

Billings City Administrator Weekly Report

September 23, 2021

- 1. Preparations for 2023 MT Legislature** – Yesterday, a small group met in preparation of the next legislative session (Bill Mercer, Barry Usher, Leif Johnson, Sheriff Linder, Chief St John, Gina Dahl, Ben Halverson and myself). Specifically, what laws need to be amended or created to help Billings overcome the onslaught of criminal activity. This group will be meeting periodically until we improve our situation. We are planning our first public discussion for 7:00 am November 10. All local legislators, City Council and County Commissioners will be invited.
- 2. Messinger Company/Coca-Cola Tax Abatement Request** – On Monday, the Council will consider Coca-Cola's application for a 75% tax abatement for their new \$55,000,000 facility. Under state law, their project qualifies for either a 75% or 50% 10-year abatement. In 2017, the MT legislature increased the tax abatement options, allowing for either a 50% or a 75% abatement. In 2005, the City of Billings adopted Resolution 05-18376, which provides minimum criteria, the benefits allowed, and the process for an industry to seek a tax abatement in the City. In 2005, the 50% abatement was the only option under state law therefore it is the only option provided for in Resolution 05-18376. If the Council would like to grant Coca-Cola a 75% abatement, you can. Staff recommends you first amend your resolution opening both the 50% and 75% abatement options. During the same future meeting, you could then approve the 75% abatement. If you are not inclined to grant the 75% abatement, there is no need to amend Resolution 05-18376 in connection to this project. You have the authority to grant the 50% abatement (even though they requested 75%) or deny their abatement request. Yellowstone County will be considering their application in October.
- 3. Temporary Low-Income Home Water Assistance Program (LIHWAP)** - Public Works is participating in a temporary program that will provide low-income households assistance in paying their water and wastewater bills. This program is slated to operate from October 1, 2021, through September 30, 2023. Households can apply to the Montana Department of Public Health and Human Services for assistance through a process coordinated with the Low-Income Energy Assistance (LIEAP) program. Funds will be sent from the State directly to the City to be credited to income-eligible household customers to reduce arrearages, prevent shutoffs, and reduce monthly bills.
- 4. Stillwater Building Council Memo Attachments** – There has been some slight modifications to the attachments to the Stillwater Building staff memo for September 27, 2021. The modifications do not change the form and intent of the agreement. Attached please find Exhibit D – Lease Assignment Assumption and Exhibit E – FINAL Encroachment & Easement Agreement and the Lease with Yellowstone County.
- 5. Heights Sewer Interceptor Repair Update** - Staff is currently processing agreements for construction of the repair with multiple contractors. Materials for cured-in-place (CIP) lining of the

70-foot vertical standpipe and each horizontal pipe adjacent to the standpipe have been ordered and are being shipped. Construction is scheduled to begin the week of September 27th with the bypass pumping being installed. Construction of the 42-inch sewer main replacement and the lining of the standpipe is scheduled to begin the week of October 4.

6. Public Safety Mill Levy Presentation

- Mission Ridge Retirement Home, September 28 at 3:00 PM
- Heights Task Force, September 28 at 7:30 PM
- This week I have also presented to 3 public works groups
- Next week, I finish the remaining public works department groups

Happy Thursday!

EXHIBIT D – ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

[SEPARATELY ATTACHED]

ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (“Assignment”), is made, entered into and effective as of _____, 2021 (“Effective Date”), by and between **WC COMMERCIAL, LLC**, an Alaska limited liability company (“Assignor”), the **CITY OF BILLINGS**, (“Assignee”) and **Yellowstone County**, (“Tenant”).

RECITALS

A. This Assignment and Assumption Agreement relates to a Lease For A Portion Of The Third Floor Of The Stillwater Building in Billings, Montana, pursuant to which Assignor is the Landlord and Yellowstone County is the Tenant, (the “Lease”). The leased premises is contained within the Stillwater Building, and the real property is more particularly described in Exhibit “A”. A true and correct copy of the foregoing Lease is attached hereto as Exhibit “B”. The Lease is dated January 23rd, 2018. Pursuant to the Lease, Yellowstone County is a Tenant in the Stillwater Building with leased premises of approximately 17,395 square feet, (the “Premises”).

B. Assignor and Assignee are parties to that Purchase and Sale Agreement dated July 13, 2021, wherein Assignor is the Seller and Assignee is the Buyer. Pursuant to the Purchase and Sale Agreement, Assignor as Seller intends to sell and convey to Assignee as Buyer all of Assignor’s right title and interest in and to all of the property known as the Stillwater Building, of which the Premises are a part.

C. This Assignment is being made for the purposes of: (1) assigning the Lease from Assignor to Assignee; (2) obtaining Yellowstone County’s consent to the assignment; and (3) having Yellowstone County release Assignor from all future obligations and duties under the Lease from and after the date of the Assignment to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Lease. Assignor hereby assigns, transfers, conveys, and delivers to Assignee all interest in and right to the Lease.

2. Assumption of Obligation. Assignee hereby expressly assumes and all of the obligations of the Landlord under the Lease from and after the Effective Date of this Assignment.

3. Consent of the Tenant. Tenant hereby expressly consents to the Assignment of the Lease from Assignor to Assignee.

4. Release of Assignor. Tenant agrees that Assignor shall be and is released from all obligations and liability under the Lease from and after the Effective Date of this Assignment. The County agrees that from and after the Effective Date of this Assignment, it shall look exclusively to Assignee as its Landlord.

