

# WHITE PETERSON

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September 14, 2023

To: Mayor and Councilmembers, City of Ketchum  
Delivered electronically

From: Matthew A. Johnson, City Attorney

### *Legal Staff Cover Report: P22-035B Administrative Appeal*

#### **Background:**

This is an administrative appeal matter by a neighboring property owner with respect to design review and plat decisions by the Planning and Zoning Commission. The general background of the matter is presented in the memoranda submitted by the parties, as well as documented in the Record of related documents included in your Council packet.

#### **Procedural Status:**

This is an administrative appeal of decisions of the Planning and Zoning Commission, as is provided for in Ketchum Municipal Code §17.144.020. This matter was scheduled by the City Council, along with approving deadlines for submission of briefs or memorandum by the parties involved. Those memoranda have been submitted and are provided for the Council's review.

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

This is an administrative appeal hearing. Oral arguments will be presented by the involved parties only. Staff may be involved for limited presentation and is available for questions. This is not a public hearing and there is no public comment as part of the process. Comments or input outside the appeal hearing is discouraged, and if any is received should be disclosed at the start of the hearing.

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

#### **Standard of Review:**

Since the Council does not hear administrative appeals frequently, a common question when they do arise is as to the applicable standard of review. Standard of review is a legal term

guiding the discretion (or not) of the Council's review and decision with respect to use of the Record and in particular in whether or not to consider new additional information.

In this situation, it is important for the Council to understand the standard of review as defined in KMC §17.144.020(C) – underlining added:

*“Authority of council.* Upon hearing the appeal, the council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the Commission. Furthermore, the council may remand the application to the Commission for further consideration with regard to specific criteria stated by the council”

In summary, the standard of review is to review this matter on the record as presented to the Planning and Zoning Commission. While arguments, per the memos of the parties, are considered, there should not be new factual information considered or weighed that has was not part of the Record below.

**Decision Options:**

As indicated in the last sentences of KMC §17.144.020(C) – see above – upon review and deliberation, the Council may decide from the following on the underlying P&Z decisions: affirm, reverse, modify in whole or in part, and/or remand the application back to P&Z with direction.

Per KMC §17.155.030, the Council must issue a written decision with 30 days of this hearing. Typically, the Council will indicate a decision, or at least direction, for staff and legal counsel to prepare a full draft written decision for final approval and decision at a future Council meeting within that 30-day time period.

I will be present for the hearing and am happy to answer any further procedural questions or concerns as needed. I will also be available to assist in the proceedings as is helpful.

## **200 N Leadville Administrative Appeal Attachments List**

- A. Application for Appeal and Initial Appeal Letter
- B. 240 Leadville Support of Appeal – August 14, 2023
- C. Reply Memorandum from Ed Simon – August 26, 2023
- D. 240 Leadville Reply – September 8, 2023
- E. Application – Final Design Review
- F. Project Plans – Final Design Review
- G. Application - Condominium Preliminary Plat
- H. Project Plans - Condominium Preliminary Plat
- I. Public Notice
- J. Notice Certification
- K. Staff Report (no attachments) – Planning and Zoning Commission November 29, 2023
  - a. Staff report and attachments – [CLICK HERE](#)
- L. Hearing Transcript – November 29, 2023
- M. Staff Report (no attachments) - Planning and Zoning Commission December 20, 2023
  - a. Staff report and attachments – [CLICK HERE](#)
- N. Hearing Transcript – December 20, 2023
- O. Staff Report (no attachments) - Planning and Zoning Commission February 28, 2023
  - a. Staff report and attachments – [CLICK HERE](#)
- P. Hearing Transcript – February 28, 2023
- Q. Public Comment (all hearings)
- R. Findings of Fact, Conclusions of Law, and Decision - Final Design Review
- S. Findings of Fact, Conclusions of Law, and Decision – Condominium Preliminary Plat
- T. FAR Exceedance Agreement #22811



City of Ketchum  
Planning & Building

OFFICIAL USE ONLY	
File Number:	P22-035B
Date Received:	4/26/23
By:	HLN
Fee Paid:	\$2175 <sup>00</sup>
Approved Date:	
Denied Date:	
By:	

### Notice of Appeal

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

OFFICIAL USE ONLY	
Date Appeal Received: 4/26/2023	Date Notice Published:
Appeal Fee: \$2175 <sup>00</sup>	Transcript Fee:
Date Paid: 4/26/2023	Date Paid:
Date Appellant Notified of Estimated Transcript Costs and Notice:	Mailing Fee:
Date of Appeal Hearing:	Date Paid:
Action(s) Taken/Findings:	
APPELLANT	
Name of Appellant: 240 Leadville, L.L.C.	Phone Number: 208-720-0789
Address: PO Box 284, Sun Valley, ID 83333	Fax Number or Email: david@vpcompanies.com
REPRESENTATIVE	
Name of Representative: Alturas Law Group	Phone Number: 208-788-6688
Address: 101 E Bullion St, Hailey, ID 83333	Fax Number or Email: sam@alturaslawgroup.com; admin@alturaslawgroup.com
APPLICATION	
Application Being Appealed: P22-035 and P22-035A - The 208 Condos	
Explain How You Are an Affected Party:	
See attached.	
Date of Decision or Date Findings of Fact Were Adopted: April 11, 2023	
SUBMITTAL INFORMATION	
This Appeal is Based on The Following Factors (set forth all basis for appeal including the particulars regarding any claimed error or abuse of discretion):	
See attached.	

If you have attached additional pages, please indicate the number of pages attached 9

4/26/2023

Signature of Appellant or Representative

Date



City of Ketchum

# Attachment A: Application for Appeal and Initial Appeal Letter



April 26, 2023

Morgan Landers, AICP  
Director of Planning and Building  
City of Ketchum  
Planning & Building  
191 5th Street West  
Ketchum, ID 83340

Re: *240 Leadville, L.L.C. Appeal of P22-035 and P22-035A - The 208 Condos*

Dear Ms. Landers:

## **I. INTRODUCTION**

I represent 240 Leadville, L.L.C., the owner of property directly adjacent to the 208 Condominiums Project (the “Project”). The Project’s applicant is 755 S Broadway, LLC (the “Applicant”). The City of Ketchum Planning and Zoning Commission (the “Commission”) entered findings of fact, conclusions of law, and decision (the “Decision”) for the Project’s design review application (P22-035) and condominium subdivision – preliminary plat application (P22-035A) on April 11, 2023.

To appeal the Commission’s Decision, Ketchum Municipal Code (“KMC”) § 17.144.020 requires notice of said appeal on or before 5:00 p.m. of the fifteenth calendar day after the findings of fact have been approved by the Commission. This notice of appeal is timely, as it has been filed with the City of Ketchum within the required time period.

Idaho law and KMC only allow affected persons to appeal local land use decisions. See KMC § 17.144.101.B. Idaho Code § 67-6521(1)(a) defines an affected person as a person or entity that has a bona fide interest in real property, which may be adversely affected by the approval of an application for subdivision and design review. 240 Leadville, L.L.C. has a bona fide interest in ensuring that neighboring property owners build projects that are substantively and procedurally consistent with KMC and Idaho law. As explained more specifically below, the Decision adversely affects property owned by 240 Leadville, L.L.C.

This notice of appeal outlines the factors and basis of appeal, including particulars regarding errors and abuses of discretion contained in the Decision.

## **II. ISSUES ON APPEAL**

### **A. The City Council's approval of the FAR Exceedance Agreement violates Idaho's Local Land Use and Planning Act ("LLUPA" or "Idaho Code § 67-6501").**

The Ketchum City Council's ("Council") approval of FAR Exceedance Agreement 22811 ("Far Exceedance Agreement") violated KMC and LLUPA because Council made quasi-judicial determinations reserved for the the Commission and failed to notice and conduct a public hearing concerning the same.

Under LLUPA, city councils may either retain their planning and zoning authority or delegate it to a commission. Idaho Code § 67-6504. Ketchum elected to establish a planning and zoning commission pursuant to Idaho Code § 67-6504, and the only power retained by the Council is the authority to adopt ordinances, finally approve land subdivisions, and act in an appellate capacity for appeals from the Commission. See KMC § 4.12.020; Idaho Code § 67-6504; *Brower v. Bingham Cty. Comm'rs (In re The Application for Zone Change)*, 140 Idaho 512, 514, 96 P.3d 613, 615 (2004). Importantly, LLUPA requires governing boards to adopt hearing procedures that "provide an opportunity for all affected persons to present and rebut evidence." Idaho Code § 67-6534. It is the Commission's obligation and responsibility to ensure land use applications meet the requirements of KMC, not the Council's.

Under the KMC, the Commission is required to conduct design review for mixed use buildings and projects in all zoning districts. KMC §§ 17.96.010 and 030.b. Specifically, KMC § 17.96.050.A states that the Commission, not the City Council, shall determine whether an application for design review conforms to all standards under Title 17. KMC § 17.124.040 is a development standard that applies to all projects in CC zoning districts, and this development standard limits projects to a maximum floor area ratio ("FAR") of 1.0, unless some community housing benefit is provided. Subsection B.2 of this code states that an increased FAR may be permitted subject to design review, which necessarily requires an applicant to go through design review to receive a FAR Exceedance Agreement. At a minimum, it is

the Commission that must determine whether and how much of an increased FAR is warranted for a specific project, not the Council.

Lastly, KMC § 17.144.020 establishes the Council as an appellate body for decisions made by the Commission. When the Council made the determination about the appropriate FAR to apply to the Project application prior to any public hearings before the Commission, the Council biased and prejudiced not only the Commission's ability to determine the appropriate FAR for the Project, but its own ability to fairly adjudicate any subsequent appeals related to the FAR, community housing incentives, and the size of the project.

Only the Commission can approve a FAR Exceedance Agreement because the Council dedicated its planning and zoning powers to the Commission. The Commission is vested with the sole authority to evaluate whether an application for design review meets the standards under KMC Title 17. Once the Commission has made its quasi-judicial determinations about whether an application meets all standards, then that decision can be appealed to the Council. The maximum FAR development standard is a standard of evaluation that the Commission must consider during design review. The Council cannot arbitrarily predetermine an increased FAR outside of a public hearing and prior to an application being assessed by the Commission. Especially when the calculation of an in-lieu fee is made outside of public comment and without specific standards.

The FAR in-lieu fee calculated as part of the Far Exceedance Agreement is arbitrary and capricious, as there is no explanation for the price per square foot used in the in-lieu fee calculation. The Far Exceedance Agreement is devoid of any meaningful explanation for how the Council determined the proposed in-lieu fee or settled on \$450 per square foot as a reasonable fee. Additionally, any allowed FAR exceedance is arbitrary and capricious or an abuse of discretion in violation of LLUPA because there are no objective standards for determining when a project might qualify for a FAR exceedance agreement and how much of an increased FAR the project is entitled to.

Here, the Council's consideration and determination that the Project met the FAR standard and the amount of a community housing in-lieu fee was improper because that determination is reserved for the Commission. The FAR Exceedance Agreement contains a recital of the FAR standard under KMC § 17.121.040 and an analysis of the standard as it relates to the Project's design review application. While



the City may intend for the Commission to have “final” say over this matter, the Council’s determination that the FAR standard was met and a sum certain for the in-lieu fee was appropriate prejudices the Commission’s ability to impartially and independently consider all design review standards. Furthermore, since the Council sits in an appellate capacity, it has biased itself against any appeals that may concern the project or the FAR agreement. Finally, and potentially most significantly, the public and impacted neighbors were not given notice or an opportunity to be heard when the Council considered whether to approve the FAR Exceedance Agreement and the FAR development standard is arbitrary and capricious as a development standard.

B. The Project’s application was incomplete because the Applicant did not provide a 3D model of the Project and surrounding neighborhood.

Despite the requirement that the Project submit a 3D model of the Project and surrounding neighborhood, the Applicant failed to do so, and as such, the Project’s application is incomplete.

KMC § 17.96.040.A provides that “A completed design review application with all fees paid and all application materials submitted shall constitute a complete application for design review and is required prior to review of any design review proposal.” Additionally, according to KMC § 17.96.040.C.5, an applicant is required to submit “[o]ther information as required by the administrator or the Commission” for an application for design review.

The Commission required a 3D model of the Project during its December 20, 2022 meeting. Starting at 1:46:36 in the video recording of the meeting, Commissioner Cordovano began discussing his desire for the Applicant to provide a 3D model of the Project. Additionally, at about 1:48:13, Chairman Morrow requested “a model showing what [the Project] will look like with the surrounding neighborhood,” noting that the Commission has started to ask for that frequently. Morgan Landers, AICP, Director of Planning and Building, also required that the Application provide a 3D model of the project. In email communications between Ms. Landers and David Hutchinson between February 22–23, 2023, Mr. Hutchinson stated that he “[d]id not see the ‘model’ that included the neighborhood, that the P&Z required on the record in the last public hearing.” Ms. Landers responded, acknowledging the 3D model requirement, stating that she “reached out to the applicant to inquire about the additional rendering.” (Notably, in subsequent emails

exchanged during those same dates, Ms. Landers clarified that her understanding is that the additional rendering “is a 3D rendering/model.”)

Although the Applicant was clearly required to submit a 3D model of the Project to the Commission, the Applicant never provided the 3D model. Because the Applicant failed to provide a 3D model, the Commission should not have approved the Application because it was incomplete.

C. The chairman of the Commission violated public hearing laws when he reopened public hearing to an agent of the Applicant.

Regarding the procedure for subdivision approval, KMC § 16.04.030.5.a provides that “The commission shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. At least 15 days prior to the hearing, notice of the time and place and a summary of the proposed action shall be published in the official newspaper or paper of general circulation within the jurisdiction.” Idaho Code specifically provides that “[a]t a minimum such [public] hearing procedures shall provide an opportunity for all affected persons to present and rebut evidence. Idaho Code § 67-6534.

During the February 28, 2023 hearing, the Commission reopened public comment, but only allowed a comment from an employee of the Applicant. The minutes from the February 28, 2023 hearing do not reflect the reopening of public comment, but the recorded video does.

The Commission reopened public comment at 1:26:00 in the video recording of the meeting specifically for Jeff Swanson, who is an employee of the Applicant. Mr. Swanson failed to disclose this relationship. The chair of the Commission then asked for additional public comment, but did not recognize Mr. Hutchinson or Mr. Linnet. A subsequent request for public comments to rebut Mr. Swanson was not allowed by the Chairman.

If Mr. Hutchinson or his attorney were allowed to rebut the comments from this second comment period, this may have affected the Commission’s 3-2 approval. The denial of the opportunity for an affected party to rebut public comment is a clear violation of Idaho Code § 67-6534 because it could have altered the Commission’s final decision.

- D. The Project violates KMC § 17.96.060.F.6 because the north wall does not provide undulation and relief that minimizes the appearance of bulk and flatness.

KMC § 17.96.F.5 provides that “[b]uilding walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness.” Also of significance is that the Applicant is only entitled to a 1.0 FAR under KMC § 17.124.040. Any allowed FAR in excess of 1.0 is completely discretionary for the Commission to approve, disapprove, or alter.

The Commission repeatedly expressed their conviction that the Project met code requirements for size, height, and bulk. This conviction was an error because the Commissioners did have the authority to reduce the allowed FAR based on their analysis of development and design review standards. By not understanding their authority, the Commission made an arbitrary and capricious decision because it claimed it was bound by a non-discretionary standard (the increased FAR), when any FAR above 1.0 is purely discretionary. The Commission could have and indicated its intent to require a smaller FAR for the Project because the Project did not meet KMC § 17.96.F.5. The Project should be denied for failing to meet design review and development standards, and because the Commission failed to evaluate the Project with the understanding that any FAR over 1.0 is completely discretionary and that it had the authority to reduce the size, height, and bulk of the Project.

- E. The Project is not compatible with the neighboring property because the north facade is a blank wall and does not reduce the appearance of bulk and flatness, and it is not compatible with the existing neighborhood.

Pursuant to KMC § 17.96.060.E.1, “The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.” This is a mandatory design review standard that requires the Commission to assess the Project in light of *existing* structures. KMC § 17.96.060.F.5 requires developments to minimize the appearance of bulk and flatness of the primary facades of the building. Policy CD-1.3 of Chapter 4 of the comprehensive plan states that “[i]nfill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur.” Importantly, under the KMC, the Applicant is only entitled to build a structure with a

FAR of 1.0. Any increased FAR is discretionary and must be approved in light of these standards.

Multiple times throughout the February 28, 2022 meeting, the Commission specifically found that the north facade did not minimize bulk and flatness, it was not complementary to existing structures, it was not contextually appropriate to the neighborhood, and they were constrained with the existing size and bulk of building due to it meeting code requirements. At 1:39:00 in the video of the meeting minutes, Commissioner Carter admits that this project is in conflict with the existing structures. At 1:44:00, Chairman Morrow acknowledges that the Project is distinctly larger than historic structures and other structures across the street. At 1:47:30, Commissioner Passavoy states that the Project is “radically different than what’s around you.”<sup>1</sup> Only Commissioner Cordovano recognized that the allowed FAR was 1.0 by right. See 1:50:00 of the meeting minutes.

At 1:54:00, Chairman Morrow began to discuss the Project’s north facade and height. He specifically stated that he wished the building was smaller and that the north facade contained more undulations, but that it “meets the code.” Again, the Commission failed to understand that it has discretion in allowing a FAR in excess of 1.0 for this project. Because the Commission acknowledges that the Project is larger than surrounding structures and lacks undulation in violation of KMC § 17.96.060.F, its decision to approve the Project on the basis that the Commission lacks authority to require a smaller building or a north facade that undulates is in error.

Commissioner Carter also failed to understand that the Commission has discretion over the size of the building, because Design Review requires that the Commission not only find conformity with all Design Review criteria, but also “all applicable standards and criteria as set forth in this chapter, this title, and any other standards as adopted or amended by the City of Ketchum from time to time.” KMC § 17.96.050.A.2. At about 2:15:00, Commissioner Carter and Chairman Morrow again incorrectly claim that they do not have the ability to deny the Project based on size, height, and bulk or the FAR.

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<sup>1</sup> Notably, Commissioner Passavoy then reiterated the incorrect statement that they are bound to the size of this building per KMC. Again, the size of the building is a direct result of the discretionary increased FAR that the Commission failed to recognize it could change.

However, the most illustrative comment from the Commission regarding the misunderstanding of their authority comes from Commissioner Passavoy at 2:21:00, when she says, “this building is not compatible with other little buildings right around it.” She then uses the potential for future developments as justification for approving it, despite finding it nonconforming.

The Decision does not accurately reflect the deliberations and conclusions of the Commission in making their decision to approve the Project. The Decision discusses the Commission’s findings that the Project might conform with *future* land use in the surrounding neighborhoods, not current land uses. The Decision also states that the Commission found, contrary to the express requirements of KMC § 17.96.060.E.1 and Policy CD-1.3 of Chapter 4 of the comprehensive plan, that the building should be measured by the broader surroundings and not the immediately adjacent structures. According to KMC § 17.96.060.E.1, “[t]he project’s materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.” And Policy CD-1.3 of Chapter 4 of the comprehensive plan states that “[i]nfill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur.” Therefore, the Commission’s decision to measure the Project not by the immediately adjacent structures or neighborhood, but by the broader surroundings and potential future development, was made in error.

The Commission’s deliberations show that the process of approving the Project was flawed because the Commission failed to understand its ability to deny the application based on design review standards and other development standards in the KMC. The Commission also failed to analyze the Project under the clear wording of the Design Review criteria and Comprehensive Plan. Accordingly, the Project should be denied by the Council, since the project does not meet applicable standards, as determined by the Commission.

### **III. CONCLUSION**

The Decision approving the Project is flawed for several reasons. Most importantly, the City’s FAR exceedance development standard is procedurally unlawful, as it vests validly delegated planning and zoning authority in the Council when such power is rightfully vested in the Commission. As evidenced by the February 28, 2023 Commission meeting, the Far Exceedance Agreement prejudiced the Commission’s ability to objectively evaluate the Project for size and bulk.

Second, the Commission made several determinations that are in direct opposition to the requirements of KMC Title 17. The Commission repeatedly stated that the Project was not in conformance with KMC § 17.96.060.E.1 and F.5 and Policy CD-1.3 of Chapter 4 of the comprehensive plan. Then, the Commission evaluated the Project in the context of what might be built in the future. This was done in error and is an abuse of discretion.

The Commission also violated public meeting laws when it reopened the public hearing to allow an employee of the Applicant to testify, but it did not do so for Mr. Hutchinson or his attorney. Finally, the Commission improperly approved an incomplete application, where here, the Applicant failed to provide a 3D model in response to requests from the Commission and Ms. Landers.

My client respectfully requests that the Council deny the Project for failing to meet KMC standards and undertaking an unlawful process when determining the appropriate FAR to apply, and because the FAR development standard is unenforceable in its current form.

Sincerely,

ALTURAS LAW GROUP, PLLC

A handwritten signature in blue ink, appearing to read 'S. L. Linnet', with a long horizontal flourish extending to the right.

Samuel L. Linnet

cc: Client



City of Ketchum

**Attachment B:**  
**240 Leadville Support of Appeal**  
**– August 14, 2023**



August 14, 2023

Matthew Johnson  
Legal Counsel for the City of Ketchum  
191 5th Street West  
Ketchum, ID 83340  
mjohnson@whitepeterson.com - Sent via email only

Re: *Memorandum in Support of Appeal P22-035B*

Dear Mayor Bradshaw; Council President Slanetz; and Councilors Breen, David and Hamilton:

240 Leadville, L.L.C. appealed the approval of design review (P22-035) and a condominium subdivision plat (P22-035A) for the construction of a 10,856 square foot three-story mixed-use development known as The 208 Condominiums (the “Project”), located at 200 N Leadville Avenue. The project consists of 1,306 square feet of ground floor retail space and four, market-rate residential units: one 639 square foot basement unit, a 746 square foot second floor unit, a 2,628 square foot second floor suite, and a 3,503 square foot penthouse on the third floor. None of these units are deed restricted. Instead, the Project has attempted to buy almost two times the allowed square footage by making a community housing contribution of only 20% of the increased square footage at \$450 per square foot. The Project, as approved by the Planning and Zoning Commission (the “Commission”) is only as large as it is because of a Floor Area Ratio (“FAR”) exceedance agreement allowing for increased density, mass, and bulk.

The overarching theory of this appeal is that the Project was approved through a complicated and unlawful procedure that predetermined the outcome of the Planning and Zoning Commission’s design review and subdivision plat process. By approving FAR Exceedance Agreement 22811 (the “Agreement”), the Council decided on the size and mass of this building prior to the Commission ever considering its design, it prejudiced the Commission’s ability to independently assess this project in light of Ketchum’s municipal code, and it prevented meaningful public comment about not only the appropriate size of the Project, but also the appropriate amount of payment for an increased FAR.

My client and I fully understand the difficulty of being in the position of an elected official, especially as it relates to land use and local planning. We also understand the intent behind Ketchum Municipal Code (“KMC”) § 17.124.040, which



allows for a FAR of 1.0 by right, and it allows for an increased FAR if there is a community housing benefit provided to the City of Ketchum. While the intent of this section of code is commendable, the process surrounding its implication has created very real policy and legal issues. Not to mention, in its current form, the FAR development standard almost guarantees in-lieu fee payments for excess FAR at a fraction of the cost of actually building community housing. Specific issues created by the current FAR development standard include negatively affecting surrounding neighbors, failing to adequately compensate the City for the benefit it is providing to developers, restricting public participation in the design review process, and prejudicing the Commission to independently review projects that seek the benefits of a FAR exceedance agreement.

## **I. COUNCIL'S AUTHORITY ON APPEAL**

On an administrative appeal from a decision by the Commission, the Council is tasked with the following responsibility:

Upon hearing the appeal, the Council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the Commission. Furthermore, the council may remand the application to the Commission for further consideration with regard to specific criteria stated by the council.

KMC § 17.144.020(C).

Here, 240 Leadville, L.L.C. requests that the Council reverse the design review and subdivision plat approval for the Project and find the Project fails to meet the required standards under KMC § 17.96.050. Specifically, the Project was approved under unlawful procedure related to KMC § 17.124.040, and it fails to meet KMC § 17.96.060.E.1 (complimenting surrounding neighborhoods and structures), KMC § 17.96.060.F.5 (minimizing the appearance of bulk and flatness), and Policy CD-1.3 of Chapter 4 of the Ketchum Comprehensive Plan (development should be contextually appropriate to neighborhoods).

## II. SPECIFIC ISSUES ON APPEAL

1. Whether the City Council's approval of the Agreement violates Idaho's Local Land Use and Planning Act ("LLUPA" or "Idaho Code § 67-6501").
2. Whether the Project application was incomplete because the Applicant did not provide a 3D model of the Project and surrounding neighborhood.
3. Whether the chairman of the Commission violated public hearing laws when he reopened public hearing to an agent of the Applicant.
4. Whether the Project violates KMC §§ 17.96.060.F.5 and E.1 and Policy CD-1.3 of Chapter 4 of the Comprehensive Plan because the north wall does not provide undulation and relief that minimizes the appearance of bulk and flatness and is not compatible with the existing neighborhood.

## III. ARGUMENT

- A. The April 25, 2023 Notice of Appeal contained a memorandum supporting the issues on Appeal, and that document contains the majority of the legal arguments necessary to deny.

In an effort to simplify the record and briefing in front of Councilmembers, this memorandum will not recite the arguments made in the April 26, 2023 Notice of Appeal. Those arguments are part of the record, and the Council should review them in full. This memorandum is intended to summarize the issues on appeal, highlight the overarching themes of this appeal, and provide the Council with a clear blueprint for reversing approval of P22-035 and P22-035A.

- B. FAR exceedance agreements approved by the Council and before design review by the Commission are unlawful, restrict public input, and prejudice the Commission during the design review and subdivision process.

At the heart of this appeal is the procedural issue that occurs when the Council approves a FAR exceedance agreement outside of the public process and before the Commission has a chance to review the project in Design Review. The specific legal aspects of this issue are briefed in the Memorandum in Support of Notice of Appeal filed on April 26, 2023. Here, I will primarily focus on the policy and practical arguments supporting my clients claim that the FAR exceedance agreement process is unlawful.

First, the FAR development standard must be met as a requirement for design review approval. See KMC §§ 17.96.050.A and 17.124.040. The design review process is a process that the Council has delegated to the planning and zoning commission. And this policy makes sense because the Commission, not the Council, is tasked with ensuring that proposed projects meet the legal requirements and policy goals of the design review process.

When the Council pre-judges an application and approves an explicit increase in the permitted size, scale, and mass of a building, it affects the Commission's ability to independently assess whether a FAR exceedance agreement is warranted, what conditions might need to apply to such an agreement, and how much of a community benefit is fair to the City in exchange for a FAR exceedance agreement. See Notice of Appeal, paragraph II.A and E (discussing the Commission's misunderstanding that it could not reevaluate whether the FAR development standard was met, and whether different or additional terms of a FAR exceedance agreement could be entered into). Thus, when the Council approved the Agreement, it made a quasi-judicial determination that the Project met the FAR development standard and could be built in excess of the 1.0 FAR requirement.

Second, the Council also unilaterally determined the amount of the FAR in-lieu fee. The Agreement allowed the Project to construct an additional 5,511 square feet—twice what is allowed by right. The FAR development standard would have required at least 937 square feet of community housing to be built as part of the Project, but instead the Agreement charged the applicant only \$450 per square foot; that's less than half the cost to actually build community housing in Ketchum. There is no residential construction occurring the City of Ketchum for \$450 per square foot, and charging that amount of money in place of actual community housing neither compensates the City for the actual cost of providing community housing or represents a meaningful amount of money to address community housing issues. The Agreement amounts to a subsidy to the developer and a cost to the taxpayers of Ketchum. It allows the developer to pay less than 50% of market rate building prices to avoid building needed community housing. This kind of policy decision must be determined by the Commission in a public hearing so that these issues can be addressed through a public process with public participation.

Lastly, allowing the Project to go forward will jeopardize the existence of the FAR exceedance agreement program because it will be the focal point of any subsequent legal challenges. If forced into litigation, my client will challenge the procedure used in approving the Agreement and the substance of the FAR development standard. The entire FAR exceedance statute could be at risk of being found unconstitutional and in violation of LLUPA.

Losing the ability to enter into FAR exceedance agreements would eliminate the City's primary means of capturing funds necessary to implement its Housing Action Plan. 240 Leadville, L.L.C. does not want to unnecessarily strike down the City's ability to fund community housing. My client's primary goal is to stop this Project because it neither meets KMC nor provides fair compensation to the City for the increased size and bulk allowed by the Agreement. Unfortunately, if this Project moves forward, that goal could result in the FAR development standard being found unlawful.

To prevent losing the FAR exceedance development standard, my client would prefer that the Project be reversed and denied on the reasonable grounds that it fails to meet all applicable design review and development standards. Citations for this conclusion can be found in paragraph E.II of the memorandum supporting the April 26, 2023 Notice of Appeal. After reversal and denial of the Project, my client would like to work with the City on a text amendment that addresses the issues related to the FAR exceedance development standard so that future projects do not cause the same development problems occurring in this instance.

Ultimately, resolution of this issue and potential future issues related to FAR exceedance agreements will require the Commission to discuss the FAR standard, understand and exercise their ability to regulate the size and bulk of buildings, and execute FAR exceedance agreements as part of the design review public process.

#### **IV. REQUEST ACTION BY THE COUNCIL**

240 Leadville, L.L.C. respectfully requests that the Council reverse approval of P22-035 and P22-035A for failing to meet the required standards applicable to the Project. Additionally, the Applicant requests the Council to amend and reform KMC § 17.124.040 to ensure that FAR exceedance agreements are entered into by the Commission during the public hearing process and without direct intervention by the Council.

Sincerely,

ALTURAS LAW GROUP, PLLC

/s/ Samuel L. Linnet

Samuel L. Linnet

Counsel for 240 Leadville, L.L.C.

cc: Client  
Ed Simon  
Morgan Landers



City of Ketchum

**Attachment C:  
Reply Memorandum from Ed  
Simon – August 26, 2023**

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Attorney for 755 S. Broadway LLC

**Re: 200 N Leadville- Lot 1 Block 23, Ketchum Townsite  
The 208 Condos  
City File No. P22-035  
APPLICANT'S APPEAL REPLY MEMORANDUM**

## **I. INTRODUCTION**

The Applicant, 755 S. Broadway, LLC, applied for Design Review (“DR”) and Preliminary Plat on July 1, 2022, according to the Ordinances of the City of Ketchum, for the 208 Condos project located at 200 N. Leadville (“the Project”), more particularly described as Lot 1, Block 23, Ketchum Townsite, records of Blaine County, Idaho.

Upon approval of a complete application, public notice was mailed to all property owners within 300 feet of the project site, and a public hearing notice was duly published in the Idaho Mountain Express on November 9, 2022. The Planning & Zoning Commission (“P&Z”) reviewed the project at a meeting on November 29, 2022, and continued it to a special meeting on December 20, 2022, and again continued it to the January 10, 2023. The Applicant requested, that in order to adequately respond to the comments made, that an additional continuance be made to the February 28, 2023 meeting. A final review was held on February 28, 2023, of the DR and Preliminary Plat applications, and a public hearing was held and public comment was taken. Proper notice was given for these proceedings, and there exists no issue relating to the public process, with the exception of the claim made by the Appellant regarding the FAR Exceedance Agreement, which will be reviewed later in this memorandum.

Ketchum Planning and Zoning Commission Findings of Fact, Conclusions of Law, and Decision (“Findings”) were adopted on April 11, 2023. Those Findings concluded that the Project fully complied with all of standards of Title 17 Zoning Regulations of the City of Ketchum, subject to the conditions included therein, which are in accordance with the regular and ordinary procedure of the P&Z. An Appeal was filed on April 26, 2023, which forms the basis for the pending hearing before the Ketchum City Council. That appeal is without merit, which will addressed in this Reply Memorandum.

## II. ISSUES ON APPEAL

1. Was the FAR Exceedance Agreement #22811 a lawful exercise of the City of Ketchum's Police Powers under the Local Land Use Planning Act, and City Ordinances; and, did the City Council exceed its authority by executing the FAR Exceedance Agreement prior to approval of Design Review.
2. Was due process afforded affected parties and the public in the presentation of the Applicant's project.

## III. ARGUMENT

### A. Preliminary law applicable to validity of City Ordinances.

The Idaho Supreme Court has held, in *Dry Creek Partners, LLC, v. Ada Cnty. Comm'rs, ex rel. State*, 148 Idaho 11, 217 P.3d 1282 (2009), that where a statute, ordinance, or regulation presents a proper field for the exercise of the police power, the extent of its invocation and application is a matter which lies very largely in the legislative discretion, and every presumption is to be indulged in favor of the exercise of that discretion, unless arbitrary action is clearly disclosed. The Court provided a good discussion:

The interpretation of a county's zoning ordinance is a question of law over which this Court exercises free review. *Terrazas v. Blaine County ex rel. Bd. of Comm'rs*, 147 Idaho 193, 203, 207 P.3d 169, 179 (2009). When asked to interpret a local ordinance, this Court employs the same standards used when interpreting a statute. *Evans*, 139 Idaho at 77, 73 P.3d at 90.

Pursuant to the state's police power, the Idaho Legislature has the authority to "enact laws concerning the health, safety and welfare of the people so long as the regulations are not arbitrary or unreasonable." *Van Orden v. Dep't of Health & Welfare*, 102 Idaho 663, 667, 637 P.2d 1159, 1163 (1981). The Legislature, as a function of the police power, has delegated authority to city and county governments to exercise land use planning powers under the LLUPA. See I.C. § 67-6503. Included in this authority is the power to adopt ordinances for the processing of subdivision permits. I.C. § 67-6513. Such ordinances are "presumed valid until the contrary is shown." *State v. Clark*, 88 Idaho 365, 377, 399 P.2d 955, 962 (1965); see also *Sweet v. Rechel*, 159 U.S. 380, 392-93, 16 S.Ct. 43, 45-46, 40 L.Ed. 188, 193-94 (1895).

For a zoning ordinance to be deemed invalid, it must be unreasonable. *Nelson*, 10 Idaho at 528, 79 P. at 81; 101A C.J.S. *Zoning & Land Planning* § 25 (2009). A zoning ordinance is only unreasonable when it is arbitrary, capricious, or discriminatory. *Ready-To-Pour, Inc. v. McCoy*, 95 Idaho 510, 514, 511 P.2d 792, 796 (1973). Such circumstances exist when the ordinance bears “no substantial

relationship to the public health, safety, morals, and general welfare.” 101A C.J.S. *Zoning & Land Planning* § 25 (2009); *see also Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed. 303, 314 (1926). Because “[t]he concept of the public welfare is broad and inclusive,” *Berman v. Parker*, 348 U.S. 26, 33, 75 S.Ct. 98, 102, 99 L.Ed. 27, 38 (1954), so long as the reasonableness of a zoning ordinance is fairly debatable, the ordinance will be upheld. *Village of Euclid*, 272 U.S. at 388, 47 S.Ct. at 118, 71 L.Ed. at 311; 101A C.J.S. *Zoning & Land Planning* § 25 (2009). **The party challenging the validity of an ordinance carries the burden of proving its illegality. *Clark*, 88 Idaho at 377, 399 P.2d at 962. (Emphasis added)**

Once it is determined that an ordinance serves the general welfare, this Court will not second-guess the wisdom of the enactment. *Clark*, 88 Idaho at 375–76, 399 P.2d at 961. When a legislative judgment is called into question, it will be upheld if there is “any state of facts either known or which could reasonably be assumed affords support for it.” *U.S. v. Carolene Prods. Co.*, 304 U.S. 144, 154, 58 S.Ct. 778, 784, 82 L.Ed. 1234, 1243 (1938). As this Court stated in *Clark*:

Where a statute, ordinance or regulation presents a proper field for the exercise of the police power, the extent of its invocation and application is a matter which lies very largely in the legislative discretion, and every presumption is to be indulged in favor of the exercise of that discretion, unless arbitrary action is clearly disclosed. The subject matter of the ordinance being within the police power, and properly belonging to the legislative department of government, the courts will not interfere with the discretion, nor inquire into



the motive or wisdom of the legislature. If the act is not clearly unreasonable, capricious, arbitrary or discriminatory, it will be upheld as a proper exercise of the police power.

The courts may differ with the legislature as to the wisdom and propriety of a particular enactment as a means of accomplishing a particular end, but as long as there are considerations of public health, safety, morals, or general welfare which the legislative body may have had in mind, which have justified the regulation, it must be assumed by the court that the legislative body had those considerations in mind and that those considerations did justify the regulation. When the necessity or propriety of an enactment is a question upon which reasonable minds might differ, the propriety and necessity of such enactment is a matter of legislative determination.

*Clark, 88 Idaho at 375–76, 399 P.2d at 961* (citations omitted). The adoption of similar ordinances by other local governments may be evidence of whether reasonable minds might differ over the propriety of an enactment. *Id.* at 376, 399 P.2d at 961.

In *Hoffman v. City of Boise, 168 Idaho 782, 487 P.3d 717* (2021) the Idaho Supreme Court had stated that the party challenging an ordinance on constitutional grounds bears the burden of establishing ordinance's unconstitutionality and is required to overcome strong presumption of validity; See also *State v. Korn, 148 Idaho 413, 224 P.3d 480* (2009).

In addition, the Idaho Supreme Court has also stated that the action of a governing board in the application and interpretation of its own ordinances is also entitled to a similar strong presumption.

Although interpretation of an ordinance is a question of law over which this Court exercises free review, *Lane Ranch P'ship v. City of Sun Valley, 145 Idaho 87, 89, 175 P.3d 776, 778* (2007), "there is a strong presumption of favoring the validity of the actions of zoning boards,

which includes the **application and interpretation of their own zoning ordinances.**" (Emphasis added) *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley County*, 132 Idaho 551, 554, 976 P.2d 477, 480 (1999) (citing *Howard v. Canyon County Bd. of Comm'rs*, 128 Idaho 479, 480, 915 P.2d 709, 710 (1996)).

*Terrazas v. Blaine County*, 207 P.3d 169, 147 Idaho 193 (Idaho 2009)

Consequently, the City of Ketchum's ordinance pursuant to the Local Land Use Planning Act (LLUPA) and city Ordinance is presumed valid, as well as the governing body's interpretation of those laws, and, the Appellant has a strong burden in overcoming that presumption. The City Council in its quasi judicial capacity, must recognize these legal principals in determining the issues on appeal that are before it.

**B. Appellant's Miscellaneous Arguments**

1. Policy Issues

The Appellant makes a number of assertions in its August 14, 2023 Memorandum in Support of Appeal that warrant comment, as they are not relevant to the issues before the City Council, go to City policies, and not state statutes or City Ordinances.

"Not to mention, in its current form, the FAR development standard almost guarantees in lieu fee payments for excess FAR at a fraction of the cost of actually building community housing." (Appellant Memorandum P2, 4<sup>th</sup> line down)

The current policy of the City regarding FAR's is contained in KMC 17.124.040. That is the policy of the City, which was enacted into its Ordinances. Such references as above are not supported by the record, nor are they relevant to the issues before the City, and must be ignored.

2. 3D Modeling

The Appellant contends that the Project was incomplete because a 3D model was not provided. Again, the Appellant misreads the City Ordinances

"Additionally, according to KMC§17.96.040.C.5, an applicant is required to submit" [o]ther information required by the

administrator or the Commission”  
(Appeal Letter April 26, 2023Memorandum  
paragraph B)

The Administrator accepted the Application on the basis that the submission of building envelopes, elevations, perspectives, renderings, and setback modeling was adequate, that the submission was complete, and the Commission did not insist upon any additional 3D modeling at the DR hearing.

KMC § 17.96.040 (4)(5) provides:

- 4.The Administrator may waive some submittal requirements if it is determined the information is not relevant to the design review.
- 5.Other information as required by the administrator or the Commission.

The Commission may require a model of the project or computer simulation renderings showing the proposal from one or more key vantage points for presentation at regular design review meetings in order to assist in the understanding of the project.

KMC § 17.96.010 C. 4. provides:

4. The Commission may require a model of the project or computer simulation renderings showing the proposal from one or more key vantage points for presentation at regular design review meetings in order to assist in the understanding of the project. Models and computer renderings must include surrounding properties in sufficient detail for the proposal to be viewed in context.

The Applicant fully complied with KMC § 17.96.010 C.4 with numerous renderings, including five (5) additional renderings after previous presentations. Those renderings were revised to meet the latest building design, including two (2) new massing views showing the immediate block, and a new photo/render of the site with the Project’s, was provided, taken from N. Leadville Ave.

The City’s staff worked well and fairly with the architect and the Applicant. That cooperation resulted in a better project for the City and the Developer. The final Design Review process both enhanced the result, and was in full compliance with all City requirements.

The statements made by the Appellant regarding a 3D Modeling, and violation of the City Ordinances are without merit, and are not supported by the law, nor the facts. The City Council must presume the validity of their Ordinances, and the Planning & Zoning Commission’s interpretation and application thereof.

### 3. Appellate Rights

*“Lastly, allowing the Project to go forward will jeopardize the existence of the FAR exceedance agreement program because it will be the focal point of any subsequent legal challenges. **If forced into litigation, my client will challenge the procedure used in approving the Agreement and the substance of the FAR development standard. The entire FAR exceedance statute could be at risk of being found unconstitutional and in violation of LLUPA. (Emphasis added)***

***Losing the ability to enter into FAR exceedance agreements would eliminate the City’s primary means of capturing funds necessary to implement its Housing Action Plan. 240 Leadville, L.L.C. does not want to unnecessarily strike down the City’s ability to fund community housing. My client’s primary goal is to stop this Project because it neither meets KMC nor provides fair compensation to the City for the increased size and bulk allowed by the Agreement. Unfortunately, if this Project moves forward, that goal could result in the FAR development standard being found unlawful.” (Appellant Memorandum P4-5)***

Again, the Appellant is mis-stating the law, and fails to meet their burden of showing the invalidity of the Ordinance as required (See §A. **Preliminary law applicable to validity of City Ordinances herein** . The Appellant has every right to appeal the decision of the P&Z Commission, the appellate decision of the City Council, and to seek judicial review. However, they also must present facts and evidence that support their contentions. Further, such statements above are coercive in nature, and intended to improperly influence the trier of fact (the City Council). As a quasi judicial body in this matter, it is incumbent upon the Council to follow the law, and the facts, and to avoid all prejudicial conduct that goes beyond proper client advocacy.

**C. The FAR Exceedance Agreement (“EA”) #22811 was a lawful exercise of the City’s police power.**

The Appellant has made a broad assertion that the City has violated the approval of the “EA” according to Title 67-6504, and that the Council execution of the “EA” prior to approval of DR was invalid and *“prejudiced the Commission’s ability to independently assess this project in light of Ketchum’s municipal code, and prevented meaningful public comment about not only the appropriate size of the Project, but also the appropriate amount of payment for an increased FAR”*. (Appellant’s Appeal Memorandum Page 1 ¶2) That assertion ignores the law and the facts.

§67-6504 does not preclude the City Council from retaining jurisdiction on all planning and zoning functions, as many of those functions have been retained by the Council under Chapter 17 Municipal Code. Ketchum Municipal Code §17.124.040 has been reserved to the Council’s decision.

In *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009) it was alleged that the County’s delegation of legislative power to Blaine County Housing Authority was a violation of the Idaho Constitution Art. III §1. The Court gave little credence to the appellant’s argument, and implied that there is no limitation on a city or county’s delegation of its land use planning authority *See Johnson, 146 at 922, 204 P.3d at 1133*. LLUPA §67-6502(a) specifically recognizes “*other necessary types of development such as low cost housing and mobile home parks*”. **By implication there is similarly no limit on a city’s reservation of those same powers.** The KMC §17.124.040 recognizes FAR’s “*via on/off site construction or voluntary community housing in lieu payments*”.

The City’s Resolution 17-006, provides for FAR standards and options, and is a voluntary contractual agreement between the City and an Applicant/Developer. There are only two choices to be made by the Applicant/Developer in this voluntary contractual agreement: either provide the housing on/off site, or to pay the “in lieu” (See FAR Exceedance Agreement #22811 **Exhibit B** ). Under §B 2.a. (herein), there is a specific mathematical calculation for the “*net livable square footage for community housing*”. That figure calculates the square footage required for the on site housing. As an alternative, an “in lieu” fee may be paid, which is similarly determined by a mathematical equation, which, “*shall be recommended by the governing housing authority on an annual basis and adopted by the city council*”. (See §B. 2. c. herein)

The Appellant has made the assertion that only the P&Z “*can approve a FAR Exceedance Agreement*” (Appellant’s April 26, 2023 Appeal, Page 3, 2<sup>nd</sup> full paragraph). That is simply not the case based upon the facts or the law. In addition, they assert “*the FAR Exceedance Agreement is arbitrary and capricious... because there are no objective standards for determining when a project might qualify for a FAR EA...*” (See April 26, 2023, P. 3, 3<sup>rd</sup> full paragraph). The Appellant ignores the very language of the aforementioned KMC and Resolution 17-006 which gives objective criteria for the City Council’s determination.

The Appellant’s position in its April 26, 2023 appeal asserts that the FAR EA is arbitrary and capricious, and in their Memorandum of August 14, 2023, they assert, “*that the project was approved through a complicated and unlawful procedure that predetermined the outcome of the P&Z Commission’s design review and subdivision plat process.*” The plain and concise reading of the FAR EA #22811, cannot be read to be arbitrary and capricious, nor complicated.

The Ketchum City Council (“Council”) should look at the FAR issue from the voice of the City Attorney, Matt Johnson on December 20, 2022:

**Page 5**

**4 I do think that the City Code is quite  
5 clear that the Council has kept the authority over FAR  
6 exceedances and -- and, in particular, the**

7 decision-making on an FAR Exceedance Agreement. Those  
8 agreements are then specifically conditioned upon the  
9 design-review approval, which keeps the design review  
10 fully in front of you, separate from that FAR  
11 Exceedance Agreement.

12 And so I do not -- I do not come to the  
13 same conclusions Mr. Linnet did, and my finding is  
14 everything is in order, procedurally.

(December 20, 2022 Transcript P.5, L.4-14)(Additional pages of the Transcript are attached hereto as **Exhibit A**, for the purpose of giving the Council context of the conversation- For Council's convenience), Exceedance Agreement 22811 attached as **Exhibit B**, and Ordinance 17.124.040 attached as **Exhibit C**)

Page 6 December 20, 2022 Transcript

MATT JOHNSON: So -- so an FAR Exceedance  
2 Agreement is not actually required for a public  
3 hearing. It's not a land-use decision in the same  
4 sense as a zoning amendment, and there hasn't been a  
5 public-hearing requirement created for it by City  
6 Code, as there has been for design-review  
7 applications.  
8 So it's separate from those. In fact,  
9 quite typically, they've been on the consent agenda  
10 when they go up before Council. (Transcript P.6, L.1-10)

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18 MATT JOHNSON: So the FAR -- and -- and -- and  
19 probably where each of you should start, if -- if  
20 you're reviewing this is -- is -- Ketchum's City Code  
23 Here's the  
24 maximum FAR allowed in this zone, and here are things

25 you can do that allow you to exceed that up to a  
Page 45

1 certain amount further, based upon certain  
2 conditions." None of those are design-review items.  
3 Those are separate development standards.  
4 And then, throughout that particularly -- in B  
5 of that section of Code, it says specifically  
6 everything is conditioned upon the -- the "increased  
7 FAR may be permitted subject to design review  
8 approval," conditioned on design-review approval.  
9 And when you look at the FAR Exceedance  
10 Agreement, all that document does is document the  
11 application of this section of Code, and it says  
12 specifically in it that that is conditioned upon  
13 design review approval. So it comes to you, as a  
14 Commission, for the design-review determination. That  
15 agreement is in effect, conditioned upon your  
16 approval.  
17 If you approve, then the FAR Exceedance  
18 Agreement is approved and valid. If you chose not to  
19 approve the design review for some reason, then the  
20 conditions fail, and the FAR Exceedance Agreement goes  
21 back to the drawing board until a new application--

The record is replete with validation of the Exceedance Ordinance. The actions of the City Council in executing it prior to Design Review by the Planning & Zoning Commission did not negate the authority and discretion of that authority to perform its

Design Review and to apply the proper required standards. Both LLUPA and City ordinances provide for the authority and actions of the City Council.

The Appellant in its appeal letter dated April 26, 2023, is incorrect in its contention that *“Only the Commission can approve a FAR Exceedance Agreement because the Council dedicated its planning and zoning powers to the Commission”* (Appeal Letter dated April 26, 2023 2<sup>nd</sup> paragraph). As stated by the City Attorney above, the execution of the EA prior to Design Review, was conditioned upon the P&Z DR approval. If the project did not receive approval, the EA would not be effective in transferring any property right under the City’s ordinances. The City Council reserved certain actions, including approval of Exceedance Agreements within its purview.

**C. There was No Denial of Due Process.**

The Appellant also claims, in its initial appeal letter of April 26, 2023 (Page 5), that there was a denial of due process at the February 28, 2023 P&Z meeting. It is asserted that based upon the requirement of Idaho Code §67-6534, that *“procedures shall provide opportunity for all affected persons to present and rebut evidence”*. This was based on the contention that the Chairman *“reopened public comment, but only allowed a comment from an employee of the Applicant.”*

The Idaho Supreme Court in *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (citations omitted) stated:

The Court shall affirm the zoning agency's action unless the Court finds that the agency's findings, inferences, conclusions or decisions are: (a) in excess of constitutional or statutory provisions; (b) in excess of the statutory authority of the



agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); Cowan, 143 Idaho at 508, 148 P.3d at 1254. The party attacking the agency's action must first illustrate that it erred in the manner specified therein and must then show that a substantial right of the party has been prejudiced. Id.

[176 P.3d 132]...

There is nothing in the record but a naked assertion that the Appellant was prejudiced by the comment of Jeff Swanson, so let's look at his comment. (February 28, 2023 Transcript)

(Transcript P.40)

14 JEFF SWANSON: Jeff Swanson [phonetic]. I've  
15 been a resident here for a bit.  
16 The one thing I think has been overlooked  
17 is the retail, and the fact is that -- I'm over there  
18 a lot. I'm helping out the owner with some of the  
19 planning and some of the reviews. This is pretty much  
20 a dead area over there in regards to foot traffic.  
21 I would think that 1,300 feet [sic] of  
22 retail -- but I hope I'm not getting off base -- kind  
23 of makes a circle because you have Atkinsons' area and  
24 what's going on over there, you have Main Street,  
25 which has some amount of retail, but the south side of  
(Transcript P.41)

1 town, there -- I see no retail there.  
2 And I'm only bringing that to the point as  
3 an observer of what's -- walking around there.  
4 There's no real interaction. It's a pretty dull side.  
5 So I will stay out of the elevator, and

6 I'll stay out of the -- although, I think that north  
7 wall looks great.

8 One fact -- and you probably are going to  
9 want to "boo" me out. I spend a lot of -- spend a lot  
10 of time in Seattle development. North walls or blank  
11 walls in Seattle are almost always cement block. And  
12 I look at these things, and I think to myself, This is  
13 really ugly. I come back, and from -- and -- in  
14 building, and all of a sudden that north wall is  
15 absorbed into the neighborhood. That's just from  
16 a -- a point of view from my end.

17 But I think the retail aspect of -- but  
18 introducing that is important -- the walking  
19 community.

20 Thank you.

The transcript of the proceeding show 28 notations on the issue of retail, beginning with the Applicant's presentation, followed by public comment, and then discussed in detail by the Commissioners (their comments can be found on Transcript February 28, 2023, pages 42, 48, 54, 60, 70 and 76). For illustrative purposes, we will address only those positive comments of the two Commissioners voting no on the project. Transcript Page 42. (Commissioner Cordovano)

7 And I appreciate a lot of this building.

8 I really appreciate the nod to smaller retail areas,  
9 whether or not they're still potentially able to be  
10 rented by one person much longer -- larger. I  
11 appreciate the look. I appreciate coming back here  
12 time and time again.

7 COMMISSIONER CARTER: The -- the sort of -- it  
8 feels like there's a -- a conflict or a -- a -- sort  
9 of a push/pull that's going on in town around the size  
10 of buildings that are getting developed, and it seems  
11 to be manifesting itself in this project.  
12 This -- you know, this lot right on -- I  
13 mean, this -- this block borders Sun Valley Road, and  
14 it's one block off of Main Street. This isn't out on  
15 the outskirts of town somewhere. This is, you know,  
16 arguably right downtown, but it's a part of town that,  
17 for one reason or another, hasn't seen a lot of  
18 growth.  
19 And, you know, this is -- this -- this  
20 project -- you know, the -- right across the alley  
21 from this is the CenturyLink building, which is  
22 a -- sort of an odd, small black hole of a building  
23 that really doesn't -- I mean, it's a communication

24 node for town, I guess, but it really contributes  
25 nothing to the streetscape of town at all. And I

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1 don't know if that's kind of contributing to why this  
2 corner's -- why -- why this corner has been dead or  
3 not.

4 It's not dead, but, you know,  
5 isn't -- doesn't have the same sort of street vibrancy  
6 that Leadville does as you go further north.

7 There's an empty parking lot across the  
8 street from -- across the street from it, towards Main  
9 Street. You know, that's like -- I imagine that's  
10 going to get developed some time soon.

11 So this -- the development of this corner  
12 is -- is sort of an opportunity to extend that  
13 streetscape of downtown in a direction that really  
14 seems to make a lot of sense. You know, we're just a  
15 block off of Main Street. The connection from Main

Page-15

16 Street, you know -- or over by where -- where Rico's  
17 used to be in Chapter One, you know, connecting to Sun  
18 Valley Road along here, I -- I think, is a -- is a  
19 real potential addition to the -- to the streetscape  
20 of town.

21 And this building kind of helps set that  
22 corner. So there's a -- there's a lot of value to it.  
23 There's retail on that downstairs. And so in that  
24 sense, you know, I think this -- this -- this building  
25 can -- can really contribute to some -- to an

Page 49

1 improvement to -- to downtown. (It should be noted that the comments  
of these two Commissioners included additional transcript statements for the purpose of  
context). (P.41, L.6-7, 10-11)

Mr. Swanson also commented on “the wall”, and basically stated, “*it looks great*”,  
and, “*blank walls in Seattle are almost always cement block*”. , (P.41, L. 7, 10-11) How  
any of Mr. Swanson’s statements could give rise to a denial of Appellant’s due process  
rights under the circumstances of the P&Z hearing public comment, and determination, is  
out of the realm of reality. It should also be noted that Appellant presented no factual basis  
for their purported denial of due process rights, in either their April 26, 2023 appeal letter,  
or Memorandum of August 14, 2023. Their assertion was,

*“If Mr. Hutchinson or his attorney were allowed to rebut the comments*

*from this second comment period, this may have affected the Commission's 3-2 approval." (April 26, 2023 Appeal Letter P.5, final paragraph)*

The Appellant must show that somehow they were deprived of their due process rights under the circumstances of the hearing. The additional comments of Mr. Swanson were not new comments to the Commission (Warren Benjamin P.16, L 4; Pam Colesworthy P.28. L1, both made similar public comments). These comments had been thoroughly discussed, almost entirely in a positive manner by the Commissioners in their deliberations. It is an absurdity to believe that any rebuttal by Mr. Hutchinson, or his attorney, would have impacted the vote of the Commission. All four of the Commissioners responded positively to the this projects ground floor retail.

It must also be noted that after Mr. Swanson spoke, the Chair stated:

*"Thank you.  
Any other- - not seeing any.  
I will - - back here- - I'll go - - I'll  
close public comment, and we can go to  
deliberation or any other questions." (Transcript P. 41, L21-25)*

Consequently, the public hearing was closed.

In addition, the Appellant failed to *illustrate* that the P&Z Commission erred in any manner during the public hearing process, showed no facts to support their contention, and have failed to show that "*a substantial right of the party has been prejudiced*". (See Page 10 herein, Neighbors, at 176 P.3d 132) . Accordingly, the Appellant's due process argument must fail.

#### **IV. CONCLUSION**

The decision of the Ketchum Planning & Zoning Commission approval of design review on the project located at 200 N. Leadville Ave, Lot 1, Block 23, Ketchum Townsite, was made with due and proper consideration and deliberation. All Ketchum zoning Ordinances and the laws of the State of Idaho Local Land Use Planning Act were properly followed. The Ketchum Planning & Zoning Commission Findings of Fact, Conclusion of law, and Decision entered on April 11, 2023, was a valid exercise of the City of Ketchum's police powers, and is fully supported by the record of the proceedings.

The laws and ordinances relevant to this proceeding are presumed to be valid and lawful, and the Appellant has failed to meet its burden of proof, showing the invalidity of those Ordinances. The proceedings held under the auspices of the Planning & Zoning Commission were a proper exercise of the City's police powers, and accomplished

according to the law. Due process rights were afforded to all participants and the citizens of Ketchum.

The Ketchum City Council must recognize the presumption of validity of its Ordinances in making its determination of this appeal. In doing so, it is bound by the record of the proceedings, must apply the law to the facts in making its findings. Consequently, the decision made by the Planning & Zoning Commission should be affirmed, and the appeal should be denied in its entirety.

Dated this 28<sup>th</sup> day of August, 2023.

Respectfully submitted,

/s/Edward Simon

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EDWARD SIMON

Attorney for Applicant, 755 S Broadway, LLC

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of August, 2023, I served a true and correct copy of **APPLICANT'S APPEAL REPLY MEMORANDUM**, upon the following person by email service:

Matthew A. Johnson  
Attorney for City of Ketchum  
White, Peterson, Gigray & Nichols  
[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

Samuel L. Linnet  
Alturas Law Group  
[sam@alturaslawgroup.com](mailto:sam@alturaslawgroup.com)

/s/Edward Simon

---

Edward Simon



1 the Commission about further articulation of that  
2 facade. And I think one or two Commissioners had even  
3 made a comment of, you know, potentially stepping back  
4 that top level of the third floor to create some  
5 additional undulation and relief.

6 And so that's what's in front of you  
7 today -- is -- is just further discussion and  
8 direction to the applicant on that.

9 I would like to mention that we received  
10 two additional public comments after the packet was  
11 published last week, and those were provided to you  
12 via e-mail and the agenda has been updated.

13 One of those, you will notice, is from a  
14 land-use attorney. And so we do have the City  
15 Attorney, Matt Johnson, online to provide you some  
16 feedback on that and how you all need to either  
17 address or acknowledge that, and then you can  
18 certainly ask him questions.

19 So at this point, I will turn it over to  
20 Matt. I believe he's on the line, and he can give you  
21 feedback on that, and then we can continue through the  
22 process.

23 **MATT JOHNSON:** All right, Chair and  
24 Commissioners. I'm Matt Johnson, City Attorney. I'm  
25 happy to answer questions if there's specific ones

EXHIBIT A

1 about the letter from Mr. Linnet. I -- I can tell you  
2 I've reviewed that matter. I've -- and I've provided  
3 a response to Mr. Linnet.

4 I do think that the City Code is quite  
5 clear that the Council has kept the authority over FAR  
6 exceedances and -- and, in particular, the  
7 decision-making on an FAR Exceedance Agreement. Those  
8 agreements are then specifically conditioned upon the  
9 design-review approval, which keeps the design review  
10 fully in front of you, separate from that FAR  
11 Exceedance Agreement.

12 And so I do not -- I do not come to the  
13 same conclusions Mr. Linnet did, and my finding is  
14 everything is in order, procedurally. That's why we  
15 kept the schedule for this meeting instead of  
16 considering a postponement.

17 All that being said on the record now, I'm  
18 happy to answer any questions you may have or that  
19 arise later after public comment with respect to any  
20 of the issues raised in that letter.

21 VICE CHAIRMAN MOCZYGEMBA: I had a question.  
22 Whether it's to Matt or Planning staff, is -- I think  
23 Mr. Linnet was -- had some issue over the noticing.  
24 Was that a public hearing, and was it properly noticed  
25 to the best of your knowledge?

1           MATT JOHNSON: So -- so an FAR Exceedance  
2 Agreement is not actually required for a public  
3 hearing. It's not a land-use decision in the same  
4 sense as a zoning amendment, and there hasn't been a  
5 public-hearing requirement created for it by City  
6 Code, as there has been for design-review  
7 applications.

8                   So it's separate from those. In fact,  
9 quite typically, they've been on the consent agenda  
10 when they go up before Council.

11           VICE CHAIRMAN MOCZYGEMBA: Thank you, Matt.

12           COMMISSIONER CORDOVANO: Hey, Matt. What about  
13 the noticing of the first meeting?

14                   And I don't know if that's for staff or  
15 for Matt.

16                   It sounded like some of the property  
17 owners didn't get a notice for the first meeting. Was  
18 that just not going to the mailbox or...

19           MORGAN LANDERS: Yeah. So I think -- and you're  
20 probably referring to one of the public comments that  
21 came through.

22                   So public noticing goes to the property  
23 owners within a 300-foot radius. And so we did  
24 double-check the public notice, and that did go out to  
25 all of the adjacent property owners within that

1           And -- just affirming that is not the  
2 case. You understand that. That FAR Exceedance  
3 Agreement is an outside process, and you have full  
4 ability to review this under the design  
5 curtain -- review criteria and -- and evaluate it  
6 under the -- the standards, as you understand to be  
7 appropriately applicable. That FAR Exceedance  
8 Agreement doesn't pre-commit you to anything.

9           CHAIRMAN MORROW: Thank you.

10          COMMISSIONER PASSOVOY: But, Matt, one follow-up  
11 question is -- is -- I have not, unfortunately, read  
12 the FAR Exceedance Agreement, but I plan to do that.

13           Does it -- is it worded such that, if we  
14 approve the agreement -- I mean, if we approve the  
15 project -- let's just say, "Tonight" -- as is,  
16 does -- does the FAR Exceedance Agreement  
17 automatically come into effect?

18          MATT JOHNSON: So the FAR -- and -- and -- and  
19 probably where each of you should start, if -- if  
20 you're reviewing this is -- is -- Ketchum's City Code  
21 17.124.040, which covers floor area ratio.

22           And if you look at that, as Morgan was saying,  
23 really, the -- the FAR is all about, "Here's the  
24 maximum FAR allowed in this zone, and here are things  
25 you can do that allow you to exceed that up to a

1 certain amount further, based upon certain  
2 conditions." None of those are design-review items.  
3 Those are separate development standards.

4 And then, throughout that particularly -- in B  
5 of that section of Code, it says specifically  
6 everything is conditioned upon the -- the "increased  
7 FAR may be permitted subject to design review  
8 approval," conditioned on design-review approval.

9 And when you look at the FAR Exceedance  
10 Agreement, all that document does is document the  
11 application of this section of Code, and it says  
12 specifically in it that that is conditioned upon  
13 design review approval. So it comes to you, as a  
14 Commission, for the design-review determination. That  
15 agreement is in effect, conditioned upon your  
16 approval.

17 If you approve, then the FAR Exceedance  
18 Agreement is approved and valid. If you chose not to  
19 approve the design review for some reason, then the  
20 conditions fail, and the FAR Exceedance Agreement goes  
21 back to the drawing board until a new application --  
22 does that answer your question?

23 I probably more than answered your  
24 question.

25 COMMISSIONER PASSOVOY: No. I -- I -- as I

**Instrument # 697667**

HAILEY, BLAINE, IDAHO  
11-30-2022 11:25:00 AM No. of Pages: 8  
Recorded for : CITY OF KETCHUM  
STEPHEN MCDOUGALL GRAHAM Fee: 0.00  
Ex-Officio Recorder Deputy  
Index to: AGREEMENTCORRECTION

G

**FAR EXCEEDANCE  
AGREEMENT #22811**

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 191 5 <sup>th</sup> Street W, Ketchum, Idaho 83340
755 S Broadway LLC	"Developer"	Mailing: 2667 S Tacoma Way, Tacoma, WA 98409  Subject Property: 200 N Leadville (Ketchum Townsite: Block 23: Lot 1)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho ("City"), and 755 S Broadway LLC, a limited liability corporation, owner of the subject property and developer of the project ("Developer").

**RECITALS**

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was voluntarily dismissed.
- C. The City has adopted Resolution 17-006 which provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into a FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR

FAR Exceedance Agreement - 1  
Contract #22811

**EXHIBIT B**

standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.


2. **Waiver and Release of Claims.** Developer, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Developer may withdraw from this Agreement upon thirty days notice to City provided that Developer has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Developer shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail,

certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS 29<sup>th</sup> DAY OF November, 2022.

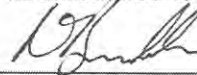
Developer

  
\_\_\_\_\_  
Michael Carr


Print Name

Managing Member  
755 S Broadway, LLC

City of Ketchum, Idaho

  
\_\_\_\_\_  
Neil Bradshaw, Mayor

Attest:

  
\_\_\_\_\_  
Trent Donat, City Clerk



STATE OF Idaho, )  
 ) ss.  
County of Blaine. )

On this 29<sup>th</sup> day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, 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.



Kelsie Choma  
Notary Public for Ketchum, ID  
Residing at Blaine County  
Commission expires 10/7/2027

STATE OF Idaho, )  
 ) ss.  
County of Blaine. )

On this 29<sup>th</sup> day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Michael R. Carr, 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.



Kelsie Choma  
Notary Public for Ketchum, ID  
Residing at Blaine County  
Commission expires 10/7/2027

## 17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:

- A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in chapter 17.08 of this title may exceed the floor area listed in the table below subject to section 17.124.050 of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

### B. Inclusionary Housing Incentive:

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
  - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
  - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.
  - c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit

rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.

- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
  - e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
  - f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
    - (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
    - (2) Payment of an in lieu fee; or
    - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
  - g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
    - (1) Land conveyance to the city;
    - (2) Existing housing unit buy down or mortgage buy down; or
    - (3) Other proposals and options as approved by the city council.
3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)

## Exhibit B

### EXCEEDANCE AGREEMENT COMPLIANCE

<b>PROJECT:</b>	The 208 Condominiums
<b>APPLICATION FILE NUMBERS:</b>	Design Review (P22-035) Condominium Subdivision Prelim Plat (P22-035A)
<b>OWNER:</b>	755 S Broadway LLC
<b>REPRESENTATIVE:</b>	Jonathan Sherman Nicole Ramey, Medici Architects
<b>REQUEST:</b>	Development of a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
<b>LOCATION:</b>	200 N Leadville Ave (Ketchum Townsite: Block 23: Lot 1)
<b>ZONING:</b>	Mixed-Use Subdistrict of the Community Core (CC-2)
<b>BACKGROUND:</b>	

1. The applicant is proposing to develop a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
2. The site is located at 200 N Leadville (Ketchum Townsite: Block 23: Lot 1) within the Mixed-Use Subdistrict of the Community Core (CC-2). Multi-family dwelling units and commercial spaces are permitted uses in the CC-2 Zone.
3. The subject property has an area of 5,504 sq ft.
4. The proposed development will have a total gross floor area of 11,663 square feet.
5. Pursuant to the definition of gross floor area (KMC §17.08.020), up to four parking stalls for developments on single Ketchum Townsite lots of 5,600 sq ft or less are not included in the gross floor area calculation. As the project has four garage spaces, the project receives a reduction of 648 sq ft.
6. With the parking stall discount, the development has a proposed Floor Area Ratio (FAR) of 2.0 (11,015 gross sq ft/5,504 sq ft lot area).
7. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.

8. The Planning and Zoning Commission is scheduled to hear the Design Review application (P22-035) for the development on November 29, 2022. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

#### EXCEEDANCE ANALYSIS

The project shall comply with the requirements of Ketchum City Code § 17.124.040 as adopted on the date a building permit is submitted for the project.

#### Permitted in Community Core Subdistrict 2 (CC-2)

**Permitted Gross FAR:** 1.0

**Permitted Gross FAR with Inclusionary Housing Incentive:** 2.0

**Proposed Gross Floor Area:** 11,663 gross square feet

**Gross Floor Area with Parking Discount:** 11,015 sq ft (reduction of 648 square feet for four stalls that are 9 x 18 feet)

**Ketchum Townsite Lot Area:** 5,504 sq ft

**FAR Proposed:** 2.0 (11,015 gross sq ft/5,504 sq ft lot area)

**Increase Above Permitted FAR:** 5,511 sq ft

**20% of Increase:** 1,102 sq ft

**Net Livable (15% Reduction):** 937 sq ft of community housing required.

**Total Proposed On-site Community Housing Contribution:** 0 sq ft

**Proposed Community Housing In-Lieu Fee:** \$421,650 (937 sq ft x \$450/sq ft) ~~XXXX~~

#### COMMUNITY HOUSING CONTRIBUTION CONDITIONS

The following conditions apply to the community housing contribution for the development at 200 N Leadville Ave:

1. The development shall provide a community housing in-lieu fee payment in the amount of \$421,650. Fee payment is due at the time of building permit application.
2. If the community housing contribution type (i.e. on-site, off-site, fee in-lieu) changes through the course of the design review approval process or at the request of the applicant/owner, an amendment to this agreement must be approved by the Ketchum City Council.
3. If the total gross square footage of the project changes through the course of the design review approval process or building permit application review, a revised fee in-lieu may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.
4. If a building permit is not issued following payment of the in-lieu fee at building permit application, a refund of the fee may be issued within a reasonable period of time.

17.124.040 - Floor area ratios and community housing.

A. *General requirements.* All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in chapter 17.08 of this title may exceed the floor area listed in the table below subject to section 17.124.050 of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
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T-4000	0.5	1.6
CC	1.0	2.25

B. **Inclusionary housing incentive.**

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
  - a. A minimum of 20 percent of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a 15 percent reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
  - b. After calculating net livable square footage, an allowance can be made for projects

**EXHIBIT C**

with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the City that groundwater on the subject property precludes underground parking, a credit of 350 square feet per required parking space shall be subtracted from the net livable square footage prior to the calculation for the 20 percent deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.

- c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the City. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the City Council. For fractions of units, the developer has the option of providing a full housing unit rather than paying the fee in lieu or working with the City or other nonprofit entity to construct the balance of the community housing unit with additional funds.
- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the City Council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the City.
- e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the Commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the City Council.
- f. The City's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the City closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
  - (1) Housing constructed by the applicant on or off site, within the City of Ketchum;
  - (2) Payment of an in lieu fee; or
  - (3)

Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.

- g. In addition to those outright options noted in this section, the City Council may consider alternative proposals by the applicant to fulfill the community housing incentive. The City Council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
  - (1) Land conveyance to the City;
  - (2) Existing housing unit buy down or mortgage buy down; or
  - (3) Other proposals and options as approved by the City Council.
- 3. In the CC district, the maximum floor area incentive applies to buildings up to three stories in height. Buildings above three stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter.

(Ord. 1135, 2015)





City of Ketchum

Attachment D:  
240 Leadville, LLC Reply –  
September 8, 2023



September 8, 2023

Matthew Johnson  
Legal Counsel for the City of Ketchum  
191 5th Street West  
Ketchum, ID 83340  
mjohnson@whitepeterson.com - Sent via email only

Re: Reply Memorandum in Support of Appeal P22-035B

Dear Mayor Bradshaw; Council President Slanetz; and Councilors Breen, David and Hamilton:

This short memorandum is in reply to the Applicant's September 28, 2023 memorandum to the Council.

#### **I. COUNCIL'S AUTHORITY ON APPEAL**

On an administrative appeal from a decision by the Commission, the Council is tasked with the following responsibility:

Upon hearing the appeal, the Council shall consider only matters which were previously considered by the Commission as evidenced by the record, the order, requirement, decision or determination of the Commission and the notice of appeal, together with oral presentation and written legal arguments by the appellant, the applicant, if different than the appellant, and the Commission and/or staff representing the Commission. The council shall not consider any new facts or evidence at this point. The council may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the Commission. Furthermore, the council may remand the application to the Commission for further consideration with regard to specific criteria stated by the council.

KMC § 17.144.020(C).

Here, 240 Leadville, L.L.C. requests that the Council reverse the design review and subdivision plat approval for the Project and find the Project fails to meet the required standards under KMC § 17.96.050. Specifically, the Project was approved under unlawful procedure related to KMC § 17.124.040, and it fails to meet KMC § 17.96.060.E.1 (complimenting surrounding neighborhoods and structures), KMC §

17.96.060.F.5 (minimizing the appearance of bulk and flatness), and Policy CD-1.3 of Chapter 4 of the Ketchum Comprehensive Plan (development should be contextually appropriate to neighborhoods). As KMC § 17.144.020(C) expressly allows, 240 Leadville, L.L.C. requests that the Council reverse the Commission's approval of the Project.

**II. APPROVAL OF THE FAR EXCEEDANCE AGREEMENT WAS MADE UPON UNLAWFUL PROCEDURE THAT PREJUDICED THE COMMISSION'S ABILITY TO EVALUATE THE PROJECT**

At various times during the final hearing for the Project, commissioners either stated that the Project did not meet design review standards, but that they were unable to deny the application because the FAR Exceedance Agreement resulted in the Project "meeting code." Specifically, Commissioner Carter stated that the Project is "a conflict to the buildings that are there." February 28, 2023 Transcript, p. 50, ln. 5. Commissioner Morrow, who voted in favor of the Project, then states that "it would be nice if buildings were smaller – this is what the Code says." February 28, 2023 Transcript, p. 55, ln. 24-25. That statement is simply not true because the Commission had the authority to require the Project be smaller but they did not understand that they had that authority because of the FAR Exceedance Agreement entered into prior to design review by the Council. Commissioner Passovoy, who also voted in favor of the project, stated that "It is difficult to be the first in the hood to do something basically, radically different than what's around you[.]" February 28, 2023 Transcript, p. 56, ln. 25 through p 57, ln. 2. She also states that "This building is not compatible with the other little buildings right around it[.]" February 28, 2023 Transcript, p. 87, ln. 6-8.

While the Council has the independent authority to reverse approval of the Project, these specific transcript sections show that even the Commission found reasons to deny the project. The Commission felt constrained by the 2.0 FAR allowed by the FAR Exceedance Agreement. And so, despite voicing multiple concerns about the size, bulk, flatness, and out-of-character design of the Project, it was approved because the Commission felt like they had to approve it. The Council can and should reverse that decision.

**III. THE COUNCIL HAS THE AUTHORITY AND RIGHT TO REVERSE THE COMMISSION'S DECISION.**

The Council has the authority and right to overturn any Commission decision if it can find legitimate reasons to do so. As provided above, the Commission already identified several reasons for why the Project does not meet Design Review criteria. First, the north wall of the Project does not provide undulation/relief, thus reducing the appearance of bulk and flatness. Second, the Project is not compatible with the existing neighboring properties. Third, the Project is too large for the property in exchange for the in-lieu fee.

All of these reasons, as stated by various Commissioners throughout the hearing process, are legally defensible reasons for denying this project, and the Council should consider the risk and benefits of approving this Project in light of the potential for future litigation and a direct challenge to the FAR exceedance process and code section.

**IV. REQUEST ACTION BY THE COUNCIL**

240 Leadville, L.L.C. respectfully requests that the Council reverse approval of P22-035 and P22-035A for failing to meet the required standards applicable to the Project. Additionally, the Applicant requests the Council to amend and reform KMC § 17.124.040 to ensure that FAR exceedance agreements are entered into by the Commission during the public hearing process and without direct intervention by the Council.

Sincerely,

ALTURAS LAW GROUP, PLLC

/s/ Samuel L. Linnet

Samuel L. Linnet

Counsel for 240 Leadville, L.L.C.

cc: Client  
Ed Simon  
Morgan Landers



City of Ketchum

# Attachment E: Application – Final Design Review



City of Ketchum  
Planning & Building

LOT 1, BLOCK 23 OF THE VILLAGE OF KETCHUM, BLAINE COUNTY,  
IDAHO, ACCORDING TO THE  
OFFICIAL PLAT THEREOF, RECORDED AS INSTRUMENT NO. 302967,  
RECORDS OF BLAINE COUNTY, IDAHO

**Design Review Application**

OFFICIAL USE ONLY
File Number:
Date Received:
By:
Pre-Application Fee Paid:
Design Review Fee Paid:
Approved Date:
Denied Date:
By:
ADRE: Yes <input type="checkbox"/> No <input type="checkbox"/>

APPLICANT INFORMATION		
Project Name: The 208 - Mix-use (Residential & Retail)	Phone: 206.383.4526	
Owner: 755 South Broadway, LLC	Mailing Address: 2667 South Tacoma Way, Tacoma, WA 98409	
Email: jonathandesign0007@gmail.com	206.383.4526	
Project Representative: Jonathan Sherman	Phone: 208.726.0194	
Architect License Number: AR 1937	Mailing Address: 200 West River Street, Ketchum, ID 83340	
Medici Architects - Nicole Ramey	Suite: 301 or PO Box 6156, Ketchum, ID 83340	
Engineer of Record: Ellipse Engineering		
Email: sratterman@eeimt.com	Phone: 513.265.2869	
Engineer License Number: ID PE 16816 – Exp. 3/31/2023	Mailing Address: 365 NE Quimby Ave, Bend, OR 97701	
<i>All design review plans and drawings for public commercial projects, residential buildings containing more than four (4) dwelling units and development projects containing more than four (4) dwelling units shall be prepared by an Idaho licensed architect or an Idaho licensed engineer.</i>		
PROJECT INFORMATION		
Legal Land Description:	Lot1, block 23 of the village of Ketchum, Blaine county, Idaho.	
Street Address:	200 North Leadville Ave, Ketchum, ID 83340	
Lot Area (Square Feet):	5496.49 SF (.13 acre) - Site undeveloped	
Zoning District:	CC - Community Core	
Overlay District:	<input type="checkbox"/> Floodplain <input type="checkbox"/> Avalanche <input type="checkbox"/> Mountain	
Type of Construction:	<input checked="" type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Remodel <input type="checkbox"/> Other	
Anticipated Use:	Retail + Residential	Number of Residential Units: 4
TOTAL FLOOR AREA		
	Proposed	Existing
Basements	2,797 Sq. Ft.	0 Sq. Ft.
1 <sup>st</sup> Floor	3,906 Sq. Ft.	0 Sq. Ft.
2 <sup>nd</sup> Floor	3,780 Sq. Ft.	0 Sq. Ft.
3 <sup>rd</sup> Floor	3,733 Sq. Ft.	0 Sq. Ft.
Mezzanine	0 Sq. Ft.	0 Sq. Ft.
Total	14,216 Sq. Ft.	0 Sq. Ft.
FLOOR AREA RATIO		
Community Core: 2.07	Tourist:	General Residential-High:
BUILDING COVERAGE/OPEN SPACE		
Percent of Building Coverage: 71%		
DIMENSIONAL STANDARDS/PROPOSED SETBACKS		
Front: 10 feet	Side: Varies - average 5'-0"	Side: 0' - 3"    Rear: 3 feet
Building Height: 39' - 7" feet		
OFF STREET PARKING		
Parking Spaces Provided: 4 ( ground level - closed garage)		
Curb Cut: 0 Sq. Ft.	%	
WATER SYSTEM		
<input checked="" type="checkbox"/> Municipal Service	<input type="checkbox"/> Ketchum Spring Water	

The Applicant agrees in the event of a dispute concerning the interpretation or enforcement of the Design Review Application in which the city of Ketchum is the prevailing party, to pay the reasonable attorney fees, including attorney fees on appeal and expenses of the city of Ketchum. 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.

Jonathan S. Sherman (JS SHERMAN, LLC)

05.26.2022

Signature of Owner/Representative

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.

## **DESIGN REVIEW EVALUATION STANDARDS**

**(May not apply to Administrative Design Review):**

### **17.96.060: IMPROVEMENTS AND STANDARDS FOR ALL PROJECTS**

#### **A. Streets:**

1. The applicant shall be responsible for all costs associated with providing a connection from an existing city streets to their development.
2. All streets designs shall be in conformance with the right-of-way standards and approved by the Public Works Director.

#### **B. Sidewalks:**

1. All projects under 17.96.010(A) that qualify as a "Substantial Improvement" shall install sidewalks in conformance with the right-of-way standards. Sidewalk improvements may be waived for projects that qualify as a "Substantial Improvement" which comprise additions of less than 250 square feet of conditioned space.
2. The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.
3. New sidewalks shall be planned to provide pedestrian connections to any existing or future sidewalks adjacent to the site. In addition, sidewalks shall be constructed to provide safe pedestrian access to and around a building.
4. The city may approve and accept voluntary cash contributions in-lieu of the above described improvements, which contributions must be segregated by the city and not used for any purpose other than the provision of these improvements. The contribution amount shall be one hundred ten percent (110%) of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the Public Works Director. Any approved in-lieu contribution shall be paid before the city issues a certificate of occupancy.

#### **C. Drainage:**

1. All storm water shall be retained on site.
2. Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.
3. The Public Works Director may require additional drainage improvements as necessary, depending on the unique characteristics of a site.

# C L E A R   C R E E K   D I S P O S A L

PO Box 130 • Ketchum, ID 83340 • Phone 208.726.9600 • [www.ccdisposal.com](http://www.ccdisposal.com)

April 21, 2022

Planning & Zoning  
City of Ketchum  
P O Box 2315  
Ketchum, ID 83340-2315

Re: 200 Leadville Ave N

To whom it may concern,

Please allow this letter to serve that Tim Pavolka and Jonathan Sherman have engaged in conversations with me regarding the above-mentioned site. The conversations have been to the following:

This site will provide enough space for dumpster(s) for garbage and cardboard & carts for recycling. There is enough space and access to service this dumpster adequately, utilizing a "Garbage Glider" as indicated on the enclosed plan and a portion of the alley. Should the owners choose only to have a dumpster for garbage and eliminate the cardboard; the scenario still works. Either scenario will only work with a mechanized mode of transporting the dumpster(s) to the alley for servicing. (Snow, Ice, Weight) The Dumpster will be transported to the alley for servicing as per the enclosed plan.

This site when finished as per the plans will satisfy any and all concerns for the safe and efficient removal of garbage. I would like to mention that this is an example of high-quality planning that will benefit the owner(s) of this site, building, and the City. If I may be of further assistance during this process or in the future, please call.

Sincerely,



Mike Goitiandia  
Clear Creek Disposal

Enclosures

CC. Tim Pavolka, Jonathan Sherman

.200 Leadville Ave N - 2





October 24, 2022



755 SOUTH BROADWAY A COL  
755 SOUTH BROADWAY  
DENVER, CO 80209

To whom it may concern,

Thank you for your inquiry about electrical service at 200 N LEADVILLE AVE  
KETCHUM, ID 83340

The property is located within Idaho Power's service area in the state of Idaho

Idaho Power will provide electrical service to this location once any required easement or right of way are obtained by Idaho Power and/or the Customer, and in compliance with the statutes of the State of Idaho/Oregon and the Idaho Power tariffs on file with our regulators. Tariffs include the General Rules and Regulations that covers new service attachments and distribution line installations or alterations.

Idaho Power Company has reviewed the revised transformer location, still at the southeast property corner, but with additional clearance from back of sidewalk to transformer. There will be new underground power lines required to be installed in the public right of way to serve this single phase transformer.

The attached site plan dated 10\_19\_22 reflecting the revised transformer location.

Sincerely,

*Cyndi Bradshaw*

Cyndi Bradshaw  
PO Box 3909  
Hailey ID 83333



City of Ketchum

# Attachment F: Project Plans – Final Design Review

# THE 208



NOTE: 3D RENDERINGS ARE FOR ILLUSTRATIVE PURPOSES ONLY. NOT TO BE USED FOR CONSTRUCTION.

## ZONING REQUIREMENTS

**JURISDICTION:** CITY OF KETCHUM, ID

**ZONING:** CC COMMUNITY CORE, SUBDISTRICT 2-MIXED USE

**PARCEL ASSESSOR'S #:** RPK00000230010

**LOT SIZE:** 5,504 SF = 0.13 ACRE

### LEGAL DESCRIPTION:

LOT 1, BLOCK 23 OF THE VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED AS INSTRUMENT NO. 302967, RECORDS OF BLAINE COUNTY, IDAHO.

### MAXIMUMS:

MAX. FAR: 2.25 WITH INCLUSIONARY HOUSING INCENTIVE  
REFER TO SHEET A0.3  
MAX. BUILDING COVERAGE: 75% (SF)  
MAX. HEIGHT: 42' ABOVE ABE

### SETBACKS:

-FRONT AND STREET SIDE 5' AVERAGE  
-ADJACENT TO ALLEYWAY 3'  
-NON-HABITABLE STRUCTURES LOCATED ON BUILDING ROOF-TOPS 10'

## CODE INFORMATION

ALL MATERIALS, WORKMANSHIP, DESIGN AND CONSTRUCTION SHALL CONFORM TO THE DRAWINGS, SPECIFICATIONS, AND THE FOLLOWING APPLICABLE CODES USED IN THIS DESIGN FOR CITY OF KETCHUM.

- 2018 INTERNATIONAL BUILDING CODE (IBC)
- 2018 INTERNATIONAL FIRE CODE
  - INCLUDING AMENDMENTS PER KETCHUM ORDINANCE
- 2018 INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
  - INCLUDING AMENDMENTS BY THE IDAHO BUILDING CODE BOARD
- 2018 INTERNATIONAL FIRE CODE (IFC)
  - INCLUDING ADMENMENTS PER KETCHUM ORDINANCE
- 2018 CITY OF KETCHUM MUNICIPAL CODE
  - INCLUDING KETCHUM GREEN BUILDING CODE
- 2018 INTERNATIONAL FUEL GAS CODE (IFGC)
- 2018 INTERNATIONAL MECHANICAL CODE (IMC)
- 2018 NATIONAL ELECTRIC CODE (NEC)
- 2018 IDAHO STATE PLUMBING CODE (ISPC)

## ACCESSIBLE UNITS

PROJECT CONTAINS (4) UNITS TOTAL:  
(3)TYPE B UNITS PROVIDED, PER IBC CHAPTER 11

**PARKING:**  
RETAIL: EXEMPT LESS THAN 5,500 SF 0 SPACES  
RESIDENTIAL: 4 SPACES

## DESIGN REVIEW APPLICATION REQUIREMENTS

**TITLE 17 - CHAPTER 17.96 DESIGN REVIEW:**  
17.96.040.C.2.f. FLOOR PLAN. LIST GROSS AND NET SQUARE FOOTAGE FOR EACH FLOOR. LIST OCCUPANCY CLASSIFICATION AND TYPE OF CONSTRUCTION.

### OCCUPANCY CLASSIFICATION:

M- MERCANTILE (RETAIL AREAS)  
R-2 RESIDENTIAL  
S-2 PARKING AREAS

### TYPE OF CONSTRUCTION:

V-B

NOTE: METHOD FOR MEASURING FLOOR AREA (GROSS) PER CHAPTER 17.08 DEFINITIONS:  
THE SUM OF HORIZONTAL AREA OF THE BUILDING MEASURED ALONG THE OUTSIDE WALLS OF EACH FLOOR OF A BUILDING OR PORTION OF A BUILDING, INCLUDING STAIR TOWERS AND ELEVATORS ON THE GROUND FLOOR ONLY, AND 50 PERCENT OF ATRIUMS OVER 18 FEET PLATE HEIGHT, BUT NOT INCLUDING BASEMENTS, UNDERGROUND PARKING AREAS OR OPEN UNENCLOSED DECKS. PARKING AREAS COVERED BY A ROOF OR PORTION OF THE BUILDING AND ENCLOSED ON THREE OR MORE SIDES BY BUILDING WALLS ARE INCLUDED. FOUR PARKING STALLS FOR DEVELOPMENTS ON SINGLE KETCHUM TOWN SITE LOTS OF 5,600 SF IN SIZE OR LESS ARE NOT INCLUDED IN THE GROSS FLOOR AREA CALCULATION.

NOTE: METHOD FOR MEASURING FLOOR AREA (NET) PER CHAPTER 17.08 DEFINITIONS:  
THE SUM OF HORIZONTAL AREAS OF ALL FLOORS IN A BUILDING INCLUDING BASEMENTS BUT NOT INCLUDING OPEN UNENCLOSED DECKS, INTERIOR OR EXTERIOR CIRCULATION, MECHANICAL EQUIPMENT ROOMS, PARKING AREAS, COMMON AREAS, PUBLIC BATHROOMS OR STORAGE AREAS IN BASEMENTS.

## PROJECT DATA

PROJECT DESCRIPTION: NEW CONSTRUCTION OF MIXED USE AND COMMERCIAL BUILDING

OWNER: MICHAEL CARR  
2667 SOUTH TACOMA WAY  
TACOMA, WA 98409  
P:206.423.3121  
E:MIKEC@PERFORMANCERADIATOR.COM

ARCHITECT: MEDICI ARCHITECTS  
200 WEST RIVER STREET #301  
KETCHUM, ID 83340  
P: 208.726.0194  
E: EMILY@MEDICIARCHITECTS.COM

DESIGNER: EXECUTIVE DESIGN SERVICES  
SHERMAN, JONATHAN  
FRIDAY HARBOR, WA 98250  
P:206.383.4526  
E:JONATHANDESIGN007@GMAIL.COM

CIVIL ENGINEER: GALENA ENGINEERING, INC  
317 N. RIVER STREET  
HAILEY, IDAHO 83333  
P: 208.788.1705  
E:GALENA@GALENA-ENGINEERING.COM

LANDSCAPE ARCHITECT: LYON LANDSCAPE ARCHITECTS  
126 SOUTH MAIN STREET, SUITE B1  
HAILEY, IDAHO 83333  
P:253.209.4053  
E:MOGHAN@LYONLA.COM

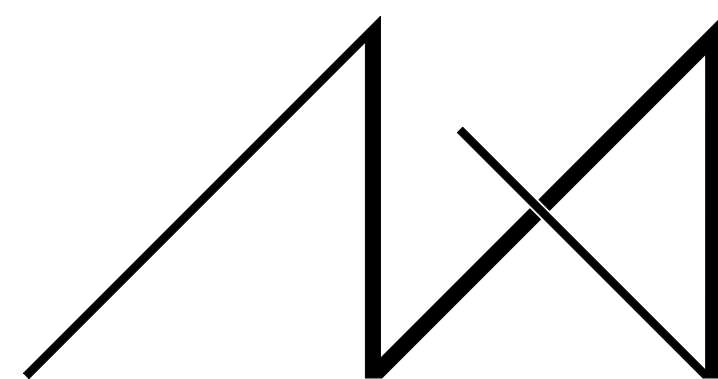
GENERAL CONTRACTOR: CONRAD BROTHERS  
105 LEWIS ST SUITE 101  
KETCHUM, IDAHO 83340  
P:208.309.1200  
E:PAUL@CONRADBROTHERSCONSTRUCTION.COM

ELECTRICAL ENGINEER: ABOSSEIN ENGINEERING  
18465 NE 68TH STREET #22  
REDMOND, WA 98052  
P:425.462.9441  
E:CSERVICE@ABOSSEIN.COM

CITY OF KETCHUM LIGHTING CONSULTANT: THE MH COMPANIES  
2995 N COLE RD SUITE 115  
BOISE, IDAHO 83704  
P:208.609.3722  
E:CARSON@MHLIGHTING.COM



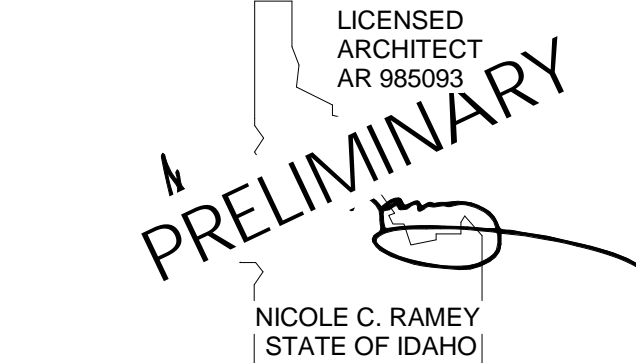
VICINITY MAP  
1/4" = 1'-0"



MEDICI ARCHITECTS

11661 SE 1ST STREET, SUITE 200  
BELLEVUE, WASHINGTON 98005  
TEL: (425) 453-9298  
FAX: (425) 452-8448

REGISTRATION:



INTAKE DATE: 02/22/23

REVISIONS: DATE:

NO.	DESCRIPTION	DATE

PROJECT / CLIENT:

THE 208 BUILDING

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
IDAHO, 83340  
PARCEL #RPK00000230010

## SYMBOL LEGEND

(A)	GRID LINES	EXISTING WALL
1	PROJECT BASE POINT	EXISTING WALL TO DEMO
⊗	REFERENCE ELEVATION POINT	2X WALLS
⊕	PROPERTY CORNER	FOUNDATION WALL
⊖	PROPERTY LINE	CONCRETE SURFACE
⊖	CENTER LINE	CAST IN PLACE CONCRETE
T.O.W. 119.12'	TOP OF WALL ELEVATION	STRUCTURAL POST-SIZE AND TYPE PER STRUCTURAL PLAN
N 90°00'00" E	PROPERTY LINE TAG	GAS OUTLET
Distance	SECTIONS FOUND ON SHEET A101	GAS METER
A101	DETAIL SECTION FOUND ON SHEET A101	HOSE BIB
A101	INTERIOR ELEVATION FOUND ON SHEET A1.0	DOWNSPOUT
1 A1.0 2 3		METER
EXIT	EXIT DIRECTION	ELECTRICAL METER
(S)	SMOKE DETECTOR	ELECTRICAL PANEL
(SC)	SMOKE & CARBON MONOXIDE DETECTOR	UNDISTURBED EARTH
(1)	DOOR TAG NUMBER	COMPACTED FILL
10'-0"x12'-0"	DOOR SIZE	GRAVEL
(A)	WINDOWS TAG NUMBER	RIGID OR SPRAY INSULATION
(Δ)	DRAWING REVISION	BIBS BLOW-IN INSULATION
(1)	WALL TAG ASSEMBLY	STONE
f <sub>WH</sub>	WHOLE HOUSE FAN CONTROL	BATT INSULATION
		LED LIGHT EMITTING DIODE
		LOD LIMIT OF DISTURBANCE
		LF LINEAR FEET
		MANUF MANUFACTURER
		MAX MAXIMUM
		MECH MECHANICAL
		MED MEDIUM
		MIN MINIMUM
		MISC MISCELLANEOUS
		NIC NOT IN CONTRACT
		NTS NOT TO SCALE
		NO NUMBER
		QC ON CENTER
		PERF PERFORATED
		PICT PICTURE
		PLAM PLASTIC LAMINATE
		PSF POUNDS PER SQUARE FOOT
		PSI POUNDS PER SQUARE INCH
		PL PROPERTY LINE
		PNA PROTECTED NATURAL AREA
		QTY QUANTITY
		REF REFRIGERATOR
		REQ REQUIRED
		REV REVISION
		R RISER
		RM ROOM
		R ROUGH OPENING
		SG SAFETY GLASS
		SM SIMILAR
		SH SINGLE HUNG
		SOG SLAB ON GRADE
		SPEC SPECIFICATION
		SF SQUARE FOOT
		SS STAINLESS STEEL
		STD STANDARD
		STL STEEL
		STOR STORAGE
		SD STORM DRAIN
		SUP SUPPLEMENTAL
		TV TELEVISION
		TEMP TEMPORARY
		TP TOILET PAPER DISPENSER
		T&G TONGUE & GROOVE
		TO TOP OF
		TOW TOP OF WALL
		TB TOWEL BAR
		T TREAD
		TPZ TREE PROTECTION ZONE
		TYP TYPICAL
		UNO UNLESS NOTED OTHERWISE
		VB VAPOR BARRIER
		VTO VENT TO OUTSIDE
		VF VERIFY IN FIELD
		VERT VERTICAL
		WG WATER GLOSET
		WH WATER HEATER
		WRB WATER RESISTANT BARRIER
		W WASHER
		WV WHOLE HOUSE FAN
		W WINDOW
		WI WITH
		WO WITHOUT
		WP WATER PROOFING
		YD YARD
		KEY NOTES

## ABBREVIATIONS

AFF	ABOVE FINISH FLOOR	PICT	PICTURE
AC	AIR CONDITIONING	PLAM	PLASTIC LAMINATE
AHU	AIR HANDLING UNIT	PSF	POUNDS PER SQUARE FOOT
ALT	ALTERNATE	PSI	POUNDS PER SQUARE INCH
ALUM	ALUMINUM	PL	PROPERTY LINE
ANOD	ANODIZED	PNA	PROTECTED NATURAL AREA
BSMT	BASEMENT	QTY	QUANTITY
BLK	BLOCK	REF	REFRIGERATOR
BS	BOTH SIDES	REQ	REQUIRED
BLDG	BUILDING	REV	REVISION
CAB	CABINET	R	RISER
CB	CATCH BASIN	RM	ROOM
CLG	CEILING	R	ROUGH OPENING
CLR	CLEAR	SG	SAFETY GLASS
CL	CLOSET	SM	SIMILAR
CONC	CONCRETE	SH	SINGLE HUNG
CMU	CONCRETE MASONRY UNIT	SOG	SLAB ON GRADE
CONT	CONTINUOUS	SPEC	SPECIFICATION
CJ	CONTROL JOINT	SF	SQUARE FOOT
CPT	CARPET	SS	STAINLESS STEEL
CSMT	CASSEMBLY	STD	STANDARD
CF	CUBIC FOOT	STL	STEEL
DIA	DIAMETER	STOR	STORAGE
DBH	DIAMETER BREST HEIGHT	SD	STORM DRAIN
DIM	DIMENSION	SUP	SUPPLEMENTAL
DW	DISHWASHER	TV	TELEVISION
DH	DOUBLE HUNG	TEMP	TEMPORARY
DN	DOWN	TP	TOILET PAPER DISPENSER
DS	DOWNSPOUT	T&G	TONGUE & GROOVE
D	DRYER	TO	TOP OF
EA	EACH	TOW	TOP OF WALL
ELEC	ELECTRICAL	TB	TOWEL BAR
EP	ELECTRICAL PANEL	T	TREAD
ELEV	ELEVATOR	TPZ	TREE PROTECTION ZONE
EQ	EQUAL	TYP	TYPICAL
EXT	EXTERIOR	UNO	UNLESS NOTED OTHERWISE
EXIST	EXISTING	VB	VAPOR BARRIER
FFE	FINISH FLOOR ELEVATION	VTO	VENT TO OUTSIDE
FRD	FIRE RATE DOOR	VF	VERIFY IN FIELD
FRW	FIRE RATE WINDOW	VERT	VERTICAL
FXD	FIXED	WG	WATER GLOSET
FXT	FIXTURE	WH	WATER HEATER
FAR	FLOOR AREA RATIO	WRB	WATER RESISTANT BARRIER
FTG	FOOTING	W	WASHER
FAU	FORCED AIR UNIT	WV	WHOLE HOUSE FAN
FDN	FOUNDATION	W WINDOW	
FURN	FURNACE	WI WITH	
GFA	GROSS FLOOR AREA	WO WITHOUT	
HWD	HARDWOOD	WP WATER PROOFING	
HOR	HEADER	YD YARD	
HVAC	HEATING, VENTILATION & A/C		
HT	HEIGHT		
HRZ	HORIZONTAL		
HR	HOUR		
INCL	INCLUDE (ED)ING		
INT	INTERIOR		
LED	LED LIGHT EMITTING DIODE		
LOD	LIMIT OF DISTURBANCE		
LF	LINEAR FEET		
MANUF	MANUFACTURER		
MAX	MAXIMUM		
MECH	MECHANICAL		
MED	MEDIUM		
MIN	MINIMUM		
MISC	MISCELLANEOUS		
NIC	NOT IN CONTRACT		
NTS	NOT TO SCALE		
NO	NUMBER		
QC	ON CENTER		
PERF	PERFORATED		

DRAWING NAME:

TITLE SHEET

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

A0.0

PLOT SCALE: 1:1

REGISTRATION:

LICENSED ARCHITECT  
 AR 985993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**SITE PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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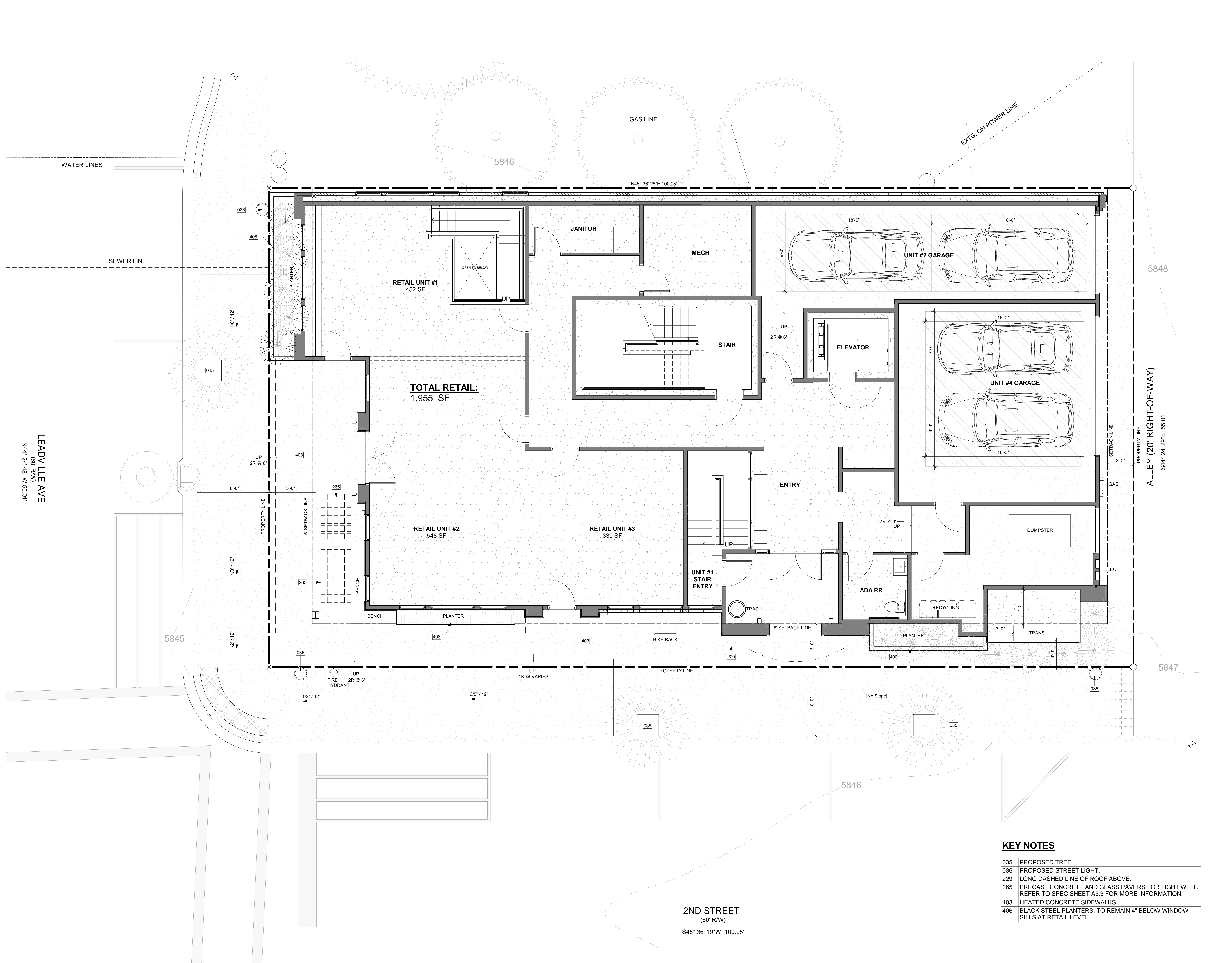
APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

PLOT SCALE: 1:1

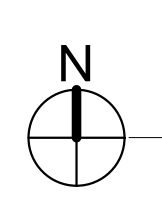
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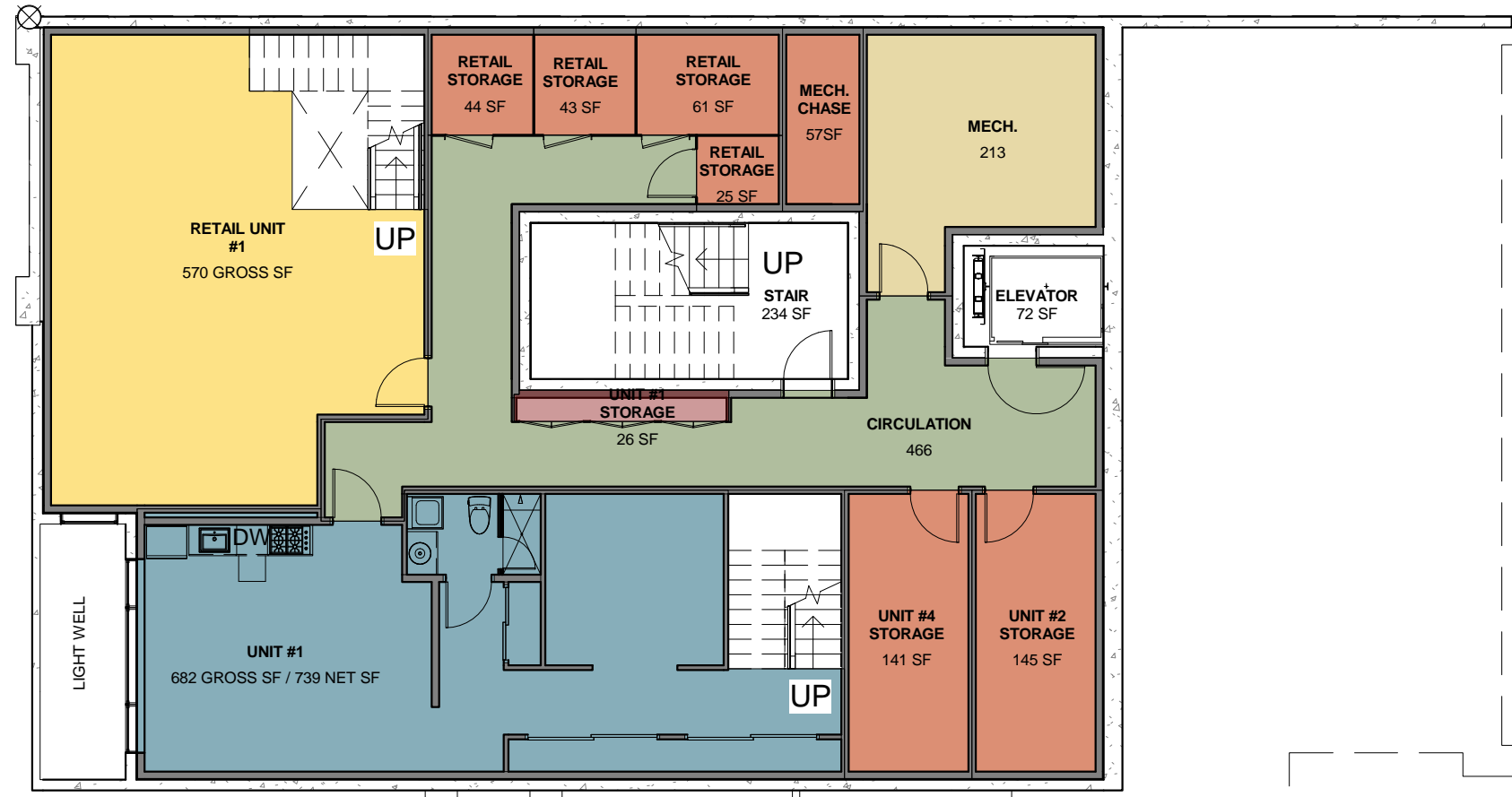


**KEY NOTES**

- 035 PROPOSED TREE.
- 036 PROPOSED STREET LIGHT.
- 229 LONG DASHED LINE OF ROOF ABOVE.
- 265 PRECAST CONCRETE AND GLASS PAVERS FOR LIGHT WELL. REFER TO SPEC SHEET A5.3 FOR MORE INFORMATION.
- 403 HEATED CONCRETE SIDEWALKS.
- 406 BLACK STEEL PLANTERS. TO REMAIN 4" BELOW WINDOW SILLS AT RETAIL LEVEL.

SITE PLAN 1  
 1/4" = 1'-0"

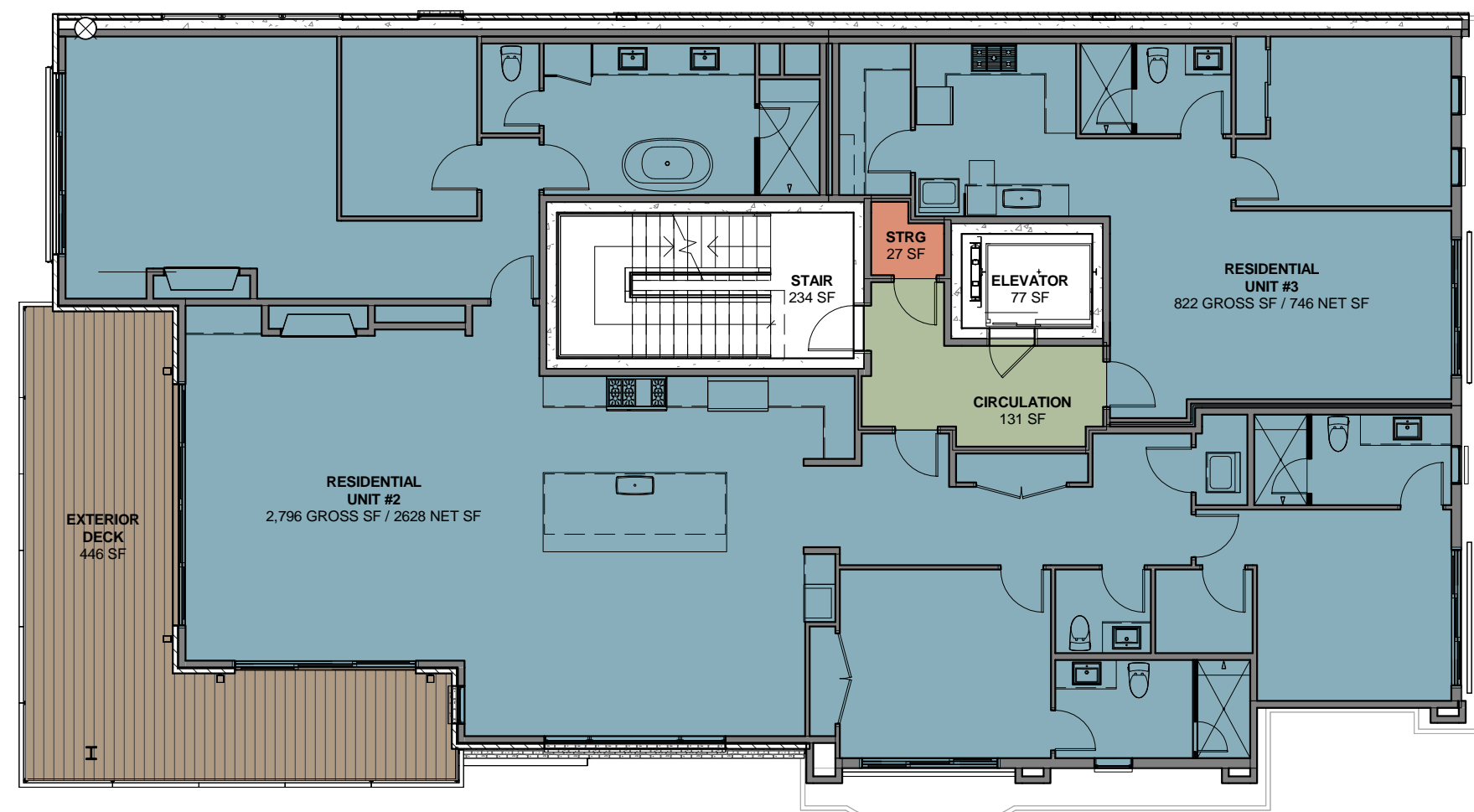




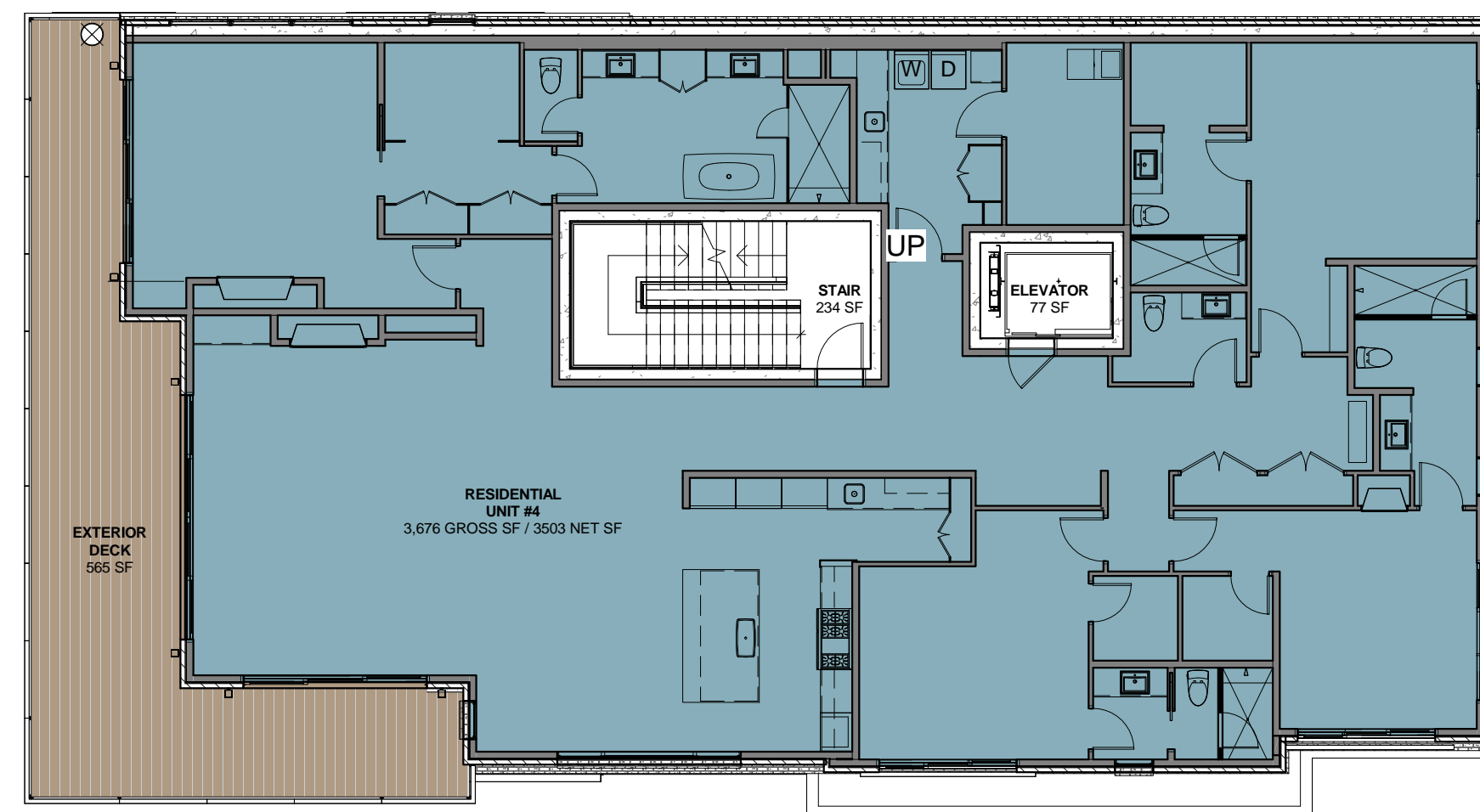
LOWER LEVEL PLAN  
3/32" = 1'-0"



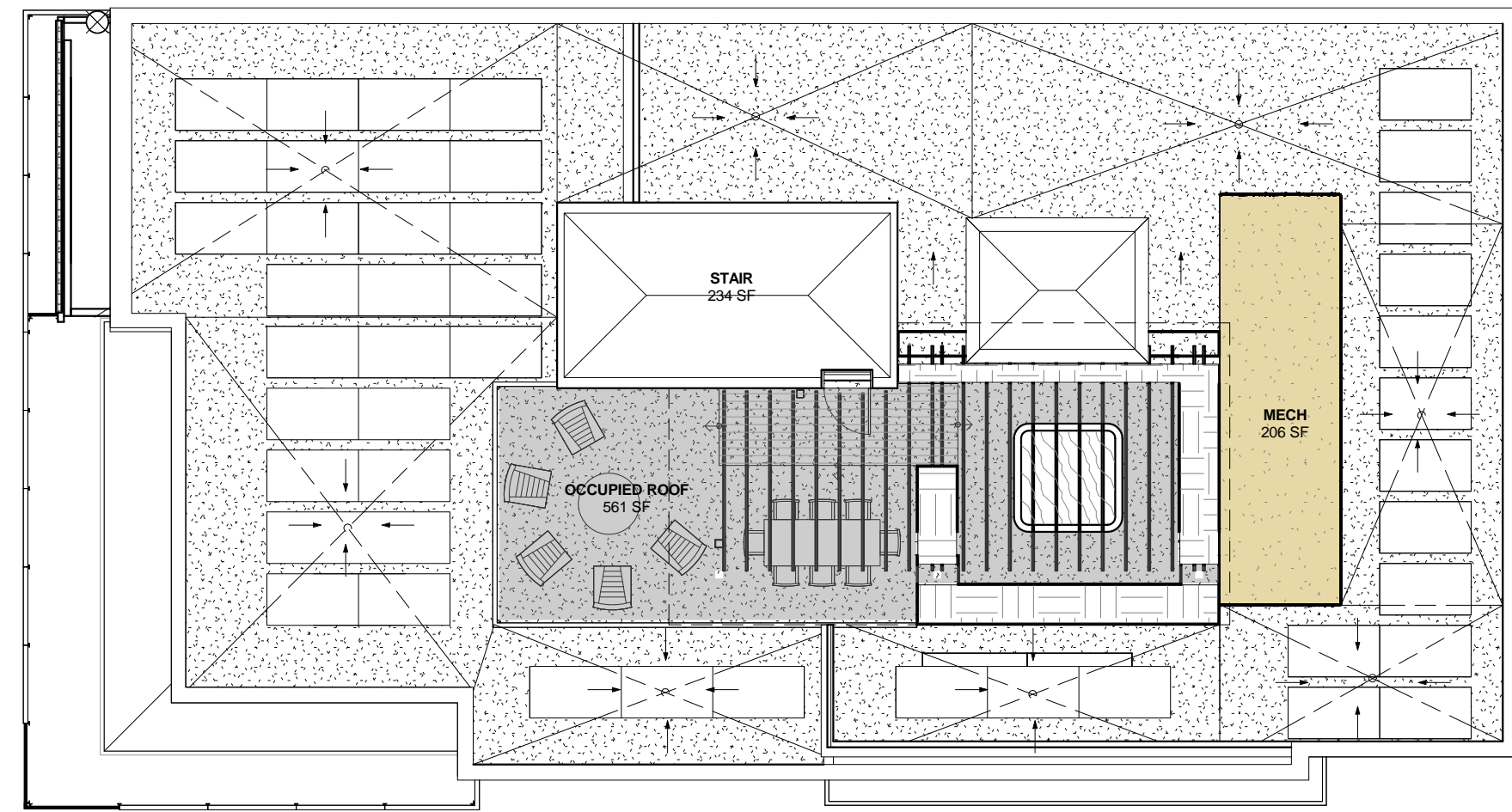
1ST FLOOR PLAN  
3/32" = 1'-0"



2ND FLOOR PLAN  
3/32" = 1'-0"



3RD FLOOR PLAN  
3/32" = 1'-0"



ROOF PLAN  
3/32" = 1'-0"

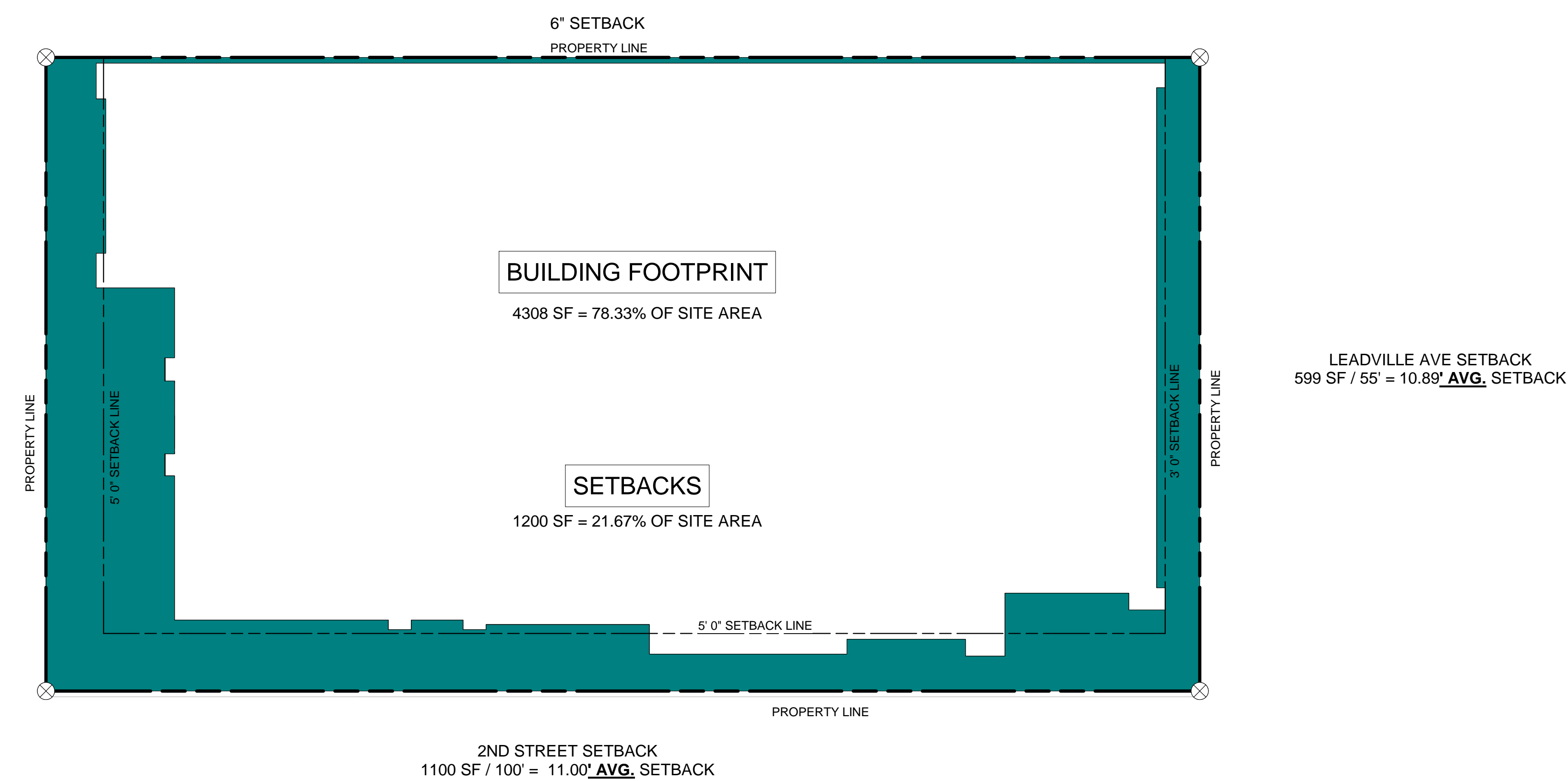
FLOOR AREA LEGEND	
	STORAGE AREA
	RESIDENTIAL PARKING
	RESIDENTIAL AREA
	EXTERIOR AMENITY AREA
	MECHANICAL / FIRE
	COMMERCIAL AREA
	CIRCULATION
	VERTICAL CIRCULATION

DESIGN REVIEW APPLICATION REQUIREMENTS

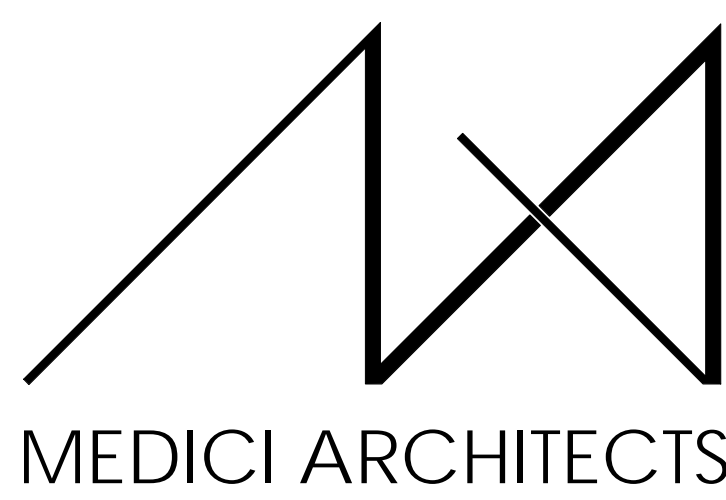
BUILDING AREA SQUARE FOOTAGES				
FLOOR PLAN	AREA USE	GROSS AREA SF	NET AREA SF	EXCLUDED AREA SF
LOWER LEVEL	RESIDENTIAL UNIT #1	682 SF	639 SF	682 SF
	STORAGE UNIT #4	141 SF		141 SF
	STORAGE UNIT #1	26 SF		26 SF
	STORAGE UNIT #2	145 SF		145 SF
	RETAIL UNIT #1	570 SF		570 SF
	MECH / FIRE RISER ROOM	213 SF		213 SF
	CIRCULATION	466 SF		466 SF
	STAIR	234 SF		234 SF
TOTALS:		2549 SF	639 SF	2549 SF
1ST FLOOR	RETAIL UNIT #1	380 SF	0 SF	665 SF
	RETAIL UNIT #1 STAIR	121 SF		
	ATRIUM (50% over 18')	34 SF		
	RETAIL UNIT #2	544 SF		
	RETAIL UNIT #3	341 SF		
	RESTROOM	67 SF		
	RESIDENTIAL UNIT#1 STAIR	33 SF		
	RESIDENTIAL PARKING	530 SF		
	RESIDENTIAL PARKING	552 SF		
	JANITOR	74 SF		
	MECHANICAL	148 SF		
	CIRCULATION	682 SF		
	STAIR	234 SF		
	ELEVATOR	77 SF		
TRASH ROOM	220 SF			
TOTALS:	4069 SF	0 SF	665 SF	
2ND FLOOR	RESIDENTIAL UNIT #2	2796 SF	3374 SF	757 SF
	RESIDENTIAL UNIT #3	822 SF		
	STORAGE	27 SF		
	EXTERIOR DECK	446 SF		
	CIRCULATION	131 SF		
	STAIR	234 SF		
	ELEVATOR	77 SF		
TOTALS:	4533 SF	3374 SF	757 SF	
3RD FLOOR	RESIDENTIAL UNIT #4	3676 SF	3503 SF	876 SF
	EXTERIOR DECK	565 SF		
	STAIR	234 SF		
	ELEVATOR	77 SF		
TOTALS:	4552 SF	3503 SF	876 SF	
ROOF DECK	OCCUPIED ROOF	561 SF	0 SF	1001 SF
	MECHANICAL	206 SF		
	STAIR	234 SF		
TOTALS:	1001 SF	0 SF	1001 SF	
TOTAL BUILDING:		16,704 SF	7516 SF	5,848 SF

	GROSS AREA SF	NET AREA SF	EXCLUDED AREA SF
TOTAL BUILDING:	16,704 SF	7516 SF	5,848 SF

	GROSS AREA SF	SITE AREA SF	FAR
FAR:	10,856 SF	5504 SF	1.97



FIRST FLOOR AVERAGE SETBACK DIAGRAM  
1/8" = 1'-0" 6



11661 SE 1ST STREET, SUITE 200  
BELLEVUE, WASHINGTON 98005  
TEL: (425) 453-9298  
FAX: (425) 452-8448

REGISTRATION:

LICENSED ARCHITECT  
AR 985593  
**PRELIMINARY**  
NICOLE C. RAMEY  
(STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

NO.	DESCRIPTION	DATE

PROJECT / CLIENT:

THE 208 BUILDING

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
IDAHO, 83340  
PARCEL #RPK0000230010

DRAWING NAME:

DESIGN REVIEW FLOOR  
AREA DIAGRAM

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

A0.3

PLOT SCALE: 1:1

REGISTRATION:

LICENSED ARCHITECT  
 AR 9855993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**LOWER LEVEL PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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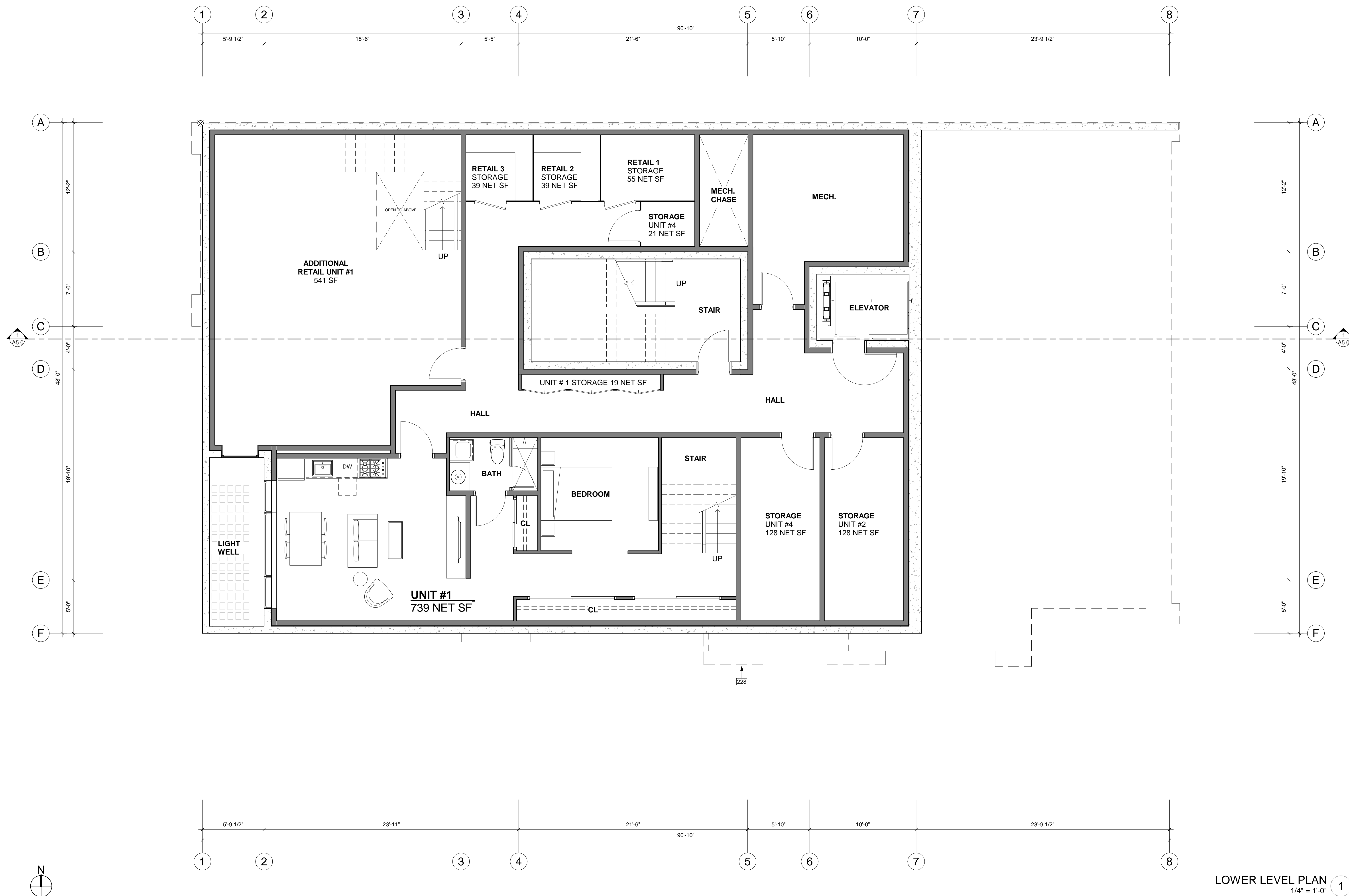
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PROJECT No.: A21-198

DATE: 2/22/2023

**A2.0**

PLOT SCALE: 1:1



LOWER LEVEL PLAN  
 1/4" = 1'-0" 1

**KEY NOTES**

228 DASHED LINE OF BUILDING ABOVE.

REGISTRATION:

LICENSED ARCHITECT  
 AR 9855993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**1ST FLOOR PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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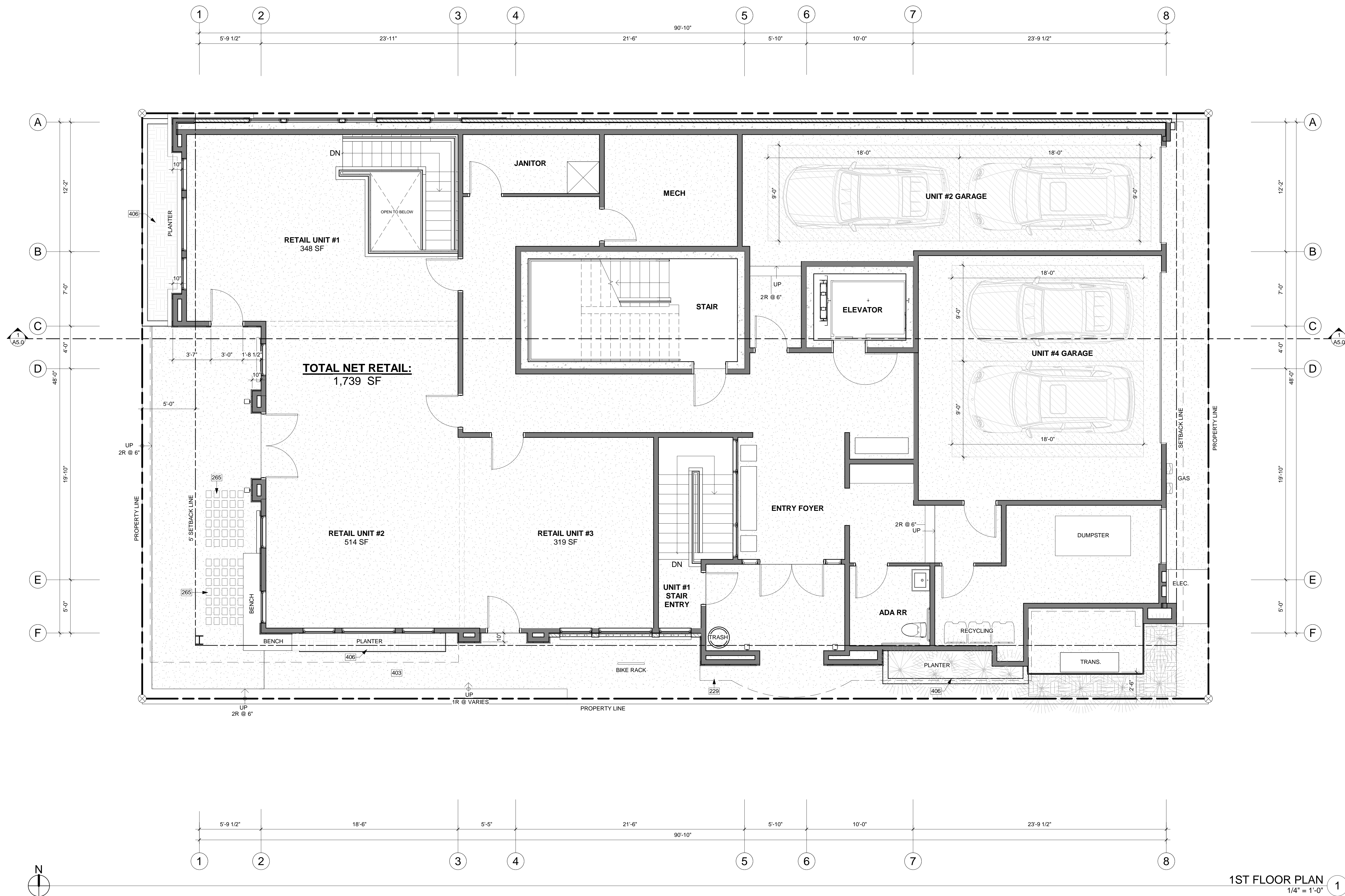
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DATE: 2/22/2023

**A2.1**

PLOT SCALE: 1:1



**KEY NOTES**

- 229 LONG DASHED LINE OF ROOF ABOVE.
- 265 PRECAST CONCRETE AND GLASS PAVERS FOR LIGHT WELL. REFER TO SPEC SHEET A5.3 FOR MORE INFORMATION.
- 403 HEATED CONCRETE SIDEWALKS.
- 406 BLACK STEEL PLANTERS. TO REMAIN 4" BELOW WINDOW SILLS AT RETAIL LEVEL.

