

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING  
A LEASE AGREEMENT FOR CONSTRUCTION AND OCCUPANCY OF A RIVER  
CENTER AT 22826 TWO RIVERS ROAD ON PROPERTY TO BE OWNED BY THE  
TOWN**

**Ordinance No. 02  
Series of 2016**

**RECITALS**

1. The Town of Basalt has approved Ordinance No. 01, Series of 2015 approving a contract for the Town to purchase the Roaring Fork Conservancy's interests in Lot 1, Basalt Riverfront Park Subdivision.

2. The Town is interested in furthering the development of a River Center near Old Pond to be constructed by the Roaring Fork Conservancy and to this end entered into a Pre-Development agreement with the Roaring Fork Conservancy on August 29, 2014.

3. In order to help provide funding for the River Center the Town is purchasing the property owned by the Roaring Fork Conservancy and agreeing to construct certain park and trail improvements originally required by the Roaring Fork Conservancy as part of their land use approvals granted by Ordinance No. 08, Series of 2010 as amended by Ordinance No. 07, Series of 2011.

4. The Town Council desires to approve a lease agreement to give the Conservancy time to amend its current approvals, seek remaining funding and construct the River Center.

5. At a public meeting on January 12, 2016 the Basalt Town Council approved this ordinance on first reading and scheduled second reading and public hearing for January 26, 2016, at a meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicants, Staff and members of the public.

6. At a public hearing on January 26, 2016, the Town Council heard evidence and testimony from the Applicants, Town Staff, and members of the public.

7. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the Basalt Town Council of Basalt, Colorado, as follows:

1. The Roaring Fork Conservancy Lease Agreement, attached hereto as **Exhibit A**, is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the Agreement on behalf of the Town Council. The Town further agrees to complete the execution of the lease and record it upon immediately following the Town's closing of the Property the Town is acquiring from the Conservancy as authorized by Ordinance No. 01, Series of 2016. The Town Attorney may make minor modifications to the Lease Agreement before execution which are consistent with the intent of this approval.

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors, and assigns of the owners of the Property.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

4. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON January 26, 2016 by a vote of 7 to 0 on January 12, 2016.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on January 26, 2016.

TOWN OF BASALT, COLORADO

By: \_\_\_\_\_

Jacque R. Whitsitt, Mayor

ATTEST:

By: *Pamela K Schilling*  
Pamela K. Schilling, Town Clerk



First Publication: Thursday, January 21, 2016  
Final Publication: Thursday, February 4, 2016  
Effective date: Thursday, February 18, 2016

(EXHIBIT A TO ORDINANCE NO. 02, SERIES OF 2016)

TOWN OF BASALT

ROARING FORK CONSERVANCY LEASE AGREEMENT

This LEASE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 between the **TOWN OF BASALT**, a home-rule municipality of the State of Colorado, whose address is c/o Town Manager 101 Midland Avenue, Basalt, CO 81621 ("Landlord") and the Roaring Fork Conservancy, whose address is 201 Basalt Center Circle, Basalt, CO 81621 ("Tenant").

WITNESSETH

WHEREAS, Landlord is the owner of the real property known as Lot 1, Basalt Riverfront Park.

WHEREAS, Landlord desires to lease a portion of the Property, consisting of approximately 8568 square feet as delineated on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the Premises" in accordance with the terms and conditions contained in this Lease Agreement;

WHEREAS, Tenant desires to plan, build and construct a River Center on the Premises and desires to lease from the Landlord the Premises in accordance with the terms and conditions contained in this Lease Agreement.

NOW, THEREFORE, for and in consideration of the payments to be made hereunder, and in further consideration of the terms, conditions, covenants and mutual promises contained herein, the parties hereto agree as follows:

1. Premises. The parties agree that this is a land lease only. Landlord does hereby lease Premises to the Tenant and Tenant does hereby rent from Landlord the land area, all in its current condition subject to the covenants and conditions hereinafter contained to wit:

That portion of the land area located at 22826 Two Rivers Road, delineated and outlined on Exhibit A Attached hereto and incorporated herein, hereinafter referred to as "the Premises."

