CITY OF KETCHUM, IDAHO
PLANNING AND ZONING COMMISSION
Tuesday, November 14, 2023, 4:30 PM
191 5th Street West, Ketchum, Idaho 83340

AGENDA

PUBLIC PARTICIPATION INFORMATION
Public information on this meeting is posted outside City Hall.

We welcome you to watch Commission Meetings via live stream.
You will find this option on our website at www.ketchumidaho.org/meetings.

If you would like to comment on a public hearing agenda item, please select the best option for your participation:

1. Join us via Zoom *(please mute your device until called upon)*.
   Join the Webinar: https://ketchumidaho-org.zoom.us/j/84908562336
   Webinar ID: 849 0856 2336

2. Address the Commission in person at City Hall.

3. Submit your comments in writing at participate@ketchumidaho.org *(by noon the day of the meeting)*.

This agenda is subject to revisions. All revisions will be underlined.

CALL TO ORDER:
ROLL CALL:
COMMUNICATIONS FROM COMMISSIONERS:
CONSENT AGENDA:
Note re: ALL ACTION ITEMS - The Commission is asked to approve the following listed items by a single vote, except for any items that a commissioner asks to be removed from the Consent Agenda and considered separately.

1. ACTION ITEM: Approval of the October 24, 2023 minutes
2. ACTION ITEM: Recommendation to approve the Scheduling Order and Notice as stipulated and presented, and ratify the previous signature of the City Attorney for the Sawtooth Serenade Administrative Appeal
3. ACTION ITEM: Recommendation to approve the Scheduling Order and Notice as presented and authorize the Chair to sign for the 121 Badger Lane Floodplain Development Permit

PUBLIC HEARING:

4. ACTION ITEM: Recommendation to hold a public hearing to review and take action on the Walnut & Fourth Condominiums Subdivision Preliminary Plat Application to subdivide the new mixed-use building located at 580 E 4th Street. Public hearing for this project continued from Planning and Zoning Commission Meeting on October 10, 2023

NEW BUSINESS:

5. ACTION ITEM: Review and make a determination of Administrative Appeal P22-056A for the processing of a final design review application for the Sawtooth Serenade development locate at 260 N 1st Ave
6. Review proposed 2024 Planning & Zoning Commission meeting schedule

EXECUTIVE SESSION:

ADJOURNMENT:

CALL TO ORDER: *(00:00:23 in video)*
Neil Morrow called the meeting of the Ketchum Planning and Zoning Commission to order at 4:30 p.m.

ROLL CALL:
Neil Morrow
Susan Passovoy *absent
Brenda Moczygemba
Tim Carter *absent
Spencer Cordovano

ALSO PRESENT:
Morgan Landers—Director of Planning and Building
Abby Rivin – Senior Planner
Paige Nied – Associate Planner
Adam Crutcher – Associate Planner
Heather Nicolai—Planning Technician & Office Administrator

COMMUNICATIONS FROM COMMISSIONERS: *(00:00:40 in video)*

None

CONSENT AGENDA: *(00:00:50 in video)*

1. ACTION ITEM: Approval of the October 10, 2023 minutes
2. ACTION ITEM: Recommendation to review and approve the Findings of Fact, Conclusions of Law and Decision for the Walnut Avenue Residence Mountain Overlay Design Review application File No. P23-052.
3. ACTION ITEM: Recommendation to review and approve the Findings of Fact, Conclusions of Law and Decision for the Walnut Avenue Lot Consolidation Preliminary Plat application File No. P23-052A.

Motion to approve the entire consent agenda. Made by Brenda Moczygemba; seconded by Spencer Cordovano (*00:01:10 in video)*
MOVER: Brenda Moczygemba
SECONDER: Spencer Cordovano
AYES: Brenda Moczygemba, Spencer Cordovano & Neil Morrow
NAYS:
RESULT: UNANIMOUSLY ADOPTED

PUBLIC HEARING: *(00:01:20 in video)*

4. ACTION ITEM: Recommendation to approve applicant's request to move to continue the public hearing for the Warm Springs Ranch Residences Lot 33 to a date certain of November 14, 2023. *(00:01:26 in video)*

- Applicant requested to move to continue the public hearing for this project to a date uncertain.

Motion to approve applicant's request to move to continue the public hearing for the Warm Springs Ranch Residences Lot 33 to a date uncertain. Motion made by Spencer Cordovano; seconded by Brenda Moczygemba. *(00:01:44 in video)*

MOVER: Spencer Cordovano
SECONDER: Brenda Moczygemba
AYES: Brenda Moczygemba, Spencer Cordovano & Neil Morrow
NAYS:
RESULT: UNANIMOUSLY ADOPTED

NEW BUSINESS: *(00:01:48 in video)*

5. Discussion and feedback on Plan & Code Update Phase 1 draft documents, including the Comprehensive Plan Audit, Phase 2: Scope of Work, and Public Engagement Plan. *(00:01:48 in video)*
- Staff Presentation-Abby Rivin-Senior Planner & Morgan Landers-Director, Planning & Building *(00:02:00 in video)*
- Commission questions & comments and dialog with Staff & Consultants -Darcie White (Clarion) & Daren Fluke (Jacobs) *(00:15:55 in video)*

6. General announcements and highlights from staff *(00:57:12 in video)*

ADJOURNMENT:

Motion to adjourn at 5:29pm *(00:58:53 in video)*

MOVER: Neil Morrow
SECONDER: Spencer Cordovano
AYES: Brenda Moczygemba, Spencer Cordovano & Neil Morrow
NAYS:
RESULT: ADOPED UNANIMOUSLY

_____
Neil Morrow – P & Z Commissioner

_____
Morgan Landers – Director of Planning & Building

WHITE PETERSON

ATTORNEYS AT LAW

KELSY R. BRIGGS
MARC J. BYBEE
WM. F. GIGRAY, III
DANIEL W. GOODMAN
MATTHEW A. JOHNSON
JACOB M. JONES
WILLIAM F. NICHOLS *

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.
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BRIAN T. O'BANNON *
PHILIP A. PETERSON
WILLIAM L. PUNKONEY

TERRENCE R. WHITE
OF COUNSEL
WILLIAM F. "BUD" YOST
OF COUNSEL

* Also admitted in OR

November 9, 2023

To: Planning and Zoning Commissioners, City of Ketchum

From: Matthew Johnson, City Attorney

Re: Sawtooth Serenade Administrative Appeal – Scheduling Order

Recommended Motion: *I move to approve the Scheduling Order and Notice as stipulated and presented, and ratify the previous signature of the City Attorney.*

Background:

This is a procedural step for the City to process an administrative appeal filed with respect to a determination of the Planning Director.

Under Ketchum Municipal Code §17.144.010, the Commission orders and notices a hearing date for the administrative appeal and also accepts certain procedural steps, all of which are specified in the attached Order.

I met with the attorney for the Appellant/Applicant via phone and/or email, and all have accepted the schedule set forth and formalized in the Order. Due to some delays and timing considerations, this Order is being presented for approval of the Commission on the same day and at the same meeting as the stipulated hearing will be held. For these reasons I previously signed the Order in my capacity as City Attorney so as to provide timely notice to the Appellant/Applicant, which was accepted. So, the motion in this circumstance is to ratify (approve) my signature/previous action.

This is an administrative appeal hearing where the Commission will sit in a quasi-judicial role. There will be arguments by the parties, but there is no public hearing and public comments will not be taken. Council will have full discretion to ask questions of the parties, staff, and/or city attorney as we needed.

As the briefs are submitted, the Council will be provided information to access copies of the briefs, as well as the record including transcripts if applicable.

I will be available at the 11/14/23 Commission meeting to answer any additional questions on procedure that may arise in connection with the Scheduling Order. Questions or concerns on the substance of the administrative appeal should be reserved for the 11/14/23 hearing.

City of Ketchum
City Hall

SCHEDULING AND NOTICE OF APPEAL HEARING
BEFORE PLANNING AND ZONING COMMISSION
Administrative Appeal: Sawtooth Serenade Design Review Applications

An administrative appeal was filed by Scott and Julie Lynch & Yah Bernier and Elizabeth McCaw & Distrustful Ernest Revocable Trust (Applicant/Appellant), with respect to the above-referenced applications and associated Planning Director Determination, dated August 24, 2023. The administrative appeal of Director Determination was timely filed on September 7, 2023. The administrative appeal was filed pursuant to Ketchum Municipal Code 17.144.010.

1. The Planning Director has certified and reported that the procedural requirements have been met and the Director's Determination provided. KMC 17.144.010(A).

2. The City Attorney has worked with legal counsel for the Applicant/Appellant and the parties have agreed to the schedule set forth in this Order.

3. Briefing Schedule: Appellant has already submitted a brief or memorandum in support of the appeal on September 7, 2023. The Planning Director is to submit a reply brief or memorandum by mid-day on November 3, 2023. Applicant is to submit a further response brief or memorandum by 5:00 p.m. on November 9, 2023. The Commission Packet is anticipated to go out on November 9, 2023, with all of the briefings included.

4. Hearing Date: This matter is set for hearing before the Commission at its regular meeting and location on November 14, 2023. KMC 17.144.010(B).

5. Commission Review Authority: Upon hearing the appeal, the Commission shall consider the record, the order, requirement, decision or determination of the administrator and the notice of appeal, together with oral presentation and written legal arguments by the appellant and the administrator. The Commission shall not consider any new facts or evidence at this point. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator.
KMC 17.144.010(C).

6. Decision: A written decision will be entered within 30 days of conclusion of the appeal hearing. All parties and any affected party of record have a right to request and/or will be provided a copy of the decision. KMC 17.144.010(D).

Date of Notice: November 3, 2023.

Matthew A. Johnson, City Attorney

Delivered electronically to jrl@lawsonlaski.com

WHITE PETERSON

ATTORNEYS AT LAW

KELSY R. BRIGGS
MARC J. BYBEE
WM. F. GIGRAY, III
DANIEL W. GOODMAN
MATTHEW A. JOHNSON
JACOB M. JONES
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OF COUNSEL

* Also admitted in OR

November 9, 2023

To: Planning and Zoning Commissioners, City of Ketchum

From: Matthew Johnson, City Attorney

Re: 121 Badger Lane Administrative Appeal – Scheduling Order/Notice

Recommended Motion: I move to approve the Scheduling Order and Notice as presented, and authorize the Chair to sign.

Background:

This is a procedural step for the City to continue to process an administrative appeal filed with respect to a determination of the Planning Director.

Under Ketchum Municipal Code §17.144.010, the Commission orders and notices a hearing date for the administrative appeal and also accepts certain procedural steps, all of which are specified in the attached Order.

I met with the attorneys for the parties (Appellant and Applicant) via phone and/or email, and all have accepted the schedule set forth and formalized in the Order.

This is an administrative appeal hearing where the Commission will sit in a quasi-judicial role. There will be arguments by the parties, but there is no public hearing and public comments will not be taken. Council will have full discretion to ask questions of the parties, staff, and/or city attorney as we needed.

As the briefs are submitted, the Council will be provided information to access copies of the briefs, as well as the record including transcripts if applicable.

I will be available at the 11/14/23 Commission meeting to answer any additional questions on procedure that may arise in connection with the Scheduling Order. Questions or concerns on the substance of the administrative appeal should be reserved for the 12/12/23 hearing.

City of Ketchum
City Hall

SCHEDULING ORDER AND NOTICE OF APPEAL HEARING
BEFORE PLANNING AND ZONING COMMISSION
Administrative Appeal: P23-014 – 121 Badger Lane

An administrative appeal was filed by Appellant, with respect to the above-referenced application(s) and Director's determination. The administrative appeal was filed on July 11, 2023. The administrative appeal was filed pursuant to Ketchum Municipal Code 17.144.010.

The Planning and Zoning Commission hereby finds and orders that:

1. The Planning and Zoning Director has certified and reported that the procedural requirements have been met. KMC 17.144.010(A).

2. A record of the proceeding has been prepared and is accepted by the Commission. KMC 17.144.010(A).

3. The City Attorney has held scheduling discussions with the parties, who agreed to the schedule set forth in this Order.

4. Hearing Date: This matter is set for hearing before the Commission at its regular meeting and location on December 12, 2023. KMC 17.144.010(B).

5. Briefing Schedule: Appellant has already submitted a brief or memorandum in support of the appeal. Applicant is to submit a response brief or memorandum by 5:00 p.m. on November 28, 2023. Appellant is to submit a reply brief, if any, by 5:00 p.m. on December 5, 2023. All briefs/memos are to be sent to the parties to the administrative appeal and the City Attorney. All have agreed that electronic delivery of the documents is sufficient.

6. Commission Review Authority: Upon hearing the appeal, the Commission shall consider the record, the order, requirement, decision or determination of the administrator and the notice of appeal, together with oral presentation and written legal arguments by the appellant, [applicant (if different than appellant)], and the administrator. The Commission shall not consider any new facts or evidence at this point. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator. KMC 17.144.010(C).

7. Decision: A written decision will be entered within 30 days of conclusion of the appeal hearing. All parties, the Commission, and any affected party of record have a right to request and/or will be provided a copy of the decision. KMC 17.144.010(B)&(D).

Date of Order: November ___, 2023.

_____
Neil Morrow, Chair

ATTEST

_____
Trent Donat, City Clerk

City of Ketchum
Planning & Building

STAFF REPORT
KETCHUM PLANNING AND ZONING COMMISSION
REGULAR MEETING OF NOVEMBER 14, 2023

PROJECT:	Walnut & Fourth Condominiums
APPLICATION TYPE:	Condominium Subdivision – Preliminary Plat
FILE NUMBER:	P23-053
ASSOCIATED APPLICATIONS:	Pre-Application Design Review P20-024, Design Review P20-046, Design Review Amendment P20-46A, FAR Exceedance Agreement Contract 20595A, Lot Line Shift P21-015, Building Permit B21-009
PROPERTY OWNER:	Walnut & Fourth LLC
REPRESENTATIVE:	David Patrie, Galena-Benchmark Engineering
LOCATION:	580 4th Street E (Ketchum Townsite: Block 44: Lot 7A)
ZONING:	Retail Core of the Community Core (CC-1 Zone)
OVERLAY:	None
REVIEWER:	Abby Rivin, AICP – Senior Planner
NOTICE:	A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on September 20, 2023. The public hearing notice was published in the Idaho Mountain Express on September 20, 2023. A notice was posted on the project site and the city's website on September 25, 2023. The public hearing for this Condominium Subdivision Preliminary Plat Application was continued from the Planning and Zoning Commission Meeting of October 10, 2023.

EXECUTIVE SUMMARY

The City of Ketchum Planning & Building Department received Condominium Subdivision Preliminary Plat Application File No. P23-053 for the Walnut & Fourth Mixed-Use Development on June 8, 2023. The application was processed and deemed complete on June 8, 2023. Following receipt of the complete application, Planning staff routed the application materials to all city departments for review. City department comments were provided to the applicant on July 21, 2023 and September 14, 2023.

All comments have been addressed satisfactorily through the applicant's revisions to the project plans or conditions of approval.

The condominium subdivision preliminary plat application will subdivide the mixed-use building into eight commercial condominium units on the first and second floors, two residential condominium units on the second floor, two community housing units, basement storage units, limited common area, and common area.

PROJECT HISTORY AND BACKGROUND

The applicant is nearing completion on the construction of a new 21,383 gross-square-foot, two-story building located at the southwest corner of Walnut Avenue and 4th Street. The mixed-use building contains 2,489 square feet of food service, 3,288 square feet of retail, and a 3,252-square-foot cultural facility, on the ground floor. The second floor includes 4,999 square feet of office space and two residential units. Two community housing units, 1,104 square feet and 914 square feet in net-livable area, each with detached storage areas of approximately 50 square feet are provided within the basement. In addition, the basement contains storage units for commercial and residential uses on the first and second floors of the mixed-use building.

The Commission reviewed and approved Design Review Application File No. P20-046 for the Walnut & Fourth Mixed-Use Building on September 15, 2020. The project was issued a building permit (Application File No. B21-009) on June 22, 2021. The Commission reviewed and approved Design Review Amendment Application File No. P20-046A, which proposed modifications to the mixture of uses and their configurations within the mixed-use building, on September 27, 2022. The project is nearing completion and all required life safety, building code, and utility infrastructure requirements have been met. The Planning & Building Department has issued Temporary Certificates of Occupancy for ground-floor commercial units, two of the office units on the second floor, and the two community housing units.

ANALYSIS

Parking

The mixture of uses generates a total parking demand of five spaces—two parking spaces are required for the two residential units on the second floor and three parking spaces are required for the cultural facility. The applicant has provided 11 total parking spaces. Six of these parking spaces, including one ADA space, are provided on site. The project is eligible for five on-street parking credits pursuant to Ketchum Municipal Code §17.125.050.C. The six on-site parking spaces and five on-street credit spaces satisfy the project parking demand for the proposed mixture of uses. Two of the on-site parking spaces must be designated for the two residential units (Unit R-250 and Unit R-260) on the upper floors of the building. The three parking spaces required for the cultural facility may be satisfied either through the remaining four on-site parking spaces or the five on-street credit parking spaces. Sheet 3 of the preliminary plat (See Attachment B) shows the on-site parking spaces. Two of the parking spaces have been designated as limited common area assigned to the two residential units on the second floor of the mixed-use building. The remaining parking spaces are designated as common area.

Storage

The basement floor plan on sheet 2 of the Walnut & Fourth Condominiums preliminary plat contains five condominium units. These units were constructed for storage occupancy and do not currently meet the life safety, building code, or fire code requirements for commercial or residential occupancy.

Storage is only permitted as an accessory use to the upper-level commercial and residential uses within the mixed-use development. The basement condominium units may not be marketed or sold for storage as self-storage facilities are prohibited in the Community Core pursuant to Ketchum Municipal Code §17.12.020. Instead of designating basement Units B6 and B8 as common area or limited common area assigned to specific commercial or residential unit, the applicant has proposed the following plat note as shown on sheet 1 of the preliminary plat (Attachment B):

> 6. *Units B6 and B8 are designated as accessory storage assigned to any other Unit or Common Area within this plat.*

Basement units B1, B9, and B10 are not included in this plat note because the applicant would like to maintain flexibility to change the use classification and occupancy of these three basement condominium units in the future. Staff recommends the following condition of approval to address basement units B1, B9, and B10:

> *Prior to forwarding the condominium subdivision preliminary plat to City Council for final review and approval, the applicant shall add the following plat note to sheet 1:*
>
> > *Units B1, B9, and B10 are designated as accessory storage assigned to any other Unit or Common Area within this plat until such time as a building permit is issued for a change of occupancy of the Unit.*

The intent of this plat note is to memorialize that until such time as a building permit is issued for a change of occupancy of the Unit, Units B1, B9, and B10 must be designated as assessory storage assigned to a unit or common area within the mixed-use development as self-storage facilities are prohibited in the Community Core.

CONFORMANCE WITH SUBDIVISION STANDARDS

During city department review, staff reviewed the condominium subdivision preliminary plat application for conformance with the procedures for subdivision approval (Ketchum Municipal Code §16.04.030), subdivision development and design standards (Ketchum Municipal Code §16.04.040), and condominium requirements (Ketchum Municipal Code §16.04.070). Certain standards are not applicable for one of the following reasons:

- The standard applies to the establishment of new subdivisions creating multiple new lots that will form blocks around new streets, and not the subject property, which is comprised of three existing platted lots within the original Ketchum townsite.
- The standard applies to an action that will be taken at the final plat stage of the process.
- The City Engineer has determined that the standard does not apply.

The proposed condominium preliminary plat application complies with all applicable subdivision requirements and standards. Please see Attachment C for a staff's comprehensive analysis of all subdivision requirements and standards.

STAFF RECOMMENDATION

Staff recommends approval of the Walnut & Fourth Condominiums Subdivision Preliminary Plat Application P23-053 subject to the following conditions:

1. This preliminary plat application is subject to all conditions of approval for Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B21-009.

2. Prior to forwarding the condominium subdivision preliminary plat to City Council for final review and approval, the applicant shall add the following plat note to sheet 1: Units B1, B9, and B10 are designated as accessory storage assigned to any other Unit or Common Area within this plat until such time as a building permit is issued for a change of occupancy of the Unit.
3. Failure to record a Final Plat within two (2) years of Council's approval of a Preliminary Plat shall cause the Preliminary Plat to be null and void.

RECOMMENDED MOTION

"I move to recommend approval of the Walnut & Fourth Condominiums Subdivision Preliminary Plat application and adopt the Findings of Fact, Conclusions of Law, and Decision as the application conforms to all applicable subdivision regulations for a preliminary plat and condominium project."

ATTACHMENTS:

A. Walnut & Fourth Condominiums Subdivision Preliminary Plat Application & Supplemental Materials
B. Walnut & Fourth Condominiums Subdivision Preliminary Plat Plan Set
C. Draft Planning and Zoning Commission Findings of Fact, Conclusions of Law, and Decision

Attachment A

Walnut & Fourth Condominiums

Subdivision Preliminary Plat Application

&

Supplemental Materials

City of Ketchum
Planning & Building

OFFICIAL USE ONLY	
Application Number:	P23-053
Date Received:	6/8/23
By:	HLN
Fee Paid:	$8925
Approved Date:	
By:	

Subdivision Application

Submit completed application to the Planning and Building Department electronically to planningandzoning@ketchumidaho.org. Once your application has been received, we will review it and contact you with the next steps. If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the city website at: www.ketchumidaho.org and click on Municipal Code.

APPLICANT INFORMATION			
Name of Proposed Subdivision: Walnut & Fourth Condominiums			
Owner of Record: Walnut & Fourth LLC			
Address of Owner: c/o Gregory Carr, 313 N Water Ave., Idaho Falls, ID 83402			
Representative of Owner: David Patrie, Galena-Benchmark Engineering			
Legal Description: Lot 7A, Block 44, Ketchum Townsite RPK 0000044007A			
Street Address: 580 4th St. E			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 17 condo units			
Total Land Area: +/- 16,512 Sq. Ft. (0.38 Ac. +/-)			
Current Zoning District: CC			
Proposed Zoning District: CC			
Overlay District:			
TYPE OF SUBDIVISION			
Condominium ☒	Land ☐	PUD ☐	Townhouse ☐
Adjacent land in same ownership in acres or square feet:			
Easements to be dedicated on the final plat: Public Utility Easements as shown on the attached plat.			
Briefly describe the improvements to be installed prior to final plat approval: The structure and infrastructure for condominium units will be finished.			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations One (1) copy of current title report and owner's recorded deed to the subject property One (1) copy of the preliminary plat All files should be submitted in an electronic format to planningandzoning@ketchumidaho.org			

Applicant agrees in the event of a dispute concerning the interpretation or enforcement of the Subdivision Application in which the City of Ketchum is the prevailing party to pay reasonable attorney's fees and costs, including fees and costs of appeal for the City of Ketchum. Applicant agrees to observe all City ordinances, laws and conditions imposed. Applicant agrees to defend, hold harmless and indemnify the City of Ketchum, city officials, agents and employees from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property, and losses and expenses caused or incurred by Applicant, its servants, agents, employees, guests and business invitees and not caused by or arising out of the tortuous conduct of city or its officials, agents or employees. Applicant certifies that s/he has read and examined this application and that all information contained herein is true and correct.

David Patrie 05/23/23

Applicant Signature (for owner) Date

Instrument # 665131
HAILEY, BLAINE, IDAHO
11-22-2019 01:42:30 PM No. of Pages: 2
Recorded for : THOMAS C PRAGGASTIS
JOLYNN DRAGE Fee: 15.00
Ex-Officio Recorder Deputy
Index to: WTY/QC/CORP DEED

RECORDING REQUESTED BY
AND
WHEN RECORDED RETURN TO

Thomas C. Praggastis
Post Office Box 6090
Ketchum, Idaho 83340

Mail Tax Statements To:

Walnut & Fourth, LLC
c/o Gregory C. Carr
313 N. Water Avenue
Idaho Falls, ID 83402

(Space Above Line for Recorder's Use)

QUITCLAIM DEED

FOR VALUE RECEIVED, GCC, LLC, an Idaho limited liability company, Grantor, does hereby convey, release, remise and forever quitclaim unto WALNUT & FOURTH, LLC, an Idaho limited liability company, Grantee, all of Grantor's right, title and interest in the following described real property located in Blaine County, Idaho:

Lots 7 and 8 in Block 44 of the CITY OF KETCHUM, as shown on the official plat thereof, on file in the office of the County Recorder, Blaine County, Idaho.

The Property shall be held by Grantee subject to reservations, restrictions, encumbrances, easements and other matters of record.

DATED this 18th day of November, 2019.

GCC, LLC,
an Idaho limited liability company

By: Gregory C. Carr
Its: Manager

STATE OF Idaho)
ss.
County of Blaine)

On this 18th day of November, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared GREGORY C. CARR, known to me to be the Manager of GCC, LLC, an Idaho limited liability company, and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Christine A. Rolf
Notary Public for State of
Residing at Hailey, Idaho
Commission Expires: 6-15-2023

CHRISTINE A. ROLF
NOTARY PUBLIC
MY COMMISSION
EXPIRES 6-15-2023
STATE OF IDAHO
COMMISSION NUMBER 8672

CLTA GUARANTEE

ISSUED BY
STEWART TITLE GUARANTY COMPANY
A CORPORATION, HEREIN CALLED THE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN.

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

Dated: March 8, 2023

Signed under seal for the Company, but this endorsement is to be valid only when it bears an authorized countersignature.

Countersigned by:

Authorized Countersignature

TitleOne
Company Name

271 1st Ave North
PO Box 2365
Ketchum, ID 83340
City, State

STEWART TITLE GUARANTY COMPANY INCORPORATED 1908 TEXAS

Frederick H. Eppinger
President and CEO

David Hisey
Secretary

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the company for further information as to the availability and cost.

GUARANTEE CONDITIONS AND STIPULATIONS

1. **Definition of Terms** - The following terms when used in the Guarantee mean:
   (a) "the Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
   (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
   (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
   (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
   (e) "date": the effective date.
2. **Exclusions from Coverage of this Guarantee** - The Company assumes no liability for loss or damage by reason of the following:
   (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
   (b) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water; whether or not the matters excluded by (1), (2) or (3) are shown by the public records.
   (c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A)(C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways on which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
   (d) (1) Defects, liens, encumbrances or adverse claims against the title, if assurances are provided as to such title, and as limited by such assurances.
   (2) Defects, liens, encumbrances, adverse claims or other matters (a) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the Assureds; (b) which result in no loss to the Assured; or (c) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of assurances provided.
3. **Notice of Claim to be Given by Assured Claimant** - An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.
4. **No Duty to Defend or Prosecute** - The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.
5. **Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate** - Even though the Company has no duty to defend or prosecute as set forth in Paragraph 4 above:
   (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
   (b) If the Company elects to exercise its options as stated in Paragraph 5(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
   (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
   (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.
6. **Proof of Loss or Damage** - In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by an authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.
7. **Options to Pay or Otherwise Settle Claims: Termination of Liability** - In case of a claim under this Guarantee, the Company shall have the following additional options:
   (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5, and the Guarantee shall be surrendered to the Company of cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5.

8. **Determination and Extent of Liability -** This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

9. **Limitation of Liability**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

10. **Reduction of Liability or Termination of Liability** - All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 5 shall reduce the amount of liability pro tanto.

11. **Payment Loss**

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

12. **Subrogation Upon Payment or Settlement -** Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

13. **Arbitration** - Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is $1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

14. **Liability Limited to This Guarantee; Guarantee Entire Contract**

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. **Notices, Where Sent** - All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at P. O. Box 2029, Houston, TX 77252-2029.

LOT BOOK GUARANTEE
Issued By
Stewart Title Guaranty Company

SCHEDULE A

File No. 23472754
State: ID
County: Blaine

Guarantee No.	Liability	Date of Guarantee	Fee
G-0000061556718	$1,000.00	March 8, 2023 at 7:30 a.m.	$140.00

Name of Assured:
Galena Engineering

The assurances referred to on the face page hereof are:

1. **That, according to the Company's property records relative to the following described land (but without examination of those Company records maintained and indexed by name):**

   Lot 7A, Block 44 of LOT 7A, BLOCK 44, KETCHUM TOWNSITE, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 682495, records of Blaine County, Idaho.

2. **The last recorded instrument purporting to transfer title to said land is:**

   Deed Type: Quit Claim Deed
   Grantors: GCC, LLC, an Idaho limited liability company
   Grantees: Walnut & Fourth, LLC, an Idaho limited liability company
   Recorded Date: November 22, 2019
   Instrument: 665131
   Click here to view

3. **There are no mortgages or deeds of trust which purport to affect title to said land, other than those shown below under Exceptions.**

4. **There are no (homesteads, agreements to convey, attachments, notices of non-responsibility, notices of completion, tax deeds) which purport to affect title to said land, other than shown below under Exceptions.**

5. **No guarantee is made regarding (a) matters affecting the beneficial interest of any mortgage or deed of trust which may be shown herein as an exception, or (b) other matters which may affect any such mortgage or deed of trust.**

6. **No guarantee is made regarding any liens, claims of liens, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said land is the same as said address.**

EXCEPTIONS:

1. NOTE: According to the available records, the purported address of the land referenced herein is:

580 E 4th St, Ketchum, ID 83340

2. Taxes for the year 2022 are paid in full.
Parcel Number: RPK0000044007A
Original Amount: $10,785.92

3. Taxes, including any assessments collected therewith, for the year 2023 which are a lien not yet due and payable.

4. Real property taxes which may be assessed, levied and extended on any subsequent and/or occupancy roll with respect to improvements completed during the current tax year and previous tax years, which escaped assessment on the regular assessment roll, which are not yet due and payable.