REGISTRATION:

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**PRELIMINARY**  
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INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**2ND FLOOR PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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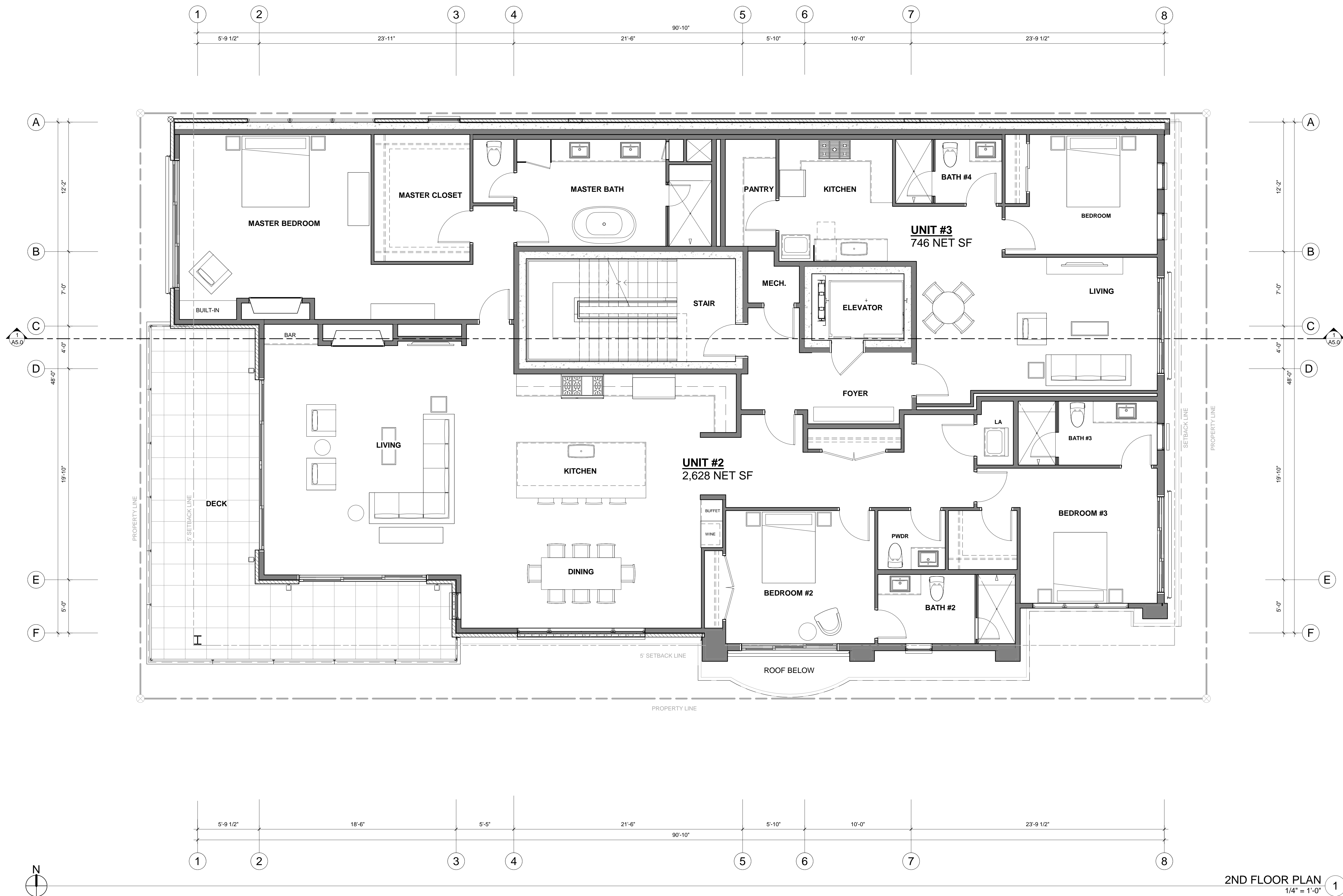
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PROJECT No.: A21-198

DATE: 2/22/2023

**A2.2**

PLOT SCALE: 1:1





REGISTRATION:

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**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**3RD FLOOR PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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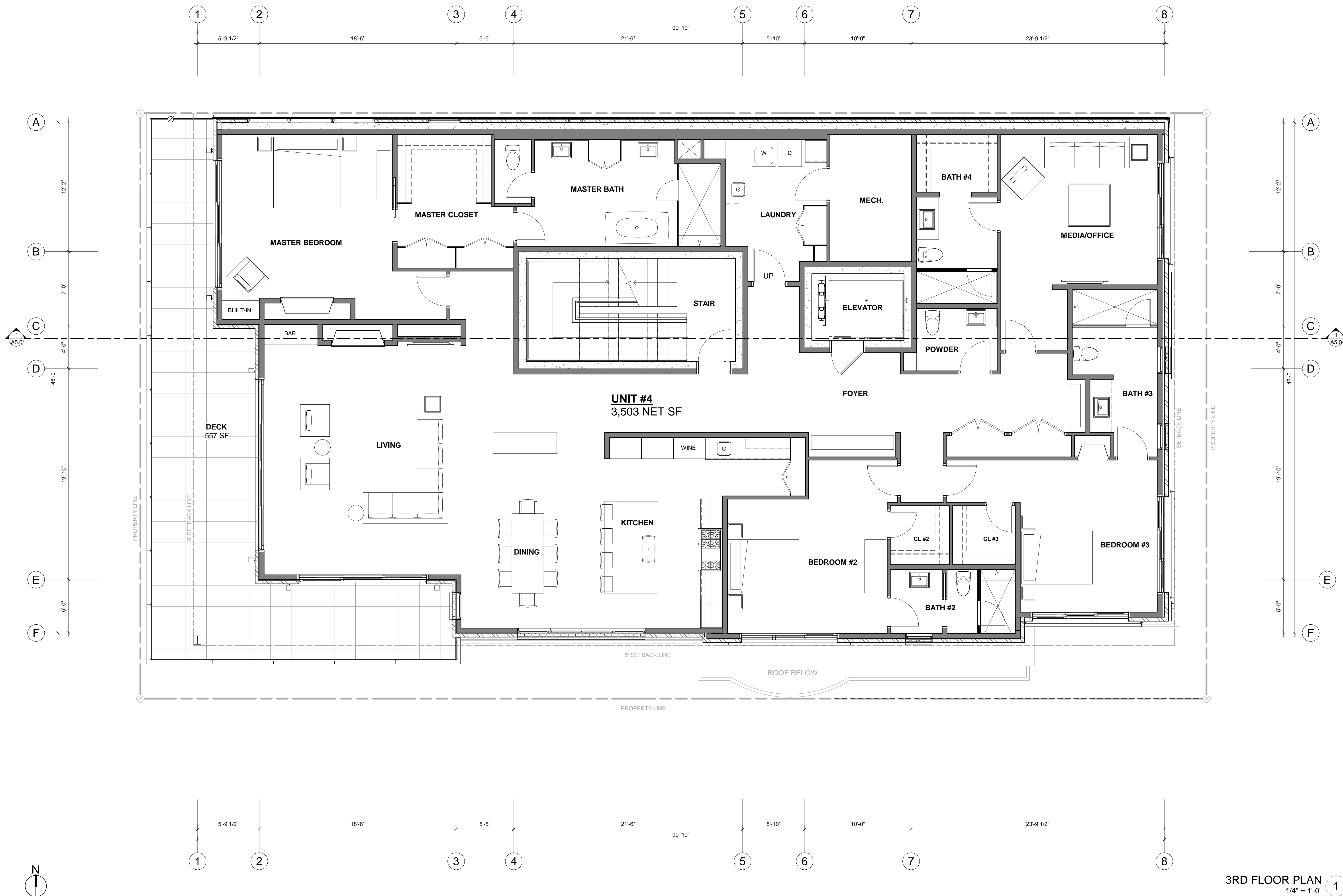
APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

**A2.3**

PLOT SCALE: 1:1



REGISTRATION:

LICENSED ARCHITECT  
 AR 9855993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**ROOF PLAN**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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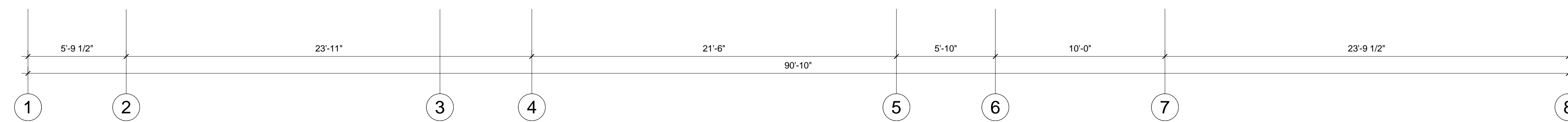
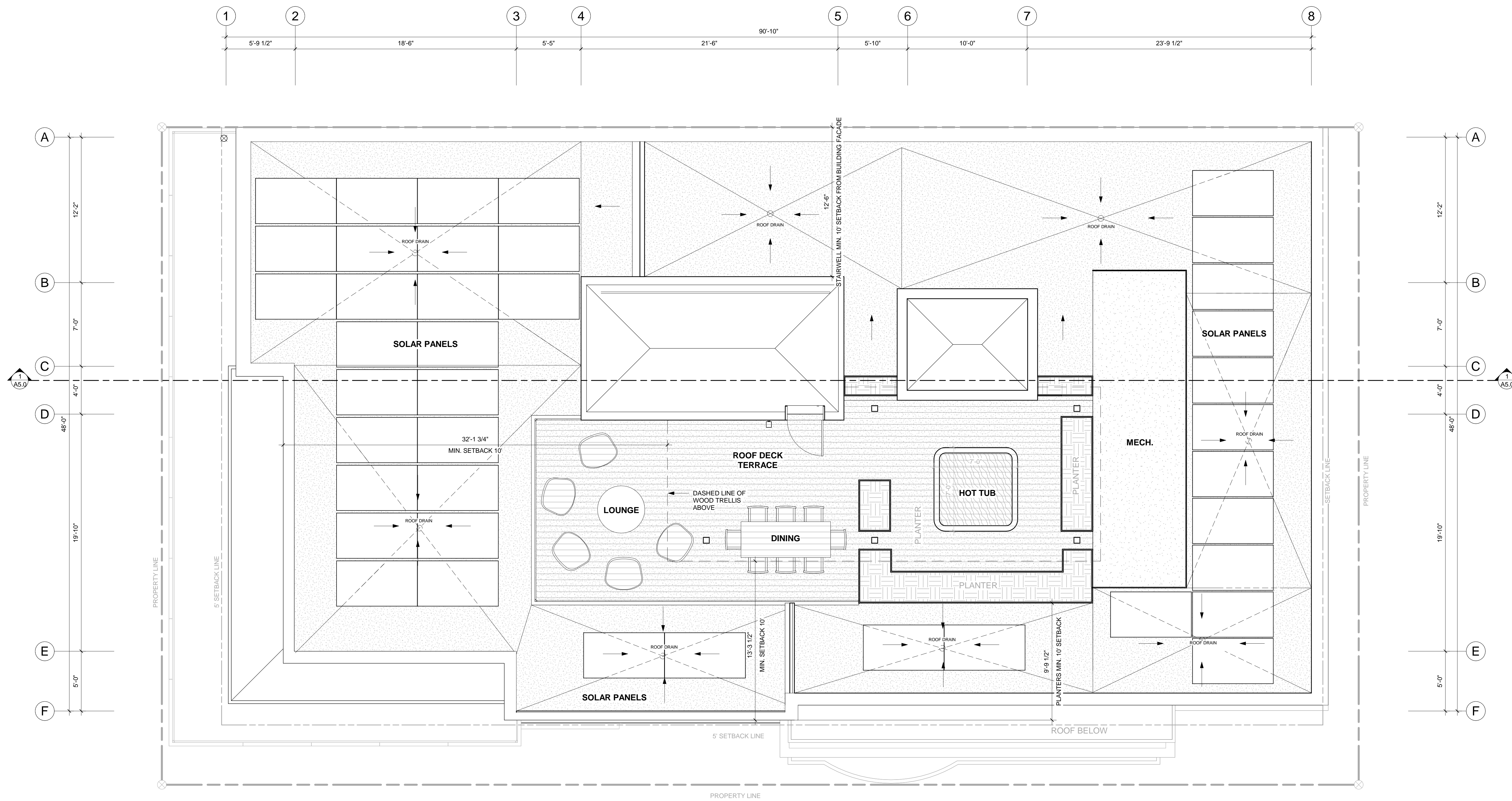
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DATE: 2/22/2023

**A3.0**

PLOT SCALE: 1:1



**ROOF PLAN**  
 1/4" = 1'-0" 1



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**PRELIMINARY**  
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 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK0000230010

DRAWING NAME:

**ELEVATIONS**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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PROJECT No.: A21-198

DATE: 2/22/2023

**A4.0**

PLOT SCALE: 1:1



**SOUTH ELEVATION** 1  
 1/4" = 1'-0"

**KEY NOTES**

- 400 NATURAL STONE VENEER.
- 401 BRICK VENEER.
- 404 WOOD SIDING.
- 405 BLACK STEEL C-CHANNEL.
- 406 BLACK STEEL PLANTERS. TO REMAIN 4" BELOW WINDOW SILLS AT RETAIL LEVEL.
- 407 METAL MESH SCREEN.
- 408 BLACK STEEL GUARD. MIN. 75% TRANSPARENT AT ROOFTOP.
- 409 BLACK METAL COPING OVER PARAPET WALL.
- 410 METAL CLAD WOOD WINDOWS AND DOORS.
- 411 PRE CAST CONCRETE LINTEL.

REGISTRATION:

LICENSED ARCHITECT  
 AR 985993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**ELEVATIONS**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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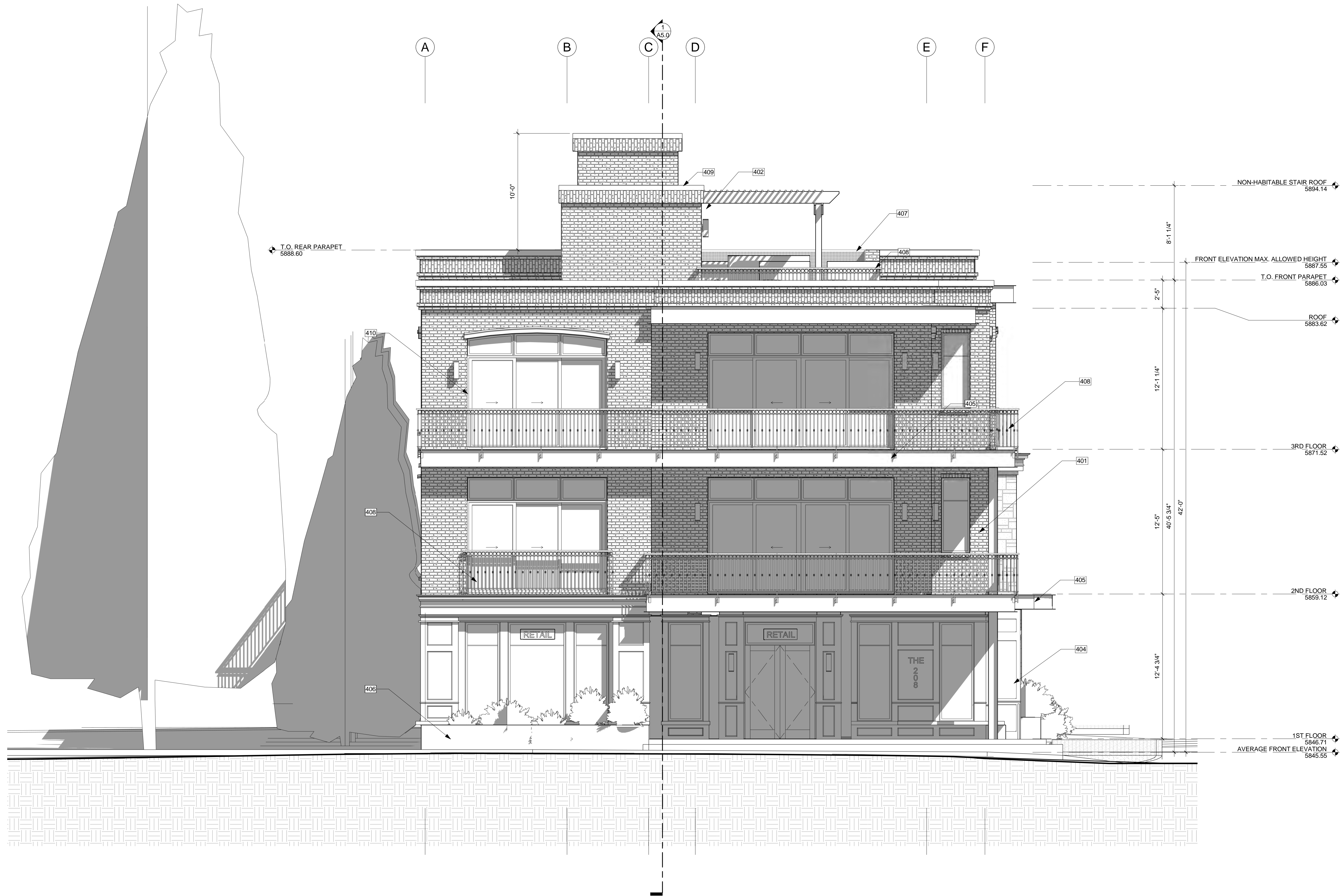
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PROJECT No.: A21-198

DATE: 2/22/2023

**A4.1**

PLOT SCALE: 1:1



WEST ELEVATION 2  
 1/4" = 1'-0"

**KEY NOTES**

401	BRICK VENEER.
402	LIGHTING @ ALL EXTERIOR DOORS INSTALLED PER MANUFACTURER, TYP. REFER TO SHEET A5.2 FOR LIGHTING SPECS. ALL LIGHTS SHALL COMPLY WITH CITY OF KETCHUM MUNICIPAL CODE 17.132.
404	WOOD SIDING.
405	BLACK STEEL C-CHANNEL.
406	BLACK STEEL PLANTERS. TO REMAIN 4" BELOW WINDOW SILLS AT RETAIL LEVEL.
407	METAL MESH SCREEN.
408	BLACK STEEL GUARD. MIN. 75% TRANSPARENT AT ROOFTOP.
409	BLACK METAL COPING OVER PARAPET WALL.
410	METAL CLAD WOOD WINDOWS AND DOORS.

REGISTRATION:

LICENSED ARCHITECT  
 AR 985993  
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 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

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**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010



**EAST ELEVATION 1**  
 1/4" = 1'-0"

**KEY NOTES**

400	NATURAL STONE VENEER.
401	BRICK VENEER.
405	BLACK STEEL C-CHANNEL.
407	METAL MESH SCREEN.
408	BLACK STEEL GUARD. MIN. 75% TRANSPARENT AT ROOFTOP.
409	BLACK METAL COPING OVER PARAPET WALL.
410	METAL CLAD WOOD WINDOWS AND DOORS.
411	PRE CAST CONCRETE LINTEL.
412	ELECTRICAL/ GAS METERS.
413	BLACK STEEL FRAMED TRELLIS W/ BLACK STAINED WOOD CANOPY.

DRAWING NAME:

**ELEVATIONS**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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PROJECT No.: A21-198

DATE: 2/22/2023

PLOT SCALE: 1:1

**A4.2**

REGISTRATION:

LICENSED ARCHITECT  
 AR 985593  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK0000230010

DRAWING NAME:

**ELEVATIONS**

Drawn By: MS

Checked By: EB

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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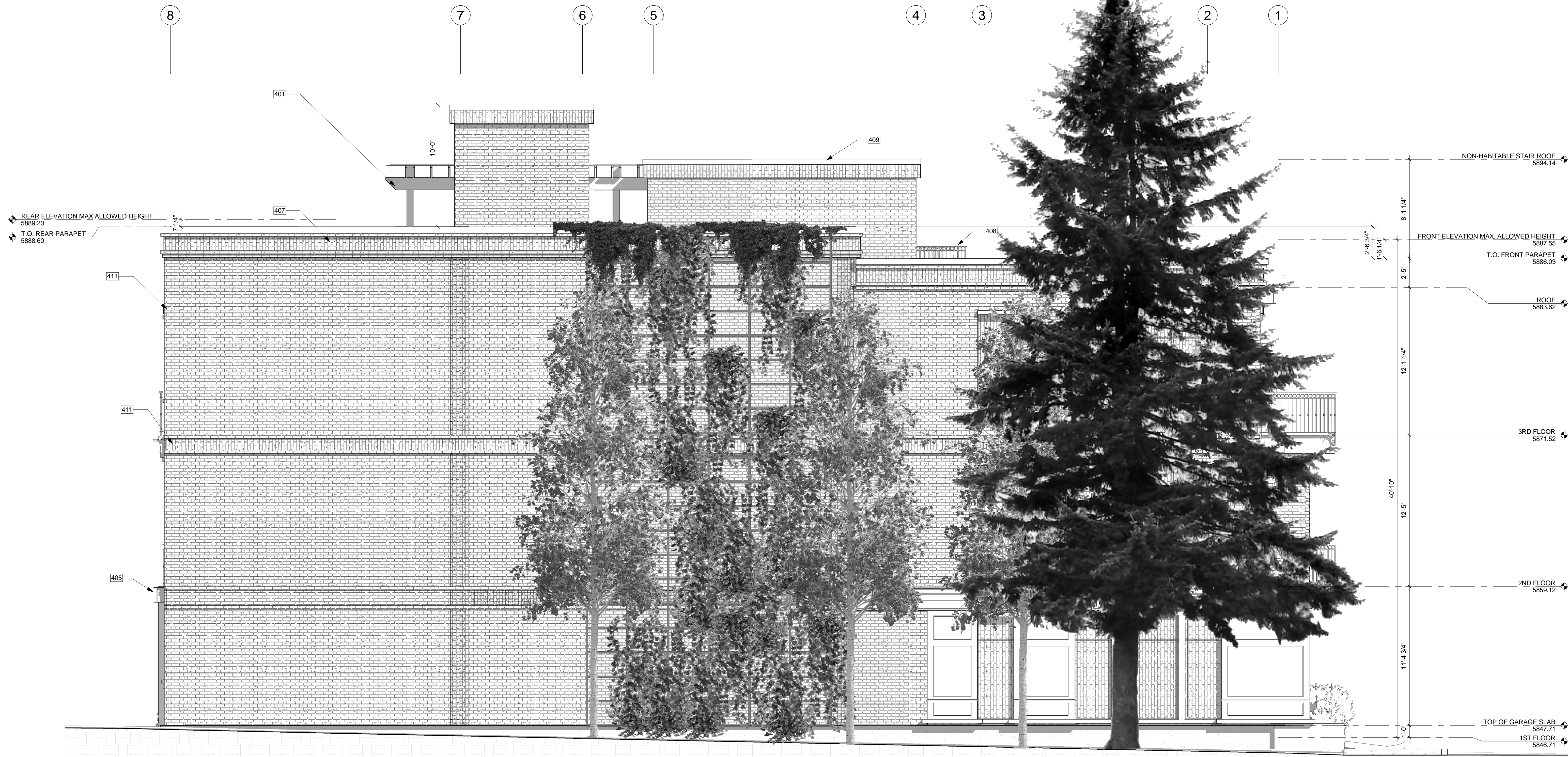
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PROJECT No.: A21-198

DATE: 2/22/2023

**A4.3**

PLOT SCALE: 1:1



**NORTH ELEVATION** 1  
 1/4" = 1'-0"

**KEY NOTES**

401	BRICK VENEER.
405	BLACK STEEL C-CHANNEL.
407	METAL MESH SCREEN.
408	BLACK STEEL GUARD. MIN. 75% TRANSPARENT AT ROOFTOP.
409	BLACK METAL COPING OVER PARAPET WALL.
411	PRE CAST CONCRETE LINTEL.

REGISTRATION:

LICENSED ARCHITECT  
 AR 985593  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK0000230010

DRAWING NAME:

**ELEVATIONS**

Drawn By: Author

Checked By: Checker

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

**A4.4**

PLOT SCALE: 1:1



**NORTH ELEVATION** 1  
 1/4" = 1'-0"

**KEY NOTES**

401	BRICK VENEER.
405	BLACK STEEL C-CHANNEL.
407	METAL MESH SCREEN.
408	BLACK STEEL GUARD. MIN. 75% TRANSPARENT AT ROOFTOP.
409	BLACK METAL COPING OVER PARAPET WALL.
411	PRE CAST CONCRETE LINTEL.

NOTE: 3D RENDERINGS ARE FOR ILLUSTRATIVE PURPOSES ONLY. NOT TO BE USED FOR CONSTRUCTION.



SOUTH EAST PERSPECTIVE



NORTH EAST PERSPECTIVE



SOUTH WEST PERSPECTIVE



11661 SE 1ST STREET, SUITE 200  
 BELLEVUE, WASHINGTON 98005  
 TEL: (425) 453-9298  
 FAX: (425) 452-8448

REGISTRATION:

LICENSED  
 ARCHITECT  
 AR 985593  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

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REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

**PERSPECTIVES**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

PLOT SCALE: 1:1

**A4.5**



REGISTRATION:

LICENSED ARCHITECT  
 AR 985993  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK0000230010

DRAWING NAME:

**SECTIONS**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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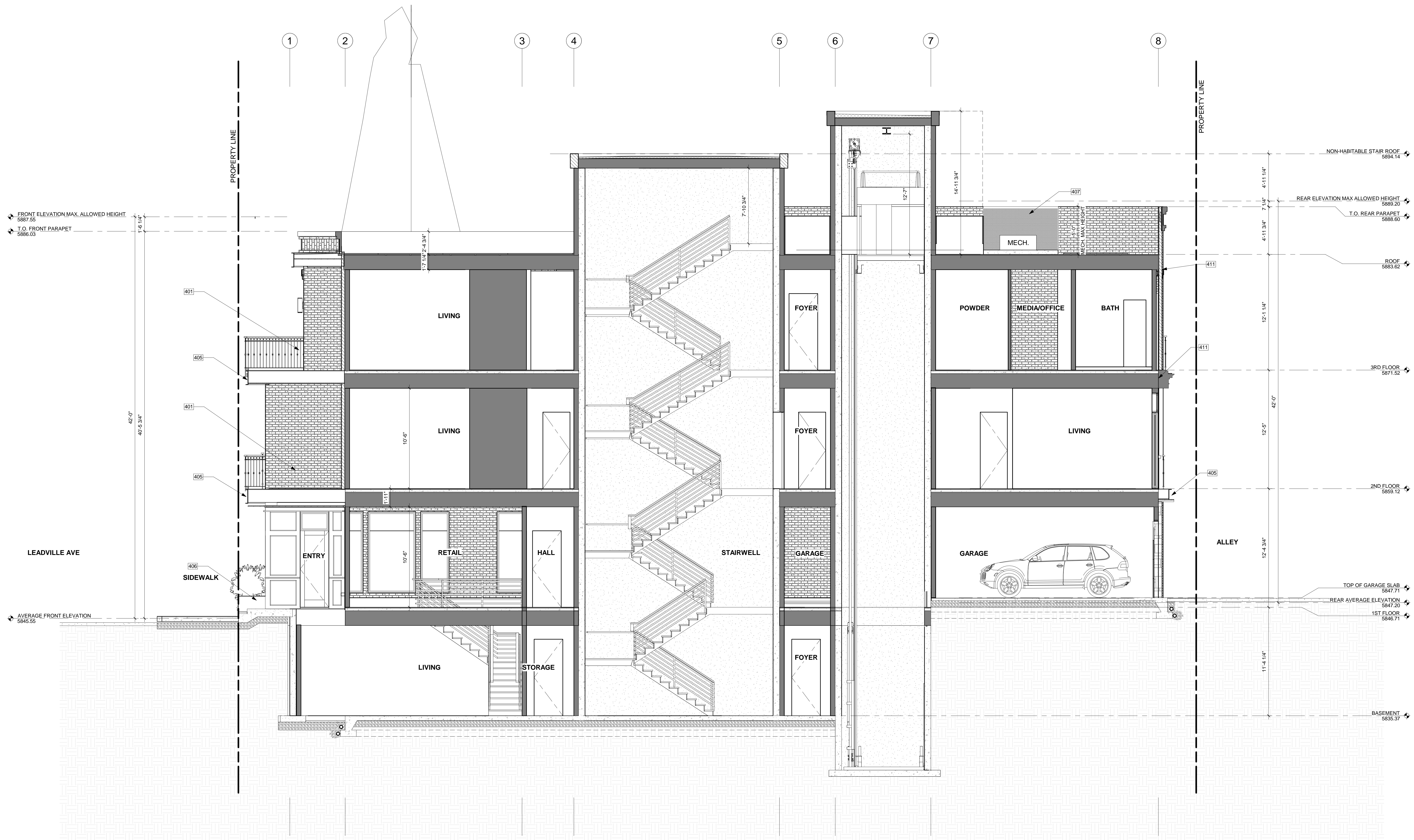
APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

**A5.0**

PLOT SCALE: 1:1



SECTION 1  
 1/4" = 1'-0" 1

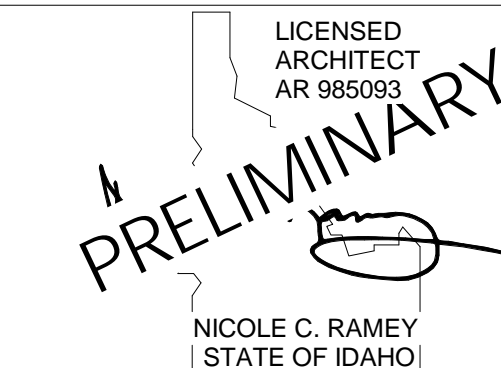
**KEY NOTES**

- 401 BRICK VENEER.
- 405 BLACK STEEL C-CHANNEL.
- 406 BLACK STEEL PLANTERS. TO REMAIN 4" BELOW WINDOW SILLS AT RETAIL LEVEL.
- 407 METAL MESH SCREEN.
- 411 PRE CAST CONCRETE LINTEL.



11661 SE 1ST STREET, SUITE 200  
 BELLEVUE, WASHINGTON 98005  
 TEL: (425) 453-9298  
 FAX: (425) 452-8448

REGISTRATION:



INTAKE DATE: 02/22/23

REVISIONS: DATE:

REVISIONS:	DATE:

PROJECT / CLIENT:

THE 208 BUILDING

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010

DRAWING NAME:

EXTERIOR MATERIALS

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

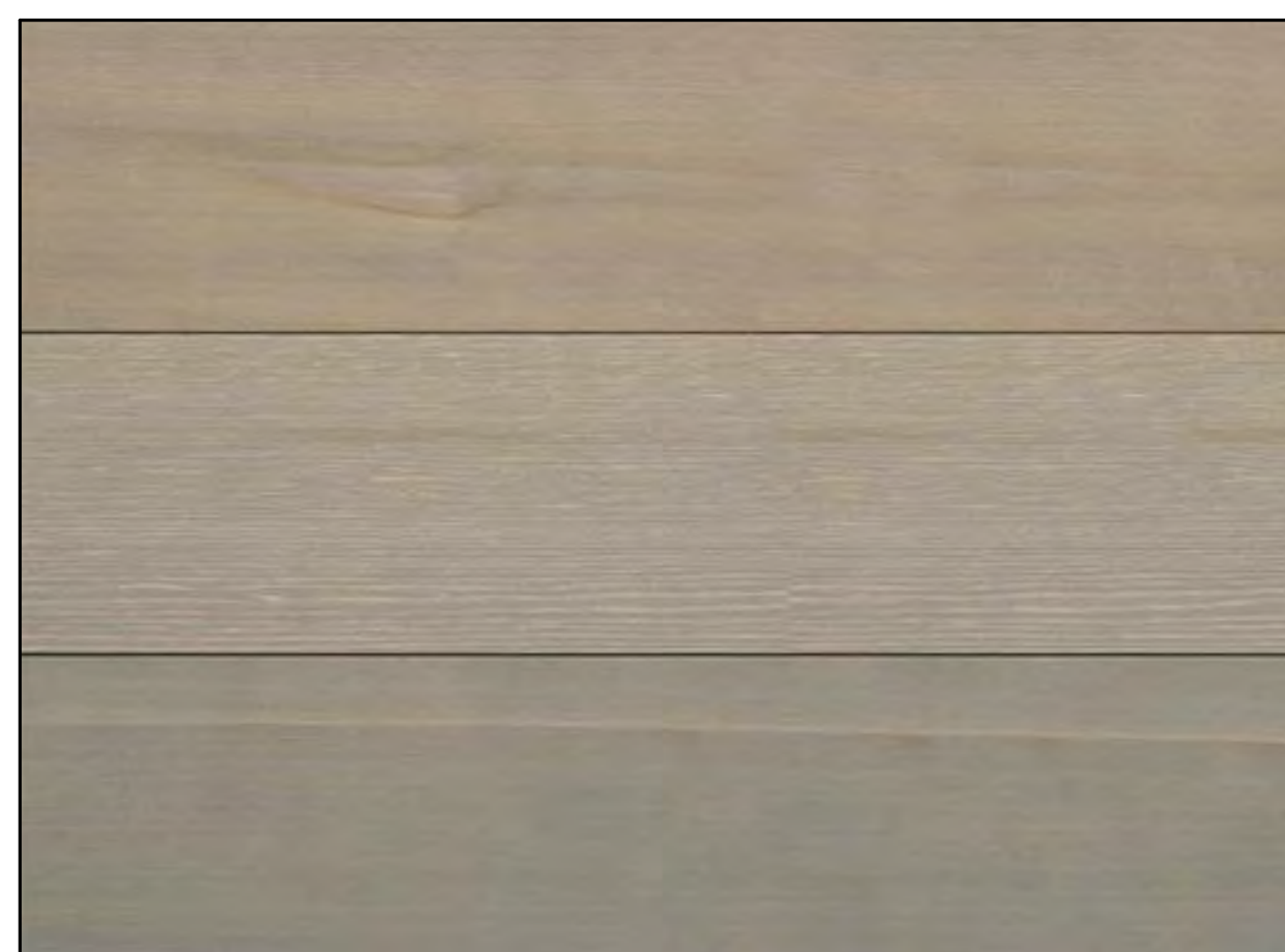
DATE: 2/22/2023



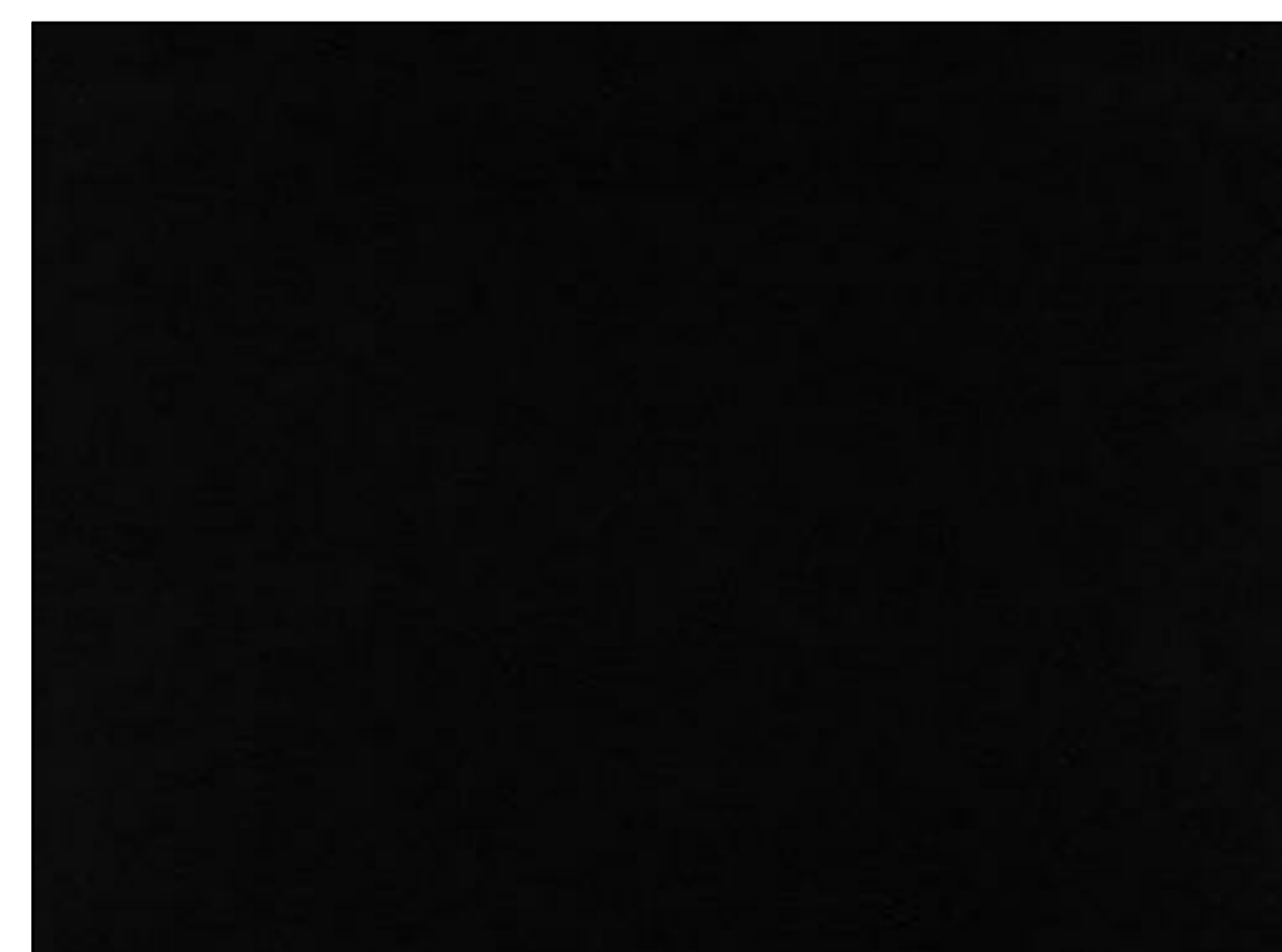
**BRICK VENEER**  
 MOUNTAIN BLEND WITH RUG TEXTURE



**STONE VENEER**  
 SILVERTIP STACK



**WOOD SOFFIT**  
 ALASKAN YELLOW CEDAR VG



**STEEL**  
 BLACK STEEL

TEGEL 18 WALL SCENE

TECH LIGHTING

Understated modern design characterizes Tegel outdoor LED wall sconces. Providing well-controlled up and down lighting, or down light only, these wall sconces provide accent and ambient illumination. The option of three finish choices and two sizes ensures this design profile successfully blends with all architectural aesthetics.

- Outstanding protection against the elements:**
- Powder coat finishes
  - Impact-resistant, UV stabilized frosted acrylic lensing
  - Up light and down light options, with 10° and 36° beam spread options

SPECIFICATIONS

DELIVERED LUMENS	2499 Up/Downlight	3277 Downlight
WEIGHT	2.94 lbs Downlight	2.52 lbs Downlight
VOLTAGE	Universal 120-277V with integral electronic LED lamp processor (UL-listed)	
DIMMING	0-10V, 0-10V	
LEADERS/STRUCTURAL	Adjustable, up/down lighting	
MOUNTING OPTIONS	Wall	
OPTICS	10° and 36°	
PERFORMANCE OPTIONS	Photocontrol / Large Projector	
CCF	UL-listed	
CRF	IP66	
COLOR RENDERING	90-95	
BUILD NUMBER	100-Downlight 101-UL-DL	
BASE GEL	Completed downlight	
WET/LETTED	IP66	
GENERAL LISTING	ETL	
CALIFORNIA TITLE 24	Can be listed to comply with CEC 2019 Title 24. Visit our website for more information.	
START TEMP	30°C	
FIELD-SERVICEABLE LED	Yes	
CONSTRUCTION	Aluminum	
HARDWARE	Stainless Steel	
FINISH	Powder Coat	
LED LIFETIME	L70: >60,000 Hours	
WARRANTY*	5 Years	
WEIGHT	8 lbs.	



TEGEL 18 (shown in charted)

TEGEL 18 (shown in black)

ORDERING INFORMATION

PRODUCT	FINISH	LENSING	BEAM SPREAD*	LEVEL	FINISH	FUNCTION	HEIGHT	OPTIONS
TEGEL 18	Black	Downlight	10°	0	Aluminum	Downlight	10"	None
TEGEL 18	Black	Downlight	36°	0	Aluminum	Downlight	10"	None

\* Visit techlighting.com for specific accessory information and details.

techlighting.com

LITECONTROL making light work™

2L-R-D MOD™ 2 LED RECESSED DIRECT

- FEATURES**
- Variable Intensity technology provides a range of specifiable outputs and resulting fixture wattages
  - 2 DCM color consistency
  - End cap design eliminates visible diffuser seams/gaps

- INSTALLATION**
- PT Mounting: Continuous spackle trim with beaded edge welded to housing. Spackle trim allows plaster coat up to fixture edge for clean ceiling appearance
  - LG/NG/SS Mounting: Side rails provide continuous mounting, lateral spacing between T-bars and allows clearance for T-bar supporting wire. For "Regular" grid mount, fixture will sit level with the T-bar
  - DW Mounting: Side rails allow installation into drywall slot. Visible flange is located on all 4 sides of fixture

- ELECTRICAL**
- Variable Intensity (VI) technology allows precise specification of fixture output/wattage. Fixture will be programmed and labeled to specification. Indirect and direct hemispheres can be independently specified
  - LED boards and drivers can be accessed and removed from fixture, while installed
  - Entire LED module can be removed and replaced
  - IC (i Circuit) Fixture wired for a single circuit
  - Emergency Battery: 10W battery powered driver. Provides a minimum of 90 minutes of emergency lighting. Inverter-Compatible. Provided by others. Available in: 6'-EF L or R, D030 through D065, 8'-EF L or R, D030 through D075. Available with SOF, ASYM, BAT downlight diffusers. Test switch located in lens. For rows where the battery fixture is in the middle of a row, the test switch will be located in that section

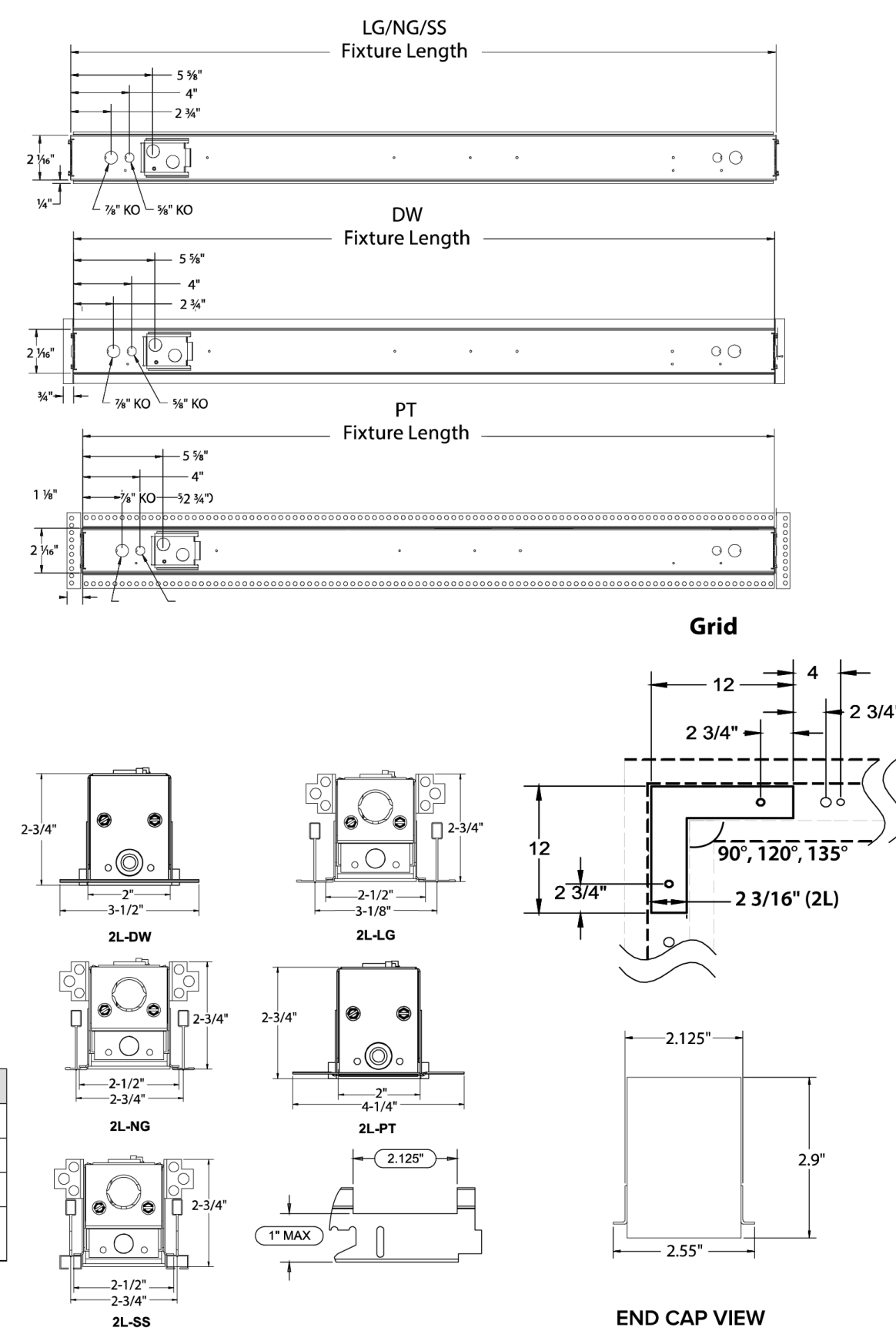
KEY DATA	
Lumen Range Per Foot	D: 300-850
Wattage Range Per Foot	2.9-8.6
Efficacy Range (LPW)	99-102
Rated Life (Hours)	L70: >61,000 L90: >61,000

MOD X

**Product Details**

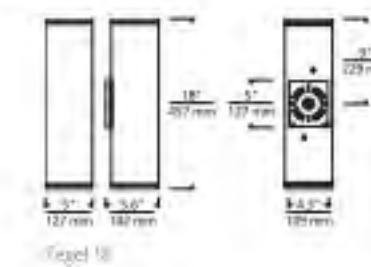
General	
Aperture	2 in
Color Rendering Index (CRI)	• 80 CRI • 90 CRI
Color Temperature	• 2700 K • 3000 K • 3500 K • 4000 K • 5000 K • SpectraSync

DIMENSIONS

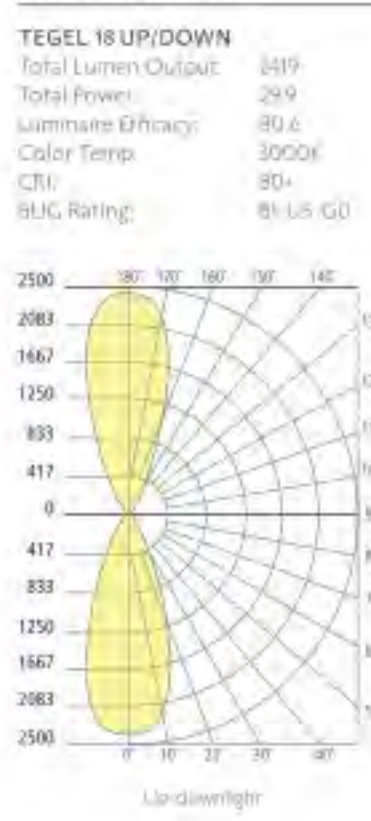


TEGEL 18 WALL SCENE

TECH LIGHTING



PHOTOMETRICS\*



PROJECT INFO

PROJECT NO.	
CLIENT	
DATE	

TECH LIGHTING Visual Comfort & Co.

\* Visit techlighting.com for specific accessory information and details.

techlighting.com

KIMLIGHTING®

UR20 ARCHITECTURAL AREA/SITE

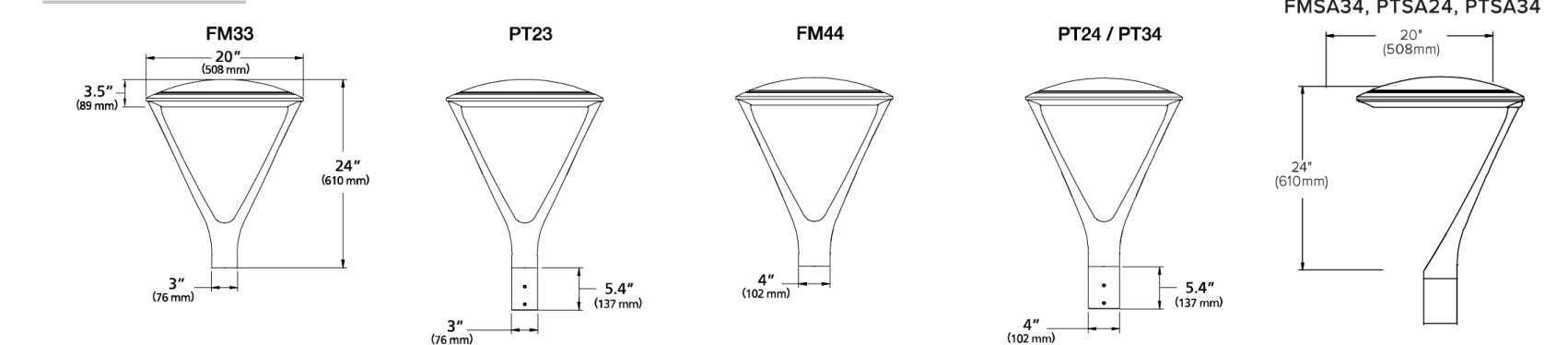
- FEATURES**
- 20" size in single/dual arm post top, pole and wall mount
  - High performance optics up to 16,874 delivered lumens
  - Elegant form factor
  - Diffusion lens option
  - SiteSync™ wireless control options
  - UL/ULC listed for wet locations, IP66 and 4G/1.5G vibration rated

- INSTALLATION**
- Fixtures must be grounded in accordance with national, state and/or local electrical codes. Failure to do so may result in serious personal injury.

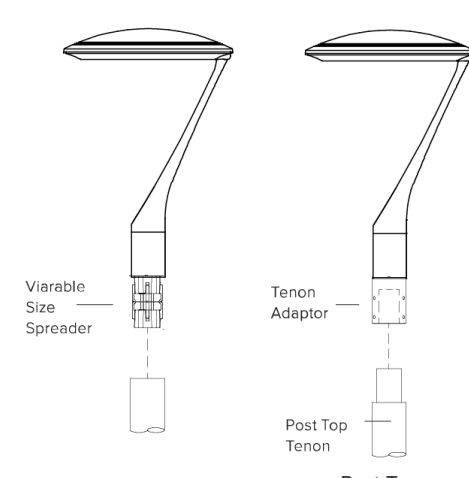
- ELECTRICAL**
- Universal voltage, 120 through 277V with ±10% tolerance. Driver is Underwriters Laboratories listed.
  - High voltage configurations, 347/480. Driver has a 0-10V dimming interface for multi-level illumination options. Driver is Underwriters Laboratories listed.
  - "Thermal Shield", secondary side, thermistor provides protection for the sustainable life of LED module and electronic components.
  - Drivers shall have greater than a 0.9 power factor, less than 20% harmonic distortion, and be suitable for operation in -40°C to 40°C ambient environments.
  - Luminaire shall be capable of operating at 100% brightness in a 40°C environment. Both driver and optical array have integral thermal protection that will dim the luminaire upon detection of temperatures in excess of 85°C.
  - Surge protection: 10,000k in parallel, 20,000k in series
  - Wiring: No. 18AWG rated 105°C, wet rating.

KEY DATA	
Lumen Range	2694 - 16874
Wattage Range	25 - 150
Efficacy Range (LPW)	95 - 133
Reported Life (Hours)	L70>60,000
Weight	35 lbs - 15.8 Kg
EPA	0.608

DIMENSIONS



Ouro



**POLE MOUNTED ROUND POLE-MOUNTED OCCUPANCY**  
Sensor up to 30'. Select voltage and finish color.

**SCH-R**  
• Round Pole-Mounted Occupancy Sensor: up to 30' - an outdoor occupancy sensor with 0-10V interface dimming control that mounts directly to the pole. Wide 360° pattern. Module colors are available in Black, Gray, and White. Module is cut for round pole mounting. Pole diameter is needed upon order. Poles to be drilled in the field will be provided with installation instructions.

• Ordering Example: SCH-R4'277'/BL<sup>3</sup>

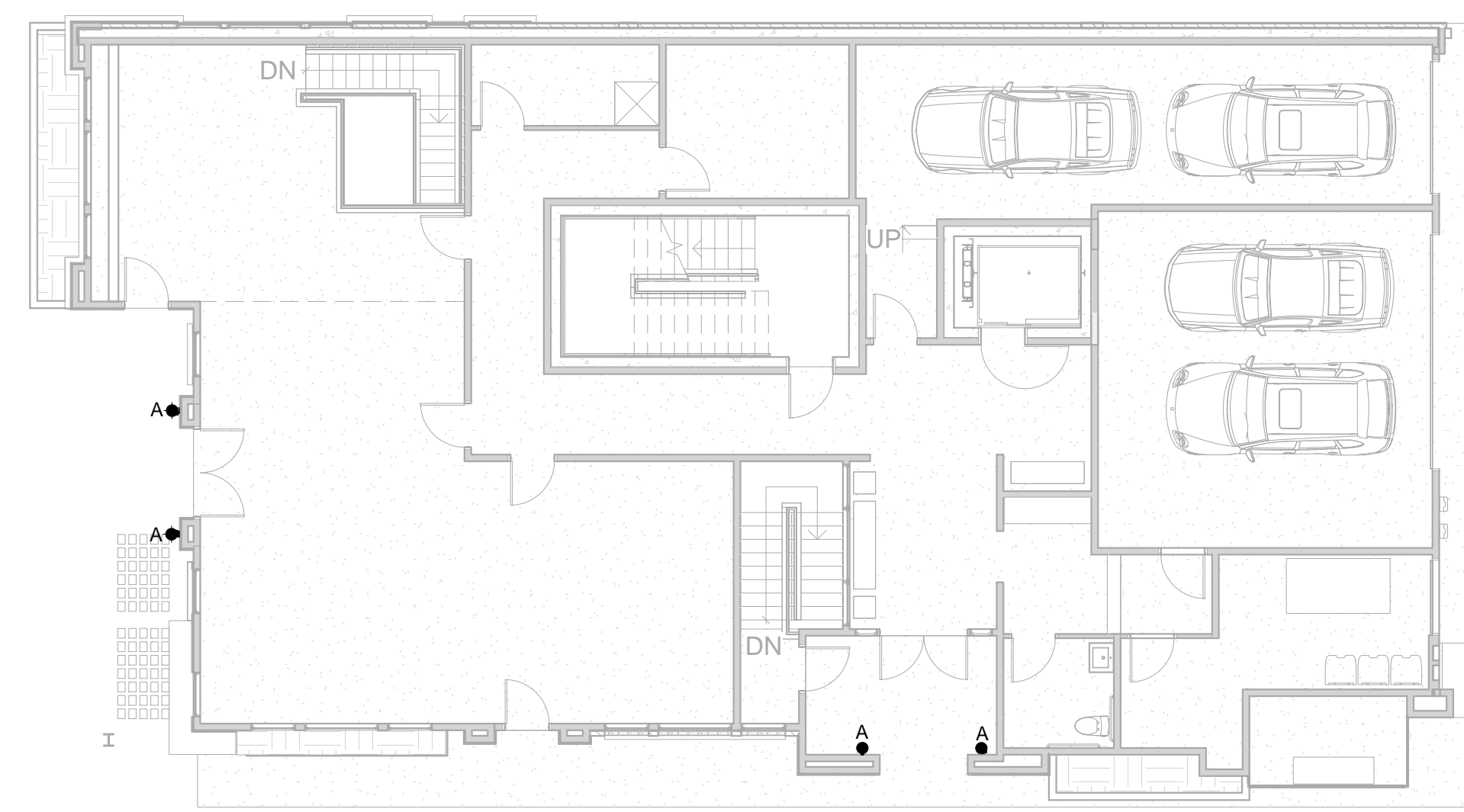
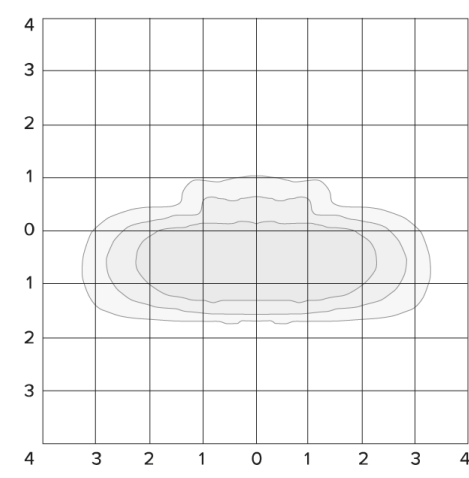
**SQUARE POLE-MOUNTED OCCUPANCY**  
Sensor up to 30'. Select voltage and finish color.

**SCH-S**  
• Square Pole-Mounted Occupancy Sensor: up to 30' - an outdoor occupancy sensor with 0-10V interface dimming control that mounts directly to the pole. Wide 360° pattern. Module colors are available in Black, Gray, and White. Module is cut for square pole mounting. Pole diameter is needed upon order. Poles to be drilled in the field will be provided with installation instructions.

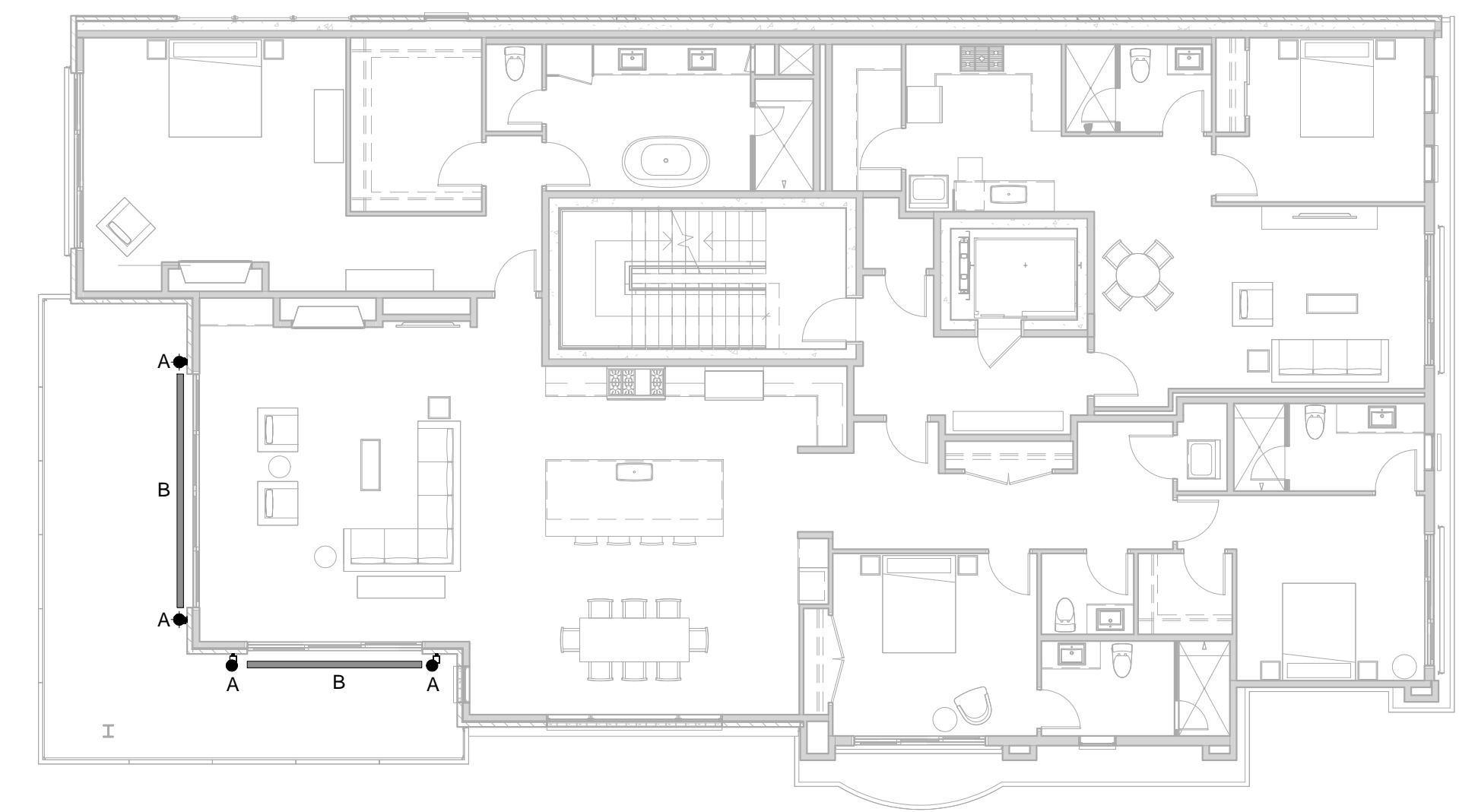
• Ordering Example: SCH-S277'/BL<sup>3</sup>

**ASTRODIM**  
• AstroDIM provides multi-stage night-time power reduction based on an internal timer referenced to the power on/off time. There is no need for an external control infrastructure. The unit automatically performs a dimming profile based on the predefined scheduled reference to the midpoint, which is calculated based on the power on/off times.

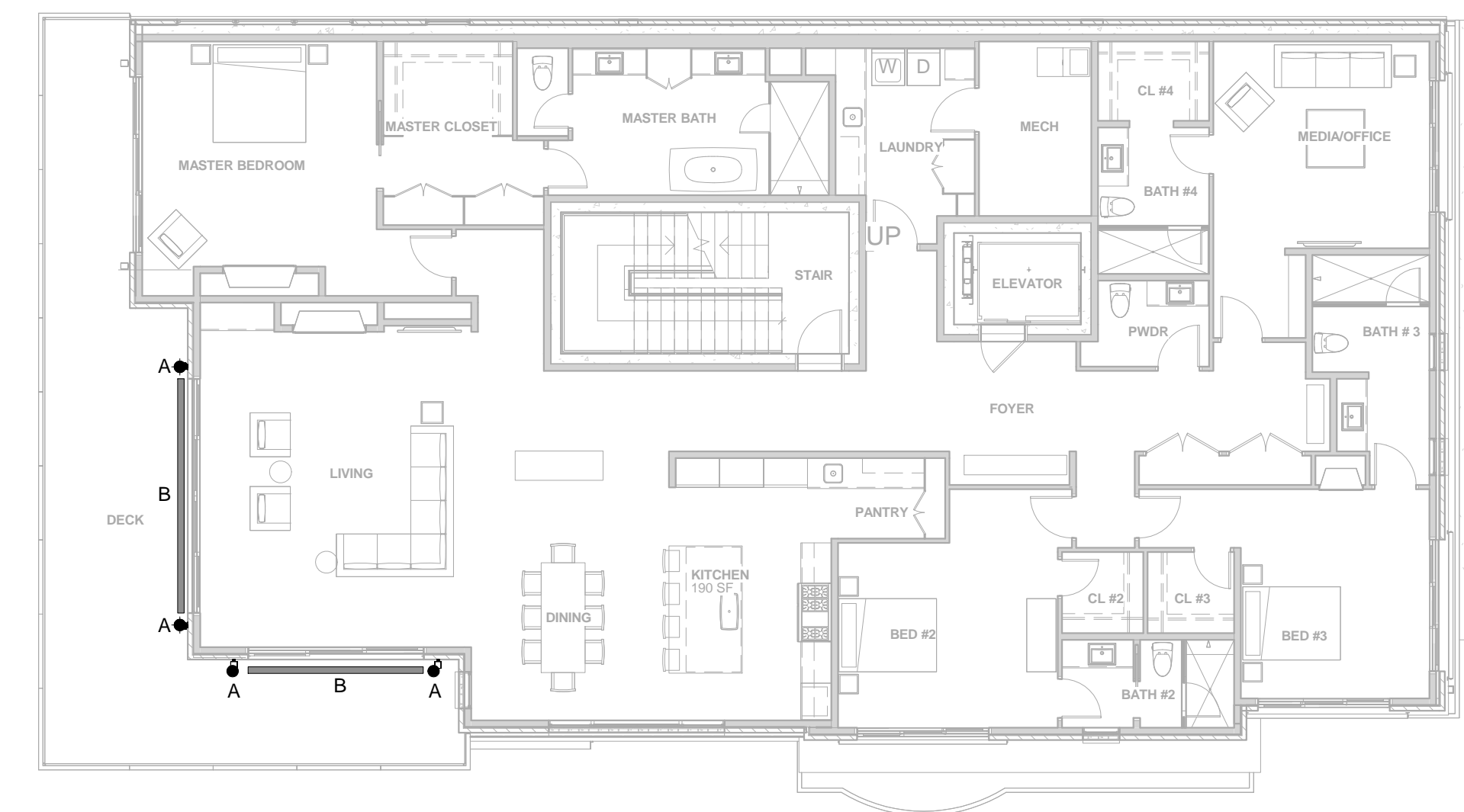
ISOFOOT CANDLE PLOT



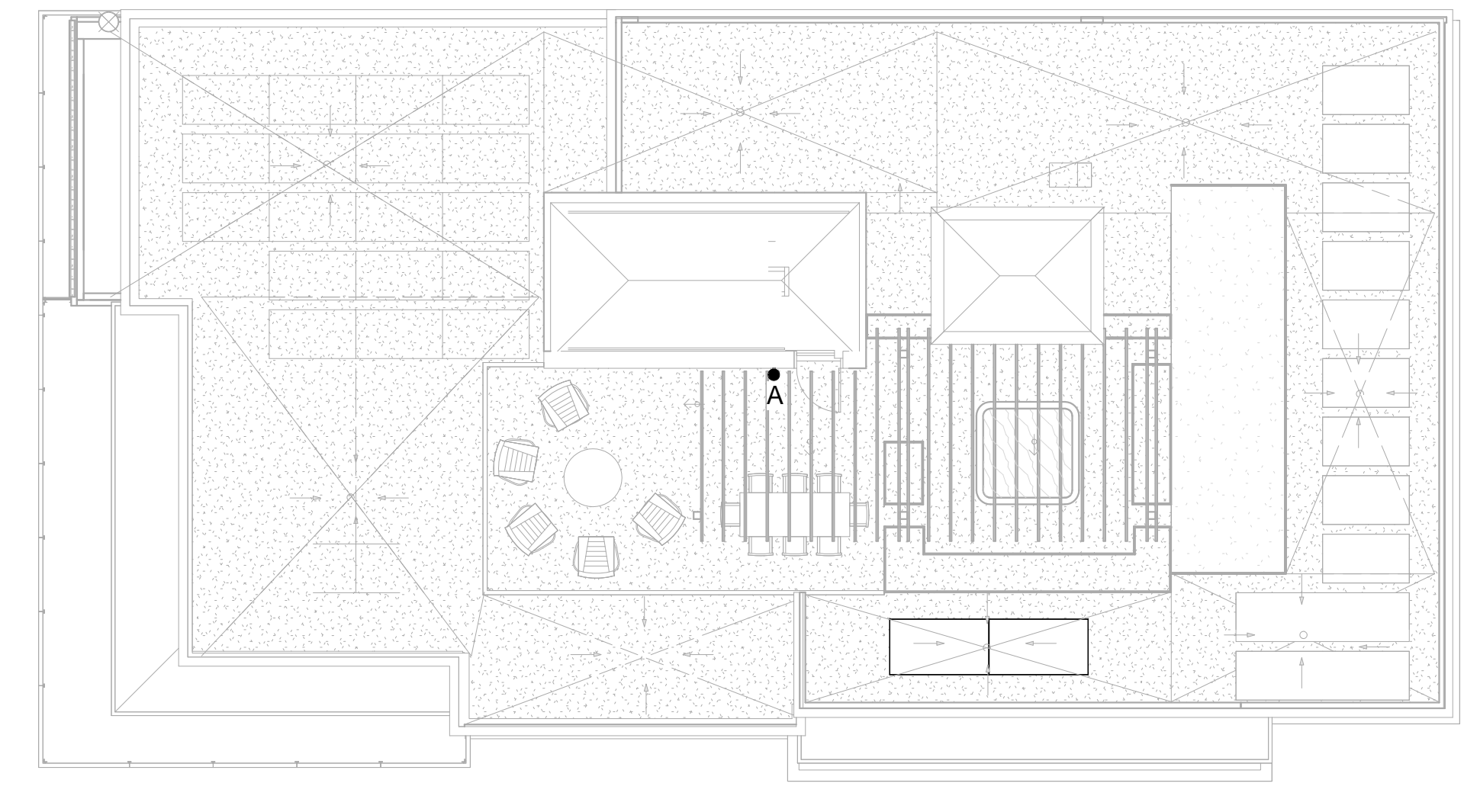
1ST FLOOR PLAN 1" = 10'-0" 1



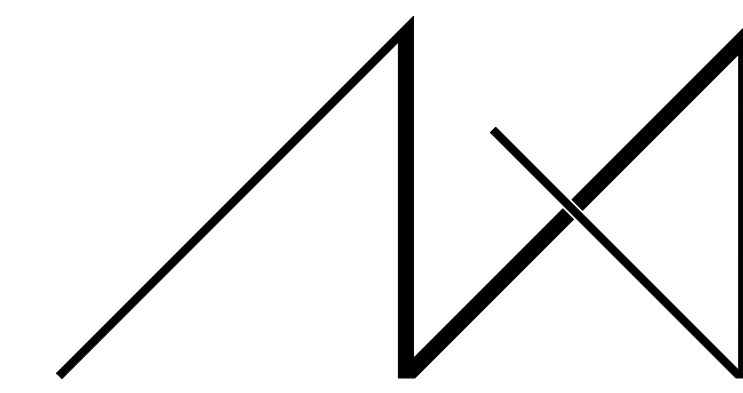
2ND FLOOR PLAN 1" = 10'-0" 2



3RD FLOOR PLAN 1" = 10'-0" 3



ROOF PLAN 1" = 10'-0" 4



MEDICI ARCHITECTS

11661 SE 1ST STREET, SUITE 200  
BELLEVUE, WASHINGTON 98005  
TEL: (425) 453-9298  
FAX: (425) 452-8448

REGISTRATION:

LICENSED ARCHITECT  
AR 985993  
PRELIMINARY  
NICOLE C. RAMEY  
(STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS: DATE:

PROJECT / CLIENT:

THE 208 BUILDING

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
IDAHO, 83340  
PARCEL #RPK0000230010

DRAWING NAME:

EXTERIOR LIGHTING PLANS AND FIXTURES

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

A5.2

PLOT SCALE: 1:1

**EXTERIOR BUILDING SIGN**

**BUILDING SIGN**  
 TYPE FACE: SWIS721 BLK BT  
 SIZE OF NUMBERS: 4.25" x 6"  
 SIZE OF LETTERS: 3" x 3"

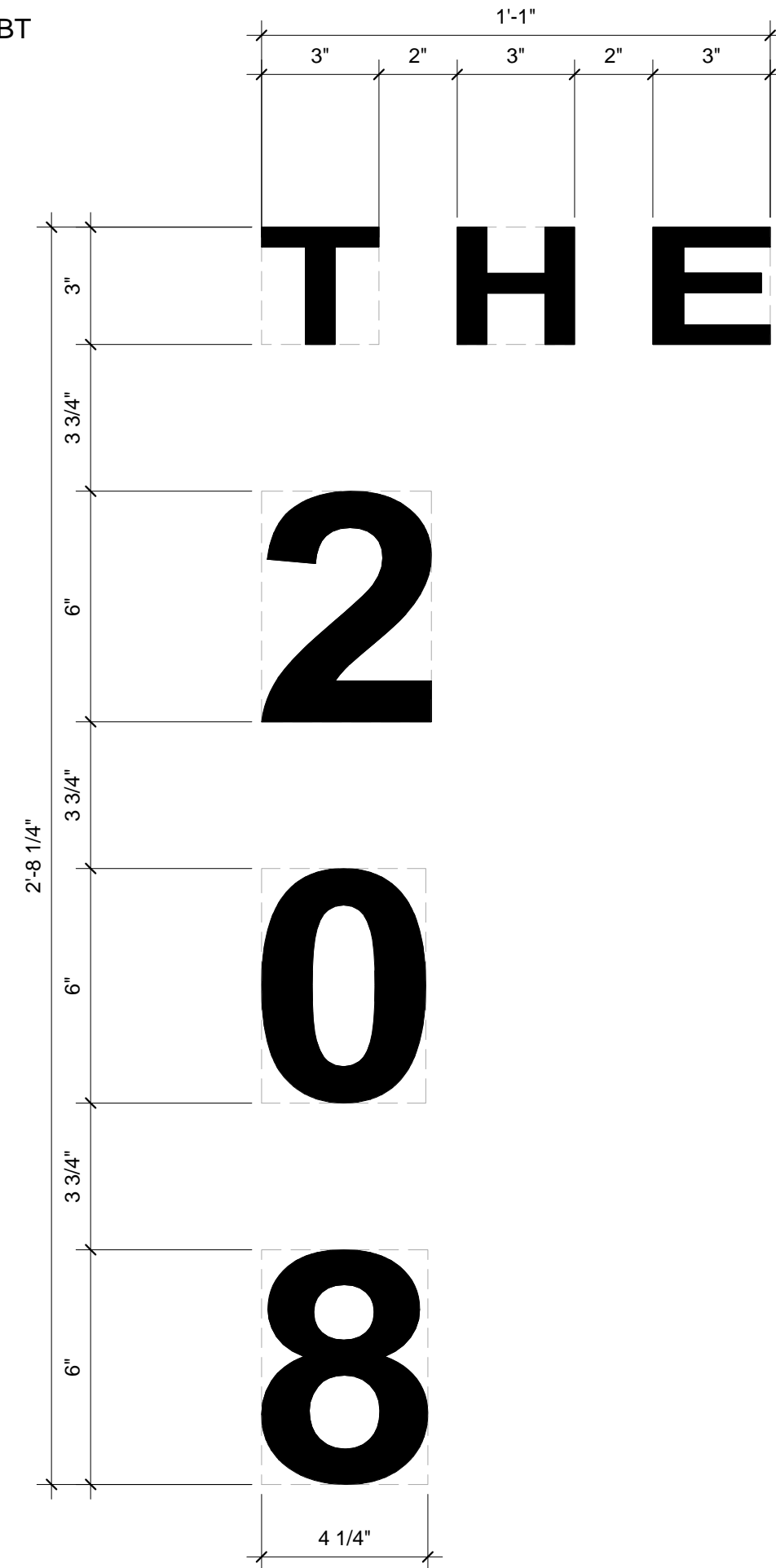
**DISCRIPTION:**  
 BLACK ANODIZED ALUMINUM  
 HOLLOW CORE CAST LETTER PIN  
 MOUNTED WITH HALF INCH OFFSET  
 FROM BUILDING SURFACE

4 SQ FEET MAX  
 TO COMPLY WITH KETCHUM  
 SIGN ORDINACE  
 17.127.00

**LEADVILLE AVE SIGNAGE CALC**  
 55/3 L.F. = 18.3 SQ. FT.  
 OF SIGNAGE ALLOWED

-SIGN TO COMPLY WITH 17.127  
 KETCHUM SIGN ORDINANCE

**PROPOSED:**  
 BUILDING ADDRESS 8,625 SQ. FT



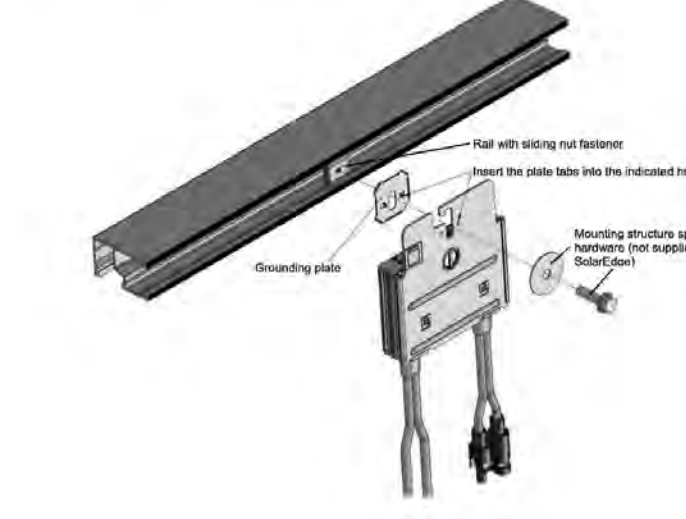
- CONSTRUCTION NOTES**
- ROOF PITCH: 2° (AR-01) AND 36° (AR-02)
  - ROOF CLADDING: FLAT TPO MEMBRANE (AR-01) AND STANDING SEAM METAL ROOF (AR-02)
  - ROOF STRUCTURE: ENGINEERED RAFTER SYSTEM (AR-01) AND 7"WF TRUSSES AT 24" O.C. (AR-02)
  - MOUNTS ARE ON GRID SPACING, OCCURRING AT RAFTERS
  - VERIFY RAFTER LOCATIONS IN FIELD
  - MAX SPAN BETWEEN MOUNTS: 20' O.C.
  - APPROX G21 HEIGHTS TOTAL
  - REFER TO MODULE AND RACKING MFR'S INSTALL MANUALS
  - PLUMBING AND MECHANICAL VENTS SHALL NOT BE COVERED BY SOLAR MODULES
  - ALL FASTENERS STAINLESS STEEL U.O.N.

DIRECT CURRENT PHOTOVOLTAIC POWER SOURCE	
MAXIMUM VOLTAGE	480.0 V
MAXIMUM CIRCUIT CURRENT	20.0 A
MAXIMUM RATED OUTPUT CURRENT OF DC TO DC CONVERTER	15.0 A

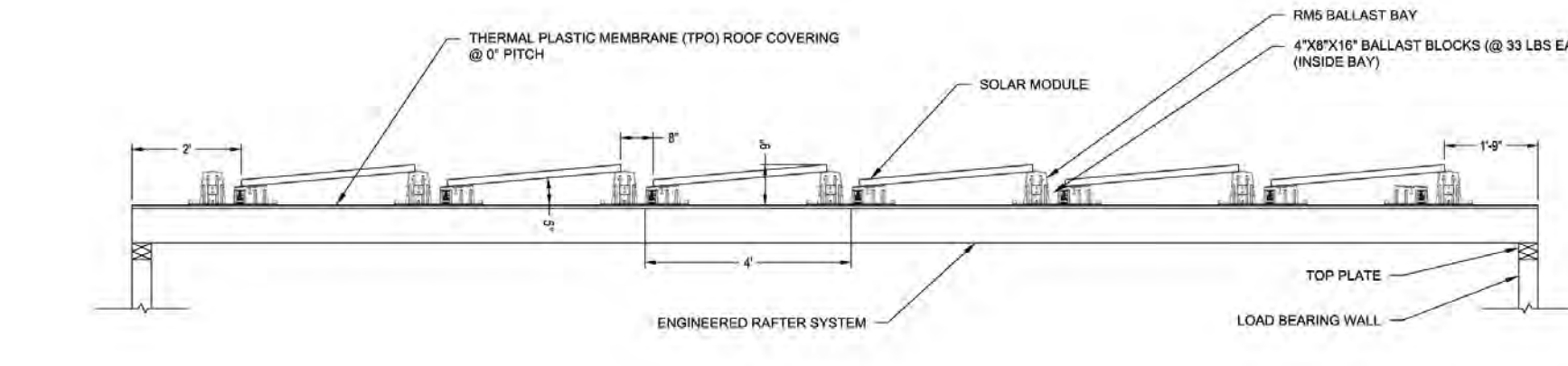
LABEL PLACEMENT: INVERTER 1

SOLAR PV SYSTEM AC POINT OF CONNECTION	
AC OUTPUT CURRENT	64.0 A
NOMINAL AC VOLTAGE	240 V

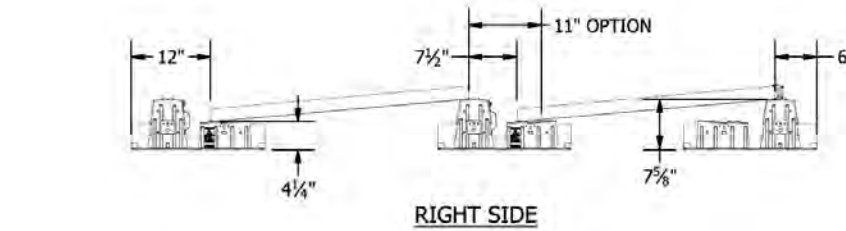
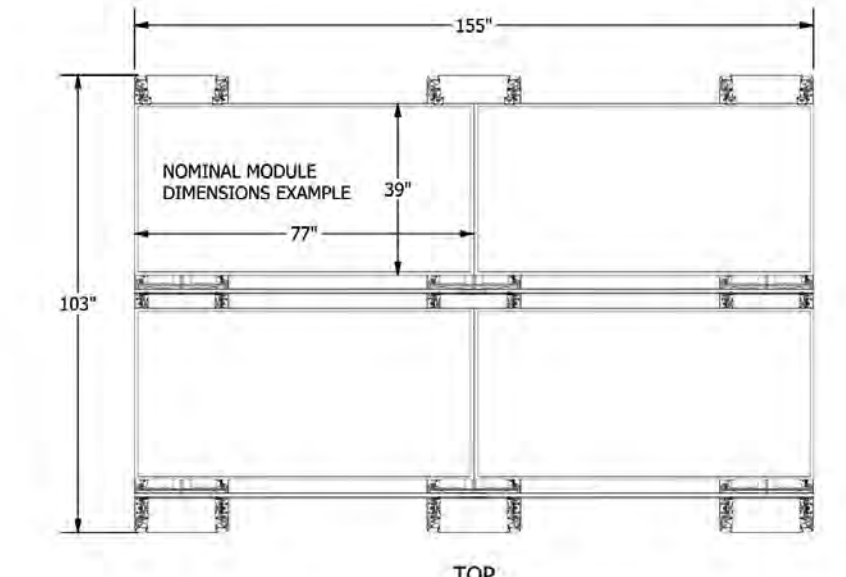
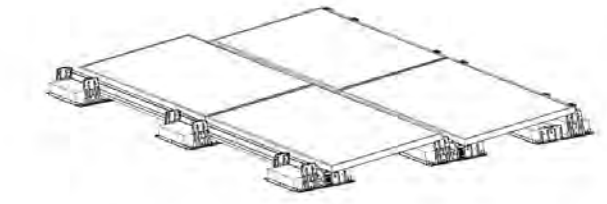
THIS PANEL FED BY MULTIPLE SOURCES (UTILITY AND SOLAR)  
 LABEL PLACEMENT: MAIN SERVICE PANEL



1 ROOF ELEVATION (AR-01)  
 SCALE: 1/8" = 1'-0"



NOTES:  
 1. ARRAY DIMENSIONS WILL VARY BASED ON MODULE WIDTH & LENGTH.



**PRECAST CONCRETE AND GLASS PAVERS**



**Design Features + Options:**

**Glass paver** and precast concrete panel systems allow light to travel through the floor to brighten any space below or create a decorative feature at night as the light shines up from underfoot. Solid or hollow floor glass blocks are manufactured to have a thicker face and are annealed for a longer period of time, increasing the strength of the precast concrete and glass paver sidewalk panels. Our panels can also be recessed to accept field-applied finishes (ex. wood) to seamlessly transition into adjoining materials.

**Glass Pavers & Panel Sizes**

- Glass pavers are available in:
  - 2.75" and 3.5" square (historic pavers)
  - 4.5" and 7.5" round
  - 6" and 8" square

Panels come in a variety of common sizes. Custom shapes, sizes, and configurations are possible to fit any project's design.

**Glazing**

- Glazing options available:
  - Clear or sandblasted top for an anti-slip walking surface

Sandblasting the glass will allow for overall more slip resistance when walking across the top surface of the glass pavers. Custom faux finishes may also be available.

**Concrete Finishes**

- Six (6) standard colors
- Custom colors available to match any project's design
- Sand Blast, Acid Etched, or Light Broom finish on the top surface of the concrete
- Fully engineered and tested
- Stamped engineered drawings are available for all 50 States and Canada

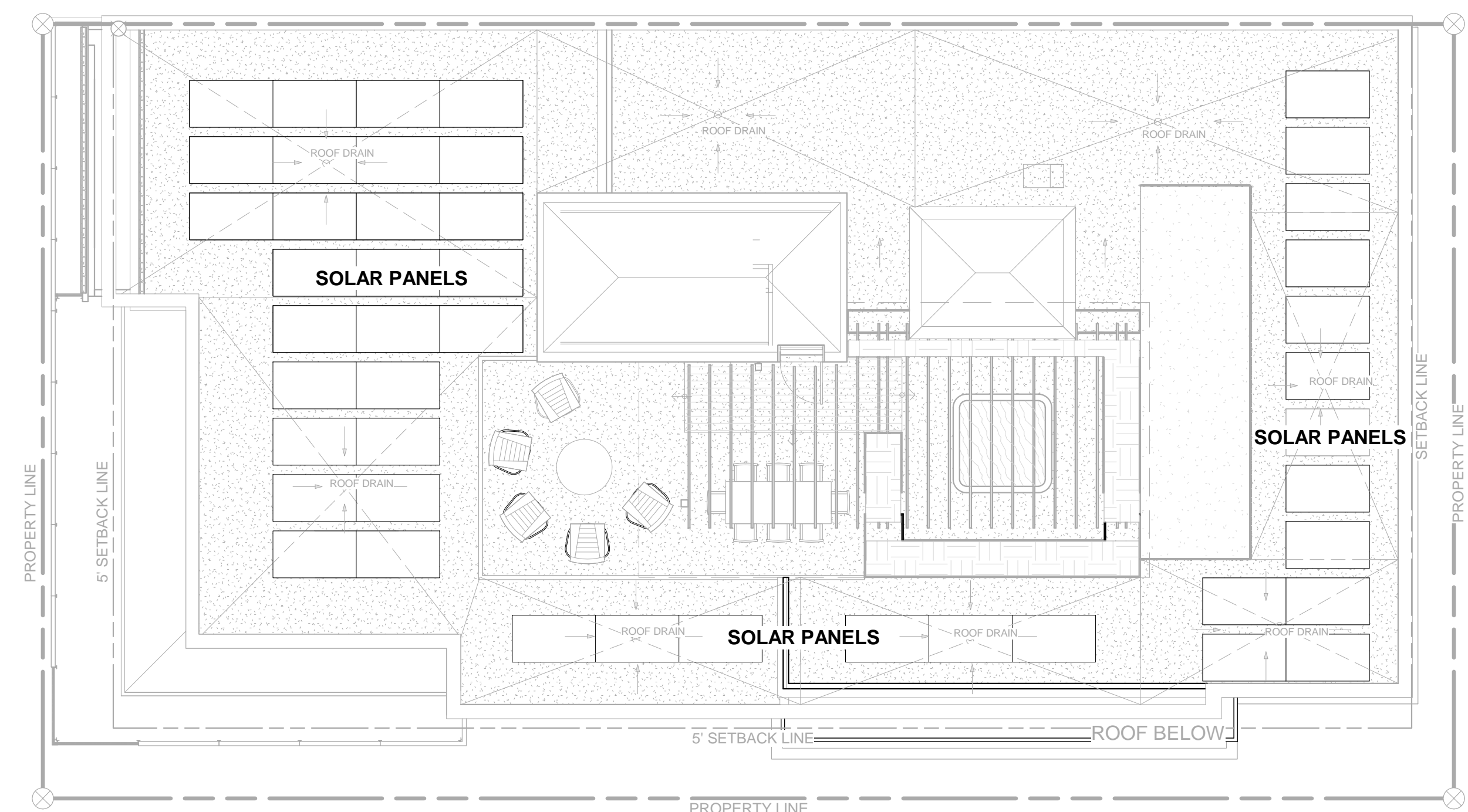
**Common Applications:**

Glass paver and precast concrete panels are extremely versatile and appropriate for use in all market sectors ranging from commercial offices, cultural centers, government building renovations, mass transit, and more. Below is a list of applications in which our precast concrete and pavers system has been installed. Prefabricated panels allow for a quick and easy installation, with low maintenance in the future. If you don't see your application below, give one of our design experts a call to start working on the design of your dreams.

Balconies	Flooring	Stair Treads
Barrel Vaults	Lobby Floors	Pavios
Bridges	Roadways	Walls
Canopies	Sidewalks	Windows
Deck Lights	Skylights	Vault Lights

**Load Capabilities:**

Precast concrete panels are engineered to carry 150 pounds per square foot live load over the course of a 5-foot span. Pre-glazed glass paver and precast concrete panels are engineered to handle high load capabilities. Incredibly strong, these precast concrete panels can even be engineered to withstand vehicular traffic and vehicular traffic loads as high as ASHTO H520-44.

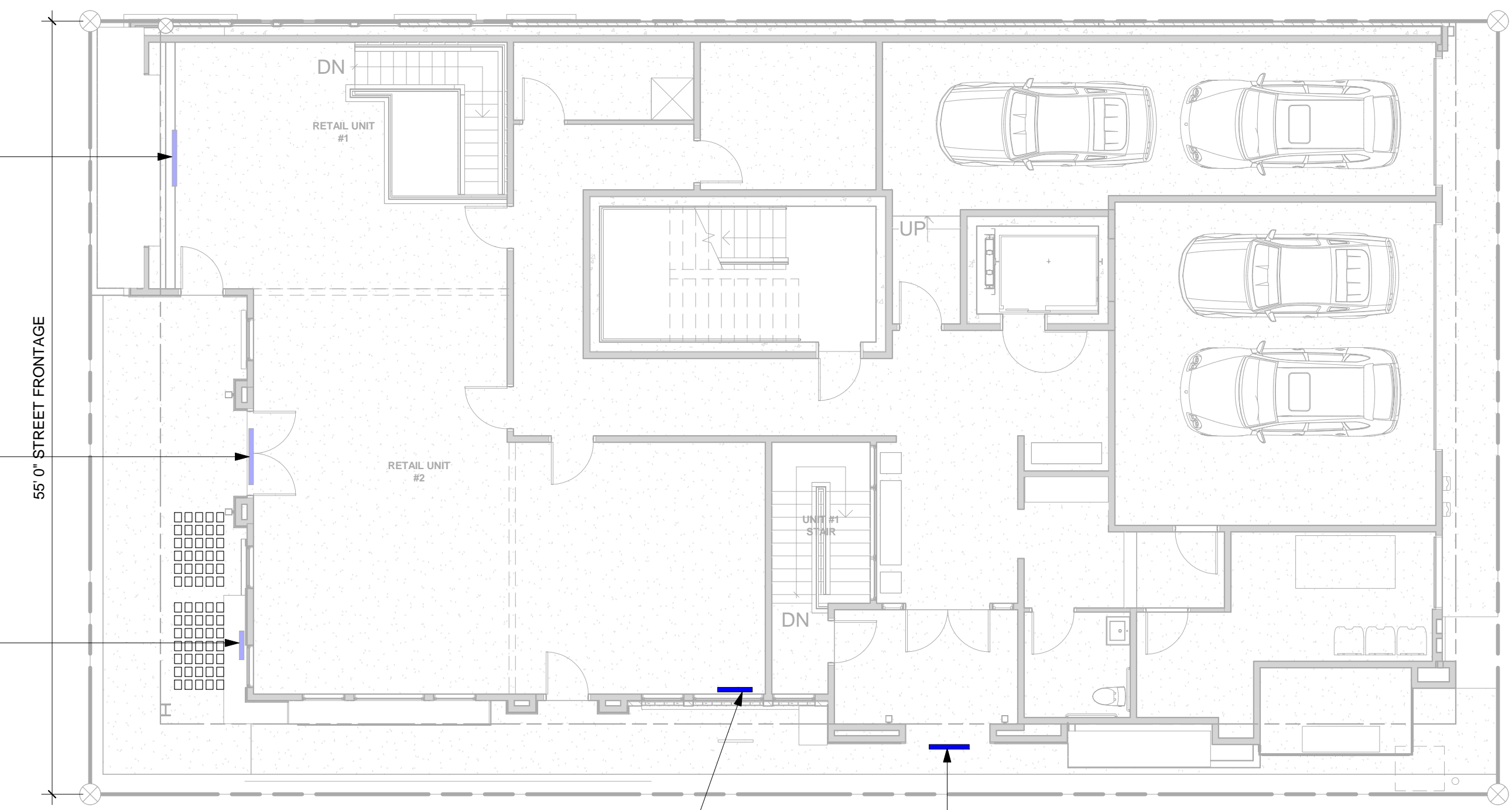


ROOF SOLAR PANEL LAYOUT  
 1/8" = 1'-0" 1

**INTERIOR RETAIL SIGN**  
 -4SQ FT MAX  
 TO COMPLY WITH KETCHUM  
 SIGN ORDINANCE 17.127.020

**INTERIOR RETAIL SIGN**  
 -4SQ FT MAX  
 TO COMPLY WITH KETCHUM  
 SIGN ORDINANCE 17.127.020

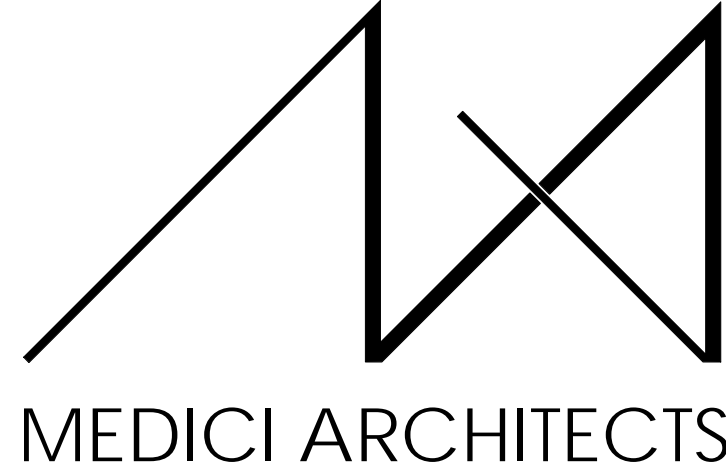
**EXTERIOR SIGN**  
 -PROPOSED 8,625 SF  
 -TO COMPLY WITH KETCHUM  
 SIGN ORDINANCE 17.127



**INTERIOR RETAIL SIGN**  
 -4SQ FT MAX  
 TO COMPLY WITH KETCHUM  
 SIGN ORDINANCE 17.127.020

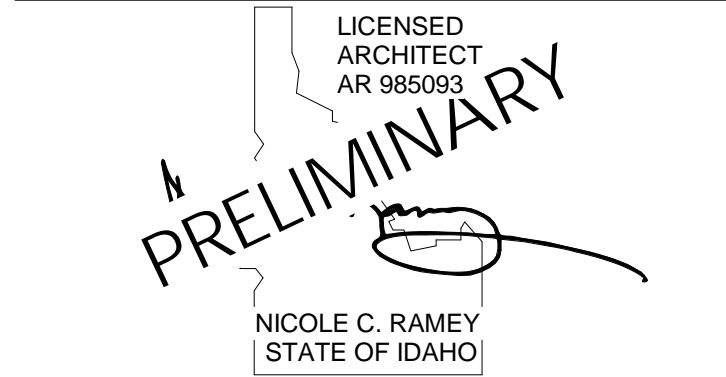
**EXTERIOR SIGN**  
 -PROPOSED SIGN 3 SF  
 TO COMPLY WITH KETCHUM  
 SIGN ORDINANCE 17.127.020

SIGNAGE PLAN  
 1/8" = 1'-0" 3



11661 SE 1ST STREET, SUITE 200  
 BELLEVUE, WASHINGTON 98005  
 TEL: (425) 453-9298  
 FAX: (425) 452-8448

**REGISTRATION:**



INTAKE DATE: 02/22/23

**REVISIONS:**

REVISIONS:	DATE:

**PROJECT / CLIENT:**

THE 208 BUILDING

CARR, MICHAEL

**JOB ADDRESS:**

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK0000230010

DRAWING NAME:

SPEC SHEET

Drawn By: MS

Checked By: NR

Owner Approval:

**PHASE:**

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

PLOT SCALE: 1:1 **A5.3**

REGISTRATION:

LICENSED ARCHITECT  
 AR 9855932  
**PRELIMINARY**  
 NICOLE C. RAMEY  
 (STATE OF IDAHO)

INTAKE DATE: 02/22/23

REVISIONS:	DATE:

PROJECT / CLIENT:

**THE 208 BUILDING**

CARR, MICHAEL

JOB ADDRESS:

200 N LEADVILLE KETCHUM  
 IDAHO, 83340  
 PARCEL #RPK00000230010



NORTHWEST PERSPECTIVE 4



SOUTHWEST PERSPECTIVE 1



SOUTH PERSPECTIVE 3



SOUTHEAST PERSPECTIVE 2

DRAWING NAME:

**PERSPECTIVES**

Drawn By: MS

Checked By: NR

Owner Approval:

PHASE:

CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION:

PROJECT No.: A21-198

DATE: 2/22/2023

**A6.8**

PLOT SCALE: 1:1



City of Ketchum

# Attachment G: Application - Condominium Preliminary Plat



City of Ketchum  
Planning & Building

OFFICIAL USE ONLY
Application Number:
Date Received:
By:
Fee Paid:
Approved Date:
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, 191 th St. West, 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: The 208 Condominiums			
Owner of Record: 755 S Broadway LLC			
Address of Owner: 2667 Tacoma Way, Tacoma, Washington 98409			
Representative of Owner: Galena Engineering			
Legal Description: Lot 1, Block 23, Ketchum Towsite			
Street Address: 200 N Leadville Ave			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 5 Condominium Units			
Total Land Area: 5,504 Sq. Ft. (0.13 Ac.)			
Current Zoning District: CC-2 Mixed Use			
Proposed Zoning District: CC-2 Mixed Use			
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: None			
Briefly describe the improvements to be installed prior to final plat approval: Construction of Condominium Units			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance			
One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations			
One (1) copy of current title report and owner's recorded deed to the subject property			
One (1) copy of the preliminary plat			
All files should be submitted in an electronic format.			

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.

*Sean Fly*

6/14/2022

Applicant Signature — Representative's Signature


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.

**Instrument # 673273**

HAILEY, BLAINE, IDAHO  
09-21-2020 8:32:25 AM No. of Pages: 2  
Recorded for: TITLEONE - TWIN FALLS  
JOLYNN DRAGE Fee: \$15.00  
Ex-Officio Recorder Deputy: JB  
Electronically Recorded by Simplifile

**Sun Valley Title**

 A TitleOne Company

Order Number: 20378964

**Warranty Deed**

For value received,

**M. Brent Stevens and M. Annette Stevens, as Co-Trustees of the Stevens Living Trust, dated December 14, 2005**

the grantor, does hereby grant, bargain, sell, and convey unto

**755 S Broadway, a Colorado limited liability company**

whose current address is 2667 South Tacoma Way Tacoma, WA 98409

the grantee, the following described premises, in Blaine County, Idaho, to wit:

Lot 1, Block 23 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

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 and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, 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: ~~September~~ 16, 2020

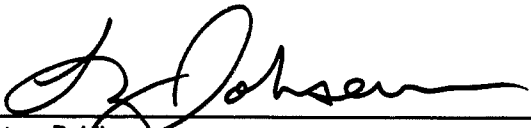
~~Stevens Living Trust, dated December 14, 2005~~

By: Mr. Brent Stevens, Trustee

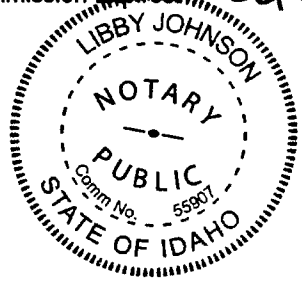
By: M. Annette Stevens, Trustee

State of Idaho, County of Blaine, ss.

On this 18 day of September in the year of 2020, before me, the undersigned, a notary public in and for said state personally appeared **M. Brent Stevens and M. Annette Stevens**, known or identified to me to be the person whose name is subscribed to the within instrument, as trustee of **the Stevens Living Trust, dated December 14, 2005** and acknowledged to me that he/she executed the same as trustee.

  
\_\_\_\_\_  
Notary Public

Residing In: Hailey, Idaho  
My Commission Expires: September 22, 2022  
(seal)



## ALTA Commitment Form

**COMMITMENT FOR TITLE INSURANCE**  
**Issued By**



Commitment No. 20378964

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 EXTRACONTRACTUAL 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 Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I""Requirements have not been met within 180 days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.

- (d) "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.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in 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; [and]
- (f) Schedule B, Part II Exceptions; and
- (g) a counter-signature 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 shall not be liable for any other amendment to this Commitment.

#### 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 shall not be 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 will only have liability 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 shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.

(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

(f) In no event shall the Company be 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) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (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 and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, 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 HAS BEEN 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 the purpose of providing closing or settlement services.

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. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option 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>>.

***Transaction Identification Data for reference only:***

Issuing Agent: Nick Busdon  
Issuing Office: TitleOne Corporation dba Sun Valley Title  
ALTA® Universal ID: 1065022  
Commitment Number: 20378964  
Property Address: 200 N Leadville Ave, Ketchum, ID 83340  
[Revision Number:]



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:  
P.O. Box 2029  
Houston, Texas 77252

## 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, 1980 Post Oak Blvd., Privacy Officer, Houston, Texas 77056

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

**WHAT DO/DOES SUN VALLEY TITLE 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 Sun Valley Title and its affiliates ("Sun Valley Title"), 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 Sun Valley Title, 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.

<b>Reasons we can share your personal information</b>	<b>Do we share?</b>	<b>Can you limit this sharing?</b>
<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 nonfinancial 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 nonaffiliates to market to you.</b> Nonaffiliates are companies not related by common ownership or control. They can be financial and nonfinancial companies.	No	We don't share

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

**Sharing practices**

<b>How often do/does Sun Valley Title notify me about their practices?</b>	We must notify you about our sharing practices when you request a transaction.
<b>How do/does Sun Valley Title 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 Sun Valley Title 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.

**Contact Us**

If you have any questions about this privacy notice, please contact us at: Sun Valley Title, 1101 W River Street, Suite 201, Boise, Idaho 83702.

American Land Title Association

Homeowner's Policy  
Revised 02/03/10

**HOMEOWNER'S POLICY OF TITLE INSURANCE  
FOR A ONE-TO-FOUR FAMILY RESIDENCE  
ISSUED BY**



**As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing at the address shown in Section 3 of the Conditions.**

**OWNER'S COVERAGE STATEMENT**

This Policy insures You against actual loss, including any costs, attorneys' fees and expenses provided under this Policy. The loss must result from one or more of the Covered Risks set forth below. This Policy covers only Land that is an improved residential lot on which there is located a one-to-four family residence and only when each insured named in Schedule A is a Natural Person.

Your insurance is effective on the Policy Date. This Policy covers Your actual loss from any risk described under Covered Risks if the event creating the risk exists on the Policy Date or, to the extent expressly stated in Covered Risks, after the Policy Date.

Your insurance is limited by all of the following:

- The Policy Amount
- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A
- The Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions
- The Exclusions on page 3
- The Conditions on pages 3, 4 and 5.

**COVERED RISKS**

The Covered Risks are:

1. Someone else owns an interest in Your Title.
2. Someone else has rights affecting Your Title because of leases, contracts, or options.
3. Someone else claims to have rights affecting Your Title because of forgery or impersonation.
4. Someone else has an easement on the Land.
5. Someone else has a right to limit Your use of the Land.

Countersigned by:

Authorized Countersignature

Sun Valley Title  
Company

Ketchum, ID



Matt Morris  
President and CEO

Denise Carraux  
Secretary

Page 6 of  
Policy  
Serial No. **O-9240-**\_\_\_\_\_



City, State

Agent ID #

**COVERED RISKS (Continued)**

6. Your Title is defective. Some of these defects are:
- a. Someone else's failure to have authorized a transfer or conveyance of your Title.
  - b. Someone else's failure to create a valid document by electronic means.
  - c. A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.
  - d. A document upon which Your Title is based was signed using a falsified, expired, or otherwise invalid power of attorney.
  - e. A document upon which Your Title is based was not properly filed, recorded, or indexed in the Public Records.
  - f. A defective judicial or administrative proceeding.
7. Any of Covered Risks 1 through 6 occurring after the Policy Date.
8. Someone else has a lien on Your Title, including a:
- a. lien of real estate taxes or assessments imposed on Your Title by a governmental authority that are due or payable, but unpaid;
  - b. Mortgage;
  - c. judgment, state or federal tax lien;
  - d. charge by a homeowner's or condominium association; or
  - e. lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.
9. Someone else has an encumbrance on Your Title.
10. Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.
11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.
12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. However, You are not covered for any violation that relates to:
- a. any obligation to perform maintenance or repair on the Land; or
  - b. environmental protection of any kind, including hazardous or toxic conditions or substances
- unless there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists. Our liability for this Covered Risk is limited to the extent of the violation stated in that notice.
13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.
14. The violation or enforcement of those portions of any law or government regulation concerning:
- a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; or
  - f. environmental protection,
- if there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists or declaring the intention to enforce the law or regulation. Our liability for this Covered Risk is limited to the extent of the violation or enforcement stated in that notice.
15. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 14 if there is a notice recorded in the Public Records, describing any part of the Land, of the enforcement action or intention to bring an enforcement action. Our liability for this Covered Risk is limited to the extent of the enforcement action stated in that notice.
16. Because of an existing violation of a subdivision law or regulation affecting the Land:
- a. You are unable to obtain a building permit.
  - b. You are required to correct or remove the violation; or
  - c. someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.
- The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
17. You lose Your Title to any part of the Land because of the right to take the Land by condemning it, if:
- a. there is a notice of the exercise of the right recorded in the Public Records and the notice describes any part of the Land; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

Page 7 of  
Policy  
Serial No.

**O-9240-**\_\_\_\_\_

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**stewart**  
title guaranty company





18. You are forced to remove or remedy Your existing structures, or any part of them – other than boundary walls or fences – because any portion was built without obtaining a building permit from the proper government office. The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
19. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. If You are required to remedy any portion of Your existing structures, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
20. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.
21. You are forced to remove Your existing structures because they encroach onto Your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
22. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land.
23. You are forced to remove Your existing structures which encroach onto an easement or over a building set-back line, even if the easement or building set-back line is excepted in Schedule B.
24. Your existing structures are damaged because of the exercise of a right to maintain or use any easement affecting the Land, even if the easement is excepted in Schedule B.
25. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.
26. Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.
27. A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.
28. Your neighbor builds any structures after the Policy Date – other than boundary walls or fences – which encroach onto the Land.
29. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.
30. Someone else owns an interest in Your Title because a court order invalidates a prior transfer of the title under federal bankruptcy, state insolvency, or similar creditors' rights laws.
31. The residence with the address shown in Schedule A is not located on the Land at the Policy Date.
32. The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.

#### OUR DUTY TO DEFEND AGAINST LEGAL ACTIONS

We will defend Your Title in any legal action only as to that part of the action which is based on a Covered Risk and which is not excepted or excluded from coverage in this Policy. We will pay the costs, attorneys' fees, and expenses We incur in that defense.

We will not pay for any part of the legal action which is not based on a Covered Risk or which is excepted or excluded from coverage in this Policy.

We can end Our duty to defend Your Title under Section 4 of the Conditions.

#### THIS POLICY IS NOT COMPLETE WITHOUT SCHEDULES A AND B

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date – this does not limit the coverage described in Covered Risk 7, 8.e, 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

#### CONDITIONS

##### 1. DEFINITIONS

Page 8 of Policy Serial No.	<b>O-9240-</b> _____
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- a. Easement – the right of someone else to use the Land for a special purpose.
- b. Estate Planning Entity – A legal entity or Trust established by a Natural Person for estate planning.
- c. Known – things about which You have actual knowledge. The words “Know” and “Knowing” have the same meaning as Known.
- d. Land – the land or condominium unit described in paragraph 3 of Schedule A and any improvements on the Land which are real property.
- e. Mortgage – a mortgage, deed of trust, trust deed or other security instrument.
- f. Natural Person – a human being, not a commercial or legal organization or entity. Natural Person includes a trustee of a Trust even if the trustee is not a human being.
- g. Policy Date – the date and time shown in Schedule A. If the insured named in Schedule A first acquires the interest shown in Schedule A by an instrument recorded in the Public Records later than the date and time shown in Schedule A, the Policy Date is the date and time the instrument is recorded.
- h. Public Records – records that give constructive notice of matters affecting Your Title, according to the state statutes where the Land is located.
- i. Title – the ownership of Your interest in the Land, as shown in Schedule A.
- j. Trust – a living trust established by a Natural Person for estate planning.
- k. We/Our/Us – Stewart Title Guaranty Company.
- l. You/Your – the insured named in Schedule A and also those identified in Section 2.b. of these Conditions.

**2. CONTINUATION OF COVERAGE**

- a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.
- b. This Policy also insures:
  - (1) anyone who inherits Your Title because of Your death;
  - (2) Your spouse who receives Your Title because of dissolution of Your marriage;
  - (3) the trustee or successor trustee of a Trust or any Estate Planning Entity to whom You transfer Your Title after the Policy Date;
  - (4) the beneficiaries of Your Trust upon Your death; or
  - (5) anyone who receives your Title by a transfer effective on Your death as authorized by law.
- c. We may assert against the insureds identified in Section 2.b. any rights and defenses that We have against any previous insured under this Policy.

**3. HOW TO MAKE A CLAIM**

- a. Prompt Notice Of Your Claim
  - (1) As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing.
  - (2) Send Your notice to **Stewart Title Guaranty Company**, P.O. Box 2029, Houston, Texas 77252-2029, Attention: Claims Department. Please include the Policy number shown in Schedule A, and the county and state where the Land is located. Please enclose a copy of Your policy, if available.
  - (3) If You do not give Us prompt notice, Your coverage will be reduced or ended, but only to the extent Your failure affects Our ability to resolve the claim or defend You.
- b. Proof Of Your Loss
  - (1) We may require You to give Us a written statement signed by You describing Your loss which includes:

- (a) the basis of Your claim;
  - (b) the Covered Risks which resulted in Your loss;
  - (c) the dollar amount of Your loss; and
  - (d) the method You used to compute the amount of Your loss.
- (2) We may require You to make available to Us records, checks, letters, contracts, insurance policies and other papers which relate to Your claim. We may make copies of these papers.
  - (3) We may require You to answer questions about Your claim under oath.
  - (4) If you fail or refuse to give Us a statement of loss, answer Our questions under oath, or make available to Us the papers We request, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.

**4. OUR CHOICES WHEN WE LEARN OF A CLAIM**

- a. After We receive Your notice, or otherwise learn, of a claim that is covered by this Policy, Our choices include one or more of the following:
  - (1) Pay the claim;
  - (2) Negotiate a settlement;
  - (3) Bring or defend a legal action related to the claim;
  - (4) Pay You the amount required by this Policy;
  - (5) End the coverage of this Policy for the claim by paying You Your actual loss resulting from the Covered Risk, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;
    - (6) End the coverage described in Covered Risk 16, 18, 19 or 21 by paying You the amount of Your insurance then in force for the particular Covered Risk, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;
  - (7) End all coverage of this Policy by paying You the Policy Amount then in force, and those costs, attorneys’ fees and expenses incurred up to that time which We are obligated to pay;
  - (8) Take other appropriate action.
- b. When We choose the options in Sections 4.a. (5), (6) or (7), all Our obligations for the claim end, including Our obligation to defend, or continue to defend, any legal action.
- c. Even if We do not think that the Policy covers the claim, We may choose one or more of the options above. By doing so, We do not give up any rights.

**5. HANDLING A CLAIM OR LEGAL ACTION**

- a. You must cooperate with Us in handling any claim or legal action and give Us all relevant information.
- b. If You fail or refuse to cooperate with Us, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.
- c. We are required to repay You only for those settlement costs, attorneys’ fees and expenses that We approve in advance.
- d. We have the right to choose the attorney when We bring or defend a legal action on Your behalf. We can appeal any decision to the highest level.

**CONDITIONS (Continued)**

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We do not have to pay Your claim until the legal action is finally decided.

- e. Whether or not We agree there is coverage, We can bring or defend a legal action, or take other appropriate action under this Policy. By doing so, We do not give up any rights.

## 6. LIMITATION OF OUR LIABILITY

- a. After subtracting Your Deductible Amount if it applies, We will pay no more than the least of:

- (1) Your actual loss;
- (2) Our Maximum Dollar Limit of Liability then in force for the particular Covered Risk, for claims covered only under Covered Risk 16, 18, 19 or 21; or
- (3) the Policy Amount then in force.

and any costs, attorneys' fees and expenses that We are obligated to pay under this Policy.

- b. If We pursue Our rights under Sections 4.a.(3) and 5.e. of these Conditions and are unsuccessful in establishing the Title, as insured:

- (1) the Policy Amount then in force will be increased by 10% of the Policy Amount shown in Schedule A, and
- (2) You shall have the right to have the actual loss determined on either the date the claim was made by You or the date it is settled and paid.

- c. (1) If We remove the cause of the claim with reasonable diligence after receiving notice of it, all Our obligations for the claim end, including any obligation for loss You had while We were removing the cause of the claim.

- (2) Regardless of 6.c.(1) above, if You cannot use the Land because of a claim covered by this Policy:

- (a) You may rent a reasonably equivalent substitute residence and We will repay You for the actual rent You pay, until the earlier of:
  - (i) the cause of the claim is removed; or
  - (ii) We pay You the amount required by this Policy. If Your claim is covered only under Covered Risk 16, 18, 19 or 21, that payment is the amount of Your insurance then in force for the particular Covered Risk.

- (b) We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to twenty-five (25) miles from the Land, and repair of any damage to that personal property because of the relocation. The amount We will pay You under this paragraph is limited to the value of the personal property before You relocate it.

- d. All payments We make under this Policy reduce the Policy Amount, then in force, except for costs, attorneys' fees and expenses. All payments We make for claims which are covered only under Covered Risk 16, 18, 19 or 21 also reduce Our Maximum Dollar Limit of Liability for the particular Covered Risk, except for costs, attorneys' fees and expenses.

- e. If We issue, or have issued, a Policy to the owner of a Mortgage that is on Your Title and We have not given You any coverage against the Mortgage, then:

- (1) We have the right to pay any amount due You under this Policy to the owner of the Mortgage, and any amount paid shall be treated as a

payment to You under this Policy, including under Section 4.a. of these Conditions;

- (2) Any amount paid to the owner of the Mortgage shall be subtracted from the Policy Amount then in force; and

- (3) If Your claim is covered only under Covered Risk 16, 18, 19 or 21, any amount paid to the owner of the Mortgage shall also be subtracted from Our Maximum Dollar Limit of Liability for the particular Covered Risk.

- f. If You do anything to affect any right of recovery You may have against someone else, We can subtract from Our liability the amount by which You reduced the value of that right.

## 7. TRANSFER OF YOUR RIGHTS TO US

- a. When We settle Your claim, We have all the rights and remedies You have against any person or property related to the claim. You must not do anything to affect these rights and remedies. When We ask, You must execute documents to evidence the transfer to Us of these rights and remedies. You must let Us use Your name in enforcing these rights and remedies.

- b. We will not be liable to You if We do not pursue these rights and remedies or if We do not recover any amount that might be recoverable.

- c. We will pay any money We collect from enforcing these rights and remedies in the following order:

- (1) to Us for the costs, attorneys' fees and expenses We paid to enforce these rights and remedies;
- (2) to You for Your loss that You have not already collected;
- (3) to Us for any money We paid out under this Policy on account of Your claim; and
- (4) to You whatever is left.

- d. If You have rights and remedies under contracts (such as indemnities, guaranties, bonds or other policies of insurance) to recover all or part of Your loss, then We have all of those rights and remedies, even if those contracts provide that those obligated have all of Your rights and remedies under this Policy.

## 8. THIS POLICY IS THE ENTIRE CONTRACT

This Policy, with any endorsements, is the entire contract between You and Us. To determine the meaning of any part of this Policy, You must read the entire Policy and any endorsements. Any changes to this Policy must be agreed to in writing by Us. Any claim You make against Us must be made under this Policy and is subject to its terms.

## 9. INCREASED POLICY AMOUNT

This Policy Amount then in force will increase by ten percent (10%) of the Policy Amount shown in Schedule A each year for the first five years following the Policy Date shown in Schedule A, up to one hundred and fifty percent (150%) of the Policy Amount shown in Schedule A. The increase each year will happen on the anniversary of the Policy Date shown in Schedule A.

## 10. SEVERABILITY

If any part of this Policy is held to be legally unenforceable, both You and We can still enforce the rest of this Policy.

## 11. ARBITRATION

- a. If permitted in the state where the Land is located, You or We may demand arbitration.
- b. The law used in the arbitration is the law of the state where the Land is located.

- c. The arbitration shall be under the Title Insurance Arbitration Rules of the American Land Title Association (“Rules”). You can get a copy of the Rules from us.
- d. Except as provided in the Rules, You cannot join or consolidate Your claim or controversy with claims or controversies of other persons.
- e. The arbitration shall be binding on both You and Us. The arbitration shall decide any matter in dispute between You and Us.
- f. The arbitration award may be entered as a judgment in the proper court.

**12. CHOICE OF LAW**

The law of the state where the Land is located shall apply to this policy.

SAMPLE



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In the event matters are discovered during the closing process which would otherwise be insured by the Covered Risks included in the policy, the Company may limit or delete insurance provided by the affected Covered Risk. In such event, a Supplemental Report will be issued prior to closing. General exceptions 1 through 6 will not appear in the ALTA Homeowner's Policy (CoverageOne).

NOTE: Covered Risks 16, 18, 19 and 21 contained in the ALTA Homeowner's Policy (2/3/2010) include certain deductibles and maximum dollar limits of coverage. The Covered Risks, the deductibles and our maximum dollar limit of liability are:

Covered Risk 16:

Your Deductible Amount: 1% of Policy Amount shown in Schedule A, or \$2,500.00 (whichever is less)

Our Maximum Dollar Limit of Liability: \$10,000.00

Covered Risk 18:

Your Deductible Amount: 1% of Policy Amount shown in Schedule A, or \$5,000.00 (whichever is less)

Our Maximum Dollar Limit of Liability: \$25,000.00

Covered Risk 19:

Your Deductible Amount: 1% of Policy Amount shown in Schedule A, or \$5,000.00 (whichever is less)

Our Maximum Dollar Limit of Liability: \$25,000.00

Covered Risk 21:

Your Deductible Amount: 1% of Policy Amount shown in Schedule A, or \$2,500.00 (whichever is less)

Our Maximum Dollar Limit of Liability: \$5,000.00



TitleOne Corporation dba Sun Valley Title  
 Authorized Agent for:  
 Stewart Title Guaranty Company

SCHEDULE A Revision: 09/02/2020 - Updated effective date and changed Underwriters

1. Commitment Date: August 31, 2020 at 08:00 AM
2. Policy or Policies to be issued:

X	ALTA Owners Policy (6/17/06) Proposed Insured: 755 S Broadway, LLC	<i>Extended Coverage</i>	Policy Amount: Premium:	\$1,250,000.00 \$3,608.00
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*CoverageOne or Extended* Portion of Premium: \$328.00

3. The estate or interest in the land described or referred to in this Commitment is:  
Fee Simple
4. Title to the estate or interest in said land is at the effective date hereof vested in:  
M. Brent Stevens and M. Annette Stevens, as Co-Trustees of the Stevens Living Trust, dated December 14, 2005
5. The land referred to in this Commitment is described as follows:  
See Attached Schedule C

Stewart Title Guaranty Company  
 TitleOne Corporation dba Sun Valley Title

By:

---

Nick Busdon, Authorized Signatory

SCHEDULE B, PART I  
Requirements

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. NOTE: According to the available records, the purported address of said land is:

200 N Leadville Ave, Ketchum, ID 83340

6. Necessary conveyance to the proposed insured.

7. The Company will require a copy of the Articles of Organization, Operating Agreement, and other related documents for 755 Broadway LLC showing the power and authority of the party or parties who plan to execute the forthcoming conveyance or mortgage on behalf of said limited liability company.

8. Note: In the event this transaction fails to close, or this commitment is cancelled, a cancellation fee will be charged to comply with the State of Idaho Department of Insurance regulations.

9. The Company will require delivery of and approval by the Company of an Indemnity and Affidavit as to Debts, Liens and Possession, prior to the issuance of the policy.

10. The Company will require delivery of and approval by the Company of a properly executed, Lien Subordination by Burks Excavation if building demo will take place prior to closing.

SCHEDULE B, PART II  
Exceptions from Coverage

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company. If the Company's requirements are satisfied, Exceptions 1 through 7 will be removed on Enhanced/Extended coverage policies.

Exceptions:

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. Rights or claims of parties in possession not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, and that is not shown by the Public Records.
4. Easements, or claims of easements, not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and 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 to title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
7. Taxes or special 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 to such proceedings whether or not shown by the records of such agency, or by the public records.
8. Taxes for the year 2019 are paid in full.  
Parcel Number: RPK00000230010  
Original Amount: \$5,449.28  
Without homeowner's exemption
9. Taxes, including any assessments collected therewith, for the year 2020 which are a lien not yet due and payable.
10. Water and sewer charges, if any, for the City of Ketchum.
11. Easements, reservations, restrictions, and dedications as shown on the official plat of Ketchum Townsite.
12. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded April 12, 1937 as Instrument No. [75052](#).
13. Right of way for ditches, tunnels, telephone, and distribution lines constructed by authority of the United States, as granted to the United States under the provisions of Section 58-604 Idaho Code.

(End of Exceptions)



SCHEDULE C

Legal Description:

Lot 1, Block 23 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

After Recording Mail to:  
Michael R. Carr  
755 South Broadway  
2667 South Tacoma Way  
Tacoma WA 98409.

**DECLARATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS  
FOR:  
208 CONDOMINIUMS, A CONDOMINIUM**

Grantor: 755 South Broadway, a Colorado LLC

Grantee: The Public

Reference Numbers of Documents Assigned or Released: N/A

Legal Description (abbreviated):

Complete Legal Description is located on Exhibit "A" of document Assessor's Tax Parcel  
Number: RPK00000230010

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**DECLARATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS FOR:**

**208 N. LEADVILLE CONDOMINIUMS, A CONDOMINIUM**

Pursuant to the Idaho Condominium Property Act (“The Act”), Idaho Code 55-1501 et seq, defined in Section 1.8.1 and for the purpose of submitting the Property hereinafter described to the provisions of said Act, the undersigned, being sole owner(s), lessee(s) or possessor(s) of said Property, make the following Declaration. By acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the Property or any Unit in the Condominium created by this Declaration, it is agreed that this Declaration, together with the Survey Map and Plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the Condominium development mutually beneficial to all of the described Units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire Condominium and upon each such Unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the Condominium or any security interests therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments and regardless of any subsequent forfeitures, foreclosures, or sales of Units under security instruments.

The name of this Condominium is 208 Condominiums, A Condominium.

**Article 1  
INTERPRETATION**

1.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Condominium under the provisions of Idaho law. It is intended and covenanted also that, insofar as it affects this Declaration and Condominium, the provisions of the Act under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration insofar as reasonably possible.

1.2 Consistent with Act. The terms used herein are intended to have the same meaning given in the Act unless the context clearly requires otherwise or to so define the terms would produce an **illegal** or improper result. This condominium project has been created and exists in full compliance with Idaho state law requirements for condominiums and all other applicable law and regulations.

1.3 Covenant Running with Land. It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, binding on

its successors and assigns, all subsequent Owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable.

1.4 Percent of Owners or Mortgagees. For purposes of determining the percentage of Owners or Mortgagees, or percentage of voting power for, approving a proposed decision or course of action in cases where an Owner owns, or a Mortgagee holds Mortgages on, more than one Unit, such owner shall be deemed a separate Owner for each such Unit so owned and such Mortgagee shall be deemed a separate Mortgagee for each such first Mortgage so held.

1.5 Declarant Is Original Owner. Declarant is the original Owner of all Units and Property and will continue to be deemed the Owner thereof except as conveyances or documents changing such ownership regarding specifically described Units are recorded.

1.6 Captions and Exhibits. Captions given to the various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.7 Inflationary Increase in Dollar Limits. Any dollar amounts specified in this Declaration in connection with any proposed action or decision of the Board or Association may, in the discretion of the Board, be increased proportionately by the increase in the consumer price index for the city of Ketchum, Idaho, or the consumer price index that is tied to the Ketchum/Sun Valley, Idaho area, for All Urban Consumers, prepared by the United States Department of Labor for the base period, January 1<sup>st</sup> of the calendar year following the year in which the Declaration was recorded, to adjust for any deflation in the value of the dollar.

1.8 Definitions

1.8.1 "The Act" means Idaho Code 55-1501 et seq.

1.8.2 "Allocated Interest" means those undivided interests in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit more particularly provided for in Article 8 and as shown in Exhibit C.

1.8.3 "Assessment" means all sums chargeable by the Association against a Unit including, without limitation: (a) regular and special Assessments for Common Expenses, charges, and fines imposed by the Association; (b) interest and late

charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

1.8.4 "Association" means all of the Owners acting as a group in accordance with the Bylaws and with this Declaration as it is duly recorded and as they may be lawfully amended, which Association is more particularly provided for in Article 9 .

1.8.5 "Board" means the board of directors of the Association provided for in Section 10.3.

1.8.6 "Books and Records of the Association" shall be given the broadest possible meaning and shall include, without limitation, exception or qualification, the following:

(a) Declaration, Survey Map and Plans, Articles of Incorporation, Bylaws and other rules and regulations governing the Condominium (or any part thereof), and all amendments thereto;

(b) minute books, including all minutes, of all Owner, Board, Officer, Committee or other meetings relating to the Condominium (or any part thereof), including all reports, documents, communications or written instruments attached thereto or referenced therein);

(c) all financial records, including without limitation canceled checks, bank statements, and financial statements of the Association and source documents from the time of incorporation of the Association through the current date;

(d) all reports, documents, communications, or written instruments pertaining to the personal property of the Association or the Condominium (or any part thereof);

(e) all reports, documents, communications, written instruments, plans, and specifications pertaining to the construction, remodeling, maintenance, repair, replacement, or condition of the Condominium (or any part thereof);

(t) all insurance policies or copies thereof for the Condominium (or any part thereof) and Association;

(g) copies of any certificates of occupancy that may have been issued for the Condominium (or any part thereof);

{h) any other permits or notices issued by governmental bodies applicable to the Condominium (or any part thereof) in force or issued;

(i) all written warranties that are still in effect for the Condominium (or any part thereof), or any other area or facilities which the Association has the responsibility to maintain and repair, from the Declarant, contractor, subcontractors, suppliers, and manufacturers, together with all owners' manuals or instructions furnished with respect to installed equipment or building systems;

G) a roster of Owners, Officers and Board members and eligible mongooses and their addresses and telephone numbers, if known;

(k) any leases of the Common Elements or areas and other leases to which the Association is a party; any employment, service, consultation, professional or other contracts in which the Association, Board or Officer is one of the contracting parties, or in which the Association or the Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge, or which in any way relate to the Condominium (or any part thereof);

(l) all reports, documents, communications, or written instruments pertaining to any litigation or other legal or mediation/arbitration proceeding (whether pending, threatened, or under consideration) to which the Association (or Board, Officer, or Owner) is or may be a party, or which may relate to or affect the Condominium (or any part thereof), and

(m) all other all reports, documents, communications, or written instruments in any way relating to or affecting the Association, Board, Officers, Owners, or the Condominium (or any part thereof).

1.8.7 "Bylaws" shall mean the Bylaws of the Association provided for in Article 9.

1.8.8 "Common Elements" means all portions of the Condominium other than the Units.

1.8.9 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.8.10 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to Article 8.

1.8.11 "Condominium" means the condominium created by this Declaration and related Survey Map and Plans pursuant to the Act.

1.8.12 "Conveyance" means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract and with respect to a Unit in a



leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

1.8.13 "Declarant" means any person or group of persons acting in concert who (a) executed as Declarant this Declaration; or (b) reserves or succeeds to any Special Declarant Right under the Declaration.

1.8.14 "Declarant Control" means the right, if expressly reserved by this Declaration, of the Declarant or persons designated by the Declarant to appoint and remove Association officers and Board members, or to veto or approve a proposed action of the Board or Association; provided, in no event shall exercising the voting rights allocated to a Unit or Units owned by the Declarant or Declarant's affiliates be deemed "Declarant Control".

1.8.15 "Declaration" means this Declaration and any amendments thereto.

1.8.16 "Development Rights" means any right, if expressly reserved by the Declarant in this Declaration to: (a) add real property or improvements to the Condominium; (b) create Units, Common Elements, within real property included or added to the Condominium; (c) subdivide Units or convert Units into Common Elements; (d) withdraw real property from the Condominium; or (e) reallocate Common Elements with respect to Units that have not been conveyed by the Declarant.

1.8.17 "Dispose" or "Disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a Unit but does not include the transfer or release of a security interest.

1.8.18 "Eligible Mortgagee" means a mortgagee of a Unit or the Mortgagee of the Condominium that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees.

1.8.19 "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a Mortgage or a deed in lieu thereof.

1.8.20 "Identifying Number" means the designation of each Unit in a Condominium.

1.8.21 "Interior Surfaces" (where that phrase is used in defining the boundaries of Common Elements) shall not include paint, paneling, and other such finished surface coverings. Said finished coverings, along with fixtures and other tangible personal property located in and used in connection with said Common Element, shall be deemed a part of said Common Element.

1.8.22 "Limited Common Element" means a portion of the Common Elements allocated by this Declaration (or by subsequent amendments thereto) or by operation of law for the exclusive use of one or more but fewer than all of the Units as provided in Article 7.

1.8.23 "Manager" means the person retained by the Board to perform such management and administrative functions and duties with respect to the Condominium as are delegated to such person and as are provided in a written agreement between such person and the Association.

1.8.24 "Mortgage" means a mortgage or deed of trust that creates a lien against a Unit and also means a real estate contract for the sale of a Unit.

1.8.25 "Mortgagee " means the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Unit created by mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Unit. A Mortgagee of the Condominium and a Mortgagee of a Unit are included within the definition of Mortgagee.

1.8.26 "Mortgagee of a Unit" means the holder of a Mortgage on a Unit, which mortgage was recorded simultaneous with or after the recordation of this Declaration. Unless the context requires otherwise, the term "Mortgagee of a Unit" shall also be deemed to include the Mortgagee of the Condominium.

1.8.27 "Mortgagee of the Condominium" means the holder of a Mortgage on the Property which this Declaration affects, which Mortgage was either recorded prior to the recordation of this Declaration; or was recorded against all Units after the recordation of this Declaration but prior to the recorded conveyance of any Unit. The term "Mortgagee of the Condominium" does not include Mortgagees of the individual Units.

1.8.28 "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entities.

1.8.29 "Property" or "Real Property" means any fee, leasehold or other estate or interest in, over, or under the land described in Exhibit A, including buildings, structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Property" included parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water, and personally intended for use in connection therewith.

1.8.30 "Purchaser" means any person, other than Declarant, who by means of a disposition acquires a legal or equitable interest in a Unit other than (a) a leasehold interest including renewal options, of less than twenty years at the time of creation of the

Unit, or (b) as security for an obligation.

1.8.31 "Renting or Leasing" a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), in exchange for the payment of rent (that is, money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

1.8.32 "Residential Purposes" means use for dwelling or recreational purposes, or both.

1.8.33 "Special Declarant Rights" means rights, if expressly reserved in this Declaration for the benefit of Declarant to:

(a) complete improvements indicated on Survey Maps and Plans filed with the Declaration under the Act

(b) exercise any Development Right under Section 23.2;

(c) maintain sales offices, management offices, signs advertising the Condominium, and models under Section 23.1.2;

(d) use easements through the Common Elements for the purpose of making improvements within the Condominium or within real property which may be added to the Condominium;

make the Condominium part of a larger Condominium or a development under the Act

(e) make the Condominium subject to a master association under the Act; or

1.8.34 "Survey Map and Plans" means the survey map and the plans recorded simultaneously with this Declaration and any amendments, corrections, and addenda thereto subsequently recorded.

1.8.35 "Unit" means a portion of the Condominium designated for separate ownership, the boundaries of which are described pursuant to Article 4.

1.8.36 "Unit Owner" means, subject to Section 1.9.5, a Declarant or other person who owns a Unit but does not include a person who has an interest in a Unit solely as security for an obligation; or is merely "renting" or "leasing" a Unit as defined in Section 1.8.3 1. "Unit Owner" means the vendee, not the vendor, of a Unit under a real estate contract, as well as any Mortgagee entitled to exercise a vote under Section 9.3.5.

1.9 Construction and Validity

1.9.1 All provisions of the Declaration and Bylaws are severable.

1.9.2 The rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, rules, or regulations adopted pursuant to the Act

1.9.3 In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with the Act.

1.9.4 The creation of this Condominium shall not be impaired and title to the Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the Declaration or Survey Map and Plans or any amendment thereto to comply with the Act.

1.9.5 If the Declaration or Bylaws now or hereafter provide that any officers or directors of the Association must be Unit Owners, then notwithstanding the definition contained in Section 1.8.35, the term "Unit Owner" in such context shall, unless the Declaration or Bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a Unit Owner. Any officer or director of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

**Article2**  
**DESCRIPTION OF REAL PROPERTY**

The Real Property included in the Condominium is described in Exhibit A attached hereto.

**Article 3**  
**DESCRIPTION OF UNITS**

There may be as many as ten (10) Units created in this condominium which shall not be created in phases. Exhibit B attached hereto sets forth the following:

3.1 Unit Number. The Identifying Number of Each Unit created by the Declaration.

3.2 Unit Description. With respect to each existing Unit:

3.2.1 The approximate square footage.

3.2.2 The number of bathrooms, bedrooms and fireplaces within a Unit.

3.2.3 Access to Common Ways and Public Streets. Each Unit has direct access to Common Area parking areas and/or driveways, and all such Common Areas have direct access to public streets.

#### **Article 4 BOUNDARIES**

4.1 Unit Boundaries. Units shall include any improvements now or hereafter located within said space.

4.2 Monuments as Boundaries. Any physical boundaries of a Unit constructed in substantial accordance with the original Survey Map and Plans thereof become its boundaries rather than the bounds expressed in the Survey Map and Plans, regardless of settling or lateral movements of the said physical boundaries or minor variances between boundaries shown on the Survey Map and Plans and those of any said physical boundaries. This Section does not relieve Declarant or any other person of liability for failure to adhere to the Survey Map and Plans.

