

August 31, 2016

Richard Nason
Office of the State Fire Marshall
Public Safety Inspector II
45 Commerce Drive
Augusta, ME 04333-0165

RE: 3 and 5 Spring Street, Portland Renovations

Dear Mr. Nason:

Our firm represents the owners of 6 City Center in Portland, Maine as its property manager and construction manager. I am also one of the building owners and a CPA who has specialized in real estate taxation, management and development for my 30+ year career. Mike Charek, our architect for the renovation projects at 6 City Center, and at the rear of the building (aka 3 and 5 Spring Street), met with you this past Thursday to review the ADA disproportionality rule as it relates to the renovations to the building for a 3,433 SF restaurant and 1,568 retail store in the ground and first floors at the rear of the building.

Per your request as a follow up to that meeting, we are providing this letter to set forth a spreadsheet analysis of the "alteration" construction costs related to the "primary function areas" and "paths of travel" for the two spaces, identify exempt alteration costs and the specific ADA compliance costs. Over the past three months we have conferred with the two general contractors involved, D&D Builders and Landmark Construction, to obtain realistic estimates of these costs. Mike and I met and conferred several times to review the application of the ADA definitions, regulations and interpretations of the 2010 Standards as they apply to this project. Mike is co-signing this letter to confirm that we are both in agreement with the results.

I would note at the outset that we acquired the building on February 24, 2015, so we are including all alteration costs to these two primary functions areas and paths of travel since we acquired the building. We have attached a schedule of all building improvement costs incurred since that time. The vast majority of such costs relate to other floors of the building and totally separate paths of travel and primary function areas accessed solely from the front of the building along Free Street.



Date:

The amounts related to the rear of the building were minimal because one space was vacant awaiting a tenant and the other was a functioning nightclub. These two spaces are accessible only from the rear of the building (one {3,433 SF} has been vacant since we acquired the building and the other {1,568} has been a ground floor nightclub), and therefore the prior year costs are minimal because these are new primary function areas and paths of travel. We are attaching an existing conditions and as complete floor plan for each floor for your review so you can see the different spaces and different paths of travel.

With respect to the prior years and as noted in the Q & A section of the ADA website at, <https://www.ada.gov/reachingout/title313.html>

“... Can an entity limit its path of travel obligation by engaging in a series of small alterations? No. An entity cannot evade the path of travel requirement by doing several small alterations (each of which, if considered by itself, would be so inexpensive that adding 20 percent would not result in addition of any path of travel features). Whenever an area containing a primary function is altered, other alterations to that area (or to other areas on the same path of travel) made within the preceding three years are considered together in determining disproportionality.... In other words, all of the alterations to the same path of travel taken within the preceding three years are considered together in deciding whether the 20 percent has been reached.

ILLUSTRATION: On February 1, 1992, a nursery school with several steps at its entrance renovates one of its classrooms. The renovations total \$500, triggering up to \$100 worth of path of travel obligations (20 percent of \$500). Because \$100 will not buy a ramp and because no other accessible features needed in that particular nursery school can be added for \$100, no path of travel features are added. On October 1, 1992, more renovations are done at a cost of \$1,000, this time triggering path of travel obligations of up to \$200. As before, no path of travel features are added. Then, on March 1, 1993, another minor renovation (\$2,000) is made to the same area, this time triggering path of travel obligations of up to \$400. Had the nursery school done all three small renovations at the same time, the cost would have been \$3,500, triggering a path of travel obligation of up to \$700. For \$700, an accessible ramp could have been installed....”

On the attached spreadsheet analysis, we have taken the prior year costs of \$5,871, to which we have added the construction costs to be incurred by the landlord and the tenant over the next year. We have then broken the costs down by the floor and space and then characterized them as repairs, exempt, ADA costs and all other construction costs related to “alterations.”

You will note that we have excluded all costs related to the second floor construction costs. We have done so consistent with the 2010 Standards because those costs are for an office tenant that is accessed from the front of the building; a totally separate path of travel and separate primary function area. We have therefore treated all of the second floor costs as exempt under the 2010 Standards from the 3 and 5 Spring Street cost analysis. I would note that on the second floor, we are making the entrances, bathrooms, flooring and kitchen ADA compliant for that 2nd floor office space.



Date:

Returning to the 3 and 5 Spring Street project, we have also treated as exempt all the window replacement and installation costs for the ground and first floor consistent with the requirements in the Standards. Similarly we have excluded all ordinary and necessary repair costs to the floors, paint, roofing, etc. in those two spaces.