5. Water and sewer charges, if any, for the City of Ketchum.

6. Easements, reservations, restrictions, and dedications as shown on the official plat of Ketchum Townsite.

7. Easements, reservations, restrictions, and dedications as shown on the official plat of Lot 7A, Block 44, Ketchum Townsite.

8. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded January 14, 1980 as Instrument No. 200412, records of Blaine County, Idaho.

9. An easement for the purpose shown below and rights incidental thereto as set forth in an Easement.
Granted to: CLM Properties, a California general partnership
Purpose: Support and maintenance of a building wall and foundation
Recorded: April 6, 1984
Instrument No.: 250232

10. Terms and conditions contained in a/an FAR Exceedance Agreement Contract #20595 by and between the City of Ketchum and Walnut & Fourth LLC.
Recorded: May 12, 2021
Instrument No.: 682499, records of Blaine County, Idaho.

11. Terms and conditions contained in a/an FAR Exceedance Agreement #20595A by and between the City of Ketchum and Walnut & Fourth LLC.
Recorded: January 4, 2023
Instrument No.: 698234, records of Blaine County, Idaho.

12. Terms and conditions contained in a/an Right-of-Way Encroachment Agreement 22814 by and between the City of Ketchum, Idaho, a municipal corporation and Walnut & Fourth, LLC.
Recorded: January 24, 2023
Instrument No.: 698578, records of Blaine County, Idaho.

13. A Deed of Trust to secure an indebtedness in the amount shown below and any other obligations secured thereby:
Amount: $1,855,000.00
Trustor/Grantor: GCC LLC, an Idaho limited liability company
Trustee: Blaine County Title
Beneficiary: Bank of Idaho
Dated: May 6, 2019
Recorded: May 6, 2019
Instrument No.: 659935

An agreement to modify the terms and provisions of said Deed of Trust as therein provided.
Recorded: February 8, 2023
Instrument No.: 698790, records of Blaine County, Idaho.

Sun Valley Title
By:

Nick Busdon, Authorized Signatory

JUDGMENT AND TAX LIEN GUARANTEE
Issued By
Stewart Title Guaranty Company

SCHEDULE A

Amount of Liability: $1,000.00

Fee Amount: $0.00

Guarantee No.: G-0000061556718

Name of Assured: Galena Engineering

Date of Guarantee: March 8, 2023

That, according to the indices of the County Recorder of Blaine County, State of ID, for a period of 10 years immediately prior to the date hereof, there are no

*** Federal Tax Liens**
*** Abstracts of Judgment, or**
*** Certificates of State Tax Liens**

filed, or recorded against the herein named parties, other than those for which a release appears in said indices and other than those shown under Exceptions.

The parties referred to in this guarantee are as follows:

Walnut & Fourth, LLC, an Idaho limited liability company

Sun Valley Title
By:

Nick Busdon, Authorized Signatory

SCHEDULE B

Exceptions:

NONE

CONDOMINIUM DECLARATION

FOR

WALNUT & FOURTH CONDOMINIUMS

LAWSON LASKI CLARK, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, ID 83340

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CONDOMINIUM DECLARATION
FOR WALNUT & FOURTH CONDOMINIUMS

THIS CONDOMINIUM DECLARATION (the "Declaration") dated for reference purposes _____, 2023, shall be effective upon recordation in the office of the Recorder in Blaine County, Idaho. This Declaration is made by Walnut & Fourth, LLC, an Idaho limited liability company (the "Declarant"). Declarant is the owner of certain real property in the City of Ketchum, Blaine County, Idaho more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a mixed use residential and commercial condominium project known as Walnut & Fourth Condominiums (the "Project") by submitting the Property to the condominium form of ownership and use pursuant to the Idaho Condominium Act, Idaho Code §§ 55-1501 et seq., as amended and supplemented from time to time (the "Act"). The Project shall be a combination residential and commercial project consisting of: (a) two (2) residential units and four (4) commercial units on the second floor; (b) four (4) commercial units on the first floor; and (c) two (2) community housing units, one (1) commercial unit, and four (4) storage units in the basement plus associated Common Areas and Limited Common Areas, all as determined by Declarant.

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, lease, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Project.

Section 1.3 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act , and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.4 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Unit Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1 "Act" means the Idaho Condominium Act as defined in Section 1.1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2 "Allocated Interests" means the undivided interest in the Common Elements and the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project. The formulas used to establish the Allocated Interests are described in Article 4. The Allocated Interests for each Unit are set forth on Exhibit B.

Section 2.3 "Articles of Incorporation" means the Articles of Incorporation of Walnut & Fourth Condominiums Owners' Association as filed with the Idaho Secretary of State, a copy of which is attached hereto as Exhibit C.

Section 2.4 "Assessments" means the annual, special and default Assessments, if any, levied pursuant to this Declaration.

Section 2.5 "Association" means the Walnut & Fourth Condominiums Owners' Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.

Section 2.6 "Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association and in the Act.

Section 2.7 "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto, copies of which are attached hereto as Exhibit D.

Section 2.8 "Commercial Unit" means Units with a "C" prefix as depicted on the Plat as follows: C-110, C-120, C-150, C-160, C-210, C-220, C-230, C-240, C-B1, C-B4, C-B5, C-B8 and C-B9. Commercial Units B-4, B-5, B-8 and B-9 are designed primarily for use for storage.

Section 2.9 "Common Area" or "Common Elements" means all of the Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

(a) the Property; and

(b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, balconies, windows, entrances and exits, and the mechanical installations of the Improvements consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, cable television, and heating and central air conditioning which exist for use by one or more of the Unit Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), whether located exclusively within the boundaries any Unit or Units or not, except for the Units; and

(c) corridors, elevators, and stair towers; and

(d) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, plaza, parking garage and parking areas, and related facilities upon the Property; and

(d) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of one or more of the Unit Owners; and

(e) in general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Unit Owners.

The Common Elements shall be owned by the Unit Owners of the separate Units, each Unit Owner of a Unit having an undivided interest in the Common Elements as allocated in Exhibit B.

Section 2.10 "Common Expenses Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.11 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of a Unit Owner as provided in this Declaration;

(b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;

(c) all sums lawfully assessed against the Units by the Board of Directors;

(d) expenses agreed upon as Common Expenses by the members of the Association;

(e) expenses provided to be paid pursuant to any Management Agreement; and

(f) personal property associated with the Common Area.

Section 2.12 "Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

Section 2.13 "Declarant" means Walnut & Fourth, LLC, an Idaho limited liability company, its successors and assigns.

Section 2.14 "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument

however denominated that exercises a Development Right, executed by Declarant and recorded in the Records. The term Declaration includes all Plats recorded with this Declaration and all amendments to the Declaration and supplements to the Plats without specific reference thereto.

Section 2.15 "Deed" means each initial Special Warranty, Warranty or Grant Deed recorded after the date hereof by which Declarant conveys a Unit.

Section 2.16 "Eligible First Mortgagee" means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for in Article 19 entitled "Mortgagee Protections".

Section 2.17 "First Mortgagee" means a holder of a Security Interest in a Unit that has priority over all other Security Interests in the Unit.

Section 2.18 "Improvement(s)" means the building (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located.

Section 2.19 "Limited Common Elements" means those parts of the Common Elements that are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include the common or party wall shared by adjoining Units which are owned by the same Person, any window, patio or deck door, balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit's boundaries, storage spaces and parking spaces outside Units designated as Limited Common Elements in this Declaration or on the Plat, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Plat as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Unit Owners, except by invitation. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine care and cleaning of the walls, ceilings and floors of any balcony, patio or of any other Limited Common Elements appurtenant

to and accessible only from the Unit Owner's Unit, and for keeping the same in a clean, sanitary, and attractive condition. Extraordinary maintenance and renovations of the Limited Common Elements shall require the prior written approval of the Association or shall be performed by the Association. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Limited Common Elements may be classified as "Commercial Limited Common Elements" or "Residential Limited Common Elements." The designation as a Residential Limited Common Element means the area so designated shall be used by all Residential Unit Owners in common, to the exclusion of the Commercial Unit Owner.

Section 2.20 "Majority of Owners" means a majority (or any greater percentage that may be specifically required for a particular action or authorization by the terms of this Declaration) of the total voting power of the members of the Association.

Section 2.21 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.22 "Managing Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.23 "Occupant" means any member of a Residential Unit Owner's family or a Unit Owner's guests, invitees, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

Section 2.24 "Period of Declarant Control" means the maximum period of time defined and limited by Section 8.6 of this Declaration during which the Declarant may, at its option, control the Association.

Section 2.25 "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or any combination thereof.

Section 2.26 "Plat" means that part of a Declaration that is a land survey plat as set forth in Idaho Code § 50-1301, as amended, depicts all or any portion of the Project in two dimensions, is executed by the Declarant, and is recorded in the Records.

Section 2.27 "Project" means the term as defined in Section 1.1 hereof.

Section 2.28 "Project Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Plat, and any procedures, Rules and Regulations included in the Walnut & Fourth Condominiums Rules, and any policies relating to the Project adopted under such documents by the Association or the Board of Directors.

Section 2.29 "Property" means that that term as defined in the introduction to this Declaration and more particularly described on Exhibit A, attached hereto.

Section 2.30 "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.31 "Records" means the Office of the Clerk and Recorder in Blaine County, Idaho, and each other county in which any portion of the Project is located.

Section 2.32 "Residential Unit" means Units with a "R" prefix as depicted on the Plat as follows: R-250, R-260, R-B2 and R-B3. Residential Units B2 and B3 are designated for deed restricted community housing.

Section 2.33 "Rules and Regulations" means the rules and regulations promulgated by the Board of Directors for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Project Documents, as amended and supplemented from time to time. Separate Rules and Regulations may apply to the different classes of Units within the Project.

Section 2.34 "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.35 "Special Declarant Rights" means those rights reserved by Declarant in Article 15 of this Declaration.

Section 2.36 "Unit" means a physical portion of the Project which is designated for separate ownership and the boundaries of which are described in or determined by this Declaration. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B. Walls, floors or ceilings designated as boundaries of a Unit in this Declaration, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements. Subject to Sections 2.9(b) and 2.19, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. A Unit may be either a Residential Unit or a Commercial Unit.

Section 2.37 "Unit Owner" or "Owner" means the Declarant or any other person who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Unit unless such person has acquired record title to the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure.

ARTICLE 3 - DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division Into Units. The Property is hereby divided into that number of Units described in Exhibit B, as amended from time to time, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The total of the undivided interests in the Common Elements set forth in Exhibit B, shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

Section 3.2 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Plat, and those numbers are set forth in Exhibit B.

Section 3.3 Inseparability of Unit. Except as provided in Section 3.5 below, and in Article 15: (a) no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance other disposition of a Unit or any part thereof shall be presumed to be a

disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Unit Owner's membership in the Association.

Section 3.4 Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Unit Owners and shall remain physically undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Unit Owner shall be deemed to have specifically waived such Unit Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Unit Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5 Alterations of Units; Relocation of Boundaries Between Adjoining Units. Subject to receipt of prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association, Unit Owner(s) shall have the right to alter their Units, and relocate boundaries between their Unit and an adjoining Unit, combine adjoining Units and alter and improve Limited Common Elements and reallocate Limited Common Elements between or among Units, subject to the provisions and requirements of this Declaration and of the Act and an appropriate reallocation of the share of Common Area Ownership and Common Expense Liability as set forth on Exhibit B. Any costs associated with replatting required to accomplish the foregoing shall be the responsibility of the Owner.

ARTICLE 4 - ALLOCATED INTERESTS

Section 4.1 Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulas set out in Section 4.2 below. These formulas are to be used in reallocating interests if Units are added to the Project or if Units are converted to Common Elements or Limited Common Elements.

Section 4.2 Formulas for the Allocation of Interests. The interests allocated to each Unit that are set forth on Exhibit B have been calculated by the Declarant using the following formulas:

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the square footage of the interior floor area of each Unit in relation to the square footage of

the interior of all Units in the Project as a whole as determined by Declarant or, after the period of Declarant Control, the Association. Such percentage is to be used for tax assessments pursuant to Section 55-1514 of the Act as well as liability pursuant to Section 55-1515 of the Act.

(b) Common Expense Liability. The percentage of Common Expense Liability allocated to each Unit is based on the relative undivided interests in the Common Elements allocated to each Unit, calculated as set forth in Section 4.2(a), above.

(c) Votes. Each Unit shall be allocated one (1) vote for a total of seventeen (10) votes.

Section 4.3 Rounding Convention. Allocated Interests, stated as a fraction or as a percentage, shall be rounded to the nearest tenth of a percent (.1%) and shall, in total, be deemed to equal one hundred percent (100%) for the purpose of this Declaration.

ARTICLE 5 - PLAT

The Plat shall be filed in the Records. The Plat shall be filed following substantial completion of the Improvement(s) depicted on the Plat and prior to the conveyance of any Unit depicted on the Plat to a purchaser. The Plat shall show the following:

(a) the name and a general schematic map of the entire Project;

(b) the location and dimensions of all existing improvements within that Real Estate;

(c) the extent of any existing encroachments across any Project boundary;

(d) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Project;

(e) the location of each Unit and that Unit's identifying number;

(f) horizontal Unit boundaries, with reference to all established data and that Unit's identifying number;

(g) any Units in which the Declarant has reserved the right to create additional Units or Common Elements, identified appropriately; and

(f) the approximate location and dimensions of all Limited Common Elements.

The Plat shall contain a certificate of a registered and licensed surveyor certifying that it was prepared subsequent to the substantial completion of the improvements and contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Plat, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

ARTICLE 6 - LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1 Contracts to Convey and Conveyances. Subsequent to the recording of the Declaration and Plat, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

> Unit ____, according to the Condominium Declaration for Walnut & Fourth Condominiums, recorded _____, as Instrument No. _____ and the Plat recorded _____, as Instrument No. _____, in the office of the Recorder of Blaine County, Idaho.

Section 6.2 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it, and to incorporate all the rights incident to ownership to a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions

contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.3 Separate Tax Assessments. Upon the filing for record of this Declaration and the Plat in the Records, Declarant shall deliver a copy of this Declaration to the assessor of Blaine County as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit.

ARTICLE 7 - UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 7.1 Common Elements. Every Unit Owner shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Plat;

(b) the right, without the obligation, of the Association from time to time to assign on an equitable basis portions of the Common Elements such as parking spaces or storage spaces for the exclusive use of the Unit Owner of a particular Unit by an appropriate instrument in writing;

(c) the right, without the obligation, of the Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Project; and

(d) the right, without the obligation, of the Association to adopt, from time to time, any and all rules and regulations concerning the Project as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Project for the benefit of all Unit Owners, and for facilitating the greatest and most convenient availability and use of the Units and Common Elements by Unit Owners.

Section 7.2 Limited Common Elements. Subject to the provisions of this Declaration, every Unit Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit.

ARTICLE 8 - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 8.1 Association Membership. The Association's Articles of Incorporation shall be filed no later than the date the first interest in a Unit in the Project is conveyed to a purchaser. Every Unit Owner shall be a member of the Association and shall remain a member for the period of the Unit Owner's ownership of a Unit. No Unit Owner, whether one or more persons or entity, shall have more than one membership per Unit owned, but all of the persons or entities owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity or entities shall appoint and authorize one person or alternate persons to represent the Unit Owners of the Unit. Such representative shall be a natural person who is a Unit Owner, or a designated board member or officer of a corporate Unit Owner, or a general partner of a partnership Unit Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Unit Owner as a member of the Association, and serve on the Board of Directors if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, such Unit Owner is entitled to cast the vote(s) allocated to that Unit. If more than one of the multiple Unit Owners are present and there is no written designation of an authorized representative, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners, which majority agreement may be assumed for all purposes if any one of the multiple Unit Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

Section 8.2 Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in Section 4.2(c). A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Unit Owners having twenty-five percent (25%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than ten (10) and no more than fifty (50) days in advance of any meeting, the

Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered, sent prepaid by United States Mail to the mailing address of each Unit Owner or sent via e-mail with the Unit Owner's consent to receive notice by such means. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide for a lower percentage, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes, in person or by proxy, at the beginning of the meeting. Notwithstanding anything to the contrary contained herein, for a period of ten (10) years from the date of this Declaration, Declarant shall receive notice of and have the right to attend all meetings of the Association and/or its Board.

Section 8.3 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Unit Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the budget proposed by the Board of Directors shall be mailed or sent via e-mail with the Unit Owner's consent to receive notice by such means, to the Unit Owners within thirty (30) days after its adoption by the Board of Directors, along with a notice of a meeting of the Association to be held not less than ten (10) nor more than fifty (50) days after mailing of the summary to the Unit Owners. Unless, at such meeting, a Majority of Owners, rather than a majority of those present and voting in person or by proxy, reject the proposed budget, the budget is ratified, regardless of whether a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Unit Owners continues until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors as provided above.

Section 8.4 Unit Owners' and Association's Addresses for Notices. All Unit Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Unit Owners for notices, demands, and all other communications regarding Association matters. The Unit Owner or the representative of the Unit Owners of a Unit shall furnish such registered address to the secretary of the Association or its' designated agent within ten days after transfer of title to the Unit to such Unit Owner or Unit Owners. Such registration shall be in written form and signed by all of the Unit Owners of the Unit or by such persons as are authorized to represent the interests of all Unit Owners of the Unit. If no address is registered or if all of the Unit Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this

Section 8.4. If the address of the Unit is the registered address of the Unit Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Unit Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the Project or such other address as the Board of Directors may designate from time to time by notice to the Unit Owner(s). For the purposes of meeting Notices, any Unit Owner may consent to receive notice by email by providing the Association a current email address. Such email address shall be deemed valid unless and until a new email address is provided to the Association or consent to receive notice by email is withdrawn by the Unit Owner.

Section 8.5 Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide to the Association written notice of the Person's name, address, Unit owned, date of transfer, and name of the former Unit Owner within ten (10) days of the date of transfer. The Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Units. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 8.6 Declarant Control of the Association. In order to ensure an orderly commencement of the occupation and operation of the Project, there shall be a Period of Declarant Control of the Association, during which a Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors, notwithstanding any voting requirements or other procedural requirements set forth herein or in the Bylaws. The Period of Declarant Control shall commence upon the recording of this Declaration and shall terminate two (2) years thereafter.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 8.7 Required Election of Residential Unit Owners. The Board of Directors shall consist of three (3) members, all of whom shall initially be appointed by the Declarant. Terms shall be for a period of two (2) years, except that the terms of one of the initial Board members shall be one (1) year. Not later than sixty (60) days after conveyance of the second Residential Unit to Unit Owners other than Declarant, one (1) member of the Board of Directors shall be elected by Residential Unit Owners. Following the period of Declarant Control, in order to insure representation of Residential Unit Owners and the Commercial Unit Owner in the affairs of the Association and to protect the valid interests of the Residential Units and the Commercial Unit in the operation of the Project, the Owners of the Residential Units, voting as a class, shall be entitled to elect one (1) member of the Board of Directors, and the Owner of the Commercial Unit shall be entitled to appoint one (1) member of the Board of Directors and the third director shall be elected by a majority of the votes. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

Section 8.8 Removal of Members of the Board of Directors. Subject to Section 8.6 hereof, following notice and an opportunity to be heard as required by this Declaration and the Act, the Unit Owners, by ninety percent (90%) vote of all votes cast at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by the Declarant.

Section 8.9 Requirements for Turnover of Declarant Control. Within sixty (60) days the termination of the Period of Declarant Control, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

(a) the original or a certified copy of the recorded Declaration as amended, the Association's articles of incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends;

(c) the Association funds or control thereof;

(d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;

(e) a copy, for the non-exclusive use of the Association, of any plans and specifications used in the construction or renovation of the Improvements;

(f) all insurance policies then in force, in which the Unit Owners, the Association or its members of the Board of Directors and officers are named as insured persons;

(g) copies of any certificates of occupancy that may have been issued with respect to the Improvements;

(h) any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the date on which Unit Owners other than the Declarant took control of the Association;

(i) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) a roster of Unit Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) employment contracts in which the Association is a contracting party;

(l) any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services;

(m) operation and maintenance documentation of any and all equipment owned by the Association; and

(n) maintenance recommendations for Common Elements including but not limited to furnishings, equipment, elevators and corridor surfaces, spas furniture and garbage receptacles.

Section 8.10 Agent for Service of Process. The Association's initial agent for service of process as contemplated by the Act shall be the person identified as such in the Articles of Incorporation.

ARTICLE 9 - ASSOCIATION POWERS AND DUTIES

Section 9.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Unit Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements and the Limited Common Elements, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and prior approval of the Unit Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Unit Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Unit Owner and such Unit Owner's authorized agents.

Section 9.2 Association Powers. The Association shall have, subject to the limitations contained in this Declaration and the Act, the powers necessary for the administration of the affairs of the Association and the upkeep of the Project which shall include, but not be limited to, the power to:

(a) adopt and amend Bylaws and Rules and Regulations;

(b) adopt and amend budgets for revenues, expenditures and reserves;

(c) collect assessments for Common Expenses from Owners;

(d) create and maintain reserve accounts;

(e) hire and discharge Managing Agents;

(f) hire and discharge employees and agents, other than Managing Agents, and independent contractors;

(g) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Project;

(h) make contracts and incur liabilities;

(i) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(j) cause additional improvements to be made as part of the Common Elements;

(k) acquire, hold, encumber, and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act;

(l) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;

(m) impose and receive a payment, fee, or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;

(n) impose a reasonable charge for late payment of Assessments, recover Costs of Enforcement for collection of Assessment and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and hearing, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;

(o) impose a reasonable charge for the preparation and recordation of amendments to this Declaration or for preparation of statements of unpaid Assessments;

(p) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;

(q) assign the Association's right to future income, including the right to receive Assessments;

(r) by resolution, establish committees of the Board of Directors and/or Unit Owners, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee;

(s) exercise any other powers conferred by this Declaration or the Bylaws;

(t) establish policies and procedures for entry into Units under authority granted to the Association in the Project Documents for the purpose of cleaning, maid service, maintenance and repair including emergency repair, and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity;

(u) exercise any other power that may be exercised in Idaho by legal entities of the same type as the Association; and

(v) exercise any other power necessary and proper for the governance and operation of the Association.

Section 9.3 Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Directors may act in all instances on behalf of the Association.

Section 9.4 Board of Directors Meetings. All meetings of the Board of Directors, at which action is to be taken by vote, will be open to the Unit Owners and at the request of any member, agendas for meetings of the Board of Directors shall be made reasonably available for examination by the member of the Association or their representatives, except that meetings of the Board of Directors may be held in executive session(s), without giving notice and without the requirement that they be open to Unit Owners, in the following situations:

(a) budget consideration;

(b) matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

(c) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(d) investigative proceedings concerning possible or actual criminal misconduct;

(e) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(f) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy, including but not limited to violations and collections proceedings.

ARTICLE 10 – ASSESSMENTS

Section 10.1 Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

Section 10.2 Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration, and pay in accordance with Section 10.5. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Project including maintenance, repair and replacement of the Common Elements as required by the Act and the Project Documents, and the funding of reserve funds created pursuant to Section 10.14 of this Declaration. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be applied to (i) the following year's Annual Assessment, (2) a capital reserve fund, or (3) a refund or Owners or credit against future assessments as determined by the Board of Directors.

Section 10.3 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion to their Percentage of Common Expenses Liability set forth on Exhibit B, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties; (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Elements which shall be assigned equally or on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited; (d) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (e) any Common Expense caused by the misconduct of any Unit Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Unit Owner(s); and (f) any expenses which are charged equally to the Units. All such allocations of Common Expenses Liability to the Units on a basis other than the Units' Percentage of Common Expenses Liability shall be made by the Board of Directors. In making the allocations, the Board of Directors shall use as a guide the assignment of various Common Expenses to the following categories: utilities (unless separately metered or disproportionately benefiting fewer than all Units), insurance, exterior building maintenance and repairs, and reserves. All Common Expenses associated with maintenance, repair or replacement of areas that serve exclusively Residential Units or the Commercial Unit shall be allocated to only such Units.

Section 10.4 Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 10.3 entitled "Apportionment of Annual Assessments" set forth above.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments are to be paid in quarterly installments in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the first day of each quarter. If any such installment shall not be paid within thirty (30) days after it shall

have become due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. A Unit Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period. However, if the Common Expenses Liability is re-allocated, any installment(s) of an assessment not yet due shall be recalculated in accordance with the re-allocated Common Expenses Liability.

Section 10.6 Default Assessments. All Costs of Enforcement assessed against a Unit Owner pursuant to the Project Documents, or any expense of the Association which is the obligation of a Unit Owner pursuant to the Project Documents shall become a default Assessment assessed against the Unit Owner's Unit. Notice of the amount and demand for payment of such default Assessment shall be sent to the Unit Owner ten (10) days prior to enforcing any remedies for non-payment hereunder.

Section 10.7 Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Unit Owners, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Unit Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Unit Owner's Unit. No Unit Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit.

Section 10.8 Lien for Assessments; Assignment of Rents. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of the Project Documents shall be burdens running with the specific Unit to which such Assessments apply. The Association may impose a lien upon a specific Unit, by preparing a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Unit Owner or Unit Owners of the Unit, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Upon any default in the payment of annual, special, or default Assessments, the Association

shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Unit Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Unit Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or default Assessments.

Section 10.9 Remedies for Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment, (b) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (c) the Association may thereafter bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay the same, (d) the Association may proceed to foreclose its lien against the particular Unit pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Idaho law for foreclosure of real estate mortgages and (e) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against a Unit Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 10.10 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Unit Owner to pay all Assessments on the Unit, all purchasers shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Unit Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Unit Owner of a Unit. For Assessment purposes, the date a

purchaser becomes the Unit Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Unit Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Unit Owner of a Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by deed, a purchaser shall be deemed to become the Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Unit, irrespective of the date the deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 10.11 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Unit Owner irrevocably waives the homestead exemption provided by Idaho Code § 55-1001 et seq., as amended. The Association's lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

(a) real property ad valorem taxes and special assessment liens duly imposed by an Idaho governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(b) the lien of any First Mortgagee except to the extent Idaho law grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of a First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such party acquires title to the Unit, except to the extent the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Unit, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Unit Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.12 Statement of Status of Assessments. On or before fourteen (14) calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors, any Unit Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Unit Owner's account setting forth:

(a) the amount of any unpaid Assessments then existing against a particular Unit;

(b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

(c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and

(d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 10.13 Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the

interest of any Unit Owner in the Common Elements except a Security Interest in the Common Elements granted by the Association pursuant to the requirements of the Act.

Section 10.14 Reserve Funds. The Association shall maintain (i) a capital reserve fund for the repair, restoration and replacement of the Common Elements; and (ii) a general operating reserve fund. The Association may increase the reserve funds or replace funds withdrawn from any reserve funds with funds collected through Assessments. The amounts held in such reserve funds shall be set at the discretion of the Board of Directors. All reserve funds shall be maintained in FDIC insured, interest bearing accounts.

ARTICLE 11 - MAINTENANCE RESPONSIBILITY

Section 11.1 Unit Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Owner of a Unit shall have the exclusive right and duty to paint, tile, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Unit Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Residential Unit Owner shall be permitted to install any hardwood floor or other hard surface improvements in his Unit that might affect adjoining Units by increasing noise or vibrations, without the prior written approval of the Association, which approval may be denied, or conditioned, in the Association's sole discretion. Owners of the Units shall install and maintain window coverings at their own expense that are consistent with the standards adopted by the Association.

Any decoration, maintenance or repair to the Unit must be performed in such a manner, so that it shall be in compliance with industry standard codes and construction practices.

Section 11.2 Responsibility of the Unit Owner. The Unit Owner of any Unit shall, at the Unit Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. A Unit Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit

Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors, and any heating and/or cooling equipment for the exclusive use of the Unit and any Limited Common Elements appurtenant to the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. The Commercial Unit Owner shall be responsible for the maintenance, repair and replacement of all windows and doors in the Commercial Unit. Notwithstanding the foregoing, Unit Owners shall not be responsible for damage to exterior doors and windows except if as a result of a negligent or willful act of said Owner. The Association shall not be responsible for repairs occasioned by casualty due to the act or negligence of the Unit Owner or Occupant of the Unit except as provided in Article 16.

The Association shall not be responsible for damage that occurs due to the Unit Owner's failure to abide by the operation recommendations included in Operation, Maintenance and/or Warranty Manuals for the Unit or for Common Elements.

