



City of Ketchum

November 18, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to hold a public hearing, begin to make findings, and continue the public hearing for the three applications affecting the proposed 1st and 4th Street Mixed Use Building by Jack Bariteau

Recommendation and Summary

Staff is recommending the Council adopt the following three motions:

- (1) Move to Continue the Public Hearing pertaining to the proposed approximately 110' x 30' Partial Alley Vacation Application in Block 57 immediately adjacent to property owned by Bariteau and Holt & Johnson, LLC for additional analysis. (Note: a copy of the June 10, 2019 Commission approved Vacation findings are set forth in **Attachment A**).
- (2) Move to Continue the Public Hearing pertaining to the proposed Preliminary Plat Application pending resolution of the Partial Alley Vacation. (Note: a copy of the June 10, 2019 Commission approved Preliminary Plat findings and associated plat are set forth in **Attachment B**).
- (3) Move to Continue the Public Hearing pertaining to the proposed Development Agreement in order to more fully address the draft terms and conditions of approval as set forth in **Attachment C**. (Note: the applicant proposes a series of edits to the Commission-recommended Development Agreement, which are shown in **Attachment C1**).

The reasons for the recommendations are as follows:

- Vacating alleyway access when (1) safer alternatives exists, (2) neighboring uses are not inhibited, (3) appropriate design solutions are forwarded, and (4) necessary utility and pedestrian accommodations are provided is consistent with Idaho Code and the provisions of the Ketchum Municipal Code. (See **Attachment D** for public interest rubric details, including the interests of adjacent property owners, the city traditionally applies to project design and vacation applications); and
- Approving a preliminary plat, design review, and memorializing key provisions of the Commission's determination on the 1st and 4th Mixed Use project within a Development Agreement is a best practice in planning and zoning matters that involve multiple procedural requirements and factual determinations.

Introduction and History

The proposed Bariteau Mixed Use Project at 1st & 4th included five applications that were reviewed by the Ketchum Planning and Zoning Commission earlier in 2019. Subject Commission review resulted in:

1. The Applicant's withdrawal of a height variance request;
2. Design Review approval (project drawing excerpts are included for reference in **Attachment E**); and,
3. Three recommendations of approval to the Council for the partial alley vacation, preliminary plat and development agreement as noted in Attachments A-C.

Alley Vacation & Preliminary Plat: Staff recommends conditional approval of both the partial alley vacation and plat amendment, provided: maintenance terms for both the vacated and un-vacated portions of the Block 57 alley can be satisfactorily resolved. Noted public interest concerns to be addressed in the partial alley vacation and preliminary plat findings and potential conditions of approval include, by alleyway area, the following:

Proposed Block 57 **Vacated** Alleyway Area

- Snowmelt
- Continued Pedestrian Access
- Utility & Emergency Access

Proposed Block 57 **Un-vacated** Alleyway Area

- "Maintenance Area" Terms to assure:
 - vehicle turnaround
 - winter plowing (private plowing)
- Alleyway repair and upkeep (city)
- Fire protection and emergency services
- Utility services (IPCO, Clear Creek, etc)

Development Agreement: To help memorialize key provisions of the City's deliberations, a Development Agreement has been recommended by the Commission to Council for recordation against the Property affected by Bariteau's 1st and 4th Mixed-Use Project. This is a best practice and Attachment C includes all the key provisions contained in the Commission's Findings of Fact and Conclusions of Law for the Vacation, Preliminary Plat, and Design Review. Additional provisions still pending, in part, include: Owner shall enter into an Alley Maintenance Agreement with the City to ensure Owner is responsible for snow removal for the unvacated portion of the Alley.

Attachments

A – Partial Alley Vacation Findings, as Signed by Commission Chair on June 10, 2019

B – Preliminary Plat Findings, as Signed by Commission Chair on June 10, 2019

C – Development Agreement, as Approved by the Commission on June 10, 2019

C1 – Applicant Proposed Edits to PZ-Recommended Development Agreement

D – Public Interest Rubric for Vacations

E – Excerpt of Approved Design Review Drawings for 1st and 4th Mixed Use Project

F – Written Public & Agency Comment Received for Council Hearing(s)

IN RE:)
) **KETCHUM PLANNING & ZONING COMMISSION**
Petition to Vacate) **FINDINGS OF FACT, CONCLUSIONS OF LAW**
City Rights of Way) **AND DECISION**

BACKGROUND FACTS

APPLICANTS: Holt Johnson LLC & Jack E. Bariteau Jr Separate Property Trust UTA
10/2/96

REPRESENTATIVE: Benchmark Associates

REQUEST: Request to vacate the northern approximately 30' x 110' of alleyway within Block 57 of the Ketchum City Townsite. The western ½ of the alley (15' x 110') is proposed to benefit 160 W. 4th (owned by Holt & Johnson LLC) and the eastern ½ of the alley (15' x 110') is proposed to benefit 391 N. 1st Ave. (owned by Jack E Bariteau Jr, trustee, of the Jack E. Bariteau Jr Separate Property Trust UTA 10/2/96).

As noted in Exhibit F and, specifically, the April 2019 Preliminary Plat for Ketchum Townsite: Block 57: Lots 1B and 6A, "a 30' wide by 110' public utility easement, emergency access easement and public pedestrian access is granted the public" for all but the landscape area within the vacated alleyway to assure continued access from Sun Valley Road to 4th Street through subject alleyway in Block 57.

NOTICE: All requirements of notice have been met. Legal notice was published in the Idaho Mountain Express, a newspaper of general circulation, on April 24 and May 1, 2019. A notice of the public hearing regarding this matter was mailed to property owners within 300 feet of the boundaries of the subject Vacated ROW on May 3, 2019.

ZONING: The subject area proposed for vacation is located in Sub-District 2 of the Community Core.

GENERAL FINDINGS OF FACT

1. The applicants are petitioning the City of Ketchum to vacate portions of an alley in Block 57.
2. The Planning and Zoning Commission conducted both a site visit and a public hearing on this application on May 13, 2019, and recommended approval to the City Council, subject to the proposed conditions below.

3. As evidenced by the site visit and survey, the area proposed for alley vacation is not suitable for vehicular access, particularly during winter months, due to steep slopes and limited sight visibility for westbound traffic on 4th Street; and, as such, subject alleyway is under-used.
4. Block 57 currently has a through alley which has been maintained by the city. As noted by the city streets department, the city historically has plowed snow to the north end of the alley, storing snow on the northern portion of the alleyway that is the subject of this alley vacation. The plowing and storage of snow on the northern portion of the alleyway effectively closes the alley to vehicular and pedestrian use during winter months. If the north section of the alley is vacated, the city street department would not necessarily continue to maintain the alley as the city typically does not maintain partial alleys.
5. Prior to recording the plat the applicant shall enter into a Maintenance Agreement, approved by Ketchum City Council, regarding the applicant's maintenance of the 30' x 25' portion of alley directly adjacent to the vacated portion of the alley; the applicant has agreed to maintain this 30' x 25' portion of alley because the applicant's proposed improvements to the vacated portion of the alley interfere and/or prevent city maintenance of the 30' x 25' portion of alley
6. Based on title and survey work by Benchmark Associates, there are utilities within the Block 57 alleyway, which will be duly noted within the public utility easements referenced on the final plat. One of the utilities in the alleyway that requires additional attention is the Ketchum Springs Water Line, which is tentatively scheduled to be abandoned in September 2020 and includes service stubs to 4-of-the-5 properties in Block 57. The fifth property is the Holt Johnson LLC property that will enjoy half of the vacated alley with this project. As noted by the Ketchum Water Department comments, if the Applicants wants to start excavation on the alley before the City abandons the existing Ketchum Springs Water Line and provides new service stubs/tie-ins for each of the properties in Block 57, then the Applicant should plan to pay the full cost of conversion for each of the properties.
7. Based on the recommendation of the Planning and Zoning Commission, upon hearing evidence by the public, there is a need to preserve pedestrian and/or non-vehicular access within the vacated portion of the Block 57 alleyway. Subject pedestrian/non-vehicular access shall be memorialized (a) within the Development Agreement recorded against the 391 N. 1st Ave / Bariteau property and (b) on the Final Plat for Ketchum Townsite: Block 57: Lots 1B and 6A (affecting both the 391 N. 1st Ave / Bariteau property and 160 W. 4th / Holt & Johnson LLC property). Further, to assure usability of the pedestrian/nonvehicular access the Applicant agreed, upon recommendation by the Commission, to (a) sign subject easement for public use, (b) assure the walkway is properly lit in accordance with the city night sky ordinance, and (c) snowmelt the entire 110' walkway including the stairway.

8. Any future building proposed on either Lots 1B or 6A will not intrude into the vacated alleyway.
9. As recommended in the Ketchum Comprehensive Plan, subject alley vacation balances the “relationship between physical development goals, such as land use and infrastructure or land conservation, with social and economic goals, such as economic development.”

CONSIDERATIONS & RECOMMENDATION

1. All public rights of way and lands are entrusted to the City for the good of the community and should be evaluated with a long-term perspective.
2. Benchmark Associates has located all utilities within the alley area proposed for vacation and has designated a public utility easement on the proposed Final Plat for Ketchum Townsite: Block 57: Lots 1B and 6A.

