

STREET DINING ON MAIN OUTDOOR DINING LEASE 2024

This Street Dining on Main Outdoor Dining Lease 2024 (“Lease”) is by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, (the “City”, “Park City”, or “Landlord”) and **SHABU, INC.**, a Utah corporation, **DBA SHABU** (the “Tenant”) located at 442 Main Street, Park City, Utah.

WHEREAS, the City wishes to enable opportunities for restaurants on Main Street to be able to provide additional outdoor dining opportunities; and

WHEREAS, the City’s goals include the establishment of new and creative opportunities to facilitate the Main Street experience for residents and visitors alike during the shoulder and summer seasons; and

WHEREAS, the City’s goals include the preservation and enhancement of Park City’s character regarding Old Town and the desire to strengthen the pedestrian experience along Main Street; and

WHEREAS, the City recognizes the desire of many visitors and residents to dine outdoors along historic Main Street; and

WHEREAS, the City’s General Plan recommends utilizing street design techniques to encourage slower traffic speeds and a more intimate pedestrian-oriented scale; and

WHEREAS, the City completed a Public Benefit Analysis on April 25, 2024, a copy of which is available in the Special Events Office (“Public Benefit Analysis”);

WHEREAS, the City’s goals include maintaining and furthering the resort community’s economic opportunities, as well as enhancing the economic viability of Park City’s Main Street Business District.

NOW, THEREFORE, the parties agree as follows:

1. **PROPERTY.** The property affected by this Lease is generally described as the street area and sidewalk directly fronting Tenant’s building located at 442 Main Street, which has a length of 23.7 feet (1.18 parking spaces), and more specifically described in site plan **Exhibit A**, attached hereto and incorporated herein by this reference, (the “Premises”). The length of the outdoor dining deck per restaurant may not exceed forty feet (40’).
2. **RENT.** Annual rent for the use of the street for the deck is waived per the Public Benefit Analysis completed on April 25, 2024. Tenant shall be solely responsible for payment of any and all costs associated with Tenant’s performance under this

Lease, including but not limited to additional business licensing fees, insurance, sales taxes and other expenses.

3. **TERM.** Unless otherwise delayed, suspended, or terminated by Summit County health order(s), the term of this Lease shall commence on May 29, 2024, and shall terminate on October 1, 2024 ("Term") unless terminated earlier as provided herein. Additional term restrictions are attached hereto and incorporated herein by this reference in **Exhibit B** (Street Dining Operational Restrictions). This Lease may be terminated by Park City upon a finding of non-compliance of this Lease or the attached operational restrictions. Failure to remove the deck by October 30, 2024, will result in loss of eligibility for the following year. The use of the Premises shall not conflict with any previously existing Special Event Permit recipients on Main Street.
4. **MAIN STREET IMPROVEMENTS.** If at any time the street dining deck needs to be removed due to construction related to Main Street improvements, the City will give each affected street dining business owner a minimum of twenty four-(24) hours to have their decks removed, unless there is an emergency project which then the business owner should remove the deck as soon as possible. The City will not be responsible for any associated costs involving deck removal/placement or potential lost revenue.
5. **USE OF PREMISES.** Tenant may use the Premises only for outdoor dining services in a manner consistent with applicable Summit County health orders, Section 15-2.6-12(B)(1) of the Park City Land Management Code and the terms of this Lease. As a condition of this Lease, Tenant shall comply with the operational restrictions set forth in Exhibit B. Park City makes no representations regarding the Premises and Tenant accepts the Premises "AS IS."
6. **IMPROVEMENTS TO THE PREMISES.** Tenant shall not make any improvements to the Premises without first obtaining Park City's written consent. Any improvements approved by Park City shall be completed at Tenant's sole expense and removed at Tenant's sole expense upon expiration of this Lease. No permanent alterations to the City's property are permitted.
7. **SIGNS.** No signs shall be permitted on the Premises except as specifically approved by the Park City Municipal Corporation Planning Department pursuant to the Park City Sign Code and/or Tenant's Master Sign Plan.
8. **INSURANCE.**

At its own cost and expense, Tenant shall maintain the following mandatory insurance coverage to protect against claims for injuries to persons or property damage that may arise from or relate to the use and occupancy of the Premises by by Tenant, its agents, representatives, employees, or contractors for the entire duration of this Lease or for such longer period of time as set forth below.

Prior to taking possession of the Premises, Tenant shall furnish a certificate of insurance as evidence of the requisite coverage. The certificate of insurance must include endorsements for additional insured, waiver of subrogation, primary and non-contributory status, and completed operations.

- a. Commercial General Liability Insurance. Tenant shall maintain commercial general liability insurance on a primary and non-contributory basis in comparison to all other insurance, including the Landlord's own policies of insurance, for all claims against Landlord. The policy must be written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$3,000,000 aggregate for personal injury and property damage. Upon request of Landlord, Tenant must increase the policy limits to at least the amount of the limitation of judgments described in Utah Code § 63G-7-604, the Governmental Immunity Act of Utah (or successor provision), as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3 (or successor provision).
- b. Umbrella/Excess Coverage. The insurance limits required by this section may be met by either providing a primary policy or in combination with umbrella / excess liability policy(ies). To the extent that umbrella/excess coverage is used to satisfy the limits of coverage required hereunder, the terms of such coverage must be following form to, or otherwise at least as broad as, the primary underlying coverage, including amending the "other insurance" provisions as required so as to provide additional insured coverage on a primary and non-contributory basis, and subject to vertical exhaustion before any other primary, umbrella/excess, or any other insurance obtained by the additional insureds will be triggered.
- c. Insured Parties. Each policy and all renewals or replacements must name the Landlord (and its officers, agents, and employees) as additional insureds on a primary and non-contributory basis with respect to liability arising out of or related to the use and occupancy of the Premises by Tenant.
- d. Waiver of Subrogation. Tenant waives all rights against Landlord and any other additional insureds for recovery of any loss or damages to the extent these damages are covered by any of the insurance policies required under this Lease. Tenant shall cause each policy to be endorsed with a waiver of subrogation in favor of Landlord for claims arising out of or related to the use and occupancy of the Premises by Tenant, including claims by Tenant, its employees, agents, and contractors.
- e. Quality of Insurance Companies. All required insurance policies must be issued by insurance companies qualified to do business in the state of Utah and listed on the United States Treasury Department's current Department of Treasury Fiscal Services List 570, or having a general

policyholders rating of not less than "A-" in the most current available A.M. Best Co., Inc.'s, Best Insurance Report, or equivalent.