To facilitate a reading of the spreadsheet, the third column from the right provides comments related to the reasons for inclusion or exclusion under the 2010 ADA Standards.

Based on the attached information, we have arrived at the conclusion that the 20% disproportionate rule will come into play in this project and will limit the costs that must be spent on ADA accessibility to the amounts set forth in the ADA Costs column of \$54,718+/- . The landlord and tenant are estimating we will jointly spend \$58,000+/- on ADA accessibility costs. Thus, the estimated costs to install incline lifts or an elevator to both spaces of approximately \$90,000 to \$100,000 would be disproportionate and therefore not required under the 2010 Standards.

Please don't hesitate to call Mike or me to discuss this in greater detail or to ask questions with respect to the amounts and allocations spreadsheet.

Thank you for your time and assistance in this matter.

Sincerely,

Drew E. Swenson, CPA

Michael R. Charek, AIA

Enc.



ADA Disproportionate Cost Analysis

Date: **09/20/16**

| | 6 City Center aka 3 and 5 Spring Street Renovations | | | | Comments | Primary | Function |
|--|---|----------------|----------------|----------------|---|-----------------------|-----------------------|
| | Ground Floor | 2nd Floor | Basement | Combined | | Area & Path of Travel | Area & Path of Travel |
| <u>Renovation Cost Detail</u> | <u>D&D</u> | <u>D&D</u> | <u>D&D</u> | <u>Costs</u> | | <u>Costs</u> | <u>Costs</u> |
| Ground Floor and Basement | | | | | | | |
| Demo Ground Floor Vacancy & Veilleux space to brick walls for window | 750 | 0 | 0 | 750 | Exempt costs | 0 | 0 |
| Demo Ground Floor Vacancy & Veilleux space for primary function space | 750 | 0 | 0 | 750 | 100% Primary Function Area Costs | 750 | 0 |
| Install window openings in walls with steel support | 23,357 | 25,952 | 5,190 | 54,500 | Exempt costs | 0 | 0 |
| Install Window Framing | 10,286 | 11,429 | 2,286 | 24,000 | Exempt costs | 0 | 0 |
| Acquire and install 21 Windows | 27,379 | 30,421 | 6,084 | 63,885 | Exempt costs | 0 | 0 |
| Replace damaged 2 Doors at Fire Escape (interior + exterior) (repairs) | 2,900 | 0 | 0 | 2,900 | Repairs | 0 | 0 |
| Cut in and install 2 Doors to Spring Street (Grnd & Bsmnt) | 1,250 | 0 | 1,250 | 2,500 | 100% Accessible Entry Costs | 0 | 2,500 |
| Repair Gaps in Wood Flooring on ground floor (repairs) | 3,500 | 0 | 0 | 3,500 | Repairs | 0 | 0 |
| City Permits for all of the construction components | 1,667 | 1,667 | 1,667 | 5,000 | Exempt costs | 0 | 0 |
| Install Basement ADA Patio, Deck & 2 Stairways into ground and basement | 12,000 | 0 | 10,000 | 22,000 | 100% Primary Function Area Costs | 0 | 22,000 |
| Install new fire exit stairs (repairs) | 6,000 | 0 | 0 | 6,000 | Repairs | 0 | 0 |
| Veilleux wall installation & move his new restroom for restaurant areas | 6,000 | 0 | 0 | 6,000 | 67% Primary Function Area Costs | 4,000 | 2,000 |
| General Contractor Profit & Overhead | 5,333 | 5,333 | 5,333 | 16,000 | Use 50% as Construction Costs | 8,000 | 0 |
| Electrical Contractor plugs, equipment, panel switch 400, etc. | 10,600 | 16,112 | 1,060 | 27,772 | 2nd floor Exempt & 50% of Balance | 5,830 | 0 |
| Central Maine Power upgrade service to building | 15,000 | 0 | 0 | 15,000 | 75% Restaurant Primary Function Area | 11,250 | 0 |
| Phone Line Contractor stub into space for office and front desk | 1,000 | 0 | 0 | 1,000 | 100% Primary Function Area Costs | 1,000 | 0 |
| Data Line Contractor stub into space for office and front desk | 1,000 | 0 | 0 | 1,000 | 100% Primary Function Area Costs | 1,000 | 0 |
| Painting Contractor to clean up walls | 550 | 400 | 300 | 1,250 | Repairs | 0 | 0 |
