



City of Ketchum  
Planning & Building

**STAFF REPORT**  
**KETCHUM PLANNING AND ZONING COMMISSION**  
**REGULAR MEETING OF MAY 10, 2022**

- PROJECT:** 1<sup>st</sup> and 4<sup>th</sup> Mixed Use
- APPLICATION TYPE:** Development Agreement Amendment (P22-016)  
Condominium Subdivision – Preliminary Plat (File No. P22-016A)
- APPLICANT:** Jack E. Bariteau (owner)  
Dave Patrie – Benchmark Engineering (engineer)
- PROPERTY OWNER:** Waypoint Pearl, LLC
- REQUEST:** Second Amendment to Development Agreement #20427 to amend development timeframes, changes to sequencing of final plat recording, and changes to employee housing and community housing deed restriction parameters
- LOCATION:** 391 N 1<sup>st</sup> Ave and 120 W 4<sup>th</sup> Street - Ketchum Townsite: Block 57: Lot 1B (formerly Lots 1 and 2)
- ZONING:** Community Core – Subdistrict 2 – Mixed Use (CC-2)
- REVIEWER:** Morgan R. Landers, 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 April 20, 2022. The public hearing notice was published in the Idaho Mountain Express the on April 20, 2022. A notice was posted on the project site on May 3, 2022 and the city’s website on April 20, 2022.

**EXECUTIVE SUMMARY**

The Applicant is under construction on a new mixed-use building at 391 First Ave N and 120 W 4<sup>th</sup> Street (the “subject property”). The building includes an underground parking garage, 12 employee housing units, 3 community housing units, 7 market rate residential units, and approximately 6,900 square feet of ground floor commercial space (the “project”). The 12 employee housing units provide employee housing for Harriman Hotel located on the southeast corner of Main Street and River Street. The three community housing units are to satisfy the community housing requirement for the FAR density bonus the 1<sup>st</sup> and 4<sup>th</sup> project received. The project includes 31 underground parking spaces, seven dedicated to the commercial uses, and nine dedicated to residential units that require parking. The remaining 15 spaces will be made available to the tenants of the employee housing and community housing units dependent on need and availability. The employee housing and community housing units are exempt from parking requirements.

To achieve the project currently under construction, the applicant made a request to consolidate Lots 1 and 2 of Block 57, Ketchum Townsite, and requested to vacate a portion of the public alley adjacent to the project site. A preliminary plat was filed with the Design Review application to permit removal of lot lines between

Lots 1 and 2, and vacation of the alley. The preliminary plat for these actions was approved by the Commission on June 10, 2019, and City Council on December 16, 2019.

Development Agreement #20427 (Attachment A) was approved in December 2019 which sets forth the obligations of the developer and city for the 1<sup>st</sup> and 4<sup>th</sup> development including employee and community housing unit requirements, sequence of obligations, and timeframe for completion of the project. An amendment to the Development Agreement (Attachment B) was approved on January 19, 2021 which extended the timeframes and requirements for the project.

The applicant is requesting a second amendment to the Development Agreement that would allow for the following (see Attachment D for detailed request):

1. Release of performance bond for site reclamation
2. Replacement of letter of credit for site improvements with performance bond
3. 6-month extension to the deadline for obtaining a Certificate of Occupancy
4. Acceptance and processing of final plat map for consolidating the lots and vacation of alley prior to Certificate of Occupancy. The approved Agreement requires that a certificate of occupancy for the project be issued prior to recordation of the alley vacation.
5. Master lease of the employee housing units to a Hotel Operator or the Hotel Developer. The approved Agreement only identified the Hotel Developer as the entity for the master lease.
6. Use of third-party verifier, other than Blaine County Housing Authority, for the qualifier of tenants for the community housing units. The approved agreement only identified Blaine County Housing Authority as the manager of the community housing units.
7. Lease of the 12 employee housing units targeted for income Category 6. The approved Agreement requires a separate exceedance agreement that would have set the units at income Category 4.

As part of this request, the applicant submitted the final plat for the consolidation of the lots and vacation of the alley, and the condominium preliminary plat for the project. The proposed amendments to the Development Agreement must be approved by the City Council before either plat application can be approved. Staff is supportive of the proposed amendments 1 through 6, however, staff is not in support of request 7. Additionally, staff is recommending modification to a provision in Section 10 of the approved agreement that allows the community housing units to be used for hotel employees through a master lease with the hotel developer/operator. A redline and clean version of the draft Second Amendment of Development Agreement #20427 is included as Attachment E and F respectively. Please see the analysis below for an overview of staff's position on these provisions.

Regarding the plat applications, staff reviewed both plat applications for conformance with the subdivision regulations. Per the subdivision ordinance, the Commission does not review the final plat application as the preliminary plat was already reviewed and approved. The Commission does review the condominium preliminary plat. Staff believes the condominium preliminary plat application to be in conformance with the subdivision requirements as further discussed in the report below.

### **PROJECT HISTORY AND BACKGROUND**

The project has been in process since early 2019 with various approvals and agreements in place that dictate the obligations of the project, sequence of the obligations, and timeframe for delivery on obligations. The project approvals and agreements are outlined below:

- March 11, 2019 - Preapplication Design Review meeting (P19-018)
- June 6, 2019 - Design Review approval from the Commission (P19-038)
- June 10 and July 8, 2019 – Planning and Zoning Commission review of Development Agreement
- December 16, 2019 - Development Agreement #20427 approved by City Council including provisions for:
  - Vacation of a portion of the public alley adjacent to the project

- Process and timing for consolidating the lots and vacation of alley
- Deadlines for building permit application, issuance, and certificate of occupancy
- Maintenance of the entire alley from 4<sup>th</sup> Street to Sun valley Road
- Required Improvements, timing for completion, and performance bond requirements
- Employee housing and community housing units including exceedance agreement, deed covenant and master leasing provisions
- Site restoration and security in the event the project did not move forward
- General terms and conditions customary of development agreements
- October 29, 2020 – Right-of-Way Encroachment Agreement #20548 (Attachment C) recorded including provisions for improvements and long-term maintenance
- January 19, 2021 – First Amendment to Development Agreement #20427 extending deadlines within the agreement including building permit issuance, receipt of certificate of occupancy, and others
- April 19, 2021 – Building Permit Issued
- April 22, 2021 – Assignment and Assumption Agreement executed transferring all entitlements, permits, and agreements from Jack E Bariteau and Main Drive Properties to Waypoint Pearl, LLC. (Current property owner)

The City of Ketchum received applications for the second amendment to the Development Agreement, Condominium Preliminary Plat, and Final Plat for the 1<sup>st</sup> and 4<sup>th</sup> Mixed Use project, located at 391 First Ave North, on March 16<sup>th</sup>, April 6<sup>th</sup> and April 7<sup>th</sup> of 2022 respectively. The applications have been reviewed concurrently and were deemed complete on April 18, 2022. Department comments were provided to the applicant on April 18, 2022. All department comments have been addressed satisfactorily through applicant revision of project plans or conditions of approval.

#### **EVALUATION OF DEVELOPMENT AGREEMENT AMENDMENT REQUESTS**

As discussed above, staff is supportive of all but one amendment request pertaining to the Development Agreement. Staff is not supportive of the applicant’s request to revise the provisions of Section 9 of the agreement related to the target income category for all community housing units. Additionally, staff recommends removal of the provision to allow the community housing units to be used for hotel employees through a master lease with the hotel developer/operator.

The employee housing units are to satisfy the requirements of the Harriman Hotel. The community housing units are to satisfy the community housing obligation in exchange for the FAR density bonus approved for the project. Community housing units fall under the requirements of Section 17.124.050 in the Ketchum Municipal Code (KMC) and memorialized through an exceedance agreement.

#### *Income Category Request*

As the 1<sup>st</sup> and 4<sup>th</sup> project will be completed prior to the Harriman Hotel, the on-site employee housing units shall be committed as deed-restricted community housing units per the approved Development Agreement. The agreement currently states:

“Twelve such depicted units shall be dedicated to on-site employee housing. In the event Owner determines not to use such for on-site employee housing, then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority.”

The FAR Exceedance Agreement outlining the specifics of the community housing units, including the employee housing units if they converted to community housing units, has yet to be approved. This proposed amendment is serving as the required exceedance agreement. Projects in Ketchum that have on-site deed restricted community housing units are governed under the requirements of Section 17.124.050 of the KMC. This code section requires administration of community housing units and associated covenants by the

governing housing authority, Blaine County Housing Authority (BCHA), and that the units be targeted for income category 4 or less unless otherwise approved by the Commission and City Council.

As mentioned above, staff is supportive of a qualified third-party verifier, other than BCHA, for administration of the units, however, staff does not agree with the target income request of category 6 for the employee housing units. As outlined in KMC Section 17.124.050, the purpose of deed restricted community housing units is to provide affordable workforce housing for sale or rent. Units that fall under this program shall be targeted for BCHA income category 4 or less unless otherwise approved by the Commission and City Council. Figure 1 below shows the income categories published by BCHA in April 2022. Income category 4 is for households making 80-100% of Area Median Income (AMI), whereas category 6 is for households making 120-140% of AMI.

**Figure 1: BCHA Published Income Categories**

Household Size	Category 1 up to 50% of Median	Category 2 50% to 60% of Median	Category 3 60% to 80% Median	Category 4 80% to 100% of Median	Category 5 100% to 120% of Median	Category 6 120% to 140% of Median
1	\$27,800	\$33,350	\$44,450	\$55,550	\$66,650	\$77,750
2	\$31,750	\$38,100	\$50,800	\$63,450	\$76,150	\$88,850
3	\$35,700	\$42,850	\$57,100	\$71,400	\$85,650	\$99,950
4	\$39,650	\$47,600	\$63,450	\$79,300	\$95,200	\$111,050
5	\$42,850	\$51,400	\$68,550	\$85,650	\$102,800	\$119,950
6	\$46,000	\$55,200	\$73,600	\$92,000	\$110,400	\$128,800
Allowable Net Worth	\$75,000	\$85,000	\$110,000	\$125,000	\$150,000	\$175,000

*Numbers based upon 2022 HUD AMI limits for Blaine County, as published April 19, 2022.*

The City of Ketchum has not approved an increase in the category target outlined in the KMC for any project within the city limits to date. In fact, some projects such as Ketch, and Ketch 2, were required to have targeted categories 3 recognizing the significant need for housing at more affordable levels. Any change in income category must be approved by the Commission and Council and must be based on a demonstrated need for the category requirement.

The City of Ketchum has established our largest housing category need through the development of the Housing Action Plan, which is in final adoption phase. The plan identifies that the largest need for workforce housing is rental units in the range of 0-120% AMI as the City’s economy is based on workers who earn under 80% AMI based on industry median earnings data published by the US Census. Based on this, staff does not believe an increase in the income target to Category 4 meets the goals of the community housing program and does not support the requested increase.

**Master Leasing**

Section 10 of the approved development agreement states that “Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer”. The units referenced in this provision are the three community housing units. Staff recommends this section be changed so the community housing units are managed separately and do not become employee housing for the hotel employees unless those employees qualify under the community housing income category. Since the development agreement was approved in 2019, the availability of affordable housing is at crisis. The required community housing units should be available to any resident or employee in the city that qualifies for community housing. By removing the ability of the Hotel Developer/Operator to master lease the community housing units, these units become part of the broader community housing inventory as the code intends when provided in exchange for a FAR bonus.

If the units are part of the master lease agreement with the Hotel Developer/Operator, administration of the deed restricted units will no longer be under the third-party verifier for employment and income qualifications



and will not be available to the broader pool of community housing candidates that are on various wait lists through BCHA, ARCH, or other housing entities. Staff does not believe that allowing the units to be master leased to the Hotel Developer/Operator meets the intent of the community housing program and creates risk of the units being lost from the community housing inventory in perpetuity. Employees of the hotel can apply for these units through the standard application and qualification requirements for community housing units same as other members of the community, a more equitable approach for the renting of the community housing units. Retaining the existing process for the community housing units provides more direct oversight of the units in the long term.

In conclusion, staff recommends the on-site employee housing units and community housing units be income restricted at a category 4 and that the community housing units not be included in the master lease to the Hotel Developer/Operator.

### **CONFORMANCE WITH SUBDIVISION STANDARDS**

During Department Review, staff reviewed the preliminary plat application for conformance with KMC 16.04.030 – *Procedures for subdivision approval*, KMC 16.04.040 – *Development and Design*, and KMC 16.04.070 – *Condominiums*. Please see Attachment I for the review of all requirements and standards. Where “N/A” is checked, the standard is not applicable for one of two reasons:

- The standard applies to the creation of new subdivisions, not the subject property, which is an existing platted lot within the Ketchum Townsite.
- The standard applies to action that shall be taken at the final plat stage of the process and this application is for a preliminary plat.
- Per provisions of the standard, the City Engineer has determined that the standard does not apply.

During final review of the preliminary plat, staff identified some minor labeling issues that should be corrected prior to final plat approval. Staff recommends condition of approval #1 to address the corrections.

### **STAFF RECOMMENDATION**

Staff recommends the commission review the Development Agreement Amendment and provide recommendations on the following topics:

- Income category target for employee housing units
- Master leasing of community housing units

If the Commission makes a recommendation to move the Development Agreement Amendment to City Council, staff recommends approval of the condominium preliminary plat subject to the following conditions of approval:

1. The final plat shall reflect the removal of the term “former” in plat note 6 and shall reflect the removal of the legend under the basement floor plan referencing commercial and residential.
2. The preliminary plat is subject to all conditions of approval associated with Design Review approval P19-038, and all provisions of Development Agreement #20427, and First Amendment to Development Agreement #20472.
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.

If the Commission does not make a recommendation to move the Development Agreement Amendment to City Council, staff recommends tabling of the condominium preliminary plat to the next hearing of the Development Agreement Amendment.

### **ATTACHMENTS:**

- A. Development Agreement #20427
- B. First Amendment to Development Agreement #20427

- C. Encroachment Agreement #675091
- D. Amendment Application and Request Letters
- E. Draft Second Amendment to Development Agreement #20427 – redline
- F. Draft Second Amendment to Development Agreement #20427 - clean
- G. Application and Supporting Materials – Condominium Preliminary Plat
- H. Plan Set – Condominium Preliminary Plat
- I. Condominium Preliminary Plat Standards Analysis
- J. Public Comment

**ATTACHMENT A:**  
**Development Agreement**  
**#20427**

**Instrument # 665841**

HAILEY, BLAINE, IDAHO

12-29-2019 01:32:29 PM No. of Pages: 12

Recorded for : CITY OF KETCHUM

JOLYNN DRAGE

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION



RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
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(SPACE ABOVE LINE FOR RECORDER'S USE)

**DEVELOPMENT AGREEMENT #20427**

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is dated for reference purposes this 16 h day of Decembe , 2019, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (“**Ketchum**” or “**City**”) and JACK E. BARITEAU, JR. as Trustee of the JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST, under agreement dated October 2, 1996 and MAIN DRIVE PROPERTIES, LLC, a Tennessee limited liability company (collectively “**Owner**”, and together with the City, the “**Parties**”).

**BACKGROUND AND CONTEXT**

A. Ketchum is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to vacate rights-of-way, to grant variances to building height restrictions, to remove lot lines, grant rights to exceed building floor area ratio limitations, to grant licenses to encroach into the public right-of-way and the power to contract. A development agreement between the Parties is a collaboration that will provide mutual benefit for the Parties, businesses in the Commercial Core District and residents of the City.

B. Owner owns the real property situated in the State of Idaho, County of Blaine, commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho and more particularly described as Lots 1 and 2 of Re-Division of Lots 1 and 2, Block 57, Original Ketchum Townsite, according to the plat thereof, recorded as Instrument No. 191607, records of Blaine County, Idaho (“**Property**”).

C. Owner has petitioned City to amend the current Property description to (a) vacate the common internal lot line between Lots 1 and 2 of the Property and (b) include the vacated fifteen-foot by one hundred and ten-foot (15’ x 110’) portion of alleyway adjacent the Property in Block 57, as more particularly described in paragraphs 5 and 6 above.

D. Owner has applied for design review approval for construction of improvements on the Property (“**Project**”) consisting of an approximately 34,729 gross square foot mixed use residential and commercial building to be constructed on and over a 15,225 square foot underground garage parking which will provide substantial public benefits, including a master lease of apartment units to Trail Creek Fund, LLC, successor Harriman Hotel, LLC, or other successor (“**Hotel Developer**”) to fulfill its obligation for hotel employee housing as set forth in the June 4, 2018 First Amendment to the Amended and Restated Development Agreement between the City and Trail Creek Fund, LLC. City acknowledges the square footages recited are

approximate and the actual square footages will not be known until construction documents are prepared and submitted to the City for a building permit following which submittal the actual square footages shall apply to the Project.

E. The Parties agree that the Property shall be developed in accordance with this Agreement; all applicable City ordinances; and any additional conditions and requirements imposed upon the Property by the Ketchum Planning and Zoning Commission (“**Commission**”) and/or City Council (“**Council**”) during the design review, vacation, development agreement, plat amendment, and 4<sup>th</sup> Street / 1<sup>st</sup> Avenue encroachment approval processes.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties agree as hereinafter provided.

**1. Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.

**2. Incorporation of Related Findings, Agreements, Approvals, Permits and Plans.** The following findings of fact, approvals, permits, plans, and documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:

- a. Findings of Act, Conclusion of Law, and Order regarding the request for vacation;
- b. FAR Exceedance Agreement;
- c. Preliminary and final plat documents and approvals;
- d. Decision and orders related to the 1<sup>st</sup> & 4<sup>th</sup> Mixed Use Building Design Review;
- e. Decision and orders related to Owner’s application for encroachment;
- f. Design review drawings;
- g. Alley, 1<sup>st</sup> Avenue, and 4<sup>th</sup> Street sidewalk and landscaping plans;

Any material failure to comply with the terms and conditions of any of the above-referenced documents shall constitute a breach of this Agreement.

In the event of any inconsistency between the terms and conditions of this Agreement and the findings of fact, approvals, permits and plans listed above, the more restrictive terms and conditions shall govern. Development of the Project shall be vested and governed by policies, procedures, guidelines, ordinances, codes and regulations of the City governing land use in effect as of the date this Agreement is recorded and continue consistent with §17.96.090 of the Ketchum Municipal Code.

Owner may request to be bound by future amendments to the Ketchum Municipal Code (“**KMC**”), or other regulations, policies or guidelines affecting development, and such request

may be approved administratively, by the Commission, and/or by the Ketchum City Council consistent with the KMC.

**3. Right to Develop.** Subject to the requirements of this Agreement and KMC, the Owner and all future owners of some or all of the Property shall have the right to demolish all or any portion of the existing structures and redevelop, construct, improve and use the Property as a mixed use residential and commercial building as depicted and described in the approved plans incorporated into the Agreement as fully set forth in the recitals, including the Planning and Zoning Commission approved Pivot North Architecture plans approved on June 10, 2019 (“Plans”). The improvements on the Property shall be built exclusively as permitted under §17.96 of the KMC relating to design review approval. Any development of any portion of the Property substantially inconsistent with this Agreement or the design review approval for the Project shall constitute a breach of this Agreement by Owner.

Pursuant to KMC §17.96.090, the design review approval on this Project shall be valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. Application for a building permit must be done within this time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A building permit must be obtained within fourteen (14) months from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision, and a certificate of occupancy must be obtained for the Project no later than 18 months after the building permit is issued unless the time for completion of the Project is extended by the City Council.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty (30) days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this Agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all inconsistent terms and conditions of the approvals referenced in Section 2 shall be deemed to have been amended to conform the amendment to this Agreement.

**4. FAR Exceedance Agreement.** The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, and hereby incorporated by reference.

**5. Vacation of Alley.** Owner has made application to the City for vacation of the alley right-of-way pursuant to KMC §16.04.050. If approved via separate City vacation process,

such order or decision on vacation, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. Owner shall assume and be responsible for maintenance of the entirety of the alley, including appropriate snow and snowmelt maintenance, to be further specified by a separate alley maintenance agreement. Any such alley vacation shall be deemed null and void in the event the Project is not commenced and completed within the time limits set forth in this Agreement.

**6. Removal of Lot Lines and Inclusion of Vacated Alley.** Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associates, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite (“**Amended Property**”). Notwithstanding the City approval of the final plat map, the final plat map reflecting such changes shall not be recorded and become effective until after issuance of the Certificate of Occupancy for the Project.

**7. Sidewalk Improvements.** Owner has proposed and hereby commits for the Project to include ten-foot wide sidewalks along both 1<sup>st</sup> Avenue and 4<sup>th</sup> Street. All of the proposed sidewalk improvements along 4<sup>th</sup> Street are in the public Right of Way (“**ROW**”), while half of the sidewalk improvements (+/- 5’ wide) along 1<sup>st</sup> Avenue are in the public ROW. Subject sidewalk improvements include snowmelt, raised landscape planters, street trees with decorative tree grates, public art, bike racks, pedestrian walkway lighting, and street lighting. Final approval of subject improvements will be subject to review and approval through a separate encroachment agreement and to assure compliance with federal ADA and city standards. Such encroachment agreement shall be obtained prior to issuance of a building permit for the Project.

**8. Encroachment on Right of Way.** Owner has made application to the City for license for encroachments along the public Right of Way (“**ROW**”) for proposed sidewalk improvements along 4<sup>th</sup> Street, pursuant to KMC 12.08.040. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement.

**9. On-Site Employee Housing Units.** Owner commits to construction and provision of on-site employee housing units as specified in the Planning and Zoning approved design review documents, dated May 31, 2019. Three of such depicted units shall be deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority. Twelve such depicted units shall be dedicated to on-site employee housing. In the event Owner determines not to use such for on-site employee housing, then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority.

**10. Master Lease of Employee Housing Units.** The Parties agree Owner may enter into a master lease with the Hotel Developer for apartment units containing at least eighteen (18) beds and thereby satisfy those certain related obligations of Trail Creek Fund, LLC under the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016

and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“**Hotel Development Agreement**”). All apartment units leased to the Hotel Developer may be subleased, assigned or otherwise made available to employees of the Hotel Developer on terms and conditions determined by it in the exercise of its discretion. If the Hotel Development Agreement is terminated for any reason the apartment units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer’s obligations may not also be counted as satisfaction of any required units necessary under the FAR Exceedance Agreement for the Project. Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.

**11. Conditions to Owner’s Obligations.** Owner’s obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing for the Project. If either of those conditions (or part of one) is not satisfied, then this Agreement shall no longer be valid.

**12. Required Improvements by Owner.** Prior to issuance of a building permit, Owner agrees to provide the City an irrevocable letter of credit for completion of the improvements to both 4<sup>th</sup> Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents. Subject security shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer. The amount of security shall be at 150% of engineering estimates for the improvements.

**13. Term.** The term of this Agreement shall be two years and eight months (2 years 8 months) from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision except such term will not be considered to supersede or amend the standard validity periods as specified in KMC, which may be shorter as to specific approvals and necessary steps (e.g. KMC §17.96.090 specifying that design review approval is only valid for twelve months without additional steps for extension).

**14. Financing.** Prior to the issuance of a building permit for the Project, Owner shall provide evidence to the reasonable satisfaction of the City Council of Owner’s receipt of one or more funding commitments for the cost of construction of the Project. Within sixty days after the issuance of a building permit for the Project, Owner shall provide evidence to the City of closure of the construction financing, such as a deed of trust to secure a construction loan, for completion of the Project. Owner shall not commence additional excavation or construction work on the Property except as may be required to maintain existing permits until receipt of City approval of such financing commitment

**15. Site Restoration.** Owner shall submit to City, prior to issuance of building permit, a Site Restoration Plan and a security instrument naming City as beneficiary sufficient to fund such restoration. The Restoration Plan shall:

- a. Identify a clear restoration plan sufficient to restore site to finished elevations compatible with neighboring streets and residences, including landscaping and other details, and subject to City review and approval;



- b. Be accompanied by a licensed engineer's estimate of one hundred and fifty percent (150%) of the estimated reclamation costs, with such estimate subject to verification and approval by the City not to be unreasonably withheld, delayed or conditioned;
- c. Be accompanied by a letter of credit or performance bond naming City as beneficiary, with the proposed method and form of such security subject to City review and approval not to be unreasonably withheld, delayed or conditioned, in the amount of the 150% reclamation cost estimate and provide for the City to immediately pursue reclamation and restoration on the site in the event of a material failure of condition, other material breach of the Development Agreement, or abandonment of the Project.

In the event Owner materially fails a condition or otherwise breaches this Amendment and/or the Agreement then City shall be entitled to immediately commence reclamation and restoration pursuant to such Restoration Plan and security instrument.