Section 11.3 Unit Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner; and, if the Unit Owner fails to repay the expenses incurred by the Association within seven days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 11.4 Responsibility of the Association. The Association, without the requirement of approval of the Unit Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Project not required in this Declaration to be maintained and kept in good repair by a Unit Owner or by Declarant.

Section 11.5 Utilities and Services. The Association shall be responsible for obtaining utilities for Common Areas and to a Common Area demark to service all Units including, but not limited to, heating, cooling, water, sewer, electric, trash, recycling, and cable/internet. Such Utilities and Services shall be separately metered to each Unit to the extent reasonably feasible, and otherwise allocated by the Association based on a reasonable assessment of each Unit's relative usage.

ARTICLE 12 - MECHANICS' LIENS

Section 12.1 Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Plat in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Unit Owner or the Unit Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Unit Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Unit Owner's Unit, against the Unit of another Unit Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Unit Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of this Article 12 by collecting from the Unit Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Unit Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Unit Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Unit Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

ARTICLE 13 - USE RESTRICTIONS

Section 13.1 Use of Units. Except for uses reserved to Declarant in Article 15 entitled "Special Declarant Rights and Additional Reserved Rights", all Residential Units shall be used for single family dwelling and lodging purposes only. Unit Owners of the Residential Units may rent or lease such Units to others for these purposes, however Short Term Rentals, (ie rentals for a period of less than thirty (30) days) shall not be allowed. The residential/housing portions of the Of the Commercial Unit shall likewise preclude Short Term Rentals.

Section 13.2 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Residential Unit Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Unit Owner without the prior written approval of the Association. There shall be no rubbish or debris of any kind placed or permitted to accumulate and no odors shall be permitted to arise from the property so as to render any portion of the Project unsanitary, unsightly, offensive or detrimental to any property or person. Trash, garbage or other waste shall be kept only in sanitary containers. No Unit Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in receptacles customarily used for it, which shall be located in places specifically designed for such purpose. No smoking shall be permitted in Common Areas, including Limited Common Areas. Any exterior fire pit or grill located on Limited Common Area shall be fueled by natural gas; no wood or charcoal fires shall be allowed.

Section 13.3 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Project. No damage to or waste of the Common Elements shall be committed by any Unit Owner or Occupant, and each Unit Owner shall indemnify and hold the Association and the other Unit Owners harmless against all loss resulting from any such damage or waste caused by him or an Occupant of his Unit. Failure to so indemnify shall be a default by such Unit Owner under this Section. At its own initiative or upon the written request of any Unit Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment levied against such Unit.

Section 13.4 Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any Common Element nor any modification of water distribution lines shall be made or caused to be made by any Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association. No clothes lines, satellite dishes, television antennas, wiring or installation of air conditioning equipment, window coverings or other improvements, alterations or decorations visible from outside a Unit

shall be added by a Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, the Association. Except for interior decorations not visible from outside a Unit and alteration or relocation of walls constituting Limited Common Elements, no alteration or subdivision of Units or relocation of boundaries between adjoining Units shall be made by the Unit Owners without the prior written approval of the Declarant during the Period of Declarant Control and, thereafter, by the Association. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section 13.4. Such Rules and Regulations shall include, but shall not be limited to, requirements that the applicant submit (a) plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. The Rules and Regulations shall specifically consider the impact of the alteration on the harmony of external design and location in relation to surrounding structures and topography.

Section 13.5 Use Restrictions. No animal pens, sheds, fences or other structures of any kind shall be erected by any Unit Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Unit Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare and all lighting must comply with the City of Ketchum's Dark Sky Ordinance. No sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others. No livestock, animals, poultry or fowl shall be kept in any Unit other than domestic dogs and cats, which are not allowed below the ground floor, and provided that no such dog or cat which is or becomes an annoyance or nuisance to other Occupants of the Project shall thereafter be kept in any Unit. No pet shall be left at any time in the Common Area except when under the direct control of its owner. In the event Rules and Regulations relating to the Use Restrictions are adopted by the Association related to pets, the more stringent restriction on such use shall control.

Section 13.6 Limit on Timesharing. No Unit Owner, excluding Declarant, shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association.

Section 13.7 Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any

purpose whatsoever except such signs as have been approved by the Declarant during the Period of Declarant Control and, thereafter, the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Project only with the prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association, which approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Association.

Section 13.9 Restrictions on Use of Parking and Storage Areas. No parking shall be permitted at any location on the Property unless specifically designated for parking by the Association. All parking spaces shall be used for parking operable vehicles only. No boat, trailer, recreational vehicle, camper or commercial vehicle shall be parked or left within the Project. No storage is permitted outside of Units except in specifically designated storage areas. No Owner may use any parking or storage space assigned to another. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association is specifically authorized, but not obligated, to remove any vehicle parked in any area not designated for parking, or any vehicle parked in any space that is assigned to another person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, or any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration.

ARTICLE 14 - EASEMENTS

Section 14.1 Easement of Enjoyment. Every Unit Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article 14 and the easements and restrictions set forth in Article 7 entitled "Unit Owners' Property Rights in Common Elements".

Section 14.2 Delegation of Use. Any Unit Owner may delegate, in accordance with the Project Documents, the Unit Owner's right of enjoyment in the Common Elements to an Occupant of the Unit Owner's Unit.

Section 14.3 Recorded Easements. The Property shall be subject to any easements shown on any recorded plat affecting the Property, shown on the recorded Plat or reserved or granted under this Declaration.

Section 14.4 Easements for Encroachments. The Project, and all portions of it, is subject to easements hereby created for encroachments between Units and the Common Elements as follows:

(a) in favor of all Unit Owners, so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

(b) in favor of each Unit Owner, so that the Unit Owner shall have no legal liability when any part of his Unit encroaches upon the Common Elements or upon another Unit; and

(c) in favor of all Unit Owners, the Association, and the Unit Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 14.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of a Unit Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at Unit Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a default Assessment to the Unit Owner.

Section 14.6 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the

companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Unit Owners, the Association, and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant during the Period of Declarant Control and, thereafter, the Association, shall have the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 14.6 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.7 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 14.8 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.9 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Unit Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Unit Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of a Unit Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Unit Owners shall be a Common Expense.

Section 14.10 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 14, even though no specific reference to such easements or to this Article 14 appears in the instrument for such conveyance.

ARTICLE 15 – SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 15.1 Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete improvements indicated on the Plat filed with this Declaration and/or the right to complete construction of the Project as Declarant determines in its sole discretion.

(b) Sales Management and Marketing. The right to locate, relocate and maintain sales offices, management offices, signs advertising the Project, and models within any Unit or Units owned by Declarant and in the Common Elements. Declarant shall have the right to show Units and the Common Elements to prospective purchasers.

(c) Construction Easements. The right to create and use easements through the Common Elements for the purpose of making improvements within the Project. Declarant expressly reserves the right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. Declarant may perform all work without the consent or approval of any Unit Owner or First Mortgagee or holder of a Security Interest. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property for the purpose of furnishing utility and other services to buildings and improvements to be constructed on any of the Property. Declarant's reserved construction easement includes the right to grant easements to public utility

companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units.

(d) Control of Association and Board of Directors. Subject to Section 8.6, the right to appoint or remove any officer of the Association or any member of the Board of Directors.

(e) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(f) Amendment of Plat. The right to amend the Plat and any Development Agreement between Declarant and the City of Ketchum in connection with the exercise of any Development Rights.

(g) Signs. The right to maintain signs on the Common Elements advertising the Project.

(h) Post-Sales. The right to use the Common Elements to maintain customer relations and provide post-sale services to Unit Owners.

(i) Parking/Storage. The right to use and to allow others to use all parking and storage areas, except Limited Common Elements appurtenant to sold Units, in connection with its marketing efforts.

(j) Disputes With Association. The right to require that all disputes with the Association, including but not limited to those arising out of or relating to the purchase and sale of the Units, the construction or management of the Units or Common Elements, or the interpretation of this Declaration, be mediated by the American Arbitration Association under its Commercial Mediation Rules. Thereafter, Declarant shall have the right to require that any unresolved dispute or controversy or claim, including but not limited to the aforementioned, be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(k) Payment of Common Expenses. The right, but not the obligation, to pay all or part of budgeted Common Expenses in lieu of the Association levying Assessments for the same for any period of time.

Section 15.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 15.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Unit Owners and/or the Association.

(c) Easement Rights. The rights to an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations arising under this Declaration or the Act.

Section 15.3 Limitations on Special Declarant Rights and Additional Reserved Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right or Additional Reserved Rights may be exercised by the Declarant for the Period of Declarant Control.

Section 15.4 Interference with Special Declarant Rights. Neither the Association nor any Unit Owners may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of the Declarant.

Section 15.5 Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this Article 15 for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 15.6 Owner Waivers, Releases and Assumption of Risk Rights Transferable. Each Owner by accepting a deed to a Unit thereby does agree to assume all responsibility for and all inherent risk of damage or injury that may occur while

owning or occupying a Unit or the Common Area, including but not limited to the following:

(a) Damage to land and other real property that is not part of a Unit, or that was not included in the purchase price for the Unit;

(b) Damage to spas and other recreational equipment or facilities driveways, boundary and retaining walls not necessary to the structural integrity of the Unit, fences, landscaping, sprinkler systems, patios, decks, stoops, steps and porches, or any other appurtenant structure or attachment to a Unit not part of the Unit;

(c) Damage or loss which arises while the Unit is being used for nonresidential purposes;

(d) Damage or loss which arises out of the use of the patio fireplace;

(e) Any condition, which does not result in actual physical damage to the Unit;

(f) Damage to Unit as a result of modifications or improvements to Units. Unit Owner shall restore the Unit to industry standard codes or to the level of construction, whichever is greater.

(g) Any loss or damage that is caused or made worse by any of the following causes, whether acting alone or in concert or in sequence or concurrence with any other cause or causes whatsoever:

(h) Negligence, improper maintenance, defective material or work supplied by, or improper operation by, anyone other than the Declarant or its contractors, including failure to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures;

(i) Failure to give prompt and proper notice to any insurer, including to any Home Buyer's Warranty insurer;

(j) Riot or civil commotion, war, vandalism, hurricane, tornado, fire, explosion, blasting, smoke, water, groundwater, flood, earthquake, hail snow, ice storm, lighting, falling trees or other objects, aircraft, vehicles, mudslide, avalanche, or volcanic eruption;

(k) Abuse or use of a Unit, or any part thereof, beyond the reasonable capacity of such Unit for such use;

(l) Microorganisms, fungus, decay, wet rot, dry rot, mold, mildew, vermin, insects, rodents, wild or domestic animals, plants, corrosion, rust, radon, radiation, asbestos, any solid, liquid or gaseous pollutant, contaminant, toxin, irritant, or carcinogenic substance, and electromagnetic field or emission;

(m) Failure to minimize or mitigate any defect, condition, loss or damage as soon as practicable.

(n) Any damage known prior to acquiring the Unit;

(o) Loss caused, in whole or in part, by any peril or occurrence for which compensation is provided by private insurance, or state or federal funds;

(p) Diminished market value of the Unit;

(q) Any and all consequential loss or damage, including without limitation, any damage to property not covered by insurance, any damage to property not owned by the Owner, any bodily damage or personal injury of any kind, including physical or mental pain and suffering and emotional distress, and any medical or hospital expenses, or lost profits.

Each Owner further (i) releases Declarant and its members, employees, agents and representatives from any claim, loss, liability or cause of action in connection with the risks hereby assumed, (ii) waives and agrees not to sue, make any claim against, maintain an action against or recover from Declarant, its members, employees, agents, or representatives for damages sustained as a result of the risks hereby assumed, and (iii) to indemnify and hold harmless, Declarant and its members, employees, agents or representatives from all claims, judgments, costs, including attorneys' fees, incurred in connection with any action brought as a result of the risks hereby assumed.

ARTICLE 16 - INSURANCE

Section 16.1 Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance

described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for broad form covered causes of loss in amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Association. The Board of Directors, the Managing Agent, and their respective employees and agents. The minimum limits of insurance will be $2,000,000 per occurrence, subject to an annual policy aggregate of $2,000,000 unless otherwise determined by the Board. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner. Unit Owners and Eligible First Mortgagees shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, of the Common Elements or membership in the Association.

(c) Fidelity Bond. The Association shall maintain a fidelity bond on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than two months' current Assessments plus reserves, as calculated from the current budget of the Association. Any person employed as an independent contractor by the Association, including the Property Management Company must obtain and maintain fidelity bond in like amount for the benefit of the Association unless the Association names such person as an insured employee in the bond specified above.

(d) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Unit Owners, including but not limited to Community Association Professional (aka Directors and Officers Liability), Company Reimbursement (or Company Indemnification) and Fiduciary Liability policies.

(e) Unit Owners' Policies. Each Unit Owner shall obtain additional insurance at his own cost for his own benefit, including contents and personal liability of not less than $2,000,000. All policies shall name the Association as an additional insured and shall provide that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Unit Owner.

Section 16.2 Required Provisions. All insurance policies carried pursuant to the requirements of this Article 16 must provide that:

(a) each Unit Owner and each Eligible First Mortgagee is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

(b) no act or omission by any Unit Owner or Eligible First Mortgagee, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(c) if, at the time of a loss under the Association policy, there is other insurance in the name of a Unit Owner covering the risks covered by the policy, the Association's policy provides primary insurance until the limits are exhausted, the Unit Owner coverage will then be excess;

(d) any loss covered by the policies must be adjusted by the Insurance Carrier with the Association;

(e) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;

(f) the insurer, or authorized representative, shall issue certificates of insurance to the Association and, upon request, to any Unit Owner or holder of a Security Interest; and

(g) the insurer issuing the policy may not cancel or refuse to renew it until forty-five (45) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and any Unit Owner(s) and holder(s) of Security Interests to whom a certificate of insurance has been issued at their respective last known addresses.

Section 16.3 Adjustment of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submission of claims, responsibility for deductibles, and any other matters of claims adjustment that are required by the insurer. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 16.4 Copies of Policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by any Unit Owner or Eligible First Mortgagee at reasonable times.

ARTICLE 17 - RESTORATION UPON DAMAGE OR DESTRUCTION

Section 17.1 Duty to Restore. Any portion of the Project, for which insurance is required under the Act or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) the Project is terminated;

(b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;

(c) sixty-seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

(d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by Subparagraphs (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and a Majority of Owners.

Section 17.4 Replacement of Less Than Entire Property. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project and, except to the extent that other persons will be distributees:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Unit Owner of the Unit and the Unit Owner of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed to each Unit Owner or holders of Security Interests, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 17.5 Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration.

Section 17.6 Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

(a) whether or not damaged or destroyed Property is to be repaired or restored; and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 17.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or holders of Security Interests, the Board of Directors, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Unit Owners and the holders of Security Interest.

ARTICLE 18 - CONDEMNATION

Section 18.1 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Unit Owners and after written notice to all mortgagees, the development, or a portion of it, may be sold by the Board of Directors acting as irrevocable attorney-in-fact of all of the Unit Owners for a price deemed fair and equitable by the Board of Directors, but in no event less than the aggregate unpaid balance of all mortgages encumbering all Units in the development.

Section 18.2 Distribution of Proceeds of Sale. On a sale occurring under Section 18.1, the proceeds shall be distributed to the Unit Owner and the mortgagees of each Unit in proportion to each Units relative interest in the Project as determined by an appraisal commissioned by the Board of Directors.

Section 18.3 Distribution of Condemnation Award. If the Project, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Unit Owners and their respective mortgagees.

ARTICLE 19 - MORTGAGEE PROTECTIONS

Section 19.1 Introduction. This Article 19 establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article 19 is supplemental

to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2 Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of sixty-seven percent (67%) of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to one vote for each Security Interest held by such Eligible First Mortgagee.

Section 19.3 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each Eligible First Mortgagee making such request:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;

(b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by a Unit Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of Eligible First Mortgagees as set forth in this Article;

(e) any judgment rendered against the Association; and

(f) a copy of any financial statement of the Association.

Section 19.4 Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of sixty-seven percent (67%) of the Eligible First Mortgagees:

(a) sale, conveyance or encumbrance of the Common Elements, separate from any Unit (provided, however, that the granting of easements for

public utilities, or for other purposes provided for in this Declaration will not be deemed a transfer within the meaning of this clause);

(b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;

(d) any action not to repair or to replace the Common Elements except as permitted in this Declaration.

Section 19.5 Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of Eligible First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 19.6 First Mortgagees' Rights.

(a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Unit Owner encumbered by a First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 19.7 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article 19 shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors;

(b) prevent the Association or Board of Directors from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article 18 entitled "Restoration Upon Damage or Destruction".

Section 19.8 Special Declarant Rights. No provision or requirement of this Article 19 entitled "Mortgagee Protections" shall apply to any Special Declarant Rights reserved to Declarant in this Declaration.

ARTICLE 20 - DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 20.1 Term. This Declaration and any amendments or supplements to it shall remain in effect from the date of recordation for a period of fifty (50) years. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless otherwise terminated or modified as provided in this Article.

Section 20.2 Amendment of Declaration. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration (including the Plat) may be amended only by a vote or agreement of Unit Owners to which more than sixty seven percent (67%) of the votes in the Association are allocated. Notwithstanding the foregoing, no amendment may create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit in the absence of a vote or agreement of the Unit Owners to which at least sixty seven percent (67%) of the votes of the Association, including sixty seven percent (67%) of the votes allocated to Units not owned by Declarant, are allocated, except to the extent otherwise permitted or required by this Declaration or the Act. Notwithstanding the foregoing, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Unit Owners to which at least sixty seven percent (67%) of the votes of the Association are allocated, except to the extent otherwise permitted or required by this Declaration or the Act.

Section 20.3 Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Unit Owners

desiring an amendment as provided for in this Declaration or the Act; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 20.4 When Modifications Permitted. Notwithstanding the provisions of Section 20.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 20.5 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article 20 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Unit Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable) were obtained and are on file in the office of the Association. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

Section 20.6 Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Unit Owners or the Association as a condition to the effectiveness of those actions as provided in Article 19 entitled "Mortgagee Protections".

Section 20.7 Termination of the Project. The Project may only be terminated as provided in the Act.

ARTICLE 21 – ALLEGED DEFECTS

Section 21.1 Intention. It is Declarant's intent that all Improvements of every type and kind which may be installed by Declarant as part of the Project, including the fixtures in the Units and Common Elements within the Project (collectively, the "Declarant Improvements") be of a quality that is consistent with construction and development practices for a condominium of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly

litigation. Accordingly, all Owners and the Association, as well as the Board shall be bound by the claim resolution procedure set forth in this Article 19.

Section 21.2 Declarant's Right to Cure. If the Association, the Board, or any Owner or Owners (collectively, "Claimant") claim, contend, or allege that any portion of a Unit and/or any Declarant Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, cure, repair and/or replace such Alleged Defect as set forth herein.

Section 21.3 Notice to Declarant. If a Claimant discovers an Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at: Walnut & Fourth, LLC , 313 North Water Street, Idaho Falls, ID 83402, or such other address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

Section 21.4 Right to Enter, Inspect, Cure and/or Replace. Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of an Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of rights, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit or the Common Elements, and/or any Declarant Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing and/or replacing the Alleged Defect. In conducting such inspection, cure, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 21.5 Claims. All Claims arising out of this Article 21 shall be submitted to binding Arbitration as provided in Section 21.8, below. No Claimant shall initiate any arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within 120 days after its receipt of the Notice of Alleged Defect, either (1) failed to cure, repair or replace the Alleged Defect or (2) if the Alleged Defect cannot reasonably be cured, repaired or replaced within such 120 day period, failed to commence such cure, repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair or replacement of the Alleged Defect,

Claimant shall not stop, restrict, hinder, interrupt or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents, or independent contractors, to inspect, cure, repair or replace the Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.

Section 21.6 No Additional Obligations; Irrevocability and Waiver of Rights. Nothing set forth in this Article 21 shall be construed to impose any obligation on Declarant to inspect, cure, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units and/or the Declarant Improvements constructed thereon, nor shall anything set forth in this Article 21 constitute an express or implied representation, warranty or guarantee by Declarant concerning any Declarant Improvements or the Project. The right of Declarant to enter, inspect, cure, repair and/or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Records.

Section 21.7 Statutory Remedies. The terms, conditions and procedures set forth in this Article 21 are in addition to the terms, conditions and procedures set forth in Idaho Code §§ 6-2501, et seq., and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and/or commencing an action under Idaho Code §§ 6-2501, et seq. for "constructional defects"; provided, however, the procedures set forth in this Article 21 shall not abrogate any of the requirements of Claimant under Idaho Code §§ 6-2501, et seq. Further, to the extent any provisions of this Article 21 are inconsistent with the provision of Idaho Code §§ 6-2501, et seq., the provisions of this Section 21 shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in Idaho Code §§ 6-2501, et seq. until expiration of the 120 day period set forth in this Article 21. It is the express intent of Declarant to provide, by this Article 21, an initial 120 day period for Declarant to investigate and cure any constructional defects alleged by Claimant before the provisions of Idaho Code §§ 6-2501, et seq. are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Idaho Code §§ 6-2501, et seq. Each Owner, by acceptance of a deed or otherwise acquiring title to any Unit agrees to be bound by all of the provisions of this Article 21.

Section 21.8 Arbitration. Unless otherwise agreed, the exclusive method of binding dispute resolution for claims made by a Claimant arising out of this Article 21 shall be arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules in effect as of the date of this

Declaration. A demand for arbitration shall be made by such Claimant in writing, delivered to Declarant and filed with the entity administering the arbitration. No demand for arbitration shall be made until after the procedures set forth in Sections 21.3 through 21.6 have been fully complied with and the timeframes set forth therein have expired. In no event shall a claim for arbitration be made after the date when the initiation of legal or equitable proceedings based on the claim are barred by the applicable statute of limitations or statute of repose. For purposes of statutes of limitation and statutes of repose, receipt of the written demand for arbitration by the entity administering the arbitration shall constitute the initiation of legal action or equitable proceedings based on the claim. This agreement to arbitrate shall be specifically enforceable in accordance with applicable law in any court of competent jurisdiction, and any award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In any such arbitration, the prevailing party shall, in addition to any other relief received, be entitled to an award of its reasonable attorneys' fees and costs arising from such claim.

Section 21.9 Additional Disclosures; Disclaimers and Releases

WITHOUT LIMITING ANY OTHER PROVISION IN THIS DECLARATION, THE ASSOCIATION AND, BY ACCEPTANCE OF A DEED OR ACQUIRING TITLE TO A UNIT, OR BY POSSESSION OR OCCUPANCY OF A UNIT, EACH OWNER FOR ITSELF AND FOR THE OWNER'S TENANTS, EMPLOYEES, FAMILY MEMBERS, GUESTS AND OTHER INVITEES, SHALL CONCLUSIVELY BE DEEMED TO UNDERSTAND, AND TO HAVE ACKNOWLEDGED AND AGREED TO, ALL OF THE FOLLOWING:

(a) Living in a multi-story building with commercial and residential components entails living in very close proximity to other persons and businesses, with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. However, Owners will hear noise from adjacent Units within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Owners may also experience light entering the Units from commercial lighting in the vicinity and from street lights located in close proximity to the windows and doors of the Units.

(b) The Association has no control over the transmission of noise, light or odors within the Project and/or from the adjacent residential, retail and commercial developments, and the potential effect of such noise, light or odors on Units within the Project.

(c) Each Owner acknowledges that (i) there are no protected views in the Project, and no Unit is assured the existence or unobstructed continuation of any particular view, and (ii) any construction, landscaping or other installation of Improvements by the Declarant, other Owners or owners of other property in the vicinity of the Project may impair the view from any Unit, and each Owner consents to such view impairment.

(d) Certain portions of land (the "Neighboring Developments") outside, abutting and/or near the Project have not yet been developed or may be subject to redevelopment, and in the future may or will be developed by Declarant, or third parties over whom Declarant has no control. The Association has no jurisdiction over the future Neighboring Developments, and accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments; and such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Project or Owners.

(e) Residential and commercial construction is an industry inherently subject to variations and imperfections, and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects. Subsequent to the initial Conveyance of each Unit, each Owner hereby releases the Declarant from any and all claims arising from or relating to such expected minor flaws.

(f) The finished construction of each Unit, Common Elements and any Association Property, while within the standards of the industry in the City of Ketchum, Blaine County, Idaho, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws; and each Owner hereby releases the Declarant from any and all claims arising from or relating to such variations, imperfections and flaws.

(g) Indoor air quality of the Units may be affected in a manner and to a degree found in new construction within industry standards, including, without limitation, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and similar products.

(h) Installation and maintenance of any security or traffic access device, operation, or method, shall not create any presumption or duty whatsoever of the Declarant or the Association (or their respective officers, directors,

managers, employees, agents, and/or contractors) with regard to security or protection of persons or property within or adjacent to the Project; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Project had been located within public areas.

(i) The Units and other portions of the Project from time to time may, but need not necessarily, experience problems with bees, ants, spiders, termites, birds, and/or other insect, rodent or pest problems (collectively, "pests"); and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own independent determination regarding the existence or non-existence of any pest(s) which may be associated with the Unit or other portions of the Project.

(j) Even with a "slip sheet" underneath, certain hard surface flooring may still be subject to hairline cracks, and grout may crack and/or deteriorate, and furthermore, cracks in the walls may result from normal settlement and shifting around doors, windows, walls and ceilings; and each Owner shall be solely responsible for any such cracking or deterioration.

(k) "Cutting-out" (for example, but not limited to, for installation of speakers or "can" lights) or alteration of any portion of wall, ceiling, and/or floor by an Owner within a Unit is permitted only when such "cutting-out" is repaired, does not damage or adversely affect sound insulation or other important features of the Unit and complies with the pertinent fire codes.

(l) Other matters, limitations, and restrictions, uniquely applicable to this Project, are set forth in this Declaration, and may be supplemented from time to time by the Rules and Regulations.

(m) Declarant has complied with all Unit maintenance and operation procedures and has performed upgrades, modifications, and/or repairs consistent with or above industry standards. Declarant reserves the right to buy back Units deemed to be defective at the market rate. Should an Owner allege that a Unit is defective, an inspection shall be performed by an independent third party and shall be paid for by the Unit Owner. Should the Unit be deemed defective Declarant will reimburse Unit Owner 50% of the inspection cost.

Section 21.10 Releases. THE ASSOCIATION AND, BY ACCEPTANCE OF A DEED OR OTHERWISE ACQUIRING TITLE TO A UNIT, EACH OWNER, FOR ITSELF AND ALL PERSONS CLAIMING UNDER SUCH OWNER, SHALL CONCLUSIVELY BE DEEMED TO HAVE

ACKNOWLEDGED AND AGREED TO RELEASE THE DECLARANT AND ITS AFFILIATES, AND ALL OF THEIR RESPECTIVE OFFICERS, MANAGERS, AGENTS, EMPLOYEES, SUPPLIERS, AND CONTRACTORS, FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSS, DAMAGE OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR NUISANCE OR HEALTH HAZARD, PROPERTY DAMAGE, BODILY INJURY, AND/OR DEATH) ARISING FROM OR RELATED TO ALL AND/OR ANY ONE OR MORE OF THE CONDITIONS, ACTIVITIES, OCCURRENCES, OR OTHER MATTERS DESCRIBED IN THE FOREGOING SECTION 21.

ARTICLE 22 - MISCELLANEOUS

Section 22.1 Enforcement. Except as otherwise provided in this Declaration, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Project Documents shall be through any proceedings at law or in equity brought by any aggrieved Unit Owner, the Association, or Declarant against the Association or any Unit Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 22.2 Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopy.

Section 22.3 Nonwaiver. Failure by Declarant, the Association, or any Unit Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Project Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.4 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule

prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.5 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.6 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 22.7 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 22.8 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 22.9 Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.

Section 22.10 Construction. This Declaration shall be construed and interpreted without the application of any rule of construction based on the Declarant as the drafter of this Declaration.

Section 22.11 Legal Counsel. This Declaration was prepared by attorneys representing only the Declarant.

Executed as of the _____ day of _____ 2023.

Walnut & Fourth, LLC,
An Idaho limited liability company

By:_____
Greg Carr, Manager

State of Idaho)
) ss.
County of Blaine)

On this ____ day of _____ 2022, before me, a Notary Public in and for said State, personally appeared Greg Carr, known or identified to me to be the Manager of Walnut & Fourth, LLC , an Idaho limited liability company, who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

_____
Notary Public for Idaho
Residing at _____
My Commission expires _____

EXHIBIT A
TO
DECLARATION

LEGAL DESCRIPTION

Walnut & Fourth Condominiums, City of Ketchum, Blaine County, Idaho.