PROCESS AND CRITERIA FOR REVIEW

The Planning and Zoning Commission is a recommending body to the City Council on right of way vacations and has recommended approval of the current application. The Planning & Zoning Commission has conducted a duly-noticed public hearing on the matter. Title 16, Subdivision Ordinance, Ketchum Municipal Code offers the following for Vacations and Dedications:

16.04.050: VACATIONS AND DEDICATIONS:

- A. *Application: Any property owner desiring to vacate an existing public street, alley or easement right of way, or desiring to dedicate a street or alley right of way shall file an application with the administrator. Upon receipt of the completed application and other information reasonably required by the administrator, the date of acceptance of the application shall be affixed on the application. Thereafter, such application shall be placed upon the commission agenda for consideration at a regular meeting of the commission, and the procedures followed for such vacations shall comply with Idaho Code sections 50-1321, 50-1325 and 50-1306(A), including subsequent amendment or codification.*
- B. *Commission Action: The commission shall consider the application and testimony of the applicant and such other information as may come before it with regard to the proposed vacation or dedication. The commission shall consider the interests of the adjacent property owners, public utilities, conformance of the proposal with the comprehensive plan and the future development of the neighborhood, and shall make its recommendations for accepting or rejecting such application. If dedication of a street is accepted, recommendations for improvements to be made prior to the acceptance shall be made by the commission.*

- C. *Council Action: In considering an application for vacation of an existing street, alley or easement right of way, the council shall establish a date for public hearing and give such notice as required by law. The council shall hear and consider the public testimony, applicant testimony, recommendations of the commission, and any other information as may be brought before the council. Whenever the council vacates an existing public street, the city shall provide adjacent property owners with a quitclaim deed for the vacated street as prescribed by law. Such vacation shall become effective upon delivery of such deed(s). When considering an application for dedication to the public of a street, alley or easement right of way, the council may require certain improvements be constructed or performance bond furnished prior to acceptance of the dedication. To complete the acceptance of any dedication, the council shall accept same by resolution or by approval of a final subdivision plat.*
- D. *Exemptions: The provisions of this section shall not apply to the widening of any street which is shown in the comprehensive plan or the dedication of non-vehicular easements to the city. (Ord. 316 § 5, 1979)*

Findings:

1. This application has been made by the owner of all properties abutting the public right-of-way proposed for vacation, and said request for vacation has been adequately noticed, per I.C. 50-1321.
2. Future development of the neighborhood and, particularly, the remainder of the Block 57 properties abutting subject alleyway are not compromised by the proposed Holt/Bariteau alley vacation as the existing alleyway access for each of the properties south of the proposed vacation area are retained. Further, access from these properties is typically not possible during winter months and access to the south is onto Sun Valley Road at a relatively flat grade and with good sight distances in each direction.
3. Portions of the alleyway right of way considered for vacation include public utilities, which will be memorialized within public utility easements on the final plat.
4. The proposed alley vacation in Block 57 is found to be in the public interest, provided: (a) both a public utility and pedestrian/non-vehicular easement is reserved concurrent with the vacation order; (b) no new buildings on new Lot 1B or 6A encroach into subject 30' x 110' vacated alleyway; (c) the entire 110' walkway including the stairway within subject pedestrian/non-vehicular easement is kept free of snow during winter months using a snowmelt system, is signed for public use, and properly lit in accordance with the city night sky ordinance; and (d) the existing Ketchum Springs Water Line within Block 57 is properly vacated and new service lines and metering is extended to all properties within Block 57 that are currently serviced by subject Ketchum Springs Water Line. Because city funds are not available for subject re-connection of water lines, subject costs shall be borne by the applicant unless otherwise agreed to in writing by the City Council.

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.
2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and subdivision ordinance, Title 16.
3. The City of Ketchum Planning Department provided adequate notice of the time, place and summary of the applicant's proposal to be heard by the City Council for review of this application.
4. The proposed vacation **does** meet the standards of approval under Idaho Code Section 50-311 and Ketchum Subdivision Code Title 16, Chapter 16.04.050, subject to conditions of approval.

DECISION

THEREFORE, the Ketchum Planning & Zoning **recommends approval** to the Ketchum City Council the request of the Applicants to:

1. Vacate the northern approximately 30' x 110' of alleyway within Block 57 of the Ketchum City Townsite with the western ½ of the alley (15' x 110') transferred to 160 W. 4th (owned by Holt & Johnson LLC) and the eastern ½ of the alley (15' x 110') transferred to 391 N. 1st Ave. (owned by Jack Eli Bariteau Jr, trustee, of the Jack E. Bariteau Jr Separate Property Trust UTA 10/2/96).

This approval is subject to the following conditions:

1. Dedication of a public utility and emergency access easement on the final plat prior to recordation.
2. Dedication of a pedestrian/non-vehicular access easement within the vacated portion of the Block 57 alleyway. Subject dedication shall be reflected (a) within the Development Agreement recorded against the 391 N. 1st Ave / Bariteau property; and, (b) on the recorded Final Plat for Ketchum Townsite: Block 57: Lots 1B and 6A (affecting both the 391 N. 1st Ave / Bariteau property and 160 W. 4th / Holt & Johnson LLC property).
3. Prior to recording the plat the applicant shall enter into a Maintenance Agreement, approved by Ketchum City Council, regarding the applicant's maintenance of the 30' x 25' portion of alley directly adjacent to the vacated portion of the alley; the applicant has agreed to maintain this 30' x 25' portion of alley because the applicant's proposed improvements to the vacated portion of the alley interfere and/or prevent city maintenance of the 30' x 25' portion of alley.
4. The entire 110' walkway including the stairway within subject pedestrian/non-vehicular easement is: (a) kept free of snow during winter months using a snowmelt system, (b)

signed for public use, and (c) properly lit in accordance with the city night sky ordinance.

5. No buildings on new Lots 1B or 6A encroach into subject 30' x 110' vacated alleyway.
6. In compliance with City and Health Department requirements, the existing Ketchum Springs Water Line within Block 57 needs to be properly abandoned and new service lines and metering extended to all properties within the entirety of Block 57. Because city funds are not currently available for this project, if the Applicants wants to start excavation on the alley before the City abandons the existing Ketchum Springs Water Line, then the Applicant is responsible for providing new service stubs/tie-ins for each of the properties in Block 57 and the full cost of conversion for each of the properties.

Findings of Fact **adopted** this 10th day of June 2019.



Planning & Zoning Commission Chair or Vice-Chair

Attachment B

CITY OF KETCHUM
TITLE 16, CHAPTER 16.04 SUBDIVISIONS
FINDINGS OF FACT AND DECISION

Applicants: Holt Johnson LLC ("Holt") & Jack E. Bariteau Jr Separate Property Trust UTA 10/2/96 ("Bariteau")

File #19-039: This application adjusts the lots lines of three existing lots (one lot owned by Holt and two lots owned by Bariteau), as well as a 30' x 110' portion of the alleyway within Block 57 of the Ketchum Townsite. The resulting two newly created lots assume the vacation of subject alleyway as set forth in Exhibits B and F and the merging of lot lines as follows.

As depicted on the 4/30/2019 Preliminary Plat prepared by Benchmark Associates a (1) 0.42 acre Lot 1B within Block 57 of the Ketchum Townsite is created by merging Amended Lots 1 and 2 with the eastern half of the 30' wide x 110' long vacated alleyway; and (2) the 0.16 acre Lot 6A is created by merging the East 50' of Lots 5 & 6 with the western half of the 30' x 110' vacated alleyway. Subject application is located in the Community Core Mixed-Use Subdistrict 2.

Findings:

1. Notices with 10-day comment period were sent to adjacent property owners on the May 3, 2019, informing them of an opportunity to comment on the application. No public comments on the preliminary plat were received prior to hearing.
2. The proposal complies with the definition of "readjustment of lot lines" in Title 16, Chapter 16.04.
3. New Lot 1B within Block 57 of the Ketchum Townsite, owned by Bariteau, is created by merging Amended Lots 1 and 2 with the eastern half of the 30' wide x 110' long vacated alleyway.
4. New Lot 6A within Block 57 of the Ketchum Townsite, owned by Holt, is created by merging the East 50' of Lots 5 & 6 with the western half of the 30' x 110' vacated alleyway.
5. In compliance with City and Health Department requirements, the existing Ketchum Springs Water Line within Block 57 shall be abandoned and new service lines and metering extended to all properties within Block 57 currently serviced by subject Ketchum Springs Water Line. Because city funds are not currently available for this project, if the Applicants wants to start excavation on the alley before the City abandons the existing Ketchum Springs Water Line, then the Applicant is responsible for providing new service stubs/tie-ins for each of the properties in Block 57 and the full cost of conversion for each of the properties. Subject improvements are required prior to plat recordation.
6. All City and County requirements for final plat submittal, recordation, and signature shall be met, including (a) the proper dedication of public utilities along property lines and


within the vacated portion of the Block 57 alleyway as confirmed in writing by the respective utilities; and (b) a plat note depicting Lot 1B owner on-going responsibilities to assure the entire 110' walkway including the stairway within subject pedestrian/non-vehicular easement is: (i) kept free of snow during winter months using a snowmelt system, (ii) signed for public use, and (iii) properly lit in accordance with the city night sky ordinance.

7. Prior to recording the plat the applicant shall enter into a Maintenance Agreement, approved by Ketchum City Council, regarding the applicant's maintenance of the 30' x 25' portion of alley directly adjacent to the vacated portion of the alley; the applicant has agreed to maintain this 30' x 25' portion of alley because the applicant's proposed improvements to the vacated portion of the alley interfere and/or prevent city maintenance of the 30' x 25' portion of alley. The plat will clearly note that no buildings on new Lots 1B or 6A are permitted to encroach into the approximately 30' x 110' vacated alleyway.
8. The development agreement affecting Lot 1B shall be recorded against the property and referenced on the plat.

Decision:

THEREFORE, the Ketchum Planning & Zoning **recommends for approval** to the Ketchum City Council the request of Bariteau/Holt to reconfigure subject lots as depicted on the 4/30/2019 Preliminary Plat prepared by Benchmark Associates consistent with the aforementioned nine Findings.

Findings of Fact **adopted** this 10th day of June 2019.



Planning & Zoning Commission Chair or Vice -Chair

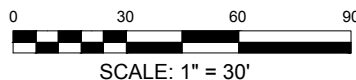
KETCHUM TOWNSITE: BLOCK 57: LOTS 1B & 6A

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

WHEREIN THE BOUNDARY COMMON TO AMENDED LOTS 1 & 2 IS ELIMINATED AND THE EAST 15' OF
VACATED ALLEY IS ADDED TO AMENDED LOT 2, CREATING LOT 1B;

AND THE WEST 15' OF VACATED ALLEY IS ADDED TO THE EAST 50' OF LOTS 5 & 6, CREATING LOT 6A.