#### **16. Miscellaneous Provisions.**

a) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of Ketchum or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Ketchum's Zoning Ordinance, Ketchum's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

b) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both Parties and as evidenced by amended plats and development plans.

c) Specific Performance. In the event of a breach of this Agreement, in addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

d) Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded.

e) Notices. All notices required or provided for under this Agreement shall be in writing and deemed delivered upon delivery in person or upon mailing by certified mail, return receipt requested, postage prepaid. However, the time period in which a response to such notice must be given shall commence to run from the date of receipt on the return receipt of the notice. Rejection or refusal to accept, or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

Notices to City shall be addressed as follows:

City of Ketchum  
Post Office Box 2315  
Ketchum, ID 83340  
Attn: John Gaeddert, Planning Director  
Telephone: 208.726-7801  
Email: [jgaeddert@ketchumidaho.org](mailto:jgaeddert@ketchumidaho.org)

Notices given to Owner shall be addressed as follows:

Jack E. Bariteau, Jr.  
Post Office Box 84  
Sun Valley, ID 83353  
Telephone: 650.906-5636  
Email: [jack@waypointsunvalley.com](mailto:jack@waypointsunvalley.com)

with a copy to:

Lawson Laski Clark & Pogue, PLLC  
675 Sun Valley Road, Suite A  
Post Office Box 3310  
Ketchum, Idaho 83340  
Attn.: Edward A. Lawson  
Telephone: 208.725-0055  
Email: [eal@lawsonlaski.com](mailto:eal@lawsonlaski.com)

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

f) Reliance by the Parties. This Agreement is intended by Owner to be considered by Ketchum as part of Owner's application for design review approval for the Project and the ancillary applications referenced. Owner acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said applications.

g) Relationship of Parties. It is understood that the contractual relationship between City and Owner is such that neither party is the agent, partner, or joint venturer of the other party.

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns. City acknowledges and agrees Owner may assign its rights hereunder to a new entity formed for the purpose of developing the Property or to a lender providing a construction or permanent loan, or both.

- i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. The Parties agree to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination.
- j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.
- k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.
- l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.
- m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.
- n) Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.
- o) Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.
- p) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof. Venue shall be in Blaine County, Idaho.
- q) Force Majeure. If either party hereto is delayed in the performance of any of its obligations hereunder because of abnormal and unforeseeable inclement weather, material shortages, labor shortages, dispute or strike, civil strife, acts beyond the reasonable control of the delayed party including acts of God, and actions by the United States of America, the State of Idaho, the City or any of their agencies, the time of performance hereunder, shall be reasonably extended for the same time as lost by the cause hereinabove set forth. Any claim of a force majeure event must be submitted to the other party within thirty days of such event.

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

Main Drive Properties, LLC, a Tennessee limited liability company

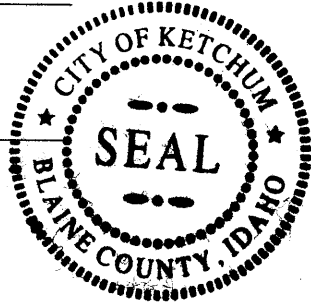
City of Ketchum, Idaho, a municipal corporation

By: \_\_\_\_\_  
William Allison, Managing Member

By: Neil Bradshaw  
Neil Bradshaw, Mayor

Jack E. Bariteau, Jr.  
Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau, Jr. Separate Property Trust  
u/a/d October 2, 1996

Attest: Robin Crotty  
Robin Crotty, City Clerk



ACKNOWLEDGMENTS

STATE OF IDAHO )  
  )ss.  
County of Blaine )

Subscribed and sworn before me on this 20<sup>th</sup> day of December, 2019, before me a Notary Public in and for said State, personally appeared NEAL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

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



Robin Crotty  
Notary Public  
Residing at Ketchum City Hall  
My Commission Expires 12/22/2020

STATE OF )  
  )ss.  
County of )

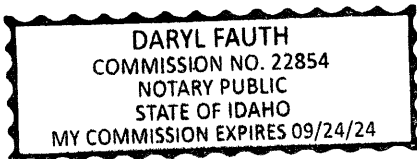
Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said State, personally appeared WILLIAM ALLISON known or identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

State of IDAHO        )  
                                  )ss.  
County of            )

On this 17<sup>th</sup> day of December, 2019, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST under trust agreement dated October 2, 1996, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.



*[Handwritten Signature]*  
\_\_\_\_\_  
My Commission Expires 9/24/24  
Notary Public for Idaho  
Residing At Idaho, ID

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

Main Drive Properties, LLC, a Tennessee limited liability company

City of Ketchum, Idaho, a municipal corporation

By: William Allison  
William Allison, Managing Member

By: \_\_\_\_\_  
Neil Bradshaw, Mayor

\_\_\_\_\_  
Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau, Jr. Separate Property Trust  
u/a/d October 2, 1996

Attest: \_\_\_\_\_  
Robin Crotty, City Clerk

**ACKNOWLEDGMENTS**

STATE OF IDAHO )  
  )ss.  
County of Blaine )

Subscribed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me a Notary Public in and for said State, personally appeared NEAL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

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

\_\_\_\_\_  
Notary Public  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF )  
  )ss.  
County of )

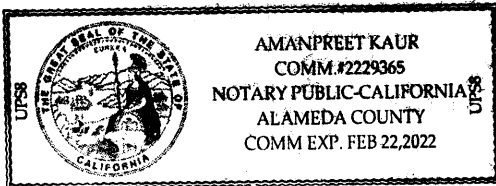
**A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

Subscribed and sworn before me on this 17 day of Dec, 2019, before me a Notary Public in and for said State, personally appeared WILLIAM ALLISON known or identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

*Amanpreet Kaur*

Notary Public  
Residing at Emeryville CA  
My Commission Expires Feb 22, 2022



State of IDAHO            )  
  )ss.  
County of                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST under trust agreement dated October 2, 19967, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.

My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing At \_\_\_\_\_

**ATTACHMENT B:**  
**First Amendment to**  
**Development Agreement**  
**#20427**



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

OFFICE OF THE CITY CLERK  
CITY OF KETCHUM  
POST OFFICE BOX 2315  
KETCHUM, IDAHO 83340

**Instrument # 679218**

HAILEY, BLAINE, IDAHO  
2-11-2021 01:44:06 PM No. of Pages: 5  
Recorded for : CITY OF KETCHUM  
JOLYNN DRAGE Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENT/CORRECTION

*JD*

(Space Above Line For Recorder's Use)

### FIRST AMENDMENT TO DEVELOPMENT AGREEMENT #20427

This Amendment ("Amendment") is made as of January 19, 2021 by and between the City of Ketchum, Idaho ("Ketchum"), a municipal corporation, and Main Drive Properties, LLC, a Tennessee limited liability company and Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau Jr. Separate Property Trust, dated October 2, 1996 (collectively "Owner", and together with Ketchum, the "Parties").

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to Development Agreement #20427 ("Agreement"), dated December 16, 2019, and recorded on December 20, 2019 in the records of Blaine County, Idaho as Instrument No. 665841, under and by virtue of which the Parties established certain rights and obligations with regard to the development of the real property commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho ("Property").

1.2 The parties desire to amend and supplement the Agreement as hereinafter provided pursuant to section 16. b) thereof.

1.3 With the exception of the amendments in this Agreement, all terms of Agreement 20427 shall remain in effect.

2. Amendments. In view of the foregoing, the Parties agree to amend and supplement the Agreement including the extension of the design review approval to June 10, 2021, as follows:

2.1 The Parties have adopted the following schedule for the performance of the obligations of Owner under the Agreement and all related permits, approvals, and consents:

Performance Obligation

Completion Deadline

Subject to Section 3, submit for Building Permit

Building Permit submitted 9/26/20

Subject to Section 3, Obtain a Building Permit	Within 90 days of approval of this Development Agreement Amendment
Subject to Section 8, Submit Right-Of-Way Encroachment Agreement	Signed 10/19/20; Recorded 10/29/20
Subject to Section 15, Submit Site Restoration Plan and Bond	Prior to issuance of building permit
Subject to Section 14, Submit Evidence of Construction Loan Commitment	Prior to issuance of building permit
Subject to Section 14, Submit Evidence of Construction Loan Recordation issuance.	Within 60 days of building permit No excavation may occur on the site until the construction loan is recorded and evidence is provided to the City.
Subject to Section 12, Submit Letter of Credit for Off Site Improvements	Prior to issuance of building permit
Subject to Section 3, Receipt of Certificate of Occupancy	Within 18 months after issuance of building permit

2.2 Section 13 is amended to provide that the term of the Agreement shall be 2 years from issuance of the building permit.

2.3 After the Building Permit is issued, Owner shall be responsible for the maintenance and snow removal in the alley between 4<sup>th</sup> Street and Sun Valley Road. The method and hours for snow removal in the alley shall be consistent with city snow removal hours and methods.

2.4 Owner shall vacate the Ketchum Springs Line and install required service connections prior to July 1, 2021.

3. Construction. This Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Amendment and the Agreement the terms of this Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Amendment, unless otherwise defined herein.

4. Ratification. The Agreement, as amended and supplemented by this Amendment, is hereby ratified and affirmed.


5. Counterparts. This Agreement may be executed in any number of counterparts.


This Amendment is executed by the Parties as of the date first above written.

Main Drive Properties, LLC, a Tennessee limited liability company

By:   
William Allison, Managing Member

City of Ketchum, Idaho, a municipal corporation

By:   
Neil Bradshaw, Mayor

By:   
Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau, Jr. Separate Property Trust u/a/d October 2, 1996





STATE OF IDAHO )  
 )ss.  
County of Blaine )

On this 3rd day of February, 2021, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of the Jack E Bariteau, Jr. Separate Property Trust under trust agreement dated October 2, 1996, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.



[Signature]  
My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this 10 day of February, 2021, before me, a Notary Public in and for said State, personally appeared NEIL BRADSHAW, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.



[Signature]  
Notary Public for Idaho  
Residing at 110 Wood River Pr. Ketchum, ID  
Commission expires 12/14/2026

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this     day of    , 2021, before me, a Notary Public in and for said State, personally appeared WILLIAM ALLISON, known or identified to me to be the Manager of Main Drive Properties, LLC, a limited liability company and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in the name of said limited liability company.

See Attached Acknowledgment  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

# All-purpose Acknowledgment California only

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

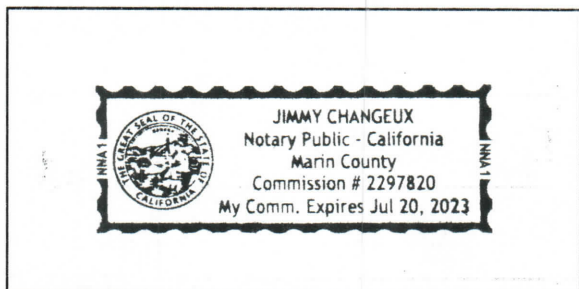
State of California

County of MARIN

On 02/08/2021 before me, JIMMY CHANGEUX, Notary Public (here insert name and title of the officer),

personally appeared William Arthur Allison

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Notary Seal

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jimmy Changeux

Description of Attached Document

Type or Title of Document First Amendment to development Agreement #20427 dated December 16<sup>th</sup>, 2019 and Recorded December 20<sup>th</sup>, 2019 in the Record of Blaine County Instrument # 665441

Document Date February 08<sup>th</sup>, 2021 Number of Pages (04 Pages)(Power)

Signer(s) Other Than Named Above \_\_\_\_\_ Property known as: 391 N. 1<sup>st</sup> Avenue, Ketchum, ID



FO01-000DSG5350CA-01

**ATTACHMENT C:**  
**Right-of-Way Encroachment**  
**Agreement #675091**

WHEN RECORDED, PLEASE RETURN TO:

OFFICE OF THE CITY ATTORNEY  
CITY OF KETCHUM  
POST OFFICE BOX 2315  
KETCHUM, IDAHO 83340

Instrument # 675091

HAILEY, BLAINE, IDAHO  
10-29-2020 05:05:09 PM No. of Pages: 9  
Recorded for : CITY OF KETCHUM  
JOLYNN DRAGE Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENT/CORRECTION

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20548**

THIS AGREEMENT, made and entered into this 19 day of October, by and between CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and JACK E BARITEAU JR., as Trustee of THE JACK E. BARITEAU JR., SEPARATE PROPERTY TRUST, dated October 2, 1996 and Main Drive Properties, LLC, a Tennessee limited liability company, (collectively referred to as "Owner"), whose address is Post Office Box 84, Sun Valley, Idaho 83353.

*RECITALS*

WHEREAS, Owner is the owner of real property described as 391 First Avenue North, Lots 1 and 2 of RE-DIVISION OF LOTS 1 & 2, Block 57, ORIGINAL KETCHUM TOWNSITE, according to the official plat thereof, record as Instrument No. 191607, records of Blaine County, Idaho ("Subject Property"), located within the City of Ketchum, State of Idaho; and as shown on Exhibit "A" attached hereto as Lot 1B after the Subject Property is replatted and,

WHEREAS, Owner wishes to construct a snow melt system under sidewalk pavers, planters, drainage, irrigation, trees, and all related and approved improvements within the City of Ketchum rights-of-way directly adjacent and abutting to Owner's property on First Avenue North and on Fourth Street as shown on Exhibit A: and,

WHEREAS, Until such time as the alley abutting properties identified as Owner's Property; and 160 West Fourth Street is vacated, Ketchum permits the installation of retaining walls, a public stairwell and public utilities and as shown in Exhibit "A" . After the alley is vacated, such improvements will be owned and maintained by the Owner; and,

WHEREAS, Owner wishes to install a snow melt system and plant mix pavement in the public right of way alley adjacent to 311 First Avenue; 331 First Avenue; and 171 West Sun Valley Road as shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time and approves of the use of said public right-of-way subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

## *TERMS AND CONDITIONS*

1. Ketchum shall permit Owner to install and maintain the Improvements identified in Exhibit "A" within the public rights-of-way of First Avenue North and Fourth Street located directly adjacent to the real properties located at 391 and 331 First Avenue North in Ketchum Idaho. Improvements include a snow melt system under sidewalk pavers, planters, drainage, irrigation, and trees. Ketchum permits improvements for so long as Owner maintains said Improvements in a good repair and in a safe manner, and unless and until Ketchum in good faith requires the removal of all or some part of the Improvements to complete necessary modifications to the public right of way.

2. Ketchum shall permit Owner to install and maintain the Improvements identified in Exhibit "A" within the public alley right-of-way that is directly adjacent to ; the east side of 171 West Sun Valley Road and the west side of 311 First Avenue North and 331 First Avenue North in Ketchum Idaho. Improvements consist of snow melt and plant mix pavement. Ketchum permits improvements for so long as Owner maintains said Improvements in a good repair and in a safe manner, and unless and until Ketchum in good faith requires the removal of all or some part of the Improvements to complete necessary modifications to the public right-of-way.

3. Until such time as the alley is vacated, Ketchum hereby permits Owner to excavate the public alley right-of-way directly behind and adjacent to Owner's east property line and up to the west property line of 160 West Fourth Street and complete the alley right-of-way improvements as shown on Exhibit "A" attached hereto. Once the alley vacation is final, Owner shall assume ownership and responsibility for all improvements in the vacated alley.

4. Owner shall pay for the cost of all of right of way improvements as shown on Exhibit "A" at its sole expense, with the exception that Ketchum shall reimburse Owner for all design and construction costs of the sidewalk, snow melt system, curb and gutter and other improvements required by Ketchum that begins at the property line separating 391 and 331 First Avenue North and ends at the property line separating 331 and 311 First Avenue North. Owner shall provide Ketchum a written estimate of such costs prior to commencing work. Owner and Ketchum shall mutually agree to the estimated costs. Reimbursement of these costs shall be made within ninety (90) days of receipt of Owner's written demand by Ketchum. Owner shall provide a complete accounting of all costs of this work to Ketchum with Owner's written notice.

5. The removal of all Owner improvements if so directed by Ketchum shall be at the sole expense of the Owner unless otherwise necessitated by the future development and or redevelopment of the properties located at 331 First Avenue North and 171 West Sun Valley Road. Redevelopment or development of these properties may impact or disturb Owner's original public alley right-of-way improvements and Owner's maintenance responsibilities described below. If, and when an individual property owner of 331 First Avenue North, 160 West Fourth Street and or 171 West Sun Valley Road, has applied for and been granted approval by Ketchum for the development, redevelopment and construction of improvements on such property owner's respective property, Ketchum agrees that as a condition of such future approval, that the applicant shall notify Owner in writing of the need to disturb all or a portion of the public alley improvements made by Owner. Owner and Ketchum agree to cooperate and coordinate with each respective



property owner related to the proposed improvement work that will disturb the improvements in the public alley right-of-way as shown on Exhibit "A" and each respective property owner shall be responsible for reimbursing Owner for any repair or restoration to the public alley right-of-way improvements so as to not interfere or cause Owner to not fulfill its obligations for the operation and maintenance of the public alley improvements as described herein. Ketchum agrees to make this obligation a condition of any future development, redevelopment or improvement approvals granted to the property owners identified by property address herein above.

6. Owner shall be responsible for the following:
  - a. Maintenance, repair and replacement of the snow melt system and all related improvements within the rights-of-way on First Avenue North, Fourth Street and the public alley right-of-way bordering the properties as shown on Exhibit "A" due to failures from installation, use, or other damage to the snow melt system. The Owner shall be responsible for removal of snow on the public sidewalks and alley where the snow melt is located in the event the snow melt system fails to operate or requires repair or replacement. Such maintenance, repair, replacement, and snow removal shall be at Owner's expense and shall be an obligation of Owner or Owner's property manager and occur within 48 hours of notice by Ketchum unless a longer period of time is agreed to by Owner and Ketchum. If the snow melt system is not operating, Owner shall Remove snow from the public right of way within 48 hours of Ketchum requesting removal. .
  - b. Maintenance, repair, and replacement, of the pavers, planters and trees located in the public rights-of-way on First Avenue North and Fourth Street and directly adjacent to 391 First Avenue North and 331 First Avenue North . Such maintenance, repair, and replacement shall be at Owner's expense and occur within 48 hours of notice by Ketchum unless a longer period of time is agreed to by Owner and Ketchum.
  - c. Until the vacation of the public alley right-of-way by Ketchum behind 391 First Avenue North is recorded in Blaine County, Owner shall be responsible for snow removal until such time as the snow melt system is operational in the public alley right-of-way bordered by the properties located at 311 First Avenue North, 331 First Avenue North and 171 West Sun Valley Road. Snow removal requirements may be adjusted during the period of construction with approval by Ketchum. Owner shall maintain access to the Idaho Power temporary sector power box located at the northwest corner of the alley behind 391 First Avenue, including snow removal, until the public alley right-of-way vacation is recorded.

7. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way unless arising from the willful misconduct or gross negligence of Ketchum. Owner shall further indemnify and hold Ketchum harmless from and against any and all

claims arising from any material breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon written notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum except those arising from the willful misconduct or gross negligence of Ketchum.

8. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

9. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

10. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

11. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

12. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.


13. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

14. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

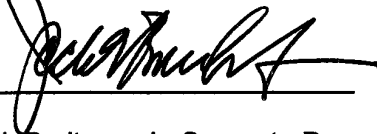
15. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

16. The parties fully understand all of the provisions of this Agreement, and believe them to be fair, just, adequate, and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

OWNER:


By: 

Jack Bariteau Jr., as Trustee of The Jack E. Bariteau Jr. Separate Trust u/a/d October 2, 1996

By: 

Jack Bariteau, Jr. Separate Property Trust and Main Drive Properties, LLC.


CITY OF KETCHUM:

By: 

Neil Bradshaw, Mayor



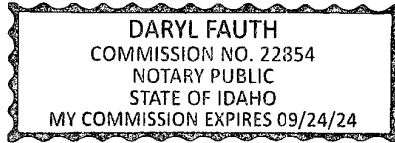
ATTEST:

, deputy City Clerk  
Grant Gager  
City Clerk  
for

STATE OF Idaho )  
County of Blaine ) ss.

On this 16<sup>th</sup> day of October, 2020, before me, the undersigned Notary Public in and for said State, personally appeared JACK BARITEAU, JR., Trustee of the Jack E. Bariteau, Jr. Separate Property Trust known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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



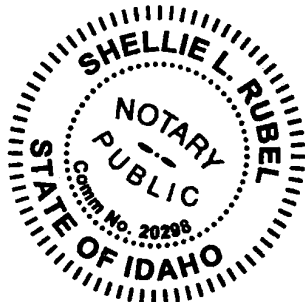
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission expires 9/24/24

~~STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.~~

STATE OF IDAHO )  
County of Blaine ) ss.

On this 29 day of October, 2020, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



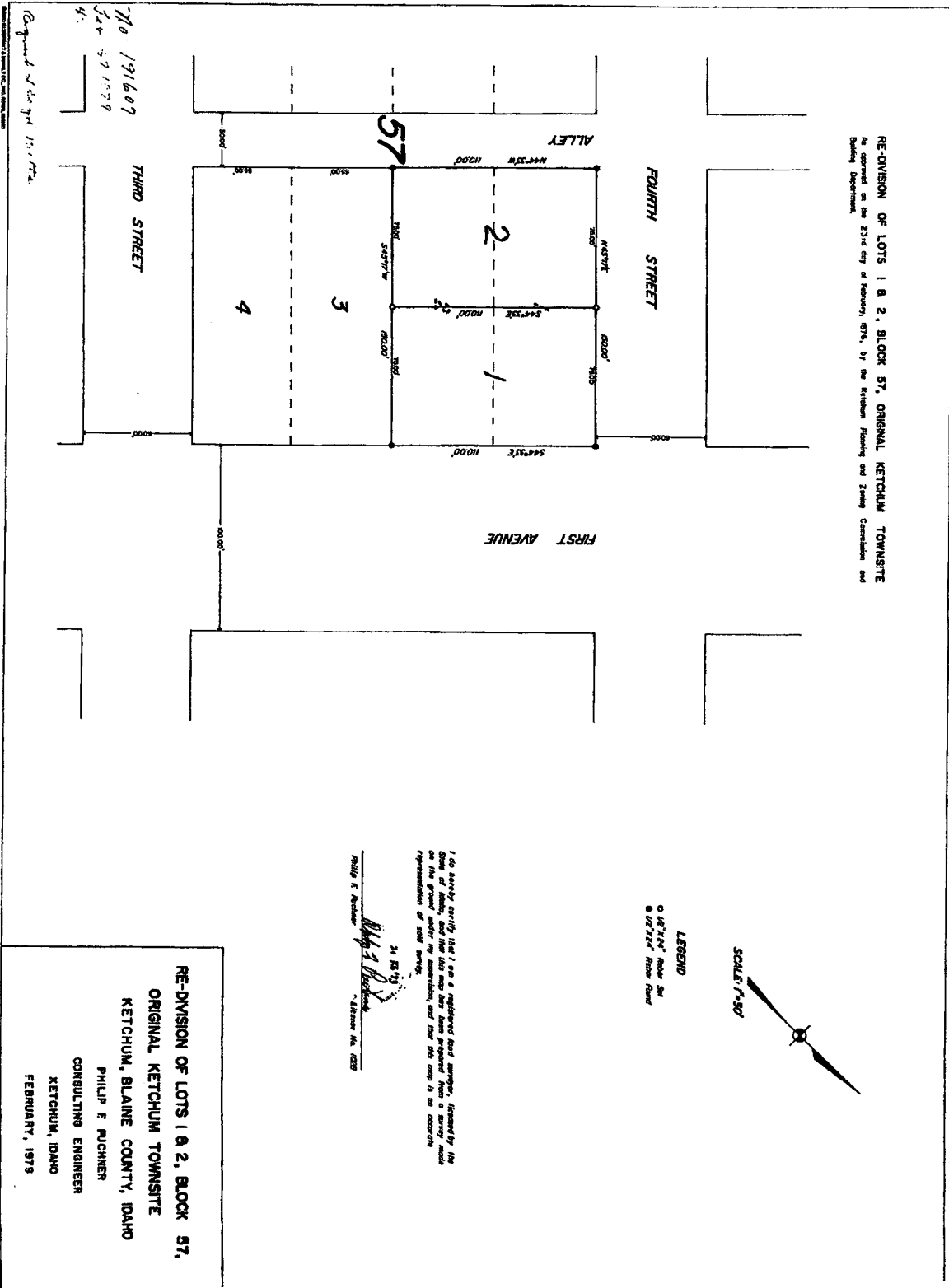
Shellie L. Rubel  
Notary Public for Idaho  
Residing at Blaine County  
Commission expires 3-19-2024

191607

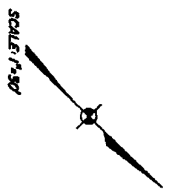
DRAWING NUMBER  
Blk-57 L-1,2  
Ketchum

DRAWING NUMBER

RE-DIVISION OF LOTS 1 & 2, BLOCK 57, ORIGINAL KETCHUM TOWNSITE  
As approved on the 23rd day of February, 1979, by the Ketchum Planning and Zoning Commission and  
County Department.