4.3 Relocation of Boundaries, Adjoining Units.

4.3.1 In General. Subject to the provisions of the Declaration and other provisions of law, the boundaries between adjoining Units may only be relocated by an amendment to the Declaration upon application to the Association by the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Unless the Board determines within thirty days that the reallocations are unreasonable, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by those Unit owners, contains words or conveyance between them and is recorded in the name of the grantor and the grantee.

4.3.2 Survey Map and Plans. The Association shall obtain and record Survey Maps or Plans complying with the requirements of the Act necessary to show the altered boundaries between adjoining Units and their dimensions and Identifying Numbers.

#### **Article S DESCRIPTION OF OTHER IMPROVEMENTS**

Within the condominium and within the common elements, there has been constructed parking areas and landscape for the benefit of the Unit owners.

**Article 6**  
**DESCRIPTION OF COMMON ELEMENTS**

Except as otherwise specifically allocated by the Provisions of Article 7 or other provisions of this Declaration or amendments hereto, the Common Elements consist of all portions of the Condominium except Units and include the following:

6.1 The Real Property described in Exhibit A, and improvements thereto, which are not part of a Unit.

6.2 Installations of utility services such as power, light, telephone, and in general all apparatus and installations existing for common use, including but not limited to, installed sanitary sewer systems.

6.3 The driving areas which provide access to the Units and are set forth as private lane (common element) on the Survey Map and Plans.

6.4 Any parking or storage areas.

6.5 All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in Common use. Common Elements shall include all existing fences, either on the perimeter of the condominium or within any Units as shown on the Survey Map and Plans.

**Article 7**  
**DESCRIPTION OF LIMITED COMMON ELEMENTS**

7.1 Limited Common Elements. The Limited Common Elements, if any, are allocated for the exclusive use of the Owner or Owners of one or more than one Unit to which they are allocated, provided by law or some other provision of this Declaration, or amendments thereto.

**Article 8**  
**ALLOCATED INTERESTS**

The Allocated Interests of each Unit (that is, the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit) are set forth in Exhibit C attached hereto. The Allocated Interest appertaining to each Unit cannot be changed except as provided in this Declaration. The Allocated Interest and the title to the respective Units shall not be separated or separately

conveyed and each undivided interest shall be deemed to be conveyed with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the title to the Unit. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an Allocated Interest made without the Unit to which that Interest is allocated is void.

## **Article 9 OWNER'S ASSOCIATION**

9.1 Form of Association. The Association shall be organized as a non-profit corporation under the laws of the State of Idaho and shall be known as 208 N. Leadville Condominium Association.

### 9.2 Membership

9.2.1 Qualification Each Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit so owned; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Unit Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Unit shall be the sole qualification for membership in the Association

9.2.2 Transfer of Membership. The Association membership of each Owner (including Declarant) shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

### 9.3 Voting.

9.3.1 Number of Votes. The total voting power of all Owners shall be equal to the total number of Units, with one vote allocated to each Unit

9.3.2 Multiple Owners. If only one of the multiple Owners of a Unit is present at a meeting Of the Association, the owner is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

9.3.3 Proxies. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

9.3.4 Association Owned Units. No votes allocated to a Unit owned by the Association may be cast and in determining the per-centage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded.

9.3.5 Pledged Votes. If an Owner is in default under a first Mortgage for Ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Unit owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, or in the event the record Owner or Owners have otherwise pledged their vote regarding special matters to a Mortgagee under a duly recorded Mortgage, only the vote of such Mortgagee will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Owners and their respective Mortgagees, if any.

#### 9.4 Meetings. Notices and Quorums.

9.4.1 Meetings. A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Board, or by Unit owners having twenty percent of the votes in the Association. Not less than ten nor more than sixty 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 first class United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or to the mailing address designated in writing by a Mortgagee entitled to vote under Section 9.3.5. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the Declaration or Bylaws, changes in the previously approved budget that result in a change in Assessment obligations, and any proposal to remove a director or officer.

#### 9.4.2 Quorums.

- (a) A quorum is present throughout any meeting of the Association if the



owners of Units to which twenty-five percent of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

(b) A quorum is deemed present throughout any meeting of the Board if persons entitled to cast fifty percent of the votes on the Board are present at the beginning of the meeting.

9.5 Bylaws of Association.

9.5.1 Adoption of Bylaws. Bylaws (and amendments thereto) for the administration of the Association and the Property, and for other purposes not inconsistent with the Act or with the intent of this Declaration shall be adopted by the Association upon concurrence of those voting Owners holding a majority of the total voting power. Amendments to the Bylaws may be adopted at any regular or special meeting. Declarant may adopt initial Bylaws.

9.5.2 Bylaws Provisions. The Bylaws may contain supplementary, not inconsistent, provisions regarding the Operation and Administration of the Condominium.

**Article 10**  
**MANAGEMENT OF CONDOMINIUM**

10.1 Administration of the Condominium. The Unit Owners covenant and agree that the administration of the Condominium shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association which are incorporated herein by reference and made a part hereof.

10.2 Election and Removal of Board and Officers.

10.2.1 Election By Owners in General. The Unit Owners (including Declarant and any Affiliate of Declarant to the extent Units are owned by Declarant or any such Affiliate) shall elect a Board of at least three members, at least a majority of whom must be Unit Owners. The Board shall elect the officers. Such members of the Board and officers shall take office upon election.

10.2.2 Election By Owners, Other Than Declarant.

(a) The affairs of the Association shall initially be governed by a Board composed of at least one (1) but not more than three (3) members as determined by Declarant.

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created (in all phases) to Unit Owners other than Declarant at least one (1) member and not less than twenty-five percent (25%) of the

members of the Board may be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be created (in all phases) to Unit Owners other than a Declarant, not less than thirty-three and one-third percent of the members of the Board may be elected by Unit Owners other than the Declarant.

(c) Commencing with the first Association meeting at which the Unit Owners are to elect the entire Board (other than a meeting held when Declarant still owned all of the Units), and unless the Bylaws are amended at that meeting, the Board shall be composed of three (3) Members (not including a Board member designated by Declarant), a majority of whom must be Owners of Units in the Condominium; provided, the Declarant (or a representative of Declarant) shall have the right (which may not be terminated by amendment to the Declaration or Bylaws, and which shall continue so long as any Special Declarant Rights or Developments remain in effect or Declarant has any obligation or liability of any express or implied warranty) to serve as a full non-voting member of the Association Board (with all of the rights and powers of a Board member except for the right to vote).

10.2.3 Taking Office: Officers. The Board shall elect the officers of the Association. Such members of the Board and officers shall take office upon election.

10.2.4 Removal. The Unit Owners, by a two-thirds vote of the voting power in the Association present and entitled to vote at any meeting of the Unit Owners at which a quorum is present may remove any member of the Board with or without cause.

### 10.3 Management by Board.

10.3.1 On Behalf of Association Except as otherwise provided in the Declaration, the Bylaws, Section 10.3.2 or the Act, the Board shall act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise ordinary and reasonable care.

10.3.2 Not on Behalf of Association The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to Section 21.1, to terminate the Condominium pursuant to the Act, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board pursuant to section 10.2; but the Board may fill vacancies in its membership for the unexpired portion of any term.

10.3.3 Budget Approval. Within thirty days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of

the summary. Unless at that meeting the Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, or the required notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

#### 10.4 Authority of the Association

10.4.1 The Association acting by and through the Board, or a Manager appointed by the Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have all powers and authority permitted to the Association under the Act and this Declaration, including without limitation:

- (a) Adopt and amend Bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Unit Owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Subject to the provisions of the Declaration, institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium; provided, that on matters affecting a Unit the Association must obtain the prior written consent of the Owner of the Unit affected;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to Section 10.8;
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or

operation of the Common Elements, and for services provided to Unit Owners;

(k) Impose and collect charges for late payment of assessments and, after notice and an opportunity to be heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in the Declaration or Bylaws or rules and regulations adopted by the Board levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of the Declaration, Bylaws, and rules and regulations of the Association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the Declaration, resale certificates required by the Act and statements of unpaid Assessments;

(m) Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the Declaration provides;

(o) Exercise any other powers conferred by the Declaration or Bylaws;

(p) Exercise all other powers that may be exercised in this state by the same type of corporation as the Association;

(q) Exercise any other powers necessary and proper for the governance and operation of the Association;

(r) Maintain and repair any Unit, its appurtenances and appliances, and Common Elements, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Element or preserve the appearance and value of the Condominium, and the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner, provided that the Board shall levy a special charge against the Unit of such Owner for the cost of such maintenance or repair, and

(s) Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorney fees) incurred by the Board by reason of such lien or liens shall be specially

charged against the Owners and the Units responsible to the extent of their responsibility.

10.4.2 The Board's power hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Association funds a capital addition or improvement (other than for purposes of restoring, repairing or replacing portions of the Common Elements) having a total cost in excess of Five Thousand Dollars (\$5,000), without first obtaining the affirmative vote of a majority of Owners at a meeting called for such purpose, or if no such meeting is held, then the written consent of a majority of Owners; provided that any expenditure or contract for each capital addition or improvement in excess of Twenty-Five Thousand Dollars (\$25,000) must be approved by Owners having not less than sixty-seven percent (67%) of the voting power.

10.4.3 Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all of the Owners or any of them.

10.4.4 The Board and its agents or employees may enter any Unit or Common Element when necessary, in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board paid for as a Common Expense if the entry was due to an emergency, or for the purpose of maintenance or repairs to Common Elements where the repairs were undertaken by or under the direction or authority of the Board; provided, if the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Common Elements.

10.5 Borrowing by Association. In the discharge of its duties and the exercise of its powers as set forth in Section 10.4.1, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and to secure the repayment of such funds, assess each Unit (and the Owner thereof) for said Units pro rata share of said borrowed funds and the obligation to pay said pro rata share shall be a lien against said Unit and the undivided interest in the Common Elements appurtenant to said Unit. Provided, that the Owner of a Unit may remove said Unit and the Allocated Interest in the Common Elements appurtenant to such Unit from the lien of such assessment by payment of the Allocated Interest in Common Expense Liability attributable to such Unit. Subsequent to any such payment, discharge, or satisfaction, the Unit and the Allocated Interest in the Common Elements appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit and the Allocated Interest in the Common Elements appurtenant thereto not so paid, satisfied, or

discharged.

## 10.6 Association Records and Funds

10.6.1 Records and Audits. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act in providing resale certificates. All Books and Records of the Association (as defined in Section 1.8) shall be made reasonably available (at all reasonable hours of weekdays or under other reasonable circumstances) for examination and copying by Declarant, and any Owner, Mortgagee, insurer and guarantor of any Mortgage on any Unit, or their agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. If this Condominium consists of fifty or more Units, the financial statements of the Condominium shall be audited at least annually by a certified public accountant. If this Condominium consists of fewer than fifty Units, an annual audit is also required but may be waived annually by Owners (other than the Declarant) of Units to which sixty percent of the votes are allocated, excluding the votes allocated to Units owned by the Declarant.

10.6.2 Fund Commingling. The funds of the Association shall be kept in accounts in the name of the Association and shall not be commingled with the funds of any other Association, nor with the funds of any Manager of the Association or any other person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the Association.

10.7 Association as Trustee With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry, A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

## 10.8 Common Elements. Conveyance. Encumbrance.

10.8.1 In General. Portions of the Common Elements which are not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, including eighty percent (80%) of the votes allocated to Units not owned by Declarant or an Affiliate of Declarant, agree to that

action; but all the Owners of Units to which any Common Element is allocated must agree in order to convey that Common Element or subject it to a security interest. Proceeds of the sale or financing are an asset of the Association.

10.8.2 Agreement. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is situated and is effective only upon recording.

10.8.3 Conditions Precedent. The Association, on behalf of the Unit Owners, may contract to convey Common Elements or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 10.8.1 and 10.8.2. Thereafter, the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, including the power to execute deeds or other instruments.

10.8.4 Void Transaction. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

10.8.5 Support Right. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

10.8.6 Prior Encumbrances. A conveyance or encumbrance of Common Elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances either on Units (and their Allocated Interest in Common Elements) or on Common Elements.

10.9 Termination of Contracts and Leases. If entered into before the Board elected by the Unit Owners pursuant to Section 10.2.2 takes office, (1) any management contract, employment contract, or lease or recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an Affiliate of a Declaration, or (3) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to Section 10.2.2 takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This Section does not apply to any lease, the termination of which would terminate the Condominium or reduce its size, unless the real property subject to that lease was included in the Condominium for the purpose of avoiding the right of the

Association to terminate a lease under this Section.

10.10 Governmentally Required Maintenance, etc. Any insurance, maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one owner, shall be the sole and exclusive responsibility of the Association (not the Declarant) and any cost incurred in connection therewith shall be a Common Expense. In furtherance of the generality of the foregoing, and not by way of limitation, such work shall include maintenance of any grass-lined swales and proper disposal of clippings; maintenance of wetland plantings; replacement of wetland and landscape plantings that die during any required maintenance period; maintenance of public and private storm sewer and retention systems. Declarant shall have the right but not the obligation, to perform any such work if the Association fails to do so. The Association shall promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by declarant as a result of the Declarant performing or the Association's failure to perform, such work (including any work necessary to obtain a release, or avoid a forfeiture, of any cash deposit or other bond made by Declarant.

10.11 Maintenance Repair, Inspection and Warranty Procedure. The Association shall defend, indemnify and hold Declarant harmless from any expense or claim arising from or relating to any Association's failure to promptly and properly maintain, repair or inspect the Condominium (or any part thereof), or the Association's failure to promptly and properly make a claim (or comply with dispute resolution procedures) under any warranty obtained or issued by Declarant. Declarant shall not be liable under any express or implied warranty (including without limitation the Idaho Condominium Act implied warranties) for loss or damage which the Association or Owners have not taken timely action to minimize, or which is caused or made worse by a failure to properly and promptly maintain, repair, or inspect (including without limitation failure to fully comply with any inspection, monitoring, maintenance or repair checklist, manual or recommendation provided by Declarant (or a contractor, subcontractor or manufacturer) to the Association or Owners.

10.12 Association Litigation.

10.12.1 The term "Legal Proceedings" as used herein shall include litigation, administrative mediation, arbitration or other proceedings in the name of the Association on behalf of itself or two or more Unit Owners on matters affecting the Condominium.



10.12.2 The provisions of this Section 10.12 shall not apply to Legal Proceedings, as a result of which the Association could not be held responsible for costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) in a aggregate amount of not more than \$5,000 (including without limitation fees contingent on a result), and which involve:

- (a) collection of delinquent regular or special Assessments, the enforcement of any Assessment lien and interest and penalties in connection therewith;
- (b) collection of monies owed to the Association, or recovery of damages caused to the Association or Condominium (or any part thereof), when the principal amount to be recovered involves less than \$25,000;
- (c) enforcement of the provisions of the Declaration, Articles, Bylaws or rules and regulations of the Association;
- (d) defense of a claim against the Association, when the principal amount to be recovered involves less than \$25,000; or
- (e) the filing of a complaint, answer or other pleading for the limited purpose satisfying a statute of limitation deadline, avoiding entry of a default order or judgment, or preventing personal injury or serious harm to the Condominium (if such purpose is certified in good faith by the Association's attorney), but except for this limited purpose the other conditions of Section 10. 12 must be satisfied.

10.12.3 In order for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in Legal Proceedings, and in order for the Association to become obligated in the aggregate sum in excess of \$5,000, to professionals, consultants or other experts in connection with Legal Proceedings, the following conditions must first be satisfied:

- (a) the Board has received a detailed written summary ("Litigation Summary") concerning the substance of the proceeding, including: (i) agreements with lawyers, experts and consultants; issues involved; (ii) legal and factual basis of anticipated allegations on behalf of and against the Association; (iii) remedies to be sought on behalf of and against the Association; (iv) estimated amount to be sought on behalf of (and that could be sought from) the Association, (v) Association's estimated costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) and any third-party costs of suit that the Association would pay if the Association does not prevail; (vi) reports and recommendations by any professionals or consultants retained by the Association (and by any opposing party, if available); (vii) any written demands or settlements offers made by an opposing party (the Board shall request that an opposing party make such demand and settlement offer); and (viii) any negative consequences that the Association, Condominium or Owners could suffer during such proceedings including

required disclosures to prospective purchasers, impediments to Unit refinancing, or diminishment of Unit value.

(b) if the proceeding will involve a claim against the Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) concerning construction defects or other condition of the Condominium, the Litigation Summary will also include: a description of the construction defects or other condition (which shall also have been transmitted to the Declarant); and any written response from the Declarant concerning such defects (including any offer to settle by performing remedial work, payment of cash or a combination of both).

(c) A copy of the Litigation Summary shall be transmitted to all Owners, together with a written notice of the Owner's right of access to the Books and Records of the Association as provided in Section 10.6.1, and a written notice of a special Owner's meeting to be convened as provided in this Declaration, at which meeting the Declarant (and its representatives shall be entitled to attend and participate in on a non-voting basis }.

(d) The Owners holding eighty percent (80%) of the total Association voting power must grant approval for the Association (or the Board acting on behalf of the Association} to institute, defend, or intervene in legal proceedings, provided, that under no circumstances may legal proceedings be commenced against Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) with respect to any alleged construction defect or other condition which Declarant has agreed in writing to remedy and is proceeding with reasonable due diligence to do so.

## **Article 11 USE; REGULATION OF USES;**

11.1 Residential Units. The Units on the second and third floor may only be used for single-family residential purposes. The units on the lower level and main floor may be used for commercial office or retail. No restaurants shall be allowed.

11.2 Vehicle Parking Restrictions. Unit Owners and their guests may only park automobiles, light trucks, passenger vans within the Parking Area of the Common Elements. Said vehicles may not be permanently parked or stored within said Parking Area and the Board of the Association may adopt rules and regulations concerning the parking of said vehicles. No vehicle of any type may be parked in the Parking Area for longer than 48 hours without the express written approval from the Board of the Association. The Board may require removal of any vehicle and any other personal property improperly stored or placed or parked within the Common Elements in violation of this Declaration.

11.3 Common Drive and Walks. Common drives shall be used exclusively for normal transit and no obstructions shall be placed thereon or therein except by express

written consent of the Board.

11.4 Maintenance.

11.4.1 Units. Each Unit owner shall at its sole expense have the right and duty to keep the Unit improvements, equipment of appliances and appurtenances located therein in good order, condition and repair. Each owner shall be responsible for the construction, alteration, maintenance, repair or replacement of any improvements in said Unit.

11.4.2 Fences. No fences shall be constructed within the Common Elements or Limited Common Elements without the express written consent of the Board of the Association.

11.5 Pets. Domestic household pets, such as dogs and cats, may be kept by Unit Owners; provided, that the keeping of pets shall be subject to such reasonable rules and regulations as the Board may from time to time adopt. The Board may require the removal of any animal which the Board in the exercise of reasonable discretion finds disturbing other Unit Owners unreasonably and may exercise this authority for specific animals even though other animals are permitted to remain. Animals which are declared to be dangerous under state law are prohibited, although no animal shall be deemed dangerous on account of its particular breed.

Pets will not be allowed on any Common Elements unless they are on a leash or being carried and are being walked to or from the Unit to a public walk or street. At all times the Common Elements shall be free of any pet debris, including food and feces matter. At no time is pet feces to be deposited in garbage. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Condominium, nor may any animal be bred or used therein for any commercial purpose. Any outside facility for pets must be kept clean on a daily basis and no waste products or food be left in either the facility or on the Property.

11.6 Offensive Activity. No noxious or offensive activity shall be carried on in any Unit or Common Element, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

All occupants shall avoid making noises, and using musical instruments, radios, and amplifiers in such manner as may disturb other occupants. Owner shall also control their pets so that they do not disturb other occupants.

No refuse, garbage or trash of any kind shall be thrown, placed or kept on any Common Element of the project outside of the disposal facilities provided for such purposes.

Every Unit Owner and occupant shall at all times keep his Unit in a strictly clean and sanitary condition, free of rodents and pests, and observe and perform all laws, ordinances, rules and regulations, including kennel laws and animal control laws.

11.7 Common Element Alterations. Nothing shall be altered or constructed in, or (except for an Owner's personal property) removed from, the Common Element except upon the written consent of the Board and after procedures required herein or by law.

11.8 House Rules. The Board or the Association membership is empowered to pass, amend and revoke detailed, reasonable administrative rules and regulations, or "House Rules," necessary or convenient from time to time to ensure compliance with the general guidelines of this Article. Such House Rules shall be binding on all Unit Owners, lessees, guests and invitees upon adoption by the Board or Association.

11.9 Rental Units.

(Reserved).

11.10 Timesharing. Timesharing, as defined in the Idaho Timeshare Act is prohibited. Short term (under 30 days) vacation rentals shall be allowed.

11.11 Exemption for Declarant. The provisions with respect to design control for Unit structures as set forth above shall not apply to any Unit structures constructed by the Declarant on any Unit owned by the Declarant.

## **Article 12 COMMON EXPENSES AND ASSESSMENTS**

12.1 Estimated Expenses Within sixty (60) days prior to the beginning of each calendar year, or such other fiscal year as the Board may adopt, the Board shall estimate the charges including Common Expenses, and any special charges for particular Units to be paid during such year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as for maintenance repair, replacement and acquisition of Common Elements; and shall take into account any expected income and any surplus available from the prior year's operating fund. Without limiting the generality of the foregoing but in furtherance thereof, the Board shall create and maintain from regular monthly Assessments a reserve fund for replacement of those Common Elements which can reasonably be expected to require replacement or a major repair prior to the end of the useful life of the buildings. The Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace, or perform such major repair, to each Common Element covered by the fund at the end of the estimated useful life of each such Common Element. The initial Board, whether appointed by Declarant or elected by Unit Owners, may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for

any reason (including non-payment for any reason of arty Owner's Assessment), the Board may at any time levy a further Assessment, which shall be assessed to the Owners according to Section 12.4. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future Assessments and/or refund such excess funds. The Common Expenses as defined above shall include but are not limited to the costs of maintaining, repairing and replacing roads, Common Areas, storm water collection and disposition system, septic system community drain fields and septic tanks, electricity and septic system pumps in connection therewith, street lights, if any, liability insurance, security services, and utilities for the benefit of the Common Areas including water and power, and any other expenses which the Association shall deem to be for the benefit of all Unit Owners.

12.2 Payment by Owners. Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Unit.

12.3 Commencement of Assessments. The Declarant in the exercise of its reasonable discretion shall determine when the Association shall commence making Assessments; provided, that in all events the Assessments shall commence on a date within 60 days after the date on which seventy-five percent (75%) of the Units which may be created, have been conveyed to Owners (other than Declarant or on Affiliate of Declarant). Until the Association makes an Assessment, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments must be made against all Units, based on a budget adopted by the Association; provided, until a date within 60 days after the date on which seventy-five percent (75%) of the Units which may be created have been conveyed to Owners (other than Declarant or an Affiliate of Declarant):

(a) the Board (whether appointed by Declarant or elected by Unit Owners) may elect not to collect monthly assessments calculated as provided in Section 12.1 and instead elect to collect and expend monthly assessments based on the actual costs of maintaining, repairing, operating and insuring the Common Areas; or

(b) the Declarant may elect to pay all of certain of such actual costs and have Unit Owners pay a pro-rata share (based on each Unit's Allocated Interest) of the remainder of such costs.

12.4 Allocated Liability All Common Expenses must be assessed against all the

Units in accordance with the allocations set forth in Exhibit B. Any past due Common Expense Assessment or installment thereof bears interest at the rate established by the Association pursuant to Section 12.10.11.

12.5 Insurance Costs. The Board may elect that the costs of insurance must be assessed in proportion to risk.

12.6 Utility Costs. The Board may elect that the costs of utilities must be assessed in proportion to usage.

12.7 Assessments for Judgment Assessments to pay a judgment against the Association pursuant to the Act (1) may be made only against the Units in the Condominium at the time the judgment was entered in proportion to their Allocated Common Expense Liabilities at the time the judgment was entered.

12.8 Owner Misconduct. To the extent that any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that expense against the Owner's Unit.

12.9 Reallocation. If Common Expense Liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

12.10 Lien For Assessments.

12.10.1 Lien. The Association has a lien on a Unit for any unpaid Assessments levied against a Unit from the time the Assessment is due.

12.10.2 Priority. A lien under Section 12.1 shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recording of the Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

12.10.3 Mortgage Priority Except as provided in Sections 12.10.4 and 12.10.5, the lien shall also be prior to the Mortgages described in Section 12.10.2(b) to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to Section 12.10.1, which would have become due during the six months immediately preceding the date of the sheriff's sale in an action for judicial foreclosure by either the Association or a Mortgagee, the date of a trustee's sale in a non-judicial foreclosure by a Mortgagee, or the date of recording of the Declaration of forfeiture in a proceeding by the vendor under a real estate contract.

12.10.4 Mortgagee Notice. The priority of the Association's lien against Units encumbered by a Mortgage held by an Eligible Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three months if and to the extent that the lien priority under Section 12.10.3 includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or has given such request for notice and before the Association gives the holder a written notice of the delinquency. This Section does not affect the priority of mechanics' or material men's liens, or the priority of liens for other Assessments made by the Association.

12.10.5 Recording as Notice. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this Section in the real property records of any county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 12.10.3.

12.10.6 Limitation on Action. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

12.10.7 Foreclosure. The lien arising under Section 12.10 may be enforced judicially by the Association or its authorized representative in the manner set forth herein. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure.

12.10.8 Receiver. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Condominium, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this section, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not

affect the priority of preexisting liens on the Unit.

12.10.9 Mortgagee Liability. Except as provided in Section 12.10.3, the holder of a Mortgage or other Purchaser of a Unit who obtains the right of possession of the Unit through foreclosure shall not be liable for Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Unit Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this Section.

12.10.10 Lien Survives Sale. The lien arising under Section 12.10 shall not be affected by the sale or transfer of the subject Unit except in the event of sale through foreclosure, as provided in Section 12.10.9.

12.11 Owner Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligations of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee thereof. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

12.12 Late Charge. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under Idaho law on the date on which the Assessments became delinquent.

12.13 Attorney's Fees. The prevailing party shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

12.14 Assessment Certificate. The Association, upon written request, shall furnish to a Unit Owner or a Mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent



known by the recipient to be false.

12.15 Acceleration of Assessments. In the event any monthly Assessment or special charge attributable to a particular Unit remains delinquent for more than sixty (60) days, the Board may, upon fifteen (15) days written notice to the Owner of such Unit, accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such Unit.

12.16 Delinquent Assessment Deposit Working Capital

12.16.1 Delinquent Assessment Deposit.

(a) A Unit Owner may be required by the Board or by the Manager, from time to time, to make and maintain a deposit not less than one (1) month nor in excess of three (3) months estimated monthly Assessment and charges, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Unit owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments.

(b) Resort may be had thereto at any time when such owner is ten (10) days or more delinquent in paying his monthly or other Assessments and charges. Said deposits shall not be considered as advance payments of regular Assessments. In the event the Board should draw upon said deposit as a result of a Unit Owner's delinquency in payment of any Assessments, said Owner shall continue to be responsible for the immediate and full payment of said delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the Board shall continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by this Declaration and by law.

(c) Upon the sale of a Unit, the seller/Owner thereof shall not be entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Unit pursuant to this or any other Section of this Declaration; rather, any such deposit or reserve account shall continue to be held by the Association for the credit of such Unit and the Unit Purchaser shall succeed to the benefit thereof, and the Unit seller shall be responsible for obtaining from the Purchaser appropriate compensation thereof.

12.16.2 Working Capital Contribution. The first Purchaser of any Unit shall pay to the Association, in addition to other amounts due, an amount equal to two (2) months of monthly Assessments as a contribution to the Association's working capital. Such working capital contributions shall not be used to defray Declarant's expenses in completing the construction of the Condominium, to pay Declarant's contributions to

Association reserves or to make up any deficits in the budget of the Association. Upon the election of the first Board by Unit Owners other than Declarant, Declarant shall pay to the Association as a working capital contribution an amount equal to two (2) months of monthly Assessments for each of the Units then owned by Declarant. When a Unit owned by Declarant is sold, Declarant may apply funds collected at closing from the Purchaser to reimburse itself for funds paid to the Association for such contribution with respect to that Unit.

### **Article 13 INSURANCE**

13.1 In General. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available:

13.1.1 Property insurance on the Common Elements of the Condominium;

13.1.2 Liability insurance, including medical payments insurance, in an amount determined by the Board but not less than Two Million Dollars, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

13.1.3 Workmen's compensation insurance to the extent required by applicable laws.

13.1.4 Fidelity bonds naming the members of the Board, the Manager and its employees and such other persons as may be designated by the Board as principals and the Association as obligee, in at least an amount equal to three months aggregate assessments for all Units plus reserves in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression.

13.1.5 Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

13.1.6 Such other insurance (including directors' and officers' liability) as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation,

Veteran's Administration, or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by such agency.

13.2 Required Provisions. Insurance policies carried pursuant to this Article shall:

13.2.1 Provide that each Unit Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

13.2.2 Provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

13.2.3 Provide that no act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

13.2.4 Provide that if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Unit Owner or any Mortgagee;

13.2.S Provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

13.2.6 Contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

13.2.7 Contain, if available, an agreed amount and Inflation Guard Endorsement.

13.3 Claims Adjustment. Any loss covered by the property insurance under this Article must be adjusted with the Association, but the insurance proceeds for that loss are

payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage, the insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of Article 14, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders 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 is terminated.

13.4 Insurance.

13.4.1 Owners Insurance. Each Unit Owner shall maintain and pay for property insurance, if available, to include any improvements within the Unit.

13.4.2 Owners Additional Insurance. Each Owner shall also obtain liability insurance insuring the Unit Owner against liability from claims arising out of accidents, injuries occurring within the Unit or Common Elements assigned to the Unit. Such insurance shall be at the expense of the Unit Owner. No Owner shall, however, be entitled to exercise his right to maintain insurance coverage in any manner which would decrease the amount that the Board of Directors, or any trustee of the Board of Directors, on behalf of all of the Owners, will realize under any insurance policy which the Board of Directors may have in force on the Condominium. at any particular time. Each owner is required and agrees to notify the Board of Directors of all improvements by the Owner to his Unit the value of which is more than \$1,000.00. Each Owner, if requested by the Board of Directors, shall file a copy of such individual policy or policies with the Board of Directors within 30 days after request is made, and the Board of Directors shall immediately review its effect with its insurance broker, agent or carrier.

13.5 Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request to any Unit Owner or holder of a Mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of applicable law pertaining to the cancellation. or non-renewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act,

13.6 Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the now Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners under Article 13 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

**Article 14**  
**DAMAGE OR DESTRUCTION; RECONSTRUCTION**

14.1 Definitions: Significant Damage; Repair; Emergency Work.

14.1.1 As used in this Article, the term "Significant Damage" means damage or destruction, whether or not caused by casualty, to any part of the property which the Board is responsible to maintain or repair which would exclude any Unit structures: (a) for which funds are not available in the maintenance and repair or contingency budget of the Association to make timely repairs; and (b) which has a significant adverse impact on the habitability of any Unit or the ability of an owner or owners to use the property or any significant portion of the property for its intended purpose.

14.1.2 As used in this Article, the term "Repair" means to repair, reconstruct, rebuild or restore the building or improvement which is a Common Element which suffered significant damage to substantially the same condition to which they existed prior to the damage or destruction. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

14.1.3 As used in this Article, the term "Emergency Work" shall mean the work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the owners from liability arising out of the condition of the property.

14.2 Initial Board Determinations. In the event of significant damage to any part of the Common Elements, the Board shall promptly, and in all events within thirty (30) days after the date of significant damage, or, if the significant damage did not occur at a particular identifiable time, after the date of its discovery, make the following determinations with respect thereto employing such advise as the Board deems advisable:

14.2.1 The nature and extent of the significant damage, together with an inventory of the improvements and property directly affected thereby.

14.2.2 A reasonably reliable estimate of the cost to repair the significant damage, which estimate shall, if reasonably practicable, be based upon a firm bid obtained from a responsible contractor.

14.2.3 The anticipated insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

14.2.4 The amount, if any, that the estimated cost of repair exceeds the anticipated insurance proceeds thereof and the amount of assessment to each Unit if such excess was paid as a common expense and specially assessed against all the Units in proportion to their allocated interest in the Common Elements.

14.2.5 The Board's recommendation as to whether such significant damage should be repaired.

14.3 Notice of Damage or Destruction. The Board shall promptly, and in all events within thirty (30) days after the date of significant damage, provide each owner, and each first mortgagee with a written notice summarizing the initial Board determination made under Section 14.2. If the Board fails to do so within said thirty (30) days, then any owner or mortgagee may make the determination required under Section 14.2 and give the notice required under this Section.

#### 14.4 General Provisions.

14.4.1 Duty to Restore Any portion of the Condominium for which insurance is required under this Article which is significantly damaged shall be repaired promptly by the Association unless: (a) the Condominium is terminated; (b) repair would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the Unit owners vote not to repair. Even if the significant damage is not to be repaired, the Board shall still have the authority to perform emergency work. The cost of repair in excess of insurance proceeds and reserves is a common expense.

14.4.2 Damage not Restored. If all or any portion of the damaged portions of a Common Element are not repaired (regardless of whether such damage is significant): (a) 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; (b) the remainder of the proceeds shall be distributed to all the Unit owners or lienholders, as their interest may appear, in proportion to the Common Element interest of all the Units.

#### 14.5 Restoration by Board.

If the damage (regardless of whether such damage is significant) is to be repaired pursuant to Section 14.4., then:

14.5.1 Contract and Contractors. The Board shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to truce such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provision for the costs

thereof. The Board may further authorize the insurance carrier to proceed with repair upon satisfaction of the Board that such work will be appropriately carried out.

14.5.2 Insurance Trustee. The Board may enter into a written agreement in recordable form with any reputable institution or trust or escrow company that such firm or institution shall act as an insurance trustee to adjust and settle any claim for a loss in excess of Fifty Thousand Dollars (\$50,000), or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Article.

14.6 Restoration by Unit Owner In the event a Unit structure or any portion within a Unit is damaged or destroyed, then the Unit owner must repair (as that term is defined under Article 14.1.2) the Unit structure or improvements within the Unit within six (6) months after the date of casualty unless the damage or destruction requires replacement or rebuilding of the Unit structure in which event the Unit owner shall have six (6) months from the date of casualty to rebuild or replace. In the event of repair, reconstruction or replacement by a Unit owner of a Unit structure or any improvement within a Unit, then all plan approval must be submitted as provided for under this Declaration.

14.7 Decision to Terminate. In the event of a decision to terminate the Condominium and not to repair and restore damage and destruction, the Board may nevertheless expend such of the insurance proceeds and funds of the Association as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged or destroyed buildings and clearing, filling and grading the real property), and the remaining funds, if any, and property shall thereafter be held and distributed as provided in the Act

## **Article 15 CONDEMNATION**

15.1 Association as Attorney-in-Fact Any portion of the limited or Common Elements are partially or completely condemned, the Association shall act as a representative of the owners and mortgagees in any proceedings, negotiations, or settlements. Each owner appoints the Association as its attorney-in-fact for this purpose. Any proceeds shall be paid to the Association for the benefit of the owners and the mortgagees and shall be used and distributed as set forth below.

15.2 Distribution of Condemnation Proceeds. In the event of a condemnation of any of the Common Elements, the proceeds shall be used:

15.2.1 To restore if practical the remaining Common Elements;

15.2.2 For payment to Unit owners and their mortgagees which are specifically damaged by the condemnation, which damage was an element of the

condemnation award; and

15.2.3 The balance shall be distributed pro rata among the Unit owners and their mortgagees in proportion to their percentage interest in the Common Elements.

15.3 Condemnation of Units OR Unit Structures. If any Unit or Unit structure is condemned, then the condemnation award for that Unit or Unit structure shall be paid to the owner of that Unit and Unit structure. In the event of a partial condemnation which does result in some but not all of the Units and Unit structures being condemned, then the condominium documents shall be amended to reflect any required elimination of Units and reallocation of percentage interest.

15.4 Condemnation of Entire Property. In the event that the entire property is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The condemnation award with respect to the common areas shall be apportioned among the owners and shares proportionate to the respective undivided interest in the Common Element. If a standard different from the value of the property as a whole is employed to measure the condemnation award and the negotiation, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principal, the board of directors shall as soon as practical, determine the share of the condemnation award to which each owner is entitled. After first paying their respective share of each owner and all mortgagees and liens on the interest of such owner, the balance remaining in such share shall then be distributed to each owner individually. Each Unit owner shall receive directly the condemnation award as it relates to the value of the Unit and Unit structure being condemned or otherwise disposed of as provided for herein.

## **Article 16 COMPLIANCE WITH DECLARATION**

16.1 Enforcement. Every Owner shall comply strictly with the provisions of this Declaration, the Bylaws and administrative rules and regulations passed hereunder, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to this Declaration, the Bylaws and administrative rules and regulations. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board (acting through its officers on behalf of the Owners), or by the aggrieved Owner on his own against the party (including an Owner or the Association) failing to comply. In the event of a dispute between the Declarant and the Association (Or the Board or any Owner), each party shall be solely responsible for payment of all legal fees incurred by that party, regardless of the nature of the dispute or who may be the prevailing party.

16.2 No Waiver of Strict Performance. The failure of the Board in any one or



more instances to insist upon the strict performance of this Declaration, of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

## **Article 17 LIMITATION OF LIABILITY**

17.1 Liability for Utility Failure. Etc. Except to the extent covered by insurance obtained by the Board pursuant to Article 13, neither the Association nor the Board nor the Manager shall be liable for: any failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

17.2 No Personal Liability. So long as a Board member, Association committee member, or Association officer has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person and such person's evaluation of such information, no such person (and no Association manager acting pursuant to the directions of the Board) shall be personally liable to any Owner, or other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence, including any discretionary decision, or failure to make a discretionary decision, by such person in such person's official capacity. Without limiting the generality of the foregoing, the term "discretionary decisions" shall include evaluating and deciding whether or not to act in response to reports, investigations or recommendations received by such person, and shall include deciding whether or not to commence, defend, continue, or settle lawsuits or arbitration/mediation or other legal proceedings involving the Association or Condominium (or any part thereof). Provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Article 13.

17.3 Indemnification of Board Members. Each Board member or Association committee member, or Association officer, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or

imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having hold such position at the time such expenses or liabilities are incurred, except in such cases wherein such person is adjudged guilty of willful or intentional misconduct, a knowing violation of the law in the performance of his duties and except in such cases where such person has participated in a transaction from which said person will personally receive a benefit in money, property or services to which said person is not legally entitled. Provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association, The Association and each Owner shall defend, indemnify and hold Declarant harmless from any claim, expense or liability based on the failure of the Association or such Owner to comply with applicable dudes and obligations under. the Declaration, Association Articles or Bylaws, or Association rules and regulations or under any warranty obtained or issued by Declarant; or wider applicable law.

17.4 Legal Proceedings. The rights, powers, benefits, duties and obligations granted to and imposed upon parties subject to this Declaration (including without limitation the Declarant, Owners, Association, Board and Officers) shall not be restricted, diminished, or otherwise modified by threatened or pending legal proceedings (including without limitation litigation, administrative, mediation, or arbitration), which proceedings involve one or more of such parties.

## **Article 18 MORTGAGEE PROTECTION**

18.1 Change in Manager. In the event that professional management is employed by the Association, at least thirty (30) days' notice of any contemplated change in the professional managers shall be given to any Eligible Mortgagee. The Association shall not elect to terminate professional management and assume self-management without the prior written approval of sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of all Eligible Mortgagees; provided that such prior consent shall not be required to change from one professional manager to another professional manager.

18.2 Abandonment of Condominium Status. Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not: without prior written approval of sixty-seven percent (67%) of all Eligible Mortgagees and sixty-seven percent (67%) of the Owners of record of the Units, seek by act or omission to: abandon or terminate the condominium status of the project; or abandon, encumber, sell or transfer any of the Common Elements.

18.3 Partitions and Subdivision. The Association shall not combine nor subdivide any Unit or the appurtenant Common Elements, nor abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal so to do, without the prior written approval of fifty-one percent (51%) of all Eligible Mortgagees

and sixty seven percent {67%} of Owners of record of the Units, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s), so affected.

18.4 Change in Percentages. The Association shall not make any Material Amendment (as defined in Section 21.7) to this Declaration or Bylaws (including changes in the percentages of interest in the Common Elements) without the prior written approval of fifty-one percent (51 %) of all Eligible Mortgagees and sixty-seven percent (67%) of all Owners of record of the Units, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

18.5 Copies of Notices. A Mortgagee of a Unit (and any insurer or guarantor of such Mortgage) shall be entitled to receive timely written notice: (a) that the Owner/Mortgagor of the Unit has for more than sixty {60} days failed to meet any obligation under the Condominium documents, (b) of all meetings of the Association and be permitted to designate a representative to attend all such meetings; (c) of any condemnation loss or casualty loss affecting a material portion of the Property or the Unit on which it holds a Mortgage; (d) of any lapse, cancellation or material modification of insurance policies or fidelity bonds maintained by the Association; and (e) of any proposed action that requires the consent of a specified percentage of Mortgagees. To be entitled to receive notices under this Section 18.5, the Mortgagee (or Mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guaranties) the Mortgage.

18.6 Effect of Declaration Amendments. No amendment of this Declaration shall be effective to modify change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such Mortgage. Any provision of this Declaration conferring rights upon Mortgagees which is inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

18.7 Insurance

18.7.1 Board Duties. With respect to a first Mortgagee of a Unit the Board shall:

(a) Cause any insurance carrier to include in the insurance policy a standard mortgage clause, naming any mortgagee who makes written request to the Board to be so named;

(b) Furnish any such Mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the Unit on which such Mortgagee has a lien;

(c) Require any insurance carrier to give the Board and any and all insured (including such Mortgagees) at least thirty (30) days' written notice before canceling, reducing the coverage or limits, or otherwise substantially modifying any insurance with respect to the Property on which the Mortgagee has a lien (including cancellation for a premium nonpayment);

(d) Not make any settlement of any insurance claims for loss or damage to any such Unit, Common Element exceeding Five Thousand Dollars (\$5,000) without the approval of such Mortgagee; provided, that the withholding of such approval shall not be unreasonable or in conflict with the provisions of Article 14;

(e) Give such Mortgagee written notice of any loss or taking affecting Common Elements, if such loss or taking exceeds Ten Thousand Dollars (\$10,000);

(t) Give such Mortgagee written notice of any loss, damage or taking affecting any Unit or Common Elements in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000);

18.7.2 Additional Policy Provisions. In addition, the insurance policy acquired shall:

(a) Provide that any reference to a Mortgagee in such policy shall mean and include any holders of Mortgages of any Unit or Unit lease, in their respective order and preference, whether or not named therein;

(b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Unit Owners or any persons claiming under any of them;

(c) Waive any provision invalidating such Mortgage clause by reason of: the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; any requirement that the Mortgagee pay any premium thereon; and any contribution clause.

18.8 Inspection of Books. Declarant (and Declarant's agents), Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit shall be entitled: to inspect and copy at all reasonable hours of weekdays (or under other reasonable circumstances) all of the Books and Records of the Association (as defined in Section 1.8), within a reasonable time following request; and, upon written request of any holder, insurer or guarantor of a first Mortgage at no cost to the party so requesting (or if this project contains fewer than fifty (50) Units, upon the written request of the holders of fifty-one percent (51%) or more of first Mortgages at their expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

**Article 19**  
**EASEMENTS**

19.1 General It is intended that in addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common Elements for: all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this Condominium plan; and for the maintenance, repair and replacement of all improvements within each Unit. Each Unit as it is constructed is granted an easement (to which each other Unit and all Common Element is subject) for the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

19.2 Utility, Etc. Easements. The Board, on behalf of the Association and all members thereof, shall have authority to grant utility, road, parking and similar easements, licenses and permits under, through or over the Common Elements, which easements the Board determines are reasonably necessary to the ongoing development and operation of the Property.

19.3 Association. There is hereby reserved and granted to the Association, or their duly authorized agents and representatives, easements and rights of access over, across, under or into the Condominium, Units, and any part thereof as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Association as are set forth or as provided or authorized in this Declaration, in the Articles, Bylaws or Association Rules.

19.4 Declarant Functions. There is hereby reserved to the Declarant (and its duly authorized agents, employees, contractors and representatives, such easements and rights of access over, across, under or into the Condominium (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Declarant as are set forth, provided for or authorized in: this Declaration; Survey Map and Plans; Articles, Bylaws, or Association Rules; building or other governmental permits or approvals; and Purchase and Sale Agreement between Declarant and a Unit Purchaser, any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law.

19.5 Encroachments. Each Unit and all Common Element is hereby declared to have an easement over all adjoining Units and Common Element, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the building, or any other similar

cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Unit or Common Element is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit. The provisions of this Section 19.4 are intended to supplement Article 4 and the Act and, in the event of any conflict the provisions of Article 4 and the Act shall control.

**Article 20**  
**PROCEDURES FOR SUBDIVIDING OR COMBINING**

20.1 (Reserved).

**Article 21**  
**AMENDMENT OF DECLARATION, SURVEY MAP, PLANS**

21.1 In General. Except in cases of amendments that may be executed by a Declarant (in the exercise of any Development Right), or the Association as provided for in this Declaration, or Unit Owners subject to the terms of this Declaration, the Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated at the time the amendment is proposed; however, the following Sections and Articles may be amended only by vote or agreement of Owners of Units to which one hundred percent (100%) of the votes in the Association are allocated, and only with the consent of the Declarant (so long as any right, duty or obligation of the Declarant continues under the Declaration or any express or implied warranty, agreement or law: Sections 1.8.6, 1.8.38, 10.2.2(c), 10.4.1 (d), 10.6.110.10, 10.11, 10.12, 17.2, 17.3, 18.8, 19.4, 21.6 and 21.7, and Articles 23 and 24.

21.2 Challenge to Validity. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded.

21.3 Recording. Every amendment to the Declaration must be recorded in every county in which any portion of the Condominium is located and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously

recorded amendment thereto. All amendments adding Units shall contain a cross-reference by recording number to the Survey Map and Plans relating to the added Units and set forth all information required by the Act.

21.4 General Limitations. Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and the Owners of Units to which at least ninety percent of the votes in the Association are allocated other than the Declarant.

21.5 Execution. Amendments to the Declaration required by the Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

21.6 Special Declarant/Development Rights No amendment may restrict, eliminate, or otherwise modify any Special Declarant or Development Right, or any other right, power, benefit provided in the Declaration to Declarant (nor otherwise hinder the business activities or expectations of, or benefits provided hereunder to, the Declarant) without the consent of the Declarant and any Mortgagee of record (excluding Mortgagees of Units owned by persons other than the Declarant) with a security interest in the Special Declarant or Development Right or in any real property subject thereto.

21.7 Material Amendments. Any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall require the consent of fifty-one percent (51%) of the Eligible Mortgagees: voting rights; Assessments, Assessment liens, or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium; insurance or fidelity bond; leasing of Units; imposition of any restrictions on a Unit Owners right to sell or transfer his or her Unit; a decision by the Association to establish self-management when professional management had been required previously by the Condominium's documents or by an Eligible Mortgage holder; restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or any provisions that expressly benefit or are adverse to Mortgage holders, insurers, or guarantors. A Mortgagee who fails to respond within sixty (60) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered

by certified or registered mail with a return receipt requested.

21.8 Map and Plans Amendment. Except as otherwise provided herein, the Survey Map and Plans may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for the examination of every Owner. Such amendment to the Survey Map and Plans shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

21.9 Lender Requirements All Unit Owners covenant and agree, for themselves and their heirs, successors and assigns, to vote in favor of and implement any amendments hereto which may be necessary to satisfy the requirements of the Federal National Mortgage Association, Veteran's Administration and Federal Housing Administration.

## **Article 22 MISCELLANEOUS**

### 22.1 Notice for All Purposes.

22.1.1 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) hours after a copy has been deposited in the United States mail, postage prepaid, for first class mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such person or persons if no other mailing address has been given to the Board by any of the persons so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board may be given to Declarant until the Board has been constituted and thereafter shall be given to the President or Secretary of the Board.

22.1.2 Mortgagee Notice. Upon written request thereof, and for a period specified in such notice, the Mortgagee of any Unit shall be entitled to be sent a copy of any notice respecting the Unit covered by his security instrument until the request is withdrawn or the security instrument discharged. Such written request may be renewed an unlimited number of times.

### 22.1.3 Mortgagee's Acceptance.



22.1.4 Priority of Mortgage. This Declaration shall not initially be binding upon any Mortgagee of record at the time of recording of said Declaration but rather shall be subject and subordinate to said Mortgage.

22.1.5 Acceptance Upon First Conveyance. Unless otherwise expressly approved by the Purchaser of a Unit, Declarant shall not consummate the conveyance of title of such Unit until said Mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements, in accordance with the Act for partial release of Units with their appurtenant Common Elements and Allocated Interest in Common Elements from the lien of said Mortgage. The issuance and recording of the first such partial release by said Mortgagee shall constitute its acceptance of the provisions of this Declaration and the Condominium status of the Units remaining subject to its Mortgage as well as its acknowledgment that such appropriate arrangements for partial release of Units have been made; provided, that, except as to the Units (and their Allocated Interests in Common Elements) so released, said Mortgage shall remain in full effect as to the entire Property.

22.2 Severability. The provisions hereof shall be deemed independent and severable, and the validity or partial invalidity or enforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof if the remainder complies with the Act or as covenants effect the common plan.

22.3 Conveyances Notice Required. The right of a Unit Owner to sell, transfer, or otherwise convey the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: the Unit to be sold; the name and address of the Purchaser, of the closing agent, and of the title insurance company insuring the Purchaser's interest; and the estimated closing date. The Board shall have the right to notify the Purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. It is understood, however, that a violation of this Section shall not invalidate a sale, transfer or other conveyance of a Unit which is otherwise valid under applicable law.

22.4 Transfer of Declarant's Powers. It is understood that Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any person, upon such terms and conditions as Declarant may determine, all of Declarant's rights, powers, privileges and authority arising hereunder by virtue of Declarant's capacity as Declarant (which rights, powers, privileges and authority am in addition to those arising from Declarant's ownership of one or more Units and include Development Rights and Special Declarant Rights).

22.5 Effective Date. This Declaration shall take effect upon recording.

22.6 Reference to Survey Map and Plans. The Survey Map and Plans of the Condominium referred to herein were filed with the Auditor of Blaine County, Idaho, simultaneously with the recording of this Declaration.

**ARTICLE 23**  
**SPECIAL DECLARANT RIGHTS**  
**DEVELOPMENT RIGHTS**

23.1 Special Declarant Rights. As more particularly provided in this Article, Declarant, for itself and any successor Declarant has reserved the following Special Declarant Rights:

23.1.1 Completion of Improvements. Declarant, its agents, employees, contractors and representatives shall have the right to complete, repair, replace or correct improvements and otherwise perform work as set forth, provided for or authorized in: this Declaration; Survey Map and Plans; Articles, Bylaws, or association Rules; building or other governmental permits or approvals; and Purchase and Sale Agreement between Declarant and a unit Purchaser, any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law. This Special Declarant Right shall continue so long as any right, duty or obligation of the Declarant continues under any express or implied warranty, agreement or law.

23.1.2 Sales Facility of Declarant. Declarant, its agents, employees and contractors shall be permitted to establish and maintain in any unit still owned by Declarant and in any of the Common Elements (other than Limited Common Elements assigned to units not owned by Declarant), such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of units and appurtenant interests, including but not limited to: business offices; management offices; sales offices; construction offices; storage areas; signs; model units; and parking areas for all agents, employees, contractors, prospective tenants or purchasers of Declarant. Any such facilities not designated as unit by the Declaration is a Common Element and, if Declarant ceases to be a unit owner, the Declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium, which Declarant shall have the right to do. Declarant, may maintain signs on the Common Elements advertising the condominium. The provisions of this Section are subject to the provisions of other state law and to local ordinances. The number, size, location, and relocation of such facilities shall be determined from time to time by Declarant in the exercise of its sole discretion; provided, that the maintenance and use of such facilities shall not unreasonably interfere with a unit owners use and enjoyment of the unit and appurtenant Limited Common Elements; and those portions of the Common Elements reasonably necessary to use and enjoy such unit and Limited Common Elements.

23.1.3 Exercise of Declarant Rights Declarant shall have the right to

exercise Development Rights, if any, under this Declaration and the Act.

23.1.4 Termination of Declarant's Rights. Except as otherwise provided in this Declaration, the foregoing Special Declarant Rights shall continue so long as Declarant is completing improvements which are within or may be added to this condominium, or Declarant owns any units, Or any Development Rights remain in effect; provided, that Declarant may voluntarily terminate any or all of such Rights at any time by recording an amendment to the Declaration, which amendment specifies which Right is thereby terminated.

23.2 Development Rights. (Reserved).

23.3 Boundaries of Limited Common Elements. Declarant shall have the right to establish, expand, contract or otherwise modify the boundaries of any Limited Common Element allocated to a unit; provided, the prior consent will be required from the owner of the unit.

23.4 Liability for Damage. The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved by Declarant pursuant to or created by this Declaration or the Act.

23.5 Declarant's Easements. Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights or Development Rights, whether arising under the Act or reserved in the Declaration.

#### **Article 24**

#### **RESERVATION BY DECLARANT FOR USE OF COMMON ELEMENTS FOR BENEFIT OF OTHER PROPERTY OWNED BY DECLARANT**

(Reserved).

#### **Article 25**

#### **DISPUTE RESOLUTION**

25.1 Policy-Mediation. The parties hope there will be no disputes arising out of their relationship. To that end, each commit to cooperate in good faith and to deal fairly in performing its duties under this Declaration in order to accomplish their mutual objectives and avoid disputes. But if a dispute arises, the parties agree to resolve all disputes by the following alternate dispute resolution process: (a) the parties will seek a fair and prompt negotiated resolution, but if this is not successful, (b) all disputes shall be resolved by binding arbitration, provided that during this process, (c) at the request of either party made not later than forty-five (45) days after the initial arbitration demand,

the parties will attempt to resolve any dispute by nonbinding mediation (but without delaying the arbitration hearing date). The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury.

25.2 Binding Arbitration Any claim between or among any party subject to this Declaration (including without limitation, the Declarant, Association Board or officers, Unit Owners, or their employees or agents) arising out of or relating to this Declaration, a Unit or Units, the Condominium or the Association shall be determined by Arbitration in the county in which the Condominium is located commenced in accordance with 55-7.04.060; provided, that the total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed \$50,000, including interest, attorneys' fees and costs. If any party demands a total award greater than \$50,000, there shall be three (3) neutral arbitrators. If the parties cannot agree on the identity of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large, Complex Case Panel (or have similar professional credentials). Each arbitrator shall be an attorney with at least fifteen (15) years' experience in commercial or real estate law and shall reside in the county in which the Condominium is located. Whether a claim is covered by the Article shall be determined by the arbitrator(s). All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder.

25.3 Hearing Law - Appeal Limited. The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ninety (90) days of the initial demand for arbitration and to conclude the hearing within three (3) days; and the arbitrator(s) written decision shall be made not later than fourteen (14) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award and decision shall be final, and the judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy; but shall not have the power to award punitive or exemplary damages; or to award attorneys' fees and costs to the prevailing party. The decision and award of the arbitrator(s) need not be unanimous; rather, the decision and award of two arbitrators shall be final.

25.4 Warranty Dispute Resolution. In the event Declarant has issued a warranty of quality to the initial purchasers of Units, and such warranty contains provisions governing the making of claims and governing the resolution of disputes, then the

provisions of such warranty shall control over the provisions of this Article 25 with respect to all express and implied warranty claims (including without limitation the Idaho Condominium Act implied warranties) involving Units and Common Elements (regardless of whether the Unit Owner, Association or Board is asserting the claim).

## Article 26

### FANNIE MAE REQUIREMENTS

26.1 Compliance with Law. This condominium project has been created and exists in full compliance with Idaho State law and all other applicable laws and regulations.

26.2 Rights of First Refusal. Nothing in this Condominium Declaration shall be interpreted to create a right of first refusal in the sale of any unit that applies to or adversely impacts the rights of a mortgagee to foreclose or take title to a unit pursuant to the remedies in the mortgage; accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagee; or sell or lease a unit acquired by the mortgagee.

26.3 Amendments to Documents Affecting Mortgagees. This Condominium Declaration provides that amendments or material adverse nature to mortgagees shall be agreed to by mortgagees that represent at least 51 percent of the votes of unit estates that are subject to mortgages. This Condominium Declaration provides that any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for any other reason must be agreed to by mortgagees that represent at least 51 percent of the votes of the unit estates that are subject to mortgages. This Condominium Declaration provides that implied approval of the mortgagee is assumed when an eligible mortgagee fails to submit a response to any written proposal for an amendment to the Condominium Declaration or any other project documents within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested.

26.4 Rights of Mortgagees and Guarantors. Any mortgagee or guarantor of a unit has the right to timely written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage; any 60 day delinquency of the payment of assessments or charges owed by the owner of any unit on which it owes the mortgage; a lapse cancellation or material modification of any insurance policy maintained by the owners' association; and any proposed action that requires the consent of a specified percentage of mortgagees.

26.5 First Mortgagees' Rights. Nothing contained in this Declaration, or any other Condominium project document shall be interpreted to give a condominium unit owner or any other party priority over any rights of mortgagees 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 taking of condominium units and/or common elements.

26.6 Unpaid Dues. Any first mortgagee who obtains title to a condominium unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by the mortgagee. If the Condominium Association's lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

**DECLARENT: 755 SOUTH BROADWAY**

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

**Micheal R. Carr, Managing Member**

**STATE OF IDAHO** )  
 )  
**COUNTY OF BLAINE** )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared Michael R. Carr, to me known to be the Managing Member of 755 South Broadway, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
PRINTED NAME \_\_\_\_\_  
Notary public for the State of Idaho  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF REAL**  
**PROPERTY INCLUDED IN THE CONDOMINIUM**

LOT 1, BLOCK 23 OF THE VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED AS INSTRUMENT NO. 302967, RECORDS OF BLAINE COUNTY, IDAHO.

## **EXHIBIT "B"**

### **UNIT DESCRIPTIONS**

(Subject to Chang)

#### **208 N. Leadville, Unit 50**

##### **Ketchum ID 83353**

692 approximate Square Feet studio apartment  
1 bathroom.  
Unit has direct access to public streets

#### **208 N. Leadville, Unit 70**

##### **Ketchum ID 83353**

686 approximate square feet office  
1 restroom  
Unit has direct access to public streets

#### **208 N. Leadville Unit 100**

##### **Ketchum ID 83353**

1,220 approximate square feet, retail/office  
1 restroom.  
Unit has direct access to public streets

#### **208 N. Leadville Unit 2A**

##### **Ketchum ID 83353**

3,052 approximate square feet, including deck.  
3 Bedrooms, 3.5 bathrooms. 2 fireplaces  
Unit has direct access to common areas, parking areas and walkways which all have direct access to public streets.

#### **208 N. Leadville, Unit 2B**

##### **Ketchum ID 83353**

744 approximate square feet.  
1 bedroom, 1 bathroom.  
Unit has direct access to common areas, parking areas and walkways which all have direct access to public streets.

#### **208 N. Leadville Unit 3**

##### **Ketchum ID 83353**

3,948 approximate square feet, including deck.  
4 bedrooms, 4 bathrooms, 2 Fireplaces.  
Unit has direct access to common areas, parking areas and walkways which all have direct access to



EXHIBIT "C"

**DESCRIPTION OF ALLOCATED INTERESTS OF EACH UNIT**

Each Unit will be allocated interest by the calculations provided by the registered civil engineer. These interests shall be in the common elements, common expense liability, and votes in the 208 Leadville Condominium Association.



City of Ketchum

# Attachment H: Project Plans – Condominium Preliminary Plat

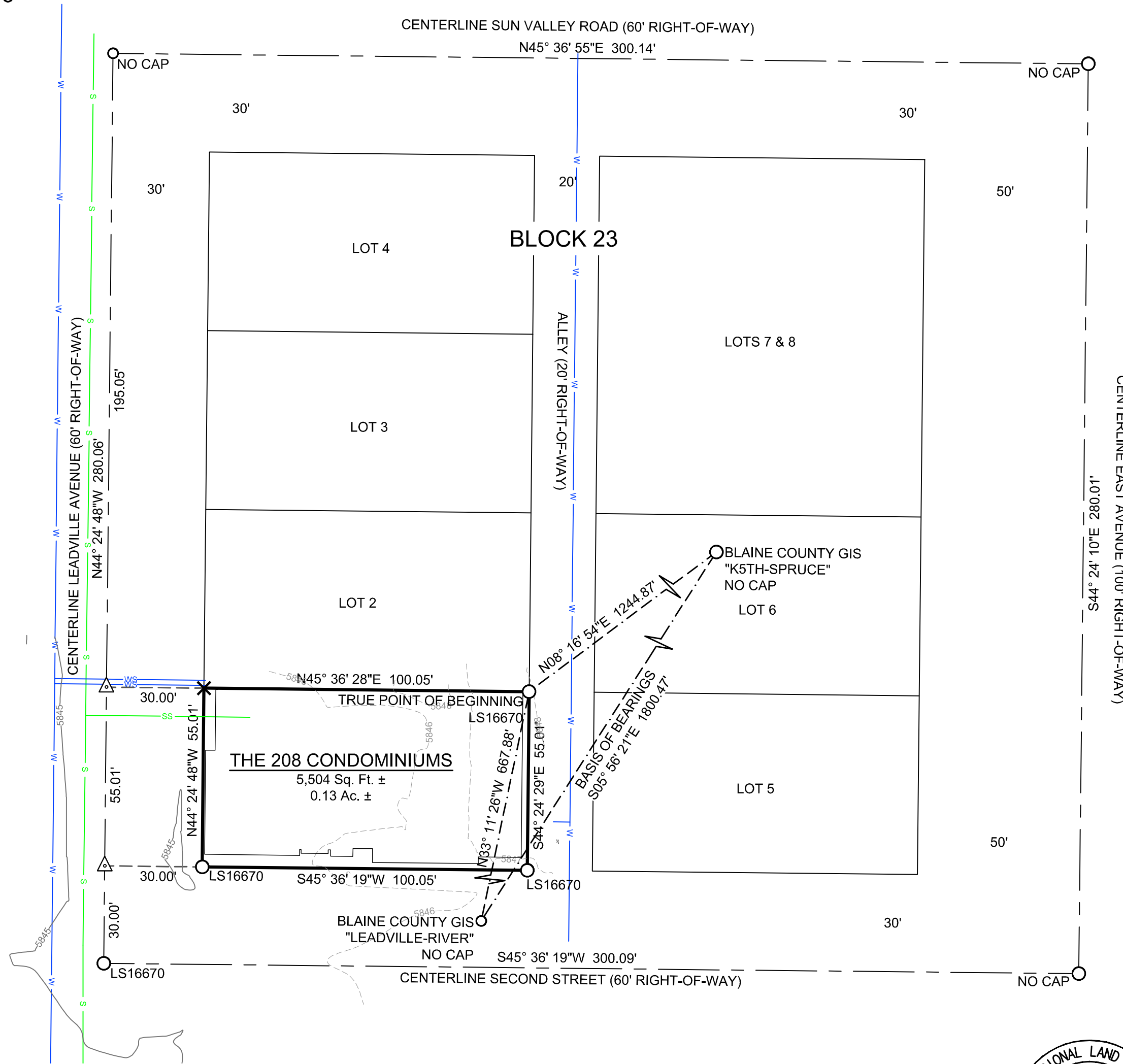
A PRELIMINARY CONDOMINIUM PLAT SHOWING  
**THE 208 CONDOMINIUMS**  
 WHEREIN LOT 1, BLOCK 23, KETCHUM TOWNSITE IS CONVERTED INTO CONDOMINIUMS  
 LOCATED WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
 OCTOBER 2022



**LEGEND**

	Property Line
	Adjoiner's Lot Line
	Centerline of Right of Way
	Building Footprint
	GIS Tie Line
	Survey Tie Line
	Water Main
	Water Service Line
	Sewer Main Line
	Sewer Service Line
	5' Contour Interval
	1' Contour Interval
	Found 5/8" Rebar
	Found 1/2" Rebar
	Found Magnetic Nail & Chiseled X
	Calculated Point, Nothing Set

SCALE: 1" = 30'



**SURVEY NARRATIVE & NOTES**

- The purpose of this survey is to show the monuments found during the boundary retracement of Lot 1, Block 23, Ketchum Townsite and to condominiumize said property as shown hereon. The boundary shown is based on found centerline monumentation, the Amended Record of Survey of Lot 1, Block 23, Ketchum Townsite, Instrument Number 682212, and the Official Map of the Village of Ketchum, Instrument No. 302967, both records of Blaine County, Idaho. All found monuments have been accepted. An additional document used in the course of this survey is the Record of Survey of Lot 1, Block 23, Ketchum Townsite, Instrument Number 673065, records of Blaine County, Idaho.
- In interpreting the Declaration, Plat or Plats, and Deeds, the existing physical boundaries of the unit as originally constructed, or reconstructed in lieu thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, plat or plats, and/or deeds, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown in the declaration, plat or plats, and/or deeds, and the actual boundaries of the units in the buildings.
- A Title Commitment for the property has been issued by Stewart Title Guaranty Company, File Number 20378964, with a Date of Policy of August 31, 2020. Certain information contained in said title policy may not appear on this map or may affect items shown hereon. It is the responsibility of the owner or agent to review said title policy. All plottable encumbrances and easements listed in the title report are shown hereon. Review of specific documents is required, if further information is desired.
- Horizontal or sloping planes shown hereon are top of finished subfloor and bottom of finished ceiling; vertical planes are finished surfaces of interior walls. Some structural members extend into units, limited common areas and parking spaces.
- Property shown hereon is subject to terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by applicable Condominium Law or the Condominium Declaration recorded under Instrument Number \_\_\_\_\_, records of Blaine County, Idaho. Consult the Condominium Declarations for the definition of common and limited common area.
- All area outside of units that is not designated as limited common is common area. areas of "common" or "limited common" are shown by diagram.
- Building ties are to the interior corners of unit walls. Elevation datum is NAVD 1988.
- Utility easements necessary to allow for access and maintenance of utilities serving units other than the unit they are located in are hereby granted by this plat.
- The current zoning is CC - Mixed Use. Refer to the City of Ketchum Zoning Ordinance for specific information about this zone.
- The owner of Lot 1 is 755 S Broadway LLC., 2667 S Tacoma Way, Tacoma, Washington 98409. The surveyor/representative is Mark E. Phillips, Galena Engineering, Inc., 317 N. River St., Hailey, Idaho 83333.

HEALTH CERTIFICATE: Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be reimposed in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-1326, by issuance of a Certificate of Disapproval.

Date \_\_\_\_\_ South Central District Health Dept., EHS



MARK E. PHILLIPS, P.L.S. 16670

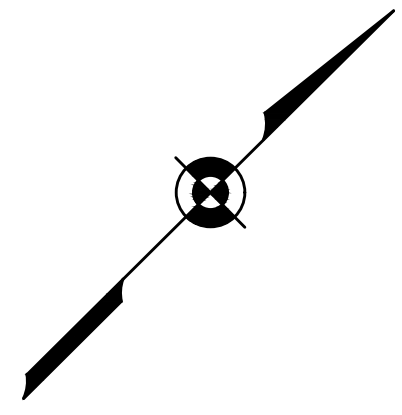
THE 208  
 CONDOMINIUMS

GALENA ENGINEERING, INC.  
 HAILEY, IDAHO

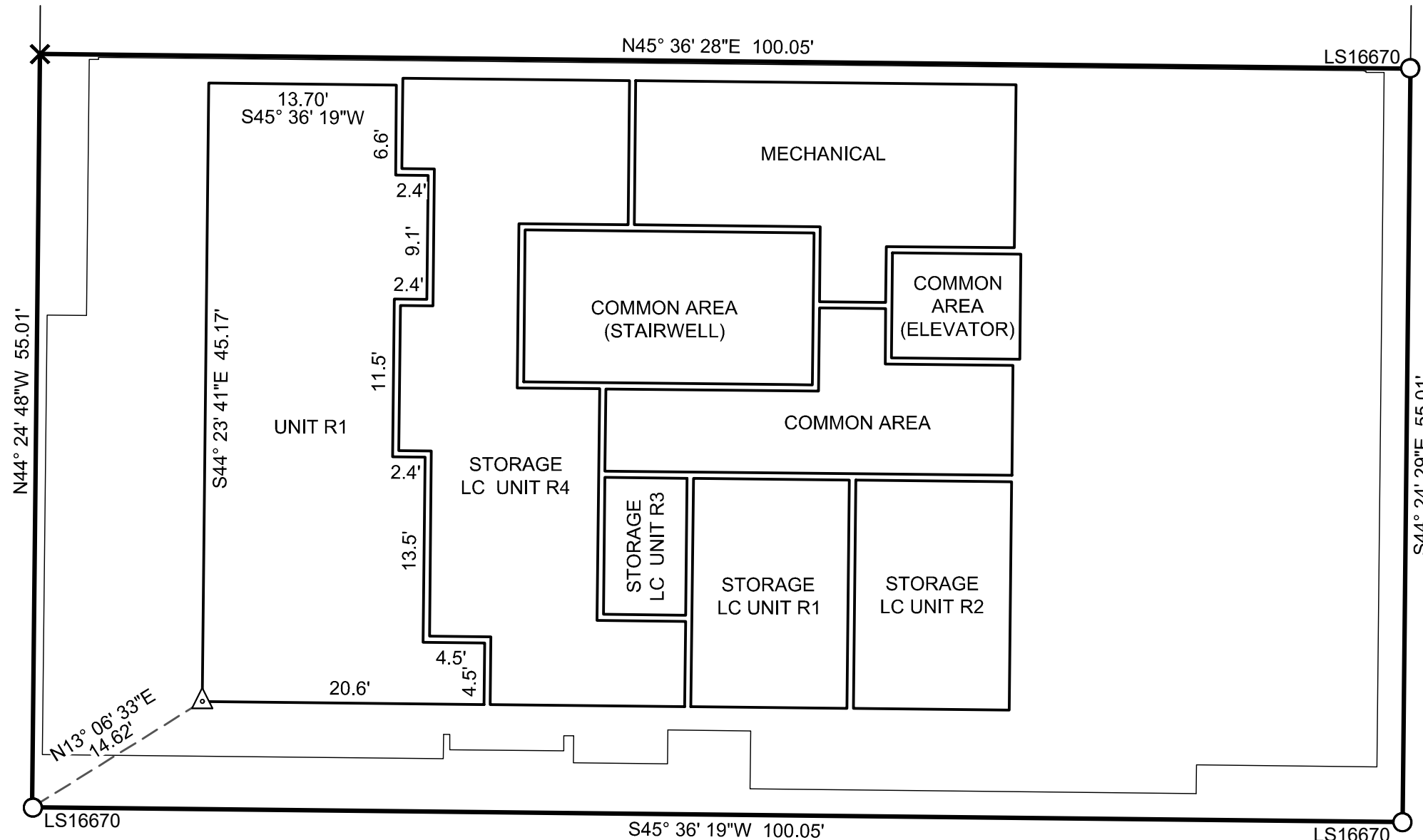
1 OF 4  
 Job No. 7000-03

# A PRELIMINARY CONDOMINIUM PLAT SHOWING THE 208 CONDOMINIUMS

WHEREIN LOT 1, BLOCK 23, KETCHUM TOWNSITE IS CONVERTED INTO CONDOMINIUMS  
LOCATED WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
OCTOBER 2022

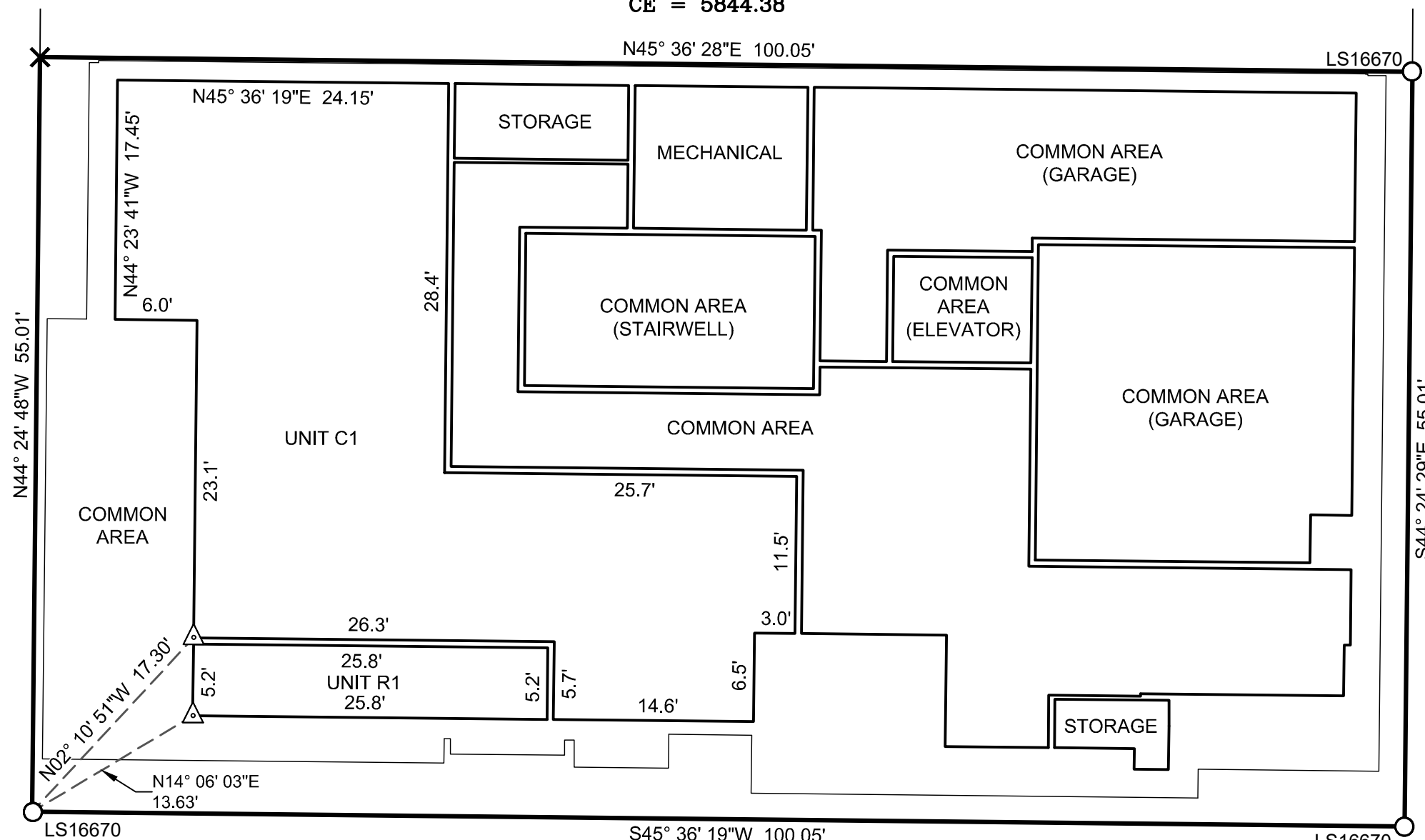


SCALE: 1" = 10'



### BASEMENT

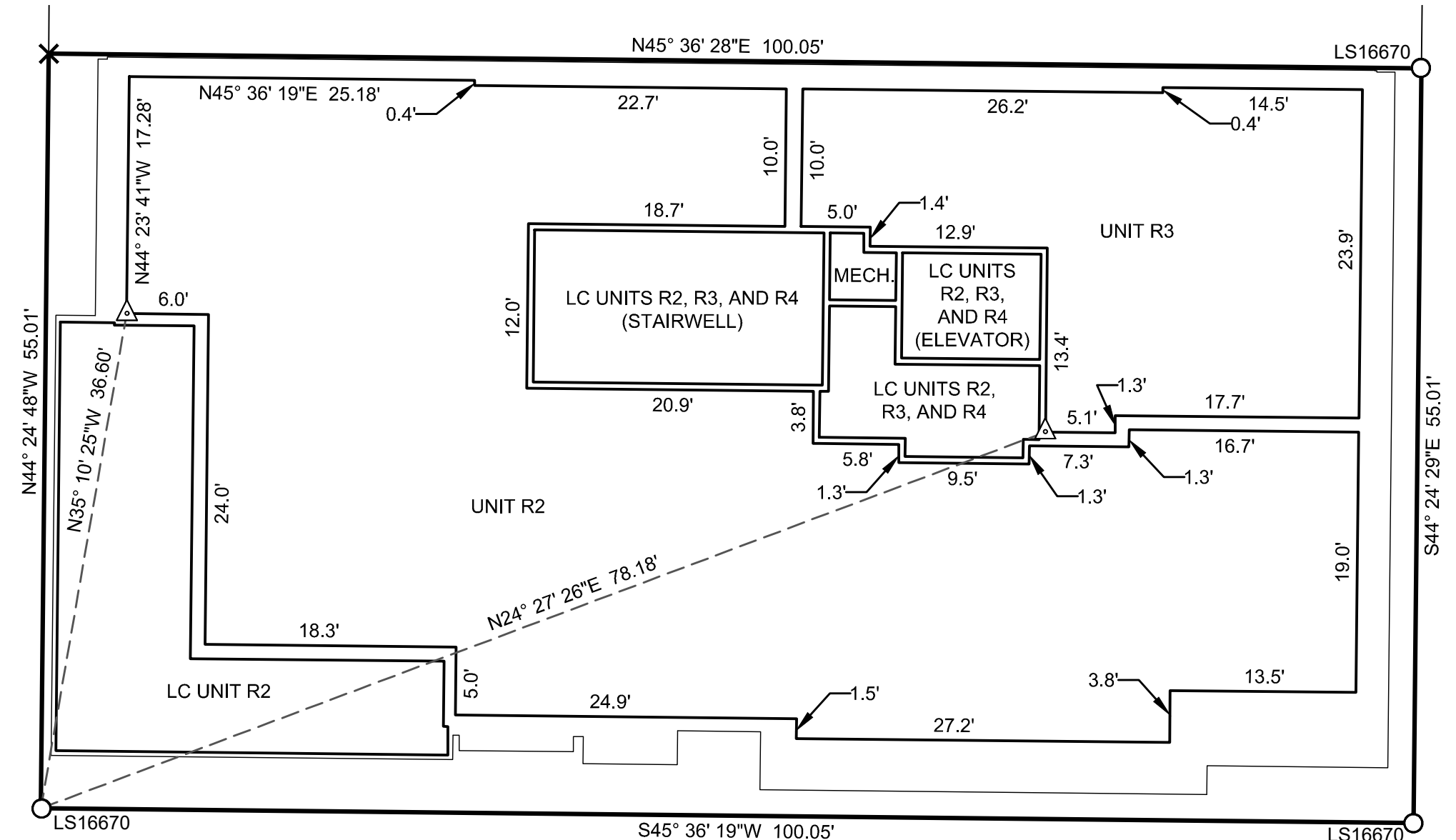
FE = 5834.87'  
CE = 5844.38'



### 1ST FLOOR

FE = 5846.22'  
CE = 5856.71'

LEGEND	
	Property Line
	Adjoiner's Lot Line
	Building Footprint
	Survey Tie Line
	Found 5/8" Rebar
	Found Magnetic Nail & Chiseled X
	Calculated Point, Nothing Set
FE	Floor Elevation
CE	Ceiling Elevation
LC	Limited Common



### 2ND FLOOR

FE = 5858.55'  
CE = 5869.54'



MARK E. PHILLIPS, P.L.S. 16670

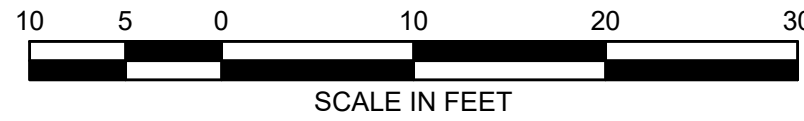
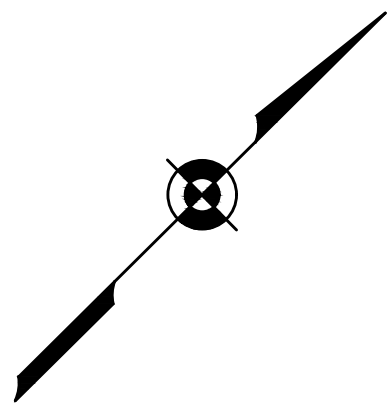
THE 208  
CONDOMINIUMS

GALENA ENGINEERING, INC.  
HAILEY, IDAHO

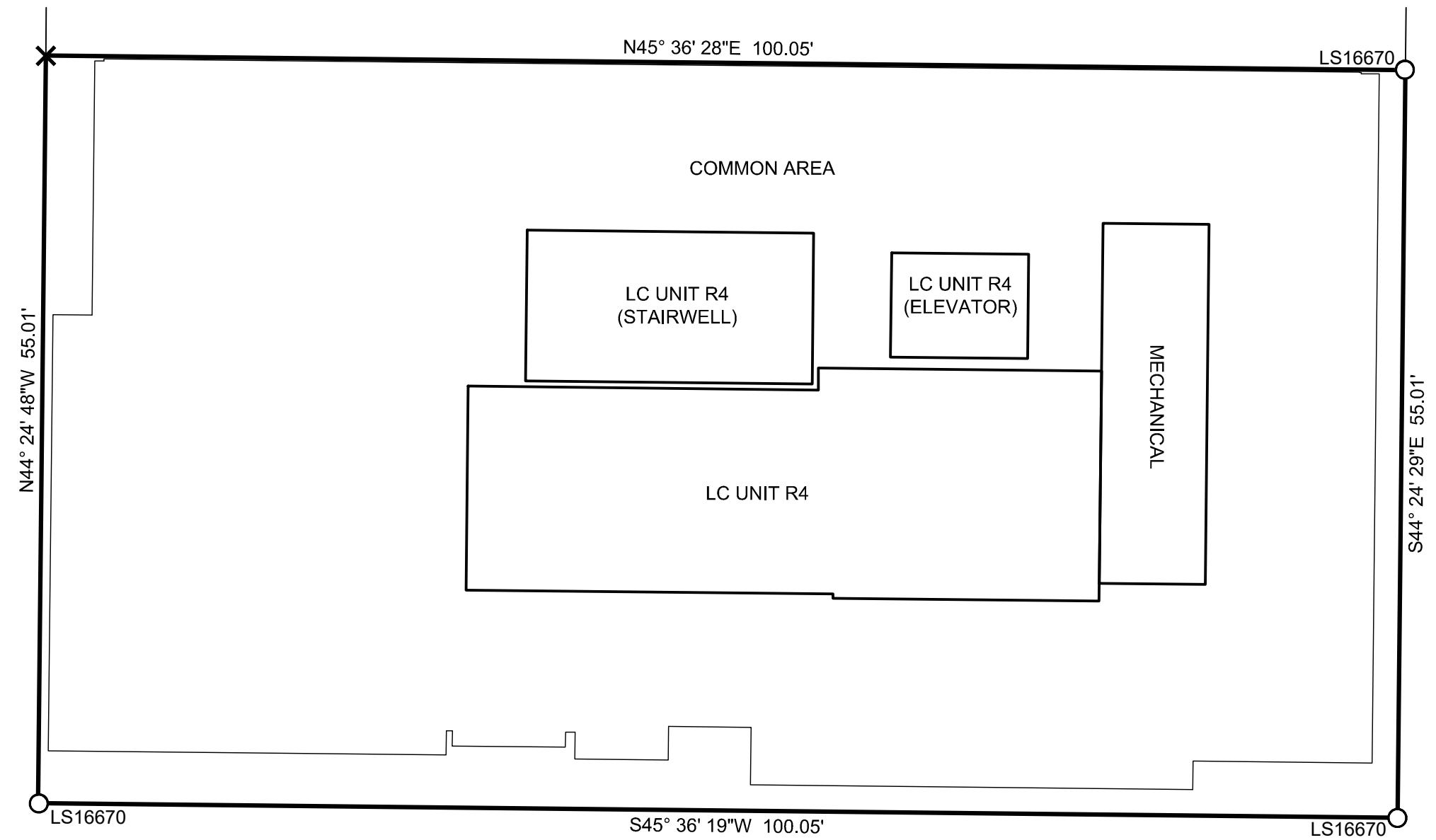
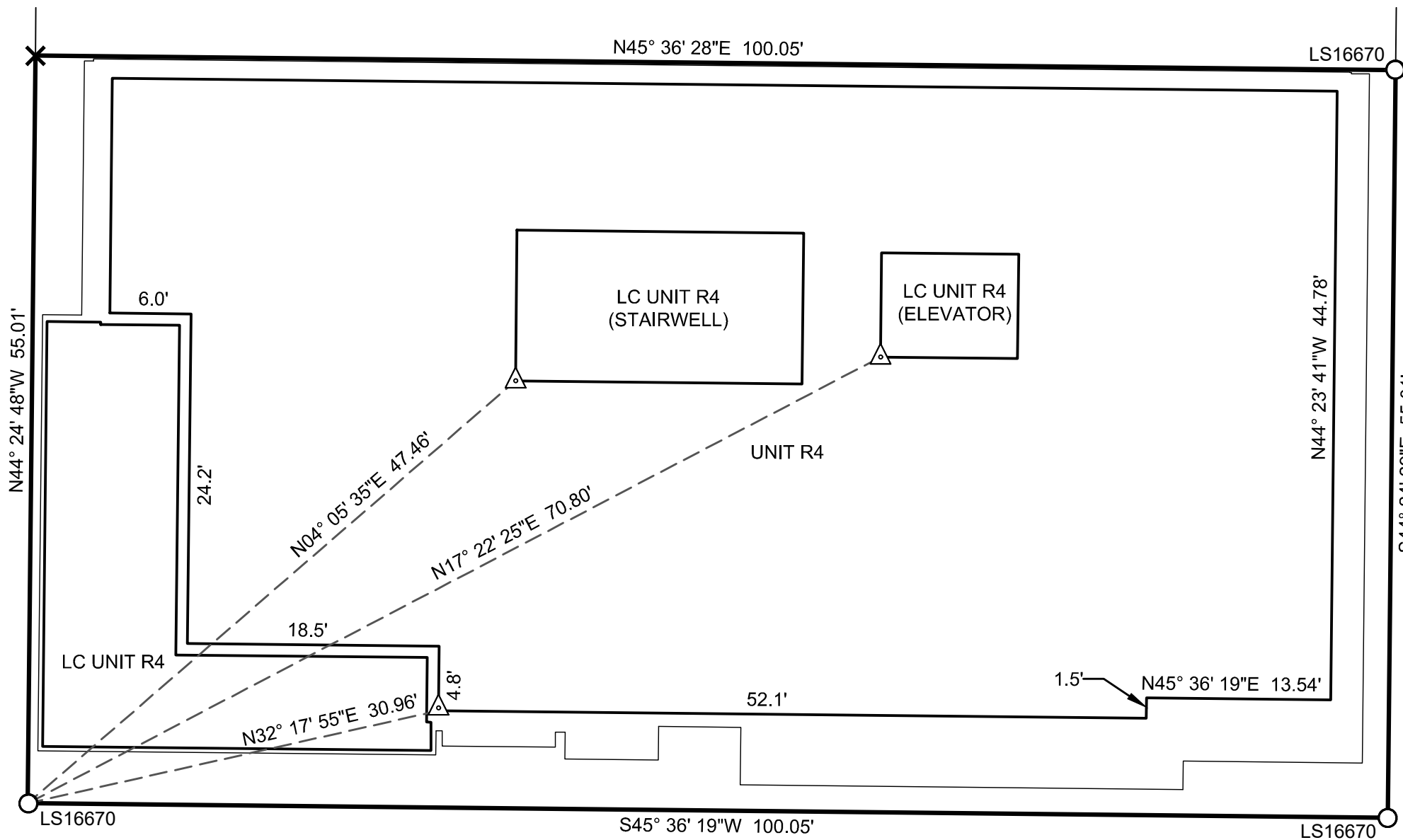
2 OF 4  
Job No. 7000-03

# A PRELIMINARY CONDOMINIUM PLAT SHOWING THE 208 CONDOMINIUMS

WHEREIN LOT 1, BLOCK 23, KETCHUM TOWNSITE IS CONVERTED INTO CONDOMINIUMS  
LOCATED WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO  
OCTOBER 2022



SCALE: 1" = 10'



### LEGEND

- Property Line
- Adjoiner's Lot Line
- Building Footprint
- Survey Tie Line
- Found 5/8" Rebar
- Found Magnetic Nail & Chiseled X
- Calculated Point, Nothing Set
- FE Floor Elevation
- CE Ceiling Elevation
- LC Limited Common



MARK E. PHILLIPS, P.L.S. 16670

THE 208  
CONDOMINIUMS

GALENA ENGINEERING, INC.  
HAILEY, IDAHO

3 OF 4  
Job No. 7000-03

**CERTIFICATE OF OWNERSHIP**

This is to certify that the undersigned are the owners in fee simple of the following described condominium property:

A parcel of land located within Section 18, T.4N., R.18E., B.M., City of Ketchum, Blaine County, Idaho, more particularly described as follows:

Lot 1, Block 23, Ketchum Townsite

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. I do hereby certify that all units within this condominium plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of units shown within this plat.

It is the intent of the owners to hereby include said condominium property in this plat.

755 S. Broadway LLC, An Idaho Limited Liability Company

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared 755 S. Broadway LLC, known or identified to me to be the manager of the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

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 in and for said State  
Residing in \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

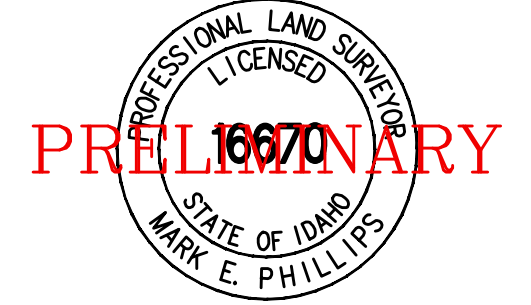
**PROJECT ENGINEER'S CERTIFICATE**

I, the undersigned, project engineer for 208 Condominiums, certify that the subdivision is in accordance with the City of Ketchum Subdivision standards.

\_\_\_\_\_  
Jeff C. Loomis, PE 7986, Galena Engineering, INC

**SURVEYOR'S CERTIFICATE**

I, Mark E. Phillips, a duly Licensed Professional Land Surveyor in the State of Idaho, do hereby certify that this plat is a true and accurate map of the land and points surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to Plats, Surveys, and Condominiums and the Corner Perpetuation and Filing Act, 55-1601 through 55-1612.



MARK E. PHILLIPS, P.L.S. 16670

**BLAINE COUNTY SURVEYOR'S APPROVAL**

I, Sam Young County Surveyor for Blaine County, Idaho, do hereby certify that I have checked the foregoing Plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating to Plats and Surveys.

\_\_\_\_\_  
Sam Young, P.L.S. 11577  
Blaine County Surveyor

**KETCHUM CITY COUNCIL CERTIFICATE**

I, the undersigned, City Clerk, in and for the City of Ketchum, Blaine County, Idaho, do hereby certify that at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2022, this plat was duly accepted and approved.

\_\_\_\_\_  
Tara Fenwick, City Clerk, City of Ketchum

**KETCHUM CITY ENGINEER CERTIFICATE**

I, the undersigned, City Engineer in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this \_\_\_\_ day of \_\_\_\_\_, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

\_\_\_\_\_  
Sherri Newland, City Engineer, City of Ketchum

**KETCHUM CITY PLANNER CERTIFICATE**

I, the undersigned, Planner in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this \_\_\_\_ day of \_\_\_\_\_, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

\_\_\_\_\_  
Morgan Landers, City of Ketchum

**BLAINE COUNTY TREASURER'S APPROVAL**

I, the undersigned County Treasurer in and for Blaine County, State of Idaho per the requirements of Idaho Code 50-1308, do hereby certify that any and all current and/or delinquent county property taxes for the property included in this subdivision have been paid in full. This certification is valid for the next thirty (30) days only.

\_\_\_\_\_  
Blaine County Treasurer

\_\_\_\_\_  
Date

**BLAINE COUNTY RECORDER'S CERTIFICATE**

THE 208  
CONDOMINIUMS

GALENA ENGINEERING, INC.  
HAILEY, IDAHO

4 OF 4  
Job No. 7000-03



City of Ketchum

# Attachment I: Public Notice



City of Ketchum  
Planning & Building

NOTICE OF PUBLIC HEARING BEFORE THE KETCHUM PLANNING AND ZONING COMMISSION

<b>Meeting Date:</b>	November 29, 2022
<b>Meeting Time:</b>	4:30 PM, or thereafter as the matter can be heard.
<b>Meeting Location:</b>	City Hall Council Chambers, 191 5 <sup>th</sup> Street W, Ketchum, Idaho. The meeting will be livestreamed at <a href="http://www.ketchumidaho.org/meetings">www.ketchumidaho.org/meetings</a> . Public comment may be given remotely, when the public comment portion of the meeting for this item is opened. The link to join the webinar for the meeting is: <a href="https://ketchumidaho-org.zoom.us/j/81013712385">https://ketchumidaho-org.zoom.us/j/81013712385</a> Webinar ID: 810 1371 2385. This information can also be found on the meeting agenda.
<b>Project Name:</b>	The 208 Condominiums
<b>Project Location:</b>	200 N Leadville (KETCHUM LOT 1 BLK 23)
<b>Zoning:</b>	Community Core – Subdistrict 2
<b>Representatives:</b>	Nicole Ramey, Medici Architects (Architect) Matt Smithman, Galena Engineering
<b>Property Owner:</b>	755 S Broadway, LLC
<b>Application Types:</b>	Design Review (P22-035) & Condominium Subdivision Preliminary Plat (P22-035A)
<b>Project Description:</b>	<p>The Commission will consider, and take action on, a Design Review application for the development of a new 11,663 square foot three story mixed-use development at 200 N Leadville Ave. The proposed development includes ground floor commercial space, four residential condominiums with associated parking and storage, and a rooftop deck.</p> <p>The Commission will also consider and take action on a Condominium Preliminary Plat subdivision application for the proposed 208 Condominiums project. The application proposes to subdivide the building into four residential condominiums units, one commercial unit, common area, and limited common areas for storage, circulation, and parking.</p>

A copy of the Staff Report will be available on the City website at the following link <https://ketchumidaho.org/meetings>. The meeting will be livestreamed with the video feed accessible at the same link at 4:30 p.m. the day of the meeting.

NOTICE IS FURTHER GIVEN that, at the aforementioned time, all interested persons shall be given an opportunity to comment on the matter stated above. Comments and questions prior to the hearing may be directed to the Ketchum Department of Planning and Building, P.O. Box 2315, Ketchum, Idaho, 83340, or via email to [participate@ketchumidaho.org](mailto:participate@ketchumidaho.org). Written comments received by 5:00 PM, seven (7) days prior to the hearing will be included as an attachment to the staff report. For additional information, please call (208) 726-7801.

Publication Date: October 19, 2022





City of Ketchum

# Attachment J: Notice Certification

Design Review

Noticing Checklist / Certification

Project Name: The 208 Condominiums

Address: 200 N Leadville

File No: P22-035 Date Filed: \_\_\_\_\_

P&Z  City Council  Meeting Date: 11/29/22

- Publish in Idaho Mt Express 15 days prior to meeting
- Mail notice to **all properties within 300 feet** on day of publication
- Mail notice to all **Political Subdivisions** on day of publication
- Post on Website 15 days prior to meeting
- Post on Premises 7 days prior to meeting/ Verify Story Poles

<u>11/4/22</u> Deadline	<u>11/3/22</u> Date notice sent to paper
<u>11/4/22</u> Deadline	<u>11/9/22</u> Date of publication
<u>11/14/22</u> Deadline	<u>11/7/22</u> Date mailed to all 300-foot adjoiners
<u>11/14/22</u> Deadline	<u>11/7/22</u> Date Posted on Website <i>setup for 11/21/22</i>
<u>11/21/22</u> Deadline	<u>11/7/22</u> <i>leave to CSO's to post by 11/21/22</i> Date Posted on Premises
<u>11/21/22</u> Deadline	<u>11/21/22</u> Story Poles Verified

Copy of Notice and Mailing lists placed in file.

I, Heather Nicolai, Planning Technician for the City of Ketchum, Idaho Planning and Building Department, hereby certify that the above noticing was completed on the dates so indicated.

CERTIFIED this 11<sup>th</sup> day of November, 2022



---

Heather Nicolai  
Planning Technician



City of Ketchum

**Attachment K:  
Staff Report (no attachments) –  
Planning and Zoning  
Commission November 29,  
2023**



**STAFF REPORT**  
**KETCHUM PLANNING AND ZONING COMMISSION**  
**SPECIAL MEETING OF NOVEMBER 29, 2022**

- PROJECT:** The 208 Condos
- FILE NUMBER:** P22-035 and P22-035A
- APPLICATION TYPE:** Final Design Review and Subdivision – Condominium Preliminary Plat
- APPLICANT:** Nicole Ramey, Medici Architects (Architect)
- PROPERTY OWNER:** 755 S Broadway, LLC
- REQUEST:** Final Design Review and Condominium Preliminary Plat application for the development of a new, 11,663 square foot, three-story mixed-use building
- LOCATION:** 200 N Leadville Avenue - Ketchum Townsite: Block 23: Lot 1
- 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 November 7, 2022. The public hearing notice was published in the Idaho Mountain Express on November 9, 2022. A notice was posted on the project site and the city’s website on November 7, 2022. Story poles were verified on the subject property on November 22, 2022.

**I. EXECUTIVE SUMMARY:**



Figure 1: Conceptual Rendering of “The 208 Condos”

The Applicant is proposing an 11,663 square foot three-story mixed-use development known as The 208 Condominiums (the “project”), located at 200 N Leadville Avenue (the “subject property”). The development is not subject to the interim ordinance as the applications were deemed complete prior to the effective date of the ordinance.

The subject property is a vacant corner lot zoned Community Core -Subdistrict 2 - Mixed Use (CC-2) just southeast of the Kneadery and VP Companies offices, across from Vintage restaurant and another vacant lot on the opposite corner.

As proposed, the project includes 1,306 square feet of ground floor retail, and four residential dwelling units as follows:

- One dwelling unit in the basement – 704 net square feet (NSF)

- Two dwelling units on the second floor – 749 NSF and 2,587 NSF
- One dwelling unit on the third floor – 3,514 NSF

Based on the size of the units, a total of 4 parking spaces are required for the residential units. The project proposes two two-car garages. The retail space and the two residential units less than 750 net square feet are exempt from parking requirements. Please see Attachment B for floor plans of each floor and corresponding square footage calculations.

The project proposes to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing, mitigating the additional floor area by making a community housing in-lieu payment of \$421,650. The total FAR for the project is 2.0, where 1.0 is permitted by right. An FAR Exceedance Agreement for the in-lieu payment was approved by City Council on November 21, 2022. See Attachment E for the FAR calculations for the project.

The project will construct improvements to the right-of-way per the City of Ketchum improvement standards including, three streetlights, asphalt alley, curb and gutter, and 8-foot sidewalks. The project proposes to snowmelt the sidewalks adjacent to the project. The city engineer and streets department has conducted a preliminary review all improvements and believes the improvements to meet the city's standards. Final review of all improvements to the right-of-way will be conducted by the City Engineer and Streets Department prior to issuance of a building permit. An encroachment permit approved by the City Council will be required for the snow melt system.

Staff believes the project conforms to the zoning and dimensional standard requirements and most of the design review criteria. Staff also believes the project conforms with the subdivision preliminary plat and condominium preliminary plat requirements. However, staff has concerns related to the placement of the transformer and the activation of the 2<sup>nd</sup> Street façade. Staff recommends the Commission review the application and provide feedback to the applicant on potential revisions to address staff's concerns.

## **II. BACKGROUND:**

The City of Ketchum received the application for Final Design Review and condominium preliminary plat on July 1, 2022. The Final Design and Preliminary Plat applications have been reviewed concurrently and were deemed complete on October 14, 2022. Department comments were provided to the applicant on July 27, 2022, and additional comments provided on October 14, 2022. As of the date of this report, most comments have been resolved or are addressed by conditions of approval. Staff has outstanding concerns related to the location of the proposed transformer and 2<sup>nd</sup> Street façade as outlined further below.

## **III. CONFORMANCE WITH ZONING AND DESIGN REVIEW STANDARDS:**

Per Ketchum Municipal Code (KMC) §17.96.010.A – *Applicability*, design review is required for all new mixed-use buildings. Before granting Design Review approval, the Commission must determine that the application meets two criteria: (1) the project doesn't jeopardize the health, safety, or welfare of the public, and (2) the project conforms to all Design Review standards and zoning regulations (KMC §17.96.050.A).

### **Conformance with Zoning Regulations**

During department review, city staff reviewed the project for conformance with all applicable zoning code requirements including uses, dimensional limitations, signage, parking, development standards, and dark skies. The project follows all applicable zoning code requirements. Please see Attachment E for a full review of dimensional standards.

The proposed development is not subject to the interim ordinance as the application was deemed complete prior to the effective date of the ordinance. However, for information only, staff has provided an overview of

how the project would conform to the interim ordinance as Attachment H. This is for information and reference only and does not represent criteria by which the development should or can be evaluated.

Staff believes the proposed development meets all zoning and dimensional standards as outlined in the applicable sections of the KMC.

### Conformance with Design Review Improvements and Standards

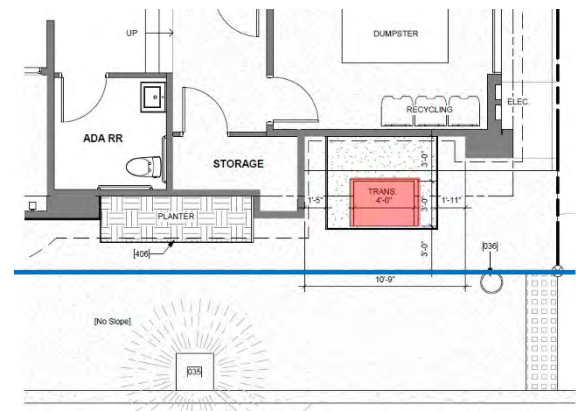
During department review, city staff reviewed the project for conformance with all applicable design review improvements and standards outlined in KMC §17.96.060 – *Improvements and Standards*. Staff also reviewed the development for conformance with KMC §17.96.070 – *Community Core (CC) Projects*. Finally, staff reviewed the development for conformance with all corresponding city code requirements related to right-of-way improvements including but not limited to sidewalks, street lighting, alleys, and on-street parking.

Staff believes that either a requirement is not applicable due to the scope of the project, or requirements are met, except for the placement of the transformer and activation of the 2<sup>nd</sup> Street façade and further discussed below. Please see Attachment F for a review of all design review improvements and standards.

### Transformer Location

Per Section 17.96.060.D.2 “Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view”. Additionally, Criteria 17.96.060.C.2 states “Roof and ground mounted mechanical and electrical equipment shall be fully screened from public view. Screening shall be compatible with the overall building design.” The subject property was previously served by an above ground power line that crossed the alley from the north to a power pole on the subject property as shown on the Sheet titled “ALTA” of Attachment B. At the owner’s expense, the above ground lines have already been removed. The applicant proposes to serve the development by below grade power from the alley to a transformer at the rear of the building adjacent to the sidewalk as shown in Figure 2 to the right.

Figure 2: Proposed Transformer Location.

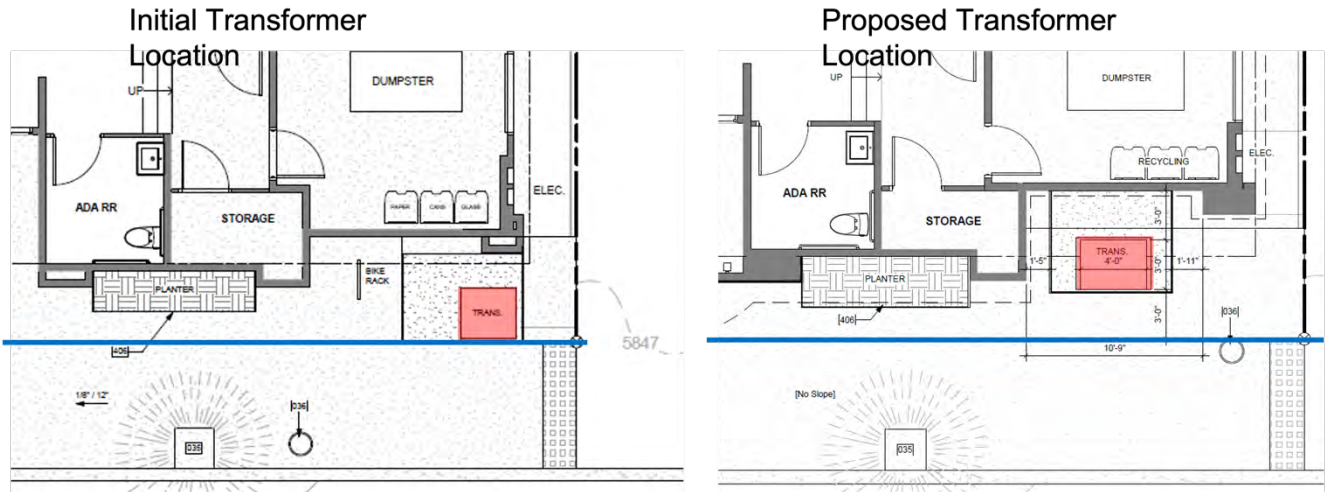


Staff is not supportive of the current location as it does not meet the criteria outlined above specific to screening. Staff also believes the location to be contradictory to the placement of transformers in recent projects within the downtown that have effectively screened transformers. Many projects place this equipment within the rear of the building, opposite pedestrian walkways, and concealed by the building or other substantial screening. Approval of this location would be a departure from what many projects in the community core have designed to and accommodated. The currently proposed location is an improvement from the initial application submittal; however, staff does not believe the placement and screening to be sufficient.

For context, during department review of the initial application, planning staff expressed concern that the location of the transformer did not meet setback and clearance requirements and was not fully screened from public view with the proposed metal screening. Staff recommended the applicant team evaluate relocation of the transformer to the northern property boundary to provide more separation and screening between the sidewalk and the equipment. Staff also recommended the applicant consider open tuck-under parking as that would allow for a more flexible use of the limited space off the alley. Enclosed garage space requires square foot allocation for walls, doors, access and circulation.

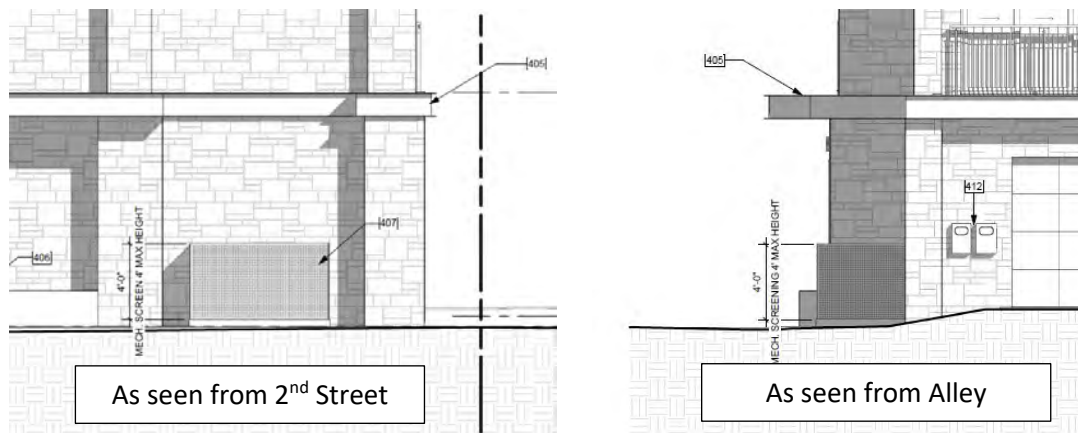
Upon resubmittal of the application materials, the applicant team made some changes to the transformer placement by setting it back to meet clearance requirements but did not move the transformer from the general location. The applicant represents that all options were evaluated and that no other location for the transformer is feasible based on clearance requirements, the applicant’s desire to have enclosed parking, and the constrained space allocated to various uses on the ground floor. Figure 3 below shows the initial transformer location on the left and the proposed transformer location on the right. The transformer is highlighted in red and the subject property boundary adjacent to the 2<sup>nd</sup> Street sidewalk is shown in blue.

Figure 3: Initial and Proposed Transformer Locations



The proposed screening is a 4-foot-high metal mesh panel as shown below in Figure 4 below.

Figure 4: Proposed Screening of Transformer



Staff believes the current location is preferable to the initial application, however, the transformer will still be visible by the public at all times of year due to the proximity to the public sidewalk. Staff also has concerns about the metal screening. This screening is seen in other areas of downtown with little practical success. Metal paneling is prone to freezing in the wintertime, causing Idaho Power to break the panels to get access to transformers. Often, repair of the screens by the property management or homeowner’s association takes an extended period of time resulting in either no screening, or broken screening that may obstruct alleys or sidewalks.

Staff believes that consistent application of the design review criteria is important as the city has made positive progress in the placement of equipment over the past couple of years from previous practice. If allowed to place the transformer in the proposed location, the project is setting up an example that would be considered

acceptable to the city and will likely be employed on other projects. Based on these concerns, staff recommends the following alternatives to what is currently proposed:

- Evaluate the configuration of ground floor parking and uses to create an adequate space for the transformer in the rear of the property along the northern property boundary
- Screen the transformer with landscaping that will soften the aesthetic of the transformer and adequately screen the equipment year-round. Staff recommends shrubs rather than tall grasses as the grasses are cut down during the winter and will expose the equipment.

### Activation of Ground Floor at Corner

Per Section 17.96.070.B.2, “For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.” During department review, staff expressed concerns about the placement of the entrance to the basement residential unit and the recessed nature of the retail and residential entrance on 2<sup>nd</sup> Ave. Although the façade along the stairwell includes storefront type windows with associated landscape planters, the placement of the stairwell at the prominent corner of the building and the recessed nature of the main entrance takes away opportunities to maximize activation of the street along 2<sup>nd</sup> Street. On many corner lot developments in the downtown, the focus of activating the street should be at the corner with facades becoming less activated toward the alley where there is usually parking, utilities, trash, and other back of house uses. As shown in Figures 5 and 6 below, only a small portion of the 2<sup>nd</sup> Street façade will have activation at the street level adjacent to the sidewalk. Figure 5 is a plan view of the uses adjacent to the 2<sup>nd</sup> Street façade and Figure 6 shows how those uses translate to the building’s elevation. See the paragraph below for a description of the color coding.

Figure 5: 2nd Street Facade (plan view)

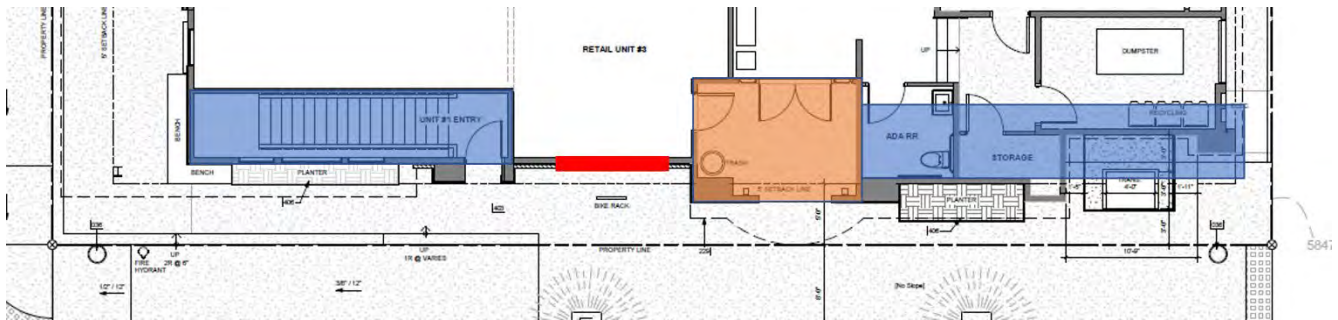


Figure 6: 2nd Street Facade (elevation)



The blue shading notates the stairwell to the basement on the corner and the back of house uses along the façade toward the alley. The orange notes the recessed entry to the building which includes a side entrance to the retail space and the primary entrance for the upper-level residential uses. The red line notates the portion of the façade with direct visibility into the retail space. The intent of the design review criteria is to ensure activation of the street by providing interest for pedestrians. Retail uses rely heavily on “window shopping” potential, which is not supported by the placement of the stairwell in its currently location. Staff recommended the applicant review alternative placement of the stairwell; however the applicant team



represents this is the best location for the purpose of bringing in natural light into the basement unit. The applicant also represents a desire to create a prominent entrance to the upper floor residential units that sets this portion of the building apart from the other uses.

Although staff understands these desires, staff believes the placement of these features diminishes the activation of the street and closes the building off from the pedestrian realm. Staff recommends the applicant consider the following alternatives:

- Relocate the stairwell to the basement residential unit to allow for full visibility of the retail space.
- Reduce the size of the recessed entry to allow for the relocation of the retail entrance to be placed directly onto 2<sup>nd</sup> Street.

#### Exposed Wall on North Facade

The north facade of the proposed building faces toward the Kneadery, adjacent to the VP Companies office and has a zero-foot setback from the property line. Section 17.96.070.B.1 states “Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front façade”. Although this standard does not directly apply to this façade as it is not set back from the property line, the adjacent building is a one-story building with a pitched roof and has significant setbacks from property lines. Some vegetation is present, although sparse. As shown in the southwest perspective on Sheet A4.4, the north façade will be visible until redevelopment of the adjacent property. As shown in the renderings on Sheet A4.4 and elevation on Sheet A4.3, the development proposes some horizontal banding and a mural to add interest to the building and to reduce the perceived mass of the structure.

In general, staff believes the proposed development meets the design review criteria except for the placement of the transformer and potential activation of the 2<sup>nd</sup> Street facade. Staff requests the Commission review the proposed development and provide feedback to the applicant on the transformer location and 2<sup>nd</sup> Street activation.

#### **IV. 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 G for the review of all requirements and standards. Where “N/A” is checked, the standard is not applicable for one of three reasons:

- The standard applies to the creation of new subdivisions, not the subject property, which is an existing platted lot within the original 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.

The alley between N Leadville Ave and East Ave meets the city’s minimum width requirement of 20 feet. The proposed building is set back 3 feet from the alley, allowing adequate turning movements for vehicles entering and exiting the enclosed garages. The development will reconstruct the alley as shown in the right-of-way improvements plan on Sheet C2.0 of Attachment B. Reconstruction of the alley will include regrading of the alley to meet slope requirements, address drainage issues for the length of the subject property, and tie into the existing sidewalk to the east across the alley.

Staff believes the proposed preliminary plat meets all the subdivision requirements and standards for a preliminary plat and condominium map.

#### **V. STAFF RECOMMENDATION**

Staff requests the Commission review the Design Review application and provided feedback to the applicant on the transformer location and the 2<sup>nd</sup> Street façade activation.

**ATTACHMENTS:**

- A. Application Materials – Design Review application and supplemental materials
- B. Application Materials - Design Review Plan Set
- C. Application Materials – Preliminary Plat application and supplemental materials
- D. Application Materials – Preliminary Plat Plan Set
- E. Zoning and Dimensional Standards Analysis
- F. Design Review Criteria Analysis
- G. Condominium Preliminary Plat Analysis
- H. Interim Ordinance Analysis – Information Only



City of Ketchum

Attachment L:  
Hearing Transcripts - November  
29, 2023

**P22-035 / P22-035A - 200 N Leadville Ave**

**CITY OF KETCHUM PLANNING AND ZONING COMMISSION**

IN RE: )  
P22-035 / THE 208 CONDOS )  
and )  
P22-035A / THE 208 CONDOS )  
200 North Leadville Avenue )  
\_\_\_\_\_ )

**TRANSCRIPT OF RECORDED PUBLIC HEARING**

**TUESDAY, NOVEMBER 29, 2022**

**COMMISSIONERS PRESENT:**

**NEIL MORROW, CHAIRMAN**

**BRENDA MOCZYGEMBA, VICE CHAIRPERSON**

**TIM CARTER**

**SPENCER CORDOVANO**

**SUSAN PASSOVOY**

**TRANSCRIBED BY:**

**VICTORIA HILLES, RPR, CSR NO. 1173**

1 (Begin transcription at 0:0:47 of audio  
2 file.)

3 CHAIRMAN MORROW: Communications from  
4 Commissioners, any kind of ex parte disclosures or  
5 communications?

6 VICE CHAIRMAN MOCZYGEMBA: No. I did -- I did a  
7 site visit of the 200 North Leadville story poles.

8 CHAIRMAN MORROW: Okay. All right.

9 (Pause transcription at 0:01:06 of audio  
10 file and resume transcription at 0:34:10  
11 of audio file).

12 CHAIRMAN MORROW: Okay. Action Item 3,  
13 recommendation to hold a public hearing review and  
14 provide feedback on design review and condominium,  
15 preliminary-plat applications for the proposed  
16 mixed-use development at 200 North Leadville, P22-035  
17 and P22-035A.

18 Staff.

19 Is this Morgan?

20 MORGAN LANDERS: Yes. Yes. Yes.

21 Thank you, everyone. Let me get teed up  
22 here.

23 Great. Thank you, everyone.

24 I'm Morgan Landers.

25 This project is a design-review

1 application and a condominium, preliminary-plat  
2 application for a new, mixed-use development at the  
3 corner of Second and Leadville.

4 I do have a brief presentation to kind of  
5 review what we over-viewed in the staff report, and we  
6 do have representatives of the applicant here that  
7 wish to provide some comments and remarks as well, and  
8 then -- obviously, go to your question and answers,  
9 public comment, and then into your deliberation.

10 So I'll talk at a high level kind  
11 of -- project introduction, zoning standards, design  
12 review standards, and subdivision standards. These  
13 are going to be high-level items that we discussed in  
14 the staff report, and I can drill down on anything in  
15 more detail that you would like.

16 So as I mentioned, this is the final  
17 design-review and condominium preliminary plat for a  
18 new 11,663-square-foot, three-story, mixed-use  
19 building. The property's located at 200 North  
20 Leadville.

21 And so you can see here on the upper  
22 portion of the screen -- this is an aerial photo.  
23 It's on the north corner. We're at a bit of an offset  
24 in the downtown. So it's the north corner of Second  
25 and Leadville, and that is within the Subdistrict 2 of

1 the Community Core.

2 So retail is not required, but certainly a  
3 permitted use on the ground floor. The existing lot  
4 is vacant, currently. There was a previous building  
5 on the property, but that was demolished in 2020.

6 So an overview of what the proposed  
7 project is. There are four levels, as this building  
8 has a basement. And so in the basement we have one  
9 residential unit that has a net square footage of 704  
10 square feet, and then the remainder of the basement is  
11 consisting of storage space for the other residential  
12 units and then access and ingress and things like  
13 that.

14 On the ground floor we have 1,306 square  
15 feet of retail, we have garages for the residential  
16 units that are of larger size, and then we also have  
17 kind of the back-of-house operations for the project,  
18 which are utilities, garbage, storage, additional  
19 storage for retail, and things of that nature.

20 On the second floor there are two  
21 residential units. One is 749 net square feet, and  
22 the other is 2,587. And then on the third floor there  
23 is one penthouse unit of 3,514 square feet.

24 Please keep in mind -- these are  
25 net-square-footage numbers because those are the

1 square-footage numbers we use to calculate the parking  
2 requirements, but the gross-square-footage numbers of  
3 those units are just slightly higher. And I believe  
4 both of those numbers were included in the packet of  
5 information.

6 There is a rooftop deck proposed for this  
7 project. It is set back, per all of the requirements  
8 of the zoning regulations, set back for unhabitable  
9 structures, everything set back 10 feet from  
10 the -- from the parapet of the building, and that is  
11 included in the project plans as well.

12 So on the zoning regulation side, we do  
13 review proposed uses, dimensional standards, including  
14 all the setbacks, building-height and coverage  
15 requirements. This is a project that is requesting to  
16 take advantage of the floor-area, density-bonus  
17 program. Their FAR Exceedance Agreement was approved  
18 by City Council at the last City Council meeting, you  
19 know, pending approval of their design review and  
20 condo preliminary plat.

21 So if there are amendments that are made  
22 to that agreement moving forward, we have recently  
23 made a shift on kind of the order by which we're doing  
24 those because the City Council has the purview over  
25 the FAR Exceedance Agreement, and the Planning



1 Commission over -- purview of design review.

2 There's some clauses in the agreement  
3 that -- if there are design changes that result from  
4 the design-review process, there's amendment  
5 procedures for that agreement.

6 And then we also review everything for  
7 parking requirements and all of our dark-sky  
8 requirements as well. At this time, we do believe  
9 they are in conformance with all of the zoning  
10 regulations as the project is currently proposed.

11 On the other side of that, I just wanted  
12 to call your attention to -- I did provide an overview  
13 of the project's conformance with our Interim  
14 Ordinance, although this project was exempt from that  
15 because it was deemed complete prior to the effective  
16 date of that Ordinance.

17 But as staff, we want to make sure that  
18 you all, -- even as you're seeing projects, those  
19 aren't criteria that you can be evaluating the project  
20 against. But I think one of the requests of the  
21 Planning Commission was that you all would see how  
22 projects kind of fit into that because that's part of  
23 the learning experience during this Interim Ordinance  
24 process.

25 So on the design-review side of things, in

1 general, staff believes that this is a pretty good  
2 project. We think that they've taken a lot of care  
3 from a lot of the architectural elements and some of  
4 the detailing of the building, but we do have a couple  
5 of -- of components of the project that we were not  
6 able to get full resolution between staff and the  
7 applicant on.

8           And so we want to present those for you  
9 today for you to give feedback to the applicant on  
10 whether you agree that these are concerns and that  
11 there are some changes that should be made or whether  
12 the Commission feels supportive of what's in front of  
13 you today and can move forward with that project.

14           So staff highlighted a couple of things,  
15 primarily the utility screening of the  
16 transformer -- and I'll go through that -- and then,  
17 also, activation of the ground floor at the corner.  
18 We also highlighted the north facade, which I did  
19 include a slide on, although staff doesn't necessarily  
20 have concerns about that. It was more -- something to  
21 highlight for you all in case you wanted to provide  
22 additional feedback to the applicant.

23           So for the utility screening, the  
24 design-review criteria says that roof and  
25 ground-mounted mechanical and electrical equipment

1 shall be fully screened from public view. This is a  
2 Community-Core-specific, design-review criteria. In  
3 the rest of the town we have design-review criteria  
4 that speaks generally to utilities being underground  
5 and screened, but we are much more specific about  
6 things in the Community Core.

7 So as I reviewed in the staff report, we  
8 did have some iterations with the applicant. So the  
9 applicant has tried to address staff's comments, but  
10 we still do have some concerns.

11 So the image on the left is what was  
12 initially proposed by the applicant. And so you can  
13 see here in this red -- this was the original  
14 transformer location. This blue line is the property  
15 line.

16 So there were a couple of concerns. One  
17 was the location, but the initial proposal didn't meet  
18 the clearance requirements for Idaho Power or the  
19 City. So we worked with the applicant to make some  
20 revisions.

21 And so you can see the current proposed  
22 location of the transformer on the right, and it is  
23 now set back from the property line. And there were  
24 some adjustments that were made to the building facade  
25 to kind of further tuck the transformer in.

1           Staff still has some concerns related to  
2 this location primarily because of the location  
3 adjacent to the sidewalk and some of the screening  
4 that's proposed.

5           Here's another view of what currently is  
6 proposed. So from the Second Street facade, if you're  
7 on the sidewalk, this will be your view of the  
8 transformer. This is about a 4-foot, screened fence.

9           And then, if you're walking down from the  
10 alley or if you're walking down Second Street kind of  
11 at an angle, this is what it would appear to be from  
12 those pedestrian vantage points as well.

13           So in our additional discussions with the  
14 applicant, you know, we expressed concerns about  
15 visibility, the long-term viability of the screening,  
16 and the inconsistent application of design-review  
17 criteria if we were to permit this location.

18           From a visibility standpoint and from a  
19 viability standpoint, the metal screening is really  
20 not something that has proven to be effective over  
21 time. Idaho Power has expressed concern that these  
22 screens can freeze. You know, they're metal screens.

23           And so, in the wintertime, if they're  
24 frozen in place and the transformer has to get  
25 accessed -- Idaho Power doesn't necessarily oppose the

1 screening, but they will just break the screening to  
2 access the transformer. It's not something that  
3 they'll just kind of wait to get de-frozen, things  
4 like that.

5           And then it often takes a long time for  
6 that screening to get replaced or repaired. So we do  
7 have instances in the Community Core right now, where  
8 this metal screening has been used, and it's damaged  
9 and no longer serving its function.

10           The other concern, I think, is -- is just  
11 kind of how effective that metal screening is from  
12 screening the utilities from public view. You know,  
13 in some instances it may be a more preferable  
14 situation than landscaping because some landscaping  
15 doesn't do as well in the winter months, may get  
16 trimmed back, you know, things of that nature. So  
17 those are some of the concerns on that front.

18           And then staff does have a concern. We  
19 have made a pretty successful shift over the past few  
20 years to really start to tuck these transformers back  
21 into back-of-house operations, if you will. And so  
22 this would be an exception on kind of what we've tried  
23 to shift to and would revert back to where we have  
24 come from, and so staff does have a concern about  
25 that.

1           We did talk with the applicant about  
2 evaluating kind of a reconfiguration of those  
3 ground-floor uses; maybe looking at surface parking,  
4 rather than enclosed parking, as it takes up less real  
5 estate; and then, maybe, some alternative screening  
6 treatments that would be more effective in kind of the  
7 full winter months. But the applicant has represented  
8 they've had some challenges in effectively doing that,  
9 and so that's why we are here today.

10           So the second issue that staff wanted to  
11 bring to your attention is, really, kind of the  
12 activation of the Second Street corner. Our  
13 design-review criteria is a little bit unique because  
14 we talk about how we want to facilitate ground-floor  
15 street frontage, primarily as it relates to commercial  
16 space.

17           And we say that -- for nonresidential  
18 portions, that we shall have storefront windows;  
19 clear, transparent glass; you know, things like that.  
20 That is really intended to provide interior, viewable  
21 space into those ground-floor uses; right? You get to  
22 window shop with your retail uses, things of that  
23 nature.

24           The proposed project has an access stair  
25 to the basement residential unit right on the corner

1 of Second and Leadville. And so, although they have  
2 proposed storefront-window treatments, it doesn't  
3 really meet the objectives of the design-review  
4 criteria in kind of activating that space. And so,  
5 although, on kind of its commercial-facade side of  
6 things, it may look as though it is doing that -- but  
7 it is actually blocking a pretty significant view into  
8 the retail space, as it's proposed.

9 So here is a diagram that I included in  
10 the staff report.

11 I think the other concern from staff's  
12 standpoint is just the amount of activation on the  
13 entire Second Street -- kind of -- corridor.

14 And so what I'm showing here in blue are  
15 kind of the back-of-house operations that don't have  
16 direct visibility into the building. So here is the  
17 stairwell entry into the basement residential unit  
18 with the retail space behind it. In this retail  
19 space, the only visibility you have from Second Street  
20 is by one bank of windows right here in the red.

21 You have an entrance to that retail space  
22 from a recessed kind of residential courtyard that's  
23 set back and somewhat -- kind of narrowed from an  
24 entry standpoint, so it's really not very visible.  
25 And then, as soon as you transition to the right of

1 that, you go into the back-of-house operations. So  
2 you've got an ADA restroom, you've got storage, you  
3 know, the dumpster, you know, things like that.

4 And so, when you look at the Second Street  
5 as a whole, really, the only portion of that street  
6 that's going to be activated is this portion that you  
7 see here in the red.

8 What I also have is an elevation view of  
9 what that looks like from Second Street. And so, you  
10 know, here -- this bank of windows here -- well, the  
11 windows are actually these three panels. This is a  
12 closed kind of corner element.

13 And so this is the stairwell down into the  
14 ground -- to the basement level. And so -- although  
15 we do have kind of this aesthetic of these storefront  
16 windows, you're -- really don't have visibility of  
17 anything of note.

18 And then you have -- the entrance to the  
19 residential unit is here, and then, again,  
20 these -- this red box here is actually where you do  
21 have visibility into the retail space.

22 And then, again, you move back -- as you  
23 head towards the alley further -- this is the entrance  
24 for the residential units -- oh, lost my cursor.

25 Residential units -- the entrance to the



1 retail space is kind of tucked back behind here, and  
2 then you transition into your back-of-house  
3 operations.

4 Staff definitely understands that it's  
5 really challenging when you're dealing with a corner  
6 lot. You know, there's not an expectation that we  
7 activate every single piece of linear footage of these  
8 properties because there are always going to be  
9 back-of-house operations, but staff doesn't believe  
10 that the location of the residential staircase down  
11 into the basement at the corner of the property is  
12 really the best location for it.

13 So again, we expressed concerns about the  
14 extent of the transparency -- storefront windows on  
15 that prominent corner really activating that space.

16 We did discuss with the applicant a  
17 relocation of the stairwell to the basement unit and  
18 potentially reducing the size of the entry to the main  
19 residential units on the upper floors -- and kind of  
20 reorient that retail-unit entrance to the street. But  
21 at this time, the applicant represents that those  
22 recommendations aren't able to be accommodated. So  
23 that's where we are today.

24 And the last element of this project that  
25 we highlighted in the staff report was the north

1 facade. Our design-review criteria really emphasizes  
2 addressing facades if they are stepped back 5 feet  
3 from the property line, if they're on an interior lot  
4 line.

5 This one and other projects like this,  
6 where you have had maybe a 0-foot lot line -- but it  
7 is exposed because the adjacent building is such  
8 more -- is so much more small than the proposed  
9 building -- the Commission has provided feedback in  
10 the past about varying materials and other ways to  
11 treat that facade in the interim until adjacent  
12 properties redevelop.

13 So with that -- that concludes my comments  
14 on the design review.

15 On the condominium preliminary plat, the  
16 project and application meets all of the condo,  
17 preliminary-plat, and subdivision requirements. This  
18 is an existing lot and existing infrastructure, so a  
19 lot of the application requirements don't apply. And  
20 we do have kind of that draft analysis in the  
21 attachments of the staff report, and at this time, we  
22 would ask that the Commission review and provide  
23 feedback to the applicant on some of staff's feedback.

24 CHAIRMAN MORROW: Does the applicant have a  
25 presentation?

1 MORGAN LANDERS: Yes.

2 CHAIRMAN MORROW: Okay.

3 MORGAN LANDERS: Yeah.

4 CHAIRMAN MORROW: Why don't we do that then?

5 MORGAN LANDERS: I've got -- okay. Good.

6 And this is Nicole Ramey, project  
7 architect for the project.

8 And, Nicole, I can kind of toggle to  
9 whatever sheets you would like me to navigate to.

10 NICOLE RAMEY: [Unintelligible].

11 MORGAN LANDERS: Oh, and if you'll turn your mic  
12 on with the little button right there.

13 Yep.

14 NICOLE RAMEY: If we could just go first to the  
15 renderings of the back of the project.

16 MORGAN LANDERS: [Unintelligible].

17 NICOLE RAMEY: So first of all, I wanted to  
18 thank Morgan for all of her hard work. It's a long  
19 process to get to this point. She's been tireless in  
20 helping us through this, so thank you to your staff.

21 I did want to highlight a couple of  
22 things, a couple reasons for why -- why the building  
23 is the way it is and some of the things that we think  
24 are [unintelligible] project moving forward.

25 The retail space is really flexible. One

1 of the things that we did as a project team is we sat  
2 through some of the first emergency-ordinance meetings  
3 and kind of heard some feedback. One of the things we  
4 heard there was [unintelligible] community -- you  
5 know, they need different sizes and types of retail  
6 space.

7           So this -- this retail space can be one  
8 large retail space. It can be two. It can be three.  
9 Instead of, architecturally -- that we could subdivide  
10 it into three different spaces if need be. It can  
11 stay one. It's flexible, depending on the -- on the  
12 City's needs.

13           One of the other things we did is we  
14 actually added a unit during some of our initial talks  
15 with Morgan. This was originally a three-unit  
16 building. The second and third floor were identical  
17 units in size and floor plan.

18           So we put a 749-square-foot unit on the  
19 second floor -- just hearing feedback -- even though  
20 that's not applicable, this falls -- not under the  
21 Interim Ordinance, but just as, you know, a -- we're  
22 looking -- you know, we're listening. We're paying  
23 attention. This is something that the City wants. So  
24 we added that unit just of our own device.

25           Another thing that we've done -- and you

1 can't see it on purpose, but the roof is full of solar  
2 panels. So not only do we have a little rooftop deck  
3 for that third-floor unit, but all the remaining area  
4 will be filled with solar panels.

5 New technology allows them to be set at a  
6 little lower solar elevation, so we're looking at, you  
7 know, specs that make it so you're not going to see  
8 them up above the roof. But we're looking at what  
9 other local jurisdictions are doing and paying  
10 attention to that as well.

11 So we have solar panels -- supplier -- on  
12 how that will be in agreement [unintelligible],  
13 obviously, we're looking forward to a sustainable  
14 building that's here to last, here for the long run.

15 Another thing that goes along with that is  
16 the materials. We're trying to do something a little  
17 different. [Unintelligible] this brick, and we have  
18 siding, and we have natural stone. Steel accents  
19 [unintelligible] using [unintelligible] products that  
20 we've seen -- projects recently. So all of those  
21 materials are designed to last, to stand the test of  
22 time. They're going to be sustainable.

23 Some of the things that we also did is  
24 the -- the recessed entry, which is kind of that black  
25 portion you see in the upper left-hand -- right on the

1 corner of Second and Leadville. So we pulled that  
2 area back. It's actually slightly recessed.

3 There is a column, but that is to help  
4 provide -- you know, that's to make the pedestrian  
5 experience a little nicer. It's covered. There's a  
6 bench. There's a planter on the Second side. So you  
7 can actually walk kind of under there and get coverage  
8 as you're walking.

9 So it's supposed to -- you know, that's  
10 our version of, "How are" -- "How are you activating  
11 the corner?" Well, we're allowing the pedestrians to  
12 walk kind of through the building in that -- that  
13 sense. So that's kind of one of our responses  
14 to -- to the activation.

15 In our talks with Morgan there were  
16 several things that we did take into consideration  
17 once we submitted. We have worked with her and her  
18 staff on pulling the roof -- the upper roof back.  
19 That was something we've also seen on some recent  
20 projects.

21 The upper roofs are, you know, too  
22 overbearing. They're coming out too far. So we've  
23 actually pulled that back, and it's not as far out as,  
24 you know, the deck structure below so that third-floor  
25 deck is actually partially unobstructed above. So

1 that was, you know, one of the things that we worked  
2 back -- worked with her on.

3 We've also worked with the City on pulling  
4 the pergola back, meeting all the rooftop setbacks.  
5 At one point, we did have landscaping planters that  
6 were at the parapet side, right up next to the parapet  
7 [unintelligible] greenery spilling over. So we've  
8 pulled those back to meet all the requirements.

9 We did also work with Morgan and her staff  
10 on the lower-level unit. We had proposed some light  
11 wells to help make that unit a little nicer and  
12 [unintelligible]. And due to the dark skies, we have  
13 eliminated those as well.

14 We also de-emphasized the entrance to the  
15 lower-level unit. It had a little bit more prominent  
16 feature in previous instances. We worked to make that  
17 a little smaller, in addition to proposing smaller  
18 landscaping in the planters, so as not to obstruct the  
19 windows into the retail spaces, more space.