APRIL 2019
PRELIMINARY PLAT



LEGEND

- BOUNDARY LINE
- STREET CENTERLINE
- PUBLIC MONUMENT TIES
- LOT LINE ELIMINATED
- FOUND 1/2" REBAR
- FOUND 5/8" REBAR
- SET 5/8" REBAR, CAPPED LS13764
- FOUND COPPER MONUMENT WITH MAGNET IN SIDEWALK STAMPED LS13764

NOTES:

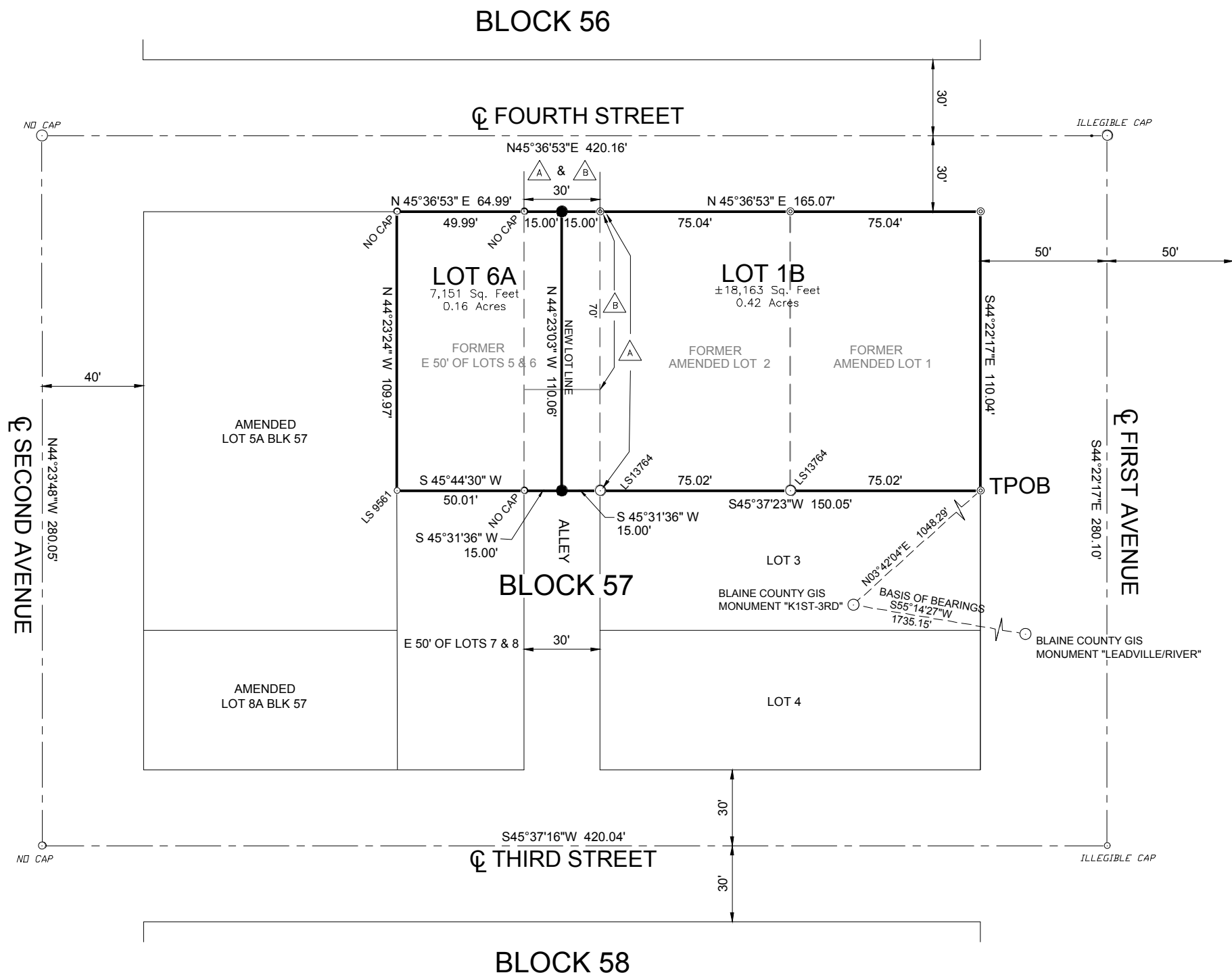
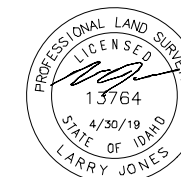
1. REFERENCE DRAWINGS: AMENDED LOTS 1 & 2 PER THE PLAT OF THE "RE-DIVISION OF LOTS 1 & 2, BLOCK 57, ORIGINAL KETCHUM TOWNSITE", RECORDED AS INST. NO. 191607, RECORDS OF BLAINE COUNTY, IDAHO. THE EASTERLY 50 FEET OF LOTS 5 AND 6 PER CORPORATION WARRANTY DEED, RECORDED AS INSTRUMENT NO. 445984.
2. EASEMENT A: A 30' WIDE BY 110 FOOT PUBLIC UTILITY EASEMENT, EMERGENCY ACCESS EASEMENT AND PUBLIC PEDESTRIAN ACCESS EASEMENT IS GRANTED AS SHOWN HEREON, EXCLUDING THE LANDSCAPED AREAS APPROVED BY THE CITY OF KETCHUM.
3. EASEMENT B: A 30' WIDE BY 70' MUTUAL RECIPROCAL INGRESS AND EGRESS EASEMENT IS GRANTED TO BENEFIT THE OWNERS AND TENANTS OF LOTS 1B AND 6A.

HEALTH CERTIFICATE

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

Date: _____

South Central Public Health District, REHS



	KETCHUM TOWNSITE: BLOCK 57: LOTS 1B & 6A	
	LOCATED WITHIN SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO	
PREPARED FOR: JACK BARITEAU		
PROJECT NO. 19020 PRELIMINARY PLAT	DWG BY: DWS/CPL DATE: 04/30/2019	19020PG1.DWG SHEET: 1 OF 1

Attachment C

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

DEVELOPMENT AGREEMENT

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

BACKGROUND AND CONTEXT

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

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

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

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

Amended and Restated Development Agreement between the City and Trail Creek Fund, LLC. City acknowledges the square footages recited are approximate and the actual square footages will not be known until construction documents are prepared and submitted to the City for a building permit following which submittal the actual square footages shall apply to the Project.

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

AGREEMENT

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

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

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

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

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

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

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

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

3. Right to Develop. Subject to the requirements of this Agreement and KMC, the Owner and all future owners of some or all of the Property shall have the right to demolish all or any portion of the existing structures and redevelop, construct, improve and use the Property as a mixed use residential and commercial building as depicted and described in the approved plans incorporated into the Agreement as fully set forth in the recitals, including the Planning and Zoning Commission approved Pivot North Architecture plans dated May 31, 2019 (“Plans”). The improvements on the Property shall be built exclusively as permitted under §17.96 of the KMC relating to design review approval. Any development of any portion of the Property substantially inconsistent with this Agreement or the design review approval for the Project shall constitute a breach of this Agreement by Owner.

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

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

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

4. FAR Exceedance Agreement. The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, dated _____, 2019, and hereby incorporated by reference. *{City comment: May need revising based on timing of FAR Exceedance Agreement approval.}*

5. Vacation of Alley. Owner has made application to the City for vacation of the alley right-of-way pursuant to KMC §16.04.050 and for a waiver of the alley improvement requirements set forth in Part I of KMC §16.04.040, which prohibits dead end alleys. If approved via separate City vacation process, such order or decision on vacation, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. Any such alley vacation shall be deemed null and void in the event the Project is not completed within the time limits set forth in this Agreement.

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

7. Sidewalk Improvements. Owner has proposed and hereby commits for the Project to include ten-foot wide sidewalks along both 1st Avenue and 4th Street. All of the proposed sidewalk improvements along 4th Street are in the public Right of Way (“**ROW**”), while half of the sidewalk improvements (+/- 5’ wide) along 1st Avenue are in the public ROW. Subject sidewalk improvements include snowmelt, raised landscape planters, street trees with decorative tree grates, public art, bike racks, pedestrian walkway lighting, and street lighting. Final approval of subject improvements and plans is required and will be subject to review and approval by the City through a separate encroachment agreement. Such encroachment agreement shall be obtained prior to issuance of a building permit for the project. *{City comment: applicant proposes additional edits not shown here that will require additional consideration by KCC at time of their review.}*

8. Encroachment on Right of Way. Owner has made application to the City for license for encroachments along the public Right of Way (“**ROW**”) for proposed sidewalk improvements along 4th Street, pursuant to KMC 12.08.040. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. *{City comment: applicant proposes additional edits not shown here that will require additional consideration by KCC at time of their review.}*

9. Master Lease of Employee Housing Units. The Parties covenant and agree Owner may enter into a master lease with the Hotel Developer for apartment units containing eighteen (18) beds and thereby fulfill and satisfy the obligation of Trail Creek Fund, LLC under the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016 and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“**Hotel Development Agreement**”). All apartment units leased to the Hotel Developer may be subleased, assigned or otherwise made available to employees of the Hotel Developer on terms and conditions determined by it in the exercise of its discretion. If the Hotel Development Agreement is terminated for any reason the apartment units shall cease to be governed by the

master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer's obligations may not also be counted as satisfaction of any required units necessary under the FAR Exceedance Agreement for the Project. Subject to Ketchum City Council approval, units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.