5. Representations of County. The County, as Tenant, makes the following representations to the City in connection with the Lease:

A. Tenant is the tenant under the Lease. There have been no amendments, modifications or revisions to the Lease.

B. The Lease has been duly authorized and executed by Tenant and is in full force and effect. Attached hereto as Exhibit B is a true, correct, and complete copy of the Lease together with all amendments, modifications and revisions related to the Lease. No other documents govern the relationship between Landlord and Tenant other than the Lease.

C. The Lease has not been assigned, by operation of law or otherwise, by Tenant. Tenant has not received any notice of the assignment by Landlord to any party of the Landlord's interest in the Lease.

D. The Lease has a Commencement Date of May 23, 2018 and an expiration date of May 22, 2025. There is one (1) consecutive renewal term of three (3) years.

E. As of the date hereof, Rent has been paid through _____, 2021.

F. Neither Tenant nor, to the best of Tenant's knowledge, Landlord is in default under the Lease and no event has occurred that, with the giving of notice or passage of time, or both, could result in a default under the Lease.

6. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, and representatives of the respective parties hereto.

7. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against any other party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event, the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees and costs.

8. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of Montana without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument

10. Cooperation. Assignor hereby agrees to and shall execute and deliver to Assignees any and all documents, agreements and instruments necessary to consummate the transactions contemplated by this Assignment.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

ASSIGNOR: WC COMMERCIAL, LLC

By: _____

Joseph W. Holden
Its: Member

ASSIGNEE: CITY OF BILLINGS

By: _____

William A. Cole
Its: Mayor

**TENANT: YELLOWSTONE COUNTY BY AND THROUGH
ITS BOARD OF COUNTY COMMISSIONERS**

Donald Jones, Chairman

John Ostlund, Commissioner

Denis Pitman, Commissioner

EXHIBIT A
Legal Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

EXHIBIT B
Lease

[Separately Attached]

4852-5796-4539, v. 4

EXHIBIT E – ENCROACHMENT AND EASEMENT AGREEMENT

[SEPARATELY ATTACHED]

Upon recording, return to:
Doug James
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

ENCROACHMENT AND EASEMENT AGREEMENT

This Encroachment and Easement Agreement (“Agreement”) is made effective the _____ day of September, 2021, between **WC COMMERCIAL, LLC**, an Alaska limited liability company, (“WC”), **CRMX-233, LLC**, a Montana limited liability company, (CRMX), and **THE CITY OF BILLINGS, MONTANA**, (“City”).

RECITALS

A. WC is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Building”, and is more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block 43, of the Original Town (Now City) of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. 16312.

Together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures and improvements thereon and all water and ditch rights, rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property.

The foregoing parcel shall be referred to as the “Stillwater Building Parcel”.

B. CRMX is the owner of certain real property located in Yellowstone County, Montana, which is referred to as the “Stillwater Garage”, and is more particularly described as follows:

LOTS 17, 18, 19, 20, 21, 22, 23, AND 24, BLOCK 42, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Stillwater Garage Parcel”.

C. A pedestrian Sky Bridge connects the Stillwater Building on the Stillwater Building Parcel to the Stillwater Garage Parcel. CRMX is the Owner of the Sky Bridge and the Stillwater Garage Parcel. This Sky Bridge was approved by the City on June 18, 2018, pursuant to Resolution No. 18-10729. The Sky Bridge is generally defined as:

That Sky Bridge over the City street described as 26th Street, lying between the Stillwater Building Parcel and the Stillwater Garage Parcel. The Sky Bridge is approximately 98 feet long, 10 feet wide, and 10 feet tall.

D. The City has entered into a purchase and sale agreement with WC for the purchase of the Stillwater Building Parcel.

E. CRMX intends to transfer ownership of the Stillwater Garage Parcel and the Sky Bridge to WC.

F. WC, CRMX, and the City enter into this Agreement for the purpose of defining their respective rights and duties with respect to the Sky Bridge.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

AGREEMENT

1. **Permanent Easement.** CRMX grants to the City and its successors and assigns forever a permanent access easement for the City and its employees, guests, and invitees to use the Sky Bridge for the purpose of ingress and egress to and from the Stillwater Building Parcel over and through the Sky Bridge that connects to the Stillwater Garage Parcel. Through this easement, CRMX grants to the City and its successors and assigns, employees, guests, and invitees, access to and from the Stillwater Garage and the Stillwater Garage Parcel through the Sky Bridge. This easement shall be appurtenant to the Stillwater Building Parcel. For the purposes of this easement, the Stillwater Building Parcel is the “Dominant Estate” and the Stillwater Garage Parcel is the “Servient Estate”. This easement shall not be terminated without the express written consent of the owner(s) of the Stillwater Building Parcel.
2. **Sky Bridge Encroachment.** The Sky Bridge connects the Stillwater Garage Parcel to the Stillwater Building Parcel. The Sky Bridge encroaches upon and is attached to the Stillwater Building. The encroachment or “Encroachment Area” refers to that portion of the Sky Bridge that encroaches upon and attaches to the Stillwater Building as well as the support columns under the Sky Bridge on the east side of the Stillwater Building. The “Encroachment Area” means the specific area where the Sky Bridge attaches to the Stillwater Building and includes the connecting portions of both the Sky Bridge and the Stillwater Building as well as the support columns. The attached Exhibit A details the location and scope of the encroachment. WC and the City consent to the encroachment as depicted on Exhibit A and further grant CRMX and its successors and assigns an easement to construct, maintain, and use the Sky Bridge and Encroachment Area.
3. **Sky Bridge Maintenance.** CRMX covenants and agrees that CRMX and its successors and assigns shall keep and maintain the Sky Bridge and Encroachment Area and ensure that the