No. 191607  
Blk-57 L-1,2  
Ketchum  
Approved 2/23/79



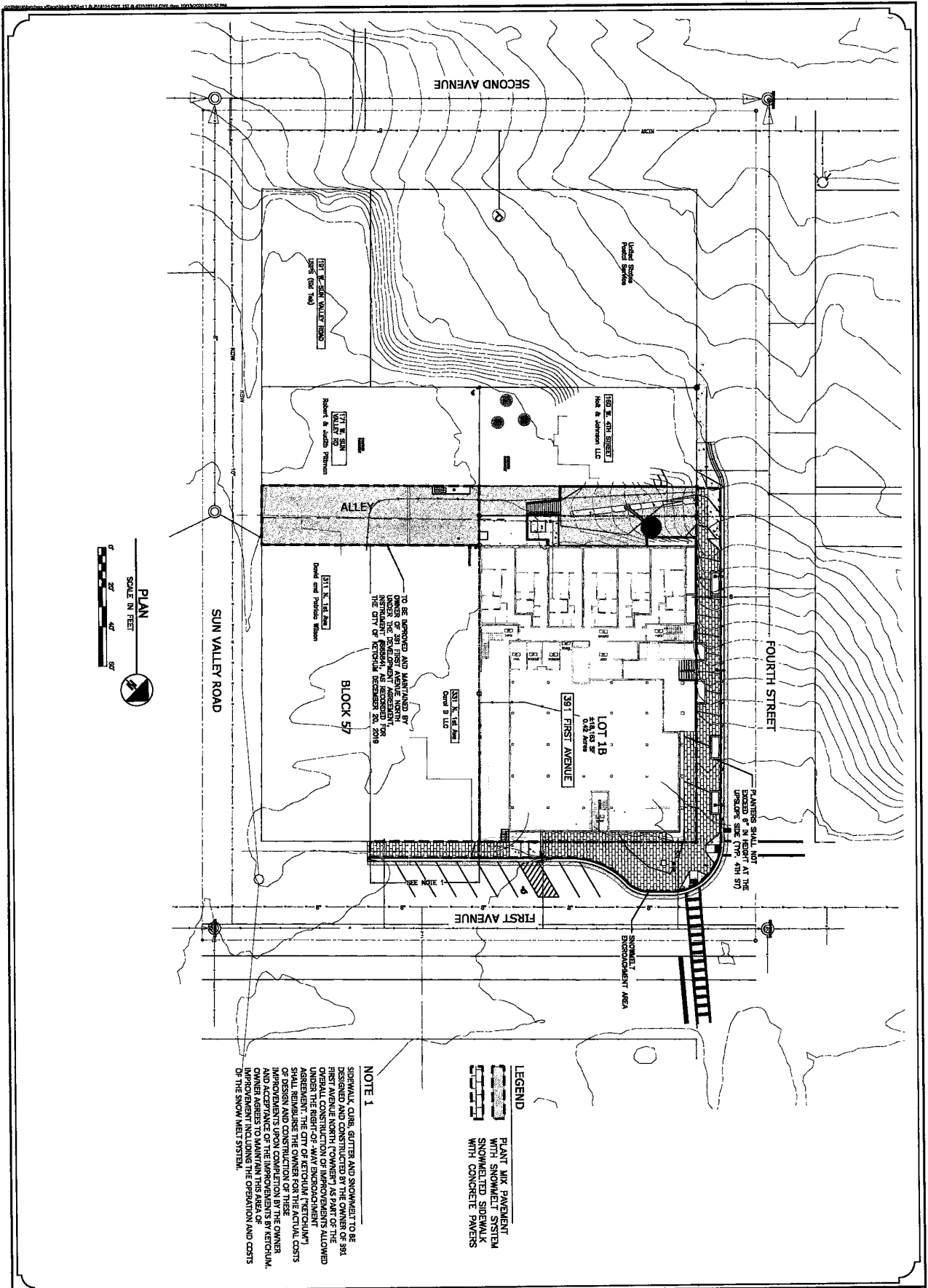
SCALE 1"=50'

LEGEND  
○ 1/2" x 1/4" Hole Size  
● 1/2" x 1/4" Hole Size

I do hereby certify that I am a registered land surveyor, licensed by the State of Idaho and that this map has been prepared from a survey made by me or under my supervision and that the map is an accurate representation of said survey.

24 Feb 1979  
Philip F. Ruchner  
- Licensed No. 1289

RE-DIVISION OF LOTS 1 & 2, BLOCK 57,  
ORIGINAL KETCHUM TOWNSITE  
KETCHUM, BLAINE COUNTY, IDAHO  
PHILIP F. RUCHNER  
CONSULTING ENGINEER  
KETCHUM, IDAHO  
FEBRUARY, 1979

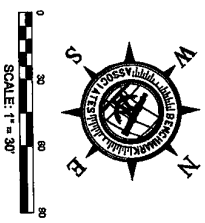
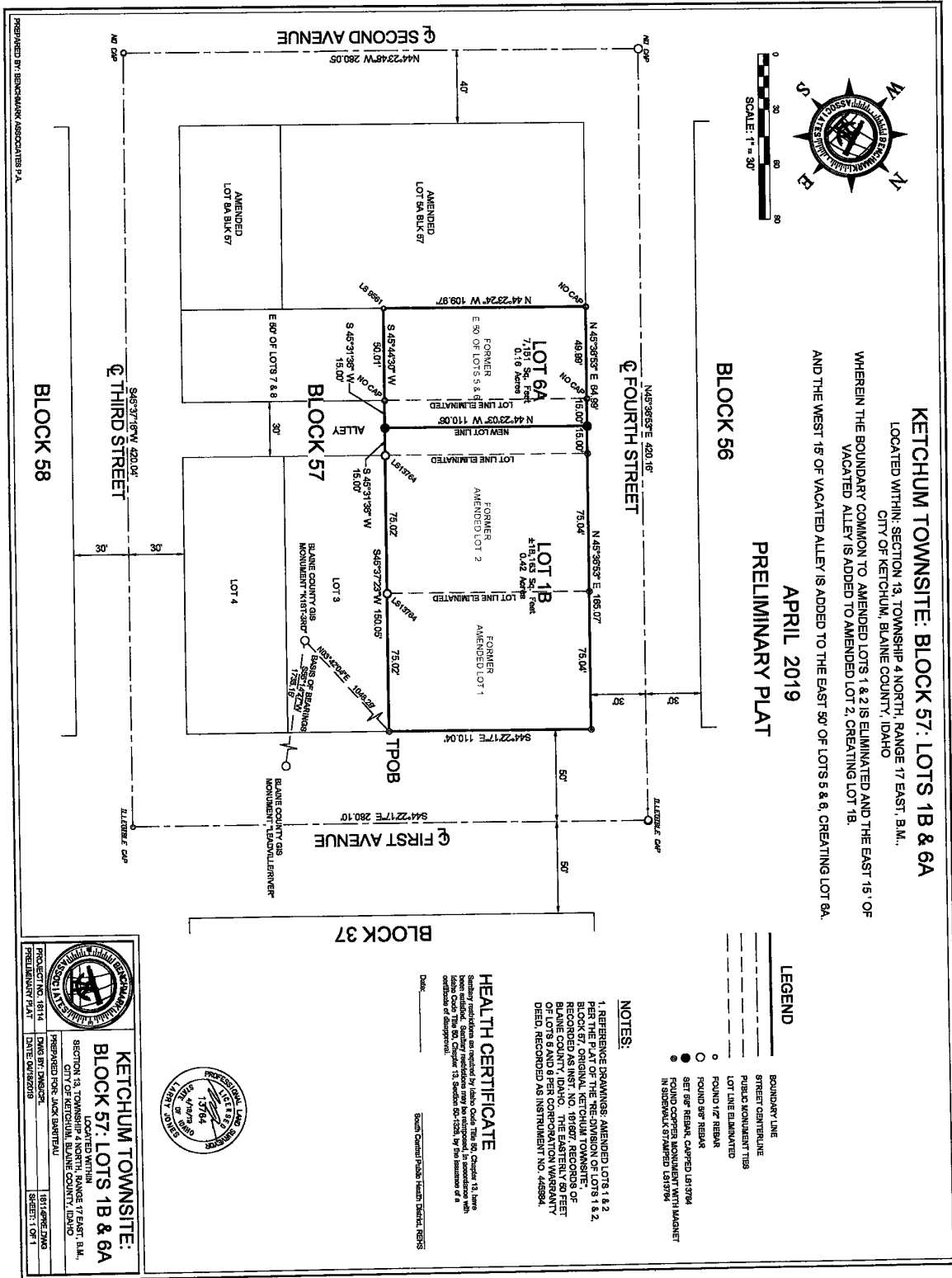


REVISIONS		DATE	BY
No.	DESCRIPTION		

DESIGNED BY: J.B.  
 CHECKED BY: J.B.  
 DATE: 10/13/20  
 PROJECT NO.: 18114  
 DRAWING NO.: EXHIBIT A

APPROVED BY: JACK BARITEAU  
 P.E. LICENSE NO. 18114  
 STATE OF IDAHO  
 1000 WEST MAIN STREET  
 KETCHUM, IDAHO 83701  
 TEL: 208-725-8114  
 FAX: 208-725-8112  
 WWW.JACKBARITEAU.COM

**ENCROACHMENT AND ALLEY MAINTENANCE**  
 KETCHUM BLOCK 57 LOT 1B  
 T4N, R17E, SEC 13, B.M., KETCHUM, IDAHO  
 PREPARED FOR: JACK BARITEAU



**KETCHUM TOWNSITE: BLOCK 57: LOTS 1B & 6A**  
 LOCATED WITHIN SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, 3rd M.,  
 CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 WHEREIN THE BOUNDARY COMMON TO AMENDED LOTS 1 & 2 IS ELIMINATED AND THE EAST 15' OF  
 VACATED ALLEY IS ADDED TO AMENDED LOT 2, CREATING LOT 1B.  
 AND THE WEST 15' OF VACATED ALLEY IS ADDED TO THE EAST 50' OF LOTS 5 & 6, CREATING LOT 6A.  
**APRIL 2019**  
**PRELIMINARY PLAT**  
**BLOCK 56**

- LEGEND**
- BOUNDARY LINE
  - STREET CENTERLINE
  - PUBLIC MONUMENT TIES
  - LOT LINE ELIMINATED
  - FOUND 1st REBAR
  - FOUND 2nd REBAR
  - SET 2nd REBAR, CAPPED LB137M
  - FOUND 3rd REBAR, CAPPED LB137M
  - FOUND 4th REBAR, CAPPED LB137M
  - FOUND 5th REBAR, CAPPED LB137M
  - FOUND 6th REBAR, CAPPED LB137M
  - FOUND 7th REBAR, CAPPED LB137M
  - FOUND 8th REBAR, CAPPED LB137M
  - FOUND 9th REBAR, CAPPED LB137M
  - FOUND 10th REBAR, CAPPED LB137M
  - FOUND 11th REBAR, CAPPED LB137M
  - FOUND 12th REBAR, CAPPED LB137M
  - FOUND 13th REBAR, CAPPED LB137M
  - FOUND 14th REBAR, CAPPED LB137M
  - FOUND 15th REBAR, CAPPED LB137M
  - FOUND 16th REBAR, CAPPED LB137M
  - FOUND 17th REBAR, CAPPED LB137M
  - FOUND 18th REBAR, CAPPED LB137M
  - FOUND 19th REBAR, CAPPED LB137M
  - FOUND 20th REBAR, CAPPED LB137M

**NOTES:**

1. REFERENCE DRAWINGS: AMENDED LOTS 1 & 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10, LOT 11, LOT 12, LOT 13, LOT 14, LOT 15, LOT 16, LOT 17, LOT 18, LOT 19, LOT 20, LOT 21, LOT 22, LOT 23, LOT 24, LOT 25, LOT 26, LOT 27, LOT 28, LOT 29, LOT 30, LOT 31, LOT 32, LOT 33, LOT 34, LOT 35, LOT 36, LOT 37, LOT 38, LOT 39, LOT 40, LOT 41, LOT 42, LOT 43, LOT 44, LOT 45, LOT 46, LOT 47, LOT 48, LOT 49, LOT 50, LOT 51, LOT 52, LOT 53, LOT 54, LOT 55, LOT 56, LOT 57, LOT 58, LOT 59, LOT 60, LOT 61, LOT 62, LOT 63, LOT 64, LOT 65, LOT 66, LOT 67, LOT 68, LOT 69, LOT 70, LOT 71, LOT 72, LOT 73, LOT 74, LOT 75, LOT 76, LOT 77, LOT 78, LOT 79, LOT 80, LOT 81, LOT 82, LOT 83, LOT 84, LOT 85, LOT 86, LOT 87, LOT 88, LOT 89, LOT 90, LOT 91, LOT 92, LOT 93, LOT 94, LOT 95, LOT 96, LOT 97, LOT 98, LOT 99, LOT 100.

**HEALTH CERTIFICATE**  
 I, the undersigned, a duly licensed and qualified Professional Engineer in the State of Idaho, do hereby certify that the above described plat is in accordance with the provisions of the Idaho Code, Title 55, Chapter 13, Section 50-1-202, by the issuance of a certificate of design approval.  
 Date: \_\_\_\_\_  
 Scott Conrad Public Health District Director



**KETCHUM TOWNSITE: BLOCK 57: LOTS 1B & 6A**  
 LOCATED WITHIN SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, 3rd M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 PREPARED FOR: JACK BARTHAU  
 PREPARED BY: CHRIS SPENCER  
 DATE: 04/18/2019  
 18149RE.DWG  
 SHEET 1 OF 1

**ATTACHMENT D:**  
**Amendment Application**  
**and Request Letters**





City of Ketchum  
Planning & Building

OFFICIAL USE ONLY	
File Number:	122-016
Date:	3/16/17
By:	SMcCallen
Approved Date:	
Denied Date:	
By:	

PD # 19501 -

### Development Agreement Amendment Application

ORIGINAL DEVELOPMENT AGREEMENT	
Project Name:	FIRST & FOURTH (391 1st AVENUE NORTH, KETCHUM, IDAHO 83340)
Development Agreement:	DA # 20427 (INSTRUMENT # 191607); FIRST AMENDMENT (INSTRUMENT #
Phone:	(650) 906-5236
Email:	jack@nayspointsunvalley.com 665841)
Mailing Address:	P.O. BOX 84, SUN VALLEY, IDAHO 83353
Representative:	JAR E. BURTELL, JR. MANAGING MEMBER
Mailing Address:	P.O. BOX 84, SUN VALLEY, IDAHO 83353
Phone:	(650) 906-5236
Email:	jack@nayspointsunvalley.com
PROJECT INFORMATION	
Legal Land Description:	LOTS 1 AND 2 OF RE-DIVISION OF LOTS 1 AND 2, BLICK 57, ORIGINAL KETCHUM TOWNSHIP
Street Address:	391 1st AVENUE NORTH, KETCHUM
Lot Area:	16,500 SF
Zoning District:	CC, SUBDISTRICT 11
Overlay District:	<input type="checkbox"/> Flood <input type="checkbox"/> Avalanche <input type="checkbox"/> Mountain
Anticipated Use:	MIXED USE, 3 STORY FOR SALE CONDOMINIUM RESIDENCES; COMMUNITY HOUSING APARTMENTS;
SECOND AMENDMENT	COMMERCIAL RETAIL AND OFFICE SPACE
Date of Agreement:	
Parties Named in Original Agreement:	
Summary of Significant Changes:	
THIRD AMENDMENT	
Date of Agreement:	
Parties Named in Original Agreement:	
Summary of Significant Changes:	
OTHER AMENDMENTS	
Date of Agreement:	
Parties Named in Original Agreement:	
Summary of Significant Changes:	SEE

I, the undersigned, certify that all information submitted with and upon this application form is true and accurate to the best of my knowledge and belief.

Signature of Owner/Representative

3/16  
Date

Once your application has been received, we will review it and contact you with next steps. No further action is required at this time.

March 16, 2022

Suzanne Frick  
Director of Planning and Zoning  
City of Ketchum  
P. O. Box 2315  
Ketchum, Idaho 83340

RE: Development Agreement Amendment Application – Waypoint Pearl, LLC – Development Agreement #20427 dated December 20, 2019 and First Amendment to Development Agreement #20427 dated January 19, 2021

Dear Suzanne:

Per our discussions on Friday, February 25, 2021, with you, Jade and Mayor Bradshaw and per our call yesterday afternoon with you, the Mayor and Abby, this letter will serve as the Summary of Significant Changes, Waypoint Pearl, LLC is requesting be approved by the City of Ketchum to the existing Development Agreement and First Amendment that govern the building now under construction at the northwest corner of First Avenue North and Fourth Street. The requested Changes are as follows:

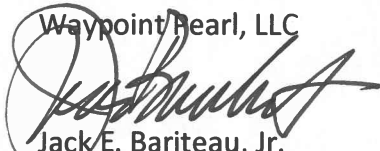
1. Permission to replace the current Letter of Credit in the amount of \$1,787,449.14 with a Performance Bond in the amount of \$1,787,449.14 under a Change Rider dated April 13, 2022 and effective March 7, 2022 for the on and offsite work that was required by the City in order to release the building permit for the project. With acceptance of this change, the City would instruct D L Evans Bank to release the Letter of Credit. This Bond is provided by Conrad Brothers of Idaho, Inc. and Conrad Brothers is requesting release of the Site Restoration Performance Bond (see attached) as part of this request. As the building continues with full construction and on pace for construction completion by the end of the year (subject to only to supply chain issues that are out of our or the contractor's control), our ownership has already expended well over \$200,000 in site work in the alley that includes nearly 90% of the excavation of the alley as approved for the Project; removal and elimination of the Ketchum Springs water line formerly located in the alley; completed new water connections to those properties within Block 57 as required under the Development Agreement. Conrad and our ownership has also arranged for and paid for relocation and rerouting of all other private utilities and payment of all design, connection and new equipment fees to Idaho Power (\$73,549.00); Cox Communications (\$11,192.91); Century Link (\$25,334.38) and snow removal costs to keep the alley extending south of our property line to Sun Valley Road clean and maintained (\$9,061.45). The release of the LOC will permit us to utilize equity funds to order and secure low inventory or difficult to obtain construction materials that now have significant lead times keep on schedule to complete the on and offsite improvement work dictated by the permitted plans and executed contracts with all subcontractors.

2. The First Amendment to Development Agreement, Section 2.1, recorded as Instrument # 697218, calls for the Receipt of Certificate Occupancy within 18 months of issuance of the building permit. The building permit was issued on April 19, 2021. The project, due to the heavy December, 2021 snows, ongoing supply chains issues, unavailability of materials for construction sequencing and lost building time from the loss of a full labor force due to Covid impacted labor force personnel from time to time, will not permit us to finish the building within the 18 month period from the date of issuance of the building permit April 19, 2021. We hereby request that this date for completion be extended to February 15, 2023. To date, please note that we have met the conditions of Section 2.3 and 2.4 and have completed or performed on all time related and financing conditions of the original DA and First Amendment to the DA.
3. Paragraph 6. of the original DA stipulates "Notwithstanding the City approval of the final plat map, the final plat map reflecting such changes shall not be recorded and become effective until after the issuance of the Certificate of Occupancy for the Project." Our ownership hereby requests that the final map for the Removal of Lot Lines and Inclusion of Vacated Alley process be allowed to proceed and be approved as soon as possible and prior to the current Certificate of Occupancy requirement in the DA. Our recently submitted ownership's application for preliminary plat approval can then be reviewed for approval by the City, as is the normal City process, for providing temporary certificates of occupancy for the residential condominiums to be sold provided the building meets the life safety standards and City requirements for on and off site improvements for accessing the building. Conrad is fully aware of these requirements and will make sure that all standards are met. Benchmark Engineering is also creating a new plat map to replace the submitted preliminary plat map to show the Community/Employee Housing Units as one condominium plat unit within the building.
4. The original DA provides for the master lease of the 12 community/employee apartments by the ownership of the hotel site now owned by Harriman Hotel, LLC as well as any Exceedance units. Per the e-mail transmitted from Abby Rivin to Ian McLaughlin of Pivot North Design on December 1, 2020, "A separate FAR Exceedance Agreement will not be required for the 1<sup>st</sup> & 4<sup>th</sup> Mixed-Use Building because the development agreement specifies the community housing requirement." We have a total of 15 Community/Employee Housing apartments in plan and being constructed. The intention is that these 15 apartments will meet and exceed the 18 hotel employee bed requirement under the Amended and Restated Development Agreement as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016 and therefore can be master leased to the Hotel Developer. We request two changes to the DA. First, that the master lease may be either with the Hotel Developer and or the hotel management operator hired by the Hotel ownership for the hotel and, second, that as the 15 apartments will be completed well in advance of the hotel project, that Waypoint Pearl, LLC be allowed to master

lease on an interim basis the apartments to any other business operating within Blaine County until such time as the apartments are to be occupied by the Hotel employees.

Please let me know if you have any questions on this Amendment Application Request at your earliest convenience. A cashier's check in the amount of \$1950.00 for the Application Fee is enclosed with this Summary.

Best regards,

Waypoint Pearl, LLC  
  
Jack E. Bariteau, Jr.  
Managing Member

CC: Ed Lawson



Conrad Brothers  
General Contractors and Builders  
P.O. Box 3432 - Hailey, Idaho 83333  
208-726-3830 Fax 208-726-5788  
www.conradbrothersconstruction.com

April 25, 2022

Morgan Landers  
City of Ketchum  
Planning and Building/Senior Planner  
P.O. Box 2315  
Ketchum, Idaho 83340

RE: Request for Time Extension to Complete Construction and Obtain Certificate of Occupancy-  
First & Fourth Building, Ketchum

Dear Morgan:

Conrad Brothers Construction is the general contractor for the building now being erected at the corner of First Avenue North and Fourth Street. Jack Bariteau, Managing Member of Waypoint Pearl, LLC, the owner and developer of the Project, has requested that I respond to the City on the delays that we have incurred in constructing the building that will now put the construction and completion of the Project building beyond the 18 months specified in the First Amendment to the Development Agreement.

As I understand, Mr. Bariteau has previously submitted his ownership's request that this 18-month period be extended to February 15, 2023, due to the delays in commissioning the Project since the issuance of the building permit on April 19, 2021. You have requested from Conrad Brothers the reasons for the delay and the justification for the timeline for extending this completion date.

The delays result from a combination of factors that that frankly I have not witnessed before in construction, especially on a building of this nature, as cutting edge and of this level of complexity. These factors include significant supply chain disruptions and delivery schedules of the building's components starting with concrete supply and delivery for pouring the concrete post tension slab garage roof deck on which the rest of the Compressed Laminated Timber or CLT structure has been erected. Weeks were lost here alone.

We continue to be noticed by vendors and suppliers on supply delays that come with huge inflationary spikes in project material costs.

We were further impacted by early weather with the arrival of significant the December, 2022 snowfall. This was out of the ordinary per the averages over the last 10 years. We spent more time removing snow from the project site than in actual building construction and exceeded our allotted 15 weather days delay. Cold temperatures in January and February further slowed the process of making up for any lost workdays.

Additionally, the lack of cooperation ( she was certainly not obligated ) with the adjacent property owner to the Project's immediate south in providing access to her property to enable us to excavate and install garage wall shoring along the common shared property line between the First & Fourth building

Conrad Brothers Construction  
105 Lewis St, Suite 101 Ketchum, ID 83340  
208-726-3830



Conrad Brothers

General Contractors and Builders  
P.O. Box 3432 - Hailey, Idaho 83333  
208-726-3830 Fax 208-726-5788  
www.conradbrothersconstruction.com

and her Consign Design property required new reengineering of the foundation wall along this line by the structural engineer and delays in completing the overall underground garage. We were told to assume that we would have access in preliminary design work.

We also have documentation and communications from suppliers and vendors where original committed dates of delivery and pricing have changed considerably. Two examples are key here for the City to recognize. First, the appliance package order for the 7 penthouse residences in the building placed through Mountain Land Design, was made on December 16, 2021, with a scheduled delivery date of September 1, 2022. These appliances manufactured by Sub Zero and Wolf are now delayed into October and through to January of 2023. The key component in this package is the Dual Fuel cooktop range to be installed in each residence which is now scheduled for delivery on December 12, 2022. This component appliance part is required for securing a temporary certificate of occupancy. The second example is the delivery of a key exterior window component of the overall window package. While we have been receiving the fixed window package in a variety of shipments from the manufacturer, we have been informed that there is a 6 week or longer delay from the first week in April now past to the end of May for the sliding glass window sections that are to be installed at the exterior terrace decks of Residences 301, 301, 303 and 304.

My staff and on-site team have reviewed our records and the current loss of construction time now totals 54.5 days. Our original building schedule formulated in March of 2021 assumed a completion of the Project within the 18-month period and finish by mid-October, 2022.