10. Conditions to Owner's Obligations. Owner's obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing. If either of those conditions (or part of one) is not satisfied, then this Agreement shall no longer be valid. *{City comment: applicant proposes additional edits not shown here that will require additional consideration by KCC at time of their review.}*

11. Required Improvements by Owner. Prior to issuance of a building permit, Owner agrees to provide the City security (irrevocable letter of credit, performance bond or set aside agreement) for completion of the improvements to both 4th Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents. Subject security shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer. The amount of security shall be at 150% of engineering estimates for the improvements. *{City comment: applicant proposes additional edits not shown here that will require additional consideration by KCC at time of their review.}*

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

13. Financing. Owner shall provide and show sufficient evidence to the City Council of full financing and funding for completion of the Project to the satisfaction of the City Council prior to issuance of a building permit for the Project. Owner shall evidence such financing by recording on the Property a deed of trust to secure a construction loan prior to issuance of a building permit and by such other proof of financing reasonably necessary for the satisfaction of the City Council that this condition is met. Owner shall not commence excavation or construction work on the Property until acceptable and approval of such financing evidence by the City. *{City comment: applicant proposes additional edits not shown here that will require additional consideration by KCC at time of their review.}*

14. Miscellaneous Provisions.

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

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

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

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

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

Notices to City shall be addressed as follows:

City of Ketchum
Post Office Box 2315
Ketchum, ID 83340
Attn: John Gaeddert, Planning Director
Telephone: 208.726-7801
Email: JGaeddert@ketchumidaho.org

Notices given to Owner shall be addressed as follows:

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

with a copy to:

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

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

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

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

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. The Parties agree to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination.

j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

Notary Public
Residing at _____
My Commission Expires _____

STATE OF)
)ss.
County of)

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

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

Notary Public
Residing at _____
My Commission Expires _____

State of IDAHO)
)ss.
County of)

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

My Commission Expires _____
Notary Public for Idaho
Residing At _____

Attachment C1 - Applicant proposed edits to Development Agreement

Note: Council may wish to direct staff to accept, reject or modify various draft development agreement provisions, including the addition of performance assurances

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(SPACE ABOVE LINE FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT

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

BACKGROUND AND CONTEXT

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

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

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

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

Amended and Restated Development Agreement between the City and Trail Creek Fund, LLC. [City acknowledges the square footages recited are approximate and the actual square footages will not be known until construction documents are prepared and submitted to the City for a building permit following which submittal the actual square footages shall apply to the Project.](#)

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

AGREEMENT

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

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

2. Incorporation of Related Findings, Agreements, Approvals, Permits and Plans.

The following findings of fact, approvals, permits, plans, and documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:

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

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

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

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Owner may request to be bound by future amendments to the Ketchum Municipal Code (“KMC”), or other regulations, policies or guidelines affecting development, and such request may be approved administratively, by the Commission, and/or by the Ketchum City Council consistent with the KMC.

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

Deleted: dated April [redacted] and May [redacted], 2019

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

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

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

4. FAR Exceedance Agreement. The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, dated [redacted], 2019, and hereby incorporated by reference. *{City comment: May need revising based on timing of FAR Exceedance Agreement approval.}* The Agreement needs to be approved concurrent with

approval of this Agreement. Owner would prefer to have FAR Agreement provisions incorporated into this Agreement rather than in a separate agreement. Owner understands the issues are all settled.

5. **Vacation of Alley.** Owner has made application to the City for vacation of the alley right-of-way pursuant to KMC §16.04.050 and for a waiver of the alley improvement requirements set forth in Part I of KMC §16.04.040, which prohibits dead end alleys. If approved via separate City vacation process, such order or decision on vacation, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. Any such alley vacation shall be deemed null and void in the event the Project is not **commenced** within the time limits set forth in this Agreement.

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6. **Removal of Lot Lines and Inclusion of Vacated Alley.** Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associates, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite (“**Amended Property**”).

- Deleted: The final Plat Map reflecting such changes shall not be recorded and become effective until after issuance of the Certificate of Occupancy for the project....
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7. **Sidewalk Improvements.** Owner has proposed and hereby commits for the Project to include ten-foot wide sidewalks along both 1st Avenue and 4th Street. All of the proposed sidewalk improvements along 4th Street are in the public Right of Way (“**ROW**”), while half of the sidewalk improvements (+/- 5’ wide) along 1st Avenue are in the public ROW. Subject sidewalk improvements include snowmelt, raised landscape planters, street trees with decorative tree grates, public art, bike racks, pedestrian walkway lighting, and street lighting. City agrees to and hereby grants approval for the said ROW encroachments subject only to approval by the City Planning Department of construction plans and specifications consistent with the foregoing prior to issuance of a building permit for the Project.

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8. **Encroachment on Right of Way.** Intentionally Omitted.

9. **Master Lease of Employee Housing Units.** The Parties covenant and agree Owner may enter into a master lease with the Hotel Developer for apartment units containing at least eighteen (18) beds and thereby fulfill and satisfy the obligation of Trail Creek Fund, LLC under the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016 and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“**Hotel Development Agreement**”). All apartment units leased to the Hotel Developer may be subleased, assigned or otherwise made available to employees of the Hotel Developer on terms and conditions determined by it in the exercise of its discretion. If the Hotel Development Agreement is terminated for any reason the apartment units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer’s obligations may not also be counted as satisfaction of any required units necessary under the FAR Exceedance Agreement for the Project. Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.

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

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

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11. **Required Improvements by Owner.** Prior to issuance of a building permit, Owner agrees to provide the City security, (irrevocable letter of credit, performance bond or set aside agreement) for completion of the improvements to both 4th Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents. Subject security, shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer. The amount of security shall be at 150% of engineering estimates for the improvements. Nothing herein shall be construed or deemed to restrict or prohibit Owner from applying for or obtaining reimbursement for some or all of the cost of said improvements from the Ketchum Urban Renewal Authority.

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

13. **Financing.** Owner shall provide evidence to the City Council of receipt of one or more funding commitments for completion of the Project to the reasonable satisfaction of the City Council prior to issuance of a building permit for the Project. Owner shall not commence additional excavation or construction work on the Property except as may be required to maintain existing permits until receipt of City approval of such financing commitment.

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14. Miscellaneous Provisions.

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

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

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

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

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

Notices to City shall be addressed as follows:

City of Ketchum
Post Office Box 2315
Ketchum, ID 83340
Attn: John Gaeddert, Planning Director
Telephone: 208.726-7801
Email: JGaeddert@ketchumidaho.org

Notices given to Owner shall be addressed as follows:

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

with a copy to:

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

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

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

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

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

i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. The Parties agree to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination.

j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

n) Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

o) Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.

STATE OF _____)
)ss.
County of _____)

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

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

Notary Public
Residing at _____
My Commission Expires _____

State of IDAHO _____)
)ss.
County of _____)

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

My Commission Expires _____
Notary Public for Idaho
Residing At _____

Attachment D

Attachment D

The Council recently adopted ordinance #1198 and while subject 1st & 4th Mixed Use Application and its petition to vacate a portion of a city alleyway preceded subject ordinance, the following code excerpts reflect the public interest rubric, including the interests of adjacent property owners, the city traditionally applies to project design and vacation applications.

SECTION 16.04.050.C Council Action: In considering an application for vacation of an existing street, alley or easement right-of-way, the Council shall establish a date for public hearing and give such notice as required by law. The council shall hear and consider the public testimony, applicant testimony, recommendations of the commission, and any other information as may be brought before the council. The Council shall only approve the vacation of all or any portion of an existing street, alley or easement right-of-way if it finds and concludes, based on the record of the public hearing, that such vacation is in the public interest. Whenever the council vacates an existing public street, the city shall provide adjacent property owners with a quitclaim deed for the vacated street as prescribed by law. Such vacation shall become effective upon delivery of such deed(s). When considering an application for dedication to the public of a street, alley or easement right of way, the council may require certain improvements be constructed or performance bond furnished prior to acceptance of the dedication. To complete the acceptance of any dedication, the council shall accept same by resolution or by approval of a final subdivision plat.

SECTION 16.04.040.I. Alley Improvement Requirements: Alleys shall be provided in, 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 permitted only within the original Ketchum Townsite and only after due consideration of the interests of the owners of property adjacent to the dead end alley including, but not limited to, the provision of fire protection, snow removal and trash collection services to such properties. 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.

Attachment E



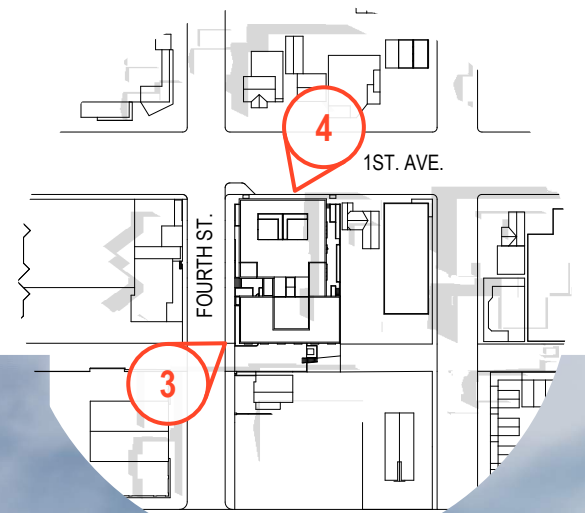
1 VIEW LOOKING AT THE NORTHWEST CORNER OF BUILDING, ACROSS FOURTH ST.