20 And we also revised the north elevation to  
21 incorporate horizontal banding, as opposed to vertical  
22 banding, to de-emphasize the height on that elevation.  
23 Also, working [unintelligible] the bike-rack  
24 locations, moving that closer to Leadville to be a  
25 little bit more prominent for bike users. So that's

1 kind of some of the highlights and some of the things  
2 that we've worked through -- worked through on the  
3 project.

4 One other thing I wanted to point out, as  
5 we talk about moving to the [unintelligible], Morgan  
6 was pointing out the activation of the retail. This  
7 stairwell down into the lower-level unit, it has big  
8 windows. One of the reasons for that is it's going to  
9 highlight some art that's on a wall, technically,  
10 within the residential unit. You would see -- that's  
11 a large art wall beyond there.

12 Another reason for keeping that wall there  
13 is, you know, retail does need some solid surface. It  
14 can't all be glass. So if you look at the floor plan,  
15 we feel that we've provided -- depending on how it's  
16 subdivided, whether it's one unit or three retail  
17 units, we're providing an ample amount of solid  
18 surface for, you know, displays and hanging racks and  
19 whatnot.

20 We looked at adding another window in the  
21 stairwell on the Leadville side. The issue with that  
22 is, obviously, timing. And if you think about the  
23 activation of the light within that space, obviously,  
24 that light would be on at night. [Unintelligible]  
25 home and -- windows into the retail space.



1           They'd have no -- there'd be differing  
2 light qualities. So they wouldn't really be speaking  
3 to each other, even if there was a window there. So  
4 for continuity and keeping that Leadville Avenue kind  
5 of like the front -- not the retail only -- we decided  
6 to leave that window out -- that corner.

7           One other thing I noticed in the Code  
8 under the Community Core design-review standard under  
9 "Architectural," "B," it says, "Facades facing a  
10 street or alley shall be designed with both solid  
11 surfaces and window openings to avoid the creation of  
12 blank walls and employ similar architectural elements,  
13 materials, and colors as the front facade."

14           So, you know, while I can appreciate  
15 trying to help [unintelligible] local businesses and  
16 people who are in these spaces -- you know, we did  
17 look at the Code for some of these parameters of how  
18 to -- how to design the building. So, you know, if  
19 those are parameters that the City really wants to  
20 have included, I would encourage [unintelligible].

21           I think that's kind of it.

22           CHAIRMAN MORROW: Mm-hmm.

23           NICOLE RAMEY: I guess I -- I did want to point  
24 out, you know, we have -- we're adding four  
25 residential units. There's no net loss of units.

1 We're not [unintelligible] lots, trying to hit some of  
2 these marks. [Unintelligible] the Interim Ordinance,  
3 it's not applicable, but, I feel like you're -- we  
4 tried to get very close to that, even though we  
5 started the project long [unintelligible].

6 CHAIRMAN MORROW: Thank you.

7 Commissioners, do you have -- do you want  
8 to do public comment first and then do -- or do you  
9 want to go direct to -- do you have questions for the  
10 applicant or staff?

11 Let's do that.

12 VICE CHAIRMAN MOCZYGEMBA: Yeah. I have  
13 questions for staff.

14 I guess -- curious. Could you maybe  
15 expand on the applicant's comment in regards to the  
16 elimination of the window wells at the basement unit.

17 MORGAN LANDERS: Yeah. So -- and this was  
18 something I know has come up in some other projects,  
19 too, where we may have allowed it in the past.

20 When we were looking at this, as far as  
21 the illumination -- that those would be illuminated  
22 during the evening times. The purpose of those window  
23 wells is to bring in -- light into the unit during the  
24 daytime, which can certainly be helpful, but what you  
25 have, as a result, is then up-lighting of that area in

1 the evenings. So I think there's some concern related  
2 to dark skies.

3 If the Commission has feedback on whether  
4 you all feel that that is a concern related to dark  
5 skies or not, I'll -- staff can also come back with  
6 some additional information on that, but that was the  
7 determination provided to them on those.

8 And the locations of those original window  
9 wells, one of them was kind of what I could consider  
10 to say, you know, "exposed to the sky," so you could  
11 get some natural light.

12 The other window well was actually beneath  
13 the awning, right in front of the retail space. So I  
14 think it wouldn't, probably, have as much light as,  
15 maybe, anticipated. It certainly would kind of in the  
16 late-evening hours, but for -- it was on the side of  
17 the property, where, during the majority of the day,  
18 you wouldn't get a lot of natural light through that  
19 window regardless.

20 VICE CHAIRMAN MOCZYGEMBA: Thank you.

21 CHAIRMAN MORROW: Spencer.

22 Tim. Tim, do you have anything?

23 Tim's got nothing.

24 Susan?

25 COMMISSIONER PASSOVOY: I'm getting used to

1 this.

2 I just had a couple of questions.

3 I'm not -- I -- I -- I don't -- I'm not  
4 quite clear as to what the pedestrian sees through the  
5 windows that are on Second Street, oh -- over the  
6 stairwell, down into the basement unit. So if I'm  
7 walking along, there's a window there, and then -- do  
8 I understand that, then, I'm going to be looking at  
9 art that's on a wall inside, but that's all?

10 I mean, that's -- that -- not that that's  
11 a -- a -- a minor consideration. I just wanted to  
12 make sure I understand what -- what I'm seeing.

13 MORGAN LANDERS: That's correct.

14 And let me share my screen again. And  
15 hopefully -- and I can continue to just leave this up  
16 so we can navigate through if we need to.

17 So here is -- and this is a  
18 similar -- this is kind of the elevation -- so this is  
19 the view of the building as if you were across the  
20 street on -- across the side of Second Street. And so  
21 here are the three windows, and they are kind of  
22 floor-to-ceiling, glass windows, so they do achieve  
23 kind of that storefront feel.

24 And so in this -- in this kind of  
25 three-panel-windowed area the applicant has

1 represented that there would be some sort of art  
2 installation that you would have visibility of.

3 I think it would be helpful if the  
4 applicant could talk about how that might be  
5 illuminated because, based on the floor plans, that is  
6 an open stairwell to the residential unit, so not  
7 necessarily something where you would close off a  
8 door, where it could remain illuminated in the evening  
9 hours as a nice feature for pedestrians into the  
10 evening. So perhaps we can get some additional  
11 clarity from them on that.

12 But does that help answer your question?

13 COMMISSIONER PASSOVOY: Yes, that does.

14 I appreciate that and -- and Nicole's  
15 presentation as well.

16 Then the second question that I have is  
17 one that -- you said that the metal screening on the  
18 transformer is not a good idea from -- from the -- a  
19 maintenance-and-longevity standard and that  
20 landscaping, also, could be problematic. What are the  
21 other choices that are available?

22 MORGAN LANDERS: Yeah. Let me clarify. I think  
23 landscaping could be effective if the right types of  
24 landscaping were chosen.

25 So sometimes we'll see landscaping around

1 transformers be kind of those taller, ornamental  
2 grasses, Karl Foerster grasses, things like that.  
3 Those always get cut back in the wintertime as just  
4 part of their regular maintenance and upkeep, and then  
5 they regrow in the spring.

6 So I think if the applicant were to  
7 consider landscaping, we would look for something that  
8 would be more of the evergreen variety so that it  
9 could maintain its substantial screening capacity in  
10 the winter months as well.

11 COMMISSIONER PASSOVOY: And this -- I'm totally  
12 naive about this, but if -- if there is a basement,  
13 why can't the transformer just be down from where it  
14 is into the basement?

15 MORGAN LANDERS: Hot -- hot button, Susan.

16 UNIDENTIFIED SPEAKER: [Unintelligible].

17 MORGAN LANDERS: We -- we have actually had  
18 those conversations with Idaho Power. We know  
19 that -- in some more urban areas, that power vaults  
20 are something that are used pretty regularly.

21 We have not been able to get agreement  
22 with Idaho Power of the use of vaults, and so the  
23 transformer placement has become a more challenging  
24 issue for projects, particularly single Ketchum  
25 Townsite lots in the downtown core. So unfortunately,

1 at this point in time, we are not in a position where  
2 we could permit that, just with our discussions with  
3 Idaho Power.

4 COMMISSIONER PASSOVOY: Okay. Thank you.

5 CHAIRMAN MORROW: Anything else?

6 Okay, Spencer.

7 COMMISSIONER CORDOVANO: I keep just getting  
8 curious about how we're going to deal with -- deal  
9 with snowfall, like off the side of the building  
10 with -- with, you know, limited setbacks that are  
11 encompassed by pedestrian areas. I was also wondering  
12 if there's snowmelt in the sidewalks.

13 MORGAN LANDERS: There are snowmelt proposed  
14 for, not only the City right-of-way sidewalks, but  
15 also the pedestrian area between the property line and  
16 the building facade as well. So all of that is  
17 anticipated to be snowmelted.

18 COMMISSIONER CORDOVANO: Yeah. I don't know.  
19 I -- you know, you get some snow on your balcony, and  
20 where do you put it, and when do you do it? I have a  
21 similar thing going on at some of my office units.

22 And then, just with cornices forming up  
23 top and --

24 MORGAN LANDERS: Mm-hmm.

25 COMMISSIONER CORDOVANO: -- stuff like

1 that -- and we were also talking about some like Code  
2 recommendations on -- how only the fourth floor gets  
3 set back and how, since it's a third floor, it doesn't  
4 need to be set back further --

5 MORGAN LANDERS: Mm-hmm.

6 COMMISSIONER CORDOVANO: -- and I'm just seeing  
7 value in that.

8 I do like this building. I think it's a  
9 great design. It's super cool. I really like  
10 the -- the overall design of it. I think if I was  
11 in -- an inhabitant there, I'd maybe be looking for a  
12 little more privacy in my deck railings, but that's  
13 just for them to figure out.

14 I really do appreciate the chance of  
15 smaller retail. I think that that price point, that  
16 size is so much more applicable for a local business  
17 to go in there, one with smaller overhead, more  
18 personalized.

19 And I do appreciate the  
20 749-square-foot-unit addition. That definitely is a  
21 step in the right direction on my end, and I thank the  
22 applicant and design team for that. I would  
23 definitely like to see them stay small, but the market  
24 is what it is, and I think it's a notion in the right  
25 direction.



1 I think it's super-cool activation.

2 I -- as long as the transformer's set back  
3 3 feet -- I mean, whatever. We wrap a bunch of them  
4 with art. Just wrap it with a brick-looking thing,  
5 and as long as it can't get hit by a snowplow -- it  
6 seems like it's kind of the spot for it because you  
7 wouldn't want to negotiate the whole northern edge of  
8 the building there. And it's close-ish to the alley.

9 I was driving through the alley this  
10 morning, looking at where everybody else has utilities  
11 and -- it seems there -- I was wondering, you know,  
12 with what we learned from the Catch [phonetic]  
13 building and how we've taken some overnight parking  
14 available down here by the post office and stuff, if  
15 there was any forecast on what we would do for  
16 overnight parking in the future for these two units  
17 under 750 square feet.

18 If -- if you'd -- if you'd --

19 UNIDENTIFIED SPEAKER: [Unintelligible].

20 COMMISSIONER CORDOVANO: If you'd -- you've got  
21 to --

22 UNIDENTIFIED SPEAKER: [Unintelligible].

23 COMMISSIONER CORDOVANO: -- come up to the  
24 thing.

25 And do we want to have a --

1 MORGAN LANDERS: So my preference would be that  
2 we would do Q and A just with staff.

3 You know, if you do have specific  
4 questions for the applicant, that is the -- Mike Carr,  
5 he's another representative of the --

6 UNIDENTIFIED SPEAKER: Yeah.

7 MORGAN LANDERS: -- of this project.

8 COMMISSIONER CORDOVANO: Do you want to --

9 MORGAN LANDERS: Do you want to do --

10 COMMISSIONER CORDOVANO: -- hold off for that  
11 for --

12 CHAIRMAN MORROW: Let's -- let's do staff first.

13 COMMISSIONER CORDOVANO: Yep. And then we'll  
14 do --

15 CHAIRMAN MORROW: And then the questions for the  
16 applicant.

17 COMMISSIONER CORDOVANO: And the public comment.

18 CHAIRMAN MORROW: Public comment.

19 COMMISSIONER CORDOVANO: Cool.

20 It's kind of a double-edged sword on the  
21 dark sky, so I appreciate everybody's time of like,  
22 "Well, let's light it up," "let's not," and how we  
23 deal with that. I would be in favor of the light  
24 wells. I'm -- I'm going to defer to the experts on  
25 that one.



1 MORGAN LANDERS: -- clear that up.

2 COMMISSIONER CORDOVANO: You know, personal  
3 services doesn't require parking. People are in and  
4 out pretty quick. It'd be a great spot for a  
5 hairdresser, salon, something --

6 MORGAN LANDERS: We -- and this is --

7 COMMISSIONER CORDOVANO: -- on the smaller  
8 [unintelligible] size.

9 MORGAN LANDERS: -- in the CC-2, not in the  
10 CC-1, so there's much more flexibility on ground-floor  
11 commercial uses. So the CC-1 is where we have  
12 restrictions on office space and things like that.  
13 So --

14 CHAIRMAN MORROW: Okay.

15 MORGAN LANDERS: -- it's a permitted use.

16 CHAIRMAN MORROW: If we've got no more, I'll  
17 open the floor for public comment.

18 If you're in the room, please step to the  
19 mic and state your name for the record.

20 Do we have anyone online?

21 UNIDENTIFIED SPEAKER: At this time, we do not,  
22 Commissioner.

23 CHAIRMAN MORROW: Okay. Do we have anyone in  
24 the room?

25 Feel free to...

1 PAM COLESWORTHY: Hey. I'm Pam Colesworthy, for  
2 the record, and I come to these meetings sometimes  
3 because I'm interested in a project, and sometimes I  
4 just come to listen and learn. And in this case, it's  
5 both. So I was happy to sit in on the previous Pines  
6 unit as well. I thought that was really interesting.

7 On this project, as I'm listening to staff  
8 present, I noticed the reservation that staff had  
9 regarding the retail windows on this -- on Second  
10 Street. And as I started to visualize Second Street,  
11 I'm thinking, Second Street really isn't a retail  
12 street. Leadville is your -- is your retail street,  
13 and that corner kind of works.

14 But, you know, if you go up and down,  
15 you've got Chapter 1, and the -- it's just not a  
16 retail street. So I wouldn't be too concerned about  
17 what staff is concerned about on that respect.

18 Overall, I agree with you -- and that is  
19 that it's -- it's a really cool-looking building. It  
20 doesn't look like anything else, and I like the use of  
21 the materials.

22 And I'm -- I -- the other thing that I  
23 think about -- and I may be wrong on this, but I'd  
24 like you to consider perhaps the window wells that  
25 it -- lad -- it -- let in the natural light. In terms

1 of dark sky, I think a lot of lights just get turned  
2 off. I mean, if somebody's living down there, at a  
3 certain point they're going to go to sleep. And I  
4 just, again, wouldn't be too concerned about that.

5 So those are my comments.

6 Thank you.

7 CHAIRMAN MORROW: Thank you, Pam.

8 Sir.

9 DAVE HUTCHINSON: Well, I'm Dave [phonetic]  
10 Hutchinson, for the record. I am the representative  
11 of the property owner next door, which is 240  
12 Leadville, LLC, and I'm also the business owner that's  
13 been the tenant in the building for about 30 years.  
14 So we've looked at this property for quite some time.

15 I will applaud the applicant in  
16 certain -- in certain cases, as -- as to trying to get  
17 to something that's an interesting building.

18 I have a letter for the record, which I'll  
19 submit after. Somehow I got the staff report on the  
20 23rd, and a letter to the record requires a seven-day  
21 advance. So the math didn't work, so I couldn't get  
22 the letter into your packet because I only had six  
23 days. So I won't completely read my letter. It's a  
24 little more intricate than what my comments are here  
25 today.

1 I think you need to take a close look at  
2 just how big this building is. Perhaps you've seen  
3 the story poles. 42 feet plus a rooftop deck is a  
4 very large building on that block.

5 I'm certainly not suggesting the property  
6 owner -- the applicant needs to build a building  
7 that's my size or anything close to that. But if you  
8 look at The Kneadery and the Leadville Plaza and you  
9 look at the other buildings on the block, the scale is  
10 considerably lower. So the ability to find  
11 compatibility, which is in your design review  
12 standards, I think, is difficult.

13 I -- I was calling it a "bonus" in my  
14 letter, but the FAR exceedance, I -- I think, is a  
15 little backward. I think you need to look at the  
16 design before you approve an FAR exceedance because I  
17 think it's the FAR exceedance that creates the size,  
18 which also creates the bulk, which also creates the  
19 difficulty to provide relief. It creates flat facades  
20 on -- on -- on street-side -- from street-side  
21 perspectives.

22 I do agree with the staff that the Second  
23 Avenue -- the Second Street facade that has windows  
24 that look into blank spaces or even art walls or  
25 stairwells completely flies in the face of what the

1 Ordinance demands. And the Ordinance demands that you  
2 make a positive finding on that circumstance or that  
3 the project is either denied or has to be redesigned.  
4 So I think you need to take a very close look at that.

5 The transformer thing, I think you'll  
6 figure that out; right? It's probably not in the  
7 right place.

8 I think the -- I've worked with Nicole. I  
9 think she's very talented. I -- I think they're  
10 hamstrung by trying to create too much square footage  
11 inside the space. I think that's what's created the  
12 size. That's the request for FAR exceedance, and I  
13 think that's what's tainted the ability to create  
14 the -- the bulk relief and the undulation in the  
15 building.

16 So I -- if you could look at it just from  
17 a big perspective -- in my letter I went to the extent  
18 of citing the Ordinance and the standards for your  
19 review. So if you feel like checking that out, that  
20 would be great.

21 I do think this requires more hearings.  
22 You know, I got the -- I got the staff report last  
23 week, the day before Thanksgiving. Friday was a  
24 holiday. Today, at 4:30, we have nobody commenting.  
25 You know, this is a big building in this -- in this



1 town. I can't believe nobody has shown up to say  
2 anything. I think it's just being found out.

3 I do know that other people within the  
4 block ask me, "Hey. What's going on?" So people  
5 don't totally know yet. So I hope you wait and get  
6 some more public -- public response.

7 From a functional perspective, there's two  
8 garages. One's a side-by-side. That's got to be the  
9 penthouse garage; right? Nobody's buying the  
10 penthouse without a two-car garage. And you've got a  
11 tandem. That's probably the big unit on the second  
12 floor.

13 I've been functioning out of that alley  
14 for a long time. I -- I almost took video of the  
15 delivery trucks pulling through today. The guy in the  
16 tandem place is going to have a really hard time  
17 figuring out how to get out of his garage, especially  
18 the one that's already blocked in. So we've got some  
19 functional issues on the parking.

20 I appreciate the comment of, "Where are  
21 the other people going to put their car?" You know,  
22 at this point, we've got six or seven spaces off the  
23 alley, which we let people use at night. You know, we  
24 let the Wiseguy delivery guy park in our spaces at  
25 night.

1 Right now, this lot is bollarded off so  
2 there is no parking. So people do excess park in our  
3 space, which is fine with us when we're not using it.  
4 But when this building is built, there's not going to  
5 be any parking.

6 So you can go to East Avenue, which I've  
7 had to do on occasion because other people are parking  
8 in my parking. You can't find a space there either.

9 And when it snows, I'm not sure where  
10 anybody's going to go. So I think that's kind of a  
11 problem.

12 The other thing -- when it comes to  
13 deliveries, you've got three restaurants delivering  
14 out of that alley and a -- and a couple of dumpsters.  
15 So there's a lot of action back there, as far as  
16 circulation.

17 I would like the City to take a look  
18 at -- since this is the first new development on that  
19 alley at the -- at the power poles and lines through  
20 there. It would make it much better to take the poles  
21 and the lines out. I've seen the lines come down with  
22 trucks and the power poles encroach into the alley.

23 I'm not suggesting that the applicant has  
24 to shoulder the cost. I would think that if they  
25 fronted it or you used some of the funds from the

1 Idaho Power Franchise Agreement to bring the rest of  
2 the lines down. That might make sense because they've  
3 got to go underground -- or I'd be happy to  
4 contribute. I think that the whole alley would  
5 probably like to see that done, and I know that's a  
6 priority in the city and has been for years.

7 I made the same comment in my letter about  
8 snow and rain. We all know that the snow overlaps,  
9 and there are areas of the sidewalk there that are  
10 completely uncovered, and it's coming from 42 feet.  
11 So you wouldn't want to get hit with a piece of ice  
12 with no coverage. So you might want to see it step  
13 back.

14 Right now, this building  
15 footage -- lot -- floor-by-floor, are very identical.  
16 It's a box. So if you set things back, you can  
17 prevent that from happening.

18 I was curious to see the staff's review  
19 under the new Ordinance because I think that's  
20 important that we take a look at that. Under the new  
21 Ordinance, there'd need to be 900 square feet more of  
22 retail space, which, I think, is the direction the  
23 City is trying to take things.

24 That's the first thing I noticed here, is  
25 you've got an 11,663-square-foot building with

1 1,306 feet [sic] of retail in a verily -- very  
2 highly-trafficked, retail area, where the City's  
3 trying to promote commerce. That's 11 percent of the  
4 total, not a big number.

5 This is, really, a -- a residential  
6 project. It's got a little bit of retail, but  
7 certainly not what the City's looking for; right?  
8 They're looking for more.

9 I like the fact that they've set it up so  
10 there can be smaller retail units. I think that's  
11 appropriate. It makes total sense. I just think  
12 1,300 feet is not a whole lot for what we're trying to  
13 accomplish in town here.

14 I would say that the interesting part of  
15 all these applications -- and I appreciate you for  
16 sitting here.

17 And Number 5 on the screen is -- this is  
18 my pep-talk part of the -- part of the presentation  
19 here -- is that staff can review -- you can check to  
20 see that it's exactly the right height. You can meet  
21 the setbacks, but design review is up to you guys;  
22 right? And if it's not right, if it doesn't meet the  
23 standards, you've got to redesign. You can't fix it  
24 after it's built.

25 So I implore you to take a closer look at

1 the size, the mass, the bulk, and the FAR exceedance.  
2 I don't ever see that the FAR -- FAR exceedance, for  
3 the purpose of housing, which is noble, is worth a  
4 building that's out of scale, doesn't fit the  
5 neighborhood, the block, or the -- or the town. And  
6 42 feet with a rooftop deck in that location is going  
7 to be big for a long, long, long time, and people are  
8 going to drive by and say, "Wow. How did that get  
9 built?"

10 So I think you need to take a look at  
11 whether the FAR exceedance is appropriate. Getting  
12 \$400,000 in in-lieu funds isn't going to fix the  
13 housing problem; right? I applaud it, but it's not  
14 going to fix the housing problem.

15 I -- I obviously don't expect this to be a  
16 vacant lot or a small building. I think these guys  
17 will get it done, but I'd like to see you hold their  
18 feet to the fire and get it right because you only get  
19 one shot.

20 That's all I have.

21 Thanks.

22 CHAIRMAN MORROW: Thank you.

23 DAVE HUTCHINSON: Should I give you the letter  
24 for --

25 CHAIRMAN MORROW: Please.

1 Oh, Morgan will take it.

2 Any other public comment?

3 Okay. Seeing none.

4 I will close public comment, and we can  
5 discuss among the Commissioners.

6 If you guys have deliberation, questions.  
7 What do -- what do you think?

8 COMMISSIONER CORDOVANO: I wanted to -- I kind  
9 of wanted to --

10 CHAIRMAN MORROW: Oh, wait.

11 UNIDENTIFIED SPEAKER: [Unintelligible].

12 CHAIRMAN MORROW: If you guys have questions, I  
13 didn't have one. I asked if there were questions for  
14 the applicant.

15 COMMISSIONER CORDOVANO: Oh.

16 CHAIRMAN MORROW: Do you want to ask for --

17 COMMISSIONER CORDOVANO: On -- about the  
18 parking.

19 CHAIRMAN MORROW: Yeah. Great.

20 COMMISSIONER CORDOVANO: I've got another  
21 question about the CC&Rs.

22 CHAIRMAN MORROW: Great.

23 MIKE CARR: So...

24 COMMISSIONER CORDOVANO: You've got to come up  
25 to the --

1           CHAIRMAN MORROW: Mike, you have to step to the  
2 mic and state your name for the record.

3           MIKE CARR: I'm sorry.

4                     Mike Carr.

5                     As I understand the Catch -- and I've  
6 talked to the Mayor about this before -- is that all  
7 the residents on their phones have a text notice that  
8 comes to them that they can move their vehicle to a  
9 designated parking spot for -- for snow clearance.

10                    We would be more than happy to include  
11 those people in that process. I -- I'd be for  
12 everyone doing it. Neil kind of knows what I think  
13 about parking, and maybe you've heard what I think  
14 about parking. So that is -- that would be our  
15 intent.

16                    And I think -- what I was going to say  
17 when I got -- if I got a chance to get up here is, "I  
18 think this is a really beautiful building." And I  
19 haven't seen anything like it. It's not -- it might  
20 be square, but it doesn't look square. It's got a lot  
21 of great setbacks. It's got a lot of great features.  
22 It's got a lot of great color.

23                    I agree with you on the transformer. I  
24 mean, they could be covered, I bet. This is the first  
25 time I ever heard about them freezing. If that's the

1 case, we will go on record, and we will take care of  
2 it within 72 hours of it being broken or frozen by  
3 the -- by the Council -- or by the -- Idaho Power.

4 And there might be other ideas to screen  
5 it, but -- for us, the way the parking works and  
6 everything works, is if you make us move this -- the  
7 transformer, the parking ends up more towards the  
8 elevator and more towards the retail because you can't  
9 park them. The tandem, instead of being towards the  
10 north wall, now it has to be towards Second Avenue  
11 [sic].

12 So if that makes sense to you, there's  
13 sort of drawings on that that you could figure out,  
14 but...

15 I appreciate your guys' time, and thank  
16 you.

17 CHAIRMAN MORROW: Thank you.

18 Other --

19 COMMISSIONER CORDOVANO: I have a --

20 CHAIRMAN MORROW: Go ahead.

21 COMMISSIONER CORDOVANO: -- question.

22 Did anybody dig into the CC&Rs? I was  
23 wondering if short-term rentals were allowed in the  
24 units.

25 MIKE CARR: [Unintelligible].



1 CHAIRMAN MORROW: Yep.

2 COMMISSIONER CORDOVANO: Thanks for coming back  
3 up and everybody for hanging tonight.

4 MIKE CARR: Okay. Sorry. I need to hear the  
5 question again.

6 COMMISSIONER CORDOVANO: Are short-term rentals  
7 allowed --

8 MIKE CARR: Well, that's --

9 COMMISSIONER CORDOVANO: -- or excluded by the  
10 CC&Rs?

11 MIKE CARR: -- up to the HOA -- right? -- as I  
12 understand. And currently, we don't have any owners  
13 to have an HOA, so I don't think we have that answer.

14 COMMISSIONER CORDOVANO: It's just a standard  
15 issue, one that I -- that I always ask. And I don't  
16 know if I'm leaning either way on it. Honestly, it's  
17 just -- one of the only ways in Idaho to restrict  
18 short-term rentals is on a declaration of the CC&Rs,  
19 so I like to bring it up.

20 And then, also, further conversation. You  
21 know, I think short-term rentals are better in the  
22 CC-1 and 2 than in neighborhoods. So just throwing it  
23 out there, food for thought.

24 MIKE CARR: Well, yeah. I mean, if a guy had  
25 that big a place and it was sitting empty, it would be

1 better to have people in town being more active and  
2 spending more money in the city. So...

3 COMMISSIONER CORDOVANO: Yeah. And we do see a  
4 lot of these penthouses sitting quite empty.

5 Another question. Is the tandem parking  
6 for the penthouse or --

7 MIKE CARR: The tandem?

8 COMMISSIONER CORDOVANO: -- for the third floor?

9 MORGAN LANDERS: I believe that the --

10 MIKE CARR: For the third floor.

11 MORGAN LANDERS: Yeah.

12 COMMISSIONER CORDOVANO: Yeah. All right. That  
13 makes much more sense. I was making sure we weren't  
14 getting lost, that --

15 MIKE CARR: And -- and, you know, one other  
16 thing I wanted to say, Neil -- sorry -- is we've gone  
17 through a lot of changes in this process that you  
18 haven't seen, whether it was the roof, whether or not  
19 we had to move the elevator, whether we changed the  
20 parking, where we moved the transformer, how we did  
21 the entrance to the basement, all these things -- I  
22 mean, probably 20 or 30 things we've -- we've changed.

23 And to be honest with you, we've probably  
24 spent -- you were bringing up money -- about that  
25 homeowner who was spending money. We've probably

1 spent 40 or \$50,000 in design changes already on  
2 things that weren't codified, that were, "We want it  
3 this way," like the garbage. That was new to us.  
4 That's not in the Code.

5 It's like, "Where did this one come from?"  
6 And so -- "Oh, wow. We've got to change this and  
7 change that." It changes the whole building.

8 So anyhow. We've spent -- a lot of  
9 changes. And I would appreciate you guys to consider  
10 approving this project.

11 Thank you.

12 MORGAN LANDERS: And just to clarify, based on  
13 the condominium plat, the tandem is for the larger  
14 unit on the second floor. And so the -- the penthouse  
15 on the third floor would have the --

16 CHAIRMAN MORROW: Side by side.

17 MORGAN LANDERS: -- side by side.

18 Mm-hmm.

19 COMMISSIONER CORDOVANO: And the elevator lands  
20 within the -- each unit, or is there a --

21 MORGAN LANDERS: Yep, the elevator accesses the  
22 upper floors. Mm-hmm.

23 COMMISSIONER CORDOVANO: And...

24 UNIDENTIFIED SPEAKER: [Unintelligible].

25 MORGAN LANDERS: Is that your question?

1           COMMISSIONER CORDOVANO: Yeah. I was just  
2 seeing if it was --

3           MORGAN LANDERS: Seeing if --

4           COMMISSIONER CORDOVANO: -- going above and was  
5 going to have to go to Council, but it looks like, on  
6 the third floor, it lands in the unit -- or will there  
7 be --

8           MORGAN LANDERS: Yeah. There's -- there's no  
9 requirement for --

10          COMMISSIONER CORDOVANO: -- an external?

11          MORGAN LANDERS: -- Council to approve any of  
12 the additional pertinences on the rooftop because they  
13 meet all of the provisions for setback and height  
14 overruns for elevators and stairwells.

15          CHAIRMAN MORROW: Brenda, do you have --

16          VICE CHAIRMAN MOCZYGEMBA: No. I have no more  
17 questions. I don't have questions, but, I  
18 guess -- general comments.

19                   I think this is a -- a pretty good-looking  
20 project. In walking around the story poles today,  
21 there is a very clear discrepancy in size of the  
22 adjacent buildings, the adjacent buildings probably  
23 being 1950s-type, single -- old, single-family homes  
24 that may have been rehabilitated into offices and the  
25 like.

1           So I definitely agree with Mr. Hutchinson  
2 on coming to grips with the overall scale. But I  
3 think -- in the names of -- you know, our downtown  
4 being in evolution, so to speak, and -- and -- and our  
5 push towards a greater density in search of  
6 vitalities, I -- I think, that's the overall goal.

7           So I think this will be a little bit of a  
8 sore thumb as -- as those things evolve in -- in the  
9 sense of scale, but I -- I think as -- in terms of the  
10 building, I think it's a good mix of pieces and parts  
11 and things that -- as Nicole said, that we haven't  
12 seen of late, that don't trend super modern, but still  
13 have a building that's -- that's relevant and, I  
14 think, is fairly timeless.

15           I think there could be more to be done on  
16 the -- the -- the shared-property-line wall,  
17 the -- the party wall there. I -- I think it's really  
18 nice what's been done with the brickwork at the very  
19 top parapet and then between the first and second  
20 floors, whether that's a soldier course -- whatever it  
21 may be, I think it would be interesting to see that  
22 brought around that -- that shared wall, some sort of  
23 brickwork.

24           Right -- right now, there's the kind of  
25 four horizontal bands and then the one vertical band,

1 but maybe there's some additional brick detailing that  
2 could really help out there.

3 And then in regards to the elimination of  
4 the window wells in the name of dark sky, I think -- I  
5 think we just need to pick our battles judiciously,  
6 you know, in our push for density and more units. You  
7 know, in order to do that well and to have a  
8 well-marketed basement unit, it -- it means having  
9 window wells to bring light down in there.

10 And I think the point was made that, you  
11 know, eventually that person goes to sleep. Maybe  
12 they're a night owl. I don't know.

13 But, I mean, in the same vein, when one of  
14 these windows above grade has its lights on -- or  
15 maybe it's the retail display at night -- that's going  
16 to shine light onto the pavers and then reflect into  
17 the -- into the night sky. So I -- I don't know that  
18 I would hold a hard and fast line on that and -- and  
19 would really appreciate window wells within these  
20 basement units.

21 Let's see. A couple other comments here.

22 And then I -- I appreciate the staff  
23 taking the time to -- especially to compare this to  
24 the Interim Ordinance. I think this is a very good  
25 example of the challenges that may be brought forth in

1 the future of projects that are under the analysis of  
2 the Interim Ordinance. And I think what -- what we  
3 should maybe take -- take home from that, especially,  
4 is the 50-percent, ground-floor commercial.

5 I mean, we can see just how much stuff has  
6 to be packed into the back of house, whether it's  
7 egress stairs or elevators or parking requirements.

8 I mean, I think -- I think this unit is  
9 hitting on, you know, using small units to not have  
10 a -- a parking count, and then four cars, I -- I  
11 think, would be the minimum, whether it's -- whether  
12 it's two units that are above that 2,000 square feet,  
13 that have the two-car parking, or whether it's several  
14 units at -- that demand the one-car parking. I think  
15 most of these buildings are going to have the  
16 four-parking load.

17 So I think that's going to be something  
18 that's going to be challenging for these projects to  
19 come, so I'd like staff to keep a close eye as we keep  
20 getting more applications -- how that's comparing to  
21 that 50 percent.

22 And I think that's in direct response as  
23 well. You know, I think there's criticism that this  
24 project only has the 12-percent of commercial. But,  
25 again, I -- I think that's just a result of the stuff

1 that has to happen on the -- on the -- the ground  
2 floor, back of house. I just don't see an  
3 alternative, short of coming up with office space on  
4 the second floor and eliminating a, you know, unit's  
5 square footage up there.

6 And then, I guess, that can kind of segue  
7 into this transformer. Yeah. These things are  
8 unsightly no matter what -- what you do. And you  
9 always hate the day when Cyndi Bradshaw calls you and  
10 says you have to have a transformer on your site  
11 so -- and what to do about it because, again, the  
12 alley is stuffed with stuff, dumpsters, and parking  
13 meters.

14 I don't know that a -- a metal screen is  
15 necessarily the answer because -- what's -- what's  
16 uglier, the sight of a green box or the sight of a  
17 metal screen? So I don't know that there's a solution  
18 there.

19 I -- I -- I struggle, and -- and I also  
20 struggle with what exactly Idaho Power would like to  
21 do. I think, on the Westcliff Townhomes development,  
22 we talked about plantings, but then they also had  
23 restrictions on the plantings.

24 Was that true, Morgan?

25 MORGAN LANDERS: Yeah. So I think where we've



1 landed with Idaho Power is the 3-foot clearance and  
2 then the landscaping, the non-combustible landscaping.  
3 So I think that's the key for them, is that it's  
4 really hardy, you know, something that can't easily  
5 catch fire. And then that can be on three sides, and  
6 then it opens interior to the development.

7           So one of the things that we'll need to shift  
8 on this -- I believe, right now, it opens to the  
9 Second Street side. So perhaps there's a pivot of the  
10 transformer to the alley side, and then that  
11 landscaping can kind of be a bit more effective. And  
12 I think staff would appreciate feedback from the  
13 Commission on whether, you know, metal screening or  
14 landscaping, you know, is preferred on that piece.

15           VICE CHAIRMAN MOCZYGEMBA: I guess my -- my  
16 preference is always for landscaping. I -- I think  
17 these transformers go away at the end of the day. You  
18 know, being right next to the Mindbender [phonetic]  
19 building, that transformer's right on the corner of  
20 the street. It does have metal screening. But I  
21 think where there is metal screening, there are  
22 transformers. It -- it just kind of is -- in my mind.

23           So as far as applicant feedback, I guess  
24 if -- if there could be planting there versus the  
25 screen, that would be my preference. But, again,

1 I -- I don't think moving the building around to try  
2 to get this into the building -- I think there's  
3 always safety concerns -- to your question,  
4 Susan -- of not putting it in the basement.

5 But even if you put it under an overhang,  
6 I believe there's still fire requirements in case the  
7 thing blows up. So, to me, the -- the perimeter  
8 is -- is the most appropriate.

9 CHAIRMAN MORROW: Comments? Questions?

10 COMMISSIONER PASSOVOY: I don't have anything  
11 additional at this time.

12 I told you the question was naive.

13 CHAIRMAN MORROW: Tim?

14 COMMISSIONER CARTER: Are we deliberating? Are  
15 we through questions, or are we deliberating?

16 CHAIRMAN MORROW: Questions, deliberation. If  
17 you have specific questions -- otherwise, I think,  
18 we're kind of entering deliberation here.

19 COMMISSIONER CARTER: Let's see. I was  
20 interested in Mr. Hutchinson's suggestion about  
21 undergrounding the power lines. And, you know, I am  
22 curious to hear from staff about how that process  
23 would work and how -- you know, whether that process  
24 would be tied to approval of this building in some way  
25 or whether that's a process that's entirely

1 independent.

2 I think --

3 MORGAN LANDERS: That's --

4 COMMISSIONER CARTER: Doing the undergrounding  
5 the power lines, staff, can you talk a little bit  
6 about that?

7 MORGAN LANDERS: I sure can.

8 Thank you, Tim. And --

9 COMMISSIONER CARTER: Is URA fundage -- funds  
10 available? That's another part of the question.

11 So go ahead.

12 MORGAN LANDERS: That's correct. So it's my  
13 understanding that the power lines that run through  
14 the alley here are serving multiple properties. So we  
15 always have the requirement, as part of design review,  
16 that all services that are serving the development  
17 need to be underground.

18 There was an aboveground power line that  
19 served this property directly, kind of at the  
20 midpoint, I think, that was shown on the survey, but  
21 that was actually removed and relocated, I believe,  
22 last year. And so if there were to be an  
23 undergrounding of power lines here, that would need to  
24 be more of a collaborative process and project with  
25 multiple property owners.

1                   And the URA is where the City funding  
2 comes from, from that. It's my understanding that,  
3 right now, the URA is holding off on funding projects  
4 like that until they understand what their investment  
5 may be for the First and Washington project. So it's  
6 always something that -- a conversation can be had,  
7 but -- not quite sure what the availability of that is  
8 and how quickly something like that could happen.

9                   COMMISSIONER CARTER: So two questions that come  
10 from that. What about the Idaho Power franchising  
11 fee? Is that money available for undergrounding?

12                   And then, just to clarify, are you saying  
13 that this sort of undergrounding process is intended  
14 to happen piecemeal as buildings get redeveloped along  
15 alleyways like this? Each building is required to  
16 underground their power, and that's sort of the  
17 process that the City is work -- is -- is relying on  
18 at this point?

19                   MORGAN LANDERS: Yes. It's been a bit of a  
20 blend over the past couple of years. So if you all  
21 recall, in the project that we had up on the corner of  
22 8th and Washington, there was actually a collaborative  
23 effort that was initiated by a previous developer to  
24 do some undergrounding kind of proactively with the  
25 Urban Renewal Agency, to do that ahead of some of

1 those projects going through. So it does kind of all  
2 happen a bit differently and depends on availability  
3 of funds.

4 Tim, I don't know the answer to your  
5 question regarding the franchise fees. I have to talk  
6 with Susanne [phonetic] about that, and I could come  
7 back to you all with some more information.

8 But I think it -- at its core, we do make  
9 sure that each individual project is independent and  
10 underground; right? So if there are above-ground  
11 lines that serve the property, those do have to be  
12 relocated.

13 But when it comes to undergrounding of  
14 more extensive power lines that maybe service multiple  
15 properties in, you know, the full extent of an alley,  
16 that usually is a much more extensive process, kind of  
17 outside of the design-review process.

18 COMMISSIONER CARTER: Okay. Thank you.

19 Let's see. Another question I  
20 have -- looking at the rail -- looking at the two  
21 patios that are on the front corner of this  
22 building --

23 MORGAN LANDERS: Mm-hmm.

24 COMMISSIONER CARTER: -- currently the railings  
25 are -- are -- are open railings, are see-through

1 railings. Can staff just clarify, you know, if, at  
2 some point, a homeowner wanted to close those off for  
3 privacy, does that -- does that need to come back in  
4 front of design review?

5 MORGAN LANDERS: Yes, that would be considered a  
6 design-review change. Our design-review criteria  
7 outlined some things that are acceptable to be done  
8 from an administrative-approval standpoint. In  
9 general, a change like that, staff would see it as  
10 substantial enough to where it would come back to the  
11 Planning Commission. We likely would not make that  
12 determination administratively.

13 And so that would be -- you know, any  
14 change to railings, doors, windows, things like that  
15 would -- would trigger at least an  
16 administrative -- if not a public hearing at design  
17 review.

18 COMMISSIONER CARTER: So staff makes the  
19 determination of whether that's an administrative  
20 decision or it needs to come back in front of the  
21 Commission; is that right?

22 MORGAN LANDERS: Yes. And I believe the  
23 practice has been that -- if we are making an  
24 administrative determination on something that is of  
25 substance, that the Planning Commission is notified of

1 that so that you all can provide any feedback on  
2 whether you feel comfortable with that administrative  
3 determination or not.

4 COMMISSIONER CARTER: Got it.

5 Thank you.

6 MORGAN LANDERS: Mm-hmm.

7 COMMISSIONER CARTER: Let's see. I'll just  
8 speak a little bit to the building.

9 I know this team's been at it for quite a  
10 while, so I'm happy to see that you guys have gotten  
11 to this point, and it's nice to see the building.

12 I, too, think that it's a -- a -- think  
13 that it's a -- a good-looking -- it's an attractive  
14 building. There's some design elements that are  
15 appreciated. It's nice to see the brick and the  
16 stonework. It's nice to see the cornice work at the  
17 top. I appreciate that.

18 The -- sort of the comments about the  
19 program of the building and, you know, this being a  
20 residential building with some commercial on the first  
21 floor, you know, I certainly hear that. And, you  
22 know, this -- this is going to be one of those  
23 buildings that's going to be in town for -- for quite  
24 a while.

25 I mean, you know, when you look at old

1 pictures of Ketchum and there's a bunch of little  
2 houses and then -- you know, there'll be the Lane  
3 Mercantile building or, you know, there'll be some  
4 large buildings in sort of random places around town  
5 that you -- you know, on those old pictures. And, you  
6 know, this is going to have a little bit of that feel.  
7 It's going to be a building that, you -- you know, is  
8 going to sort of anchor that corner for a long time to  
9 come.

10 And, you know, what makes a building a  
11 successful building is a -- it -- you know, a building  
12 that's -- you know, that adds to the streetscape of  
13 town, that adds to the fabric of town is a -- is sort  
14 of a tough thing to put your hands on. You know, what  
15 does work and what doesn't work, is hard -- it's hard  
16 to -- to figure out, exactly.

17 The -- you know, I don't think that the  
18 residential component of a building like this is what  
19 is going to make it a -- you know, a beloved building  
20 or an iconic building or a -- or even a -- you know, a  
21 building that -- you know, a building that's -- that's  
22 known or has character or that people would think is  
23 like a real positive part of town. It -- it's kind of  
24 the street aspect of the town. It's the street aspect  
25 of the building that does -- I think, that does that.



1           You know, what -- what kind of businesses  
2           are attracted to go into a building like this? You  
3           know, are -- are they businesses that are successful  
4           because the spaces are really, you know, well thought  
5           out and they work and there's a lot of support for  
6           those businesses in the back? You know,  
7           it -- it -- it's hard to figure out.

8           But, you know, certainly, I would think  
9           that putting the resources that, you know, the  
10          design -- that the development team is going to put  
11          into this -- you know, hopefully, that -- there's  
12          a -- there's an intent. I mean, obviously, there's a  
13          financial component to this, but there's also an  
14          intent to, you know, add something to the town.

15          And so, you know, that's kind of how I  
16          think about the comments that staff has put out about  
17          the activation on Second Street and the  
18          corner-stairwell issue. And I -- I understand why the  
19          design team has done that. I mean, it -- it is a  
20          creative way to get light down into the basement, that  
21          basement unit. It's -- it -- so I -- you know, I -- I  
22          understand that.

23          It feels like, you know, the corner of a  
24          building like this on a corner lot is -- is such an  
25          important part of what the -- the character of that

1 building, and it seems like a big risk to put a  
2 stairwell on such an important aspect of a building  
3 like this.

4           You know, I agree that the windows through  
5 there and the art in the back will create some  
6 interest. And, you know, I don't think that it's a  
7 completely-flawed plan, but it does -- you know, it  
8 feels like it's quite a risk, is -- that -- that  
9 is -- you know, when I think about it, like that's  
10 such an important element to the building.

11           So, you know, I -- I hope that -- you  
12 know, I hope that -- I don't know what other -- you  
13 know, what other options there are, and there's always  
14 other options. It's give and take.

15           You know, this is -- this building is  
16 maxed. You know, we -- this is maxed out. I mean,  
17 it's 2.0 FAR. So, you know, the challenges come with  
18 trying to squeeze everything into it, is what -- is,  
19 you know, creating some of the constraints about the  
20 stairwell, the constraints about the -- the  
21 transformer.

22           And so, you know, maybe part of the  
23 solution to try and figure out how to make those  
24 things work is to back off on the max -- maximizing a  
25 little bit, you know, not being -- I -- you know, I

1 know the design team has been through a bunch of  
2 iterations on this and a lot of thoughts, and there's  
3 a huge history to why things are the way they are.

4 So, you know, just looking at it for the  
5 last few days since we got the staff report -- I don't  
6 pretend to be able to figure it all -- figure it all  
7 out and have the solutions.

8 But, you know, seeing what we have here,  
9 you know, I can't help but just have -- that stairwell  
10 in that corner, which is such an important element of  
11 the building, that just -- I can't -- I can't help but  
12 comment on that. Otherwise, it's a -- I think it's  
13 a -- it's got some really beautiful design elements to  
14 it, and the wall -- you know, the party wall on  
15 the -- the north wall, the map is a great touch.

16 You know, maybe a little more -- you know,  
17 that is likely -- that wall's likely, potentially, to  
18 stay that way for a long time, and so -- maybe a  
19 little more touch on that, some -- some more design  
20 elements on that wall would be something to -- to look  
21 at.

22 That's all I've got for the moment.

23 CHAIRMAN MORROW: Thanks, Tim.

24 I just -- since -- echo some of these  
25 things.

1 I think we should definitely ask the URA  
2 to look into this, not just for this building, but for  
3 the whole alley. Obviously, Mr. Hutchinson says it's  
4 a busy alley. A lot of people use it. There's a lot  
5 going on. There's a hole. So as we do this, maybe  
6 this is a good way to get them started on  
7 undergrounding the -- the -- the power in the alley.

8 I like the light wells. I think if you  
9 live in the basement, it's important to have some  
10 light. If you eliminate them completely, I think it's  
11 a problem. I don't think they're going to be  
12 really -- you -- you know, maybe use a glass block or  
13 something that keeps some of the light from coming  
14 out. I -- I -- I don't know.

15 Maybe there's a different option than just  
16 clear glass to bring light down there, but to keep  
17 the -- the amount -- but I think it's better to have  
18 light in a basement unit than worry too much about the  
19 dark sky on that corner, under that building.

20 I agree with Tim on the stairway. I don't  
21 know where else it could go, but I'd love to -- even  
22 if it went from the other side, I'd love to see it  
23 move away from the corner. It kind of just -- and it  
24 just doesn't sit right on the -- on the very corner of  
25 the building.

1           If it ends up that way, that's -- that's  
2       where it is, but I think it would be interesting to  
3       see it somewhere else. And I agree that it's a really  
4       large building. It would be nice if the top floor  
5       would step back a -- a little -- I know -- again, not  
6       required, but -- you know, to fit into that because  
7       the houses across the street are historic. My guess  
8       is they're not going anywhere. The [unintelligible]  
9       building probably isn't going anywhere. You know,  
10      the -- the small buildings surrounding it aren't going  
11      anywhere until someone buys the Vintage lot and builds  
12      on that corner.

13           We -- we're going to see a small -- so  
14      anything they could do -- they've done a nice job, but  
15      anything additionally to reduce the mass and feel of  
16      that building -- but in the long run, that's the size  
17      you're allowed to build. That's what the town's going  
18      to end up at.

19           You know, it's -- it's -- I -- I -- I like  
20      the addition of the unit. I like the -- I also would  
21      like to see more retail on the first floor, but, you  
22      know, it's a -- it's a collaboration of, "What can we  
23      do," "What can't we do?"

24           I do think it is kind of massive. It  
25      would be nice if it had a little more undulation to

1 it, but those are the -- those are the -- the comments  
2 I have.

3 The -- the -- we're stuck with Idaho Power  
4 and what they say. I'd like to see landscaping. I  
5 don't think the metal grates are that -- that bad,  
6 but, you know, you're probably less likely to have the  
7 landscaping damaged by Idaho Power.

8 So I -- I'm okay with -- with -- with most  
9 of what's going on here. I'd like to see if it's  
10 possible to make a few of these changes to make the  
11 building feel a little less bulky in its -- on its  
12 corner and to really respect that corner, but those  
13 are my -- my feelings.

14 Please.

15 SUSAN PASSOVOY: Okay. I just -- after  
16 listening to some of these comments, I guess my  
17 question is for staff.

18 When I was representing developers, I  
19 hated people on planning commissions who did this,  
20 but --

21 CHAIRMAN MORROW: Now you get to be that person.

22 SUSAN PASSOVOY: -- so I'm very empathetic, and  
23 I -- I ask your, you know, forgiveness ahead of time.

24 But did you explore with the applicant  
25 taking that staircase, moving it back, so the entrance

1 into the basement unit came out of the same foyer as  
2 the entrance to the upper units and having the retail  
3 be right on the corner?

4 I don't -- I'm -- I'm not looking at the  
5 configuration of the subterranean -- the whole concept  
6 of a basement unit freaks me out, but that's a whole  
7 other issue.

8 But I don't remember what the -- and I  
9 don't have that one in front of me, the configuration  
10 of the subterranean unit and how the access to that  
11 unit through the stairwell would be affected if it  
12 were moved -- let's see. I guess that's east -- and  
13 then had the -- the retail be on the corner. Did you  
14 guys take a look at that?

15 MORGAN LANDERS: Yeah. So in the very first  
16 round, we went through two rounds of department review  
17 on this project before bringing it to you all, and  
18 staff made that comment twice. We did pry -- try and  
19 make some recommendations to the applicant on things  
20 to consider. Ultimately, we -- we do leave it to them  
21 to kind of try and figure out what the solutions are.

22 They represented that there was an  
23 evaluation of moving that stairwell. I think, even  
24 prior to their submittal of their application, their  
25 original proposal, when they came in for kind of

1 preliminary discussions with staff, showed the  
2 stairwell on the Leadville side of the project. And  
3 so we -- we were pretty strong with them -- that that  
4 would be even -- a less desirable location.

5 The applicants retained that moving that  
6 stairwell entrance to the middle portion of the  
7 building would ultimately, then, end up kind of  
8 reevaluating where that residential unit is in the  
9 basement and potentially lose other opportunities for  
10 that natural light.

11 So I think having it along that area, you  
12 know, certainly has some implications. We did ask  
13 them to evaluate it, and you all could certainly ask  
14 them to take another stab at that.

15 CHAIRMAN MORROW: Thank you.

16 COMMISSIONER CORDOVANO: I think we're right  
17 about the staircase.

18 And I -- I feel for the applicant team,  
19 and I'd like to get to a place where we see  
20 scratch-ups of buildings before they even get that far  
21 for some sort of predesign because I'm sure members of  
22 the staff feel the same -- of going through all the  
23 full swings that everybody goes to get here, and then  
24 you've got to hear some wild advice from a guy like  
25 me. So I feel for you on that.



1 I -- there's a couple things in the  
2 right -- the right direction and a couple things in  
3 the wrong like -- you know, do we even -- what if the  
4 basement unit went away, and you put that on the  
5 second floor? I'm sure you thought about that, but  
6 single lots are hard to work with.

7 And I'd like to see it stepped back. It's  
8 kind of a blank wall on the north edge, and it's going  
9 to be a tall shadow caster for a while.

10 And I think that this street will be  
11 retail down the road. And I think one or two of those  
12 other lots could turn into something like this in the  
13 near future, and we need to start forecasting that as  
14 a main street to get back to Aroma, or Birch  
15 [phonetic], or Lee Gilman -- whatever -- some of the  
16 other stores down by Village Market.

17 I'm kind of torn on this one, where to go.  
18 The percentages are so small for retail, but there is  
19 a step in the right direction there. But just looking  
20 at the penthouse with four bathrooms up there, it's  
21 just like -- seems like a partition wall could be  
22 thrown in and an extra kitchen wouldn't be that  
23 expensive to get a more diverse unit mix.

24 Whether or not -- it meets the Code or  
25 not, I'd almost be inclined to throw out a, "Nay," and

1 still try to get invited to a party at the hot tub  
2 once it goes up. So I'm pretty torn.

3 CHAIRMAN MORROW: Thank you.

4 So --

5 UNIDENTIFIED SPEAKER: [Unintelligible].

6 MORGAN LANDERS: Well --

7 CHAIRMAN MORROW: No.

8 It's okay.

9 UNIDENTIFIED SPEAKER: [Unintelligible].

10 CHAIRMAN MORROW: Tim, do you have anything  
11 else?

12 COMMISSIONER CARTER: No. I mean, I  
13 guess -- you know, we've got to decide what to do  
14 here. Do we want -- you know, do we want to see this  
15 again? So, you know, at -- I do -- you know, the lack  
16 of public comment is a -- was a -- that's a, you know,  
17 interesting point.

18 This is a -- a building in town. I mean,  
19 just for the -- just to give it a little bit of time  
20 to sort of marinate and hear a lot -- you know, some  
21 more of -- the residents in town have to say, you  
22 know, I certainly wouldn't be against that.

23 I mean, I know this project's been in the  
24 works for a long time, but, you know, I do agree that  
25 these buildings -- you know, these are pretty

1 permanent structures. And so just taking a little bit  
2 of time to get it right is -- you know, taking the  
3 time to get it right is -- is -- certainly feels like  
4 a good idea.

5 CHAIRMAN MORROW: I -- I'd have to agree, and  
6 I -- and I'd say, at least, because this is a meeting  
7 on the 29th -- or not -- you know, we have another  
8 meeting coming up in a week or two weeks or -- you  
9 know, we -- we're pretty close. So if we brought it  
10 back, we could bring it back quickly. We're not going  
11 to require --

12 MORGAN LANDERS: Well, let me --

13 CHAIRMAN MORROW: -- [unintelligible].

14 MORGAN LANDERS: Let me chime in on that --

15 CHAIRMAN MORROW: Okay.

16 MORGAN LANDERS: -- if I can.

17 So the application that you have in front  
18 of you on December 13th is the design-review  
19 application for the Harriman Hotel. So we were  
20 holding that meeting and not really bringing other  
21 things in to you because that's going to be pretty  
22 robust for you all.

23 You have a couple of options. I think  
24 the -- we would like to get some direction on whether  
25 you want to see some of these changes. Staff

1 certainly is supportive of that.

2           There's a meeting on January 10th, which  
3 would be your next regular meeting. If you all wanted  
4 to, you could hold a -- a second meeting in December,  
5 although you are butting up against the holidays a  
6 bit. So that option would really be December 20th.  
7 So those are kind of the options ahead of you.

8           Regardless, staff doesn't -- didn't  
9 provide any conditions of approval for you this  
10 evening, so we would need to come back to you with any  
11 of those conditions of approval anyway for discussion  
12 to make sure that you believe that they addressed all  
13 of the concerns and things like that. So I think  
14 there's certainly at least one more step in the  
15 process before full approval can be done.

16           CHAIRMAN MORROW: So then we're really not -- if  
17 we push it to the next meeting, then we're -- or the  
18 meeting after -- whatever -- then we're really  
19 not -- you'd have to come back anyway before they  
20 could start? So we -- we'd give Nicole at least a  
21 small chance to -- I don't know -- listen to what we  
22 said and see if there's a way to do some of those  
23 things?

24           MORGAN LANDERS: Yeah. And it -- and it's up to  
25 you all on whether you want to hold a second meeting

1 in December or not, ahead of the holidays.

2 COMMISSIONER CORDOVANO: Is there any  
3 deliberation or direction that the staff can provide  
4 towards payment of the in-lieu fee versus construction  
5 of a unit?

6 If we're taking 400k -- theoretical "we,"  
7 that is -- if there's a \$400,000 payment for the  
8 in-lieu -- and the market rate for a condo,  
9 apparently, is about the same as that right now  
10 too -- would there be a push to get it built or -- you  
11 know, does the -- did the applicant come forward with  
12 that as their preference, or were they steered in that  
13 direction?

14 MORGAN LANDERS: Yeah. Let me give you a little  
15 bit of background.

16 So the way that the Code is written around  
17 the density-bonus program is that there are certain  
18 avenues by which they comply with the mitigation as  
19 a -- by right. So that is on site, off site, or the  
20 payment in-lieu.

21 So right now, City Council has generally  
22 said that an in-lieu payment is something that they're  
23 accepting of at this current moment in time because  
24 our in-lieu fund is fairly low from a balance  
25 standpoint.

1                   And so I think that there is some support  
2 for us to kind of rebuild those funds because we don't  
3 know whether we're going to have dedicated funding for  
4 housing programs moving forward. So right now, that's  
5 some of the discussion that they've been having;  
6 right? When we bring the FAR Exceedance Agreements,  
7 we try and kind of take the temperature on -- on  
8 whether those are -- you know, we're headed in the  
9 right direction or not.

10                   So right now -- City Council was accepting  
11 of the in-lieu payment for this project, I think,  
12 partly because of where our current fund balance is,  
13 and then we have other projects in the pipeline that  
14 are building on-site units as well. So it seems to be  
15 a bit of a blend, just kind of taking into context  
16 everything we have in the pipeline.

17                   COMMISSIONER CARTER: Can you -- sorry.

18                   Staff --

19                   CHAIRMAN MORROW: Go ahead.

20                   COMMISSIONER CARTER: -- can you just -- Morgan,  
21 can you talk for a sec about, you know,  
22 the -- the -- the order of things here feels different  
23 than in the past, where the FAR Agreement has gone to  
24 City Council. And can you just talk about that.

25                   And --

1 MORGAN LANDERS: Sure.

2 COMMISSIONER CARTER: -- did City Council agree  
3 to an FAR of 2 -- FAR Exceedance Agreement of 2?  
4 Is -- is that -- you know, they did that before this  
5 project came to us; is that -- can you talk about that  
6 a little bit?

7 MORGAN LANDERS: Yeah. So there has been a  
8 shift in that process, and part of the reason for the  
9 shift is that we started to see the City Council  
10 shifting their policy direction a bit, to Spencer's  
11 point on, "Do we want in-lieu? Do we want on site,"  
12 and particularly with the on-site units, was there  
13 Category 4 -- or should the category-income levels for  
14 on-site units be lower?

15 And so the feedback that we were getting  
16 from the applicants is that, "Hey. It'll" -- "it  
17 would be much better to know, from a City Council  
18 standpoint, where they want us to go on a project so  
19 that we can continue to make those adjustments as we  
20 go through the design-review process."

21 And so the structure of this program  
22 definitely is a very challenging chicken-and-an-egg;  
23 right? There's no perfect way to do it.

24 How we tried to approach that -- is  
25 that -- in the FAR Exceedance Agreement there's

1 provisions on how amendments should be made. So, yes,  
2 they've -- preliminary said they will accept an  
3 in-lieu fee for a project of a 2.0 FAR. But if that  
4 project doesn't get design-review approval, that FAR  
5 Exceedance Agreement doesn't exist; right?

6 It's a -- it's tied to the design-review  
7 approval, and so there's provisions in there that  
8 say, "Hey. If there's changes to the square-footage  
9 requirement, if there's changes to the  
10 method" -- basically, if there's changes to anything,  
11 then there's a process by which that agreement can be  
12 amended.

13 So I hope -- Tim, does that kind of answer  
14 your question?

15 We were trying to respond a bit to giving  
16 applicants as far-enough, early notice on kind of what  
17 the expectations would be as possible.

18 COMMISSIONER CARTER: Yeah, I understand there's  
19 a complex -- so -- but -- but, basically, what I -- I  
20 think I wanted to get to is that City Council didn't,  
21 you know, hamstring us with a 2.0 FAR building.

22 MORGAN LANDERS: No. No.

23 COMMISSIONER CARTER: There's -- there's still  
24 quite a bit of leeway on our side on that front.

25 MORGAN LANDERS: Very much so.



1           And -- and, primarily, the question to  
2 them is, "Is the method acceptable?" You know, are  
3 they willing to accept an in-lieu fee of a certain  
4 amount, or is it on-site units, off-site units, things  
5 like that? They have to approve that method because  
6 that's a contractual agreement between the applicant  
7 and the City.

8           But, again, those amendment provisions are  
9 in there, that if there are changes to the  
10 design-review application -- or sometimes we see  
11 changes at the building-permit phase as well; right?  
12 Maybe some square footages shift because of  
13 architectural requirements or Building Code  
14 requirements. So this -- those agreements are pretty  
15 fluid.

16           And, definitely, you all aren't kind of  
17 tied into a -- into a spot there.

18           COMMISSIONER CARTER: Got it. Thank you.

19           COMMISSIONER CORDOVANO: I think I remember a  
20 recent Council meeting where it got approved much  
21 later.

22           MORGAN LANDERS: Mm-hmm.

23           COMMISSIONER CORDOVANO: We were hashing it out,  
24 and he was like -- the applicant was like, "Wait. I  
25 thought this was a done deal." And so we're working

1 out that process.

2 MORGAN LANDERS: Yeah. And I think there  
3 definitely has been a different cadence to those  
4 agreements over the past few years. You know, there  
5 was a period of time where the project would get  
6 reviewed at design review, you'd get the approval from  
7 the Planning and Zoning Commission, and then those FAR  
8 Exceedance Agreements wouldn't get finalized until  
9 prior to a certificate of occupancy.

10 And that creates a challenge  
11 because -- hey -- if the policy changes, that's a big  
12 change for an applicant that's for -- fought -- that  
13 far along -- along in the process.

14 I think the reason for that was to make  
15 sure that the final -- if someone was paying an  
16 in-lieu fee or providing an on-site unit, that the  
17 square-footage calculations didn't change between  
18 design review and building permit. Those changes are  
19 usually pretty minor, but I think that was the  
20 purpose.

21 And so then we shifted it to -- prior to  
22 building-permit issuance, and then, you know, after  
23 design review, and now we've shifted it even further  
24 just to try and kind of stay ahead of the thought  
25 process there.

1           COMMISSIONER CORDOVANO: Well, I'm just going to  
2           swerve a little farther out of my lane here, as I  
3           usually do.

4                       I think we should be letting the  
5           developers develop and the City permit -- and getting  
6           as much stuff built as we can. And if we made the  
7           categories higher -- like a Deed Restriction L  
8           [phonetic], just a 'Local' with no income  
9           restriction -- then we'd see a lot more units getting  
10          developed. And I think there's a lot of room for more  
11          units here.

12                      And -- just throwing it out there -- on  
13          the parking thing that -- you know, I think the  
14          streets should be parked on, and people should drive  
15          over snow banks if they get plowed in. And, you know,  
16          there's a lot more room for units in here and -- just  
17          making sure everybody forecasted it and thought about  
18          it. And there's -- if we had less workers in town,  
19          there'd be more parking available.

20                      So there's everything for everyone to  
21          think about when they bring their comments to...

22           CHAIRMAN MORROW: Lovely.

23                      All right. So I guess the question  
24          is -- we've -- we've pretty much gone through the  
25          whole thing. Do you guys want to -- we have to wait

1 for the -- we don't have anything to

2 really [unintelligible] --

3 MORGAN LANDERS: You all have provided --

4 CHAIRMAN MORROW: -- conditions, yeah. Yes.

5 MORGAN LANDERS: -- your feedback. And I -- I  
6 think the -- what I'm hearing -- and you all can  
7 validate this -- is that you're looking for the  
8 applicant to continue to evaluate a couple of  
9 those -- what I've heard is that the -- from the  
10 transformer side of things, that you all are okay with  
11 the location if the screening maybe had -- more of a  
12 landscaped screening than the metal screening; is that  
13 correct?

14 CHAIRMAN MORROW: Yes.

15 MORGAN LANDERS: Okay.

16 CHAIRMAN MORROW: Okay. Yeah.

17 MORGAN LANDERS: And then you would like to see  
18 the applicant continue to evaluate an alternate  
19 location for that stairwell, is what I'm hearing as  
20 well.

21 CHAIRMAN MORROW: Yes.

22 MORGAN LANDERS: Okay. And it --

23 CHAIRMAN MORROW: And --

24 MORGAN LANDERS: And I -- what -- I think what  
25 I'm hearing is that you all would actually like to see

1 those come back to you, rather than kind of deferring  
2 back to staff on our judgment. And I think that  
3 that --

4 CHAIRMAN MORROW: Because you have to bring us  
5 the conditions anyway --

6 MORGAN LANDERS: Correct.

7 CHAIRMAN MORROW: -- we might as well do that  
8 all at once.

9 VICE CHAIRMAN MOCZYGEMBA: Yeah. I think if  
10 we're including the potential relocation or rethought  
11 of that stair at the corner, that's a significant  
12 enough design change --

13 MORGAN LANDERS: Mm-hmm.

14 UNIDENTIFIED SPEAKER: Yeah.

15 VICE CHAIRMAN MOCZYGEMBA: -- as I'm sure you'll  
16 see. But I think we also discussed potentially  
17 spicing up that north side, maybe, with some --

18 MORGAN LANDERS: Mm-hmm.

19 VICE CHAIRMAN MOCZYGEMBA: -- brickwork.

20 I don't know.

21 Tim, you had, maybe, some comments as  
22 well.

23 COMMISSIONER CARTER: Just a little  
24 more -- regarding that north side, just a  
25 little -- you know, is there a little more we can do

1 to -- you know, in case we're looking at that for  
2 40 years?

3 And -- and then regarding the stairwell,  
4 staff, I heard a comment about -- that there'd been  
5 some discussion about the stairwell being on Leadville  
6 Avenue and that staff had discouraged that. Is -- you  
7 know, to me, there's two options on Leadville. You  
8 know, one is to run the stairwell parallel to the  
9 street as it is now, parallel to Second.

10 But another option is to just have a  
11 single door, you know, maybe at that north end, and  
12 the stairwell runs, you know, perpendicular to the  
13 front.

14 Staff, were you discouraging both of those  
15 options? Can you just evaluate -- talk -- talk a  
16 little bit about that because, to me, the -- you know,  
17 a single door at that north corner of Leadville that  
18 led to a stairwell that went down would not  
19 be -- would be preferable to what we have now. But,  
20 staff, maybe you want to comment on that.

21 MORGAN LANDERS: That's correct, Tim.

22 Thank you.

23 Yeah. The original application had  
24 proposed the stairwell kind of lengthwise along  
25 Leadville, and so that was what we were discouraging.

1 And at that time, we had encouraged them to evaluate a  
2 potential stairwell that ran along the north end of  
3 the building, you know, kind of a single point of  
4 access, and then running it along that side. The  
5 applicants really didn't like that approach because of  
6 the loss of the ability to get natural light, because  
7 that's kind of the purpose of that stairwell.

8 So, again, I think they can continue to  
9 kind of evaluate those options, but, Tim, we did agree  
10 that that could be a -- a potential solution.

11 COMMISSIONER CARTER: Okay. Good.

12 MORGAN LANDERS: And that would also create some  
13 potential undulation on that north side as well,  
14 depending on how it kind of shook out.

15 COMMISSIONER CARTER: And then I guess I would  
16 just say that, you know, I would trade window wells  
17 for the stairwell in the -- locate -- I mean, you  
18 know --

19 UNIDENTIFIED SPEAKER: Correct. Yeah.

20 COMMISSIONER CARTER: -- if -- if it takes  
21 window wells --

22 CHAIRMAN MORROW: Yeah.

23 COMMISSIONER CARTER: -- to get light down in  
24 there, I -- I would certainly prefer those to the  
25 current stairwell configuration.

1 MORGAN LANDERS: Okay. It sounds like we've got  
2 some agreement among the other Commissioners to that  
3 as well; is that correct?

4 CHAIRMAN MORROW: That would be great.

5 VICE CHAIRMAN MOCZYGEMBA: I would agree.

6 CHAIRMAN MORROW: Yeah.

7 MORGAN LANDERS: Okay.

8 SUSAN PASSOVOY: I also wanted to add a comment  
9 on the -- the window wells. It is very common in  
10 covenants and restrictions to require light-blocking  
11 shades in certain locations, and there -- certainly  
12 could be included in this so that the -- the unit  
13 could have the advantage of light during the day, but  
14 not have an adverse effect on the dark sky.

15 MORGAN LANDERS: That's a great point.

16 Thank you, Susan.

17 So I think, at this point, the question to  
18 the Commission is -- whether you all would like to  
19 have a second meeting in December to hear this again,  
20 or whether you'd like to see it come back to you in  
21 January.

22 CHAIRMAN MORROW: I'm not going to -- I'm  
23 flexible. So...

24 COMMISSIONER CARTER: No. That seems --

25 COMMISSIONER PASSOVOY: I -- I guess



1 my -- my -- I'm sorry.

2 CHAIRMAN MORROW: Go ahead.

3 COMMISSIONER PASSOVOY: Oh.

4 COMMISSIONER CARTER: Go ahead.

5 COMMISSIONER PASSOVOY: My question would be  
6 whether staff would have the time to do what you need  
7 to do in that space of time, and, "Will the applicant  
8 have a chance to" -- "to take a look at this and  
9 that," because I know how jammed up everything gets  
10 and -- and -- from this period to the end of the year.

11 I'm perfectly willing to come to a meeting  
12 on the 20th, but only if the people who have to  
13 provide information to us have a chance to do what  
14 they need to do.

15 CHAIRMAN MORROW: Yeah, I -- I agree. I think  
16 that's a discussion between you and the applicant.  
17 And then you can come back to us and say, "They're  
18 ready," or, "They need the extra two weeks," or  
19 whatever it is.

20 MORGAN LANDERS: So maybe I could recommend that  
21 you --

22 COMMISSIONER CARTER: [Unintelligible].

23 MORGAN LANDERS: -- all -- with the -- oh,  
24 sorry. Go ahead, Tim.

25 COMMISSIONER CARTER: Well, I would just say

1 another component to this was just giving the public  
2 a -- a chance to digest this project a little bit.  
3 And so, you know, I don't know if having a meeting on  
4 the 20th accomplishes that --

5 CHAIRMAN MORROW: Yeah. [Unintelligible].

6 COMMISSIONER CARTER: -- just given that it's  
7 the holiday season, and I don't know how much people  
8 are paying attention.

9 MORGAN LANDERS: Sure. And -- and we did fully  
10 notice the project, too, with the adjacent property  
11 owners and -- you know, and all of that, so there was  
12 that continued notice. We did that as part of our  
13 requirements.

14 What we could do is -- you all could make  
15 the recommendation and continue the meeting to the  
16 20th, and then staff can kind of confirm that. And if  
17 we need to cancel it, we can.

18 CHAIRMAN MORROW: Okay. So I would recommend  
19 that we continue this portion of the meeting until the  
20 20th.

21 Can I have a second on that.

22 COMMISSIONER CARTER: Second.

23 COMMISSIONER PASSOVOY: I second.

24 CHAIRMAN MORROW: All in favor?

25 VICE CHAIRMAN MOCZYGEMBA: Aye.

1 CHAIRMAN MORROW: Aye.

2 COMMISSIONER CORDOVANO: Aye.

3 COMMISSIONER CARTER: Aye.

4 COMMISSIONER PASSOVOY: Aye.

5 CHAIRMAN MORROW: Okay. Awesome.

6 Great job.

7 Thank you, guys.

8 (End transcription at 2:09:50 of audio  
9 file.)

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IN WITNESS WHEREOF, I set my hand and seal  
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---

VICTORIA HILLES, RPR, CSR NO.

1173

Notary Public

Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires December 3, 2026

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City of Ketchum

**Attachment M:  
Staff Report (no attachments) -  
Planning and Zoning  
Commission December 20,  
2023**



City of Ketchum  
Planning & Building

**STAFF REPORT**  
**KETCHUM PLANNING AND ZONING COMMISSION**  
**SPECIAL MEETING OF DECEMBER 20, 2022**

<b>PROJECT:</b>	The 208 Condos
<b>FILE NUMBER:</b>	P22-035 and P22-035A
<b>APPLICATION TYPE:</b>	Final Design Review and Subdivision – Condominium Preliminary Plat
<b>APPLICANT:</b>	Nicole Ramey, Medici Architects (Architect)
<b>PROPERTY OWNER:</b>	755 S Broadway, LLC
<b>REQUEST:</b>	Final Design Review and Condominium Preliminary Plat application for the development of a new, 11,663 square foot, three-story mixed-use building
<b>LOCATION:</b>	200 N Leadville Avenue - Ketchum Townsite: Block 23: Lot 1
<b>ZONING:</b>	Community Core – Subdistrict 2 – Mixed Use (CC-2)
<b>REVIEWER:</b>	Morgan R. Landers, AICP – Senior Planner
<b>NOTICE:</b>	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 November 7, 2022. The public hearing notice was published in the Idaho Mountain Express on November 9, 2022. A notice was posted on the project site and the city’s website on November 7, 2022. Story poles were verified on the subject property on November 22, 2022. The project was heard at the November 29, 2022 meeting of the Planning and Zoning Commission and continued to a special meeting on December 20, 2022.

**I. EXECUTIVE SUMMARY:**

The Planning and Zoning Commission reviewed the proposed development at their November 29, 2022 meeting (See Attachment A for the staff report). At the meeting, staff highlighted three areas where improvements to the project could be made to bring the application into conformance with the Ketchum Design Review Criteria:

- Location of the transformer
- 2<sup>nd</sup> Street activation on the ground floor
- Exposed façade on the north side of the building

Upon review of the application materials, staff and applicant presentation, and public comment, the Commission provided feedback to the applicant as follows:

- The location of the transformer was acceptable, however, landscape screening that retains its foliage year-round is preferred to the metal screening proposed

- A window well for added light to the basement unit would be a preferred alternative to the stairwell on the corner of 2<sup>nd</sup> and Leadville Ave
- Additional articulation of the north elevation should be considered, this could be achieved with material variation, architectural detailing, or stepping the top floor of the façade back on the north end

The applicant has provided a revised development proposal (Attachment B) which seeks to address the comments provided by the Commission. The following changes are being proposed:

- Transformer – the location of the transformer has remained, however, there is additional landscape screening proposed around the transformer for additional screening
- 2<sup>nd</sup> Street – the basement level floor plan has been reconfigured:
  - Decreased the size of the storage units
  - Moved the dwelling unit to orient along 2<sup>nd</sup> Street not Leadville Ave and increased the size of the basement dwelling unit
  - Moved the staircase to the dwelling unit to the center of the building a moved the entrance to the recessed residential entryway
  - Increased the square footage of retail with the addition of basement level retail space with staircase to lower level from the ground floor retail
- 2<sup>nd</sup> Street – Ground level changes include:
  - Addition of a light well on the Leadville side of the building
  - Entrance to the retail space moved from the recessed entry to be street facing on 2<sup>nd</sup> Street
  - Windows on 2<sup>nd</sup> Street provide direct view into retail space rather than staircase to basement dwelling unit
- North Elevation – the material on northern portion of the façade has changed to the red brick wrapping the building on the top level of the building. There is additional brick detailing on the horizontal and vertical red brick portions of the building.

## II. CONFORMANCE WITH ZONING AND DESIGN REVIEW STANDARDS:

Per Ketchum Municipal Code (KMC) §17.96.010.A – *Applicability*, design review is required for all new mixed-use buildings. Before granting Design Review approval, the Commission must determine that the application meets two criteria: (1) the project doesn't jeopardize the health, safety, or welfare of the public, and (2) the project conforms to all Design Review standards and zoning regulations (KMC §17.96.050.A).

### Conformance with Zoning Regulations

The proposed changes do not impact the project's conformance with the zoning regulations, including dimensional standards, applicable to the project. The project remains in conformance with all zoning requirements.

### Conformance with Design Review Improvements and Standards

Staff believes the proposed changes to the basement and ground floor of the project address the staff and commission comments very well. The relocation of the staircase at the corner of 2<sup>nd</sup> and Leadville opens the views into the retail space and emphasizes the commercial elements of the building. The reorganization also creates additional retail space and increases the size of the basement dwelling unit which are all desirable outcomes. A such, staff believes the comments related to ground floor activation to be resolved with the revised design.

Staff conducted a meeting with the applicant and Idaho Power to discuss screening of the proposed transformer. Staff believes the proposed landscaping to be an improvement over the previous proposal and supports the revised screening.



The applicant has made revisions to the north elevation of building, however, staff is concerned that the changes proposed do not resolve the Commission's comments. The Design Review criteria outlines that "Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness" and that "Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front façade". The changes to the brick coloring on the top portion of the building accentuates the building's height and length and is fully exposed to the street. Although there is additional brick detailing, it is subtle and does not assist in reducing the appearance of the bulk of the building or the flatness of the elevation. Staff recommends further consideration of this façade by the applicant through more extensive façade treatments or adjustments of roof lines or façade walls to create adequate undulation/relief.

### **III. STAFF RECOMMENDATION**

Staff requests the Commission review the Design Review application and provided feedback to the applicant on the proposed revisions.

#### **ATTACHMENTS:**

- A. Staff Report – November 29, 2022 Planning and Zoning Commission Meeting
- B. Application Materials – Revised Design Review Plan Set
- C. Public Comment



City of Ketchum

Attachment N:  
Hearing Transcripts - December  
20, 2023

**P22-035 / P22-035A - 200 N Leadville Avenue**

**CITY OF KETCHUM PLANNING AND ZONING COMMISSION**

IN RE: )  
P22-035 / THE 208 CONDOS )  
and )  
P22-035A / THE 208 CONDOS )  
200 North Leadville Avenue )  
\_\_\_\_\_ )

**TRANSCRIPT OF RECORDED PUBLIC HEARING**

**TUESDAY, DECEMBER 20, 2022**

**COMMISSIONERS PRESENT:**

**NEIL MORROW, CHAIRMAN**

**BRENDA MOCZYGEMBA, VICE CHAIRPERSON**

**TIM CARTER**

**SPENCER CORDOVANO**

**SUSAN PASSOVOY**

**TRANSCRIBED BY:**

**VICTORIA HILLES, RPR, CSR NO. 1173**

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1 (Begin transcription at 0:1:00 of audio  
2 file.)  
3 CHAIRMAN MORROW: Any discussion or -- okay.  
4 I -- I did go look at those story poles  
5 for this project, so that's my --  
6 COMMISSIONER CORDOVANO: I did prior to the  
7 first meeting.  
8 CHAIRMAN MORROW: Okay.  
9 (Pause transcription at 0:01:11 of audio  
10 file and resume transcription at 0:02:30  
11 of audio file.)  
12 CHAIRMAN MORROW: Okay. We'll move on to Action  
13 Item 2. This is a recommendation to hold a public  
14 hearing, review, and provide feedback on design-review  
15 and condominium-preliminary-plat applications for the  
16 proposed mixed-use development at 200 North Leadville  
17 Avenue, P22-035 and P22-035A.  
18 Morgan.  
19 MORGAN LANDERS: Great. Thank you, everyone.  
20 So this is a continuation of our  
21 November 29th meeting.  
22 So if you all recall, we had  
23 presented -- staff presented the application to you  
24 all. It was a design-review application and a  
25 condominium-preliminary-plat application.

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1 At that meeting, staff had made comments  
2 in kind of three general areas related to things that  
3 we thought that the Commission might have feedback on,  
4 and the Commission did provide that feedback. And so  
5 we are here in front of you today, as the applicant  
6 has made a variety of changes based on that feedback  
7 that you provided.  
8 So a couple of the changes that they made  
9 that staff are in support of -- is that there's been a  
10 pretty significant reorientation of the basement-level  
11 floor plan and the staircase to that ground -- the  
12 basement-level dwelling unit, which staff believes  
13 addressed the majority of staff and the Planning  
14 Commission's feedback. So we would look for some  
15 affirmation from you all on that.  
16 And then we also have a  
17 screen -- screening configuration that we discussed  
18 with Idaho Power that we think meets some of the  
19 intent and is certainly an improvement above and  
20 beyond the actual moving of the transformer, which we  
21 think will be problematic.  
22 And it didn't seem like the Commission was  
23 really looking for them to do -- and then the other  
24 piece of the conversation was kind of how to treat  
25 that north facade. So there was some feedback from

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1 the Commission about further articulation of that  
2 facade. And I think one or two Commissioners had even  
3 made a comment of, you know, potentially stepping back  
4 that top level of the third floor to create some  
5 additional undulation and relief.  
6 And so that's what's in front of you  
7 today -- is -- is just further discussion and  
8 direction to the applicant on that.  
9 I would like to mention that we received  
10 two additional public comments after the packet was  
11 published last week, and those were provided to you  
12 via e-mail and the agenda has been updated.  
13 One of those, you will notice, is from a  
14 land-use attorney. And so we do have the City  
15 Attorney, Matt Johnson, online to provide you some  
16 feedback on that and how you all need to either  
17 address or acknowledge that, and then you can  
18 certainly ask him questions.  
19 So at this point, I will turn it over to  
20 Matt. I believe he's on the line, and he can give you  
21 feedback on that, and then we can continue through the  
22 process.  
23 MATT JOHNSON: All right, Chair and  
24 Commissioners. I'm Matt Johnson, City Attorney. I'm  
25 happy to answer questions if there's specific ones

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1 about the letter from Mr. Linnet. I -- I can tell you  
2 I've reviewed that matter. I've -- and I've provided  
3 a response to Mr. Linnet.  
4 I do think that the City Code is quite  
5 clear that the Council has kept the authority over FAR  
6 exceedances and -- and, in particular, the  
7 decision-making on an FAR Exceedance Agreement. Those  
8 agreements are then specifically conditioned upon the  
9 design-review approval, which keeps the design review  
10 fully in front of you, separate from that FAR  
11 Exceedance Agreement.  
12 And so I do not -- I do not come to the  
13 same conclusions Mr. Linnet did, and my finding is  
14 everything is in order, procedurally. That's why we  
15 kept the schedule for this meeting instead of  
16 considering a postponement.  
17 All that being said on the record now, I'm  
18 happy to answer any questions you may have or that  
19 arise later after public comment with respect to any  
20 of the issues raised in that letter.  
21 VICE CHAIRMAN MOCZYGEMBA: I had a question.  
22 Whether it's to Matt or Planning staff, is -- I think  
23 Mr. Linnet was -- had some issue over the noticing.  
24 Was that a public hearing, and was it properly noticed  
25 to the best of your knowledge?

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1 MATT JOHNSON: So -- so an FAR Exceedance  
 2 Agreement is not actually required for a public  
 3 hearing. It's not a land-use decision in the same  
 4 sense as a zoning amendment, and there hasn't been a  
 5 public-hearing requirement created for it by City  
 6 Code, as there has been for design-review  
 7 applications.  
 8 So it's separate from those. In fact,  
 9 quite typically, they've been on the consent agenda  
 10 when they go up before Council.  
 11 VICE CHAIRMAN MOCZYGEMBA: Thank you, Matt.  
 12 COMMISSIONER CORDOVANO: Hey, Matt. What about  
 13 the noticing of the first meeting?  
 14 And I don't know if that's for staff or  
 15 for Matt.  
 16 It sounded like some of the property  
 17 owners didn't get a notice for the first meeting. Was  
 18 that just not going to the mailbox or...  
 19 MORGAN LANDERS: Yeah. So I think -- and you're  
 20 probably referring to one of the public comments that  
 21 came through.  
 22 So public noticing goes to the property  
 23 owners within a 300-foot radius. And so we did  
 24 double-check the public notice, and that did go out to  
 25 all of the adjacent property owners within that

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1 300 feet.  
 2 I think some of the challenge that happens  
 3 with public noticing is that if there is an entity  
 4 that is either renting that space or leasing that  
 5 space, it is up to the property owner to notify those  
 6 tenants. And so our obligations under the law are to  
 7 make sure that we notify the property owner, but we  
 8 certainly understand that sometimes that information  
 9 isn't conveyed down to tenants.  
 10 COMMISSIONER CORDOVANO: Yeah. And I think  
 11 that -- my comment was mostly in regards to the first  
 12 meeting that we held on 12/13. But I did read that  
 13 public comment that you're referring to, and I wasn't  
 14 sure if that was even a 300-foot adjoiner.  
 15 MORGAN LANDERS: And are you talking about the  
 16 first meeting on this application? So that was on  
 17 November 29th, and we did notice that through all of  
 18 our normal channels, so the mailing to the 300-foot  
 19 adjoiners.  
 20 The other thing that we do that's required  
 21 per our Code is -- we have a physical notice that's on  
 22 the property itself. And so that's usually how we try  
 23 and kind of get the word out more broadly for maybe  
 24 people who aren't as -- part of that adjacent property  
 25 owner. So we did go back and confirm, and all of the

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1 noticing was done properly for that initial hearing on  
 2 the 29th.  
 3 COMMISSIONER CORDOVANO: When are the story  
 4 poles required to go up?  
 5 MORGAN LANDERS: One week prior to the hearing,  
 6 and those get verified by our Community Service  
 7 Officers -- that one week prior -- as well. And so if  
 8 those aren't up, then we either -- you know, the  
 9 evaluation of a waiver has to come in with the  
 10 application, and it has to be requested by the  
 11 applicant.  
 12 But if the determination is that those are  
 13 required, then they need to be in place. If they're  
 14 not in place, then we do have to postpone the hearing.  
 15 But for this application, they were in place in the  
 16 right amount of time.  
 17 COMMISSIONER CORDOVANO: And that's to the top  
 18 of the building or to the top of the hot-tub canopy?  
 19 MORGAN LANDERS: It's to the top of the -- the  
 20 highest point of the -- of the building on a corner.  
 21 COMMISSIONER CORDOVANO: Thanks.  
 22 MORGAN LANDERS: Mm-hmm.  
 23 CHAIRMAN MORROW: Susan, do you have anything?  
 24 COMMISSIONER PASSOVOY: No, I -- the only  
 25 question I have is -- whether you also put notices in

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1 the newspaper of record.  
 2 MORGAN LANDERS: Mm-hmm. We do, yeah. We're  
 3 required by statute to put a legal notice in a paper  
 4 of general circulation. So that, for us, is -- it  
 5 gets posted in the "Legal Notices" section on the  
 6 Wednesday paper because that's where they have the  
 7 expanded legal notices. So that -- those all get  
 8 posted accordingly.  
 9 And we actually have to notice -- I think  
 10 the minimum timeframe in our Code is 15 days, but  
 11 because of the cycle of the noticing period for the  
 12 paper, it ends up being a little bit more than that,  
 13 usually about a week and a half more than that.  
 14 CHAIRMAN MORROW: All right.  
 15 MORGAN LANDERS: And if there's not any other  
 16 questions, I will turn it over to the applicant, as  
 17 they want to review some of the proposed changes with  
 18 you and provide some comments. And then we can move  
 19 into public comment and proceed as usual for a public  
 20 hearing.  
 21 All right, Nicole.  
 22 NICOLE RAMEY: Let's start --  
 23 MORGAN LANDERS: The one at the end or the one  
 24 at the beginning?  
 25 NICOLE RAMEY: This one here.

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1 Good afternoon. Nicole Ramey, for the  
2 record.  
3 Thanks, again, for meeting for this  
4 special meeting.  
5 And, as always, I wanted to thank Morgan  
6 and her staff for all their hard work on putting all  
7 of this together and getting everything in order.  
8 [Unintelligible].  
9 UNIDENTIFIED SPEAKER: [Unintelligible].  
10 NICOLE RAMEY: Okay. So the design team took a  
11 look at the 2nd Street activation comment, and we have  
12 made a few changes. We relocated the entrance to the  
13 lower-level residential unit to be within the main  
14 residential entry off 2nd, so now all of the  
15 residential entries are consolidated off that main 2nd  
16 entry. We reconfigured the retail entrance off 2nd.  
17 It is now closer to Leadville, and the  
18 windows previously in the lower-level stairwell are  
19 now dedicated to the retail space. So as -- as you  
20 can see in this rendering, all the windows in  
21 the -- in the black area, those are now dedicated to  
22 the commercial/retail space. So that was kind of the  
23 big move in terms of the facade.  
24 When it comes to the floor plan, we  
25 increased the retail-unit size by 649 square feet,

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1 from 1,306 to 1,955. We did this by adding square  
2 footage from the lower level with access via an  
3 interior stair -- stair. So this is now about  
4 18 percent of the gross square foot, so we upped that  
5 percentage quite a bit.  
6 We feel these changes not only activate  
7 the corner with the commercial space, but also add  
8 commercial square footage and condense the residential  
9 unit entries together in one location. So a couple  
10 benefits there for that comment.  
11 And a side note. We did add back in an  
12 area of precast glass paver, concrete block, so now  
13 that provides light down into the lower-level unit and  
14 down into the lower-level retail space. So the glass  
15 block is also completely under the second-floor deck,  
16 so while there will be light trespass, it technically  
17 is underneath that second-floor deck.  
18 We had a meeting with Idaho Power and  
19 Morgan Landers to review allowable clearances and  
20 allowed materials around transformers. Idaho Power's  
21 policy is that a fence and landscaping within a  
22 three-foot clearance of the transformer are  
23 acceptable. The landscaping should be able to be laid  
24 down, so no sturdy shrubs. And, you know, if any of  
25 that just gets destroyed or altered during maintenance

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1 or repair, it's on the property owner.  
2 So we've added a wire-mesh fence and  
3 proposed landscaping on two sides of the transformer.  
4 The orientation of the transformer did not matter to  
5 Idaho Power, and as all sides of the transformer can  
6 be treated with the same fence and landscaping, we  
7 kept the orientation the same.  
8 As for the north wall, we added red brick  
9 on the third-floor band. The design review criteria  
10 about, "Facades facing a street or alley or located  
11 more than 5 feet from an interior side property line  
12 shall be designed with both solid surfaces" --  
13 windows -- "solid surfaces and window openings," does  
14 not apply.  
15 This wall does not front a street or  
16 alley, and it is within 5 feet of the interior side  
17 property line. I believe that this design review  
18 criteria, you know, is not pertaining to interior,  
19 zero-lot-line facades. Per Building Code and  
20 life-safety requirements, we cannot include window  
21 openings.  
22 The goal of the brick detailing here is to  
23 be subtle. Changes in brick-lay pattern and  
24 orientation are the design. We are open to  
25 discussions on the most suitable treatment of this

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1 facade while understanding the project meets the  
2 setback and the height requirements.  
3 We did -- I also want to point out that we  
4 contacted the neighbor to the north to ask if we could  
5 discuss additional landscaping or relocation of  
6 existing trees on the property. The discussions were  
7 rejected.  
8 I guess I just -- as a side note -- as  
9 I've always said, if -- if what is coming before you  
10 is not, you know, what everybody wants to see, then I  
11 would encourage all parties to look at -- and I know  
12 it's in the works -- rewriting the Code so then we  
13 know what to design to going forward.  
14 So that's kind of [unintelligible].  
15 CHAIRMAN MORROW: Thank you.  
16 Morgan, do you have anything?  
17 MORGAN LANDERS: Nothing at this time, but we'll  
18 open up for --  
19 CHAIRMAN MORROW: For public comment?  
20 MORGAN LANDERS: -- questions or public comment.  
21 COMMISSIONER CORDOVANO: I've got a question  
22 for the applicant.  
23 CHAIRMAN MORROW: Oh, you guys have questions  
24 first?  
25 Okay.

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1 COMMISSIONER CORDOVANO: You said you couldn't  
 2 put in windows on the -- was that the north --  
 3 NICOLE RAMEY: Correct.  
 4 COMMISSIONER CORDOVANO: -- side for the Life  
 5 Safety --  
 6 NICOLE RAMEY: The Building Code.  
 7 COMMISSIONER CORDOVANO: Or Building Code.  
 8 NICOLE RAMEY: Correct.  
 9 COMMISSIONER CORDOVANO: Could you elaborate on  
 10 that, Morgan.  
 11 MORGAN LANDERS: Yeah. So what Nicole is  
 12 stating is correct. The amount of openings you can  
 13 have on a facade wall is dictated by the setback from  
 14 the property line.  
 15 And since this building wall is at the  
 16 zero-setback line from the property, no fenestration  
 17 is permitted that can open. So there -- I'm not sure  
 18 what some of the other details are, as far as if it  
 19 can be nonoperable. I would have to defer to Nicole  
 20 on that. But as far as kind of large openings that  
 21 actually can be operable, those are not permitted.  
 22 NICOLE RAMEY: Can we scroll to the last page.  
 23 MORGAN LANDERS: Mm-hmm.  
 24 NICOLE RAMEY: We did go around and we took some  
 25 photos of example -- of examples within town of these

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1 types of facades. So when you build, you know, within  
 2 a certain distance of your property line, the  
 3 International Building Code requires you to, you know,  
 4 build to a certain fire and life-safety requirement.  
 5 So that is why we see these types of facades all over  
 6 town.  
 7 The building on the lower-right-hand  
 8 corner that does have a window would preclude that  
 9 property owner from, you know, building within the set  
 10 distance of that window. So, you know, unless you're  
 11 set back a certain distance off your property line,  
 12 you are not allowed to have openings.  
 13 COMMISSIONER CORDOVANO: Thanks for providing  
 14 this. That was going to be my next question. It  
 15 definitely helps provide some perspective.  
 16 UNIDENTIFIED SPEAKER: [Unintelligible].  
 17 CHAIRMAN MORROW: I was just saying that the two  
 18 on the bottom are -- that -- that's the new Bariteau  
 19 [phonetic] building on -- across from the post office;  
 20 correct?  
 21 Yeah. So I know we approved something  
 22 that doesn't look like that at the end. When it's  
 23 finished, it won't be a blank wall. It'll have  
 24 texture, color, material. It will have something on  
 25 it, so -- just so that Commissioners know that weren't

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1 here for that.  
 2 COMMISSIONER CORDOVANO: And then I saw -- did  
 3 you change -- you -- thanks for the retail changes.  
 4 And these units are still potentially able  
 5 to be rented separately?  
 6 NICOLE RAMEY: Correct.  
 7 COMMISSIONER CORDOVANO: And was there any  
 8 reduction in size to the top floor?  
 9 NICOLE RAMEY: No.  
 10 COMMISSIONER CORDOVANO: And that is all from  
 11 me.  
 12 Thanks.  
 13 VICE CHAIRMAN MOCZYGEMBA: Nicole, you  
 14 mentioned -- thank you for, I guess, coordinating with  
 15 Idaho Power and what they would allow and not allow  
 16 regarding the transformer screening.  
 17 What sort of plantings would be proposed  
 18 there? You mentioned they can't be like hardy bushes.  
 19 Is it grasses?  
 20 NICOLE RAMEY: That -- I guess, we'd be open to  
 21 suggestions. Idaho Power did not want to specify --  
 22 VICE CHAIRMAN MOCZYGEMBA: Okay.  
 23 NICOLE RAMEY: -- any specific landscaping. And  
 24 I suppose, while they didn't say they would not allow  
 25 a sturdy shrub, it -- it would just get destroyed, and

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1 it would make their lives miserable. So in the  
 2 interest of, you know, being a good client of  
 3 theirs...  
 4 VICE CHAIRMAN MOCZYGEMBA: Right.  
 5 And then -- did they have additional  
 6 feedback? I think it was brought up in the previous  
 7 meeting that there was some criticism from Idaho Power  
 8 with previous transformer screening that included  
 9 metal screening that needed to be moved because it  
 10 gets frozen to the ground or whatever.  
 11 It -- they were okay moving forward with  
 12 the metal screen, as --  
 13 NICOLE RAMEY: Right. Cyndi Bradshaw with Idaho  
 14 Power was fine allowing those. I'm sure that there  
 15 have been problems. And, once again, if -- you know,  
 16 if a metal screen is destroyed during maintenance or  
 17 repair, that's on the property owner. It's not Idaho  
 18 Power's equipment.  
 19 VICE CHAIRMAN MOCZYGEMBA: Okay. Thank you.  
 20 MORGAN LANDERS: And if I could provide a little  
 21 bit of clarity to Brenda.  
 22 One of the other considerations for this  
 23 property is that the sidewalks where the transformer  
 24 is located are snowmelted. And so I think some of the  
 25 additional considerations related to snow removal or

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1 freezing were a bit mitigated because of that.  
 2 And then we had discussed -- I believe the  
 3 applicant had offered in the last public meeting that  
 4 they would be supportive of some sort of condition of  
 5 approval that said, you know, "If any of this stuff  
 6 was damaged, it needed to be replaced within a certain  
 7 period of time."  
 8 So if the project does move forward, staff  
 9 will work on crafting whatever conditions of approval  
 10 the Commission feels are appropriate and then present  
 11 you all -- to those -- to you all for further  
 12 consideration.  
 13 VICE CHAIRMAN MOCZYGEMBA: [Unintelligible].  
 14 Yeah.  
 15 COMMISSIONER PASSOVOY: I -- I'm following up on  
 16 Spencer's question about reducing the size of the  
 17 top-floor unit. I realize that it -- that it's in the  
 18 developer's interest to maximize the square footage of  
 19 that unit, but I -- I am wondering if you would be  
 20 willing or -- to reduce it at least on the north side  
 21 so there's more set back and that wall is, therefore,  
 22 not such a blank wall.  
 23 I mean, the unit is 3,500 square feet. So  
 24 I don't know how much you -- but, you know, it -- I  
 25 don't know what's an -- I'm not an architect. I don't

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1 know what's an appropriate setback, and I'm reluctant  
 2 to do -- what do -- what do they call it? -- designing  
 3 from the dais. But it seems, to me, that it's one way  
 4 this issue can be addressed.  
 5 NICOLE RAMEY: Sure. Personally, I -- I do not  
 6 feel a setback from the north achieves any of the  
 7 goals in terms of reducing bulk or flatness. It would  
 8 be a narrow sliver that you would see.  
 9 And then, also, you know, is that  
 10 something that's going to be written in the Code that  
 11 the neighbors also set back on the third floor --  
 12 COMMISSIONER PASSOVOY: Mm-hmm.  
 13 NICOLE RAMEY: -- when that property's  
 14 developed?  
 15 COMMISSIONER PASSOVOY: I shouldn't say, "Just  
 16 the north side." I'm also looking at the west side,  
 17 you know, setting back the -- the entire thing, if you  
 18 can.  
 19 NICOLE RAMEY: Sure.  
 20 COMMISSIONER PASSOVOY: Yeah. I don't know how  
 21 much it would reduce the size of the unit, but I -- I  
 22 have said before -- I think that the exterior  
 23 treatment of the building is quite attractive and a  
 24 refreshing change from a lot of things that one sees.  
 25 But it -- I just -- it's a question as to whether or

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1 not that -- that setback can be done and still achieve  
 2 a very valuable unit.  
 3 MORGAN LANDERS: And -- and if I could just jump  
 4 in there because I know Nicole has kind of posed a  
 5 question to you all about Code changes and things like  
 6 that. I think it would be helpful to give you all  
 7 some perspective on just how the design review kind of  
 8 criteria works.  
 9 And so, you know, there was the -- the  
 10 design review criteria relating to the facades that  
 11 face the street, face the alley, the 5-foot setback.  
 12 The other design review criteria that comes -- comes  
 13 into play here is just that "building walls shall  
 14 provide undulation/relief, thus reducing the  
 15 appearance of bulk and flatness."  
 16 So, you know, that is a pretty specific  
 17 design review criteria that -- if the Planning  
 18 Commission does feel that there are elements of this  
 19 building that don't adequately mitigate the bulk or  
 20 flatness of the building, the Planning Commission can  
 21 provide that feedback within their bounds.  
 22 You know, what needs to be kept in mind is  
 23 that we do have building-height maximums that are  
 24 still being met with the projects. We do allow  
 25 42-foot-high buildings, but the purpose of that -- of

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1 that design review criteria is that, even allowing  
 2 that height, there are architectural elements that can  
 3 impact and positively mitigate the bulk and flatness  
 4 of a building. So it is a little bit of a balance.  
 5 And, Susan, I -- I appreciate your comment  
 6 and question.  
 7 So it is kind of up to the Commission on  
 8 whether you feel that the current design meets that  
 9 criteria or not, and then make some recommendations on  
 10 what you'd like to see.  
 11 CHAIRMAN MORROW: I think -- were there any  
 12 changes to the north wall, the color -- the -- the --  
 13 NICOLE RAMEY: There were, yes.  
 14 CHAIRMAN MORROW: Can we see a --  
 15 MORGAN LANDERS: Mm-hmm.  
 16 NICOLE RAMEY: We did add --  
 17 CHAIRMAN MORROW: Do you have a --  
 18 NICOLE RAMEY: -- more brick. So the third  
 19 floor is now banded with brick. We did take a look at  
 20 kind of a user on Leadville, how they would be  
 21 approaching the building. And --  
 22 CHAIRMAN MORROW: Yeah. That's a -- okay. So  
 23 the top is now brick, and so it's not all that beige  
 24 all the way up?  
 25 NICOLE RAMEY: Correct.



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1 CHAIRMAN MORROW: Okay.  
2 NICOLE RAMEY: So -- and that is -- really, the  
3 most high-profile view is, truly, the top. So that's  
4 why we chose to highlight that area with the nicer  
5 material, with the brick.  
6 CHAIRMAN MORROW: Okay. Thank you.  
7 Anything else right now before public  
8 comment?  
9 I will open the floor to public comment.  
10 If you're in the room, please step to the microphone  
11 and state your name for the record.  
12 Do we have anyone online?  
13 UNIDENTIFIED SPEAKER: Not at this moment,  
14 Commissioner, but I'll let you know.  
15 CHAIRMAN MORROW: Okay. Great.  
16 So we'll start in the room.  
17 Thank you.  
18 COMMISSIONER CORDOVANO: And the people online  
19 can press the raise-your-hand button on the Zoom call  
20 to --  
21 CHAIRMAN MORROW: Lovely.  
22 COMMISSIONER CORDOVANO: -- alert  
23 [unintelligible].  
24 SAM LINNET: Hey, Commissioners. My name's Sam  
25 Linnet with Alturas Law Group. I represent 240 North

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1 Leadville, LLC.  
2 I believe you've been forwarded a letter  
3 that I submitted regarding this application. I think  
4 the majority of my client's concerns and my concerns  
5 are outlined in there, so I'll -- I'll try to keep  
6 this fairly brief.  
7 Primarily -- I'm primarily concerned just  
8 with the process. So this is a procedural issue. The  
9 Council entered into a contract with the applicant  
10 about the develop -- about a development standard that  
11 is subject to design review, which is why we're here  
12 today.  
13 The solution here, I guess -- well,  
14 primarily, the problem with that is that the City  
15 Council essentially weighed in on something  
16 that -- and, I believe, is in the Planning and Zoning  
17 Commission's court. And by doing so, I think it's  
18 taken away some of your ability -- your objectivity or  
19 ability to act -- act independently.  
20 The solution is to have the City simply  
21 void this agreement and have the Planning and Zoning  
22 Commission evaluate the Far Exceedance Agreement  
23 standard in accordance with the design review.  
24 I think doing it opposite, having the City  
25 Council say, "Yep. This project" -- "after looking at

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1 plans and applications, this project meets this  
2 development standard, and we" -- "we think we should  
3 approve a FAR Exceedance Agreement for this." I'm  
4 certain -- I think that's putting the cart before the  
5 horse.  
6 If the current agreement stands, I think  
7 whatever decision the Commission comes to could  
8 potentially be influenced by this clear directive from  
9 the City Council.  
10 And if the Commission has the power, as  
11 Mr. Johnson said, to, you know -- that this agreement  
12 is conditionally approved, subject to design review,  
13 but if the Commission has the power -- if you all have  
14 the power to look at this FAR Exceedance Agreement,  
15 change it, modify it, not approve it at all, then I  
16 think that begs the question of, "Well, why would the  
17 City Council enter into that agreement at all if it  
18 ultimately is a decision that's up to the Planning and  
19 Zoning Commission?"  
20 I don't think, from a policy perspective  
21 and from a government perspective, that the City  
22 Council should be making promises to  
23 applicants -- even if they're conditional  
24 promises -- about what might be allowed for their  
25 project. The Planning and Zoning Commission is vested

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1 with power to make planning and zoning decisions and  
2 determinations.  
3 This development standard -- or the FAR  
4 Exceedance Agreement is in Title 17. It's in our  
5 Planning and -- the City of Ketchum's Planning and  
6 Zoning Code. So I think it would be best for the  
7 Commission to consider continuing this matter, to talk  
8 with staff, to terminate the FAR Exceedance Agreement,  
9 and then come back with a clean slate and consider  
10 whether a FAR Exceedance Agreement is warranted for  
11 this application at the same time that you do design  
12 review.  
13 Thank you very much.  
14 CHAIRMAN MORROW: Thank you.  
15 SAM LINNET: We have -- our client wants to make  
16 a couple comments as well.  
17 DAVE HUTCHINSON: Thanks, Sam. I'm Dave  
18 Hutchinson. I'm the tenant and the property owner  
19 next door.  
20 And whether the City Attorney is correct  
21 or my attorney is correct, there's no question. It  
22 was out of order. It was done backward. It makes no  
23 sense for the City Council -- without a public  
24 hearing, without notice, without plans -- to grant a  
25 conditional Exceedance Agreement without me being

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1 there. I was actually amazed when I got here last  
2 week and staff said that the City Council had approved  
3 an Exceedance Agreement.  
4 Whether or not the City deems it  
5 appropriate to notice such a thing, let's talk about  
6 it. They agreed, which they say is conditional -- but  
7 if you approved this plan, it wouldn't be conditional.  
8 It would have been finite. They agreed to exceed the  
9 FAR by 100 percent, 5,500 square feet. The FAR in the  
10 downtown is a 1.0, which -- by the way, the Code is  
11 clear as to what the FAR is here.  
12 So with no notice, the Council, in my  
13 pigeon -- opinion, prejudiced the hearing last week.  
14 I was in it. Look at the tape. You were confused. I  
15 was confused. I -- I think I kind of know what's  
16 going on around here, and I was like, "You've got to  
17 be kidding. I can't believe they did that." So  
18 whether it's legal or not, I don't care. I think you  
19 should do it right just so that it doesn't create  
20 issues down the road.  
21 We're such huge supporters of housing. We  
22 don't want to see the in-lieu opportunity thrown out  
23 because they didn't do it right. So whoever's right,  
24 we'll figure that out.  
25 When it comes to design, what we really

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1 have here is -- we've got too big a building in the  
2 location. That's the fundamental disconnect.  
3 As far as the applicant's corrections to  
4 the first level and listening to the feedback, I think  
5 they've done kind of a nice job. If you could throw  
6 this in the washer and then put it in the drier and  
7 shrink it, it's -- it's probably pretty -- a pretty  
8 nice design. I think Nicole has done a nice job.  
9 I do agree with staff that, on the north  
10 wall, it still pertains to undulation. And I could  
11 probably get my camera out and drive around and come  
12 up with an equal number of pictures that have setbacks  
13 and undulation on the -- on the property-boundary  
14 lines.  
15 And I don't think -- maybe one of those  
16 pictures was 35 feet. They -- none of them were  
17 42 feet tall. So on a 55-foot-wide lot, on a narrow  
18 street, with a 42-foot-tall facade, you do not get  
19 undulation unless you change the setback.  
20 You know, the third level -- now, I -- I  
21 happen to also be in this business. If you could set  
22 it back and put some windows up there, those views are  
23 very valuable. And if the applicant or the designers  
24 want to talk to me about some sort of agreement -- not  
25 to butt up against them with a 42-foot-tall wall some

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1 time in the future, I'm wide, open to that  
2 conversation.  
3 I don't think having, on a single lot, a  
4 42-foot-tall, flat facade -- all it does is force  
5 everybody down the road to match it and move along.  
6 So it really sets the tone.  
7 The most important thing, to me -- and  
8 hopefully you guys have read my -- you know, a lot of  
9 verbiage. The first letter I brought to the last  
10 one -- I didn't send them both to you at the same  
11 time, so apologies for all of that.  
12 But, really, what we have here  
13 is -- is -- the -- the -- the City Code provides for  
14 scale. It provides for neighborhood compatibility. I  
15 sat in your chairs and did this for many years; right?  
16 I know what it is.  
17 And it's meant to be a -- an exception to  
18 grant an FAR Exceedance, and it should be based upon  
19 the ability of the Commission to find that it meets  
20 the design review criteria without pressure from  
21 another body. It makes -- that makes no sense to me.  
22 You're the finder of fact on whether this meets the  
23 design review criteria.  
24 In my opinion, at the size, it just  
25 doesn't. I'm not going to specifically address the

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1 architecture. I think that's getting super close. I  
2 actually believe that if we all work together, this  
3 will be a really great building.  
4 I'm -- I'm -- we're not -- certainly not  
5 expecting nothing to be there. But at a bonus FAR and  
6 a 42-foot height, as well as -- I think there's a  
7 10-foot protrusion through the center for an  
8 elevator -- this will be -- not just the biggest  
9 building on this side of town. It'll be absolutely  
10 huge for the neighborhood; right? So the  
11 compatibility and the -- and the comparability just  
12 doesn't exist.  
13 The purpose of the chapter -- of design  
14 review, the main purpose -- it says, "The purpose of  
15 this chapter is to maintain and enhance appearance,  
16 character, beauty and function of the City, to ensure  
17 that new development is complementary to the design of  
18 existing City neighborhoods and to protect and enhance  
19 the economic base of the City in Ketchum" -- "City of  
20 Ketchum."  
21 The keywords in that, in my opinion, are  
22 "character" -- it's being "complementary" -- and the  
23 "existing city neighborhood."  
24 Where this is being located is pretty much  
25 a done deal. At some point my little building will be

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1 redeveloped. The Kneadery probably won't change. A  
 2 lot of the buildings around there aren't going to  
 3 change. There are historic structures within a  
 4 stone's throw. The streets are narrow. It's not a  
 5 90-foot-wide corridor.  
 6 There are other locations where an in-lieu  
 7 agreement for housing contribution would make sense  
 8 to -- to get a bigger building. It's where other  
 9 buildings are bigger, where streets are wider, and  
 10 where it fits into the neighborhood, where there's  
 11 topography. This is less than a block from -- from  
 12 the center of town, Sun Valley and Main Street.  
 13 So once again, I -- I think the building  
 14 will be a great building when we're done. But if we  
 15 get impatient and just say, "Hey" -- you know, you  
 16 write a check, you get a big building, I think that's  
 17 a bad precedent.  
 18 Thank you.  
 19 CHAIRMAN MORROW: Thank you, Dave.  
 20 Other public comment in the room?  
 21 Good. We've got plenty -- you guys, we've  
 22 got plenty of time. Everyone will get to go.  
 23 COMMISSIONER CORDOVANO: I enjoy staying here  
 24 late into the night, so [unintelligible].  
 25 DUFFY WITMER: My name's Duffy Witmer, and I was

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1 a neighbor 55 feet away from the proposed project. I  
 2 agree exactly with Dave. The architecture's quite  
 3 attractive, I think. And it's a -- it's a fitting  
 4 spot for this building. I just think it's oversized.  
 5 And it is a -- having been in business at  
 6 The Kneadery for 18 years -- a tremendous amount of  
 7 traffic on Leadville, on the corner there. And I  
 8 think a building this size is -- can be a really great  
 9 asset to the town and the neighborhood. It's just, in  
 10 my opinion, oversized.  
 11 CHAIRMAN MORROW: Thank you.  
 12 JOHN MALIN: Hi there. I'm John Malin  
 13 [phonetic]. I own the Elephant's Perch, which is the  
 14 next block over. I don't -- I -- I agree with  
 15 everything Dave said and with what Duffy said. It is  
 16 a nice-looking building. You guys did a nice job, but  
 17 it's just the wrong size, and the north wall is a  
 18 problem.  
 19 The north wall goes 40 feet high. You can  
 20 see a wall similar when you go over here to the  
 21 building Dave Wilson built, where Maude's is. That  
 22 building is probably 28 feet high. Think about that  
 23 being 12 feet higher and poor, little Carol there in  
 24 Consign Design being at the bottom of that. That's  
 25 Dave's situation.

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1 I think it sets a terrible precedent for  
 2 everything in the Commercial Core to have these walls  
 3 that are blank walls, especially one that's  
 4 40-foot-plus feet high.  
 5 I think the City -- the  
 6 Council -- the -- I know who sits upstairs, and I know  
 7 that I don't agree with what goes on up there. I  
 8 think they sell those in-lieu fees to somebody who  
 9 wants to come and overbuild a site, and I think it's  
 10 a -- a bad thing for our city. I think it sets a  
 11 terrible precedent. You know, there's a vacant lot.  
 12 That's my wife. Sorry.  
 13 I think it sets a terrible precedent for  
 14 the neighborhood. Right across the street is another  
 15 site. That site, if built like this, is going to have  
 16 another 40-foot wall right next to McCann Daech  
 17 Fenton. That's a disaster.  
 18 Over on my block -- while we have a wider  
 19 street over there on East Avenue, where the Perch  
 20 is -- when they come along and want to redevelop the  
 21 UPS building and I've got a 40-foot wall there, that's  
 22 going to take all the sun away from that side of  
 23 the -- from the morning part of the day, and it's  
 24 going to be just a nightmare to be looking at. We  
 25 have a historic building, so we will always be low

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1 rise.  
 2 Dave's building's got a -- you know,  
 3 he -- I -- I'm not sure what happens with him, but  
 4 Duffy will never change the -- and Dillon will never  
 5 change the -- The Kneadery. So I feel like the  
 6 precedent is really an issue.  
 7 And -- and what complicates it a little  
 8 bit more is the parking issue that happens. And so  
 9 The Kneadery, as all of you know, already has a  
 10 parking issue many days in the morning. Downtown has  
 11 a parking issue. Just drive around now.  
 12 Of course, this is the week. If there  
 13 ever is a week, you know, it's now. But the parking  
 14 is going to be more and more impacted by these  
 15 precedents that allow buildings to be slightly  
 16 overbuilt and have too much stuff and it be slightly  
 17 under-parked. And, you know, it's just going to make  
 18 it worse and worse downtown.  
 19 And I've made myself really clear  
 20 about -- with the Bluebird. Our competitors are not a  
 21 handful of people around town. Our competitors in the  
 22 retail business are Amazon, and that's a problem. And  
 23 so when parking gets tough, people buy from Amazon,  
 24 and that's what leads to deterioration in downtown  
 25 retail because you can't pay your rent. You can't pay

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1 your bills. You can't pay your people, and so that's  
2 just the -- that's what happens.  
3 So my concern really is the precedent  
4 and -- and what happens if we get a bunch of these  
5 buildings 40 feet high with these blank walls? Just  
6 imagine what it looks -- in our charming, little town.  
7 So that's all I have to say.  
8 Thank you.  
9 CHAIRMAN MORROW: Thank you.  
10 DILLON WITMER: Good afternoon, Commissioners.  
11 My name's Dillon Witmer. I am the actual, current  
12 owner of The Kneadery.  
13 Thanks for my dad [unintelligible].  
14 When I first purchased The Kneadery from  
15 Duffy, the banks said, "Well, we think you should just  
16 tear this down and do a three-story  
17 multi-development," something like this rendition.  
18 Who here wants to see me tear down The Kneadery? I  
19 don't think anybody in a community like this would,  
20 you know, appreciate that.  
21 And I guess my point is -- is that, unlike  
22 Mr. Hutchinson and -- and John, I'm at the beginning  
23 of my career, and I want to see this community develop  
24 and grow into something that I'm proud to leave for my  
25 kids and the next generation.

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1 And I agree with them. I think the  
2 building's beautiful. I know that, at some point,  
3 something will be there, just as long as we keep in  
4 mind kind of the history behind us and where we came,  
5 how we all got to this point, and how to kind of  
6 steward the next generation of what's built in  
7 town -- makes sense with what's in town. I think the  
8 size and the scope for something in this  
9 neighborhood -- if you look around, you know, right  
10 across the street, we're all kind of low-rise  
11 buildings.  
12 And something like this will cast a shadow  
13 over all of us -- not to mention -- you know, like  
14 they said, my parking will be inhibited. Think about  
15 the Sysco trucks, Nikola [phonetic] trucks, garbage  
16 trucks. You know, you've got Wiseguy. You've got  
17 KBs. That alley is a thoroughfare, and they're going  
18 to add these parking spaces, these garages, and stuff  
19 like that.  
20 Don't get me wrong. I want to see  
21 something with the right design come into this -- this  
22 sector in town. I think that having vacant lots -- I  
23 mean, when -- where Warfield is now, that sat -- sat  
24 vacant for years. I felt like that was a bad look for  
25 our town, same thing where The Pod is now. I'd like

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1 to see more things come into town that we can be proud  
2 of.  
3 And I recognize -- it seems like they've  
4 added a lot more retail space, and that's what I'd  
5 like to see. I want to see people walking past my  
6 restaurant find something while they're waiting to sit  
7 in my restaurant. You know, we've got a lot of great  
8 shops in the area.  
9 And I think that that should be -- not  
10 that -- we want to introduce more retail in the  
11 downtown core. And the more residential you get, when  
12 you add it to the downtown core -- hurts.  
13 I mean, I remember I was selling salsa at  
14 the farmer's market years ago, and we couldn't have  
15 live music anymore because somebody bought a penthouse  
16 up above, and they didn't want to listen to  
17 that -- some guy playing guitar, you know, making  
18 dollar bills at a -- you know, that's part of this  
19 small town.  
20 You know, that's why we all gravitate to  
21 this small town because you know each other. You see  
22 each other at the post office and at Atkinsons', and  
23 we all, you know, high-five or we give each other  
24 knuckles because of what we were fortunate enough to  
25 grow up with.

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1 And I -- I just want to see the next 40 to  
2 50 years while I do business the same -- not  
3 over-building too quickly, you know, preserving  
4 the -- the downtown core that we have, the reason  
5 people come to Ketchum.  
6 You know, when somebody's sitting on my  
7 patio, I can serve them a great breakfast, but I can't  
8 change the amazing view that they have right now. You  
9 know, all I can do is try to enhance their experience  
10 that they're already having.  
11 And I agree. It's a little bit weird to  
12 have just this -- you know, on a side street like  
13 that, just this -- you know, no-windows, very-cold  
14 part of the downtown core of Ketchum. You -- yeah, I  
15 see it in some of these areas. And the height, to me,  
16 is, you know, okay.  
17 So the story poles. You go up there. I  
18 was sitting in Hutchinson's office the other day, and  
19 I couldn't even -- from his windows, I couldn't even  
20 see that -- where the building, you know, started and  
21 stopped, just from sitting there at ground level.  
22 So I'm all for having something new in  
23 this area. I think, if -- like Hutchinson says, it's  
24 a beautiful design. If we could just shrink it down a  
25 little bit, be cognizant of the businesses that have

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1 been operating there for -- I mean, like we're in our  
 2 47th year at The Kneadery, you know.  
 3 And like I said, remember, you know,  
 4 we -- we need parking. We need guys to be coming  
 5 through that alley. I mean, if you go there, wait  
 6 until it snows 18 inches and come look at that back  
 7 alley and tell me what it looks like. It is -- it's a  
 8 mess already, and that's not -- you know, telling some  
 9 guy from San Francisco or New York or Florida or  
 10 whoever moves in there, "This is what you're going to  
 11 deal with."  
 12 Wait until you have a winter. Wait until  
 13 you see what our snow removal's like. Wait until you  
 14 see what the parking's like. Where are you going to  
 15 park your car overnight, you know? Well, what happens  
 16 if it snows 2 inches? Well, you can go pay the  
 17 impound lot to go pick up your car. More tax dollars  
 18 for the City.  
 19 But overall, I don't -- I don't remember  
 20 being noticed of this happening, and I didn't know  
 21 about it until Hutch [phonetic] let me know. And like  
 22 I said, I'm all for the future of Ketchum, new  
 23 buildings, just built in the right way.  
 24 So thanks for your time.  
 25 CHAIRMAN MORROW: Thank you.

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1 COMMISSIONER CORDOVANO: We'll be waiting for  
 2 that 18 inches of snowstorm.  
 3 CHAIRMAN MORROW: Next week, I hope.  
 4 PAM COLESWORTHY: Pam Colesworthy, for the  
 5 record.  
 6 And in our office meeting -- I'm with  
 7 Berkshire Hathaway HomeServices Sun Valley Properties.  
 8 We discussed this particular project and the height  
 9 and that there was neighboring objection to the  
 10 height. And yet, from our perspective -- and I'm  
 11 learning now -- there's more to this than meets the  
 12 eye, but from our perspective, it was that -- the  
 13 understanding of the applicant had put forth a project  
 14 that met all the requirements.  
 15 So the office said, "Well, then, let's  
 16 write a letter," and the letter was written and it was  
 17 sent in late this afternoon, and I don't think you've  
 18 all had a chance to see it, so I'm just simply going  
 19 to read the letter if that's all right.  
 20 To the Planning staff and Commission,  
 21 "Having followed the approval process for a number of  
 22 projects in the Ketchum Commercial Core, we are  
 23 concerned that the project located at 200 North  
 24 Leadville may be at risk of not being approved,  
 25 despite being in compliance with all current zoning

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1 requirements.  
 2 "The main concern appears to be the height  
 3 of the building, which is within the current zoning  
 4 regulations. And to deny this project over its height  
 5 while within codified zoning parameters would be a  
 6 perfect example of spot zoning and set a new  
 7 precedent, one that potentially could lead to  
 8 litigation.  
 9 "While we're all concerned about Ketchum  
 10 losing its small-town charm, zoning ordinances exist  
 11 for a reason. To deny the developer the right to  
 12 build while in compliance with the Zoning Ordinance is  
 13 both unfair to the developer and risky to the city.  
 14 "Lastly, we find the exterior design of  
 15 the building to be attractive and in keeping with the  
 16 character of our town and somewhat timeless in the use  
 17 of materials and colors. It will be a welcome  
 18 addition to the town, with additional residences,  
 19 including a workforce-housing unit that we hope will  
 20 contribute more vibrancy to Ketchum. And we urge you  
 21 to approve the project as submitted."  
 22 And there are eight signatures here from  
 23 the broker and very -- partners and various agents."  
 24 So do I -- do I give this to you?  
 25 CHAIRMAN MORROW: Yeah.

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1 PAM COLESWORTHY: Oh, you take it. Sorry.  
 2 And so there may be procedural things.  
 3 There may be other things that you all are considering  
 4 that we did not have knowledge of. But in general, I  
 5 think the attitude of the office is -- if you don't  
 6 like the size and the bulk, then you need to change  
 7 the Code. I think that's where we come down.  
 8 Thank you.  
 9 CHAIRMAN MORROW: Thank you.  
 10 Other -- other public comment?  
 11 Dave, if you already spoke, do you  
 12 have -- if it's -- if it's super -- give one point  
 13 or -- you want to make it super quick. Let's -- so we  
 14 have one meeting here --  
 15 COMMISSIONER CORDOVANO: You've -- you've  
 16 exceeded your three minutes. Somebody else  
 17 [unintelligible] --  
 18 DAVE HUTCHINSON: Oh, I -- did I pass  
 19 my -- I'll -- I'll -- I'll defer -- I'll defer it to  
 20 you guys, my next three.  
 21 I -- I just wanted to address the -- the  
 22 previous comment. The -- the rules and regulations  
 23 allow you to deny it for the bulk and -- and size.  
 24 That's -- that's the whole point of design review.  
 25 The last thing I'd want to say is -- is

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1 if -- if it was as simple as zoning, you'd stick the  
2 application in one side of the computer, and it would  
3 pop out, "Yes," or, "No." And you guys get to decide  
4 what makes sense for this town because you're going to  
5 see it for 100 years.  
6 Thank you.  
7 CHAIRMAN MORROW: Okay.  
8 Other -- no?  
9 COMMISSIONER CORDOVANO: Anybody online?  
10 CHAIRMAN MORROW: Anybody online?  
11 UNIDENTIFIED SPEAKER: There is no public  
12 comment online.  
13 CHAIRMAN MORROW: Okay. Seeing none in the room  
14 and having none online, I will close the public  
15 comment. And we can move to --  
16 MORGAN LANDERS: So at this point in time, I  
17 think staff -- I've got a couple of just follow-ups,  
18 and then we do need to provide opportunity for the  
19 applicant to address any public comments as well.  
20 CHAIRMAN MORROW: Lovely.  
21 MORGAN LANDERS: So I think I heard a couple of  
22 things and just want to clarify -- and -- and maybe  
23 Matt can jump in as well.  
24 But when the FAR Exceedance Agreement went  
25 to City Council, that did not accompany all of the

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1 plans and applications and things like that. So it is  
2 not in view of the design review criteria or an  
3 evaluation of the project. It's merely the agreement  
4 of how the in-lieu housing gets mitigated, whether  
5 it's an in-lieu, on-site, things like that.  
6 So I just wanted to provide that clarity  
7 to you all as well. I think we've hopefully clarified  
8 some of the questions around that, but wanted to make  
9 sure that you all are aware -- that agreement really  
10 is just the mechanism by which they address their  
11 community housing, not necessarily how much and -- and  
12 things like that. So that's just an update on that.  
13 And then, with that, I'll turn it over to  
14 Matt to see if he has any additional comments, and  
15 then we can have an opportunity for the applicant.  
16 MATT JOHNSON: Okay. Chair and Commissioners,  
17 Matt Johnson, City Attorney.  
18 I -- I think Morgan put it well in the  
19 context for the FAR Exceedance Agreement, and I think  
20 all I'd really add to that is to emphasize -- if it  
21 hasn't been made clear already, the concern being  
22 raised is about the idea that somehow the Council's  
23 action on the FAR Exceedance Agreement constrains  
24 you or -- or -- or predisposes your decision, as a  
25 Commission, on design review.

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1 And -- just affirming that is not the  
2 case. You understand that. That FAR Exceedance  
3 Agreement is an outside process, and you have full  
4 ability to review this under the design  
5 curtain -- review criteria and -- and evaluate it  
6 under the -- the standards, as you understand to be  
7 appropriately applicable. That FAR Exceedance  
8 Agreement doesn't pre-commit you to anything.  
9 CHAIRMAN MORROW: Thank you.  
10 COMMISSIONER PASSOVOY: But, Matt, one follow-up  
11 question is -- is -- I have not, unfortunately, read  
12 the FAR Exceedance Agreement, but I plan to do that.  
13 Does it -- is it worded such that, if we  
14 approve the agreement -- I mean, if we approve the  
15 project -- let's just say, "Tonight" -- as is,  
16 does -- does the FAR Exceedance Agreement  
17 automatically come into effect?  
18 MATT JOHNSON: So the FAR -- and -- and -- and  
19 probably where each of you should start, if -- if  
20 you're reviewing this is -- is -- Ketchum's City Code  
21 17.124.040, which covers floor area ratio.  
22 And if you look at that, as Morgan was saying,  
23 really, the -- the FAR is all about, "Here's the  
24 maximum FAR allowed in this zone, and here are things  
25 you can do that allow you to exceed that up to a

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1 certain amount further, based upon certain  
2 conditions." None of those are design-review items.  
3 Those are separate development standards.  
4 And then, throughout that particularly -- in B  
5 of that section of Code, it says specifically  
6 everything is conditioned upon the -- the "increased  
7 FAR may be permitted subject to design review  
8 approval," conditioned on design-review approval.  
9 And when you look at the FAR Exceedance  
10 Agreement, all that document does is document the  
11 application of this section of Code, and it says  
12 specifically in it that that is conditioned upon  
13 design review approval. So it comes to you, as a  
14 Commission, for the design-review determination. That  
15 agreement is in effect, conditioned upon your  
16 approval.  
17 If you approve, then the FAR Exceedance  
18 Agreement is approved and valid. If you chose not to  
19 approve the design review for some reason, then the  
20 conditions fail, and the FAR Exceedance Agreement goes  
21 back to the drawing board until a new application --  
22 does that answer your question?  
23 I probably more than answered your  
24 question.  
25 COMMISSIONER PASSOVOY: No. I -- I -- as I

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1 understand it, it -- basically, it's an up-or-down  
2 with respect to the FAR Agreement?  
3 MORGAN LANDERS: I think I can clarify.  
4 So, Susan, the FAR Exceedance Agreement  
5 would go into effect if you -- if you all approved the  
6 project in front of you, upon your adoption of the  
7 findings of fact. So the adoption of findings of fact  
8 is your kind of final action on the design review, so  
9 that would be the point in time when the FAR  
10 Exceedance Agreement goes into effect.  
11 That FAR Exceedance Agreement does have  
12 provisions for amendments to it as well because staff  
13 always wants to provide the most amount of flexibility  
14 for the Planning Commission and -- understanding how  
15 the process kind of unfolds.  
16 And so I think the biggest thing that's in  
17 front of you today is, "Do you think that the project,  
18 as it sits today, meets the design review criteria,  
19 specifically the one related to undulation and relief,  
20 bulk/flatness?" And if not, what direction do you  
21 have to the applicant to provide some of  
22 that -- to -- to greater meet that criteria  
23 or -- however you would -- would like to move down  
24 that path.  
25 So we always want to make sure that, any

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1 time the Commission makes an action, it's grounded in  
2 one of the standards of criteria. And this one is one  
3 that applies that you can provide some feedback on.  
4 So hopefully that provides clarity to you.  
5 COMMISSIONER PASSOVOY: Thank you, Morgan.  
6 We are very nicely reigned in.  
7 MORGAN LANDERS: Hopefully not too much. You  
8 all have a good amount of flexibility here.  
9 COMMISSIONER CORDOVANO: Not too much at all.  
10 CHAIRMAN MORROW: Spencer or Brenda?  
11 VICE CHAIRMAN MOCZYGEMBA: Yeah. No questions.  
12 CHAIRMAN MORROW: Do you have...  
13 COMMISSIONER CORDOVANO: Hundreds of speeches?  
14 Yeah.  
15 CHAIRMAN MORROW: Yeah. Okay.  
16 Unless you want to hear --  
17 MORGAN LANDERS: Well, and -- and before we --  
18 CHAIRMAN MORROW: -- [unintelligible] --  
19 COMMISSIONER CORDOVANO: Well -- well -- well,  
20 let's --  
21 CHAIRMAN MORROW: Hear from the applicant.  
22 COMMISSIONER CORDOVANO: Mike, go.  
23 CHAIRMAN MORROW: Rebuttal first. That makes  
24 sense.  
25 MORGAN LANDERS: And then we can enter into

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1 deliberations, [unintelligible] --  
2 CHAIRMAN MORROW: Right. Okay.  
3 MORGAN LANDERS: -- things like that.  
4 CHAIRMAN MORROW: No more questions.  
5 We'll hear from Mike.  
6 MIKE CARR: Hello. I'm Mike Carr, and I -- we  
7 are the applicant. And I think that I'd like to go  
8 through the back -- not the side of the building; the  
9 back of the building -- and start to meet some of the  
10 objections of some of the --  
11 COMMISSIONER CORDOVANO: Alley.  
12 MIKE CARR: Oh, the alley.  
13 So one of the comments was, "Oh, man.  
14 There's too much traffic going up and down that  
15 alley." So it's Wiseguy Pizza. It's Sysco. It's all  
16 these people. Well, we're building this unit, and one  
17 of the objections is, "It's not got enough people in  
18 it." So these four cars that are going to park in  
19 this back alley, that double-car garage, or the  
20 other-car garage to the right -- is going to somehow  
21 adversely affect the alley.  
22 And by the way, our garbage, because we're  
23 following the new rules, has to be in the bin to the  
24 far left with an automatic-door opener. Currently,  
25 that alley, if you drive through it, has got dumpsters

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1 all over it, cars going down it. So I kind of think  
2 traffic for the back of the alley and a building  
3 that -- one of the objections we get is that -- "It's  
4 too big, and there's no people in it," is a pretty  
5 moot sense -- point.  
6 Conversely, it's heated, so it's got  
7 snowmelt. So to address the snow-removal issue, it  
8 wouldn't be our -- our problem. It would be our  
9 neighbors'.  
10 And if you could show the 2nd Street side,  
11 please.  
12 So on 2nd Street, we addressed the  
13 Commission's issue -- or I should say, "the City's  
14 issue," not, "the Commission's issue" -- about the  
15 retail being brought by the below-grade unit.  
16 And so if you have the floor plan, now you  
17 enter into the building in the same corridor, you go  
18 downstairs, and it's -- it's, really, quite nice. We  
19 addressed all your concerns. I think we, in fact,  
20 improved on it, and we really -- I think we learned  
21 something from that. It was good.  
22 Then, if we go to the front -- the floor  
23 plan of the retail -- so one of your -- I think,  
24 Brenda, one of your big deals was, "Hey. You know,  
25 we've got to reconsider our requirement on

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1 5,400-square-foot lots about how much space we can  
2 provide."  
3 So this is the first floor. So there's  
4 still three units. So there's the -- there's the unit  
5 that -- that you approach on -- on 2nd, and then  
6 there's two that approach on Leadville.  
7 Now one of the arguments here is, "Oh, The  
8 Kneadery's parking is going to be destroyed." Well,  
9 if you get more retail, you're going to have more  
10 pressure on parking. So I'm not sure the public  
11 parking that's there is specified for one business,  
12 but this is -- this will bring more parking; okay?  
13 Guaranteed. You guys want people? We want people.  
14 You want retail? You want more retail? People drive  
15 cars.  
16 So if you can show the basement now,  
17 please.  
18 And if you see on the -- I'm sorry. One  
19 second.  
20 On the unit to the north, it has an  
21 open-air access to the basement. So there's still  
22 three retail units, but the one retail unit to the  
23 north probably will be designated just to one tenant  
24 because the -- it's an upstairs/downstairs.  
25 So if you'd show the downstairs, please,

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1 now.  
2 So the downstairs now incorporates -- all  
3 that space to the north is now a retail unit. So if  
4 you picture it, you go in, it's retail, and you can  
5 continue and go downstairs, and there's more retail.  
6 We totally reduced the storage for all the  
7 units. We added the below-grade unit that has light  
8 wells. So just for the facts, there was -- there was  
9 no one living on this street, in this spot, before we  
10 bought it. And with this, you have at least four  
11 units; okay?  
12 So if you'd go to the north wall, please,  
13 and the colored picture.  
14 So the reason the wall has to be solid is  
15 because it's a firewall; okay? That's the Code for a  
16 zero-lot-line. Now, our neighbor, who was on Planning  
17 and Zoning, was the Mayor, and was also a City Council  
18 person -- somewhere in their career, they had the  
19 ability to understand that this was the -- the height  
20 restriction in the Code of the City of Ketchum.  
21 We only went by the rules. So we offered  
22 to relandscape that wall, and we were rejected. I  
23 still would propose that we could put trees there,  
24 pines there, and we could make it look a lot greener.  
25 Conversely, we could put windows

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1 there -- and he said this -- if he would agree to a  
2 lot line -- to come off his lot line -- so that we  
3 don't need the firewall.  
4 But I think the firewall's at least 5  
5 feet, Morgan.  
6 MORGAN LANDERS: I believe it's 5 feet, yes.  
7 MIKE CARR: So if he wanted to encumber his  
8 property with a deed of trust -- which is what he said  
9 today -- is that he would do that -- we could put  
10 windows on that wall, or we could make it look  
11 different.  
12 So if this whole project comes to -- we're  
13 at Code, we're at the right height that -- allowed by  
14 the Code of the City of Ketchum, and the question is  
15 this north wall, let's figure a way to make this north  
16 wall look better.  
17 Now, your comments are, "Make it smaller."  
18 Well, you guys, it's expensive to build. The stuff  
19 gets sold by the square foot. Dave's a developer. He  
20 understands that. And so we'll -- we're happy to work  
21 with you.  
22 But I think this is a pretty nice  
23 building, and we have spent a tremendous amount of  
24 money on this, and we have spent a tremendous amount  
25 of time working with the City to meet things that

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1 weren't even Code. And -- and when -- I know people  
2 go, "Oh, if it's not in the Code" -- well, the Code is  
3 kind of what developers should follow.  
4 And so -- anyhow. I think I address -- we  
5 added retail, we -- we fixed the entrance, the  
6 transformer -- I did not talk about -- but we did fix  
7 the transformer as well. The back alley, I think, is  
8 a nonissue with traffic. We have four cars  
9 that -- supposedly no one's going to live in the place  
10 anyhow.  
11 And then this north wall -- give me a  
12 solution. I can give you one. Take the setback,  
13 deed-of-trust it, and we can put windows on it. We  
14 can put landscaping. We could put vines. We could  
15 paint windows; okay? We could make that look like  
16 there's windows. We can make that work, but we don't  
17 need to take it away from the Code. That's my two  
18 cents.  
19 Thank you.  
20 COMMISSIONER CORDOVANO: Thanks, Mike.  
21 MIKE CARR: Do you have any questions?  
22 CHAIRMAN MORROW: Thank you.  
23 VICE CHAIRMAN MOCZYGEMBA: Yes, Mike. While  
24 you're up there, could you explain -- you had made a  
25 comment about the alley being snowmelted. Is that



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1 something that you're proposing to do?  
 2 MIKE CARR: Not the alley, but the apron --  
 3 VICE CHAIRMAN MOCZYGEMBA: The apron. Okay.  
 4 Great.  
 5 MIKE CARR: -- into -- the apron into the  
 6 garages.  
 7 VICE CHAIRMAN MOCZYGEMBA: Great. Okay.  
 8 Thank you.  
 9 MIKE CARR: So when he said, "The person from  
 10 San Francisco" or wherever -- some person who,  
 11 supposedly, is buying this, which -- it might be me,  
 12 so -- you know, that they understand what the snow is  
 13 like.  
 14 VICE CHAIRMAN MOCZYGEMBA: Great. Okay.  
 15 Thank you.  
 16 COMMISSIONER CORDOVANO: When Pam mentioned it  
 17 was a workforce-housing unit -- just to clarify --  
 18 that's based on the size --  
 19 MIKE CARR: [Unintelligible].  
 20 COMMISSIONER CORDOVANO: -- and --  
 21 MIKE CARR: No, in-lieu. We --  
 22 COMMISSIONER CORDOVANO: Based on your in-lieu  
 23 payment? There will be no --  
 24 MIKE CARR: In-lieu --  
 25 COMMISSIONER CORDOVANO: -- deed restrictions?