2. Term. The Lease term shall commence on \_\_\_\_\_, 2016 and shall end on \_\_\_\_\_, 2021. The term of the Lease Agreement shall automatically extend to a total 99 years upon a certificate of occupancy for the River Center to be occupied by the Tenant.

3. Base Rent. The base rent for the first five years of the term of this Lease, commencing \_\_\_\_\_, 2016 and terminating \_\_\_\_\_, 2021 shall be Five dollars (\$5.00), payable in annual installments of \$1.00 commencing on \_\_\_\_\_, 2016 and continuing on an annual basis thereafter.

4. Tenant's Acceptance of Premises. Tenant accepts the Premises, together with any and all appurtenances thereto, as is, in its present existing condition. Except as may be specifically stated herein, the parties agree that no representation, statement, express or implied warranty has been made by or on behalf of the Landlord as to the condition of the Premises or its sustainability for the Tenant's use thereof. In no event shall the Landlord be liable for damages resulting from any condition or defect in the condition of the Premises.

5. Use of Premises. The Tenant may use and occupy the Premises for the purpose of building and occupying a River Center. "River Center" means the land uses approved by the Town of Basalt in accordance with the Basalt Municipal Code. No other use of the Premises is permitted without the written consent of the Landlord. Tenant shall not use or permit the use of the Premises for any unlawful purpose. Tenant shall be liable for the actions of its guests and invitees. No hazardous or dangerous activities are permitted on the Premises.

6. Use of Property Outside of Premises. The Tenant may have use of Town Property outside of the Lease Area for Construction of the River Center only and subject to an approved Construction Management Plan and Construction License to be approved by the Town Building Official.

7. Performance Deadlines. The Tenant must satisfy the following requirements. Failure to meet those requirements shall constitute a violation of this lease.

		<b>Performance Requirement</b>
A – Approvals Deadline	April 15, 2017	Applicant must obtain Amended land Use Approvals
B – Building Permit Deadline	April 15, 2019	Applicant must obtain a full building permit for River Center
C – Completed Construction Deadline	April 15, 2021	Applicant must obtain a final certificate of occupancy

A. Deadline A requires the Tenant to obtain all necessary approvals under Sec. 16-28 of the Basalt Municipal Code for the use of the Property as a River Center.

B. Deadline B requires the Tenant to obtain all necessary building permits from the Town of Basalt for the construction of the River Center approved in accordance with Deadline A.

C. Deadline C requires the Tenant to obtain a final Certificate of Occupancy for the use and occupancy of the River Center built in accordance with Deadline B.

D. The Landlord may, for good cause shown as determined in the discretion of the Landlord, grant extensions of the deadlines referred to in this section.

8. Utilities. Tenant shall pay all utilities for the Premises throughout the term of this Lease, including charges for water, heat, sewer, electricity and light, cable TV, telephone, trash collection, and general maintenance and any other utilities or services desired by Tenant. Procedurally, Tenant shall have the natural gas, water, electricity, telephone, and cable TV, to the extent desired by Tenant, placed in Tenant's name. In addition, Tenant shall contract directly with all utility and service companies.

9. Real Estate Taxes. As the Property is owned by Landlord and the Tenant has provided documentation that it is a 501(C) 3 under Federal Tax Laws, it is anticipated that Tenant will not have to pay real property taxes for its use and occupancy of the Premises. However, any real property taxes that may be levied on the Premises shall be paid by Tenant.

10. Repairs and Maintenance. Tenant shall be solely responsible for the repair and maintenance of the River Center and other improvements it places or constructs on the Premises.

11. Damage to Premises. Tenant shall be solely responsible for damage to the Premises and the improvements located thereon regardless of cause and whether caused intentionally or by negligence of Tenant, its agents, employees, guests and invitees.

12. Snowplowing and Snow Removal/Yard Maintenance. The Town agrees to maintain the Premises until a Development Permit is issued by the Town for a River Center. The boundaries and responsibilities for maintenance between the Roaring Fork Conservancy and the Town of Basalt will be further refined in the River Center's land use approval process.