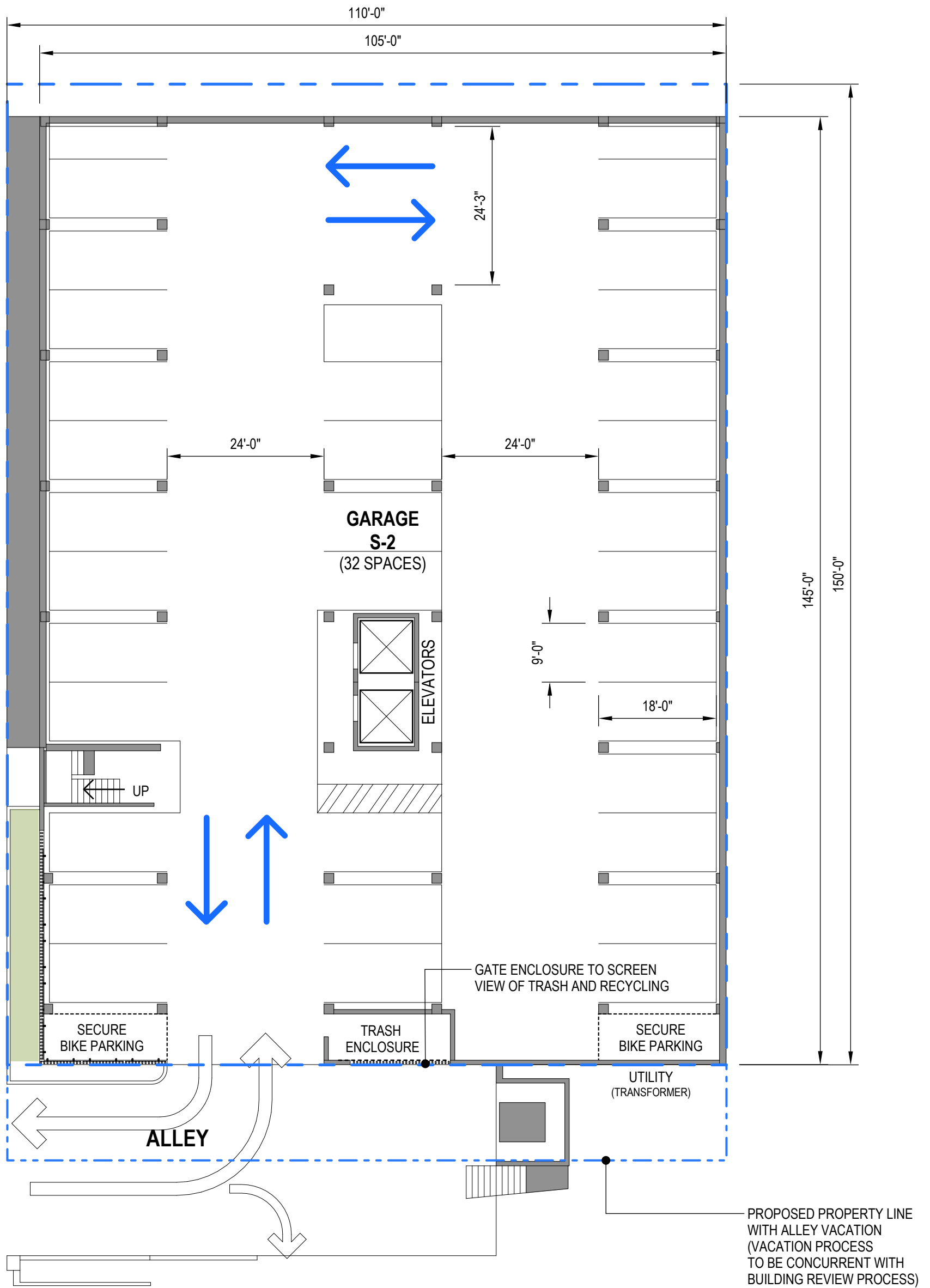
2 VIEW LOOKING AT THE NORTHEAST CORNER OF BUILDING



3 VIEW LOOKING AT THE NORTHWEST CORNER OF BUILDING, DETAIL



4 VIEW LOOKING AT FIRST AVE. ELEVATION OF BUILDING



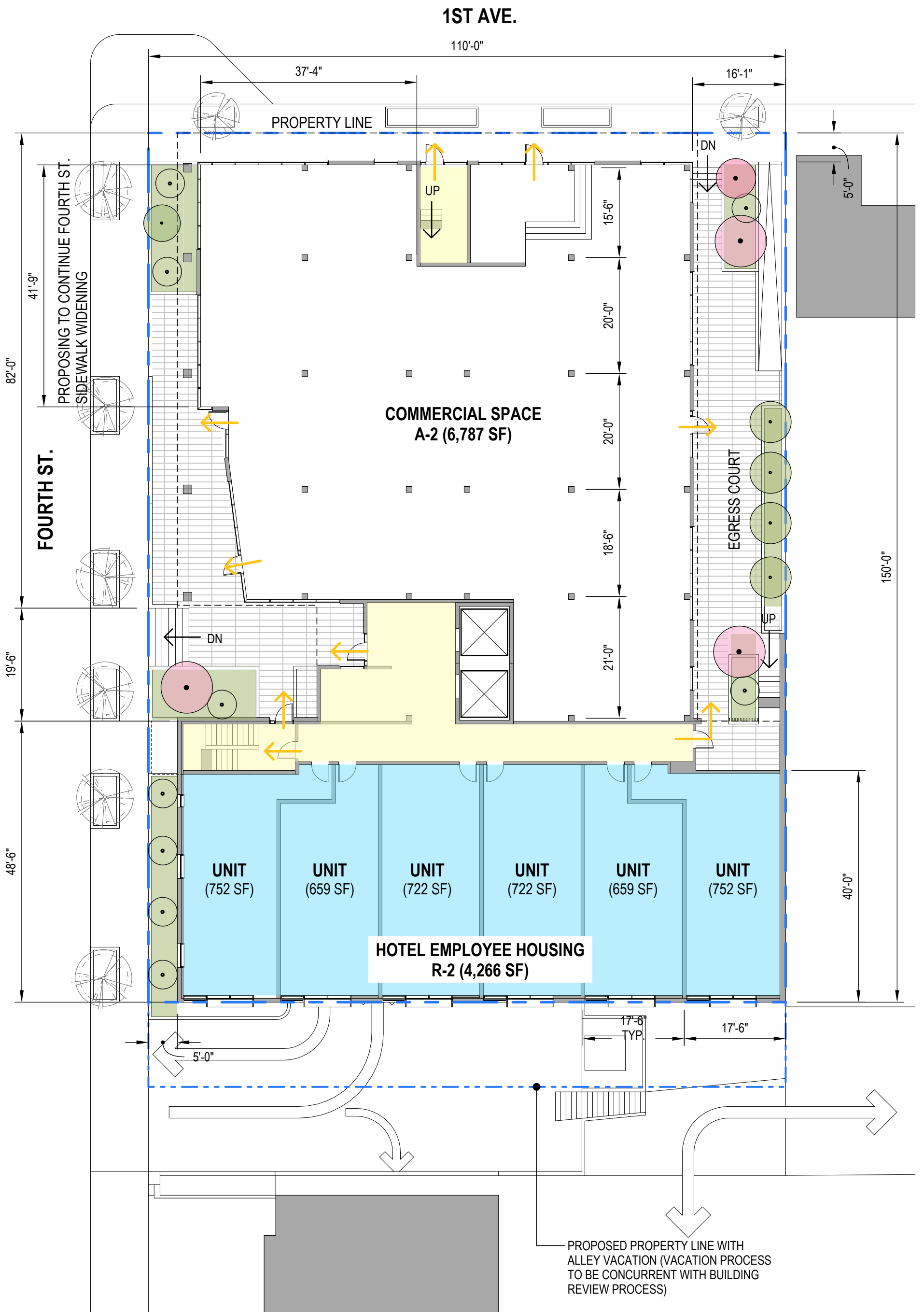
Type VB Analysis:

Level	Occupancy	Allowed	Proposed	Notes
Level 0	S-2	52,000 SF	15,225 SF	Ratio = 0.29
Level 1	A-2(MR)	14,760 SF	6,787 SF	Ratio = 0.45
	R-2	17,220 SF	3,961 SF	Ratio = 0.23
				Total Ratio = 0.68 (OK)
Level 2	R-2	17,220 SF	13,006 SF	Ratio = 0.76
Level 3	R-2	17,220 SF	13,046 SF	Ratio = 0.76, West portion of building considered 4 stories VB works only as podium

GARAGE FLOOR PLAN

SCALE: 1/16" = 1'-0"



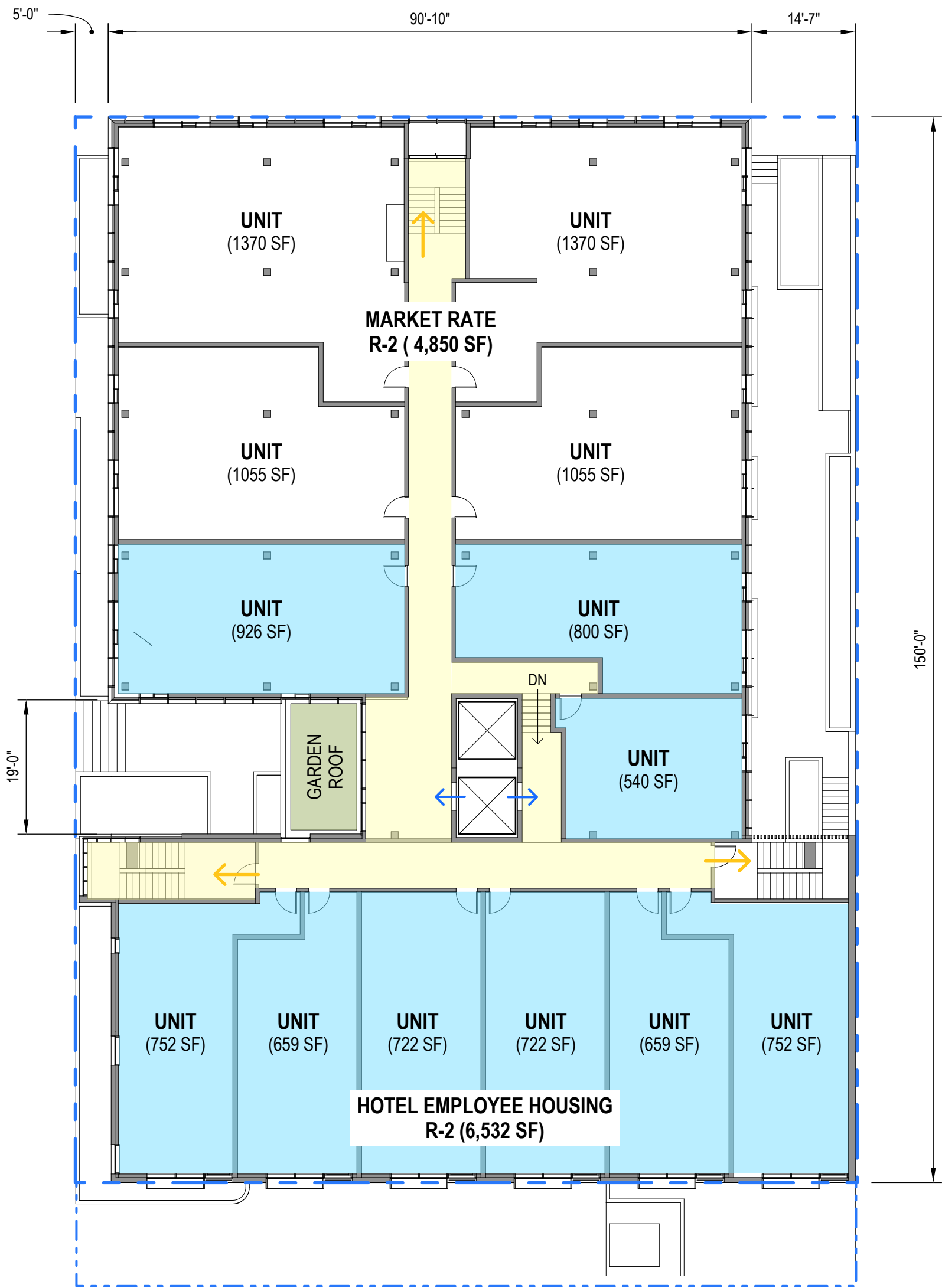


SITE PLAN / GROUND FLOOR PLAN

SCALE: 1/16" = 1'-0"