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1 MIKE CARR: We're still in the process. You  
 2 know, you still can contribute housing, and  
 3 that's -- you -- I -- that's another meeting, but you  
 4 guys should review what you asked developers to do to  
 5 actually contribute housing and try and figure out how  
 6 it works, the math. It's pretty complicated.  
 7 COMMISSIONER CORDOVANO: Just out of kind  
 8 of -- of curiosity -- not conditional at all -- you're  
 9 more inclined to pay the fee than to give up the  
 10 749-square -- unit on the second floor?  
 11 MIKE CARR: Yeah, because -- yes.  
 12 COMMISSIONER CORDOVANO: And whatever is fine.  
 13 You know, you don't even have to answer this --  
 14 MIKE CARR: No. No, we are.  
 15 COMMISSIONER CORDOVANO: -- [unintelligible].  
 16 MIKE CARR: We did propose the lower unit, and  
 17 we were rejected.  
 18 COMMISSIONER CORDOVANO: Because of our recent  
 19 basement ruling?  
 20 MIKE CARR: Yeah, but that wasn't the ruling  
 21 when we first applied, but -- yes.  
 22 However, it is -- but, yeah, that -- that  
 23 was the reason. And I'm quite sure we can -- I think  
 24 we can find someone to buy it or rent it for sure. I  
 25 think there's a couple gentleman in here that

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1 would -- they told us they'd move in immediately once  
 2 it's available, but -- but it's a beautiful building.  
 3 And, I mean, Morgan and them have done a  
 4 ton of work. Nicole has done a massive amount of  
 5 work. And, I mean, look at that. That thing -- even  
 6 from this wall, it doesn't look that bad. I mean, I  
 7 understand Dave's problem with it, but we did the  
 8 cornices and that.  
 9 And the whole point of in-city density is  
 10 that, theoretically, the next building goes right to  
 11 the firewall. That's why it's a firewall, and you  
 12 can't put windows in; okay? Again, if he's willing to  
 13 encumber his lot and say, "I'll get a deed  
 14 restriction," I'll put windows on that wall.  
 15 COMMISSIONER CORDOVANO: Could you move -- could  
 16 you move --  
 17 MIKE CARR: So the ball's in his court.  
 18 COMMISSIONER CORDOVANO: Could you move your  
 19 building back an equal amount?  
 20 MIKE CARR: No. Look it -- it's -- you already  
 21 get 5 feet here, 5 feet here, 3 feet here. You  
 22 already take 5 -- you already take like 1,400 square  
 23 feet of 5,500 square feet in setbacks. I mean, the  
 24 setbacks are -- I get it, but my answer is, "I don't  
 25 think we" -- "I don't think we need to."

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1 I understand these gentlemen's concerns  
 2 about the -- hey -- the wall, the setback, but, you  
 3 know, Dave's a developer. He knows he could build a  
 4 building next to it.  
 5 I don't understand why, forever -- this  
 6 process went on -- that somebody didn't say, "Well, we  
 7 should only be able to go up 30 feet there," if that's  
 8 what you wanted. But the property would have been  
 9 sold for a different price as well.  
 10 So part of the property going for the  
 11 price it went for -- and, by the way, I bought it when  
 12 I was riding my bicycle, so, for sure, my neighbors  
 13 knew that it was for sale long before I did.  
 14 So -- okay. They didn't buy it. This  
 15 is -- this was the rules. They knew the rule book.  
 16 They wrote the rule book, it sounds like. I mean,  
 17 they can quote the rules, and now they are pissed off  
 18 about the rules.  
 19 So anyhow. That's where we're at.  
 20 COMMISSIONER CORDOVANO: I've got to think  
 21 that -- you've got a good point on more retail making  
 22 it harder on the whole street. That's fine. I'm  
 23 super appreciative of the small units that you guys  
 24 put into the building and -- hope they stay small.  
 25 And I think the biggest question is, you

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1 know, where the -- the basement unit and the  
2 749-square-foot unit, where that user's going to park.  
3 And --  
4 MIKE CARR: Well, we said --  
5 COMMISSIONER CORDOVANO: I guess I'm just -- I  
6 think that's where a lot of the parking concern's  
7 coming from, and that's more of a City question,  
8 but --  
9 MIKE CARR: So if you go at night, I mean,  
10 Morgan went at night. I mean, if you go at night,  
11 there's so much parking available on the streets  
12 there.  
13 COMMISSIONER CORDOVANO: I go at night.  
14 MIKE CARR: It's there. You can park anywhere  
15 you want to; right?  
16 COMMISSIONER CORDOVANO: I think a street's  
17 destiny is to be parked on.  
18 MIKE CARR: What's that?  
19 COMMISSIONER CORDOVANO: I think a street's  
20 destiny is to be parked on, but I was just clarifying  
21 that.  
22 MIKE CARR: Yeah. And then for the snow-removal  
23 piece, like I told you, the City and the Catch  
24 [phonetic] buildings -- as I understood, it has been  
25 really, pretty successful, that they text all the

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1 people with cars in the Catch buildings, and they move  
2 their cars to the lot, and they clear the snow and it  
3 goes. I mean, Jesus, it's 2022.  
4 Texting and -- is not that complicated of  
5 a process. I think it's worked quite well for the  
6 city. There's lots of parking. There's not lots of  
7 parking for people who want to work at a store, park  
8 in front of the store, and then ask the customers to  
9 be able to park in front of the store.  
10 COMMISSIONER CORDOVANO: Agreed.  
11 MORGAN LANDERS: And just to clarify on the  
12 parking requirement. So the requirement  
13 is -- anything less than 750 net square feet is not  
14 required to provide a parking space. So...  
15 COMMISSIONER CORDOVANO: Yeah. And  
16 then -- well, I don't have any more questions for the  
17 applicant if anybody does.  
18 UNIDENTIFIED SPEAKER: [Unintelligible].  
19 CHAIRMAN MORROW: Susan?  
20 UNIDENTIFIED SPEAKER: [Unintelligible].  
21 CHAIRMAN MORROW: Thank you, guys.  
22 Appreciate it.  
23 MIKE CARR: Thank you.  
24 COMMISSIONER CORDOVANO: Thanks, Mike.  
25 CHAIRMAN MORROW: They can -- yeah. And Tim is

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1 joining us now.  
2 COMMISSIONER CORDOVANO: My question for staff  
3 is, "What is the plan for" -- "is the plan for these  
4 units to be sold to a car-less biker who works in  
5 Ketchum, or is there going to be a -- an ordinance  
6 that comes through, similar to what we see at the  
7 Catch building in these neighborhoods, for the two  
8 units that don't require a parking spot?"  
9 MORGAN LANDERS: So for the two units that don't  
10 require parking, it would anticipate that those  
11 vehicles would park on the street and that they would  
12 manage their vehicle parking within the public  
13 right-of-way.  
14 When the City adopted the change to the  
15 parking requirements in 2017, that was a bit of the  
16 premise, that -- that we should be using our parking  
17 inventory in a flexed way, where, in the evenings,  
18 when residents are home, they have a place to park on  
19 the street.  
20 And then they, arguably, go to their day  
21 job, and then the vendors and -- and patrons of the  
22 businesses, locally, can then use those spaces. So  
23 it's a bit of a shared-parking scenario, and that was  
24 a policy decision that was made in 2017. I think that  
25 discussion continues to happen on whether those

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1 parking incentives continue to be in play long term,  
2 as part of our -- our long-haul kind of Code rewrite.  
3 But as of -- what is in front of you  
4 today, this application is vested under our current  
5 Code, so we can't require them to provide additional  
6 parking on the site other than what's being provided  
7 in front of you today.  
8 COMMISSIONER CORDOVANO: No, but the users will  
9 be able to park on the street overnight and move their  
10 cars to a certain extent?  
11 MORGAN LANDERS: It would be the same  
12 parking-management system we have for the rest of  
13 downtown.  
14 COMMISSIONER CORDOVANO: Great. Thanks.  
15 That was my question.  
16 MORGAN LANDERS: Yeah.  
17 COMMISSIONER CORDOVANO: Tim, you showed up  
18 right in time for my rant.  
19 COMMISSIONER CARTER: That was it?  
20 COMMISSIONER CORDOVANO: No.  
21 Do I start?  
22 Okay.  
23 MORGAN LANDERS: And -- and before you start,  
24 Spencer, just to let everyone know, you know, tonight  
25 we're also just asking for feedback and direction to

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1 staff and the applicant. So there isn't a specific  
2 motion in front of you, but we would like to provide  
3 additional direction to the applicant so that they can  
4 continue to work through the process.  
5 COMMISSIONER CORDOVANO: Thanks.  
6 A lot of feelings going around in the  
7 room. I think we could all just take a little step  
8 back and realize that we're all neighbors and that we  
9 all have the same goal here.  
10 I think a lot of this comes from the fact  
11 that the Fifth and Main building's FAR exceedance was  
12 approved months and months and months down the road,  
13 and we started looking at when FAR exceedances go to  
14 Council and how long that happens after P&Z. So I  
15 think that's where we're working through the kinks of  
16 how to do this for both sides of the table.  
17 I think everybody just needs to play nice  
18 and figure it out. And while it might seem late, I  
19 just think there's tilt -- still time to do it. The  
20 more and more we see buildings come through here and  
21 everybody gets the same process out of us -- that we  
22 come to better conclusions because these buildings are  
23 going to stand for a long time.  
24 I'd also like to recognize that the  
25 F -- the floor area ratio, by right, is only 1.0 in

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1 the CC-1 and CC-2, and that is super clear in the  
2 Code. While there's been a lot of precedence, you  
3 have to look at what those other buildings provide.  
4 And I -- I think we should be chiseling  
5 the codes one at a time as they come. I've been  
6 saying we need to do third-floor setbacks and rewrite  
7 the Code that only pertains to the fourth floor for  
8 months now, I think, since August 19th of this year.  
9 And I understand a lot of what I've  
10 learned about rewriting those Codes, but when we do  
11 these dramatic overhauls, it's almost -- the market's  
12 changed. Everything changes. You can't forecast this  
13 stuff. So staying current with the Code -- and quite  
14 frankly, there is a lot of -- in my perspective, there  
15 is a lot of room to be said that we control this, but  
16 we really don't.  
17 Staff has to put something in front of us  
18 before we get to vote on it, and staff has been led by  
19 a certain few for too long, in my personal opinion.  
20 So we're all working together, regardless of our  
21 feelings, though.  
22 And thanks, Pam, for bringing up the  
23 Berkshire Hathaway support, as I've voted against most  
24 of their buildings and still can remain friendly and  
25 have constructive conversations with them on the

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1 street.  
2 So if we can just take the feelings back a  
3 little bit and reach a level-headed decision, I think  
4 there's still time for the property owners to talk.  
5 And I don't think it's going to be one way or the  
6 other. You know, it's going to be a mutual decision.  
7 But, in general, I think there's a couple  
8 questions that I have for staff and then things that  
9 we need to evaluate. The basement stair seems totally  
10 sweet, and I'm -- the changes -- I'm totally in  
11 support of everything.  
12 Transformer -- somebody else can get lost  
13 in the Code on that one.  
14 But, you know, in exchange for this FAR  
15 increase, regardless if the Council approves it or  
16 not, has -- because, yes, we -- after the Ordinance 1,  
17 2, 3, 4 was passed without proper deliberation -- as  
18 we felt, needed to go to Council. We need to be more  
19 careful of what we put towards Council  
20 and -- have since talked with staff and requested more  
21 notice before these things go through. I think that  
22 was after this exceedance.  
23 But we are -- in exchange for more  
24 density, we are changing -- exchanging \$436,000. So  
25 if the applicant would rather sell a unit than

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1 deed-restrict a unit, is that worth 436k if that  
2 unit's worth more than that on the open market? So,  
3 "What are we getting out of this," is the question at  
4 hand.  
5 Further, thank you for those pictures of  
6 the other buildings because I was going to ask, and  
7 those did bring out -- there -- there are a lot of  
8 them, and some of them next to Whiskey's were due to a  
9 fire, and the firewall was very important in that  
10 situation. However, none of them were 42 feet tall,  
11 and they all had dramatically more undulation.  
12 We're almost getting to the point  
13 of -- when I turn by a building down here on a lot of  
14 these streets -- a lot of these buildings that are  
15 built to the corners -- you can't see around the  
16 corner when you're turning, and then we're just going  
17 to get more stop signs everywhere. And I've been  
18 preaching about how stop signs aren't even sustainable  
19 anymore, and we're violating our own -- idling into  
20 our -- into our -- our -- our -- violating our Idling  
21 Ordinance at the stop light in downtown.  
22 The character of the north facade needs  
23 undulation on each corner. I have always been talking  
24 about setting back the third story.  
25 And my question for staff is, based on my

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1 calculations, the hot-tub canopy on the top is 49 feet  
2 off the front of the building, 47 off the back. And  
3 I'd like clarification on how things get above 42 feet  
4 and why.  
5 MORGAN LANDERS: So our Code does have a  
6 provision for unhabitable -- basically roof -- or  
7 pertinences that exceed that 42 feet -- and allows for  
8 those to exceed up to 10 feet above the roof height.  
9 So if a building is maximizing the 42 feet, then they  
10 can have non-habitable additions that are rooftop  
11 fixtures that can go up to the 52 feet, and that's  
12 existing in our Code today.  
13 COMMISSIONER CORDOVANO: Please add that to the  
14 list of things I'd like to see changed.  
15 I think my feedback for the applicant  
16 is -- once again, I'm not a developer, but there's so  
17 much space wasted on circulation. I'm sure you need  
18 to meet 2018 Building Code for ingress and egress, but  
19 there's so much space wasted on volume and  
20 circulation. This thing could be -- not 12-foot  
21 ceilings everywhere and reduce a lot of mass with some  
22 more undulation, and I would like to see that  
23 explored.  
24 I also think that -- you know, I'm not  
25 here to deny this permit tonight, but I'm also not

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1 here to approve it, and I think we could make a  
2 continuance with two meetings a year this year  
3 with -- a month -- excuse me -- of two meetings a  
4 month.  
5 CHAIRMAN MORROW: Amazing. Oh my god. That  
6 would be awesome.  
7 COMMISSIONER CORDOVANO: That'd be no fun.  
8 CHAIRMAN MORROW: Yeah.  
9 COMMISSIONER CORDOVANO: We have two meetings a  
10 month. And since we've been through this, it will be  
11 less and less time. And, you know, I'm happy to stay  
12 all night. So I wouldn't -- but I also want  
13 to -- don't want to bring it back too quickly and also  
14 don't want to wait too long.  
15 I'm not sure if they're planning on  
16 digging in May, and they need a couple months' lead  
17 into that. But with this amount of excavation, I'd  
18 have to think we have a little bit of time to  
19 fine-tune this thing and put some of the feelings and  
20 action to rest prior.  
21 So I'd like to hear the Commission's  
22 deliberation on what we think about the undulation on  
23 the north facade, on the corners, and, you know, the  
24 FAR exceedance tradeoff.  
25 CHAIRMAN MORROW: Thank you.

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1 Brenda.  
2 VICE CHAIRMAN MOCZYGEMBA: I only have a couple  
3 of comments. I appreciate the work that the applicant  
4 did so expediently to kind of make -- make the  
5 revisions previously requested.  
6 The -- I like the -- the plantings that  
7 are added around the transformer in tandem with the  
8 screening, I think that's -- if Idaho Power's happy  
9 with what's being proposed, then I think that's the  
10 best we can get there to make that thing go away.  
11 I had discussed last time -- just about  
12 the amount of stuff that does have to happen in the  
13 alley, as has been discussed in this meeting, and how  
14 much goes on. And I think, you know, seeing this  
15 application on a single lot is representative of that,  
16 of the dumpster glider, the parking. And then when  
17 Idaho Power has a transformer requirement, it just  
18 starts to chew up space.  
19 I'm especially appreciative of the  
20 elimination of the stairwell that was previously at  
21 the corner down to the basement unit. I had previous  
22 criticisms of another application that used the glass  
23 block as the window well. I am very curious as to  
24 how -- what -- what the finished product -- and how  
25 much light is brought into that unit.

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1 I did go into the website of the cut sheet  
2 that was provided, and it seemed like there were some  
3 really creative uses of the -- of the product. So  
4 hopefully the applicant can continue forward in, I  
5 guess, finding the best way to increase the light that  
6 gets into that window well, but I am appreciative of  
7 its size and not just being minimal, again, to just  
8 meet minimum -- minimum requirements and requests.  
9 And then I -- I think my only issue here  
10 that's been voiced throughout the majority of the  
11 meeting is the north-property-line wall, and I think  
12 we get stuck on this for the majority of these infill  
13 applications.  
14 In my mind, I've reached a certain level  
15 of comfort with it, given the pace of development, but  
16 we also have to be careful if the pace of development  
17 is stalled. You know, how comfortable are we with  
18 this building kind of sitting here by its lonesome for  
19 what could be the foreseeable future?  
20 I think in -- in the imagery that was  
21 provided of some of the property-line walls, what we  
22 saw is a portion of those walls being receded or  
23 stepped back. And, in this application, we are  
24 looking at a 42-foot-tall wall for the -- essentially  
25 the length of that interior property line.

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1 But, nonetheless, I think the push that  
2 has been made, you know, whether we've been kind of  
3 skewed again into this safety of, oh, you know,  
4 development's happening, and we're trying to increase  
5 the density and the vibrancy of downtown.  
6 Sorry. I kind of lost my train of thought  
7 there.  
8 I guess we -- we've been going down this  
9 course, and it -- or down this path, and now the  
10 question is, "Okay. You know, what does happen if  
11 this wall stands here for a long time?"  
12 But, nonetheless, I think it would be a  
13 missed opportunity to say, "Oh, well. You know, the  
14 adjacent buildings are single story, so this project  
15 should only be allowed a" -- "a certain density."  
16 I think the question, in my mind, is,  
17 "Okay. What is" -- "what is the neighborhood?" You  
18 know, reading back into the purpose of the design  
19 review guidelines, you know, it's fitting with the  
20 scale of the neighborhood. And my -- in my mind, the  
21 question is, "What" -- "What's the neighborhood," and,  
22 "What's the timeline?"  
23 I don't -- I certainly don't want to force  
24 the hand of the developer to not use the property to  
25 the highest and best use, and then, in 10 years down

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1 the road, this building is one of the smaller  
2 developments. That's not increasing the vitality of  
3 the neighborhood.  
4 So in that vein, I think I've come to  
5 terms with the height of the wall. I think we need to  
6 be careful, as we move forward in crafting the Code,  
7 as to how we reduce, I guess, the amount of  
8 questioning we have -- every single  
9 application -- about what to do with these  
10 property-line walls.  
11 But I think the applicant has met the  
12 intent of the Code, in my mind, in regards to reducing  
13 bulk and mass. I -- I think I vocalized last time  
14 that I appreciate the use of the materials. I think  
15 other people said in the room that they're timeless,  
16 and I would agree, but it still brings in some of  
17 those more modern elements like the C-Channel fascias  
18 along that corner element.  
19 So those are my comments.  
20 CHAIRMAN MORROW: Thank you.  
21 Susan.  
22 COMMISSIONER PASSOVOY: Well, I agree with much  
23 of what Wendy has said.  
24 Brenda. I'm sorry, Brenda. It's been a  
25 long day.

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1 The -- I -- I see our job here as  
2 balancing a number of very important aspects of -- of  
3 development in the downtown, both in the abstract and  
4 in the specific, in this case.  
5 And the developer, having met all the  
6 technical requirements of the Code, still gives us the  
7 opportunity to balance that against the more abstract  
8 elements of how it fits into the neighborhood. And I  
9 think the question of, "What is the neighborhood,"  
10 and, "What is it today," and, "What is it likely to be  
11 in the next 10 or 15 years" -- I'm -- I'm not sure  
12 about 100 years, but I think we -- we definitely need  
13 to be looking to the timeline that -- that is  
14 effective.  
15 I -- about the north wall, I am completely  
16 appreciative of having to -- you put the property to  
17 its highest and best use, both economically and  
18 functionally. And it's not our intent to take  
19 anything away from the developer in that sense.  
20 On the other hand, it just is troublesome  
21 to me that it is this wall along this property line,  
22 and I really am wondering whether -- whether -- and to  
23 what extent there can be some effort to pull -- even  
24 though it's allowed by the Code, to be mindful of the  
25 mass-size-bulk-et-cetera perspective.

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1 We spent a lot of our last meeting talking  
2 about those very same elements, with respect to  
3 another project. And it's clearly in the interest of  
4 our fellow residents that we -- we do the best we can  
5 to -- to provide -- to meet this balance however we  
6 define it between the developability of property and  
7 the aesthetic of the property.  
8 So I am -- I -- I would really like to see  
9 some attempt, even on a -- even if it's at a sketch  
10 level -- I'm not looking for detailed plans -- of  
11 pulling the top floor back, away from that wall to  
12 some extent. I don't know whether it's 2 -- 2 feet,  
13 or 3 feet, or whatever. It is an enormous unit on the  
14 top of that building. It's bigger than my house.  
15 And I -- you know, I just -- I think it  
16 would make an enormous difference in the problem that  
17 we are struggling with, and clearly, we are all  
18 struggling with this.  
19 CHAIRMAN MORROW: Thank you.  
20 Tim, do you have --  
21 COMMISSIONER CARTER: Yeah. So let's see.  
22 I just apologize to the Commission  
23 for -- and folks that are here -- for showing up late.  
24 I don't have the benefit of hearing what  
25 seems like was quite a bit of comment about this

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1 project. I get a sense from the public comment that  
2 we got -- the written public comment that we got and  
3 just from the flavor of the room that -- what -- what  
4 it might have been.  
5 Regarding the issues that we brought up at  
6 the last P&Z meeting, that we wanted to see addressed,  
7 I appreciate the design team's effort to reconfigure  
8 that corner. I think that this is definitely an  
9 improvement and -- and, you know, makes this building  
10 function better in the long term. The transformer  
11 issue, I feel like, has been addressed.  
12 I don't address -- I don't have anything  
13 to add to the discussion about the north wall other  
14 than -- you know, I feel the same way as the rest of  
15 the Commission, that we deal with this project -- this  
16 issue on a lot of projects. And it's a difficult one  
17 to parse. So I appreciate the efforts that were made  
18 on the design change so far.  
19 I do wonder about -- you know, it does  
20 feel -- with the brick being added above and the  
21 columns below, it does -- at first glance, it does  
22 seem a little top heavy. I don't know if there's  
23 a -- another way to reconfigure the finishes on that  
24 wall to make it feel less so.  
25 Let's see.

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1 It -- before we go too far, can I get  
2 brought up to speed on more -- Morgan, you brought up  
3 that, maybe, we're not making a decision tonight.  
4 There was a -- a -- an issue regarding process that  
5 you guys discussed before I got here. So was there a  
6 decision made about how that process -- how our  
7 process is going to work here? Are we -- are we going  
8 to not make a decision tonight?  
9 MORGAN LANDERS: So the only reason you're not  
10 asked to make a decision tonight is that you have some  
11 design changes in front of you to review. And so  
12 staff didn't make a recommendation of approval or  
13 denial because we felt there was continued discussion  
14 on the design review criteria.  
15 What you missed on the process side of  
16 things was related to the FAR Exceedance Agreement.  
17 And so those are things that you can come up to speed  
18 on before the next hearing -- before the final  
19 decision is made.  
20 COMMISSIONER CARTER: Okay.  
21 MORGAN LANDERS: Yeah.  
22 COMMISSIONER CARTER: All right. So we're  
23 giving -- so it sounds like we're still in  
24 the -- we're still giving direction from the  
25 Commission to the design/development team here.

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1 MORGAN LANDERS: Correct. Yeah.  
2 So the -- the question in front of you is,  
3 you know, "Do you feel that the application in front  
4 of you, you know, meets all the criteria and addresses  
5 your concerns, or do you want to continue to get  
6 additional study from the architect on meeting the  
7 criteria?"  
8 COMMISSIONER CARTER: So the transformer and the  
9 corner issue, I feel, are addressed. The north-wall  
10 issue -- you know, I would certainly like to see some  
11 other potential options.  
12 And then it seems like the other issue in  
13 the room is, you know, the -- the scale and mass of  
14 the building and -- is it appropriate for the location  
15 that's -- that it's in?  
16 And, you know, I -- I feel like projects  
17 like this -- you know, we have a Code that sort of  
18 governs how -- how the bulk and mass of these  
19 buildings, you -- you know, get -- you know, must  
20 conform to and -- you know, there's a -- there's a  
21 little bit of what seems like area for negotiation in  
22 the details of the FAR Exceedance Agreement.  
23 We have a 1.0 FAR that's given by right.  
24 And then, you know, we can go up to -- is it 2.25 or  
25 2.5? -- based on FAR -- 2.25 -- based on a FAR

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1 Exceedance Agreement if the project gives -- provides  
2 community housing, either on the site or in lieu.  
3 The Code is not -- you know, there  
4 is -- the -- the Code doesn't seem to be entirely  
5 clear as to how much -- how much leeway we have to  
6 make that negotiation as a Commission. And we've been  
7 fighting that -- frankly, we've been fighting that on  
8 other projects. You know, what -- you know, is -- is  
9 it -- if the developer provides the required amount,  
10 then they get the 2.25, or is there some negotiation  
11 that is -- does the Code allow for some negotiation  
12 there?  
13 We've brought -- this has been an issue  
14 on -- on multiple projects in the past.  
15 MORGAN LANDERS: And so I can help clarify if  
16 that's helpful.  
17 So the FAR exceedance from 1.0 to 2.25 is  
18 contingent upon design-review approval. So it has to  
19 have a design review approval for whatever you all  
20 feel is appropriate, that meets the design review  
21 criteria. And so then that's where you root your  
22 decision and your deliberations on the design review  
23 criteria specifically. And so if a project meets the  
24 design review criteria, you can then approve the FAR  
25 exceedance.

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1 COMMISSIONER CARTER: And the design --  
 2 MORGAN LANDERS: If it doesn't meet it, then  
 3 you -- the FAR Exceedance Agreement becomes null.  
 4 COMMISSIONER CARTER: And the design review  
 5 criteria in the Code is very -- you know, the  
 6 design-review agreement -- the language in the Code  
 7 sort of limits us to the look of the building and the  
 8 finishes on the outside.  
 9 The -- our -- our ability to comment on  
 10 the program of the building is something that we have  
 11 been sort of asking for here, as a Commission, over  
 12 the last couple months. That's part of what the  
 13 Interim Ordinance was about, was giving the Commission  
 14 some more discretion on being able to comment on the  
 15 program of buildings. There was a lot of pushback  
 16 from the community to give us that -- you know,  
 17 to -- to give us that voice.  
 18 So, you know, I don't know, Morgan. Do  
 19 you have -- you want to comment a little bit on that?  
 20 MORGAN LANDERS: Yeah. So the way that staff  
 21 presented it to you all in the staff report is that,  
 22 really, there's kind of two criteria in the design  
 23 review that allow you to -- to influence kind of  
 24 the -- the bulk and the size and kind of the  
 25 orientation of the building. Yes, this may be

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1 cosmetic, but it may have impacts to the program.  
 2 So the design review criteria that is most  
 3 applicable in this instance is that "building walls  
 4 shall provide undulation/relief, thus reducing the  
 5 appearance of bulk and flatness."  
 6 So that's, really, a design review  
 7 criteria that -- you know, our Code does allow  
 8 42 feet, but in an instance where you do have a very  
 9 tall, flat wall, if you feel like additional  
 10 undulation or relief is necessary to meet that  
 11 criteria, which ultimately is to reduce the bulk and  
 12 flatness, you all can make those requests.  
 13 COMMISSIONER CARTER: Okay. Well, then, along  
 14 those lines, certainly, the bulk and flatness of that  
 15 north wall is -- I mean, it's hard to argue that  
 16 it -- you know, that it has -- it does have  
 17 undulation. I mean, it doesn't.  
 18 And, you know, from that -- from that  
 19 point of view, I would like -- I think it would be  
 20 helpful to see the design and development team, you  
 21 know, find some ways to mitigate that issue on that  
 22 north wall.  
 23 So -- and -- and then, I guess, you know,  
 24 the other thing I would say is, you know, "Part of  
 25 this process is to give the public" -- you know,

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1 developers and -- you know, what the developers in  
 2 town are -- are -- many of the developers in town are  
 3 members of our community, and the developers are, you  
 4 know, looking to -- to make a living, to be a part of  
 5 town, just as the neighbors are as well.  
 6 And finding a way to -- to coexist  
 7 is -- is important. And this forum, where projects  
 8 have to come in front of the Commission and the public  
 9 gets a chance to comment, is -- is a way for -- you  
 10 know, is a way for -- for developers to hear, you  
 11 know, what the community, you know, wants to see.  
 12 And I think hearing that -- and, you know,  
 13 any development team -- you know, the  
 14 development -- development teams have a -- a  
 15 right -- you know, the Code gives development teams a  
 16 right to move forward, and I don't think, you know, we  
 17 would -- I don't think anybody would -- would argue  
 18 that owners of property have a right to -- to develop  
 19 them in a way that -- that has some bounds, but, you  
 20 know, that -- that also, you know, gives them the  
 21 benefits of being a property owner. That -- you know,  
 22 that's part of our system.  
 23 But those -- you know, the developers are  
 24 also not developing in a vacuum. We're developing in  
 25 a community. And, you know, finding a way for

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1 projects to be constructive additions to a community  
 2 is -- you know, is hopefully something that is part  
 3 of -- you know, that this process helps development  
 4 teams achieve. So I'm just going to add that comment.  
 5 But, in general, I appreciate the  
 6 additions that have been made to the project, the  
 7 changes that they made to the project. I think, other  
 8 than the north wall, which -- maybe if we could see a  
 9 little more work on -- have been improvements from the  
 10 previous -- previous design that we saw.  
 11 VICE CHAIRMAN MOCZYGEMBA: [Unintelligible].  
 12 CHAIRMAN MORROW: No, please.  
 13 VICE CHAIRMAN MOCZYGEMBA: One thing that I  
 14 would like to interject with and that was mentioned in  
 15 the staff report that we haven't touched on -- and  
 16 this may just be something that gets handled in the  
 17 future, as I discussed previously -- is regarding  
 18 these property-line walls.  
 19 I think Nicole pointed it out as well, but  
 20 the portion of the Code that reads, "Facades facing a  
 21 street or alley or located more than 5 feet from an  
 22 interior side property line shall" -- "shall be  
 23 designed with both solid surfaces and window  
 24 openings."  
 25 So, I mean, the question -- and I spoke

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1 with Morgan a little bit about this -- is -- is,  
2 "What" -- "What is the intent of that?" And I know  
3 that we have evaluated other property-line walls based  
4 on the other development that was going on, you know,  
5 directly adjacent or -- or soon to be.  
6 And so, you know, in this case, in my  
7 mind, this building is meeting that portion of the  
8 Code because it is not located more than 5 feet from  
9 an interior side property line.  
10 So the question is, you know, how that is  
11 interpreted. You know, it -- it -- it would be  
12 impossible to -- crystal ball -- of, say, "Oh,  
13 well" -- "well, that portion of Code just means, when  
14 it's stepped more than 5 feet from the interior side  
15 property line, it needs, you know, to have solid  
16 surfaces and window openings because you're looking at  
17 it in perpetuity;" right?  
18 But in this case, we just cannot determine  
19 whether there'll be a building there, again, 5 years  
20 down the line, 10 years down the line, or 15. So  
21 you -- when you start to create undulation and  
22 other -- I guess, other ways to manipulate the  
23 materials along that facade, you're creating more -- I  
24 guess it's just money being spent on something that  
25 will be -- possibly be covered up down the line.

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1 So that's kind of the -- the biggest  
2 conflict in my head is, you know, How much do you push  
3 any sort of application to make a wall pretty  
4 essentially, to only be covered up later?  
5 CHAIRMAN MORROW: I -- I agree, and I  
6 would -- with my condolences to Ben Franz, who we made  
7 do that for his building. And then, suddenly, someone  
8 built right next to it, but we didn't know. There was  
9 a little cabin there. It could have stayed there for  
10 30 years, so we made him change that wall, and he  
11 spent money on it. And within a year, it was -- it  
12 wasn't there, but it could have been.  
13 And I think this is what we -- I've been  
14 on this Commission for a while, and we've done this  
15 with a lot of buildings. The Mill build -- the  
16 building that The Mill is in across from Zions bank,  
17 the alley, is a story shorter than it was presented as  
18 because they couldn't underline the -- underground the  
19 power lines.  
20 UNIDENTIFIED SPEAKER: Mm-hmm.  
21 CHAIRMAN MORROW: So they couldn't build the  
22 fourth floor, and they -- we made them undulate and  
23 change the materials on that back wall, which  
24 shows -- kind of shows from Washington. And then they  
25 stepped back their third floor, which was

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1 losing -- not only did they lose a whole floor; they  
2 lost space in the kind of setback or step-back on the  
3 top.  
4 So we've been struggling with this on a  
5 lot of properties for a long time, and I -- I -- I  
6 don't think we can take the chance of saying, "Yeah,  
7 leave a big, blank wall up there, and we hope  
8 something gets built in" -- "in 5 years or 10 years  
9 and" -- "not a big, blank wall for 50 years."  
10 But the -- just in -- in reference to what  
11 you said, I think that we've been through this a lot.  
12 And, yes, I feel bad for some of the people that we  
13 made -- you know, in the previous Code and not even  
14 this Code -- made spend significant money on projects  
15 that ended up being things they really didn't need to  
16 in the new Code.  
17 So just in reference to that, I'd -- I'd  
18 like to say that I think -- if I've said it once, I've  
19 said it 1,000 times. This process makes buildings  
20 better and -- because they're here for a long, long  
21 time. I think it's -- as painful as it is, it's  
22 important.  
23 I -- I agree. I think the changes made  
24 have been in response to what we like. And I think  
25 we've got a few small issues left, but I think we've

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1 made significant progress. And -- and I think  
2 Nicole's done a great job with that. It's a great  
3 design. It may not be exactly there yet, but I think  
4 we're getting there.  
5 Is Matt still on with us?  
6 MATT JOHNSON: I am.  
7 CHAIRMAN MORROW: Are you still there?  
8 I just have a couple quick ones.  
9 We don't -- we don't ever get to see or  
10 have any effect on the FAR exceedance agreements  
11 as -- as Planning and Zoning; do we?  
12 MATT JOHNSON: On the agreement itself, no,  
13 other than it's conditioned on your design-review  
14 approval.  
15 CHAIRMAN MORROW: Okay. But, I mean, we -- if  
16 we wanted to look at it and go -- we think that's a  
17 weird tradeoff, we wouldn't be able to make changes in  
18 that?  
19 MATT JOHNSON: You wouldn't be able to make  
20 changes. Any comment you had on it would purely be  
21 sort of an advisory-type thing.  
22 CHAIRMAN MORROW: Okay. Second, we heard "spot  
23 zoning." I know, in my opinion, this isn't spot  
24 zoning no matter what we do. Do -- do you think  
25 this -- that -- that would be a specific, like, "You



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1 can't do this here?"  
2 MATT JOHNSON: Correct.  
3 CHAIRMAN MORROW: And third, despite your  
4 wonderful legal knowledge, is -- is it -- is there  
5 potential that we could still encounter litigation  
6 even though you don't think it's possible? Maybe  
7 Mr. Linnet wants to file a claim. Do you think there  
8 is some actionable -- something in here -- potentially  
9 actionable -- something in here?  
10 MATT JOHNSON: Well, there's -- there's multiple  
11 steps that would happen before we got to anything that  
12 would be litigation in court.  
13 CHAIRMAN MORROW: You -- you know what I mean.  
14 I'm trying to prevent --  
15 MATT JOHNSON: Right.  
16 CHAIRMAN MORROW: -- us from doing something  
17 in -- in my -- the -- the part I feel good about is,  
18 if we can have the neighbors and the developers work  
19 together as we move through this process, we won't  
20 have that issue. I just don't want to put us in the  
21 position of having that issue.  
22 MATT JOHNSON: So the -- the answer to the  
23 question of, "Is litigation possible," is  
24 always, "Yes."  
25 CHAIRMAN MORROW: Yes. Yeah. Okay.

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1 MATT JOHNSON: All -- all -- all -- all it takes  
2 is a party willing to pay an attorney to -- to make  
3 arguments.  
4 I -- I do think, in this case, the  
5 procedural issues that have been raised are -- are  
6 relatively straightforward, could additionally be  
7 addressed at other points in the administrative  
8 appeals process as need be, and I think the risk of  
9 litigation is relatively lower -- or at least with  
10 some chance to work through with the -- the -- the  
11 party raising them first.  
12 So is that a wiggly-enough answer?  
13 CHAIRMAN MORROW: Yeah. Yeah. Perfect.  
14 That's -- those answered my three legal  
15 issues right there.  
16 Because this is subject to design review  
17 approval, I -- I think we've heard a bunch of people  
18 say, "You've met all the requirements" -- and I think  
19 Susan mentioned this, that you can meet the  
20 requirements for height and for lot-line setback and  
21 for those things, but still not meet the requirements  
22 that it fit into the neighborhood character or that it  
23 be compatible.  
24 And I -- and I think that, in that sense,  
25 this is where we have our subjective -- it's not just,

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1 you know, "Stick it in one side. It's 42 feet high.  
2 That's fine," and it comes out the other side and it's  
3 approved. So I think the area that we do have leeway  
4 here -- even though it's met the requirements -- is  
5 that it still may not fit into the character of the  
6 neighborhood, based on what's around it.  
7 So I -- I just wanted to address that,  
8 that it sounds -- a lot of people are like, "Well, we  
9 did everything we should do. We should get an  
10 approval." And I'm like, "That's" -- "that" -- "this  
11 is a subjective process, and it deals with neighbors,  
12 and it deals with the future that we don't know  
13 about."  
14 So I just wanted to bring that up, that,  
15 yes, according to the -- the -- the -- how high it is  
16 or how wide it is or what the setback is,  
17 it's -- it's compatible, but it still may not actually  
18 fit into the neighborhood or be compatible with what  
19 we're looking for in that neighborhood. So I just  
20 wanted to bring that up.  
21 I agree with Spencer and some other  
22 people, that -- as much as it's a pain in the -- in  
23 the butt, wedding-caking this structure would -- would  
24 probably solve a lot of the problems. So  
25 the -- wedding-caking the top floor a little bit

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1 and -- maybe, in the new Code, zero-lot-line buildings  
2 should wedding-cake at -- at the third floor and not  
3 the fourth floor.  
4 But I think this -- if the top floor were  
5 set back, that would -- a little bit, that would be  
6 undulation, or if that north wall were opened into a  
7 deck, or -- I -- I -- you know, again, we're not  
8 designing up here, but that -- if it -- if it's set  
9 back up there somehow, stepped back, that would take a  
10 lot of the mass-and-bulk feeling away from the -- the  
11 building and would give undulation to that flat wall,  
12 that being stepped back and not being just pushed in  
13 and out.  
14 I think parking in the area's inadequate  
15 already, so I think the parking issue is -- the Code  
16 says as long as there's 750 -- people often move their  
17 cars -- you know, I hate to see the -- the City change  
18 their rules for everyone on that, but it looks like  
19 that -- that's what's going to happen, and we're going  
20 to have different winter rules. And that's -- you  
21 know, that's a cost of having the city become bigger  
22 and having had inadequate parking since the '80s.  
23 I -- I agree with the balancing act  
24 that -- I think we've gotten really close here, and we  
25 just have to make sure that what we approve is -- is

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1 compatible with the neighborhood for the long run  
2 because these buildings will be here for 70 or  
3 100 years. So I would like to see the -- my direction  
4 would be, "You've done a great job. Can we address  
5 some of these last issues."  
6 And, you know, I'd love to see, if there  
7 was an agreement between the neighbors, what it'd look  
8 like with windows up there, or a -- a -- a small deck  
9 area, or an enclosed -- whatever it is -- on the top  
10 there to make it seem less massive. It would be cool  
11 to see how they come to that.  
12 So, overall, I do -- I think the -- the  
13 design is really nice. It would be awesome if it  
14 could just kind of -- you know, I know it's a  
15 zero-lot-line building, but it's a small lot with a  
16 zero-lot-line building, and the neighbors' buildings,  
17 many of them are one story, so it -- it's going to  
18 have a shocking effect for a while no matter what. So  
19 my -- that's my direction.  
20 I think, Nicole, you've done a great job.  
21 I think we'd like to see some of these other potential  
22 changes. That's kind of where I am now.  
23 COMMISSIONER CORDOVANO: I believe we could  
24 request a 3D model of the building.  
25 MORGAN LANDERS: If there's any specific

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1 diagrams or graphics that you'd like to see when they  
2 come back, it'd be good to know that, and then we can  
3 ask the applicants to prepare those.  
4 COMMISSIONER CORDOVANO: I think that would help  
5 set the scale and the scope. And I'd love to see it  
6 come back at 1.75, with a lower total height.  
7 MORGAN LANDERS: So from --  
8 CHAIRMAN MORROW: Go ahead.  
9 MORGAN LANDERS: -- for -- just a quick  
10 clarification for staff.  
11 Spencer, when you're asking for additional  
12 3D models, are you looking for something different  
13 than what's included in the packet now, as far as  
14 renderings?  
15 COMMISSIONER CORDOVANO: I was kind of curious  
16 what that design review guideline would get me,  
17 honestly, as I considered a 3D model, or maybe an  
18 area -- more of an area-centric model.  
19 MORGAN LANDERS: So what I would caution the  
20 Commission against is providing a specific cap on the  
21 FAR, but asking the applicants to evaluate what  
22 additional undulation or relief on that northern  
23 facade would look like and see what that comes back  
24 with -- because we -- we are in a bit of a delicate  
25 space, where we can't dictate a specific FAR, but we

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1 can evaluate revised proposals, based on the  
2 criteria --  
3 COMMISSIONER CORDOVANO: Totally, and I --  
4 MORGAN LANDERS: -- if the Commission's open  
5 to it.  
6 COMMISSIONER CORDOVANO: I -- I just kind of had  
7 to slide that in there from the side because I feel  
8 like a lot of this is so subjective. And I don't want  
9 to make that a cut-and-dry thing, but the whole  
10 building could use some wedding-caking.  
11 I understand development costs enough to  
12 realize that we're probably only going to get it at  
13 the top floor. The windows are almost an excuse to  
14 get the top floor set back 5 feet, similar -- as it is  
15 on the whole building.  
16 CHAIRMAN MORROW: To Spencer's point, we ask  
17 this --  
18 COMMISSIONER CORDOVANO: [Unintelligible].  
19 CHAIRMAN MORROW: -- a lot of times, "Can we get  
20 a model that shows what it will look like within  
21 the -- with the surrounding neighborhood," the bulk,  
22 mass -- kind of like, "Here it is, and here's a big  
23 picture of what the rest of the" -- we've -- we've  
24 started to ask for that a lot, and it helps us kind of  
25 really look at it, so I think that would be super

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1 helpful.  
2 MORGAN LANDERS: Yeah, we can definitely do  
3 that.  
4 COMMISSIONER CORDOVANO: Yeah, so undulation on  
5 the north side, west side, and the east side.  
6 MORGAN LANDERS: All right.  
7 CHAIRMAN MORROW: Any --  
8 COMMISSIONER CORDOVANO: And I'm -- I'm -- I'm  
9 all for people being able to buy their lots under the  
10 rules, but I think we need to update them more  
11 quickly. And it is just totally absurd that the max  
12 height is 42 feet, and a guy can have a canopy over  
13 his hot tub of 49 feet -- no fence, none, for the  
14 guy -- whatever, but that's just a 49-foot building in  
15 general logic, which is very contrary to City Code.  
16 CHAIRMAN MORROW: So at this point, if we've had  
17 comment and if you think we've given proper direction  
18 and because I don't believe we're making any kind of  
19 decision tonight, I think -- especially with what  
20 we've heard from the neighbors, I'd like to see more  
21 public input, more -- I'd like to see what Nicole  
22 comes back with, I'd -- you know, I think we have some  
23 steps in the process.  
24 But I do think, as usual, it gets better  
25 and better every time. This is an order better than

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1 the last one, having moved the stairs and -- and --  
 2 COMMISSIONER CORDOVANO: And we also don't want  
 3 to deny it.  
 4 CHAIRMAN MORROW: No. No. No. We want it to  
 5 get to where it can be built and -- and be there for  
 6 100 years and -- but that's -- I think we're getting  
 7 there. And if we don't need to make any kind of  
 8 decision tonight, if you feel like we have good  
 9 direction --  
 10 MORGAN LANDERS: I do. So the only motion that  
 11 you will need to make is to continue to the next  
 12 meeting, so that would be January 10th. And then  
 13 staff will consult with the applicant following the  
 14 meeting to see if they can make that. And if we need  
 15 to push it, we can push it.  
 16 CHAIRMAN MORROW: Okay.  
 17 COMMISSIONER CORDOVANO: So like -- I feel  
 18 like January -- and tell me if this is my purview.  
 19 I -- I feel like January tends to rush, and there's  
 20 plenty of projects that have been in line for a long  
 21 time too.  
 22 CHAIRMAN MORROW: I -- I don't have a problem  
 23 with it, but it does seem like it's 10 days. And  
 24 during the holidays, and that might be unfair to the  
 25 applicant's team to say, "Hey. Here goes your

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1 Christmas and New Year's so you can redo this."  
 2 So we're happy to let you guys discuss it  
 3 with them and -- and have it set to a date certain  
 4 that -- you'll let us know.  
 5 MORGAN LANDERS: Yeah. And -- and sorry,  
 6 Spencer, to interrupt.  
 7 But, really, it's just to make sure that  
 8 we have a date certain because if we don't set it to a  
 9 date certain, we have to go through the re-noticing  
 10 process, which we can if the -- if the Planning  
 11 Commission prefers that.  
 12 But I think what we can do is continue it  
 13 to the 10th, and then if, for some reason, the  
 14 applicant team doesn't feel that's reasonable, we can  
 15 certainly continue it again.  
 16 CHAIRMAN MORROW: And don't feel like you guys  
 17 have to ruin your holiday for us. We're going to be  
 18 here in January and February. So...  
 19 COMMISSIONER PASSOVOY: I just wanted to make  
 20 one clarification.  
 21 My comment regarding the size of the unit  
 22 on the top is not a reflection of my opinion as to how  
 23 much space people can or should have to live in. It's  
 24 up to them. I only mentioned it because I -- I felt  
 25 that it was large enough to allow for some undulation

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1 of that wall, without losing the -- the -- the overall  
 2 marketability of the unit.  
 3 MORGAN LANDERS: Thank you.  
 4 CHAIRMAN MORROW: Susan doesn't feel left out.  
 5 It's four-and-a-half times bigger than the space I  
 6 live in. So...  
 7 COMMISSIONER CORDOVANO: What do we want to do  
 8 about date certain? I'm -- I don't want to overstep  
 9 here, but --  
 10 CHAIRMAN MORROW: Well, let's do --  
 11 COMMISSIONER CORDOVANO: -- [unintelligible].  
 12 CHAIRMAN MORROW: -- January 10th. And then if  
 13 the applicant needs to change it, they'll change it  
 14 with staff, and we'll -- they'll have a date certain.  
 15 But this way, we -- we've got something at -- as a  
 16 placeholder. Is that okay?  
 17 COMMISSIONER CORDOVANO: Yeah.  
 18 CHAIRMAN MORROW: Okay. So I will take a motion  
 19 if anyone...  
 20 COMMISSIONER CORDOVANO: I'll make a motion to  
 21 continue this project to a date certain, being  
 22 January 10th --  
 23 CHAIRMAN MORROW: January 10th, yes.  
 24 COMMISSIONER CORDOVANO: -- with hopes of a  
 25 continuance.

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1 COMMISSIONER PASSOVOY: And I second the motion.  
 2 CHAIRMAN MORROW: All in favor?  
 3 Aye.  
 4 COMMISSIONER CORDOVANO: Aye.  
 5 COMMISSIONER PASSOVOY: Aye.  
 6 COMMISSIONER CARTER: Aye.  
 7 CHAIRMAN MORROW: Thank you, everyone.  
 8 VICE CHAIRMAN MOCZYGEMBA: Nay.  
 9 CHAIRMAN MORROW: Oh, Brenda is a "Nay."  
 10 VICE CHAIRMAN MOCZYGEMBA: Can I do that with a  
 11 continuance?  
 12 CHAIRMAN MORROW: Yes.  
 13 MORGAN LANDERS: You sure can.  
 14 VICE CHAIRMAN MOCZYGEMBA: Okay.  
 15 MORGAN LANDERS: Mm-hmm.  
 16 CHAIRMAN MORROW: Thank you to the public and to  
 17 the applicant and to the attorneys and everyone in the  
 18 room. We will see you guys either in January or some  
 19 time after that. If you're involved, stay involved,  
 20 and we'll be happy to continue to hear from you.  
 21 (End transcription at 1:53:00 of audio  
 22 file.)  
 23 -o0o-  
 24  
 25

1 REPORTER'S CERTIFICATE

2  
3 I, VICTORIA HILLES, RPR, Registered  
4 Professional Reporter, CSR No. 1173, Certified  
5 Shorthand Reporter, certify:

6 That the audio recording of the proceedings  
7 was transcribed by me or under my direction.

8 That the foregoing is a true and correct  
9 transcription of all testimony given, to the best of  
10 my ability.

11 I further certify that I am not a relative or  
12 employee of any attorney or party, nor am I  
13 financially interested in the action.

14 IN WITNESS WHEREOF, I set my hand and seal  
15 this 8th day of June, 2023.

16  
17 

18  
19 VICTORIA HILLES, RPR, CSR NO.  
20 1173  
21 Notary Public  
22 Post Office Box 2636  
23 Boise, Idaho 83701-2636

24  
25 My commission expires December 3, 2026

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**P22-035 / P22-035A - 200 N Leadville Avenue**

**CITY OF KETCHUM PLANNING AND ZONING COMMISSION**

IN RE: )  
P22-035 / THE 208 CONDOS )  
and )  
P22-035A / THE 208 CONDOS )  
200 North Leadville Avenue )  
\_\_\_\_\_ )

**TRANSCRIPT OF RECORDED PUBLIC HEARING**

**TUESDAY, DECEMBER 20, 2022**

**COMMISSIONERS PRESENT:**

**NEIL MORROW, CHAIRMAN**

**BRENDA MOCZYGEMBA, VICE CHAIRPERSON**

**TIM CARTER**

**SPENCER CORDOVANO**

**SUSAN PASSOVOY**

**TRANSCRIBED BY:**

**VICTORIA HILLES, RPR, CSR NO. 1173**

1 (Begin transcription at 0:1:00 of audio  
2 file.)

3 CHAIRMAN MORROW: Any discussion or -- okay.

4 I -- I did go look at those story poles  
5 for this project, so that's my --

6 COMMISSIONER CORDOVANO: I did prior to the  
7 first meeting.

8 CHAIRMAN MORROW: Okay.

9 (Pause transcription at 0:01:11 of audio  
10 file and resume transcription at 0:02:30  
11 of audio file.)

12 CHAIRMAN MORROW: Okay. We'll move on to Action  
13 Item 2. This is a recommendation to hold a public  
14 hearing, review, and provide feedback on design-review  
15 and condominium-preliminary-plat applications for the  
16 proposed mixed-use development at 200 North Leadville  
17 Avenue, P22-035 and P22-035A.

18 Morgan.

19 MORGAN LANDERS: Great. Thank you, everyone.

20 So this is a continuation of our  
21 November 29th meeting.

22 So if you all recall, we had  
23 presented -- staff presented the application to you  
24 all. It was a design-review application and a  
25 condominium-preliminary-plat application.



1           At that meeting, staff had made comments  
2           in kind of three general areas related to things that  
3           we thought that the Commission might have feedback on,  
4           and the Commission did provide that feedback. And so  
5           we are here in front of you today, as the applicant  
6           has made a variety of changes based on that feedback  
7           that you provided.

8           So a couple of the changes that they made  
9           that staff are in support of -- is that there's been a  
10          pretty significant reorientation of the basement-level  
11          floor plan and the staircase to that ground -- the  
12          basement-level dwelling unit, which staff believes  
13          addressed the majority of staff and the Planning  
14          Commission's feedback. So we would look for some  
15          affirmation from you all on that.

16          And then we also have a  
17          screen -- screening configuration that we discussed  
18          with Idaho Power that we think meets some of the  
19          intent and is certainly an improvement above and  
20          beyond the actual moving of the transformer, which we  
21          think will be problematic.

22          And it didn't seem like the Commission was  
23          really looking for them to do -- and then the other  
24          piece of the conversation was kind of how to treat  
25          that north facade. So there was some feedback from

1 the Commission about further articulation of that  
2 facade. And I think one or two Commissioners had even  
3 made a comment of, you know, potentially stepping back  
4 that top level of the third floor to create some  
5 additional undulation and relief.

6 And so that's what's in front of you  
7 today -- is -- is just further discussion and  
8 direction to the applicant on that.

9 I would like to mention that we received  
10 two additional public comments after the packet was  
11 published last week, and those were provided to you  
12 via e-mail and the agenda has been updated.

13 One of those, you will notice, is from a  
14 land-use attorney. And so we do have the City  
15 Attorney, Matt Johnson, online to provide you some  
16 feedback on that and how you all need to either  
17 address or acknowledge that, and then you can  
18 certainly ask him questions.

19 So at this point, I will turn it over to  
20 Matt. I believe he's on the line, and he can give you  
21 feedback on that, and then we can continue through the  
22 process.

23 MATT JOHNSON: All right, Chair and  
24 Commissioners. I'm Matt Johnson, City Attorney. I'm  
25 happy to answer questions if there's specific ones

1 about the letter from Mr. Linnet. I -- I can tell you  
2 I've reviewed that matter. I've -- and I've provided  
3 a response to Mr. Linnet.

4 I do think that the City Code is quite  
5 clear that the Council has kept the authority over FAR  
6 exceedances and -- and, in particular, the  
7 decision-making on an FAR Exceedance Agreement. Those  
8 agreements are then specifically conditioned upon the  
9 design-review approval, which keeps the design review  
10 fully in front of you, separate from that FAR  
11 Exceedance Agreement.

12 And so I do not -- I do not come to the  
13 same conclusions Mr. Linnet did, and my finding is  
14 everything is in order, procedurally. That's why we  
15 kept the schedule for this meeting instead of  
16 considering a postponement.

17 All that being said on the record now, I'm  
18 happy to answer any questions you may have or that  
19 arise later after public comment with respect to any  
20 of the issues raised in that letter.

21 VICE CHAIRMAN MOCZYGEMBA: I had a question.  
22 Whether it's to Matt or Planning staff, is -- I think  
23 Mr. Linnet was -- had some issue over the noticing.  
24 Was that a public hearing, and was it properly noticed  
25 to the best of your knowledge?

1           MATT JOHNSON: So -- so an FAR Exceedance  
2 Agreement is not actually required for a public  
3 hearing. It's not a land-use decision in the same  
4 sense as a zoning amendment, and there hasn't been a  
5 public-hearing requirement created for it by City  
6 Code, as there has been for design-review  
7 applications.

8                       So it's separate from those. In fact,  
9 quite typically, they've been on the consent agenda  
10 when they go up before Council.

11           VICE CHAIRMAN MOCZYGEMBA: Thank you, Matt.

12           COMMISSIONER CORDOVANO: Hey, Matt. What about  
13 the noticing of the first meeting?

14                       And I don't know if that's for staff or  
15 for Matt.

16                       It sounded like some of the property  
17 owners didn't get a notice for the first meeting. Was  
18 that just not going to the mailbox or...

19           MORGAN LANDERS: Yeah. So I think -- and you're  
20 probably referring to one of the public comments that  
21 came through.

22                       So public noticing goes to the property  
23 owners within a 300-foot radius. And so we did  
24 double-check the public notice, and that did go out to  
25 all of the adjacent property owners within that

1 300 feet.

2 I think some of the challenge that happens  
3 with public noticing is that if there is an entity  
4 that is either renting that space or leasing that  
5 space, it is up to the property owner to notify those  
6 tenants. And so our obligations under the law are to  
7 make sure that we notify the property owner, but we  
8 certainly understand that sometimes that information  
9 isn't conveyed down to tenants.

10 COMMISSIONER CORDOVANO: Yeah. And I think  
11 that -- my comment was mostly in regards to the first  
12 meeting that we held on 12/13. But I did read that  
13 public comment that you're referring to, and I wasn't  
14 sure if that was even a 300-foot adjoiner.

15 MORGAN LANDERS: And are you talking about the  
16 first meeting on this application? So that was on  
17 November 29th, and we did notice that through all of  
18 our normal channels, so the mailing to the 300-foot  
19 adjoiners.

20 The other thing that we do that's required  
21 per our Code is -- we have a physical notice that's on  
22 the property itself. And so that's usually how we try  
23 and kind of get the word out more broadly for maybe  
24 people who aren't as -- part of that adjacent property  
25 owner. So we did go back and confirm, and all of the

1 noticing was done properly for that initial hearing on  
2 the 29th.

3 COMMISSIONER CORDOVANO: When are the story  
4 poles required to go up?

5 MORGAN LANDERS: One week prior to the hearing,  
6 and those get verified by our Community Service  
7 Officers -- that one week prior -- as well. And so if  
8 those aren't up, then we either -- you know, the  
9 evaluation of a waiver has to come in with the  
10 application, and it has to be requested by the  
11 applicant.

12 But if the determination is that those are  
13 required, then they need to be in place. If they're  
14 not in place, then we do have to postpone the hearing.  
15 But for this application, they were in place in the  
16 right amount of time.

17 COMMISSIONER CORDOVANO: And that's to the top  
18 of the building or to the top of the hot-tub canopy?

19 MORGAN LANDERS: It's to the top of the -- the  
20 highest point of the -- of the building on a corner.

21 COMMISSIONER CORDOVANO: Thanks.

22 MORGAN LANDERS: Mm-hmm.

23 CHAIRMAN MORROW: Susan, do you have anything?

24 COMMISSIONER PASSOVOY: No, I -- the only  
25 question I have is -- whether you also put notices in

1 the newspaper of record.

2 MORGAN LANDERS: Mm-hmm. We do, yeah. We're  
3 required by statute to put a legal notice in a paper  
4 of general circulation. So that, for us, is -- it  
5 gets posted in the "Legal Notices" section on the  
6 Wednesday paper because that's where they have the  
7 expanded legal notices. So that -- those all get  
8 posted accordingly.

9 And we actually have to notice -- I think  
10 the minimum timeframe in our Code is 15 days, but  
11 because of the cycle of the noticing period for the  
12 paper, it ends up being a little bit more than that,  
13 usually about a week and a half more than that.

14 CHAIRMAN MORROW: All right.

15 MORGAN LANDERS: And if there's not any other  
16 questions, I will turn it over to the applicant, as  
17 they want to review some of the proposed changes with  
18 you and provide some comments. And then we can move  
19 into public comment and proceed as usual for a public  
20 hearing.

21 All right, Nicole.

22 NICOLE RAMEY: Let's start --

23 MORGAN LANDERS: The one at the end or the one  
24 at the beginning?

25 NICOLE RAMEY: This one here.

1                   Good afternoon. Nicole Ramey, for the  
2 record.

3                   Thanks, again, for meeting for this  
4 special meeting.

5                   And, as always, I wanted to thank Morgan  
6 and her staff for all their hard work on putting all  
7 of this together and getting everything in order.

8                   [Unintelligible].

9                   UNIDENTIFIED SPEAKER: [Unintelligible].

10                  NICOLE RAMEY: Okay. So the design team took a  
11 look at the 2nd Street activation comment, and we have  
12 made a few changes. We relocated the entrance to the  
13 lower-level residential unit to be within the main  
14 residential entry off 2nd, so now all of the  
15 residential entries are consolidated off that main 2nd  
16 entry. We reconfigured the retail entrance off 2nd.

17                  It is now closer to Leadville, and the  
18 windows previously in the lower-level stairwell are  
19 now dedicated to the retail space. So as -- as you  
20 can see in this rendering, all the windows in  
21 the -- in the black area, those are now dedicated to  
22 the commercial/retail space. So that was kind of the  
23 big move in terms of the facade.

24                  When it comes to the floor plan, we  
25 increased the retail-unit size by 649 square feet,



1 from 1,306 to 1,955. We did this by adding square  
2 footage from the lower level with access via an  
3 interior stair -- stair. So this is now about  
4 18 percent of the gross square foot, so we upped that  
5 percentage quite a bit.

6 We feel these changes not only activate  
7 the corner with the commercial space, but also add  
8 commercial square footage and condense the residential  
9 unit entries together in one location. So a couple  
10 benefits there for that comment.

11 And a side note. We did add back in an  
12 area of precast glass paver, concrete block, so now  
13 that provides light down into the lower-level unit and  
14 down into the lower-level retail space. So the glass  
15 block is also completely under the second-floor deck,  
16 so while there will be light trespass, it technically  
17 is underneath that second-floor deck.

18 We had a meeting with Idaho Power and  
19 Morgan Landers to review allowable clearances and  
20 allowed materials around transformers. Idaho Power's  
21 policy is that a fence and landscaping within a  
22 three-foot clearance of the transformer are  
23 acceptable. The landscaping should be able to be laid  
24 down, so no sturdy shrubs. And, you know, if any of  
25 that just gets destroyed or altered during maintenance

1 or repair, it's on the property owner.

2 So we've added a wire-mesh fence and  
3 proposed landscaping on two sides of the transformer.  
4 The orientation of the transformer did not matter to  
5 Idaho Power, and as all sides of the transformer can  
6 be treated with the same fence and landscaping, we  
7 kept the orientation the same.

8 As for the north wall, we added red brick  
9 on the third-floor band. The design review criteria  
10 about, "Facades facing a street or alley or located  
11 more than 5 feet from an interior side property line  
12 shall be designed with both solid surfaces" --  
13 windows -- "solid surfaces and window openings," does  
14 not apply.

15 This wall does not front a street or  
16 alley, and it is within 5 feet of the interior side  
17 property line. I believe that this design review  
18 criteria, you know, is not pertaining to interior,  
19 zero-lot-line facades. Per Building Code and  
20 life-safety requirements, we cannot include window  
21 openings.

22 The goal of the brick detailing here is to  
23 be subtle. Changes in brick-lay pattern and  
24 orientation are the design. We are open to  
25 discussions on the most suitable treatment of this

1 facade while understanding the project meets the  
2 setback and the height requirements.

3 We did -- I also want to point out that we  
4 contacted the neighbor to the north to ask if we could  
5 discuss additional landscaping or relocation of  
6 existing trees on the property. The discussions were  
7 rejected.

8 I guess I just -- as a side note -- as  
9 I've always said, if -- if what is coming before you  
10 is not, you know, what everybody wants to see, then I  
11 would encourage all parties to look at -- and I know  
12 it's in the works -- rewriting the Code so then we  
13 know what to design to going forward.

14 So that's kind of [unintelligible].

15 CHAIRMAN MORROW: Thank you.

16 Morgan, do you have anything?

17 MORGAN LANDERS: Nothing at this time, but we'll  
18 open up for --

19 CHAIRMAN MORROW: For public comment?

20 MORGAN LANDERS: -- questions or public comment.

21 COMMISSIONER CORDOVANO: I've got a question  
22 for the applicant.

23 CHAIRMAN MORROW: Oh, you guys have questions  
24 first?

25 Okay.

1 COMMISSIONER CORDOVANO: You said you couldn't  
2 put in windows on the -- was that the north --

3 NICOLE RAMEY: Correct.

4 COMMISSIONER CORDOVANO: -- side for the Life  
5 Safety --

6 NICOLE RAMEY: The Building Code.

7 COMMISSIONER CORDOVANO: Or Building Code.

8 NICOLE RAMEY: Correct.

9 COMMISSIONER CORDOVANO: Could you elaborate on  
10 that, Morgan.

11 MORGAN LANDERS: Yeah. So what Nicole is  
12 stating is correct. The amount of openings you can  
13 have on a facade wall is dictated by the setback from  
14 the property line.

15 And since this building wall is at the  
16 zero-setback line from the property, no fenestration  
17 is permitted that can open. So there -- I'm not sure  
18 what some of the other details are, as far as if it  
19 can be nonoperable. I would have to defer to Nicole  
20 on that. But as far as kind of large openings that  
21 actually can be operable, those are not permitted.

22 NICOLE RAMEY: Can we scroll to the last page.

23 MORGAN LANDERS: Mm-hmm.

24 NICOLE RAMEY: We did go around and we took some  
25 photos of example -- of examples within town of these

1 types of facades. So when you build, you know, within  
2 a certain distance of your property line, the  
3 International Building Code requires you to, you know,  
4 build to a certain fire and life-safety requirement.  
5 So that is why we see these types of facades all over  
6 town.

7 The building on the lower-right-hand  
8 corner that does have a window would preclude that  
9 property owner from, you know, building within the set  
10 distance of that window. So, you know, unless you're  
11 set back a certain distance off your property line,  
12 you are not allowed to have openings.

13 COMMISSIONER CORDOVANO: Thanks for providing  
14 this. That was going to be my next question. It  
15 definitely helps provide some perspective.

16 UNIDENTIFIED SPEAKER: [Unintelligible].

17 CHAIRMAN MORROW: I was just saying that the two  
18 on the bottom are -- that -- that's the new Bariteau  
19 [phonetic] building on -- across from the post office;  
20 correct?

21 Yeah. So I know we approved something  
22 that doesn't look like that at the end. When it's  
23 finished, it won't be a blank wall. It'll have  
24 texture, color, material. It will have something on  
25 it, so -- just so that Commissioners know that weren't

1 here for that.

2 COMMISSIONER CORDOVANO: And then I saw -- did  
3 you change -- you -- thanks for the retail changes.

4 And these units are still potentially able  
5 to be rented separately?

6 NICOLE RAMEY: Correct.

7 COMMISSIONER CORDOVANO: And was there any  
8 reduction in size to the top floor?

9 NICOLE RAMEY: No.

10 COMMISSIONER CORDOVANO: And that is all from  
11 me.

12 Thanks.

13 VICE CHAIRMAN MOCZYGEMBA: Nicole, you  
14 mentioned -- thank you for, I guess, coordinating with  
15 Idaho Power and what they would allow and not allow  
16 regarding the transformer screening.

17 What sort of plantings would be proposed  
18 there? You mentioned they can't be like hardy bushes.  
19 Is it grasses?

20 NICOLE RAMEY: That -- I guess, we'd be open to  
21 suggestions. Idaho Power did not want to specify --

22 VICE CHAIRMAN MOCZYGEMBA: Okay.

23 NICOLE RAMEY: -- any specific landscaping. And  
24 I suppose, while they didn't say they would not allow  
25 a sturdy shrub, it -- it would just get destroyed, and

1 it would make their lives miserable. So in the  
2 interest of, you know, being a good client of  
3 theirs...

4 VICE CHAIRMAN MOCZYGEMBA: Right.

5 And then -- did they have additional  
6 feedback? I think it was brought up in the previous  
7 meeting that there was some criticism from Idaho Power  
8 with previous transformer screening that included  
9 metal screening that needed to be moved because it  
10 gets frozen to the ground or whatever.

11 It -- they were okay moving forward with  
12 the metal screen, as --

13 NICOLE RAMEY: Right. Cyndi Bradshaw with Idaho  
14 Power was fine allowing those. I'm sure that there  
15 have been problems. And, once again, if -- you know,  
16 if a metal screen is destroyed during maintenance or  
17 repair, that's on the property owner. It's not Idaho  
18 Power's equipment.

19 VICE CHAIRMAN MOCZYGEMBA: Okay. Thank you.

20 MORGAN LANDERS: And if I could provide a little  
21 bit of clarity to Brenda.

22 One of the other considerations for this  
23 property is that the sidewalks where the transformer  
24 is located are snowmelted. And so I think some of the  
25 additional considerations related to snow removal or

1 freezing were a bit mitigated because of that.

2 And then we had discussed -- I believe the  
3 applicant had offered in the last public meeting that  
4 they would be supportive of some sort of condition of  
5 approval that said, you know, "If any of this stuff  
6 was damaged, it needed to be replaced within a certain  
7 period of time."

8 So if the project does move forward, staff  
9 will work on crafting whatever conditions of approval  
10 the Commission feels are appropriate and then present  
11 you all -- to those -- to you all for further  
12 consideration.

13 VICE CHAIRMAN MOCZYGEMBA: [Unintelligible].

14 Yeah.

15 COMMISSIONER PASSOVOY: I -- I'm following up on  
16 Spencer's question about reducing the size of the  
17 top-floor unit. I realize that it -- that it's in the  
18 developer's interest to maximize the square footage of  
19 that unit, but I -- I am wondering if you would be  
20 willing or -- to reduce it at least on the north side  
21 so there's more set back and that wall is, therefore,  
22 not such a blank wall.

23 I mean, the unit is 3,500 square feet. So  
24 I don't know how much you -- but, you know, it -- I  
25 don't know what's an -- I'm not an architect. I don't



1 know what's an appropriate setback, and I'm reluctant  
2 to do -- what do -- what do they call it? -- designing  
3 from the dais. But it seems, to me, that it's one way  
4 this issue can be addressed.

5 NICOLE RAMEY: Sure. Personally, I -- I do not  
6 feel a setback from the north achieves any of the  
7 goals in terms of reducing bulk or flatness. It would  
8 be a narrow sliver that you would see.

9 And then, also, you know, is that  
10 something that's going to be written in the Code that  
11 the neighbors also set back on the third floor --

12 COMMISSIONER PASSOVOY: Mm-hmm.

13 NICOLE RAMEY: -- when that property's  
14 developed?

15 COMMISSIONER PASSOVOY: I shouldn't say, "Just  
16 the north side." I'm also looking at the west side,  
17 you know, setting back the -- the entire thing, if you  
18 can.

19 NICOLE RAMEY: Sure.

20 COMMISSIONER PASSOVOY: Yeah. I don't know how  
21 much it would reduce the size of the unit, but I -- I  
22 have said before -- I think that the exterior  
23 treatment of the building is quite attractive and a  
24 refreshing change from a lot of things that one sees.  
25 But it -- I just -- it's a question as to whether or

1 not that -- that setback can be done and still achieve  
2 a very valuable unit.

3 MORGAN LANDERS: And -- and if I could just jump  
4 in there because I know Nicole has kind of posed a  
5 question to you all about Code changes and things like  
6 that. I think it would be helpful to give you all  
7 some perspective on just how the design review kind of  
8 criteria works.

9 And so, you know, there was the -- the  
10 design review criteria relating to the facades that  
11 face the street, face the alley, the 5-foot setback.  
12 The other design review criteria that comes -- comes  
13 into play here is just that "building walls shall  
14 provide undulation/relief, thus reducing the  
15 appearance of bulk and flatness."

16 So, you know, that is a pretty specific  
17 design review criteria that -- if the Planning  
18 Commission does feel that there are elements of this  
19 building that don't adequately mitigate the bulk or  
20 flatness of the building, the Planning Commission can  
21 provide that feedback within their bounds.

22 You know, what needs to be kept in mind is  
23 that we do have building-height maximums that are  
24 still being met with the projects. We do allow  
25 42-foot-high buildings, but the purpose of that -- of

1 that design review criteria is that, even allowing  
2 that height, there are architectural elements that can  
3 impact and positively mitigate the bulk and flatness  
4 of a building. So it is a little bit of a balance.

5 And, Susan, I -- I appreciate your comment  
6 and question.

7 So it is kind of up to the Commission on  
8 whether you feel that the current design meets that  
9 criteria or not, and then make some recommendations on  
10 what you'd like to see.

11 CHAIRMAN MORROW: I think -- were there any  
12 changes to the north wall, the color -- the -- the --

13 NICOLE RAMEY: There were, yes.

14 CHAIRMAN MORROW: Can we see a --

15 MORGAN LANDERS: Mm-hmm.

16 NICOLE RAMEY: We did add --

17 CHAIRMAN MORROW: Do you have a --

18 NICOLE RAMEY: -- more brick. So the third  
19 floor is now banded with brick. We did take a look at  
20 kind of a user on Leadville, how they would be  
21 approaching the building. And --

22 CHAIRMAN MORROW: Yeah. That's a -- okay. So  
23 the top is now brick, and so it's not all that beige  
24 all the way up?

25 NICOLE RAMEY: Correct.

1 CHAIRMAN MORROW: Okay.

2 NICOLE RAMEY: So -- and that is -- really, the  
3 most high-profile view is, truly, the top. So that's  
4 why we chose to highlight that area with the nicer  
5 material, with the brick.

6 CHAIRMAN MORROW: Okay. Thank you.

7 Anything else right now before public  
8 comment?

9 I will open the floor to public comment.  
10 If you're in the room, please step to the microphone  
11 and state your name for the record.

12 Do we have anyone online?

13 UNIDENTIFIED SPEAKER: Not at this moment,  
14 Commissioner, but I'll let you know.

15 CHAIRMAN MORROW: Okay. Great.

16 So we'll start in the room.

17 Thank you.

18 COMMISSIONER CORDOVANO: And the people online  
19 can press the raise-your-hand button on the Zoom call  
20 to --

21 CHAIRMAN MORROW: Lovely.

22 COMMISSIONER CORDOVANO: -- alert  
23 [unintelligible].

24 SAM LINNET: Hey, Commissioners. My name's Sam  
25 Linnet with Alturas Law Group. I represent 240 North

1 Leadville, LLC.

2 I believe you've been forwarded a letter  
3 that I submitted regarding this application. I think  
4 the majority of my client's concerns and my concerns  
5 are outlined in there, so I'll -- I'll try to keep  
6 this fairly brief.

7 Primarily -- I'm primarily concerned just  
8 with the process. So this is a procedural issue. The  
9 Council entered into a contract with the applicant  
10 about the develop -- about a development standard that  
11 is subject to design review, which is why we're here  
12 today.

13 The solution here, I guess -- well,  
14 primarily, the problem with that is that the City  
15 Council essentially weighed in on something  
16 that -- and, I believe, is in the Planning and Zoning  
17 Commission's court. And by doing so, I think it's  
18 taken away some of your ability -- your objectivity or  
19 ability to act -- act independently.

20 The solution is to have the City simply  
21 void this agreement and have the Planning and Zoning  
22 Commission evaluate the Far Exceedance Agreement  
23 standard in accordance with the design review.

24 I think doing it opposite, having the City  
25 Council say, "Yep. This project" -- "after looking at

1 plans and applications, this project meets this  
2 development standard, and we" -- "we think we should  
3 approve a FAR Exceedance Agreement for this." I'm  
4 certain -- I think that's putting the cart before the  
5 horse.

6 If the current agreement stands, I think  
7 whatever decision the Commission comes to could  
8 potentially be influenced by this clear directive from  
9 the City Council.

10 And if the Commission has the power, as  
11 Mr. Johnson said, to, you know -- that this agreement  
12 is conditionally approved, subject to design review,  
13 but if the Commission has the power -- if you all have  
14 the power to look at this FAR Exceedance Agreement,  
15 change it, modify it, not approve it at all, then I  
16 think that begs the question of, "Well, why would the  
17 City Council enter into that agreement at all if it  
18 ultimately is a decision that's up to the Planning and  
19 Zoning Commission?"

20 I don't think, from a policy perspective  
21 and from a government perspective, that the City  
22 Council should be making promises to  
23 applicants -- even if they're conditional  
24 promises -- about what might be allowed for their  
25 project. The Planning and Zoning Commission is vested

1 with power to make planning and zoning decisions and  
2 determinations.

3 This development standard -- or the FAR  
4 Exceedance Agreement is in Title 17. It's in our  
5 Planning and -- the City of Ketchum's Planning and  
6 Zoning Code. So I think it would be best for the  
7 Commission to consider continuing this matter, to talk  
8 with staff, to terminate the FAR Exceedance Agreement,  
9 and then come back with a clean slate and consider  
10 whether a FAR Exceedance Agreement is warranted for  
11 this application at the same time that you do design  
12 review.

13 Thank you very much.

14 CHAIRMAN MORROW: Thank you.

15 SAM LINNET: We have -- our client wants to make  
16 a couple comments as well.

17 DAVE HUTCHINSON: Thanks, Sam. I'm Dave  
18 Hutchinson. I'm the tenant and the property owner  
19 next door.

20 And whether the City Attorney is correct  
21 or my attorney is correct, there's no question. It  
22 was out of order. It was done backward. It makes no  
23 sense for the City Council -- without a public  
24 hearing, without notice, without plans -- to grant a  
25 conditional Exceedance Agreement without me being

1 there. I was actually amazed when I got here last  
2 week and staff said that the City Council had approved  
3 an Exceedance Agreement.

4           Whether or not the City deems it  
5 appropriate to notice such a thing, let's talk about  
6 it. They agreed, which they say is conditional -- but  
7 if you approved this plan, it wouldn't be conditional.  
8 It would have been finite. They agreed to exceed the  
9 FAR by 100 percent, 5,500 square feet. The FAR in the  
10 downtown is a 1.0, which -- by the way, the Code is  
11 clear as to what the FAR is here.

12           So with no notice, the Council, in my  
13 pigeon -- opinion, prejudiced the hearing last week.  
14 I was in it. Look at the tape. You were confused. I  
15 was confused. I -- I think I kind of know what's  
16 going on around here, and I was like, "You've got to  
17 be kidding. I can't believe they did that." So  
18 whether it's legal or not, I don't care. I think you  
19 should do it right just so that it doesn't create  
20 issues down the road.

21           We're such huge supporters of housing. We  
22 don't want to see the in-lieu opportunity thrown out  
23 because they didn't do it right. So whoever's right,  
24 we'll figure that out.

25           When it comes to design, what we really



1 have here is -- we've got too big a building in the  
2 location. That's the fundamental disconnect.

3 As far as the applicant's corrections to  
4 the first level and listening to the feedback, I think  
5 they've done kind of a nice job. If you could throw  
6 this in the washer and then put it in the drier and  
7 shrink it, it's -- it's probably pretty -- a pretty  
8 nice design. I think Nicole has done a nice job.

9 I do agree with staff that, on the north  
10 wall, it still pertains to undulation. And I could  
11 probably get my camera out and drive around and come  
12 up with an equal number of pictures that have setbacks  
13 and undulation on the -- on the property-boundary  
14 lines.

15 And I don't think -- maybe one of those  
16 pictures was 35 feet. They -- none of them were  
17 42 feet tall. So on a 55-foot-wide lot, on a narrow  
18 street, with a 42-foot-tall facade, you do not get  
19 undulation unless you change the setback.

20 You know, the third level -- now, I -- I  
21 happen to also be in this business. If you could set  
22 it back and put some windows up there, those views are  
23 very valuable. And if the applicant or the designers  
24 want to talk to me about some sort of agreement -- not  
25 to butt up against them with a 42-foot-tall wall some

1 time in the future, I'm wide, open to that  
2 conversation.

3 I don't think having, on a single lot, a  
4 42-foot-tall, flat facade -- all it does is force  
5 everybody down the road to match it and move along.  
6 So it really sets the tone.

7 The most important thing, to me -- and  
8 hopefully you guys have read my -- you know, a lot of  
9 verbiage. The first letter I brought to the last  
10 one -- I didn't send them both to you at the same  
11 time, so apologies for all of that.

12 But, really, what we have here  
13 is -- is -- the -- the -- the City Code provides for  
14 scale. It provides for neighborhood compatibility. I  
15 sat in your chairs and did this for many years; right?  
16 I know what it is.

17 And it's meant to be a -- an exception to  
18 grant an FAR Exceedance, and it should be based upon  
19 the ability of the Commission to find that it meets  
20 the design review criteria without pressure from  
21 another body. It makes -- that makes no sense to me.  
22 You're the finder of fact on whether this meets the  
23 design review criteria.

24 In my opinion, at the size, it just  
25 doesn't. I'm not going to specifically address the

1 architecture. I think that's getting super close. I  
2 actually believe that if we all work together, this  
3 will be a really great building.

4 I'm -- I'm -- we're not -- certainly not  
5 expecting nothing to be there. But at a bonus FAR and  
6 a 42-foot height, as well as -- I think there's a  
7 10-foot protrusion through the center for an  
8 elevator -- this will be -- not just the biggest  
9 building on this side of town. It'll be absolutely  
10 huge for the neighborhood; right? So the  
11 compatibility and the -- and the comparability just  
12 doesn't exist.

13 The purpose of the chapter -- of design  
14 review, the main purpose -- it says, "The purpose of  
15 this chapter is to maintain and enhance appearance,  
16 character, beauty and function of the City, to ensure  
17 that new development is complementary to the design of  
18 existing City neighborhoods and to protect and enhance  
19 the economic base of the City in Ketchum" -- "City of  
20 Ketchum."

21 The keywords in that, in my opinion, are  
22 "character" -- it's being "complementary" -- and the  
23 "existing city neighborhood."

24 Where this is being located is pretty much  
25 a done deal. At some point my little building will be

1 redeveloped. The Kneadery probably won't change. A  
2 lot of the buildings around there aren't going to  
3 change. There are historic structures within a  
4 stone's throw. The streets are narrow. It's not a  
5 90-foot-wide corridor.

6 There are other locations where an in-lieu  
7 agreement for housing contribution would make sense  
8 to -- to get a bigger building. It's where other  
9 buildings are bigger, where streets are wider, and  
10 where it fits into the neighborhood, where there's  
11 topography. This is less than a block from -- from  
12 the center of town, Sun Valley and Main Street.

13 So once again, I -- I think the building  
14 will be a great building when we're done. But if we  
15 get impatient and just say, "Hey" -- you know, you  
16 write a check, you get a big building, I think that's  
17 a bad precedent.

18 Thank you.

19 CHAIRMAN MORROW: Thank you, Dave.

20 Other public comment in the room?

21 Good. We've got plenty -- you guys, we've  
22 got plenty of time. Everyone will get to go.

23 COMMISSIONER CORDOVANO: I enjoy staying here  
24 late into the night, so [unintelligible].

25 DUFFY WITMER: My name's Duffy Witmer, and I was

1 a neighbor 55 feet away from the proposed project. I  
2 agree exactly with Dave. The architecture's quite  
3 attractive, I think. And it's a -- it's a fitting  
4 spot for this building. I just think it's oversized.

5 And it is a -- having been in business at  
6 The Kneadery for 18 years -- a tremendous amount of  
7 traffic on Leadville, on the corner there. And I  
8 think a building this size is -- can be a really great  
9 asset to the town and the neighborhood. It's just, in  
10 my opinion, oversized.

11 CHAIRMAN MORROW: Thank you.

12 JOHN MALIN: Hi there. I'm John Malin  
13 [phonetic]. I own the Elephant's Perch, which is the  
14 next block over. I don't -- I -- I agree with  
15 everything Dave said and with what Duffy said. It is  
16 a nice-looking building. You guys did a nice job, but  
17 it's just the wrong size, and the north wall is a  
18 problem.

19 The north wall goes 40 feet high. You can  
20 see a wall similar when you go over here to the  
21 building Dave Wilson built, where Maude's is. That  
22 building is probably 28 feet high. Think about that  
23 being 12 feet higher and poor, little Carol there in  
24 Consign Design being at the bottom of that. That's  
25 Dave's situation.

1 I think it sets a terrible precedent for  
2 everything in the Commercial Core to have these walls  
3 that are blank walls, especially one that's  
4 40-foot-plus feet high.

5 I think the City -- the  
6 Council -- the -- I know who sits upstairs, and I know  
7 that I don't agree with what goes on up there. I  
8 think they sell those in-lieu fees to somebody who  
9 wants to come and overbuild a site, and I think it's  
10 a -- a bad thing for our city. I think it sets a  
11 terrible precedent. You know, there's a vacant lot.

12 That's my wife. Sorry.

13 I think it sets a terrible precedent for  
14 the neighborhood. Right across the street is another  
15 site. That site, if built like this, is going to have  
16 another 40-foot wall right next to McCann Daech  
17 Fenton. That's a disaster.

18 Over on my block -- while we have a wider  
19 street over there on East Avenue, where the Perch  
20 is -- when they come along and want to redevelop the  
21 UPS building and I've got a 40-foot wall there, that's  
22 going to take all the sun away from that side of  
23 the -- from the morning part of the day, and it's  
24 going to be just a nightmare to be looking at. We  
25 have a historic building, so we will always be low

1 rise.

2 Dave's building's got a -- you know,  
3 he -- I -- I'm not sure what happens with him, but  
4 Duffy will never change the -- and Dillon will never  
5 change the -- The Kneadery. So I feel like the  
6 precedent is really an issue.

7 And -- and what complicates it a little  
8 bit more is the parking issue that happens. And so  
9 The Kneadery, as all of you know, already has a  
10 parking issue many days in the morning. Downtown has  
11 a parking issue. Just drive around now.

12 Of course, this is the week. If there  
13 ever is a week, you know, it's now. But the parking  
14 is going to be more and more impacted by these  
15 precedents that allow buildings to be slightly  
16 overbuilt and have too much stuff and it be slightly  
17 under-parked. And, you know, it's just going to make  
18 it worse and worse downtown.

19 And I've made myself really clear  
20 about -- with the Bluebird. Our competitors are not a  
21 handful of people around town. Our competitors in the  
22 retail business are Amazon, and that's a problem. And  
23 so when parking gets tough, people buy from Amazon,  
24 and that's what leads to deterioration in downtown  
25 retail because you can't pay your rent. You can't pay

1 your bills. You can't pay your people, and so that's  
2 just the -- that's what happens.

3 So my concern really is the precedent  
4 and -- and what happens if we get a bunch of these  
5 buildings 40 feet high with these blank walls? Just  
6 imagine what it looks -- in our charming, little town.

7 So that's all I have to say.

8 Thank you.

9 CHAIRMAN MORROW: Thank you.

10 DILLON WITMER: Good afternoon, Commissioners.  
11 My name's Dillon Witmer. I am the actual, current  
12 owner of The Kneadery.

13 Thanks for my dad [unintelligible].

14 When I first purchased The Kneadery from  
15 Duffy, the banks said, "Well, we think you should just  
16 tear this down and do a three-story  
17 multi-development," something like this rendition.  
18 Who here wants to see me tear down The Kneadery? I  
19 don't think anybody in a community like this would,  
20 you know, appreciate that.

21 And I guess my point is -- is that, unlike  
22 Mr. Hutchinson and -- and John, I'm at the beginning  
23 of my career, and I want to see this community develop  
24 and grow into something that I'm proud to leave for my  
25 kids and the next generation.



1                   And I agree with them. I think the  
2 building's beautiful. I know that, at some point,  
3 something will be there, just as long as we keep in  
4 mind kind of the history behind us and where we came,  
5 how we all got to this point, and how to kind of  
6 steward the next generation of what's built in  
7 town -- makes sense with what's in town. I think the  
8 size and the scope for something in this  
9 neighborhood -- if you look around, you know, right  
10 across the street, we're all kind of low-rise  
11 buildings.

12                   And something like this will cast a shadow  
13 over all of us -- not to mention -- you know, like  
14 they said, my parking will be inhibited. Think about  
15 the Sysco trucks, Nikola [phonetic] trucks, garbage  
16 trucks. You know, you've got Wiseguy. You've got  
17 KBs. That alley is a thoroughfare, and they're going  
18 to add these parking spaces, these garages, and stuff  
19 like that.

20                   Don't get me wrong. I want to see  
21 something with the right design come into this -- this  
22 sector in town. I think that having vacant lots -- I  
23 mean, when -- where Warfield is now, that sat -- sat  
24 vacant for years. I felt like that was a bad look for  
25 our town, same thing where The Pod is now. I'd like

1 to see more things come into town that we can be proud  
2 of.

3 And I recognize -- it seems like they've  
4 added a lot more retail space, and that's what I'd  
5 like to see. I want to see people walking past my  
6 restaurant find something while they're waiting to sit  
7 in my restaurant. You know, we've got a lot of great  
8 shops in the area.

9 And I think that that should be -- not  
10 that -- we want to introduce more retail in the  
11 downtown core. And the more residential you get, when  
12 you add it to the downtown core -- hurts.

13 I mean, I remember I was selling salsa at  
14 the farmer's market years ago, and we couldn't have  
15 live music anymore because somebody bought a penthouse  
16 up above, and they didn't want to listen to  
17 that -- some guy playing guitar, you know, making  
18 dollar bills at a -- you know, that's part of this  
19 small town.

20 You know, that's why we all gravitate to  
21 this small town because you know each other. You see  
22 each other at the post office and at Atkinsons', and  
23 we all, you know, high-five or we give each other  
24 knuckles because of what we were fortunate enough to  
25 grow up with.

1           And I -- I just want to see the next 40 to  
2           50 years while I do business the same -- not  
3           over-building too quickly, you know, preserving  
4           the -- the downtown core that we have, the reason  
5           people come to Ketchum.

6           You know, when somebody's sitting on my  
7           patio, I can serve them a great breakfast, but I can't  
8           change the amazing view that they have right now. You  
9           know, all I can do is try to enhance their experience  
10          that they're already having.

11          And I agree. It's a little bit weird to  
12          have just this -- you know, on a side street like  
13          that, just this -- you know, no-windows, very-cold  
14          part of the downtown core of Ketchum. You -- yeah, I  
15          see it in some of these areas. And the height, to me,  
16          is, you know, okay.

17          So the story poles. You go up there. I  
18          was sitting in Hutchinson's office the other day, and  
19          I couldn't even -- from his windows, I couldn't even  
20          see that -- where the building, you know, started and  
21          stopped, just from sitting there at ground level.

22          So I'm all for having something new in  
23          this area. I think, if -- like Hutchinson says, it's  
24          a beautiful design. If we could just shrink it down a  
25          little bit, be cognizant of the businesses that have

1 been operating there for -- I mean, like we're in our  
2 47th year at The Kneadery, you know.

3 And like I said, remember, you know,  
4 we -- we need parking. We need guys to be coming  
5 through that alley. I mean, if you go there, wait  
6 until it snows 18 inches and come look at that back  
7 alley and tell me what it looks like. It is -- it's a  
8 mess already, and that's not -- you know, telling some  
9 guy from San Francisco or New York or Florida or  
10 whoever moves in there, "This is what you're going to  
11 deal with."

12 Wait until you have a winter. Wait until  
13 you see what our snow removal's like. Wait until you  
14 see what the parking's like. Where are you going to  
15 park your car overnight, you know? Well, what happens  
16 if it snows 2 inches? Well, you can go pay the  
17 impound lot to go pick up your car. More tax dollars  
18 for the City.

19 But overall, I don't -- I don't remember  
20 being noticed of this happening, and I didn't know  
21 about it until Hutch [phonetic] let me know. And like  
22 I said, I'm all for the future of Ketchum, new  
23 buildings, just built in the right way.

24 So thanks for your time.

25 CHAIRMAN MORROW: Thank you.

1 COMMISSIONER CORDOVANO: We'll be waiting for  
2 that 18 inches of snowstorm.

3 CHAIRMAN MORROW: Next week, I hope.

4 PAM COLESWORTHY: Pam Colesworthy, for the  
5 record.

6 And in our office meeting -- I'm with  
7 Berkshire Hathaway HomeServices Sun Valley Properties.  
8 We discussed this particular project and the height  
9 and that there was neighboring objection to the  
10 height. And yet, from our perspective -- and I'm  
11 learning now -- there's more to this than meets the  
12 eye, but from our perspective, it was that -- the  
13 understanding of the applicant had put forth a project  
14 that met all the requirements.

15 So the office said, "Well, then, let's  
16 write a letter," and the letter was written and it was  
17 sent in late this afternoon, and I don't think you've  
18 all had a chance to see it, so I'm just simply going  
19 to read the letter if that's all right.

20 To the Planning staff and Commission,  
21 "Having followed the approval process for a number of  
22 projects in the Ketchum Commercial Core, we are  
23 concerned that the project located at 200 North  
24 Leadville may be at risk of not being approved,  
25 despite being in compliance with all current zoning

1 requirements.

2 "The main concern appears to be the height  
3 of the building, which is within the current zoning  
4 regulations. And to deny this project over its height  
5 while within codified zoning parameters would be a  
6 perfect example of spot zoning and set a new  
7 precedent, one that potentially could lead to  
8 litigation.

9 "While we're all concerned about Ketchum  
10 losing its small-town charm, zoning ordinances exist  
11 for a reason. To deny the developer the right to  
12 build while in compliance with the Zoning Ordinance is  
13 both unfair to the developer and risky to the city.

14 "Lastly, we find the exterior design of  
15 the building to be attractive and in keeping with the  
16 character of our town and somewhat timeless in the use  
17 of materials and colors. It will be a welcome  
18 addition to the town, with additional residences,  
19 including a workforce-housing unit that we hope will  
20 contribute more vibrancy to Ketchum. And we urge you  
21 to approve the project as submitted."

22 And there are eight signatures here from  
23 the broker and very -- partners and various agents."

24 So do I -- do I give this to you?

25 CHAIRMAN MORROW: Yeah.

1 PAM COLESWORTHY: Oh, you take it. Sorry.

2 And so there may be procedural things.  
3 There may be other things that you all are considering  
4 that we did not have knowledge of. But in general, I  
5 think the attitude of the office is -- if you don't  
6 like the size and the bulk, then you need to change  
7 the Code. I think that's where we come down.

8 Thank you.

9 CHAIRMAN MORROW: Thank you.

10 Other -- other public comment?

11 Dave, if you already spoke, do you  
12 have -- if it's -- if it's super -- give one point  
13 or -- you want to make it super quick. Let's -- so we  
14 have one meeting here --

15 COMMISSIONER CORDOVANO: You've -- you've  
16 exceeded your three minutes. Somebody else  
17 [unintelligible] --

18 DAVE HUTCHINSON: Oh, I -- did I pass  
19 my -- I'll -- I'll -- I'll defer -- I'll defer it to  
20 you guys, my next three.

21 I -- I just wanted to address the -- the  
22 previous comment. The -- the rules and regulations  
23 allow you to deny it for the bulk and -- and size.  
24 That's -- that's the whole point of design review.

25 The last thing I'd want to say is -- is

1 if -- if it was as simple as zoning, you'd stick the  
2 application in one side of the computer, and it would  
3 pop out, "Yes," or, "No." And you guys get to decide  
4 what makes sense for this town because you're going to  
5 see it for 100 years.

6 Thank you.

7 CHAIRMAN MORROW: Okay.

8 Other -- no?

9 COMMISSIONER CORDOVANO: Anybody online?

10 CHAIRMAN MORROW: Anybody online?

11 UNIDENTIFIED SPEAKER: There is no public  
12 comment online.

13 CHAIRMAN MORROW: Okay. Seeing none in the room  
14 and having none online, I will close the public  
15 comment. And we can move to --

16 MORGAN LANDERS: So at this point in time, I  
17 think staff -- I've got a couple of just follow-ups,  
18 and then we do need to provide opportunity for the  
19 applicant to address any public comments as well.

20 CHAIRMAN MORROW: Lovely.

21 MORGAN LANDERS: So I think I heard a couple of  
22 things and just want to clarify -- and -- and maybe  
23 Matt can jump in as well.

24 But when the FAR Exceedance Agreement went  
25 to City Council, that did not accompany all of the



1 plans and applications and things like that. So it is  
2 not in view of the design review criteria or an  
3 evaluation of the project. It's merely the agreement  
4 of how the in-lieu housing gets mitigated, whether  
5 it's an in-lieu, on-site, things like that.

6 So I just wanted to provide that clarity  
7 to you all as well. I think we've hopefully clarified  
8 some of the questions around that, but wanted to make  
9 sure that you all are aware -- that agreement really  
10 is just the mechanism by which they address their  
11 community housing, not necessarily how much and -- and  
12 things like that. So that's just an update on that.

13 And then, with that, I'll turn it over to  
14 Matt to see if he has any additional comments, and  
15 then we can have an opportunity for the applicant.

16 MATT JOHNSON: Okay. Chair and Commissioners,  
17 Matt Johnson, City Attorney.

18 I -- I think Morgan put it well in the  
19 context for the FAR Exceedance Agreement, and I think  
20 all I'd really add to that is to emphasize -- if it  
21 hasn't been made clear already, the concern being  
22 raised is about the idea that somehow the Council's  
23 action on the FAR Exceedance Agreement constrains  
24 you or -- or -- or predisposes your decision, as a  
25 Commission, on design review.

1           And -- just affirming that is not the  
2 case. You understand that. That FAR Exceedance  
3 Agreement is an outside process, and you have full  
4 ability to review this under the design  
5 curtain -- review criteria and -- and evaluate it  
6 under the -- the standards, as you understand to be  
7 appropriately applicable. That FAR Exceedance  
8 Agreement doesn't pre-commit you to anything.

9           CHAIRMAN MORROW: Thank you.

10           COMMISSIONER PASSOVOY: But, Matt, one follow-up  
11 question is -- is -- I have not, unfortunately, read  
12 the FAR Exceedance Agreement, but I plan to do that.

13                   Does it -- is it worded such that, if we  
14 approve the agreement -- I mean, if we approve the  
15 project -- let's just say, "Tonight" -- as is,  
16 does -- does the FAR Exceedance Agreement  
17 automatically come into effect?

18           MATT JOHNSON: So the FAR -- and -- and -- and  
19 probably where each of you should start, if -- if  
20 you're reviewing this is -- is -- Ketchum's City Code  
21 17.124.040, which covers floor area ratio.

22                   And if you look at that, as Morgan was saying,  
23 really, the -- the FAR is all about, "Here's the  
24 maximum FAR allowed in this zone, and here are things  
25 you can do that allow you to exceed that up to a

1 certain amount further, based upon certain  
2 conditions." None of those are design-review items.  
3 Those are separate development standards.

4 And then, throughout that particularly -- in B  
5 of that section of Code, it says specifically  
6 everything is conditioned upon the -- the "increased  
7 FAR may be permitted subject to design review  
8 approval," conditioned on design-review approval.

9 And when you look at the FAR Exceedance  
10 Agreement, all that document does is document the  
11 application of this section of Code, and it says  
12 specifically in it that that is conditioned upon  
13 design review approval. So it comes to you, as a  
14 Commission, for the design-review determination. That  
15 agreement is in effect, conditioned upon your  
16 approval.

17 If you approve, then the FAR Exceedance  
18 Agreement is approved and valid. If you chose not to  
19 approve the design review for some reason, then the  
20 conditions fail, and the FAR Exceedance Agreement goes  
21 back to the drawing board until a new application --  
22 does that answer your question?

23 I probably more than answered your  
24 question.

25 COMMISSIONER PASSOVOY: No. I -- I -- as I

1 understand it, it -- basically, it's an up-or-down  
2 with respect to the FAR Agreement?

3 MORGAN LANDERS: I think I can clarify.

4 So, Susan, the FAR Exceedance Agreement  
5 would go into effect if you -- if you all approved the  
6 project in front of you, upon your adoption of the  
7 findings of fact. So the adoption of findings of fact  
8 is your kind of final action on the design review, so  
9 that would be the point in time when the FAR  
10 Exceedance Agreement goes into effect.

11 That FAR Exceedance Agreement does have  
12 provisions for amendments to it as well because staff  
13 always wants to provide the most amount of flexibility  
14 for the Planning Commission and -- understanding how  
15 the process kind of unfolds.

16 And so I think the biggest thing that's in  
17 front of you today is, "Do you think that the project,  
18 as it sits today, meets the design review criteria,  
19 specifically the one related to undulation and relief,  
20 bulk/flatness?" And if not, what direction do you  
21 have to the applicant to provide some of  
22 that -- to -- to greater meet that criteria  
23 or -- however you would -- would like to move down  
24 that path.

25 So we always want to make sure that, any

1 time the Commission makes an action, it's grounded in  
2 one of the standards of criteria. And this one is one  
3 that applies that you can provide some feedback on.  
4 So hopefully that provides clarity to you.

5 COMMISSIONER PASSOVOY: Thank you, Morgan.

6 We are very nicely reigned in.

7 MORGAN LANDERS: Hopefully not too much. You  
8 all have a good amount of flexibility here.

9 COMMISSIONER CORDOVANO: Not too much at all.

10 CHAIRMAN MORROW: Spencer or Brenda?

11 VICE CHAIRMAN MOCZYGEMBA: Yeah. No questions.

12 CHAIRMAN MORROW: Do you have...

13 COMMISSIONER CORDOVANO: Hundreds of speeches?

14 Yeah.

15 CHAIRMAN MORROW: Yeah. Okay.

16 Unless you want to hear --

17 MORGAN LANDERS: Well, and -- and before we --

18 CHAIRMAN MORROW: -- [unintelligible] --

19 COMMISSIONER CORDOVANO: Well -- well -- well,

20 let's --

21 CHAIRMAN MORROW: Hear from the applicant.

22 COMMISSIONER CORDOVANO: Mike, go.

23 CHAIRMAN MORROW: Rebuttal first. That makes  
24 sense.

25 MORGAN LANDERS: And then we can enter into

1 deliberations, [unintelligible] --

2 CHAIRMAN MORROW: Right. Okay.

3 MORGAN LANDERS: -- things like that.

4 CHAIRMAN MORROW: No more questions.

5 We'll hear from Mike.

6 MIKE CARR: Hello. I'm Mike Carr, and I -- we  
7 are the applicant. And I think that I'd like to go  
8 through the back -- not the side of the building; the  
9 back of the building -- and start to meet some of the  
10 objections of some of the --

11 COMMISSIONER CORDOVANO: Alley.

12 MIKE CARR: Oh, the alley.

13 So one of the comments was, "Oh, man.  
14 There's too much traffic going up and down that  
15 alley." So it's Wiseguy Pizza. It's Sysco. It's all  
16 these people. Well, we're building this unit, and one  
17 of the objections is, "It's not got enough people in  
18 it." So these four cars that are going to park in  
19 this back alley, that double-car garage, or the  
20 other-car garage to the right -- is going to somehow  
21 adversely affect the alley.

22 And by the way, our garbage, because we're  
23 following the new rules, has to be in the bin to the  
24 far left with an automatic-door opener. Currently,  
25 that alley, if you drive through it, has got dumpsters

1 all over it, cars going down it. So I kind of think  
2 traffic for the back of the alley and a building  
3 that -- one of the objections we get is that -- "It's  
4 too big, and there's no people in it," is a pretty  
5 moot sense -- point.

6           Conversely, it's heated, so it's got  
7 snowmelt. So to address the snow-removal issue, it  
8 wouldn't be our -- our problem. It would be our  
9 neighbors'.

10           And if you could show the 2nd Street side,  
11 please.

12           So on 2nd Street, we addressed the  
13 Commission's issue -- or I should say, "the City's  
14 issue," not, "the Commission's issue" -- about the  
15 retail being brought by the below-grade unit.

16           And so if you have the floor plan, now you  
17 enter into the building in the same corridor, you go  
18 downstairs, and it's -- it's, really, quite nice. We  
19 addressed all your concerns. I think we, in fact,  
20 improved on it, and we really -- I think we learned  
21 something from that. It was good.

22           Then, if we go to the front -- the floor  
23 plan of the retail -- so one of your -- I think,  
24 Brenda, one of your big deals was, "Hey. You know,  
25 we've got to reconsider our requirement on

1 5,400-square-foot lots about how much space we can  
2 provide."

3 So this is the first floor. So there's  
4 still three units. So there's the -- there's the unit  
5 that -- that you approach on -- on 2nd, and then  
6 there's two that approach on Leadville.

7 Now one of the arguments here is, "Oh, The  
8 Kneadery's parking is going to be destroyed." Well,  
9 if you get more retail, you're going to have more  
10 pressure on parking. So I'm not sure the public  
11 parking that's there is specified for one business,  
12 but this is -- this will bring more parking; okay?  
13 Guaranteed. You guys want people? We want people.  
14 You want retail? You want more retail? People drive  
15 cars.

16 So if you can show the basement now,  
17 please.

18 And if you see on the -- I'm sorry. One  
19 second.

20 On the unit to the north, it has an  
21 open-air access to the basement. So there's still  
22 three retail units, but the one retail unit to the  
23 north probably will be designated just to one tenant  
24 because the -- it's an upstairs/downstairs.

25 So if you'd show the downstairs, please,



1 now.

2 So the downstairs now incorporates -- all  
3 that space to the north is now a retail unit. So if  
4 you picture it, you go in, it's retail, and you can  
5 continue and go downstairs, and there's more retail.

6 We totally reduced the storage for all the  
7 units. We added the below-grade unit that has light  
8 wells. So just for the facts, there was -- there was  
9 no one living on this street, in this spot, before we  
10 bought it. And with this, you have at least four  
11 units; okay?

12 So if you'd go to the north wall, please,  
13 and the colored picture.

14 So the reason the wall has to be solid is  
15 because it's a firewall; okay? That's the Code for a  
16 zero-lot-line. Now, our neighbor, who was on Planning  
17 and Zoning, was the Mayor, and was also a City Council  
18 person -- somewhere in their career, they had the  
19 ability to understand that this was the -- the height  
20 restriction in the Code of the City of Ketchum.

21 We only went by the rules. So we offered  
22 to relandscape that wall, and we were rejected. I  
23 still would propose that we could put trees there,  
24 pines there, and we could make it look a lot greener.

25 Conversely, we could put windows

1 there -- and he said this -- if he would agree to a  
2 lot line -- to come off his lot line -- so that we  
3 don't need the firewall.

4 But I think the firewall's at least 5  
5 feet, Morgan.

6 MORGAN LANDERS: I believe it's 5 feet, yes.

7 MIKE CARR: So if he wanted to encumber his  
8 property with a deed of trust -- which is what he said  
9 today -- is that he would do that -- we could put  
10 windows on that wall, or we could make it look  
11 different.

12 So if this whole project comes to -- we're  
13 at Code, we're at the right height that -- allowed by  
14 the Code of the City of Ketchum, and the question is  
15 this north wall, let's figure a way to make this north  
16 wall look better.

17 Now, your comments are, "Make it smaller."  
18 Well, you guys, it's expensive to build. The stuff  
19 gets sold by the square foot. Dave's a developer. He  
20 understands that. And so we'll -- we're happy to work  
21 with you.

22 But I think this is a pretty nice  
23 building, and we have spent a tremendous amount of  
24 money on this, and we have spent a tremendous amount  
25 of time working with the City to meet things that

1 weren't even Code. And -- and when -- I know people  
2 go, "Oh, if it's not in the Code" -- well, the Code is  
3 kind of what developers should follow.

4 And so -- anyhow. I think I address -- we  
5 added retail, we -- we fixed the entrance, the  
6 transformer -- I did not talk about -- but we did fix  
7 the transformer as well. The back alley, I think, is  
8 a nonissue with traffic. We have four cars  
9 that -- supposedly no one's going to live in the place  
10 anyhow.

11 And then this north wall -- give me a  
12 solution. I can give you one. Take the setback,  
13 deed-of-trust it, and we can put windows on it. We  
14 can put landscaping. We could put vines. We could  
15 paint windows; okay? We could make that look like  
16 there's windows. We can make that work, but we don't  
17 need to take it away from the Code. That's my two  
18 cents.

19 Thank you.

20 COMMISSIONER CORDOVANO: Thanks, Mike.

21 MIKE CARR: Do you have any questions?

22 CHAIRMAN MORROW: Thank you.

23 VICE CHAIRMAN MOCZYGEMBA: Yes, Mike. While  
24 you're up there, could you explain -- you had made a  
25 comment about the alley being snowmelted. Is that

1 something that you're proposing to do?

2 MIKE CARR: Not the alley, but the apron --

3 VICE CHAIRMAN MOCZYGEMBA: The apron. Okay.

4 Great.

5 MIKE CARR: -- into -- the apron into the  
6 garages.

7 VICE CHAIRMAN MOCZYGEMBA: Great. Okay.

8 Thank you.

9 MIKE CARR: So when he said, "The person from  
10 San Francisco" or wherever -- some person who,  
11 supposedly, is buying this, which -- it might be me,  
12 so -- you know, that they understand what the snow is  
13 like.

14 VICE CHAIRMAN MOCZYGEMBA: Great. Okay.

15 Thank you.

16 COMMISSIONER CORDOVANO: When Pam mentioned it  
17 was a workforce-housing unit -- just to clarify --  
18 that's based on the size --

19 MIKE CARR: [Unintelligible].

20 COMMISSIONER CORDOVANO: -- and --

21 MIKE CARR: No, in-lieu. We --

22 COMMISSIONER CORDOVANO: Based on your in-lieu  
23 payment? There will be no --

24 MIKE CARR: In-lieu --

25 COMMISSIONER CORDOVANO: -- deed restrictions?

1           MIKE CARR: We're still in the process. You  
2 know, you still can contribute housing, and  
3 that's -- you -- I -- that's another meeting, but you  
4 guys should review what you asked developers to do to  
5 actually contribute housing and try and figure out how  
6 it works, the math. It's pretty complicated.

7           COMMISSIONER CORDOVANO: Just out of kind  
8 of -- of curiosity -- not conditional at all -- you're  
9 more inclined to pay the fee than to give up the  
10 749-square -- unit on the second floor?

11          MIKE CARR: Yeah, because -- yes.

12          COMMISSIONER CORDOVANO: And whatever is fine.  
13 You know, you don't even have to answer this --

14          MIKE CARR: No. No, we are.

15          COMMISSIONER CORDOVANO: -- [unintelligible].

16          MIKE CARR: We did propose the lower unit, and  
17 we were rejected.

18          COMMISSIONER CORDOVANO: Because of our recent  
19 basement ruling?

20          MIKE CARR: Yeah, but that wasn't the ruling  
21 when we first applied, but -- yes.

22                 However, it is -- but, yeah, that -- that  
23 was the reason. And I'm quite sure we can -- I think  
24 we can find someone to buy it or rent it for sure. I  
25 think there's a couple gentleman in here that

1 would -- they told us they'd move in immediately once  
2 it's available, but -- but it's a beautiful building.

3 And, I mean, Morgan and them have done a  
4 ton of work. Nicole has done a massive amount of  
5 work. And, I mean, look at that. That thing -- even  
6 from this wall, it doesn't look that bad. I mean, I  
7 understand Dave's problem with it, but we did the  
8 cornices and that.

9 And the whole point of in-city density is  
10 that, theoretically, the next building goes right to  
11 the firewall. That's why it's a firewall, and you  
12 can't put windows in; okay? Again, if he's willing to  
13 encumber his lot and say, "I'll get a deed  
14 restriction," I'll put windows on that wall.

15 COMMISSIONER CORDOVANO: Could you move -- could  
16 you move --

17 MIKE CARR: So the ball's in his court.

18 COMMISSIONER CORDOVANO: Could you move your  
19 building back an equal amount?

20 MIKE CARR: No. Look it -- it's -- you already  
21 get 5 feet here, 5 feet here, 3 feet here. You  
22 already take 5 -- you already take like 1,400 square  
23 feet of 5,500 square feet in setbacks. I mean, the  
24 setbacks are -- I get it, but my answer is, "I don't  
25 think we" -- "I don't think we need to."

1 I understand these gentlemen's concerns  
2 about the -- hey -- the wall, the setback, but, you  
3 know, Dave's a developer. He knows he could build a  
4 building next to it.

5 I don't understand why, forever -- this  
6 process went on -- that somebody didn't say, "Well, we  
7 should only be able to go up 30 feet there," if that's  
8 what you wanted. But the property would have been  
9 sold for a different price as well.

10 So part of the property going for the  
11 price it went for -- and, by the way, I bought it when  
12 I was riding my bicycle, so, for sure, my neighbors  
13 knew that it was for sale long before I did.

14 So -- okay. They didn't buy it. This  
15 is -- this was the rules. They knew the rule book.  
16 They wrote the rule book, it sounds like. I mean,  
17 they can quote the rules, and now they are pissed off  
18 about the rules.

19 So anyhow. That's where we're at.

20 COMMISSIONER CORDOVANO: I've got to think  
21 that -- you've got a good point on more retail making  
22 it harder on the whole street. That's fine. I'm  
23 super appreciative of the small units that you guys  
24 put into the building and -- hope they stay small.

25 And I think the biggest question is, you

1 know, where the -- the basement unit and the  
2 749-square-foot unit, where that user's going to park.  
3 And --

4 MIKE CARR: Well, we said --

5 COMMISSIONER CORDOVANO: I guess I'm just -- I  
6 think that's where a lot of the parking concern's  
7 coming from, and that's more of a City question,  
8 but --

9 MIKE CARR: So if you go at night, I mean,  
10 Morgan went at night. I mean, if you go at night,  
11 there's so much parking available on the streets  
12 there.

13 COMMISSIONER CORDOVANO: I go at night.

14 MIKE CARR: It's there. You can park anywhere  
15 you want to; right?

16 COMMISSIONER CORDOVANO: I think a street's  
17 destiny is to be parked on.

18 MIKE CARR: What's that?

19 COMMISSIONER CORDOVANO: I think a street's  
20 destiny is to be parked on, but I was just clarifying  
21 that.

22 MIKE CARR: Yeah. And then for the snow-removal  
23 piece, like I told you, the City and the Catch  
24 [phonetic] buildings -- as I understood, it has been  
25 really, pretty successful, that they text all the



1 people with cars in the Catch buildings, and they move  
2 their cars to the lot, and they clear the snow and it  
3 goes. I mean, Jesus, it's 2022.

4 Texting and -- is not that complicated of  
5 a process. I think it's worked quite well for the  
6 city. There's lots of parking. There's not lots of  
7 parking for people who want to work at a store, park  
8 in front of the store, and then ask the customers to  
9 be able to park in front of the store.

10 COMMISSIONER CORDOVANO: Agreed.

11 MORGAN LANDERS: And just to clarify on the  
12 parking requirement. So the requirement  
13 is -- anything less than 750 net square feet is not  
14 required to provide a parking space. So...

15 COMMISSIONER CORDOVANO: Yeah. And  
16 then -- well, I don't have any more questions for the  
17 applicant if anybody does.

18 UNIDENTIFIED SPEAKER: [Unintelligible].

19 CHAIRMAN MORROW: Susan?

20 UNIDENTIFIED SPEAKER: [Unintelligible].

21 CHAIRMAN MORROW: Thank you, guys.

22 Appreciate it.

23 MIKE CARR: Thank you.

24 COMMISSIONER CORDOVANO: Thanks, Mike.

25 CHAIRMAN MORROW: They can -- yeah. And Tim is

1 joining us now.

2 COMMISSIONER CORDOVANO: My question for staff  
3 is, "What is the plan for" -- "is the plan for these  
4 units to be sold to a car-less biker who works in  
5 Ketchum, or is there going to be a -- an ordinance  
6 that comes through, similar to what we see at the  
7 Catch building in these neighborhoods, for the two  
8 units that don't require a parking spot?"

9 MORGAN LANDERS: So for the two units that don't  
10 require parking, it would anticipate that those  
11 vehicles would park on the street and that they would  
12 manage their vehicle parking within the public  
13 right-of-way.

14 When the City adopted the change to the  
15 parking requirements in 2017, that was a bit of the  
16 premise, that -- that we should be using our parking  
17 inventory in a flexed way, where, in the evenings,  
18 when residents are home, they have a place to park on  
19 the street.

20 And then they, arguably, go to their day  
21 job, and then the vendors and -- and patrons of the  
22 businesses, locally, can then use those spaces. So  
23 it's a bit of a shared-parking scenario, and that was  
24 a policy decision that was made in 2017. I think that  
25 discussion continues to happen on whether those

1 parking incentives continue to be in play long term,  
2 as part of our -- our long-haul kind of Code rewrite.

3 But as of -- what is in front of you  
4 today, this application is vested under our current  
5 Code, so we can't require them to provide additional  
6 parking on the site other than what's being provided  
7 in front of you today.

8 COMMISSIONER CORDOVANO: No, but the users will  
9 be able to park on the street overnight and move their  
10 cars to a certain extent?

11 MORGAN LANDERS: It would be the same  
12 parking-management system we have for the rest of  
13 downtown.

14 COMMISSIONER CORDOVANO: Great. Thanks.

15 That was my question.

16 MORGAN LANDERS: Yeah.

17 COMMISSIONER CORDOVANO: Tim, you showed up  
18 right in time for my rant.

19 COMMISSIONER CARTER: That was it?

20 COMMISSIONER CORDOVANO: No.

21 Do I start?

22 Okay.

23 MORGAN LANDERS: And -- and before you start,  
24 Spencer, just to let everyone know, you know, tonight  
25 we're also just asking for feedback and direction to

1 staff and the applicant. So there isn't a specific  
2 motion in front of you, but we would like to provide  
3 additional direction to the applicant so that they can  
4 continue to work through the process.

5 COMMISSIONER CORDOVANO: Thanks.

6 A lot of feelings going around in the  
7 room. I think we could all just take a little step  
8 back and realize that we're all neighbors and that we  
9 all have the same goal here.

10 I think a lot of this comes from the fact  
11 that the Fifth and Main building's FAR exceedance was  
12 approved months and months and months down the road,  
13 and we started looking at when FAR exceedances go to  
14 Council and how long that happens after P&Z. So I  
15 think that's where we're working through the kinks of  
16 how to do this for both sides of the table.

17 I think everybody just needs to play nice  
18 and figure it out. And while it might seem late, I  
19 just think there's tilt -- still time to do it. The  
20 more and more we see buildings come through here and  
21 everybody gets the same process out of us -- that we  
22 come to better conclusions because these buildings are  
23 going to stand for a long time.

24 I'd also like to recognize that the  
25 F -- the floor area ratio, by right, is only 1.0 in

1 the CC-1 and CC-2, and that is super clear in the  
2 Code. While there's been a lot of precedence, you  
3 have to look at what those other buildings provide.

4 And I -- I think we should be chiseling  
5 the codes one at a time as they come. I've been  
6 saying we need to do third-floor setbacks and rewrite  
7 the Code that only pertains to the fourth floor for  
8 months now, I think, since August 19th of this year.

9 And I understand a lot of what I've  
10 learned about rewriting those Codes, but when we do  
11 these dramatic overhauls, it's almost -- the market's  
12 changed. Everything changes. You can't forecast this  
13 stuff. So staying current with the Code -- and quite  
14 frankly, there is a lot of -- in my perspective, there  
15 is a lot of room to be said that we control this, but  
16 we really don't.

17 Staff has to put something in front of us  
18 before we get to vote on it, and staff has been led by  
19 a certain few for too long, in my personal opinion.  
20 So we're all working together, regardless of our  
21 feelings, though.

22 And thanks, Pam, for bringing up the  
23 Berkshire Hathaway support, as I've voted against most  
24 of their buildings and still can remain friendly and  
25 have constructive conversations with them on the

1 street.

2 So if we can just take the feelings back a  
3 little bit and reach a level-headed decision, I think  
4 there's still time for the property owners to talk.  
5 And I don't think it's going to be one way or the  
6 other. You know, it's going to be a mutual decision.

7 But, in general, I think there's a couple  
8 questions that I have for staff and then things that  
9 we need to evaluate. The basement stair seems totally  
10 sweet, and I'm -- the changes -- I'm totally in  
11 support of everything.

12 Transformer -- somebody else can get lost  
13 in the Code on that one.

14 But, you know, in exchange for this FAR  
15 increase, regardless if the Council approves it or  
16 not, has -- because, yes, we -- after the Ordinance 1,  
17 2, 3, 4 was passed without proper deliberation -- as  
18 we felt, needed to go to Council. We need to be more  
19 careful of what we put towards Council  
20 and -- have since talked with staff and requested more  
21 notice before these things go through. I think that  
22 was after this exceedance.

23 But we are -- in exchange for more  
24 density, we are changing -- exchanging \$436,000. So  
25 if the applicant would rather sell a unit than

1 deed-restrict a unit, is that worth 436k if that  
2 unit's worth more than that on the open market? So,  
3 "What are we getting out of this," is the question at  
4 hand.

5 Further, thank you for those pictures of  
6 the other buildings because I was going to ask, and  
7 those did bring out -- there -- there are a lot of  
8 them, and some of them next to Whiskey's were due to a  
9 fire, and the firewall was very important in that  
10 situation. However, none of them were 42 feet tall,  
11 and they all had dramatically more undulation.

12 We're almost getting to the point  
13 of -- when I turn by a building down here on a lot of  
14 these streets -- a lot of these buildings that are  
15 built to the corners -- you can't see around the  
16 corner when you're turning, and then we're just going  
17 to get more stop signs everywhere. And I've been  
18 preaching about how stop signs aren't even sustainable  
19 anymore, and we're violating our own -- idling into  
20 our -- into our -- our -- our -- violating our Idling  
21 Ordinance at the stop light in downtown.

22 The character of the north facade needs  
23 undulation on each corner. I have always been talking  
24 about setting back the third story.

25 And my question for staff is, based on my

1 calculations, the hot-tub canopy on the top is 49 feet  
2 off the front of the building, 47 off the back. And  
3 I'd like clarification on how things get above 42 feet  
4 and why.

5 MORGAN LANDERS: So our Code does have a  
6 provision for unhabitable -- basically roof -- or  
7 pertinences that exceed that 42 feet -- and allows for  
8 those to exceed up to 10 feet above the roof height.  
9 So if a building is maximizing the 42 feet, then they  
10 can have non-habitable additions that are rooftop  
11 fixtures that can go up to the 52 feet, and that's  
12 existing in our Code today.

13 COMMISSIONER CORDOVANO: Please add that to the  
14 list of things I'd like to see changed.

15 I think my feedback for the applicant  
16 is -- once again, I'm not a developer, but there's so  
17 much space wasted on circulation. I'm sure you need  
18 to meet 2018 Building Code for ingress and egress, but  
19 there's so much space wasted on volume and  
20 circulation. This thing could be -- not 12-foot  
21 ceilings everywhere and reduce a lot of mass with some  
22 more undulation, and I would like to see that  
23 explored.

24 I also think that -- you know, I'm not  
25 here to deny this permit tonight, but I'm also not



1 here to approve it, and I think we could make a  
2 continuance with two meetings a year this year  
3 with -- a month -- excuse me -- of two meetings a  
4 month.

5 CHAIRMAN MORROW: Amazing. Oh my god. That  
6 would be awesome.

7 COMMISSIONER CORDOVANO: That'd be no fun.

8 CHAIRMAN MORROW: Yeah.

9 COMMISSIONER CORDOVANO: We have two meetings a  
10 month. And since we've been through this, it will be  
11 less and less time. And, you know, I'm happy to stay  
12 all night. So I wouldn't -- but I also want  
13 to -- don't want to bring it back too quickly and also  
14 don't want to wait too long.

15 I'm not sure if they're planning on  
16 digging in May, and they need a couple months' lead  
17 into that. But with this amount of excavation, I'd  
18 have to think we have a little bit of time to  
19 fine-tune this thing and put some of the feelings and  
20 action to rest prior.

21 So I'd like to hear the Commission's  
22 deliberation on what we think about the undulation on  
23 the north facade, on the corners, and, you know, the  
24 FAR exceedance tradeoff.

25 CHAIRMAN MORROW: Thank you.

1 Brenda.

2 VICE CHAIRMAN MOCZYGEMBA: I only have a couple  
3 of comments. I appreciate the work that the applicant  
4 did so expediently to kind of make -- make the  
5 revisions previously requested.

6 The -- I like the -- the plantings that  
7 are added around the transformer in tandem with the  
8 screening, I think that's -- if Idaho Power's happy  
9 with what's being proposed, then I think that's the  
10 best we can get there to make that thing go away.

11 I had discussed last time -- just about  
12 the amount of stuff that does have to happen in the  
13 alley, as has been discussed in this meeting, and how  
14 much goes on. And I think, you know, seeing this  
15 application on a single lot is representative of that,  
16 of the dumpster glider, the parking. And then when  
17 Idaho Power has a transformer requirement, it just  
18 starts to chew up space.

19 I'm especially appreciative of the  
20 elimination of the stairwell that was previously at  
21 the corner down to the basement unit. I had previous  
22 criticisms of another application that used the glass  
23 block as the window well. I am very curious as to  
24 how -- what -- what the finished product -- and how  
25 much light is brought into that unit.

1 I did go into the website of the cut sheet  
2 that was provided, and it seemed like there were some  
3 really creative uses of the -- of the product. So  
4 hopefully the applicant can continue forward in, I  
5 guess, finding the best way to increase the light that  
6 gets into that window well, but I am appreciative of  
7 its size and not just being minimal, again, to just  
8 meet minimum -- minimum requirements and requests.

9 And then I -- I think my only issue here  
10 that's been voiced throughout the majority of the  
11 meeting is the north-property-line wall, and I think  
12 we get stuck on this for the majority of these infill  
13 applications.

14 In my mind, I've reached a certain level  
15 of comfort with it, given the pace of development, but  
16 we also have to be careful if the pace of development  
17 is stalled. You know, how comfortable are we with  
18 this building kind of sitting here by its lonesome for  
19 what could be the foreseeable future?

20 I think in -- in the imagery that was  
21 provided of some of the property-line walls, what we  
22 saw is a portion of those walls being receded or  
23 stepped back. And, in this application, we are  
24 looking at a 42-foot-tall wall for the -- essentially  
25 the length of that interior property line.

1           But, nonetheless, I think the push that  
2 has been made, you know, whether we've been kind of  
3 skewed again into this safety of, oh, you know,  
4 development's happening, and we're trying to increase  
5 the density and the vibrancy of downtown.

6           Sorry. I kind of lost my train of thought  
7 there.

8           I guess we -- we've been going down this  
9 course, and it -- or down this path, and now the  
10 question is, "Okay. You know, what does happen if  
11 this wall stands here for a long time?"

12           But, nonetheless, I think it would be a  
13 missed opportunity to say, "Oh, well. You know, the  
14 adjacent buildings are single story, so this project  
15 should only be allowed a" -- "a certain density."

16           I think the question, in my mind, is,  
17 "Okay. What is" -- "what is the neighborhood?" You  
18 know, reading back into the purpose of the design  
19 review guidelines, you know, it's fitting with the  
20 scale of the neighborhood. And my -- in my mind, the  
21 question is, "What" -- "What's the neighborhood," and,  
22 "What's the timeline?"

23           I don't -- I certainly don't want to force  
24 the hand of the developer to not use the property to  
25 the highest and best use, and then, in 10 years down

1 the road, this building is one of the smaller  
2 developments. That's not increasing the vitality of  
3 the neighborhood.

4 So in that vein, I think I've come to  
5 terms with the height of the wall. I think we need to  
6 be careful, as we move forward in crafting the Code,  
7 as to how we reduce, I guess, the amount of  
8 questioning we have -- every single  
9 application -- about what to do with these  
10 property-line walls.

11 But I think the applicant has met the  
12 intent of the Code, in my mind, in regards to reducing  
13 bulk and mass. I -- I think I vocalized last time  
14 that I appreciate the use of the materials. I think  
15 other people said in the room that they're timeless,  
16 and I would agree, but it still brings in some of  
17 those more modern elements like the C-Channel fascias  
18 along that corner element.

19 So those are my comments.

20 CHAIRMAN MORROW: Thank you.

21 Susan.

22 COMMISSIONER PASSOVOY: Well, I agree with much  
23 of what Wendy has said.

24 Brenda. I'm sorry, Brenda. It's been a  
25 long day.

1           The -- I -- I see our job here as  
2           balancing a number of very important aspects of -- of  
3           development in the downtown, both in the abstract and  
4           in the specific, in this case.

5           And the developer, having met all the  
6           technical requirements of the Code, still gives us the  
7           opportunity to balance that against the more abstract  
8           elements of how it fits into the neighborhood. And I  
9           think the question of, "What is the neighborhood,"  
10          and, "What is it today," and, "What is it likely to be  
11          in the next 10 or 15 years" -- I'm -- I'm not sure  
12          about 100 years, but I think we -- we definitely need  
13          to be looking to the timeline that -- that is  
14          effective.

15          I -- about the north wall, I am completely  
16          appreciative of having to -- you put the property to  
17          its highest and best use, both economically and  
18          functionally. And it's not our intent to take  
19          anything away from the developer in that sense.

20          On the other hand, it just is troublesome  
21          to me that it is this wall along this property line,  
22          and I really am wondering whether -- whether -- and to  
23          what extent there can be some effort to pull -- even  
24          though it's allowed by the Code, to be mindful of the  
25          mass-size-bulk-et-cetera perspective.

1           We spent a lot of our last meeting talking  
2 about those very same elements, with respect to  
3 another project. And it's clearly in the interest of  
4 our fellow residents that we -- we do the best we can  
5 to -- to provide -- to meet this balance however we  
6 define it between the developability of property and  
7 the aesthetic of the property.

8           So I am -- I -- I would really like to see  
9 some attempt, even on a -- even if it's at a sketch  
10 level -- I'm not looking for detailed plans -- of  
11 pulling the top floor back, away from that wall to  
12 some extent. I don't know whether it's 2 -- 2 feet,  
13 or 3 feet, or whatever. It is an enormous unit on the  
14 top of that building. It's bigger than my house.

15           And I -- you know, I just -- I think it  
16 would make an enormous difference in the problem that  
17 we are struggling with, and clearly, we are all  
18 struggling with this.

19           CHAIRMAN MORROW: Thank you.

20           Tim, do you have --

21           COMMISSIONER CARTER: Yeah. So let's see.

22           I just apologize to the Commission  
23 for -- and folks that are here -- for showing up late.

24           I don't have the benefit of hearing what  
25 seems like was quite a bit of comment about this

1 project. I get a sense from the public comment that  
2 we got -- the written public comment that we got and  
3 just from the flavor of the room that -- what -- what  
4 it might have been.

5           Regarding the issues that we brought up at  
6 the last P&Z meeting, that we wanted to see addressed,  
7 I appreciate the design team's effort to reconfigure  
8 that corner. I think that this is definitely an  
9 improvement and -- and, you know, makes this building  
10 function better in the long term. The transformer  
11 issue, I feel like, has been addressed.

12           I don't address -- I don't have anything  
13 to add to the discussion about the north wall other  
14 than -- you know, I feel the same way as the rest of  
15 the Commission, that we deal with this project -- this  
16 issue on a lot of projects. And it's a difficult one  
17 to parse. So I appreciate the efforts that were made  
18 on the design change so far.

19           I do wonder about -- you know, it does  
20 feel -- with the brick being added above and the  
21 columns below, it does -- at first glance, it does  
22 seem a little top heavy. I don't know if there's  
23 a -- another way to reconfigure the finishes on that  
24 wall to make it feel less so.

25           Let's see.



1           It -- before we go too far, can I get  
2 brought up to speed on more -- Morgan, you brought up  
3 that, maybe, we're not making a decision tonight.  
4 There was a -- a -- an issue regarding process that  
5 you guys discussed before I got here. So was there a  
6 decision made about how that process -- how our  
7 process is going to work here? Are we -- are we going  
8 to not make a decision tonight?

9           MORGAN LANDERS: So the only reason you're not  
10 asked to make a decision tonight is that you have some  
11 design changes in front of you to review. And so  
12 staff didn't make a recommendation of approval or  
13 denial because we felt there was continued discussion  
14 on the design review criteria.

15           What you missed on the process side of  
16 things was related to the FAR Exceedance Agreement.  
17 And so those are things that you can come up to speed  
18 on before the next hearing -- before the final  
19 decision is made.

20           COMMISSIONER CARTER: Okay.

21           MORGAN LANDERS: Yeah.

22           COMMISSIONER CARTER: All right. So we're  
23 giving -- so it sounds like we're still in  
24 the -- we're still giving direction from the  
25 Commission to the design/development team here.

1 MORGAN LANDERS: Correct. Yeah.

2 So the -- the question in front of you is,  
3 you know, "Do you feel that the application in front  
4 of you, you know, meets all the criteria and addresses  
5 your concerns, or do you want to continue to get  
6 additional study from the architect on meeting the  
7 criteria?"

8 COMMISSIONER CARTER: So the transformer and the  
9 corner issue, I feel, are addressed. The north-wall  
10 issue -- you know, I would certainly like to see some  
11 other potential options.

12 And then it seems like the other issue in  
13 the room is, you know, the -- the scale and mass of  
14 the building and -- is it appropriate for the location  
15 that's -- that it's in?

16 And, you know, I -- I feel like projects  
17 like this -- you know, we have a Code that sort of  
18 governs how -- how the bulk and mass of these  
19 buildings, you -- you know, get -- you know, must  
20 conform to and -- you know, there's a -- there's a  
21 little bit of what seems like area for negotiation in  
22 the details of the FAR Exceedance Agreement.