| HVAC Contractor | 32,388 | 16,301 | 18,409 | 67,098 | 100% New System for Restaurant | 32,388 | 0 |
| Lifts, shafts, power, alarms, etc (\$90K to \$100K if installed) | 0 | 0 | 0 | 0 | Lifts, shafts, power, alarms, disconnects | 0 | 0 |
| Soundproofing in basement ceiling | 0 | 0 | 0 | 0 | Repairs | 0 | 0 |
| Separate water meters for basement and ground floor (repairs) | 4,000 | 0 | 2,000 | 6,000 | Repairs | 0 | 0 |
| Costs from past three years (Alarm strobes from other spreadsheet) | 5,871 | 0 | 0 | 5,871 | Path of Travel + Primary Function Area | 4,371 | 1,500 |
| Engineer (windows only) | 3,333 | 3,333 | 3,333 | 10,000 | Exempt costs (window related only) | 0 | 0 |
| Architect (windows and primary function) | 15,000 | 5,000 | 0 | 20,000 | 25% Related to Alterations | 5,000 | 0 |
| Tenant General Contractor Costs for Primary Function Area & Path of Travel | 170,000 | 0 | 30,000 | 200,000 | Bar + Dining Area and Path of Travel | 200,000 | 0 |
| Tenant/Owner Supplied Equipment | 100,000 | 0 | 0 | 100,000 | Exempt Restaurant & Retail Costs | 0 | 0 |
| Tenant General Contractor Costs for Kitchen, Storage & Other Exempt Costs | 100,000 | 0 | 20,000 | 120,000 | Exempt Restaurant & Retail Costs | 0 | 0 |
| Tenant General Contractor Costs for 2 ADA Bathrooms, ADA flooring, etc. | 30,000 | 0 | 0 | 30,000 | Bar + Dining Area and Path of Travel | 0 | 30,000 |
| Second Floor Fit up for Tenant (different primary area and access) | | | | | | | |
| Carpeting 2nd Floor, Tile bathrooms, kitchen, reception | 0 | 29,000 | 0 | 29,000 | Different Path & Primary Function Area | 0 | 0 |
| Add on Costs to be paid by Tenant | 0 | 0 | 0 | 0 | Different Path & Primary Function Area | 0 | 0 |
| Painting 2nd Floor | 0 | 9,200 | 0 | 9,200 | Different Path & Primary Function Area | 0 | 0 |
| Glass Entry Door and Transom Light | 0 | 2,100 | 0 | 2,100 | Different Path & Primary Function Area | 0 | 0 |
| Sprinklers new offices, bathroom, front conf. room, etc. | 0 | 5,500 | 0 | 5,500 | Different Path & Primary Function Area | 0 | 0 |
| Reception Area and Entry remove office, windows & 2 angles | 0 | 3,000 | 0 | 3,000 | Different Path & Primary Function Area | 0 | 0 |
| Move front conference room wall back to entry door point | 0 | 1,500 | 0 | 1,500 | Different Path & Primary Function Area | 0 | 0 |
| Kitchen move to office, change kitchen to powder room w door | 0 | 2,500 | 0 | 2,500 | Different Path & Primary Function Area | 0 | 0 |
| Three new offices on Cross Street, drop ceilings | 0 | 10,000 | 0 | 10,000 | Different Path & Primary Function Area | 0 | 0 |
| Four offices on Spring Street, drop ceilings | 0 | 10,000 | 0 | 10,000 | Different Path & Primary Function Area | 0 | 0 |
| Bathrooms upgrade fixtures | 0 | 2,500 | 0 | 2,500 | Different Path & Primary Function Area | 0 | 0 |
| Frost office windows | 0 | 2,000 | 0 | 2,000 | Different Path & Primary Function Area | 0 | 0 |
| Brokerage Commission | 0 | 0 | 0 | 0 | Different Path & Primary Function Area | 0 | 0 |
| Miscellaneous | 0 | 7,800 | 0 | 7,800 | Different Path & Primary Function Area | 0 | 0 |
| | <u>589,915</u> | <u>201,049</u> | <u>106,912</u> | <u>897,876</u> | Total respective Costs | <u>273,589</u> | <u>58,000</u> |
| | | | | | 20% of Total Costs Required by ADA | 54,718 | |
| | | | | | Accessible Entrances (2) | -2,500 | |
| | | | | | Accessible Route (Stairs & Deck) | -22,000 | |
| | | | | | Accessible Bathroom (3) | -30,000 | |
| | | | | | Accessible Telephone | 0 | |
| | | | | | Accessible Drinking Fountain | 0 | |
| | | | | | Accessible Parking/Storage/Alarms | -1,500 | |
| | | | | | Accessible Other | -2,000 | |
| | | | | | Remaining ADA Costs to be Incurred | <u>-3,282</u> | |