- f. Cancellation. Should any of Tenant's required insurance policies under this Lease be cancelled before the termination or expiration of this Lease, Tenant must deliver notice to Landlord within 30 days of cancellation. Landlord may request and Tenant must provide within 10 days certified copies of any required policies during the term of this Lease.
 - g. Additional Coverage. Notwithstanding anything to the contrary, if Tenant has procured any insurance coverage or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage or limits set forth in this Lease, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance are the coverage and limits required by this Lease and such coverage and limits must be provided in full to the additional insureds and indemnified parties under this Lease. The parties expressly intend that the provisions in this Lease will be construed as broadly as permitted to be construed by applicable law to afford the maximum insurance coverage available under Tenant's insurance policies.
 - h. No representation. In specifying minimum Tenant's insurance requirements, Landlord does not represent that such insurance is adequate to protect Tenant from loss, damage or liability arising from the use and occupancy of the Premises. Tenant is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.
9. **HOLD HARMLESS**. Tenant shall defend, indemnify, and hold Park City harmless from all claims, loss, damage, injury or liability (hereafter "Liability") arising out of or resulting from Tenant's use and occupancy of the Premises to the full extent permitted by law and/or the Governmental Immunity Act of Utah, including reasonable attorney's fees, but excluding any liability resulting from acts or omissions of Park City, its officers, employees or agents. Nothing herein shall be construed as a waiver of any of the rights or defenses under the Governmental Immunity Act of Utah (Utah Code § 63G-7-101 et seq., as amended). The obligations hereunder shall be determined under principles of tort law including, but not limited to, the Governmental Immunity Act of Utah. In case of an emergency including but not limited to a flood, storm drain, or utility, the structure may be removed or damaged by response teams at the cost of the Tenant. Tenant shall indemnify, protect and hold the Landlord harmless from and defend (by counsel reasonably acceptable to Landlord) the Landlord against any and all claims, causes of action, liability, damage, loss or expense (including reasonable attorneys' fees and costs and court costs), statutory or otherwise arising out of or incurred in connection with (i) the use, operation, occupancy or existence of the Premises or the presence of visitors, or any other person, at the Premises during

the Term, (ii) any activity, work or thing done or permitted or suffered by Tenant in or about the Premises, (iii) any acts, omissions or negligence of Tenant, any person claiming through Tenant, or the contractors, agents, employees, members of the public, invitees, or visitors of Tenant or any other such person ("Tenant Party" or "Tenant Parties"), (iv) any breach, violation or nonperformance by any Tenant Party of any provision of this Lease or of any law of any kind, or (v) except to the extent resulting from any negligence or intentional torts of Landlord.

- 10. ASSIGNABILITY. Tenant shall not assign or transfer any interest in this Lease without the prior written consent of Park City. Any assignment or transfer without written approval is void.
- 11. PROFESSIONAL PERFORMANCE. Tenant agrees to perform services under this Lease at the highest professional standards, and to the satisfaction of Park City.
- 12. APPLICABLE LAW. This Lease shall be governed by the laws of the state of Utah.
- 13. ENTIRE AGREEMENT. This Lease constitutes the entire and only agreement between the parties and it cannot be altered or amended except by written instrument, signed by both parties.

Each party is signing this Lease on the date stated opposite that party's signature.

Tenant:
SHABU, INC., a Utah corporation,
DBA SHABU

DocuSigned by:
 By: Kevin Valaika
 Name Printed: kevin valaika
 Title: general manager