These examples are not an isolated situation to the First & Fourth building. All local builders including our major general contractor competitors are experiencing these delays. Conrad Brothers does not see any relief in sight at this juncture, given increasing supply chain problems, the high cost of fuel and, freight availability thus any improvement in faster delivery times. We therefore hope that the City honor the Development Amendment Agreement application of our client to complete by the time extension of this exceptional mixed use building to February, 15, 2023. We understand the impact to our client that without such extension of time to complete, opens up serious financial performance issues with his Company and his construction lender and in turn our continued performance and payment for our services by Waypoint Pearl, LLC.

Please feel free to contact me with any questions or comments at your earliest convenience.

Sincerely,  
Conrad Brothers of Idaho, Inc

Paul Conrad  
President

CC: Jack Bariteau, Waypoint Pearl, LLC  
Edward Lawson

**ATTACHMENT E:**  
**Draft Second Amendment to**  
**Development Agreement**  
**#20427 - redline**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

OFFICE OF THE CITY CLERK  
CITY OF KETCHUM  
POST OFFICE BOX 2315  
KETCHUM, IDAHO 83340

(Space Above Line For Recorder's Use)

## SECOND AMENDMENT TO DEVELOPMENT AGREEMENT #20427

This Amendment (“Amendment”) is made as of June \_\_, 2022 by and between the City of Ketchum, Idaho (“Ketchum”), a municipal corporation, and Waypoint Pearl, LLC, an Idaho limited liability company (“Owner”, and together with Ketchum, the “Parties”).

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to Development Agreement #20427 (“Agreement”), dated December 16, 2019, and recorded on December 20, 2019 in the records of Blaine County, Idaho as Instrument No. 665841, under and by virtue of which the Parties established certain rights and obligations with regard to the development of the real property commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho (“Property”).

1.2 Ketchum and Owner are parties to First Amendment to Development Agreement #20427, dated January 19, 2021 (“First Amendment”), and recorded on February 11, 2021 in the records of Blaine County, Idaho as Instrument No. 679218, under and by virtue of which the Parties amended certain portions of the Agreement.

1.3 Main Drive Properties, LLC and Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau Jr. Separate Property Trust dated October 2, 1996, parties to the Agreement and the First Amendment, executed an Assignment and Assumption Agreement dated April 22, 2021, under and by virtue of assigned certain agreements and intangibles to Waypoint Pearl, LLC, an Idaho limited liability company.

1.4 Waypoint Pearl, LLC is the owner of the Property.

1.5 The parties desire to amend and supplement the Agreement and First Amendment as hereinafter provided pursuant to section 16. b) thereof.

1.6 With the exception of the amendments in this Agreement, all terms of Agreement 20427 and First Amendment to Development Agreement 20427 shall remain in effect.

2. Amendments to the First Amendment. In view of the foregoing, the Parties agree to amend and supplement the First Amendment to Development Agreement 20427 as follows:

2.1 Section 2.1 is amended to read as follows:



Performance Obligation

Completion Deadline

Subject to Section 3, Receipt of Certificate of Occupancy

Within ~~24~~<sup>18</sup> months after issuance of building permit. The building permit was issued on April 19, 2021.

2.2 Section 2.2 is amended to provide that the term of the Agreement shall be October 19, 2023, 2.5 years from issuance of building permit on April 19, 2021.

3. Amendments to Development Agreement 20427. In view of the foregoing, the Parties agree to amend and supplement the Agreement as follows:

3.1 Section 4 is amended to read:

**4. FAR Exceedance Agreement.** The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to Section 9. of this Agreement. that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, and hereby incorporated by reference.

3.2 Section 6 is amended to read:

**6. Removal of Lot Lines and Inclusion of Vacated Alley.** Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associations, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite (“Amended Property”). Owner may submit application for, and Ketchum agrees to accept and process a final plat map for the removal of lot lines and inclusion of vacated alley prior to Certificate of Occupancy of the project provided all other applicable provisions of this Agreement are met. Notwithstanding the City approval of the final plat map, the final plat map reflecting such changes shall not be recorded and become effective until after the issuance of the Certificate of Occupancy for the Project.

3.3 Section 9 is amended to read as follows:

**9. On-Site Employee Housing Units.** Owner commits to construction and provision of on-site employee housing units as specified in the Planning and Zoning approved design review documents, dated May 31, 2019. Three of such depicted units shall satisfy the in-lieu housing obligation associated with the floor area bonus and be deed restricted community housing units, with such covenant to

be managed by Blaine County Housing Authority or other qualified third-party verifier approved by Ketchum. Twelve such depicted units shall be dedicated to on-site employee housing to satisfy the employee housing obligation for the Harriman Hotel. In the event the units are not required to fulfill the employee housing obligation for the Hotel Project located at 300 River Street East, Ketchum Idaho, ~~Owner determines not to use such for on-site employee housing,~~ then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority or other qualified third-party verifier approved by Ketchum, until such time as the units are to be occupied to satisfy the employee housing obligation for the Hotel Project. Should the employee housing units not be occupied to satisfy the employee housing obligation for the Hotel project, the covenant shall remain in full effect.

All deed-restricted community housing units shall be for rent only and rental limits shall not exceed Category 4 as regularly published by the Blaine County Housing Authority. Covenants for all units shall be recorded prior to recording of the final condominium plat or Certificate of Occupancy of the building, whichever comes first.

Owner has made application to Ketchum pursuant to KMC §16.04.070 for a condominium preliminary plat application for the Project which identifies the community housing units and employee housing units. As shown on the condominium preliminary plat, Unit 2B on the second floor shall satisfy the requirement for three deed restricted community housing units. Unit 1A on the first floor and Unit 2A on the second floor shall satisfy the requirement for the twelve on-site employee housing units.

3.4 Section 10 is amended to read as follows:

**10. Master Lease of Employee Housing Units.** The parties agree Owner may enter into a master lease with the Hotel Developer or Hotel Operator for the Harriman Hotel located at 300 River Street East, Ketchum Idaho “Hotel Project”, for employee housing apartment units containing at least eighteen (18) beds and thereby satisfy those certain related obligations of Harriman Hotel, LLC by Waypoint LLC, Trail Creek Fund, LLC under the Development Agreement approved for the Hotel Project and any and all Amendments or Settlement Agreements for the Hotel Project located at 300 River Street East, Ketchum Idaho “Hotel Development Agreement”, ~~the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016 and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“Hotel Development Agreement”).~~ All employee housing apartment units leased to the Hotel Developer or Hotel Operator may be subleased, assigned, or otherwise made available to employees of the Hotel Developer or Hotel Operator on terms and conditions determined by it in the exercise of its discretion provided that the employees are employed at the Hotel Project located at 300 River Street East, Ketchum Idaho. If the Hotel Development Agreement is

terminated for any reason the ~~apartment-employee housing~~ units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer's obligations may not also be counted as satisfaction of the three required any required community housing units necessary to satisfy the in-lieu community housing obligation under this FAR Exceedance Agreement for the Project. ~~Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.~~

3.5 Section 12 is amended to read as follows:

**12. Required Improvements by Owner.** ~~Prior to issuance of a building permit,~~ Owner agrees to provide the City ~~an irrevocable letter of credit a performance bond~~ for completion of the improvements to both 4<sup>th</sup> Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents ~~approved by the City. Subject security shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer.~~ The amount of the security shall be at least 150% of engineering estimates for the improvements.

Prior to City Council approval of the final condominium plat, or issuance of the Certificate of Occupancy, or Temporary Certificate of Occupancy for the project, all required improvements shall be completed and approved by the City.

3.6 Section 16.e shall be amended to include updated contact information for Ketchum and Owner as follows:

City of Ketchum  
PO Box 2315  
Ketchum, ID 83340  
Attn: Suzanne Frick, Planning and Building Director  
Telephone: 208-726-7801  
Email: [sfrick@ketchumidaho.org](mailto:sfrick@ketchumidaho.org)

Waypoint Pearl, LLC  
PO Box 84  
Sun Valley, ID 83353  
Attn: Jack E. Bariteau, Jr.  
Telephone: 650-906-5636  
Email: [jack@waypointsunvalley.com](mailto:jack@waypointsunvalley.com)

4. Construction. This Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Amendment and the Agreement the terms of this Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Amendment, unless otherwise defined herein.

5. Ratification. The Agreement, as amended and supplemented by this Amendment, is hereby ratified and affirmed.

6. Counterparts. This Agreement may be executed in any number of counterparts.

This Amendment is executed by the Parties as of the date first above written.

Waypoint Pearl, LLC, an Idaho limited liability company

City of Ketchum, Idaho, a municipal corporation

By: \_\_\_\_\_  
Jack E. Bariteau, Jr., Its Managing Member

By: \_\_\_\_\_  
Neil Bradshaw, Mayor

STATE OF IDAHO )  
 )ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Managing Member, of Waypoint Pearl, LLC, and acknowledged to me that by said Member's signature on the foregoing instrument, the foregoing named entity executed the same.

\_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 )ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared NEIL BRADSHAW, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission expires \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

**ATTACHMENT F:**  
**Draft Second Amendment to**  
**Development Agreement**  
**#20427 - clean**

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:  OFFICE OF THE CITY CLERK CITY OF KETCHUM POST OFFICE BOX 2315 <b>KETCHUM, IDAHO 83340</b>	
--	--

(Space Above Line For Recorder's Use)

## SECOND AMENDMENT TO DEVELOPMENT AGREEMENT #20427

This Amendment (“Amendment”) is made as of June \_\_, 2022 by and between the City of Ketchum, Idaho (“Ketchum”), a municipal corporation, and Waypoint Pearl, LLC, an Idaho limited liability company (“Owner”, and together with Ketchum, the “Parties”).

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to Development Agreement #20427 (“Agreement”), dated December 16, 2019, and recorded on December 20, 2019 in the records of Blaine County, Idaho as Instrument No. 665841, under and by virtue of which the Parties established certain rights and obligations with regard to the development of the real property commonly known as 391 N. 1<sup>st</sup> Avenue, Ketchum, Idaho (“Property”).

1.2 Ketchum and Owner are parties to First Amendment to Development Agreement #20427, dated January 19, 2021 (“First Amendment”), and recorded on February 11, 2021 in the records of Blaine County, Idaho as Instrument No. 679218, under and by virtue of which the Parties amended certain portions of the Agreement.

1.3 Main Drive Properties, LLC and Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau Jr. Separate Property Trust dated October 2, 1996, parties to the Agreement and the First Amendment, executed an Assignment and Assumption Agreement dated April 22, 2021, under and by virtue of assigned certain agreements and intangibles to Waypoint Pearl, LLC, an Idaho limited liability company.

1.4 Waypoint Pearl, LLC is the owner of the Property.

1.5 The parties desire to amend and supplement the Agreement and First Amendment as hereinafter provided pursuant to section 16. b) thereof.

1.6 With the exception of the amendments in this Agreement, all terms of Agreement 20427 and First Amendment to Development Agreement 20427 shall remain in effect.

2. Amendments to the First Amendment. In view of the foregoing, the Parties agree to amend and supplement the First Amendment to Development Agreement 20427 as follows:

2.1 Section 2.1 is amended to read as follows:

Performance Obligation

Completion Deadline

Subject to Section 3, Receipt of Certificate of Occupancy

Within 24 months after issuance of building permit. The building permit was issued on April 19, 2021.

2.2 Section 2.2 is amended to provide that the term of the Agreement shall be October 19, 2023, 2.5 years from issuance of building permit on April 19, 2021..

3. Amendments to Development Agreement 20427. In view of the foregoing, the Parties agree to amend and supplement the Agreement as follows:

3.1 Section 4 is amended to read:

**4. FAR Exceedance Agreement.** The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to Section 9. of this Agreement.

3.2 Section 6 is amended to read:

**6. Removal of Lot Lines and Inclusion of Vacated Alley.** Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associations, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite (“Amended Property”). Owner may submit application for, and Ketchum agrees to accept and process a final plat map for the removal of lot lines and inclusion of vacated alley prior to Certificate of Occupancy of the project provided all other applicable provisions of this Agreement are met.

3.3 Section 9 is amended to read as follows:

**9. On-Site Employee Housing Units.** Owner commits to construction and provision of on-site employee housing units as specified in the Planning and Zoning approved design review documents, dated May 31, 2019. Three of such depicted units shall satisfy the in-lieu housing obligation associated with the floor area bonus and be deed restricted community housing units, with such covenant to be managed by Blaine County Housing Authority or other qualified third-party verifier approved by Ketchum. Twelve such depicted units shall be dedicated to on-site employee housing to satisfy the employee housing obligation for the Harriman Hotel. In the event the units are not required to fulfill the employee housing obligation for the Hotel Project located at 300 River Street East, Ketchum



Idaho, then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority or other qualified third-party verifier approved by Ketchum, until such time as the units are to be occupied to satisfy the employee housing obligation for the Hotel Project. Should the employee housing units not be occupied to satisfy the employee housing obligation for the Hotel project, the covenant shall remain in full effect. All deed-restricted community housing units shall be for rent only and rental limits shall not exceed Category 4 as regularly published by the Blaine County Housing Authority. Covenants for all units shall be recorded prior to recording of the final condominium plat or Certificate of Occupancy of the building, whichever comes first.

Owner has made application to Ketchum pursuant to KMC §16.04.070 for a condominium preliminary plat application for the Project which identifies the community housing units and employee housing units. As shown on the condominium preliminary plat, Unit 2B on the second floor shall satisfy the requirement for three deed restricted community housing units. Unit 1A on the first floor and Unit 2A on the second floor shall satisfy the requirement for the twelve on-site employee housing units.

3.4 Section 10 is amended to read as follows:

**10. Master Lease of Employee Housing Units.** The parties agree Owner may enter into a master lease with the Hotel Developer or Hotel Operator for the Harriman Hotel located at 300 River Street East, Ketchum Idaho “Hotel Project”, for employee housing units containing at least eighteen (18) beds and thereby satisfy those certain related obligations of Harriman Hotel, LLC by Waypoint LLC, under the Development Agreement approved for the Hotel Project and any and all Amendments or Settlement Agreements for the Hotel Project located at 300 River Street East, Ketchum Idaho “Hotel Development Agreement”. . All employee housing units leased to the Hotel Developer or Hotel Operator may be subleased, assigned, or otherwise made available to employees of the Hotel Developer or Hotel Operator on terms and conditions determined by it in the exercise of its discretion provided that the employees are employed at the Hotel Project located at 300 River Street East, Ketchum Idaho. If the Hotel Development Agreement is terminated for any reason the employee housing units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer’s obligations may not also be counted as satisfaction of the three required community housing units necessary to satisfy the in-lieu community housing obligation s for the Project.

3.5 Section 12 is amended to read as follows:

**12. Required Improvements by Owner.** Owner agrees to provide the City a performance bond for completion of the improvements to both 4<sup>th</sup> Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and

other documents approved by the City. . The amount of the security shall be at least 150% of engineering estimates for the improvements.

Prior to City Council approval of the final condominium plat, or issuance of the Certificate of Occupancy, or Temporary Certificate of Occupancy for the project, all required improvements shall be completed and approved by the City.

3.6 Section 16.e shall be amended to include updated contact information for Ketchum and Owner as follows:

City of Ketchum  
PO Box 2315  
Ketchum, ID 83340  
Attn: Suzanne Frick, Planning and Building Director  
Telephone: 208-726-7801  
Email: [sfrick@ketchumidaho.org](mailto:sfrick@ketchumidaho.org)

Waypoint Pearl, LLC  
PO Box 84  
Sun Valley, ID 83353  
Attn: Jack E. Bariteau, Jr.  
Telephone: 650-906-5636  
Email: [jack@waypointsunvalley.com](mailto:jack@waypointsunvalley.com)

4. Construction. This Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Amendment and the Agreement the terms of this Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Amendment, unless otherwise defined herein.

5. Ratification. The Agreement, as amended and supplemented by this Amendment, is hereby ratified and affirmed.

6. Counterparts. This Agreement may be executed in any number of counterparts.

This Amendment is executed by the Parties as of the date first above written.

Waypoint Pearl, LLC, an Idaho limited liability company

City of Ketchum, Idaho, a municipal corporation

By: \_\_\_\_\_  
Jack E. Bariteau, Jr., Its Managing Member

By: \_\_\_\_\_  
Neil Bradshaw, Mayor

STATE OF IDAHO )  
 )ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Managing Member, of Waypoint Pearl, LLC, and acknowledged to me that by said Member's signature on the foregoing instrument, the foregoing named entity executed the same.

\_\_\_\_\_  
My Commission Expires \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 )ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared NEIL BRADSHAW, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission expires \_\_\_\_\_

State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

**ATTACHMENT G:**  
**Application and Supporting**  
**Materials – Condominium**  
**Preliminary Plat**



City of Ketchum  
Planning & Building

OFFICIAL USE ONLY	
P22-016A	
Date	4/6/22
By	SMY/Calh
	76825
Approved D	
By	

**Subdivision Application**

Submit completed application and payment to the Planning and Building Department, PO Box 2315, Ketchum, ID 83340 or hand deliver to Ketchum City Hall, 480 East Ave. N., Ketchum. 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](http://www.ketchumidaho.org) and click on Municipal Code.

APPLICANT INFORMATION			
Name of Proposed Subdivision: First & Fourth Condominiums			
Owner of Record: Waypoint Pearl, LLC: Jack E. Bariteau, Jr., Managing Member			
Address of Owner: P.O. Box 84, Sun Valley, ID 83353			
Representative of Owner: Benchmark Associates, Dave Patrie			
Legal Description: Amended Lots 1 & 2, Block 57, Ketchum Townsite			
Street Address: 391 First Avenue North, Ketchum, Idaho			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 10 market rate units & 3 spaces for community housing condominiumized			
Total Land Area: +/- 18,163 SF			
Current Zoning District: CC			
Proposed Zoning District: CC			
Overlay District: n/a			
TYPE OF SUBDIVISION			
Condominium <input checked="" type="checkbox"/>	Land <input type="checkbox"/>	PUD <input type="checkbox"/>	Townhouse <input type="checkbox"/>
Adjacent land in same ownership in acres or square feet: n/a			
Easements to be dedicated on the final plat: <b>No new easements.</b>			
Briefly describe the improvements to be installed prior to final plat approval: <b>New building, heated paver sidewalk, curb &amp; gutter, utility installations.</b>			
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 <input checked="" type="checkbox"/>			
One (1) copy of current title report and owner's recorded deed to the subject property <input checked="" type="checkbox"/>			
One (1) copy of the preliminary plat <input checked="" type="checkbox"/>			
All files should be submitted in an electronic format.			

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 Kato for applicant*  
Applicant Signature

3/24/22  
Date

**Instrument # 681852**

HAILEY, BLAINE, IDAHO  
04-23-2021 4:41:39 PM No. of Pages: 3  
Recorded for: BLAINE COUNTY TITLE  
JOLYNN DRAGE Fee: \$15.00  
Ex-Officio Recorder Deputy: CWB  
Electronically Recorded by Simplifile



**WARRANTY DEED**

For Value Received

The Jack E. Bariteau, Jr. Separate Property Trust U/T/D October 2, 1996, Jack Eli Bariteau, Jr., Trustee, as to an undivided 50% interest and Main Drive Properties, LLC., a Tennessee limited liability company, as to an undivided 50% interest as tenants in common,

the Grantor, hereby grants, bargains, sells, conveys and warrants unto

Waypoint Pearl, LLC, an Idaho limited liability company

the Grantee, whose current address is: PO Box 84, Sun Valley, ID 83353

the following described premises, to-wit:

Lots 1 and 2 of RE-DIVISION OF LOTS 1 & 2, Block 57, ORIGINAL KETCHUM TOWNSITE, according to the official plat thereof, recorded as Instrument No. 191607, records of Blaine County, Idaho.

**SUBJECT TO:** Current General Taxes, a lien in the process of assessment, not yet due or payable. Easements, restrictions, reservations, provisions of record, and assessments, if any.

**TO HAVE AND TO HOLD** the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those to which this conveyance is expressly made subject to and those made, suffered or done by the Grantee; and subject to all existing patent reservations; restrictions in railroad deeds of record; easements and rights of way established and of record; protective covenants of record; zoning ordinances and applicable building codes, use restrictions, ordinances, laws and regulations of any governmental unit; general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable; and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Dated this 6th day of April, 2021.

The Jack E. Bariteau, Jr. Separate Property Trust U/ Main Drive Properties, LLC., a Tennessee limited liability company  
T/D October 2, 1996

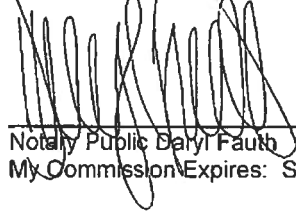
Jack Eli Bariteau, Jr.  
Trustee

By: William A. Allison  
Its:

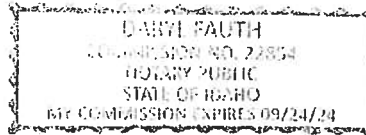
Manager

State of Idaho  
County of Blaine

This record was acknowledged before me on 6th day of April, 2021, by Jack Eli Bariteau, Jr., as the Trustee(s) of The Jack E. Bariteau, Jr. Separate Property Trust U/T/D October 2, 1996.

  
\_\_\_\_\_  
Notary Public Daryl Fauth  
My Commission Expires: September 24, 2024


(STAMP)



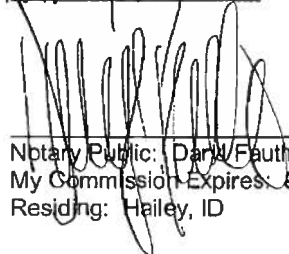
State of Idaho

ss.

County of Blaine

This record was acknowledged before me on the 6<sup>th</sup> day of April, 2021 by William A. Allison, the  
 of Main Drive Properties, LLC, a Tennessee limited liability company

(STAMP)

  
\_\_\_\_\_  
Notary Public: Daryl Fauth  
My Commission Expires: 09/24/24  
Residing: Hailey, ID







**ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**NOTICE**

**IMPORTANT - READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

**COMMITMENT TO ISSUE POLICY**

Subject to the Notice; Schedule B, Part I - Requirements; Schedule B, Part II - Exceptions; and the Commitment Conditions, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I - Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

Countersigned by:

Authorized Countersignature

Blaine County Title, Inc.  
360 Sun Valley Road  
P.O. Box 3176  
Ketchum, ID 83340  
(208) 726-0700



Frederick H. Eppinger  
President and CEO

David Hisey  
Secretary

*This page is only a part of a 2021 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No. 2224412

ALTA Commitment For Title Insurance (7-01-2021)

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## COMMITMENT CONDITIONS

### 1. DEFINITIONS

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
  - b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
  - c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
  - d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
  - e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
  - f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
  - g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
  - h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
  - i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
  - j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.
2. If all of the Schedule B, Part I - Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- a. the Notice;
  - b. the Commitment to Issue Policy;
  - c. the Commitment Conditions;
  - d. Schedule A;
  - e. Schedule B, Part I - Requirements;
  - f. Schedule B, Part II - Exceptions; and
  - g. a countersignature by the Company or its issuing agent that may be in electronic form.

### 4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

*This page is only a part of a 2021 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No. 2224412

ALTA Commitment For Title Insurance (7-01-2021)

Page 2 of 4



## 5. LIMITATIONS OF LIABILITY

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - (i) comply with the Schedule B, Part I - Requirements;
  - (ii) eliminate, with the Company's written consent, any Schedule B, Part II - Exceptions; or
  - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

## 6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- d. The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

## 7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

## 8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

## 9. CLAIMS PROCEDURES

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

*This page is only a part of a 2021 ALTA® Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions; and a countersignature by the Company or its issuing agent that may be in electronic form.*

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File No. 2224412

ALTA Commitment For Title Insurance (7-01-2021)

Page 3 of 4



## 10. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

## 11. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is \$2,000,000 or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

## STEWART TITLE GUARANTY COMPANY

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at Stewart Title Guaranty Company, P.O. Box 2029, Houston, Texas 77252-2029.

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File No. 2224412

ALTA Commitment For Title Insurance (7-01-2021)

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**ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)  
SCHEDULE A**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

**Issuing Agent:** Blaine County Title, Inc.  
**Issuing Office:** 360 Sun Valley Road, P.O. Box 3176, Ketchum, ID 83340  
**Issuing Office's ALTA® Registry ID:**  
**Loan ID Number:**  
**Commitment Number:** 2224412  
**Issuing Office File Number:** 2224412  
**Property Address:** 391 N 1st Ave., Ketchum, ID 83340  
120 W 4th St., Ketchum, ID 83340  
**Revision Number:**

1. **Commitment Date:** February 16, 2022 at 8:00 A.M.