23 We have a 1.0 FAR that's given by right.  
24 And then, you know, we can go up to -- is it 2.25 or  
25 2.5? -- based on FAR -- 2.25 -- based on a FAR

1 Exceedance Agreement if the project gives -- provides  
2 community housing, either on the site or in lieu.

3 The Code is not -- you know, there  
4 is -- the -- the Code doesn't seem to be entirely  
5 clear as to how much -- how much leeway we have to  
6 make that negotiation as a Commission. And we've been  
7 fighting that -- frankly, we've been fighting that on  
8 other projects. You know, what -- you know, is -- is  
9 it -- if the developer provides the required amount,  
10 then they get the 2.25, or is there some negotiation  
11 that is -- does the Code allow for some negotiation  
12 there?

13 We've brought -- this has been an issue  
14 on -- on multiple projects in the past.

15 MORGAN LANDERS: And so I can help clarify if  
16 that's helpful.

17 So the FAR exceedance from 1.0 to 2.25 is  
18 contingent upon design-review approval. So it has to  
19 have a design review approval for whatever you all  
20 feel is appropriate, that meets the design review  
21 criteria. And so then that's where you root your  
22 decision and your deliberations on the design review  
23 criteria specifically. And so if a project meets the  
24 design review criteria, you can then approve the FAR  
25 exceedance.

1 COMMISSIONER CARTER: And the design --

2 MORGAN LANDERS: If it doesn't meet it, then  
3 you -- the FAR Exceedance Agreement becomes null.

4 COMMISSIONER CARTER: And the design review  
5 criteria in the Code is very -- you know, the  
6 design-review agreement -- the language in the Code  
7 sort of limits us to the look of the building and the  
8 finishes on the outside.

9 The -- our -- our ability to comment on  
10 the program of the building is something that we have  
11 been sort of asking for here, as a Commission, over  
12 the last couple months. That's part of what the  
13 Interim Ordinance was about, was giving the Commission  
14 some more discretion on being able to comment on the  
15 program of buildings. There was a lot of pushback  
16 from the community to give us that -- you know,  
17 to -- to give us that voice.

18 So, you know, I don't know, Morgan. Do  
19 you have -- you want to comment a little bit on that?

20 MORGAN LANDERS: Yeah. So the way that staff  
21 presented it to you all in the staff report is that,  
22 really, there's kind of two criteria in the design  
23 review that allow you to -- to influence kind of  
24 the -- the bulk and the size and kind of the  
25 orientation of the building. Yes, this may be

1 cosmetic, but it may have impacts to the program.

2 So the design review criteria that is most  
3 applicable in this instance is that "building walls  
4 shall provide undulation/relief, thus reducing the  
5 appearance of bulk and flatness."

6 So that's, really, a design review  
7 criteria that -- you know, our Code does allow  
8 42 feet, but in an instance where you do have a very  
9 tall, flat wall, if you feel like additional  
10 undulation or relief is necessary to meet that  
11 criteria, which ultimately is to reduce the bulk and  
12 flatness, you all can make those requests.

13 COMMISSIONER CARTER: Okay. Well, then, along  
14 those lines, certainly, the bulk and flatness of that  
15 north wall is -- I mean, it's hard to argue that  
16 it -- you know, that it has -- it does have  
17 undulation. I mean, it doesn't.

18 And, you know, from that -- from that  
19 point of view, I would like -- I think it would be  
20 helpful to see the design and development team, you  
21 know, find some ways to mitigate that issue on that  
22 north wall.

23 So -- and -- and then, I guess, you know,  
24 the other thing I would say is, you know, "Part of  
25 this process is to give the public" -- you know,

1 developers and -- you know, what the developers in  
2 town are -- are -- many of the developers in town are  
3 members of our community, and the developers are, you  
4 know, looking to -- to make a living, to be a part of  
5 town, just as the neighbors are as well.

6           And finding a way to -- to coexist  
7 is -- is important. And this forum, where projects  
8 have to come in front of the Commission and the public  
9 gets a chance to comment, is -- is a way for -- you  
10 know, is a way for -- for developers to hear, you  
11 know, what the community, you know, wants to see.

12           And I think hearing that -- and, you know,  
13 any development team -- you know, the  
14 development -- development teams have a -- a  
15 right -- you know, the Code gives development teams a  
16 right to move forward, and I don't think, you know, we  
17 would -- I don't think anybody would -- would argue  
18 that owners of property have a right to -- to develop  
19 them in a way that -- that has some bounds, but, you  
20 know, that -- that also, you know, gives them the  
21 benefits of being a property owner. That -- you know,  
22 that's part of our system.

23           But those -- you know, the developers are  
24 also not developing in a vacuum. We're developing in  
25 a community. And, you know, finding a way for

1 projects to be constructive additions to a community  
2 is -- you know, is hopefully something that is part  
3 of -- you know, that this process helps development  
4 teams achieve. So I'm just going to add that comment.

5 But, in general, I appreciate the  
6 additions that have been made to the project, the  
7 changes that they made to the project. I think, other  
8 than the north wall, which -- maybe if we could see a  
9 little more work on -- have been improvements from the  
10 previous -- previous design that we saw.

11 VICE CHAIRMAN MOCZYGEMBA: [Unintelligible].

12 CHAIRMAN MORROW: No, please.

13 VICE CHAIRMAN MOCZYGEMBA: One thing that I  
14 would like to interject with and that was mentioned in  
15 the staff report that we haven't touched on -- and  
16 this may just be something that gets handled in the  
17 future, as I discussed previously -- is regarding  
18 these property-line walls.

19 I think Nicole pointed it out as well, but  
20 the portion of the Code that reads, "Facades facing a  
21 street or alley or located more than 5 feet from an  
22 interior side property line shall" -- "shall be  
23 designed with both solid surfaces and window  
24 openings."

25 So, I mean, the question -- and I spoke

1 with Morgan a little bit about this -- is -- is,  
2 "What" -- "What is the intent of that?" And I know  
3 that we have evaluated other property-line walls based  
4 on the other development that was going on, you know,  
5 directly adjacent or -- or soon to be.

6 And so, you know, in this case, in my  
7 mind, this building is meeting that portion of the  
8 Code because it is not located more than 5 feet from  
9 an interior side property line.

10 So the question is, you know, how that is  
11 interpreted. You know, it -- it -- it would be  
12 impossible to -- crystal ball -- of, say, "Oh,  
13 well" -- "well, that portion of Code just means, when  
14 it's stepped more than 5 feet from the interior side  
15 property line, it needs, you know, to have solid  
16 surfaces and window openings because you're looking at  
17 it in perpetuity;" right?

18 But in this case, we just cannot determine  
19 whether there'll be a building there, again, 5 years  
20 down the line, 10 years down the line, or 15. So  
21 you -- when you start to create undulation and  
22 other -- I guess, other ways to manipulate the  
23 materials along that facade, you're creating more -- I  
24 guess it's just money being spent on something that  
25 will be -- possibly be covered up down the line.



1                   So that's kind of the -- the biggest  
2 conflict in my head is, you know, How much do you push  
3 any sort of application to make a wall pretty  
4 essentially, to only be covered up later?

5                   CHAIRMAN MORROW: I -- I agree, and I  
6 would -- with my condolences to Ben Franz, who we made  
7 do that for his building. And then, suddenly, someone  
8 built right next to it, but we didn't know. There was  
9 a little cabin there. It could have stayed there for  
10 30 years, so we made him change that wall, and he  
11 spent money on it. And within a year, it was -- it  
12 wasn't there, but it could have been.

13                   And I think this is what we -- I've been  
14 on this Commission for a while, and we've done this  
15 with a lot of buildings. The Mill build -- the  
16 building that The Mill is in across from Zions bank,  
17 the alley, is a story shorter than it was presented as  
18 because they couldn't underline the -- underground the  
19 power lines.

20                   UNIDENTIFIED SPEAKER: Mm-hmm.

21                   CHAIRMAN MORROW: So they couldn't build the  
22 fourth floor, and they -- we made them undulate and  
23 change the materials on that back wall, which  
24 shows -- kind of shows from Washington. And then they  
25 stepped back their third floor, which was

1 losing -- not only did they lose a whole floor; they  
2 lost space in the kind of setback or step-back on the  
3 top.

4 So we've been struggling with this on a  
5 lot of properties for a long time, and I -- I -- I  
6 don't think we can take the chance of saying, "Yeah,  
7 leave a big, blank wall up there, and we hope  
8 something gets built in" -- "in 5 years or 10 years  
9 and" -- "not a big, blank wall for 50 years."

10 But the -- just in -- in reference to what  
11 you said, I think that we've been through this a lot.  
12 And, yes, I feel bad for some of the people that we  
13 made -- you know, in the previous Code and not even  
14 this Code -- made spend significant money on projects  
15 that ended up being things they really didn't need to  
16 in the new Code.

17 So just in reference to that, I'd -- I'd  
18 like to say that I think -- if I've said it once, I've  
19 said it 1,000 times. This process makes buildings  
20 better and -- because they're here for a long, long  
21 time. I think it's -- as painful as it is, it's  
22 important.

23 I -- I agree. I think the changes made  
24 have been in response to what we like. And I think  
25 we've got a few small issues left, but I think we've

1 made significant progress. And -- and I think  
2 Nicole's done a great job with that. It's a great  
3 design. It may not be exactly there yet, but I think  
4 we're getting there.

5 Is Matt still on with us?

6 MATT JOHNSON: I am.

7 CHAIRMAN MORROW: Are you still there?

8 I just have a couple quick ones.

9 We don't -- we don't ever get to see or  
10 have any effect on the FAR exceedance agreements  
11 as -- as Planning and Zoning; do we?

12 MATT JOHNSON: On the agreement itself, no,  
13 other than it's conditioned on your design-review  
14 approval.

15 CHAIRMAN MORROW: Okay. But, I mean, we -- if  
16 we wanted to look at it and go -- we think that's a  
17 weird tradeoff, we wouldn't be able to make changes in  
18 that?

19 MATT JOHNSON: You wouldn't be able to make  
20 changes. Any comment you had on it would purely be  
21 sort of an advisory-type thing.

22 CHAIRMAN MORROW: Okay. Second, we heard "spot  
23 zoning." I know, in my opinion, this isn't spot  
24 zoning no matter what we do. Do -- do you think  
25 this -- that -- that would be a specific, like, "You

1 can't do this here?"

2 MATT JOHNSON: Correct.

3 CHAIRMAN MORROW: And third, despite your  
4 wonderful legal knowledge, is -- is it -- is there  
5 potential that we could still encounter litigation  
6 even though you don't think it's possible? Maybe  
7 Mr. Linnet wants to file a claim. Do you think there  
8 is some actionable -- something in here -- potentially  
9 actionable -- something in here?

10 MATT JOHNSON: Well, there's -- there's multiple  
11 steps that would happen before we got to anything that  
12 would be litigation in court.

13 CHAIRMAN MORROW: You -- you know what I mean.  
14 I'm trying to prevent --

15 MATT JOHNSON: Right.

16 CHAIRMAN MORROW: -- us from doing something  
17 in -- in my -- the -- the part I feel good about is,  
18 if we can have the neighbors and the developers work  
19 together as we move through this process, we won't  
20 have that issue. I just don't want to put us in the  
21 position of having that issue.

22 MATT JOHNSON: So the -- the answer to the  
23 question of, "Is litigation possible," is  
24 always, "Yes."

25 CHAIRMAN MORROW: Yes. Yeah. Okay.

1           MATT JOHNSON: All -- all -- all -- all it takes  
2 is a party willing to pay an attorney to -- to make  
3 arguments.

4           I -- I do think, in this case, the  
5 procedural issues that have been raised are -- are  
6 relatively straightforward, could additionally be  
7 addressed at other points in the administrative  
8 appeals process as need be, and I think the risk of  
9 litigation is relatively lower -- or at least with  
10 some chance to work through with the -- the -- the  
11 party raising them first.

12           So is that a wiggly-enough answer?

13           CHAIRMAN MORROW: Yeah. Yeah. Perfect.

14           That's -- those answered my three legal  
15 issues right there.

16           Because this is subject to design review  
17 approval, I -- I think we've heard a bunch of people  
18 say, "You've met all the requirements" -- and I think  
19 Susan mentioned this, that you can meet the  
20 requirements for height and for lot-line setback and  
21 for those things, but still not meet the requirements  
22 that it fit into the neighborhood character or that it  
23 be compatible.

24           And I -- and I think that, in that sense,  
25 this is where we have our subjective -- it's not just,

1 you know, "Stick it in one side. It's 42 feet high.  
2 That's fine," and it comes out the other side and it's  
3 approved. So I think the area that we do have leeway  
4 here -- even though it's met the requirements -- is  
5 that it still may not fit into the character of the  
6 neighborhood, based on what's around it.

7 So I -- I just wanted to address that,  
8 that it sounds -- a lot of people are like, "Well, we  
9 did everything we should do. We should get an  
10 approval." And I'm like, "That's" -- "that" -- "this  
11 is a subjective process, and it deals with neighbors,  
12 and it deals with the future that we don't know  
13 about."

14 So I just wanted to bring that up, that,  
15 yes, according to the -- the -- the -- how high it is  
16 or how wide it is or what the setback is,  
17 it's -- it's compatible, but it still may not actually  
18 fit into the neighborhood or be compatible with what  
19 we're looking for in that neighborhood. So I just  
20 wanted to bring that up.

21 I agree with Spencer and some other  
22 people, that -- as much as it's a pain in the -- in  
23 the butt, wedding-caking this structure would -- would  
24 probably solve a lot of the problems. So  
25 the -- wedding-caking the top floor a little bit

1 and -- maybe, in the new Code, zero-lot-line buildings  
2 should wedding-cake at -- at the third floor and not  
3 the fourth floor.

4 But I think this -- if the top floor were  
5 set back, that would -- a little bit, that would be  
6 undulation, or if that north wall were opened into a  
7 deck, or -- I -- I -- you know, again, we're not  
8 designing up here, but that -- if it -- if it's set  
9 back up there somehow, stepped back, that would take a  
10 lot of the mass-and-bulk feeling away from the -- the  
11 building and would give undulation to that flat wall,  
12 that being stepped back and not being just pushed in  
13 and out.

14 I think parking in the area's inadequate  
15 already, so I think the parking issue is -- the Code  
16 says as long as there's 750 -- people often move their  
17 cars -- you know, I hate to see the -- the City change  
18 their rules for everyone on that, but it looks like  
19 that -- that's what's going to happen, and we're going  
20 to have different winter rules. And that's -- you  
21 know, that's a cost of having the city become bigger  
22 and having had inadequate parking since the '80s.

23 I -- I agree with the balancing act  
24 that -- I think we've gotten really close here, and we  
25 just have to make sure that what we approve is -- is

1 compatible with the neighborhood for the long run  
2 because these buildings will be here for 70 or  
3 100 years. So I would like to see the -- my direction  
4 would be, "You've done a great job. Can we address  
5 some of these last issues."

6 And, you know, I'd love to see, if there  
7 was an agreement between the neighbors, what it'd look  
8 like with windows up there, or a -- a -- a small deck  
9 area, or an enclosed -- whatever it is -- on the top  
10 there to make it seem less massive. It would be cool  
11 to see how they come to that.

12 So, overall, I do -- I think the -- the  
13 design is really nice. It would be awesome if it  
14 could just kind of -- you know, I know it's a  
15 zero-lot-line building, but it's a small lot with a  
16 zero-lot-line building, and the neighbors' buildings,  
17 many of them are one story, so it -- it's going to  
18 have a shocking effect for a while no matter what. So  
19 my -- that's my direction.

20 I think, Nicole, you've done a great job.  
21 I think we'd like to see some of these other potential  
22 changes. That's kind of where I am now.

23 COMMISSIONER CORDOVANO: I believe we could  
24 request a 3D model of the building.

25 MORGAN LANDERS: If there's any specific



1 diagrams or graphics that you'd like to see when they  
2 come back, it'd be good to know that, and then we can  
3 ask the applicants to prepare those.

4 COMMISSIONER CORDOVANO: I think that would help  
5 set the scale and the scope. And I'd love to see it  
6 come back at 1.75, with a lower total height.

7 MORGAN LANDERS: So from --

8 CHAIRMAN MORROW: Go ahead.

9 MORGAN LANDERS: -- for -- just a quick  
10 clarification for staff.

11 Spencer, when you're asking for additional  
12 3D models, are you looking for something different  
13 than what's included in the packet now, as far as  
14 renderings?

15 COMMISSIONER CORDOVANO: I was kind of curious  
16 what that design review guideline would get me,  
17 honestly, as I considered a 3D model, or maybe an  
18 area -- more of an area-centric model.

19 MORGAN LANDERS: So what I would caution the  
20 Commission against is providing a specific cap on the  
21 FAR, but asking the applicants to evaluate what  
22 additional undulation or relief on that northern  
23 facade would look like and see what that comes back  
24 with -- because we -- we are in a bit of a delicate  
25 space, where we can't dictate a specific FAR, but we

1 can evaluate revised proposals, based on the  
2 criteria --

3 COMMISSIONER CORDOVANO: Totally, and I --

4 MORGAN LANDERS: -- if the Commission's open  
5 to it.

6 COMMISSIONER CORDOVANO: I -- I just kind of had  
7 to slide that in there from the side because I feel  
8 like a lot of this is so subjective. And I don't want  
9 to make that a cut-and-dry thing, but the whole  
10 building could use some wedding-caking.

11 I understand development costs enough to  
12 realize that we're probably only going to get it at  
13 the top floor. The windows are almost an excuse to  
14 get the top floor set back 5 feet, similar -- as it is  
15 on the whole building.

16 CHAIRMAN MORROW: To Spencer's point, we ask  
17 this --

18 COMMISSIONER CORDOVANO: [Unintelligible].

19 CHAIRMAN MORROW: -- a lot of times, "Can we get  
20 a model that shows what it will look like within  
21 the -- with the surrounding neighborhood," the bulk,  
22 mass -- kind of like, "Here it is, and here's a big  
23 picture of what the rest of the" -- we've -- we've  
24 started to ask for that a lot, and it helps us kind of  
25 really look at it, so I think that would be super

1 helpful.

2 MORGAN LANDERS: Yeah, we can definitely do  
3 that.

4 COMMISSIONER CORDOVANO: Yeah, so undulation on  
5 the north side, west side, and the east side.

6 MORGAN LANDERS: All right.

7 CHAIRMAN MORROW: Any --

8 COMMISSIONER CORDOVANO: And I'm -- I'm -- I'm  
9 all for people being able to buy their lots under the  
10 rules, but I think we need to update them more  
11 quickly. And it is just totally absurd that the max  
12 height is 42 feet, and a guy can have a canopy over  
13 his hot tub of 49 feet -- no fence, none, for the  
14 guy -- whatever, but that's just a 49-foot building in  
15 general logic, which is very contrary to City Code.

16 CHAIRMAN MORROW: So at this point, if we've had  
17 comment and if you think we've given proper direction  
18 and because I don't believe we're making any kind of  
19 decision tonight, I think -- especially with what  
20 we've heard from the neighbors, I'd like to see more  
21 public input, more -- I'd like to see what Nicole  
22 comes back with, I'd -- you know, I think we have some  
23 steps in the process.

24 But I do think, as usual, it gets better  
25 and better every time. This is an order better than

1 the last one, having moved the stairs and -- and --

2 COMMISSIONER CORDOVANO: And we also don't want  
3 to deny it.

4 CHAIRMAN MORROW: No. No. No. We want it to  
5 get to where it can be built and -- and be there for  
6 100 years and -- but that's -- I think we're getting  
7 there. And if we don't need to make any kind of  
8 decision tonight, if you feel like we have good  
9 direction --

10 MORGAN LANDERS: I do. So the only motion that  
11 you will need to make is to continue to the next  
12 meeting, so that would be January 10th. And then  
13 staff will consult with the applicant following the  
14 meeting to see if they can make that. And if we need  
15 to push it, we can push it.

16 CHAIRMAN MORROW: Okay.

17 COMMISSIONER CORDOVANO: So like -- I feel  
18 like January -- and tell me if this is my purview.  
19 I -- I feel like January tends to rush, and there's  
20 plenty of projects that have been in line for a long  
21 time too.

22 CHAIRMAN MORROW: I -- I don't have a problem  
23 with it, but it does seem like it's 10 days. And  
24 during the holidays, and that might be unfair to the  
25 applicant's team to say, "Hey. Here goes your

1 Christmas and New Year's so you can redo this."

2 So we're happy to let you guys discuss it  
3 with them and -- and have it set to a date certain  
4 that -- you'll let us know.

5 MORGAN LANDERS: Yeah. And -- and sorry,  
6 Spencer, to interrupt.

7 But, really, it's just to make sure that  
8 we have a date certain because if we don't set it to a  
9 date certain, we have to go through the re-noticing  
10 process, which we can if the -- if the Planning  
11 Commission prefers that.

12 But I think what we can do is continue it  
13 to the 10th, and then if, for some reason, the  
14 applicant team doesn't feel that's reasonable, we can  
15 certainly continue it again.

16 CHAIRMAN MORROW: And don't feel like you guys  
17 have to ruin your holiday for us. We're going to be  
18 here in January and February. So...

19 COMMISSIONER PASSOVOY: I just wanted to make  
20 one clarification.

21 My comment regarding the size of the unit  
22 on the top is not a reflection of my opinion as to how  
23 much space people can or should have to live in. It's  
24 up to them. I only mentioned it because I -- I felt  
25 that it was large enough to allow for some undulation

1 of that wall, without losing the -- the -- the overall  
2 marketability of the unit.

3 MORGAN LANDERS: Thank you.

4 CHAIRMAN MORROW: Susan doesn't feel left out.  
5 It's four-and-a-half times bigger than the space I  
6 live in. So...

7 COMMISSIONER CORDOVANO: What do we want to do  
8 about date certain? I'm -- I don't want to overstep  
9 here, but --

10 CHAIRMAN MORROW: Well, let's do --

11 COMMISSIONER CORDOVANO: -- [unintelligible].

12 CHAIRMAN MORROW: -- January 10th. And then if  
13 the applicant needs to change it, they'll change it  
14 with staff, and we'll -- they'll have a date certain.  
15 But this way, we -- we've got something at -- as a  
16 placeholder. Is that okay?

17 COMMISSIONER CORDOVANO: Yeah.

18 CHAIRMAN MORROW: Okay. So I will take a motion  
19 if anyone...

20 COMMISSIONER CORDOVANO: I'll make a motion to  
21 continue this project to a date certain, being  
22 January 10th --

23 CHAIRMAN MORROW: January 10th, yes.

24 COMMISSIONER CORDOVANO: -- with hopes of a  
25 continuance.

1 COMMISSIONER PASSOVOY: And I second the motion.

2 CHAIRMAN MORROW: All in favor?

3 Aye.

4 COMMISSIONER CORDOVANO: Aye.

5 COMMISSIONER PASSOVOY: Aye.

6 COMMISSIONER CARTER: Aye.

7 CHAIRMAN MORROW: Thank you, everyone.

8 VICE CHAIRMAN MOCZYGEMBA: Nay.

9 CHAIRMAN MORROW: Oh, Brenda is a "Nay."

10 VICE CHAIRMAN MOCZYGEMBA: Can I do that with a  
11 continuance?

12 CHAIRMAN MORROW: Yes.

13 MORGAN LANDERS: You sure can.

14 VICE CHAIRMAN MOCZYGEMBA: Okay.

15 MORGAN LANDERS: Mm-hmm.

16 CHAIRMAN MORROW: Thank you to the public and to  
17 the applicant and to the attorneys and everyone in the  
18 room. We will see you guys either in January or some  
19 time after that. If you're involved, stay involved,  
20 and we'll be happy to continue to hear from you.

21 (End transcription at 1:53:00 of audio  
22 file.)

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REPORTER'S CERTIFICATE

I, VICTORIA HILLES, RPR, Registered Professional Reporter, CSR No. 1173, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings was transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 8th day of June, 2023.



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VICTORIA HILLES, RPR, CSR NO.  
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My commission expires December 3, 2026



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City of Ketchum

**Attachment O:  
Staff Report (no attachments) -  
Planning and Zoning  
Commission February 28, 2023**



City of Ketchum  
Planning & Building

**STAFF REPORT**  
**KETCHUM PLANNING AND ZONING COMMISSION**  
**REGULAR MEETING OF FEBRUARY 28, 2023**

**PROJECT:** The 208 Condos

**FILE NUMBER:** P22-035 and P22-035A

**APPLICATION TYPE:** Final Design Review and Subdivision – Condominium Preliminary Plat

**APPLICANT:** Nicole Ramey, Medici Architects (Architect)

**PROPERTY OWNER:** 755 S Broadway, LLC

**REQUEST:** Final Design Review and Condominium Preliminary Plat application for the development of a new, 10,856 square foot, three-story mixed-use building

**LOCATION:** 200 N Leadville Avenue - Ketchum Townsite: Block 23: Lot 1

**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 November 7, 2022. The public hearing notice was published in the Idaho Mountain Express on November 9, 2022. A notice was posted on the project site and the city’s website on November 7, 2022. Story poles were verified on the subject property on November 22, 2022. The project was heard at the November 29, 2022 meeting of the Planning and Zoning Commission (the “Commission”) and continued to a special meeting on December 20, 2022. The project was heard again on December 20, 2023, and continued to the January 10, 2023 meeting of the Commission. The applicant, citing the need for additional time to respond to Commission’s comments, requested the January 10, 2023 hearing be continued to the February 28, 2023 meeting of the Commission. No information was presented or reviewed at the January 10, 2023 meeting and no public comment was taken.

**I. EXECUTIVE SUMMARY:**

As noted above, the Commission has reviewed the proposed application two previous times. Once at their November 29, 2022 hearing and again on December 20, 2022. Staff and Commission comments at the November 29, 2022 hearing were addressed by the applicant at the December 20, 2022 hearing with the exception of the north façade wall. The Commission discussed design review criteria related to the bulk and flatness of the building and commented that the bulk and flatness of the north façade wall was significant and that additional articulation should be considered. The Commission requested the applicant evaluate stepping back the third floor and applying varied materials and architectural detailing to achieve a reduced bulk and

flatness. The Commission also requested a 3D model/rendering of what the building will look like in context with the surrounding neighborhood.

The applicant has provided a revised development proposal included as (Attachment A). The applicant has indicated that the 3D model/rendering will be provided during the applicant presentation portion of the meeting. The following changes are proposed:

- The third floor is stepped back on the Leadville Ave side approximately 4 feet from the ground floor façade wall for a total of 6 feet 10 inches from the property line on Leadville Ave.
- The third-floor deck has been extended to the north end of the building
- The building has been pulled away from the north property line 7 inches to allow for additional brick detailing and architectural treatments on the north façade including a wrap of the dark wood paneling on the ground floor and bricked in windows on the upper floors
- The parapet wall on the rear portion of the building has been raised 1 foot 4 inches to accommodate an elevator tower on the alley side of the building
- A metal railing has been added to the east end of the façade along 2<sup>nd</sup> Street
- A wall trellis on the north façade has been added to facilitate climbing vines from the ground floor to the rooftop deck

Staff recommends the Commission review the proposed changes to determine if the Commission's concerns and requests have been addressed satisfactorily.

## **II. CONFORMANCE WITH ZONING AND DESIGN REVIEW STANDARDS:**

Per Ketchum Municipal Code (KMC) §17.96.010.A – *Applicability*, design review is required for all new mixed-use buildings. Before granting Design Review approval, the Commission must determine that the application meets two criteria: (1) the project doesn't jeopardize the health, safety, or welfare of the public, and (2) the project conforms to all Design Review standards and zoning regulations (KMC §17.96.050.A).

### ***Criteria #1: Health, Safety, and Welfare of the Public***

The 2014 Comprehensive Plan outlines 10 core values that drive our vision for the future including a strong and diverse economy, vibrant downtown, community character, and a variety of housing options. The built environment within the downtown plays a key role in materializing these values to achieve the city's vision. The 2014 Comprehensive Plan designates the future land use for the subject property as "mixed-use commercial" where, according to the plan, "New structures in existing mixed-use areas should be oriented to streets and sidewalks and contain a mix of activities. Mixed-use development should contain common public space features that provide relief to the density and contribute to the quality of the street." Primary uses include offices, medical facilities, health/wellness-related services, recreation, government, residential, and services.

Policy CD-1.3 of Chapter 4 of the comprehensive plan states that "Infill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur. Context refers to the natural and manmade features adjoining a development site; it does not imply a certain style." The transition between buildings is a key design element and has the potential to impact the perceived cohesiveness of the downtown and can impact the way residents and visitors experience a place.

Staff believes the project meets many of the goals and policies of the plan. The project proposes a variety of sizes of residential units and provides desirable retail square footage on the ground floor. The project is set back from the property line on both the Leadville Ave and 2<sup>nd</sup> Street sides, with awnings that invite and protect pedestrians. Benches at the corner and thoughtful landscape elements create common public space that engages with the uses in the building and the adjacent sidewalk. The Commission has expressed concerns related to the project's context with the neighborhood and adjacent development. As further discussed below, the bulk and flatness of the north façade is the most concerning aspect of the development. If the Commission

determines that the revisions to the building effectively reduce the bulk and flatness of the building, the project could be found to conform to Policy CD-1.3 of the comprehensive plan.

**Criteria #2: Applicable Standards and Criteria**

Conformance with Zoning Regulations

The proposed changes do not impact the project’s conformance with the zoning regulations, including dimensional standards, applicable to the project. The project remains in conformance with all zoning requirements.

Conformance with Design Review Improvements and Standards

Staff believes that most design review criteria are met with the proposed project, particularly as it relates to the changes made between the November 29<sup>th</sup> and December 20<sup>th</sup> hearings. Based on discussions at the December 20<sup>th</sup> hearing, the remaining concern for the Commission is design review criteria 17.96.060.F.5, which outlines that “Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness”. Staff believes that many of the changes proposed are a positive improvement from what was proposed at the December 20<sup>th</sup> hearing. The applicant has revised the plan set to show the existing adjacent trees for context. The applicant has not provided the 3D model/rendering of the surrounding buildings as requested by the Commission as part of the plan set, however, the model will be presented at the hearing for consideration. Sheet A4.4 shows the north façade elevation with the trellis, more articulated brick detailing, bricked in windows, and wood treatment that wraps the corner at the ground floor. It also shows the step back of the third floor from the front façade. No step backs of the third floor have been made on the sides or the rear of the building. Sheet A4.3 shows the same elevation but with the existing vegetation.

The renderings on Sheet A4.5 show how the step back of the third floor changes the appearance of the building. For comparison, Figures 1 and 2 below show comparison renderings between the December 20<sup>th</sup> proposal and what is proposed today.

*Figure 1: Corner Rendering of 2<sup>nd</sup> and Leadville Comparison (December 20<sup>th</sup> on Left)*



*Figure 2: Corner Rendering of Leadville Ave Comparison (December 20th on Left)*



The revised renderings depict what exists today with vegetation on adjacent properties. For reference, Sheet A4.4 shows what the elevation would look like if the vegetation did not exist.

### **III. STAFF RECOMMENDATION**

Staff requests the Commission review the Design Review application and provided feedback to the applicant on the proposed revisions.

### **ATTACHMENTS:**

- A. Application Materials – Revised Design Review Plan Set





City of Ketchum

Attachment P:  
Hearing Transcripts - February  
28, 2023

CITY OF KETCHUM PLANNING AND ZONING COMMISSION

IN RE: )  
P22-035 / THE 208 CONDOS )  
and )  
P22-035A / THE 208 CONDOS )  
200 North Leadville Avenue )  
\_\_\_\_\_ )

TRANSCRIPT OF RECORDED PUBLIC HEARING

TUESDAY, FEBRUARY 28, 2023

COMMISSIONERS PRESENT:

NEIL MORROW, CHAIRMAN

BRENDA MOCZYGEMBA, VICE CHAIRPERSON

TIM CARTER

SPENCER CORDOVANO

SUSAN PASSOVOY

TRANSCRIBED BY:

VICTORIA HILLES, RPR, CSR NO. 1173

<p style="text-align: right;">Page 2</p> <p>1 (Begin transcription at 0:41:14 of audio 2 file.) 3 CHAIRMAN MORROW: So -- all right. We will move 4 on to Action Item 5 -- that's correct -- a public 5 hearing review -- and provide feedback on Design 6 Review and condominium preliminary plat applications 7 for the proposed mixed-use development at 200 North 8 Leadville. 9 Morgan. 10 MORGAN LANDERS: Okay. Thank you, everyone. 11 I don't have formal presentation slides 12 for you all this evening. I think the focus of the 13 discussion is fairly truncated on one kind of specific 14 issue. I do want to highlight a couple of things from 15 the staff report. 16 If you all recall, the very first time you 17 saw this was in December [sic], and then there was 18 some discussion. You all provided the applicant with 19 some feedback, and they had kind of provided a variety 20 of revisions for review that you all, then, kind of 21 felt were pretty good. 22 And the -- where we landed at our last 23 discussion with this meeting was that there was still 24 some concern related to kind of the north-facade wall 25 on the north property line between the subject</p>	<p style="text-align: right;">Page 4</p> <p>1 metal-banding component that Nicole will touch on. 2 This was in response to the re-addition of an elevator 3 overrun that was added to the building, that was not 4 part of the initial proposal. 5 And then there is also, on the north 6 facade, kind of a trellis that has been applied to the 7 facade, which would provide facilitation of vine 8 growth and things like that to kind of add a more 9 landscaped element. 10 So with that, I don't have any comments 11 for you all. I do think that some of these 12 improvements are positive. But the question to the 13 Commission is, "Do you all believe that the changes 14 proposed effectively reduce the bulk and flatness of 15 the building on that side with that undulation and 16 relief change?" 17 So with that, I'll turn it over to the 18 applicant, and Nicole can drive from here. 19 CHAIRMAN MORROW: Thanks, Morgan. 20 NICOLE RAMEY: Okay. Good afternoon. 21 As always, I want to thank Morgan and her 22 staff for their tireless hard work and feedback on 23 this. This is always a little bit of a long process. 24 There are a couple of things I wanted to 25 address before we get into the meat of the</p>
<p style="text-align: right;">Page 3</p> <p>1 property and the property to the north. And 2 primarily, there was some concern related to the 3 undulation and relief and the bulk and flatness of the 4 building. 5 And so, as we sit here today, the 6 applicant has taken another stab at addressing some of 7 your comments. We do have an applicant representative 8 here, Nicole Ramey. She's the architect for the 9 project, so she'll give you kind of the full review of 10 the changes. 11 But, in general, they have stepped back 12 the third floor of the building on the Leadville 13 Avenue side. There's also -- the third-floor deck has 14 been extended to kind of be the full length of the 15 front facade on the Leadville side. 16 The building has been pulled away from the 17 north property line about 7 inches, which 18 would -- accommodates for some of the additional brick 19 detailing and things like that so that the 20 building -- so that those things don't project onto 21 the adjacent property. 22 There's also -- the parapet wall on kind 23 of the rear portion of the building, as you go down 24 Second Street -- there has been a raising of the 25 parapet wall and an addition of kind of a</p>	<p style="text-align: right;">Page 5</p> <p>1 presentation, really relating to the comment letters, 2 and some of them containing a little bit of erroneous 3 information. 4 I read quite a few comments regarding a 5 height bonus. I want to make clear that we're not 6 asking for a height bonus, variance, or waiver of any 7 kind. The height limit in place for the Community 8 Core is applicable regardless of the floor area ratio. 9 So I just wanted to make sure that it's 10 understood that we're not asking for any height 11 variance. 12 Also, a few letters referenced a 13 6,000-square-foot, north-elevation number. That 14 number's false. The actual square footage for the 15 north-elevation wall is 3,500. 16 We have taken the option that is allowed 17 by Code to go through this FAR-exceedance process, but 18 placing a specific size or height requirement on this 19 particular lot is spot zoning. 20 Here are our revised renderings. Morgan 21 did run through a couple of the changes, so some of 22 these might be doubling up, but I just wanted to point 23 out -- point out the changes from our point of view. 24 So we listened to the staff and outside comments and 25 made the following revisions.</p>

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1 The roof-parapet height has been split,  
 2 resulting in two different roof-parapet heights for  
 3 the front and rear of the building. The front roof  
 4 parapet was lowered 16 inches. So you can see that  
 5 kind of in this area. So this roof was actually  
 6 lowered 16 inches, the whole front of the building.  
 7 The two parapets now have 31 inches of height  
 8 difference between them.  
 9 On the Second Ave -- Avenue [sic]  
 10 elevation, a portion of the roof parapet was lowered,  
 11 and the massing was modulated to get more  
 12 articulation. A new roof overhang was placed over  
 13 this new facade extension, providing more relief to  
 14 the facade. So that's this area of the building.  
 15 We popped it out slightly. We added this  
 16 roof element, once again, kind of breaking up this  
 17 Second Avenue elevation. That wasn't specifically  
 18 brought up in the previous hearings, but, as we looked  
 19 at modulating the rest of the building, it just made  
 20 sense to include that on that elevation as well to  
 21 kind of keep the design language flowing throughout  
 22 the -- the whole building.  
 23 Let's go down.  
 24 So this is the north elevation. We have  
 25 two different elevations we'll show. This one shows

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1 existing landscaping on the northern neighbors'  
 2 property, which is, really, what you would see in  
 3 reality -- is that there are aspen trees and very  
 4 large -- that is existing. Without the trees, you can  
 5 see more of the changes that we've proposed.  
 6 So on this Leadville elevation, the  
 7 portion of the third floor nearest to Leadville has  
 8 been recessed to reduce bulk. The third-floor deck  
 9 now wraps around in front of this pushed-back facade.  
 10 So we've added a deck here. There is now 4 feet of  
 11 difference between the first-and-second-floor facade  
 12 and the third-floor facade.  
 13 From the front property line of Leadville,  
 14 we have 2'9 -- foot of setback at the first and second  
 15 floors and 6'10 at the third floor. The north  
 16 elevation benefits from this horizontal step in the  
 17 facade, as the view seen from the street has more  
 18 undulation and is cut away at this corner.  
 19 For the north elevation, we also brought  
 20 the same materials and design language around, and we  
 21 included bricked-in windows, wood trim that matches  
 22 the Leadville and Second retail elevations on the  
 23 first floor, and vines on -- growing on a trellis  
 24 structure. These add aesthetic appeal, texture, and  
 25 interest.

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1 So although not applicable, we used the  
 2 same materials and kept the same architectural  
 3 language, which is in Chapter One 7.96.070, B, 1 of the  
 4 Code.  
 5 We also wanted to show some of the  
 6 previous iterations of the building compared to the  
 7 current design so we can point out some of the changes  
 8 we've made through this process. Some were before the  
 9 design-review-hearing process, just with staff, and  
 10 some have been through the design-review-hearing  
 11 process.  
 12 So we have pulled the upper-roof overhang  
 13 back. As you can see, we started out with one that  
 14 was extended out quite a bit further. We revised the  
 15 planters and plant material -- staff request. We've  
 16 revised the transformer location and screening. We  
 17 added one residential unit. We began this process  
 18 with three residential units, and now we have four.  
 19 Most of the roof elements were eliminated,  
 20 and those that remain are set back. You can see  
 21 how -- in previous versions, you could see some of  
 22 our -- a roof trellis and some planter boxes. Those  
 23 have been either removed or set back.  
 24 We've removed light wells, but we've since  
 25 added them back, per Design Review comments on the

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1 Leadville side, so they only exist under the overhang.  
 2 We have added a window into the retail  
 3 space on Leadville, and we have moved the stairwell  
 4 and entry that was for the lower-level residential  
 5 unit, and so we have swapped that out with the retail  
 6 reentry. So we've added windows onto the retail space  
 7 on both Leadville and Second, and we've also adjusted  
 8 and moved the bike racks and trash and all of those  
 9 things as well.  
 10 I also wanted to point out that,  
 11 since -- from Day 1, we've had -- I think this is in  
 12 response to the hotel. We've had Juliet balconies on  
 13 all three facades.  
 14 CHAIRMAN MORROW: Thank you.  
 15 NICOLE RAMEY: So we -- we even have them on the  
 16 alley, once again, to kind of keep that design  
 17 continuity going. So there they are, four of them, so  
 18 everyone can enjoy traffic.  
 19 CHAIRMAN MORROW: After the hotel, everyone  
 20 knows what they are now. So...  
 21 NICOLE RAMEY: Okay. So the next thing I want  
 22 to talk about is setbacks. So the blue area in these  
 23 diagrams -- and we have three -- show the total area  
 24 set back from the property line, but looking at it  
 25 differently -- areas where we could have extended the

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1 building to the property line.  
2 We worked diligent -- diligently to erode  
3 the building corner at Leadville and Second, which is  
4 arguably the most visible view of the project and the  
5 pedestrian corridor.  
6 So looking at it in plan view, this retail  
7 corner is set back 11 foot -- 2 feet from Leadville,  
8 and 6 feet from Second. Our average setbacks exceed  
9 the 5-foot average required with a first-floor average  
10 of 16.7 feet from Leadville and 11 feet on Second.  
11 You can see similar setbacks apply for the second and  
12 third floors.  
13 Here are the setbacks, once again shown in  
14 elevation. And you can see quite a bit of setback off  
15 the property line on Leadville. This would not  
16 preclude other property owners from building to the  
17 property line, but we have set back a minimum of 2'9  
18 [unintelligible].  
19 I did want to point out -- the Zoning Code  
20 calls for setbacks on the front, side, and rear, but  
21 it specifically does not call for setbacks off the  
22 interior property lines.  
23 [Unintelligible].  
24 So Chapter One 7.96.060, F states,  
25 "Building character shall be clearly defined by use of

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1 architectural features." The design features here  
2 are, really, the brick and the brick-detailing. The  
3 style of architecture's not meant to be defined by  
4 [unintelligible] and the massing.  
5 The materiality is providing the details.  
6 As construction costs rise, we should be celebrating  
7 efforts to include unique architectural details, not  
8 standard, push-and-pull, modern boxes.  
9 The Code also states, "Building walls  
10 shall provide undulation/relief, thus reducing the  
11 appearance of bulk and flatness." While not defined  
12 in the Code, "relief" can also be known as a  
13 sculptural method in which the sculpted pieces are  
14 bonded to a solid background of the same material.  
15 It's the use of brick.  
16 I also wanted to highlight some elements  
17 of our project in relation to the Interim Ordinance,  
18 although the Interim Ordinance is not applicable to  
19 our project.  
20 We do have less than 30 percent  
21 commercial, but we are providing four residential  
22 units, so we meet that requirement. There's no  
23 consolidation of lots, there's no net loss of  
24 residential units, and no ground-floor residential.  
25 Moving on to the context. Here is

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1 a -- here is a rendering standing right in front of  
2 the Image Eyes entrance, looking down. We have this  
3 view, obviously, in the winter, but we also show what  
4 this looks like in the summer. And you can see that  
5 the foliage -- you see, actually, even less of the  
6 building than you do from here.  
7 So, you know, I know a lot of concern has  
8 been -- you know, there was a comment in one of the  
9 letters about the view from Sun Valley Road. This is  
10 pretty much the view you would see from Sun Valley  
11 Road.  
12 You can see, in the existing Google Earth  
13 image, the previous building. Without actual  
14 documentation, it appears that it had different  
15 setbacks that were a lot closer to Leadville than what  
16 we are proposing.  
17 As the staff report referenced the Comp  
18 Plan and the designation of this property and  
19 adjoining lies -- adjoining lots as future, mixed-use  
20 commercial, this building is truly a mixed-use  
21 building, while the existing, neighboring buildings  
22 technically do not meet this proposed designation.  
23 As we discuss the word  
24 'contest' -- 'context,' let us not get sidetracked by  
25 designing to existing buildings that do not meet the

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1 City's Comprehensive Plan goals. As the face of  
2 Ketchum is changing before our eyes, now is the time  
3 to assure that new development meets the future goals  
4 of Ketchum, as laid out in the Comp Plan, not  
5 yesterday's unplanned community.  
6 This is a view of the building with the  
7 current existing buildings, landscaping in place. So  
8 you can see quite a bit of foliage. These are all  
9 approximate, given that we don't have actual building  
10 plans. So Google Earth and [unintelligible].  
11 So here's kind of the context image that  
12 we were asked to provide, showing what this building  
13 would look like in the neighborhood. We also decided  
14 to put together an image of what could happen with an  
15 unknown property next door.  
16 So, you know, what is the City's vision  
17 for this area of the Community Core? [Unintelligible]  
18 goals of the Comp Plan? One goal listed is a "vibrant  
19 downtown," [unintelligible] business, retail,  
20 shopping, dining, and entertainment -- once again --  
21 mixed-use, combining those uses together. Another  
22 goal listed is "a single concentrated commercial and  
23 retail core."  
24 So we feel that our building's meeting  
25 some of these goals of the Comp -- Comp Plan and what

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1 [unintelligible] development has been asked to  
2 provide, according to that document.  
3 Also, another goal I'd like to point out  
4 is a "variety of housing" options. This property not  
5 only has a larger penthouse unit and a smaller unit,  
6 but it also has two units that are less than 750  
7 square feet. So this is adding to the mixed use and  
8 vitality -- different users of the building.  
9 That is my presentation.  
10 CHAIRMAN MORROW: Thank you.  
11 Public comment. Do we have any online?  
12 UNIDENTIFIED SPEAKER: We do not.  
13 CHAIRMAN MORROW: Okay. Would -- would  
14 the -- Commissioners, do you have questions for staff  
15 or the applicant first?  
16 UNIDENTIFIED SPEAKER: I have a comment.  
17 CHAIRMAN MORROW: Okay. But let's see if we  
18 want to -- do -- do you guys want to question staff  
19 and the applicant first or --  
20 VICE CHAIRMAN MOCZYGEMBA: Whichever.  
21 CHAIRMAN MORROW: Okay. Let's do public comment  
22 because I think we're going to have some, and then we  
23 can include that in whatever we talk about.  
24 So step to the podium. State your name  
25 for the record.

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1 WARREN BENJAMIN: Good afternoon. My name is  
2 Warren Benjamin, and this is for the record.  
3 Thank you for the opportunity to register  
4 my comments about the project under discussion today  
5 at Second and Leadville.  
6 I am a full-time resident of Ketchum and  
7 have lived here for 13 years. I have worked with  
8 several nonprofits, raising money. I was a business  
9 owner with my partner in the downtown quarter. I'm  
10 here to offer my opinion on whether Planning and  
11 Zoning should approve this above-mentioned project,  
12 and I think the answer is a resounding, "Yes." I will  
13 offer you two reasons and be as succinct as possible.  
14 First, let me say that I'm no expert on  
15 the building, construction, logistics, and approval of  
16 any type of structure in the valley. I'll leave that  
17 up to you, the experts. However, if you have a  
18 marketing or advertising issue, I'm the one to talk  
19 to.  
20 Let me first say that, based on my  
21 knowledge of this project, I believe the developer has  
22 checked off the most important boxes that are relevant  
23 to you. First, this project has added four  
24 residential units of critical housing for our  
25 community in the densely-populated downtown quarter.

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1 Check.  
2 The project meets all Code requirements.  
3 Check.  
4 The project has added 1,300 square feet of  
5 retail space in, again, the critical downtown quarter.  
6 Check.  
7 The project will generate much-needed tax  
8 revenue for both property and/or retail sales.  
9 Check.  
10 And the project will add to the  
11 beautification of downtown Ketchum, an example of a  
12 forward-thinking structure that will remain evergreen  
13 past its life expectancy.  
14 Check.  
15 But most importantly -- and just as  
16 important as the structure itself -- is the character  
17 of the person behind this project and his intention to  
18 improve the overall living space in Ketchum. We don't  
19 talk about that a lot. We don't talk about the person  
20 that's behind this project.  
21 Personally, I want someone next door to me  
22 that believes in our community and looks for the  
23 long-range solutions to keep the character and  
24 vibrancy of Ketchum, and I believe that person is Mike  
25 Carr. Mike has both the sensibility and the eye to

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1 make our community a better place to live. He is the  
2 current owner of two residential properties and shares  
3 in the business interests in a commercial building in  
4 Bellevue.  
5 Along with his two children, Mike has  
6 committed his time, his money, his heart to this  
7 project. He is a person that not only make -- takes  
8 very seriously to this project, but is not looking to  
9 make it as a land grab and does not want to embarrass  
10 any of his neighbors. He is committed to doing the  
11 right thing.  
12 So in conclusion, like I said at the  
13 beginning, Mike has checked off all the important  
14 points related to the building, and Mike has committed  
15 himself and his investments to make Ketchum a better  
16 place to live. In my opinion, he has proven to be the  
17 person that be -- that should be granted immediate  
18 approval of this project.  
19 Thank you for your time and consideration.  
20 CHAIRMAN MORROW: Thanks, Warren.  
21 Other public comment?  
22 SAM LINNET: Thank you, Commission.  
23 My name is Sam Linnet with Alturas Law  
24 Group, and I represent 240 North Leadville, LLC.  
25 First, at the last meeting, the Commission

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1 asked for a 3D model of the proposed building, and I  
 2 don't believe that what was presented today was a 3D  
 3 model showing us this -- bulk and scale of the  
 4 building and -- and adjacent properties. So I would  
 5 first request that you ask the applicant again to  
 6 provide what was requested back in December.  
 7 The main issue with this project is the  
 8 size and scale of the building, which results in that  
 9 north-facade wall. This -- the size and scale was  
 10 determined -- it was predetermined by the City Council  
 11 when they approved their FAR Exceedance Agreement for  
 12 this project.  
 13 That was entered into prior to this  
 14 application coming before the P&Z Commission. And  
 15 rather than the P&Z Commission having an open  
 16 conversation about whether to grant a FAR exceedance  
 17 at all, the City Council approved the FAR exceedance  
 18 outside of a public hearing and without any input.  
 19 As you know, part of your role in the  
 20 design-review process is to determine if an applicant  
 21 has -- has met all of the development standards,  
 22 including floor area ratios.  
 23 Part of the difficulty in your ability to  
 24 determine whether this standard has been met now is  
 25 that you're being forced to justify an increase in the

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1 FAR after the City Council has already told the  
 2 developer that they get a FAR of 2.0.  
 3 I'm sympathetic to a developer that needs  
 4 certainty in the standards that are going to apply to  
 5 their building, but with -- that certainty cannot and  
 6 should not be given at the expense of the P&Z  
 7 Commission's ability to independently determine  
 8 whether and how standards are applied, including the  
 9 FAR-exceedance standard.  
 10 Discretionary standards like allowing a  
 11 floor area ratio of 2.0 instead of 1.0 is -- is  
 12 discretionary and it's inherently uncertain, but  
 13 that's part of the bargain the developers get.  
 14 There's a significant benefit to a development, that  
 15 it gets an exceedance of the FAR.  
 16 It is up to the developer to determine if  
 17 the uncertainty in that discretionary standard is  
 18 worth going forward with their project as proposed, or  
 19 they can go with the sure thing and the -- as  
 20 of -- right FAR of 1.0 for this project.  
 21 This Commission should have been able to  
 22 work with the applicant about whether a FAR exceedance  
 23 is appropriate for this project in order to determine  
 24 what design and what kind of FAR exceedance is  
 25 warranted. The design of the building and its impact

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1 on neighboring property owners would be considerations  
 2 that you, as a Planning and Zoning Commission, could  
 3 take into account and that the public would be  
 4 involved with during that process.  
 5 Instead, the City Council made a promise  
 6 to the developer that they could build a building with  
 7 a FAR of 2.0, instead of the permitted 1.0, without  
 8 taking any public input.  
 9 As a result of the City approving the FAR  
 10 exceedance prior to you seeing the design of the  
 11 building, you are in the unfortunate position of being  
 12 unable to make a determination about whether that FAR  
 13 exceedance is appropriate, how much of an exceedance  
 14 should be allowed, and whether the conditions that are  
 15 related to granting a FAR exceedance have been met.  
 16 The current process has created a  
 17 development environment that lets applicants build  
 18 higher-density buildings that do not match baseline  
 19 development standards in the City of Ketchum, and  
 20 that's solely because of -- a developer is willing to  
 21 pay more money to the City.  
 22 The City Council took no public comment  
 23 about whether a FAR exceedance should be warranted,  
 24 and the public had no input about whether and how much  
 25 FAR exceedance should be allowed. This kind of

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1 process creates inequity in the development that  
 2 occurs in this city, and it reduces public input in  
 3 that development.  
 4 So, again, on behalf of my client, I'd ask  
 5 that you continue this matter until the City  
 6 terminates the current FAR Exceedance Agreement and  
 7 gives back to you the power to determine whether FAR  
 8 exceedance is appropriate and how much.  
 9 There was also a comment from the  
 10 applicant that this would be a spot zoning by  
 11 dictating the size and mass of the building. The FAR  
 12 exceedance that allows them to achieve the size and  
 13 mass that they're presenting to you today is  
 14 discretionary. It is not spot zoning, requiring them  
 15 to meet the baseline FAR exceedance standards.  
 16 Thank you.  
 17 CHAIRMAN MORROW: Thank you.  
 18 Other public comment in the room?  
 19 Thank you.  
 20 DAVE HUTCHINSON: Yeah. Hi.  
 21 I'm Dave Hutchinson, and Sam's my lawyer,  
 22 so I'll attempt not to repeat what he had to say,  
 23 but -- but I -- I will echo some of the comments  
 24 because I think they've been the thread through the  
 25 last three meetings.

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1 And I truly believe that if you had a  
 2 chance to see this before the Council did -- and that  
 3 first hearing, which I attended, where you were all a  
 4 little confused by the fact that there was a 2.0  
 5 building in front of you with a preemptive Exceedance  
 6 Agreement -- that we would have negotiated this into  
 7 something that was smaller. I -- I -- I firmly  
 8 believe that.  
 9 The unfortunate position you've been put  
 10 in, unless it's undone -- and we suggest that it be  
 11 undone so it can't be undone at a future date, from  
 12 the legal perspective, because we don't want to undo  
 13 the Ordinance. We think that that FAR exceedance for  
 14 a -- for housing has merit. It's just -- we believe  
 15 that if you had seen it first, we'd have seen  
 16 something different.  
 17 So you're now in a position of having to  
 18 go backward and take things away that they thought  
 19 they already had. And I feel for the architect and  
 20 the applicant, and I've said so to both of them. I  
 21 feel like they got stuck in a bad process.  
 22 However, the building's not built yet.  
 23 We're all still here looking at it. I just watched a  
 24 previous application, as I sat here, where people felt  
 25 like the process worked, and I think the process here

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1 can still work. In general, I've complimented the  
 2 building on -- on three of the four sides.  
 3 The difficulty is -- is the north wall;  
 4 right? The north wall hasn't changed in five or  
 5 six weeks, from when we were last here. It's a -- a  
 6 hair more attractive. They've used my trees to make  
 7 it look better, which kind of doesn't work because I  
 8 don't know how long those are there. One of the  
 9 photos had a tree that doesn't exist anymore, that was  
 10 from -- I don't know -- maybe 20 years ago or 15 years  
 11 ago.  
 12 So it's still very difficult to  
 13 understand, from the sidewalk, walking into The  
 14 Kneadery or coming from Sun Valley Road, how obtrusive  
 15 this north wall will be.  
 16 The reason I was encouraged to come to  
 17 this meeting after redesign is -- I thought we would  
 18 see a three-dimensional model, which can be  
 19 required -- which I think Spencer required -- which  
 20 allows you to look at it.  
 21 You know, the CAD programming allows you  
 22 to look at things from all directions, and I think we  
 23 could have seen some perspectives that would have  
 24 given the -- the P&Z some pause as to what the  
 25 appearance of bulk, flatness, scale, and compatibility

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1 with the neighborhood is.  
 2 And -- and I think you guys get it. You  
 3 know, if I had my druthers, I'd have moved the story  
 4 poles into a location that were a little more telling,  
 5 but even the story poles, as they sit today,  
 6 are -- are pretty obvious.  
 7 At the last hearing, Mr. Carr said, you  
 8 know, "The" -- "Yeah. The guy next door to me on the  
 9 north property line never offered to compromise,"  
 10 which wasn't true.  
 11 So I sent them an e-mail. And I was able  
 12 to get his partner on the phone, Mr. Puvolka  
 13 [phonetic], and I said, "Hey. Why don't we both set  
 14 back 5 feet? I'll put it in a deed restriction and  
 15 step back a little more. You know, I think it'd be  
 16 better for the community, and I'm happy to take the  
 17 same reduced-bulk requirement on my side now, even  
 18 though I don't have any idea when I'm going to build  
 19 in the future."  
 20 And he said he thought it was worth  
 21 discussion, but there was never a return phone call  
 22 after the initial discussion. I still think there's  
 23 merit to that.  
 24 I think a -- I think a 7-inch setback and  
 25 whoever owns my property or myself building to the

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1 property line with a -- a little, skinny gap in there  
 2 is just a -- you know, that's a good way to catch  
 3 leaves and junk and stuff off the roof. So the fact  
 4 that they went 7 inches -- it might as well be on the  
 5 property line.  
 6 I -- I do think that they've done -- made  
 7 some attempt to change the relief, but it's  
 8 really -- you know, the relief in 7 inches is only 7  
 9 inches of relief.  
 10 The -- the north -- the north wall is one  
 11 problem. I also have a real problem with the elevator  
 12 shaft, which isn't shown in many of these depictions.  
 13 But I believe the intent of protrusions through the  
 14 roof and -- and through the height -- height -- above  
 15 the height limit is meant for chimneys and mechanical  
 16 and vents and things like that.  
 17 And although an elevator shaft  
 18 is "uninhabited," it sticks up -- I don't know exactly  
 19 how much higher above the roof, but it is very, very  
 20 visible. And the elevator shaft benefits one  
 21 occupant, which is the penthouse, which means the  
 22 entire town gets to look at this protrusion on already  
 23 a large building for the benefit of one occupant  
 24 because they don't want to walk up the stairs.  
 25 We happen to be doing a project on the



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1 east side of Seattle with multiple roof decks. We  
2 don't send the elevator through the roof. It's just  
3 inappropriate from a design perspective.  
4 So that's kind of a small comment.  
5 I believe -- excuse me -- I believe that  
6 it's incumbent upon you now, even though the process  
7 is a little ass-backward, to either continue or deny.  
8 I really do. I don't believe it passes the  
9 design-review criteria. It's not compatible with the  
10 neighborhood.  
11 You would have really seen it if we got a  
12 3D model. Go put yourself in the 3D down in front of  
13 The Kneadery and look up and have it spin and look  
14 around, not look from a cherry-picker view from above  
15 the top. That's a whole-different look; right?  
16 So I think it's incumbent upon you to at  
17 least continue it so we can get a better project  
18 before it's built. You know, there's still snow on  
19 the ground. I think we can make more progress.  
20 Or I think it's incumbent upon you to deny  
21 and send a message that this was the wrong location  
22 for a double-FAR -- a 1.0 to -- to a 2.0 -- on a  
23 5,500-foot [sic], flat lot one block from Main Street  
24 and one block from Sun Valley Road in a neighborhood  
25 that is already smaller in scale. It's just the wrong

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1 place. There may be an appropriate place within the  
2 community, but that's not it.  
3 So I hope you can get the process back on  
4 track, and I hope we can make this project fly with a  
5 little -- with a little more work.  
6 And I appreciate your time.  
7 CHAIRMAN MORROW: Thank you.  
8 Other public comment in the room?  
9 PAM COLESWORTHY: Pam Colesworthy, for the  
10 record. And I, for the most part, disagree with  
11 Mr. Hutchinson.  
12 I cannot speak to the FAR exceedance and  
13 the process and what discussions were happening with  
14 City Council versus you and -- you'll have to work  
15 that through, but this current iteration of this  
16 building is the best one we've seen yet, and I think  
17 the applicant has tried to give the City everything  
18 that the City wants.  
19 So I think it's very attractive and that  
20 you ought to go ahead and approve it because the mass  
21 and scale is happening all over this town. You go  
22 quadrant by quadrant and look around and see the  
23 buildings that you have already approved. You have  
24 set the precedent.  
25 And if you want the vibrancy and people in

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1 the core and -- and retail and to accommodate the  
2 parking and all the things that you want, you have no  
3 place to go but up.  
4 So I strongly encourage you to approve  
5 this, and I -- from what I'm hearing is -- it complies  
6 with everything. And I'm -- I'm sorry that the  
7 neighbor to the north doesn't like the wall, but the  
8 wall looks better than ever. And at a certain point,  
9 that, too, shall be developed and it will be big. And  
10 that's the nature of how this town is going to evolve.  
11 It's just the nature of life.  
12 Thank you for your consideration.  
13 CHAIRMAN MORROW: Thank you.  
14 Other public comment in the room?  
15 Seeing none. I will close -- and -- and  
16 none online?  
17 UNIDENTIFIED SPEAKER: There is no public  
18 comment online, sir.  
19 CHAIRMAN MORROW: I will close public comment,  
20 and we can go to -- oh, okay. One more.  
21 MORGAN LANDERS: Well, we do have -- so Mike  
22 Carr is the property owner.  
23 CHAIRMAN MORROW: Oh, so --  
24 MORGAN LANDERS: There is an opportunity for  
25 them to --

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1 CHAIRMAN MORROW: -- the applicant.  
2 MORGAN LANDERS: -- kind of respond to --  
3 CHAIRMAN MORROW: Okay.  
4 MORGAN LANDERS: -- the public comment. So  
5 either himself or Nicole could respond to what --  
6 CHAIRMAN MORROW: Okay. So we'll --  
7 MORGAN LANDERS: -- [unintelligible].  
8 CHAIRMAN MORROW: We'll put you in the applicant  
9 section there and --  
10 MORGAN LANDERS: Well, no. What I mean is that,  
11 if we are closing public comment --  
12 CHAIRMAN MORROW: Yes.  
13 MORGAN LANDERS: -- the next step in the process  
14 is their response.  
15 CHAIRMAN MORROW: Okay.  
16 MORGAN LANDERS: Yeah.  
17 CHAIRMAN MORROW: So if you guys would --  
18 MIKE CARR: [Unintelligible] if we can go  
19 together. It's -- it's a pretty big project, but --  
20 CHAIRMAN MORROW: Please state your name for the  
21 record.  
22 Thanks.  
23 MIKE CARR: Mike Carr. I'm the developer.  
24 And one of the things -- the last time we  
25 were here and we went through it -- and I might ask to

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1 bring up some more photos, but -- is -- you talked  
2 about vision and -- of what the city would look like.  
3 And, to me, the vision of a  
4 1,300-square-foot house built in 1940 in the Community  
5 Core that has no retail, has no housing, has nothing  
6 that you're wanting to achieve, ultimately, that's not  
7 the vision in -- at least in my opinion.  
8 And so the changes we made -- oh, excuse  
9 me -- all the way around, from the back of the  
10 building to the front of the building, et cetera, have  
11 been immense, from the Juliette balconies, to the  
12 flowers, to the -- to the rounded windows, to the  
13 overhangs, to the change in relief on the roof.  
14 When you go to the north wall, the change  
15 of the bottom of the first floor -- if you look at  
16 that, we wrap that material around so it actually  
17 looks like it's the building itself by itself.  
18 And then you go above it, the next two  
19 floors, and it's bricked-in windows that looks like,  
20 "Maybe that building was built in the '30s, and  
21 someone bricked-in the windows," et cetera.  
22 You go further down, and you have the  
23 trellises -- okay? -- which then  
24 cover -- there -- that -- that cover the roof.  
25 They'll come from the top and the bottom. And if you

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1 go -- I mean, we do have a 3D -- essentially,  
2 but -- but if you go to these views here,  
3 that's -- that's like with no trees, but that's not  
4 how the building exists.  
5 If you go to the winter view, this  
6 is -- this is how it looks. That's the building.  
7 Those two trees do exist, and there's three aspens  
8 behind it so that, if you go to the summer  
9 view -- you're in the summer. You can't even see the  
10 building.  
11 And so this whole idea -- you can't see  
12 it -- you can't -- you do look at the building, I'm  
13 sure, from Dave's house; okay? That's a reality. But  
14 when you get the streetscape, when you get to the view  
15 you're talking about, you don't look at it.  
16 Then if you go to the front of the  
17 building, which -- you know, Dave talks about a 5-foot  
18 setback, but a 5-foot setback of the building changes  
19 your parking. And now you can't park the building  
20 because the back of the building, which we covered a  
21 long time ago -- about all the things you have to put  
22 in the back of the building, the park -- or the  
23 parking, the garbage, the elevator -- the elevator,  
24 the stairwell.  
25 You -- you start -- you take away from the

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1 beauty of the inside of the building. Even if you  
2 went to the outside, the flow of the building  
3 completely gets kind of discombobulated, for lack of a  
4 better word. So for us, this building is old school.  
5 It's timeless.  
6 That north wall, if I go back to  
7 it -- because I think the north wall is like  
8 everybody's hot -- I don't think anybody disagrees  
9 that the building looks -- the other ways -- but if  
10 you -- excuse me -- but if -- I mean, that's how the  
11 north wall looks without the aspen -- I mean, that's  
12 how it would look with no trees.  
13 But the bottom -- the bricked-in windows,  
14 the change in brick, the change of material in the  
15 bottom -- when you walk on the sidewalk, you don't  
16 look back 80 feet. You probably catch the first  
17 40 feet of the building. And so we cover the first  
18 50, 60 percent of the building with the look of a  
19 building that exists with windows, material, and the  
20 trellis to meet the -- you know, to make it -- break  
21 it up on the green side.  
22 So I -- I mean, it's pretty, dang  
23 nice-looking. It's a zero-lot-line Code. We think  
24 you should approve it today.  
25 Do you have anything else to say?

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1 NICOLE RAMEY: I do.  
2 MIKE CARR: Yeah. Okay. I'm sorry.  
3 NICOLE RAMEY: I did also want to respond to the  
4 comments about the elevator.  
5 Once again, we are not asking for any  
6 height variances. The elevator height meets the Code.  
7 The Code is 10 feet above the parapet height, and our  
8 parapet height is within the Code. Therefore, we are  
9 meeting the requirements for elevator height.  
10 And then, also, the comment about it only  
11 being used by the penthouse is erroneous. It would be  
12 for three of the residential units.  
13 And that's --  
14 CHAIRMAN MORROW: Thank you.  
15 COMMISSIONER CORDOVANO: Question --  
16 CHAIRMAN MORROW: Yeah, please.  
17 COMMISSIONER CORDOVANO: -- for the applicant,  
18 Nicole.  
19 NICOLE RAMEY: Yes.  
20 COMMISSIONER CORDOVANO: Have you considered  
21 using either -- the smaller units as community housing  
22 instead of paying the in-lieu fee?  
23 NICOLE RAMEY: Yes, we have.  
24 We were told that the lower-level unit was  
25 a no-go for being in the affordable-housing pool. And

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1 then, as we added the second 749-square-foot unit  
2 during the process -- we -- I -- you know, I guess  
3 that's a -- that's a discussion, but it's more about  
4 adding it [unintelligible] to the pool.  
5 COMMISSIONER CORDOVANO: And -- thank you.  
6 And what is the top-floor penthouse's new  
7 size with the reduced massing?  
8 UNIDENTIFIED SPEAKER: [Unintelligible]. I'm  
9 looking at 35.  
10 NICOLE RAMEY: Yeah. [Unintelligible].  
11 3,505 net.  
12 COMMISSIONER CORDOVANO: Thank you.  
13 CHAIRMAN MORROW: Other questions?  
14 COMMISSIONER CORDOVANO: Another question for  
15 staff.  
16 CHAIRMAN MORROW: Yeah, we closed the public  
17 comment. Yeah, I closed public comment.  
18 Sorry. Go ahead, Spencer.  
19 COMMISSIONER CORDOVANO: A question for staff,  
20 but if anybody has anything else for the applicant  
21 while she's here...  
22 CHAIRMAN MORROW: Go ahead.  
23 COMMISSIONER CORDOVANO: What's the in-lieu  
24 payment for this project?  
25 MORGAN LANDERS: I will look that up. I think

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1 it was in the original staff report, but I'll find  
2 that and get back to you.  
3 COMMISSIONER CORDOVANO: [Unintelligible].  
4 UNIDENTIFIED SPEAKER: \$411,000.  
5 CHAIRMAN MORROW: Okay. Thank you.  
6 Other questions --  
7 COMMISSIONER CORDOVANO: Keeps you up at night.  
8 CHAIRMAN MORROW: -- for staff?  
9 COMMISSIONER CORDOVANO: Keeps you up at night.  
10 UNIDENTIFIED SPEAKER: [Unintelligible].  
11 CHAIRMAN MORROW: No other questions for staff  
12 or the applicant?  
13 VICE CHAIRMAN MOCZYGEMBA: I have a question for  
14 the applicant.  
15 I -- I think we covered this before, but  
16 we covered it in detail in a previous meeting. The  
17 brick here -- is the intention that it will be a -- a  
18 full brick to achieve the brick detailing; correct?  
19 NICOLE RAMEY: And that is part of the  
20 reason -- the 7 inches is not -- is not empty space.  
21 7 inches is really to allow for full brick detailing,  
22 utilizing full-sized bricks, to be offset from each  
23 other and achieve that -- call it that "traditional"  
24 definition of relief on the building.  
25 VICE CHAIRMAN MOCZYGEMBA: And then has there

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1 been any discussion with the adjacent property owner  
2 regarding plantings for the trellis? I think you had  
3 mentioned that there is a possibility that the  
4 plantings could all come from the rooftop.  
5 NICOLE RAMEY: Correct.  
6 VICE CHAIRMAN MOCZYGEMBA: Okay. Great.  
7 Thanks.  
8 CHAIRMAN MORROW: Tim, do you have --  
9 COMMISSIONER CARTER: No.  
10 CHAIRMAN MORROW: Susan?  
11 COMMISSIONER PASSOVOY: Yes, I -- since the  
12 original application precedes my tenure on the  
13 Commission, I just wanted to get a little  
14 clarification on the procedure.  
15 I know that we have -- because of  
16 the -- the order in which the FAR Exceedance Agreement  
17 was done -- I guess, created -- I'm not quite sure  
18 what the right word is -- but, you know, some  
19 consternation, that we have advise -- so -- advised  
20 that we don't want to -- want this to happen again; is  
21 that correct?  
22 MORGAN LANDERS: That's correct.  
23 So this -- there was quite a bit of  
24 history of kind of how we were doing the sequence of  
25 FAR exceedance agreements. This very project actually

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1 instigated a comprehensive policy discussion with the  
2 Planning and Zoning Commission and City Council.  
3 So just to kind of recap where that  
4 landed -- is that -- moving forward, if an applicant  
5 is coming forward with either on-site, off-site, or an  
6 in-lieu payment that meets kind of their by-right  
7 options, the FAR exceedance agreements won't go to  
8 City Council until after the Planning and Zoning  
9 Commission makes their recommendation on -- on design  
10 review.  
11 The only caveat to that is that, if an  
12 applicant is requesting, basically, an alternative  
13 mitigation -- which is provided for in the Code, but  
14 is only allowed by City Council approval -- what we  
15 decided and what the Planning Commission seemed to be  
16 okay with, was that we would go to the Planning  
17 Commission for an initial -- or to the City Council  
18 for an initial discussion, no approval of an FAR  
19 exceedance agreement comes through the Planning and  
20 Zoning design-review process, and then follow that  
21 with approval of the FAR exceedance agreement after  
22 the P&Z design-review process.  
23 So that is what we are following for all  
24 projects moving forward, but this project was the kind  
25 of instigator of that policy discussion.

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1 COMMISSIONER PASSOVOY: So going forward, we  
 2 will have sort of a 360 process?  
 3 MORGAN LANDERS: Yes. Yes, you sure will.  
 4 And -- and just to kind of clarify. We  
 5 have -- and -- and, also, I just want to make sure  
 6 because I think, Tim, you may have missed some of the  
 7 earlier discussion in one of the earlier meetings as  
 8 well.  
 9 We have received kind of a legal  
 10 determination from the City's Legal Department that  
 11 the conditions that are placed on that FAR Exceedance  
 12 Agreement do not prejudice the Commission for making  
 13 their decision on design review.  
 14 There's a lot of conditions of that  
 15 agreement that says, "If something changes, this is  
 16 how it happens," so it does not lock you all in for a  
 17 prejudged approval of the project. You still have  
 18 full reign to make your decision, based on the  
 19 design-review criteria.  
 20 COMMISSIONER PASSOVOY: On the -- on the merits  
 21 of the building, these are the design review --  
 22 MORGAN LANDERS: Correct.  
 23 COMMISSIONER PASSOVOY: All right. Then my  
 24 second clarification -- oh, please don't have  
 25 forgotten it already.

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1 Can I come back?  
 2 CHAIRMAN MORROW: Yeah, you can come back to it.  
 3 COMMISSIONER PASSOVOY: Can I reserve --  
 4 CHAIRMAN MORROW: We can --  
 5 UNIDENTIFIED SPEAKER: Excuse me.  
 6 [Unintelligible] you a moment.  
 7 CHAIRMAN MORROW: We will -- yes. Okay.  
 8 Spencer?  
 9 COMMISSIONER CORDOVANO: Is there any way  
 10 we -- considering open up -- opening back -- public  
 11 comment?  
 12 CHAIRMAN MORROW: Generally, I wouldn't.  
 13 Do you have a specific -- do we have a lot  
 14 of public comment that --  
 15 COMMISSIONER CORDOVANO: No, I think just --  
 16 CHAIRMAN MORROW: -- [unintelligible]?  
 17 COMMISSIONER CORDOVANO: Well, somebody else  
 18 wanted to comment. I'm --  
 19 CHAIRMAN MORROW: Morgan?  
 20 MORGAN LANDERS: Generally, what I recommend is  
 21 that we always reopen public comment if there's been  
 22 new information provided.  
 23 CHAIRMAN MORROW: Okay.  
 24 MORGAN LANDERS: So if there's new information  
 25 that you all felt the public was not aware of --

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1 CHAIRMAN MORROW: I'm happy to --  
 2 MORGAN LANDERS: -- you know, you could. It --  
 3 CHAIRMAN MORROW: I'm happy to do it --  
 4 MORGAN LANDERS: It's really up to --  
 5 CHAIRMAN MORROW: -- on Spencer's request.  
 6 MORGAN LANDERS: -- your discretion.  
 7 COMMISSIONER CORDOVANO: I'm -- I'm inclined to  
 8 hear it.  
 9 CHAIRMAN MORROW: I'm happy to do it.  
 10 So thank you, Nicole.  
 11 So temporarily, we will reopen public  
 12 comment. If we have comment, please step to the  
 13 microphone and state your name for the record.  
 14 JEFF SWANSON: Jeff Swanson [phonetic]. I've  
 15 been a resident here for a bit.  
 16 The one thing I think has been overlooked  
 17 is the retail, and the fact is that -- I'm over there  
 18 a lot. I'm helping out the owner with some of the  
 19 planning and some of the reviews. This is pretty much  
 20 a dead area over there in regards to foot traffic.  
 21 I would think that 1,300 feet [sic] of  
 22 retail -- but I hope I'm not getting off base -- kind  
 23 of makes a circle because you have Atkinsons' area and  
 24 what's going on over there, you have Main Street,  
 25 which has some amount of retail, but the south side of

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1 town, there -- I see no retail there.  
 2 And I'm only bringing that to the point as  
 3 an observer of what's -- walking around there.  
 4 There's no real interaction. It's a pretty dull side.  
 5 So I will stay out of the elevator, and  
 6 I'll stay out of the -- although, I think that north  
 7 wall looks great.  
 8 One fact -- and you probably are going to  
 9 want to "boo" me out. I spend a lot of -- spend a lot  
 10 of time in Seattle development. North walls or blank  
 11 walls in Seattle are almost always cement block. And  
 12 I look at these things, and I think to myself, This is  
 13 really ugly. I come back, and from -- and -- in  
 14 building, and all of a sudden that north wall is  
 15 absorbed into the neighborhood. That's just from  
 16 a -- a point of view from my end.  
 17 But I think the retail aspect of -- but  
 18 introducing that is important -- the walking  
 19 community.  
 20 Thank you.  
 21 CHAIRMAN MORROW: Thank you.  
 22 Any other -- not seeing any.  
 23 I will -- back here -- I'll go -- I'll  
 24 close public comment, and we can go to deliberation or  
 25 any other questions.

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1 COMMISSIONER CORDOVANO: Yeah. I don't know.  
 2 I -- to respond to the -- you know, this  
 3 whole -- everything is -- is -- first off, I would  
 4 like to thank the applicant. I know it's a big lift,  
 5 and it's a lot of investment financially and mentally  
 6 to invest in our town.  
 7 And I appreciate a lot of this building.  
 8 I really appreciate the nod to smaller retail areas,  
 9 whether or not they're still potentially able to be  
 10 rented by one person much longer -- larger. I  
 11 appreciate the look. I appreciate coming back here  
 12 time and time again.  
 13 However, at the end of the day, I'm just  
 14 not behind it for a few reasons. I feel like it  
 15 doesn't meet the character of the neighborhood. I  
 16 feel like it further defines the character of the  
 17 neighborhood.  
 18 I feel like there's a lot of other ways  
 19 this building could have met a 2.0 floor area ratio  
 20 and not maxed height and not maxed elevator shafts.  
 21 And I have been known to vote against any top-floor  
 22 penthouse with a hot tub on top that maxes out the  
 23 height for those reasons.  
 24 I think a building with 10-to-12-foot  
 25 ceilings and community housing in it, instead of

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1 the -- paying the in-lieu fee, would do a lot more for  
 2 the town. We've been pushing everyone to develop  
 3 community housing, rather than pay the fee time and  
 4 time again on this Commission.  
 5 I think, you know, in regard to the public  
 6 comment in the back, I also think Mike's a great guy.  
 7 I see him around all the time at all the local  
 8 watering holes and skiing and out in the woods, and we  
 9 don't evaluate who's doing the project. It's not a  
 10 personal thing. We give the same level of agita to  
 11 anyone, be it out-of-town developers or locals.  
 12 And quite frankly, I need to remove my  
 13 bias from my decision -- that two of my neighbors in  
 14 an apartment building that will not last are neighbors  
 15 of condos that have been bought and sold by this  
 16 development team and kicked out of their places before  
 17 their leases were up in the precursing years. So I'm  
 18 removing that bias in both aspects from my decision.  
 19 And I don't think it's critical housing at  
 20 all. I think it's housing that is large, too tall,  
 21 and, honestly, housing without a view of the northern  
 22 realm that they're missing by not having windows  
 23 there.  
 24 I appreciate the Building Code and the  
 25 Fire Code when they need it. When Dirty Little

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1 Roddy's burnt down and that was in a position that  
 2 they needed to -- brick walls, lot line to lot line,  
 3 we saw why they do that. But I think there's a  
 4 million other ways to get to a 2.0 floor area ratio.  
 5 And the undulation of the north wall has  
 6 been very minimally reduced time and time again. And  
 7 while it does look good, I've got my concerns about  
 8 the safety of the public, walking under all these  
 9 potential areas for cornice, whether they're melted or  
 10 not, with the sidewalk extensions.  
 11 And that's where I stand.  
 12 CHAIRMAN MORROW: Thank you.  
 13 Susan, I think you've remembered your --  
 14 COMMISSIONER PASSOVOY: I did remember my other  
 15 point. It's really a -- basically a small one, but I  
 16 just -- it's sort of a correction.  
 17 We discussed asking for a 3D CAD model or  
 18 something, but I think that we let that go by the end  
 19 of the meeting. I don't think it was a requirement.  
 20 It would be nice to have, but we got talked out of it,  
 21 as I recall.  
 22 CHAIRMAN MORROW: I'm not sure if that was this  
 23 or the hotel, but I think that the -- the concept is,  
 24 "Did this" -- "did what we see here show the massing,  
 25 as compared to the neighborhood?" And sometimes it

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1 does, and sometimes it's a little skewed to look  
 2 better than it could.  
 3 But I think we've all been to this site  
 4 enough to know what a difference it's going to make in  
 5 the -- in the sense of size on that side. But, you  
 6 know...  
 7 COMMISSIONER PASSOVOY: I -- I'm very  
 8 sympathetic to most of Spencer's comments. And I  
 9 also, however, am sympathetic to -- yes, this  
 10 building, in a sense, does set an -- a precedent for  
 11 how that area will be developed as we go forward over  
 12 the next 10 years.  
 13 And I keep saying that the town is  
 14 growing, the town will grow, and we are in charge of  
 15 managing how that growth occurs. We can't stop it,  
 16 but we can get the best we can as it grows and make  
 17 sure that it is providing aesthetic growth and useful  
 18 growth.  
 19 And this is where I'm -- I'm sympathetic  
 20 with Spencer's comments, that I just wish we could get  
 21 more housing out of these projects that are being  
 22 built and -- not orienting them toward people who  
 23 don't spend -- who don't live here.  
 24 They live here occasionally, but they are  
 25 not full-time residents -- residents of the city. And

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1 I realize that that is out of the bounds of the  
2 purview of this Commission, but it feeds my prejudice  
3 about how the change is managed.  
4 In terms of design review, I think this is  
5 a gorgeous building.  
6 CHAIRMAN MORROW: Thank you.  
7 Brenda.  
8 VICE CHAIRMAN MOCZYGEMBA: Yeah. I don't have  
9 too much to say.  
10 I appreciate the applicant team in  
11 responding to all the feedback that's been given  
12 throughout the last several meetings.  
13 I think it's a mistake to, you know, not  
14 be forward-thinking enough in trying to, you know,  
15 force this building to be smaller to meet its other,  
16 you know, non-conforming neighbors, essentially.  
17 It -- it -- it's a hard spot to be in because, I  
18 think, it's been acknowledged that, you know, this  
19 would be an otherwise dead corner of town, but I see  
20 that more as an opportunity, rather than down-playing  
21 the highest and best use that this property could  
22 become.  
23 We -- you know, we can argue all day long  
24 what -- you know, what the benefit of these  
25 condominium units are going to be to the town, but I

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1 think, in regards to the current Code language, you  
2 know, the -- the applicant has responded to what's  
3 allowable in -- in a nice fashion.  
4 And so that's my opinion.  
5 CHAIRMAN MORROW: Thank you.  
6 Tim.  
7 COMMISSIONER CARTER: The -- the sort of -- it  
8 feels like there's a -- a conflict or a -- a -- sort  
9 of a push/pull that's going on in town around the size  
10 of buildings that are getting developed, and it seems  
11 to be manifesting itself in this project.  
12 This -- you know, this lot right on -- I  
13 mean, this -- this block borders Sun Valley Road, and  
14 it's one block off of Main Street. This isn't out on  
15 the outskirts of town somewhere. This is, you know,  
16 arguably right downtown, but it's a part of town that,  
17 for one reason or another, hasn't seen a lot of  
18 growth.  
19 And, you know, this is -- this -- this  
20 project -- you know, the -- right across the alley  
21 from this is the CenturyLink building, which is  
22 a -- sort of an odd, small black hole of a building  
23 that really doesn't -- I mean, it's a communication  
24 node for town, I guess, but it really contributes  
25 nothing to the streetscape of town at all. And I

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1 don't know if that's kind of contributing to why this  
2 corner's -- why -- why this corner has been dead or  
3 not.  
4 It's not dead, but, you know,  
5 isn't -- doesn't have the same sort of street vibrancy  
6 that Leadville does as you go further north.  
7 There's an empty parking lot across the  
8 street from -- across the street from it, towards Main  
9 Street. You know, that's like -- I imagine that's  
10 going to get developed some time soon.  
11 So this -- the development of this corner  
12 is -- is sort of an opportunity to extend that  
13 streetscape of downtown in a direction that really  
14 seems to make a lot of sense. You know, we're just a  
15 block off of Main Street. The connection from Main  
16 Street, you know -- or over by where -- where Rico's  
17 used to be in Chapter One, you know, connecting to Sun  
18 Valley Road along here, I -- I think, is a -- is a  
19 real potential addition to the -- to the streetscape  
20 of town.  
21 And this building kind of helps set that  
22 corner. So there's a -- there's a lot of value to it.  
23 There's retail on that downstairs. And so in that  
24 sense, you know, I think this -- this -- this building  
25 can -- can really contribute to some -- to an

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1 improvement to -- to downtown.  
2 The -- the question that seems to be -- or  
3 the conflict that seems to be -- is -- is -- you know,  
4 "Is three story" -- "is a three-story building  
5 appropriate in this location?" It certainly stands  
6 out, compared to the development that's  
7 there -- that's currently there now.  
8 And I guess the appropriateness of this  
9 building here depends on, you know, what's going to  
10 happen with development in town in the future. You  
11 know, is -- is the -- is development -- you know, is  
12 this what's going to happen?  
13 And if we force it -- or if -- if we -- if  
14 we force a smaller building into here, is it, then,  
15 eventually going to look out -- out of scale with the  
16 buildings that eventually come up around it, or -- or  
17 if we allow this building, are we then -- are we then  
18 sort of creating that -- are we sort of incentivizing  
19 that large development to happen? It's for -- I guess  
20 it's sort of chicken-or-the-egg.  
21 You know, my -- I -- I suppose it would be  
22 easier to have a two-story building developed here  
23 because there'd be less conflict, so it's hard to be  
24 in a position to -- to just make this decision.  
25 You know, my sense is that -- my -- my

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1 kind of gut -- is that downtown is where this kind of  
2 development needs to be, one block off of Main Street,  
3 one block off of Sun Valley Road.  
4 You know, as jarring as a -- it -- sort of  
5 a -- it's a conflict to the buildings that are there,  
6 but it doesn't -- it feels like this development's  
7 sort of inevitable, certainly at the scale we've been  
8 going the last few years. It -- it feels like this is  
9 where we're headed.  
10 I appreciate the improvements to the north  
11 wall. I -- I mean, I -- I really think  
12 those -- those -- recessed, bricked-in-window look  
13 is -- is a good -- a good -- a good solution for that.  
14 It's tricky to invest a lot in a wall that -- you  
15 know, there's a good chance that that is going to get  
16 developed over at some point.  
17 A couple comments about the -- about the  
18 facade -- you know, one of the things I hoped we -- I  
19 couple of things I hope we address in the Code rewrite  
20 that we do is this sort of focus on -- on undulation  
21 everywhere. There's a previous iteration of this  
22 building on the -- is it 2nd Street? -- view that  
23 shows this sort of brick cornice-work over the top of  
24 the white stone. That's, I think, much more  
25 attractive.

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1 And, you know, we forced this building to  
2 put in -- add -- add sort of -- add a -- I think it's  
3 a -- a -- like a steel-fascia-overhang wall and a  
4 break in the parapet, and -- and I -- just for  
5 the -- you know, for the sake of undulation and -- and  
6 relief. And I think the religion of undulation  
7 of -- is -- I would like -- I'd like to address in the  
8 next -- in the Code rewrite.  
9 And then I also think we should look at  
10 elevator overruns. I understand that, you know, the  
11 way this is designed is what's allowed by Code, but do  
12 we really need to have elevators going to the roof?  
13 What -- what is the reason why elevators are going to  
14 the roof? So if we can address that because  
15 it -- elevator overruns require so much additional  
16 height over the allowable roof.  
17 We ran into it in the hotel. Why is it  
18 that we're -- why are there elevators going to the  
19 roof, and must we allow those? Because they really do  
20 add a significant amount to sort of the agreed-upon,  
21 allowable height of the building.  
22 CHAIRMAN MORROW: All right. Go ahead.  
23 VICE CHAIRMAN MOCZYGEMBA: Tim, thanks for  
24 adding that on the elevator overrun. That's one thing  
25 I forgot to mention, but I would agree.

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1 In our rewrite, I think we need to clarify  
2 what -- what that allows because these things continue  
3 to come up as kind of warts on the top of the  
4 building. But I think they still take away -- while  
5 it's not viewed from the street, I think, from afar,  
6 they're going to take away someone's view at -- at  
7 some point.  
8 CHAIRMAN MORROW: So, yeah. That -- I know we  
9 wanted to stay away from any kind of amendment or  
10 anything as we go into the Code rewrite, but  
11 I'm -- I'm of the same now.  
12 This is two times in a row that we've come  
13 up with -- we're fighting about height to keep the  
14 city low, and then there's this 10-foot thing on top  
15 that, you know, totally destroys it. Even though you  
16 can't see it from the street, it -- you -- you know,  
17 it's not 42. It's 52 now. And so  
18 it -- it -- it -- it's allowed, but I'd like to get  
19 rid of it.  
20 If they've got to dig it at the bottom  
21 into the ground to get that space to put the  
22 stuff -- whatever they need, but I'm -- I'm in -- in  
23 firm favor of getting rid of this or -- or making it  
24 so that -- clearly, someone said they do it in  
25 Seattle, and they were -- they can make it even with

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1 the roof or build the roof over it.  
2 I think we need to address this before  
3 it -- as the buildings get bigger, before we have a  
4 bunch of 52-foot -- you know, on one building, it may  
5 not matter. On 10, it may start to look like they're  
6 all really large buildings. So I think that's more of  
7 an urgent concern as we go forward.  
8 More to this point, I'm hoping -- well,  
9 first off, my first question was going to be, "Did  
10 they talk to the neighbors?"  
11 One of the pictures they show has a bunch  
12 of like aspens on the side. I like that view, but  
13 you're not getting that with 7 inches. You know, I  
14 like the 5-foot setback and the ability to put windows  
15 and have a northern view like Spen [phonetic] said.  
16 But, again, that didn't seem to go anywhere, you know,  
17 having the neighbors do that.  
18 I agree with Tim on this being an  
19 activation of this corner. I guess, as much as I hate  
20 it, what we're going to see is this corner and the  
21 Vintage corner going to the level -- to the limit, 42  
22 or 35.  
23 And then, next -- across the street, you  
24 have the two historic houses. And so you're going to  
25 see some kind of stepdown no matter what over there

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1 with Chapter One and the two houses and -- and even  
 2 the real-estate building on the corner is -- the  
 3 builder's building -- Lee Gilman's building is one  
 4 story. So you're going to have that stepdown no  
 5 matter what you do there. I mean, it's -- I -- I just  
 6 see that.  
 7 And then as you go to the next block, you  
 8 have Argyros, which is tall, and you have the blue  
 9 building, which doesn't have any retail. They seem to  
 10 have gotten rid of all their retail next to  
 11 Sister -- whatever that building was -- the Boulder  
 12 Building -- Boulder Building. So --  
 13 MORGAN LANDERS: Is that the one with Lloyd  
 14 Construction in it?  
 15 CHAIRMAN MORROW: Yeah, it just has that now.  
 16 MORGAN LANDERS: Two-story building?  
 17 CHAIRMAN MORROW: Yeah.  
 18 MORGAN LANDERS: Yep.  
 19 CHAIRMAN MORROW: And then behind the block  
 20 on -- on the other side, they built a three-story kind  
 21 of condo -- townhouses over there, so it's -- it's  
 22 coming up. So I'm with Tim that -- you know, this  
 23 will activate that corner, and we just have to find  
 24 some way to -- to blend it back down as you go to the  
 25 next block. Hopefully, those -- those original houses

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1 stay.  
 2 Can the trellis get enough light, being on  
 3 the north side, not getting a lot of light? I  
 4 just -- I'd hate to see a bunch of -- you know, just  
 5 an empty trellis or a bunch of dead plants or -- or  
 6 you guys constantly trying to put new plants in there  
 7 so that it doesn't -- it's -- it's not so much a  
 8 question, as it is just something that  
 9 we're -- yeah -- that we'd like to -- that I'd like to  
 10 make sure we're keeping an eye on.  
 11 As anything else -- and you guys can tell  
 12 me to stop saying this, but this project gets better  
 13 and better. And I'm sure if it took another two  
 14 years, it would get somewhere close to where Dave  
 15 wants it to be, and we would find a really great  
 16 project, but I think -- I think the process works.  
 17 We've -- I really like the addition to the  
 18 north wall of the bricked-in windows. I think that's  
 19 a really clever solution that gives it some feel, more  
 20 than just color or murals or whatever.  
 21 And if we can get the trellis to work,  
 22 then it really kind of -- now you've kind of shrunk  
 23 that. As -- again, as much as I'm with everyone  
 24 else -- it would be nice if buildings were  
 25 smaller -- this is what the Code says. This is what's

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1 going to get built in some of these places. Look  
 2 around town. This is what's getting built.  
 3 So I think they did a nice job of -- of  
 4 limiting that, of stepping the building back more.  
 5 I -- I like Tim's comment about the -- the  
 6 religion of undulation, but I -- I think, right now,  
 7 it's still important that we do it. But we probably  
 8 should address it so it doesn't get out of control.  
 9 The elevator tower. The trees on the  
 10 north. The trellis.  
 11 And then you guys dealt with the legal.  
 12 So if it gets beyond us -- not our process. I mean,  
 13 we would like the process to work properly every time,  
 14 but I didn't feel pressed to -- to say we couldn't  
 15 make it drink, and we keep trying to make it drink.  
 16 So we've actually done some work on -- on that side.  
 17 So all in all, I think it's -- you know,  
 18 again, if we had another six months, it would get  
 19 better and better, but that's not a -- always a  
 20 realistic thing. I think it's gotten a lot better  
 21 through the process. So that's where I am.  
 22 Susan.  
 23 COMMISSIONER PASSOVOY: And the only thing I  
 24 wanted to add, which is -- I appreciate Tim's  
 25 observations. It is difficult to be the first in the

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1 hood to do something basically, radically different  
 2 than what's around you, and that's why this is  
 3 definitely the target of a lot of con -- community  
 4 concern about direction.  
 5 And I think that, if this is going to be  
 6 the first one of several in this area, it's -- it's a  
 7 nice one. I mean, I think that the architect and the  
 8 developer have come up with -- with a good -- a good  
 9 compromise and -- within the boundaries of the Code  
 10 that we are required to work with.  
 11 CHAIRMAN MORROW: Well, they might not have been  
 12 the first, but we rejected -- I don't know -- Tim  
 13 might have been here for this.  
 14 We rejected a project across the street  
 15 that was strictly -- strictly housing, with no  
 16 activation on the first floor. And we were just  
 17 like, "It's" -- "It doesn't fit the neighborhood."  
 18 It -- so I could see, with retail on the first floor,  
 19 that project coming back, which was maybe not as bulky  
 20 as this, but was large. And -- and you're probably  
 21 going to see that next door anyway.  
 22 So I -- you're right. It -- it -- it was  
 23 hard for the first, and there would have been one  
 24 before, but we were like, "There's no way that we're  
 25 putting your front door on the street."



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1 So, Spencer.  
2 COMMISSIONER CORDOVANO: I just think -- you  
3 know, the development, by right, is 1.0, and the rest  
4 of this is discretionary, based on our review of the  
5 design criteria.  
6 And just because it looks pretty and meets  
7 the Code, I'd like to offer the perspective that it  
8 reaps every benefit of the Code to the maximum,  
9 without providing -- claiming vibrancy is great. We  
10 got a couple units out of it.  
11 But then you look at the offices on Sun  
12 Valley Road and Leadville, and there's about 20 units  
13 in there, and the building's 24 feet tall. And you go  
14 around the clock there, and I think you get more of  
15 that vibrancy, more tax, and more action from any  
16 other building.  
17 And I just think, whether or not the  
18 Council already approved the FAR Exceedance Agreement,  
19 I think it could still be achieved at 2.0, with a much  
20 smaller and vibrant building. And just because it  
21 looks great, that doesn't mean we have to live with  
22 it.  
23 CHAIRMAN MORROW: Thank you.  
24 Anyone else? Other comment? Other  
25 questions for staff?

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1 Staff, anything else?  
2 Well, I'm happy to take a motion or  
3 continue deliberation, or if you guys need more  
4 time...  
5 COMMISSIONER CORDOVANO: I mean, I'd --  
6 CHAIRMAN MORROW: Continue the --  
7 COMMISSIONER CORDOVANO: We've -- we've been in  
8 here three, four times on an application that came  
9 through for the one-hit wonder. He got stopped in his  
10 tracks. I'd hate to stop it all the way in its  
11 tracks. I'm not sure if that motion would be seconded  
12 or further supported.  
13 But I think, for me, 411k to the in-lieu  
14 fund for a building that maxes out -- everything  
15 out -- and we've asked time and time again for more  
16 undulation on the wall. The property owner, the  
17 adjacent property owners, they've all talked about  
18 solutions that haven't been achieved.  
19 I'm not in favor.  
20 CHAIRMAN MORROW: Thank you.  
21 Other comments or anyone persuaded to  
22 accept Spencer's motion, that you could...  
23 COMMISSIONER CORDOVANO: I kind of want to hear  
24 what everyone else is thinking.  
25 VICE CHAIRMAN MOCZYGEMBA: I appreciate those

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1 comments that -- I -- I think it's going to be  
2 unanimous around the table here -- is that this is a  
3 tricky one because it does stand alone at the moment.  
4 I think what -- what I had discussed at  
5 the last meeting was talking about, you know,  
6 it's -- it's just going to be impossible to forecast  
7 what comes next. You know, is -- is -- is there  
8 additional development, is there a development pause,  
9 or does this thing stand alone for the next decade?  
10 So I think that's -- that's kind of what we're  
11 struggling with right now.  
12 But, personally, I think a -- a  
13 three -- you know, we're -- we're -- we're trying to  
14 hedge the bets here, and -- and I think that a  
15 three-story building that meets the Code and where our  
16 Comp Plan is pointing to and gaining vibrancy to this  
17 street corner, even if it's just retail on the first  
18 floor, is a step in the right direction.  
19 You -- you know, I think the -- this whole  
20 mix, where it's retail on the first floor and  
21 condominiums on the top floor, is just a response to  
22 our current economic cycle, where cost of construction  
23 is forcing the developer's hand to not have a building  
24 that's all office space and retail because it's  
25 impossible to turn it around and make any sort of

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1 money at the end of the day.  
2 So that's my two cents.  
3 CHAIRMAN MORROW: Thank you.  
4 Tim --  
5 COMMISSIONER CORDOVANO: I just think -- I feel  
6 like -- if we let this building go with a  
7 94-percent-not-undulated north wall, the neighborhood  
8 has no choice in the future but to match it. And if  
9 we got to a point with a further-undulated wall and a  
10 third-story setback, we would have a lot easier time  
11 telling the next property owner or the developer of  
12 the northern lot, "No, you can't put a flat wall  
13 there."  
14 Tell me if I'm wrong. I defer to you  
15 guys. You guys have been here a lot longer than me.  
16 CHAIRMAN MORROW: I -- I don't know. We've  
17 accepted some -- you know, we've -- we've always been  
18 pretty diligent about saying, "If there's a flat wall  
19 being designed, it has to have something on it  
20 because, until it gets covered -- and most of them end  
21 up getting covered.  
22 The best example is Dr. Franz's building,  
23 which we made him change, and then within six months,  
24 they had already built another building up by the  
25 wall. All we did was make him put two different

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1 colors on it, but we've -- we've done that.  
2 So I guess, here, the question is -- if  
3 Mr. Hutchinson doesn't develop for 10 years or  
4 15 years, then that wall is going to be there, and  
5 we're going to have to live with that. But if it  
6 turns out that it's either too much to live next to  
7 or, again, the economy changes and now we have a new  
8 non-mountain, modern design that comes in, maybe  
9 something else goes up there.  
10 So I'm not sure how much -- you know,  
11 it -- it -- it meets the -- my problem is it meets the  
12 Code. You know, it'd be great if the Code said, "Hey,  
13 35' at the top. That's the parapet. Nothing above  
14 it," but it doesn't. And -- and I -- I agree. We  
15 don't have to just say, "Okay. We're going to do it,"  
16 but I think they've made some good changes to the  
17 building.  
18 My personal feelings are different  
19 from, "This fits the Code." I'd like to see that  
20 north wall undulate, but if it gets covered, I'm not  
21 sure that's worth it. I like the -- what they've done  
22 with the bricked-in windows because it has that feel.  
23 But, yeah, I -- I see what you're -- what you're  
24 saying.  
25 And I do have an issue, kind of, with

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1 the -- with just the FAR. It would be nice to know  
2 how they came to a -- this corner -- it fits for a  
3 2 -- or whatever City Council did, but it didn't  
4 affect, at least, my -- I looked at this like  
5 predesign and design for any building we do, not like  
6 it was entitled to get this. So...  
7 MORGAN LANDERS: And -- and the FAR Exceedance  
8 Agreement was just based on the proposed project. So  
9 it wasn't in the -- the actual building plans and the  
10 design of the building are not provided to City  
11 Council. It's -- it's purely an agreement that  
12 outlines how to conduct the community-housing  
13 mitigation, and that's a math problem.  
14 CHAIRMAN MORROW: So they don't look at the  
15 neighborhood and go, "Okay. Here's a" -- "it  
16 shouldn't be a 2 here?"  
17 MORGAN LANDERS: No.  
18 CHAIRMAN MORROW: Okay. So this is something,  
19 then, we'd probably have to --  
20 MORGAN LANDERS: That's not part of their  
21 discussion at all. That's -- that's the role of the  
22 Planning and Zoning Commission.  
23 CHAIRMAN MORROW: Okay.  
24 MORGAN LANDERS: And, you know, I -- if it  
25 helps, the project does meet the Code, but you also

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1 have design-review criteria; right? So I think what  
2 staff tried to kind of present to you all is -- the  
3 criteria that's applicable is that the building wall  
4 "shall provide undulation/relief, thus reducing the  
5 appearance of bulk and flatness."  
6 So, you know, that's -- that's kind of  
7 your guiding light there. It's -- do -- do you feel  
8 that it does that, or do you feel that it doesn't?  
9 You know, I definitely -- you all are grappling with a  
10 pretty significant challenge, but every time that I  
11 feel a little bit lost in a decision, I always go back  
12 to the criteria, and ultimately, that's what you all  
13 have to make your decision based on.  
14 Whether it's an approval or a denial, it  
15 needs to be rooted in that criteria. So it's very  
16 important that you kind of keep that as your guiding  
17 light as you move forward. And staff believes this is  
18 probably the most applicable criteria that you are  
19 working with.  
20 So, again, if you feel that it does  
21 effectively reduce the bulk and flatness, then you  
22 could approve. And if you don't, then you could deny  
23 or request additional changes.  
24 CHAIRMAN MORROW: Very succinct. Thank you.  
25 So more discussion? I'm open for a

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1 motion, whatever you guys want to do, and it could be  
2 a motion for anything.  
3 COMMISSIONER PASSOVOY: The architect has, I  
4 think, shown herself to be quite thoughtful about  
5 making additional changes. I'm kind of inclined to  
6 ask her to go back on the north wall and give it  
7 another iteration.  
8 CHAIRMAN MORROW: So that would essentially be a  
9 continuance, a motion to continue?  
10 MORGAN LANDERS: That would be that, and that is  
11 an option for you.  
12 What I would request is that you all have  
13 a little bit more dialogue about the specific changes  
14 you'd like to see because we have seen this project  
15 quite a few times now. So I think, yes, you know,  
16 kind of taking another go at it -- but I think being a  
17 bit more specific about what you think might be  
18 effective could be helpful so that we avoid kind of  
19 continued meetings.  
20 And again, you know, staying away from  
21 specifics of, you know, "It's a 1.7 FAR versus a 2.0  
22 FAR" -- really kind of focusing on kind of what those  
23 elements of that north facade are, I think, will be  
24 helpful and will improve kind of the applicant's  
25 response.

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1 COMMISSIONER CORDOVANO: I feel like I've  
2 already been there.  
3 VICE CHAIRMAN MOCZYGEMBA: Yeah. I think what  
4 I've heard that I don't necessarily agree with -- but,  
5 you know, there's no more [unintelligible] of this  
6 north wall as it stands, that -- what -- what's been  
7 discussed before by Commissioner Spencer would be a  
8 stepping back of the third floor.  
9 But in my mind, again, that -- that's  
10 something that is not the intent of the Code at -- at  
11 these third floors, to have a step-back, but I think  
12 that's where some of the other Members at this table,  
13 in -- in their mind -- I think where -- where we're  
14 kind of stuck.  
15 CHAIRMAN MORROW: Yeah. I would -- I -- I mean,  
16 I'm not an architect, but I always thought, if you  
17 were looking north, it would be cool if there was a  
18 balcony on that side, but then that would require some  
19 agreement with the neighbor to have a permanent  
20 setback so that -- because that's a real structure in  
21 the -- it's not a window. It's not something that can  
22 get covered up. It would really affect that top  
23 floor.  
24 So if there were some change made to the  
25 top floor so that the north side had an outside

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1 balcony so that it wasn't just -- whatever. But then  
2 that would -- that would necessitate some setback with  
3 the neighbor -- agreement with the neighbor so that  
4 that balcony didn't get walled in in the future. That  
5 would be an awful thing. So -- but, again, not -- not  
6 trying to give architectural solutions.  
7 So we have essentially two for  
8 continuance.  
9 Tim, do you have a...  
10 COMMISSIONER CARTER: I want to -- Morgan, can  
11 you just explain the connection between the FAR  
12 exceedance -- the discretion that is -- that is given,  
13 in the Code, to -- is the FAR -- is FAR  
14 exceedance -- that discretion isn't given to -- to the  
15 Commission. Isn't our -- or is it? That's my  
16 question. Is --  
17 MORGAN LANDERS: So --  
18 COMMISSIONER CARTER: You know, we have to  
19 evaluate this project based on the design-review  
20 criteria -- right? -- which is bulk and flatness and  
21 health and safety. Where does it -- where are we  
22 charged -- there -- there's a relationship, but how  
23 are we directly charged with the FAR exceedance?  
24 MORGAN LANDERS: Yep. So let me pull up the  
25 Code section -- section specifically because that will

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1 help you.  
2 The floor-area-density-bonus program is  
3 for inclusionary-housing incentive, and that is  
4 100-percent dependent on design-review approval. So  
5 it says, "An increased FAR may be permitted subject to  
6 design review approval." And that is in our Code. So  
7 that's Section 17.124.040. So they only get it if you  
8 all believe that the increase of the size of the  
9 building meets the design-review criteria, and then it  
10 has a design-review approval.  
11 COMMISSIONER CORDOVANO: And I don't.  
12 And due to everything I've stated, with  
13 all respect intended to the development team, I'd like  
14 to throw out a motion to deny the design-review permit  
15 for 200 North Leadville, based on undulation, bulk,  
16 and flatness, lack thereof, and the other factors I  
17 mentioned.  
18 COMMISSIONER PASSOVOY: Undulation, bulk, and  
19 flatness of the north wall specifically or of  
20 the -- the rest of the facades?  
21 COMMISSIONER CORDOVANO: North wall,  
22 specifically, and the building in general.  
23 CHAIRMAN MORROW: I -- I -- yeah. I -- I would  
24 only disagree with that unless something -- I think  
25 they've made a nice effort in the stepping back and

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1 the change in moving the balcony along. I mean, I  
2 think the front of the building and the corner of the  
3 building, moving the stairs inside, is a massive  
4 improvement from what we looked at before.  
5 So the north wall, specifically, maybe I'm  
6 okay with that. But I think the rest of the building  
7 is -- is -- you know, they've done a nice job.  
8 COMMISSIONER CARTER: I mean, this building is  
9 not out of scale with many, many other buildings in  
10 town. Why are -- you know, we have -- we've approved  
11 three-story buildings like this, and, you know,  
12 they -- there's three-story buildings like this that  
13 exist in -- in lots of places in town. So why this  
14 one, and why here?  
15 COMMISSIONER CORDOVANO: I've voted against all  
16 of those for the factors of the Code that I see  
17 updated. The reason I didn't throw out motions on the  
18 other ones and -- was because of the amount of  
19 community housing that they've provided or other  
20 setbacks and other undulations in those buildings and  
21 in relation to the character of the neighborhood that  
22 they've been in.  
23 COMMISSIONER CARTER: So there's a -- there's  
24 a -- the three-story -- the mass of the building is,  
25 essentially, a cost to the public, and the tradeoff

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1 isn't worth it? Is that what you're saying? To  
2 the -- what the public's getting in -- in return for  
3 having to live with this mass, it's -- the public  
4 isn't getting enough in return?  
5 COMMISSIONER CORDOVANO: Correct.  
6 COMMISSIONER CARTER: So what we are getting in  
7 that -- in this is a -- is sort of a -- an -- an  
8 act -- some retail space on the first floor and  
9 activation of that corner, sort of an extension of the  
10 downtown -- sort of downtown life one block in a  
11 direction that seems appropriate.  
12 But that's what -- you know, because it's  
13 one block off Sun Valley Road and one block off of  
14 Main Street, it seems like that is a -- is something  
15 that's beneficial to town, a -- you know, an -- an  
16 expansion of the downtown character in -- in this  
17 direction seems appropriate.  
18 But what -- so what are we not getting?  
19 The housing -- the type of housing that we're getting  
20 is not -- is not valuable enough to -- to -- is not  
21 valuable enough to what the town needs? Is that what  
22 you're saying?  
23 COMMISSIONER CORDOVANO: Well, I think that  
24 the -- the housing will be less vibrant than the rest  
25 of the uses in the neighborhood. I think, for an

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1 in-lieu payment of 411k, it just states the obvious,  
2 that it's more financially motivating to sell off two  
3 750-square-foot units. And is that tradeoff worth it  
4 to us? I'd rather see that unit be built in.  
5 MORGAN LANDERS: If I may offer just a word of  
6 caution. The way that our Code is kind of structured  
7 in the criteria and the findings that the Planning and  
8 Zoning Commission needs to make don't necessarily  
9 create that structure of benefits and tradeoffs. It  
10 does, from the FAR-exceedance standpoint.  
11 From a design-review perspective with the  
12 design-review criteria -- and we do have Criteria 1,  
13 which is the health, safety, and welfare. Applicants  
14 need to make both, but I would caution that the way  
15 that our Code is currently written, there's not a  
16 strong association between the kind of individual uses  
17 and -- and things like that within the building and  
18 the -- kind of the tradeoff of design-review criteria.  
19 So I -- I would caution us from kind of  
20 going down that road. I think a lot of the  
21 Comprehensive Plan elements are related to, you know,  
22 contextual design. Certainly that relates to the size  
23 of the building, but I would caution the  
24 Commission from going down the road of, you know, the  
25 benefit of the individual uses and things like that.

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1 I think our -- our Code isn't fully  
2 structured to -- to -- to kind of support that  
3 approach at this time.  
4 COMMISSIONER CORDOVANO: Agreed. And I think,  
5 MORGAN LANDERS: Though I do know that that is a  
6 frustration of the Commission that we hope to address.  
7 COMMISSIONER CORDOVANO: Agreed. I think we're  
8 deliberating a little bit further and getting into  
9 some of the other criteria ulterior that I based my  
10 motion on, but --  
11 COMMISSIONER CARTER: Yeah. So I don't --  
12 COMMISSIONER CORDOVANO: -- you don't have to  
13 second it.  
14 COMMISSIONER CARTER: -- [unintelligible]. How  
15 do we evaluate the FAR exceedance, then, if, you  
16 know -- other than bulk and flatness? You know,  
17 I -- I guess that's the -- that's the only --  
18 MORGAN LANDERS: Well, and it's --  
19 COMMISSIONER CARTER: -- criteria that we have  
20 to evaluate.  
21 MORGAN LANDERS: So if you go back in the staff  
22 report -- the Commission has to make two findings;  
23 right? So again, we kind of reorient back to the  
24 findings because that's what we -- what we have. That  
25 Criteria 1 is a finding the Commission has to find,

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1 that the project will not jeopardize the health,  
2 safety, and welfare of the public.  
3 I think in staff's assessment of it,  
4 because of the type of project that is being proposed,  
5 we don't feel that this project jeopardizes the  
6 health, safety, and welfare, based on some of the  
7 objectives the -- the goals and objectives of the  
8 Comprehensive Plan.  
9 The other criteria, then, is the  
10 design-review criteria, the zoning standards, things  
11 like that. The Commission has to make both of those  
12 findings, that it both meets the design-review  
13 criteria and will not jeopardize the health, safety,  
14 and welfare of the community.  
15 So I know that that is, generally -- kind  
16 of general and broad, where the kind of compatibility  
17 piece comes into play with the application -- is  
18 related in the Comprehensive Plan. And I can kind of  
19 pull up the note in the staff report, if that's  
20 helpful. There is a component, kind of a goal and  
21 objective, of the Comprehensive Plan. Just give me  
22 one moment here. I had it pulled up, and it went  
23 away.  
24 So there is, you know, a policy statement  
25 in the Comprehensive Plan that states, "Infill and

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1 redevelopment projects should be contextually  
2 appropriate to the neighborhood and development in  
3 which they" -- "occur. Context refers to the natural  
4 and manmade features adjoining a development site; it  
5 does not imply a certain style."  
6 So that's kind of the guide -- from a  
7 design-review perspective, that's how the  
8 Comprehensive Plan kind of ties into the design-review  
9 component as well.  
10 CHAIRMAN MORROW: Nice and general so we have no  
11 real --  
12 MORGAN LANDERS: Nice and general.  
13 CHAIRMAN MORROW: I -- I -- I don't want to  
14 bring it up too much, but when we looked at the  
15 project across the street, one of the reasons we  
16 rejected it and one of the buildings we told -- we  
17 said it would -- we'd be looking more like was the  
18 Mountain West Bank. You know, it was -- it was  
19 basically townhouses. It had nothing, no activation  
20 on the corner.  
21 And we said, "You know, what we're looking  
22 for is more" -- "something like the Mountain West,  
23 which has housing on top, even though it's very  
24 hidden, kind of in a building, even though it's open,  
25 and retail on the first floor."

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1 And that's kind of what -- in a sense,  
2 what we're getting here, not as many units on top and  
3 not as much retail on the bottom, but it's a  
4 different -- it's also not wedged in. Again, it's the  
5 first one. So it's not really wedged into anything,  
6 but that was kind of what we were looking for on the  
7 opposite corner a few years ago. I'm not sure that's  
8 changed that much.  
9 Again, I -- I'm fully with Spencer if  
10 the -- you know, if we could shrink the size of the  
11 buildings we're getting, I think it would make the  
12 town more livable, more -- keep it more of what it  
13 was, but it's not in the Code. It's not what  
14 we're -- you know, it's not what's getting built now.  
15 And I'm not sure we can come to this corner, which, as  
16 Tim says, is a block away from both of the most active  
17 areas in town and say, "This is too much."  
18 You know, if it were somewhere else,  
19 maybe -- but I think right here, just because it's an  
20 undeveloped -- south of town, that it's -- doesn't  
21 make it out of bounds for something that fits the  
22 Code. So...  
23 VICE CHAIRMAN MOCZYGEMBA: I think I also take  
24 into consideration the lengthy conversations we had  
25 about the Interim Ordinance, and I think that was kind

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1 of a shift in the general thought process amongst  
2 staff and Commissioners, both, but this thought of  
3 creating -- or -- or adding more density, you know,  
4 when -- when you look at that matrix that is in the  
5 Interim Ordinance about the number of housing units,  
6 given a certain percentage of retail.  
7 I mean, while this project came before the  
8 Interim Ordinance, I think it's hitting at a lot of  
9 what was discussed and a lot of what was -- what we're  
10 striving for as we look forward. So I don't want to  
11 shy away from, "Hey. This is the" -- "the first one  
12 on that corner."  
13 I agree with Tim. You know, looking at  
14 Google Maps in the street view and -- you know, in  
15 reference to Mountain West Bank and Image Eyes, you  
16 know, Mountain West being a three-story, brick  
17 building, Image Eyes being a two-story, brick building  
18 with a healthy parapet, you know, I think -- when  
19 we -- and I think I touched on this at the last  
20 meeting.  
21 We have to look at what the definition of  
22 "neighborhood" is. And -- and while there are those  
23 shorter structures immediately adjacent, as Tim's  
24 saying, you know, we're -- we're a block off Main  
25 Street, and we're at the other end of the block from

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1 Sun Valley Road, so it -- in that sense, I think, this  
2 is contextually appropriate and is a -- is a great use  
3 of that lot.  
4 And we -- it's not that we can keep taking  
5 this, "Oh, well, first there has to be a two-story  
6 building, and then there has to be a two-story  
7 building with some three-story elements." I mean,  
8 we -- we just don't have that opportunity that  
9 developers are going to come around. You know, this  
10 building's going to be here for the next 50-plus  
11 years.  
12 And so, again, I'm -- I'm just trying  
13 to -- there's no way to forecast what's going to come  
14 next or what's come -- coming adjacent to this  
15 structure, but I think we have to be forward-thinking  
16 in this -- in the way that -- if we want to increase  
17 density and vibrancy in downtown, to -- to back off  
18 and say that this needs to have third-floor setbacks  
19 or no third floor at all would -- would be a mistake.  
20 CHAIRMAN MORROW: I -- I think it -- in a sense,  
21 it's important to remember it's not a full-sized lot.  
22 Like, I guess, maybe if it was a -- a -- technically,  
23 a conforming lot, then they might have more room to  
24 actually do a setback, but this is a -- smaller than  
25 50-sized lot; correct?

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1 MORGAN LANDERS: It's a single Ketchum  
 2 Townsite --  
 3 CHAIRMAN MORROW: Oh, it --  
 4 MORGAN LANDERS: -- lot.  
 5 CHAIRMAN MORROW: Oh, it fits the --  
 6 MORGAN LANDERS: Mm-hmm.  
 7 CHAIRMAN MORROW: Oh, okay.  
 8 MORGAN LANDERS: It's 5,500 square feet.  
 9 CHAIRMAN MORROW: Oh, okay. All right.  
 10 COMMISSIONER CORDOVANO: I've already spoken my  
 11 piece about --  
 12 CHAIRMAN MORROW: Yeah.  
 13 COMMISSIONER CORDOVANO: -- 16 --  
 14 CHAIRMAN MORROW: Yeah.  
 15 COMMISSIONER CORDOVANO: -- foot ceilings and  
 16 everything.  
 17 Is -- is nobody going to second my motion?  
 18 CHAIRMAN MORROW: Okay. Do we have a second for  
 19 Spencer's motion?  
 20 No. So the motion fails.  
 21 Do -- do we have any --  
 22 COMMISSIONER CORDOVANO: What are you thinking,  
 23 Tim?  
 24 COMMISSIONER CARTER: Well, I'm just wondering  
 25 about the implications of -- you know, are the

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1 implications of rejecting the design review on  
 2 this -- are we -- does that mean the project's going  
 3 back to --  
 4 COMMISSIONER CORDOVANO: One-year holding  
 5 period.  
 6 COMMISSIONER CARTER: Yeah. What is -- what are  
 7 the implications of that?  
 8 MORGAN LANDERS: If the project is denied,  
 9 actually, we do not have the one-year holding period  
 10 in the design-review portion of the Code. That only  
 11 applies with conditional use permits and one  
 12 other -- and variance applications. Design review,  
 13 they can come back in, but they do have to start from  
 14 the beginning with a fresh application, staff review,  
 15 kind of start from the -- process from the beginning.  
 16 COMMISSIONER CARTER: Yeah. So, I mean -- I  
 17 mean, I -- I don't necessarily disagree with -- you  
 18 know, I mean, I -- there are -- I mean, I -- I think  
 19 that the criteria which we are allowed to evaluate  
 20 this building under, which we're -- you know,  
 21 there's -- there's criteria which we really aren't  
 22 allowed to consider.  
 23 The criteria that we're allowed to -- that  
 24 we're charged to use to evaluate this is, "Is the  
 25 building contextually appropriate," and, "Is the bulk

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1 and flatness and undulation" -- "is the" -- "does the  
 2 building provide undulation and relief and reduce bulk  
 3 and flatness?" Like that's the criteria that we have  
 4 to evaluate this under.  
 5 We -- you know, it -- do we like the mix  
 6 of housing in the building? That's not -- I mean, I  
 7 think, Morgan, that's what you said. We can't  
 8 go, "That's not how" -- we're not allowed to -- the  
 9 Code doesn't allow us to use -- evaluate this  
 10 project --  
 11 CHAIRMAN MORROW: Based on --  
 12 COMMISSIONER CARTER: -- based on those  
 13 parameters.  
 14 CHAIRMAN MORROW: Yeah.  
 15 MORGAN LANDERS: [Unintelligible].  
 16 COMMISSIONER CARTER: It only allows us -- you  
 17 need to clarify that -- you know, the criteria  
 18 are, "Does this building provide" -- "do the building  
 19 walls provide undulation and relief, reduce the  
 20 appearance of bulk and flatness, and is this  
 21 development culture" -- "contextually appropriate with  
 22 the surrounding part of town?"  
 23 MORGAN LANDERS: That's correct. I think,  
 24 unfortunately, you know, you wouldn't be able to put  
 25 conditions on it that says, "You have to have all

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1 full-time residents within each unit or, you know, the  
 2 units can only be 2,000 square feet apiece.  
 3 You know, we do have some of those  
 4 elements in the Interim Ordinance, which is why we  
 5 kind of floated some of those pieces to try and  
 6 continue to kind of work the box a bit. But this  
 7 application is not under some of those other  
 8 requirements.  
 9 COMMISSIONER CARTER: So I guess -- you know,  
 10 I -- I do think that there are -- that there are  
 11 challenges. You know, this building definitely  
 12 presents some challenges to approval under those  
 13 criteria, but I'm not sure that denying it and  
 14 having -- forcing the developer to go back to square  
 15 one is, really, the appropriate response to that.  
 16 I mean, if -- if we want to push back and  
 17 say that, you know, there are bulk-and-flatness issues  
 18 or there are architectural issues with this  
 19 development, I think we can address it differently  
 20 than just straight-up denial.  
 21 That's why I'm reluctant to second your  
 22 motion, Spence [phonetic].  
 23 COMMISSIONER CORDOVANO: All good. That's fine.  
 24 I think we've communicated adequately  
 25 during the last three meetings what we'd like to see,

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1 and they've come back with what they want to do. And  
2 we've got more stuff on the agenda, three meetings a  
3 month, and, God forbid, dinner to go to.  
4 CHAIRMAN MORROW: Would you -- oh, forget it.  
5 Go ahead.  
6 So -- so, Tim, are -- are you in favor,  
7 then, of -- in between Spencer's motion for denying it  
8 and our motion for approving it? Are you somewhere in  
9 between there, or are you okay to continue it, or do  
10 you want to approve it and -- you know, I'm with you  
11 in the sense of going all the way back to scratch is  
12 not going to get us a much different building.  
13 I think Nicole's going to come back with  
14 some changes, but we're going to see,  
15 essentially -- you know, seven months later and a lot  
16 of money, we're going to see essentially  
17 something -- even if it were a floor shorter -- and  
18 then I go with Brenda on that, which is -- you know,  
19 this building's going to be here 50, 60, 70 years.  
20 You know, you have to have some  
21 forward-thinking of, If we make them build a two-story  
22 building here, in 20 years, that could be the  
23 weird-looking building, or that could be, you know,  
24 a lack of whatever. I -- I -- I think we have to have  
25 some faith in the --

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1 COMMISSIONER CORDOVANO: I'll just say it for  
2 the --  
3 CHAIRMAN MORROW: -- [unintelligible].  
4 COMMISSIONER CORDOVANO: -- last time. I think  
5 you could still do 2.0 floor area with a building that  
6 was 35 feet or so tall -- this is not a specific  
7 recommendation or anything. It's just deliberation --  
8 CHAIRMAN MORROW: Yeah.  
9 COMMISSIONER CORDOVANO: -- and that it sets the  
10 character of the neighborhood to have no third-story  
11 setbacks and forces the hand of the neighborhood.  
12 CHAIRMAN MORROW: All right. Well, I'm -- you  
13 know, this is definitely a difficult thing. No matter  
14 what we're going to do -- sorry for you guys who are  
15 last.  
16 I have -- I -- I -- I'm not sure I want to  
17 reopen public comment, even for the neighbor,  
18 because -- because they --  
19 UNIDENTIFIED SPEAKER: Public comment is closed?  
20 CHAIRMAN MORROW: Yes. Well, I reopened it  
21 once, so I -- I could --  
22 UNIDENTIFIED SPEAKER: [Unintelligible].  
23 MORGAN LANDERS: If -- I -- I do -- I would  
24 recommend that we would kind of wrap up  
25 deliberations --

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1 CHAIRMAN MORROW: Okay.  
2 MORGAN LANDERS: -- and not reopen public  
3 comment.  
4 CHAIRMAN MORROW: And I think -- Dave, I just  
5 want you guys to know -- I think we know  
6 what -- what -- where you're coming from, and I think  
7 a lot of us are incredibly sympathetic to that point.  
8 COMMISSIONER CARTER: Yeah. I mean, I -- well,  
9 look. We have to -- you know, there -- there  
10 is -- the fact remains there's -- -- there is some  
11 significant, you know, pushback to whether this  
12 building is contextually appropriate and whether the  
13 bulk and flatness of that north wall is really  
14 appropriate for the development right now.  
15 So, I mean, I -- I don't feel -- I feel  
16 like the -- there's -- you know, I -- I don't -- I  
17 don't know if there's enough support to outright  
18 support this -- to -- to make a motion to -- to  
19 approve this design as it is. It seems like there's  
20 enough of a challenge here that we ought to  
21 consider -- you know, we ought to look for some kind  
22 of -- a next step here.  
23 CHAIRMAN MORROW: So --  
24 COMMISSIONER CARTER: But what that  
25 is -- or -- or at least -- you know, is there

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1 enough -- I guess, is there enough -- I guess  
2 [unintelligible].  
3 CHAIRMAN MORROW: So -- and -- and -- it -- it's  
4 a good question until --  
5 COMMISSIONER CARTER: Spencer's made it clear  
6 that he's --  
7 CHAIRMAN MORROW: And to Morgan's -- to Morgan's  
8 point, if we're going to do that, then I would like  
9 people to have much more specific -- you know, we want  
10 you to make an agreement with the neighbor and put  
11 windows on that side. We want you to set back and put  
12 a balcony.  
13 COMMISSIONER CARTER: Yeah. Or --  
14 CHAIRMAN MORROW: And I want them  
15 to -- something instead of, "Let's send Nicole back  
16 and give her a couple beers and see what she comes up  
17 with." That's not a -- that's not a real -- you know,  
18 that -- I don't think that's fair for us to do to  
19 them.  
20 If you're going to say, "We want some  
21 differences," whether it's a -- a totally different  
22 2.0 design or something, I -- I really would like you  
23 guys -- and I think Morgan's with me on this -- not to  
24 be amorphous about it, to give them some specific,  
25 concrete -- so that we're not just coming back again

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1 and again, but also, we're not hamstringing Nicole by  
2 saying, "Hey. Come up with something new,  
3 you" -- "you know, that we've given you no direction  
4 on."  
5 COMMISSIONER CARTER: Can we get the  
6 "contextually appropriate" language? Where's that?  
7 MORGAN LANDERS: Yeah. So it's on page 2 of the  
8 staff report, and it's a policy within the  
9 Comprehensive Plan. So 'contextual with the  
10 neighborhood' is not a design-review criteria. So  
11 that falls under the "health, safety," and "welfare of  
12 the public," Criteria -- so that Criteria 1.  
13 So that's on page 2, kind of towards the  
14 bottom, Policy CD-1.3, and that's that "infill and  
15 redevelopment projects should be contextually  
16 appropriate to the neighborhood and development in  
17 which they will occur. Context refers to the natural  
18 and manmade features adjoining a development site; it  
19 does not imply a certain style."  
20 COMMISSIONER CARTER: This is Comp Plan  
21 language.  
22 MORGAN LANDERS: It is. And -- and that's -- I  
23 mean, there's, again, two findings that you all have  
24 to make. That first criteria is a -- a very open one.  
25 And so --

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1 COMMISSIONER CARTER: Health and -- health,  
2 safety, and welfare [unintelligible] --  
3 MORGAN LANDERS: Mm-hmm. That's the health,  
4 safety, and welfare of the public.  
5 COMMISSIONER PASSOVOY: The -- I come back to my  
6 point about being the first. This building is not  
7 compatible with the other little buildings right  
8 around it, but they aren't going to be here forever,  
9 and this one is going to set the tone for what's going  
10 to go forward. I don't feel hamstrung by approving  
11 it. And if something else comes along, I -- I don't  
12 feel like I'm required -- just because I approved  
13 something in the past. Circumstances change.  
14 Contexts change. Whatever.  
15 The third floor is set back. It's not  
16 like all the walls on all the sides are the same. I  
17 wish the neighbors and the -- I wish these property  
18 owners had been able to come to some  
19 mutually-satisfactory agreement about the separation  
20 between development on both of these sites, but I  
21 think that, maybe, the best way to bring this down is  
22 to move approval of the design, as presented this  
23 evening.  
24 CHAIRMAN MORROW: Is that a motion?  
25 UNIDENTIFIED SPEAKER: Is that a motion?

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1 COMMISSIONER PASSOVOY: Yeah. How are you -- I  
2 meant -- oh, I -- but I need the -- as always --  
3 CHAIRMAN MORROW: You were a little --  
4 COMMISSIONER PASSOVOY: -- I need the language.  
5 What is the --  
6 CHAIRMAN MORROW: It's in the --  
7 MORGAN LANDERS: So the -- the motion would  
8 be --  
9 CHAIRMAN MORROW: Would be --  
10 MORGAN LANDERS: -- to approve the design-review  
11 application for 200 North Leadville and direct staff  
12 to develop the findings of fact.  
13 COMMISSIONER PASSOVOY: And conclusions -- I so  
14 move.  
15 Let's see what happens.  
16 VICE CHAIRMAN MOCZYGEMBA: I will second, with  
17 the addition of also approving the preliminary plat.  
18 MORGAN LANDERS: This does have a preliminary  
19 plat.  
20 CHAIRMAN MORROW: And that's still in this  
21 motion. We still have a second motion, or the  
22 preliminary plat's the second motion?  
23 MORGAN LANDERS: And if there's an amendment  
24 with the motion, then you do need to go back to the  
25 original motioner to make sure that they agree with

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1 the amendment.  
2 VICE CHAIRMAN MOCZYGEMBA: Susan, the  
3 motion -- the amended motion would include, basically,  
4 making a motion to approve the final design review and  
5 the condominium preliminary plat for the 208 Condos at  
6 200 North Leadville.  
7 COMMISSIONER PASSOVOY: That amendment is  
8 acceptable.  
9 VICE CHAIRMAN MOCZYGEMBA: And I'll second my  
10 amendment.  
11 CHAIRMAN MORROW: Okay. All in favor?  
12 I know --  
13 COMMISSIONER PASSOVOY: Any further discussion?  
14 CHAIRMAN MORROW: Any further discussion?  
15 Thank you.  
16 Nothing else? All in favor?  
17 COMMISSIONER PASSOVOY: Aye.  
18 VICE CHAIRMAN MOCZYGEMBA: Aye.  
19 CHAIRMAN MORROW: All opposed?  
20 COMMISSIONER CORDOVANO: Nay.  
21 COMMISSIONER CARTER: Nay.  
22 CHAIRMAN MORROW: And it passes three to two.  
23 MORGAN LANDERS: Motion carries.  
24 CHAIRMAN MORROW: Okay.  
25 MORGAN LANDERS: Thank you, everyone.



1 (End transcription at 2:23:57 of audio  
2 file.)  
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REPORTER'S CERTIFICATE

I, VICTORIA HILLES, RPR, Registered Professional Reporter, CSR No. 1173, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings was transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 8th day of June, 2023.



VICTORIA HILLES, RPR, CSR NO.  
1173  
Notary Public  
Post Office Box 2636  
Boise, Idaho 83701-2636

My commission expires December 3, 2026

	<b>active (1)</b> 75:16	23:10,11;31:21;75:7	81:2
\$	<b>actual (4)</b> 5:14;12:13;13:9;63:9	<b>agree (6)</b> 51:25;53:18;62:14;66:4; 76:13;88:25	<b>appeal (1)</b> 7:24
<b>\$411,000 (1)</b> 35:4	<b>actually (7)</b> 6:5;12:5;30:16;36:25;56:16; 77:24;79:9	<b>Agreed (2)</b> 72:4,7	<b>appearance (4)</b> 11:11;23:25;64:5;80:20
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CITY OF KETCHUM PLANNING AND ZONING COMMISSION

IN RE: )  
P22-035 / THE 208 CONDOS )  
and )  
P22-035A / THE 208 CONDOS )  
200 North Leadville Avenue )  
\_\_\_\_\_ )

TRANSCRIPT OF RECORDED PUBLIC HEARING

TUESDAY, FEBRUARY 28, 2023

COMMISSIONERS PRESENT:

NEIL MORROW, CHAIRMAN

BRENDA MOCZYGEMBA, VICE CHAIRPERSON

TIM CARTER

SPENCER CORDOVANO

SUSAN PASSOVOY

TRANSCRIBED BY:

VICTORIA HILLES, RPR, CSR NO. 1173

1 (Begin transcription at 0:41:14 of audio  
2 file.)

3 CHAIRMAN MORROW: So -- all right. We will move  
4 on to Action Item 5 -- that's correct -- a public  
5 hearing review -- and provide feedback on Design  
6 Review and condominium preliminary plat applications  
7 for the proposed mixed-use development at 200 North  
8 Leadville.

9 Morgan.

10 MORGAN LANDERS: Okay. Thank you, everyone.

11 I don't have formal presentation slides  
12 for you all this evening. I think the focus of the  
13 discussion is fairly truncated on one kind of specific  
14 issue. I do want to highlight a couple of things from  
15 the staff report.

16 If you all recall, the very first time you  
17 saw this was in December [sic], and then there was  
18 some discussion. You all provided the applicant with  
19 some feedback, and they had kind of provided a variety  
20 of revisions for review that you all, then, kind of  
21 felt were pretty good.

22 And the -- where we landed at our last  
23 discussion with this meeting was that there was still  
24 some concern related to kind of the north-facade wall  
25 on the north property line between the subject

1 property and the property to the north. And  
2 primarily, there was some concern related to the  
3 undulation and relief and the bulk and flatness of the  
4 building.

5 And so, as we sit here today, the  
6 applicant has taken another stab at addressing some of  
7 your comments. We do have an applicant representative  
8 here, Nicole Ramey. She's the architect for the  
9 project, so she'll give you kind of the full review of  
10 the changes.

11 But, in general, they have stepped back  
12 the third floor of the building on the Leadville  
13 Avenue side. There's also -- the third-floor deck has  
14 been extended to kind of be the full length of the  
15 front facade on the Leadville side.

16 The building has been pulled away from the  
17 north property line about 7 inches, which  
18 would -- accommodates for some of the additional brick  
19 detailing and things like that so that the  
20 building -- so that those things don't project onto  
21 the adjacent property.

22 There's also -- the parapet wall on kind  
23 of the rear portion of the building, as you go down  
24 Second Street -- there has been a raising of the  
25 parapet wall and an addition of kind of a

1 metal-banding component that Nicole will touch on.  
2 This was in response to the re-addition of an elevator  
3 overrun that was added to the building, that was not  
4 part of the initial proposal.

5 And then there is also, on the north  
6 facade, kind of a trellis that has been applied to the  
7 facade, which would provide facilitation of vine  
8 growth and things like that to kind of add a more  
9 landscaped element.

10 So with that, I don't have any comments  
11 for you all. I do think that some of these  
12 improvements are positive. But the question to the  
13 Commission is, "Do you all believe that the changes  
14 proposed effectively reduce the bulk and flatness of  
15 the building on that side with that undulation and  
16 relief change?"

17 So with that, I'll turn it over to the  
18 applicant, and Nicole can drive from here.

19 CHAIRMAN MORROW: Thanks, Morgan.

20 NICOLE RAMEY: Okay. Good afternoon.

21 As always, I want to thank Morgan and her  
22 staff for their tireless hard work and feedback on  
23 this. This is always a little bit of a long process.

24 There are a couple of things I wanted to  
25 address before we get into the meat of the

1 presentation, really relating to the comment letters,  
2 and some of them containing a little bit of erroneous  
3 information.

4 I read quite a few comments regarding a  
5 height bonus. I want to make clear that we're not  
6 asking for a height bonus, variance, or waiver of any  
7 kind. The height limit in place for the Community  
8 Core is applicable regardless of the floor area ratio.  
9 So I just wanted to make sure that it's  
10 understood that we're not asking for any height  
11 variance.