Sky Bridge is kept in good order and repair, consistent with a first-class office building in Billings, Montana. The cost of maintaining the Sky Bridge and Encroachment Area shall be borne entirely by CRMX and its successors and assigns, including but not limited to WC . The City and its successors and assigns acknowledge and agree that, subject to applicable laws and regulations, CRMX and its successors and assigns shall, at all times, have exclusive control over and responsibility for all aspects involving maintenance or construction of the Sky Bridge; however, in no event shall such maintenance or construction increase the scope of the encroachment or easement described in this Agreement.

4. **Maintenance of Encroachment.** CRMX and WC covenant and agree to reimburse the City for any and all costs to repair damage to the Stillwater Building caused by CRMX or WC's maintenance, or lack of maintenance, of the Sky Bridge or the Encroachment Area. The City covenants and agrees to reimburse WC for any and all costs to repair any damage to the Sky Bridge caused by the City or the City's maintenance of the Stillwater Building.

Neither party shall do or permit to be done any act or thing that would tend to jeopardize the structural, cosmetic, or architectural integrity of the Stillwater Building, the Sky Bridge, or the Stillwater Garage, nor shall they perform any act in relation to the Encroachment Area that would cause damage to any portion of the respective portions of the Sky Bridge or Stillwater Building.

5. **Security and Fire Suppression.** CRMX and its successors and assigns shall be responsible for all security, alarm systems, cameras, and fire suppression systems located in the Stillwater Garage and/or the Sky Bridge. All systems located within the Sky Bridge shall be independent of and from the Stillwater Building, with the exception of the fire suppression system which shall remain connected to the Stillwater Building. Accordingly, the alarms, cameras, data cables, electrical wiring, and other shared systems in the Sky Bridge shall not be connected to or operated from the Stillwater Building or any of the equipment or systems located in the Stillwater Building. CRMX shall remove and eliminate all connected systems between the Sky Bridge and the Stillwater Building, with the exception of the fire suppression system.
6. **Cost Reimbursement.** CRMX and its successors and assigns, including but not limited to WC, shall reimburse the City for its proportionate share of all costs of using and maintaining the fire suppression system that is part of the Sky Bridge. The proportionate share of costs to be paid by CRMX shall be determined by multiplying the total cost by a fraction, the numerator of which shall be the square footage of the Sky Bridge (98 square feet) and the denominator of which shall be the leasable square footage of the Stillwater Building (129,600 square feet) plus the square footage of the Sky Bridge (98 square feet). The City shall bill CRMX or its successor on an annual basis. The billing invoice shall itemize all costs included in calculation and the amount paid by the City and the amount to be paid by CRMX or its successor. CRMX or its successor shall pay the invoiced amount within forty (40) days of the invoice date.
7. **Control and Access to Stillwater Building.** The City shall have the exclusive right to limit or control access to the Stillwater Building through the Sky Bridge. The City may, in its sole and exclusive discretion, limit or prohibit access to the Stillwater Building through the Sky Bridge. Provided, however, the City shall generally keep the door between the Stillwater

Building and the Sky Bridge open during the City's normal business hours on days when the City is open for business in the Stillwater Building. The door from the Stillwater Building to the Sky Bridge shall be locked during those days and hours when the City Offices in the Stillwater Building are not open to the general public, including hours after closing, Saturdays, Sundays, and holidays. The City may lock the door to the Sky Bridge on a short-term basis for security, maintenance, or public safety purposes. Similarly, CRMX and its successors and assigns shall keep the door from the Sky Bridge to the Stillwater Garage open during general business hours when City offices in the Stillwater Building are open to the general public.

8. **Destruction or Damage of the Stillwater Building; Termination of Easement.** In the event the Stillwater Building is destroyed, damaged in a way that prevents occupancy, or razed, for any reason, the covenants, agreements, obligations, duties, or property interests, including easement interests granted to CRMX by this Agreement, shall terminate.

If CRMX and its successors and assigns fail to properly maintain the Skybridge consistent with a first-class office building located in Billings, Montana, then the City may provide a notice of default to CRMX or the current owner of the Stillwater Garage Parcel the ("Maintenance Notice"). If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the maintenance default within sixty (60) days of receiving the Maintenance Notice, the City may provide an additional notice of the City's intention to terminate this Encroachment Agreement and all easements upon thirty (30) days additional notice. If CRMX or the current owner of the Stillwater Garage Parcel fails to cure the default after receiving a second Maintenance notice, then the City may record a Notice of Termination with the two default notices attached. Upon the recording of the Default Notice, this Encroachment Agreement and all easements shall be terminated. In the event of termination, CRMX or the current owner of the Stillwater Garage Parcel shall cause the removal of the Skybridge within sixty (60) days and shall make all repairs to the Stillwater Building necessary or prudent to restore the integrity and appearance of the building. If CRMX or the current owner of the Stillwater Garage Parcel fails to timely remove the skybridge, the City may do so at the expense of CRMX or the current owner of the Stillwater Garage Parcel. In such event, CRMX or the current owner of the Stillwater Garage Parcel shall pay to the City 110% of the City's out of pocket costs plus interest from the date invoiced until paid at the legal rate of interest in the State of Montana.