6 City Center Building Improvement Costs 02/24/15 to 08/30/16



Reviewed for Code Compliance
Inspections Division
Approved with Conditions

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Date: 09/20/16

| Name | Memo | Amount | Func |
|-------------------------------|---|-----------|------|
| Pine State Elevator | Modernize existing OTIS elevator | 16,916.00 | 0.00 |
| Reflections | repair/repaint window trim on front of building | 10,000.00 | 0.00 |
| D&D Builders, LLC | Painting | 350.00 | 0.00 |
| Michael R. Charek, Architect | Architectural services-measured floor plans: 34.5 hrs@ \$125/hr | 4,312.50 | 0.00 |
| Nadeau's Refrigeration | 10% deposit for HVAC upgrade. Bryant heat pump/air handler install | 7,434.00 | 0.00 |
| Reagan and Company | Turn file cabinets in to office re: trim | 5,673.00 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 20,000.00 | 0.00 |
| D&D Builders, LLC | paint removal from bricks | 400.00 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 3,000.00 | 0.00 |
| Pine State Elevator | Modernize existing OTIS elevator | 18,000.00 | 0.00 |
| Reflections | Repointing and Façade repairs | 5,000.00 | 0.00 |
| Keeley Electrical Contractors | 3rd floor: New lighting | 18,980.00 | 0.00 |
| Pine State Elevator | Modernize existing OTIS elevator | 7,374.00 | 0.00 |
| Keeley Electrical Contractors | Renovations work including: elevator, water heater, relocated walls, and HVAC units | 7,489.43 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 10,000.00 | 0.00 |
| D&D Builders, LLC | Materials deposit for third floor painting | 500.00 | 0.00 |
| D&D Builders, LLC | Interim payment requested via text message | 1,500.00 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 10,000.00 | 0.00 |
| D&D Builders, LLC | Painting third floor | 1,500.00 | 0.00 |
| D&D Builders, LLC | Cleaning | 300.00 | 0.00 |
| Reflections | Recauked side and rear windows. Painted exterior rear enclosure. Repointed and and fastened l... | 6,155.00 | 0.00 |
| D&D Builders, LLC | Final payment for painting 3rd floor | 1,000.00 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 18,000.00 | 0.00 |
| Keeley Electrical Contractors | Performed work for HVAC interior handlers and rooftop compressors. Installed innerduct for fiber... | 17,205.64 | 0.00 |
| D&D Builders, LLC | Paint for stairwell | 250.00 | 0.00 |
| Steamatic of Greater Portland | Air conveyance system cleaning | 7,400.00 | 0.00 |
| D&D Builders, LLC | All change orders from original contract-post all to contingency on draw budget | 1,075.00 | 0.00 |
| D&D Builders, LLC | partial payment of stairtower and lobby contract of \$1,575 +\$350. \$250 paid already | 500.00 | 0.00 |
| Reagan and Company | Built office walls, removed cabinets, installed new door | 17,260.00 | 0.00 |
| D&D Builders, LLC | Lobby painting | 825.00 | 0.00 |
| Nadeau's Refrigeration | Bryant heat pump/air handler install | 5,906.00 | 0.00 |
| Reflections | Power washed and sealed deck on Spring Street | 1,527.00 | 0.00 |
| D&D Builders, LLC | punch list items, railings, holes in walls, etc. | 652.00 | 0.00 |
| D&D Builders, LLC | performance bonus | 500.00 | 0.00 |
| Reflections | Scraped, primed, and painted the trim for all retail space (1st-4th floor). Repaired and replace... | 8,877.00 | 0.00 |
| Reflections | Scraped, primed, and painted exterior rear enclosure. Re-caulked side and rear window. Repointed... | 6,155.00 | 0.00 |
| Reflections | Repaired dormers and windows | 4,315.00 | 0.00 |