EXHIBIT B
TO
DECLARATION
TABLE OF ALLOCATED INTERESTS

Unit Identification	Unit Classification	Unit Area (sq. feet)	Percentage Share of Common Elements	Percentage Share of Common Expense Liability	Number of Votes
C-110	Commercial	2,471			1
C-120	Commercial	4,754			1
C-150	Commercial	1,141			1
C-160	Commercial	813			1
C-210	Commercial	1,382			1
C-220	Commercial	1,237			1
C-230	Commercial	992			1
C-240	Commercial	1,171			1
R-250	Residential	1,882			1
R-260	Residential	1,908			1
C-B1	Commercial	4,486			1
R-B2	Residential*	910			1
R-B3	Residential*	1,036			1
C-B4	Commercial**	193			1
C-B5	Commercial**	113			1
C-B8	Commercial**	898			1
C-B9	Commercial**	259			1
	TOTAL	25,646	100.00	100. 00	17
*	Community Housing				
**	Storage Unit				

EXHIBIT C
TO
DECLARATION

ASSOCIATION ARTICLES OF
INCORPORATION

EXHIBIT D
TO
DECLARATION

ASSOCIATION BYLAWS

Attachment B

Walnut & Fourth Condominiums Subdivision Preliminary Plat

Plan Set

A PLAT SHOWING

WALNUT & FOURTH CONDOMINIUMS

A CONDOMINIUM SUBDIVISION OF KETCHUM TOWNSITE: BLOCK 44, LOT 7A.

LOCATED WITHIN SECTION 18, T.4 N., R.18 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO

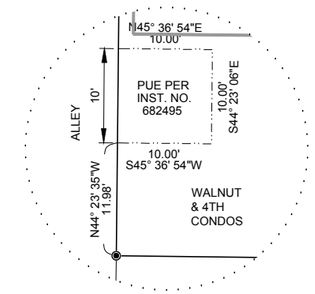
OCTOBER 2023

PRELIMINARY PLAT

SCALE: 1" = 40'

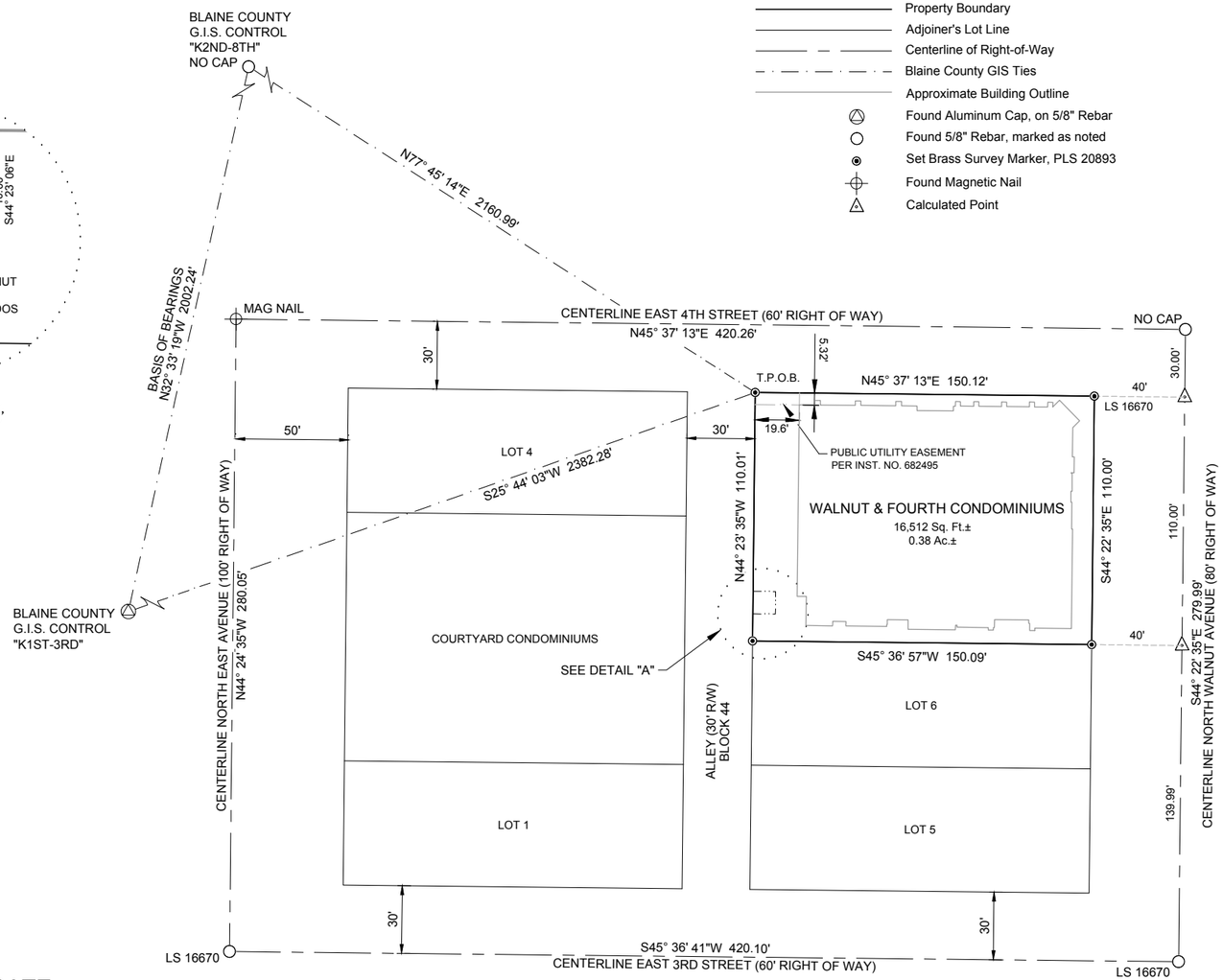
40 20 0 40 80 120

SCALE IN FEET



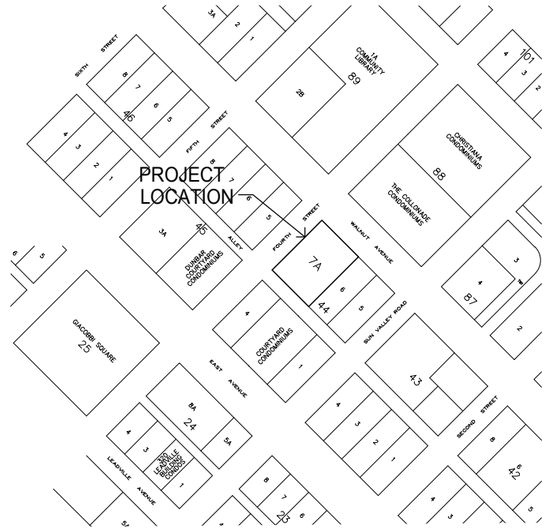
DETAIL A

SCALE: 1" = 10'



LEGEND

- Property Boundary
- Adjoiner's Lot Line
- Centerline of Right-of-Way
- Blaine County GIS Ties
- Approximate Building Outline
- Found Aluminum Cap, on 5/8" Rebar
- Found 5/8" Rebar, marked as noted
- Set Brass Survey Marker, PLS 20893
- Found Magnetic Nail
- Calculated Point



VICINITY MAP

NOT TO SCALE

SURVEY NARRATIVE & NOTES

1. The purpose of this plat is to create a Condominium Subdivision within Lot 7A, Block 44, Ketchum Townsite. The boundary shown is based on found centerline monuments and the Official Map of the Village of Ketchum, Instrument No. 302967, records of Blaine County, Idaho. Additional documents used during the course of this survey:

   – Plat of Ketchum Townsite: Block 44: Lot 7A, Instrument No. 682495, records of Blaine County, Idaho.

   – Lot Book Guarantee No. G–0000061556718, March 8, 2023 by Stewart Title Guaranty Company.

   – Quit Claim Deed, Instrument No. 665131, records of Blaine County, Idaho.

2. This plat is subject to the Declaration of Covenant's, Conditions & Restrictions for Walnut & Fourth Condominiums were recorded as Instrument No. _____, records of Blaine County, Idaho.

3. This plat is subject to the Right–of–Way Encroachment Agreement 22814, recorded as Inst. No. 698578, records of Blaine County, Idaho.

4. This plat is subject to the FAR Exceedance Agreement Contracts #20595 and 20595A, recorded as Inst. No. 682499 and 698234.

5. The Community Housing Agreement for Units B110 and B120 was recorded as Inst. No. _____, records of Blaine County, Idaho.

6. Units B6 and B8 are designated as accessory storage assigned to any other Unit or Common Area within this plat

7. Current zoning is CC–1, Retail Core of the Community Core.

HEALTH CERTIFICATE

Sanitary restrictions as required by Idaho Code Title 50, Chapter 13, have been satisfied. Sanitary restrictions may be reimposed, in accordance with Idaho Code Title 50, Chapter 13, Section 50–1326, by the issuance of a certificate of disapproval.

Dated: _____.

_____

South Central Public Health District, REHS

PROFESSIONAL LAND SURVEYOR LICENSED 20893 STATE OF IDAHO ROBERT O. BREER

OWNER OF RECORD

WALNUT & 4TH, LLC
C/O GREGORY CARR
313 NORTH WATER AVENUE
IDAHO FALLS, ID 83402

WALNUT & FOURTH CONDOMINIUMS
GALENA - BENCHMARK ENGINEERING

File: 7819 condo -plat-CURRENT
August 2, 2023
SHEET 1 OF 7

G:\BMA\W\Walnut & 4th Condominiums\7819 - Galena\dwg\Boundary-Plat\7819_condo-plat-CURRENT.dwg, 10/24/2023 11:09:59 AM

A PLAT SHOWING

WALNUT & FOURTH CONDOMINIUMS

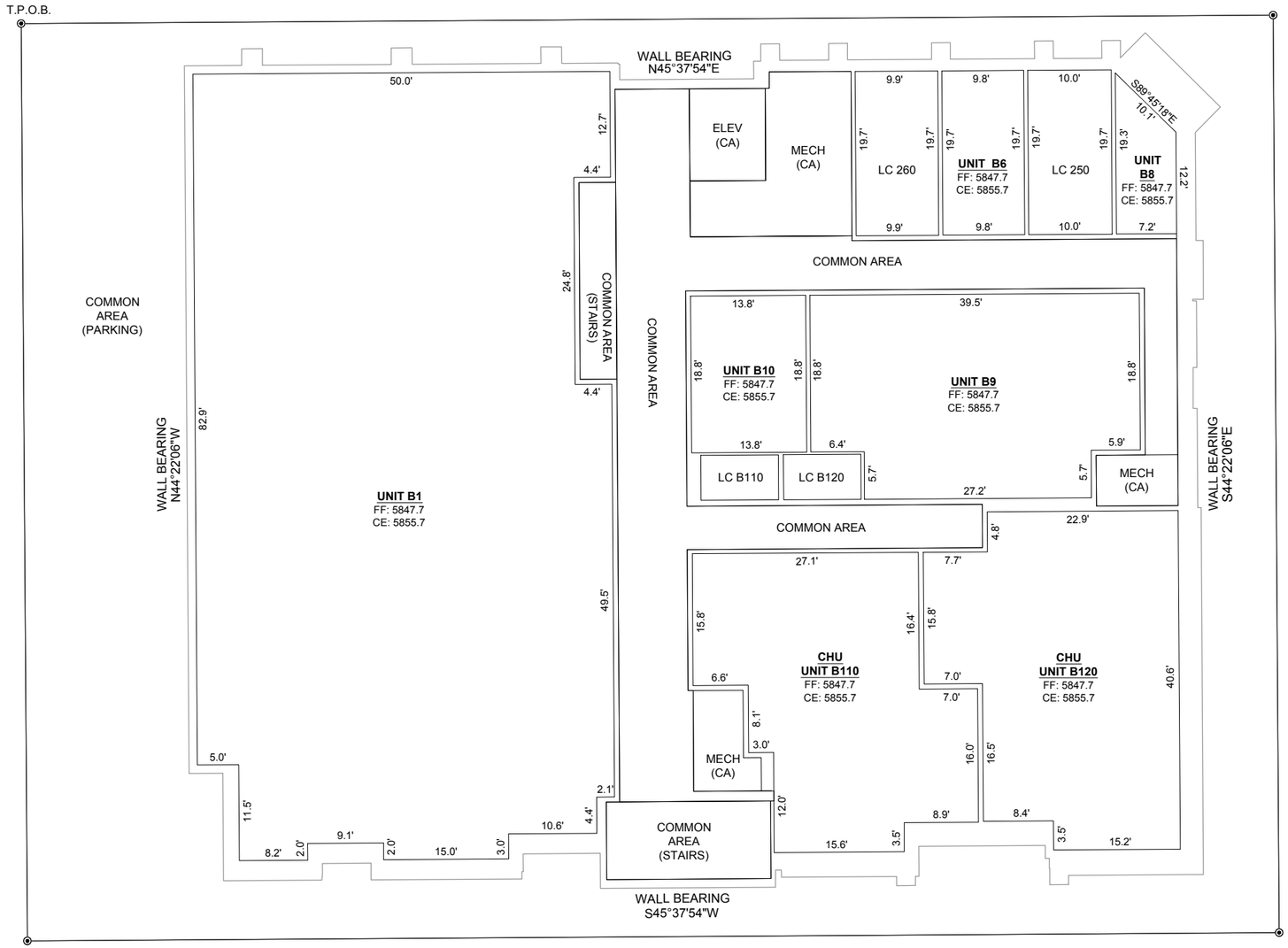
OCTOBER 2023

10 5 0 10 20 30

SCALE IN FEET

PRELIMINARY PLAT

SCALE: 1" = 10



BASEMENT

LEGEND

- Property Boundary
- Approximate Basement Building Outline
- Set Brass Survey Marker , PLS 20893

CE = Ceiling Elevation
FF = Finished Floor Elevation
CA = Common Area
LC = Limited Common Area
MECH = Mechanical Room
ELEV = Elevator
T.P.O.B. = True Point of Beginning
CHU = Community Housing Unit

FLOORPLAN NOTES

1. IN INTERPRETING THE DECLARATION, PLAT OR PLATS, AND DEEDS, THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT AS ORIGINALLY CONSTRUCTED, OR RECONSTRUCTED IN LIEU THEREOF, SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS EXPRESSED OR DEPICTED IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING AND REGARDLESS OF MINOR VARIANCES BETWEEN BOUNDARIES SHOWN IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, AND THE ACTUAL BOUNDARIES OF THE UNITS IN THE BUILDINGS.
2. HORIZONTAL OR SLOPING PLANES SHOWN HEREON ARE TOP OF FINISHED SUBFLOOR AND BOTTOM OF FINISHED CEILING; VERTICAL PLANES ARE FINISHED SURFACES OF INTERIOR WALLS. SOME STRUCTURAL MEMBERS EXTEND INTO UNITS, LIMITED COMMON AREAS AND PARKING SPACES.
3. DIMENSIONS SHOWN HEREON WILL BE SUBJECT TO SLIGHT VARIATIONS, OWING TO NORMAL CONSTRUCTION TOLERANCES.
4. CONSULT THE CONDOMINIUM DECLARATIONS FOR THE DEFINITION OF COMMON AND LIMITED COMMON AREA.
5. ALL AREA OUTSIDE OF UNITS THAT IS NOT DESIGNATED AS LIMITED COMMON IS COMMON AREA. AREAS OF "COMMON" OR "LIMITED COMMON" ARE SHOWN BY DIAGRAM.
6. BUILDING TIES ARE TO THE INTERIOR CORNERS OF UNIT WALLS.
7. UTILITY EASEMENTS NECESSARY TO ALLOW FOR ACCESS AND MAINTENANCE OF UTILITIES SERVING UNITS OTHER THAN THE UNIT THEY ARE LOCATED IN ARE HEREBY GRANTED BY THIS PLAT.

PROFESSIONAL LAND SURVEYOR LICENSED 20893 STATE OF IDAHO ROBERT O. BREIER

WALNUT & FOURTH CONDOMINIUMS

GALENA - BENCHMARK ENGINEERING

Job No. 7819
File: 7819 condo -plat-CURRENT
SHEET 2 OF 7

A PLAT SHOWING

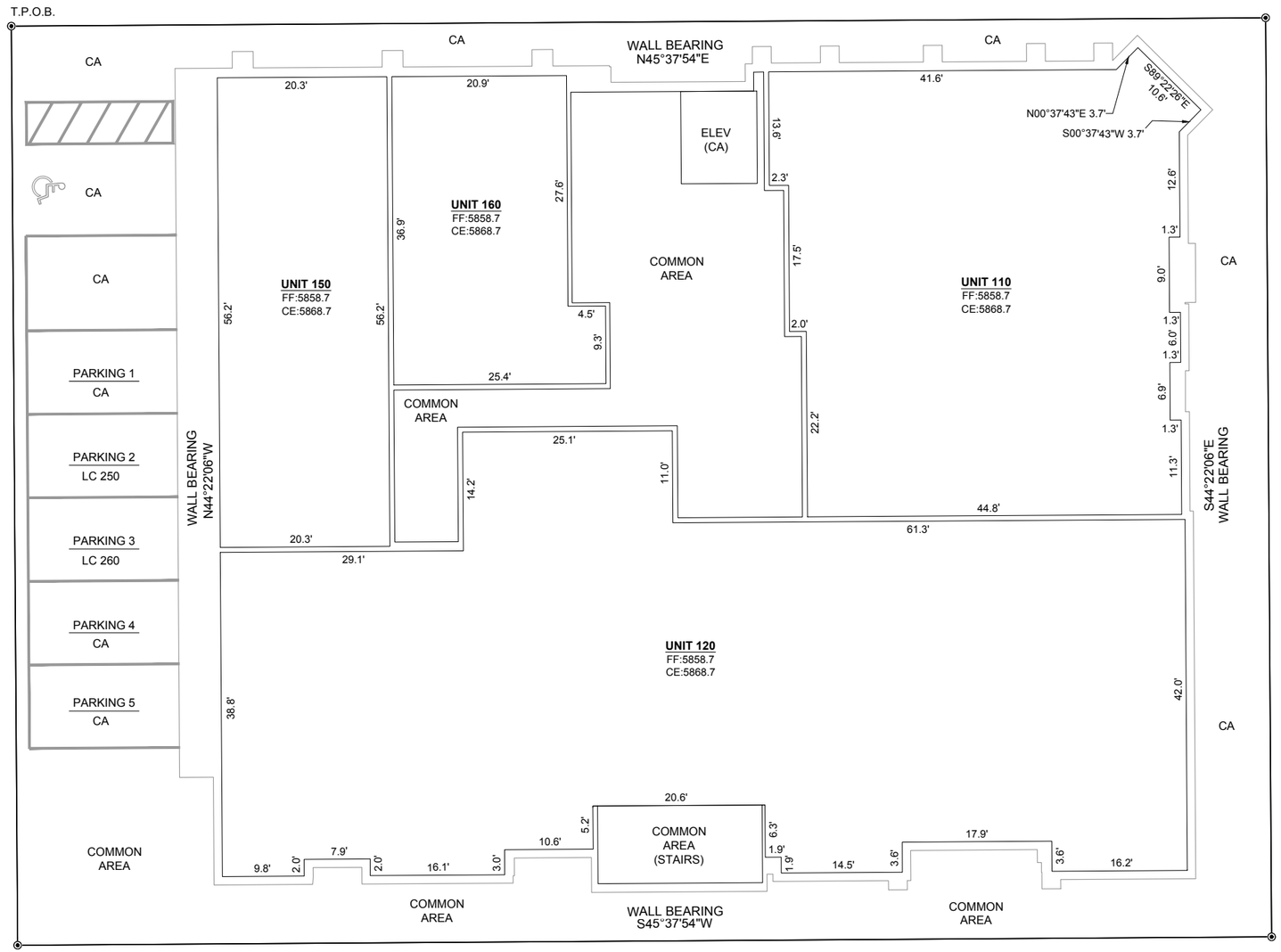
WALNUT & FOURTH CONDOMINIUMS

OCTOBER 2023

10 5 0 10 20 30

SCALE IN FEET

PRELIMINARY PLAT



FIRST FLOOR

SCALE: 1" = 10'

LEGEND

- Property Boundary
- Approximate First Level Building Outline
- Set Brass Survey Marker , PLS 20893

CE = Ceiling Elevation
FF = Finished Floor Elevation
CA = Common Area
LC = Limited Common Area
MECH = Mechanical Room
ELEV = Elevator
T.P.O.B. = True Point of Beginning

FLOORPLAN NOTES

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PROFESSIONAL LAND SURVEYOR LICENSED 20893 STATE OF IDAHO ROBERT O. BREIER

WALNUT & FOURTH CONDOMINIUMS

GALENA - BENCHMARK ENGINEERING

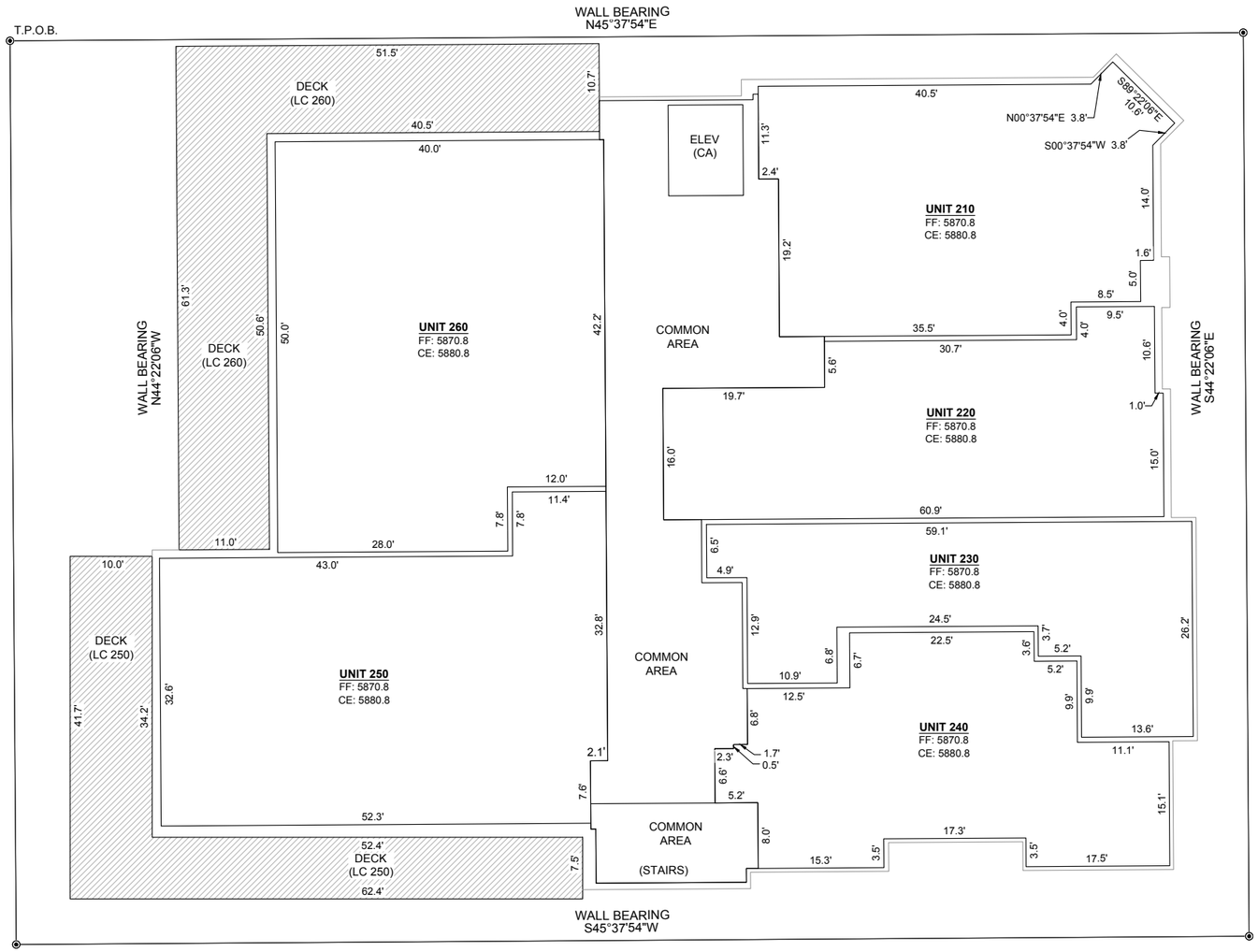
Job No. 7819
File: 7819 condo -plat-CURRENT
SHEET 3 OF 7

A PLAT SHOWING

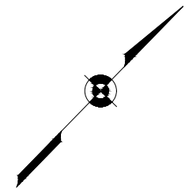
WALNUT & FOURTH CONDOMINIUMS

OCTOBER 2023

PRELIMINARY PLAT



SECOND FLOOR



SCALE: 1" = 10'

10 5 0 10 20 30

SCALE IN FEET

LEGEND

- Property Boundary
- Approximate First Level Building Outline
- Set Brass Survey Marker , PLS 20893

CE = Ceiling Elevation
FF = Finished Floor Elevation
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LC = Limited Common Area
MECH = Mechanical Room
ELEV = Elevator
T.P.O.B. = True Point of Beginning

FLOORPLAN NOTES

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WALNUT & FOURTH CONDOMINIUMS

GALENA - BENCHMARK ENGINEERING

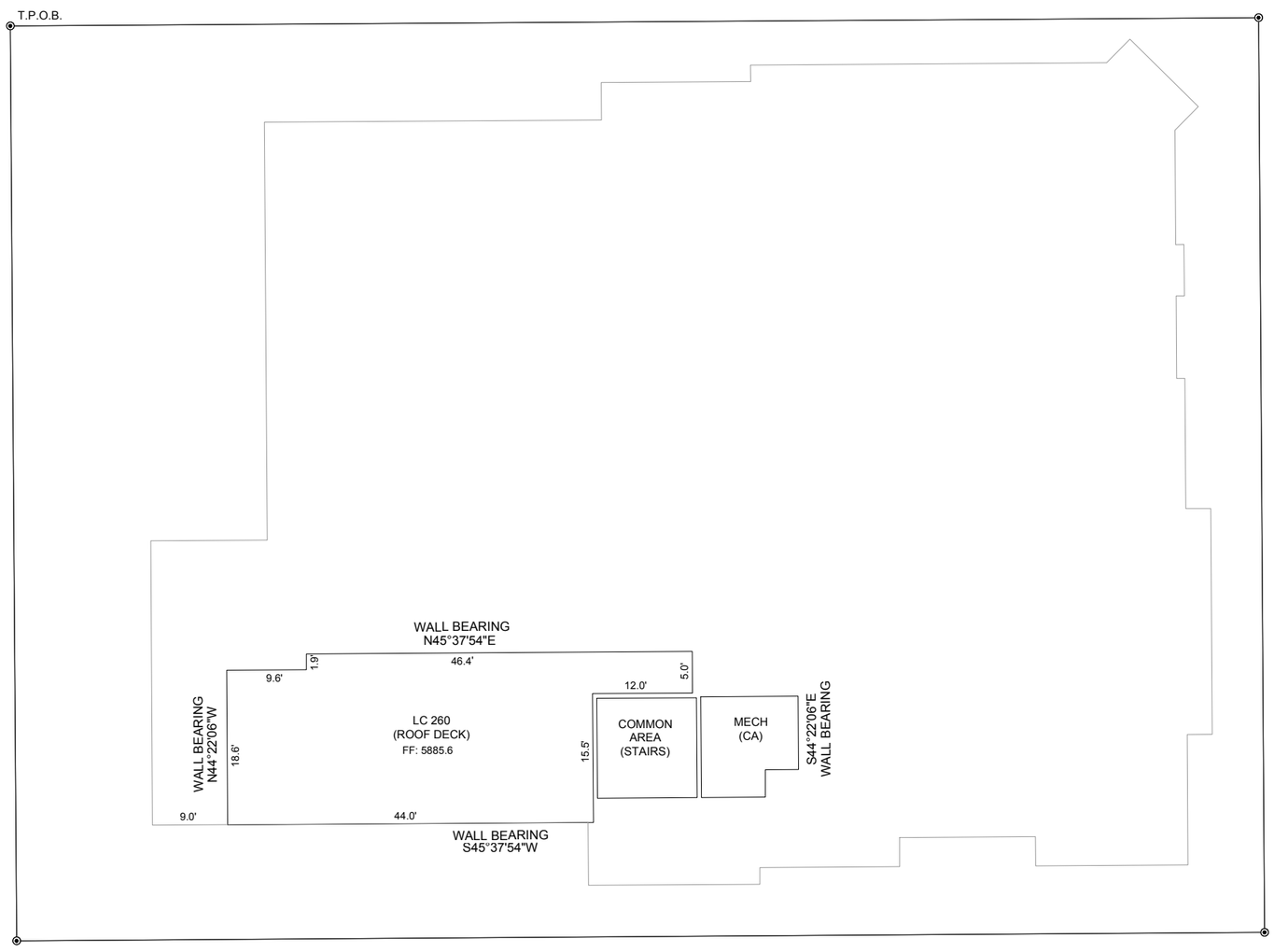
Job No. 7819
File: 7819 condo -plat-CURRENT
SHEET 4 OF 7

A PLAT SHOWING

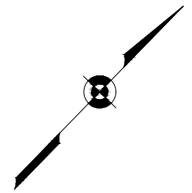
WALNUT & FOURTH CONDOMINIUMS

OCTOBER 2023

PRELIMINARY PLAT



ROOF



SCALE: 1" = 10'

10 5 0 10 20 30

SCALE IN FEET

LEGEND

- Property Boundary
- Approximate First Level Building Outline
- Set Brass Survey Marker , PLS 20893

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FF = Finished Floor Elevation
CA = Common Area
LC = Limited Common Area
MECH = Mechanical Room
ELEV = Elevator
STG = Storage
T.P.O.B. = True Point of Beginning

FLOORPLAN NOTES

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WALNUT & FOURTH CONDOMINIUMS

GALENA - BENCHMARK ENGINEERING

Job No. 7819
File: 7819 condo -plat-CURRENT
SHEET 5 OF 7

Attachment C

Draft

Planning and Zoning Commission

Findings of Fact, Conclusions of Law, and Decision

City of Ketchum
Planning & Building

IN RE:	)
	)
Walnut & Fourth	) KETCHUM PLANNING AND ZONING COMMISSION
Condominium Subdivision Preliminary Plat	) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
File Number: P23-053	) DECISION
	)
Date: November 14, 2023	)
	)

PROJECT:	Walnut & Fourth Condominiums
APPLICATION TYPE:	Condominium Subdivision – Preliminary Plat
FILE NUMBER:	P23-053
ASSOCIATED APPLICATIONS:	Pre-Application Design Review P20-024, Design Review P20-046, Design Review Amendment P20-46A, FAR Exceedance Agreement Contract 20595A, Lot Line Shift P21-015, Building Permit B21-009
PROPERTY OWNER:	Walnut & Fourth LLC
REPRESENTATIVE:	David Patrie, Galena-Benchmark Engineering
LOCATION:	580 4th Street E (Ketchum Townsite: Block 44: Lot 7A)
ZONING:	Retail Core of the Community Core (CC-1 Zone)
OVERLAY:	None

RECORD OF PROCEEDINGS

The City of Ketchum Planning & Building Department received Condominium Subdivision Preliminary Plat Application File No. P23-053 for the Walnut & Fourth Mixed-Use Development on June 8, 2023. The application was processed and deemed complete on June 8, 2023. Following receipt of the complete application, Planning staff routed the application materials to all city departments for review. City department comments were provided to the applicant on July 21, 2023 and September 14, 2023. All comments have been addressed satisfactorily through the applicant's revisions to the project plans or conditions of approval.

