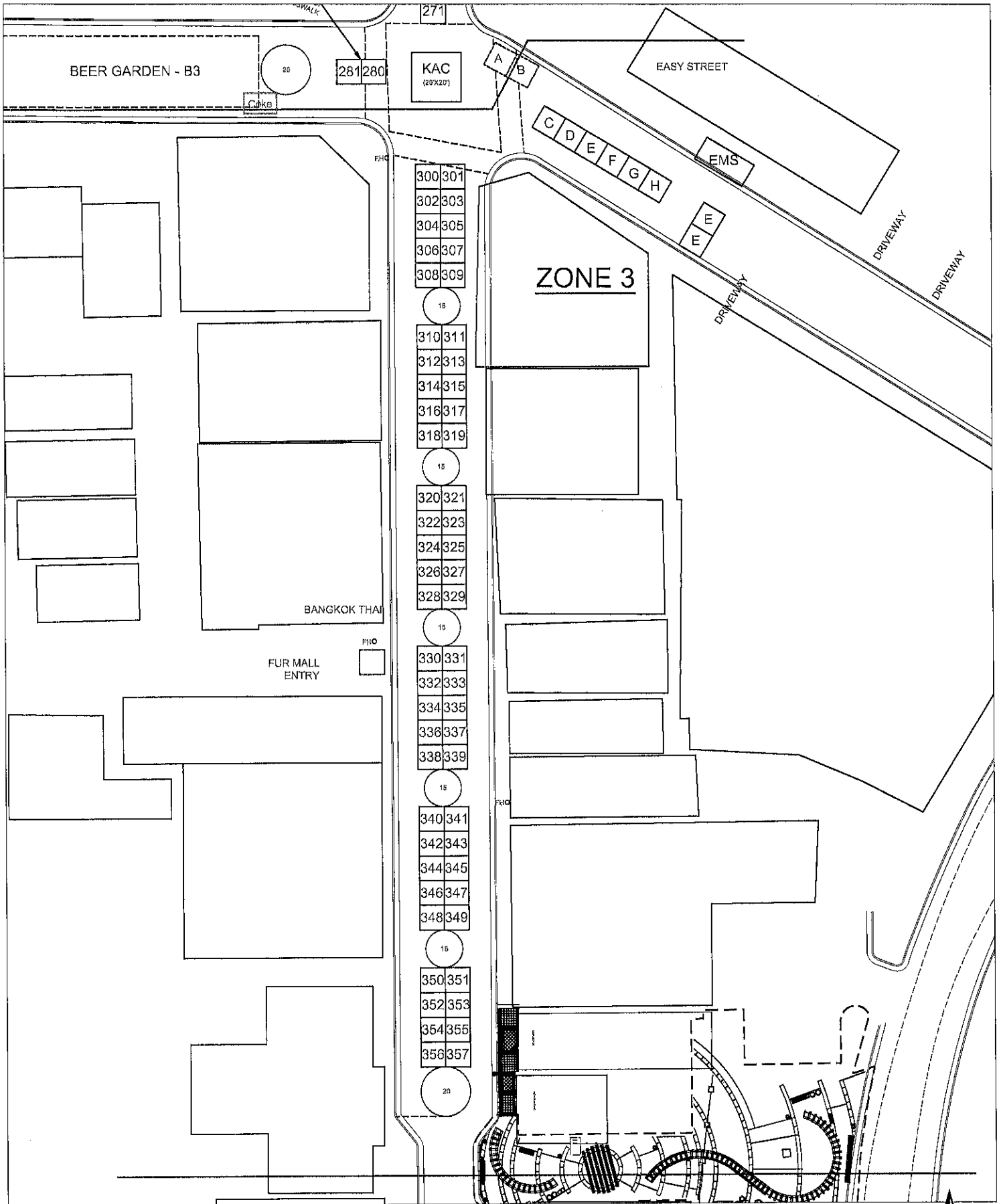


# MAIN STREET ZONE 2

## 2016 PARK CITY KIMBALL ARTS FESTIVAL