13. Indemnification. The Tenant agrees to protect, indemnify and hold harmless Landlord, its board members, employees and agents, from and against any loss, damage or claims, including reasonable attorneys' fees and costs, arising out of: (i) the use, including the initial construction, of the License Area by the Tenant or its guests or invitees, which indemnity shall include, but not be limited to, injury or loss to persons or property; (ii) any mechanic lien claims for unpaid labor, services or materials affecting any of the License Area; and (iii) any and all costs associated with removal of improvements located in the License Area upon termination of this License Agreement as further outlined in Section 5. The Tenant shall obtain, at its expense, and keep in full force and effect throughout the term of this License Agreement, with a reputable insurer, general public liability insurance for the License Area with a limit of not less than \$350,000.00 per individual and \$1,000,000 per

occurrence and, during times of construction of any improvements, repairs or replacements, shall maintain (or cause its contractor to maintain) workmen's compensation and builder's risk insurance in amounts reasonably satisfactory to Landlord; and all said policies shall name Landlord as an additional insured and the Tenant shall provide Landlord with proof of such insurance. Landlord shall have the right to request the Tenant to review and increase the limits of insurance coverage hereunder based on prevailing limits then carried by like or similar risks.

14. Improvements and Alterations. No alterations, additions, or improvements shall be made and no fixtures shall be installed in or attached to the Premises, without the written consent of the Town Manager and approval in accordance with the Basalt Municipal Code.

15. Signs. The Tenant shall not place nor allow to be placed any signs of any kind whatsoever, upon, in or about the said Premises or any part thereof, except as otherwise approved by the Town in accordance with the Town of Basalt's Municipal Code.

16. Alcohol. The Premises shall not be construed as Town Property for the purpose of complying with State and Town of Basalt liquor laws.

17. Compliance with Law. The Tenant shall comply with all laws, ordinance, rules, regulations, requirements, and directives of the federal, state and municipal governments that are applicable to and affecting the said Premises.

18. Quiet Enjoyment. So long as the Tenant is not in default hereunder during the term hereof or any renewal or extension hereof, the Landlord covenants that the Tenant shall peacefully and quietly occupy and enjoy the Premises subject of the terms hereof. The Landlord warrants and agrees to defend the title to the Premises, and Landlord further warrants that it has full power and authority to execute this Lease, be bound by, and perform all its obligations hereunder.

19. Assignment/Sublease. Tenant shall not let, sublet, transfer, assign, or otherwise in any way alienate, encumber or suffer the Premises, or any part of portion thereof, to be used by others.

20. Surrender and Termination. Upon termination of this Lease for any reason, Tenant shall surrender the Premises to Landlord in as good condition as it was at the commencement of this Lease, reasonable use and wear excepted.

21. Compensation for Improvements. Upon termination of this Lease Agreement, whether based upon its expiration, lease violation, abandonment, mutual agreement or otherwise, all of the improvements located on the Premises shall become the sole property of the Landlord. The Landlord shall at that time pay the Tenant the then-present value of the improvements as determined in accordance with an appraisal to be made by a qualified appraiser selected by agreement of the parties.

22. Re-Entry Upon Tenant Default. If there shall be a default in the performance of Tenant's obligations under this Lease or if there shall be a delinquency by Tenant in the performance of any covenant, agreement, condition, rule or regulation herein contained or hereafter established for more than fourteen (14) days after written notice of such default from Landlord to Tenant, and opportunity to cure during the 14 day period, Landlord or Landlord's agent, at any time thereafter may give written notice to Tenant specifying such event of default and stating that this Lease shall terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and upon the date specified in such notice, this Lease and all rights of Tenant hereunder shall terminate.

Upon termination of this Lease pursuant to the preceding subparagraph, Tenant shall peacefully surrender the Premises to Landlord, and Landlord may, upon or at any time after such termination, without further notice, re-enter the Premises and repossess it by force, summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises. Tenant shall be responsible for any and all costs and attorney's fees incurred by Landlord in enforcing the provisions contained in this Section. At any time after such termination, Landlord may relet the Premises or any part thereof, in the name of the Landlord or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions as Landlord, at its discretion, may determine, and may collect and receive the rents therefor.