Date: 05/24/2024

PARK CITY MUNICIPAL CORPORATION,
a Utah municipal corporation

DocuSigned by:
By: Nann Worel
Nann Worel, Mayor

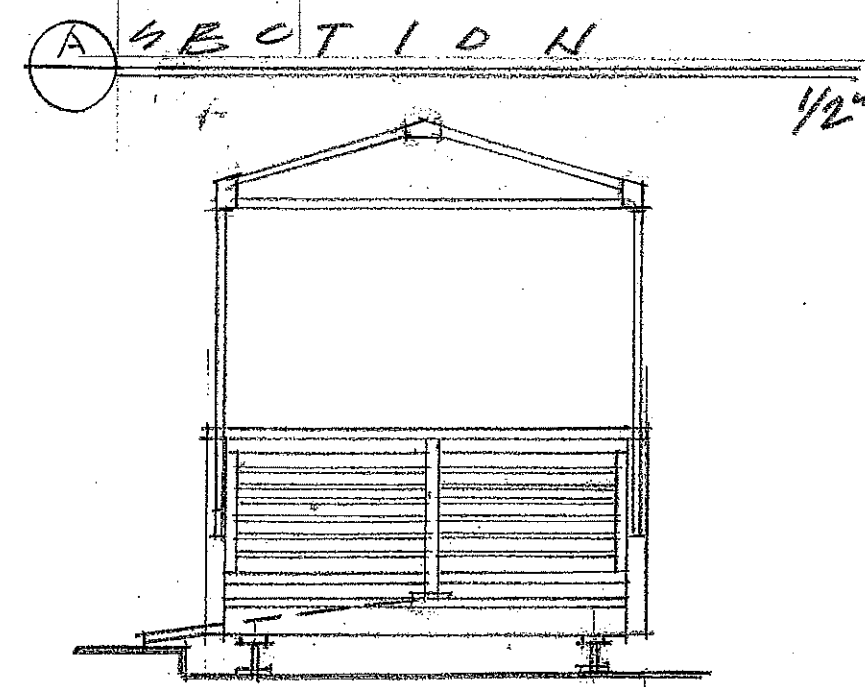