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on September 20, 2023. The public hearing notice was

published in the Idaho Mountain Express on September 20, 2023. A notice was posted on the project site and the city's website on September 25, 2023. The public hearing for the Condominium Subdivision Preliminary Plat Application was continued from the Planning and Zoning Commission Meeting of October 10, 2023.

The Planning and Zoning Commission ("Commission") considered Walnut & Fourth Condominiums Subdivision Preliminary Plat Application File No. P23-053 during their meeting on October 10, 2023. After considering staff's analysis, the applicant's presentation, and public comment, the Commission recommended approval of Walnut & Fourth Condominiums subdivision preliminary plat application to the City Council.

FINDINGS OF FACT

Project History and Background

The applicant is nearing completion on the construction of a new 21,383 gross-square-foot, two-story building located at the southwest corner of Walnut Avenue and 4th Street. The mixed-use building contains 2,489 square feet of food service, 3,288 square feet of retail, and a 3,252-square-foot cultural facility, on the ground floor. The second floor includes 4,999 square feet of office space and two residential units. Two community housing units, 1,104 square feet and 914 square feet in net-livable area, each with detached storage areas of approximately 50 square feet are provided within the basement. In addition, the basement contains storage units for commercial and residential uses on the first and second floors of the mixed-use building.

The Commission reviewed and approved Design Review Application File No. P20-046 for the Walnut & Fourth Mixed-Use Building on September 15, 2020. The project was issued a building permit (Application File No. B21-009) on June 22, 2021. The Commission reviewed and approved Design Review Amendment Application File No. P20-046A, which proposed modifications to the mixture of uses and their configurations within the mixed-use building, on September 27, 2022. The project is nearing completion and all required life safety, building code, and utility infrastructure requirements have been met. The Planning & Building Department has issued Temporary Certificates of Occupancy for ground-floor commercial units, two of the office units on the second floor, and the two community housing units.

Conformance with Subdivision Standards

The condominium subdivision preliminary plat application will subdivide the mixed-use building into eight commercial condominium units on the first and second floors, two residential condominium units on the second floor, two community housing units, basement storage units, limited common area, and common area.

During city department review, staff reviewed the condominium subdivision preliminary plat application for conformance with the procedures for subdivision approval (Ketchum Municipal Code §16.04.030), subdivision development and design standards (Ketchum Municipal Code §16.04.040),

and condominium requirements (Ketchum Municipal Code §16.04.070). Certain standards are not applicable for one of the following reasons:

- The standard applies to the establishment of new subdivisions creating multiple new lots that will form blocks around new streets, and not the subject property, which is comprised of three existing platted lots within the original Ketchum townsite.
- The standard applies to an action that will be taken at the final plat stage of the process.
- The City Engineer has determined that the standard does not apply.

The proposed condominium preliminary plat application complies with all applicable subdivision requirements and standards.

FINDINGS REGARDING COMPLIANCE WITH PRELIMINARY PLAT REQUIREMENTS

Preliminary Plat Requirements (Ketchum Municipal Code §16.04.030)				
Compliant				
Yes	No	N/A	City Code	City Standards
☒	☐	☐	16.04.030.C.1	The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.
			Findings	*The Planning & Building Department received Condominium Subdivision Preliminary Plat Application File No. P23-053 for the Walnut & Fourth Mixed-Use Development on June 8, 2023. The application was processed and deemed complete on June 8, 2023. Following receipt of the complete application, Planning staff routed the application materials to all city departments for review. City department comments were provided to the applicant on July 21, 2023 and September 14, 2023. All comments have been addressed satisfactorily through the applicant's revisions to the project plans or conditions of approval.*
☒	☐	☐	16.04.030.J	Contents Of Preliminary Plat: The preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application.
			Findings	*The subdivision application was deemed complete on June 8, 2023.*
☒	☐	☐	16.04.030.J.1	The preliminary plat shall be drawn to a scale of not less than one inch equals one hundred feet (1" = 100') and shall show the following: The scale, north point and date.
			Findings	*This standard is met as shown on Sheet 1 of the preliminary plat.*
☒	☐	☐	16.04.030.J.2	The name of the proposed subdivision, which shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho.
			Findings	*As shown on Sheet 1 of the preliminary plat, the plat is titled "Walnut & Fourth Condominiums" which is not the same as any other subdivision in Blaine County, Idaho.*

☒	☐	☐	16.04.030.J.3	The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.
			Findings	*The name of the owner and surveyor is shown on Sheet 1 of the plat. The plat was prepared by Robert O. Breier, Professional Land Survey, of Galena-Benchmark Engineering.*
☒	☐	☐	16.04.030.J.4	Legal description of the area platted.
			Findings	*The legal description of the area platted is shown on page 1 of the preliminary plat.*
☒	☐	☐	16.04.030.J.5	The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.
			Findings	*The preliminary plat shows adjacent properties within block 44 of the original Ketchum townsite, including lots 1, 4, 5, and 6 and the Courtyard Condominiums.*
☒	☐	☐	16.04.030.J.6	A contour map of the subdivision with contour lines and a maximum interval of five feet (5') to show the configuration of the land based upon the United States geodetic survey data, or other data approved by the city engineer.
			Findings	*Existing site conditions, including topography, are shown on the project plans submitted with Design Review Application File No. P20-046 and Design Review Amendment Application File No. P20-46A.*
☒	☐	☐	16.04.030.J.7	The scaled location of existing buildings, water bodies and courses and location of the adjoining or immediately adjacent dedicated streets, roadways and easements, public and private.
			Findings	*Sheet 1 of the preliminary plat shows the location of the adjacent streets, the block 44 alley, and the public utility easement recorded as Instrument Number 682495.*
☒	☐	☐	16.04.030.J.8	Boundary description and the area of the tract.
			Findings	*Sheet 1 provides the boundary description of the area. The total area of Lot 7A is 16,512 square feet as noted on the preliminary plat map.*
☒	☐	☐	16.04.030.J.9	Existing zoning of the tract.
			Findings	*Plat note #9 on Sheet 1 of the preliminary plat specifies the existing zoning of the subject property. The property is located in the Retail Core of the Community Core (CC-1 Zone).*
☒	☐	☐	16.04.030.J.10	The proposed location of street rights of way, lots, and lot lines, easements, including all approximate dimensions, and including all proposed lot and block numbering and proposed street names.
			Findings	*The preliminary plat shows the locations and lot lines for the master lot and lot lines of condominium units. No new streets or blocks are being proposed with this application.*

☒	☐	☐	16.04.030.J.11	The location, approximate size and proposed use of all land intended to be dedicated for public use or for common use of all future property owners within the proposed subdivision.
			Findings	*The plat shows all common area elements within the condominium subdivision.*
☒	☐	☐	16.04.030.J.12	The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed drainage and right-of-way improvements proposed for the project.*
☐	☐	☒	16.04.030.J.13	The direction of drainage, flow and approximate grade of all streets.
			Findings	*This standard does not apply as no new streets are proposed.*
☐	☐	☒	16.04.030.J.14	The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.
			Findings	*This standard does not apply as no new drainage canals or structures are proposed.*
☐	☐	☒	16.04.030.J.15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			Findings	*This standard does not apply as no additional tests are required.*
☒	☐	☐	16.04.030.J.16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			Findings	*The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.*
☒	☐	☐	16.04.030.J.17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.
			Findings	*Sheet 1 of the preliminary plat includes a vicinity map.*
☐	☐	☒	16.04.030.J.18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			Findings	*The subject property is not within a floodplain, floodway, or avalanche zone district.*

☐	☐	☒	16.04.030.J.19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			Findings	*A building envelope is not required as the subject property is not within the floodway, floodplain, or avalanche zone. The subject property is not adjacent to the Big Wood River, Trail Creek or Warm Springs. The subject property does not contain slopes greater than 25% and is not adjacent to an intersection.*
☒	☐	☐	16.04.030.J.20	Lot area of each lot.
			Findings	*The preliminary plat shows the area of the overall lot and the area of each condominium unit.*
☒	☐	☐	16.04.030.J.21	Existing mature trees and established shrub masses.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show existing mature trees and shrub masses.*
☒	☐	☐	16.04.030.J.22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.
			Findings	*The applicant submitted a lot book guarantee report and a warranty deed with the preliminary plat application.*
☒	☐	☐	16.04.030.J.23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			Findings	*The City of Ketchum received digital copies of the preliminary plat at the time of application.*

FINDINGS REGARDING COMPLIANCE WITH SUBDIVISION DEVELOPMENT & DESIGN STANDARDS

Subdivision Development & Design Standards (Ketchum Municipal Code §16.04.040)				
Compliant				
Yes	No	N/A	City Code	City Standards
☒	☐	☐	16.04.040.A	Required Improvements: The improvements set forth in this section shall be shown on the preliminary plat and installed prior to approval of the final plat. Construction design plans shall be submitted and approved by the city engineer. All such improvements shall be in accordance with the comprehensive plan and constructed in compliance with construction standard specifications adopted by the city. Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub

				masses and historic areas, shall be preserved through design of the subdivision.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed utility, drainage, or right-of-way improvements proposed for the project, which have been reviewed and approved by City Departments, including the City Engineer.*
☐	☐	☒	16.04.040.B	Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.
			Findings	*This standard is not applicable to the preliminary plat application.*
☐	☐	☒	16.04.040.C	Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider.
			Findings	*This standard is not applicable to the preliminary plat application.*
☐	☐	☒	16.04.040.D	As Built Drawing: Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the

				administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.
			Findings	*This standard is not applicable to the preliminary plat application.*
☐	☐	☒	16.04.040.E	Monumentation: Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows: 1. All angle points in the exterior boundary of the plat. 2. All street intersections, points within and adjacent to the final plat. 3. All street corner lines ending at boundary line of final plat. 4. All angle points and points of curves on all streets. 5. The point of beginning of the subdivision plat description.
			Findings	*The applicant shall meet the required monumentation standards prior to recordation of the final plat.*
☐	☐	☒	16.04.040.F	Lot Requirements: 1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings. 2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates corner lots at the intersection of two (2) or more streets, building envelopes shall be shown for the lot(s) so affected on the preliminary and final plats. The building envelopes shall be located in a manner designed to promote harmonious development of structures, minimize congestion of structures, and provide open space and solar access for each lot and structure. Also, building envelopes shall be located to promote access to the lots and maintenance of public utilities, to minimize cut and fill for roads and building foundations, and minimize adverse impact upon environment, watercourses and topographical features. Structures may only be built on buildable lots. Lots shall only be created that meet the definition of "lot, buildable" in section 16.04.020 of this chapter. Building envelopes shall be established outside of hillsides of twenty five percent

				(25%) and greater and outside of the floodway. A waiver to this standard may only be considered for the following: a. For lot line shifts of parcels that are entirely within slopes of twenty five percent (25%) or greater to create a reasonable building envelope, and mountain overlay design review standards and all other city requirements are met. b. For small, isolated pockets of twenty five percent (25%) or greater that are found to be in compliance with the purposes and standards of the mountain overlay district and this section. 3. Corner lots shall have a property line curve or corner of a minimum radius of twenty five feet (25') unless a longer radius is required to serve an existing or future use. 4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line. 5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible zoning districts. 6. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.
			Findings	*This standard is not applicable as no new lots are created with the condominium subdivision.*
☐	☐	☒	16.04.040.G	G. Block Requirements: The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements: 1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots. 2. Blocks shall be laid out in such a manner as to comply with the lot requirements. 3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features. 4. Corner lots shall contain a building envelope outside of a seventy five foot (75') radius from the intersection of the streets.

			Findings	*This standard is not applicable as no new lots or blocks are proposed with the condominium subdivision preliminary plat.*
☒	☐	☐	16.04.040.H	Street Improvement Requirements: 1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land; 2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable ordinances, resolutions or regulations of the city or any other governmental entity having jurisdiction, now existing or adopted, amended or codified; 3. Where a subdivision abuts or contains an existing or proposed arterial street, railroad or limited access highway right of way, the council may require a frontage street, planting strip, or similar design features; 4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods; 5. Street grades shall not be less than three-tenths percent (0.3%) and not more than seven percent (7%) so as to provide safe movement of traffic and emergency vehicles in all weather and to provide for adequate drainage and snow plowing; 6. In general, partial dedications shall not be permitted, however, the council may accept a partial street dedication when such a street forms a boundary of the proposed subdivision and is deemed necessary for the orderly development of the neighborhood, and provided the council finds it practical to require the dedication of the remainder of the right of way when the adjoining property is subdivided. When a partial street exists adjoining the proposed subdivision, the remainder of the right of way shall be dedicated; 7. Dead end streets may be permitted only when such street terminates at the boundary of a subdivision and is necessary for the development of the subdivision or the future development of the adjacent property. When such a dead end street serves more than two (2) lots, a temporary turnaround easement shall be provided, which easement shall revert to the adjacent lots when the street is extended; 8. A cul-de-sac, court or similar type street shall be permitted only when necessary to the development of the subdivision, and provided, that no such street shall have a maximum length greater than four hundred feet (400') from entrance to center of turnaround, and all cul-de-sacs shall

				have a minimum turnaround radius of sixty feet (60') at the property line and not less than forty five feet (45') at the curb line; 9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°); 10. Where any street deflects an angle of ten degrees (10°) or more, a connecting curve shall be required having a minimum centerline radius of three hundred feet (300') for arterial and collector streets, and one hundred twenty five feet (125') for minor streets; 11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited; 12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets; 13. Proposed streets which are a continuation of an existing street shall be given the same names as the existing street. All new street names shall not duplicate or be confused with the names of existing streets within Blaine County, Idaho. The subdivider shall obtain approval of all street names within the proposed subdivision from the commission before submitting same to council for preliminary plat approval; 14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills; 15. Street patterns of residential areas shall be designed to create areas free of through traffic, but readily accessible to adjacent collector and arterial streets; 16. Reserve planting strips controlling access to public streets shall be permitted under conditions specified and shown on the final plat, and all landscaping and irrigation systems shall be installed as required improvements by the subdivider; 17. In general, the centerline of a street shall coincide with the centerline of the street right of way, and all crosswalk markings shall be installed by the subdivider as a required improvement; 18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement; 19. Private streets may be allowed upon recommendation by the commission and approval by the council. Private streets shall be constructed to meet the design standards specified in subsection H2 of this section; 20. Street signs shall be installed by the subdivider as a required improvement of a type and design approved by the administrator and shall be consistent with the type and design of existing street signs elsewhere in the city;

				21. Whenever a proposed subdivision requires construction of a new bridge, or will create substantial additional traffic which will require construction of a new bridge or improvement of an existing bridge, such construction or improvement shall be a required improvement by the subdivider. Such construction or improvement shall be in accordance with adopted standard specifications; 22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and 23. Gates are prohibited on private roads and parking access/entranceways, private driveways accessing more than one single-family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the right-of-way improvements proposed for the project, which have been reviewed and approved by City Departments, including the City Engineer.*
☒	☐	☐	16.04.040.I	Alley Improvement Requirements: Alleys shall be provided in business, commercial and light industrial zoning districts. The width of an alley shall be not less than twenty feet (20'). Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be provided to permit safe vehicular movement. Dead end alleys shall be prohibited. Improvement of alleys shall be done by the subdivider as required improvement and in conformance with design standards specified in subsection H2 of this section.
			Findings	*The project proposes alley improvements, including grading and resurfacing the alley with asphalt. These improvements are shown on the project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009.*
☐	☐	☒	16.04.040.J	Required Easements: Easements, as set forth in this subsection, shall be required for location of utilities and other public services, to provide adequate pedestrian circulation and access to public waterways and lands. 1. A public utility easement at least ten feet (10') in width shall be required within the street right of way boundaries of all private streets. A public utility easement at least five feet (5') in width shall be required within property boundaries adjacent to Warm Springs Road and within any other property boundary as determined by the city engineer to be necessary for the provision of adequate public utilities. 2. Where a subdivision contains or borders on a watercourse, drainageway, channel or stream, an easement shall be required of

				sufficient width to contain such watercourse and provide access for private maintenance and/or reconstruction of such watercourse. 3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that easement along the portion of the riverbank which runs through the proposed subdivision. 4. All subdivisions which border on the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a twenty five foot (25') scenic easement upon which no permanent structure shall be built in order to protect the natural vegetation and wildlife along the riverbank and to protect structures from damage or loss due to riverbank erosion. 5. No ditch, pipe or structure for irrigation water or irrigation wastewater shall be constructed, rerouted or changed in the course of planning for or constructing required improvements within a proposed subdivision unless same has first been approved in writing by the ditch company or property owner holding the water rights. A written copy of such approval shall be filed as part of required improvement construction plans. 6. Nonvehicular transportation system easements including pedestrian walkways, bike paths, equestrian paths, and similar easements shall be dedicated by the subdivider to provide an adequate nonvehicular transportation system throughout the city.
			Findings	*This standard is not applicable as no easements are proposed or required for this project. The project does not create a new private street. This property is not adjacent to Warm Springs Road. The property does not border a watercourse, drainage way, channel, or stream.*
☒	☐	☐	16.04.040.K	Sanitary Sewage Disposal Improvements: Central sanitary sewer systems shall be installed in all subdivisions and connected to the Ketchum sewage treatment system as a required improvement by the subdivider. Construction plans and specifications for central sanitary sewer extension shall be prepared by the subdivider and approved by the city engineer, council and Idaho health department prior to final plat approval. In the event that the sanitary sewage system of a subdivision cannot connect to the existing public sewage system, alternative provisions for sewage disposal in accordance with the requirements of the Idaho department of health and the council may be constructed on a temporary basis until such time as connection to the public sewage system is possible. In

				considering such alternative provisions, the council may require an increase in the minimum lot size and may impose any other reasonable requirements which it deems necessary to protect public health, safety and welfare.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed sewer improvements for the project, which have been reviewed and approved by City Departments, including the City Engineer and Wastewater Department.*
☐	☐	☒	16.04.040.L	Water System Improvements: A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision according to specifications and requirements of the city under the supervision of the Ketchum fire department and other regulatory agencies having jurisdiction. Furthermore, the central water system shall have sufficient flow for domestic use and adequate fire flow. All such water systems installed shall be looped extensions, and no dead end systems shall be permitted. All water systems shall be connected to the municipal water system and shall meet the standards of the following agencies: Idaho department of public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed water service improvements for the project, which have been reviewed and approved by City Departments, including the City Engineer and Utilities Department.*
☐	☐	☒	16.04.040.M	Planting Strip Improvements: Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.
			Findings	*This standard does not apply as this application does not create a new subdivision. There are no incompatible uses adjacent to the proposed condominium subdivision.*
☐	☐	☒	16.04.040.N	Cuts, Fills, And Grading Improvements: Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil

				conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following: 1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application. 2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: a. Proposed contours at a maximum of five foot (5') contour intervals. b. Cut and fill banks in pad elevations. c. Drainage patterns. d. Areas where trees and/or natural vegetation will be preserved. e. Location of all street and utility improvements including driveways to building envelopes. f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements. 3. Grading shall be designed to blend with natural landforms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways. 4. Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or hydrology shall be allocated for open space for the benefit of future property owners within the subdivision. 5. Where existing soils and vegetation are disrupted by subdivision development, provision shall be made by the subdivider for revegetation of disturbed areas with perennial vegetation sufficient to stabilize the soil upon completion of the construction. Until such times as such revegetation has been installed and established, the subdivider shall maintain and protect all disturbed surfaces from erosion. 6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply: a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability. b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).

				c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability. d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope. e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.
			Findings	*This standard does not apply as this application does not create a new subdivision. The preliminary plat proposed to subdivide the mixed-use building into condominium units.*
☒	☐	☐	16.04.040.O	Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed drainage improvements for the project, which have been reviewed and approved by City Departments, including the City Engineer and Streets Department.*
☒	☐	☐	16.04.040.P	Utilities: In addition to the terms mentioned in this section, all utilities including, but not limited to, electricity, natural gas, telephone and cable services shall be installed underground as a required improvement by the subdivider. Adequate provision for expansion of such services within the

				subdivision or to adjacent lands including installation of conduit pipe across and underneath streets shall be installed by the subdivider prior to construction of street improvements.
			Findings	*The project plans submitted with Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B 21-009 show the proposed utility improvements for the project, which have been reviewed and approved by City Departments, including the City Engineer and Utilities Department.*
☐	☐	☒	16.04.040.Q	Off Site Improvements: Where the offsite impact of a proposed subdivision is found by the commission or council to create substantial additional traffic, improvements to alleviate that impact may be required of the subdivider prior to final plat approval, including, but not limited to, bridges, intersections, roads, traffic control devices, water mains and facilities, and sewer mains and facilities.
			Findings	*The proposed condominium development does not create substantial additional traffic; therefore, no off-site improvements are required.*
☐	☐	☒	16.04.040.R	Avalanche And Mountain Overlay: All improvements and plats (land, planned unit development, townhouse, condominium) created pursuant to this chapter shall comply with City of Ketchum Avalanche Zone District and Mountain Overlay Zoning District requirements as set forth in Title 17 of this Code.
			Findings	*N/A as this property is not located within the Avalanche Zone or Mountain Overlay.*
☐	☐	☒	16.04.040.S	Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.
			Findings	*The City Arborist conducted a site inspection determined that the existing trees are not healthy or mature, and therefore, do not require replacement.*

FINDINGS REGARDING COMPLIANCE WITH CONDOMINIUM PLAT REQUIREMENTS

Condominium Plat Requirements (Ketchum Municipal Code §16.04.070)				
Compliant				
Yes	No	N/A	City Code	Standards
☒	☐	☐	16.04.070.B	The subdivider of the condominium project shall submit with the preliminary plat application a copy of the proposed bylaws and condominium declarations of the proposed condominium development. Said documents shall adequately provide for the control and maintenance of all common areas, recreational facilities and open space.

			Findings	*The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.*
☐	☐	☒	16.04.070.D	All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular condominium units. No garage may be condominiumized or sold separate from a condominium unit.
			Findings	The Walnut & Fourth mixed-use development does not include any attached or detached garages. Surface parking is provided adjacent to the rear property line along the alley.
☒	☐	☐	16.04.070.E	Adequate storage areas shall be provided for boats, campers and trailers, as well as adequate interior storage space for personal property of the resident of each condominium unit.
			Findings	Storage for each residential unit and community housing unit has been provided in the basement.
☒	☐	☐	16.04.070.F	A maintenance building or room shall be provided of adequate size and location for the type and size of the condominium project for storage of maintenance equipment and supplies for common areas.
			Findings	The applicant has provided adequate space for the storage of common area maintenance equipment and supplies within the mechanical rooms labeled as MECH(CA). 3 common area mechanical rooms are provided within the basement as indicated on sheet 2 of the preliminary plat.
☒	☐	☐	16.04.070.G	The subdivider shall dedicate to the common use of the homeowners adequate open space of such shape and area usable and convenient to the residents of the condominium subdivision. Location of building sites and common area shall maximize privacy and solar access.
			Findings	*The preliminary plat designates adequate open space for the residents of the condominium subdivision.*
☒	☐	☐	16.04.070.H	All other provisions of this chapter and all applicable ordinances, rules and regulations of the city and all other governmental entities having jurisdiction shall be complied with by condominium subdivisions.
			Findings	*The project has been reviewed for compliance with all other section of the subdivision standards. The project conforms with all subdivision regulations as discussed above.*

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code ("KMC") and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant's Condominium Subdivision Preliminary Plat application for the development and use of the project site.

2. The Commission has authority to review and approve the applicant's Condominium Subdivision Preliminary Plat Application pursuant to Chapter 16.04 of Ketchum Code Title 16.

3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §16.04.030.

4. The Condominium Subdivision Preliminary Plat application is governed under Chapter 16.04 of Ketchum Municipal Code.

5. The Walnut & Fourth Condominiums Subdivision Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

DECISION

THEREFORE, the Commission **recommends approval** of this Condominium Subdivision Preliminary Plat Application File No. P23-053 this Tuesday, November 14, 2023 subject to the following conditions of approval.

CONDITIONS OF APPROVAL

1. This preliminary plat application is subject to all conditions of approval for Design Review P20-046, Design Review Amendment P20-46A, and Building Permit B21-009.
2. Prior to forwarding the condominium subdivision preliminary plat to City Council for final review and approval, the applicant shall add the following plat note to sheet 1: Units B1, B9, and B10 are designated as accessory storage assigned to any other Unit or Common Area within this plat until such time as a building permit is issued for a change of occupancy of the Unit.
3. Failure to record a Final Plat within two (2) years of Council's approval of a Preliminary Plat shall cause the Preliminary Plat to be null and void.

Findings of Fact **adopted** this 14th day of November 2023.

Neil Morrow, Chair
City of Ketchum
Planning and Zoning Commission

WHITE PETERSON

ATTORNEYS AT LAW

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MARC J. BYBEE
WM. F. GIGRAY, III
DANIEL W. GOODMAN
MATTHEW A. JOHNSON
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OF COUNSEL
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OF COUNSEL

* Also admitted in OR

November 9, 2023

To: Planning and Zoning Commissioners
City of Ketchum
Delivered via meeting packet

From: Matthew Johnson, City Attorney

Re: Administrative Appeal Process – Sawtooth Serenade Design Review

Background:

This is an administrative appeal to the P&Z Commission of a determination by the Planning Director. The appeal was filed by the Applicant, Scott and Julie Lynch & Yah Bernier and Elizabeth McCaw, & Distrustful Ernest Revocable Trust, represented by Jim Laski of Lawson Laski Clark.

The matter generally concerns the design review process, in particular the interplay between the preliminary design review and the full/final design review as relate to timing and applicability of City ordinances, in particular Ordinance 1234. The details of these issues are presented in the memoranda presented by Mr. Laski for the Applicant and Director Landers for the Planning Department.

Procedural Status:

This is an administrative appeal of decisions or determinations of the Planning Director, as is provided for in Ketchum Municipal Code §17.144.010. This matter was scheduled by the City Attorney, along with approving deadlines for submission of memorandum, by agreement of the parties involved and approval of the Commission. All three memoranda have been timely submitted and are provided for the Commission's review.

From a process perspective, the Commission can focus its review primarily on those memoranda and their arguments. The Council is reviewing these arguments and addressing interpretation questions in a quasi-judicial role. The remainder of any accompanying documents are the Record, which may include application documents, minutes, staff reports, etc., and are available primarily as resources or for purposes of reference within arguments to evaluate the factual background.

This is an administrative appeal hearing. Oral arguments will be presented by the involved parties only: Mr. Laski for Appellant/Applicant and Director Landers for the Planning Department. The presenting parties and supporting staff will be available for questions. This is not a public hearing and there is no public comment as part of the process. Comments or input to Commissioners outside the appeal hearing are discouraged, and if any is received should be disclosed by that Commissioner at the start of the hearing.

During the hearing, the Commission, at its discretion, is welcome to ask questions of staff or the parties as may be helpful to deliberation. It is encouraged to handle most questions for a party during their portion of the hearing. The order of presentation will be Appellant/Applicant, Director/Respondent, and then an Appellant rebuttal if desired. Any further presentation or answers to questions will be at the discretion of the Commission.