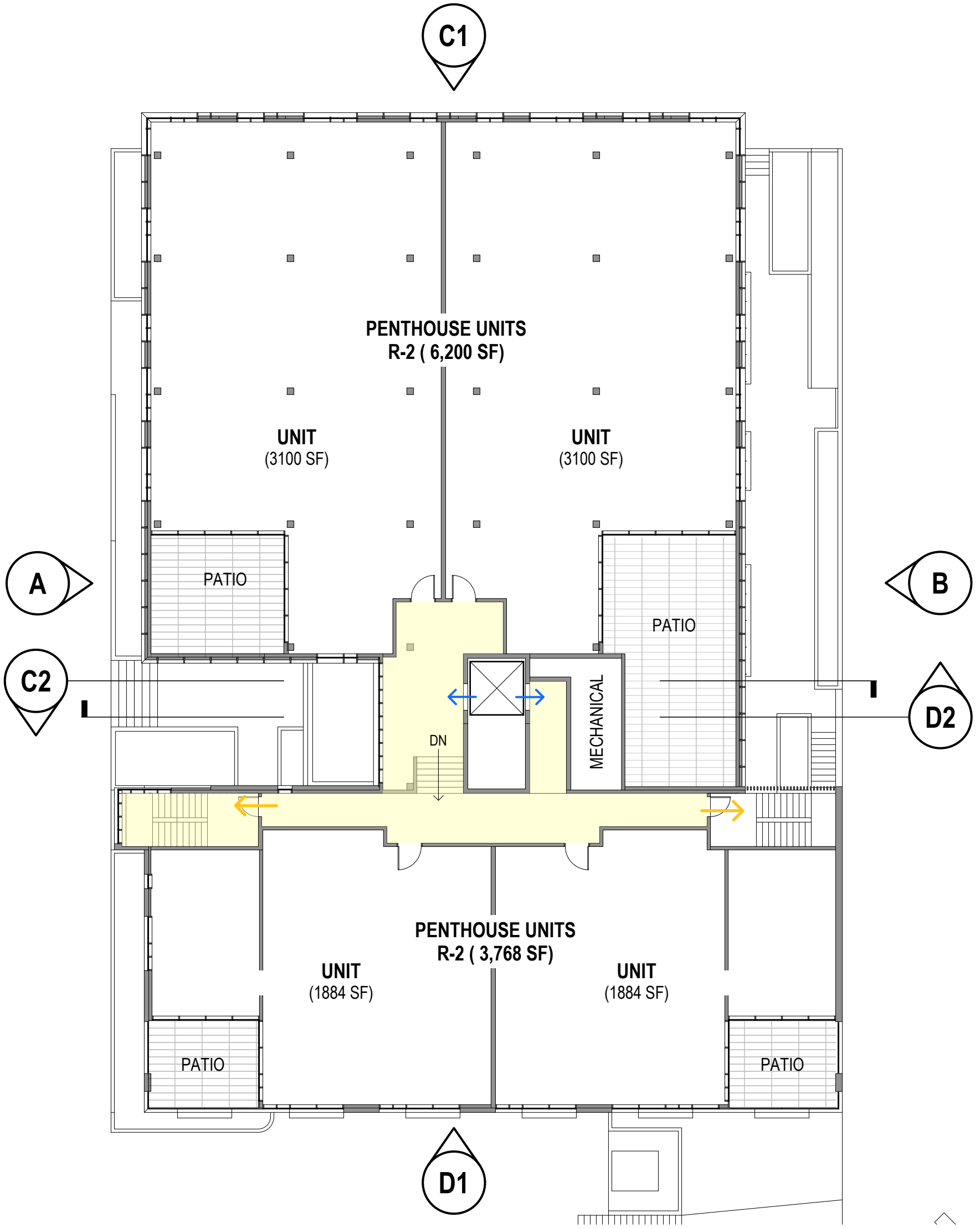
NOTE:
SNOW MELT WILL BE PROVIDED IN LIEU OF SNOW STORAGE AT ALL OUTDOOR HARDSCAPE LOCATIONS



SECOND FLOOR PLAN

SCALE: 1/16" = 1'-0"





THIRD FLOOR PLAN

SCALE: 1/16" = 1'-0"



First & Fourth Areas:

Third Floor:

East Penthouse units	3100 SF (x2)
West Penthouse units	1884 SF (x2)
Circulation / Mechanical	1,143 SF
Third floor total SF:	11,111 SF

Second Floor:

Market rate unit A	1370 SF (x2)	
Market rate unit B	1055 SF (x2)	
Hotel Employee unit A	752 SF (x2)	
Hotel Employee unit B	659 SF (x2)	
Hotel Employee unit C	722 SF (x2)	
Hotel Employee Unit D	926 SF	(Meet Exceedance Agreement)
Hotel Employee Unit E	800 SF	(Meet Exceedance Agreement)
Hotel Employee Unit F	540 SF	(Meet Exceedance Agreement)
Circulation	1324 SF	
Second Floor total SF:	12,706 SF	

Ground Floor:

Commercial space	6787 SF
Hotel Employee unit A	752 SF (x2)
Hotel Employee unit B	659 SF (x2)
Hotel Employee unit C	722 SF (x2)
Lobby / Circulation	1272 SF
Ground Floor total SF:	12,325 SF

Total SF (all floors): **36,142 SF** **FAR = 1.99** **(2.25 allowable - 40,838 SF)**

PLANT MATERIALS



RED MAPLE



HARVEST GOLD LINDEN



SWEDISH APSENA



COLUMNAR BUCKTHORN



BIRCHLEAF SPIREA



PAWNEE BUTTES CHERRY



BLUE CREEK WILLOW



ORNAMENTAL GRASSES



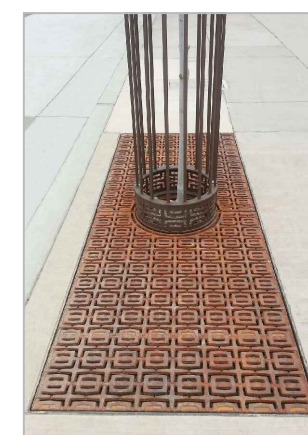
HARDSCAPES + SITE AMENITIES



COLORED CONCRETE / PATTERNS



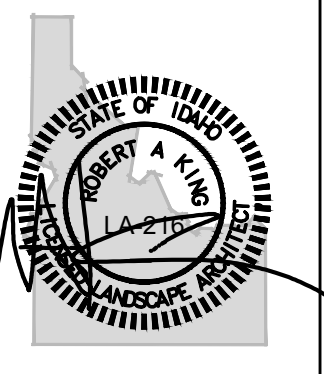
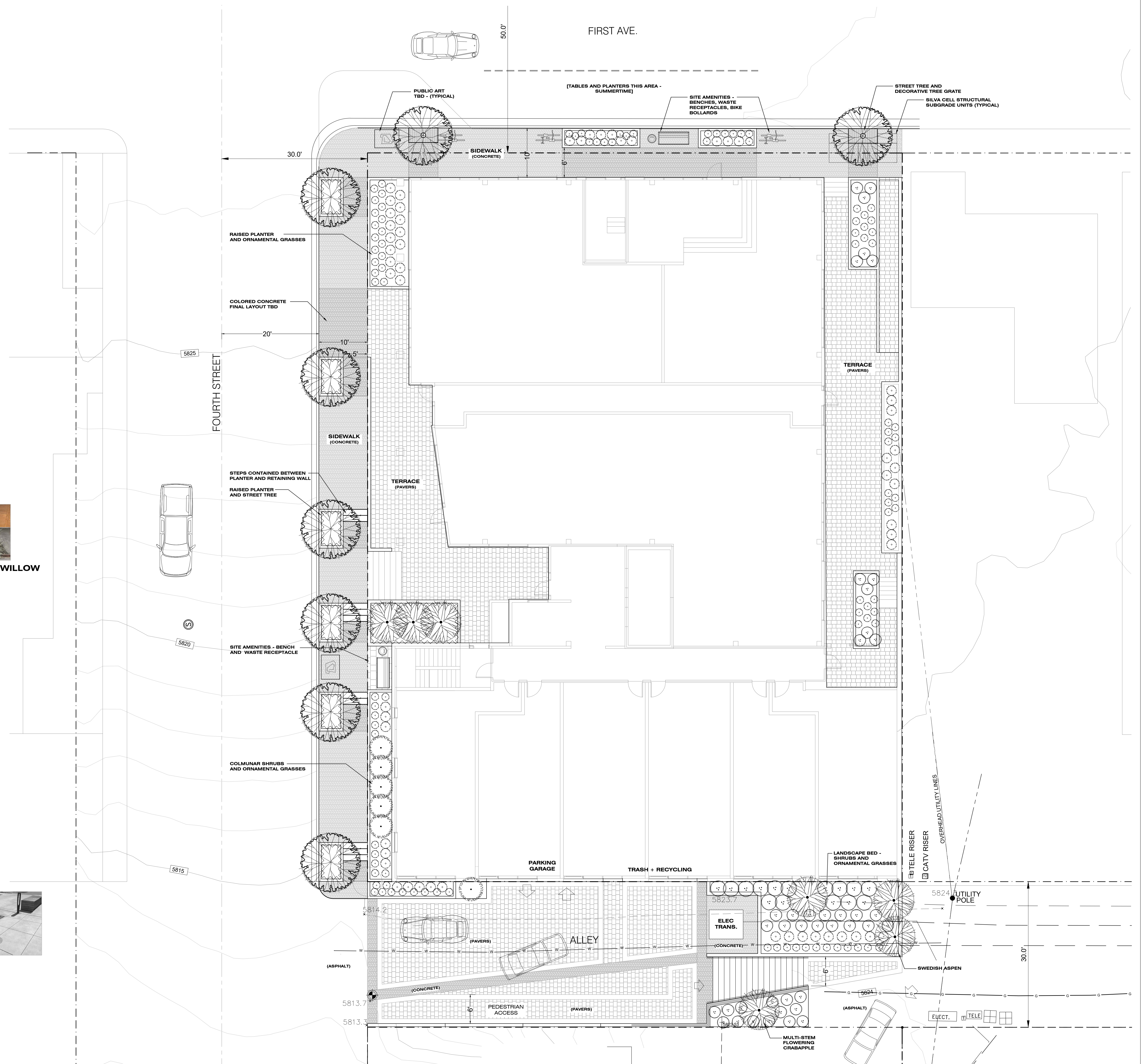
PAVERS