9. **Easement and Covenants to Run with the Land.** Notwithstanding the foregoing provisions, the grant of the easements and covenants described herein shall run with the land and shall be binding on and shall inure to the benefit of the parties of this Agreement, and their respective successors or assigns.
10. **Indemnity.** Each of the parties agree to indemnify and to hold the other party harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to maintenance, repair, or access undertaken by the other party during the time this Agreement is in place. Neither party shall be required to indemnify the other party for such other party's intentional or negligent acts or omissions. Notwithstanding any other provisions contained herein, WC agrees that upon conveyance of the Sky Bridge by CRMX to WC, WC shall indemnify and hold harmless

CRMX, its members, agents and representatives from any further liability arising under the terms of the agreement including, but not limited to, the obligations set forth herein.

11. **Insurance.** CRMX and its successors and assigns, including but not limited to WC, shall maintain commercial general liability insurance covering (i) WC's liability with respect to the Sky Bridge; and (ii) any construction that WC may perform in connection with the Sky Bridge. Such insurance shall provide limits of not less than \$1,500,000 general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian Sky Bridge, in compliance with City Resolution No. 18-10729. WC shall name the City as additional insured under the insurance policy and such policy shall provide thirty (30) days' advance written notice to the City of any cancellation or reduction in coverage.
12. **Negligent Acts or Omissions.** If the negligent acts or omissions of the owners, agents, or employees of CRMX, WC or the City cause damage to or destruction of the Stillwater Building, the Sky Bridge, or the Encroachment Area, then such negligent party shall bear the entire cost of repair or reconstruction caused by the negligent acts or omissions. If either party to this Agreement fails or refuses to pay its share, or all costs in case of any negligent act or omission, the other party may perform the required repairs or restoration and shall be entitled to seek contribution from the negligent party. The party performing the repairs shall be entitled to recover attorney's fees along with all further and additional relief afforded under the law.
13. **Notices.** Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

To the City:	City of Billings c/o City Administrator PO Box 1178 Billings, MT 59101
Email:	kukulskic@billingsmt.gov
Phone:	406-657-8433

With a copy to (but which shall not constitute notice to the City)

	City of Billings c/o City Attorney PO Box 1178 Billings, MT 59101
Email:	dahlg@billingsmt.gov
Phone:	406-657-8205

To WC: WC Commercial, LLC
c/o Joseph W. Holden
5404 Bundy Road
Worden, MT 59088
Email: joe@holden7.com
Phone: 406-690-1394

With a copy to (but which shall not constitute notice to WC)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

To CRMX: CRMX-233, LLC
c/o Max Hansen
8 South Idaho Street, Ste A.
Dillon, MT 59725
Email: maxh@accruit.com
Phone: 406-660-4206

With a copy to (but which shall not constitute notice to CRMX)

Hendrickson Law Firm PC
c/o Mark E. Noennig
208 North Broadway, Suite 324
Billings, MT 59101
Email: mark@hendricksonlawmt.com
Phone: 406-245-6238

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement.

14. **Binding Effect.** This Agreement, and the terms, conditions and covenants described herein, shall be binding on and shall inure to the benefit of The City of Billings', CRMX-233,LLC, and WC's successors and assigns, and any person or entity that at any time hereafter shall become the owner of the Stillwater Building Parcel, the Stillwater Garage Parcel, and/or the Sky Bridge, or portion thereof.
15. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.
16. **Attorney's Fees.** In the event it shall be necessary for any Party to place this Agreement in the hands of an attorney for the enforcement of any of such Party's rights hereunder or for the recovery of any monies due to any such owner hereunder, and if it is necessary for them to

bring suit for the enforcement of such rights or such recovery, the prevailing Party in such suits shall recover from the unsuccessful Party all costs of court, reasonable attorney's fees and any other relief authorized by law.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
18. **Severability.** Invalidation of any one of the provisions or covenants herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.
19. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

DATED this ____ day of September, 2021.

[Signature Pages to Follow]

CRMX-233, LLC
By: Accruit Equity Acquisitions, LLC,
Sole Member

By: Max A. Hansen
Its: Executive Vice President

STATE OF MONTANA)
: ss.
County of _____)

This instrument was acknowledged before me on this ____ day of September, 2021 by Max Hansen, known to me to be Executive Vice President of Accruit Equity Acquisitions, LLC, sole member of CRMX-233, LLC.

Notary Public for the State of Montana

CITY OF BILLINGS, MONTANA

By: William A. Cole
Its: Mayor

STATE OF MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of September, 2021, by
William A. Cole, Mayor of **The City of Billings**.

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

WC COMMERCIAL, LLC,
An Alaska limited liability company

By: Joseph W. Holden
Its: Member

STATE OF MONTANA)
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of September, 2021, by
Joseph W. Holden, Member of **WC Commercial, LLC**.