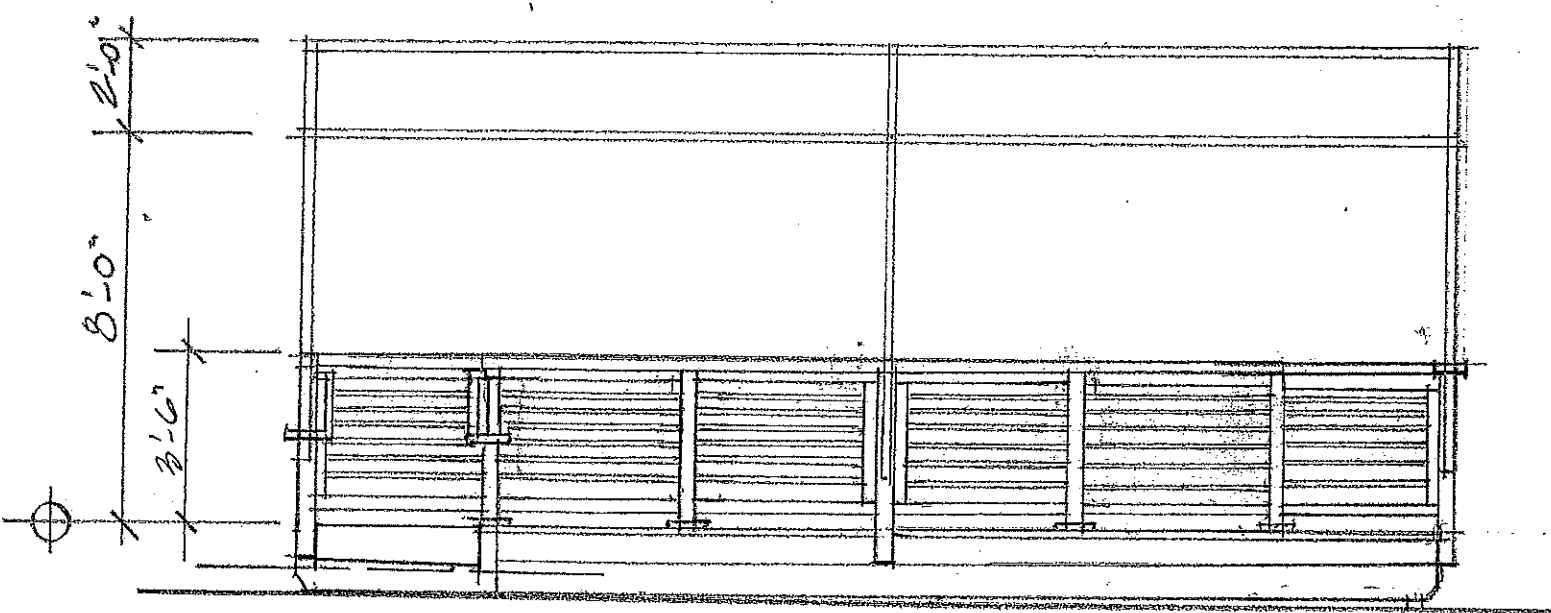
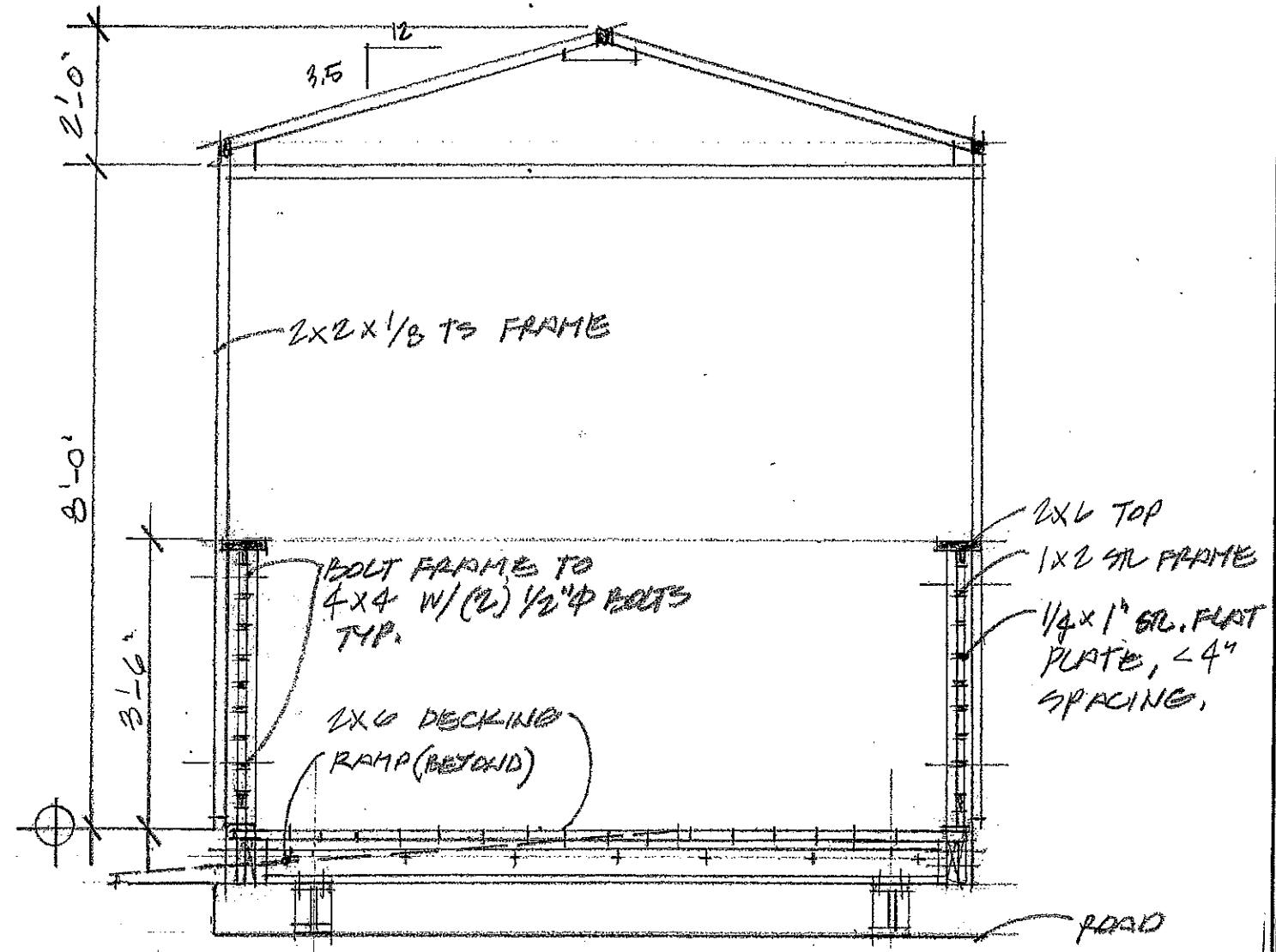
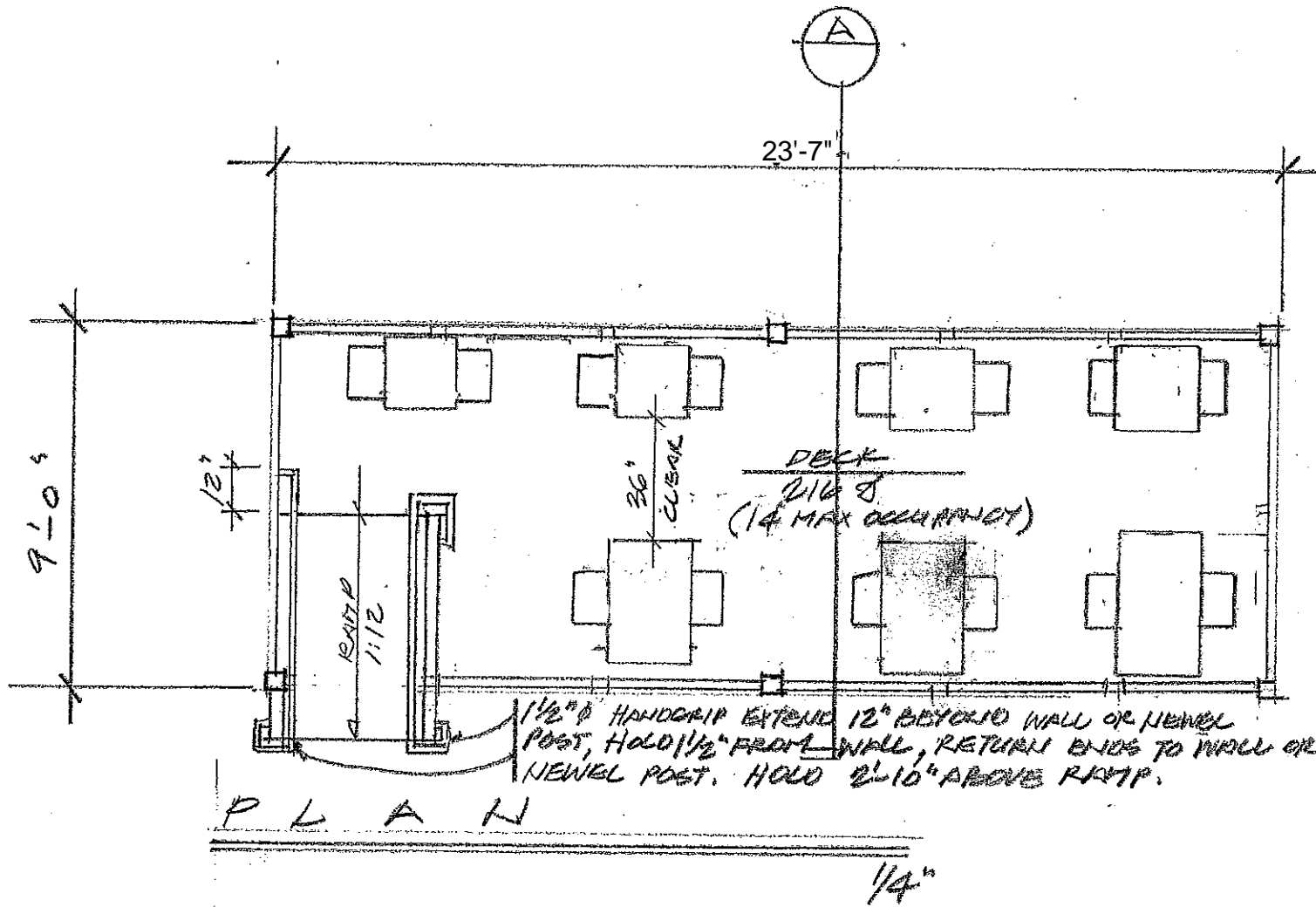
Date: May 28, 2024