23. Surrender of Lease Area Upon Termination. At the termination of this Lease, Tenant shall surrender the Premises to Landlord in good condition and repair, excepting for reasonable wear and tear and acts of God. Tenant shall have the right at the end of the term hereof to, and upon demand by Landlord Tenant shall, remove any equipment, furniture, trade fixtures not affixed to the realty, and other personal property placed in the Premises by Tenant and Tenant shall promptly repair any damage to the Premises caused by such removal and Landlord may require removal of attached fixtures at its sole discretion.

24. Attorneys' Fees and Waiver of Right to Jury. In the event of any litigation or other action or proceeding between the parties hereto arising out of the performance or non-performance of this Lease, or enforcement of any rights or remedies hereunder, including any indemnities herein contained, the prevailing party shall be entitled in such litigation, action or proceeding to also recover as part of any judgment, award or other relief, its reasonable attorney's fees and costs incurred. The Landlord and Tenant expressly waive any right which either may have to trial by jury of any dispute arising under this Lease relating to the issues of termination of this Lease and rights to possession of the Premises.

25. Notices. All notices required under the terms of this Lease shall be given in person or by mailing such notices by certified or registered mail, return receipt requested, to the address of the party as shown at the beginning of this Lease, or to such other address as may be designated in writing, which notice of change of address shall be given in the same manner. If not sooner received, any notice given by mail shall conclusively be deemed received three (3) days after the date of certification or registration. Unless and until otherwise designated, notice shall be given to the Landlord and Tenant as follows:

Landlord:  
Town Manager  
Town of Basalt  
101 Midland Avenue  
Basalt, CO 81621

Tenant:  
Board President  
Pat McMahon  
Roaring Fork Conservancy  
PO Bix 3349  
Basalt, CO 81621

26. Enforceability/Attorney's Fees. If either party fails to perform any of its obligations under this Lease Agreement, or if a dispute arises concerning the meaning or interpretation of any provision of this Lease Agreement, then the defaulting party or the party not prevailing in the dispute, as the case may be, must pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under the Lease, including, without limitation, court costs and reasonable attorneys' fees as per §13-40-123, C.R.S.

27. Situs. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action commenced to enforce the terms of this agreement shall be brought in the Eagle County Courts and the parties hereto agree that venue for any such action shall be proper in the Eagle County Courts.

28. Enforcement. Time is of the essence herein. If either party hereto must bring suit to enforce any of the provisions of this Agreement, the prevailing party in such action shall be entitled to attorney's fees from the non-prevailing party.

29. Waiver. No assent by Landlord, expressed or implied, with respect to any breach or default of the terms, conditions or covenants contained in this lease agreement shall in any way be construed as a waiver of any succeeding or other breach or default.

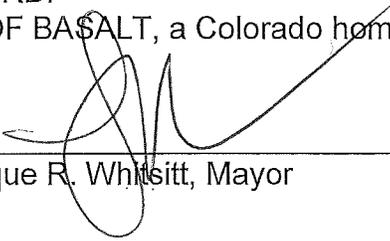
30. Entire Lease. This Lease contains the entire contract between the parties and there are no other agreements, understandings, representations, or warranties except as expressly set forth herein. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the Landlord and Tenant.

31. Binding Effect. All the terms, covenants, and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns respectively.

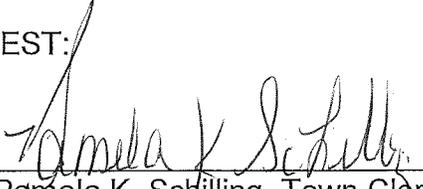
32. Social Capital and Community Benefits. The Landlord entered into this Lease Agreement with the Tenant as a result of the Social Capital and Community Benefits to be provided to the Basalt Community. In order to further mutual goals, the Tenant agrees to meet with the Landlord at least once a year at the Landlord's request to review how the Tenant is furthering the goals of the Town of Basalt to increase vitality in the downtown area and make the objectives of the River Center available to all citizens and tourists in the Basalt area.