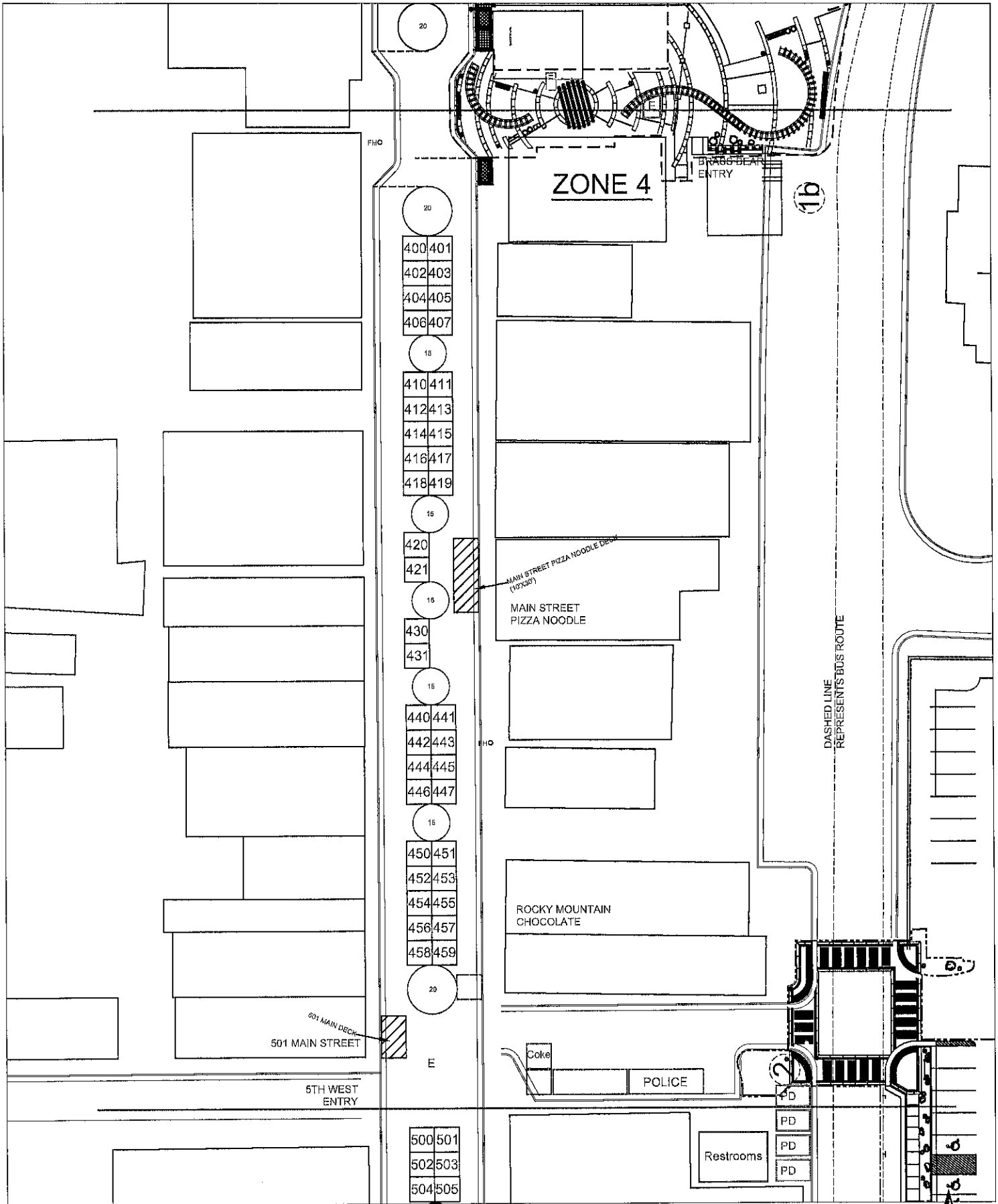


# MAIN STREET ZONE 3

2016 PARK CITY KIMBALL ARTS FESTIVAL