Standard of Review:

Since the Commission does not hear administrative appeals frequently, a common question when they do arise is as to the applicable standard of review. Standard of review is a legal term guiding the discretion (or not) of the review and decision with respect to use of the Record and in particular in whether or not to consider new additional information.

In this situation, it is important for the Council to understand the standard of review as defined in KMC §17.144.010(C):

Authority of Commission. Upon hearing the appeal, the Commission shall consider the record, the order, requirement, decision or determination of the administrator and the notice of appeal, together with oral presentation and written legal arguments by the appellant and the administrator. The Commission shall not consider any new facts or evidence at this point. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator.

While arguments, per the memoranda of the parties, are considered, there should not be new factual information considered or weighed that was not part of the Record below.

Decision Options:

As indicated in the last sentences of KMC §17.144.010(C) – see above – upon review and deliberation, the Commission may decide from the following on the underlying Director decisions: affirm, reverse, modify in whole or in part, and/or remand the application back to the Director with direction.

Per KMC §17.144.010(D), the Commission must issue a written decision within 30 days of this hearing. Typically, the Commission will indicate a decision, or at least direction, for legal counsel to prepare a full draft written decision for final approval and decision at a future meeting within that 30-day time period.

I will be present for the hearing and available to assist in the proceedings as is helpful.

City of Ketchum

Sawtooth Serenade Administrative Appeal

Attachments List

A. Administrative Determination
B. Appeal Application and Appeal Brief
C. Administrator Response to Appeal Brief
D. Appellant Response to Administrator Response
E. Ordinance 1234

City of Ketchum

Attachment A:

Administrative Determination

CITY OF KETCHUM | PLANNING & BUILDING

Morgan Landers, AICP | Director
direct: 208.727.5085 | office: 208.726.7801
mlanders@ketchumidaho.org

P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340
ketchumidaho.org

Thielsen Architects
Attn: Robert Connor
720 Market Street, Suite C
Kirkland, WA 98033
[via email]

August 24, 2023

Planning Administrator Determination: Applicability of Section 3 of Interim Ordinance 1234 to the Sawtooth Serenade development located at 260 N 1st Ave.

Dear Mr. Connor-

The City of Ketchum received a Final Design Review application for the Sawtooth Serenade development located at 260 N 1st Ave, Ketchum, ID 83340, on August 7, 2023. Upon receipt, I notified the applicant via email that the application had not been received within the required 180 calendar day requirement for Final Design Review applications outlined in Section 3 of Interim Ordinance 1234. That email also outlined that the application could be processed as a new pre-application, if that was the desire of the applicant. Following that email, I received a response requesting further consideration of the determination. Per your request, I have further reviewed Interim Ordinance 1234, other applicable code provisions in the Ketchum Municipal Code, and consulted with the city attorney.

Based on my further review, I find that Section 3 of the interim ordinance does apply to the Sawtooth Serenade development as justified by the following:

1. Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees, and processes. Section 1 of the interim ordinance states that the ordinance applies to "to any Building Permit, Pre-Application Design Review, Design Review, Subdivision, or Condition Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance filed pursuant to Title 16 – Subdivision Regulations and Title 17 – Zoning Regulations". The ordinance clearly delineates between Pre-Application Design Review and Design Review as two separate applications. Although the preapplication was deemed complete prior to the effective date, the Final Design Review application has not been deemed complete as of the date of this letter which is after the effective date of the interim ordinance.

2. Initial drafts of the interim ordinance did not provide any grace period to preapplications as Preapplication Design Review does not provide for any vesting of development rights. Pursuant to KMC section17.96.010.C.2, the purpose of the preapplication is to exchange ideas and give direction to the applicant on the "design concept". The preapplication design review step is not designed to vest any specific rights or design. There is no vote of approval, approval with conditions, or denial and no Findings of Fact and Conclusions of Law are issued. Based on feedback from the development community at the time of review and adoption of the interim ordinance, the City Council acknowledged that there are investments made during the preapplication process and in the interim those developments should be provided a grace period provided they continue to timely move through the process. This led to the addition of a 180-day grace period as described below.

3. Section 3 of the interim ordinance states "Design Review or 17.104 – Mountain Overlay Zoning District that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void". The purpose of Section 3 of the interim ordinance was to provide a reasonable grace period for developments that began the multiple steps of the development approval process prior to adoption of the interim ordinance and to avoid a barrage of applications being submitted to the city prior to the effective date. This grace period was set by the interim ordinance and, upon expiration of the grace period, subject applications became "null and void." The Planning Department was not delegated any authority to extend or waive the grace period. The 180-calendar deadline has been applied to all applications with preapplications deemed complete prior to the effective date of the interim ordinance, including two others in addition to the Sawtooth Serenade development. Had the Final Design Review application been submitted within that grace period timeframe, staff would accept and process the application accordingly with Section 3 of the interim ordinance. It was not.

Thank you for your time and attention to this matter. As noted in my email dated August 8, 2023, the city can process this as a new application, starting with a new pre-application. This letter constitutes a final Administrator Determination with respect to this submission. This Determination may be administratively appealed under Ketchum Municipal Code 17.144. Please be advised, if desired, an appeal of this Determination must be filed within 15 days pursuant to KMC 17.144.030.

Please advise as to how you would like to proceed. You can reach me at mlanders@ketchumidaho.org or at 208-727-5085.

Sincerely,

Morgan Landers, AICP
Director of Planning and Building

CC: Matthew Johnson, City Attorney
Jim Laski, Lawson Laski Clark, PLLC

City of Ketchum

Appeal Attachment B:

Appeal Application and Appeal Brief

City of Ketchum
Planning & Building

OFFICIAL USE ONLY	
File Number:	P22-056A
Date Received:	9.7.23 4:23pm
By:	SMcCollum
Fee Paid:	$2175
Approved Date:	
Denied Date:	
By:	

Notice of Appeal

Submit completed application and documentation to planningandzoning@ketchumidaho.org Or hand deliver to Ketchum City Hall, 191 5th St. W. Ketchum, ID If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the City website at: www.ketchumidaho.org and click on Municipal Code. You will be contacted and invoiced once your application package is complete.

Note: The Appellant shall submit an amount to cover the cost of giving notice, as applicable in the Fee Schedule, and provide a transcript within two (2) days after the Planning and Building Department provides the Appellant with an estimate for the expense of the same. In the event the fee is not paid as required, the appeal shall not be considered filed.

OFFICIAL USE ONLY	
Date Appeal Received: 9/7/23	Date Notice Published:
Appeal Fee:	Transcript Fee:
Date Paid:	Date Paid:
Date Appellant Notified of Estimated Transcript Costs and Notice:	Mailing Fee:
Date of Appeal Hearing:	Date Paid:
Action(s) Taken/Findings:	
APPEALLANT	
Name of Appellant: Scott and Julie Lynch & Yahn Bernier and Elizabeth McCaw & Distrustful Ernest Revocable Trust	Phone Number: 425-828-0333
Address: Lynch – 409 5th Ave W, Kirkland, WA 98033 Bernier – 321 82nd Ave NE, Medina, WA 98039	Fax Number or Email: scott@lynchclan.com and yahnbernier@valvesoftware.com
REPRESENTATIVE	
Name of Representative: Thielsen Architects – Dave Theilsen. Rep. for appeal James R. Laski.	Thielsen Phone Number: 425-828-0333 Laski Phone Number: 208-725-0055
Thielsen Address: 720 Market Street, Suite C, Kirkland, WA 98033 Laski Address: 675 Sun Valley Rd A, Ketchum, ID 83340	Fax Number or Email: dave@thielsen.com; jrl@lawsonlaski.com
APPLICATION	
Application Being Appealed: Denial of Applicants' Design Review Application	
Explain How You Are an Affected Party: Owners of the Project and their Representatives	
Date of Decision or Date Findings of Fact Were Adopted: Planning Administrator Determination made August 24, 2023.	
SUBMITTAL INFORMATION	
This Appeal is Based on The Following Factors (set forth all basis for appeal including the particulars regarding any claimed error or abuse of discretion):	
1. Applicant's Project Vested Prior to the Adoption of Ordinance 1234; therefore Ordinance 1234 Does Not Apply	
2. The City has Confirmed Several Times on the Record that Ordinance 1234 Did Not Apply to the Project	
3. City is Estopped from Changing its Position re Vesting	
4. Even if Ordinance 1234 Did Apply, the 17-Day Delay in Meeting the Deadline Should Be Excused as It Was Caused in Part by Delays in Receiving Responses From the City and Its Agents	

See Additional Attached Letter Dated 9/7/2023

If you have attached additional pages, please indicate the number of pages attached 21

Signature of Appellant or Representative

Date 9-7-2023

JAMES R. LASKI
MEMBER

JRL@LAWSONLASKI.COM

LAWSON LASKI CLARK
ATTORNEYS AT LAW

City of Ketchum
Planning & Zoning Commission
c/o Morgan Landers, Planning Director
191 5th Street West,
Ketchum, ID 83340

By Hand Delivery and Email: *MLanders@ketchumidaho.org*

September 7, 2023

Re: Appeal of Administrative Determination
Sawtooth Serenade Project
Our File No.: 12690-001

Ladies and Gentlemen:

We represent Scott and Julie Lynch, Yahn Bernier and Beth McCaw, and Distrustful Ernest Revocable Trust ("Applicants") with respect to the Design Review Application for the Sawtooth Serenade development located at 260 N First Avenue, in Ketchum, Idaho. This letter will serve as to supplement the Notice of Appeal filed on behalf of the Applicants with respect to the Planning Administrator Determination made August 24, 2023 ("Determination Letter") regarding the applicability of Interim Ordinance 1234 (in particular Section 3) to the Sawtooth Serenade Development ("Project").

As you are aware, the Project vested prior to the adoption of Ordinance 1234 and thus, Ordinance does not apply to the Project. However, the Planning Administrator determined that Ordinance 1234 does apply to the Project and that the Applicants' Design Review Application, submitted on behalf of the Applicants on August 7, 2023, was not timely filed. This determination came after Applicant's Preapplication Design Review was "deemed complete" and not within the purview of the interim ordinance on October 17, 2022. The determination concludes that the required step of preapplication design review does not vest any specific rights and that requires preapplication design review is a wholly separate and unrelated application for design review in Ketchum's permitting scheme. As such, she concluded that Applicants' Design Review application would not be considered by the City as it was not submitted to the City with 180

calendar days of the last Preapplication Design Review meeting of the Commission, which she calculated to be Friday July 21, 2023.[1]

Applicant appeals the Administrative Determination on the grounds that it:

- violates the law regarding vesting of applications;
- is contrary to the express provisions of Ordinance 1234;
- is contrary to the prior written and stated actions of the City;
- is made based on unlawful procedure
- is arbitrary and capricious and an abuse of discretion; and
- is in excess of the authority of the Administrator.

The basis for the foregoing are set forth below.

A. Legal Standards

Pursuant to Title 17 of City of Ketchum Zoning Code (hereinafter referred to as the "Ordinance"), the authority of the Commission in this hearing on appeal is to consider the determination of the Administrator and the notice of appeal as well as the oral and written legal arguments of the Appellant and the Administrator. The Commission may then affirm, reverse or modify, in whole or in part, the decision of the Administrator. See Ketchum Code § 17.144.010.

In considering this appeal, it should be noted that the enabling legislation for the Commission, and Ketchum's Zoning Ordinance itself, is the Local Land Use Planning Act, I.C. § 67-6501 et seq. ("LLUPA"). The first listed purpose of the LLUPA is to "protect property rights while making accommodation for other necessary types of development . . . ." I.C. § 67-6502(a) (emphasis added). Among the statutory duties of the Commission is to insure that "land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values, or create unnecessary technical limitations on the use of property . . . ." I.C. § 67-6508(a).

B. Applicant's Project Vested Prior to the Adoption of Ordinance 1234; therefore Ordinance 1234 Does Not Apply

In its Determination Letter, the City contends that Ordinance 1234 applies to the current Application because "Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees and processes." However, the Design Review Chapter of the Zoning Code ***requires*** Preapplication Design Review on any lot or lots totaling 11,000 square feet or more. Code §17.96.10.C.1. Accordingly, for the Sawtooth Serenade Project, Preapplication Design Review was the first required step to achieving Design Review Approval and a subsequent Building Permit. While each of these steps

[1] The Administrator's determination was first emailed to the Development team on August 8, 2023. Following communication with the City Attorney, Matthew Johnson, it was agreed a more formal determination would be prepared, ultimately resulting in the August 24, 2023 determination letter which is the subject of this Appeal.

require separate applications[2] and fees, they are all a continuation of the same permitting process for the Project. As such, if Ordinance 1234 does not apply to one stage, it does not apply to any stage of the permitting process.

Idaho law is clear that a land use applicants rights are "measured under the law in effect at the time of the application." *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County, 168 Idaho 705, 717(2021) quoting S. Fork Coal. v. Bd. of Comm'rs of Bonneville Cnty., 117 Idaho 857, 861, 792 P.2d 882, 886 (1990) (citations omitted); see also Taylor v. Canyon Cnty. Bd. of Comm'rs, 147 Idaho 424, 436, 210 P.3d 532, 544 (2009).*

> The policy undergirding this rule is "to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application." Taylor, 147 Idaho at 436, 210 P.3d at 544 (citation omitted). Thus, the rule is an outgrowth of the well-established principle that legislation does not ordinarily have retroactive effect. See Cooper v. Bd. of Cnty. Comm'rs of Ada Cnty., 101 Idaho 407, 412, 614 P.2d 947, 952 (1980); see also Ben Lomond, Inc. v. City of Idaho Falls, 92 Idaho 595, 601, 448 P.2d 209, 215 (1968) (reasoning that the rule to apply the ordinance in effect at the time of the application is "in accord with the general rule that legislation generally acts prospectively only"). *Id.*

Despite the fact of a separate application form, for a project like Sawtooth Serenade, Preapplication Design Review is a required, necessary part of the Design Review Approval Process, and as such, vests the Application. Indeed, the submittal requirements for Preapplication Design Review are identical to those of Design Review. Code §17.96.10.C.3. Acknowledging that the permitting process consists of a continuum of applications, the Administrator, in her presentation to the Commission on January 24, 2023, advised your Commission that "***this project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date.***" (Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22). Because Ordinance 1234 did not apply Applicant's Preapplication Design Review Application, it does not apply to the entire Design Review process, as they are both required steps in the same permit application process.

Notwithstanding the foregoing, and despite acknowledging on the record that the Project does not come under the purview of Ordinance 1234, in point 2 of the Determination Letter, the Administrator argues that "the preapplication design review step is not designed to vest any specific right or design." (Determination Letter at ¶2). This is purportedly because there is no vote for approval made by the Commission. While this may make some sense for an applicant who choses to proceed with voluntary preapplication design review, it is not only illogical, but contrary to the law where

[2] It should be noted that the Preapplication Design Review application form and the Design Review application form are identical. For this Project, the City staff hand wrote "pre-app" on the printed Design Review application to make the distinction.

Preapplication Design Review is a required and necessary step in the Design Review Approval Process. Further, as the minutes for the January 24, 2023 Commission meeting show, the Commission did take action on the Application by voting to recommend that the Application proceed to Design Review.

In the Determination Letter, the Administrator characterizes the newly adopted 180 period to file a Design Review Application set forth in Section 3 of Ordinance 1234 as a "grace period", apparently applicable to previously recommended (but apparently not vested) Preapplication Design Review Applications (¶3 of the Determination Letter).

But, to the extent the 180 day "grace period" described in Section 3 of Ordinance 1234 applied to a Preapplication Design Review Application, it follows that the Preapplication Design Review Application did actually "vest" specific rights, at least for 180 days under the Interim Ordinance. Thus, the Administrator's argument supporting the application of Ordinance 1234 actually supports the conclusion, consistent with the City's prior statements, that the Project was vested under the law in effect prior to the Interim Ordinance.

Further, there is absolutely nothing in Section 3 of Ordinance 1234 that specifies or even implies that the 180-day period was meant to be a "grace period" applicable to "developments"[3] deemed complete prior to the adoption of the Ordinance. Rather, the only logical (and legal) interpretation of Section 3 of the Interim Ordinance is that a development that (i) is deemed complete for vesting purposes after the effective date of Ordinance 123, and (ii) is required to (or choses to) go through the preapplication design review process must then submit their design review application within 180 days of the last Commission review meeting.

With respect to the present Project, the Project's (or development's) application was deemed complete prior to the effective date of Ordinance 1234. Accordingly, as a matter of law, the 180-day time limit for filing a Design Review Application following Preapplication Design Review does not apply.

C. The City has Confirmed Several Times on the Record that Ordinance 1234 Did Not Apply to the Project

As this Commission is well aware, Applicants tracked the adoption of Interim Ordinance 1234 as well as the Planning Department's confirmation of the "completeness" of their Preapplication Design Review application in advance of the City's adoption of the Interim Ordinance. It is fair to say that the vesting provisions of the new ordinance were drafted with this Project in mind.

Section 1 of Ordinance 1234 expressly states: "The following interim regulations and standards apply to any Pre-Application Design Review . . . deemed complete for vesting purposes **after** the effective date of this Ordinance . . .". Ordinance 1234 § 1.

[3] "Developments" is the term used in Section 3 of Ordinance 1234.

Applicant's Preapplication Design Review was "deemed complete" on October 17, 2022, prior to the effective date of Ordinance 1234.

> At this time, the application has been deemed complete and will be scheduled for the next available hearing.

(See Completeness Review Letter attached as Exhibit _1_).

The issue of substantial completion and vesting was also confirmed through email correspondence between City Attorney Matt Johnson and me in the days leading up to the adoption of Ordinance 1234:

Jim –
I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson
WHITE PETERSON GIGRAY & NICHOLS, P.A.
Canyon Park at the Idaho Center
5700 E. Franklin Rd., Ste. #200
Nampa, ID 83687-7901
208.466.9272 (tel)
208.466.4405 (fax)
mjohnson@whitepeterson.com

From: Jim Laski <jrl@lawsonlaski.com>
Sent: Tuesday, October 11, 2022 9:42 AM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application (at 260 N 1st Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.
Thank you
Jim

LAWSON LASKI CLARK

JAMES R. LASKI
Lawson Laski Clark, PLLC
675 Sun Valley Road, Suite A
PO Box 3310
Ketchum, ID 83340
208-725-0055 Phone
208-725-0076 Fax

(See email correspondence attached as Exhibit _2_).

Even more clear and succinctly, the Staff Report for the Preapplication Design Review Meeting held January 24, 2023, issued on or about January 19, 2023, states that this application is not subject to Interim Ordinance 1234:

> The application is not subject to Interim Ordinance 1234 as the application was deemed complete prior to the effective date of the ordinance.

(Staff Report for January 24, 2023 Meeting at Pg. 2, attached as Exhibit 3).

Finally, and to the point that required Preapplication Design Review vests the entire Design Review Application Process, 2 hours and 31 minutes into the Preapplication Design Review Meeting of January 24, 2023, Planning Administrator Morgan Landers states:

> " . . . Staff also provided a review of the project's compliance with interim ordinance 1234. ***This Project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date . . ."***

(Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22).

Quite simply, if Ordinance 1234 does not apply to this Project, then the 180-day provision in Section 3 of the Ordinance also does not apply.

Based on the forgoing, it is abundantly clear that the Project (or Development) was vested under the Zoning Code in effect on October 17, 2022 (prior to the adoption of Ordinance 1234). Under the Design Review provisions in effect at the time Applicant's Preapplication Design Review was deemed complete, there was no time limitation for the filing of a Design Review Application following the Commission's recommendation to advance the Project to Design Review.

D. City is Estopped From Changing Its Position re Vesting

As outlined above, the Determination Letter is clearly at odds with the position taken by the City earlier in the Design Review Application Process with respect to the vesting of the Project to the detriment of the Applicants, which is contrary to law on the grounds of promissory estoppel.

"Quasi-estoppel prevents a party from changing its legal position and, as a result, gaining an unconscionable advantage or imposing an unconscionable disadvantage over another." *Hollingsworth v. Thompson*, 168 Idaho 13, 22–23, 478 P.3d 312, 321–22 (2020); *Garner v. Bartschi,* 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). "Unlike equitable estoppel, quasi-estoppel does not require an undiscoverable falsehood, and it requires neither misrepresentation by one party nor reliance by the other." *Hollingsworth*, 168 Idaho at 23, 478 P.3d at 322. Quasi-estoppel applies when:

> (1) the offending party took a different position than his or her original position and (2) either (a) the offending party gained an advantage or caused a

> disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in.

Id. (quoting *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 136, 456 P.3d 201, 215 (2019)).

The facts here are in line with *Hollingsworth*, where the Court found quasi-estoppel applied when a hospital changed its position by holding itself out as a private corporation in its business filings with the Idaho Secretary of State, but then later claimed it was a governmental entity when sued. The public filings led the plaintiffs to believe the hospital was a private corporation, causing them to disregard the ITCA notice deadline to the benefit of the hospital. 168 Idaho at 23, 478 P.3d at 322. Likewise, in the present situation, the City cannot now change its position regarding vesting to preclude Applicant from proceeding under the under the prior Code provisions.

E. Even if Ordinance 1234 Did Apply, the 17-Day Delay in Meeting the Deadline Should Be Excused as It Was Caused in Part by Delays in Receiving Responses From the City and Its Agents

It should be noted that policy behind project vesting in Idaho is designed specifically to prevent the types of action on display from staff in the processing of this application.

> The policy undergirding this rule is "to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application." *Taylor, Supra.*

With respect to the present Project, in which Design Review was submitted 197 days following the Commission's recommendation to proceed to Design Review. It doesn't take a conspiracy theorist to be skeptical as to the unexplained delays in scheduling meetings with staff due to staff unavailability, three weeks in April and May (April 24 to May 17) and in receiving required responses from City's contractors – four weeks with Michael Decker re street lighting and seven weeks with Clear Creek Disposal (June 16 to August 2) re garbage pickup location, despite diligent efforts by the Applicant team.

Given that Applicant's submittal was less than three weeks after the alleged "180-day grace period," the fourteen weeks of delays experienced by Applicant's development team raise legitimate concerns of abuse of process should the City not reconsider its position on the applicability of Ordinance 1234.

Conclusion

Based on the foregoing, it is clear the Administrative Determination violates Idaho law regarding the vesting of land use permits, is contrary the express provisions

of Ordinance 1234 and the prior written and stated actions of the City with respect to this Project. Combined with the foregoing, the unexplained delays create an unlawful procedure in the processing of Permit Application. As such the Administrator's action in making the determination is arbitrary and capricious and a clear abuse of discretion – designed to stop the Project. As such, we respectfully urge the Commission to reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC

James R. Laski

Cc: clients
Matthew A. Johnson, Esq. (by email: mjohnson@whitepeterson.com)

City of Ketchum
Planning & Building

October 17, 2022

Thielsen Architects
Attn: Dave Thielsen - Architect

Galena Engineering
Attn: Matt Smithman – Civil Engineer

[Sent via email]

Re: 260 N 1st Ave – Preapplication Design Review - Completeness Review

Dear Mr. Thielsen and Mr. Smithman,

The City of Ketchum Planning and Building Department received your resubmittal of the preapplication Design Review application on October 10, 2022. The resubmittal was in response to comments issued by city staff on September 16, 2022. At this time, the application has been deemed complete and will be scheduled for the next available hearing. Please see below for comment resolution documentation and additional comments from the city's water department.

Planning Department

General Zoning Comments

1. *Comment:* Based on the slope of the lot, it is correct to apply the term "basement" to the project and remove that square footage from the building. However, staff will need to verify that the methodology used for establishing what area falls under the definition of "basement" is correct.
    a. *Required Action:* Please provide a diagram in schematic or plan and section views showing how the invisible plane was delineated and what square footage is included in the "basement" definition and what constitutes the 954.16 SF of gross floor area remaining.
    b. ***Staff Response:*** **Comment resolved. Staff reviewed the overlap of the "Basement" definition with the "Underground Parking" definition and have determined that the calculation conducted by the applicant is correct.**
2. *Comment:* The Gross Floor Area (GFA) and Net Floor Area (NFA) calculations on Sheet A1.1 don't appear to match the net and gross SF outlined on Sheets A1.2-A1.4. For the ground level, the gross floor area on Sheet A 1.1 and A1.2 indicate a net floor area of 5,680 SF, however it is unclear what that square footage includes. Also, for Sheets A1.3 and A1.4, the GFA outlined is consistent with Sheet A1.1 but it is unclear what constitutes the NFA for these levels and what has been removed since the stair tower and elevator have already been removed.
    a. *Required Action:* Please provide Floor Area diagrams for each floor that outlines what is included in the GFA and what is not. The best way to show this is by using shading or coloring to color code each area. In the diagrams, please also include square footages.
    b. ***Staff Response: Comment Resolved.***
3. *Comment:* Sheet A1.1 shows GFA of the building, however, specific square footage of each unit and each space on the ground floor is necessary to verify parking requirements for all uses.
    a. *Required Action:* Please revised Sheet A1.1 to include a summary of square footages by use that outlines each residential unit, parking, storage, The Commons, and the Commons Court and Event Space
    b. ***Staff Response: Comment Resolved.***

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4. *Comment:* The cover letter submitted as part of the project outlines that the intent of the ground floor Commons and Commons Court and Event Center is to be a "gathering place....which would be used for fundraising and philanthropic events". The letter does not address the use of the space when those events are not happening. Staff presumes this space would be for the benefit of the residents, family and guests but not the public, however, this is a deduction based on the cover letter and clarification is necessary. Staff is also unclear whether the fundraising and event space is only the Commons Court and Event Space, or if it includes the Commons as well. Additionally, Sheet A1.1 outlines under "Required Parking" that the space is classified as "Food Service". Staff does not believe the proposed use meets the definition of food service, but rather an "Assembly, place of". The floor plans do not show a location within the space where food is being prepared. This is a key element of a "Food Service" use. The definitions of referenced uses are noted below:

   Food service: An establishment where food and drink are prepared, served and consumed on site with associated outdoor dining, or distributed to customers through take out, delivery or catering. Typical uses include, but are not limited to restaurants, cafes, delis, catering services and brewpubs that do not distribute beer produced for off-site consumption.

   Assembly, place of: The use of land for a meeting place where persons gather together for purposes of attending civic, social, religious functions, recreational events or entertainment performances on a regular or recurring basis including, but not limited to, religious institutions, banquet facilities, funeral homes, theaters, conference centers, stadiums, or indoor or outdoor recreational facilities, but excludes a "cultural facility" as defined by this chapter. A gathering of less than 25 persons shall not be considered a place of assembly provided the gathering is accessory and incidental to the principal use.

   Assembly uses require the approval of a Conditional Use Permit in the CC-2 zone district to ensure any impacts from events held in the space are mitigated through certain conditions.

   a. *Required Action:* Please provide an expanded narrative as to the function of the ground floor space and justification for its classification as Food Service. Please provide clarity on the function of the space when not being used for events. Please also provide clarity on what portion of the space will be used for events. Once additional information is provided, staff will make a determination on the use proposed.

   b. Staff Response: Comment Resolved.

5. *Comment:* It generally appears that the project is in conformance with setback requirements, however, the methodology used appears that there may be area where square footage is calculated toward both facades' setback square footage, which is not the correct methodology. In general, square footage should be counted toward one side other the other using reasonable extensions of the building façade to delineate space. Please see the attached example from another project for reference. The front façade along 1st Ave had a portion of the building on the south end significantly set back from the street. In this instance, the main edge of the building façade was carried to the property line to delineated what was included in the setback square footage (area in black). As you can see, the two setback calculations do not overlap (black and red areas).

   a. *Required Action:* Please revise Sheets A1.2-1.4 delineate the square footage calculation with independent calculations for each façade. Staff has provided an attached draft of how the calculations should be delineated for the ground floor.

   b. Staff Response: Comment Resolved.

6. *Comment:* Sheet A7 outlines the proposed building height at the front and the rear of the building and the guardrail that extends above the 42-foot height maximum. Although the code reference in Note 10 is correct in relation to height, the city categorizes "perimeter walls that enclose roof top decks that exceed the maximum building height limit as a "fixed amenity" that must be set back 10 feet from the building façade per KMC 17.12.040. Built-in hot tubs are also considered "fixed amenities" that must be set back. It is unclear from Sheet A6 what the setback is to the hot tub from the building façade at that location.

a. *Required Action:* Please revise the plans to reflect the required setback for all roof top decks. Please also revise Sheet A6 to provide a dimension from the building façade to the hot tub location.

b. Staff Response: Comment Resolved.