TREE GRATES

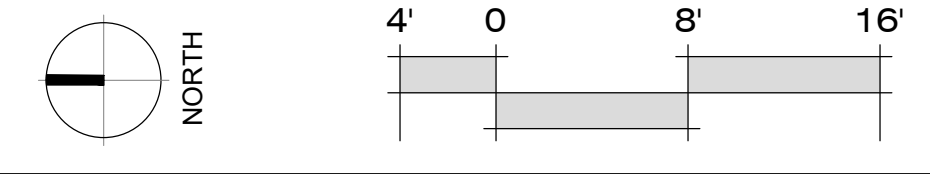


BENCHES, WASTE RECEPTACLES, BIKE BOLLARDS



LANDSCAPE MATERIALS PLAN

SCALE: 1/8" = 1' -0"



OWNER/SHIP OF DOCUMENTS: THIS ELECTRONIC DOCUMENT AND THE CONTENTS CONTAINED THEREON (I.E. DESIGNS, CONCEPTS, AND GRAPHIC SYMBOLS) ARE THE PROPERTY OF CLEMENS ASSOCIATES LLC, AND SHALL NOT BE USED IN WHOLE OR IN PART, BY ANY OTHER PERSON OR PERSONS WITHOUT THE WRITTEN AUTHORIZATION OF CLEMENS ASSOCIATES LLC.

Attachment F

November 5, 2019

Sent Via E-Mail: participate@ketchumidaho.org

Ketchum Department of Planning and Building
P.O. Box 2315
Ketchum, ID 83340

Re: Request to vacate alley between 160 W. 4th St. and 120 W. 4th St. Ketchum, Idaho

Dear Ketchum Department of Planning and Building:

This is in response to your Public Notice received November 5, 2019 sent to Idaho Power Company regarding the possible vacation and abandonment of the alley way between 160 W. 4th St. and 120 W. 4th St. in the city of Ketchum. The public notice is attached (Exhibit A) along with a map (Exhibit B), which provides a more specific location of the intended area to vacate.

Idaho Power's records indicate that the Company does maintain electrical facilities within the Right-of-Way, and must retain all existing rights related thereto. Accordingly, Idaho Power requires that any vacation of the Right-of-Way by the City of Ketchum reserve to Idaho Power the continued right to operate, maintain, repair, replace, or otherwise modify or add to Idaho Power's facilities within the Right-of-Way, including the right of ingress and egress thereto. If this project requires the relocation or amendment of Idaho Power facilities a new easement must be obtained.

In the event City of Ketchum approves the vacation and abandonment of the Right-of-Way, please mail or email to my attention a copy of the recorded resolution and the conveyance of the Right-of-Way.

Thank you for providing Idaho Power Company the opportunity to review and comment upon the subject petition for vacation.

Sincerely,



Krista Englund
Land Management and Permitting Department
Corporate Real Estate
Idaho Power Company

208-388-2245
kenglund@idahopower.com



**City of Ketchum
Planning & Building**

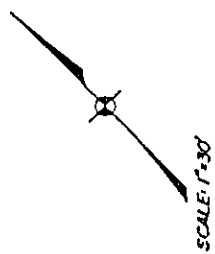
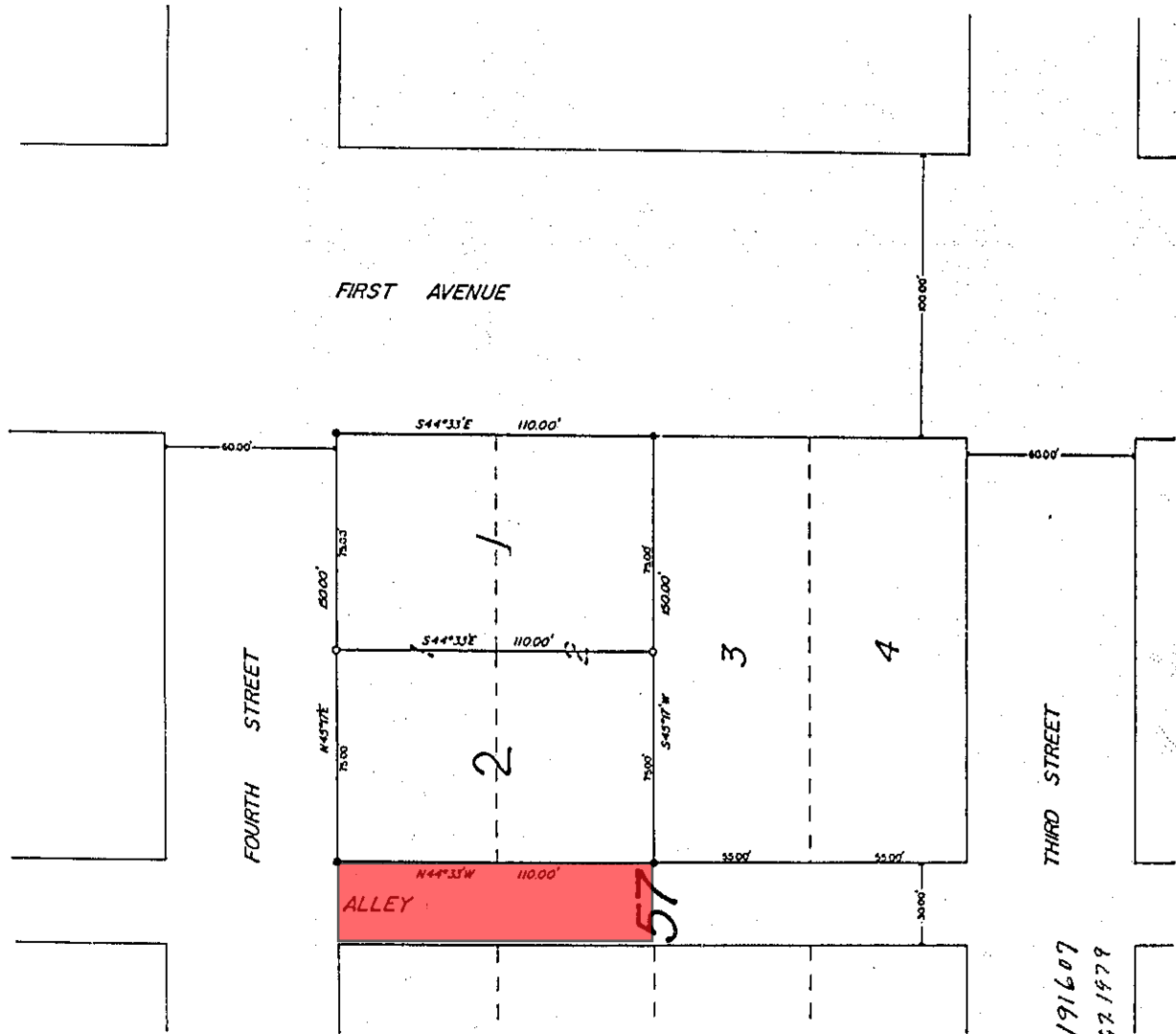
**PUBLIC NOTICE - PUBLIC HEARING
KETCHUM CITY COUNCIL**

Meeting Date:	November 18 th , 2019
Meeting Time:	4:00 PM, or thereafter as the matter can be heard.
Meeting Location:	City Hall Council Chambers, 480 East Avenue North, Ketchum, Idaho
Project Name:	1 st and 4 th Mixed Use Development.
Representative/Owner:	Jack Bariteau
Application Type:	Alley vacation, lot line shift (boundary line adjustment/plat amendment) and development agreement
Project location:	391 N. 1st Ave. (AM Lot 1, Block 57, Ketchum Townsite) and 120 W. 4th St. (AM Lot 2, Block 57, Ketchum Townsite)
Project Description:	<p>The Ketchum City Council will hold public hearings to consider the following applications for the subject property:</p> <p>Applications to vacate the portion of the alley in Block 57 that is adjacent to 160 W. 4th Street (E 50' x 55' of Lots 5 & 6, Ketchum Townsite), and 120 W. 4th St. (AM Lot 2, Block 57, Ketchum Townsite), to readjust boundary lines (lot line shift) between 391 N. 1st Ave, 120 W. 4th St. and 160 W. 4th Street., and a development agreement to memorialize the aforementioned requests will be heard. The alley vacation request would vacate ½ of the alley (15' x 110') to 160 W. 4th, owned by Holt & Johnson LLC, and ½ the alley (15' x 110') to 391 N. 1st Ave. (AM Lot 1, Block 57), owned by Jack Eli Bariteau Jr, trustee, of the Jack E Bariteau Jr Separate Property Trust UTA 10/2/96. Upon vacation of the alley the boundary line adjustment would create a new Lot 6A, Block 57, Ketchum Townsite and a new Lot 1B, Block 57, Ketchum townsite. Lot 6A would be comprised of existing E 50' x 55' of Lots 5 & 6, Block 57, plus 15' x 110' of the vacated alley and Lot 1B would be comprised of existing AM Lot 1 and AM Lot 2 of Block 57 plus 15' x 110' of the vacated alley. The subject properties are zoned Community Core, Subdistrict 2 – Mixed Use.</p>

NOTICE IS FURTHER GIVEN that at the aforementioned time and place, all interested persons may appear and shall be given an opportunity to comment on the matter stated above. A copy of the staff report will be available on the City website at the following link <http://www.ketchumidaho.org> 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, via email to participate@ketchumidaho.org, or via facsimile to (208)726-7812. The public is welcome to attend the site visit, but please note that no comments or questions will be taken at the site visit. Written comments received by 5:00 PM, seven (7) days prior to the hearing shall be made part of the public record at the hearing. All other comments must be made at the public hearing. For additional information, please call (208)726-7801.