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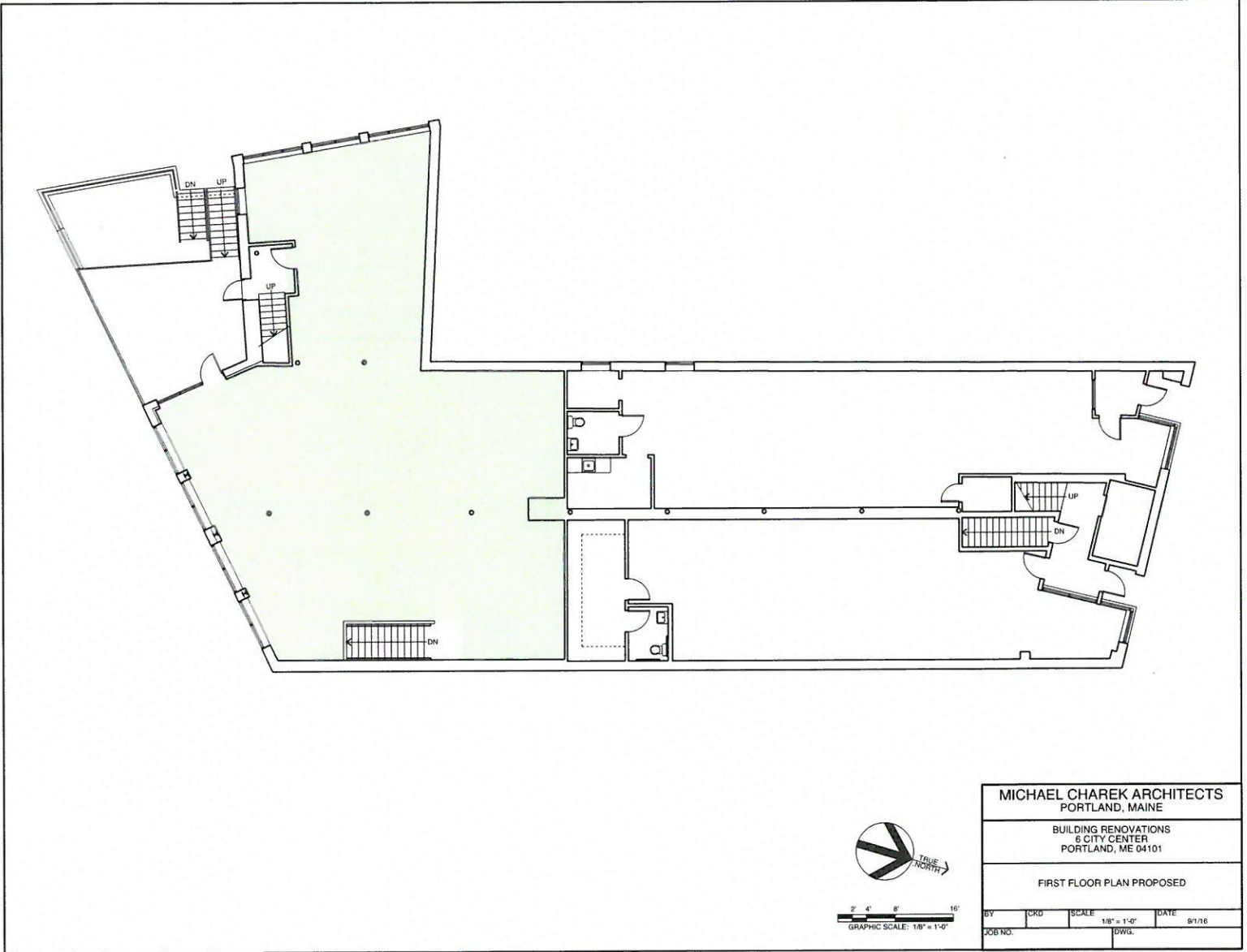
Date: 09/20/16