Print Name: _____
Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____

EXHIBIT A – LOCATION AND SCOPE OF ENCROACHMENT

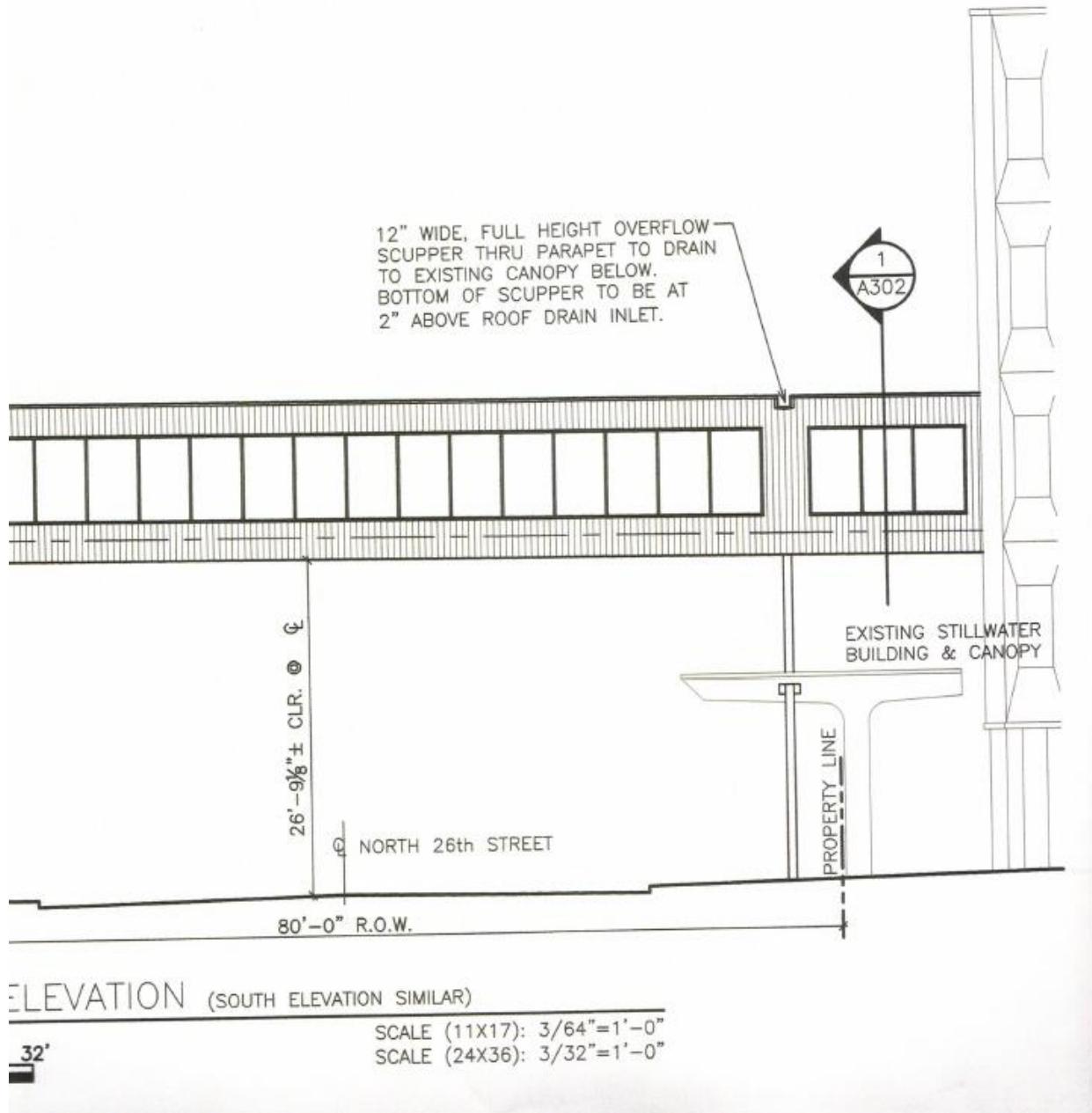


EXHIBIT B – LOCATION OF MUNICIPAL WATER HOOK-UPS FOR THE FIRE SYSTEM



4814-4879-3083, V. 3
4814-4879-3083, V. 3

LEASE FOR A PORTION OF THE THIRD FLOOR OF THE STILLWATER BUILDING

Parties

The parties to this lease agreement are WC Commercial, LLC (WC), lessor, and Yellowstone County (County), a political subdivision of the State of Montana, lessee.

Leased Property

The property to be leased is described as 17,395 contiguous square feet on the south side of the 3rd floor of the Stillwater Building (the building), located at 316 North 26th Street in Billings, Montana.

The leased property is currently a "shell space" and it is the intent of the parties that as part of the lease cost, WC will, at its sole expense, improve the leased portion of the property to provide for a "build to suit" layout. The office space will be of at least comparable quality now found in the Yellowstone County Courthouse and WC agrees to build the leased space as agreed upon by the County. The design of the office space shall conform to the diagram attached as Exhibit "B."

All building permits and permits of any kind that may be required to build the space to specifications by WC shall be the sole responsibility of WC.

WC further agrees that the office space shall be completed no later than May 23, 2018.

County Counter Space

The parties mutually acknowledge that the County will supply its own furniture but that WC may utilize any current counters to comply with the requirements of the County. Removal of any current counters shall be conducted after WC first obtains approval from the County of such removal. WC acknowledges and agrees that all counter space will be installed no later than May 16, 2018, affording the County the opportunity to wire the counter space for County use.

Additional Considerations

The parties acknowledge and agree that County Commissioner pedestal space and sliding accordion doors in the Commission Chambers is part of the consideration being paid by the County and no additional charge shall be submitted by WC for these items.

Use of the Property

The property shall be used by the County for governmental and related functions.