2. **Policy to be issued:** **Proposed Amount of Insurance**

(a) 2021 ALTA® Owner's Policy

Proposed Insured:

(b) 2021 ALTA® Loan Policy

Proposed Insured:

3. **The estate or interest in the Land at the Commitment Date is:**

Fee Simple

4. **The Title is, at the Commitment Date, vested in:**

Waypoint Pearl, LLC, an Idaho limited liability company

5. **The Land is described as follows:**

Lots 1 and 2 of RE-DIVISION OF LOTS 1 & 2, Block 57, ORIGINAL KETCHUM TOWNSITE, according to the official plat thereof, recorded as Instrument No. 191607, records of Blaine County, Idaho.

**STEWART TITLE GUARANTY COMPANY**

  
Authorized Countersignature

**STATEMENT OF CHARGES**

These charges are due and payable  
before a policy can be issued

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ID ALTA Commitment for Title Insurance Schedule A (07-01-2021) SOC

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**ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)  
SCHEDULE B PART I**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**Requirements**

File No.: 2224412

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Delivery to the Company of the Affidavit as to Debts and Liens. Upon acceptance and review of said Affidavit, title will be subject to such further matters as appear necessary and appropriate following such review.
6. Pursuant to the State of Idaho Insurance Regulations, a cancellation fee is to be charged on all cancelled orders. Unless otherwise advised, orders will be considered cancelled six months after the effective date on the Commitment. The amount of the fee assessed shall be in accordance with our rate filing with the Idaho Department of Insurance.

If you should decide to change lenders within six months, this commitment can be transferred to avoid a cancellation charge.

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File No. 2224412

ALTA Commitment For Title Insurance Schedule B I (07-01-2021)

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# ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)

## SCHEDULE B PART II

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

### Exceptions

File No.: 2224412

**Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.**

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. 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. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by Public Record.
3. Any facts, rights, interests, or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, liens, or encumbrances, or claims thereof, which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims, or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
7. Any lien or right to a lien for services, labor, equipment, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Rights of the state or federal government and/or public in and to any portion of the land for right of way (whether or not such rights are shown by recordings of easements and/or maps in the Public Records by the State of Idaho showing the general location of these rights of way).
9. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

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ID ALTA Commitment For Title Insurance Schedule B II (07-01-2021)

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**ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)  
SCHEDULE B PART II**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**Exceptions**

10. General taxes for the year 2021, a lien in the amount of \$5,363.42, of which the first half due December 20, 2021 are PAID and the second half are due on or before June 20, 2022. (Parcel No. RPK0000057001B)
11. General taxes for the year 2021, a lien in the amount of \$5,363.42, of which the first half due December 20, 2021 are PAID and the second half are due on or before June 20, 2022. (Parcel No. RPK0000057002A)
12. General taxes for the year 2022 and subsequent years, which are a lien not yet payable.
13. Water and sewer charges of the City of Ketchum, which are current as of the date of the policy.
14. Ketchum rubbish charges billed by Clear Creek Disposal, which are current as of the date of the policy.
15. Notes, Easements and Restrictions as shown on the Re-Division of Lots 1 & 2, Block 57, Original Ketchum Townsite, recorded February 27, 1979 as [Instrument No. 191607](#), records of Blaine County, Idaho.
16. Facts evidenced by that certain Survey, dated September 2018 by Benchmark Associates, recorded October 30, 2018, as [Instrument No. 656178](#), records of Blaine County, Idaho.
17. Development Agreement #20427, including the terms and provisions thereof, Dated December 16, 2019 by and between the City of Ketchum, Idaho, a municipal corporation and Jack E. Bariteau, Jr., as Trustee of the Jack E. Bariteau, Jr. Separate Property Trust, under agreement dated October 2, 1996 and Main Drive Properties, LLC, a Tennessee limited liability company, recorded December 20, 2019 as [Instrument No. 665841](#), records of Blaine County, Idaho.  
  
First Amendment to Development Agreement #20427, including the terms and provisions thereof, recorded February 11, 2021, as [Instrument No. 679218](#), records of Blaine County, Idaho.
18. Right-of-Way Encroachment Agreement 20548, including the terms and provisions thereof, by and between City of Ketchum, Idaho, a municipal corporation and Jack E. Bariteau Jr., as Trustee of The Jack E. Bariteau Jr., Separate Property Trust, dated October 2, 1996 and Main Drive Properties, LLC, a Tennessee limited liability company recorded October 29, 2020 as [Instrument No. 675091](#), records of Blaine County, Idaho.
19. Right-of-Way Encroachment Agreement 20536, including the terms and provisions thereof, dated October 19, 2020, by and between City of Ketchum, Idaho, a municipal corporation and Idaho Power Company, recorded October 30, 2020 as [Instrument No. 675171](#), records of Blaine County, Idaho.
20. Deed of Trust, Security Agreement and Fixture Filing with Assignment of Leases and Rents to secure an indebtedness in the amount shown below, and any other obligations secured thereby:  
Amount: \$17,500,000.00  
Dated: 04/23/2021  
Grantor: Waypoint Pearl, LLC, an Idaho limited liability company  
Trustee: Blaine County Title, Inc.  
Beneficiary: Dudley Family Investments, LLC, a Delaware limited liability company  
Recorded: 04/23/2021, as Instrument No. 681853, records of Blaine County, Idaho

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**ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021)**  
**SCHEDULE B PART II**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**Exceptions**

21. Assignment of Leases and Rents, by and between Waypoint Pearl, LLC, an Idaho limited liability company and Dudley Family Investments, LLC, a Delaware limited liability company, recorded 04/23/2021 as Instrument No. 681854, records of Blaine County, Idaho.
22. Financing Statement executed by Waypoint Pearl, LLC to Dudley Family Investments, LLC recorded 04/23/2021 as Instrument No. 681855, records of Blaine County, Idaho.
23. Subordination Agreement, executed by Conrad Brothers of Idaho, Inc., in favor of Dudley Family Investments, LLC , recorded 04/23/2021 as Instrument No. 681856, records of Blaine County, Idaho.
24. Financing Statement executed by Waypoint Pearl, LLC to Dudley Family Investments, LLC Filed 04/26/2001 as File No. 20210632205 records of the Idaho Secretary of State UCC Division.
25. Subordination Agreement, executed by Conrad Brothers of Idaho, Inc., in favor of Dudley Family Investments, LLC , recorded 04/29/2021 as Instrument No. 682017, records of Blaine County, Idaho.
26. Notices of liens if any, in favor of the State Tax Commission, the Department of Labor and Department of Health and Welfare of the State of Idaho filed in the office of the Secretary of State pursuant to Chapter 19, Title 45, Idaho Code. (The Idaho State Tax Commission electronically files liens with the office of the Secretary of State and not with the Blaine County Recorder. Until final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.)

Item 1 will be removed upon final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.

Items 2-5 and 7-9 may be removed upon issuance of any ALTA Extended Coverage Policy.

Copies of all recorded documents outlined in this section are available upon request.

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## STG Privacy Notice Stewart Title Companies

### WHAT DO THE STEWART TITLE COMPANIES DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of the Stewart Title Guaranty Company and its title affiliates (the Stewart Title Companies), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as the Stewart Title Companies, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information.	Do we share	Can you limit this sharing?
<b>For our everyday business purposes</b> — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
<b>For our marketing purposes</b> — to offer our products and services to you.	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies. <i>Our affiliates may include companies with a Stewart name; financial companies, such as Stewart Title Company</i>	Yes	No
<b>For our affiliates' everyday business purposes</b> — information about your creditworthiness.	No	We don't share
<b>For our affiliates to market to you</b> — For your convenience, Stewart has developed a means for you to opt out from its affiliates marketing even though such mechanism is not legally required.	Yes	Yes, send your first and last name, the email address used in your transaction, your Stewart file number and the Stewart office location that is handling your transaction by email to <a href="mailto:optout@stewart.com">optout@stewart.com</a> or fax to 1-800-335-9591.
<b>For non-affiliates to market to you.</b> Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

### SHARING PRACTICES

<b>How often do the Stewart Title Companies notify me about their practices?</b>	We must notify you about our sharing practices when you request a transaction.
<b>How do the Stewart Title Companies protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer, file, and building safeguards.
<b>How do the Stewart Title Companies collect my personal information?</b>	We collect your personal information, for example, when you <ul style="list-style-type: none"> <li>▪ request insurance-related services</li> <li>▪ provide such information to us</li> </ul> We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.
<b>What sharing can I limit?</b>	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

**Contact us:** *If you have any questions about this privacy notice, please contact us at: Stewart Title Guaranty Company, 1360 Post Oak Blvd., Ste. 100, Privacy Officer, Houston, Texas 77056*

## Privacy Notice for California Residents

Pursuant to the California Consumer Privacy Act of 2018 (“CCPA”), Stewart Information Services Corporation and its subsidiary companies (collectively, “Stewart”) are providing this **Privacy Notice for California Residents** (“CCPA Notice”). This CCPA Notice supplements the information contained in Stewart’s existing privacy notice and applies solely to all visitors, users and others who reside in the State of California or are considered California Residents (“consumers” or “you”). Terms used but not defined shall have the meaning ascribed to them in the CCPA.

### Information Stewart Collects

Stewart collects information that identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device. Most of the information that Stewart collects in the course of its regular business is already protected pursuant to the Gramm-Leach-Bliley Act (GLBA). Additionally, much of this information comes from government records or other information already in the public domain. Personal information under the CCPA does not include:

- Publicly available information from government records.
- Deidentified or aggregated consumer information.
- Certain personal information protected by other sector-specific federal or California laws, including but not limited to the Fair Credit Reporting Act (FCRA), GLBA and California Financial Information Privacy Act (FIPA).

Specifically, Stewart has collected the following categories of personal information from consumers within the last twelve (12) months:

Category	Examples	Collected?
A. Identifiers.	A real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, Social Security number, driver’s license number, passport number, or other similar identifiers.	YES
B. Personal information categories listed in the California Customer Records statute (Cal. Civ. Code § 1798.80(e)).	A name, signature, Social Security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. Some personal information included in this category may overlap with other categories.	YES
C. Protected classification characteristics under California or federal law.	Age (40 years or older), race, color, ancestry, national origin, citizenship, religion or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, genetic information (including familial genetic information).	YES
D. Commercial information.	Records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.	YES
E. Biometric information.	Genetic, physiological, behavioral, and biological characteristics, or activity patterns used to extract a template or other identifier or identifying information, such as, fingerprints, faceprints, and voiceprints, iris or retina scans, keystroke, gait, or other physical patterns, and sleep, health, or exercise data.	YES
F. Internet or other similar network activity.	Browsing history, search history, information on a consumer’s interaction with a website, application, or advertisement.	YES
G. Geolocation data.	Physical location or movements.	YES
H. Sensory data.	Audio, electronic, visual, thermal, olfactory, or similar information.	YES
I. Professional or employment-related information.	Current or past job history or performance evaluations.	YES
J. Non-public education information (per the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g, 34 C.F.R. Part 99)).	Education records directly related to a student maintained by an educational institution or party acting on its behalf, such as grades, transcripts, class lists, student schedules, student identification codes, student financial information, or student disciplinary records.	YES
K. Inferences drawn from other personal information.	Profile reflecting a person’s preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.	YES

Stewart obtains the categories of personal information listed above from the following categories of sources:

- Directly and indirectly from customers, their designees or their agents (For example, realtors, lenders, attorneys, etc.)
- Directly and indirectly from activity on Stewart's website or other applications.
- From third-parties that interact with Stewart in connection with the services we provide.

#### Use of Personal Information

Stewart may use or disclose the personal information we collect for one or more of the following purposes:

- To fulfill or meet the reason for which the information is provided.
- To provide, support, personalize, and develop our website, products, and services.
- To create, maintain, customize, and secure your account with Stewart.
- To process your requests, purchases, transactions, and payments and prevent transactional fraud.
- To prevent and/or process claims.
- To assist third party vendors/service providers who complete transactions or perform services on Stewart's behalf.
- As necessary or appropriate to protect the rights, property or safety of Stewart, our customers or others.
- To provide you with support and to respond to your inquiries, including to investigate and address your concerns and monitor and improve our responses.
- To personalize your website experience and to deliver content and product and service offerings relevant to your interests, including targeted offers and ads through our website, third-party sites, and via email or text message (with your consent, where required by law).
- To help maintain the safety, security, and integrity of our website, products and services, databases and other technology assets, and business.
- To respond to law enforcement or regulator requests as required by applicable law, court order, or governmental regulations.
- Auditing for compliance with federal and state laws, rules and regulations.
- Performing services including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing advertising or marketing services or other similar services.
- To evaluate or conduct a merger, divestiture, restructuring, reorganization, dissolution, or other sale or transfer of some or all of our assets, whether as a going concern or as part of bankruptcy, liquidation, or similar proceeding, in which personal information held by us is among the assets transferred.

Stewart will not collect additional categories of personal information or use the personal information we collected for materially different, unrelated, or incompatible purposes without providing you notice.

#### Disclosure of Personal Information to Affiliated Companies and Nonaffiliated Third Parties

Stewart does not sell your personal information to nonaffiliated third parties. Stewart may share your information with those you have designated as your agent in the course of your transaction (for example, a realtor or a lender). Stewart may disclose your personal information to a third party for a business purpose. Typically, when we disclose personal information for a business purpose, we enter a contract that describes the purpose and requires the recipient to both keep that personal information confidential and not use it for any purpose except performing the contract.

We share your personal information with the following categories of third parties:

- Service providers and vendors (For example, search companies, mobile notaries, and companies providing credit/debit card processing, billing, shipping, repair, customer service, auditing, marketing, etc.)
- Affiliated Companies
- Litigation parties and attorneys, as required by law.
- Financial rating organizations, rating bureaus and trade associations.
- Federal and State Regulators, law enforcement and other government entities

In the preceding twelve (12) months, Stewart has disclosed the following categories of personal information for a business purpose:

- Category A: Identifiers
- Category B: California Customer Records personal information categories
- Category C: Protected classification characteristics under California or federal law
- Category D: Commercial Information
- Category E: Biometric Information
- Category F: Internet or other similar network activity
- Category G: Geolocation data
- Category H: Sensory data
- Category I: Professional or employment-related information
- Category J: Non-public education information
- Category K: Inferences

#### Consumer Rights and Choices

The CCPA provides consumers (California residents) with specific rights regarding their personal information. This section describes your CCPA rights and explains how to exercise those rights.

## Access to Specific Information and Data Portability Rights

You have the right to request that Stewart disclose certain information to you about our collection and use of your personal information over the past 12 months. Once we receive and confirm your verifiable consumer request, Stewart will disclose to you:

- The categories of personal information Stewart collected about you.
- The categories of sources for the personal information Stewart collected about you.
- Stewart's business or commercial purpose for collecting that personal information.
- The categories of third parties with whom Stewart shares that personal information.
- The specific pieces of personal information Stewart collected about you (also called a data portability request).
- If Stewart disclosed your personal data for a business purpose, a listing identifying the personal information categories that each category of recipient obtained.

## Deletion Request Rights

You have the right to request that Stewart delete any of your personal information we collected from you and retained, subject to certain exceptions. Once we receive and confirm your verifiable consumer request, Stewart will delete (and direct our service providers to delete) your personal information from our records, unless an exception applies.

Stewart may deny your deletion request if retaining the information is necessary for us or our service providers to:

1. Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you
2. Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity, or prosecute those responsible for such activities.
3. Debug products to identify and repair errors that impair existing intended functionality.
4. Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law.
5. Comply with the California Electronic Communications Privacy Act (Cal. Penal Code § 1546 *seq.*).
6. Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the information's deletion may likely render impossible or seriously impair the research's achievement, if you previously provided informed consent.
7. Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us.
8. Comply with a legal obligation.
9. Make other internal and lawful uses of that information that are compatible with the context in which you provided it.

## Exercising Access, Data Portability, and Deletion Rights

To exercise the access, data portability, and deletion rights described above, please submit a verifiable consumer request to us either:

- Calling us Toll Free at 1-866-571-9270
- Emailing us at [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com)
- Visiting <http://stewart.com/ccpa>

Only you, or someone legally authorized to act on your behalf, may make a verifiable consumer request related to your personal information. You may also make a verifiable consumer request on behalf of your minor child.

To designate an authorized agent, please contact Stewart through one of the methods mentioned above.

You may only make a verifiable consumer request for access or data portability twice within a 12-month period. The verifiable consumer request must:

- Provide sufficient information that allows us to reasonably verify you are the person about whom we collected personal information or an authorized representative.
- Describe your request with sufficient detail that allows us to properly understand, evaluate, and respond to it.

Stewart cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and confirm the personal information relates to you.

Making a verifiable consumer request does not require you to create an account with Stewart.

## Response Timing and Format

We endeavor to respond to a verifiable consumer request within forty-five (45) days of its receipt. If we require more time (up to an additional 45 days), we will inform you of the reason and extension period in writing.

A written response will be delivered by mail or electronically, at your option.

Any disclosures we provide will only cover the 12-month period preceding the verifiable consumer request's receipt. The response we provide will also explain the reasons we cannot comply with a request, if applicable. For data portability requests, we will select a format to provide your personal information that is readily useable and should allow you to transmit the information from one entity to another entity without hindrance.

Stewart does not charge a fee to process or respond to your verifiable consumer request unless it is excessive, repetitive, or manifestly unfounded. If we determine that the request warrants a fee, we will tell you why we made that decision and provide you with a cost estimate before completing your request.

#### Non-Discrimination

Stewart will not discriminate against you for exercising any of your CCPA rights. Unless permitted by the CCPA, we will not:

- Deny you goods or services.
- Charge you a different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties.
- Provide you a different level or quality of goods or services.
- Suggest that you may receive a different price or rate for goods or services or a different level or quality of goods or services.

#### Changes to Our Privacy Notice

Stewart reserves the right to amend this privacy notice at our discretion and at any time. When we make changes to this privacy notice, we will post the updated notice on Stewart's website and update the notice's effective date. **Your continued use of Stewart's website following the posting of changes constitutes your acceptance of such changes.**

#### Contact Information

If you have questions or comments about this notice, the ways in which Stewart collects and uses your information described here, your choices and rights regarding such use, or wish to exercise your rights under California law, please do not hesitate to contact us at:

**Phone:** Toll Free at 1-866-571-9270

**Website:** <http://stewart.com/ccpa>

**Email:** [Privacyrequest@stewart.com](mailto:Privacyrequest@stewart.com)

**Postal Address:** Stewart Information Services Corporation  
Attn: Mary Thomas, Deputy Chief Compliance Officer  
1360 Post Oak Blvd., Ste. 100, MC #14-1  
Houston, TX 77056

## STG Privacy Notice 2 (Rev 01/26/09) Independent Agencies and Unaffiliated Escrow Agents

### WHAT DO/DOES THE Blaine County Title, Inc. DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of Blaine County Title, Inc. , and its affiliates (" N/A "), pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as Blaine County Title, Inc. , need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information	Do we share?	Can you limit this sharing?
<b>For our everyday business purposes</b> — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
<b>For our marketing purposes</b> — to offer our products and services to you.	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and non-financial companies.	Yes	No
<b>For our affiliates' everyday business purposes</b> — information about your creditworthiness.	No	We don't share
<b>For our affiliates to market to you</b>	Yes	No
<b>For non-affiliates to market to you.</b> Non-affiliates are companies not related by common ownership or control. They can be financial and non-financial companies.	No	We don't share

We may disclose your personal information to our affiliates or to non-affiliates as permitted by law. If you request a transaction with a non-affiliate, such as a third party insurance company, we will disclose your personal information to that non-affiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

Sharing practices	
<b>How often do/does Blaine County Title, Inc. notify me about their practices?</b>	We must notify you about our sharing practices when you request a transaction.
<b>How do/does Blaine County Title, Inc. protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.
<b>How do/does Blaine County Title, Inc. collect my personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>• request insurance-related services</li> <li>• provide such information to us</li> </ul> <p>We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.</p>
<b>What sharing can I limit?</b>	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

<b>Contact Us</b>	If you have any questions about this privacy notice, please contact us at: Blaine County Title, Inc. , 360 Sun Valley Road, PO Box 3176, Ketchum, ID 83340
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0004652962



STATE OF IDAHO

Office of the secretary of state, Lawrence Denney
ARTICLES OF INCORPORATION (NONPROFIT)
Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301
Filing Fee: \$30.00

For Office Use Only
-FILED-
File #: 0004652962
Date Filed: 3/10/2022 12:54:45 PM

B0689-3074 03/10/2022 12:56 PM Received by ID Secretary of State Lawrence Denney

Articles of Incorporation (Nonprofit)
Select one: Standard, Expedited or Same Day Service (see descriptions below) Standard (filing fee \$30)
Article 1: Corporation Name Entity name First & Fourth Condominium Owners' Association, Inc.
Article 2: Effective Date The corporation shall be effective when filed with the Secretary of State.
Article 3: Purpose The purpose for which the corporation is organized is: Homeowners Association
Article 4: Voting Members: The corporation has voting members.
Article 5: Asset Distribution on Dissolution Upon dissolution the assets shall be distributed: the residual assets of the Corporation (after all creditors of the Corporation have been paid), shall be distributed to the members prorated in accordance with their respective membership interests.
Article 6: IRS Designation Is this nonprofit a 501(c)3? No
Article 7: The mailing address of the corporation shall be: Mailing Address JACK E. BARITEAU, JR. PO BOX 84 SUN VALLEY, ID 83353-0084
Article 8: Registered Agent Name and Address Registered Agent Jack E. Bariteau, Jr Physical Address: 675 SUN VALLEY ROAD SUITE L SUN VALLEY, ID 83353 Mailing Address: JACK E. BARITEAU, JR. PO BOX 84 SUN VALLEY, ID 83353-0084
[X] I affirm that the registered agent appointed has consented to serve as registered agent for this entity.
Article 9: Incorporator Name(s) and Address(es)
Name Incorporator Address
Edward A Lawson PO BOX 3310 KETCHUM, ID 83340
Article 10: Director Name(s) and Address(es)
Name Title Director Address
Jack E. Bariteau Jr. Director PO BOX 84 SUN VALLEY, ID 83353





Director	PO BOX 2818 HAILEY, ID 83333
William A. Allison	Director 155 MAIN DRIVE SAN RAFAEL, CA 94901

The Articles of Incorporation must be signed by at least one Incorporator.

*Edward Lawson*

*03/10/2022*

Edward A Lawson

Date

<p>RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:</p> <p>Waypoint Pearl, LLC Post Office Box 84 Sun Valley, Idaho 83353</p>	
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(SPACE ABOVE LINE FOR RECORDER'S USE)

**CONDOMINIUM DECLARATION  
FOR  
FIRST & FOURTH CONDOMINIUMS**

THIS DECLARATION (the "**Declaration**") dated \_\_\_\_\_, 2022, shall be effective upon recordation and is made by WAYPOINT PEARL, LLC , an Idaho limited liability company (the "**Declarant**"). Declarant is the owner of certain real property in Blaine County, Idaho, more particularly described on Exhibit A (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 condominium project known as FIRST & FOURTH (the "**Condominium 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**").

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Condominium Project, to further a plan for the improvement, lease, sale and ownership of the Units in the Condominium 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 Condominium Project.

Section 1.3 Condominium 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 Condominium 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 First & Fourth Condominium Owners' Association, Inc. 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 levied pursuant to this Declaration.

Section 2.5 "Association" means the FIRST & FOURTH Condominium Owners' Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.

Section 2.6 "Board of Directors" 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, a copy of which is attached hereto as Exhibit D.

Section 2.8 "Commercial Units" means Unit 1G, 1H and 1I as shown on the Map which are designated in this Declaration for business or commercial uses.

Section 2.9 "Common Elements" means all of the Condominium 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, patios, balconies, 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 or fiber optic internet 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, cable, fiber optic internet and other similar utility installations used in connection therewith), except for the Units; and
- (c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property; and mechanical equipment and distribution system necessary for the operation of the snowmelt system located within the private exterior common area of the Property and within City of Ketchum public right of way including the public alley commencing at the southern property line of the Property and ending at the northern edge of the public sidewalk on Sun Valley Road and as illustrated on Exhibit "E" attached hereto and made a part hereof. Annual maintenance and utility costs related to the public alley area and the public alley that is subject to the Right-Of-Way Encroachment Agreement 20548 recorded as Instrument # 675091 including snow plowing, snow removal and the future and ongoing costs of the installation of snow melt and all related improvements in the public alley and public alley to be vacated as illustrated in Exhibit "E" are to be shared equally with the owner of the property herein identified as 160 Fourth Street or future Lot 6A if such public alley is vacated as shown on the Preliminary Plat dated March 2022 attached hereto as Exhibit "E"..

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

(e) in general, all other parts of the Condominium 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; and

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

Section 2.12 "Condominium Documents" means the basic documents creating and governing the Condominium Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Map, and any procedures, Rules and Regulations, or policies relating to the Condominium Project adopted under such documents by the Association or the Board of Directors.