12 Also, a few letters referenced a  
13 6,000-square-foot, north-elevation number. That  
14 number's false. The actual square footage for the  
15 north-elevation wall is 3,500.

16 We have taken the option that is allowed  
17 by Code to go through this FAR-exceedance process, but  
18 placing a specific size or height requirement on this  
19 particular lot is spot zoning.

20 Here are our revised renderings. Morgan  
21 did run through a couple of the changes, so some of  
22 these might be doubling up, but I just wanted to point  
23 out -- point out the changes from our point of view.  
24 So we listened to the staff and outside comments and  
25 made the following revisions.

1           The roof-parapet height has been split,  
2 resulting in two different roof-parapet heights for  
3 the front and rear of the building. The front roof  
4 parapet was lowered 16 inches. So you can see that  
5 kind of in this area. So this roof was actually  
6 lowered 16 inches, the whole front of the building.  
7 The two parapets now have 31 inches of height  
8 difference between them.

9           On the Second Ave -- Avenue [sic]  
10 elevation, a portion of the roof parapet was lowered,  
11 and the massing was modulated to get more  
12 articulation. A new roof overhang was placed over  
13 this new facade extension, providing more relief to  
14 the facade. So that's this area of the building.

15           We popped it out slightly. We added this  
16 roof element, once again, kind of breaking up this  
17 Second Avenue elevation. That wasn't specifically  
18 brought up in the previous hearings, but, as we looked  
19 at modulating the rest of the building, it just made  
20 sense to include that on that elevation as well to  
21 kind of keep the design language flowing throughout  
22 the -- the whole building.

23           Let's go down.

24           So this is the north elevation. We have  
25 two different elevations we'll show. This one shows



1 existing landscaping on the northern neighbors'  
2 property, which is, really, what you would see in  
3 reality -- is that there are aspen trees and very  
4 large -- that is existing. Without the trees, you can  
5 see more of the changes that we've proposed.

6 So on this Leadville elevation, the  
7 portion of the third floor nearest to Leadville has  
8 been recessed to reduce bulk. The third-floor deck  
9 now wraps around in front of this pushed-back facade.  
10 So we've added a deck here. There is now 4 feet of  
11 difference between the first-and-second-floor facade  
12 and the third-floor facade.

13 From the front property line of Leadville,  
14 we have 2'9 -- foot of setback at the first and second  
15 floors and 6'10 at the third floor. The north  
16 elevation benefits from this horizontal step in the  
17 facade, as the view seen from the street has more  
18 undulation and is cut away at this corner.

19 For the north elevation, we also brought  
20 the same materials and design language around, and we  
21 included bricked-in windows, wood trim that matches  
22 the Leadville and Second retail elevations on the  
23 first floor, and vines on -- growing on a trellis  
24 structure. These add aesthetic appeal, texture, and  
25 interest.

1           So although not applicable, we used the  
2 same materials and kept the same architectural  
3 language, which is in Chapter One 7.96.070, B, 1 of the  
4 Code.

5           We also wanted to show some of the  
6 previous iterations of the building compared to the  
7 current design so we can point out some of the changes  
8 we've made through this process. Some were before the  
9 design-review-hearing process, just with staff, and  
10 some have been through the design-review-hearing  
11 process.

12           So we have pulled the upper-roof overhang  
13 back. As you can see, we started out with one that  
14 was extended out quite a bit further. We revised the  
15 planters and plant material -- staff request. We've  
16 revised the transformer location and screening. We  
17 added one residential unit. We began this process  
18 with three residential units, and now we have four.

19           Most of the roof elements were eliminated,  
20 and those that remain are set back. You can see  
21 how -- in previous versions, you could see some of  
22 our -- a roof trellis and some planter boxes. Those  
23 have been either removed or set back.

24           We've removed light wells, but we've since  
25 added them back, per Design Review comments on the

1 Leadville side, so they only exist under the overhang.

2 We have added a window into the retail  
3 space on Leadville, and we have moved the stairwell  
4 and entry that was for the lower-level residential  
5 unit, and so we have swapped that out with the retail  
6 reentry. So we've added windows onto the retail space  
7 on both Leadville and Second, and we've also adjusted  
8 and moved the bike racks and trash and all of those  
9 things as well.

10 I also wanted to point out that,  
11 since -- from Day 1, we've had -- I think this is in  
12 response to the hotel. We've had Juliet balconies on  
13 all three facades.

14 CHAIRMAN MORROW: Thank you.

15 NICOLE RAMEY: So we -- we even have them on the  
16 alley, once again, to kind of keep that design  
17 continuity going. So there they are, four of them, so  
18 everyone can enjoy traffic.

19 CHAIRMAN MORROW: After the hotel, everyone  
20 knows what they are now. So...

21 NICOLE RAMEY: Okay. So the next thing I want  
22 to talk about is setbacks. So the blue area in these  
23 diagrams -- and we have three -- show the total area  
24 set back from the property line, but looking at it  
25 differently -- areas where we could have extended the

1 building to the property line.

2 We worked diligent -- diligently to erode  
3 the building corner at Leadville and Second, which is  
4 arguably the most visible view of the project and the  
5 pedestrian corridor.

6 So looking at it in plan view, this retail  
7 corner is set back 11 foot -- 2 feet from Leadville,  
8 and 6 feet from Second. Our average setbacks exceed  
9 the 5-foot average required with a first-floor average  
10 of 16.7 feet from Leadville and 11 feet on Second.  
11 You can see similar setbacks apply for the second and  
12 third floors.

13 Here are the setbacks, once again shown in  
14 elevation. And you can see quite a bit of setback off  
15 the property line on Leadville. This would not  
16 preclude other property owners from building to the  
17 property line, but we have set back a minimum of 2'9  
18 [unintelligible].

19 I did want to point out -- the Zoning Code  
20 calls for setbacks on the front, side, and rear, but  
21 it specifically does not call for setbacks off the  
22 interior property lines.

23 [Unintelligible].

24 So Chapter One7.96.060, F states,  
25 "Building character shall be clearly defined by use of

1 architectural features." The design features here  
2 are, really, the brick and the brick-detailing. The  
3 style of architecture's not meant to be defined by  
4 [unintelligible] and the massing.

5 The materiality is providing the details.  
6 As construction costs rise, we should be celebrating  
7 efforts to include unique architectural details, not  
8 standard, push-and-pull, modern boxes.

9 The Code also states, "Building walls  
10 shall provide undulation/relief, thus reducing the  
11 appearance of bulk and flatness." While not defined  
12 in the Code, "relief" can also be known as a  
13 sculptural method in which the sculpted pieces are  
14 bonded to a solid background of the same material.  
15 It's the use of brick.

16 I also wanted to highlight some elements  
17 of our project in relation to the Interim Ordinance,  
18 although the Interim Ordinance is not applicable to  
19 our project.

20 We do have less than 30 percent  
21 commercial, but we are providing four residential  
22 units, so we meet that requirement. There's no  
23 consolidation of lots, there's no net loss of  
24 residential units, and no ground-floor residential.

25 Moving on to the context. Here is

1 a -- here is a rendering standing right in front of  
2 the Image Eyes entrance, looking down. We have this  
3 view, obviously, in the winter, but we also show what  
4 this looks like in the summer. And you can see that  
5 the foliage -- you see, actually, even less of the  
6 building than you do from here.

7 So, you know, I know a lot of concern has  
8 been -- you know, there was a comment in one of the  
9 letters about the view from Sun Valley Road. This is  
10 pretty much the view you would see from Sun Valley  
11 Road.

12 You can see, in the existing Google Earth  
13 image, the previous building. Without actual  
14 documentation, it appears that it had different  
15 setbacks that were a lot closer to Leadville than what  
16 we are proposing.

17 As the staff report referenced the Comp  
18 Plan and the designation of this property and  
19 adjoining lies -- adjoining lots as future, mixed-use  
20 commercial, this building is truly a mixed-use  
21 building, while the existing, neighboring buildings  
22 technically do not meet this proposed designation.

23 As we discuss the word  
24 'contest' -- 'context,' let us not get sidetracked by  
25 designing to existing buildings that do not meet the

1 City's Comprehensive Plan goals. As the face of  
2 Ketchum is changing before our eyes, now is the time  
3 to assure that new development meets the future goals  
4 of Ketchum, as laid out in the Comp Plan, not  
5 yesterday's unplanned community.

6 This is a view of the building with the  
7 current existing buildings, landscaping in place. So  
8 you can see quite a bit of foliage. These are all  
9 approximate, given that we don't have actual building  
10 plans. So Google Earth and [unintelligible].

11 So here's kind of the context image that  
12 we were asked to provide, showing what this building  
13 would look like in the neighborhood. We also decided  
14 to put together an image of what could happen with an  
15 unknown property next door.

16 So, you know, what is the City's vision  
17 for this area of the Community Core? [Unintelligible]  
18 goals of the Comp Plan? One goal listed is a "vibrant  
19 downtown," [unintelligible] business, retail,  
20 shopping, dining, and entertainment -- once again --  
21 mixed-use, combining those uses together. Another  
22 goal listed is "a single concentrated commercial and  
23 retail core."

24 So we feel that our building's meeting  
25 some of these goals of the Comp -- Comp Plan and what

1 [unintelligible] development has been asked to  
2 provide, according to that document.

3 Also, another goal I'd like to point out  
4 is a "variety of housing" options. This property not  
5 only has a larger penthouse unit and a smaller unit,  
6 but it also has two units that are less than 750  
7 square feet. So this is adding to the mixed use and  
8 vitality -- different users of the building.

9 That is my presentation.

10 CHAIRMAN MORROW: Thank you.

11 Public comment. Do we have any online?

12 UNIDENTIFIED SPEAKER: We do not.

13 CHAIRMAN MORROW: Okay. Would -- would  
14 the -- Commissioners, do you have questions for staff  
15 or the applicant first?

16 UNIDENTIFIED SPEAKER: I have a comment.

17 CHAIRMAN MORROW: Okay. But let's see if we  
18 want to -- do -- do you guys want to question staff  
19 and the applicant first or --

20 VICE CHAIRMAN MOCZYGEMBA: Whichever.

21 CHAIRMAN MORROW: Okay. Let's do public comment  
22 because I think we're going to have some, and then we  
23 can include that in whatever we talk about.

24 So step to the podium. State your name  
25 for the record.



1           WARREN BENJAMIN: Good afternoon. My name is  
2 Warren Benjamin, and this is for the record.

3                   Thank you for the opportunity to register  
4 my comments about the project under discussion today  
5 at Second and Leadville.

6                   I am a full-time resident of Ketchum and  
7 have lived here for 13 years. I have worked with  
8 several nonprofits, raising money. I was a business  
9 owner with my partner in the downtown quarter. I'm  
10 here to offer my opinion on whether Planning and  
11 Zoning should approve this above-mentioned project,  
12 and I think the answer is a resounding, "Yes." I will  
13 offer you two reasons and be as succinct as possible.

14                   First, let me say that I'm no expert on  
15 the building, construction, logistics, and approval of  
16 any type of structure in the valley. I'll leave that  
17 up to you, the experts. However, if you have a  
18 marketing or advertising issue, I'm the one to talk  
19 to.

20                   Let me first say that, based on my  
21 knowledge of this project, I believe the developer has  
22 checked off the most important boxes that are relevant  
23 to you. First, this project has added four  
24 residential units of critical housing for our  
25 community in the densely-populated downtown quarter.

1 Check.

2 The project meets all Code requirements.

3 Check.

4 The project has added 1,300 square feet of  
5 retail space in, again, the critical downtown quarter.

6 Check.

7 The project will generate much-needed tax  
8 revenue for both property and/or retail sales.

9 Check.

10 And the project will add to the  
11 beautification of downtown Ketchum, an example of a  
12 forward-thinking structure that will remain evergreen  
13 past its life expectancy.

14 Check.

15 But most importantly -- and just as  
16 important as the structure itself -- is the character  
17 of the person behind this project and his intention to  
18 improve the overall living space in Ketchum. We don't  
19 talk about that a lot. We don't talk about the person  
20 that's behind this project.

21 Personally, I want someone next door to me  
22 that believes in our community and looks for the  
23 long-range solutions to keep the character and  
24 vibrancy of Ketchum, and I believe that person is Mike  
25 Carr. Mike has both the sensibility and the eye to

1 make our community a better place to live. He is the  
2 current owner of two residential properties and shares  
3 in the business interests in a commercial building in  
4 Bellevue.

5 Along with his two children, Mike has  
6 committed his time, his money, his heart to this  
7 project. He is a person that not only make -- takes  
8 very seriously to this project, but is not looking to  
9 make it as a land grab and does not want to embarrass  
10 any of his neighbors. He is committed to doing the  
11 right thing.

12 So in conclusion, like I said at the  
13 beginning, Mike has checked off all the important  
14 points related to the building, and Mike has committed  
15 himself and his investments to make Ketchum a better  
16 place to live. In my opinion, he has proven to be the  
17 person that be -- that should be granted immediate  
18 approval of this project.

19 Thank you for your time and consideration.

20 CHAIRMAN MORROW: Thanks, Warren.

21 Other public comment?

22 SAM LINNET: Thank you, Commission.

23 My name is Sam Linnet with Alturas Law  
24 Group, and I represent 240 North Leadville, LLC.

25 First, at the last meeting, the Commission

1 asked for a 3D model of the proposed building, and I  
2 don't believe that what was presented today was a 3D  
3 model showing us this -- bulk and scale of the  
4 building and -- and adjacent properties. So I would  
5 first request that you ask the applicant again to  
6 provide what was requested back in December.

7 The main issue with this project is the  
8 size and scale of the building, which results in that  
9 north-facade wall. This -- the size and scale was  
10 determined -- it was predetermined by the City Council  
11 when they approved their FAR Exceedance Agreement for  
12 this project.

13 That was entered into prior to this  
14 application coming before the P&Z Commission. And  
15 rather than the P&Z Commission having an open  
16 conversation about whether to grant a FAR exceedance  
17 at all, the City Council approved the FAR exceedance  
18 outside of a public hearing and without any input.

19 As you know, part of your role in the  
20 design-review process is to determine if an applicant  
21 has -- has met all of the development standards,  
22 including floor area ratios.

23 Part of the difficulty in your ability to  
24 determine whether this standard has been met now is  
25 that you're being forced to justify an increase in the

1 FAR after the City Council has already told the  
2 developer that they get a FAR of 2.0.

3 I'm sympathetic to a developer that needs  
4 certainty in the standards that are going to apply to  
5 their building, but with -- that certainty cannot and  
6 should not be given at the expense of the P&Z  
7 Commission's ability to independently determine  
8 whether and how standards are applied, including the  
9 FAR-exceedance standard.

10 Discretionary standards like allowing a  
11 floor area ratio of 2.0 instead of 1.0 is -- is  
12 discretionary and it's inherently uncertain, but  
13 that's part of the bargain the developers get.  
14 There's a significant benefit to a development, that  
15 it gets an exceedance of the FAR.

16 It is up to the developer to determine if  
17 the uncertainty in that discretionary standard is  
18 worth going forward with their project as proposed, or  
19 they can go with the sure thing and the -- as  
20 of -- right FAR of 1.0 for this project.

21 This Commission should have been able to  
22 work with the applicant about whether a FAR exceedance  
23 is appropriate for this project in order to determine  
24 what design and what kind of FAR exceedance is  
25 warranted. The design of the building and its impact

1 on neighboring property owners would be considerations  
2 that you, as a Planning and Zoning Commission, could  
3 take into account and that the public would be  
4 involved with during that process.

5 Instead, the City Council made a promise  
6 to the developer that they could build a building with  
7 a FAR of 2.0, instead of the permitted 1.0, without  
8 taking any public input.

9 As a result of the City approving the FAR  
10 exceedance prior to you seeing the design of the  
11 building, you are in the unfortunate position of being  
12 unable to make a determination about whether that FAR  
13 exceedance is appropriate, how much of an exceedance  
14 should be allowed, and whether the conditions that are  
15 related to granting a FAR exceedance have been met.

16 The current process has created a  
17 development environment that lets applicants build  
18 higher-density buildings that do not match baseline  
19 development standards in the City of Ketchum, and  
20 that's solely because of -- a developer is willing to  
21 pay more money to the City.

22 The City Council took no public comment  
23 about whether a FAR exceedance should be warranted,  
24 and the public had no input about whether and how much  
25 FAR exceedance should be allowed. This kind of

1 process creates inequity in the development that  
2 occurs in this city, and it reduces public input in  
3 that development.

4 So, again, on behalf of my client, I'd ask  
5 that you continue this matter until the City  
6 terminates the current FAR Exceedance Agreement and  
7 gives back to you the power to determine whether FAR  
8 exceedance is appropriate and how much.

9 There was also a comment from the  
10 applicant that this would be a spot zoning by  
11 dictating the size and mass of the building. The FAR  
12 exceedance that allows them to achieve the size and  
13 mass that they're presenting to you today is  
14 discretionary. It is not spot zoning, requiring them  
15 to meet the baseline FAR exceedance standards.

16 Thank you.

17 CHAIRMAN MORROW: Thank you.

18 Other public comment in the room?

19 Thank you.

20 DAVE HUTCHINSON: Yeah. Hi.

21 I'm Dave Hutchinson, and Sam's my lawyer,  
22 so I'll attempt not to repeat what he had to say,  
23 but -- but I -- I will echo some of the comments  
24 because I think they've been the thread through the  
25 last three meetings.

1                   And I truly believe that if you had a  
2 chance to see this before the Council did -- and that  
3 first hearing, which I attended, where you were all a  
4 little confused by the fact that there was a 2.0  
5 building in front of you with a preemptive Exceedance  
6 Agreement -- that we would have negotiated this into  
7 something that was smaller. I -- I -- I firmly  
8 believe that.

9                   The unfortunate position you've been put  
10 in, unless it's undone -- and we suggest that it be  
11 undone so it can't be undone at a future date, from  
12 the legal perspective, because we don't want to undo  
13 the Ordinance. We think that that FAR exceedance for  
14 a -- for housing has merit. It's just -- we believe  
15 that if you had seen it first, we'd have seen  
16 something different.

17                   So you're now in a position of having to  
18 go backward and take things away that they thought  
19 they already had. And I feel for the architect and  
20 the applicant, and I've said so to both of them. I  
21 feel like they got stuck in a bad process.

22                   However, the building's not built yet.  
23 We're all still here looking at it. I just watched a  
24 previous application, as I sat here, where people felt  
25 like the process worked, and I think the process here



1 can still work. In general, I've complimented the  
2 building on -- on three of the four sides.

3 The difficulty is -- is the north wall;  
4 right? The north wall hasn't changed in five or  
5 six weeks, from when we were last here. It's a -- a  
6 hair more attractive. They've used my trees to make  
7 it look better, which kind of doesn't work because I  
8 don't know how long those are there. One of the  
9 photos had a tree that doesn't exist anymore, that was  
10 from -- I don't know -- maybe 20 years ago or 15 years  
11 ago.

12 So it's still very difficult to  
13 understand, from the sidewalk, walking into The  
14 Kneadery or coming from Sun Valley Road, how obtrusive  
15 this north wall will be.

16 The reason I was encouraged to come to  
17 this meeting after redesign is -- I thought we would  
18 see a three-dimensional model, which can be  
19 required -- which I think Spencer required -- which  
20 allows you to look at it.

21 You know, the CAD programming allows you  
22 to look at things from all directions, and I think we  
23 could have seen some perspectives that would have  
24 given the -- the P&Z some pause as to what the  
25 appearance of bulk, flatness, scale, and compatibility

1 with the neighborhood is.

2 And -- and I think you guys get it. You  
3 know, if I had my druthers, I'd have moved the story  
4 poles into a location that were a little more telling,  
5 but even the story poles, as they sit today,  
6 are -- are pretty obvious.

7 At the last hearing, Mr. Carr said, you  
8 know, "The" -- "Yeah. The guy next door to me on the  
9 north property line never offered to compromise,"  
10 which wasn't true.

11 So I sent them an e-mail. And I was able  
12 to get his partner on the phone, Mr. Puvolka  
13 [phonetic], and I said, "Hey. Why don't we both set  
14 back 5 feet? I'll put it in a deed restriction and  
15 step back a little more. You know, I think it'd be  
16 better for the community, and I'm happy to take the  
17 same reduced-bulk requirement on my side now, even  
18 though I don't have any idea when I'm going to build  
19 in the future."

20 And he said he thought it was worth  
21 discussion, but there was never a return phone call  
22 after the initial discussion. I still think there's  
23 merit to that.

24 I think a -- I think a 7-inch setback and  
25 whoever owns my property or myself building to the

1 property line with a -- a little, skinny gap in there  
2 is just a -- you know, that's a good way to catch  
3 leaves and junk and stuff off the roof. So the fact  
4 that they went 7 inches -- it might as well be on the  
5 property line.

6 I -- I do think that they've done -- made  
7 some attempt to change the relief, but it's  
8 really -- you know, the relief in 7 inches is only 7  
9 inches of relief.

10 The -- the north -- the north wall is one  
11 problem. I also have a real problem with the elevator  
12 shaft, which isn't shown in many of these depictions.  
13 But I believe the intent of protrusions through the  
14 roof and -- and through the height -- height -- above  
15 the height limit is meant for chimneys and mechanical  
16 and vents and things like that.

17 And although an elevator shaft  
18 is "uninhabited," it sticks up -- I don't know exactly  
19 how much higher above the roof, but it is very, very  
20 visible. And the elevator shaft benefits one  
21 occupant, which is the penthouse, which means the  
22 entire town gets to look at this protrusion on already  
23 a large building for the benefit of one occupant  
24 because they don't want to walk up the stairs.

25 We happen to be doing a project on the

1 east side of Seattle with multiple roof decks. We  
2 don't send the elevator through the roof. It's just  
3 inappropriate from a design perspective.

4 So that's kind of a small comment.

5 I believe -- excuse me -- I believe that  
6 it's incumbent upon you now, even though the process  
7 is a little ass-backward, to either continue or deny.  
8 I really do. I don't believe it passes the  
9 design-review criteria. It's not compatible with the  
10 neighborhood.

11 You would have really seen it if we got a  
12 3D model. Go put yourself in the 3D down in front of  
13 The Kneadery and look up and have it spin and look  
14 around, not look from a cherry-picker view from above  
15 the top. That's a whole-different look; right?

16 So I think it's incumbent upon you to at  
17 least continue it so we can get a better project  
18 before it's built. You know, there's still snow on  
19 the ground. I think we can make more progress.

20 Or I think it's incumbent upon you to deny  
21 and send a message that this was the wrong location  
22 for a double-FAR -- a 1.0 to -- to a 2.0 -- on a  
23 5,500-foot [sic], flat lot one block from Main Street  
24 and one block from Sun Valley Road in a neighborhood  
25 that is already smaller in scale. It's just the wrong

1 place. There may be an appropriate place within the  
2 community, but that's not it.

3 So I hope you can get the process back on  
4 track, and I hope we can make this project fly with a  
5 little -- with a little more work.

6 And I appreciate your time.

7 CHAIRMAN MORROW: Thank you.

8 Other public comment in the room?

9 PAM COLESWORTHY: Pam Colesworthy, for the  
10 record. And I, for the most part, disagree with  
11 Mr. Hutchinson.

12 I cannot speak to the FAR exceedance and  
13 the process and what discussions were happening with  
14 City Council versus you and -- you'll have to work  
15 that through, but this current iteration of this  
16 building is the best one we've seen yet, and I think  
17 the applicant has tried to give the City everything  
18 that the City wants.

19 So I think it's very attractive and that  
20 you ought to go ahead and approve it because the mass  
21 and scale is happening all over this town. You go  
22 quadrant by quadrant and look around and see the  
23 buildings that you have already approved. You have  
24 set the precedent.

25 And if you want the vibrancy and people in

1 the core and -- and retail and to accommodate the  
2 parking and all the things that you want, you have no  
3 place to go but up.

4 So I strongly encourage you to approve  
5 this, and I -- from what I'm hearing is -- it complies  
6 with everything. And I'm -- I'm sorry that the  
7 neighbor to the north doesn't like the wall, but the  
8 wall looks better than ever. And at a certain point,  
9 that, too, shall be developed and it will be big. And  
10 that's the nature of how this town is going to evolve.  
11 It's just the nature of life.

12 Thank you for your consideration.

13 CHAIRMAN MORROW: Thank you.

14 Other public comment in the room?

15 Seeing none. I will close -- and -- and  
16 none online?

17 UNIDENTIFIED SPEAKER: There is no public  
18 comment online, sir.

19 CHAIRMAN MORROW: I will close public comment,  
20 and we can go to -- oh, okay. One more.

21 MORGAN LANDERS: Well, we do have -- so Mike  
22 Carr is the property owner.

23 CHAIRMAN MORROW: Oh, so --

24 MORGAN LANDERS: There is an opportunity for  
25 them to --

1 CHAIRMAN MORROW: -- the applicant.

2 MORGAN LANDERS: -- kind of respond to --

3 CHAIRMAN MORROW: Okay.

4 MORGAN LANDERS: -- the public comment. So  
5 either himself or Nicole could respond to what --

6 CHAIRMAN MORROW: Okay. So we'll --

7 MORGAN LANDERS: -- [unintelligible].

8 CHAIRMAN MORROW: We'll put you in the applicant  
9 section there and --

10 MORGAN LANDERS: Well, no. What I mean is that,  
11 if we are closing public comment --

12 CHAIRMAN MORROW: Yes.

13 MORGAN LANDERS: -- the next step in the process  
14 is their response.

15 CHAIRMAN MORROW: Okay.

16 MORGAN LANDERS: Yeah.

17 CHAIRMAN MORROW: So if you guys would --

18 MIKE CARR: [Unintelligible] if we can go  
19 together. It's -- it's a pretty big project, but --

20 CHAIRMAN MORROW: Please state your name for the  
21 record.

22 Thanks.

23 MIKE CARR: Mike Carr. I'm the developer.

24 And one of the things -- the last time we  
25 were here and we went through it -- and I might ask to

1 bring up some more photos, but -- is -- you talked  
2 about vision and -- of what the city would look like.

3 And, to me, the vision of a  
4 1,300-square-foot house built in 1940 in the Community  
5 Core that has no retail, has no housing, has nothing  
6 that you're wanting to achieve, ultimately, that's not  
7 the vision in -- at least in my opinion.

8 And so the changes we made -- oh, excuse  
9 me -- all the way around, from the back of the  
10 building to the front of the building, et cetera, have  
11 been immense, from the Juliette balconies, to the  
12 flowers, to the -- to the rounded windows, to the  
13 overhangs, to the change in relief on the roof.

14 When you go to the north wall, the change  
15 of the bottom of the first floor -- if you look at  
16 that, we wrap that material around so it actually  
17 looks like it's the building itself by itself.

18 And then you go above it, the next two  
19 floors, and it's bricked-in windows that looks like,  
20 "Maybe that building was built in the '30s, and  
21 someone bricked-in the windows," et cetera.

22 You go further down, and you have the  
23 trellises -- okay? -- which then  
24 cover -- there -- that -- that cover the roof.  
25 They'll come from the top and the bottom. And if you



1 go -- I mean, we do have a 3D -- essentially,  
2 but -- but if you go to these views here,  
3 that's -- that's like with no trees, but that's not  
4 how the building exists.

5 If you go to the winter view, this  
6 is -- this is how it looks. That's the building.  
7 Those two trees do exist, and there's three aspens  
8 behind it so that, if you go to the summer  
9 view -- you're in the summer. You can't even see the  
10 building.

11 And so this whole idea -- you can't see  
12 it -- you can't -- you do look at the building, I'm  
13 sure, from Dave's house; okay? That's a reality. But  
14 when you get the streetscape, when you get to the view  
15 you're talking about, you don't look at it.

16 Then if you go to the front of the  
17 building, which -- you know, Dave talks about a 5-foot  
18 setback, but a 5-foot setback of the building changes  
19 your parking. And now you can't park the building  
20 because the back of the building, which we covered a  
21 long time ago -- about all the things you have to put  
22 in the back of the building, the park -- or the  
23 parking, the garbage, the elevator -- the elevator,  
24 the stairwell.

25 You -- you start -- you take away from the

1 beauty of the inside of the building. Even if you  
2 went to the outside, the flow of the building  
3 completely gets kind of discombobulated, for lack of a  
4 better word. So for us, this building is old school.  
5 It's timeless.

6 That north wall, if I go back to  
7 it -- because I think the north wall is like  
8 everybody's hot -- I don't think anybody disagrees  
9 that the building looks -- the other ways -- but if  
10 you -- excuse me -- but if -- I mean, that's how the  
11 north wall looks without the aspen -- I mean, that's  
12 how it would look with no trees.

13 But the bottom -- the bricked-in windows,  
14 the change in brick, the change of material in the  
15 bottom -- when you walk on the sidewalk, you don't  
16 look back 80 feet. You probably catch the first  
17 40 feet of the building. And so we cover the first  
18 50, 60 percent of the building with the look of a  
19 building that exists with windows, material, and the  
20 trellis to meet the -- you know, to make it -- break  
21 it up on the green side.

22 So I -- I mean, it's pretty, dang  
23 nice-looking. It's a zero-lot-line Code. We think  
24 you should approve it today.

25 Do you have anything else to say?

1 NICOLE RAMEY: I do.

2 MIKE CARR: Yeah. Okay. I'm sorry.

3 NICOLE RAMEY: I did also want to respond to the  
4 comments about the elevator.

5 Once again, we are not asking for any  
6 height variances. The elevator height meets the Code.  
7 The Code is 10 feet above the parapet height, and our  
8 parapet height is within the Code. Therefore, we are  
9 meeting the requirements for elevator height.

10 And then, also, the comment about it only  
11 being used by the penthouse is erroneous. It would be  
12 for three of the residential units.

13 And that's --

14 CHAIRMAN MORROW: Thank you.

15 COMMISSIONER CORDOVANO: Question --

16 CHAIRMAN MORROW: Yeah, please.

17 COMMISSIONER CORDOVANO: -- for the applicant,  
18 Nicole.

19 NICOLE RAMEY: Yes.

20 COMMISSIONER CORDOVANO: Have you considered  
21 using either -- the smaller units as community housing  
22 instead of paying the in-lieu fee?

23 NICOLE RAMEY: Yes, we have.

24 We were told that the lower-level unit was  
25 a no-go for being in the affordable-housing pool. And

1 then, as we added the second 749-square-foot unit  
2 during the process -- we -- I -- you know, I guess  
3 that's a -- that's a discussion, but it's more about  
4 adding it [unintelligible] to the pool.

5 COMMISSIONER CORDOVANO: And -- thank you.

6 And what is the top-floor penthouse's new  
7 size with the reduced massing?

8 UNIDENTIFIED SPEAKER: [Unintelligible]. I'm  
9 looking at 35.

10 NICOLE RAMEY: Yeah. [Unintelligible].

11 3,505 net.

12 COMMISSIONER CORDOVANO: Thank you.

13 CHAIRMAN MORROW: Other questions?

14 COMMISSIONER CORDOVANO: Another question for  
15 staff.

16 CHAIRMAN MORROW: Yeah, we closed the public  
17 comment. Yeah, I closed public comment.

18 Sorry. Go ahead, Spencer.

19 COMMISSIONER CORDOVANO: A question for staff,  
20 but if anybody has anything else for the applicant  
21 while she's here...

22 CHAIRMAN MORROW: Go ahead.

23 COMMISSIONER CORDOVANO: What's the in-lieu  
24 payment for this project?

25 MORGAN LANDERS: I will look that up. I think

1 it was in the original staff report, but I'll find  
2 that and get back to you.

3 COMMISSIONER CORDOVANO: [Unintelligible].

4 UNIDENTIFIED SPEAKER: \$411,000.

5 CHAIRMAN MORROW: Okay. Thank you.

6 Other questions --

7 COMMISSIONER CORDOVANO: Keeps you up at night.

8 CHAIRMAN MORROW: -- for staff?

9 COMMISSIONER CORDOVANO: Keeps you up at night.

10 UNIDENTIFIED SPEAKER: [Unintelligible].

11 CHAIRMAN MORROW: No other questions for staff  
12 or the applicant?

13 VICE CHAIRMAN MOCZYGEMBA: I have a question for  
14 the applicant.

15 I -- I think we covered this before, but  
16 we covered it in detail in a previous meeting. The  
17 brick here -- is the intention that it will be a -- a  
18 full brick to achieve the brick detailing; correct?

19 NICOLE RAMEY: And that is part of the  
20 reason -- the 7 inches is not -- is not empty space.  
21 7 inches is really to allow for full brick detailing,  
22 utilizing full-sized bricks, to be offset from each  
23 other and achieve that -- call it that "traditional"  
24 definition of relief on the building.

25 VICE CHAIRMAN MOCZYGEMBA: And then has there

1 been any discussion with the adjacent property owner  
2 regarding plantings for the trellis? I think you had  
3 mentioned that there is a possibility that the  
4 plantings could all come from the rooftop.

5 NICOLE RAMEY: Correct.

6 VICE CHAIRMAN MOCZYGEMBA: Okay. Great.

7 Thanks.

8 CHAIRMAN MORROW: Tim, do you have --

9 COMMISSIONER CARTER: No.

10 CHAIRMAN MORROW: Susan?

11 COMMISSIONER PASSOVOY: Yes, I -- since the  
12 original application precedes my tenure on the  
13 Commission, I just wanted to get a little  
14 clarification on the procedure.

15 I know that we have -- because of  
16 the -- the order in which the FAR Exceedance Agreement  
17 was done -- I guess, created -- I'm not quite sure  
18 what the right word is -- but, you know, some  
19 consternation, that we have advise -- so -- advised  
20 that we don't want to -- want this to happen again; is  
21 that correct?

22 MORGAN LANDERS: That's correct.

23 So this -- there was quite a bit of  
24 history of kind of how we were doing the sequence of  
25 FAR exceedance agreements. This very project actually

1 instigated a comprehensive policy discussion with the  
2 Planning and Zoning Commission and City Council.

3 So just to kind of recap where that  
4 landed -- is that -- moving forward, if an applicant  
5 is coming forward with either on-site, off-site, or an  
6 in-lieu payment that meets kind of their by-right  
7 options, the FAR exceedance agreements won't go to  
8 City Council until after the Planning and Zoning  
9 Commission makes their recommendation on -- on design  
10 review.

11 The only caveat to that is that, if an  
12 applicant is requesting, basically, an alternative  
13 mitigation -- which is provided for in the Code, but  
14 is only allowed by City Council approval -- what we  
15 decided and what the Planning Commission seemed to be  
16 okay with, was that we would go to the Planning  
17 Commission for an initial -- or to the City Council  
18 for an initial discussion, no approval of an FAR  
19 exceedance agreement comes through the Planning and  
20 Zoning design-review process, and then follow that  
21 with approval of the FAR exceedance agreement after  
22 the P&Z design-review process.

23 So that is what we are following for all  
24 projects moving forward, but this project was the kind  
25 of instigator of that policy discussion.

1           COMMISSIONER PASSOVOY: So going forward, we  
2 will have sort of a 360 process?

3           MORGAN LANDERS: Yes. Yes, you sure will.

4                   And -- and just to kind of clarify. We  
5 have -- and -- and, also, I just want to make sure  
6 because I think, Tim, you may have missed some of the  
7 earlier discussion in one of the earlier meetings as  
8 well.

9                   We have received kind of a legal  
10 determination from the City's Legal Department that  
11 the conditions that are placed on that FAR Exceedance  
12 Agreement do not prejudice the Commission for making  
13 their decision on design review.

14                   There's a lot of conditions of that  
15 agreement that says, "If something changes, this is  
16 how it happens," so it does not lock you all in for a  
17 prejudged approval of the project. You still have  
18 full reign to make your decision, based on the  
19 design-review criteria.

20           COMMISSIONER PASSOVOY: On the -- on the merits  
21 of the building, these are the design review --

22           MORGAN LANDERS: Correct.

23           COMMISSIONER PASSOVOY: All right. Then my  
24 second clarification -- oh, please don't have  
25 forgotten it already.



1 Can I come back?

2 CHAIRMAN MORROW: Yeah, you can come back to it.

3 COMMISSIONER PASSOVOY: Can I reserve --

4 CHAIRMAN MORROW: We can --

5 UNIDENTIFIED SPEAKER: Excuse me.

6 [Unintelligible] you a moment.

7 CHAIRMAN MORROW: We will -- yes. Okay.

8 Spencer?

9 COMMISSIONER CORDOVANO: Is there any way  
10 we -- considering open up -- opening back -- public  
11 comment?

12 CHAIRMAN MORROW: Generally, I wouldn't.

13 Do you have a specific -- do we have a lot  
14 of public comment that --

15 COMMISSIONER CORDOVANO: No, I think just --

16 CHAIRMAN MORROW: -- [unintelligible]?

17 COMMISSIONER CORDOVANO: Well, somebody else  
18 wanted to comment. I'm --

19 CHAIRMAN MORROW: Morgan?

20 MORGAN LANDERS: Generally, what I recommend is  
21 that we always reopen public comment if there's been  
22 new information provided.

23 CHAIRMAN MORROW: Okay.

24 MORGAN LANDERS: So if there's new information  
25 that you all felt the public was not aware of --

1 CHAIRMAN MORROW: I'm happy to --

2 MORGAN LANDERS: -- you know, you could. It --

3 CHAIRMAN MORROW: I'm happy to do it --

4 MORGAN LANDERS: It's really up to --

5 CHAIRMAN MORROW: -- on Spencer's request.

6 MORGAN LANDERS: -- your discretion.

7 COMMISSIONER CORDOVANO: I'm -- I'm inclined to  
8 hear it.

9 CHAIRMAN MORROW: I'm happy to do it.

10 So thank you, Nicole.

11 So temporarily, we will reopen public  
12 comment. If we have comment, please step to the  
13 microphone and state your name for the record.

14 JEFF SWANSON: Jeff Swanson [phonetic]. I've  
15 been a resident here for a bit.

16 The one thing I think has been overlooked  
17 is the retail, and the fact is that -- I'm over there  
18 a lot. I'm helping out the owner with some of the  
19 planning and some of the reviews. This is pretty much  
20 a dead area over there in regards to foot traffic.

21 I would think that 1,300 feet [sic] of  
22 retail -- but I hope I'm not getting off base -- kind  
23 of makes a circle because you have Atkinsons' area and  
24 what's going on over there, you have Main Street,  
25 which has some amount of retail, but the south side of

1 town, there -- I see no retail there.

2 And I'm only bringing that to the point as  
3 an observer of what's -- walking around there.

4 There's no real interaction. It's a pretty dull side.

5 So I will stay out of the elevator, and  
6 I'll stay out of the -- although, I think that north  
7 wall looks great.

8 One fact -- and you probably are going to  
9 want to "boo" me out. I spend a lot of -- spend a lot  
10 of time in Seattle development. North walls or blank  
11 walls in Seattle are almost always cement block. And  
12 I look at these things, and I think to myself, This is  
13 really ugly. I come back, and from -- and -- in  
14 building, and all of a sudden that north wall is  
15 absorbed into the neighborhood. That's just from  
16 a -- a point of view from my end.

17 But I think the retail aspect of -- but  
18 introducing that is important -- the walking  
19 community.

20 Thank you.

21 CHAIRMAN MORROW: Thank you.

22 Any other -- not seeing any.

23 I will -- back here -- I'll go -- I'll  
24 close public comment, and we can go to deliberation or  
25 any other questions.

1           COMMISSIONER CORDOVANO: Yeah. I don't know.  
2 I -- to respond to the -- you know, this  
3 whole -- everything is -- is -- first off, I would  
4 like to thank the applicant. I know it's a big lift,  
5 and it's a lot of investment financially and mentally  
6 to invest in our town.

7           And I appreciate a lot of this building.  
8 I really appreciate the nod to smaller retail areas,  
9 whether or not they're still potentially able to be  
10 rented by one person much longer -- larger. I  
11 appreciate the look. I appreciate coming back here  
12 time and time again.

13           However, at the end of the day, I'm just  
14 not behind it for a few reasons. I feel like it  
15 doesn't meet the character of the neighborhood. I  
16 feel like it further defines the character of the  
17 neighborhood.

18           I feel like there's a lot of other ways  
19 this building could have met a 2.0 floor area ratio  
20 and not maxed height and not maxed elevator shafts.  
21 And I have been known to vote against any top-floor  
22 penthouse with a hot tub on top that maxes out the  
23 height for those reasons.

24           I think a building with 10-to-12-foot  
25 ceilings and community housing in it, instead of

1 the -- paying the in-lieu fee, would do a lot more for  
2 the town. We've been pushing everyone to develop  
3 community housing, rather than pay the fee time and  
4 time again on this Commission.

5 I think, you know, in regard to the public  
6 comment in the back, I also think Mike's a great guy.  
7 I see him around all the time at all the local  
8 watering holes and skiing and out in the woods, and we  
9 don't evaluate who's doing the project. It's not a  
10 personal thing. We give the same level of agita to  
11 anyone, be it out-of-town developers or locals.

12 And quite frankly, I need to remove my  
13 bias from my decision -- that two of my neighbors in  
14 an apartment building that will not last are neighbors  
15 of condos that have been bought and sold by this  
16 development team and kicked out of their places before  
17 their leases were up in the precursing years. So I'm  
18 removing that bias in both aspects from my decision.

19 And I don't think it's critical housing at  
20 all. I think it's housing that is large, too tall,  
21 and, honestly, housing without a view of the northern  
22 realm that they're missing by not having windows  
23 there.

24 I appreciate the Building Code and the  
25 Fire Code when they need it. When Dirty Little

1 Roddy's burnt down and that was in a position that  
2 they needed to -- brick walls, lot line to lot line,  
3 we saw why they do that. But I think there's a  
4 million other ways to get to a 2.0 floor area ratio.

5 And the undulation of the north wall has  
6 been very minimally reduced time and time again. And  
7 while it does look good, I've got my concerns about  
8 the safety of the public, walking under all these  
9 potential areas for cornice, whether they're melted or  
10 not, with the sidewalk extensions.

11 And that's where I stand.

12 CHAIRMAN MORROW: Thank you.

13 Susan, I think you've remembered your --

14 COMMISSIONER PASSOVOY: I did remember my other  
15 point. It's really a -- basically a small one, but I  
16 just -- it's sort of a correction.

17 We discussed asking for a 3D CAD model or  
18 something, but I think that we let that go by the end  
19 of the meeting. I don't think it was a requirement.  
20 It would be nice to have, but we got talked out of it,  
21 as I recall.

22 CHAIRMAN MORROW: I'm not sure if that was this  
23 or the hotel, but I think that the -- the concept is,  
24 "Did this" -- "did what we see here show the massing,  
25 as compared to the neighborhood?" And sometimes it

1 does, and sometimes it's a little skewed to look  
2 better than it could.

3 But I think we've all been to this site  
4 enough to know what a difference it's going to make in  
5 the -- in the sense of size on that side. But, you  
6 know...

7 COMMISSIONER PASSOVOY: I -- I'm very  
8 sympathetic to most of Spencer's comments. And I  
9 also, however, am sympathetic to -- yes, this  
10 building, in a sense, does set an -- a precedent for  
11 how that area will be developed as we go forward over  
12 the next 10 years.

13 And I keep saying that the town is  
14 growing, the town will grow, and we are in charge of  
15 managing how that growth occurs. We can't stop it,  
16 but we can get the best we can as it grows and make  
17 sure that it is providing aesthetic growth and useful  
18 growth.

19 And this is where I'm -- I'm sympathetic  
20 with Spencer's comments, that I just wish we could get  
21 more housing out of these projects that are being  
22 built and -- not orienting them toward people who  
23 don't spend -- who don't live here.

24 They live here occasionally, but they are  
25 not full-time residents -- residents of the city. And

1 I realize that that is out of the bounds of the  
2 purview of this Commission, but it feeds my prejudice  
3 about how the change is managed.

4 In terms of design review, I think this is  
5 a gorgeous building.

6 CHAIRMAN MORROW: Thank you.

7 Brenda.

8 VICE CHAIRMAN MOCZYGEMBA: Yeah. I don't have  
9 too much to say.

10 I appreciate the applicant team in  
11 responding to all the feedback that's been given  
12 throughout the last several meetings.

13 I think it's a mistake to, you know, not  
14 be forward-thinking enough in trying to, you know,  
15 force this building to be smaller to meet its other,  
16 you know, non-conforming neighbors, essentially.  
17 It -- it -- it's a hard spot to be in because, I  
18 think, it's been acknowledged that, you know, this  
19 would be an otherwise dead corner of town, but I see  
20 that more as an opportunity, rather than down-playing  
21 the highest and best use that this property could  
22 become.

23 We -- you know, we can argue all day long  
24 what -- you know, what the benefit of these  
25 condominium units are going to be to the town, but I



1 think, in regards to the current Code language, you  
2 know, the -- the applicant has responded to what's  
3 allowable in -- in a nice fashion.

4 And so that's my opinion.

5 CHAIRMAN MORROW: Thank you.

6 Tim.

7 COMMISSIONER CARTER: The -- the sort of -- it  
8 feels like there's a -- a conflict or a -- a -- sort  
9 of a push/pull that's going on in town around the size  
10 of buildings that are getting developed, and it seems  
11 to be manifesting itself in this project.

12 This -- you know, this lot right on -- I  
13 mean, this -- this block borders Sun Valley Road, and  
14 it's one block off of Main Street. This isn't out on  
15 the outskirts of town somewhere. This is, you know,  
16 arguably right downtown, but it's a part of town that,  
17 for one reason or another, hasn't seen a lot of  
18 growth.

19 And, you know, this is -- this -- this  
20 project -- you know, the -- right across the alley  
21 from this is the CenturyLink building, which is  
22 a -- sort of an odd, small black hole of a building  
23 that really doesn't -- I mean, it's a communication  
24 node for town, I guess, but it really contributes  
25 nothing to the streetscape of town at all. And I

1 don't know if that's kind of contributing to why this  
2 corner's -- why -- why this corner has been dead or  
3 not.

4 It's not dead, but, you know,  
5 isn't -- doesn't have the same sort of street vibrancy  
6 that Leadville does as you go further north.

7 There's an empty parking lot across the  
8 street from -- across the street from it, towards Main  
9 Street. You know, that's like -- I imagine that's  
10 going to get developed some time soon.

11 So this -- the development of this corner  
12 is -- is sort of an opportunity to extend that  
13 streetscape of downtown in a direction that really  
14 seems to make a lot of sense. You know, we're just a  
15 block off of Main Street. The connection from Main  
16 Street, you know -- or over by where -- where Rico's  
17 used to be in Chapter One, you know, connecting to Sun  
18 Valley Road along here, I -- I think, is a -- is a  
19 real potential addition to the -- to the streetscape  
20 of town.

21 And this building kind of helps set that  
22 corner. So there's a -- there's a lot of value to it.  
23 There's retail on that downstairs. And so in that  
24 sense, you know, I think this -- this -- this building  
25 can -- can really contribute to some -- to an

1 improvement to -- to downtown.

2 The -- the question that seems to be -- or  
3 the conflict that seems to be -- is -- is -- you know,  
4 "Is three story" -- "is a three-story building  
5 appropriate in this location?" It certainly stands  
6 out, compared to the development that's  
7 there -- that's currently there now.

8 And I guess the appropriateness of this  
9 building here depends on, you know, what's going to  
10 happen with development in town in the future. You  
11 know, is -- is the -- is development -- you know, is  
12 this what's going to happen?

13 And if we force it -- or if -- if we -- if  
14 we force a smaller building into here, is it, then,  
15 eventually going to look out -- out of scale with the  
16 buildings that eventually come up around it, or -- or  
17 if we allow this building, are we then -- are we then  
18 sort of creating that -- are we sort of incentivizing  
19 that large development to happen? It's for -- I guess  
20 it's sort of chicken-or-the-egg.

21 You know, my -- I -- I suppose it would be  
22 easier to have a two-story building developed here  
23 because there'd be less conflict, so it's hard to be  
24 in a position to -- to just make this decision.

25 You know, my sense is that -- my -- my

1 kind of gut -- is that downtown is where this kind of  
2 development needs to be, one block off of Main Street,  
3 one block off of Sun Valley Road.

4 You know, as jarring as a -- it -- sort of  
5 a -- it's a conflict to the buildings that are there,  
6 but it doesn't -- it feels like this development's  
7 sort of inevitable, certainly at the scale we've been  
8 going the last few years. It -- it feels like this is  
9 where we're headed.

10 I appreciate the improvements to the north  
11 wall. I -- I mean, I -- I really think  
12 those -- those -- recessed, bricked-in-window look  
13 is -- is a good -- a good -- a good solution for that.  
14 It's tricky to invest a lot in a wall that -- you  
15 know, there's a good chance that that is going to get  
16 developed over at some point.

17 A couple comments about the -- about the  
18 facade -- you know, one of the things I hoped we -- I  
19 couple of things I hope we address in the Code rewrite  
20 that we do is this sort of focus on -- on undulation  
21 everywhere. There's a previous iteration of this  
22 building on the -- is it 2nd Street? -- view that  
23 shows this sort of brick cornice-work over the top of  
24 the white stone. That's, I think, much more  
25 attractive.

1           And, you know, we forced this building to  
2 put in -- add -- add sort of -- add a -- I think it's  
3 a -- a -- like a steel-fascia-overhang wall and a  
4 break in the parapet, and -- and I -- just for  
5 the -- you know, for the sake of undulation and -- and  
6 relief. And I think the religion of undulation  
7 of -- is -- I would like -- I'd like to address in the  
8 next -- in the Code rewrite.

9           And then I also think we should look at  
10 elevator overruns. I understand that, you know, the  
11 way this is designed is what's allowed by Code, but do  
12 we really need to have elevators going to the roof?  
13 What -- what is the reason why elevators are going to  
14 the roof? So if we can address that because  
15 it -- elevator overruns require so much additional  
16 height over the allowable roof.

17           We ran into it in the hotel. Why is it  
18 that we're -- why are there elevators going to the  
19 roof, and must we allow those? Because they really do  
20 add a significant amount to sort of the agreed-upon,  
21 allowable height of the building.

22           CHAIRMAN MORROW: All right. Go ahead.

23           VICE CHAIRMAN MOCZYGEMBA: Tim, thanks for  
24 adding that on the elevator overrun. That's one thing  
25 I forgot to mention, but I would agree.

1           In our rewrite, I think we need to clarify  
2 what -- what that allows because these things continue  
3 to come up as kind of warts on the top of the  
4 building. But I think they still take away -- while  
5 it's not viewed from the street, I think, from afar,  
6 they're going to take away someone's view at -- at  
7 some point.

8           CHAIRMAN MORROW: So, yeah. That -- I know we  
9 wanted to stay away from any kind of amendment or  
10 anything as we go into the Code rewrite, but  
11 I'm -- I'm of the same now.

12           This is two times in a row that we've come  
13 up with -- we're fighting about height to keep the  
14 city low, and then there's this 10-foot thing on top  
15 that, you know, totally destroys it. Even though you  
16 can't see it from the street, it -- you -- you know,  
17 it's not 42. It's 52 now. And so  
18 it -- it -- it -- it's allowed, but I'd like to get  
19 rid of it.

20           If they've got to dig it at the bottom  
21 into the ground to get that space to put the  
22 stuff -- whatever they need, but I'm -- I'm in -- in  
23 firm favor of getting rid of this or -- or making it  
24 so that -- clearly, someone said they do it in  
25 Seattle, and they were -- they can make it even with

1 the roof or build the roof over it.

2 I think we need to address this before  
3 it -- as the buildings get bigger, before we have a  
4 bunch of 52-foot -- you know, on one building, it may  
5 not matter. On 10, it may start to look like they're  
6 all really large buildings. So I think that's more of  
7 an urgent concern as we go forward.

8 More to this point, I'm hoping -- well,  
9 first off, my first question was going to be, "Did  
10 they talk to the neighbors?"

11 One of the pictures they show has a bunch  
12 of like aspens on the side. I like that view, but  
13 you're not getting that with 7 inches. You know, I  
14 like the 5-foot setback and the ability to put windows  
15 and have a northern view like Spen [phonetic] said.  
16 But, again, that didn't seem to go anywhere, you know,  
17 having the neighbors do that.

18 I agree with Tim on this being an  
19 activation of this corner. I guess, as much as I hate  
20 it, what we're going to see is this corner and the  
21 Vintage corner going to the level -- to the limit, 42  
22 or 35.

23 And then, next -- across the street, you  
24 have the two historic houses. And so you're going to  
25 see some kind of stepdown no matter what over there

1 with Chapter One and the two houses and -- and even  
2 the real-estate building on the corner is -- the  
3 builder's building -- Lee Gilman's building is one  
4 story. So you're going to have that stepdown no  
5 matter what you do there. I mean, it's -- I -- I just  
6 see that.

7 And then as you go to the next block, you  
8 have Argyros, which is tall, and you have the blue  
9 building, which doesn't have any retail. They seem to  
10 have gotten rid of all their retail next to  
11 Sister -- whatever that building was -- the Boulder  
12 Building -- Boulder Building. So --

13 MORGAN LANDERS: Is that the one with Lloyd  
14 Construction in it?

15 CHAIRMAN MORROW: Yeah, it just has that now.

16 MORGAN LANDERS: Two-story building?

17 CHAIRMAN MORROW: Yeah.

18 MORGAN LANDERS: Yep.

19 CHAIRMAN MORROW: And then behind the block  
20 on -- on the other side, they built a three-story kind  
21 of condo -- townhouses over there, so it's -- it's  
22 coming up. So I'm with Tim that -- you know, this  
23 will activate that corner, and we just have to find  
24 some way to -- to blend it back down as you go to the  
25 next block. Hopefully, those -- those original houses



1 stay.

2 Can the trellis get enough light, being on  
3 the north side, not getting a lot of light? I  
4 just -- I'd hate to see a bunch of -- you know, just  
5 an empty trellis or a bunch of dead plants or -- or  
6 you guys constantly trying to put new plants in there  
7 so that it doesn't -- it's -- it's not so much a  
8 question, as it is just something that  
9 we're -- yeah -- that we'd like to -- that I'd like to  
10 make sure we're keeping an eye on.

11 As anything else -- and you guys can tell  
12 me to stop saying this, but this project gets better  
13 and better. And I'm sure if it took another two  
14 years, it would get somewhere close to where Dave  
15 wants it to be, and we would find a really great  
16 project, but I think -- I think the process works.

17 We've -- I really like the addition to the  
18 north wall of the bricked-in windows. I think that's  
19 a really clever solution that gives it some feel, more  
20 than just color or murals or whatever.

21 And if we can get the trellis to work,  
22 then it really kind of -- now you've kind of shrunk  
23 that. As -- again, as much as I'm with everyone  
24 else -- it would be nice if buildings were  
25 smaller -- this is what the Code says. This is what's

1 going to get built in some of these places. Look  
2 around town. This is what's getting built.

3 So I think they did a nice job of -- of  
4 limiting that, of stepping the building back more.

5 I -- I like Tim's comment about the -- the  
6 religion of undulation, but I -- I think, right now,  
7 it's still important that we do it. But we probably  
8 should address it so it doesn't get out of control.

9 The elevator tower. The trees on the  
10 north. The trellis.

11 And then you guys dealt with the legal.  
12 So if it gets beyond us -- not our process. I mean,  
13 we would like the process to work properly every time,  
14 but I didn't feel pressed to -- to say we couldn't  
15 make it drink, and we keep trying to make it drink.  
16 So we've actually done some work on -- on that side.

17 So all in all, I think it's -- you know,  
18 again, if we had another six months, it would get  
19 better and better, but that's not a -- always a  
20 realistic thing. I think it's gotten a lot better  
21 through the process. So that's where I am.

22 Susan.

23 COMMISSIONER PASSOVOY: And the only thing I  
24 wanted to add, which is -- I appreciate Tim's  
25 observations. It is difficult to be the first in the

1 hood to do something basically, radically different  
2 than what's around you, and that's why this is  
3 definitely the target of a lot of con -- community  
4 concern about direction.

5 And I think that, if this is going to be  
6 the first one of several in this area, it's -- it's a  
7 nice one. I mean, I think that the architect and the  
8 developer have come up with -- with a good -- a good  
9 compromise and -- within the boundaries of the Code  
10 that we are required to work with.

11 CHAIRMAN MORROW: Well, they might not have been  
12 the first, but we rejected -- I don't know -- Tim  
13 might have been here for this.

14 We rejected a project across the street  
15 that was strictly -- strictly housing, with no  
16 activation on the first floor. And we were just  
17 like, "It's" -- "It doesn't fit the neighborhood."  
18 It -- so I could see, with retail on the first floor,  
19 that project coming back, which was maybe not as bulky  
20 as this, but was large. And -- and you're probably  
21 going to see that next door anyway.

22 So I -- you're right. It -- it -- it was  
23 hard for the first, and there would have been one  
24 before, but we were like, "There's no way that we're  
25 putting your front door on the street."

1                   So, Spencer.

2                   COMMISSIONER CORDOVANO: I just think -- you  
3 know, the development, by right, is 1.0, and the rest  
4 of this is discretionary, based on our review of the  
5 design criteria.

6                   And just because it looks pretty and meets  
7 the Code, I'd like to offer the perspective that it  
8 reaps every benefit of the Code to the maximum,  
9 without providing -- claiming vibrancy is great. We  
10 got a couple units out of it.

11                   But then you look at the offices on Sun  
12 Valley Road and Leadville, and there's about 20 units  
13 in there, and the building's 24 feet tall. And you go  
14 around the clock there, and I think you get more of  
15 that vibrancy, more tax, and more action from any  
16 other building.

17                   And I just think, whether or not the  
18 Council already approved the FAR Exceedance Agreement,  
19 I think it could still be achieved at 2.0, with a much  
20 smaller and vibrant building. And just because it  
21 looks great, that doesn't mean we have to live with  
22 it.

23                   CHAIRMAN MORROW: Thank you.

24                   Anyone else? Other comment? Other  
25 questions for staff?

1 Staff, anything else?

2 Well, I'm happy to take a motion or  
3 continue deliberation, or if you guys need more  
4 time...

5 COMMISSIONER CORDOVANO: I mean, I'd --

6 CHAIRMAN MORROW: Continue the --

7 COMMISSIONER CORDOVANO: We've -- we've been in  
8 here three, four times on an application that came  
9 through for the one-hit wonder. He got stopped in his  
10 tracks. I'd hate to stop it all the way in its  
11 tracks. I'm not sure if that motion would be seconded  
12 or further supported.

13 But I think, for me, 411k to the in-lieu  
14 fund for a building that maxes out -- everything  
15 out -- and we've asked time and time again for more  
16 undulation on the wall. The property owner, the  
17 adjacent property owners, they've all talked about  
18 solutions that haven't been achieved.

19 I'm not in favor.

20 CHAIRMAN MORROW: Thank you.

21 Other comments or anyone persuaded to  
22 accept Spencer's motion, that you could...

23 COMMISSIONER CORDOVANO: I kind of want to hear  
24 what everyone else is thinking.

25 VICE CHAIRMAN MOCZYGEMBA: I appreciate those

1 comments that -- I -- I think it's going to be  
2 unanimous around the table here -- is that this is a  
3 tricky one because it does stand alone at the moment.

4 I think what -- what I had discussed at  
5 the last meeting was talking about, you know,  
6 it's -- it's just going to be impossible to forecast  
7 what comes next. You know, is -- is -- is there  
8 additional development, is there a development pause,  
9 or does this thing stand alone for the next decade?  
10 So I think that's -- that's kind of what we're  
11 struggling with right now.

12 But, personally, I think a -- a  
13 three -- you know, we're -- we're -- we're trying to  
14 hedge the bets here, and -- and I think that a  
15 three-story building that meets the Code and where our  
16 Comp Plan is pointing to and gaining vibrancy to this  
17 street corner, even if it's just retail on the first  
18 floor, is a step in the right direction.

19 You -- you know, I think the -- this whole  
20 mix, where it's retail on the first floor and  
21 condominiums on the top floor, is just a response to  
22 our current economic cycle, where cost of construction  
23 is forcing the developer's hand to not have a building  
24 that's all office space and retail because it's  
25 impossible to turn it around and make any sort of

1 money at the end of the day.

2 So that's my two cents.

3 CHAIRMAN MORROW: Thank you.

4 Tim --

5 COMMISSIONER CORDOVANO: I just think -- I feel  
6 like -- if we let this building go with a  
7 94-percent-not-undulated north wall, the neighborhood  
8 has no choice in the future but to match it. And if  
9 we got to a point with a further-undulated wall and a  
10 third-story setback, we would have a lot easier time  
11 telling the next property owner or the developer of  
12 the northern lot, "No, you can't put a flat wall  
13 there."

14 Tell me if I'm wrong. I defer to you  
15 guys. You guys have been here a lot longer than me.

16 CHAIRMAN MORROW: I -- I don't know. We've  
17 accepted some -- you know, we've -- we've always been  
18 pretty diligent about saying, "If there's a flat wall  
19 being designed, it has to have something on it  
20 because, until it gets covered -- and most of them end  
21 up getting covered.

22 The best example is Dr. Franz's building,  
23 which we made him change, and then within six months,  
24 they had already built another building up by the  
25 wall. All we did was make him put two different

1 colors on it, but we've -- we've done that.

2 So I guess, here, the question is -- if  
3 Mr. Hutchinson doesn't develop for 10 years or  
4 15 years, then that wall is going to be there, and  
5 we're going to have to live with that. But if it  
6 turns out that it's either too much to live next to  
7 or, again, the economy changes and now we have a new  
8 non-mountain, modern design that comes in, maybe  
9 something else goes up there.

10 So I'm not sure how much -- you know,  
11 it -- it -- it meets the -- my problem is it meets the  
12 Code. You know, it'd be great if the Code said, "Hey.  
13 35' at the top. That's the parapet. Nothing above  
14 it," but it doesn't. And -- and I -- I agree. We  
15 don't have to just say, "Okay. We're going to do it,"  
16 but I think they've made some good changes to the  
17 building.

18 My personal feelings are different  
19 from, "This fits the Code." I'd like to see that  
20 north wall undulate, but if it gets covered, I'm not  
21 sure that's worth it. I like the -- what they've done  
22 with the bricked-in windows because it has that feel.  
23 But, yeah, I -- I see what you're -- what you're  
24 saying.

25 And I do have an issue, kind of, with



1 the -- with just the FAR. It would be nice to know  
2 how they came to a -- this corner -- it fits for a  
3 2 -- or whatever City Council did, but it didn't  
4 affect, at least, my -- I looked at this like  
5 predesign and design for any building we do, not like  
6 it was entitled to get this. So...

7 MORGAN LANDERS: And -- and the FAR Exceedance  
8 Agreement was just based on the proposed project. So  
9 it wasn't in the -- the actual building plans and the  
10 design of the building are not provided to City  
11 Council. It's -- it's purely an agreement that  
12 outlines how to conduct the community-housing  
13 mitigation, and that's a math problem.

14 CHAIRMAN MORROW: So they don't look at the  
15 neighborhood and go, "Okay. Here's a" -- "it  
16 shouldn't be a 2 here?"

17 MORGAN LANDERS: No.

18 CHAIRMAN MORROW: Okay. So this is something,  
19 then, we'd probably have to --

20 MORGAN LANDERS: That's not part of their  
21 discussion at all. That's -- that's the role of the  
22 Planning and Zoning Commission.

23 CHAIRMAN MORROW: Okay.

24 MORGAN LANDERS: And, you know, I -- if it  
25 helps, the project does meet the Code, but you also

1 have design-review criteria; right? So I think what  
2 staff tried to kind of present to you all is -- the  
3 criteria that's applicable is that the building wall  
4 "shall provide undulation/relief, thus reducing the  
5 appearance of bulk and flatness."

6 So, you know, that's -- that's kind of  
7 your guiding light there. It's -- do -- do you feel  
8 that it does that, or do you feel that it doesn't?  
9 You know, I definitely -- you all are grappling with a  
10 pretty significant challenge, but every time that I  
11 feel a little bit lost in a decision, I always go back  
12 to the criteria, and ultimately, that's what you all  
13 have to make your decision based on.

14 Whether it's an approval or a denial, it  
15 needs to be rooted in that criteria. So it's very  
16 important that you kind of keep that as your guiding  
17 light as you move forward. And staff believes this is  
18 probably the most applicable criteria that you are  
19 working with.

20 So, again, if you feel that it does  
21 effectively reduce the bulk and flatness, then you  
22 could approve. And if you don't, then you could deny  
23 or request additional changes.

24 CHAIRMAN MORROW: Very succinct. Thank you.

25 So more discussion? I'm open for a

1 motion, whatever you guys want to do, and it could be  
2 a motion for anything.

3 COMMISSIONER PASSOVOY: The architect has, I  
4 think, shown herself to be quite thoughtful about  
5 making additional changes. I'm kind of inclined to  
6 ask her to go back on the north wall and give it  
7 another iteration.

8 CHAIRMAN MORROW: So that would essentially be a  
9 continuance, a motion to continue?

10 MORGAN LANDERS: That would be that, and that is  
11 an option for you.

12 What I would request is that you all have  
13 a little bit more dialogue about the specific changes  
14 you'd like to see because we have seen this project  
15 quite a few times now. So I think, yes, you know,  
16 kind of taking another go at it -- but I think being a  
17 bit more specific about what you think might be  
18 effective could be helpful so that we avoid kind of  
19 continued meetings.

20 And again, you know, staying away from  
21 specifics of, you know, "It's a 1.7 FAR versus a 2.0  
22 FAR" -- really kind of focusing on kind of what those  
23 elements of that north facade are, I think, will be  
24 helpful and will improve kind of the applicant's  
25 response.

1           COMMISSIONER CORDOVANO: I feel like I've  
2 already been there.

3           VICE CHAIRMAN MOCZYGEMBA: Yeah. I think what  
4 I've heard that I don't necessarily agree with -- but,  
5 you know, there's no more [unintelligible] of this  
6 north wall as it stands, that -- what -- what's been  
7 discussed before by Commissioner Spencer would be a  
8 stepping back of the third floor.

9           But in my mind, again, that -- that's  
10 something that is not the intent of the Code at -- at  
11 these third floors, to have a step-back, but I think  
12 that's where some of the other Members at this table,  
13 in -- in their mind -- I think where -- where we're  
14 kind of stuck.

15          CHAIRMAN MORROW: Yeah. I would -- I -- I mean,  
16 I'm not an architect, but I always thought, if you  
17 were looking north, it would be cool if there was a  
18 balcony on that side, but then that would require some  
19 agreement with the neighbor to have a permanent  
20 setback so that -- because that's a real structure in  
21 the -- it's not a window. It's not something that can  
22 get covered up. It would really affect that top  
23 floor.

24                       So if there were some change made to the  
25 top floor so that the north side had an outside

1 balcony so that it wasn't just -- whatever. But then  
2 that would -- that would necessitate some setback with  
3 the neighbor -- agreement with the neighbor so that  
4 that balcony didn't get walled in in the future. That  
5 would be an awful thing. So -- but, again, not -- not  
6 trying to give architectural solutions.

7 So we have essentially two for  
8 continuance.

9 Tim, do you have a...

10 COMMISSIONER CARTER: I want to -- Morgan, can  
11 you just explain the connection between the FAR  
12 exceedance -- the discretion that is -- that is given,  
13 in the Code, to -- is the FAR -- is FAR  
14 exceedance -- that discretion isn't given to -- to the  
15 Commission. Isn't our -- or is it? That's my  
16 question. Is --

17 MORGAN LANDERS: So --

18 COMMISSIONER CARTER: You know, we have to  
19 evaluate this project based on the design-review  
20 criteria -- right? -- which is bulk and flatness and  
21 health and safety. Where does it -- where are we  
22 charged -- there -- there's a relationship, but how  
23 are we directly charged with the FAR exceedance?

24 MORGAN LANDERS: Yep. So let me pull up the  
25 Code section -- section specifically because that will

1 help you.

2 The floor-area-density-bonus program is  
3 for inclusionary-housing incentive, and that is  
4 100-percent dependent on design-review approval. So  
5 it says, "An increased FAR may be permitted subject to  
6 design review approval." And that is in our Code. So  
7 that's Section 17.124.040. So they only get it if you  
8 all believe that the increase of the size of the  
9 building meets the design-review criteria, and then it  
10 has a design-review approval.

11 COMMISSIONER CORDOVANO: And I don't.

12 And due to everything I've stated, with  
13 all respect intended to the development team, I'd like  
14 to throw out a motion to deny the design-review permit  
15 for 200 North Leadville, based on undulation, bulk,  
16 and flatness, lack thereof, and the other factors I  
17 mentioned.

18 COMMISSIONER PASSOVOY: Undulation, bulk, and  
19 flatness of the north wall specifically or of  
20 the -- the rest of the facades?

21 COMMISSIONER CORDOVANO: North wall,  
22 specifically, and the building in general.

23 CHAIRMAN MORROW: I -- I -- yeah. I -- I would  
24 only disagree with that unless something -- I think  
25 they've made a nice effort in the stepping back and

1 the change in moving the balcony along. I mean, I  
2 think the front of the building and the corner of the  
3 building, moving the stairs inside, is a massive  
4 improvement from what we looked at before.

5 So the north wall, specifically, maybe I'm  
6 okay with that. But I think the rest of the building  
7 is -- is -- you know, they've done a nice job.

8 COMMISSIONER CARTER: I mean, this building is  
9 not out of scale with many, many other buildings in  
10 town. Why are -- you know, we have -- we've approved  
11 three-story buildings like this, and, you know,  
12 they -- there's three-story buildings like this that  
13 exist in -- in lots of places in town. So why this  
14 one, and why here?

15 COMMISSIONER CORDOVANO: I've voted against all  
16 of those for the factors of the Code that I see  
17 updated. The reason I didn't throw out motions on the  
18 other ones and -- was because of the amount of  
19 community housing that they've provided or other  
20 setbacks and other undulations in those buildings and  
21 in relation to the character of the neighborhood that  
22 they've been in.

23 COMMISSIONER CARTER: So there's a -- there's  
24 a -- the three-story -- the mass of the building is,  
25 essentially, a cost to the public, and the tradeoff

1 isn't worth it? Is that what you're saying? To  
2 the -- what the public's getting in -- in return for  
3 having to live with this mass, it's -- the public  
4 isn't getting enough in return?

5 COMMISSIONER CORDOVANO: Correct.

6 COMMISSIONER CARTER: So what we are getting in  
7 that -- in this is a -- is sort of a -- an -- an  
8 act -- some retail space on the first floor and  
9 activation of that corner, sort of an extension of the  
10 downtown -- sort of downtown life one block in a  
11 direction that seems appropriate.

12 But that's what -- you know, because it's  
13 one block off Sun Valley Road and one block off of  
14 Main Street, it seems like that is a -- is something  
15 that's beneficial to town, a -- you know, an -- an  
16 expansion of the downtown character in -- in this  
17 direction seems appropriate.

18 But what -- so what are we not getting?  
19 The housing -- the type of housing that we're getting  
20 is not -- is not valuable enough to -- to -- is not  
21 valuable enough to what the town needs? Is that what  
22 you're saying?

23 COMMISSIONER CORDOVANO: Well, I think that  
24 the -- the housing will be less vibrant than the rest  
25 of the uses in the neighborhood. I think, for an



1 in-lieu payment of 411k, it just states the obvious,  
2 that it's more financially motivating to sell off two  
3 750-square-foot units. And is that tradeoff worth it  
4 to us? I'd rather see that unit be built in.

5 MORGAN LANDERS: If I may offer just a word of  
6 caution. The way that our Code is kind of structured  
7 in the criteria and the findings that the Planning and  
8 Zoning Commission needs to make don't necessarily  
9 create that structure of benefits and tradeoffs. It  
10 does, from the FAR-exceedance standpoint.

11 From a design-review perspective with the  
12 design-review criteria -- and we do have Criteria 1,  
13 which is the health, safety, and welfare. Applicants  
14 need to make both, but I would caution that the way  
15 that our Code is currently written, there's not a  
16 strong association between the kind of individual uses  
17 and -- and things like that within the building and  
18 the -- kind of the tradeoff of design-review criteria.

19 So I -- I would caution us from kind of  
20 going down that road. I think a lot of the  
21 Comprehensive Plan elements are related to, you know,  
22 contextual design. Certainly that relates to the size  
23 of the building, but I would caution the  
24 Commission from going down the road of, you know, the  
25 benefit of the individual uses and things like that.

1 I think our -- our Code isn't fully  
2 structured to -- to -- to kind of support that  
3 approach at this time.

4 COMMISSIONER CORDOVANO: Agreed. And I think,

5 MORGAN LANDERS: Though I do know that that is a  
6 frustration of the Commission that we hope to address.

7 COMMISSIONER CORDOVANO: Agreed. I think we're  
8 deliberating a little bit further and getting into  
9 some of the other criteria ulterior that I based my  
10 motion on, but --

11 COMMISSIONER CARTER: Yeah. So I don't --

12 COMMISSIONER CORDOVANO: -- you don't have to  
13 second it.

14 COMMISSIONER CARTER: -- [unintelligible]. How  
15 do we evaluate the FAR exceedance, then, if, you  
16 know -- other than bulk and flatness? You know,  
17 I -- I guess that's the -- that's the only --

18 MORGAN LANDERS: Well, and it's --

19 COMMISSIONER CARTER: -- criteria that we have  
20 to evaluate.

21 MORGAN LANDERS: So if you go back in the staff  
22 report -- the Commission has to make two findings;  
23 right? So again, we kind of reorient back to the  
24 findings because that's what we -- what we have. That  
25 Criteria 1 is a finding the Commission has to find,

1 that the project will not jeopardize the health,  
2 safety, and welfare of the public.

3 I think in staff's assessment of it,  
4 because of the type of project that is being proposed,  
5 we don't feel that this project jeopardizes the  
6 health, safety, and welfare, based on some of the  
7 objectives the -- the goals and objectives of the  
8 Comprehensive Plan.

9 The other criteria, then, is the  
10 design-review criteria, the zoning standards, things  
11 like that. The Commission has to make both of those  
12 findings, that it both meets the design-review  
13 criteria and will not jeopardize the health, safety,  
14 and welfare of the community.

15 So I know that that is, generally -- kind  
16 of general and broad, where the kind of compatibility  
17 piece comes into play with the application -- is  
18 related in the Comprehensive Plan. And I can kind of  
19 pull up the note in the staff report, if that's  
20 helpful. There is a component, kind of a goal and  
21 objective, of the Comprehensive Plan. Just give me  
22 one moment here. I had it pulled up, and it went  
23 away.

24 So there is, you know, a policy statement  
25 in the Comprehensive Plan that states, "Infill and

1 redevelopment projects should be contextually  
2 appropriate to the neighborhood and development in  
3 which they" -- "occur. Context refers to the natural  
4 and manmade features adjoining a development site; it  
5 does not imply a certain style."

6 So that's kind of the guide -- from a  
7 design-review perspective, that's how the  
8 Comprehensive Plan kind of ties into the design-review  
9 component as well.

10 CHAIRMAN MORROW: Nice and general so we have no  
11 real --

12 MORGAN LANDERS: Nice and general.

13 CHAIRMAN MORROW: I -- I -- I don't want to  
14 bring it up too much, but when we looked at the  
15 project across the street, one of the reasons we  
16 rejected it and one of the buildings we told -- we  
17 said it would -- we'd be looking more like was the  
18 Mountain West Bank. You know, it was -- it was  
19 basically townhouses. It had nothing, no activation  
20 on the corner.

21 And we said, "You know, what we're looking  
22 for is more" -- "something like the Mountain West,  
23 which has housing on top, even though it's very  
24 hidden, kind of in a building, even though it's open,  
25 and retail on the first floor."

1           And that's kind of what -- in a sense,  
2           what we're getting here, not as many units on top and  
3           not as much retail on the bottom, but it's a  
4           different -- it's also not wedged in. Again, it's the  
5           first one. So it's not really wedged into anything,  
6           but that was kind of what we were looking for on the  
7           opposite corner a few years ago. I'm not sure that's  
8           changed that much.

9           Again, I -- I'm fully with Spencer if  
10          the -- you know, if we could shrink the size of the  
11          buildings we're getting, I think it would make the  
12          town more livable, more -- keep it more of what it  
13          was, but it's not in the Code. It's not what  
14          we're -- you know, it's not what's getting built now.  
15          And I'm not sure we can come to this corner, which, as  
16          Tim says, is a block away from both of the most active  
17          areas in town and say, "This is too much."

18          You know, if it were somewhere else,  
19          maybe -- but I think right here, just because it's an  
20          undeveloped -- south of town, that it's -- doesn't  
21          make it out of bounds for something that fits the  
22          Code. So...

23          VICE CHAIRMAN MOCZYGEMBA: I think I also take  
24          into consideration the lengthy conversations we had  
25          about the Interim Ordinance, and I think that was kind

1 of a shift in the general thought process amongst  
2 staff and Commissioners, both, but this thought of  
3 creating -- or -- or adding more density, you know,  
4 when -- when you look at that matrix that is in the  
5 Interim Ordinance about the number of housing units,  
6 given a certain percentage of retail.

7 I mean, while this project came before the  
8 Interim Ordinance, I think it's hitting at a lot of  
9 what was discussed and a lot of what was -- what we're  
10 striving for as we look forward. So I don't want to  
11 shy away from, "Hey. This is the" -- "the first one  
12 on that corner."

13 I agree with Tim. You know, looking at  
14 Google Maps in the street view and -- you know, in  
15 reference to Mountain West Bank and Image Eyes, you  
16 know, Mountain West being a three-story, brick  
17 building, Image Eyes being a two-story, brick building  
18 with a healthy parapet, you know, I think -- when  
19 we -- and I think I touched on this at the last  
20 meeting.

21 We have to look at what the definition of  
22 "neighborhood" is. And -- and while there are those  
23 shorter structures immediately adjacent, as Tim's  
24 saying, you know, we're -- we're a block off Main  
25 Street, and we're at the other end of the block from

1 Sun Valley Road, so it -- in that sense, I think, this  
2 is contextually appropriate and is a -- is a great use  
3 of that lot.

4 And we -- it's not that we can keep taking  
5 this, "Oh, well, first there has to be a two-story  
6 building, and then there has to be a two-story  
7 building with some three-story elements." I mean,  
8 we -- we just don't have that opportunity that  
9 developers are going to come around. You know, this  
10 building's going to be here for the next 50-plus  
11 years.

12 And so, again, I'm -- I'm just trying  
13 to -- there's no way to forecast what's going to come  
14 next or what's come -- coming adjacent to this  
15 structure, but I think we have to be forward-thinking  
16 in this -- in the way that -- if we want to increase  
17 density and vibrancy in downtown, to -- to back off  
18 and say that this needs to have third-floor setbacks  
19 or no third floor at all would -- would be a mistake.

20 CHAIRMAN MORROW: I -- I think it -- in a sense,  
21 it's important to remember it's not a full-sized lot.  
22 Like, I guess, maybe if it was a -- a -- technically,  
23 a conforming lot, then they might have more room to  
24 actually do a setback, but this is a -- smaller than  
25 50-sized lot; correct?

1 MORGAN LANDERS: It's a single Ketchum  
2 Townsite --

3 CHAIRMAN MORROW: Oh, it --

4 MORGAN LANDERS: -- lot.

5 CHAIRMAN MORROW: Oh, it fits the --

6 MORGAN LANDERS: Mm-hmm.

7 CHAIRMAN MORROW: Oh, okay.

8 MORGAN LANDERS: It's 5,500 square feet.

9 CHAIRMAN MORROW: Oh, okay. All right.

10 COMMISSIONER CORDOVANO: I've already spoken my  
11 piece about --

12 CHAIRMAN MORROW: Yeah.

13 COMMISSIONER CORDOVANO: -- 16 --

14 CHAIRMAN MORROW: Yeah.

15 COMMISSIONER CORDOVANO: -- foot ceilings and  
16 everything.

17 Is -- is nobody going to second my motion?

18 CHAIRMAN MORROW: Okay. Do we have a second for  
19 Spencer's motion?

20 No. So the motion fails.

21 Do -- do we have any --

22 COMMISSIONER CORDOVANO: What are you thinking,  
23 Tim?

24 COMMISSIONER CARTER: Well, I'm just wondering  
25 about the implications of -- you know, are the



1 implications of rejecting the design review on  
2 this -- are we -- does that mean the project's going  
3 back to --

4 COMMISSIONER CORDOVANO: One-year holding  
5 period.

6 COMMISSIONER CARTER: Yeah. What is -- what are  
7 the implications of that?

8 MORGAN LANDERS: If the project is denied,  
9 actually, we do not have the one-year holding period  
10 in the design-review portion of the Code. That only  
11 applies with conditional use permits and one  
12 other -- and variance applications. Design review,  
13 they can come back in, but they do have to start from  
14 the beginning with a fresh application, staff review,  
15 kind of start from the -- process from the beginning.

16 COMMISSIONER CARTER: Yeah. So, I mean -- I  
17 mean, I -- I don't necessarily disagree with -- you  
18 know, I mean, I -- there are -- I mean, I -- I think  
19 that the criteria which we are allowed to evaluate  
20 this building under, which we're -- you know,  
21 there's -- there's criteria which we really aren't  
22 allowed to consider.

23 The criteria that we're allowed to -- that  
24 we're charged to use to evaluate this is, "Is the  
25 building contextually appropriate," and, "Is the bulk

1 and flatness and undulation" -- "is the" -- "does the  
2 building provide undulation and relief and reduce bulk  
3 and flatness?" Like that's the criteria that we have  
4 to evaluate this under.

5 We -- you know, it -- do we like the mix  
6 of housing in the building? That's not -- I mean, I  
7 think, Morgan, that's what you said. We can't  
8 go, "That's not how" -- we're not allowed to -- the  
9 Code doesn't allow us to use -- evaluate this  
10 project --

11 CHAIRMAN MORROW: Based on --

12 COMMISSIONER CARTER: -- based on those  
13 parameters.

14 CHAIRMAN MORROW: Yeah.

15 MORGAN LANDERS: [Unintelligible].

16 COMMISSIONER CARTER: It only allows us -- you  
17 need to clarify that -- you know, the criteria  
18 are, "Does this building provide" -- "do the building  
19 walls provide undulation and relief, reduce the  
20 appearance of bulk and flatness, and is this  
21 development culture" -- "contextually appropriate with  
22 the surrounding part of town?"

23 MORGAN LANDERS: That's correct. I think,  
24 unfortunately, you know, you wouldn't be able to put  
25 conditions on it that says, "You have to have all

1 full-time residents within each unit or, you know, the  
2 units can only be 2,000 square feet apiece.

3 You know, we do have some of those  
4 elements in the Interim Ordinance, which is why we  
5 kind of floated some of those pieces to try and  
6 continue to kind of work the box a bit. But this  
7 application is not under some of those other  
8 requirements.

9 COMMISSIONER CARTER: So I guess -- you know,  
10 I -- I do think that there are -- that there are  
11 challenges. You know, this building definitely  
12 presents some challenges to approval under those  
13 criteria, but I'm not sure that denying it and  
14 having -- forcing the developer to go back to square  
15 one is, really, the appropriate response to that.

16 I mean, if -- if we want to push back and  
17 say that, you know, there are bulk-and-flatness issues  
18 or there are architectural issues with this  
19 development, I think we can address it differently  
20 than just straight-up denial.

21 That's why I'm reluctant to second your  
22 motion, Spence [phonetic].

23 COMMISSIONER CORDOVANO: All good. That's fine.

24 I think we've communicated adequately  
25 during the last three meetings what we'd like to see,

1 and they've come back with what they want to do. And  
2 we've got more stuff on the agenda, three meetings a  
3 month, and, God forbid, dinner to go to.

4 CHAIRMAN MORROW: Would you -- oh, forget it.  
5 Go ahead.

6 So -- so, Tim, are -- are you in favor,  
7 then, of -- in between Spencer's motion for denying it  
8 and our motion for approving it? Are you somewhere in  
9 between there, or are you okay to continue it, or do  
10 you want to approve it and -- you know, I'm with you  
11 in the sense of going all the way back to scratch is  
12 not going to get us a much different building.

13 I think Nicole's going to come back with  
14 some changes, but we're going to see,  
15 essentially -- you know, seven months later and a lot  
16 of money, we're going to see essentially  
17 something -- even if it were a floor shorter -- and  
18 then I go with Brenda on that, which is -- you know,  
19 this building's going to be here 50, 60, 70 years.

20 You know, you have to have some  
21 forward-thinking of, If we make them build a two-story  
22 building here, in 20 years, that could be the  
23 weird-looking building, or that could be, you know,  
24 a lack of whatever. I -- I -- I think we have to have  
25 some faith in the --

1 COMMISSIONER CORDOVANO: I'll just say it for  
2 the --

3 CHAIRMAN MORROW: -- [unintelligible].

4 COMMISSIONER CORDOVANO: -- last time. I think  
5 you could still do 2.0 floor area with a building that  
6 was 35 feet or so tall -- this is not a specific  
7 recommendation or anything. It's just deliberation --

8 CHAIRMAN MORROW: Yeah.

9 COMMISSIONER CORDOVANO: -- and that it sets the  
10 character of the neighborhood to have no third-story  
11 setbacks and forces the hand of the neighborhood.

12 CHAIRMAN MORROW: All right. Well, I'm -- you  
13 know, this is definitely a difficult thing. No matter  
14 what we're going to do -- sorry for you guys who are  
15 last.

16 I have -- I -- I -- I'm not sure I want to  
17 reopen public comment, even for the neighbor,  
18 because -- because they --

19 UNIDENTIFIED SPEAKER: Public comment is closed?

20 CHAIRMAN MORROW: Yes. Well, I reopened it  
21 once, so I -- I could --

22 UNIDENTIFIED SPEAKER: [Unintelligible].

23 MORGAN LANDERS: If -- I -- I do -- I would  
24 recommend that we would kind of wrap up  
25 deliberations --

1           CHAIRMAN MORROW:   Okay.

2           MORGAN LANDERS:   -- and not reopen public  
3           comment.

4           CHAIRMAN MORROW:   And I think -- Dave, I just  
5           want you guys to know -- I think we know  
6           what -- what -- where you're coming from, and I think  
7           a lot of us are incredibly sympathetic to that point.

8           COMMISSIONER CARTER:  Yeah.  I mean, I -- well,  
9           look.  We have to -- you know, there -- there  
10          is -- the fact remains there's -- -- there is some  
11          significant, you know, pushback to whether this  
12          building is contextually appropriate and whether the  
13          bulk and flatness of that north wall is really  
14          appropriate for the development right now.

15          So, I mean, I -- I don't feel -- I feel  
16          like the -- there's -- you know, I -- I don't -- I  
17          don't know if there's enough support to outright  
18          support this -- to -- to make a motion to -- to  
19          approve this design as it is.  It seems like there's  
20          enough of a challenge here that we ought to  
21          consider -- you know, we ought to look for some kind  
22          of -- a next step here.

23          CHAIRMAN MORROW:   So --

24          COMMISSIONER CARTER:  But what that  
25          is -- or -- or at least -- you know, is there

1 enough -- I guess, is there enough -- I guess  
2 [unintelligible].

3 CHAIRMAN MORROW: So -- and -- and -- it -- it's  
4 a good question until --

5 COMMISSIONER CARTER: Spencer's made it clear  
6 that he's --

7 CHAIRMAN MORROW: And to Morgan's -- to Morgan's  
8 point, if we're going to do that, then I would like  
9 people to have much more specific -- you know, we want  
10 you to make an agreement with the neighbor and put  
11 windows on that side. We want you to set back and put  
12 a balcony.

13 COMMISSIONER CARTER: Yeah. Or --

14 CHAIRMAN MORROW: And I want them  
15 to -- something instead of, "Let's send Nicole back  
16 and give her a couple beers and see what she comes up  
17 with." That's not a -- that's not a real -- you know,  
18 that -- I don't think that's fair for us to do to  
19 them.

20 If you're going to say, "We want some  
21 differences," whether it's a -- a totally different  
22 2.0 design or something, I -- I really would like you  
23 guys -- and I think Morgan's with me on this -- not to  
24 be amorphous about it, to give them some specific,  
25 concrete -- so that we're not just coming back again

1 and again, but also, we're not hamstringing Nicole by  
2 saying, "Hey. Come up with something new,  
3 you" -- "you know, that we've given you no direction  
4 on."

5 COMMISSIONER CARTER: Can we get the  
6 "contextually appropriate" language? Where's that?

7 MORGAN LANDERS: Yeah. So it's on page 2 of the  
8 staff report, and it's a policy within the  
9 Comprehensive Plan. So 'contextual with the  
10 neighborhood' is not a design-review criteria. So  
11 that falls under the "health, safety," and "welfare of  
12 the public," Criteria -- so that Criteria 1.

13 So that's on page 2, kind of towards the  
14 bottom, Policy CD-1.3, and that's that "infill and  
15 redevelopment projects should be contextually  
16 appropriate to the neighborhood and development in  
17 which they will occur. Context refers to the natural  
18 and manmade features adjoining a development site; it  
19 does not imply a certain style."

20 COMMISSIONER CARTER: This is Comp Plan  
21 language.

22 MORGAN LANDERS: It is. And -- and that's -- I  
23 mean, there's, again, two findings that you all have  
24 to make. That first criteria is a -- a very open one.  
25 And so --



1 COMMISSIONER CARTER: Health and -- health,  
2 safety, and welfare [unintelligible] --

3 MORGAN LANDERS: Mm-hmm. That's the health,  
4 safety, and welfare of the public.

5 COMMISSIONER PASSOVOY: The -- I come back to my  
6 point about being the first. This building is not  
7 compatible with the other little buildings right  
8 around it, but they aren't going to be here forever,  
9 and this one is going to set the tone for what's going  
10 to go forward. I don't feel hamstrung by approving  
11 it. And if something else comes along, I -- I don't  
12 feel like I'm required -- just because I approved  
13 something in the past. Circumstances change.  
14 Contexts change. Whatever.

15 The third floor is set back. It's not  
16 like all the walls on all the sides are the same. I  
17 wish the neighbors and the -- I wish these property  
18 owners had been able to come to some  
19 mutually-satisfactory agreement about the separation  
20 between development on both of these sites, but I  
21 think that, maybe, the best way to bring this down is  
22 to move approval of the design, as presented this  
23 evening.

24 CHAIRMAN MORROW: Is that a motion?

25 UNIDENTIFIED SPEAKER: Is that a motion?

1 COMMISSIONER PASSOVOY: Yeah. How are you -- I  
2 meant -- oh, I -- but I need the -- as always --

3 CHAIRMAN MORROW: You were a little --

4 COMMISSIONER PASSOVOY: -- I need the language.  
5 What is the --

6 CHAIRMAN MORROW: It's in the --

7 MORGAN LANDERS: So the -- the motion would  
8 be --

9 CHAIRMAN MORROW: Would be --

10 MORGAN LANDERS: -- to approve the design-review  
11 application for 200 North Leadville and direct staff  
12 to develop the findings of fact.

13 COMMISSIONER PASSOVOY: And conclusions -- I so  
14 move.

15 Let's see what happens.

16 VICE CHAIRMAN MOCZYGEMBA: I will second, with  
17 the addition of also approving the preliminary plat.

18 MORGAN LANDERS: This does have a preliminary  
19 plat.

20 CHAIRMAN MORROW: And that's still in this  
21 motion. We still have a second motion, or the  
22 preliminary plat's the second motion?

23 MORGAN LANDERS: And if there's an amendment  
24 with the motion, then you do need to go back to the  
25 original motioner to make sure that they agree with

1 the amendment.

2 VICE CHAIRMAN MOCZYGEMBA: Susan, the  
3 motion -- the amended motion would include, basically,  
4 making a motion to approve the final design review and  
5 the condominium preliminary plat for the 208 Condos at  
6 200 North Leadville.

7 COMMISSIONER PASSOVOY: That amendment is  
8 acceptable.

9 VICE CHAIRMAN MOCZYGEMBA: And I'll second my  
10 amendment.

11 CHAIRMAN MORROW: Okay. All in favor?

12 I know --

13 COMMISSIONER PASSOVOY: Any further discussion?

14 CHAIRMAN MORROW: Any further discussion?

15 Thank you.

16 Nothing else? All in favor?

17 COMMISSIONER PASSOVOY: Aye.

18 VICE CHAIRMAN MOCZYGEMBA: Aye.

19 CHAIRMAN MORROW: All opposed?

20 COMMISSIONER CORDOVANO: Nay.

21 COMMISSIONER CARTER: Nay.

22 CHAIRMAN MORROW: And it passes three to two.

23 MORGAN LANDERS: Motion carries.

24 CHAIRMAN MORROW: Okay.

25 MORGAN LANDERS: Thank you, everyone.

1 (End transcription at 2:23:57 of audio  
2 file.)

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REPORTER'S CERTIFICATE

I, VICTORIA HILLES, RPR, Registered Professional Reporter, CSR No. 1173, Certified Shorthand Reporter, certify:

That the audio recording of the proceedings was transcribed by me or under my direction.

That the foregoing is a true and correct transcription of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 8th day of June, 2023.



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VICTORIA HILLES, RPR, CSR NO.  
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My commission expires December 3, 2026

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City of Ketchum

# Attachment Q: Public Comment (all hearings)

# DAVID C. HUTCHINSON

November 29, 2022

Dear Commissioners,

My Name is David Hutchinson and I represent the owner of the property at 240 North Leadville Avenue in Ketchum, 240 North Leadville, LLC. My company has also been the tenant in the building at the same address for about 30 years. I provide this letter and make these comments as a neighbor, but want you to know that I look at this application as a problem for the entire community, as a whole.

My first comment, prior to getting into some detail, is that the building, as currently designed, has too much mass, bulk, very little architectural relief, and, if granted the bonuses (which are discretionary), it's way too tall and simply does not fit into the city at large and definitely not within the city block where it is proposed. The purpose as outlined in the Ordinance "is to maintain and enhance the appearance, character, beauty and function of the city, to ensure that new development is complimentary to design of existing City neighborhoods and to protect the economic base of the City of Ketchum." This proposal blatantly contradicts the purpose on a number of levels. It is certainly not complimentary to the design of the existing neighborhood and has no intent to enhance the economic base commercially, in this highly viable retail location, one block east of Main Street. The building is proposing a mere 1306 sq. ft. of retail in an oversized building that is 11,663 sq. ft. or only 11% of the total. This is a residential development disguised as mixed use.

The Ordinance actually provides the Commission the discretion to require more restrictive standards than are generally found in the Code. The applicant is requesting bonuses on a site that is actually a candidate for more restrictive standards. In 17.96.060 Improvements and Standards under F- 1, "Building(s) shall provide unobstructed access to the nearest sidewalk and entryway shall be clearly defined." The opposite is true on Second Street and that is pointed out in the staff report. Most of the Second Street window front exposes stairs for residential units. Again, that is because this is clearly a residential development that does not conform with the intent or standards. In F-2, the building character is not clearly defined by architectural features, it has minimal relief and is really designed to provide maximum interior square footage. F-5 requires undulation and relief to deal with bulk and flatness and that does not occur to the necessary extent, especially on a building of this size.

From a functional perspective, garage parking off the alley (including a 2-car tandem) is extremely problematic in a busy commercial alley. Deliveries and refuse pick up associated with The Kneadery, Wiseguys and the Cellar are regular daily occurrences. The power lines and poles in the alley further complicate the situation. Two of the units have no parking at all and all the surrounding long-term public parking is occupied daily, so not sure where those owners/tenants will put their cars ever, not to mention on a snowy night. Speaking of precipitation, the building design does not take into account most of the exposed sidewalks as it relates to snow and rain protection. Finally, the transformer is clearly in the wrong place and needs to be moved. If an acceptable building can be approved, I would also encourage the city to require that the under-



grounding of all the power lines in the alley be done by this developer with a reimbursement provision on future development and/or a contribution from the undergrounding fund that is from the Idaho Power franchise agreement.

Although this application, on its face, does not meet the standards under this now old ordinance, I reserve the right to argue the fact that this project should be reviewed under the current emergency ordinance. By definition, if it's an emergency, the city, under existing Standard 17.96.050 A. Criteria, can also require that the project conform to "any other standards as adopted or amended by the city of Ketchum from time to time." I also believe it could be successfully argued legally that an application, although deemed "complete," is not actually final until the notice provision is met. Notice was provided on November 23, 2022, which was well after the formal adoption of the emergency Interim Ordinance.

Design review is not a mechanical decision. The lines people in tennis and now baseball umpires are being replaced by machines because machines can more accurately determine simple facts like in or out, in situations where there is no gray area. The Design Review process intentionally includes subjectivity and requires that decisions be made by people, those appointed as the protectors of the public and the voice of the community. You are those people.

The Design Review ordinance has the strength to prohibit buildings like this from cropping up in town. The ordinance provides the discretion, but you, the commissioners, must have the courage to do what is right. The developer is required to meet the standards and only you determine if they are met. This building simply does not meet a lot of them. Per the ordinance, If any one of the standards is not met, the decision must be denial or, at minimum, a request for a significant redesign. You have the strong support of the public to deny what is inappropriate. You have been appointed to represent the past, the present and the future of Ketchum, and are the City's last line of defense. This building will stand for one hundred years or more. It's not built yet and it can be redesigned properly. If you look the other way, it will be a "sore thumb" that everyone talks about for decades.

It is apparent that this project does not want to provide something of value to the community and add to a vibrant commercial core; it just wants to make sure it makes as much economic sense as possible. The design is obviously driven by residential values and building size, not by acceptable architecture. The developer wants to sneak this building by, use the bonuses to add mass (and sales revenue) and to disregard the City's efforts at responsible development. It's all about pushing the limits. This is the opposite of sensitive and appropriate development in the core, and the applicant needs to hear that from all of you. The community is counting on you to have their back.

Sincerely,



David C. Hutchinson

**From:** [Participate](#)  
**To:** [Suzanne Frick](#); [Morgan Landers](#)  
**Subject:** FW: Public comment for P&Z meeting 11/29 Item 3  
**Date:** Monday, November 28, 2022 1:01:12 PM

---

LISA ENOURATO | CITY OF KETCHUM  
Public Affairs & Administrative Services Manager  
P.O. Box 2315 | 191 Fifth St. W. | Ketchum, ID 83340  
o: 208.726.7803 | f: 208.726.7812  
lenourato@ketchumidaho.org | www.ketchumidaho.org

-----Original Message-----

From: Yahoo! <boylehp@yahoo.com>  
Sent: Monday, November 28, 2022 11:08 AM  
To: Participate <participate@ketchumidaho.org>  
Subject: Public comment for P&Z meeting 11/29 Item 3

Commissioners,

Please carefully examine the transformer placement issue raised by the staff. The staff is 100% correct that if you let the developer proceed with the transformer placement it will become a precedent. Please do not set that precedent.

Thank you,

Perry Boyle  
Ketchum

**From:** [Participate](#)  
**To:** [Morgan Landers](#); [Heather Nicolai](#)  
**Subject:** FW: Additional Comments  
**Date:** Wednesday, December 14, 2022 11:51:34 AM

---

Public comment.

## **LISA ENOURATO | CITY OF KETCHUM**

**Public Affairs & Administrative Services Manager**

P.O. Box 2315 | 191 Fifth St. W. | Ketchum, ID 83340

o: 208.726.7803 | f: 208.726.7812

[lenourato@ketchumidaho.org](mailto:lenourato@ketchumidaho.org) | [www.ketchumidaho.org](http://www.ketchumidaho.org)

---

**From:** David Hutchinson <david@vpcompanies.com>  
**Sent:** Tuesday, December 13, 2022 4:56 PM  
**To:** Participate <participate@ketchumidaho.org>  
**Subject:** Additional Comments

To: Ketchum Planning and Zoning Commissioners

Please include this email in the staff report for the hearing on The 208 Condominiums on December 20, 2022.

The following comments are based upon additional information and from attending the first hearing,

I learned at the hearing for the first time that the City Council had approved an "FAR Exceedance Agreement" prior to the P&Z hearing for design review. I believe the staff said this was not how it was typically done in the past. I would suggest that the initial portion of the hearing was quite confusing based on this procedure deviation. The staff attempted to let the commission know that the "exceedance agreement" approval was subject to modification based on the P&Z design review findings. I would, therefore, like to emphasize that point and ask that the commission disregard what was really a premature approval. Also, as an adjacent property owner, I do not believe I was noticed of the council meeting where the exceedance was discussed and "approved".

From my observation at the hearing ( and the video tape will bear that out) this council "approval" wrongly influenced the process and created an expectation of a P&Z design review approval by the applicant for a building that is clearly out of scale for the property and the location. The applicant actually put forth the amount of time and money spent based on the council approval as a reason to approve the design review. The potential for a much bigger and taller building was in exchange for an in-lieu housing contribution.

I am all for the formula that creates housing money but not when it is at the expense of the scale and character of the community. It is only appropriate where the actual project, the location and the neighborhood support a larger scale. The potential locations for this type of height and bulk would typically be more than two blocks from the intersection of Main and Sun Valley Road ( as the scale

has been mostly determined and is lower ) and/or where there is topography that mitigates appearance of height and bulk ( west side of Main Street ), where the building fronts a 90 'wide street ( very important as it mitigates a narrow corridor) and where the neighborhood already has a collection of larger buildings, therefore adding some complimentary design to the existing neighborhood.

This site meets none of those reasonable criteria and is therefore in conflict with the entire purpose of the Design Review Ordinance. It's a block from both Main Street and Sun Valley Road, The neighborhood buildings are low in scale and not far from historic preservation buildings, it's a 55 ft wide single lot with narrow roads on both sides of the corner, it proposes a basically blank 42' tall north wall that is over 6000 sq. ft. and very visible from many locations and a Second Street frontage with no retail that contradicts that specific design review criteria. Based on those facts, the city's meaningful intent of providing for community housing creates a situation where the intended contribution to a solution becomes its own bigger problem. Any in-lieu payment in exchange for a building that will be detrimental to the community character for up to 100 years or more, is simply not worth the trade. The City needs to save the in-lieu formula and the FAR Exceedance Agreement for appropriate projects in a locations that work. There are plenty of those locations in town, but this is obviously not one.

Sincerely,  
Dave



**David Hutchinson**

(208) 726-1875  
(208) 720-0789 (cell)  
[www.vpcompanies.com](http://www.vpcompanies.com)

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Dear P&Z Commissioners,

I was recently made aware of the project application at 200 N. Leadville Avenue in Ketchum. I did some investigation after seeing the incredibly tall story poles on the lot and, as a developer, it did not take too much imagination to project that height to the four building corners and the zero set back proposed on the north property line. I was very surprised at the size but learned that the height and bulk of the building was based on a bonus related to a potential in-lieu housing payment. Although I certainly support the city's different housing initiatives, it should not be at the expense of community character and scale and by ignoring the Design Review Ordinance we all rely upon. This is just the wrong location for a height and size bonus.

When I first began to re-plan Warm Springs Ranch, I soon realized that the scale of prior approvals would have been a blight on the overall community. My final decision included dramatically reduced density (only 35 single family homes), CC&Rs that significantly reduced potential home sizes, added setbacks beyond city requirements etc. and finally, a sizable preserve that will exist in perpetuity. This plan was not put in place to maximize sales volume, it was based on having lived here for 40 years and my care for the community into the future.

I believe my actions prove that I certainly believe in proper scale throughout the city limits and this project is simply too big for the smaller scale neighborhood and its prominent location in the core. The bonus is not a right of the developer and must be first be evaluated for proper design. It's apparent that by pushing the size limits to the max. there is a greater profit for the developer but that should be of no concern to you as commissioners.

Some of the actual architectural elements have some appeal and the overall design would not be as objectionable without the bonus height and FAR. I would also expect the Second Street frontage to actually have retail as required. I would also recommend a setback(s) from the north property line to create some relief and an acceptable façade, as it is highly visible along Leadville and even from Sun Valley Road. I would also think that this is actually better for the value of any above ground residential units in the building, by bringing in natural light and views.

Making everyone look at a 42-foot-tall generally blank wall for what could be decades seems like an obviously wrong decision. The mural idea is an obvious band aid on a much bigger issue and should not even be considered.

Please deny this application and/or send it back to be designed more in keeping with the existing neighborhood and without the inappropriate bonus. It could be there for a hundred years. Let's get it right before it gets built and we are stuck with it.

Sincerely,



Bob Brennan

# DAVID C. HUTCHINSON

November 29, 2022

Dear Commissioners,

My Name is David Hutchinson and I represent the owner of the property at 240 North Leadville Avenue in Ketchum, 240 North Leadville, LLC. My company has also been the tenant in the building at the same address for about 30 years. I provide this letter and make these comments as a neighbor, but want you to know that I look at this application as a problem for the entire community, as a whole.

My first comment, prior to getting into some detail, is that the building, as currently designed, has too much mass, bulk, very little architectural relief, and, if granted the bonuses (which are discretionary), it's way too tall and simply does not fit into the city at large and definitely not within the city block where it is proposed. The purpose as outlined in the Ordinance "is to maintain and enhance the appearance, character, beauty and function of the city, to ensure that new development is complimentary to design of existing City neighborhoods and to protect the economic base of the City of Ketchum." This proposal blatantly contradicts the purpose on a number of levels. It is certainly not complimentary to the design of the existing neighborhood and has no intent to enhance the economic base commercially, in this highly viable retail location, one block east of Main Street. The building is proposing a mere 1306 sq. ft. of retail in an oversized building that is 11,663 sq. ft. or only 11% of the total. This is a residential development disguised as mixed use.

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From a functional perspective, garage parking off the alley (including a 2-car tandem) is extremely problematic in a busy commercial alley. Deliveries and refuse pick up associated with The Kneadery, Wiseguys and the Cellar are regular daily occurrences. The power lines and poles in the alley further complicate the situation. Two of the units have no parking at all and all the surrounding long-term public parking is occupied daily, so not sure where those owners/tenants will put their cars ever, not to mention on a snowy night. Speaking of precipitation, the building design does not take into account most of the exposed sidewalks as it relates to snow and rain protection. Finally, the transformer is clearly in the wrong place and needs to be moved. If an acceptable building can be approved, I would also encourage the city to require that the under-

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Although this application, on its face, does not meet the standards under this now old ordinance, I reserve the right to argue the fact that this project should be reviewed under the current emergency ordinance. By definition, if it's an emergency, the city, under existing Standard 17.96.050 A. Criteria, can also require that the project conform to "any other standards as adopted or amended by the city of Ketchum from time to time." I also believe it could be successfully argued legally that an application, although deemed "complete," is not actually final until the notice provision is met. Notice was provided on November 23, 2022, which was well after the formal adoption of the emergency Interim Ordinance.

Design review is not a mechanical decision. The lines people in tennis and now baseball umpires are being replaced by machines because machines can more accurately determine simple facts like in or out, in situations where there is no gray area. The Design Review process intentionally includes subjectivity and requires that decisions be made by people, those appointed as the protectors of the public and the voice of the community. You are those people.

The Design Review ordinance has the strength to prohibit buildings like this from cropping up in town. The ordinance provides the discretion, but you, the commissioners, must have the courage to do what is right. The developer is required to meet the standards and only you determine if they are met. This building simply does not meet a lot of them. Per the ordinance, If any one of the standards is not met, the decision must be denial or, at minimum, a request for a significant redesign. You have the strong support of the public to deny what is inappropriate. You have been appointed to represent the past, the present and the future of Ketchum, and are the City's last line of defense. This building will stand for one hundred years or more. It's not built yet and it can be redesigned properly. If you look the other way, it will be a "sore thumb" that everyone talks about for decades.

It is apparent that this project does not want to provide something of value to the community and add to a vibrant commercial core; it just wants to make sure it makes as much economic sense as possible. The design is obviously driven by residential values and building size, not by acceptable architecture. The developer wants to sneak this building by, use the bonuses to add mass (and sales revenue) and to disregard the City's efforts at responsible development. It's all about pushing the limits. This is the opposite of sensitive and appropriate development in the core, and the applicant needs to hear that from all of you. The community is counting on you to have their back.

Sincerely,

A handwritten signature in blue ink, appearing to read "David C. Hutchinson", with a long horizontal flourish extending to the right.

David C. Hutchinson

THE KNEADERY  
P.O. BOX 3043  
KETCHUM, ID 83340  
(208) 726-9462

December 14, 2022

Dear Commissioners:

I am the owner of the Kneadery, which is located at 260 N. Leadville Avenue. The Kneadery is located on the same street as the proposed three-story mixed-use building at 200 N. Leadville Avenue just 55 feet to the North. Although the proposed building is labeled "mixed-use," upon review of the proposed design, it appears that it is predominately a residential building with only a small portion (approximately 11%) dedicated to retail. Certainly, such residential development is not appropriate in the commercial core, and having zero retail on the Second Street frontage makes no sense.

As currently proposed, the building is only a block from Main Street and Sun Valley Road and the existing buildings in the neighborhood are low in scale (including the Kneadery). Furthermore, although 200 Leadville Avenue is only 55 feet wide with narrow roads on both sides of the corners, the proposed building contemplates a blank north wall that is more than 6000 square feet and very visible from public spaces, including the Kneadery's front patio, which is used for outdoor dining. Obviously, it would be less than desirable to have my customers staring at such an eyesore that will block the sun and views while they are trying to enjoy their dining experience at my restaurant.

Not only will the proposed building have a negative aesthetic effect on my business, but it will also interrupt my business's operations as well as the neighboring business' operations. Specifically, I am referring to the fact that the alley behind my property is used daily for deliveries and garbage services for the neighboring businesses. Unobstructed and continued use of this alley is imperative to allow each of these businesses to efficiently operate. However, as proposed, the garage parking off the alley as well as the 2-car tandem parking will interfere with this use and visa versa.

Additionally, as I am sure you are aware, parking in this area is already strained. Despite this problem, the project does not contemplate any relief. Instead, it proposes a mere four parking spaces with no parking for two of the units which will undoubtedly cause further strain on the publicly available parking situation, especially during the winter season when overnight parking is prohibited to allow for snow plowing. This is especially troubling to me as I anticipate that the owners of the residential units will use the nearest parking, which is located on Leadville Avenue even though those parking spaces are intended for customers at my business as well as the neighboring businesses. If parking is not readily available for customers, it is likely that they will take their business elsewhere which will have a negative impact on the existing



businesses. We cannot lose sight of the fact that this area is commercial core. Hence, the well-being of the existing businesses must be the City's priority.

Despite this, I have been informed that the City may accept an in-lieu payment in exchange for allowing a huge building that will negatively impact the neighborhood and community. Certainly, the City should not resort to prioritizing a small payment to the in-lieu fund over preserving the character of this community. The City's design standards were adopted to preserve, not undercut, the character of the community and it is imperative that you uphold them by not approving this project. Per my conversations with neighboring business owners and members of the community, the consensus is that while the proposed building may be appropriate in an alternative location, it should not be allowed at 200 N. Leadville Avenue as it will not contribute complementary design to the neighborhood. To the contrary, it attempts to sneak in an oversized, primarily residential development in an existing commercial part of town.

For these reasons, I strongly urge you to deny this application.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dillon Witmer', written over a horizontal line.

Dillon Witmer

PS. Please read my letter into the record at the December 20, 2022 hearing.



Samuel L. Linnet | sam@aiturasiawgroup.com

December 16, 2022

City of Ketchum  
Planning and Building Department  
Morgan Landers, Director  
mlanders@Ketchumidaho.org

**RE: Demand to halt design review for the 208 Condos project and terminate FAR Exceedance Agreement 22811**

Dear Planning & Building Director Morgan Landers:

I represent 240 North Leadville, LLC, which owns property adjacent to the 208 Condos project. This a demand letter to cease consideration of the design review application for the 208 Condos project. Upon review of the City Council's November 21, 2022 meeting, the Council's consideration and approval of FAR Exceedance Agreement 22811 violated Ketchum City Code ("KMC") and Idaho's Local Land Use and Planning Act ("LLUPA" or "Idaho Code 67-6501 et seq.") because the Council made quasi-judicial determinations reserved for the the Planning and Zoning Commission and failed to notice and conduct a public hearing concerning the same.

By allowing the Council to consider and approve a Far Exceedance Agreement prior to the Planning and Zoning considering design review standards, and doing so outside of a public hearing, the City has jeopardized the lawfully required process for considering 208 Condos design review application. As you are no doubt aware, the remedy to this situation is to void Far Exceedance Agreement 22811, and re-notice and re-hear the 208 Condos design review application in front of the Planning and Zoning Commission. Accordingly, on behalf of my client, I respectfully demand that the currently scheduled consideration of the 208 Condos application be pulled from the upcoming December 20, 2022 Planning and Zoning Commission meeting.

The primary rules and laws applicable to this matter are Idaho's LLUPA and KMC, Title 17. Under LLUPA, city councils may either retain their planning and zoning authority or delegate it to a commission. Idaho Code § 67-6504. Ketchum elected to establish a planning and zoning commission pursuant to Idaho Code § 67-6504, and the only planning and zoning power retained by the Council is the authority to adopt ordinances, to finally approve land subdivisions, and to act in an appellate capacity for appeals from the Planning and Zoning Commission. See

KMC § 4.12.020; Idaho Code § 67-6504; *Brower v. Bingham Cty. Comm'rs* (In re The Application for Zone Change), 140 Idaho 512, 514, 96 P.3d 613, 615 (2004). Importantly, LLUPA requires governing boards to adopt hearing procedures that “provide an opportunity for all affected persons to present and rebut evidence.” Idaho Code § 67-6534.

Under Ketchum City Code, the Planning and Zoning Commission is required to conduct design review for mixed use buildings and projects in all zoning districts. KMC §§ 17.96.010 and 030.b. Specifically, KMC § 17.96.050.A states that the Commission, not the City Council, shall determine whether an application for design review conforms to all standards under Title 17. KMC § 17.124.040 is a development standard that applies to all projects in CC zoning districts, which constrains projects to a maximum floor area ratio (FAR), unless some community housing benefit is provided. Subsection B.2 of this code states that an increased FAR may be permitted by the Planning and Zoning Commission subject to design review, which necessarily requires that an applicant must go through design review to receive a FAR Exceedance Agreement. Lastly, KMC § 17.144.020 establishes the Council as an appellate body for decisions made by the Planning and Zoning Commission.

Only the Planning and Zoning Commission can approve a FAR Exceedance Agreement after, or concurrently with, design review because the Council dedicated its planning and zoning powers to the P&Z Commission. The Idaho code sections and KMC sections cited above lay out clear, legally defensible procedures for projects subject to design review. The Planning and Zoning Commission is vested with the sole authority to evaluate whether an application for design review meets the standards under KMC Title 17. Once the Planning and Zoning Commission has made its quasi-judicial determinations about whether an application meets all standards, then that decision can be appealed. The maximum floor area ratio standard is a standard of evaluation that the Planning and Zoning Commission, not City Council, must consider during design review.

Here, the City Council's consideration and determination that the 208 Condos project met the FAR standard and the amount of a community housing in-lieu fee was improper because that determination is reserved for the Planning and Zoning Commission. FAR Exceedance Agreement 22811 contains a recital of the FAR standard under KMC § 17.121.040 and an analysis of the standard as it relates to the 208 Condos design review application. While the City may intend for the Planning and Zoning Commission to have “final” say over this matter, the City Council's determination that the FAR standard was met and that a sum certain for the in-lieu fee is appropriate prejudices the Planning and Zoning Commission's ability to impartially and independently consider all design review standards, especially when such determination is reduced to an enforceable contract. Furthermore, since the City Council sits in an appellate capacity, it has biased itself against any appeals that may concern the project or the FAR agreement. Lastly, and potentially most significant, the public and impacted neighbors were not given

notice or an opportunity to be heard when the Council considered whether to approve FAR Exceedance Agreement 22811.

As stated above, the corrective action requested by my client is for the 208 Condo design review application to be considered in its entirety by the Planning and Zoning Commission and without any undue influence from the City Council. This requires FAR Exceedance Agreement 22811 to be terminated and the 208 Condos design review public hearing to be postponed. Eventually, the Planning and Zoning Commission may elect to enter into or advise the City Council to enter into a similar agreement, but it must do so without the undue influence of knowing that the City Council has already reviewed and approved the FAR standard for this project. The imminence of the upcoming Planning and Zoning hearing to consider the 208 Condos design review application requires your response as soon as possible, but no later than Monday, December 19, 2022 at 5:00 PM.

My client supports and understands the need for the community housing in-lieu fee, but both the public and City need to ensure that it is extracting those fees with a legal and defensible process that will not jeopardize the utility of the funds received or divert attention and resources from community housing and towards appeals and litigation.

ALTURAS LAW GROUP, PLLC



Samuel L. Linnet  
Attorney for 240 Leadville, LLC

Cc: Mayor Neil Bradshaw  
City Attorney Matt Johnson  
City Council President Michael David  
Councilor Amanda Breen  
Councilor Jim Slanetz  
Councilor Courtney Hamilton



**BERKSHIRE HATHAWAY | Sun Valley Properties**  
HomeServices

December 20, 2022

To the Planning Staff and Commission,

Having followed the approval process for a number of projects in the Ketchum Commercial Core, we are concerned that the project located at 200 N Leadville may be at risk of not being approved, despite being in compliance with all current zoning requirements. The main concern appears to be the height of the building, which is within current zoning regulations. To deny this project over its height, while within codified zoning parameters, would be a perfect example of spot zoning and set a new precedent; one that potentially could lead to litigation.

While we're all concerned about Ketchum losing its small town charm, zoning ordinances exist for a reason. To deny a developer the right to build while in compliance with current zoning ordinances is both unfair to the developer, and risky to the city.

Lastly, we find the exterior design of the building to be attractive, in keeping with the character of our town, and somewhat timeless in the use of materials and colors. It will be a welcome addition to the town, with additional residences, including a workforce housing unit, that we hope will contribute more vibrancy to Ketchum.


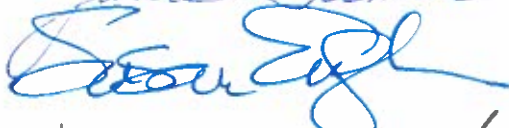

We urge you to approve this project as submitted.

Sincerely,

  
John Sofro  
Managing Partner

  
Pam Rheinschild  
Partner

  
Pam Colesworthy  
Agent




**From:** [Participate](#)  
**To:** [Morgan Landers](#); [Heather Nicolai](#)  
**Subject:** FW: P & Z Meeting on December 20  
**Date:** Monday, December 19, 2022 12:59:26 PM

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Public comment.

**LISA ENOURATO | CITY OF KETCHUM**

**Public Affairs & Administrative Services Manager**

P.O. Box 2315 | 191 Fifth St. W. | Ketchum, ID 83340

o: 208.726.7803 | f: 208.726.7812

[lenourato@ketchumidaho.org](mailto:lenourato@ketchumidaho.org) | [www.ketchumidaho.org](http://www.ketchumidaho.org)

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**From:** John Melin <johntmelin@gmail.com>  
**Sent:** Monday, December 19, 2022 11:43 AM  
**To:** David Hutchinson <david@vpcompanies.com>  
**Cc:** Participate <participate@ketchumidaho.org>  
**Subject:** Re: P & Z Meeting on December 20

No doubt he got to Neil with an offer of in lieu fees.

Please let me know if the meeting is a go.

Thanks,

John

On Mon, Dec 19, 2022 at 10:18 AM David Hutchinson <[david@vpcompanies.com](mailto:david@vpcompanies.com)> wrote:

John,  
Thanks for this ! Need to stop this stuff.

The other thing about this is the applicant is trying to “buy” these size bonuses, which makes no sense in this location.

Dave

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**From:** John Melin <[johntmelin@gmail.com](mailto:johntmelin@gmail.com)>  
**Sent:** Monday, December 19, 2022 10:11 AM  
**To:** [participate@ketchumidaho.org](mailto:participate@ketchumidaho.org)  
**Subject:** P & Z Meeting on December 20

P & Z Commissioners  
City of Ketchum

Dear Commissioners,

I whole heartedly support Dave Hutchinson in his opposition to the proposed building at the corner of Leadville Ave and Second Street. While I have limited knowledge of the specifics of the project, I am aware of the impact that these large buildings can have on the downtown parking and the downtown image.

As the owner of the Elephant's Perch and Ketchum Kitchens, I fought against the poorly conceived Blue Bird project which is dramatically under-parked and over-sized. Parking is the life blood of retail and, in Ketchum, as you all know, the Town Square area is significantly under parked during our peak tourist seasons of December and Summer. This is important because local retailers need to generate significant sales during these three months to survive for the full year.

Further, these lot-line to lot-line, very tall buildings will destroy the small town feeling of Ketchum that is so essential to attracting tourists. A 40' concrete block firewall on a small lot can ruin the character of any street.

The proposed building is a great example of the type of development that P&Z should be driving out of the CC zone.

- A large, square building that runs lot-line to lot-line, with a 40' fire wall abutting an adjacent property owner is unsightly and unfairly damages numerous nearby buildings.
- Fourth Street off Sun Valley Road is one of the charm streets in Ketchum. The idea that it gets developed with oversized buildings is repugnant. Whatever is allowed on this lot will set a precedent for the lot across the street.
- The lot is too small to have adequate parking, which will lead to more street parking during peak season. The area around the Kneadery already has a parking issue during peak tourist season. This shortage of parking will eventually affect the parking at Elephant's Perch and other businesses on East Avenue.
- All of the recent buildings with expensive condos on the upper floors will be populated by 2<sup>nd</sup> homeowners who will not bring year-round pedestrian traffic downtown but will rather increase parking use during peak seasons.

Finally, I do not believe that I was properly noticed about this project. I have a 20-year lease on the Elephant's Perch and I did not receive any communication. The Perch building is owned by an 97 year-old out-of-town owner who is battling health issues and he did not forward any communication.

It is essential that the P & Z and the City Council take a hard line with developers to ensure that they create projects that meet the high-character standards of Ketchum.

John Melin  
30 Year Resident

**From:** [Participate](#)  
**To:** [Heather Nicolaj](#)  
**Subject:** FW: Proposed mixed-use development at 200 N Leadville Ave. (P22-035 and P22-035A)  
**Date:** Tuesday, February 28, 2023 9:58:16 AM

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Public comment.

**LISA ENOURATO | CITY OF KETCHUM**

**Public Affairs & Administrative Services Manager**

P.O. Box 2315 | 191 Fifth St. W. | Ketchum, ID 83340

o: 208.726.7803 | f: 208.726.7812

[lenourato@ketchumidaho.org](mailto:lenourato@ketchumidaho.org) | [www.ketchumidaho.org](http://www.ketchumidaho.org)

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**From:** LES BOUDWIN <LESBOUDWIN@msn.com>  
**Sent:** Tuesday, February 28, 2023 9:18 AM  
**To:** Participate <participate@ketchumidaho.org>  
**Subject:** Proposed mixed-use development at 200 N Leadville Ave. (P22-035 and P22-035A)

Good morning.

My name is Les Boudwin.

I live at 113 Howard Drive, #3, Ketchum, ID.

I've known Mr. Carr professionally and socially for years.

I have studied renderings of his proposed project at 200 N Leadville.

I think his design and concept look great with the articulation and mix of finishes on the exterior.

I support approval of his design.

Thank you,

Les Boudwin

Sent from [Outlook](#)





City of Ketchum

# Attachment R: Findings of Fact, Conclusions of Law, and Decision - Final Design Review



City of Ketchum  
Planning & Building

<b>IN RE:</b>	)	
	)	
<b>The 208 Condos</b>	)	<b>KETCHUM PLANNING AND ZONING COMMISSION</b>
<b>Design Review</b>	)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND</b>
<b>Date: April 11, 2023</b>	)	<b>DECISION</b>
	)	
<b>File Number: P22-035</b>	)	

**PROJECT:** The 208 Condos

**APPLICATION TYPE:** Design Review

**FILE NUMBER:** P22-035

**ASSOCIATED APPLICATIONS:** Condominium Subdivision Preliminary Plat (P22-035A)

**REPRESENTATIVE:** Nicole Ramey, Medici Architects (Architect)

**OWNER:** 755 S Broadway, LLC

**LOCATION:** 200 N Leadville Ave – Lot 1 Block 23, Ketchum Townsite

**ZONING:** Community Core – Subdistrict 2 – Mixed Use (CC-2)

**OVERLAY:** None

**RECORD OF PROCEEDINGS**

The City of Ketchum received the application for Final Design Review and condominium preliminary plat on July 1, 2022. The Final Design and Preliminary Plat applications have been reviewed concurrently and were deemed complete on October 14, 2022. Department comments were provided to the applicant on July 27, 2022, and additional comments provided on October 14, 2022. Following receipt of the complete application, staff routed the application materials to all city departments for review. All department comments have been addressed satisfactorily through applicant revision of project plans or conditions of approval.

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on November 7, 2022. The public hearing notice

was published in the Idaho Mountain Express on November 9, 2022. A notice was posted on the project site and the city's website on November 7, 2022. Story poles were verified on the subject property on November 22, 2022. The project was heard at the November 29, 2022 meeting of the Planning and Zoning Commission (the "Commission") and continued to a special meeting on December 20, 2022. The project was heard again on December 20, 2022, and continued to the January 10, 2023 meeting of the Commission. The applicant, citing the need for additional time to respond to Commission's comments, requested the January 10, 2023 hearing be continued to the February 28, 2023 meeting of the Commission. No information was presented or reviewed at the January 10, 2023 meeting and no public comment was taken.

The Planning and Zoning Commission (the "Commission") conducted their final consideration of the Design Review (Application No. P22-035) and the Condominium Subdivision Preliminary Plat (Application No. P22-035A) applications concurrently at their February 28, 2023 hearing, and the associated public hearings were combined in accordance with Idaho Code §67-6522. After considering staff's analysis, the applicant's presentation, and public comment, the Commission approved the Design Review application with a vote of 3-2 and recommended approval of the Condominium Subdivision Preliminary Plat application to the City Council with a vote of 3-2.

### **BACKGROUND**

The Applicant is proposing an 10,856 square foot three-story mixed-use development known as The 208 Condominiums (the "project"), located at 200 N Leadville Avenue (the "subject property"). The development is not subject to the interim ordinance as the applications were deemed complete prior to the effective date of the ordinance. The subject property is a vacant corner lot zoned Community Core - Subdistrict 2 - Mixed Use (CC-2) just southeast of the Kneadery and VP Companies offices, across from Vintage restaurant and another vacant lot on the opposite corner.

As proposed, the project includes 1,306 square feet of ground floor retail, and four residential dwelling units as follows:

- One dwelling unit in the basement – 639 net square feet (NSF)
- Two dwelling units on the second floor – 746 NSF and 2,628 NSF
- One dwelling unit on the third floor – 3,503 NSF

Based on the size of the units, a total of 4 parking spaces are required for the residential units. The project proposes two two-car garages. The retail space and the two residential units less than 750 net square feet are exempt from parking requirements.

The project proposes to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing, mitigating the additional floor area by making a community housing contribution. The total FAR for the project is 1.97, where 1.0 is permitted by right.

The project will construct improvements to the right-of-way per the City of Ketchum improvement standards including, three streetlights, asphalt alley, curb and gutter, and 8-foot sidewalks. The project proposes to snowmelt the sidewalks adjacent to the project. The city engineer and streets department has conducted a preliminary review all improvements and believes the improvements to meet the city's standards. Final review of all improvements to the right-of-way will be conducted by the City Engineer

and Streets Department prior to issuance of a building permit. An encroachment permit approved by the City Council will be required for the snow melt system and pavers.

### **FINDINGS OF FACT**

The Commission, having reviewed the entire project record, provided notice, and conducted the required public hearing, does hereby find that the project does not jeopardize the health, safety, and welfare of the public and conforms to all applicable standards and criteria as set forth in Chapter 17.96 – *Design Review* and Title 17 – *Zoning Regulations*. Therefore, the Commission does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

#### **FINDINGS REGARDING HEALTH, SAFETY, AND WELFARE**

The 2014 Comprehensive Plan outlines 10 core values that drive the city’s vision for the future including a strong and diverse economy, vibrant downtown, community character, and a variety of housing options. The built environment within the downtown plays a key role in materializing these values to achieve the city’s vision. The 2014 Comprehensive Plan designates the future land use for the subject property as “mixed-use commercial” where, according to the plan, “New structures in existing mixed-use areas should be oriented to streets and sidewalks and contain a mix of activities. Mixed-use development should contain common public space features that provide relief to the density and contribute to the quality of the street.” Primary uses include offices, medical facilities, health/wellness-related services, recreation, government, residential, and services.

Policy CD-1.3 of Chapter 4 of the comprehensive plan states that “Infill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur. Context refers to the natural and manmade features adjoining a development site; it does not imply a certain style.” The transition between buildings is a key design element and has the potential to impact the perceived cohesiveness of the downtown and can impact the way residents and visitors experience a place.

The Commission discussed the project’s conformance with the future land use designation and found that the proposed project met the vision of the future land use designation as there are both residential and commercial uses proposed in the project. All of the proposed uses are listed as acceptable primary uses in the comprehensive plan. The Commission also found that the proposed uses and design of the building provided an active ground floor street frontage that supports the goals of creating a vibrant downtown. The building is set back from the property line with pedestrian amenities such as landscape planters and benches. This design creates spaces for pedestrians to congregate at the corner of the building where there are opportunities to window shop. The building design also includes floor to ceiling storefront windows that provide interest for pedestrians traveling along Leadville Ave and 2<sup>nd</sup> Street. The

building is oriented towards the corner of Leadville Ave and 2<sup>nd</sup> Street with vertical and horizontal architectural elements and storefront windows on the ground level.

The Commission also discussed the project and whether it was contextually appropriate to the neighborhood. The Commission acknowledged that the building was larger than the immediately adjacent one-story structures but acknowledged that there are two- and three-story structures within one block of the subject property. The subject property is one block from Sun Valley Rd and one block from Main Street. Both roads are heavily trafficked by pedestrians and vehicles and are the locations of many larger buildings within the community core. Ultimately, the Commission found that the context of the neighborhood should be measured not by the immediately adjacent structures, but by the broader surroundings. The Commission also acknowledged that the changes proposed by the applicant throughout the design review process improved the building's perceived height and addressed concerns related to bulk and flatness.

Therefore, the Commission found that the project is in general conformance with the comprehensive plan and does not jeopardize the health, safety, or welfare of the public.

#### FINDINGS REGARDING COMPLIANCE WITH ZONING REGULATIONS

Zoning and Dimensional Standards Analysis				
Compliant			Ketchum Municipal Code Standards and Staff Comments	
Yes	No	N/A	KMC §	Standards and Staff Comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.12.030</b>	<b>Minimum Lot Area</b>
			<b>Staff Comments</b>	<b>Permitted:</b> 5,500 square feet <b>Proposed:</b> 5,504 square feet
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.12.030</b>	<b>FAR or Lot Coverage</b>
			<b>Staff Comments</b>	<b>Permitted FAR:</b> 1.0 <b>Permitted FAR with Community Housing:</b> 2.25  <b>Floor Area, Gross:</b> The sum of the horizontal area of the building measured along the outside walls of each floor of a building or portion of a building, including stair towers and elevators on the ground floor only, and 50 percent of atriums over 18 feet plate height, but not including basements, underground parking areas or open unenclosed decks. Parking areas covered by a roof or portion of the building and enclosed on three or more sides by building walls are included. Four parking stalls for developments on single Ketchum Town Site lots of 5,600 square feet in size or less are not included in the gross floor area calculation.  <b>Proposed:</b>

				<p>Gross Square Footage – 10,856 SF (Per Sheet A0.0)  Total Lot Area – 5,504 SF  FAR – 1.97</p> <p>Community Housing Mitigation Calculation:  Permitted Gross Square Feet (1.0 FAR): 5,504 SF  Proposed Gross Square Feet: 10,856 SF  Increase Above Permitted FAR: 5,352 SF  20% of Increase: 1,070 SF  Net Livable (15% Reduction): 910 SF</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.12.030</b>	<p><b>Minimum Building Setbacks</b></p> <p><b>Staff Comments</b></p> <p><b>Permitted:</b>  Front (N Leadville Ave/west): 5 feet average  Side (Interior/north): 0 feet  Side (Street Side/2<sup>nd</sup> Street): 5 feet average as this frontage is considered “street side”  Rear (Alley/east): 3 feet</p> <p>To calculate the average setback for front and street sides, the length of the façade at each level is measured and multiplied by five to determine the minimum required square footage of setback for the façade at that level. To calculate compliance with the minimum requirement, the total square footage of proposed setback for the same facade is measured.</p> <p>0 feet - Cantilevered decks and overhangs</p> <p>10 feet - Non-habitable structures, fixed amenities, solar and mechanical equipment affixed to a roof from all building facades for all projects except for projects where 100% of the residential units are community or workforce housing.</p> <p><b>Proposed:</b>  Front (N Leadville Ave/west): 16.71-foot average  Side (Interior/north): 6-inch setback  Side (Street Side/south): 11-foot average  Rear (Alley/east): 11-foot average</p> <p>Rooftop planters, trellis, mechanical equipment, elevator and stair tower are all set back 10 feet from the façade wall. Solar panels are flush with the roof and do not require being set back. The final placement of solar panels must meet all fire code requirements.</p>
			<b>17.12.030</b>	<b>Building Height</b>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Staff Comments</b>	<p><b>Permitted:</b> 42 feet</p> <p>Height of building/CC District: The greatest vertical distance of a building in the community core district measured by determining the average elevation of the front property line and rear property line. Draw a line from the average front or rear elevation up to the maximum building height allowed, and then draw a line at that height parallel to the front or rear property line. The resulting line establishes the highest elevation of the front or rear facade. The front or rear facade shall not extend above this line. Side facades may be stepped up or down to transition from the highest elevation of the front facade height to the highest elevation of the rear facade. One or multiple steps along the side facades are allowed, except no step shall occur within 40 feet of the front elevation or within 35 feet of the rear facade. The City shall establish the elevation points used to calculate the average elevation of the front and rear property lines (see illustration A on file in the office of the City Clerk).</p> <p>Cantilevered decks and overhangs: 8 feet above walking surface  Non-habitable structures located on building roof tops: 10 feet max  Perimeter walls enclosing roof top deck and structures: 4 feet above roof surface height if it projects above the maximum height limit  Roof top solar and mechanical equipment above roof surface: 5 feet</p> <p><b>Proposed:</b></p> <p>As shown on Sheets A4.0 and A4.1, the total building height in the rear is 41.4 feet. The total building height in the front (Leadville side) is 40.5 feet.</p> <p>Cantilevered decks and overhangs: 12 feet 4 inches to the top of the cantilevered decks and overhangs  Non-habitable structures located on building roof tops: stair and trellis are 10 feet or less from the top of the roof  Roof top solar and mechanical equipment above roof surface: 5 feet  Perimeter walls enclosing rooftop deck and structures: does not exceed the maximum building height therefore the max height does not apply</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.125.030H</b>  <b>Staff Comments</b>	<p><b>Curb Cut</b></p> <p><b>Permitted:</b></p> <p>A maximum of thirty five percent (35%) of the linear footage of any street frontage may be devoted to access off street parking.</p> <p><b>Proposed:</b> The subject property has two street frontages, one along N Leadville Ave and the other along 2nd Street. All access to proposed off street parking is being accessed from an alley and therefore no street frontage is devoted to access off street parking.</p>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.125.040</b>	<p><b>Parking Spaces</b></p> <p><b>Staff Comments</b></p> <p><b>Permitted:</b> For residential multi-family dwelling units in the Community Core  Units 750 net SF or less – 0 spaces  Units 751 SF to 2,000 net SF – minimum of 1 space  Units 2,001 net SF and above – minimum of 2 spaces</p> <p>Retail spaces less than 5,500 SF are exempt from parking requirements in the Community Core</p> <p>The project proposes a total of 4 dwelling units:</p> <ul style="list-style-type: none"> <li>• One dwelling unit in the basement – 639 net square feet (NSF) – no parking required</li> <li>• Two dwelling units on the second floor – 746 NSF and 2,628 NSF – two spaces required</li> <li>• One dwelling unit on the third floor – 3,503 NSF – two spaces required</li> </ul> <p>A total of 4 off-street parking spaces are required for the project.</p> <p>Bicycle parking: One bicycle parking space for two bicycles is required.</p> <p><b>Proposed:</b>  As shown on Sheet A2.1, the project proposes a total of four parking spaces, two tandem parking spaces for Unit #2 and a side-by-side 2 car garage for Unit #4.</p>
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**FINDINGS REGARDING COMPLIANCE WITH DESIGN REVIEW STANDARDS**

<b>17.96.060.A.1 - Streets</b>	<b>Conformance</b>
<i>The applicant shall be responsible for all costs associated with providing a connection from an existing City street to their development.</i>	YES
<p><b>Finding:</b> The development is at the corner of N Leadville Ave and 2<sup>nd</sup> Street, two existing public rights-of-way. The development proposes to bring both rights-of-way up to city standards by replacing the existing nonconforming sidewalks, provide curb and gutter, and improve the alley to meet standards and provide for adequate drainage. The development proposes walkways the full length of the building from the property line to ensure direct pedestrian access from all building entrances to the sidewalks. All improvements to the right-of-way and walkways to the right-of-way improvements are at the expense of the applicant.</p>	



17.96.060.A.2 - Streets	Conformance
<i>All street designs shall be approved by the City Engineer.</i>	YES Condition #3
<b>Finding:</b> No new streets are proposed for the project, however, all improvements to the right-of-way as shown on the project plans has been reviewed by the City Engineer. Final review of all improvements to the right-of-way will be completed prior to issuance of a building permit for the project per condition of approval #3.	

