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LAW FIRM

September 6, 2017

Robin Currin  
Asheville City Attorney  
70 Court Plaza  
Asheville, NC 28801

Re: Report on Status of Title of Real Property Containing the Vance Monument

Dear Robin:

Thank you for contacting our firm to research the title history of the parcel of property containing the Vance Monument (hereinafter "the Monument Property"). Below is a summary of my findings wherein I have concluded, based on a limited search, that the City of Asheville holds title to the Monument Property.

### **The beginning of Asheville and Buncombe County**

I began my search by looking at the layout of downtown Asheville. The first set of deeds that I found that I believe comprise the Monument Property were recorded in the year 1807 in Deed Book A, Page 234; Deed Book A, Page 237; and Deed Book A, Page 523.

All three of these deeds conveyed to certain commissioners appointed by the General Assembly of the State certain property which would be "sufficient for a Public Square." It is important to note that back in this time, Broadway and Biltmore Avenue were known as "Main Street." Hence, one can draw a legal description from these deeds using Main Street as a reference. I have attached a drawing of the layout of the three noted deeds.

Upon review of these deeds, two questions were presented: (1) what was the source of the lot numbers contained within the deeds, and (2) what government entity did these commissioners represent? The deed was somewhat vague as to whether the County, City or even the State received the property.

The index in the Register of Deeds states that the City of Asheville was the Grantee for these three deeds. But I believe it is incorrect. The County received the property based on a secondary source of information.

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In 1922, F.A. Sondley wrote what appears to be the first comprehensive history of our area in a book titled "Asheville and Buncombe County." I have copied and attached to this letter pertinent pages from this book.

The first great clue is contained in Page 70. Based on this information, John Burton was the original owner of all of the downtown Asheville property, and he laid out a plat called "A Plan of the Town of Asheville." When comparing this plat to all of the 1807 deeds conveying property for the creation of the Public Square, the boundary lines match exactly. Based on this plat, the Monument Property consists of a portion of the road that was Patton Avenue at the time along with a portion of Lots 14, 15, 39, and 40 under this plat.

The Sondley book further provides significant evidence that the County was the recipient of these Public Square deeds. Pages 118-122 describe how the Grand Jury for Buncombe County presented a public grievance that the courthouse and jail sat partly on the Town Street (Patton Ave.), partly on the property of Chunn and Baird (Lots 39 and 40) and partly on the lots of Brittain and Erwin (presumably Lots 14 and 15).

Page 119 contains an excerpt wherein the foreman of this Grand Jury states that "the County, after expending a very considerable sum of money in executing said Buildings, have not the slightest title to the ground on which they stand." The foreman concludes by recommending that the Court take measures to "secure the aforesaid titles."

The book continues by listing each deal made, including a reference to the three deeds noted in the beginning of this section. Sondley, himself, then notes that it was the *county* that then began to sell off portions of its Public Square in 1867. Therefore, I believe there is sufficient evidence that the County became owner of title to the Monument Property in 1807.

### **Deeds Involving George W. Pack**

The next step I took was to discount other potential sources of information. One of these sources is a deed from the Board of Commissioners of Buncombe County to George W. Pack recorded in 1901 in Book 120, Page 435 of the Buncombe County Registry. This deed provides even further proof that the 1807 deeds were intended to convey all the Public Square property to Buncombe County. Furthermore, this deed does, in fact, convey from the County to George Pack most of what is known today as Pack Square. However, it does not convey the Monument Property.

The legal description in this deed states "all of that tract or lot whereon is now situated the present Court House together with all the land adjoining the same now owned by the County of Buncombe, **bounded on the west ground heretofore dedicated by the Board of Commissioners of Buncombe County to the purpose of the monument erected thereon in memory of Zebulon B. Vance and on the North East and South by the Streets or Highways now in use by the public.**"

The legal description is not the best, but I believe the language in bold makes clear that the deed from the County to Pack did not include the Monument Property. Further evidence that the County continued to act as if they owned the monument can be found in some minutes of the Board of County Commissioners in October 4, 1937 that you provided to me. It seems clear that the County asserted jurisdiction over the Monument Property during this time period.

As part of the deal involving the County and George Pack, Pack conveyed certain property to the County in Deed Book 121, Page 144, re-recorded in Deed Book 122, Page 21 of the Buncombe County Registry. But the legal descriptions in those deeds make clear that Pack gave the County all of the property east of South Spruce Street in front of the current courthouse and City Building, not the Monument Property. Therefore, contrary to what many assert, I do not believe George Pack ever owned title to the Monument Property.

Webb A. Morgan & Associates, P.A. conducted a well-drawn survey in 2009 and recorded in Plat Book 124, Page 9 of the Buncombe County Registry. This survey comes to the same conclusion I had involving the boundary lines of the deeds and the Pack Property I have referenced above. It shows a hard boundary line to the east of the Monument, differentiating it from the property conveyed to Pack.

I do believe the survey contains one error. One of the Notes states that the location of Vance Monument is described as Tract One in Deed Book 395, Page 534. But I pulled this deed and drew it out. The western boundary line of this property lines up with the eastern margin of Market Street. Therefore, it cannot include the Monument Property, so I believe this Note is in error.

### **Deed from the County to the City**

This leads us to the ultimate deed of ownership. In 1977, Akzona, Inc. purchased a large tract of property that now houses what is known as the Biltmore Building from various different owners on the northern side of Pack Square. As part of this transaction, Akzona received from the City of Asheville rights to the property below the surface of the ground around the northern portions of Pack Square.

In order to convey these rights to Akzona, the City needed to own the property. I assume there was a question as to whether the City or the County at the time owned the property in Pack Square. This question was solved by getting Buncombe County to convey to the City in Deed Book 1175, Page 441 of the Buncombe County Registry "all of the lands lying generally between the South margin of South Pack Square Street, the Western Margin of Broadway and Biltmore Avenue, the Northern margin of College Street, and the East margin of Market Street."

I have attached this deed along with Plat Book 44, Page 74, showing the layout of the area conveyed. It is clear from reviewing this plat that this deed includes the Monument Property.

Thus, this deed conveyed the Monument Property from the County of Buncombe to the City of Asheville.

### **Disclaimers**

It is important to note that in the interest of time and expense, I have provided this report based on materials furnished to me and other research I have done with secondary sources to ascertain the historical context of some of the older deeds.

In order to actually conduct a full and complete title examination, I would have to review every single document conveyed out by the County of Buncombe between 1807 and 1977 to make sure the County never conveyed or restricted the Monument Property. Moreover, I would have to do the same for the City of Asheville from the time they received the Monument Property in 1977 to the present.

This review would involve tens of thousands of documents with only the slimmest of chances that we might find something in addition to what we have already found. I am happy to undertake this effort but wanted to discuss the cost and necessity with you prior to doing so. Please let me know if you have any questions on this report and thank you for your confidence in our firm.

Yours truly,

A handwritten signature in black ink, appearing to read 'Peter U. Kanipe', with a stylized flourish at the end.

Peter U. Kanipe

Enclosures