Term and Option to Renew

This lease shall begin on May 23, 2018 and shall run for a period of seven (7) years. At the end of the 7th year, the County shall have the option to renew the lease for another three (3) years on the same terms as otherwise contained in this lease. The County can exercise this option with at least one hundred eighty (180) days written notice prior to the expiration of the lease term. Liquidated damages notwithstanding, the lease shall not begin until the leased space is reasonably ready for occupancy.

Rent

The parties agree that the rental price of the leased space shall be \$15 per square foot per year and. Such rent shall annually be adjusted 3 % each year on January 1 of each year. The parties further acknowledge and agree that the County is leasing space in addition to its Request for Proposal, specifically an additional department and that this addition increases WC's costs in providing leased space. The parties agree that the County will pay WC an additional \$75,000 at the time of substantial completion, representing compensation for these increased costs.

Rent shall be paid monthly. WC shall bill the County on January 1 of each year and show the monthly charges for the year on the invoice.

CAM's

The CAM shall initially be \$6.02 per square foot as shown in the attached Exhibit "A." All of the CAM's, with the exception of the costs associated with "Major Maintenance" will be adjusted as to actual costs on January 1 of each year during the term of this lease. The costs associated with "Major Maintenance" shall be adjusted annually as to actual projected costs, but in no event shall the "Major Maintenance" portion of the CAM be increased more than 3% in any given year.

The CAM's provided shall exclude janitorial services of the leased property. The County shall provide its own janitorial services for the leased space. All common area janitorial services, as well as maintenance and repair, taxes and utilities, shall be the responsibility of WC and are part of the CAM.

The square footage used to calculate the rent and CAM shall be measured from the exterior windows to the center of the internal walls dividing the lease space from other tenants or common areas in accordance with the attached drawing.

Option to Expand

Should the County desire to lease additional space, so long as that space is available, it may lease additional space for the rent price otherwise provided for in this lease.

Time is of the Essence—Liquidated Damages

The parties agree that time is of the essence in all provisions contained in this Agreement. Specifically, WC acknowledges that two new District Court judges will be moving into space vacated by multiple County departments on January 2, 2019. That space must be renovated before the judges can move into the Courthouse. In order that the judges' space be ready in time, the County will need to begin renovation of the vacated space no later than May 23, 2018.

Should the space provided for in this agreement not be ready by May 23, 2018, the parties agree that the delay will result in a great increase in Contractors' costs to the County for its renovation of Courthouse space to meet its January 2, 2019 deadline. Therefore, WC agrees that should its lease space not be completed for occupancy by May 23, 2018, that WC shall pay to the County, as liquidated damages and not as a penalty, the sum of \$2500 per day for each and every day that the leased space is not reasonably ready for occupancy.

WC agrees that the County may begin moving into the leased space one week prior to the commencement of this lease without further consideration from the County. Should the space become available prior to the agreed to date, the parties may agree to an earlier date, subject to a mutually agreed to price. However, the parties agree to abide by the terms listed in the section of this lease denoted as "Information Technology and Telephone Lines."

Information Technology and Telephone Lines

The parties acknowledge and agree that the County, at its sole expense, will install fiber optics and telephone lines and any other communication delivery systems into the building for County's exclusive use. WC agrees to provide space in the building in space other than leasable space or common area space for the running of these communication delivery systems at no charge to the County.

Recognizing that time is of the essence in moving County departments from the Courthouse to the leased space, and that installation of fiber optic, telephone and other communication delivery systems is an integral component of the timeframe involved, WC agrees to reasonably make available to the County, at no cost to the County, various locations within the building for the installation of such systems excluding leasable or common area space. County agrees such installation will not unreasonably interfere with any other operation or construction being performed by WC and that the placement of the lines will be subject to WC approval. County further warrants that any maintenance or repair of such lines will be the sole responsibility of the County.

Upon termination of this lease, unless the County purchases a fee interest in the building, the communication delivery systems within the building shall remain or be removed by the County upon request of WC, becoming property of WC. The County will terminate the connection into its communication system and WC shall have no property interest in the lines outside the building.

Server Room

As part of the leased space, the parties recognize the need for a server room to house County's hardware. The server room has to be designed as to strict climate control and air quality control standards. Any costs associated with construction and maintenance of the server room shall be the responsibility of the County. Provided, WC represents that the building air conditioning system has a redundancy which will help mitigate impacts of HVAC failure.

Peaceful Possession

The parties recognize that a major portion of the building will be unoccupied at the time the County moves into the leased space. The parties further recognize that the public will be the major user of the space and such things as public hearings and important public meetings will be held in the County's leased space. WC agrees to make reasonable attempts to mitigate interference. County understands that there may be inconvenience while construction is performed during normal business hours.

Maintenance

Unless otherwise provided for in this lease, the parties agree that all maintenance of the entire building, including the leased space, is included in the CAM and shall not be billed separately to the County. Any repairs to the property as a result of normal wear and tear shall be the responsibility of WC, but will be included in the CAM charges. Any damage to lease property that exceeds normal wear and tear, unless caused by WC or its agents or assigns, shall be the responsibility of the County.

The premises, including common areas open to the public, shall be thoroughly cleaned prior to the time that the County is allowed to move onto the leased space. County understands, however, that the building is under major renovation.

WC agrees to keep the building in first class operating condition during the term of this lease.

Janitorial Services and Grounds Maintenance

WC agrees to provide janitorial services five (5) days per week during non-business hours. This shall be included in the CAM. The County will provide its own janitorial services for its leased space.

Maintenance of the outside of the building and of the surrounding grounds shall be the sole responsibility of WC and is included in the CAM. The grounds shall be kept free of graffiti and trash at all times.