Attest:

DocuSigned by:
Michelle Kellogg
Michelle Kellogg, City Recorder

Approved as to form:

DocuSigned by:
Mark Harrington
City Attorney's Office



epic
ENGINEERING

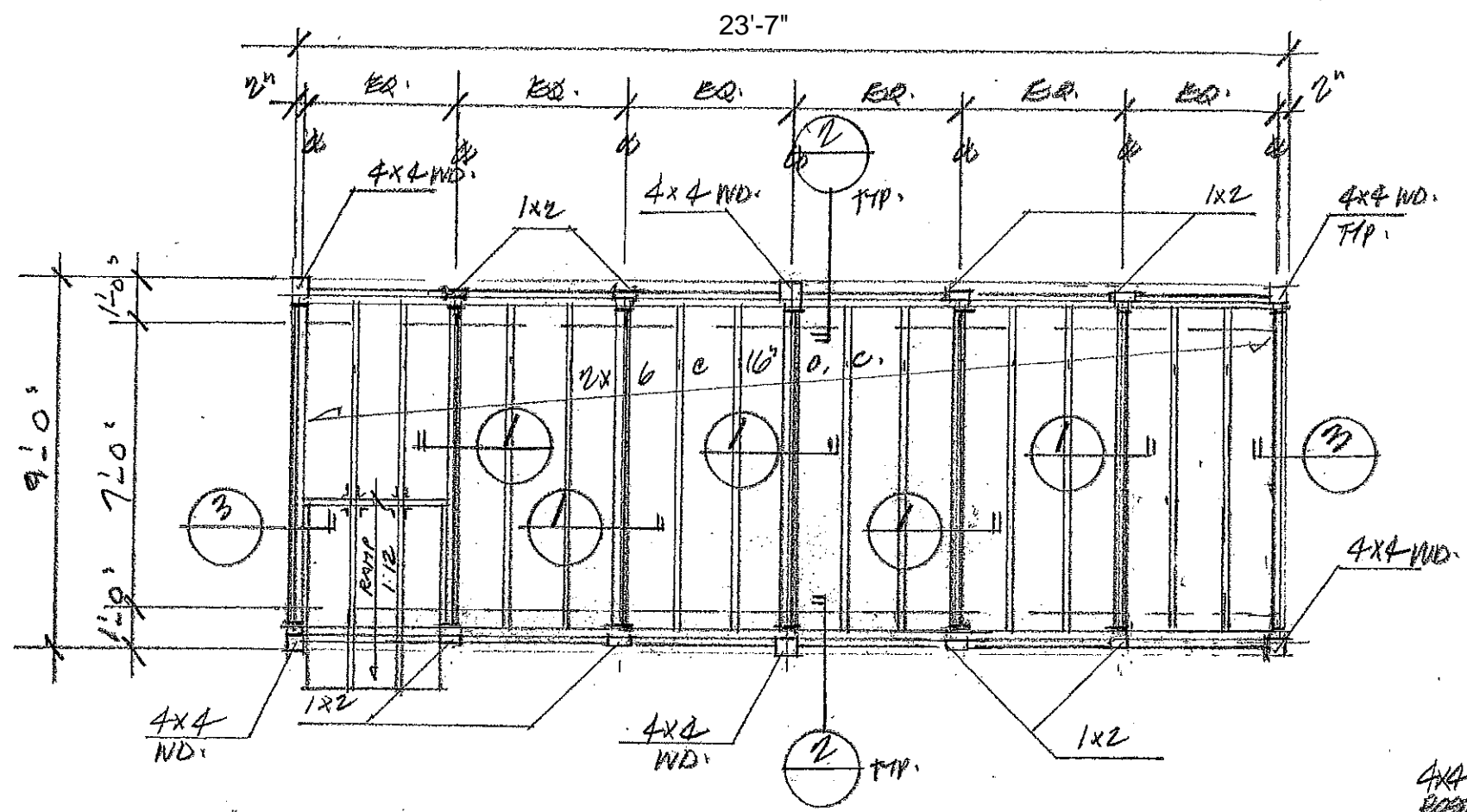
PROJECT LOCATION: SHABU DECK
442 MAIN STREET
PARK CITY, UT

DECK PLAN
ELEVATIONS
SECTION

DATE: 2.26.19

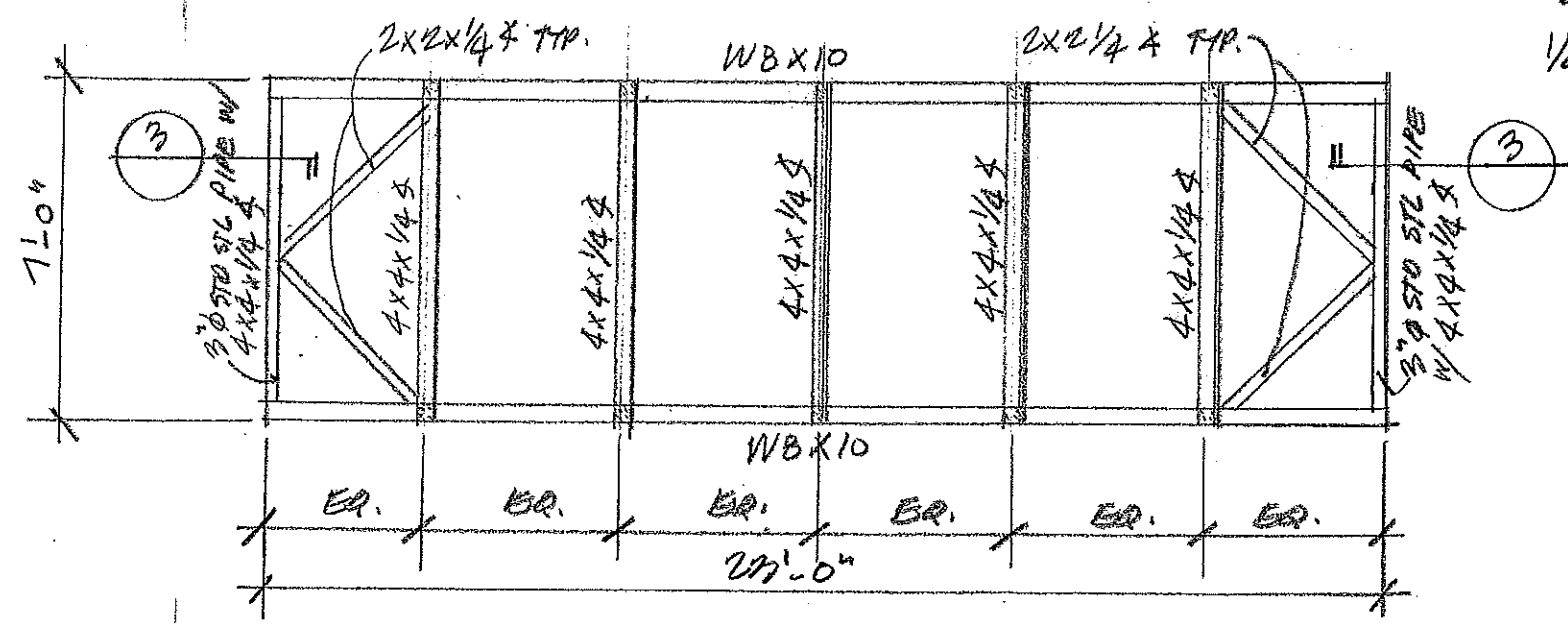
PROJECT NUMBER:

SHEET NUMBER:
A.1



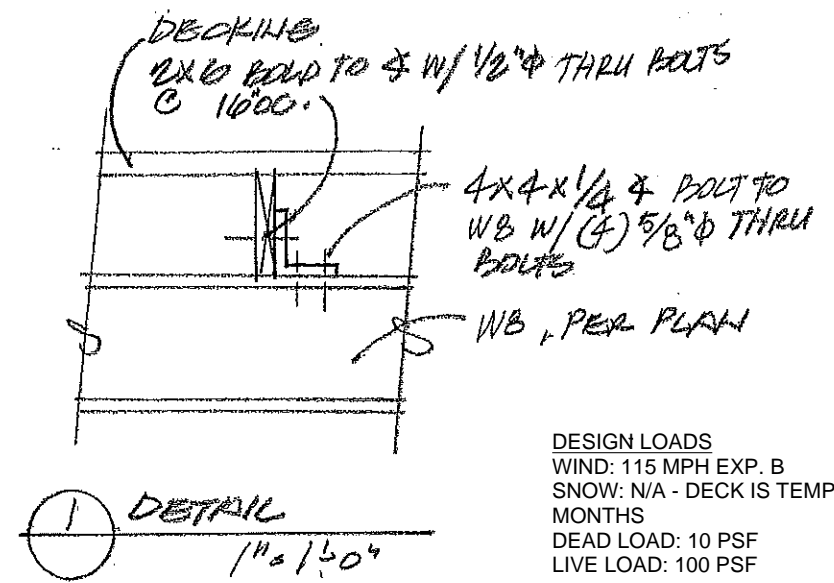
DECK FRAMING

1/4"

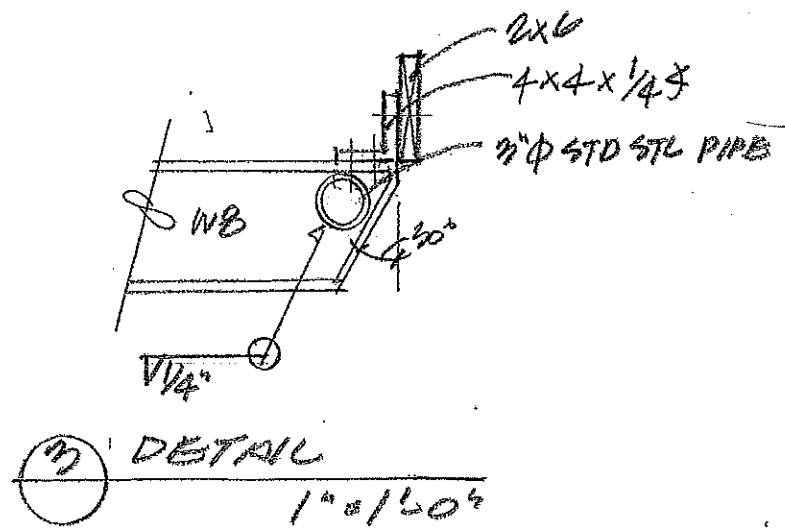
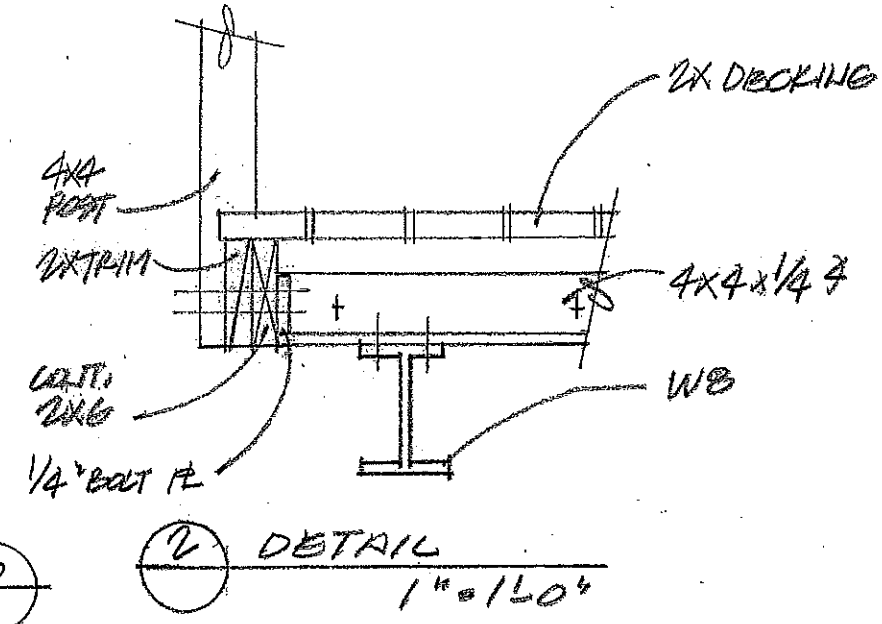