7. *Comment:* The 3-foot setback along the alley shows wood fencing to screen the transformer and condensers, electric meters/CT panel, and raised landscape bed. The 3-foot setback is intended to be a clear zone to assist in snow management operations in the winter, therefore these items need to be relocated from within the 3 feet setback along the alley.
    a. *Required Action:* Please revise the site plans to reflect revisions as noted above to avoid future unintended damage of property due to snow management operations. Please also provide a letter from Idaho Power approving the location of the transformer with associated clearances and proposed electric meters.

    b. Staff Response: Comment Resolved.
8. *Comment:* Depending on final use determination for the ground floor space, the dumpster and one recycling bin will not likely be adequate for the proposed use when special events occur. Once a use determination is made for the ground floor space, a letter of approval of the garbage service based on the use will be required from Clear Creek Disposal.
    a. *Required Action:* This comment is for information only; no action is required at this time. Upon use determination, please provide a letter from Clear Creek Disposal approving the garbage configuration.

    b. Staff Response: Comment Resolved.
9. *Comment:* Sheet A2 shows the dimensions of the parking garage area including dimensions of the parking spaces and width of the drive aisle, however, the dimensions of the 5 spaces on the Sun Valley Rd side of the parking area are noted to not meet minimum requirements and the drive aisle width does not appear to meet the 24-foot minimum between the stair and bump out where the "Trolly" area is noted. Drive aisle between stairwell and trolley/bump out area needs to also be 24 feet. Compact spaces are only permitted with certain types of uses and only when the total number of required spaces is 10 or more. If parking is proposed, it must meet the minimum dimensional standards.
    a. *Required Action:* Please revise the ground floor layout to demonstrate that all parking spaces meet the minimum dimensional standards and that the drive aisle width of 24 feet can be met for the full length of the drive aisle.

    b. Staff Response: Comment Resolved.
10. *Comment:* Construction Management Plans (CMP) are no longer required at the time of design review. Staff has not reviewed the submitted CMP. Comments on the CMP are provided at the time of building permit application for a project.

    ***a. Required Action:* No action required at this time, this comment is for information only.**
11. *Comment:* Sheets EL5-8 show the foot candles at the property boundary, however, the sheets do not show foot candles outside the property line. Staff is concerned that there may be light trespass across the property boundary into the public right-of-way as there are numerous locations along the perimeter that have medium to high foot candle measures. For instance, foot candles measuring 1.0 and 2.8 adjacent to the north property boundary and alley measurements of 9.1 and 8.8. There may be no light trespass across the property boundary per KMC 17.132.030 stating "All existing and/or new exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting." Figure 1 in the KMC only refers to light emitting from inside buildings, not exterior lighting.
    a. Required Action: Please revise the photometric study to include foot candle measurements just outside the property boundary for verification there is no light trespass. Please note that all exterior lighting including planter, tree, and water feature lights should be included in the calculations.

    b. Staff Response: Comment Resolved.
12. *Comment:* Per KMC 17.132.030.F "Uplighting. Uplighting is prohibited in all zoning districts, except as where permitted in this chapter." Staff does not believe that the "Lip of Planter" lighting or the water

feature lighting fully complies with the limitation on uplighting. As outlined in KMC 17.132.030.H.2 "All exterior lighting fixtures shall be full cutoff fixtures with the light source fully shielded, except as exempted in this chapter." As such, light fixtures must be fully shielded as to not cast light up or sideways, always casting light down as illustrated in Figure 2. For instance, the "Under Cap Lighting" is compliant as it is fully shielded based on the image.

   a. *Required Action:* Please revised the lighting proposed to comply with the dark sky compliant requirements and fixture guidelines.
   b. Staff Response: Comment Resolved.

13. *Comment:* Stair tower lighting that must remain consistently illuminated 24 hours per day due to building code requirements must be mitigated with glazing or other treatments to windows that limit the amount of light emitting from the building overnight.
   a. *Required Action:* Please provide clarity on whether any glazing is proposed for the central stair tower and whether consistent light will emit from this feature in all hours of the evening.
   b. Staff Response: Comment Resolved.
14. *Comment:* The street light illumination levels and placement of lights may not be in the correct location based on current discussions with the City Engineer and Planning departments.
   a. Required Action: As this is a preapplication design review. No further action on street light location is required at this time, however, final street light location will be determined at the time of final design review if the project moves forward.
   b. Staff Response: Comment Resolved.

Design Review Comments

The following comments are provided for consideration by the applicant. Revisions to the plans are not required, but recommended, unless otherwise noted. If revisions are not made, the following comments will be provided to the Planning and Zoning Commission for their consideration and feedback.

1. *Comment:* Per KMC 17.96.060.B.2 and 3, "2. For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways." and "3. For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows." These two standards serve to demonstrate the importance of creating an active and interesting pedestrian environment. Landscaping is encouraged, but not if it obscures views into windows. Staff has concerns that the ground floor façade of the building along Sun Valley Rd and the portion of N 1st Ave closest to Sun Valley Rd do not meet the intent of this standard as the architectural design of the project does not engage with pedestrians and serves more to privatize the space for residents and guests that create an environment that is active and interesting for pedestrians. More specifically, the landscape planter boxes that wrap the corner where the outdoor area is are 3-feet in height and the proposed plantings in the landscape boxes are shrubs and hedge like species that can grow quite tall over time. Additionally, the façade facing Sun Valley Rd has minimal storefront characteristics with transparent glass. Staff understands that the interior program of the building is driving the façade configurations, however, the proposed façade on the Sun Valley Rd side of the project does not meet the city's design review objectives. Sun Valley Rd is one of our more heavily traveled corridors by pedestrians. This intersection is the location of two new projects in recent years that intensely serve to engage pedestrians with the Maude's retail and coffee shop on one corner and a new office building on another that has well-articulated store front facades on both street frontages. The Commission will be keenly focused on continuing the design success of the other projects as this is such an important intersection within the downtown.
   a. *Required Action:* Staff recommends the applicant consider revising the landscape planter and plantings proposed around the outdoor gathering area to create a more engaging, less privatize program for the outdoor space. Additionally, staff recommends the applicant evaluate ways to integrate additional transparency onto the Sun Valley Rd side of the project. Staff recommends an evaluation of bringing the ground floor uses around to the Sun Valley Rd side of the building.

b. ***Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.***

2. *Comment:* Per KMC 17.96.060.B.1 "Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front facade." The Commission has paid special attention to interior walls that are exposed due to adjacent buildings that are of smaller scale than the proposed project. This is especially important when adjacent buildings are one-story structures adjacent to a three-story structure. Although staff believes the setback nature of the project mitigates some of these concerns, staff does have concern about the lack of material variation on the east elevation shown on Sheet A8. Include the outline of the adjacent buildings on the elevations for context
    a. *Required Action:* As part of the resubmittal materials, please revise the elevation on Sheet A8 to show the outlined of the adjacent building for reference. Staff recommends the applicant consider some material variations to break up the east elevation portions of the building that are exposed.
    b. ***Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.***

As a follow-up to the completeness letter issued on September 16, 2022, staff received confirmation from the water department reviewed the proposed plans and provides the following comments:

- A fire line and two separate services off the fire line with be required. The services must be engineered for sizing.
- The project is also required to abandon the existing service in the alley behind the Durance training building.

No action is required at this time, these comments are for informational purposes.

Please do not hesitate to email or call should you have any questions.

Sincerely,

Morgan Landers, AICP
Senior Planner
City of Ketchum Department of Planning and Building

Felicia M. Bauer

From: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Sent: Tuesday, October 11, 2022 11:07 AM
To: Jim Laski
Subject: RE: Ketchum Ordinance 1234

Jim –
I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson
WHITE PETERSON GIGRAY & NICHOLS, P.A.
Canyon Park at the Idaho Center
5700 E. Franklin Rd., Ste. #200
Nampa, ID 83687-7901
208.466.9272 (tel)
208.466.4405 (fax)
mjohnson@whitepeterson.com

From: Jim Laski <jrl@lawsonlaski.com>
Sent: Tuesday, October 11, 2022 9:42 AM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application (at 260 N 1st Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.
Thank you
Jim

LAWSON LASKI CLARK

JAMES R. LASKI
Lawson Laski Clark, PLLC
675 Sun Valley Road, Suite A
PO Box 3310
Ketchum, ID 83340

EXHIBIT 2 143

208-725-0055 Phone
208-725-0076 Fax

From: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Sent: Monday, October 03, 2022 11:06 AM
To: Jim Laski <jrl@lawsonlaski.com>
Subject: RE: Ketchum Ordinance 1234

Jim –
We will be tweaking the applicability language; I'm still working on the specifics. With respect to your clients' project specifically, the practical effect is that your preliminary design review application (which it sounds like is substantially completed) would be vested under the current ordinance – not the interim.

Matt

Matthew A. Johnson
WHITE PETERSON GIGRAY & NICHOLS, P.A.
Canyon Park at the Idaho Center
5700 E. Franklin Rd., Ste. #200
Nampa, ID 83687-7901
208.466.9272 (tel)
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mjohnson@whitepeterson.com

From: Jim Laski <jrl@lawsonlaski.com>
Sent: Saturday, October 1, 2022 6:42 AM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: Ketchum Ordinance 1234

Hi Matt –
I was hoping I might get some feedback regarding your thoughts on the proposed language relating to the applicability of the new ordinance on pending applications before Monday's meeting as we discussed. Please let me know where you stand so I can prepare my comments for city council.
Thanks
Jim

LAWSON LASKI CLARK

JAMES R. LASKI

Lawson Laski Clark, PLLC
675 Sun Valley Road, Suite A
PO Box 3310
Ketchum, ID 83340
208-725-0055 Phone
208-725-0076 Fax

From: Jim Laski
Sent: Monday, September 26, 2022 2:32 PM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: Ketchum Ordinance 1234

Matt: Here are some cases citing the law re vesting in Idaho – it seems pretty clear to me. If you have something different, please let me know.
Thank for your time today.
Jim

LAWSON LASKI CLARK

JAMES R. LASKI

Lawson Laski Clark, PLLC
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PO Box 3310
Ketchum, ID 83340
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From: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Sent: Thursday, September 22, 2022 2:29 PM
To: Jim Laski <jrl@lawsonlaski.com>
Subject: RE: Ketchum Ordinance 1234

Works for me.

Matthew A. Johnson
WHITE PETERSON GIGRAY & NICHOLS, P.A.
Canyon Park at the Idaho Center
5700 E. Franklin Rd., Ste. #200
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208.466.9272 (tel)
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mjohnson@whitepeterson.com

From: Jim Laski <jrl@lawsonlaski.com>
Sent: Thursday, September 22, 2022 12:15 PM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: Ketchum Ordinance 1234

How about 2:00 Monday?

LAWSON LASKI CLARK

JAMES R. LASKI
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675 Sun Valley Road, Suite A
PO Box 3310
Ketchum, ID 83340
208-725-0055 Phone
208-725-0076 Fax

From: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Sent: Thursday, September 22, 2022 10:44 AM
To: Jim Laski <jrl@lawsonlaski.com>
Subject: RE: Ketchum Ordinance 1234

Jim –
I'm pretty booked the rest of this week, but fairly flexible on Monday anytime between 9 and 11:30, or 2-4. If there's a time that works in there for you on Monday let me know and we can connect.

Matt

Matthew A. Johnson
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mjohnson@whitepeterson.com

From: Jim Laski <jrl@lawsonlaski.com>
Sent: Thursday, September 22, 2022 10:37 AM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: Ketchum Ordinance 1234

Hi Matt –
Any chance you might have a few minutes to discuss the proposed new ordinance and specifically with respect to the language relating to its applicability to already submitted applications? Let me know
Jim

LAWSON LASKI CLARK

JAMES R. LASKI
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208-725-0055 Phone
208-725-0076 Fax

City of Ketchum

ATTACHMENT D:

Interim Ordinance 1234 Analysis

City of Ketchum
Planning & Building

SAWTOOTH SERENADE – 260 N 1ST AVE

CONFORMANCE WITH INTERIM ORDINANCE 1234

Interim Ordinance 1234 was approved by the Ketchum City Council on October 17, 2022 and published in the paper on October 19, 2022 (the effective date). The preapplication design review application for "Sawtooth Serenade" was received and deemed complete prior to the effective date of the ordinance and therefore the ordinance does not apply to this application. However, as this is an interim ordinance, staff is providing the analysis below for information only so the Commission can see how the ordinance would apply to projects within the Community Core. This information is not to be used in evaluating the proposed development.

- **Minimum Residential Densities (Section 4) - NOT MET -** The application would be subject to the minimum density requirements as the development exceeds the base permitted FAR of 1.0:
    - The proposed development has a gross floor area of 23,942 SF and does not include any commercial space, therefore it is considered to be 100% residential.
    - The total lot area of the subject property is 16,507 SF which equates to three Ketchum townsite lots of 5,500 SF each. Based on the interim ordinance and the lot size, the project would be required to provide a minimum of 21 residential units. The proposed project has two residential units. Here is the equation for calculating minimum density:
        - (16,507 SF / 5500 SF) = 3.00 x 7 = 21
        - 7 is the number of residential units required per 5500 SF for 100% residential developments
- **Consolidation of Lots (Section 5) - N/A** - The applicant is not requesting a consolidation of lots as the lots have already been consolidated. These standards would not apply.
- **No Net Loss of Units (Section 6) – N/A -** The subject property is currently vacant, therefore there is no net loss of units with the proposed development.
- **Parking for Retail (Section 7) – POTENTIALLY -** No retail is proposed for the project. However, the interim ordinance would require ground floor commercial facing the street, for this property, which could benefit from the parking exemption.
- **Parking for Office (Section 8) – POTENTIALLY -** No office is proposed for the project. However, the interim ordinance would require ground floor commercial facing the street, for this property, which could benefit from the parking exemption.
- **Ground floor Commercial Facing the Street (Section 10) – NOT MET -** The interim ordinance would require commercial uses on the ground floor of the project facing the street. The proposed project includes ground floor parking, storage, and recreation space only for the residential units which is classified as "recreation facility, residential" per the district use matrix in KMC 17.12.020. The residential recreation facility is

permitted in the CC as an accessory use to the residential uses and are not considered a commercial use. The current development would not meet this requirement.

- **Development Standards within the CC-2 (Section 11)**:
    - **% of gross floor area for commercial (Section 11.a) – NOT MET -** No commercial is proposed for the project, however, the project would be required to comply with this requirement under the interim ordinance as Section 10 requires ground floor commercial facing the street. The current project would not meet this requirement.
    - **Community Housing in basement (Section 11.B) – N/A -** the proposed development does not propose on-site community housing, therefore this standard is not applicable.
    - **Size of residential units (Section 11.C) – NOT MET -** The proposed development includes two residential units that both exceed the 3,000 square foot maximum. One unit is 8,454 net square feet and the other is 8,819 net square feet. The proposed development does not meet this requirement.
    - **Parking Maximums (Section 11.D) – NOT MET -** The proposed development would require 4 parking spaces and 5 parking spaces are being proposed. The development would not meet this criterion as it is providing one additional parking space than what is required.
- **Comprehensive Plan Conformance (Section 13) – NOT MET**
    - Staff provided feedback in the staff report as to the proposed uses and placement of those uses within the project. Staff believes that if the proposed project met the design review criteria and the requirements of the interim ordinance, many of the goals and objectives of the comprehensive plan would be met.

City of Ketchum

Appeal Attachment C: Administrator Response to Appeal Brief

CITY OF KETCHUM
Planning & Building
office: 208.726.7801
planningandbuilding@ketchumidaho.org
P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340
ketchumidaho.org

MEMORANDUM

To: City of Ketchum Planning and Zoning Commission
From: Morgan Landers, AICP – Director of Planning and Building
Date: November 3, 2023
Re: Administrator Reply Brief for the Sawtooth Serenade Appeal of Administrative Determination

This memorandum serves as the reply brief to the Appeal of Administrative Determination letter received by Mr. Jim Laski, of Lawson, Laski, Clark, on September 7, 2023. As noted in Mr. Laski's letter, an Administrative Determination was made as to whether a Final Design Review application could be filed and processed with the city based on the ordinance in effect at the time of the application. Below is a response to Mr. Laski's letter for consideration by the Planning and Zoning Commission during your review of the appeal.

Vesting and Application Types

As noted in the determination letter to the Applicant, dated August 24, 2023, staff outlined that pre-applications are separate applications with separate fees and separate processes as outlined in the Ketchum Municipal Code. As such, staff reviews each application separately upon submittal of all required application materials. Applicant's Letter of Appeal from their counsel Jim Laski, dated September 7, 2023, outlines that the determination violates the project's vesting under the various legal cases referenced in the letter and notes that applications should be reviewed under the ordinances "in effect at the time of the application". City staff have done just that. At the time of the review of the pre-application, the application was reviewed under the ordinances and regulations in effect at the time the pre-application was deemed complete. City staff reviewed the pre-application for conformance with the regulations in effect at the time, and as Mr. Laski notes, reiterated multiple times to the fact that the interim ordinance was not applicable to the pre-application.

The action in question, and what is being appealed, is the determination of the Final Design Review, not the pre-application. As stated above, the pre-application was accepted and processed according to the ordinance in effect at the time. The preapplication process concluded with the January 24, 2023, meeting of the Commission. Upon receipt of the final design review application in September 2023, staff reviewed the application according to the processes and ordinances in effect at the time of the final design review application (not pre-application), which was Interim Ordinance 1234.

Section 3 of Interim Ordinance 1234 states that developments that have conducted a voluntary or required pre-application "must file a complete Design Review Permit application and pay all

required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void". Because the application was not submitted within the 180 calendar days, the preapplication became null and void and any allegation of vesting provided with the preapplication under Section 1 of the Interim Ordinance was dissolved.

Mr. Laski represents that the preapplication and final design review applications are a linked application process for one development and therefore both applications should be vested. Section 1 of Interim Ordinance 1234 specifically references each permit and application type separately, not "developments", therefore vesting of a pre-application is only upheld when the processes and timeframes outlined in the ordinance is followed. As noted above, the application was not filed within the required timeframe and therefore the pre-application is null and void and a new pre-application is required. Staff provided the option to the applicant to move forward with a new pre-application, which they declined.

Consistent Treatment of Applicants

If the applicant had submitted the final design review application in the required timeframe, the two applications would have been treated as timely in succession under the previous ordinance. Mr. Laski states that the actions of staff were arbitrary and capricious. Staff treated the Sawtooth Serenade project the same way as two other development projects moving through the process at similar timeframes. The Perry Building development and 4th and Main development both had pre-applications, that were required and deemed complete prior to the effective date of the interim ordinance. Applicant representatives from both developments reached out to city staff for clarification of Section 3 of the interim ordinance. Staff communicated to the applicants that Section 3 did apply to their developments and that they would need to submit within the 180 calendar days to avoid being subject to the development standards of the interim ordinance. Both projects submitted within the required timeframes to retain their vesting under the 180-day grace period.

Delays Caused by City

Finally, Mr. Laski's letter makes the accusation that explicit actions of the city delayed the applicant's ability to submit the application within 180 calendar days. The letter outlines delays from staff, Michael Decker, and Clear Creek Disposal. It should be noted that of the three-week delay from city staff, staff were on vacation for one full week of the stated timeframe. The applicants requested a meeting with the Director of Planning and Building, of which a two-week response time for requests is common due to workload and capacity. Michael Decker and Clear Creek Disposal staff are not employees or contractors of the City of Ketchum and city staff have no control or management over these entities and their response times. Also, city staff does not control the point at which applicants decide to provide information to and request feedback from those entities, which could have been done sooner than it was based on Mr. Laski's letter and the level of design of the project at pre-application.

Conclusion

Based on the information provided above, staff believes that we upheld the vesting of applications provided by the ordinances in effect at the time of applications, processed the pre-application thoroughly and fairly according to the law, and based the determination of the Final Design Review application within the bounds of the procedures as written in law. Staff prides themselves on treating all applicants and applications fairly and consistently to avoid accusations of arbitrary and capricious actions and have demonstrated how we have done that in this case. As the Director of Planning and Building, I serve as the Administrator of Title 17 of the Ketchum Municipal Code and have acted well within the authority of the role by providing options to the applicant for consideration to move the application through the required process.

Thank you for your time and consideration of this matter.

Regards,

Morgan Landers, AICP
Director of Planning and Building

City of Ketchum

Attachment D:

Appellant Response to Administrator Response

JAMES R. LASKI
MEMBER

JRL@LAWSONLASKI.COM

LAWSON LASKI CLARK
ATTORNEYS AT LAW

November 9, 2023

City of Ketchum
Planning & Zoning Commission
c/o Morgan Landers, Planning Director
191 5th Street West,
Ketchum, ID 83340

By Email: *MLanders@ketchumidaho.org*

Re: Appeal of Administrative Determination
Sawtooth Serenade Project
Applicants Response Memorandum
Our File No.: 12690-001

Ladies and Gentlemen:

On behalf of Scott and Julie Lynch, and Yahn Bernier and Beth McCaw and Distrustful Ernest Revocable Trust ("Applicants"), this letter will serve as a Response to the Planning Director's Reply Brief in accordance with the Scheduling Notice issued by the City Attorney on November 3, 2023.

In her brief, the Planning Director does not contest that the Applicant's Pre-Application Design Review Application vested under the City Code in effect prior to Ordinance 1234. She does contend, however, that the language of Ordinance 1234, which did not apply to the Mandatory Pre-Application Design Review, does apply to the next step in the Design Review process, under Ketchum City Code 17.96.010, the Design Review Application, but includes a 180-day "grace period" which would maintain the Pre-Application Design Review vesting status for 180 days under Section 3 of Ordinance 1234.

However, Section 3 is not written as a "grace period" for preapplications submitted prior to the ordinance, but rather as a provision to keep the Design Review Application Process under 17.96.010 moving forward for Preapplication Design Review Applications processed AFTER Ordinance 1234 was adopted. As stated clearly in our September 7, 2023 appeal letter, Ordinance 1234 cannot both apply in part and not apply in part to the same Project or Development. In other words, either ordinance 1234 applies in whole, or it does not apply at all, and under Idaho law and as the City has stated on numerous occasions, it does not apply.

A review of the revisions to Section 1 of proposed draft Ordinance 1234 regarding vesting, all of which came after public comment, is illustrative. The first draft of the Ordinance, reviewed by P&Z on August 16, 2022, stated the following:

> Pre-application Design Review Applications deemed complete prior to the effective date of this ordinance, *that do not have a subsequent Design Review application deemed complete,* are subject to the provisions contain [sic] herein.

Following public comment and citation to legal authority, the P&Z Commission recommended changing Section 1 to have vesting upon receipt of the completed Pre-application Design Review application as it would likely only impact a single project.

Despite P&Z's recommendation, staff revised sentences highlighted above in Section 1 to the following:

> Pre-application Design Review and Mountain Overlay Preapplication Design Review applications *that have been reviewed by the Planning and Zoning Commission at one review meeting* prior to the effective date of this ordinance are not subject to the provisions contained herein.

In discussing this revision with the City Council at its initial hearing on draft Ordinance 1234 on September 19, 2022, Ms. Landers interrupted the Mayor to state the following:

> ***And pardon me for interruption council members, but just to clarify Mayor Bradshaw, we are kind of trying to split the baby a little bit with what the Planning Commission recommended and what we initially proposed to the Planning Commission. And so the initial ordinance took a much harder line that said basically if you have a pre-application, that doesn't count at all and it [sic] really only final design review count. So what we're proposing here is that if you have a pre-application that's in process and you've had your preapplication review with the commission meaning that they've given substantial feedback. You've gotten your guidance. You've had that informal review that would be the Milestone by which you get grandfathered and the new ordinance would not apply to you. (City Council meeting Transcript, September 19, 2022 at 1:21:24 – 1:22;09)***

Following public objection the requirement of a P&Z meeting prior to vesting and citation to Idaho law confirming a project is vested when an application is substantially complete, at the next City Council meeting, held on October 3, 2022, City Attorney

Matthew Johnson recommended removing the clause "that have been reviewed by the Planning and Zoning Commission at one review meeting " and replacing that with "*deemed complete for vesting purposes*. (City Council Meeting Transcript, October 3, 2022 at 1:46:31 - 1:48:12; 1:54:54 – 1:55:30). This is the language ultimately incorporated into Ordinance 1234.

None of the discussion at City Council regarding the vesting of a project prior to Ordinance 1234 related at all to nor even referenced the 180-day provision in Section 3. There was never any discussion or suggestion that, somehow, Section 3 of Ordinance 1234 was meant to apply only to applications for Pre-application Design Review that had been deemed complete prior to the adoption of Ordinance 1234. If the 180-day period in Section 3 was meant to limit vesting on applications for Projects that vested prior to the adoption of the Ordinance, one would think it would have been discussed at the Council level as the language regarding vesting was addressed at length.

This makes sense because under chapter 17.96 of the Ketchum Ordinance related to Design Review, Subsection C, Preapplication Design Review, is a necessary, required step in the Design Review Process for specific types of Developments or Projects. As a necessary step, it triggers the vesting for the Project, as city staff has repeatedly stated on the record in both the process of adopting Ordinance 1234 and in the Pre-application Design Review process as noted in our letter of September 7, 2023.

Quite simply, either Ordinance 1234 applies or it doesn't apply to the Sawtooth Serenade Project. The City previously stated that it did NOT apply and proceeded with Pre-application Design Review, the initial stage of the Design Review Process, under the prior ordinances. It cannot now argue that Pre-application Design Review was not part of the Design Review process required for this Project. This position is even more surprising given the recent decision in ***Bracken v. City of Ketchum,*** Docket No. 48721 September 15, 2023, wherein the Idaho Supreme Court, citing the same law cited in our September 7 letter, concluded that the developer's rights vested under the ordinance in effect at the time it first filed an application, which the City refused to accept, and that Bracken's "rights could not be taken away by Ketchum's enactment of a new ordinance [thereafter] …" Bracken at 12. The Court then, citing ***Ben Lomond, Inc. v. City of Idaho Falls,*** 92 Idaho 595, 602 (1968), pointed out the City of Ketchum's "bad faith conduct" stating:

> [T]o hold for the City in the present case would mean that a city, merely by withholding action on an application for a permit, could change or enact a zoning law to defeat the application. It could, in substance, give immediate effect to a future or proposed zoning ordinance before that ordinance was enacted by proper procedure.

The City planning staff's actions with respect to the present Project seem eerily similar.

As a final matter, the Director questions the delays pointed out in our September 17, 2023 letter in receiving responses from city contractors, including Clear Creek

Disposal (the city's garbage franchisee) and The MH Companies (the city's sole street lighting consultant) which impacted the timing of submitting a completed application. To make sure the record is complete, attached as Exhibit A to this letter is a Timeline of Delays experienced by Thielsen Architects in working through the necessary steps to bring this Project from Pre-application Design Review to Design Review. Each of these communications can be confirmed by email.

Based on the foregoing, and the facts and arguments set forth in our letter of September 7, 2023, we respectfully urge the Commission to honor the City's word, stand by the written record before you regarding the vesting of the Sawtooth Serenade Project, reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC

James R. Laski

Cc: Matthew A. Johnson, Esq. (by email: mjohnson@whitepeterson.com)
clients

EXHIBIT A

Thielsen
ARCHITECTS

Timeline of Delays - Sawtooth Serenade

1st Collaborative design Meeting with Morgan Landers, Director of Planning and Building

2/11/23 Dave Thielsen (DT) of Thielsen Architects emails Morgan Landers (ML) asking for collaborative design meeting.

2/14/23 DT emails ML again asking for collaborative design meeting.

2/14/23 ML responds that she is booked for the rest of the week.

2/22/23 First collaborative design meeting between ML and TA.

Total of eleven (11) days from meeting request to the 1st meeting.

2nd Collaborative design Meeting with Morgan Landers, Director of Planning and Building

4/26/23 Robert Connor (RC) of Thielsen Architects emails ML requesting a second collaborative design meeting and receives an autoreply from ML that she is out of the office until 5/1/23.

5/1/23 RC emails ML for second collaborative design meeting.

5/1/23 DT emails ML asking for collaborative design meeting to be the week of the 8th.

5/8/23 RC emails ML asking again to schedule a collaborative design meeting.

5/8/23 ML responds that this week is full for her. Proposes the following week.

5/9/23 DT emails ML proposing meeting times.

5/9/23 ML responds that proposed times do not work for her.

5/9/23 DT emails ML proposing other times.

5/10/23 DT emails ML again attempting to secure meeting time.

5/11/23 ML responds that 5/17/23 will work.

5/17/23 Second collaborative design meeting between ML and TA.

Total of seventeen (17) days from meeting request after ML's return from vacation to the 2nd meeting.

The MH Companies

5/25/23 RC emails architectural drawings and the previous street lighting plan to the previous contact at The MH Companies. RC receives notice that the previous contact has left the company and that the message has been forwarded to a new contact who will respond shortly.

720 Market Street, Suite C
Kirkland, Washington 98033
www.thielsenarchitects.com
Telephone: 425.828.0333
FAX: 425.828.9376

5/31/23 RC calls The MH Companies and learns that the new contact is Mike Decker (MD). RC brings MD up to speed on the project.

5/31/23 RC emails drawings and the previous street lighting plan to MD.

6/9/23 RC emails MD to check status. MD can't access any of their previous work on the project and does not have good information on what Ketchum's requirements are for the project. MD tells RC he will contact the City of Ketchum to get more information.