| Name | Memo | Amount | Same Tra Pri Funct |
|-------------------------------|---|------------|-----------------------------|
| Reflections | Mason Preservation Association subcontractor invoice | 3,060.00 | |
| Reflections | Cleaned exterior windows floors 2-4. Cleaned interior windows | 1,865.00 | 0.00 |
| Reflections | Sealed brick along Cross Street and Spring Street | 3,682.00 | 0.00 |
| Paul G. White-flooring | Bathroom tile floor | 1,336.00 | 0.00 |
| Paul G. White-flooring | Kitchen tile flooring | 3,213.00 | 0.00 |
| Cunningham Security | New strobe and fire alarm system (allocate by SF of total restaurant and retail SF to building) | 19,504.37 | 3,805.30 |
| Reflections | Filled voids in masonry along brick wall on Cross St. | 2,877.00 | 0.00 |
| Keeley Electrical Contractors | Efficiency Maine | -6,840.00 | 0.00 |
| Keeley Electrical Contractors | Performed work for renovations. 6/1/15-6/30/15. | 5,983.49 | 0.00 |
| D&D Builders, LLC | Cleaning | 229.00 | 0.00 |
| D&D Builders, LLC | Cleaned out 1st and 4th floor | 820.00 | 410.00 |
| Cumberland County Glass | Skylights on 2nd floor | 4,900.00 | 0.00 |
| Reagan and Company | Built deck and restroom with shower. Cut in kitchen sink, plumbing, and eating counter. | 10,277.00 | 0.00 |
| Michael R. Charek, Architect | Architectural services-meetings, area plans, consulting on new rear stair | 1,250.00 | 0.00 |
| Keeley Electrical Contractors | Lighting fixtures on second floor | 19,980.00 | 0.00 |
| D&D Builders, LLC | 2nd floor deck staining and pergola - 2 coats | 1,200.00 | 0.00 |
| Keeley Electrical Contractors | Lighting fixtures on fourth floor | 18,420.00 | 0.00 |
| Keeley Electrical Contractors | to reduce AP by amount to be paid for by H&A for 4th floor | -18,420.00 | 0.00 |
| Keeley Electrical Contractors | Efficiency Maine Rebate | -8,180.00 | 0.00 |
| Keeley Electrical Contractors | Ran circuits for 1st and 2nd floors | 1,909.64 | 0.00 |
| Keeley Electrical Contractors | Isolated Men's Room electricity via separate metered panels | 3,311.95 | 1,655.98 |
| D&D Builders, LLC | Cleaning | 200.00 | 0.00 |
| Hopkinson & Abbondanza | Accounting entry for disposition of portion of improvements related to 4th Floor condo | -57,425.59 | 0.00 |
| Keeley Electrical Contractors | Efficiency Maine. Reimbursement to be made to Hopkinson & Abbondanza. | -7,010.00 | 0.00 |
| Hopkinson & Abbondanza | Reimbursement for Efficiency ME check dated 10/7/15. Keeley electrical work | 7,010.00 | 0.00 |
| Michael R. Charek, Architect | Architectural services-schematic design, computer modeling. 30 hrs @ \$130/hr | 3,900.00 | 0.00 |
| Michael R. Charek, Architect | Architectural services-Design development, presentations, meetings, site investigation. Ground f... | 5,950.00 | 0.00 |
| Michael R. Charek, Architect | Architectural services-Structural consultation-study and report on masonry wall. Ground floor. 5... | 1,915.00 | 0.00 |
| D&D Builders, LLC | Second Floor renovations down payment6ccr201609041 | 1,500.00 | 0.00 |
| D&D Builders, LLC | 2nd floor demo work | 2,000.00 | 0.00 |
| D&D Builders, LLC | waste hauling and materials interim test invoice | 1,000.00 | 0.00 |
| D&D Builders, LLC | 2nd floor demolition work | 3,142.87 | 0.00 |
| D&D Builders, LLC | 2nd floor conf room and reception | 600.00 | 0.00 |
| D&D Builders, LLC | permit costs and materials for D&D work on the second floor | 800.00 | 0.00 |
| D&D Builders, LLC | second floor | 2,880.00 | 0.00 |
| D&D Builders, LLC | 2nd floor framing materials | 2,000.00 | 0.00 |
| D&D Builders, LLC | 2nd floor | 2,002.90 | 0.00 |
| Total Building Improvement | | 287,175.20 | 5,871.28 |