Building Security

Security cameras will be installed throughout the building in the common areas and the operating costs will be included in the CAM. It is agreed that because County fiber optics are being installed by the County, it anticipates using its own card entry system.

Utilities

The parties agree that all utility costs, excluding communication and data, are part of the CAM's and shall not be billed to the County.

Access to the Leased Property

The parties agree that the south entrance (3rd Avenue Side) to the building will afford controlled access for County personnel and that the County will provide secured access on its 3rd floor entrance, day or night. The east entrance (North 26th Street) will be a public entrance and will be accessible during normal business hours.

The County will provide key access into the building for its leased internal office space.

Liability and Casualty Insurance

The responsibility to insure the property and operations located on the leased premises shall be the County's responsibility. All other insurance for the building and its common areas shall be the sole responsibility of WC and is included in the CAM.

Official Notices

Any notices required pursuant to this lease shall be sent to the following:

1) County:

Yellowstone County Board of Commissioners
Box 35025
Billings, MT 59107

2) WC:

WC Commercial, LLC
316 North 26th Street
Billings, MT 59101
Attn: Joseph W. Holden

Applicable Law

The parties agree that the terms of this lease do not fall within the provisions of the Montana Landlord and Tenant Act. The parties agree that this is a commercial lease and not a residential lease.

Compliance with the Law

WC agrees it will operate and design the building, both as to leased space and common areas, to comply with all state, federal and local laws, including but not limited to, zoning laws governing use and governing building permits and the Americans with Disabilities Act as amended.

Subleasing

Subleasing is allowed with the consent of WC in writing. Consent may not be unreasonably withheld. WC will allow subleasing of the lease space only for similar use. Should the sublease not cover the entire rent due and owing by the County at the time of the sublease, the County shall be responsible for the difference in rent owed by the County and paid by the subleasing party.

Modifications to Leased Space

The County may not make major modifications to the leased space except with the written consent of WC. Such consent may not be unreasonably withheld. Should the County make any permanent additions to the leased space or add any fixtures to the leased space, such additions or fixtures shall be removed by the County at the request of WC or become WC's property upon termination of the lease. Any cost of major modifications after the initial build-out will be the responsibility of the County unless otherwise agreed to by the parties.

Waiver

Should either party decline to enforce any of its rights afforded to it pursuant to this lease, such will not constitute a permanent waiver of such rights without the written consent of the other party.

Severability

Should any of the provisions of this lease be found to be unenforceable for any reason, it shall be stricken and the remaining provisions of the lease shall remain binding and in effect.

Entire Agreement

This lease agreement shall constitute the entire agreement between the parties, and any prior discussion, oral agreement or representation of any type shall not be binding on the parties. The parties specifically agree that this Agreement shall replace and rescind the Agreement signed by the parties on November 21, 2017.

Modification

Should the parties mutually agree to modify any provision of this lease, they may do so only with the express written consent of both parties.

Condominium

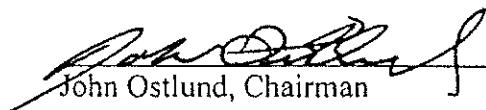
County understands and agrees that WC may convert the leased space to a Condominium. County agrees to execute any consent that may be required for such conversion, provided that such conversion shall not affect the terms of this lease.

Attorney's Fees

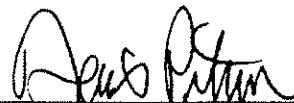
In the event of a breach of the terms of this lease, the party enforcing the lease terms shall be entitled to recover all costs of enforcement, including reasonable attorney's fees.

YELLOWSTONE COUNTY BY AND THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

DATED this 23rd day of January, 2018.



John Ostlund, Chairman

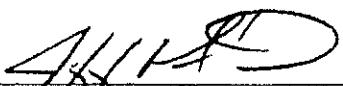


Dennis Pitman, Member



Robyn Driscoll, Member

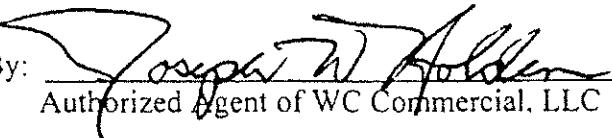
Attest:

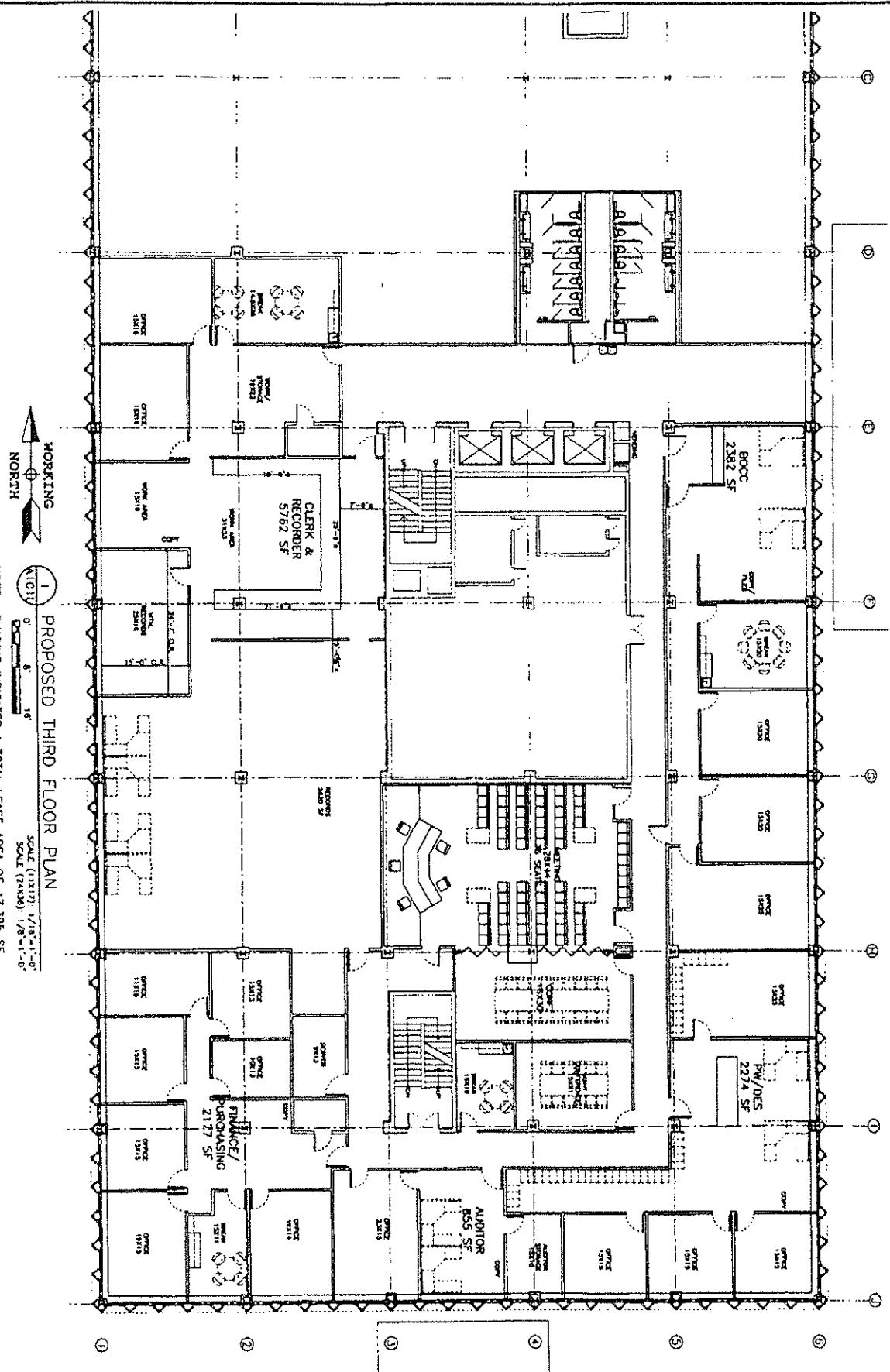


Jeff Martin
Yellowstone County Clerk and Recorder

WC COMMERCIAL, LLC

DATED this 23rd day of January, 2018

By: 
Authorized Agent of WC Commercial, LLC



Drawn By: RLB
Checked By: RLB
Date: XX-XX-2017
Project #: 160642
Cadd File:



EEC
ENGINEERS • ARCHITECTS • SURVEYORS • INVESTIGATORS

EGGART ENGINEERING COMPANY
720 LOHWEST LANE
BILLINGS, MT 59106
OFFICE: 406-859-9151
FAX: 406-859-9150
www.eeggart.com

STILLWATER BUILDING
3rd FLOOR IMPROVEMENTS
YELLOWSTONE COUNTY
316 NORTH 26th STREET
BILLINGS, MT 59101

PRELIM
EEET#:
1011

EXHIBIT "A"

CAM charges Stillwater building:

Taxes. Based on DOR estimate with building lease at \$15/psf = \$302,000 divided by 129,600 leasable sq. ft. = **\$2.33 psf.**

Insurance. Quotes from Payne-West with a value of \$33,00,000 is \$27,000 to \$33,000 / 129,600 leasable sq. ft. = **\$0.23 psf.**

Utilities.

Electrical \$65,754 estimated / 129,600 = \$0.50 psf.

Natural Gas \$23,000 estimated/ 129,600 = \$0.17 psf.

Water/Sewer \$4,800 estimated/ 129,600 = \$0.04 psf.

TOTAL \$0.71 psf.

Normal Maintenance (labor and materials).

Mechanical systems to include boilers, chillers, fans, and store front doors. \$45,000 / 129,600 = **\$ 0.34 psf.**

Elevators-materials/labor/inspections. \$21,600/129,600 = **\$0.16 psf.**

Store Front Doors/glass breakage and maintenance. \$22,000/129,600 = **\$0.17 psf.**

Security system maintenance and alarm system maintenance. \$63,500/129,600 = **\$0.49 psf.**

TOTAL \$1.16 psf.

Major Maintenance (labor and materials).

Roofing every ten years \$180,000/10/129,600 = **\$0.14 psf.**

Elevators \$70,000 every ten years/10/129,600 = **\$0.05 psf.**

Mechanical Systems \$60,000 every ten years /10/129,600 = **\$0.04 psf.**

Miscellaneous \$8,000 per year/129,600 = **\$0.06 psf.**

TOTAL \$0.29 psf.

Cleaning services for common areas \$50,000 per year

Snow Removal \$20,000 per year

Landscape Maintenance \$18,000 per year Total/129,600 = **\$0.68 psf.**

Property Management \$20,000 and Security Officer \$60,000 /129600 = **\$0.62 psf.**