STEEL FRAME

1/4"



DESIGN LOADS
WIND: 115 MPH EXP. B
SNOW: N/A - DECK IS TEMPORARY FOR SUMMER MONTHS
DEAD LOAD: 10 PSF
LIVE LOAD: 100 PSF



epic
ENGINEERING

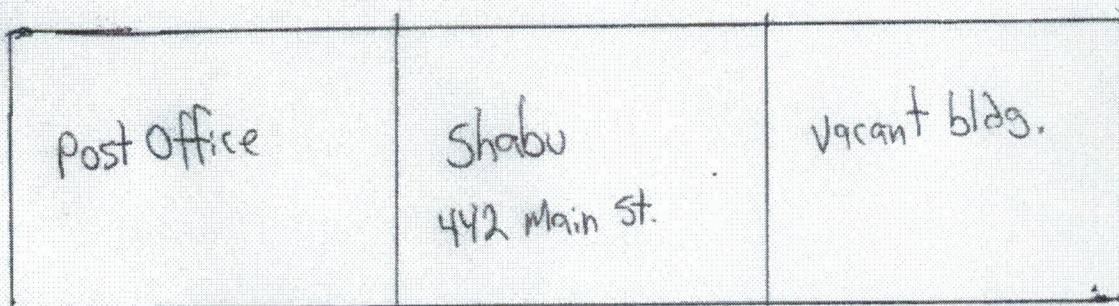
PROJECT DESCRIPTION:
SHABU DECK
442 MAIN STREET
PARK CITY, UT

DATE: 2.26.19

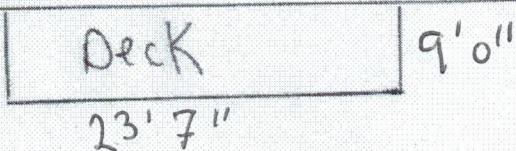
PROJECT NUMBER:

SET NUMBER:
5.1

Site Plan 442 Main St. Shabu Deck



Sidewalk



Main Street

Exhibit B – Street Dining Operational Restrictions

Street dining may be allowed by the Planning Department upon issuance of an Outdoor Dining Administrative Conditional Use Permit. Street dining is permitted beginning as early as April 29, and shall terminate on October 30th of each year. A total of twelve (12) street dining decks may be accommodated on Main Street based on the layout of the proposed decks. The Applicant must submit an application, pay an application fee, and provide all required materials and plans. Ongoing monitoring will be provided to ensure compliance with these parameters. The Administrative Conditional Use Permit or the Lease may be revoked for failure to comply with these restrictions.

Required Submittals:

- Dining Site Plan – This plan shall be to scale and indicate: the Applicant's building as it relates to the exact proximity of the street dining deck. The plan shall include accurate locations of proposed chairs, tables, umbrellas, planters, and any other existing public improvements (light fixtures, fire department connections, parking meters, etc.).
- Details/specifications sheets – Shall be submitted for each piece of equipment proposed with the street dining is application. This will include all tables, chairs, umbrellas, etc.

Design Standards:

1. Size. Street dining area shall be limited to the linear frontage a building has on Main Street and shall not exceed nine feet (9') in width. The encroachment of the proposed decks into street will not exceed seven feet, nine inches (7'-9") in width from the curb, as the encroachment of the proposed decks into the sidewalk will not exceed one foot three inches (1'-3"), unless approved by City Council. With the written permission of the adjacent property owner submitted to the City, they may extend into the neighbor's street frontage. Forty-four inches (44") of clear sidewalk width shall be available at all times where the street dining deck is constructed. Each outdoor dining deck shall not exceed forty feet (40') in length.
2. Location/Proximity/Spacing. The City reserves the right to reject an application for an outdoor dining deck:
 - If the proposed deck is too close to a previously existing deck and would eliminate needed parallel parking along Main Street thus creating a concentrated parking issue.
 - If the proposed deck is for a restaurant that does not have direct access at street level.
 - If the proposed deck is for a business with existing outdoor dining space and the expansion of such is deemed excessive.