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

LANDLORD:  
TOWN OF BASALT, a Colorado home rule municipality

By:   
\_\_\_\_\_  
Jacques R. Whitsitt, Mayor

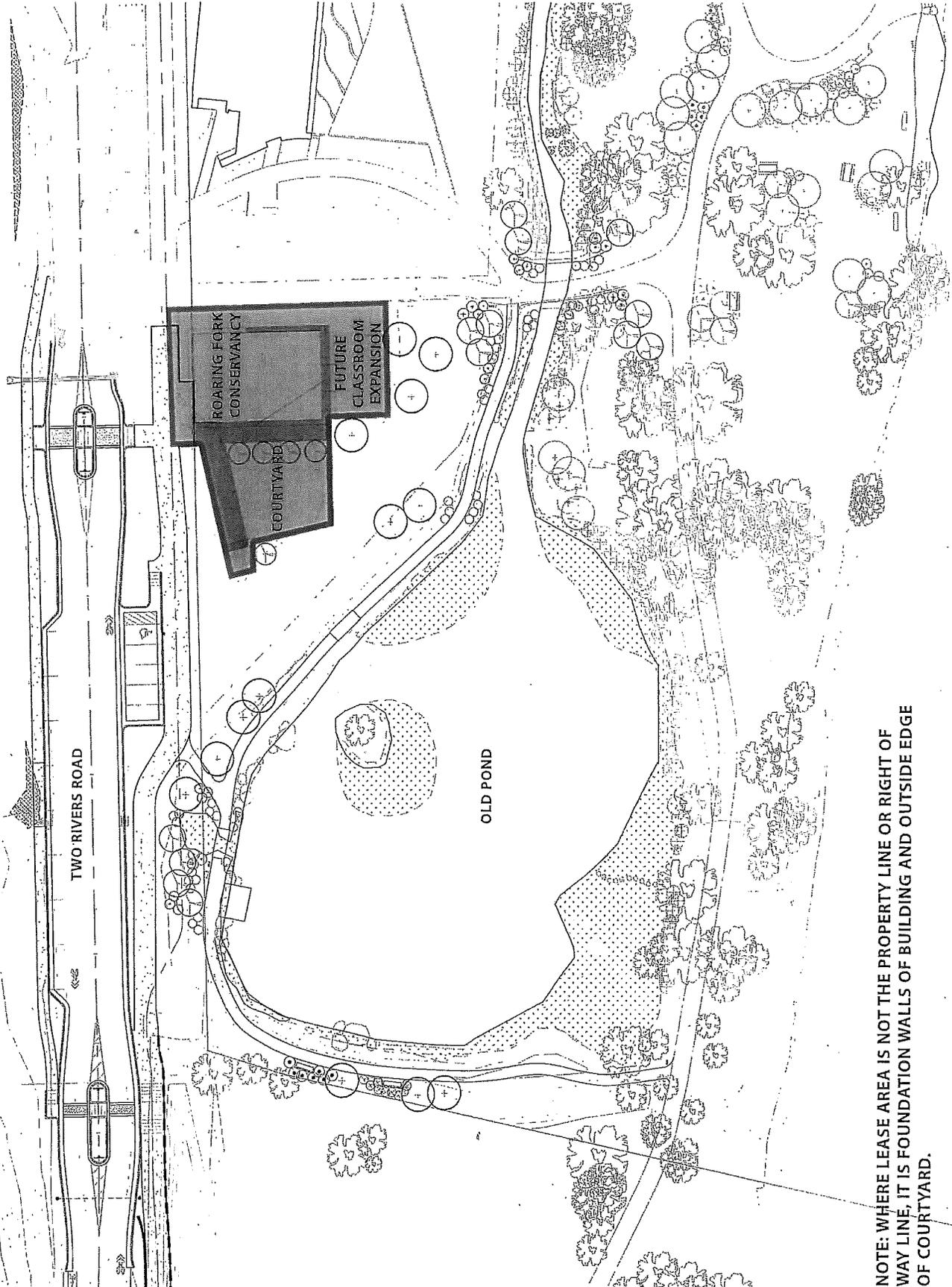
ATTEST:

By:   
\_\_\_\_\_  
Pamela K. Schilling, Town Clerk





# EXHIBIT A - LEASE AREA



NOTE: WHERE LEASE AREA IS NOT THE PROPERTY LINE OR RIGHT OF WAY LINE, IT IS FOUNDATION WALLS OF BUILDING AND OUTSIDE EDGE OF COURTYARD.