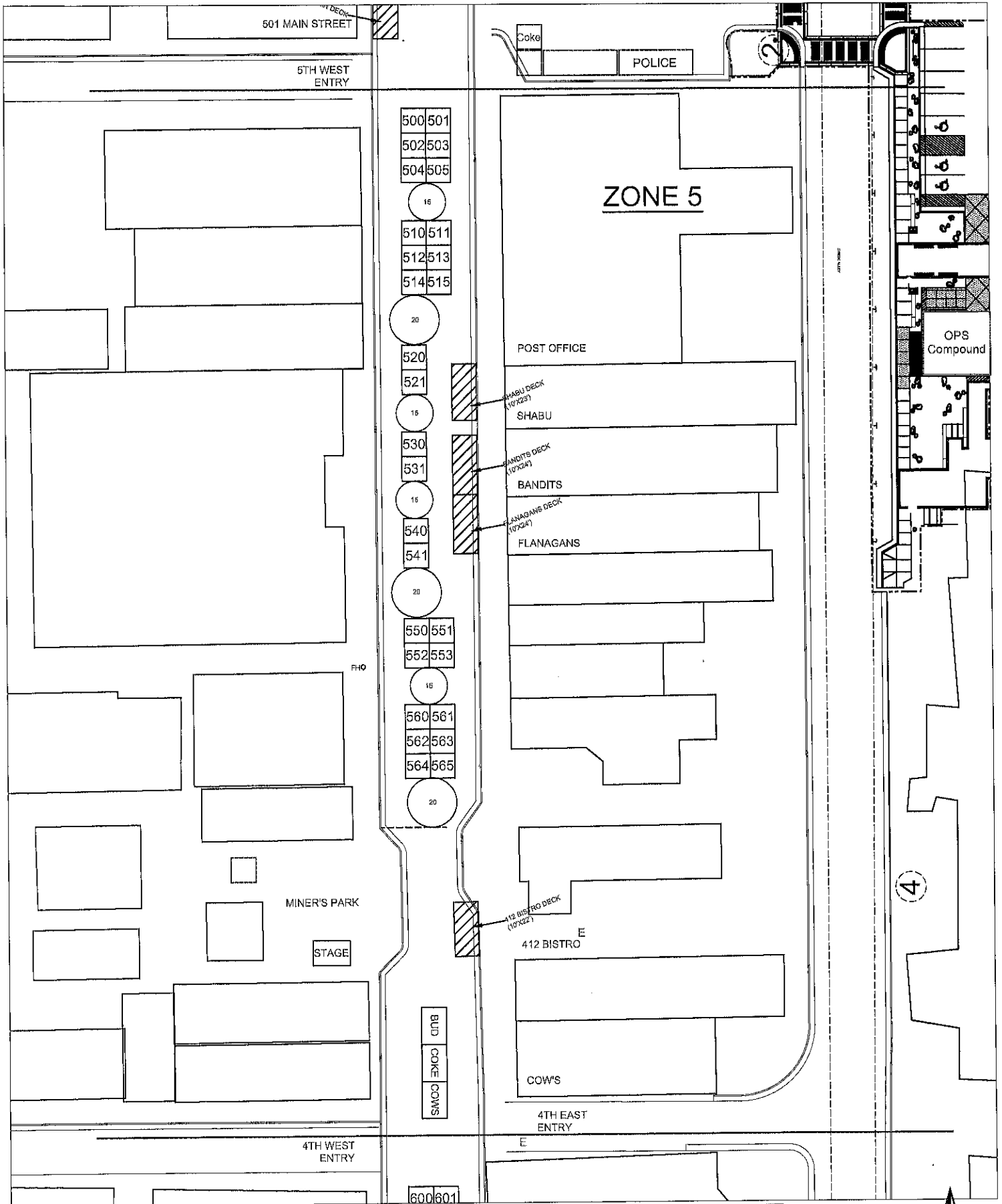
\*Accuracy based on plan provided by Park City Planning Department