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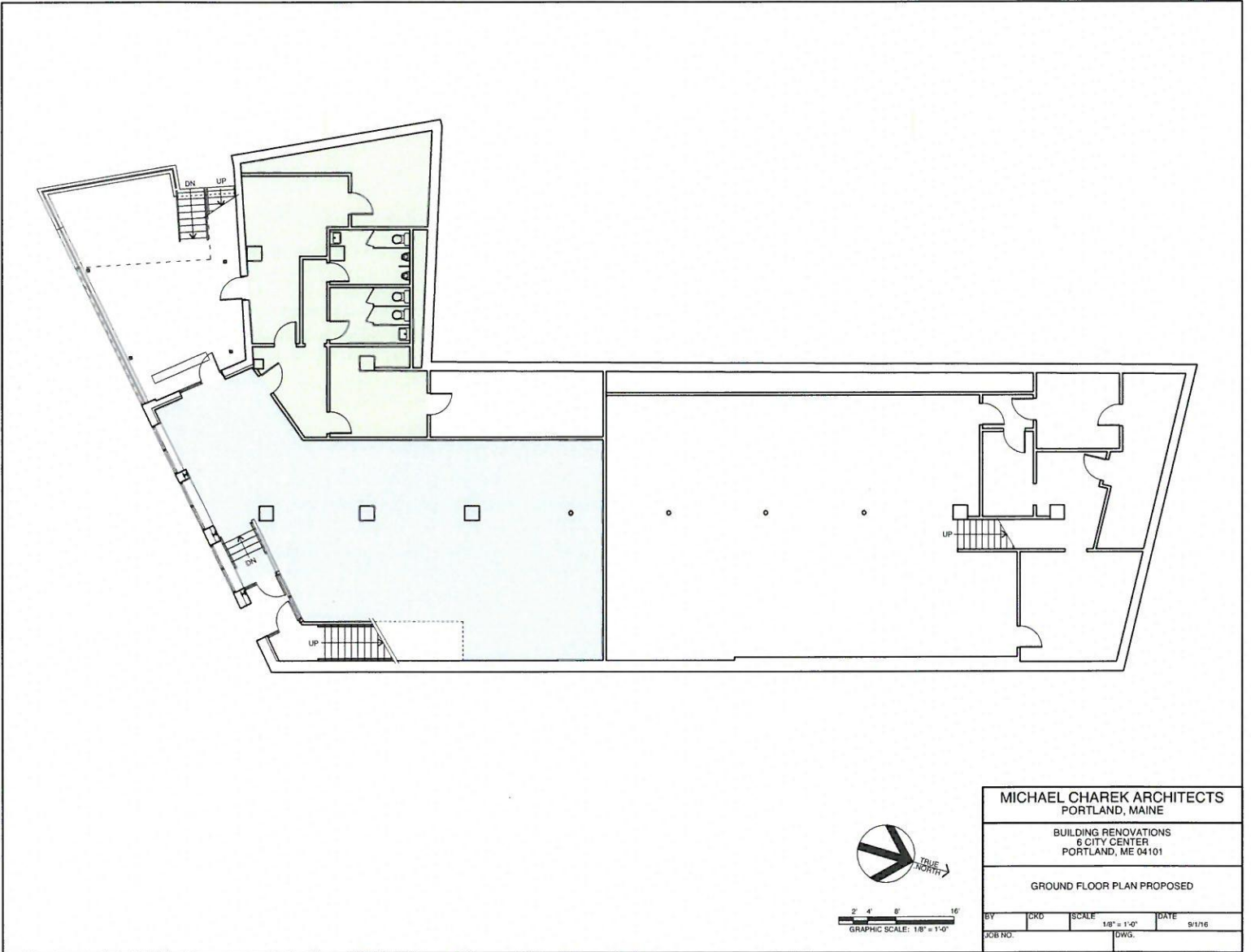


| | | | |
|---|-----|--------------|--------|
| MICHAEL CHAREK ARCHITECTS PORTLAND, MAINE | | | |
| BUILDING RENOVATIONS 6 CITY CENTER PORTLAND, ME 04101 | | | |
| FIRST FLOOR PLAN PROPOSED | | | |
| BY | CRD | SCALE | DATE |
| | | 1/8" = 1'-0" | 9/1/16 |
| JOB NO. | | DWGS. | |



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|---|------|--------------|--------|
| MICHAEL CHAREK ARCHITECTS PORTLAND, MAINE | | | |
| BUILDING RENOVATIONS & CITY CENTER PORTLAND, ME 04101 | | | |
| GROUND FLOOR PLAN PROPOSED | | | |
| BY | CKD | SCALE | DATE |
| | | 1/8" = 1'-0" | 9/1/16 |
| JOB NO. | DWG. | | |



2' 4' 8' 16'
GRAPHIC SCALE: 1/8" = 1'-0"