17.96.060.B.1 - Sidewalks	Conformance
<i>All projects under subsection 17.96.010.A of this chapter that qualify as a "substantial improvement" shall install sidewalks as required by the Public Works Department.</i>	YES
<b>Finding:</b> KMC 17.124.140 outlines the zone districts where sidewalks are required when substantial improvements are made, which include the CC, all tourist zone districts, and all light industrial districts. As the project is within the CC-2 zone district, sidewalks are required and proposed.	

17.96.060.B.2 - Sidewalks	Conformance
<i>Sidewalk width shall conform to the City's right-of-way standards, however the City Engineer may reduce or increase the sidewalk width and design standard requirements at their discretion.</i>	YES Condition #3
<b>Finding:</b> The project plans provided the details of the sidewalks for review by the City Engineer. Preliminary review of the project plans indicates that all city right-of-way standards for width and construction are met. Final review of all improvements to the right-of-way will be completed prior to issuance of a building permit for the project per condition of approval #3.	

17.96.060.B.3 - Sidewalks	Conformance
<p><i>Sidewalks may be waived if one of the following criteria is met:</i></p> <ul style="list-style-type: none"> <li><i>a) The project comprises an addition of less than 250 square feet of conditioned space.</i></li> <li><i>b) The City Engineer finds that sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, or if a sidewalk would not be beneficial to the general welfare and safety of the public.</i></li> </ul>	N/A
<b>Finding:</b> The applicant has not requested, nor has the City Engineer granted a waiver to the sidewalk requirement for the project.	

17.96.060.B.4 - Sidewalks	Conformance
<i>The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.</i>	YES

**Finding:** As shown on the project plans, the project proposes new sidewalks to be placed the full length of the subject property along N Leadville Ave and 2<sup>nd</sup> Street.

17.96.060.B.5 – Sidewalks	Conformance
<i>New sidewalks shall be planned to provide pedestrian connections to any existing or future sidewalks adjacent to the site. In addition, sidewalks shall be constructed to provide safe pedestrian access to and around a building.</i>	YES

**Finding:** There are existing sidewalks along the subject property connecting to existing sidewalks to the north and east. The development proposes to replace the existing nonconforming 5-foot sidewalks on both N Leadville Ave and 2<sup>nd</sup> Street. The new 8-foot sidewalks will taper and connect to the existing sidewalks to the north and east. There will be direct pedestrian access from the entrances and exits to the building to the new sidewalks as shown in the project plans.

17.96.060.B.6 - Sidewalks	Conformance
<i>The City may approve and accept voluntary cash contributions in lieu of the above described improvements, which contributions must be segregated by the City and not used for any purpose other than the provision of these improvements. The contribution amount shall be 110 percent of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. Any approved in lieu contribution shall be paid before the City issues a certificate of occupancy.</i>	N/A

**Finding:** The applicant has not requested relief from the requirement to construct sidewalks nor has the City granted any such request.

17.96.060.C.1 - Drainage	Conformance
<i>All stormwater shall be retained on site.</i>	YES

**Finding:** The project proposes a series of roof drains, drywells, and catch basins to manage onsite stormwater. Per the project plans, all stormwater is being retained on site.

17.96.060.C.2 - Drainage	Conformance
<i>Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.</i>	YES Condition #3

**Finding:** As shown on the project plans, all stormwater is retained on-site. The project proposes to construct right-of-way improvements the length of the subject property, including curb and gutter and other drainage infrastructure, along N Leadville Ave and 2<sup>nd</sup> Street. The project also proposes drainage infrastructure in the alley behind the subject property for the full length of the subject property. Final design of drainage infrastructure will be reviewed and approved by the City Engineer prior to building permit issuance per condition #3.

17.96.060.C.3 - Drainage	Conformance
<i>The City Engineer may require additional drainage improvements as necessary, depending on the unique characteristics of a site.</i>	N/A
<b>Finding:</b> The City Engineer did not identify any additional drainage improvements during department review. The characteristics of the site do not warrant additional drainage improvements.	

17.96.060.C.4 - Drainage	Conformance
<i>Drainage facilities shall be constructed per City standards.</i>	YES Condition #3
<b>Finding:</b> Based on review of the project plans by the City Engineer during department review, all drainage facilities meet city standards. Final design of drainage facilities will be reviewed and approved by the city engineer prior to issuance of a building permit per condition #3.	

17.96.060.D.1 - Utilities	Conformance
<i>All utilities necessary for the development shall be improved and installed at the sole expense of the applicant.</i>	YES
<b>Finding:</b> All project costs associated with the development, including installation of utilities, are the responsibility of the applicant. The applicant has not made requests for funding to the City, and no funds have been provided by the city for the project. The subject property was previously served by an above ground power line to a power pole on-site. At the owner's expense, the overhead line and power pole have already been removed. The development will be served by power from below grade power lines to an on-site transformer as shown on the project plans.	

17.96.060.D.2 - Utilities	Conformance
<i>Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view.</i>	YES
<b>Finding:</b> Per the project plans, all necessary utilities are underground. As shown on Sheet A0.1, a single-phase transformer is located on the southeast corner of the property adjacent to the alley and the pedestrian sidewalk along 2 <sup>nd</sup> Street. The transformer is proposed to be screened with perforated metal paneling and landscaping as shown on the sheet. The Idaho Power will serve letter is dated October 24, 2022 and references a previous version of the site plan. As outlined in condition of approval #3, an updated service letter from Idaho Power shall be provided with the building permit application to ensure all screening and access is adequate. Any changes in transformer size and location may require an amendment to the design review approval. As conditioned, this standard is met.	

17.96.060.D.3 - Utilities	Conformance
<i>When extension of utilities is necessary all developers will be required to pay for and install two-inch SDR11 fiber optical conduit. The placement and construction of the</i>	N/A

<i>fiber optical conduit shall be done in accordance with City of Ketchum standards and at the discretion of the City Engineer.</i>	
<b>Finding:</b> The location of the subject property is already served by fiber optical and therefore no conduit is required in this location.	

<b>17.96.060.E.1 – Compatibility of Design</b>	<b>Conformance</b>
<i>The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.</i>	YES
<b>Finding:</b> The surrounding neighbors and adjoining structures have a wide variety of materials and colors. Most of the structures adjacent to the subject property, or directly across the street, are one-story single-family residence type buildings with pitched roofs and white or lightly colored horizontal siding. However, further north along N Leadville Ave on the same block, the materials and color palette shift to brick, darker accent colors such as red or green, and flat roofs such as the building with the Cellar Pub. The building at the corner of N Leadville and Sun Valley Rd has brick, light colored stucco, and red accents. Although the proposed development does not mimic the light-colored horizontal materials of immediately adjacent properties, the proposed materials of darker brick, and black metal accents on the balconies are complementary to the buildings on N Leadville Ave. The building also includes a lighter colored accent wall along 2 <sup>nd</sup> Street that ties the building's color palette to the surrounding properties and lightens the buildings feel where there are no windows.	

<b>17.96.060.E.2 – Compatibility of Design</b>	<b>Conformance</b>
<i>Preservation of significant landmarks shall be encouraged and protected, where applicable. A significant landmark is one which gives historical and/or cultural importance to the neighborhood and/or community.</i>	N/A
<b>Finding:</b> The subject property is vacant therefore this standard does not apply.	

<b>17.96.060.E.3 – Compatibility of Design</b>	<b>Conformance</b>
<i>Additions to existing buildings, built prior to 1940, shall be complementary in design and use similar material and finishes of the building being added to.</i>	N/A
<b>Finding:</b> The subject property is vacant therefore this standard does not apply.	

<b>17.96.060.F.1 – Architectural</b>	<b>Conformance</b>
<i>Building(s) shall provide unobstructed pedestrian access to the nearest sidewalk and the entryway shall be clearly defined.</i>	YES
<b>Finding:</b> The project includes primary entrances to the retail on both N Leadville Ave and 2 <sup>nd</sup> Street. Additionally, there are entrances to the residential units on 2 <sup>nd</sup> Street. All entrances have direct access to the sidewalk. All entrances are identifiable with architectural elements, particularly the elements on 2 <sup>nd</sup> Street where there is a	

recessed entrance to the upper floor units and a single entrance articulated with architectural detailing around the door for the basement residence.

17.96.060.F.2 – Architectural	Conformance
<i>The building character shall be clearly defined by use of architectural features.</i>	YES
<p><b>Finding:</b> The building character mimics that of historic brick buildings with balconies that stretch for a significant length of the building. The windows have a subtle curvature at the top which is also a characteristic of more ornate historic brick buildings. Some examples in Ketchum include the buildings where Enoteca, Sun Valley Cullinary, and the Sawtooth Club are located.</p>	

17.96.060.F.3 – Architectural	Conformance
<i>There shall be continuity of materials, colors and signing within the project.</i>	YES
<p><b>Finding:</b> The project uses a consistent set of materials including multiple shades of brick, black metal accents, and lighter wood siding under the balconies. The signage for the project is minimal and does not deter from the architectural characteristics of the building. Signage is primarily wall mounted signage and window decals as shown on the elevations in the project plans.</p>	

17.96.060.F.4 – Architectural	Conformance
<i>Accessory structures, fences, walls and landscape features within the project shall match or complement the principal building.</i>	YES
<p><b>Finding:</b> The proposed balconies are of a material that contrasts but compliments the two tones of brick on the facades of the building. The rooftop deck proposes a wood pergola and metal landscape planters that complement the other materials of the building.</p>	

17.96.060.F.5 – Architectural	Conformance
<i>Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness.</i>	YES
<p><b>Finding:</b> The development implements a variety of features that successfully minimize the appearance of bulk and flatness on the primary facades of the building. Features include setback facades with cantilevered balconies, setback roof projection above the third floor balcony on N Leadville Ave, three dimensional trim features at each floor of the building, and material changes from the base of the building to the top on the 2<sup>nd</sup> Street side of the building. The only wall with limited undulation and material variation is the north façade which is located on an interior lot line but not set back more than 5 feet. As shown on Sheet A4.4, the development proposes horizontal brick banding, indentions of the wall façade to create “bricked in” windows, wrapping of ground floor architectural materials, and a vertical trellis with climbing vines. All of these treatments serve to avoid the creation of blank walls and are consistent with the other materials and treatments of the front façade. Additionally, the third floor façade on the N Leadville Ave side of the building is set back from the lower floors</p>	

which provides additional undulation and relief to the north façade. This setback, combined with the façade treatments, serve to adequately reduce the appearance of bulk and flatness of the building.

17.96.060.F.6 – Architectural	Conformance
<i>Building(s) shall orient toward their primary street frontage.</i>	YES
<p><b>Finding:</b> The subject properties’ primary street frontage is N Leadville Ave, however, as a corner lot, the building should orient to both N Leadville and 2<sup>nd</sup> Street. The development orients to N Leadville Ave very effectively with cantilevered balconies, main entrances to the retail space, and landscape planters that anchor the building. Additionally, the ground floor retail space includes storefront windows along N Leadville Ave that extend around the corner to the 2<sup>nd</sup> Street side.</p>	

17.96.060.F.7 – Architectural	Conformance
<i>Garbage storage areas and satellite receivers shall be screened from public view and located off alleys.</i>	YES
<p><b>Finding:</b> As shown on the project plans, the garbage area is in the rear of the building, in an enclosed storage room with a roll up door for access and service.</p>	

17.96.060.F.8 – Architectural	Conformance
<i>Building design shall include weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or onto adjacent properties.</i>	YES
<p><b>Finding:</b> As shown on the project plans, the roof plan for the project includes flat roofs at an angle that causes water to drain toward a series of roof drains along the interior of the roof. Cantilevered decks integrate with roof drain systems for any water or snow accumulation. Based on the design of drainage facilities and roof design, no water or snow will enter onto adjacent properties.</p>	

17.96.060.G.1 – Circulation Design	Conformance
<i>Pedestrian, equestrian and bicycle access shall be located to connect with existing and anticipated easements and pathways.</i>	YES
<p><b>Finding:</b> The project is fully connected by crosswalks with the existing sidewalk system. There are no regional trails, other anticipated easements, or pathways other than the sidewalk system</p>	

17.96.060.G.2 – Circulation Design	Conformance
<i>Awnings extending over public sidewalks shall extend five feet or more across the public sidewalk but shall not extend within two feet of parking or travel lanes within the right-of-way.</i>	N/A
<p><b>Finding:</b> The development does not propose any awnings over public sidewalks.</p>	

17.96.060.G.3 – Circulation Design	Conformance
<i>Traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. Consideration shall be given to adequate sight distances and proper signage.</i>	YES
<p><b>Finding:</b> Vehicle traffic accesses the site from the alley between N Leadville Ave and East Ave. Following required improvements to the alley, the access will be adequate to enter or exit the project safely. Bicycle and pedestrian circulation will primarily be in and out of the front of the project along 2<sup>nd</sup> Street.</p>	

17.96.060.G.4 – Circulation Design	Conformance
<i>Curb cuts and driveway entrances shall be no closer than 20 feet to the nearest intersection of two or more streets, as measured along the property line adjacent to the right-of-way. Due to site conditions or current/projected traffic levels or speed, the City Engineer may increase the minimum distance requirements.</i>	N/A
<p><b>Finding:</b> The subject property is a corner lot, however, alley access points for garages in the Community Core are not considered curb cuts or driveways, therefore this standard does not apply.</p>	

17.96.060.G.5 – Circulation Design	Conformance
<i>Unobstructed access shall be provided for emergency vehicles, snowplows, garbage trucks and similar service vehicles to all necessary locations within the proposed project.</i>	YES
<p><b>Finding:</b> With the right-of-way improvements proposed, access for emergency vehicles, snowplows, and garbage trucks will be enhanced as access to the property will be achievable from all sides. The enclosed garages and garbage handling area is such that vehicles will not overhang into the alley and garbage receptacles will be returned to their storage area immediately following service. There is direct access to the building from the alley, N Leadville Ave, and 2<sup>nd</sup> Street in case of emergencies.</p>	

17.96.060.H.1 – Snow Storage	Conformance
<i>Snow storage areas shall not be less than 30 percent of the improved parking and pedestrian circulation areas.</i>	N/A
<p><b>Finding:</b> The project proposes heated pavers for the pedestrian areas between the building and pedestrian sidewalks per the project plans, therefore, no on-site snow storage is required.</p>	

17.96.060.H.2 – Snow Storage	Conformance
<i>Snow storage areas shall be provided on site.</i>	N/A
<p><b>Finding:</b> As discussed above, no on-site snow storage is required as snowmelt is proposed.</p>	

17.96.060.H.3 – Snow Storage	Conformance
<i>A designated snow storage area shall not have any dimension less than five feet and shall be a minimum of 25 square feet.</i>	N/A
<b>Finding:</b> As discussed above, no on-site snow storage is required as snowmelt is proposed.	

17.96.060.H.4 – Snow Storage	Conformance
<i>In lieu of providing snow storage areas, snowmelt and hauling of snow may be allowed.</i>	N/A
<b>Finding:</b> As discussed above, no on-site snow storage is required as snowmelt is proposed.	

17.96.060.I.1 – Landscaping	Conformance
<i>Landscaping is required for all projects.</i>	YES
<b>Finding:</b> The development proposes landscaping for the project as shown on the project plans including landscape planter beds and street trees.	

17.96.060.I.2 – Landscaping	Conformance
<i>Landscape materials and vegetation types specified shall be readily adaptable to a site's microclimate, soil conditions, orientation and aspect, and shall serve to enhance and complement the neighborhood and townscape.</i>	YES
<b>Finding:</b> The landscape plan includes street trees and planter boxes with low lying shrubs and tall grasses, primarily on the west and south facing sides of the building. The landscape plan adds interest to the street by providing autumn blaze maples which are vibrant during the fall. These vegetation types are found in many areas of the community core including 4 <sup>th</sup> Street, Sun Valley Rd, and East Ave. Having similar streetscape throughout the community core provides visitors with a sense of place reinforcing where they are in the community.	

17.96.060.I.3 – Landscaping	Conformance
<i>All trees, shrubs, grasses and perennials shall be drought tolerant. Native species are recommended but not required.</i>	YES
<b>Finding:</b> All proposed plantings are drought tolerant and common for the area.	

17.96.060.I.4 – Landscaping	Conformance
<i>Landscaping shall provide a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots. The development of landscaped public courtyards, including trees and shrubs where appropriate, shall be encouraged.</i>	YES
<b>Finding:</b> The proposed land uses are complimentary to the surrounding area, therefore substantial buffer between the proposed development and surrounding properties is not encouraged. The development does not	



include any surface parking lots that need screening with vegetation. The building is setback 5 feet from the property boundary which expands the pedestrian realm. This area is where the landscape planters are proposed which enhances the pedestrian experience and creates a softening of the building.

17.96.060.J.1 – Public Amenities	Conformance
<i>Where sidewalks are required, pedestrian amenities shall be installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, restrooms, fountains, art, etc. All public amenities shall receive approval from the Public Works Department prior to design review approval from the Commission.</i>	YES
<b>Finding:</b> The development proposes street trees which have been approved by the Public Works Director. Trash receptacles, benches, and bike racks are proposed on the subject property, not within the right-of-way.	

17.96.060.K.1 – Underground Encroachments	Conformance
<i>Encroachments of below grade structures into required setbacks are subject to subsection 17.128.020.K of this title and shall not conflict with any applicable easements, existing underground structures, sensitive ecological areas, soil stability, drainage, other sections of this Code or other regulating codes such as adopted International Code Council Codes, or other site features concerning health, safety, and welfare.</i>	N/A
<b>Finding:</b> As noted in 17.128.020.G, the provisions of 17.128.020.K do not apply to the Community Core district of which the subject property is located. Therefore, this standard is not applicable.	

17.96.060.K.2 – Underground Encroachments	Conformance
<i>No below grade structure shall be permitted to encroach into the riparian setback.</i>	N/A
<b>Finding:</b> The subject property is not adjacent to any bodies of water; therefore, no riparian setback exists for the property.	

**FINDINGS REGARDING DESIGN REVIEW STANDARDS – COMMUNITY CORE**

17.96.070.A.1 – Streets	Conformance
<i>Street trees, streetlights, street furnishings, and all other street improvements shall be installed or constructed as determined by the Public Works Department.</i>	YES Condition #3
<b>Finding:</b> The development includes benches, bike racks, and trash receptacles on the subject property. Within the right-of-way, the development proposes street trees along N Leadville Ave and 2 <sup>nd</sup> Street, snowmelt sidewalks, a new fire hydrant, and three streetlights. Final review and approval of all right-of-way improvements will be conducted at the time of building permit review per condition #3.	

17.96.070.A.2 – Streets	Conformance
<i>Street trees with a minimum caliper size of three inches, shall be placed in tree grates.</i>	YES
<b>Finding:</b> As shown in the project plans, street trees proposed are 3” caliper, include tree grates, and will be installed using Silva Cell installation requirements.	

17.96.070.A.3 – Streets	Conformance
<i>Due to site constraints, the requirements of this subsection A may be modified by the Public Works Department.</i>	YES
<b>Finding:</b> No modifications to these requirements have been made. The Public Works Department has provided directions as to the location of improvements in the right-of-way.	

17.96.070.B.1 - Architectural	Conformance
<i>Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front facade.</i>	YES
<b>Finding:</b> As outlined above, the development employs a variety of architectural materials and features to avoid the creation of blank walls and reduce bulk and mass. The only wall with limited undulation and material variation is the north façade which is located on an interior lot line but not set back more than 5 feet. As shown on Sheet A4.4, the development proposes horizontal brick banding, indentions of the wall façade to create “bricked in” windows, wrapping of ground floor architectural materials, and a vertical trellis with climbing vines. All of these treatments serve to avoid the creation of blank walls and are consistent with the other materials and treatments of the front façade.	

17.96.070.B.2 - Architectural	Conformance
<i>For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.</i>	YES
<b>Finding:</b> The development includes ground floor retail that fronts N Leadville Ave and 2 <sup>nd</sup> Street. The building includes significant storefront windows on the N Leadville Ave frontage that wrap around the first half of the building on the 2 <sup>nd</sup> Street side. One landscape planter is located on N Leadville Ave with two more on 2 <sup>nd</sup> Street.	

17.96.070.B.3 - Architectural	Conformance
<i>For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows.</i>	YES

**Finding:** The development does not include features that would obscure views into windows. On the N Leadville side of the building, the landscape planter includes low lying shrubs and grasses as an accent to the windows rather than an obstruction.

17.96.070.B.4 - Architectural	Conformance
<i>Roofing forms and materials shall be compatible with the overall style and character of the structure. Reflective materials are prohibited.</i>	YES
<b>Finding:</b> The roof form and material is like that of the rest of the building. The roof form is flat, compatible with the horizontal cantilevered decks. The roof soffit is proposed to be a lighter color wood siding which will be a nice complement to the lighter tones in the brick. No reflective materials are proposed.	

17.96.070.B.5 - Architectural	Conformance
<i>All pitched roofs shall be designed to sufficiently hold all snow with snow clips, gutters, and downspouts.</i>	N/A
<b>Finding:</b> The project does not include pitched roofs.	

17.96.070.B.6 - Architectural	Conformance
<i>Roof overhangs shall not extend more than three feet over a public sidewalk. Roof overhangs that extend over the public sidewalk shall be approved by the Public Works Department.</i>	N/A
<b>Finding:</b> Roof overhangs are not proposed to encroach into the public right-of-way or over the sidewalk.	

17.96.070.B.7 - Architectural	Conformance
<i>Front porches and stoops shall not be enclosed on the ground floor by permanent or temporary walls, windows, window screens, or plastic or fabric materials.</i>	YES
<b>Finding:</b> The building does not have a traditional front porch or stoop, however, due to the topography of the site, the finished floor of the building is slightly higher than the sidewalk on the N Leadville Ave side, creating a stepped entrance to the building that somewhat functions like a stoop. The stepped-up area is not enclosed by any walls, fences, or other screening materials.	

17.96.070.C.1 – Service Areas and Mechanical/Electrical Equipment	Conformance
<i>Trash disposal areas and shipping and receiving areas shall be located within parking garages or to the rear of buildings. Trash disposal areas shall not be located within the public right-of-way and shall be screened from public views.</i>	YES
<b>Finding:</b> The trash disposal area for the project is located in the rear of the building within a fully enclosed portion of the building not visible by the public. The dumpster is located on an automatic roller which enters the alley during trash servicing and retracts to its original location within the building once the servicing is complete.	

17.96.070.C.2 – Service Areas and Mechanical/Electrical Equipment	Conformance
<i>Roof and ground mounted mechanical and electrical equipment shall be fully screened from public view. Screening shall be compatible with the overall building design.</i>	YES Condition #5
<p><b>Finding:</b> As shown on the project plans, the roof mounted mechanical equipment and solar panels are setback from the roof parapet as required by the Ketchum Municipal Code. Mechanical equipment on the roof will be screened with a 5-foot max perforated metal screen. The same screen is proposed to screen the ground mounted transformer at the rear of the property on 2<sup>nd</sup> Street at the alley. As shown on Sheet A0.1, a single-phase transformer is located on the southeast corner of the property adjacent to the alley and the pedestrian sidewalk along 2<sup>nd</sup> Street. The transformer is proposed to be screened with perforated metal paneling and landscaping as shown on the sheet. The Idaho Power will serve letter is dated October 24, 2022 and references a previous version of the site plan. As outlined in condition of approval #5, an updated service letter from Idaho Power shall be provided with the building permit application to ensure all screening and access is adequate. Any changes in transformer size and location may require an amendment to the design review approval. As conditioned, this standard is met.</p>	

17.96.070.D.1 - Landscaping	Conformance
<i>When a healthy and mature tree is removed from a site, it shall be replaced with a new tree. Replacement trees may occur on or off site.</i>	N/A
<p><b>Finding:</b> No trees exist on the subject property therefore replacement trees are not required.</p>	

17.96.070.D.2 - Landscaping	Conformance
<i>Trees that are placed within a courtyard, plaza, or pedestrian walkway shall be placed within tree wells that are covered by tree grates.</i>	YES
<p><b>Finding:</b> All street trees proposed are within tree grates and must be installed using Silva Cell installation requirements.</p>	

17.96.070.D.3 - Landscaping	Conformance
<i>The City arborist shall approve all parking lot and replacement trees.</i>	N/A
<p><b>Finding:</b> No replacement trees or parking lot trees are proposed for the development therefore this standard does not apply.</p>	

17.96.070.E.1 – Surface Parking Lots	Conformance
<i>Surface parking lots shall be accessed from off the alley and shall be fully screened from the street.</i>	N/A
<p><b>Finding:</b> The development does not propose surface parking lots therefore this standard does not apply.</p>	

17.96.070.E.2 – Surface Parking Lots	Conformance
<i>Surface parking lots shall incorporate at least one tree and one additional tree per ten on-site parking spaces. Trees shall be planted in landscaped planters, tree wells and/or diamond shaped planter boxes located between parking rows. Planter boxes shall be designed so as not to impair vision or site distance of the traveling public.</i>	N/A
<b>Finding:</b> The development does not propose surface parking lots therefore this standard does not apply.	

17.96.070.E.3 – Surface Parking Lots	Conformance
<i>Ground cover, low lying shrubs, and trees shall be planted within the planters and planter boxes. Tree grates or landscaping may be used in tree wells located within pedestrian walkways.</i>	N/A
<b>Finding:</b> The development does not propose surface parking lots therefore this standard does not apply.	

17.96.070.F.1 – Bicycle Parking	Conformance
<i>One bicycle rack, able to accommodate at least two bicycles, shall be provided for every four parking spaces as required by the proposed use. At a minimum, one bicycle rack shall be required per development.</i>	YES
<b>Finding:</b> As shown on the project plans, one bicycle rack is proposed between the entrance to the basement residential unit and the main entrance to the building on 2 <sup>nd</sup> Street.	

17.96.070.F.2 – Bicycle Parking	Conformance
<i>When the calculation of the required number of bicycle racks called for in this section results in a fractional number, a fraction equal to or greater than one-half shall be adjusted to the next highest whole number.</i>	YES
<b>Finding:</b> The development requires four parking spaces, therefore only one bicycle rack is required. The required bicycle rack is provided between the entrance to the basement residential unit and the main entrance to the building on 2 <sup>nd</sup> Street.	

17.96.070.F.3 – Bicycle Parking	Conformance
<i>Bicycle racks shall be clearly visible from the building entrance they serve and not mounted less than 50 feet from said entrance or as close as the nearest non-ADA parking space, whichever is closest. Bicycle racks shall be located to achieve unobstructed access from the public right-of-way and not in areas requiring access via stairways or other major obstacles.</i>	YES
<b>Finding:</b> The required bicycle rack is provided between the entrance to the basement residential unit and the main entrance to the building on 2 <sup>nd</sup> Street. This location is clearly visible for most visitors to the building and within 50 feet of the entrance on the N Leadville Ave side of the building.	

### **CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code (“KMC”) and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant’s Design Review application for the development and use of the project site.
2. The Commission has authority to hear the applicant’s Design Review Application pursuant to Chapter 17.96 of Ketchum Municipal Code Title 17.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §17.96.080.
4. The Design Review application is governed under Ketchum Municipal Code Chapters 17.96, 17.124, 17.08, 17.12, 17.18, and 17.128.
5. The Design Review application meets all applicable standards specified in Title 17 of Ketchum Municipal Code.

### **DECISION**

**THEREFORE**, the Commission **approves** this Design Review Application File No. P22-035 this Tuesday, April 11, 2023, subject to the following conditions of approval.

### **CONDITIONS OF APPROVAL**

1. This Design Review approval is based on the architectural plan set presented at the February 28, 2023 Planning and Zoning Commission meeting, included as Exhibit A to these findings. Building Permit Plans must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or the Planning and Zoning Administrator. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.
2. The Civil and Landscape Drawings included in Exhibit B are preliminary only and must be revised to match the approved design review plan set prior to building permit application.
3. Final civil drawings prepared by an engineer registered in the State of Idaho which include specifications for right-of-way, utilities, and drainage improvements shall be submitted for review and approval by the City Engineer, Streets, and Utilities departments prior to issuance of a building permit for the project.

4. Final landscape drawings shall be submitted for review and approval by the Planning and Building, City Engineer, Streets, and Utilities departments prior to issuance of a building permit for the project.
5. A letter from Idaho Power confirming the final transformer size, location, and approval of the proposed screening and landscaping shall be submitted with the building permit application. Any changes in the size, location, or screening constitute an amendment to the design review and must be reviewed and approved by the Administrator or the Commission per the requirements of Chapter 17.96 – *Design Review*.
6. Prior to issuance of a building permit for the project, the City Council shall review and approve an encroachment agreement for the installation and maintenance of the paver sidewalk and snowmelt within the public rights-of-way.
7. In exchange for an increase in FAR, a voluntary community housing contribution of 910 square feet is required. Payment-in-lieu contributions for community housing are required prior to issuance of a building permit for the project.
8. Prior to issuance of a building permit for the project, an Encroachment Agreement shall be approved by the City Council addressing the paver sidewalks and snowmelt within the right-of-way.
9. The term of Design Review approval shall be twelve (12) months from the date that the Findings of Fact, Conclusions of Law, and Decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council subject to changes in zoning regulations.
10. In addition to the requirements set forth in this Design Review approval, this project shall comply with all applicable local, state, and federal laws.

Findings of Fact **adopted** this 11<sup>th</sup> day of April 2023.



---

Neil Morrow, Chair  
City of Ketchum  
Planning and Zoning Commission



City of Ketchum

**Exhibit A:**  
**200 N Leadville Ave - Design  
Review Plan Set**









1144 161 ST STREET SUITE 200  
 WASHINGTON, MISSISSIPPI 39201  
 TEL: (601) 434-7478  
 FAX: (601) 434-2448

REGISTERED ARCHITECT  
 MICHAEL S. BARRY  
 STATE OF MISSISSIPPI  
 LICENSE NO. 22227923

DATE: 02/22/23  
 PERSONS: [ ]  
 PROJECT CLIENT: THE 208 BUILDING  
 ARCHITECT: MICHAEL S. BARRY

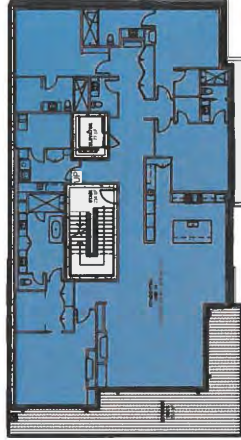
ADDRESS: 208 N. LEADVILLE HIGHWAY  
 PARCEL: 499-00000230010

DESIGN REVIEW APPLICATION REQUIREMENTS

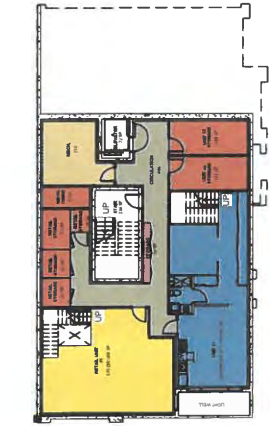
BUILDING AREA SQUARE FOOTAGES			
FLOOR PLAN	AREA USE	GROSS AREA SF	NET AREA SF
LOWER LEVEL	RESIDENTIAL UNIT #1	692 SF	639 SF
	STORAGE UNIT #4	141 SF	141 SF
	STORAGE UNIT #5	148 SF	148 SF
	STORAGE UNIT #2	148 SF	148 SF
	RETAIL UNIT #1	570 SF	570 SF
	MECH/FIRE RESER. ROOM	213 SF	213 SF
TOTALS:	STAIR	234 SF	234 SF
	ELEVATOR	72 SF	72 SF
	TRASH ROOM	294 SF	294 SF
	RETAIL UNIT #1	300 SF	300 SF
	RETAIL UNIT #1 STAIR	121 SF	121 SF
	RETAIL UNIT #2	544 SF	544 SF
1ST FLOOR	RETAIL UNIT #3	341 SF	341 SF
	RESTROOM	67 SF	67 SF
	RETAIL UNIT #1 STAIR	530 SF	530 SF
	RESIDENTIAL PARKING	552 SF	552 SF
	JANITOR	74 SF	74 SF
	STAIR	40 SF	40 SF
TOTALS:	STAIR	234 SF	234 SF
	ELEVATOR	77 SF	77 SF
	TRASH ROOM	290 SF	290 SF
	RESIDENTIAL UNIT #1	469 SF	469 SF
	RESIDENTIAL UNIT #2	729 SF	729 SF
	RESIDENTIAL UNIT #3	742 SF	742 SF
2ND FLOOR	STORAGE	27 SF	27 SF
	EXTERIOR DECK	448 SF	448 SF
	STAIR	51 SF	51 SF
	ELEVATOR	72 SF	72 SF
	TOTALS:	483 SF	3274 SF
	RESIDENTIAL UNIT #4	3676 SF	3676 SF
3RD FLOOR	EXTERIOR DECK	565 SF	565 SF
	STAIR	234 SF	234 SF
	ELEVATOR	72 SF	72 SF
	TOTALS:	452 SF	3403 SF
	RESIDENTIAL UNIT #1	874 SF	874 SF
	RESIDENTIAL UNIT #2	874 SF	874 SF
ROOF DECK	MECH/ROOF	200 SF	200 SF
	MECH/DECK	200 SF	200 SF
	STAIR	234 SF	234 SF
	TOTALS:	1001 SF	698 SF
	RESIDENTIAL UNIT #1	565 SF	565 SF
	RESIDENTIAL UNIT #2	565 SF	565 SF
TOTAL BUILDING:	GROSS AREA SF	16,704 SF	7516 SF
	NET AREA SF	5,248 SF	5,248 SF
FAR:	GROSS AREA SF	10,564 SF	5504 SF
	NET AREA SF	5504 SF	5504 SF



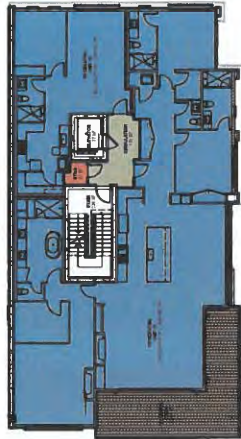
1ST FLOOR PLAN  
 3/16" = 1'-0"



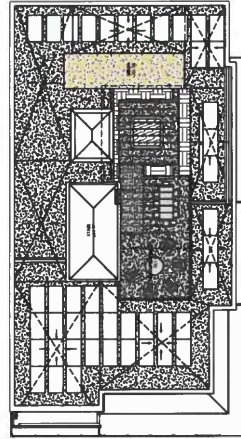
2ND FLOOR PLAN  
 3/16" = 1'-0"



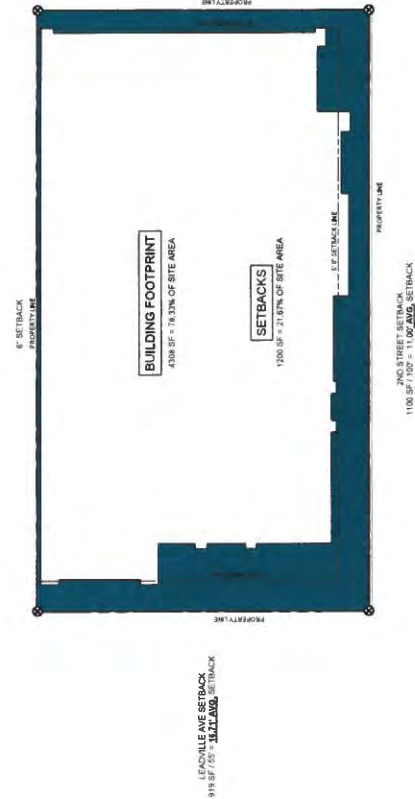
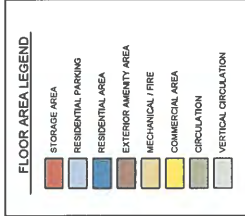
LOWER LEVEL PLAN  
 3/16" = 1'-0"



3RD FLOOR PLAN  
 3/16" = 1'-0"



ROOF PLAN  
 3/16" = 1'-0"



FIRST FLOOR AVERAGE SETBACK DIAGRAM  
 1/8" = 1'-0"

DRAWING NAME: DESIGN REVIEW FLOOR AREA DIAGRAM  
 Drawn By: MS  
 Checked By: MR  
 Owner Approval: [ ]  
 PHASE: CONSTRUCTION DRAWINGS  
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PROJECT NO.: A211-18  
 DATE: 2/22/2023  
 A0.3  
 PLOT SCALE: 11







11441 1ST STREET, SUITE 200  
 WASHINGTON, DC 20003  
 TEL: (425) 452-2790  
 FAX: (425) 452-4448

REGISTERED ARCHITECT  
 STATE OF MARYLAND  
 PREVIOUSLY REGISTERED IN NEW YORK

ISSUE DATE	DATE
02/22/23	

**PROJECT / CLIENT**  
 THE 208 BUILDING  
 CARR, MICHAEL

**JOB ADDRESS**  
 200 N LEADVILLE KETCHUM  
 PARCEL: 88PM0000020010

**DRAWING NAME**  
 2ND FLOOR PLAN

Drawn By: MS  
 Checked By: JRS  
 Owner Approval:

**PHASE**  
 CONSTRUCTION DRAWINGS

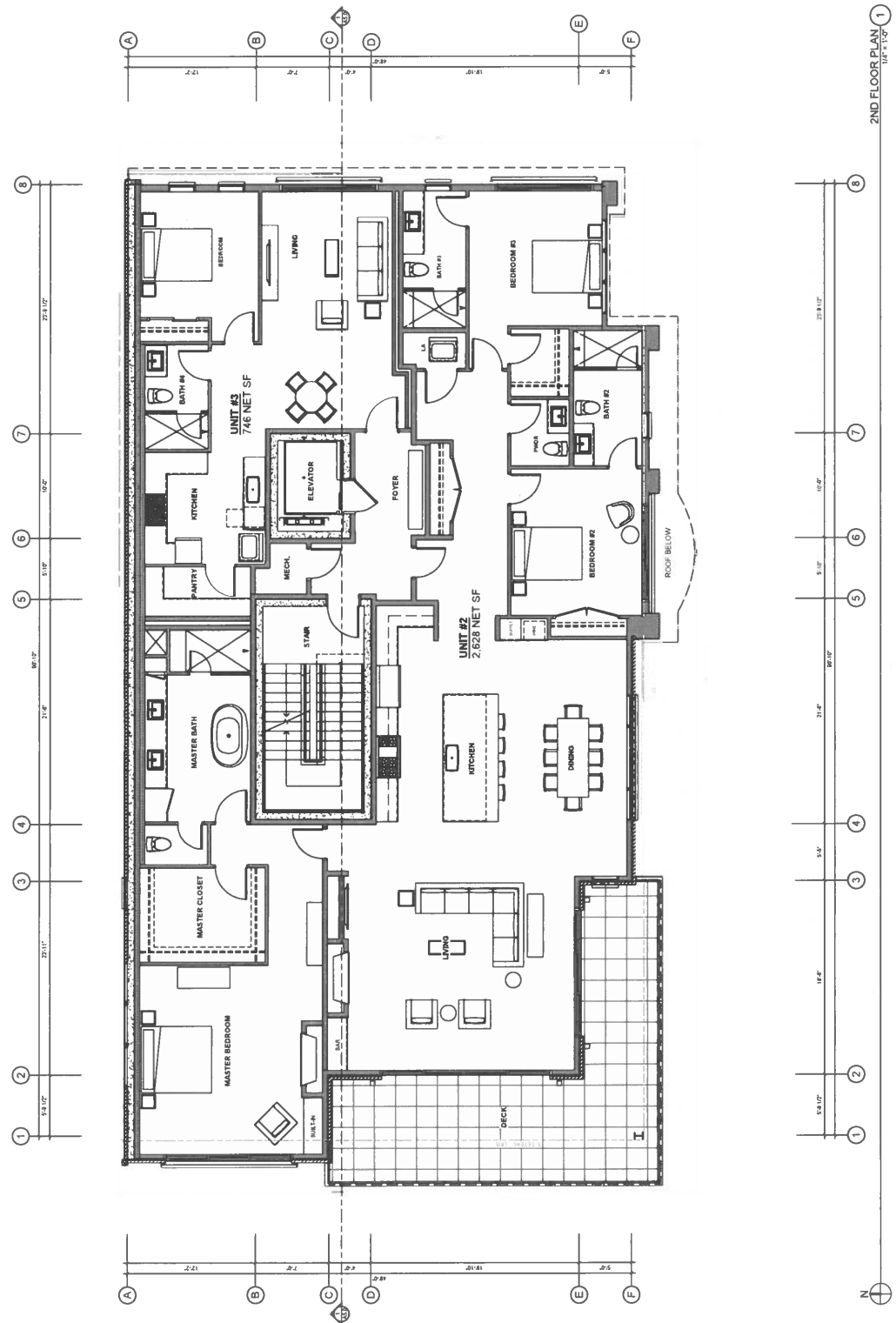
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APPROVED FOR CONSTRUCTION

PROJECT NO. A21-118  
 DATE: 2/22/23

**A2.2**

PLOT SCALE: 1:1













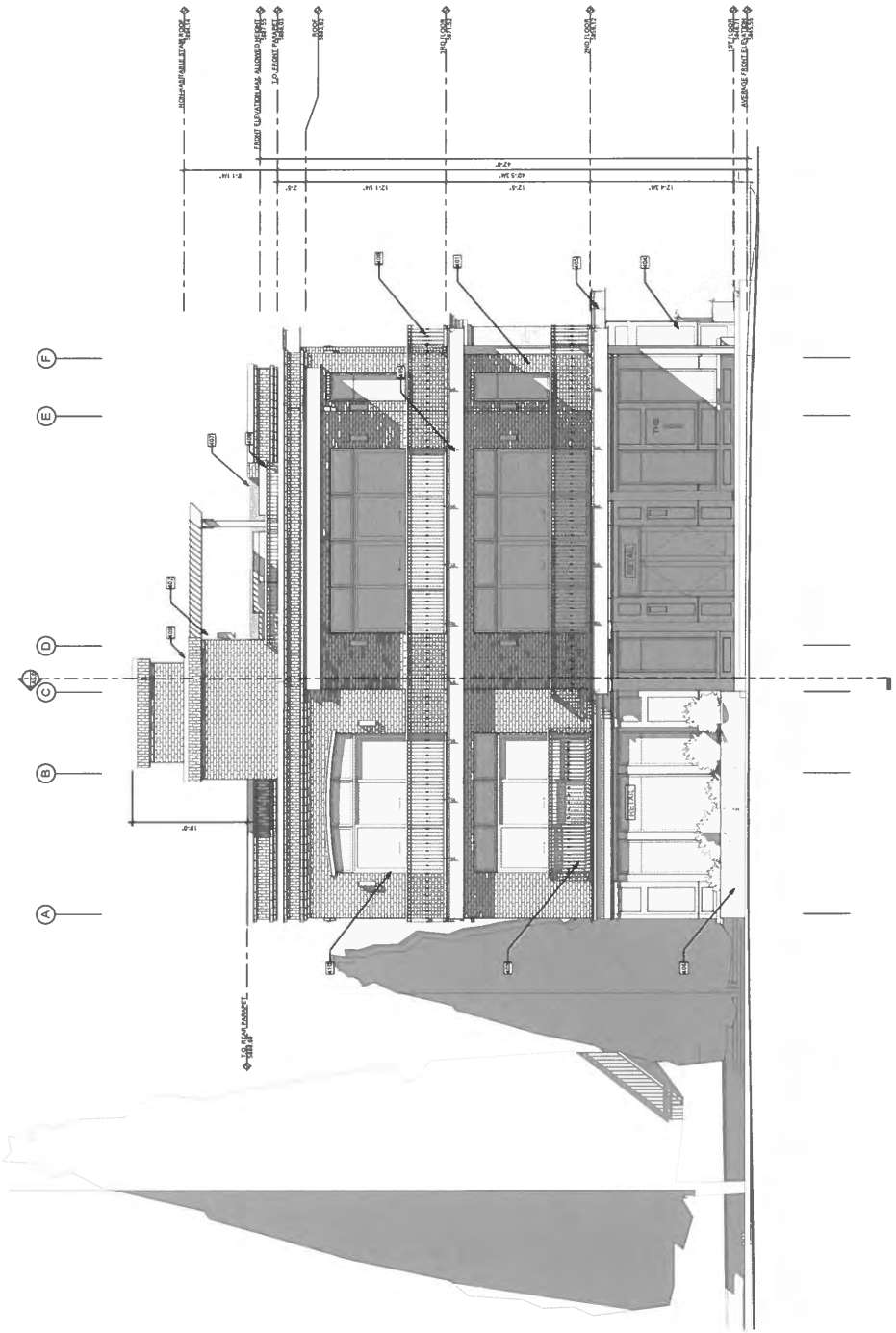
11441 1st Street, Suite 200  
 Richmond, VA 23133  
 TEL: (804) 455-9790  
 FAX: (804) 455-4444

REGISTERED ARCHITECT  
 PREVIOUSLY REGISTERED IN THE STATE OF VIRGINIA  
 MICHAEL C. CARR  
 STATE OF VIRGINIA  
 07/27/23

REVISIONS	DATE

PROJECT / CLIENT  
**THE 208 BUILDING**  
 CARR, MICHAEL

JOB ADDRESS  
 208 N. LEVADALE KETCHUM  
 RICHMOND, VA 23108  
 PARCEL: 89PK0000030010



WEST ELEVATION (2)  
 1/4" = 1'-0"

**KEY NOTES**

- 001 BRICK VENEER
- 002 LIGHTING @ ALL EXTERIOR DOORS INSTALLED PER ARCHITECT'S SCHEDULE
- 003 LIGHTING FIXTURES SHALL COMPLY WITH CITY SPECIFICATIONS
- 004 BLACK STEEL GUARD MIN. 75% TRANSPARENT AT METAL MESH SCREEN
- 005 BLACK STEEL C-CHANNEL
- 006 BLACK STEEL PLANTERS TO REMAIN # BELOW WINDOW
- 007 METAL MESH SCREEN
- 008 BLACK STEEL GUARD MIN. 75% TRANSPARENT AT METAL MESH SCREEN
- 009 BLACK METAL COPING OVER PARAPET WALL
- 010 METAL CLAD WOOD WINDOWS AND DOORS

DRAWING NAME  
**ELEVATIONS**

Drawn By: MS  
 Checked By: MK  
 Owner Approval: \_\_\_\_\_

PHASE  
 CONSTRUCTION DRAWINGS

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PROJECT No. A21-198  
 DATE 2/22/2023

**A4.1**

PLOT SCALE 1:1

INTAKE DATE	DATE
02/22/23	

PROJECT / CLIENT  
**THE 208 BUILDING**  
 CARR, MICHAEL

ZOB ADDRESS  
 208 N LEAVELLE KETCHUM  
 PARCEL #P79K0000320010

DRAWING NAME  
**ELEVATIONS**  
 Drawn By: MS  
 Checked By: MR  
 Owner Approval

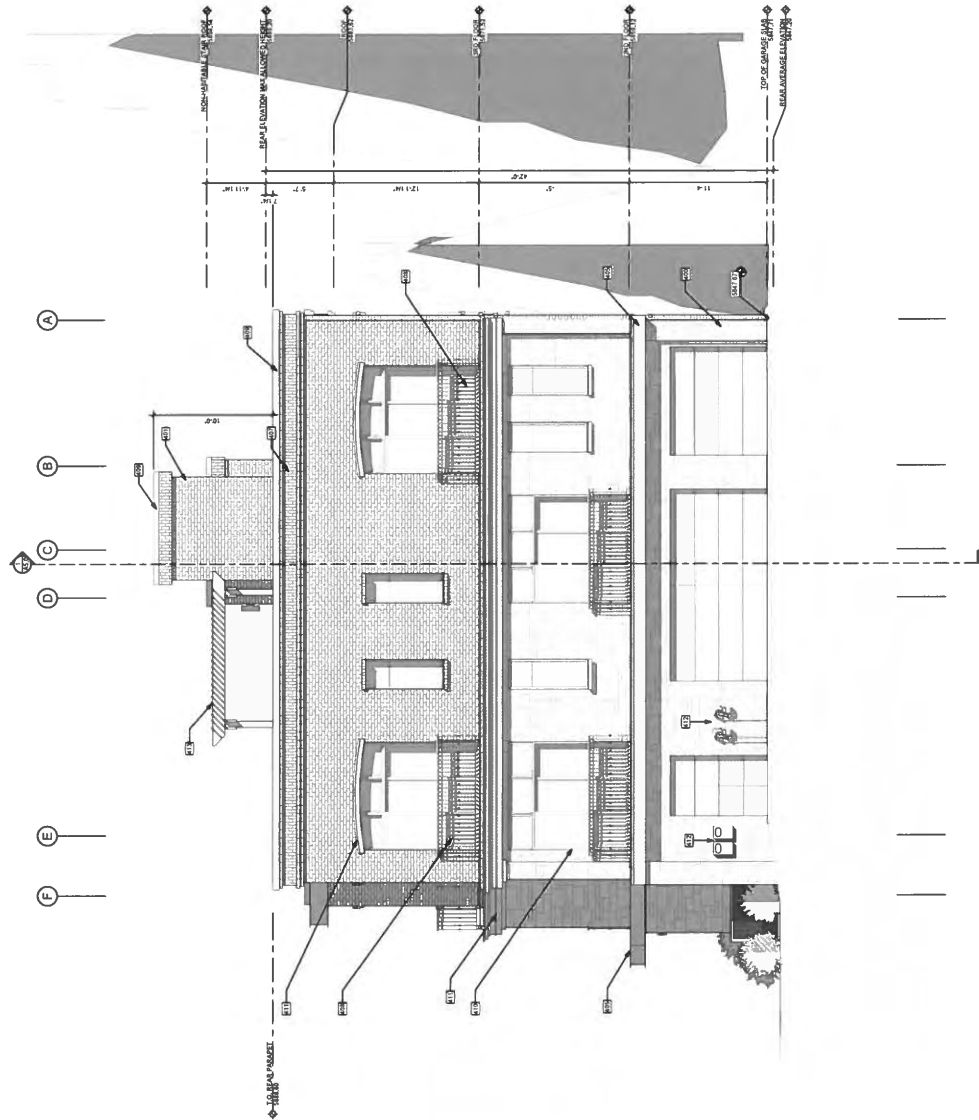
PHASE  
 CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION

PROJECT No. A23-188  
 DATE 2/22/2023

PLOT SCALE 1:1



**EAST ELEVATION 1**  
 1/4" = 1'-0"

**KEY NOTES**

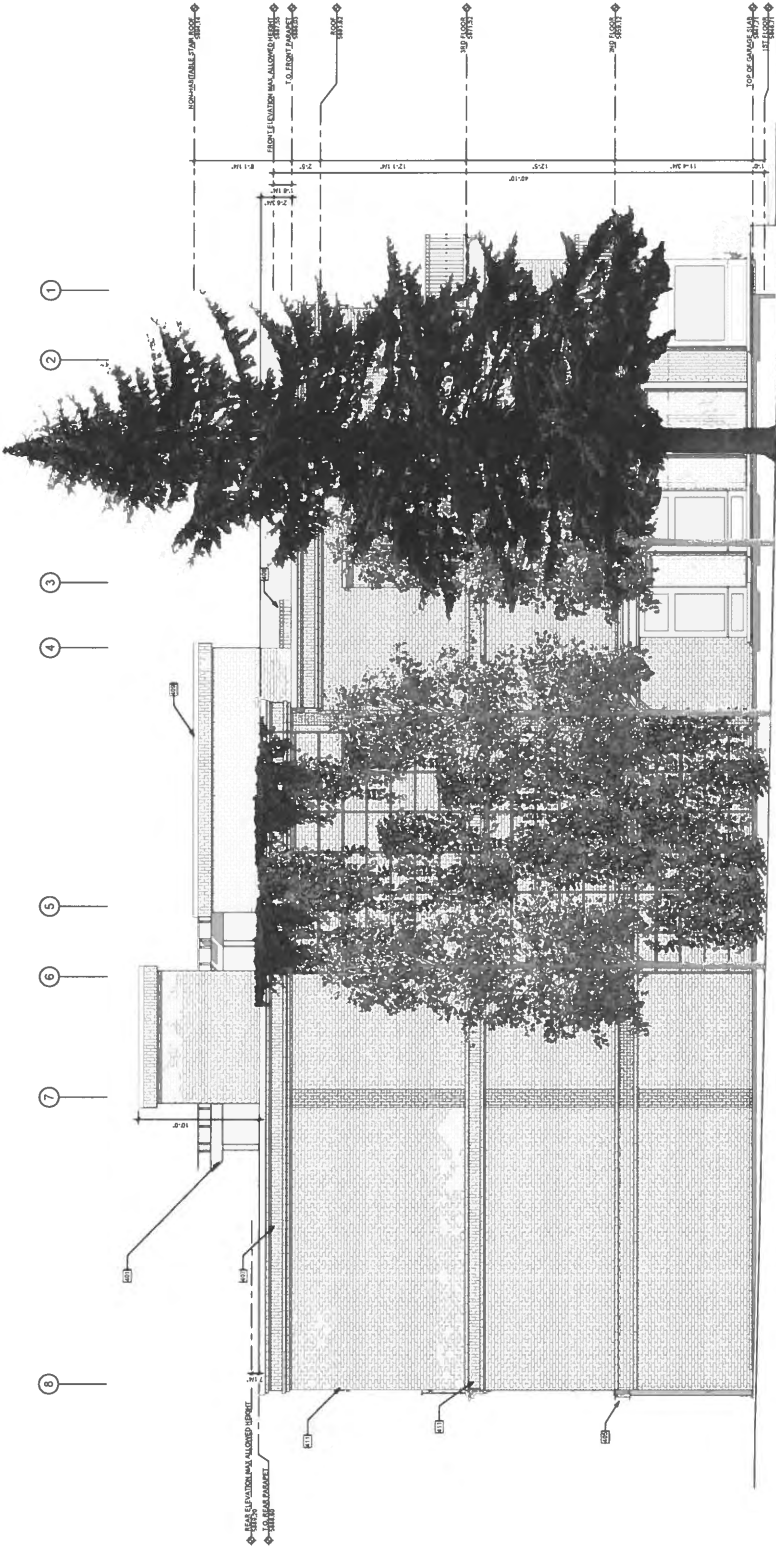
- 600 NATURAL STONE VENEER
- 601 BRICK VENEER
- 602 BLACK STEEL CHANNEL
- 603 BLACK STEEL GUARD MIN 1/4" TRANSPARENT AT ROOFTOP
- 604 ALUMINUM CORNING COVER PRESERVE HALL
- 410 METAL CLAD WOOD WINDOWS AND DOORS
- 411 PRE CAST CONCRETE LINTEL
- 412 PRE CAST CONCRETE CANOPY
- 413 BLACK STEEL FRAMED TRELLIS W/ BLACK STAINED WOOD CANOPY



REVISIONS	DATE

PROJECT / CLIENT  
**THE 2018 BUILDING**  
 CARR MICHAEL

JOB ADDRESS  
 200 N. LUDWIG KETCHUM  
 HOUSTON, TX 77002  
 PARCEL # 894000000000



**NORTH ELEVATION 1**  
1/8" = 1'-0"

**KEY NOTES**

- 101 BRICK VENEER
- 102 BLACK STEEL CHANNEL
- 103 BRICK PARAPET WALL
- 104 BLACK STEEL GUARD MIN 75% TRANSPARENT AT ROOFTOP
- 105 BRICK FACE CONCRETE OVER PARAPET WALL
- 106 CAST CONCRETE DRIVE

DRAWING NAME  
**ELEVATIONS**

Drawn By: MS  
 Checked By: EB  
 Owner Approval: \_\_\_\_\_

PHASE  
 CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION





11444 SE 1ST STREET, SUITE 200  
 TUMACACI, ARIZONA 85622  
 TEL: (480) 452-2740  
 FAX: (480) 452-8448

REGISTRATION  
 ARCHITECT  
 STATE OF ARIZONA  
 PREVIOUSLY  
 REGISTERED  
 IN THE  
 STATE OF MARYLAND

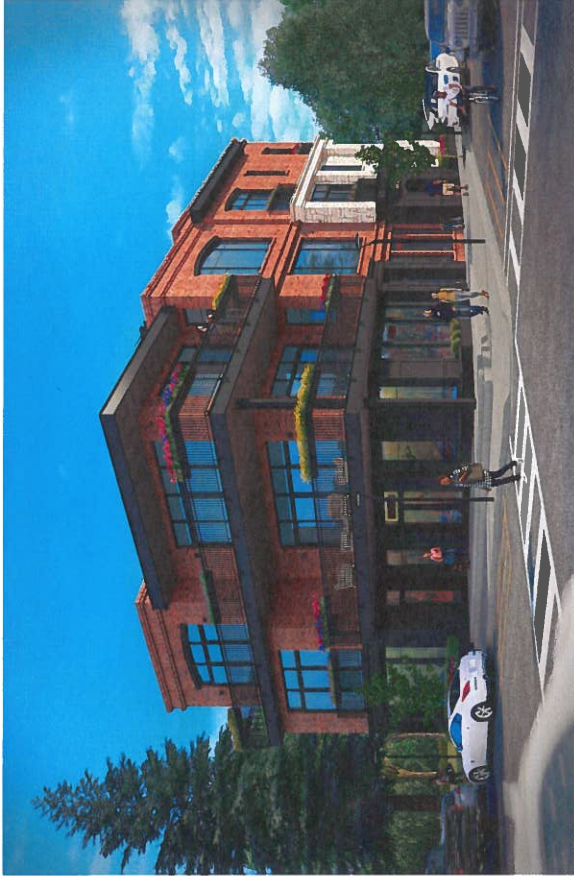
INTAKE DATE	DATE
02/27/23	

PROJECT / CLIENT  
**THE 208 BUILDING**  
 CLAIR, MICHAEL

JOB ADDRESS  
 200 N LEAVELLE KETCHUM  
 TUMACACI, ARIZONA 85622  
 PARCEL: RPT00000310010



NORTH EAST PERSPECTIVE



SOUTH EAST PERSPECTIVE

NOTE: ALL RENDERINGS ARE FOR ILLUSTRATIVE PURPOSES ONLY, NOT TO BE USED FOR CONSTRUCTION.



SOUTH WEST PERSPECTIVE

DRAWING NAME  
**PERSPECTIVES**

Drawn By: MS  
 Checked By: LR  
 Owner Approval

PHASE  
 CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION

PROJECT No. 421-108  
 DATE: 02/20/23  
**A4.5**  
 1:1 SCALE

DATE	DESCRIPTION

PROJECT CLIENT  
**THE 208 BUILDING**  
 CARR MICHAEL

JOB ADDRESS  
 208 N. LEADVILLE AVENUE  
 PARCEL LPT# 000002010

DRAWING NAME  
**SECTIONS**

Drawn By: MS  
 Checked By: MR  
 Owner Approval: \_\_\_\_\_

PHASE  
**CONSTRUCTION DRAWINGS**

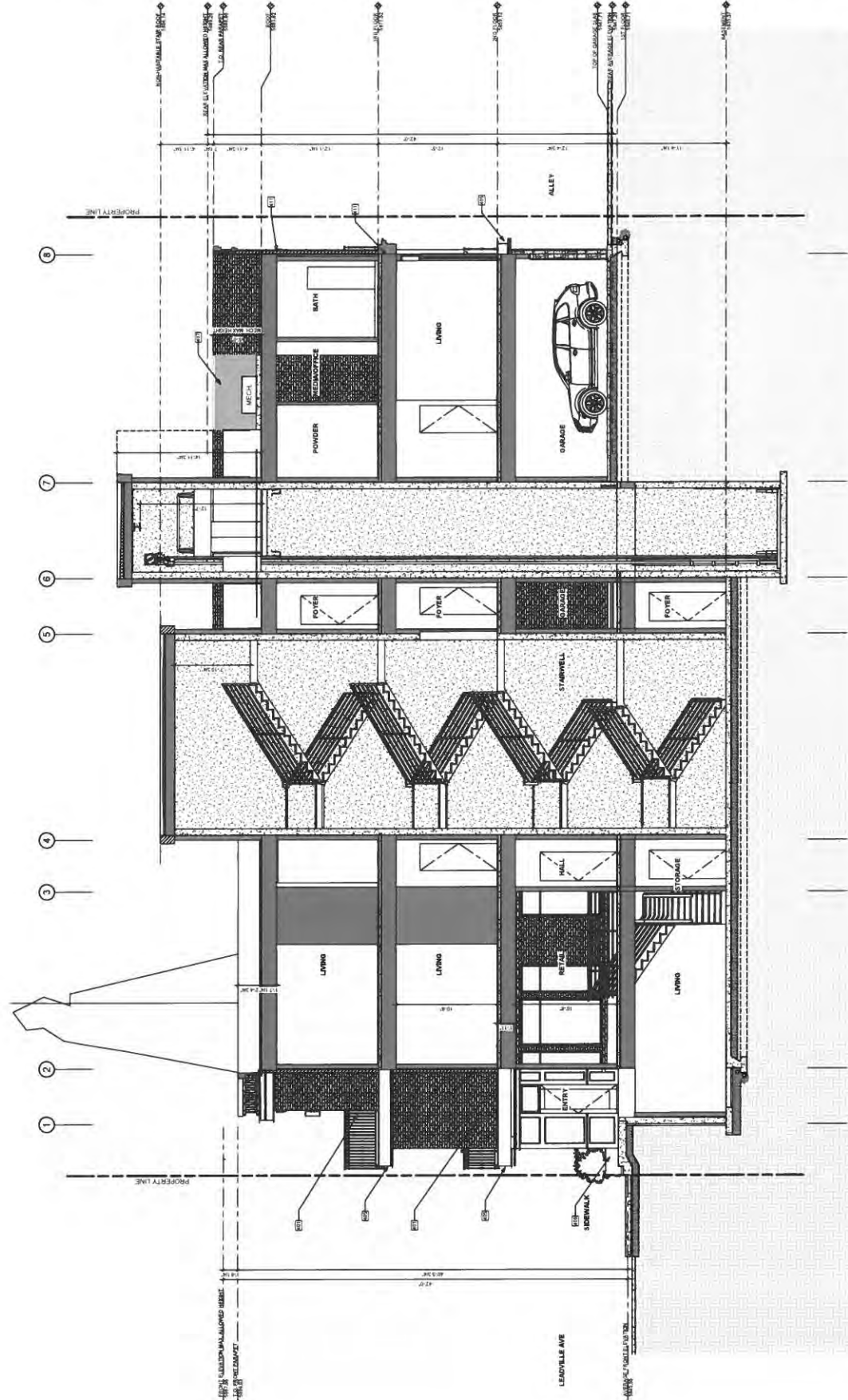
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APPROVED FOR CONSTRUCTION

PROJECT No. A5.1188  
 DATE: 2/22/23

**A5.0**

PLOT SCALE: 1/16" = 1'-0"



**SECTION 1.1**  
 1/16" = 1'-0"

**KEY NOTES**

- 001 BRICK VENEER
- 002 BLACK STEEL COLUMN
- 003 CONCRETE FLOOR TO REMAIN F BELOW WINDOW
- 004 SILL AT RETAIL LEVEL
- 007 METAL WEIR SCREEN
- 011 PRE-CAST CONCRETE LINTEL



**MEDICI ARCHITECTS**  
 11441 161 STREET, SUITE 200  
 FARMINGTON, CT 06031  
 TEL: (425) 455-2791  
 FAX: (425) 455-8446

REGISTRATION  
 LICENSE  
 NUMBER  
 STATE OF  
 CONNECTICUT  
 PREVIOUSLY  
 LICENSED  
 MICHAEL C. JAMES  
 STATE OF MICHIGAN

INTAKE DATE	DATE
02/22/23	

PROJECT / CLIENT  
**THE 208 BUILDING**  
 CARR, MICHAEL

JOB ADDRESS  
 208 W LINDVÄLLE ETCHEM  
 PARCEL #RPM000020010

DRAWING NAME  
**EXTERIOR MATERIALS**

Drawn By: MS  
 Checked By: MK  
 Owner Approval

PHASE  
 CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION

PROJECT No. A5.1.08  
 DATE: 02/22/2023

**A5.1**  
 PLOT SCALE: 1:1



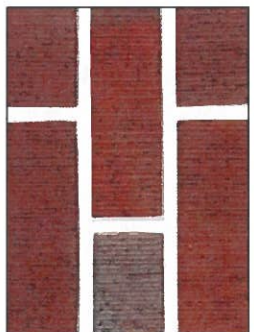
**STEEL**  
 BLACK STEEL



**WOOD SOFFIT**  
 ALASKAN YELLOW CEDAR VG



**STONE VENEER**  
 SILVERTIP STACK



**BRICK VENEER**  
 MOUNTAIN BLEND WITH RUG TEXTURE



REGISTRATION: LICENSE ARCHITECT  
 STATE OF NEW YORK  
 MICHELE C. AMADIO  
 DATE OF BIRTH: 02/22/23

REVISIONS	DATE

PROJECT CLIENT  
**THE 208 BUILDING**  
 CARR, MICHAEL

JOB ADDRESS  
 208 W. LEAVILLE RETIUM  
 PAVEL: RFP#000020010

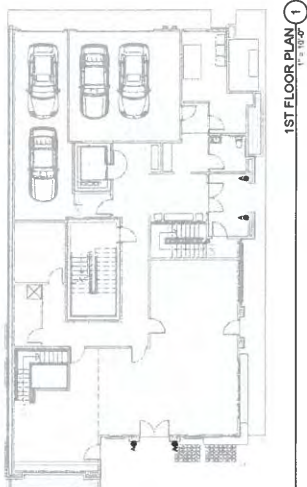
DRAWING NAME  
**EXTERIOR LIGHTING PLANS  
 AND FIXTURES**

Drawn By: MS  
 Checked By: MS  
 Owner Approval

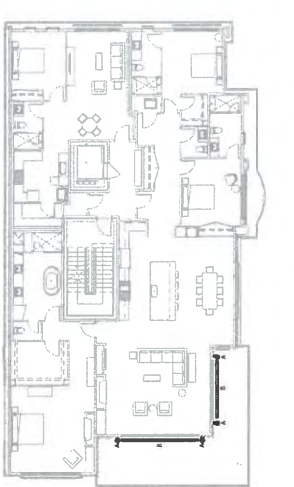
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PROJECT No. A211-18  
 DATE: 2/22/2023

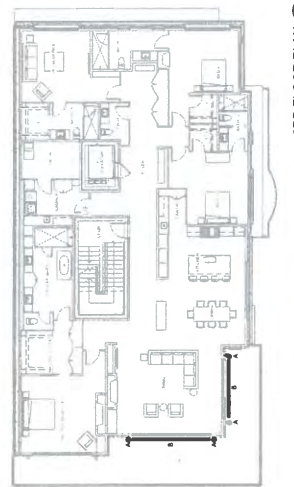
PLOT SCALE: 1:1



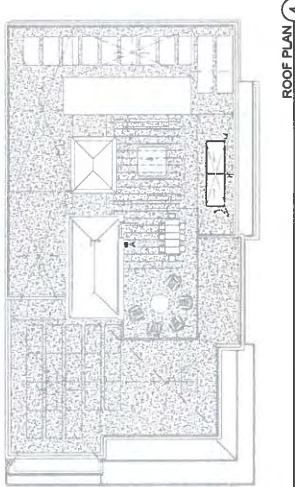
1st FLOOR PLAN  
 1/8" = 1'-0"



2nd FLOOR PLAN  
 1/8" = 1'-0"



3rd FLOOR PLAN  
 1/8" = 1'-0"



ROOF PLAN  
 1/8" = 1'-0"

**LITECONTROL 2L-R-D**  
 ARCHITECTURAL LIGHTING

**FEATURES**

- 2500K color temperature
- Variable intensity and mounting height
- Variable intensity and mounting height
- Variable intensity and mounting height

**INSTALLATION**

- 2500K color temperature
- Variable intensity and mounting height
- Variable intensity and mounting height
- Variable intensity and mounting height

**PRODUCT DETAILS**

**PRODUCT DETAILS**

Grid  
 118" x 118" x 118"

**END CAP VIEW**

**TEGEL 18 WALL SCENE**

**TECH LIGHTING**

**TECH LIGHTING**

118" x 118" x 118"

**DO ILLUMINATING UR20**  
 ARCHITECTURAL LIGHTING

**FEATURES**

- High performance LED with 100% dimmable
- 100% dimmable
- 100% dimmable

**INSTALLATION**

- High performance LED with 100% dimmable
- 100% dimmable
- 100% dimmable

**PRODUCT DETAILS**

**PRODUCT DETAILS**

Grid  
 118" x 118" x 118"

**END CAP VIEW**

**TEGEL 18 WALL SCENE**

**TECH LIGHTING**

**TECH LIGHTING**

118" x 118" x 118"



**MEDICI ARCHITECTS**  
 11441 151 STREET SUITE 200  
 WILLOW BROOK, IL 60091  
 TEL: (708) 452-9794  
 FAX: (708) 452-8446

**REGISTERED ARCHITECT**  
**PREMIUM**  
 STATE OF ILLINOIS  
 NO. 043-000000000000000000  
 EXPIRES 12/31/2023

REVISIONS	DATE

**PROJECT CLIENT**  
 THE 208 BUILDING  
 CARR MICHAEL

**JOB ADDRESS**  
 208 N LENOX AVE KETCHUM  
 WILLOW BROOK, IL 60091  
 PARCEL: 88P00000020010

**DRAWING NAME**  
**SPEC SHEET**

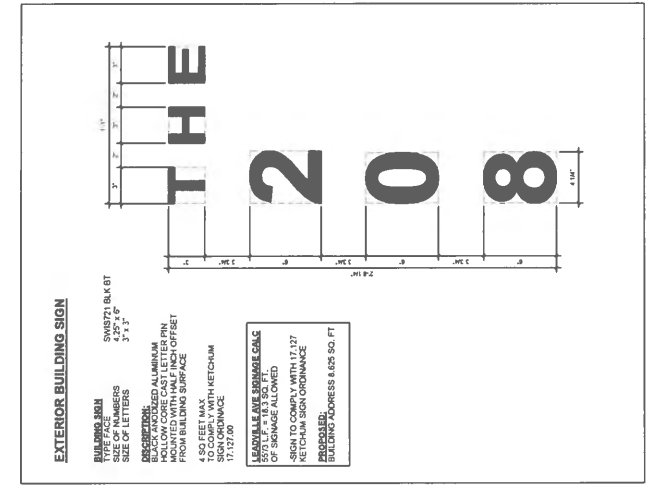
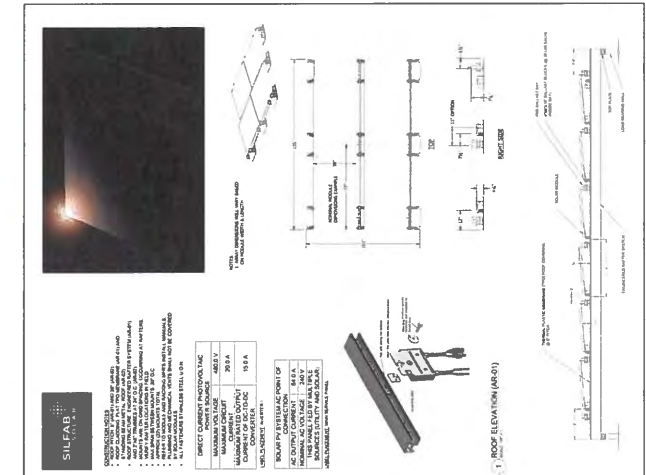
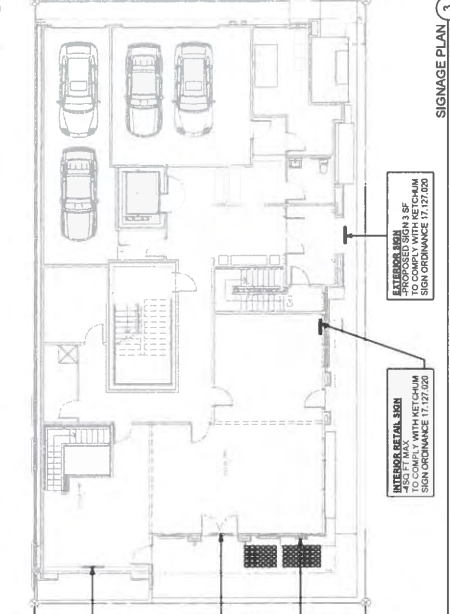
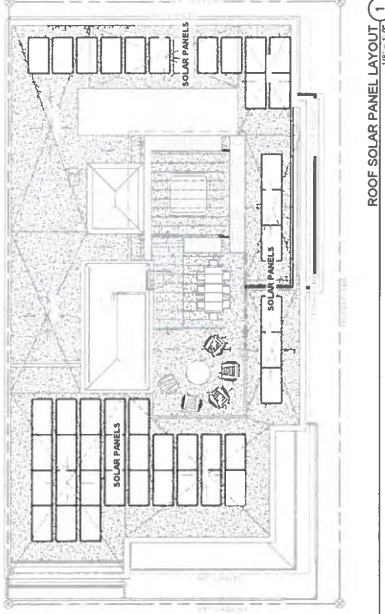
Drawn By: MS  
 Checked By: MR  
 Owner Approval: \_\_\_\_\_

**PHASE**  
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**APPROVED FOR CONSTRUCTION**

**PROJECT NO.** A21-198  
**DATE:** 2/22/2023  
**PLOT SCALE:** 1:1



**GBA**

**PRECAST CONCRETE AND GLASS PAVERS**

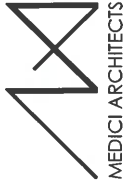
**Design Features & Options:**  
 Glass pavers are available in a variety of colors, textures, and finishes. They are made from high-quality materials and are designed to last for many years. They are available in a variety of sizes and shapes, and can be used for a wide range of applications. They are also available in a variety of colors and finishes, and can be used to create a wide range of designs.

**Glass Pavers & Panel Sizes:**  
 12" x 12" x 1/2"  
 12" x 18" x 1/2"  
 18" x 18" x 1/2"  
 18" x 24" x 1/2"

**Load Capabilities:**  
 Glass pavers are designed to support a load of up to 100 lbs per sq. ft. They are made from high-quality materials and are designed to last for many years. They are available in a variety of sizes and shapes, and can be used for a wide range of applications. They are also available in a variety of colors and finishes, and can be used to create a wide range of designs.

**CONSTRUCTION DRAWINGS**

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**MEDICI ARCHITECTS**  
 200 W. RIVER ST.  
 SUITE 301  
 CHICAGO, IL 60601  
 TEL: (773) 463-2929  
 TEL: (773) 724-2174

REGISTRATION:

INTAKE DATE	10/12/22	DATE
REVISIONS		

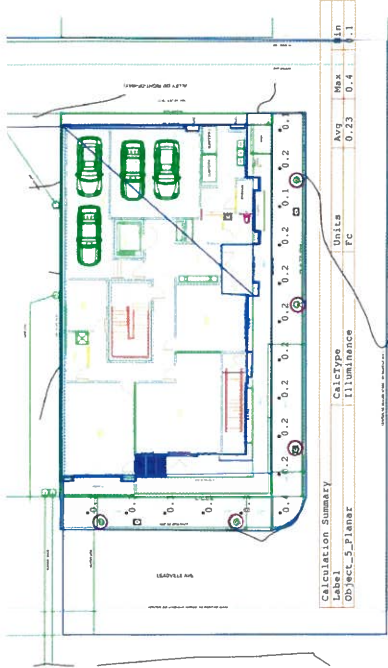
PROJECT / CLIENT  
**THE 208 BUILDING**  
 CORR. MICHAEL

JOB ADDRESS  
 208 W. RIVER ST. CHICAGO, IL 60601  
 PARCEL # PFD0000230010

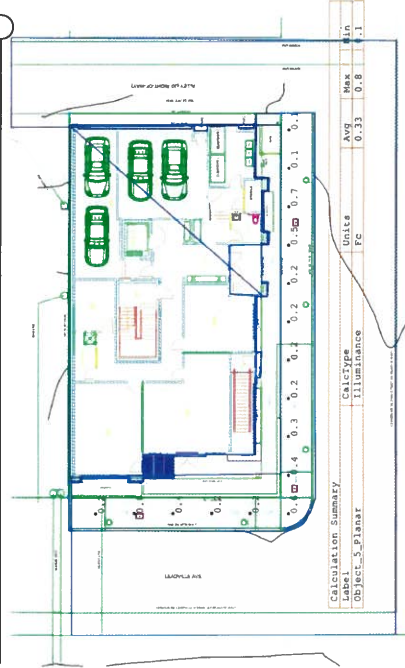
DRAWING NAME  
**PHOTOMETRIC STUDIES**  
 Drawn By: ISHUR  
 Checked By: EB  
 Owner Approval:  
 PHASE:  
 CONSTRUCTION DRAWINGS  
 The drawings in the submittal assembly of MEDICI ARCHITECTS and can be reproduced only with the permission of the Architect. No part of this drawing shall be carried out without the permission from the ARCHITECT.  
 APPROVED FOR CONSTRUCTION:

PROJECT NO.: A211189  
 DATE: 10/12/2022  
 1:19 PM

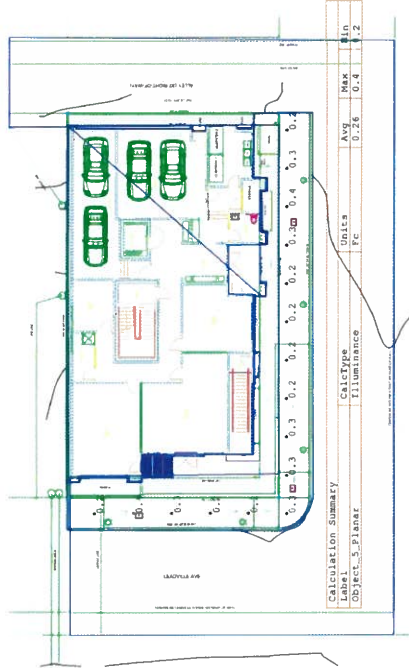
**E1.0**  
 PLOT SCALE: 1:1



PHOTOMETRIC STUDY - 15' POLE UR20



PHOTOMETRIC STUDY - 15' POLE ERCL



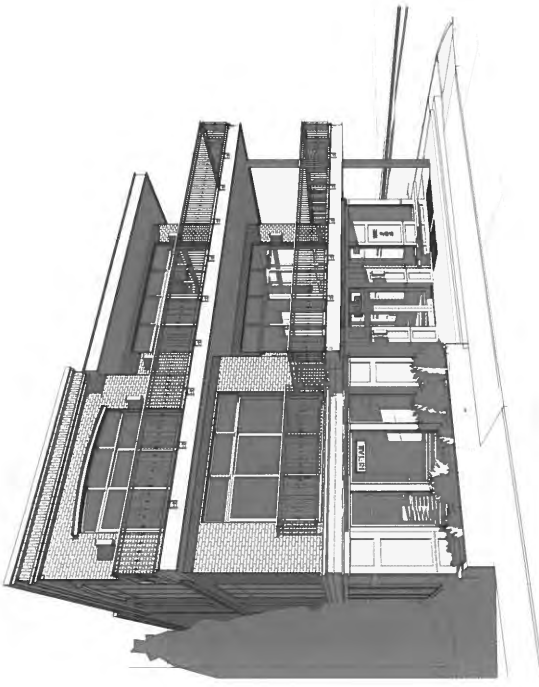
PHOTOMETRIC STUDY - 25' POLE ERCL



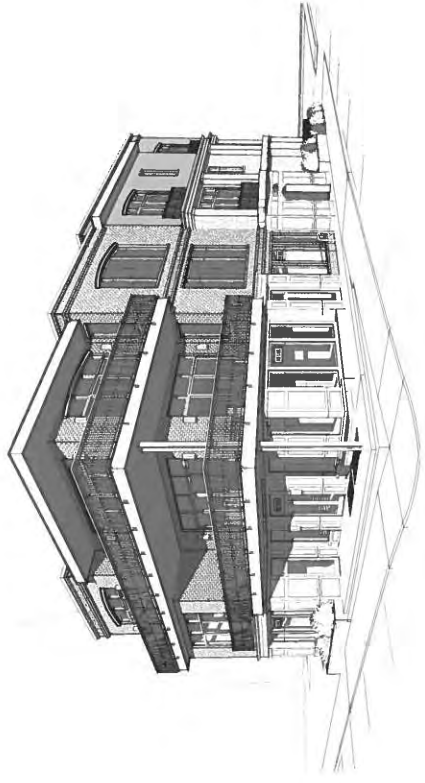
REVISIONS	DATE

PROJECT CLIENT  
**THE 20th BUILDING**  
 CARR, MICHAEL

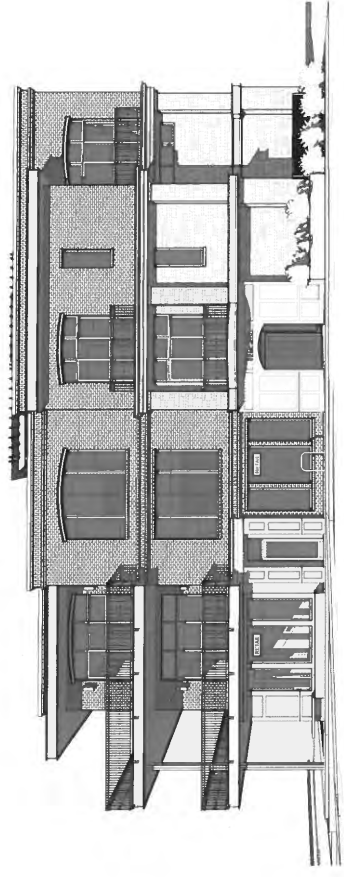
JOB ADDRESS  
 200 N LEAVILLE KETCHUM  
 PARCEL # 200000020010



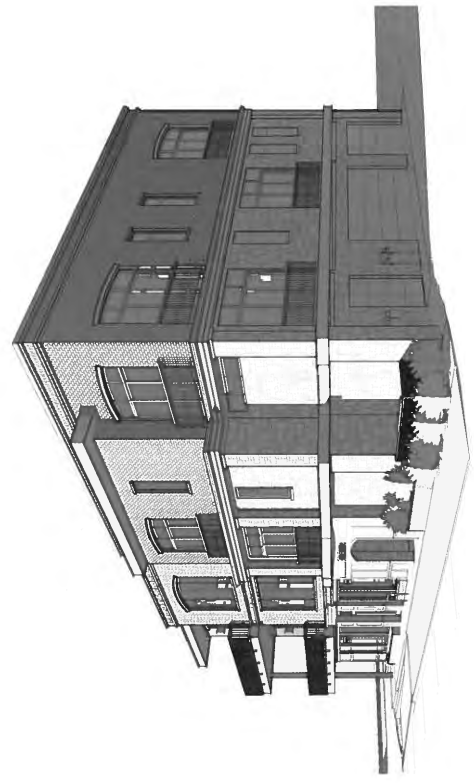
NORTHWEST PERSPECTIVE ④



SOUTHWEST PERSPECTIVE ①



SOUTH PERSPECTIVE ③



SOUTHEAST PERSPECTIVE ②

DRAWING NAME  
**PERSPECTIVES**

Drawn By: MS  
 Checked By: NR  
 Owner Approval: \_\_\_\_\_

PHASE  
 CONSTRUCTION DRAWINGS

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APPROVED FOR CONSTRUCTION



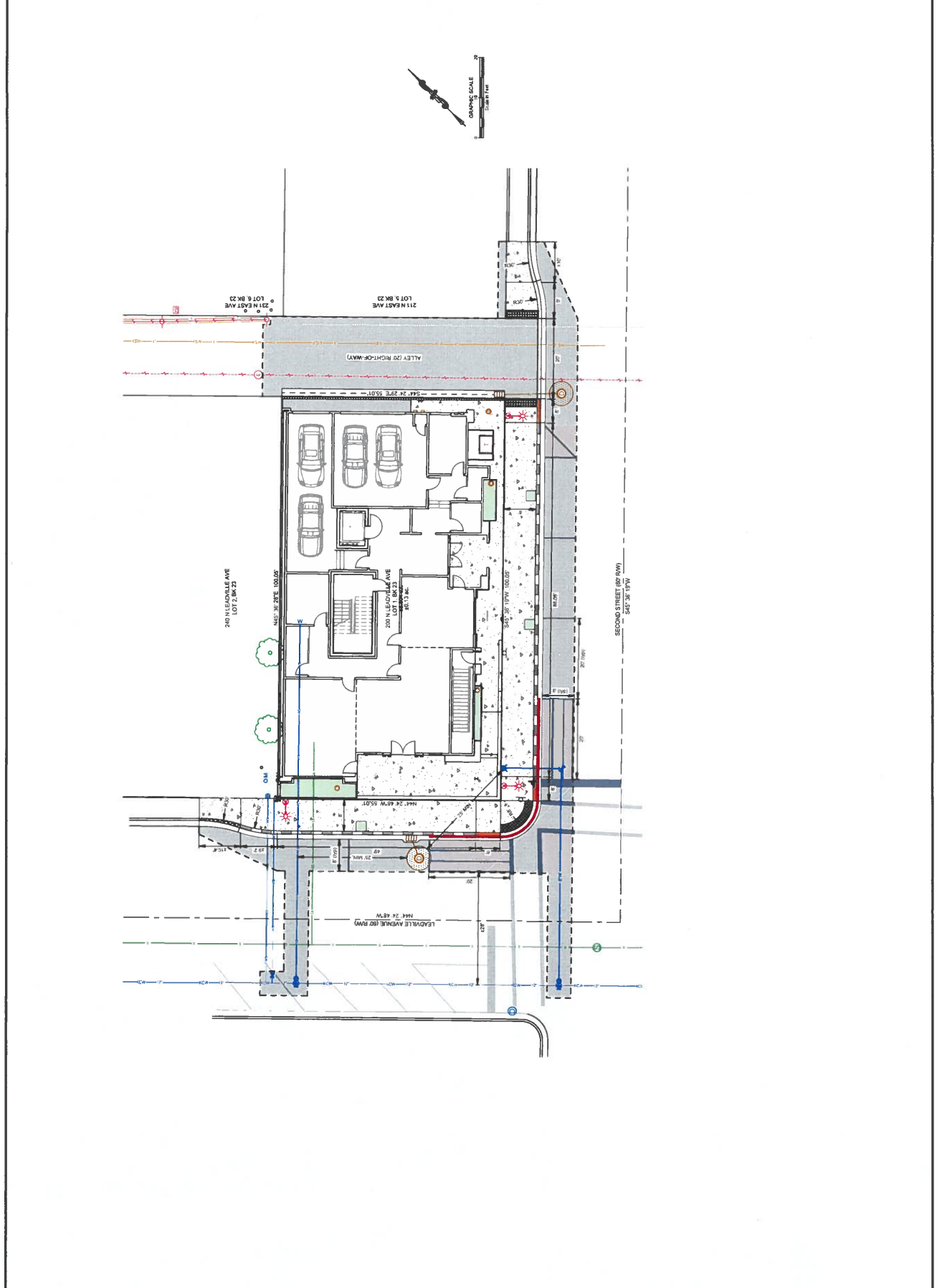
City of Ketchum

**Exhibit B:**  
**200 N Leadville Ave -**  
**Preliminary Civil and Landscape**  
**Drawings**

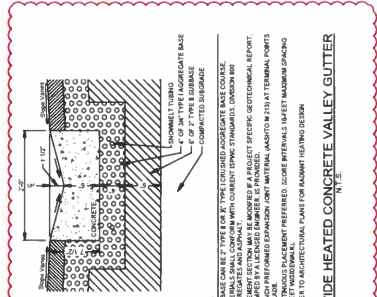






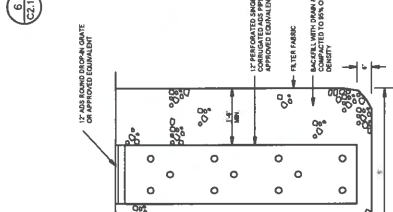
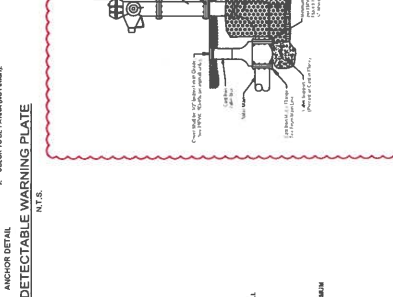
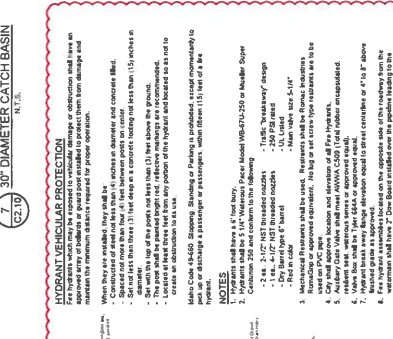
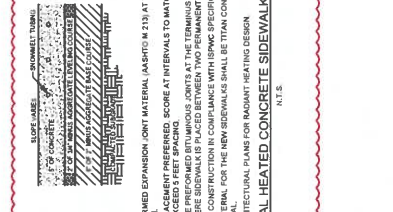
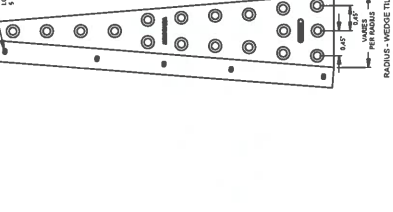
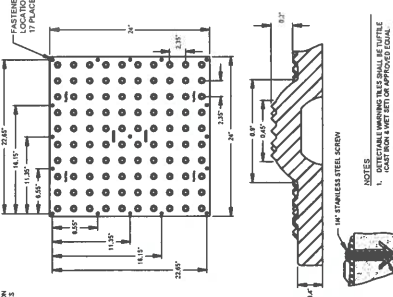
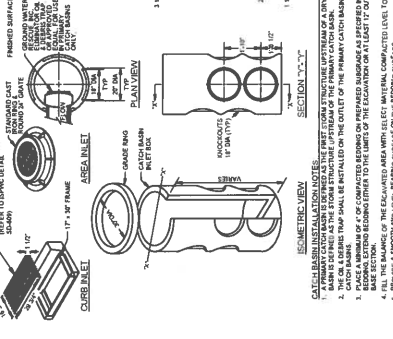
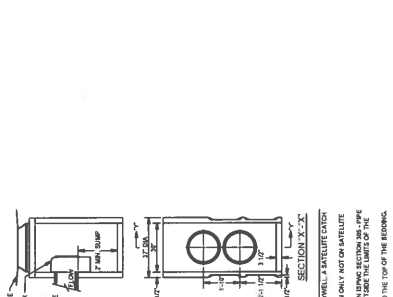
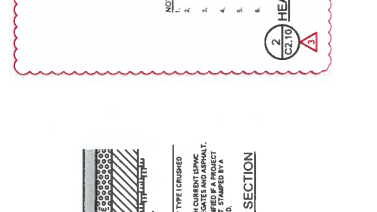
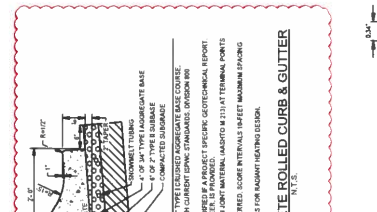
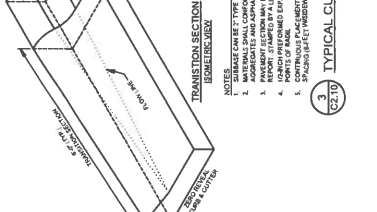
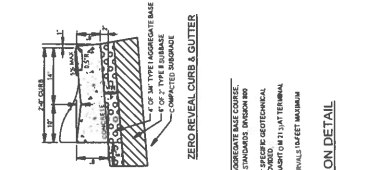






**24" WIDE HEATED CONCRETE VALLEY GUTTER**  
N.T.S.

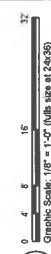
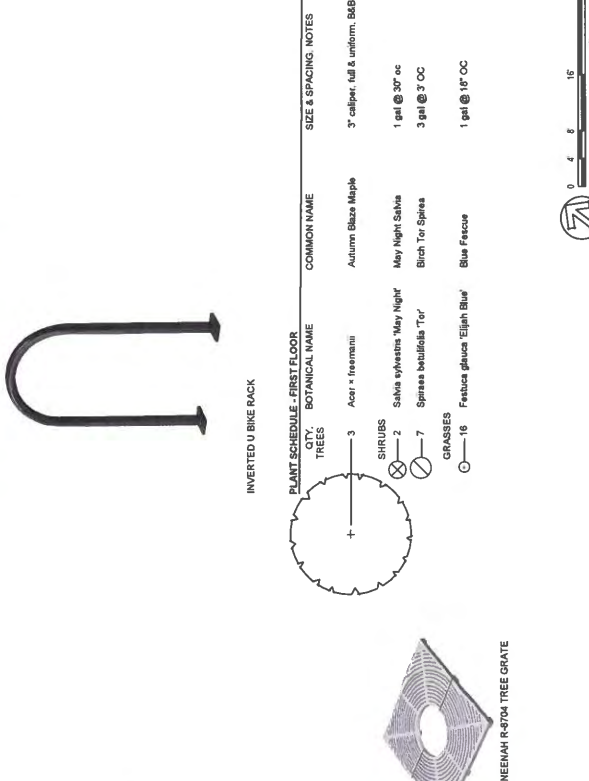
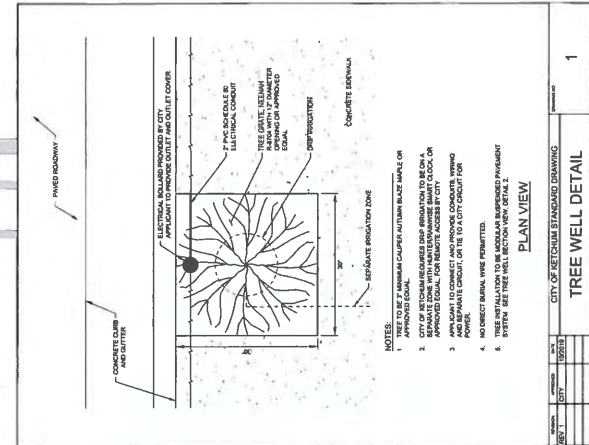
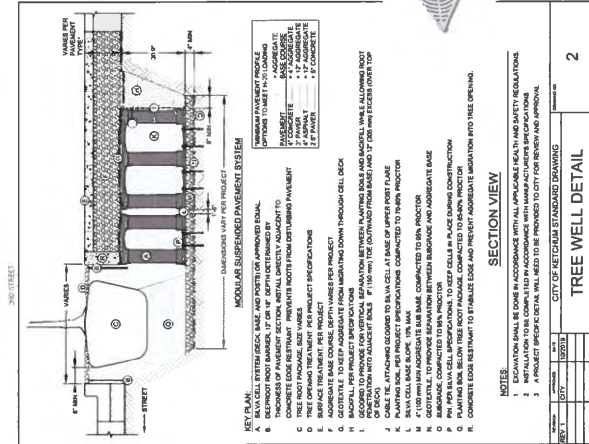
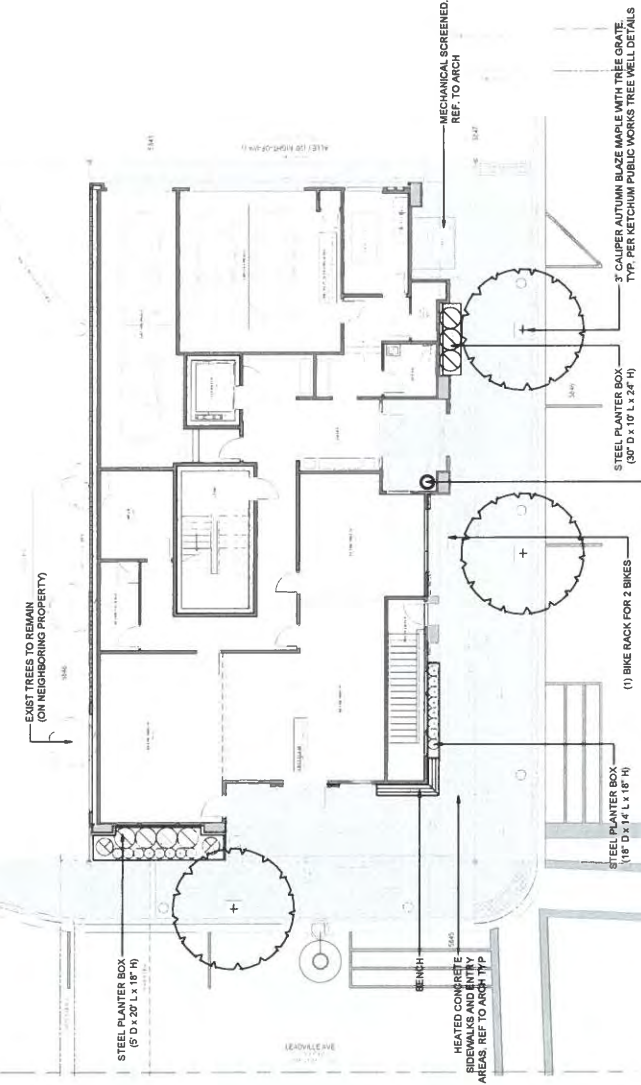
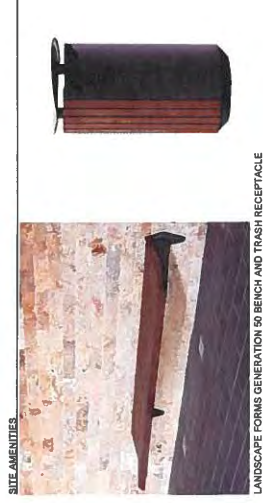
NOTES:  
1. 1/2" CHURB PREFORMED EXPANSION JOINT (AS-PTO M 213) AT TERMINAL POINTS FOR 5 FEET SPACING.  
2. MATERIALS SHALL CONFORM WITH CURRENT IBC/SP-30 STANDARDS UNLESS OTHERWISE SPECIFIED.  
3. PAVEMENT SECTION MAY BE MODIFIED AS A PROJECT SPECIFIC GEOTECHNICAL REPORT.  
4. 1/2" CHURB PREFORMED EXPANSION JOINT MATERIAL (AS-PTO M 213) AT TERMINAL POINTS FOR 5 FEET SPACING.  
5. CONTINUOUS PLACEMENT PREFERRED. SCORE INTERVALS SHALL BE MAXIMUM SPACING PER IBC/SP-30.  
6. REFER TO ARCHITECTURAL PLANS FOR MAGNIFYING DESIGN.





**Design Review Re-Submittal**

- LANDSCAPE LEGEND**
- TRASH RECEPTACLE
  - BIKE RACK
  - ▤ INTEGRATED BENCHES
  - ▥ HEATED CONCRETE SIDEWALKS
- LANDSCAPE NOTES**
- STREET TREES
    - 1 STREET TREE / 40 LF OF STREET FRONTAGE
    - 100' LF OF FRONTAGE / 40 LF = 3 (2.5) STREET TREES REQUIRED
  - BIKE RACKS
    - 1 BIKE RACK PROVIDED FOR 4 PARKING SPACES
    - INVERTED U SHAPE FOR 2 BIKES
  - BENCHES & TRASH
    - 1 BENCH AND 1 TRASH RECEPTACLE PROVIDED ALONG EACH FRONTAGE OF 2ND ST AND LEADVILLE AVE
  - SNOW STORAGE
    - HEATED CONCRETE SIDEWALKS AND ENTRY AREAS PROVIDED. ELIMINATING REQUIREMENT FOR SNOW STORAGE



NO.	DATE	DESCRIPTION
1	12/22/2020	ISSUED FOR DESIGN REVIEW
2		

NO.	DATE	DESCRIPTION
1	12/22/2020	ISSUED FOR DESIGN REVIEW
2		

NO.	DATE	DESCRIPTION
1	12/22/2020	ISSUED FOR DESIGN REVIEW
2		

NO.	DATE	DESCRIPTION
1	12/22/2020	ISSUED FOR DESIGN REVIEW
2		

NO.	DATE	DESCRIPTION
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2		

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2		

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2		

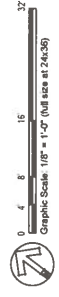
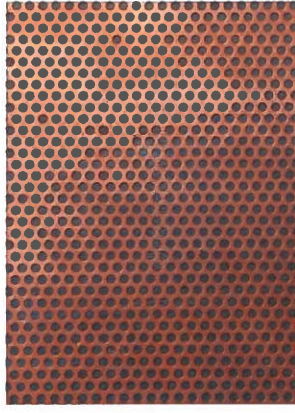
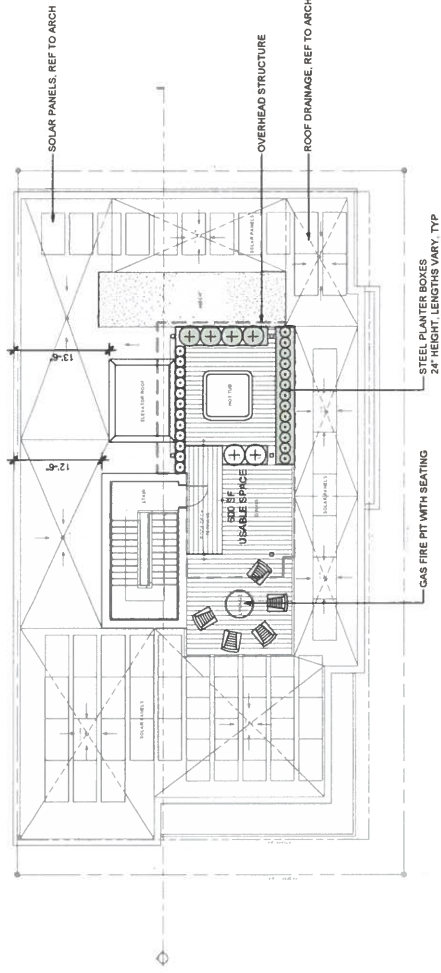
**Design Review Re-Submittal**

**ROOF DECK NOTES**

- Landscape planters, tables, chairs, & hot tub are not permanently affixed in place
- Gas Fire Pit - may be a permanent structure, requiring a min. 10' setback from building facade.

**PLANT SCHEDULE - ROOF DECK**

QTY.	BOTANICAL NAME	COMMON NAME	SIZE & SPACING NOTES
8	Callimagrostis acutiflora	Karl Foerster Grass	2 gal @ 36" OC
25	Festuca glauca 'Elijah Blue'	Blue Fescue	1 gal @ 18" OC







City of Ketchum

**Attachment S:  
Findings of Fact, Conclusions of  
Law, and Decision –  
Condominium Preliminary Plat**





**City of Ketchum  
Planning & Building**

IN RE:	)	
	)	
The 208 Condos	)	<b>KETCHUM PLANNING AND ZONING COMMISSION</b>
Condominium Subdivision – Preliminary Plat	)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND</b>
Date: April 11, 2023	)	<b>DECISION</b>
	)	
File Number: P22-035A	)	

**PROJECT:** The 208 Condominiums

**APPLICATION TYPE:** Condominium Subdivision – Preliminary Plat

**FILE NUMBER:** P22-035A

**ASSOCIATED APPLICATIONS:** Design Review (P22-035)

**REPRESENTATIVE:** Nicole Ramey, Medici Architects (Architect)

**OWNER:** 755 S Broadway, LLC

**LOCATION:** 200 N Leadville Ave – Lot 1, Block 23, Ketchum Townsite

**ZONING:** Community Core – Subdistrict 2 – Mixed Use (CC-2)

**OVERLAY:** None

**RECORD OF PROCEEDINGS**

The City of Ketchum received the application for Final Design Review and condominium preliminary plat on July 1, 2022. The Final Design and Preliminary Plat applications have been reviewed concurrently and were deemed complete on October 14, 2022. Department comments were provided to the applicant on July 27, 2022, and additional comments provided on October 14, 2022. Following receipt of the complete application, staff routed the application materials to all city departments for review. All department comments have been addressed satisfactorily through applicant revision of project plans or conditions of approval.

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on November 7, 2022. The public hearing notice was published in the Idaho Mountain Express on November 9, 2022. A notice was posted on the project site and the city’s website on November 7, 2022. Story poles were verified on the subject property on

November 22, 2022. The project was heard at the November 29, 2022 meeting of the Planning and Zoning Commission (the "Commission") and continued to a special meeting on December 20, 2022. The project was heard again on December 20, 2022, and continued to the January 10, 2023 meeting of the Commission. The applicant, citing the need for additional time to respond to Commission's comments, requested the January 10, 2023 hearing be continued to the February 28, 2023 meeting of the Commission. No information was presented or reviewed at the January 10, 2023 meeting and no public comment was taken.

The Planning and Zoning Commission (the "Commission") conducted their final consideration of the Design Review (Application No. P22-035) and the Condominium Subdivision Preliminary Plat (Application No. P22-035A) applications concurrently at their February 28, 2023 hearing, and the associated public hearings were combined in accordance with Idaho Code §67-6522. After considering staff's analysis, the applicant's presentation, and public comment, the Commission approved the Design Review application with a vote of 3-2 and recommended approval of the Condominium Subdivision Preliminary Plat application to the City Council with a vote of 3-2.

### **BACKGROUND**

The Applicant is proposing an 10,856 square foot three-story mixed-use development known as The 208 Condominiums (the "project"), located at 200 N Leadville Avenue (the "subject property"). The development is not subject to the interim ordinance as the applications were deemed complete prior to the effective date of the ordinance. The subject property is a vacant corner lot zoned Community Core -Subdistrict 2 - Mixed Use (CC-2) just southeast of the Kneadery and VP Companies offices, across from Vintage restaurant and another vacant lot on the opposite corner.

As proposed, the project includes 1,306 square feet of ground floor retail, and four residential dwelling units as follows:

- One dwelling unit in the basement – 639 net square feet (NSF)
- Two dwelling units on the second floor – 746 NSF and 2,628 NSF
- One dwelling unit on the third floor – 3,503 NSF

Based on the size of the units, a total of 4 parking spaces are required for the residential units. The project proposes two two-car garages. The retail space and the two residential units less than 750 net square feet are exempt from parking requirements.

The project proposes to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing, mitigating the additional floor area by making a community housing contribution. The total FAR for the project is 1.97, where 1.0 is permitted by right.

The project will construct improvements to the right-of-way per the City of Ketchum improvement standards including, three streetlights, asphalt alley, curb and gutter, and 8-foot sidewalks. The project proposes to snowmelt the sidewalks adjacent to the project. The city engineer and streets department has conducted a preliminary review all improvements and believes the improvements to

meet the city's standards. Final review of all improvements to the right-of-way will be conducted by the City Engineer and Streets Department prior to issuance of a building permit. An encroachment permit approved by the City Council will be required for the snow melt system and pavers.

**FINDINGS OF FACT**

The Commission, having reviewed the entire project record, provided notice, and conducted the required public hearing, does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

**FINDINGS REGARDING COMPLIANCE WITH PRELIMINARY PLAT SUBDIVISION REQUIREMENTS**

Preliminary Plat Requirements				
Compliant			City Code	City Standards
Yes	No	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.C.1</b>	<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 July 1, 2022.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I</b>	<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 October 14, 2022.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .1</b>	<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"/>	<b>16.04.030.I .2</b>	<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 "The 208 Condominiums" which is not the same as any other subdivision in Blaine County, Idaho.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .3</b>	<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 Sheets 1 and 4, the owner and subdivider is 755 S Broadway, LLC. The plat was prepared by Mark E. Phillips of Galena Engineering.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .4</b>	<b>Legal description of the area platted.</b>
			<i>Findings</i>	The legal description of the area platted is shown in the Certificate of Ownership on Sheet 4 of the preliminary plat.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .5</b>	<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 surrounding the subject property.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .6</b>	<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"/>	<b>16.04.030.I 7</b>	<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 all adjacent streets and easements. The property is currently vacant.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .8</b>	<b>Boundary description and the area of the tract.</b>
			<i>Findings</i>	Sheet 1 provides the boundary description of the area and includes square footage and acreage of the lot. Sheets 2 and 3 indicate the areas of each residential and commercial unit as will be platted for sale.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .9</b>	<b>Existing zoning of the tract.</b>
			<i>Findings</i>	Plat note #9 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"/>	<b>16.04.030.I .10</b>	<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>	Sheets 1,2 and 3 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"/>	<b>16.04.030.I .11</b>	<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>	Sheets 2 and 3 of the preliminary plat show all proposed common area and limited common areas dedicated for common use of all future property owners.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .12</b>	<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 and sanitary sewer mains.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>16.04.030.I .13</b>	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>16.04.030.I .14</b>	<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.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>16.04.030.I .15</b>	<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"/>	<b>16.04.030.I .16</b>	<b>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.</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"/>	<b>16.04.030.I .17</b>	<b>Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.</b>
			<i>Findings</i>	Sheet 3 of the preliminary plat includes a vicinity map.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>16.04.030.I .18</b>	<b>The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.</b>
			<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"/>	<b>16.04.030.I .19</b>	<b>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.</b>
			<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"/>	<b>16.04.030.I .20</b>	<b>Lot area of each lot.</b>
			<i>Findings</i>	Sheets 1, 2, and 3 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"/>	<b>16.04.030.I .21</b>	<b>Existing mature trees and established shrub masses.</b>
			<i>Findings</i>	There are no existing trees or shrub masses on the subject property. Trees on adjacent properties to the north are shown on the site survey included with the project plans.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .22</b>	<b>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.</b>
			<i>Findings</i>	The applicant provided a title commitment issued by Sun Valley Title dated August 31, 2020, and a warranty deed recorded at Instrument Number 673273 with the initial application.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.030.I .23</b>	<b>Three (3) copies of the preliminary plat shall be filed with the administrator.</b>
			<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"/>	<b>16.04.040.A</b>	<b>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</b>

				<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>	The applicant submitted a preliminary right-of-way improvements plan with the design review application outlining all proposed improvements to the public rights-of-way of N Leadville Ave, 2 <sup>nd</sup> Street, and the alley. There are no existing natural features on the property.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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>	This standard does not apply as this is a preliminary plat application, not a final plat application.
<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>	This standard does not apply as this is a preliminary plat application, not a final plat application.
<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>
			<i>Findings</i>	This standard does not apply as this is a preliminary plat application, not a final plat application.

		<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>
			<p><i>Findings</i></p> <p>No new streets are proposed, however, the project is required to bring the current streets of N Leadville Ave, 2<sup>nd</sup> Street, and they alley into conformance with city street standards. Prior to certificate of occupancy, the project will complete all right-of-way improvement plans as reviewed and approved by the City Engineer.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>16.04.040.I</b></p> <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>
			<p><i>Findings</i></p> <p>The alley between N Leadville Ave and East Ave meets the city's minimum requirement for 20 feet width, however, the alley needs to be regraded to address current drainage issues.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><b>16.04.040.J</b></p> <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><b>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.</b></p> <p><b>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.</b></p> <p><b>3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that easement along the portion of the riverbank which runs through the proposed subdivision.</b></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>	This standard does not apply as no easements exist or are required.
<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>	This subdivision application does not create new sanitary sewage disposal systems. The proposed development will be serviced by sanitary sewer mains located within N Leadville Ave.
<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 public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.</p>

			<i>Findings</i>	This subdivision application does not create new water systems. The proposed development will be serviced by water mains located within N Leadville Ave.
<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> <li>6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply: <ol 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> </ol> </li> </ol>

				<p>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).</p> <p>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</p> <p>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.</p> <p>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.</p>
			<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. Final grading plan will be reviewed and approved by the City Engineer prior to issuance of a building permit.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 condominium subdivision 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. The final grading plan will be reviewed and approved by the city engineer prior to issuance of a building permit for the proposed development.
<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 streets shall be installed by the subdivider prior to construction of street improvements.</p>

			<i>Findings</i>	As shown on the project plans, all utilities will be installed underground. Electrical service to the property will come from the alley to a new transformer on the subject property near the alley.
<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.

**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 2 of the preliminary plat, the garage units are designated as limited common elements and specifically referenced to a unit number.
<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 2 of the preliminary plat, the unit sizes facilitate the storage of personal property within the units. Additional storage units are provided in the basement for all units.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.F	<b>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.</b>
			<i>Findings</i>	Mechanical equipment rooms are designated on each floor, serving dual purpose for housing of mechanical equipment and storage of maintenance equipment and supplies. Supplies for larger maintenance projects will be supplied by the contractors responsible for the project on an as needed basis.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.G	<b>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.</b>

			<i>Findings</i>	Condominium units 2 and 4 have access to outdoor patio areas. The building also provides common area along the street frontage for use by building residents and the public.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>16.04.070.H</b>	<b>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.</b>
			<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.

#### CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code (“KMC”) and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant’s Condominium Preliminary Plat application for the development and use of the project site.
2. The Commission has authority to review and approve the applicant’s Condominium Subdivision Preliminary Plat Application pursuant to Chapter 16.04 of Ketchum Code Title 16.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §16.04.030.
4. The Condominium Subdivision Preliminary Plat application is governed under Chapter 16.04 of Ketchum Municipal Code.
5. The Condominium Subdivision Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

#### DECISION

**THEREFORE**, the Commission **recommends approval** of this Condominium Preliminary Plat Application File No. P21-035A this Tuesday, April 11, 2023 subject to the following conditions of approval.

#### CONDITIONS OF APPROVAL

1. The condominium preliminary plat approval is based on the preliminary plat included as Exhibit A to these findings. The condominium final plat must substantially conform to the preliminary plat. Final Plat applications that do not substantially conform may be subject to rereview per the procedures outlined in Section 16.04.030.G.
2. The preliminary plat is subject to all conditions of approval associated with Design Review approval 21-035.
3. Failure to record a Final Plat within two (2) years of Council’s approval of a Preliminary Plat shall cause the Preliminary Plat to be null and void.

Findings of Fact **adopted** this 11th day of April 2023.



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Neil Morrow, Chair  
City of Ketchum  
Planning and Zoning Commission





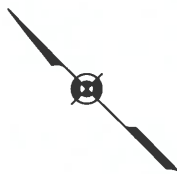
City of Ketchum

**Exhibit A:**  
**200 N Leadville Ave -**  
**Condominium Preliminary Plat**

**A PRELIMINARY CONDOMINIUM PLAT SHOWING  
THE 208 CONDOMINIUMS**

WHEREIN LOT 1, BLOCK 23, KETCHUM TOWNSITE IS CONVERTED INTO CONDOMINIUMS  
LOCATED WITHIN SECTION 18, T.4N., R.18E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO

NOVEMBER 2022

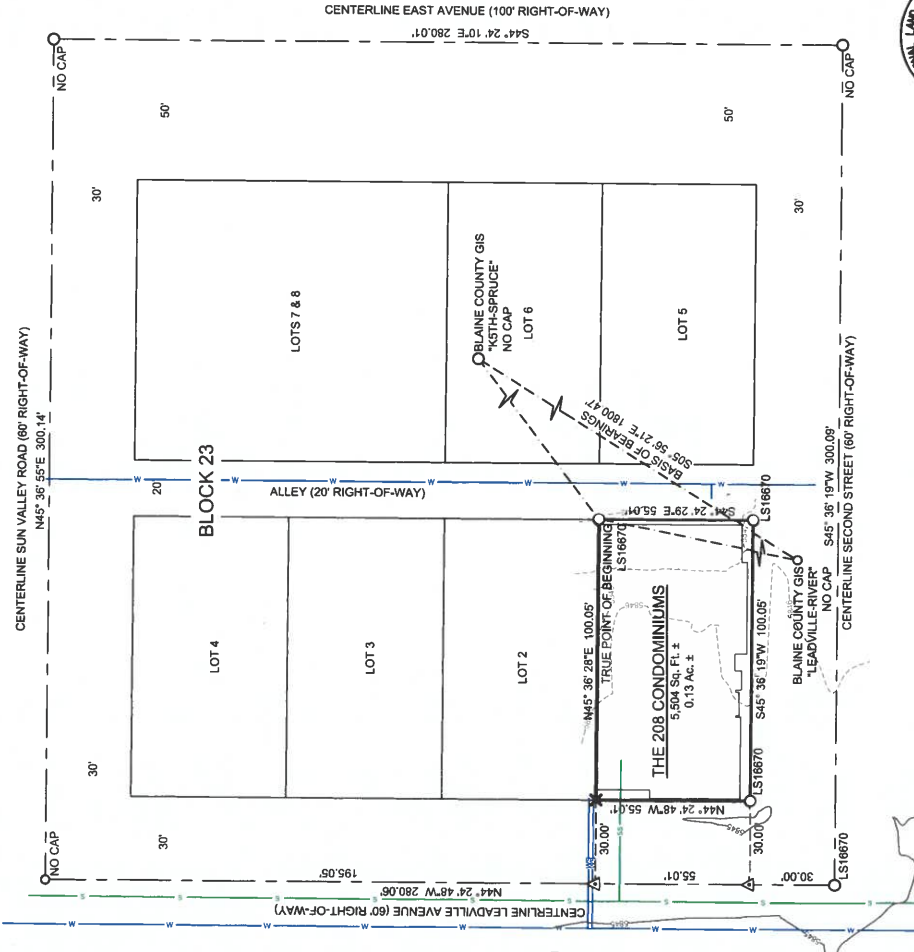


SCALE: 1" = 30'



**LEGEND**

- Property Line
- Adjoiner's Lot Line
- Centerline of Right of Way
- Building Footprint
- GIS Tie Line
- Survey/Tie Line
- Water Main
- Water Service Line
- Sewer Main Line
- Sewer Service Line
- 5' Contour Interval
- 1" Contour Interval
- Found 5/8" Rebar
- Found 1/2" Rebar
- Found Magnetic Nail & Chiseled X
- Calculated Point, Nothing Set



**SURVEY NARRATIVE & NOTES**

- The purpose of this survey is to show the monuments found during the boundary retracement of Lot 1, Block 23, Ketchum Townsite and to condominiumize said property as shown hereon. The boundary shown is based on found centerline monumentation, the Amended Record of Survey of Lot 1, Block 23, Ketchum Townsite, Instrument Number 682212, and the Official Map of the Village of Ketchum, Instrument No. 302967, both records of Blaine County, Idaho. All found monuments have been accepted. An additional document used in the course of this survey is the Record of Survey of Lot 1, Block 23, Ketchum Townsite, Instrument Number 673065, records of Blaine County, Idaho.
- In interpreting the Declaration, Plat or Plans, and Deeds, the existing physical boundaries of the unit as originally constructed, or reconstructed in lieu thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, plat or plans, and/or deeds, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown in the declaration, plat or plans, and/or deeds, and the actual boundaries of the units in the buildings.
- A Title Commitment for the property has been issued by Stewart Title Guaranty Company, File Number 20278604, with a Date of Policy of August 31, 2020. Certain information contained in said title policy may not appear on this map or may affect items shown hereon. It is the responsibility of the owner or agent to review said title policy. All necessary actions for amendments to the title report are shown hereon. Review of specific documents is required, if further information is desired.
- Horizontal or sloping planes shown hereon are top of finished subfloor and bottom of finished ceiling vertical planes are finished surfaces of interior walls. Some structural members extend into units, limited common areas and parking spaces.
- Property shown hereon is subject to terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by applicable Condominium Law or the Condominium Declaration recorded under Instrument Number \_\_\_\_\_, records of Blaine County, Idaho. Consult the Condominium Declarations for the definition of common and limited common area.
- All area outside of units that is not designated as limited common is common area. Areas of "common" or "limited common" are shown by diagram.
- Building ties are to the interior corners of unit walls. Elevation datum is NAVD 1988.
- Utility easements necessary to allow for access and maintenance of utilities serving units other than the unit they are located in are hereby granted by this plat.
- The current zoning is CC - Mixed Use. Refer to the City of Ketchum Zoning Ordinances for specific information about this zone.
- The owner of Lot 1 is 755 S Broadway LLC, 2687 S Tacoma Way, Tacoma, Washington 98408. The surveyor/representative is Mark E. Phillips, Galena Engineering, Inc., 317 N. River St., Hailey, Idaho 83333.



**PRELIMINARY**

HEALTH CERTIFICATE: Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been determined. Sanitary restrictions are hereby determined with a Certificate of Disapproval.

MARK E. PHILLIPS, P.L.S. 16670

Date \_\_\_\_\_ South Central District Health Dept., EHS

THE 208  
CONDOMINIUMS  
GALENA ENGINEERING, INC.  
HAILEY, IDAHO  
1 OF 4  
Job No. 7000-03

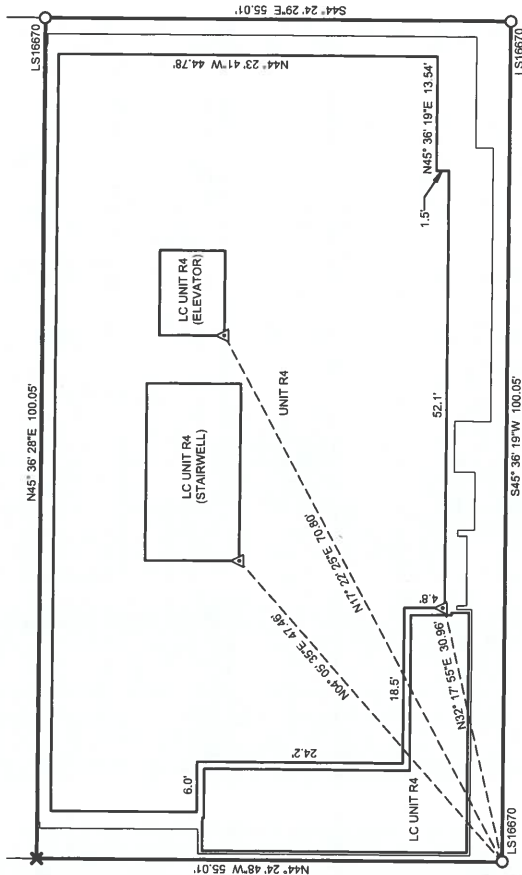
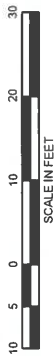


A PRELIMINARY CONDOMINIUM PLAT SHOWING  
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 NOVEMBER 2022

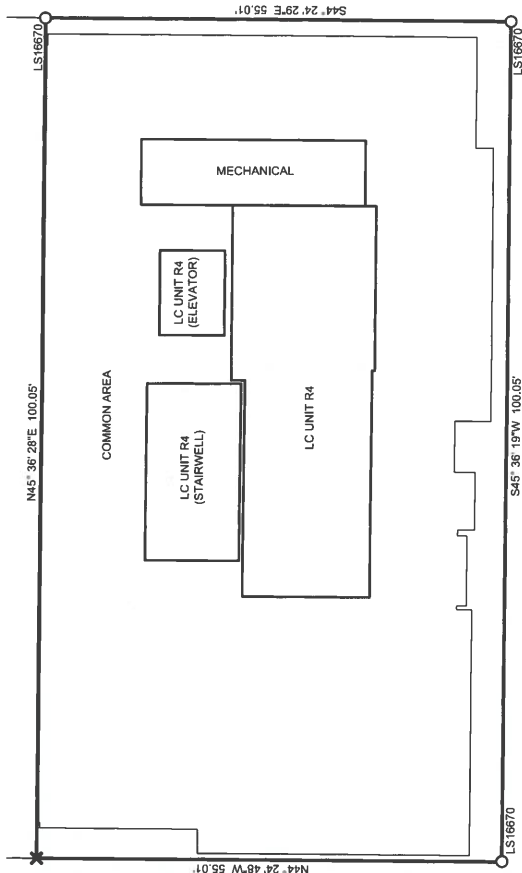


SCALE: 1" = 10'



**3RD FLOOR**

FE = 6571.38'  
 CE = 6684.00'



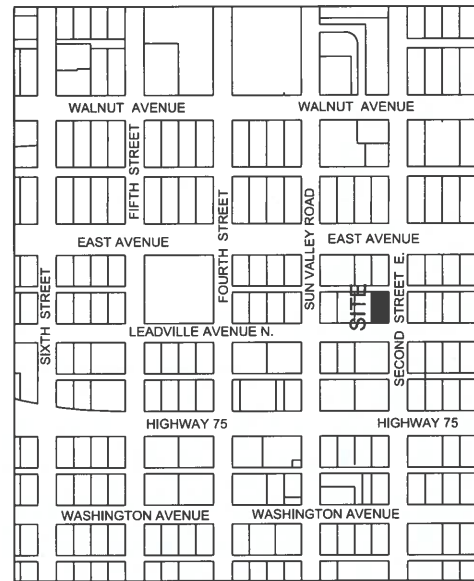
**ROOF**

FE = 6685.84'

**LEGEND**

- Property Line
- Adjoiner's Lot Line
- Building Footprint
- Survey Tie Line
- Found 5/8" Rebar
- Found Magnetic Nail & Chisel X
- Calculated Point, Noding Set
- Floor Elevation
- Ceiling Elevation
- Limited Common

- O X
- △
- FE
- CE
- LC



VICINITY MAP  
 NOT TO SCALE



MARK E. PHILLIPS, P.L.S. 16670

THE 208  
 CONDOMINIUMS  
 GALENA ENGINEERING, INC.  
 HAILEY, IDAHO  
 3 OF 4  
 Job No. 7000-03

**CERTIFICATE OF OWNERSHIP**

This is to certify that the undersigned are the owners in fee simple of the following described condominium property:

A parcel of land located within Section 18, T.4N., R.18E., B.M., City of Ketchum, Blaine County, Idaho, more particularly described as follows:

Lot 1, Block 23, Ketchum Townsite

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. I do hereby certify that all units within this condominium plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of units shown within this plat.

It is the intent of the owners to hereby include said condominium property in this plat.

755 S. Broadway LLC, An Idaho Limited Liability Company

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public in and for said State, personally appeared 755 S. Broadway LLC, known or identified to me to be the manager of the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

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 in and for said State

Residing in \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**PROJECT ENGINEER'S CERTIFICATE**

I, the undersigned, project engineer for 208 Condominiums, certify that the subdivision is in accordance with the City of Ketchum Subdivision standards.

Jeff C. Loomis, PE 7986, Galena Engineering, INC

**SURVEYOR'S CERTIFICATE**

I, Mark E. Phillips, a duly Licensed Professional Land Surveyor in the State of Idaho, do hereby certify that this plat is a true and accurate map of the land and points surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to Plats, Surveys, and Condominiums and the Corner Perpetuation and Filing Act, 55-1601 through 55-1612.



MARK E. PHILLIPS, P.L.S. 16670

**BLAINE COUNTY SURVEYOR'S APPROVAL**

I, Sam Young County Surveyor for Blaine County, Idaho, do hereby certify that I have checked the foregoing Plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating to Plats and Surveys.

Sam Young, P.L.S. 11577  
Blaine County Surveyor

**KETCHUM CITY COUNCIL CERTIFICATE**

I, the undersigned, City Clerk, in and for the City of Ketchum, Blaine County, Idaho, do hereby certify that at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, this plat was duly accepted and approved.

Trent Donat, City Clerk, City of Ketchum

**KETCHUM CITY ENGINEER CERTIFICATE**

I, the undersigned, City Engineer in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Robyn Mattison, City Engineer, City of Ketchum

**KETCHUM CITY PLANNER CERTIFICATE**

I, the undersigned, Planner in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Morgan Landers, City of Ketchum

**BLAINE COUNTY TREASURER'S APPROVAL**

I, the undersigned County Treasurer in and for Blaine County, State of Idaho per the requirements of Idaho Code 50-1306, do hereby certify that any and all current and/or delinquent county property taxes for the property included in this subdivision have been paid in full. This certification is valid for the next thirty (30) days only.

Blaine County Treasurer

Date \_\_\_\_\_

**BLAINE COUNTY RECORDER'S CERTIFICATE**

THE 208  
CONDOMINIUMS

GALENA ENGINEERING, INC.  
HAILEY, IDAHO

4 OF 4  
Job No. 7000-03





City of Ketchum

Attachment T:  
FAR Exceedance Agreement  
#22811



**FAR EXCEEDANCE  
AGREEMENT #22811**

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 191 5 <sup>th</sup> Street W, Ketchum, Idaho 83340
755 S Broadway LLC	"Developer"	Mailing: 2667 S Tacoma Way, Tacoma, WA 98409  Subject Property: 200 N Leadville (Ketchum Townsite: Block 23: Lot 1)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho ("City"), and 755 S Broadway LLC, a limited liability corporation, owner of the subject property and developer of the project ("Developer").

**RECITALS**

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was voluntarily dismissed.
- C. The City has adopted Resolution 17-006 which provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into a FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR



standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.

2. **Waiver and Release of Claims.** Developer, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Developer may withdraw from this Agreement upon thirty days notice to City provided that Developer has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Developer shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail,

certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS 29<sup>th</sup> DAY OF November, 2022.

Developer



\_\_\_\_\_  
Michael Barr

Print Name

Managing Member  
755 S Broadway, LLC

City of Ketchum, Idaho



\_\_\_\_\_  
Neil Bradshaw, Mayor

Attest:

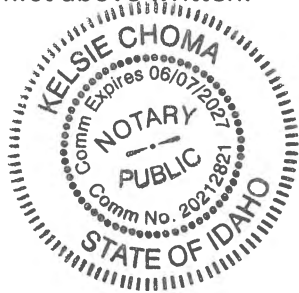


\_\_\_\_\_  
Trent Donat, City Clerk

STATE OF Idaho, )  
 ) ss.  
County of Blaine. )

On this 29<sup>th</sup> day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, 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.

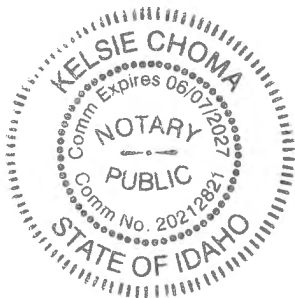


Kelsie Choma  
Notary Public for Ketchum, ID  
Residing at Blaine County  
Commission expires 6/7/2027

STATE OF Idaho, )  
 ) ss.  
County of Blaine. )

On this 29<sup>th</sup> day of November, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Michael R. Carr, 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.



Kelsie Choma  
Notary Public for Ketchum, ID  
Residing at Blaine County  
Commission expires 6/7/2027

### 17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:

A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in [chapter 17.08](#) of this title may exceed the floor area listed in the table below subject to section [17.124.050](#) of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

#### B. Inclusionary Housing Incentive:

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
  - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
  - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.
  - c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit

rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.

- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
  - e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
  - f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
    - (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
    - (2) Payment of an in lieu fee; or
    - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
  - g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
    - (1) Land conveyance to the city;
    - (2) Existing housing unit buy down or mortgage buy down; or
    - (3) Other proposals and options as approved by the city council.
3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)

## Exhibit B

### EXCEEDANCE AGREEMENT COMPLIANCE

<b>PROJECT:</b>	The 208 Condominiums
<b>APPLICATION FILE NUMBERS:</b>	Design Review (P22-035) Condominium Subdivision Prelim Plat (P22-035A)
<b>OWNER:</b>	755 S Broadway LLC
<b>REPRESENTATIVE:</b>	Jonathan Sherman Nicole Ramey, Medici Architects
<b>REQUEST:</b>	Development of a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
<b>LOCATION:</b>	200 N Leadville Ave (Ketchum Townsite: Block 23: Lot 1)
<b>ZONING:</b>	Mixed-Use Subdistrict of the Community Core (CC-2)
<b>BACKGROUND:</b>	

1. The applicant is proposing to develop a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
2. The site is located at 200 N Leadville (Ketchum Townsite: Block 23: Lot 1) within the Mixed-Use Subdistrict of the Community Core (CC-2). Multi-family dwelling units and commercial spaces are permitted uses in the CC-2 Zone.
3. The subject property has an area of 5,504 sq ft.
4. The proposed development will have a total gross floor area of 11,663 square feet.
5. Pursuant to the definition of gross floor area (KMC §17.08.020), up to four parking stalls for developments on single Ketchum Townsite lots of 5,600 sq ft or less are not included in the gross floor area calculation. As the project has four garage spaces, the project receives a reduction of 648 sq ft.
6. With the parking stall discount, the development has a proposed Floor Area Ratio (FAR) of 2.0 (11,015 gross sq ft/5,504 sq ft lot area).
7. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.

8. The Planning and Zoning Commission is scheduled to hear the Design Review application (P22-035) for the development on November 29, 2022. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

### **EXCEEDANCE ANALYSIS**

The project shall comply with the requirements of Ketchum City Code § 17.124.040 as adopted on the date a building permit is submitted for the project.

**Permitted in Community Core Subdistrict 2 (CC-2)**

**Permitted Gross FAR: 1.0**

**Permitted Gross FAR with Inclusionary Housing Incentive: 2.0**

**Proposed Gross Floor Area: 11,663 gross square feet**

**Gross Floor Area with Parking Discount: 11,015 sq ft** (reduction of 648 square feet for four stalls that are 9 x 18 feet)

**Ketchum Townsite Lot Area: 5,504 sq ft**

**FAR Proposed: 2.0** (11,015 gross sq ft/5,504 sq ft lot area)

**Increase Above Permitted FAR: 5,511 sq ft**

**20% of Increase: 1,102 sq ft**

**Net Livable (15% Reduction): 937 sq ft** of community housing required.

**Total Proposed On-site Community Housing Contribution: 0 sq ft**

**Proposed Community Housing In-Lieu Fee: \$421,650** (937 sq ft x \$450/sq ft)

### **COMMUNITY HOUSING CONTRIBUTION CONDITIONS**

The following conditions apply to the community housing contribution for the development at 200 N Leadville Ave:

1. The development shall provide a community housing in-lieu fee payment in the amount of \$421,650. Fee payment is due at the time of building permit application.
2. If the community housing contribution type (i.e. on-site, off-site, fee in-lieu) changes through the course of the design review approval process or at the request of the applicant/owner, an amendment to this agreement must be approved by the Ketchum City Council.
3. If the total gross square footage of the project changes through the course of the design review approval process or building permit application review, a revised fee in-lieu may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.
4. If a building permit is not issued following payment of the in-lieu fee at building permit application, a refund of the fee may be issued within a reasonable period of time.