# MAIN STREET ZONE 4

## 2016 PARK CITY KIMBALL ARTS FESTIVAL

\*Accuracy based on plan provided by Park City Planning Department

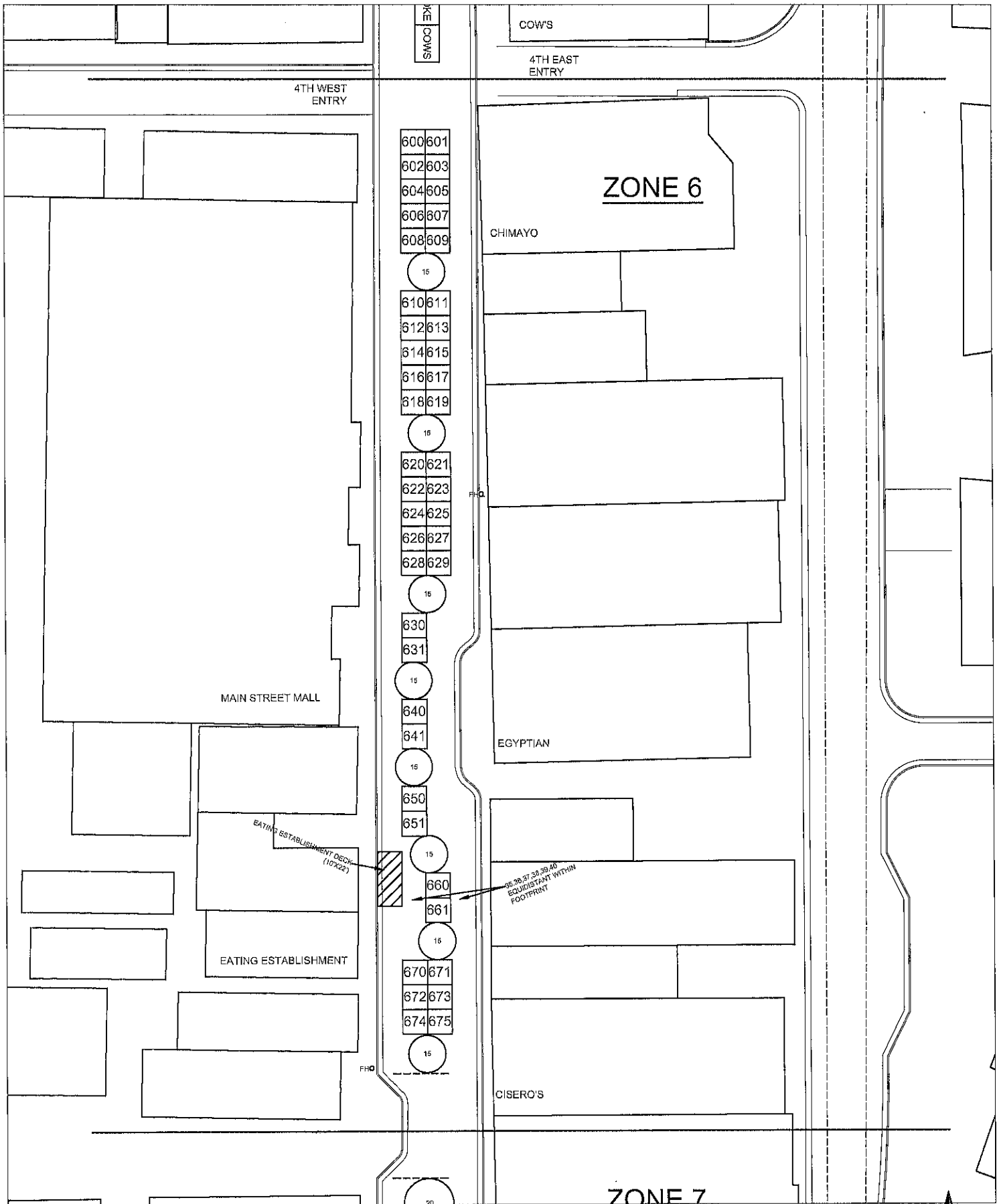


# MAIN STREET ZONE 5

2016 PARK CITY KIMBALL ARTS FESTIVAL



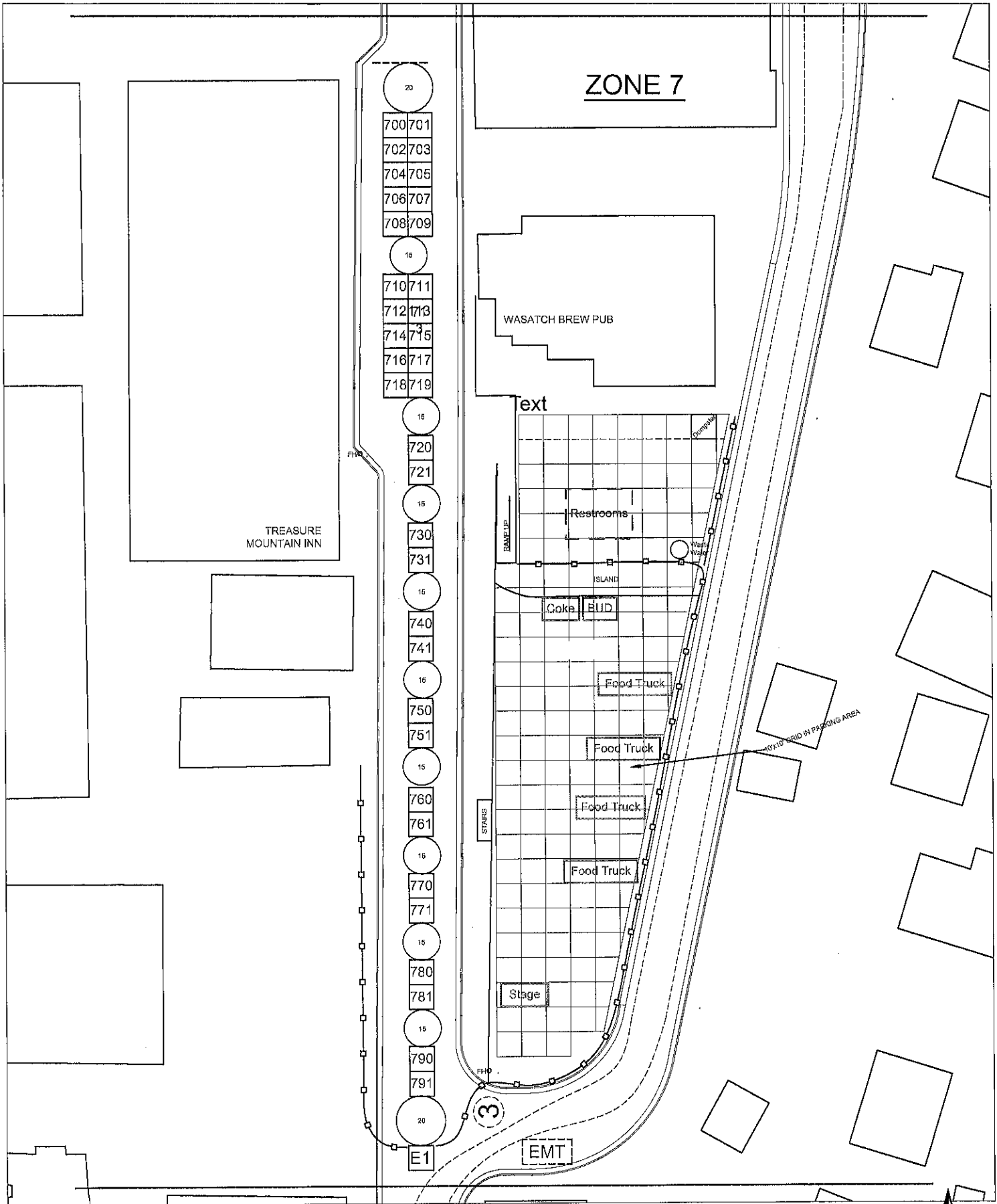
\*Accuracy based on plan provided by Park City Planning Department



# MAIN STREET ZONE 6

## 2016 PARK CITY KIMBALL ARTS FESTIVAL





# MAIN STREET ZONE 7

## 2016 PARK CITY KIMBALL ARTS FESTIVAL



\*Accuracy based on plan provided by Park City Planning Department