Section 2.13 "Condominium Map" or "Map" means that part of this Declaration that depicts all or any portion of the Condominium Project in three dimensions, is executed by the Declarant and is recorded in the Records. A Map and a Plat may be combined in one instrument. In a Map, a "Horizontal Boundary" means a plane of elevation relative to a described benchmark that defines either a lower or upper dimension of a Unit such that the real estate respectively below or above the defined plane is not part of the Unit. In a Map, a "Vertical Boundary" means the defined limit of a Unit that is not a Horizontal Boundary of that Unit.

Section 2.14 "Condominium Project" or "Project" means the term as defined in Section 1.1 hereof.

Section 2.15 "Condominium Unit" means the fee simple interest in and to a Unit, together with the undivided interest in the Common Elements appurtenant to the Unit, as allocated in Exhibit B.

Section 2.16 "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 Condominium Documents.

Section 2.17 "Declarant" means Waypoint Pearl, LLC, an Idaho limited liability company, and its successors and assigns.

Section 2.18 "Declaration" means this Declaration, together with any amendment to this Declaration, recorded in the Records. The term Declaration includes all Maps and Plats recorded with this Declaration and all amendments to the Declaration and supplements to the Maps and Plats without specific reference thereto.

Section 2.19 "Deed" means each initial Warranty Deed recorded after the date hereof by which Declarant conveys a Unit.

Section 2.20 "Development Agreement" means Development Agreement #20427 and First Amendment To Development Agreement #20427 respectively recorded as Instrument Nos. 665841 and 679218, Blaine County, Idaho.

Section 2.21 "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 20 entitled "Mortgagee Protections".

Section 2.22 "Community/Employee Housing Units" means Units 1A, 1B, 1C, 1D, 1E, 1F, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, and 2I and which are designated in this Declaration for community/employee housing uses to be master leased to the Hotel Developer as described in the Development Agreement

Section 2.23 "First Mortgagee" means a holder of a Security Interest in a Unit that has priority over all other Security Interests in the Unit.

Section 2.24 "Improvement(s)" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located.

Section 2.25 "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 any 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 Map, 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 Map 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 maintenance and care of the walls, ceilings and floors of any balcony 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 good, clean, sanitary, and attractive condition. 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.

Section 2.26 "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 2.27 "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 Condominium Project.

Section 2.28 "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 2.29 "Occupant" means any member of a Unit Owner's family or a Unit Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

Section 2.30 "On Site Community/Employee Housing Units" means Units 1A, 1B, 1C, 1D, 1E, 1F, 2A, 2B, 2C, and 2D, 2E, 2F, 2G, 2H, and 2I and thus meeting the community housing requirement for the First & Fourth project.

Section 2.31 "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 2.32 "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or any combination thereof.

Section 2.33 "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 Condominium Project in two dimensions, is executed by the Declarant, and is recorded in the Records.

Section 2.34 "Property" means the real property in Blaine County, Idaho, more particularly described on the attached Exhibit A.

Section 2.35 "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 2.36 "Records" means the Office of the Clerk and Recorder in Blaine County, Idaho, and each other county in which any portion of the Condominium Project is located.



Section 2.37 "Residential Unit" means any for sale Unit which is not a Commercial Unit unless otherwise designated for either commercial use or and designated on the Plat as Units 1G, 1H and 1I and designated as Units 2J, 2K, 2L, 3A, 3B, 3C and 3D.

Section 2.38 "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 Condominium Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. Separate Rules and Regulations may be promulgated to apply only to Commercial Units, Residential Units, Community Housing Units and/or any combination thereof.

Section 2.39 "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, pledge of an ownership interest in an Association, 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 2.40 "Special Declarant Rights" means those rights reserved by Declarant in Article 15 of this Declaration.

Section 2.41 "Unit" means a physical portion of the Condominium Project which is designated for separate ownership or occupancy 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 Condominium Project as more specifically set forth on Exhibit B. If walls, floors or ceilings are 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 Section 2.24, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Section 2.42 "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 Condominium Units. The Property is hereby divided into that number of Condominium Units described in Exhibit "B", as amended from time to time, including separately designated Commercial Unit(s), 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, rounded to the nearest 1%, 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 Map, and those numbers are set forth in Exhibit B.

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

boundaries between their Unit and an adjoining Unit and reallocate Limited Common Elements between or among Units, subject to the provisions and requirements of this Declaration and of the Act.

#### **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 Condominium 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 have been calculated by 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 upon the relative floor area of each Unit as compared to the floor area of all Units in the Condominium Project.

(b) Common Expenses Liability. The percentage of Common Expenses Liability allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all Units in the Condominium Project.

(c) Votes. Each Residential Unit other than those Units designated as Community/Employee Housing Units shall be allocated a single vote as set forth on Exhibit B. The Commercial Units as long as they continued to be owned by the Declarant shall each have six (6) votes. In the event a Commercial Unit is sold by Declarant, then the Commercial Unit sold shall be reallocated to have only one (1) vote.

Section 4.3 Rounding Convention. Any Allocated Interest, stated as a fraction, shall be rounded to the nearest one percent (1%). The total of all Allocated Interests shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

#### **ARTICLE 5. CONDOMINIUM MAP**

The Map shall be filed in the Records. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall include a Plat which shows the following:

- (a) the name and a general schematic map of the entire Condominium Project;
- (b) the extent of any existing encroachments across any Condominium Project boundary; and
- (c) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Condominium Project.

The Map shall also show the following:

- (a) the location and dimensions of each Unit and that Unit's identifying number;
- (b) horizontal Unit boundaries, if any, with reference to all established data and that Unit's identifying number; and
- (c) the approximate location and dimensions of all Limited Common Elements.

The Map shall contain a certificate of a registered and licensed surveyor certifying that the Map 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 Map, 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 Entered into Prior to Recording of Condominium Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this Article 6 and may indicate that this Declaration and Map are to be recorded.

Section 6.2 Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of the Declaration and Map, 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:

Condominium Unit \_\_\_\_\_, according to the Condominium Declaration for the First & Fourth Building, recorded \_\_\_\_\_, 2022, as (Instrument No. \_\_\_\_\_) and the Condominium Map recorded \_\_\_\_\_, 2022, as (Instrument No. \_\_\_\_\_) in the office of the Recorder of Blaine County, Idaho.

Section 6.3 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 of 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 6.4 Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records 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 Map;
- (b) the right 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 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 Condominium Project; and

(d) the right of the Association to adopt, from time to time, any and all rules and regulations concerning the Condominium Project as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Condominium 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, and such Limited Common Elements shall be conveyed along with title to the Unit.

## **ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATIONS**

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 Condominium 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 Owners 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 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 Condominium Project with the exception of the Employee/Community Housing Units shall have the votes allocated in Section 4.2; provided, however, no vote allocated to a Unit owned by the Association may be cast. Class voting by Commercial Unit Owner(s) or Residential Unit Owner(s), or combinations thereof, shall be allowed on issues specified in Section 8.10. 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 fifty percent (50%), 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 or sent prepaid by United States Mail to the mailing address of each Unit Owner. 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 fifty percent (50%) of the votes which may be cast for election of the Board of Directors are present, in person or by proxy, at the beginning of the meeting.

**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 proposed budget approved by the Board of Directors shall be mailed to the Unit Owners within thirty (30) days after its adoption 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 the 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 whether or not 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 within ten days after transfer of title to the Unit to such Unit Owner or Unit Owners. Said address may be an electronic or email address, in which case the Unit Owner consents to notice by email at that address. 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 Condominium Project or such other address as the Board of Directors may designate from time to time by notice to the Unit Owner(s).

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. There shall be a Period of Declarant Control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation of the Association and shall terminate no later than the earlier of:

- (a) sixty (60) days after conveyance of all Residential Units to Unit Owners other than those Units Declarant does not intend to convey ; or



(b) two (2) years after Declarant's first conveyance of a Unit in the ordinary course of business.

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 Unit Owners. Not later than sixty (60) days after conveyance of three (3) of the Units to Unit Owners other than Declarant, at least one (1) member of the Board of Directors shall be elected by Unit Owners other than the Declarant. Not later than the termination of any Period of Declarant Control, the Unit Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Unit Owners other than the Declarant or designated representatives of Unit Owners other than Declarant. In order to assure representation of Owners of the Commercial Unit(s) and the Residential Unit(s) in the affairs of the Association and to protect the valid interests of the Commercial Unit(s) and Residential Unit(s) in the operation of the Condominium Project, the Owner(s) of the Commercial Unit(s), voting as a class, shall be entitled to elect one of the members of the Board of Directors, and the Owner(s) of the Residential Unit(s), voting as a Class, shall be entitled to elect one member of the Board of Directors. 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. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice and an opportunity to be heard as required by this Declaration and the Act, the Unit Owners, by sixty-seven percent (67%) vote of all persons present and entitled to vote 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 after the Unit Owners other than the Declarant elect a majority of the members of the Board of Directors, 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. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;

(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 Condominium 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;  
and

(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.

Section 8.10 Issues for Class Voting. Any issue relating solely to the Commercial Units or Residential Units shall be decided by the Owner(s) of the particular Unit(s) voting as a Class on the issue. The decision on whether an issue relates solely to only one type of Unit shall be determined in the sole discretion of the Board of Directors. Any issue relating to a Limited Common Element appurtenant to more than one type of Unit, but not appurtenant to all types of Units shall be decided by the Owner(s) of the Units to which the Limited Common Elements are appurtenant, voting as a Class. The decision on whether an issue relates solely to Limited Common Elements appurtenant to less than all types of Units shall be decided in the sole discretion of the Board of Directors.

## **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 Condominium 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 Condominium 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) hire and discharge managing agents;
- (e) hire and discharge employees and agents, other than managing agents, and independent contractors;
- (f) 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 Condominium Project;
- (g) make contracts and incur liabilities;
- (h) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) cause additional improvements to be made as part of the Common Elements;
- (j) 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;
- (k) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;
- (l) 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;
- (m) 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;

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

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

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

(q) 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;

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

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

(t) 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 agendas for meetings of the Board of Directors shall be made reasonably available for examination by all members 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) matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

(b) 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;

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

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

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

Section 9.5 Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "notice and hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Managing Agent, etc.) shall give notice of the proposed action to all Unit Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit Owner having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 9.6 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from purchasers at the time of the initial sale of each Unit by Declarant an amount equal to three months' worth of annual Assessments based on the Association's budget in effect at the time of the sale. Such payments to this fund shall not be considered advance payments of annual Assessments.

## ARTICLE 10. ASSESSMENTS

Section 10.1 Commencement of Annual Assessments. Until the Declarant and or the Association as the successor in interest makes an Assessment for Common Expenses in the form of Homeowners Association Dues, the Declarant shall pay all Common Expenses for those Units that remain, if any, under Declarant's fee ownership. 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. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Condominium Project including maintenance, repair and replacement of the Common Elements as required by the Act and the Condominium Documents. 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 credited to the Unit Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses.

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 Commercial Units and Residential 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.

**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 Condominium 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 which are to be paid in installments shall be paid quarterly 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 Condominium Documents, or any expense of the Association which is the obligation of a Unit Owner pursuant to the Condominium 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 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 Condominium Documents shall be burdens running with, and a perpetual lien in favor of the Association upon the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association shall prepare 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. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied. 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, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, 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, as amended. The Association's perpetual 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;

(b) liens recorded prior to this Declaration unless otherwise agreed by the parties thereto; and

(c) 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 the 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 First Mortgagee 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.

## **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 Unit 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 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.

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 of any balcony or of any other Limited Common Elements appurtenant to the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. 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.

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 Condominium Project not required in this Declaration to be maintained and kept in good repair by a Unit Owner or by Declarant.

## **ARTICLE 12. MECHANICS' LIENS**

Section 12.1 Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map 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", and except for Commercial Units, Residential Units shall be used only for residential purposes and Commercial Units for commercial activities permitted by applicable zoning codes which do not cause unreasonable disturbance to other Unit Owners including but not limited to any such disturbance generated by a retail food service business that creates smells, odors or other noxious fumes. Subject to Section 13.6, below, Unit Owners may rent or lease such Units to others for such purposes subject to the Rules and Regulations established by Declarant or as amended from time to time by the Board of Directors of the Association and after Declarant has surrendered control of the Property to the Association.

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 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.

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 Condominium Project or in an increase in the rate of the insurance on all or any part of the Condominium 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 Condominium 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 in the same manner 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 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 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, which may adopt written guidelines to address the same. No alteration 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 outbuildings or 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 Condominium Project by the Unit Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No animals, birds, insects, or livestock of any kind shall be raised, bred, or kept on or in the Condominium Project. Notwithstanding the foregoing, residents of Units may have up to two (2) domestic dogs and/or cats so long as they do not interfere with the quiet enjoyment of occupants of other Units, or other properly licensed and certified service animals for disabled persons. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is noxious or offensive to others.

**Section 13.6 Limits on Timesharing / Short-Term Rentals.**

- (a) No Unit Owner shall offer to sell 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.
- (b) No Unit Owner shall rent his Unit for any period less than thirty (30) consecutive days ("Short Term Rental") without the written approval of Declarant during the Period of Declarant Control and thereafter the Association Property Manager. All rentals by Residential Unit Owners shall be subject to Rules and Regulations as adopted by the Declarant during the Period of Declarant Control or thereafter by the Association Board of Directors. By purchasing a Unit, each Unit Owner expressly agrees to the limitations contained herein and therein.

**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 Condominium 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. External signage must also comply with applicable restrictions of the City of Hailey.

**Section 13.8 Commercial Operations.** Each Owner of a Commercial Unit must comply with the Rules and Regulations for commercial establishments as adopted from time to time by the Association; provided, however, that the Association shall not adopt Rules and Regulations that substantially impede or effectively prohibit commercial, professional office and or retail operations.



**Section 13.9 Restrictions on Use of Parking and Storage Areas.** Unit Owners may enter into a Parking Space Agreement with the Association pursuant to which the Association may allocate or reallocate to a Unit one or more parking spaces as Limited Common Area. No parking shall be permitted at any location on the Property unless specifically designated for parking by the Association. 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 for any other purpose or 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 Condominium 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 Map or reserved or granted under this Declaration.

**Section 14.4 Easements for Encroachments.** The Condominium Project, and all portions of it, are 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 Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Condominium Project. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium 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 Condominium 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 14.5 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 14.5 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6 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 14.7 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 14.8 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 14.9 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 Plats and Maps filed with this Declaration.

(b) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Condominium Project.

(c) Amendment of Declaration and/or Plat. The right to Amend this Declaration and or to amend the Plat in connection with the exercise of its development rights.

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

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

(f) Parking/Storage. The right to use and to allow others to use all parking and storage areas in connection with its marketing efforts.

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, ski-ways, 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 Condominium 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 common facilities 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.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

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 so long as the Declarant (a) is obligated under any warranty or obligation; (b) owns any Unit; or (c) holds a Security Interest in any Unit(s); provided, however, all Special Declarant Rights and Additional Reserved Rights shall terminate ten (10) years after the date of recording this Declaration. Earlier termination of certain rights may occur pursuant to requirements of the Act.

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.

## **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 Condominium 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 Condominium

Project, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and member of the Board of Directors. 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, or management of the Common Elements or membership in the Association. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association shall maintain fidelity insurance 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 Managing Agent must obtain and maintain fidelity insurance in like amount for the benefit of the Association unless the Association names such person as an insured employee in the policy of fidelity insurance 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 Condominium Project, the Association and the Unit Owners.

(e) Unit Owners' Policies. Each Unit Owner may obtain additional insurance at his own cost for his own benefit so long as all such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be effected 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) the insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;

(c) 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;

(d) if, at the time of a loss under the 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;

(e) any loss covered by the policies must be adjusted with the Association;

(f) 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;

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

(h) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) 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 or memorandum 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. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Unit Owners causing such loss or benefitting 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 Condominium 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 Condominium Project is terminated;

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

(c) seventy-five percent (75%) 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 Condominium Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Condominium Project is not repaired or replaced as allowed by Subparagraphs (a), (b) and (c) above, then the Real Estate in the Condominium 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 Condominium 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 Condominium 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 Condominium 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**

If all or part of the Condominium Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

## 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 (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Condominium Project, 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 Condominium 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) merger of the Condominium Project with any other common interest community; or

(e) 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.

(c) **Priority.** No provision of the Condominium Project documents gives a Condominium Unit Owner or any other party priority over any rights of the First Mortgagee of the Condominium Unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or

condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.

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 Map) 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.

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 Condominium 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 Condominium Project. The Condominium Project may only be terminated as provided in the Act.

## **ARTICLE 21. MISCELLANEOUS**

Section 21.1 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Condominium 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 21.2 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 telecopier. Notices by email shall be valid only if all parties to the communication have consented to notice by email.

Section 21.3 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 Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 21.4 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 21.5 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 21.6 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 21.7 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 21.8 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 21.9 Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.

[end of text – signature appears on following page]

Executed as of the \_\_\_\_\_ day of \_\_\_\_\_ 2022

Waypoint Pearl, LLC, an Idaho limited liability company

\_\_\_\_\_  
By: Jack E. Bariteau, Jr., Managing Member

STATE OF IDAHO            )  
  ss  
County of Blaine         )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a notary public in and for said state, personally appeared Jack E. Bariteau, Jr., known or identified to me to be the Managing Member of Waypoint Pearl, LLC, and the person that executed the foregoing instrument 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 in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A  
TO  
DECLARATION**

Legal Description

Lot 1B, Block 57, City of Ketchum  
Blaine County, Idaho



**EXHIBIT B  
TO  
DECLARATION**

**TABLE OF ALLOCATED INTERESTS (TO BE FINALIZED PRIOR TO  
RECORDATION OF THE FINAL CC&R DECLARATION)**

Unit No.	Percentage share of Common Elements	Percentage share of Common Expenses	Vote in the affairs of Association
<b>Commercial Units</b>			
<b>Residential Units</b>			
	<b>100 percent</b>	<b>100 percent</b>	<b>100</b>

**EXHIBIT C  
TO  
DECLARATION**

**ARTICLES**

**EXHIBIT D  
TO  
DECLARATION**

**BYLAWS**

**BYLAWS**  
**OF**  
**FIRST & FOURTH**  
**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

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**BYLAWS**  
**OF**  
**FIRST & FOURTH**  
**CONDOMINIUM OWNERS' ASSOCIATION, INC.**

THESE BYLAWS of First & Fourth Condominium Owners' Association, Inc., an Idaho nonprofit corporation, were adopted and are effective as of the \_\_\_ day of \_\_\_\_\_, 2022. Capitalized terms used and not otherwise defined herein have the meanings set forth on in the Declaration, as defined herein in Section 1.5.

**Article 1**  
**FORMATION OF THE CORPORATION**

**Section 1.1 Formation.**

On \_\_\_\_\_, the Corporation was organized as an Idaho nonprofit corporation by executing and delivering the Articles of Incorporation to the Idaho Secretary of State in accordance with and pursuant to the Act.

**Section 1.2 Registered Office.**

The registered office of the First & Fourth Condominium Owners' Association, Inc. (the "Corporation") required by the Idaho Nonprofit Corporation Act ("Act") to be continuously maintained in the state of Idaho may, but need not, be the same as any of its principal places of business in the state of Idaho. In any case, the Corporation's registered office shall be the business office of the registered agent required by the Act to be continuously maintained in the state of Idaho. The address of the registered office may be changed from time to time by the Board of Directors or the President of the Corporation by delivering a statement to the Idaho Secretary of State containing the information acquired by the Act or by indicating such change in the annual report required by the Act to be filed with the Secretary of State.

**Section 1.3 Principal Office; Other Offices.**

The principal office of the Corporation shall be 675 Sun Valley Road, Suite L, Ketchum, Idaho. The Corporation may also have and maintain an office or principal place of business in Idaho, or at such other place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the state of Idaho, as the Board of Directors may from time to time determine or the business of the Corporation may require.

**Section 1.4 Corporate Seal.**

The Corporation may have a corporate seal, which may be altered at will by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.



**Section 1.5 Declaration.**

The "Declaration" shall mean, collectively, the Declaration of Covenants, Conditions and Restrictions for the First & Fourth Condominiums and any amendments or supplements recorded or to be recorded pursuant thereto, and applicable to the condominium development commonly known and referred to as the FIRST & FOURTH CONDOMINIUM DEVELOPMENT located in the County of Blaine, State of Idaho, legally described as set forth in Exhibit "A" attached hereto.

**Section 1.6 Other Definitions.**

Each and every definition set forth in Section 1 of the Declaration shall have the same meaning herein as therein, and each and every such definition is incorporated by reference herein and made a part hereof.

**Article 2  
MEMBERSHIP; VOTING RIGHTS**

The qualification for membership, the classes of membership and the voting rights of members shall be as set forth in Article 8 of the Declaration, all of which are hereby incorporated by reference herein as if set forth in full.

**Article 3  
MEMBERS' MEETINGS**

**Section 3.1 Place of Meetings.**

The Board of Directors may designate any place, either within or without the state of Idaho, as the place of meeting for any annual meeting or for any special meeting of members called by or at the direction of the Board of Directors. A waiver of notice signed by all members entitled to vote at a meeting may designate any place, either within or without the state of Idaho, as the place for the holding of such meeting. If no place is designated by the Board of Directors or if a special meeting be called otherwise than by or at the direction of the Board of Directors, the place of meeting shall be the principal office of the Corporation.

**Section 3.2 Annual Meetings.**

The annual meeting of the members of the Corporation shall be held on the fourth Monday (or the following day, should this fall on a legal holiday) in the month of December in each year at 3:00 p.m., at the principal office, or on such other date and at such other time which may from time to time be designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting. The failure to hold an annual meeting at the time stated or otherwise designated as provided herein shall not affect the validity of any corporate action.

### **Section 3.3 Special Meetings.**

Special meetings of the members of the Corporation may be called at any time, for any purpose or purposes, by a majority of the quorum of the Board of Directors or the President of the Corporation or by the holders of at least twenty five percent (25%) of the votes entitled to be cast on any issue proposed to be considered at the meeting (provided that such holders sign, date and deliver to the Corporation one or more written demands for the meeting describing the purpose(s) for which it is to be held) or by the person or persons authorized to do so by the Articles of Incorporation. Special meetings of the members of the Corporation may not be called by any other person or persons.

### **Section 3.4 Notice of Meetings.**

The Corporation shall notify members of the date, time and place of each annual and special members' meeting and, in case of a special meeting, a description of the purpose or purposes for which the meeting is called, no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless otherwise required by law or the Articles of Incorporation, the Corporation is required to give notice of a meeting only to members entitled to vote at the meeting. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called. Only business within the purpose(s) described in the special meeting notice may be conducted at such special meeting. Notice shall be given to each member at either: (i) the address of their respective unit; or (ii) the address supplied by the member to the Corporation.

### **Section 3.5 Waiver of Notice.**

Notice of any meeting of members may be waived in writing, signed by the person entitled to notice thereof and delivered to the Corporation for inclusion in the corporate minutes or filing with the corporate records, either before or after the date and time stated in the notice. A member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and further waives objection to consideration of a particular matter at the meeting that is not within the purpose of purposes described in the meeting notice unless the member objects to considering the matter when it is presented. Any member so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice hereof had been given.

### **Section 3.6 Quorum.**

Unless the Act or the Articles of Incorporation impose a greater requirement, twenty percent (20%) of the votes, represented in person or by proxy, entitled to be cast on a matter shall constitute a quorum. Unless one-third ( $\frac{1}{3}$ ) or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or special meeting of members are those matters that are enumerated in the meeting notice.

### **Section 3.7 Adjournment and Notice of Adjourned Meetings.**

Any meeting of members at which a quorum is not present may be adjourned to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called. Any meeting of members at which a quorum is present, whether annual or special, may be adjourned from time to time by the vote of a majority of the votes entitled to be cast at the meeting not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called. If an annual or special members' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed, however, notice of the adjourned meeting must be given under this Section to persons who are members as of the new record date. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting.

### **Section 3.8 Proxies.**

At all meetings of members, a member may vote either in person or by proxy. A member may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission, either personally or by the member's attorney-in-fact. The electronic transmission must contain or be accompanied by information from which one can reasonably verify that the member, the member's agent, or the member's attorney-in-fact authorized the transmission. An appointment of proxy is effective upon receipt, before or at the time of the meeting, by the inspector of election or the officer or agent of the Corporation authorized to tabulate votes. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the appointment form, but in no event can be valid for more than three (3) years. An appointment of a proxy is revocable in accordance with the provisions of the Act. The death or incapacity of the member appointing a proxy does not affect the right of the Corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspector of election or the officer or agent of the Corporation authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment. Subject to the acceptance of votes and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, the Corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment. Proxy voting shall not be permitted when member votes are solicited by written ballot to be cast without a meeting.