- If the proposed deck creates too much private use of the public right-of-way that may be deemed detrimental to the health, safety, and welfare of the area.
 - The Building, Planning, and Engineering Departments will review the location, proximity, and spacing of each street dining deck as well as impacts of traffic and public safety concerns. A recommendation will be given to the City Council for final review and approval.
3. Hours of Operation. The street dining decks shall be utilized for street dining and shall serve two (2) meal services seven (7) days a week for the duration that the decks are in the Right of Way. Should a restaurant not be able to serve two meal services, they may partner with another restaurant or café to use the space during at least one of the meal service times. The partner restaurant must also enter into a Lease with the City. The restaurants shall collaborate to keep the area clean.
 4. Material. Street dining decks may be built of wood or metal platforms and shall have a solid base. The design of the base shall complement the style of the building. The railing shall be painted solid to also complement the building. While outdoor dining deck is not subject to a complete Historic District Design Review (HDDR), the guidelines are applicable to the project.
 5. Height. The maximum height of the deck shall not exceed thirty-six inches (36") measured from existing grade to the base/floor of the deck at any given point. The layout of the deck may include a step to meet the maximum height allowed.
 6. Advertising. Additional signing or advertising beyond what is allowed by the Park City Sign Code is prohibited.
 7. Furniture. All tables and chairs shall be metal, wood, or other comparable material. Plastic furniture shall not be allowed. All furniture must be approved by the Planning Department per the historic district design review.
 8. Umbrellas. Umbrellas must be free standing and are prohibited from extending beyond the dining area. Any umbrellas shall be affixed permanently to the deck as required by the International Building Code requirements (including fire standards) and shall not create any public hazard.
 9. Lighting. No additional electric lighting is permitted, including exterior building lighting.
 10. Planters. Any proposed landscaping or atmosphere pieces shall be reviewed at the time of initial application and shall not create any public hazard or unnecessary clutter. All plant material must be maintained in a manner that ensures their viability throughout the summer outdoor dining season.
 11. Use. The use of the Premises shall not conflict with any previously existing Special Events on Main Street.
 12. Licensing. The additional square footage of the dining area must be added to

the existing licensed area for the restaurant. The Tenant shall also adhere to other applicable City and State licensing ordinances, including the Department of Alcoholic Beverage Services. It is the responsibility of the Tenant to ensure that all licenses are properly obtained and adhered to.

13. Duration. Street dining is permitted beginning April 29th and shall terminate on October 30th.
14. Health & Safety. The Use shall not violate the Summit County Health Code, Summit County Health Orders, State of Utah Health Orders, the Fire Code, or International Building Code.
15. Music. The use of outdoor speakers and music is prohibited.
16. Maintenance. The dining area shall be clean and maintained in a neat and orderly fashion.
17. Storage. All equipment and other associated materials must be removed and stored on private property during prohibited times (off season). No material associated with the outdoor dining decks may be stored outdoors on-site during the off-season.
18. Removal. Decks must be completely removed from the Right-of-Way prior to the end of business day October 30. If the outdoor dining structure is not removed as required, the City will remove the structure at cost to compensate for the employees and equipment needed to complete the task.
19. Drainage. Design of the deck and its skirting shall not interfere with the existing street drainage. Deck plans shall be reviewed by the City for drainage and may be modified so as to not interfere with the existing drainage patterns of the street. Decks that have drains directly under them or downhill will be required to install screening to ensure waste does not enter the system.
20. Utilities. Access to utilities shall not be hindered by the structures. No outdoor dining decks will be approved if located in an area that blocks access to fire hydrants, etc. No new utility lines shall be installed as a result of the proposed outdoor dining.
21. Aesthetics. Due to the Park City environment and storage of the decks over the years, the decks shall be maintained in a safe and high-quality manner. Prior to final installation and occupancy of each deck, the Tenant shall make sure that the structural members can adequately meet their original design and each deck shall look aesthetically pleasing.
22. Violations. The decks shall be in compliance with all County and State Health Orders in addition to Municipal Code § 11-19-3(H) regarding Prohibition Against Issuance of Municipal Permits. From the time that any Notice of Violation is given, the City may withhold permits for any alteration, repair or construction, which pertains to any existing or new structures or signs on the property or any permits pertaining to the use and development of the real property or the structure where a violation is located. The City may withhold permits until a

Notice of Compliance has been issued by the enforcement official. The City may not withhold permits that are necessary to obtain a Notice of Compliance or that are necessary to correct serious health and safety violations.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/22/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Wasatch Leavitt Insurance
2029 Sidewinder Dr, Suite 100
PO Box 682770
Park City UT 84068

CONTACT NAME: Rita Hendrickson	
PHONE (A/C, No, Ext): (435) 645-8336	FAX (A/C, No): (801) 224-0815
E-MAIL ADDRESS: rita-hendrickson@leavitt.com	
INSURER(S) AFFORDING COVERAGE	
INSURER A: Hartford	NAIC # 029424
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

APPROVED

COVERAGES **CERTIFICATE NUMBER: CL243614183**

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	X	Y	34SBAIJ7353	3/1/2024	3/1/2025	EACH OCCURRENCE	\$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						MED EXP (Any one person)	\$ 5,000
<input checked="" type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO-JECT	<input type="checkbox"/>	LOC		PERSONAL & ADV INJURY	\$ 2,000,000
<input checked="" type="checkbox"/>	OTHER: LIQUOR LIABILITY			34SBAIJ7353	03/01/2024	03/01/2025	GENERAL AGGREGATE	\$ 4,000,000
	AUTOMOBILE LIABILITY						PRODUCTS - COMP/OP AGG	\$ 4,000,000
	<input type="checkbox"/> ANY AUTO						LIQUORE LIABILITY	\$ 2,000,000
	<input type="checkbox"/> ALL OWNED AUTOS							
	<input type="checkbox"/> HIRED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> NON-OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/>						PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/>							\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR						AGGREGATE	\$
	<input type="checkbox"/> EXCESS LIAB							\$
	DED <input type="checkbox"/>							\$
	RETENTION \$ <input type="checkbox"/>							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y / N					
	If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE	
							OTH-ER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Outdoor dining 442 Main Park City Ut

Park City Municipal is listed as additional insured with primary & Noncontributory endorsement

<p>CERTIFICATE HOLDER</p> <p>Park City Municipal P O Box 1480 Park City, UT 84060</p>	<p>CANCELLATION</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <hr/> <p>AUTHORIZED REPRESENTATIVE</p> <p>Talon Davis/TADAVI</p> <p style="text-align: right;"><i>Talon Davis</i></p>
--	--

POLICY NUMBER: 34 SBA IJ7353



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - PERSON-ORGANIZATION

LOC 001, BLDG 001
PARK CITY MUNICIPAL
P O BOX 1480
PARK CITY, UT 84060