6/14/23 MD emails RC an update. MD is still working on the project but promises something very soon.

6/20/23 MD emails RC an update. MD is still working on the project and hopes to have something soon.

6/21/23 MD emails RC a drawing, but MD has moved the streetlight from in front of the exit door into a required street tree.

6/22/23 RC and MD exchange emails and MD revises the drawing. MD moves the streetlight back in front of the exit door. RC responds asking it to be moved away from the door. MD moves the streetlight back into the street tree. RC responds that it is back in the street tree and needs to move further west to be out of the street tree and not in front of the door. MD provides a drawing with the streetlighting in a workable location.

24 total emails, plus phone calls, required to get small adjustments to the location of two streetlights. *Total of twenty-eight (28) days to receive requested minor adjustment from City required vendor.*

Trash Collection/Clear Creek Disposal

6/16/23 Jeff Loomis (JL) of Galena-Benchmark emails Mike Goitiandia (MG) to review trash collection access.

6/21/23 Email from JL to Thielsen Architects (TA) stating JL is still waiting to hear back from MG on a question he asked him regarding trash collection in alley.

6/23/23 JL calls MG.

6/23/23 RC emails MG asking that he return JL's call.

6/27/23 RC calls and leaves a voicemail for MG.

6/28/23 RC calls and leaves a voicemail for MG.

6/29/23 RC emails MG drawings for his review.

6/30/23 JL and MG speak on the phone.

7/3/23 DT emails MG.

7/6/23 DT calls MG.

7/11/23-7/17/23 TA revises drawings based on civil design work which JL reviewed with MG.

7/17/23 RC emails MG asking for memo.

7/18/23 MG emails response to RC, JL, and DT.

7/18/23 RC replies to MG with revised drawings based MG's email

7/25/23 RC calls and leaves a voicemail for MG asking for a response.

7/25/23 RC emails MG asking for a response.

7/26/23 RC and MG speak on the phone.

7/26/23 RC emails MG revised drawings based on phone conversation.

7/31/23 RC emails MG asking for a response.

8/1/23 RC emails MG asking for a response.

8/1/23 RC asks Jim Laski to contact MG to get things moving.

8/2/23 MG sends approval memo to City of Ketchum and project team.

8/7/23 Final design Review Application is transmitted to City of Ketchum.

Total of forty-seven (47) days to receive feedback and approval from City required vendor.

City of Ketchum

Attachment D:

Interim Ordinance 1234

ORDINANCE 1234

AN INTERIM ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, TO IMPLEMENT REVISED DEVELOPMENT STANDARDS THAT REQUIRE MINIMUM RESIDENTIAL DENSITIES IN CERTAIN ZONE DISTRICTS FOR CERTAIN PROJECTS; REGULATE THE CONSOLIDATION OF LOTS IN CERTAIN ZONE DISTRICTS; PROHIBIT THE REDUCTION OF DWELLING UNITS IN CONJUNTION WITH DEVELOPMENT PROJECTS; CLARIFY PARKING REQUIREMENTS FOR RETAIL AND OFFICE USES IN THE CC AND T ZONE DISTRICTS; AMEND THE USES PERMITTED IN THE CC-2 AND A PORTION OF THE T ZONE DISTRICT; ADD REQUIREMENTS FOR DEVELOPMENTS WITHIN CERTAIN ZONE DISTRICTS RELATED TO SQUARE FOOTAGE OF USES, LOCATION OF USES, AND PARKING; AND ADD DESIGN REVIEW CRITERIA FOR DEVELOPMENTS IN CERTAIN ZONE DISTRICTS; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.

WHEREAS, Idaho Code Section 67-6524 authorizes local jurisdictions to enact interim ordinances, effective up to one (1) year, during the pendency of preparation and adoption of a permanent ordinance; and

WHEREAS, the State of Idaho and the Idaho Housing and Finance Association has stated that access to workforce housing has become a statewide challenge impacting urban, rural, and resort communities, resulting in a proposal for a state-led gap financing program for development of workforce housing; and

WHEREAS, the 2014 Ketchum Comprehensive Plan identifies ten core values vital to the City's ability to achieve its vision including 1) A Strong and Diverse Economy, 2) Vibrant Downtown, and 4) A Variety of Housing Options; and

WHEREAS, the City of Ketchum (the "City") is experiencing a significant population increase and a severe shortage of housing for the local workforce at all income levels which is threatening the livelihood and straining the resources of the City, its citizens, and its businesses; and

WHEREAS, businesses in Ketchum have been forced to reduce operating hours in the past two years due to lack of workforce; and

WHEREAS, the City's average annual population growth rate is approximately 1%, however, the population of the City increased 25% from 2019 to 2020; and

WHEREAS, the City collects housing specific data and is developing a Housing Action Plan to address the immediate need for more housing in the City; and

WHEREAS, the City lost 475 long-term rental and ownership housing units from 2000 to 2019; and

WHEREAS, in addition to the 475 housing units lost, the Housing Action Plan Summary and Findings identify the need to build, convert, or stabilize between 65 and 100 housing units annually in the City to ensure adequate housing for the City's workforce and support the dynamic demands of a resort community economy; and

WHEREAS, from 1990 to 2009, approximately 290 units were constructed for an average of 15 units per year. From 2010 to 2020, only 92 units were constructed for an average of 9 units per year, a significant decrease from previous years; and

WHEREAS, the City is experiencing an increase in the redevelopment of property as more than half of the City's housing stock was built before 1980 and there are a limited number of vacant properties within city limits; and

WHEREAS, development permitted under the current zoning regulations result in low-density residential development in areas where the 2014 Ketchum Comprehensive Plan envisions medium to high density residential and vibrant mixed-use development; and

WHEREAS, staff presented options for addressing housing issues to the Planning and Zoning Commission at a special meeting on February 15, 2022. At that meeting, the Planning and Zoning Commission directed staff to prepare a draft emergency ordinance reflecting proposed changes for review; and

WHEREAS, the Planning and Zoning Commission met on March 8, 2022, and March 29, 2022, to discuss the draft emergency ordinance and obtain public input related to the proposed changes and recommended on March 29, 2022, the emergency ordinance be adopted by City Council; and

WHEREAS, the City Council met on April 18, 2022, to review the draft emergency ordinance and recommendation from the Planning and Zoning Commission. At said meeting, the City Council declined to approve the emergency ordinance as presented and directed staff to conduct additional community engagement and prepare an interim ordinance reflecting additional feedback from the community; and

WHEREAS, the City conducted a community workshop to gather additional feedback on the proposed changes June 28, 2022, attended by members of the City Council, Planning and Zoning Commission, and the public. Said workshop was followed by a community survey requesting feedback on the same topic; and

WHEREAS, the Planning and Zoning Commission held a public hearing on August 16, 2022 to review this interim ordinance, as prepared by staff, reflecting significant feedback from the community; and

WHEREAS, the Planning and Zoning Commission recommended approval of this interim ordinance at a special meeting on August 16, 2022; and

WHEREAS, the City Council held a public hearing on September 19, 2022 to review the interim ordinance, information from staff, and recommendations from the Planning and Zoning Commission; and

WHEREAS, The City Council held three readings of the interim ordinance on September 19, 2022, October 3, 2022, and October 17, 2022, resulting in approval of this interim ordinance; and

WHEREAS, the Planning and Zoning Commission hearings and City Council hearings were duly noticed per the requirements of Idaho Code Section 67-6509; and

WHEREAS, the provisions of this ordinance are temporary in nature and shall expire three hundred and sixty five (365) days after the adoption of this interim ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM, IDAHO:

Section 1. The following interim regulations and standards apply to any Building Permit, Pre-Application Design Review, Design Review, Subdivision, or Conditional Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance filed pursuant to Title 16 - Subdivision Regulations and Title 17 - Zoning Regulations. Wherever any provision in Title 16 or Title 17 or any other ordinance, rule or regulation of any kind contain standards covering the same subject matter, the standards of this Ordinance shall apply.

Section 2. All zoning districts referenced in this ordinance are pursuant to Ketchum Municipal Code (the "KMC") Chapter 17.18 – *Zoning Districts* and abbreviated as referenced. All terms in this ordinance are defined in Section 17.08.020 – *Terms Defined* and 16.04.020-*Definitions* of the KMC with the addition of the following:

A. Consolidation – the action or process of combining more than one lot or unit into a single lot or unit.
B. Residential Density – the number of dwelling units per square feet of lot area.

Section 3. Developments subject to Design Review approval pursuant to KMC 17.96 – *Design Review* or 17.104 – *Mountain Overlay Zoning District* that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void.

Section 4. There shall now be minimum residential densities for new development projects or expansions of existing buildings that exceed a total floor area ratio (FAR) of 1.0 within Subdistrict 1 and Subdistrict 2 of the CC zone district and 0.5 FAR in the T, T-3000, T-4000, and GR-H zone districts as follows:

<table>
<tr><th>Zone District</th><th colspan="4">Minimum Residential Density Required
(units/SF)</th></tr>
<tr><td rowspan="3">CC
Subdistricts 1 and 2</td><td colspan="4">100% Residential Development
7 / 5,500</td></tr>
<tr><td colspan="4">Mixed Use Development</td></tr>
<tr><td>≤ 30%
Commercial

4 / 5,500</td><td>31-60%
Commercial

3 / 5,500</td><td>61-80%
Commercial

2 / 5,500</td><td>≥ 80%
Commercial

No Minimum except when residential units are provided, there shall be a minimum of 2 units</td></tr>
<tr><td rowspan="3">T</td><td colspan="4">100% Residential Development
7 / 10,000</td></tr>
<tr><td>≤ 30%
Commercial

4 / 10,000</td><td>31-60%
Commercial

3 / 10,000</td><td>61-80%
Commercial

2 / 10,000</td><td>≥ 80%
Commercial

No Minimum except when residential units are provided, there shall be a minimum of 2 units</td></tr>
<tr><td>T-3000</td><td colspan="4">4 / 10,000</td></tr>
<tr><td>T-4000</td><td colspan="4">8 / 10,000</td></tr>
<tr><td>GR-H</td><td colspan="4">8 / 10,000</td></tr>
</table>

A. For purposes of calculating commercial area for minimum residential densities, commercial square footage shall include all permitted and conditionally permitted uses identified in KMC Section 17.12.020 – *District Use Matrix* under the categories of "Commercial" or "Public and Institutional".

B. Percent commercial shall be calculated by dividing the total commercial square footage by the Gross Floor Area for the project.

C. Total commercial square footage shall be calculated using the total area of commercial uses on all floors in a building or portion of a building measured from the interior walls, excluding:
   a. Common areas
   b. Mechanical and maintenance equipment rooms
   c. Parking areas and/or garages
   d. Public areas

D. Minimum densities identified in Section 4 may be adjusted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission.

Section 5. There shall now be standards for the consolidation of lots. Additionally, there shall be a specific application type, process, and additional standards for the review and approval of the consolidation of lots as follows:

A. Consolidation of lots within the City shall be permitted in certain zone districts as follows:

Zone District	Consolidation of Lots
CC - Subdistricts 1 and 2	Permitted subject to additional standards
T	Permitted subject to additional standards
T-3000	Permitted subject to additional standards
T-4000	Permitted subject to additional standards
GR-H	Permitted subject to additional standards
GR-L	Permitted subject to waiver
LR, LR-1, and LR-2	Permitted subject to waiver
STO-1, STO-4, and STO-H	Permitted subject to waiver
LI, LI-2, and LI-3	Permitted subject to additional standards
RU and AF	Permitted subject to additional standards

**Additional Standards are outlined in Subsection F. The waiver process is as outlined in KMC Section 16.04.130.*

B. The definition of "Readjustment of Lot Lines" in KMC Section 16.04.020 - *Definitions*, also known as Lot Line Shifts, shall no longer include the "removal of lot lines".

C. Consolidation of lots may only be considered pursuant to the requirements and standards of KMC Section 16.04.030 – *Procedure for Subdivision Approval.*

D. All preliminary plat applications for consolidation of lots shall only be considered when submitted concurrently with a building permit application or land use development application as applicable.

E. The final plat for consolidation of lots shall not be signed by the City Clerk and recorded until the proposed development has received one or both of the following as applicable:
    1. A certificate of occupancy issued by the City of Ketchum; and
    2. Completion of all design review elements as approved by the Planning and Zoning Administrator.

F. In addition to KMC Section 16.04.040, all preliminary plat applications for consolidation of lots shall comply with the following criteria:
    1. The preliminary plat application is in conformance with all applicable building permit and land use development approvals.
    2. The preliminary plat application is in conformance with all applicable Zoning Regulations contained within Title 17 – Zoning Regulations.

3. The preliminary plat application is found to be in general conformance with the comprehensive plan in effect at the time the application was deemed complete.

Section 6. No demolition permit shall be issued pursuant to Chapter 15.16 of the KMC that results in the net loss in the total number of residential units currently existing on a property as of the effective date of this ordinance. The following standards apply to all properties within the City:

A. Development of property, in any zone district, may not result in the net loss of dwelling units.
B. Total number of dwelling units shall be calculated including all listed or defined dwelling unit uses and terms in the KMC such as, but not limited to, "dwelling, one family", "dwelling, multi-family", "dwelling unit, accessory", and "work/live unit".
C. No demolition permit shall be issued for any structure until a building permit application for a replacement project on the property and required fees have been accepted by the City and deemed complete.
D. Reduction in number of residential units may be permitted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission prior to submittal of a demolition permit application.
E. In the event of imminent and substantial danger to the health or safety of the public due to neglect or condemnation of the building as determined by the building official or his/her designee, a building may be demolished prior to redevelopment pursuant to the requirements of KMC Section 15.16.030. Prior to demolition of the structure(s), a development agreement shall be entered into between the owner of the property and the City of Ketchum stipulating the total number of units required at the time of development of the property. Said development agreement shall be recorded against the property with the office of the Blaine County, Idaho, Clerk and Recorder.

Section 7. There shall be no parking required for individual retail spaces of 5,500 square feet or less within the Community Core (CC) and Tourist (T) zoning districts.

Section 8. There shall be no parking required for the first 5,500 square feet of office space of a project within the Community Core and Tourist zone districts.

Section 9. New developments on properties within the Tourist zone district that include frontage along River Street from S Leadville Ave to S 2nd Ave, as shown in Exhibit A, shall be subject to the uses permitted and conditionally permitted and associated footnotes for the Community Core – Mixed Use subdistrict (CC-2) as outlined in KMC 17.12.020 – District Use Matrix.

Section 10. Properties within the Community Core – Mixed Use subdistrict (CC-2), as shown on Exhibit B, shall be subject to the following:

A. Ground floor residential with street frontage is not permitted.

Section 11. Developments within the CC Subdistrict 1 and 2, T (Leadville to 2nd Ave fronting River Street) not exempt from Design Review are subject to the following standards:

A. For mixed-use developments, a minimum of 55% of the gross floor area, as defined in KMC 17.08.020, of the ground floor must be commercial use(s).
B. Community housing units are not permitted within basements.
C. Individual residential dwelling units cannot exceed a total square footage of 3,000 square feet. Total square footage shall be calculated as the total area of residential space within a single residential unit measured from the interior walls. For residential units with multiple floors, staircases and elevators shall be included in the calculation on the first level of the residential unit only.
D. Developments shall not provide a total number of parking spaces above the minimum parking requirements per KMC 17.125.040 – *Off Street Parking and Loading Calculations,* unless the additional parking spaces are designated for public parking use only or for deed restricted community housing units.

Section 12. Requirements outlined in Sections 10 and 11 of this ordinance may be adjusted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission.

Section 13. All development subject to Design Review pursuant to KMC Section 17.96.010, shall meet the following additional criteria:

A. The design and uses of the development generally conform with the goals, policies, and objectives of the comprehensive plan.

Section 14. This ordinance shall be in full force and effect from and after its passage and approval and shall remain in effect for a period not to exceed three hundred and sixty-five (365) days from its effective date, pursuant to Idaho Code Section 67-6524.

Section 15. SAVINGS AND SEVERABILITY CLAUSE: It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence clause or phrase of this Ordinance is for any reason held to be invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 16. REPEALER CLAUSE: All City of Ketchum Ordinances or resolutions or parts thereof which are in conflict herewith are hereby repealed.

Section 17. PUBLICATION: This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit "C" shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

Section 18. EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED BY THE CITY COUNCIL and APPROVED by the MAYOR OF KETCHUM IDAHO, on this 19th day of Oct. 2022.

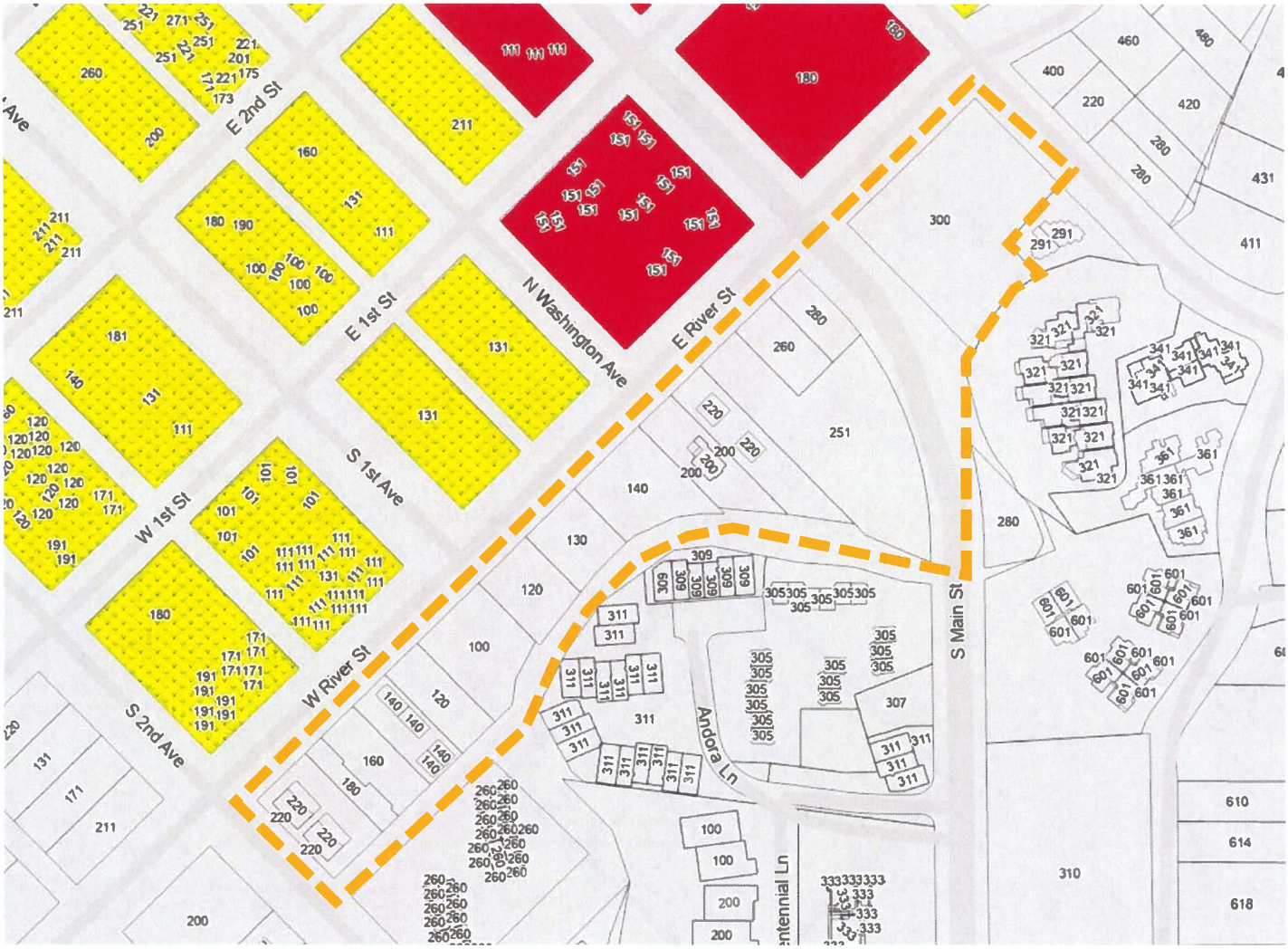
APPROVED:

Neil Bradshaw, Mayor

ATTEST:

Lisa Enourato, Interim City Clerk

Interim Ordinance 1234
Exhibit A



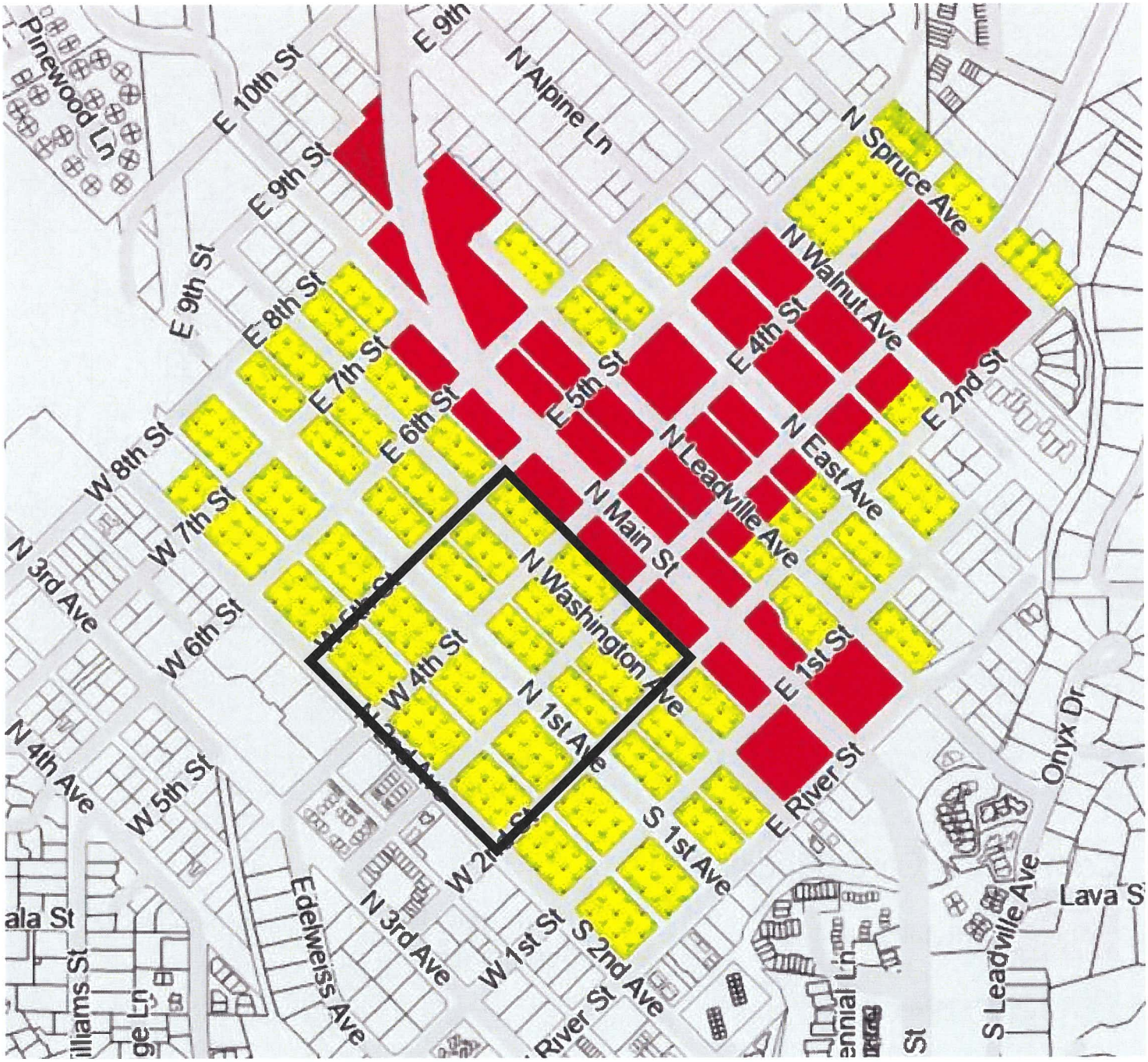
Community Core Subdistricts

1-Retail Core

2- Mixed Use

Permitted Uses to Match Mixed Use Subdistrict

Interim Ordinance 1234
Exhibit B



Community Core Subdistricts

1-Retail Core

2- Mixed Use

Ground Floor Residential with Street Frontage not permitted

EXHIBIT C: PUBLICATION SUMMARY

ORDINANCE 1234

AN INTERIM ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, TO IMPLEMENT REVISED DEVELOPMENT STANDARDS THAT REQUIRE MINIMUM RESIDENTIAL DENSITIES IN CERTAIN ZONE DISTRICTS FOR CERTAIN PROJECTS; REGULATE THE CONSOLIDATION OF LOTS IN CERTAIN ZONE DISTRICTS; PROHIBIT THE REDUCTION OF DWELLING UNITS IN CONJUNTION WITH DEVELOPMENT PROJECTS; CLARIFY PARKING REQUIREMENTS FOR RETAIL AND OFFICE USES IN THE CC AND T ZONE DISTRICTS; AMEND THE USES PERMITTED IN THE CC-2 AND A PORTION OF THE T ZONE DISTRICT; ADD REQUIREMENTS FOR DEVELOPMENTS WITHIN CERTAIN ZONE DISTRICTS RELATED TO SQUARE FOOTAGE OF USES, LOCATION OF USES, AND PARKING; AND ADD DESIGN REVIEW CRITERIA FOR DEVELOPMENTS IN CERTAIN ZONE DISTRICTS; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.

A summary of the principal provisions of Ordinance No. 1234 of the City of Ketchum, Blaine County, Idaho, adopted on October 17, 2022, is as follows:

SECTION 1. Applicability of the ordinance.

SECTION 2. Reference to terms defined and added.

SECTION 3. Requirements for submittal of final Design Review applications following preapplication meetings with Planning and Zoning Commission.

SECTION 4. Minimum residential densities for certain zone districts as outlined and method for calculation of minimum residential density requirements.

SECTION 5. Standards for consolidation of lots within the City of Ketchum.

SECTION 6. Restrictions for the reduction in number of residential units from redevelopment of property.

SECTION 7. Parking exemption for retail uses.

SECTION 8. Parking exemption for office uses.

SECTION 9. Permitted and conditionally permitted uses for certain properties along River Street in the Tourist Zone District.

SECTION 10. Restrictions on ground floor residential on certain properties within the Community Core.

SECTION 11. Development requirements in certain zone districts for square feet of commercial use(s), size of residential units, location of community housing units, parameters for exceeding minimum parking requirements.

SECTION 12. Allowance for a conditional use permit to waive requirements of Sections 10 and 11 of the ordinance.

SECTION 13. Revision to Design Review criteria to add requirement of general comprehensive plan conformance.

SECTION 14. Term of the ordinance.

SECTION 15. Provides a savings and severability clause.

SECTION 16. Provides a repealer clause.

SECTION 17. Provides for publication of this Ordinance by Summary.

SECTION 18. Establishes an effective date.

The full text of this Ordinance is available at the City Clerk's Office, Ketchum City Hall, 191 5th Street West, Ketchum, Idaho 83340 and will be provided to any citizen upon personal request during normal office hours.

ATTEST:

Lisa Enourato, Interim City Clerk

APPROVED:

Neil Bradshaw, Mayor

RESOLUTION NO. 23-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, ESTABLISHING THE DATES FOR ALL REGULAR PLANNING AND ZONING COMMISSION MEETINGS FOR 2024.

WHEREAS, regular meetings of the Planning and Zoning Commission shall be held on the second and fourth Tuesday of each month at 4:30 p.m. at Ketchum City Hall unless such date is a holiday, in which case the meeting shall be held on the following Wednesday or Thursday; and,

WHEREAS, pursuant to Idaho Code § 67-2343(1), any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule; and,

WHEREAS, the City Council has determined that listing all regular meetings of the Planning and Zoning Commission to be held in 2024 would be beneficial to the residents of and visitors to the City of Ketchum.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO that the regular meetings of the Planning and Zoning Commission for 2024 are as follows:

Tuesday January 9, 2024
Tuesday, January 23, 2024
Tuesday, February 13, 2024
Tuesday, February 27, 2024
Tuesday, March 12, 2024
Tuesday, March 26, 2024
Tuesday, April 9, 2024
Tuesday, April 23, 2024
Tuesday, May 14, 2024
Tuesday May 28, 2024
Tuesday, June,11, 2024
Tuesday, June 25,2024

Tuesday, July 9, 2024
Tuesday, July 23, 2024
Tuesday, August 13, 2024
Tuesday, August 27, 2024
Tuesday, September 10, 2024
Tuesday, September 24, 2024
Tuesday, October 8, 2024
Tuesday, October 22, 2024
Tuesday, November 12, 2024
Tuesday, November 26, 2024
Tuesday, December 10, 2024
Thursday, December 26, 2024

This Resolution will be in full force and effect upon its adoption this 4th day of December 2023.

CITY OF KETCHUM, IDAHO

_____
Mayor Neil Bradshaw

ATTEST:

_____
Trent Donat
City Clerk