### **Section 3.9 Voting Rights.**

Except as otherwise provided by law, only persons in whose names shares stand on the records of the Corporation on the record date, as provided in these Amended and Restated Bylaws, shall be entitled to vote on any matter. Unless the Articles of Incorporation provide otherwise, each member is entitled to one (1) vote on each matter voted on at a members' meeting. If a quorum exists, action on a matter, other than the election of directors, is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Articles of Incorporation or the Act require a greater number of affirmative votes. Unless otherwise provided in the Articles of Incorporation, directors are elected by a plurality of the votes cast by

the shares entitled to vote in the election at a meeting at which a quorum is present. Members shall have no right to cumulate their votes for directors.

### **Section 3.10 Corporation's Acceptance of Votes.**

(1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the Corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its member, the Corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the Corporation requests, evidence of fiduciary status acceptable to the Corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the Corporation requests, evidence of this status acceptable to the Corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the Corporation requests, evidence acceptable to the Corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The Corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the inspector of election or the officer or agent of the Corporation authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

### **Section 3.11 List of Members.**

After fixing a record date for a meeting, the Corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of such meeting. The list must show the address and the number of votes each member is entitled to. The members' list must be available for inspection by any member, beginning two (2) business days after notice of the

meeting is given and continuing through the meeting, at the Corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the requirements of Act, to copy the list, during regular business hours and at the member's expense, during the period it is available for inspection. The Corporation shall make the members' list available at the meeting; and any member, member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment. Refusal or failure to prepare or make available the members list does not affect the validity of action taken at the meeting.

### **Section 3.12 Conduct of Meeting.**

At every meeting of members, the Presidents, or, if a Chairman has not been appointed or is absent, the President or, if the President is absent, the most senior executive officer present, or in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the members entitled to vote, present in person or by proxy, shall act as chairman. The Secretary shall act as secretary of the meeting. The order of business shall be as follows: (i) roll call; (ii) proof of notice of meeting or waiver of notice; (iii) reading of minutes of preceding meeting; (iv) reports of board of officers; (v) election of directors, if any are to be elected; (vi) unfinished business; and (vii) new business. The meeting shall proceed in parliamentary procedure, as determined and adopted by the Board.

### **Section 3.13 Action Without Meeting.**

Action required or permitted by Act to be taken at a members' meeting may be taken without a meeting if the action is taken by at least eighty percent (80%) of the members entitled to vote on the action. No written consent shall be effective to take the corporate action unless, within sixty (60) days of the earliest date appearing on a consent delivered to the Corporation in the manner required by Section 30-3-49, Idaho Code, written consents signed by at least eighty percent (80%) of the members entitled to vote on the action are received by the corporation. The action must be evidenced by one (1) or more written consents bearing the date of signature and describing the action taken, signed by at least eighty percent (80%) of members entitled to vote on the action, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document.

### **Section 3.14 Nomination of Directors.**

Nominations of persons for election to the Board of Directors of this Corporation at the annual meeting of members may be made at such meeting by or at the direction of the Board of Directors, or by any nominating committee or person appointed by the Board of Directors. Election to the Board shall be by secret ballot. At such election, the members, or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to cast under the provisions of the Bylaws. The candidates receiving the highest number of votes shall be deemed elected.

## **Article 4 DIRECTORS**

### **Section 4.1 Powers.**

All corporate powers shall be exercised by or under the authority, and the business and affairs of the Corporation shall be managed by or under the direction, of the Board of Directors, subject to any limitations set forth in the Articles of Incorporation or any agreement authorized under the Act.

### **Section 4.2 Variable Range-Size Board; Qualifications.**

The authorized number of directors of the Corporation may range between three (3) and seven (7), and the number of directors may be increased or decreased from time to time by amendment to or in the manner provided by law or in these Bylaws by the Board of Directors or the members. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. A director need not be a resident of the state of Idaho or a member of the Corporation unless so required by the Articles of Incorporation. If for any cause the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the members called for that purpose in the manner provided by law or in these Bylaws.

### **Section 4.3 Term.**

Directors' terms shall be staggered. Directors are elected at each annual meeting of the members, and shall serve a term of two (2) years. Despite the expiration of the director's term, a director shall continue to serve until the director's successor is duly elected and qualifies, or until there is a decrease in the number of directors, or until the director's earlier death, resignation or removal.

### **Section 4.4 Resignation.**

A director may resign at any time by delivering written notice to the Board of Directors, its chairman, or the Corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date, in which event the resignation shall become effective at such later time. Unless specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective.

### **Section 4.5 Removal by Members.**

The member may remove one (1) or more directors with or without cause unless the Articles of Incorporation provide those directors may be removed only for cause. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director. A director may be removed by the members only at a meeting called for the purpose of removing the director; and the meeting

notice must state that the purposes, or one of the purposes, of the meeting is removal of the director.

#### **Section 4.6 Removal by Board.**

The Board shall have the power and authority to remove a Director without cause by the vote of two thirds ( $\frac{2}{3}$ ) of the directors then in office and subject to the provisions of Section 30-3-70, Idaho Code, and declare his or her position vacant if he or she: (i) has been declared of unsound mind by a final court order; (ii) has been convicted of a felony; (iii) fails to attend two consecutive regular meetings of the Board of Directors that have been duly noticed and regularly scheduled; or (iv) becomes more than sixty (60) days delinquent in payment of any assessment.

#### **Section 4.7 Removal Arising out of Court Action.**

In the event that there is a final judgment or order of any court concluding that a director has breached his or her duties, the Board shall consult with counsel as to whether or not that court determination requires a declaration of vacancy.

#### **Section 4.8 Newly Created Directorships and Vacancies.**

Unless the Articles of Incorporation provide otherwise, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause may be filled by the affirmative vote of a majority of the remaining directors then in office even if they constitute fewer than a quorum of the authorized Board of Directors or may be filled by the members. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office.

#### **Section 4.9 Meetings.**

(1) Regular Meetings. The regular meeting of the Board of Directors shall be held no less than quarterly. Notice of the date, time and place of the meeting of the Board (except emergencies) shall be given to the members at least four (4) days prior to the meeting. Such notice shall be given by posting at the Corporation's office, by mail or delivery of the notice to each residence, email, or by newsletter or similar means of communication, as enumerated in Article 8 herein. Any attendance by a member shall constitute waiver of notice.

(2) Place of Meetings. Regular and special meetings of the Board of Directors, or of any committee designated by the Board, may be held at any place within or without the state of Idaho, as determined by the Board.

(3) Telephone Meetings. Unless the Articles of Incorporation provide otherwise, any member of the Board of Directors, or of any committee thereof, may participate in a regular or special meeting by, or conduct the meeting through the uses of, any means of conference telephone or similar communications equipment by which all directors participating in the meeting may simultaneously hear each other during the meeting. A director participating in a meeting by such means is deemed to be present in person at such meeting.

(4) Special Meetings. Special meetings of the Board shall be held when called by the president of the Corporation, or by any two (2) directors, after not less than three (3) days prior notice to each director, which notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be posted in the manner prescribed for notice of regular meetings not less than seventy-two (72) hours prior to the scheduled time of the meeting.

(5) Waiver of Notice. A director may waive any notice required by the Act, the Articles of Incorporation or these Bylaws at any time before or after the date and time stated in the notice. Except as otherwise provided, such waiver must be signed by the director and filed with the minutes or corporate records. The attendance of a director at or participation in a meeting shall constitute a waiver of notice of such meeting unless the director, at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting any business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

#### **Section 4.10 Quorum and Voting.**

(1) Quorum. Unless the Articles of Incorporation or these Bylaws require a greater number or unless otherwise specifically provided by the Act, a quorum of the Board of Directors consists of (a) a majority of the fixed number of directors if the Corporation has a fixed board size or (b) a majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the Corporation has a variable-range size board.

(2) Majority Vote. If a quorum is present when a vote is taken, the affirmative vote of the majority of the directors present shall be the act of the Board of Directors, unless the Articles of Incorporation or these Bylaws require the vote of a greater number of directors.

#### **Section 4.11 Action Without a Meeting.**

Unless otherwise provided by the Articles of Incorporation or these Bylaws, any action required or permitted by the Act to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if the action is taken by all members of the Board if each Director signs a consent describing the action to be taken and delivers it to the Corporation. Action taken under this Section is the act of the Board of Directors when one or more consents signed by all Directors are delivered to the Corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the Corporation prior to the delivery to the Corporation of unrevoked written consents signed by all of the Directors. A consent signed under this Section has the effect of action taken at a meeting of the Board of Directors and may be described as such in any document.

#### **Section 4.12 Conduct of Meetings.**

Regular and special meetings of the Board shall be open to all members of the Corporation; provided, however that Corporation members who are not on the Board may not



participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of the members of the Board, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Corporation is or may become involved and orders of business of a similar or otherwise sensitive nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

#### **Section 4.13 Fees and Compensation.**

No director shall receive any compensation for any service rendered to the Corporation; provided, however, any director may be reimbursed for actual out-of-pocket expenses incurred in the performance of duties. All claims for reimbursement must be accompanied by receipt or invoice and signed and dated by the director claiming the expense.

#### **Section 4.14 Standards for Directors.**

Each member of the Board of Directors, when discharging the duties of a director, shall act in good faith and in a manner the director reasonably believes to be in the best interests of the Corporation. The members of the Board of Directors or a committee of the Board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances. In discharging board or committee duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One (1) or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent functions performed or the information, opinion, reports, or statements provided;
- (b) Legal counsel, public accountants or other persons retained by the Corporation, as to matters involving skills or expertise the director reasonably believes are matters:
  - (i) Within the particular person's professional or expert competence; or
  - (ii) As to which the particular person merits confidence; or
  - (iii) A committee of the Board of which the director is not a member if the director reasonably believes the committee merits confidence.

#### **Section 4.15 Powers and Duties of Board.**

(1) Powers. The Board shall have all powers conferred upon the Corporation as set forth herein and in the Declaration, excepting only those powers expressly reserved to the members.

(2) Duties. It shall be the duty of the Board: (i) to cause to be kept a completed record of all of its acts and doings and to present a statement thereof to the members at each annual meeting of the members, or at any special meeting when such statement is requested in writing by members; (ii) to supervise all officers, agents and employees of the Corporation, and to see that their duties are properly performed; and (iii) to delegate its powers as provided in the Declaration and these Bylaws.

#### **Section 4.16 Committees.**

Unless the Articles of Incorporation, the Act, or these Bylaws provide otherwise, the Board of Directors may create one or more committees and appoint one or more members of the Board of Directors to serve on any such committee. Each committee must have [**two**] or more members, each of whom shall serve at the pleasure of the Board of Directors.

### **Article 5 OFFICERS**

#### **Section 5.1 Offices Designated.**

The offices of the Corporation may consist of a President, a Vice President, a Secretary and a Treasurer, each of whom shall be designated by the Board of Directors in accordance with these Bylaws. The Board of Directors or the President may appoint such other officers as may be deemed necessary or desirable. With the exception of the Secretary and Treasurer, as well as additional appointed offices, no officer may simultaneously hold more than one office. The President and Vice President shall at all times be members of the Board.

#### **Section 5.2 Tenure and Duties of Officers.**

(1) Election of Officers. The election of officers shall take place annually at the meeting of the Board following each annual meeting of the members.

(2) Term of Office. Each officer shall hold office for one year unless the officer shall sooner resign, or shall be removed, or shall otherwise be or become disqualified to serve. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(3) The President. The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. The President shall, when present, preside at all meetings of the Board of Directors and shall see that all orders or resolutions of the Board are carried out. The President may sign all leases, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise signed or executed.

(4) The Vice President. In the absence of the President or in the event of the President's removal, resignation, death, or inability or refusal to act, the Vice President shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President, and shall perform other duties as from time to time may be assigned to the Vice President by the Board of Directors.

(5) The Treasurer. The Treasurer shall: (i) have charge and custody of and be responsible for all funds of the Corporation; (ii) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories; (iii) co-sign all checks and promissory notes of the Corporation; (iv) keep proper books of account; (v) cause an annual operating statement reflecting income and expenditures of the Corporation for its fiscal year to be prepared and shall cause copies of said statement to be distributed to each member within sixty (60) days after the end of such fiscal year; and (vi) cause an annual budget to be prepared and presented to each member.

(6) The Secretary. The Secretary shall: (i) attend all meetings and keep the minutes of the meetings and other proceedings of the members and of the Board of Directors in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (iii) be custodian of and responsible for maintenance and authentication of the corporate records as required to be kept pursuant to the Act; (iv) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; and (v) in general perform all duties commonly incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the Board of Directors.

### **Section 5.3 Resignations.**

Any officer may resign at any time by delivering written notice to the Corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date time, in which event the resignation shall become effective at such later time. If the Board or appointing officer accepts the future effective time, the Board or the appointing officer may fill the pending vacancy before the effective time if the Board or the appointing officer provides that the successor does not take office until the effective time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective.

### **Section 5.4 Removal.**

An officer may be removed at any time without or without cause by the Board of Directors, or by any other officer if authorized by these Bylaws or the Board.

### **Section 5.5 Compensation.**

No officer shall receive any compensation for any service rendered to the Corporation; provided, however, any officer may be reimbursed for actual out-of-pocket expenses incurred in the performance of duties. All claims for reimbursement must be accompanied by receipt or invoice and signed and dated by the officer claiming the expense.

**Section 5.6 Standards of Conduct.**

- (1) An officer when performing in such capacity, shall act:
  - (a) In good faith;
  - (b) With the care that a person in a like position would reasonably exercise under similar circumstances; and
  - (c) In a manner the officer reasonably believes to be in the best interests of the Corporation.
  
- (2) In discharging those duties an officer who does not have knowledge that makes reliance unwarranted, is entitled to rely on:
  - (a) The performance of properly delegated responsibilities by one (1) or more employees of the Corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or
  - (b) Legal counsel, public accountants, or other persons retained by the Corporation as to matters involving skill or expertise the officer reasonably believes are matters:
    - (i) Within the particular person's professional or expert competence; or
    - (ii) As to which the particular person merits confidence.
  
- (3) An officer shall not be liable to the Corporation or its members for any decision to take or not to take action; or any failure to take action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 30-3-85, Idaho Code, that have relevance.

**Article 6  
ASSESSMENTS**

**Section 6.1 Liability for Assessments; Collection.**

As more fully provided in Article 10 of the Declaration, each member is obliged to pay to the Corporation annual and special assessments to be collected as therein set forth, all of which are hereby incorporated by reference herein.

**Article 7**  
**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

**Section 7.1 Scope of Indemnification.**

The Corporation may indemnify and advance funds to or for the benefit of the directors and officers of the Corporation to the fullest extent permitted by the Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Act permitted the Corporation to provide prior to such amendment). (Idaho Code § 30-3-88).

**Section 7.2 Mandatory Indemnification of Directors.**

The Corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the individual was a director of the Corporation against reasonable expenses incurred by the director in connection with the proceeding. (Idaho Code § 30-3-88).

**Section 7.3 Further Indemnification of Directors.**

(1) Except as otherwise provided in this Section, a Corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

- (a) The director's conduct was in good faith; and
- (b) The director reasonably believed:
  - (i) In case of conduct in the director's official capacity, that the director's conduct was in the best interests of the Corporation; and
  - (ii) In all cases, that the director's conduct was at least not opposed to the best interests of the Corporation; and
  - (iii) In the case of any criminal proceeding, the director had no reasonable cause to believe the conduct was unlawful.

(2) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea or nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this Section.

(3) Unless ordered by a court under Act, the Corporation may not indemnify a director in connection with a proceeding by or in the right of the Corporation, except for reasonable expenses incurred in connection with the proceedings if it is determined that the director has met the relevant standard of conduct under subsection (1) of this Section, or as otherwise prescribed in Section 30-3-88, Idaho Code.

**Section 7.4 Advance for Expenses.**

(1) The Corporation shall, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding if the director delivers to the Corporation:

(a) A written affirmative of the director's good faith belief that the director has met the relevant standard of conduct described in Section 7.3; and

(b) The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification, and it is ultimately determined that s/he has not met the relevant standard of conduct described in Section 7.3.

(2) The undertaking required by subsection (1)(b) of this Section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

**Section 7.5 Determination of Indemnification.**

(1) The Corporation may not indemnify a director under Section 7.3, unless a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in Section 7.3.

(2) The determination shall be made in accordance with Section 30-3-88(4), Idaho Code.

**Section 7.6 Indemnification of Officers.**

The Corporation may indemnify and advance expenses to an officer of the Corporation who is a party to a proceeding because the individual is an officer of the Corporation the same extent as a director.

**Section 7.7 Insurance.**

The Corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the Corporation, or who, while a director or officer of the Corporation, serves at the Corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign Corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the Corporation would have power to indemnify or advance expenses to the individual against such liability.

**Section 7.8 Definitions.**

Sections 7.1 through 7.8 of these Bylaws shall be defined in accordance with Section 30-3-88(8), Idaho Code.

**Section 7.9 Amendments.**

Any repeal or modification of this Article 7 shall only be prospective and shall not affect the rights under this Article 7 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any director or officer.

**Section 7.10 Saving Clause.**

If this Article 7 of these Bylaws or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director and may nevertheless indemnify each officer to the full extent permitted by any applicable portion of this Article 7 that shall not have been invalidated, or by any other applicable law.

**Article 8  
NOTICES**

**Section 8.1 Methods of Notice.**

(1) Any notice under the Act or these Bylaws must be in writing unless oral notice is reasonable under circumstances. Notice by electronic transmission is written notice.

(2) If oral notice is deemed reasonable, it may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(1) It shall not be necessary that the same method of giving notice be employed in respect of all directors or members: One permissible method may be employed in respect of any one or more directors or members; and any other permissible method or methods may be employed in respect of any other or others.

**Section 8.2 Notice to Corporation.**

Written notice to the Corporation may be addressed to its registered agent at its registered office or to the Corporation or its Secretary at its principal office shown in its most recent annual report filed with the Idaho Secretary of State.

**Section 8.3 Effective Date of Notice.**

(1) Written notice by the Corporation to its member, if in a comprehensible form, is effective:

(a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the Corporation's current record of members, or

(b) When electronically transmitted to the member in a manner authorized by the member.

(2) Except as provided above, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(3) Oral notice is effective when communicated if communicated in a comprehensible manner.

#### **Section 8.4 Address Unknown.**

If no address of a member or director be known, notice may be sent to the office of the Corporation required to be maintained pursuant to Section 8.2.

#### **Section 8.5 Affidavit of Mailing.**

An affidavit of mailing, executed by a duly authorized and competent employee of the Corporation, specifying the name and address or the names and addresses of the member or members, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

#### **Section 8.6 Failure to Receive Notice.**

The period or limitation of time within which any member may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent to the member in the manner above provided, shall not be affected or extended in any manner by the failure of such member or such director to receive such notice.

#### **Section 8.7 Exception to Notice Requirement.**

(1) Whenever notice is required to be given under any provision of this chapter to any member, such notice shall not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such member at such member's address as shown on the records of the Corporation and have been returned undeliverable.



(2) If any such member shall deliver to the Corporation a written notice setting forth such member's then-current address, the requirement that notice be given to such member shall be reinstated.

## **Article 9 RECORDS AND REPORTS**

### **Section 9.1 Corporate Records.**

(1) The Corporation shall keep as permanent records minutes of all meetings of its members and Board of Directors, a record of all actions taken by the members or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Corporation.

(2) The Corporation shall maintain appropriate accounting records.

(3) The Corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) The Corporation shall keep a copy of the following records at its principal office:

(a) Its Articles of Incorporation and all amendments to them currently in effect; and

(b) Its Bylaws or Restated Bylaws and all amendments to them currently in effect.

## **Article 10 GENERAL PROVISIONS**

### **Section 10.1 Amendment by Board of Directors or Members.**

(1) The Corporation's members may amend or repeal these Bylaws only with the vote or written consent of members entitled to cast at least fifty-one percent (51%) of the voting power of the Corporation. Notwithstanding the aforementioned, the percentage of the voting power of the Corporation or of members necessary to amend a specific clause of provision in these Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

(2) The Board of Directors may amend or repeal these Bylaws unless:

(a) The Articles of Incorporation or the Act reserve this that power exclusively to the members in whole or part, or

(b) The members in amending or repealing or adopting a bylaw expressly provide that the Board of Directors may not amend, or repeal, or reinstate that bylaw.

## **Section 10.2 Interpretation; Severability.**

These Bylaws may contain any provision for managing the business and regulating the affairs of the Corporation that is not inconsistent with law, the Declaration, or the Articles of Incorporation. In the event any provision of these Bylaws is inconsistent with law, the Declaration, or the Articles of Incorporation, such law, Declaration, or Articles of Incorporation shall govern. If any one or more of the provisions contained in these Bylaws, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

## **Section 10.3 Fiscal Year.**

The fiscal year of the Corporation shall be the same as a calendar year unless a different fiscal year is adopted by the members at a duly constituted meeting thereof.

## **Section 10.4 Proof of Membership.**

No person shall exercise their rights of membership in the Corporation until satisfactory proof thereof has been furnished to the Secretary. Such proof may consist of either a copy of a duly executed and acknowledged grant deed or title insurance policy showing said person to be the owner of an interest in a condominium entitling the individual to membership. Such deed of policy shall be deemed conclusive in the absence of a conflicting claim based on a later deed or policy.

## **Section 10.5 Absentee Ballots.**

The Board may make such provisions as it may consider necessary or desirable for absentee ballots.

## **Section 10.6 Reserves.**

Any amounts collected by or paid to the Corporation in excess of operational needs shall be set aside as reserves for future financial needs in the manner set forth in the Declaration and shall be deposited into insured interest-bearing accounts. These sums may include amounts collected by Declarants from owners through purchase escrows representing capital contribution by such owners to the Corporation.

*[The remainder of page intentionally left blank.]*

The foregoing Bylaws of First & Fourth Condominium Owners' Association, Inc., an Idaho nonprofit Corporation, were adopted by the Board of Directors of the Corporation effective on the \_\_\_ day of \_\_\_\_\_, 2022.

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**Secretary**

**EXHIBIT A**

**EXHIBIT E**  
**SNOWMELT SYSTEM**



**ATTACHMENT H:**  
**Plan Set – Condominium**  
**Preliminary Plat**

**LEGEND**

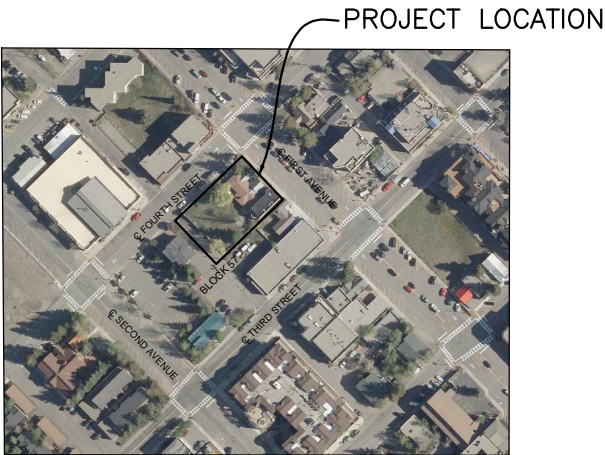
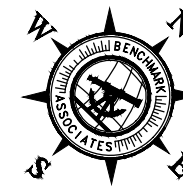
- PROPERTY LINE
- ADJOINING PROPERTY LINE
- CENTERLINE
- - - EASEMENT LINE (AS NOTED)
- BLAINE COUNTY GIS TIES
- ▭ EXTERIOR BUILDING FOOTPRINT
- ▨ HEATED PAVERS/SNOWMELT
- EDGE PAVEMENT
- OVERHEAD POWER LINE
- S — S SEWER LINE
- W — W WATER LINE
- KSW — KSW KETCHUM SPRING WATER
- G — G GAS LINE
- E — E POWER LINE
- T — T TELEPHONE LINE
- FO — FO FIBER OPTIC LINE
- TV — TV CABLE TV LINE
- 5810 1' CONTOUR - PRE CONSTRUCTION
- ⊙ SEWER MANHOLE
- ⊠ POWER BOX
- ⊡ CABLE TV RISER
- ⊢ TELEPHONE RISER
- ⊕ WATER VALVE
- ▨ LIMITED COMMON AREA
- C/A COMMON AREA
- CHU COMMUNITY HOUSING UNIT
- EHU EMPLOYEE HOUSING UNIT
- FOUND 5/8" REBAR, AS NOTED
- FOUND 1/2" REBAR, AS NOTED
- FOUND BRASS SURVEY TAG, PLS 20893

**FIRST & FOURTH CONDOMINIUMS**

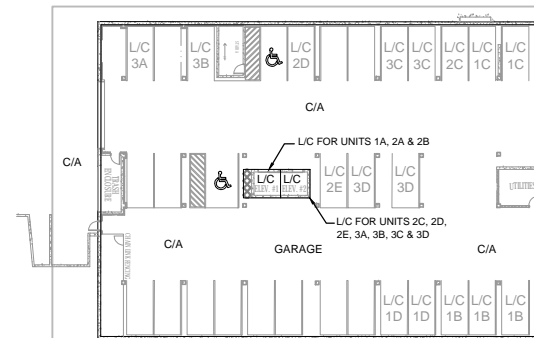
A CONDOMINIUM PLAT OF KETCHUM TOWNSITE, BLOCK 57, LOT 1B.  
 LOCATED WITHIN: SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M.,  
 CITY OF KETCHUM, BLAINE COUNTY, IDAHO

KETCHUM FILE NO. P22 - 016A

**MAY 2022**  
**PRELIMINARY PLAT**

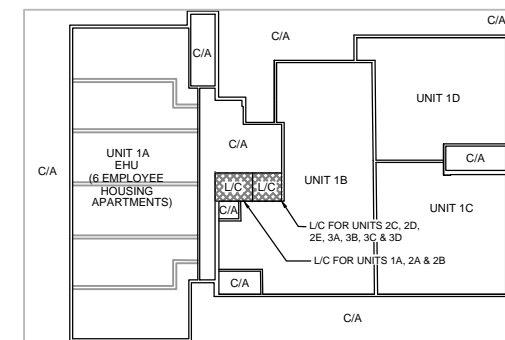


**VICINITY MAP**  
 NOT TO SCALE

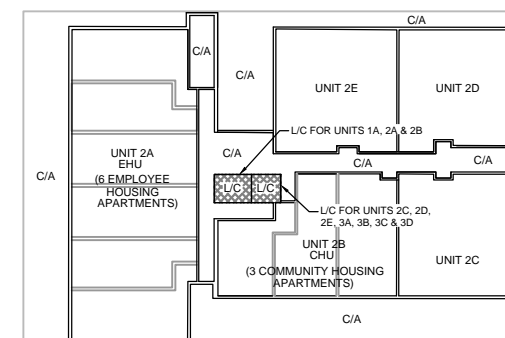


**BASEMENT**

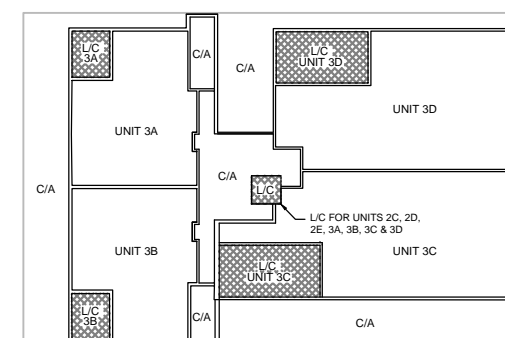
C = COMMERCIAL  
 R = RESIDENTIAL



**FIRST FLOOR**



**SECOND FLOOR**



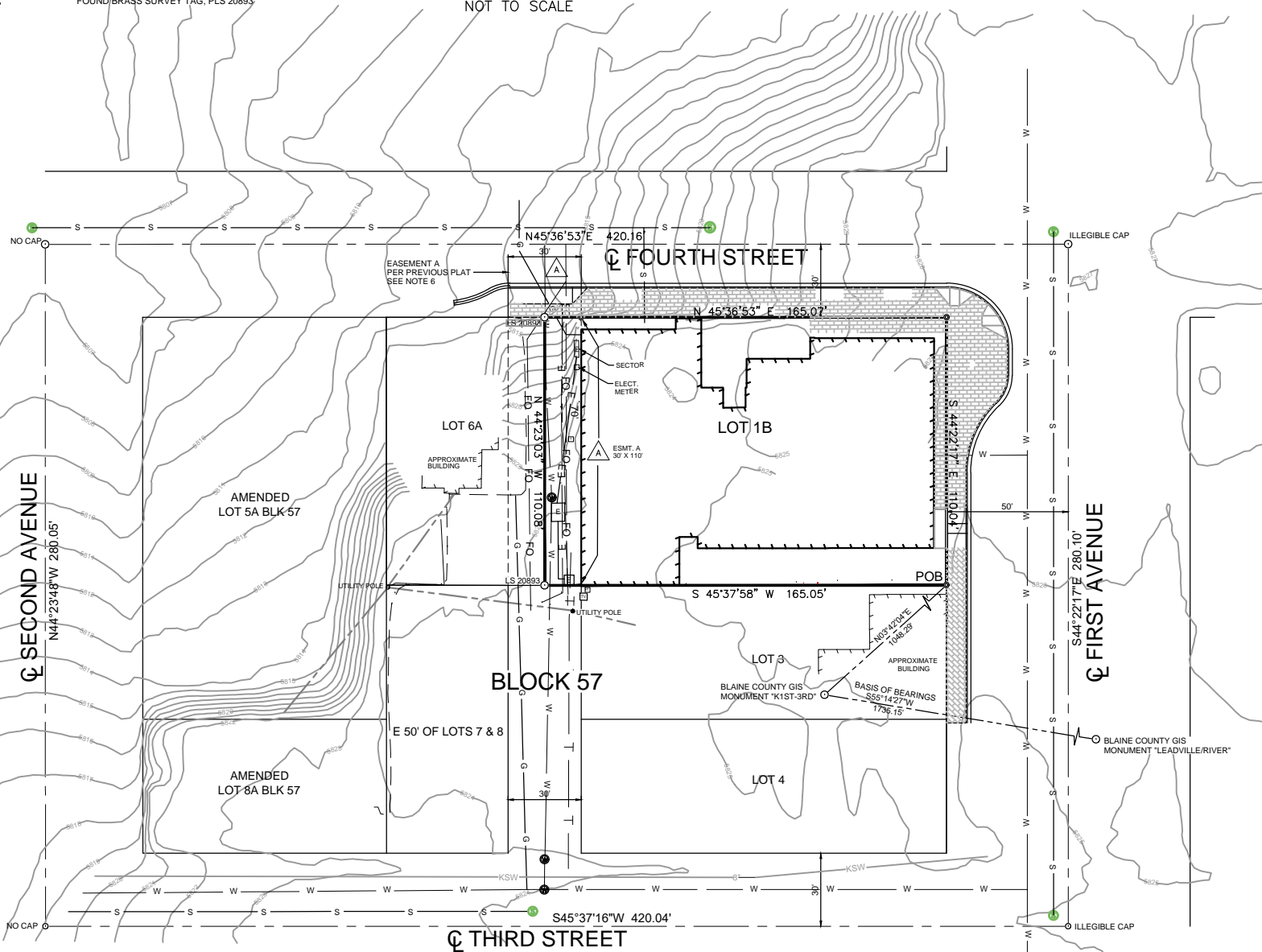
**THIRD FLOOR**

**SURVEYOR'S NARRATIVE**

1. THE PURPOSE OF THIS PLAT IS TO CREATE A CONDOMINIUM SUBDIVISION OF LOT 1B, BLOCK 57, KETCHUM TOWNSITE. FOUND MONUMENTS WERE ACCEPTED AS EITHER ORIGINAL, OR REPLACEMENTS OF ORIGINAL CORNERS.
2. DOCUMENTS USED IN THE COURSE OF THIS SURVEY:
  - a. ORIGINAL PLAT OF "KETCHUM TOWNSITE", INSTRUMENT NO. 302967.
  - b. RECORD OF SURVEY OF "KETCHUM TOWNSITE, BLOCK 57, LOTS 1A & 2A", INST. NO. 656178.
  - c. PLAT OF "KETCHUM TOWNSITE; BLOCK 57: LOTS 1B & 6A", INSTRUMENT NO. \_\_\_\_\_.
  - d. ALTA COMMITMENT FOR TITLE INSURANCE (07-01-2021), COMMITMENT NO. 2224412.

**NOTES:**

1. THIS PLAT IS SUBJECT TO THE "CONDOMINIUM DECLARATION FOR FIRST & FOURTH CONDOMINIUMS", RECORDED AS INSTRUMENT NO. \_\_\_\_\_, RECORDS OF BLAINE COUNTY, IDAHO.
2. CONSULT THE CONDOMINIUM DECLARATION FOR THE DEFINITION OF COMMON AREA & LIMITED COMMON AREA.
3. THIS PLAT IS SUBJECT TO "DEVELOPMENT AGREEMENT #20427" AND "FIRST AMENDMENT TO DEVELOPMENT AGREEMENT #20427", RECORDED AS INSTRUMENT NOS. 665841 AND 679218, RECORDS OF BLAINE COUNTY, IDAHO.
4. THIS PLAT IS SUBJECT TO "RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20548", RECORDED AS INSTRUMENT NO. 675091 AND "RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20536", RECORDED AS INST. NO. 675171, RECORDS OF BLAINE COUNTY, IDAHO.
5. THE COMMUNITY HOUSING COVENANTS RUNNING WITH THE LAND WERE RECORDED AS INST. NOS. \_\_\_\_\_. THE EMPLOYEE HOUSING COVENANTS RUNNING WITH THE LAND WERE RECORDED AS INST. NOS. \_\_\_\_\_.
6. EASEMENT A: AN EXISTING 30' WIDE BY 110' PUBLIC UTILITY, EMERGENCY ACCESS AND PUBLIC PEDESTRIAN ACCESS EASEMENT PER PLAT OF "KETCHUM TOWNSITE; BLOCK 57: LOTS 1B & 6A", INST. NO. \_\_\_\_\_. SAID EASEMENT INCLUDES MUTUAL RECIPROCAL INGRESS & EGRESS TO BENEFIT THE OWNERS AND TENANTS OF FORMER LOT 1B AND LOT 6A.
7. IN INTERPRETING THE DECLARATION, PLAT OR PLATS, AND DEEDS THE EXISTING BOUNDARIES OF A UNIT AS ORIGINALLY CONSTRUCTED OR RECONSTRUCTED IN LIEU THEREOF SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS SHOWN ON THIS PLAT.
8. 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.
9. DIMENSIONS SHOWN HEREON WILL BE SUBJECT TO SLIGHT VARIATIONS OWING TO NORMAL CONSTRUCTION TOLERANCES.
10. THE CURRENT ZONING DISTRICT FOR THE WITHIN PLAT IS CC-COMMUNITY CORE, SUBDISTRICT 2.
11. TOPOGRAPHY, AS SHOWN, EXISTED PRIOR TO CONSTRUCTION. CONTOUR INTERVAL: 1'. CONTOURS IN AREAS OF DENSE VEGETATION MAY DEVIATE FROM TRUE ELEVATION BY ONE HALF THE HEIGHT OF THE VEGETATION. DATE OF LIDAR FLIGHT FOR CONTOURS: 2016.
12. UTILITY LOCATIONS ARE PER SURFACE EVIDENCE & UTILITY LOCATE SERVICE, ARE APPROXIMATE.



**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.

South Central Public Health District, REHS

Dated: \_\_\_\_\_



**OWNER OF RECORD**

WAYPOINT PEARL, LLC, AN IDAHO LIMITED LIABILITY COMPANY  
 P.O. BOX 84, SUN VALLEY, IDAHO 83353  
 ATTN: JACK E. BARITEAU, JR., ITS MANAGING MEMBER



**FIRST & FOURTH CONDOMINIUMS**

LOCATED WITHIN  
 SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M.,  
 CITY OF KETCHUM, BLAINE COUNTY, IDAHO

PREPARED FOR: WAYPOINT PEARL, LLC

PROJECT NO. 21077	DWG BY: DWS/CPL	21077PRE-rev.DWG
PRELIMINARY PLAT	DATE: 05-3-2022	SHEET: 1 OF 1



**ATTACHMENT I:**  
**Condominium Preliminary Plat**  
**Standards Analysis**



City of Ketchum  
Planning & Building

1<sup>ST</sup> AND 4<sup>TH</sup> MIXED USE – 391 N 1<sup>ST</sup> AVE  
COMPLIANCE WITH PRELIMINARY PLAT SUBDIVISION REQUIREMENTS

Preliminary Plat Requirements					
Compliant			City Code	City Standards	
Yes	No	N/A	City Code	City Standards	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.C.1	<b>The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.</b>	
			<i>Findings</i>	The City of Ketchum Planning and Building Department received the subdivision application and all applicable application materials on April 6, 2022.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I	<b>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.</b>	
			<i>Findings</i>	The subdivision application was deemed complete on April 6, 2022.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .1	<b>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.</b>	
			<i>Findings</i>	This standard is met as shown on Sheet 1 of the preliminary plat.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .2	<b>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.</b>	
			<i>Findings</i>	As shown on Sheet 1 of the preliminary plat, the subdivision is named "1 <sup>st</sup> and 4 <sup>th</sup> Condominiums" which is not the same as any other subdivision in Blaine County, Idaho.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .3	<b>The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.</b>	
			<i>Findings</i>	As shown on Sheet 1, the owner and subdivider is Waypoint Pearl, LLC. The plat was prepared by Randall French of Benchmark Engineering.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .4	<b>Legal description of the area platted.</b>	
			<i>Findings</i>	The legal description of the area platted is shown on Sheet 1 of the preliminary plat under the title.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .5	<b>The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.</b>	
			<i>Findings</i>	Sheet 1 of the preliminary plat indicates the boundary lines of the adjoining Ketchum Townsite lots to the west and south.	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .6	<b>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.</b>	
			<i>Findings</i>	Sheet 1 of the preliminary plat shows the contour lines for the subject property.	

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I 7	<b>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.</b>
			<i>Findings</i>	Sheet 1 of the preliminary plat shows the location of the existing building on the adjacent property to the south, the building under construction on the subject property, and all adjacent streets and easements.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .8	<b>Boundary description and the area of the tract.</b>
			<i>Findings</i>	Sheet 1 provides the boundary description of the area, square footage and acreage of the lot, and the area of each unit as will be platted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .9	<b>Existing zoning of the tract.</b>
			<i>Findings</i>	Plat note #10 on Sheet 1 of the preliminary plat lists the existing zoning of the subject property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .10	<b>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.</b>
			<i>Findings</i>	Sheet 1 of 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.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .11	<b>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.</b>
			<i>Findings</i>	Sheet 1 of the preliminary plat identifies all common areas within the project that will be for the use of all future property owners. Easement A is identified on Sheet 1 and is for public utility and emergency access, public pedestrian access, and ingress/egress access for Lots 1B and 6A.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .12	<b>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.</b>
			<i>Findings</i>	Sheet 1 of the preliminary plat shows all existing and proposed water mains, sanitary sewer mains.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .13	<b>The direction of drainage, flow and approximate grade of all streets.</b>
			<i>Findings</i>	This standard does not apply as no new streets are proposed.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .14	<b>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.</b>
			<i>Findings</i>	This standard does not apply as no new drainage canals or structures are proposed. All right of way and alley improvements have been designed per city standards as reviewed and approved at the time of building permit issuance on April 19, 2021.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .15	<b>All percolation tests and/or exploratory pit excavations required by state health authorities.</b>
			<i>Findings</i>	This standard does not apply as no additional tests are required.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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.
			<i>Findings</i>	The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal. Final declarations will be recorded prior to or in conjunction with final plat recording.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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.
			<i>Findings</i>	Sheet 1 of the preliminary plat includes a vicinity map that satisfies this requirement.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Findings</i>	The subject property is not within a floodplain, floodway, or avalanche zone district.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .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.
			<i>Findings</i>	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.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .20	Lot area of each lot.
			<i>Findings</i>	Sheet 1 of the preliminary plat shows the area of the overall lot and area of each individual unit.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .21	Existing mature trees and established shrub masses.
			<i>Findings</i>	There are no existing trees or shrub masses on the property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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.
			<i>Findings</i>	The applicant provided a title commitment issued by Stewart Title dated February 16, 2022, and a warranty deed recorded at Instrument Number 681852 with the initial application.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Findings</i>	The City of Ketchum received hard and digital copies of the preliminary plat at the time of application.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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

				<p>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.</p>
			<i>Findings</i>	<p>As shown on Sheet 1 of the preliminary plat, all proposed improvements to the public right-of-way are shown. The applicant also submitted a set of construction plans for review by the City Engineer at the time of building permit application. The building permit was issued on April 19, 2022. The subject property does not include any watercourses, rock outcroppings, shrub masses or historic areas.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.B	<p><b>Improvement Plans:</b> 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.</p>
			<i>Findings</i>	<p>The applicant also submitted a set of construction plans for review by the City Engineer at the time of building permit application. The building permit was issued on April 19, 2022.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.C	<p>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.</p>
			<i>Findings</i>	<p>This standard does not apply as this is a preliminary plat application, not a final plat application. Per Development Agreement #20427, all improvements are required prior to Certificate of Occupancy for the project.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.D	<p><b>As Built Drawing:</b> 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.</p>

		<p><i>Findings</i></p>	<p>This standard does not apply as this is a preliminary plat application, not a final plat application.</p>
		<p>16.04.040.E</p>	<p>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:</p> <ol style="list-style-type: none"> <li>1. All angle points in the exterior boundary of the plat.</li> <li>2. All street intersections, points within and adjacent to the final plat.</li> <li>3. All street corner lines ending at boundary line of final plat.</li> <li>4. All angle points and points of curves on all streets.</li> <li>5. The point of beginning of the subdivision plat description.</li> </ol>
		<p><i>Findings</i></p>	<p>This standard does not apply as this is a preliminary plat application, not a final plat application.</p>
		<p>16.04.040.F</p>	<p>Lot Requirements:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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: <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> </li> <li>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.</li> <li>4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line.</li> </ol>

				<p>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.</p> <p>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.</p>
			<i>Findings</i>	This standard is not applicable as no new lots are being created.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.G	<p><b>G. Block Requirements:</b> The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Blocks shall be laid out in such a manner as to comply with the lot requirements.</li> <li>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.</li> <li>4. Corner lots shall contain a building envelope outside of a seventy five foot (75') radius from the intersection of the streets.</li> </ol>
			<i>Findings</i>	This standard is not applicable as no new lots are being created.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.H	<p><b>Street Improvement Requirements:</b></p> <ol style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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;</li> <li>4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods;</li> <li>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;</li> <li>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;</li> </ol>

			<p>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;</p> <p>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;</p> <p>9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°);</p> <p>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;</p> <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p> <p>12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets;</p> <p>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;</p> <p>14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills;</p> <p>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;</p> <p>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;</p> <p>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;</p> <p>18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement;</p> <p>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;</p> <p>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;</p>
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				<p>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;</p> <p>22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and</p> <p>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.</p>
			<i>Findings</i>	No new streets are proposed. First Ave and Fourth Street both meet the city's street requirements. Right of way improvements for drainage and sidewalks have been reviewed and approved by the City Engineer at the time of building permit application. The building permit was issued on April 19, 2022.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.I	<p><b>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.</b></p>
			<i>Findings</i>	The Design Review application included proposed improvements to the alley to facilitate pedestrian and vehicular access, and utilities. Per Development Agreement 20427, the applicant requested vacation of the alley, and vacation was approved. The building permit application included the construction plans for the final alley improvements which were reviewed and approved by the City Engineer.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.J	<p><b>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.</b></p> <p>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.</p> <p>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.</p> <p>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</p>

				<p>easement along the portion of the riverbank which runs through the proposed subdivision.</p> <p>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.</p> <p>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.</p> <p>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.</p>
			<i>Findings</i>	Easement A is included on the preliminary plat as required by the Design Review approval and final plat approval for the removal of lot lines and vacation of the alley. Easement A includes public utility, emergency access, and pedestrian access. The easement also permits ingress and egress access to Lots 1B and 6A.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.K	<p><b>Sanitary Sewage Disposal Improvements:</b> 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.</p>
			<i>Findings</i>	The property is served by city sewer services. Sheet 1 of the preliminary plat shows the location of sewer service to the project.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.L	<p><b>Water System Improvements:</b> 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</p>

				public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.
			<i>Findings</i>	The property is served by city water services. Sheet 1 of the preliminary plat shows the location of water service to the project.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	<p><b>Planting Strip Improvements:</b> 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.</p>
			<i>Findings</i>	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.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.N	<p><b>Cuts, Fills, And Grading Improvements:</b> 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:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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: <ol style="list-style-type: none"> <li>a. Proposed contours at a maximum of five foot (5') contour intervals.</li> <li>b. Cut and fill banks in pad elevations.</li> <li>c. Drainage patterns.</li> <li>d. Areas where trees and/or natural vegetation will be preserved.</li> <li>e. Location of all street and utility improvements including driveways to building envelopes.</li> <li>f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements.</li> </ol> </li> <li>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.</li> <li>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.</li> <li>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.</li> </ol>

				<p>6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply:</p> <ul style="list-style-type: none"> <li>a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability.</li> <li>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).</li> <li>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</li> <li>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.</li> <li>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.</li> </ul>
			<i>Findings</i>	This standard does not apply as this application is a condominium subdivision of an existing lot. On-site grading for the new condominium building meets all grading requirements and was reviewed at the time of building permit application.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.O	<p><b>Drainage Improvements:</b> 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.</p>
			<i>Findings</i>	The applicant submitted a site grading and drainage plan with the building permit application showing drainage for the subject property. No common drainage courses are utilized or disturbed. The grading and drainage plan meets all requirements, not impacting adjacent properties.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.P	<p><b>Utilities:</b> 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</p>

				streets shall be installed by the subdivider prior to construction of street improvements.
			<i>Findings</i>	As shown on Sheet 1 of the preliminary plat, all utilities will be installed underground. Transformer and other utility equipment will be located within the former alley (vacated). Location and required screening was reviewed and approved with the Design Review and Building Permit applications.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.Q	<b>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.</b>
			<i>Findings</i>	The proposed condominium development does not create substantial additional traffic; therefore, no off-site improvements are required other than required improvements to drainage and sidewalks as outlined above.

#### FINDINGS REGARDING COMPLIANCE WITH CONDOMINIUM SUBDIVISION REQUIREMENTS

Condominium Plat Requirements				
Compliant			City Code	Standards
Yes	No	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.B	<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.</b>
			<i>Findings</i>	The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.D	<b>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.</b>
			<i>Findings</i>	As shown on Sheet 1 of the preliminary plat, the underground parking garage layout is shown on the "Basement" payout. A total of 31 spaces is provided, 16 of which must be dedicated to individual condo units per the Design Review approval. The prelim plat outlines each parking space as a L/C or Limited Common Element and designates the unit by which the parking space is dedicated to. The remaining units are not required parking and can be managed by the owner as needed.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.E	<b>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.</b>
			<i>Findings</i>	As shown on Sheet 1 of the preliminary plat, there is some general storage in the underground parking area noted on the Basement floorplan. Additional storage for each unit is located within the condominium unit as shown on the floor plans approved with the building permit issuance.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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.
			<i>Findings</i>	Mechanical equipment rooms are designated on each floor as common areas. The ground floor includes a large garbage storage area.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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.
			<i>Findings</i>	The third floor condominium units each include outdoor deck space. On the second and first floors, the residents have access to outside common areas available to all residents as noted on the floor plans.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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.
			<i>Findings</i>	The project has been reviewed for compliance with all other section of the subdivision standards. The project is in compliance as discussed above.

**ATTACHMENT J:**  
**Public Comment**



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5/5/2022

RE: First & Fourth Building - Workforce Apartments

Dear Suzanne and Morgan:

A new project is being built in downtown that will soon contain 15 workforce apartments. We understand that these apartments are being built by the long-time local resident and developer, Jack Bariteau and his partners as part of a mixed-use building. The apartments are eventually intended satisfy the requirement for hotel workforce employees for Jack's development group hotel project. As the hotel will take a few years to build, we have inquired about the possibility of renting an apartment or apartments for my employees on an interim basis until the hotel is completed and the apartments will be master leased to the hotel for its hotel employee workforce use.

Ketchum Kustom Woodworks is a long time (30+ years) Ketchum based employer desperate to find housing that is affordable, attractive and in Ketchum. We have been unsuccessful filling open job opportunities due to the lack & affordability of housing. We understand that there will be 15 apartments for rent and that Mr. Bariteau would like to make these available for rent to local employees whether employed by my company or self-employed. I understand that the city will consider an Amendment to the current Development Agreement for the First & Fourth project which includes how the apartments can be rented until needed for the hotel employee workforce. We do not need the bureaucracy of going through the Blaine County Housing Authority application process nor do we think that we should be restricted from renting from the First & Fourth ownership if my income level does not fit Mr. Bariteau has been up front about the current control issue and we feel that he is more than amenable to working with us directly to rent these new apartments for rents that we can afford. Now's not the time to hold these apartments subject to income or rental restrictions. Please allow us to deal directly with Jack in the rental of these apartments. All Ketchum workforce employees need housing at all levels. It's time to recognize that we have a project nearly ready to help those of us in need now and Mr. Bariteau be given the latitude to work with every Ketchum company, Ketchum based employees or self-employed individuals or families to occupy these apartments when completed in the first quarter of 2023.

Warm regards,



**SHARLA ALLEN**  
OFFICE MANAGER

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