Dated this 30th of October 2019.

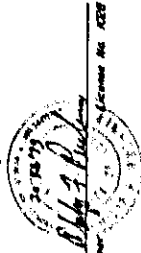
RE-DIVISION OF LOTS 1 & 2, BLOCK 57, ORIGINAL KETCHUM TOWNSITE
As approved on the 23rd day of February, 1976, by the Ketchum Planning and Zoning Commission and Building Department.



LEGEND

- 1/4" 1/4" Metal Set
- 1/2" 1/4" Metal Found

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



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

No. 191609
Feb. 27, 1979
4.
Robert Lloyd Butler

Subject: FW: Public Comment: Bariteau Project / 391 N. 1st Avenue
Date: Wednesday, November 6, 2019 at 11:52:18 AM Mountain Standard Time
From: Participate
To: AllCouncil, Suzanne Frick, Robin Crotty, John Gaeddert

Please see public comment below.

LISA ENOURATO | CITY OF KETCHUM

Assistant City Administrator

P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340

o: 208.726.7803 | f: 208.726.7812

lenourato@ketchumidaho.org | www.ketchumidaho.org

From: Craig Skotdal <craig.skotdal@skotdal.com>
Sent: Tuesday, November 05, 2019 6:15 PM
To: Participate <participate@ketchumidaho.org>
Cc: Art Skotdal <art.skotdal@skotdal.com>; Andrew Skotdal <andrew.skotdal@skotdal.com>
Subject: Public Comment: Bariteau Project / 391 N. 1st Avenue

To Whom It May Concern:

We received the public notice sent via certified letter regarding the proposed alley vacation for a project Jack Bariteau is proposing to build at 391 N. 1st Avenue. Our family has enjoyed living and recreating in Ketchum, Idaho since 1978. We currently own a condominium at Copper Ridge and residential unit at the Colonnade project that Mr. Bariteau developed.

All of the projects that Mr. Bariteau has constructed have demonstrated a commitment quality and attention to detail. His projects have been designed with the community in mind and have strengthened retail vitality in the center of the town. Based on his proven track record, we endorse the proposed alley vacation. The proposed project will be an important and much needed improvement that will help facilitate Ketchum's revitalization.

Sincerely,
Craig Skotdal
On behalf of the Skotdal family

From: sally onetto <onettosally@gmail.com>

Date: May 6, 2019 at 4:59:44 PM MDT

To: participate@ketchumidaho.org

Subject: Demolition of historic buildings, 391 First Avenue North, Ketchum

To whom it may concern

As a property owner in Ketchum for the last 19 years, and presently residing at 160 Spur Lane, I have taken great interest in the development of our City.

The ability to try and keep the character of the town whilst competing with the demand for more modern infrastructure, has in the main, gone really smoothly.

However, the proposed development by Mr Bariteau is a eyesore. There are few buildings with this heft, both in height and in depth in our city.

No balconies or stepped back decks seem to be planned, just a hulk of a building at least one floor taller than anything nearby. It is hideous and ruins any chance of keeping some sort of

attractive corner on First Ave . This is an area where parking is already a challenge in high season and where will the visitors to the Culinary Institute park if the underground parking is for the residents

or office workers? To reserve the planned 12 community housing units for the benefit of the non-existent hotel, is not, I think, the purpose of the ruling requiring developers to create such units.

Removing a historic cottage to allow the plot to sit empty with weeds for maybe a year or two, to house employees of a non-existent hotel project, to have as a core tenant an Institute which itself needs to raise funds, sounds really poor decision making.

Why not have Mr. Bariteau start building his hotel before decisions are made to create yet another hole in Ketchum. The residents are getting rather upset by the lax oversight on this.

Respectfully

Sally Onetto

160 Spur Lane, Ketchum

From: John Shetron <johnshetron@yahoo.com>
Sent: Tuesday, March 26, 2019 10:12 AM
To: Participate <participate@ketchumidaho.org>
Subject: Design Review 391 First Avenue North

Dear Planning and Review,

Please reject the current proposed design for Jack Bariteau's mixed-use project at 391 First Avenue North.

I own one of the properties across the street (360 First Avenue North) from this proposed development. I am in favor of aesthetically pleasing developments and a fan of Jack's other projects in Ketchum, however this project is visually unacceptable.

The current design looks as though it were a last minute creation by a first year architecture student - "a big box" is the description I hear repeatedly. I'm aware that "mountain modern" is a popular trend in ski town design, but this project looks as though it belongs in a gritty, gentrifying big city factory district. Please reject the design in its current form and encourage Mr. Bariteau to soften and improve the overall aesthetics of this project. A lower profile wouldn't hurt either - especially the First Avenue portion.

Thank you for your time.
Feel free to contact me.

Sincerely,

John Shetron
360 First Avenue North
PO Box 5208
Ketchum, ID 83340
208/450-9332

From: Cyn Hannah <cynhannah@yahoo.com>

Sent: Tuesday, April 02, 2019 6:00 PM

To: Participate <participate@ketchumidaho.org>

Subject: Design Review - 391 First Avenue North proposed development

Dear Ketchum Planning & Building Department,

I'm writing to express my displeasure with the design of the proposed mixed-use building located at the corner of First Avenue and Forth street (391 First Avenue North).

We are property owners on First Avenue and look forward to these lots being developed into an attractive project, however the current design is far from aesthetically pleasing - just a big unattractive box.

Developer Jack Bariteau has a stellar track record for creating attractive projects and I am perplexed as to why he would submit something so visually inferior. With it's proximity to the Post Office and a high traffic location, it is far too important to let this key Ketchum location become something less than it could be.

Please reject this current design and encourage Mr Bariteau and his team return with a project our city can be proud of.

Sincerely,

Cyn Hannah
Life Mastery Coach
208.720.3063
Your dream matters!

From: [Participate](#)
To: [AllPlanningAndZoning](#)
Subject: FW: Bariteau proposed development at 391 First Ave. North, Ketchum
Date: Thursday, April 04, 2019 2:41:01 PM

Public comment and questions below.

LISA ENOURATO | CITY OF KETCHUM
Assistant City Administrator
P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340
o: 208.726.7803 | f: 208.726.7812
lenourato@ketchumidaho.org | www.ketchumidaho.org

-----Original Message-----

From: Carol Thielen <consigndesign1@me.com>
Sent: Thursday, April 04, 2019 10:26 AM
To: Participate <participate@ketchumidaho.org>
Subject: Bariteau proposed development at 391 First Ave. North, Ketchum

Dear commissioners,

As both a retail business owner and commercial property owner in Ketchum, I would like to share a few thoughts and concerns about Mr. Bariteau's proposed project. Keeping in mind that Mr. Bariteau's main objective in this development is work force housing for his proposed hotel in the 'hole' on the south end of town, which as you know, has been vacant and an eyesore for more time than should have been allowed. They are as follows:

1. The height of the building. I would agree with Commissioners Eggers that it should be determined where the height was calculated. It appears to be a monolith.
2. Mr. Bariteau explained to me that the alley behind the property would essentially be 'condemned' as it is not usable. That is correct in the winter, but not in the summer. Can a public thoroughfare be 'condemned' to allow for private investment purposes?
3. Is this the right place for a culinary institute? Or is it going to be a trade school? A school can be located anywhere. It doesn't have to be in the prime downtown core of Ketchum, where it will probably not generate any sales tax revenue. Where will all of these students park? There is two hour parking on First Ave. North and surrounding streets.
4. Is it reasonable to think that three very different types of housing be lodged on the same real estate parcel? Work force housing, market rate housing and multimillion dollar condominiums don't quite seem to be a logical or sensible mix. And then again, we have the parking situation. Mr. Bariteau explained that there would be twenty two housing units and a total of thirty four underground parking spaces. He explained to me that the condos would each have two parking spaces leaving twenty six spaces for work force and market rate units of which there will be eighteen. If that is correct and there are two vehicle owners per unit, he would need thirty six spaces. Granted, not everyone has a car but if so, where do those people park? No over night parking in the winter. Problematic.
5. In the 13 March issue of the Mountain Express it was stated that Mr. Bariteau was in negotiations for financing. What happens if he is not successful in getting financing, as was the case with his hotel project? Do we get yet another hole in town? The central town core is very important not only to residents but to visitors. It should be vibrant and exciting with retail, restaurants and galleries. I am not sure a culinary institute would generate much enthusiasm nor is it an appropriate location, unless they are planning some sort of retail venture such as a bistro or market.
6. I am not opposed to development at all as it stimulates the economy and brings in more people and more revenue. Plus, it is much more desirable to have a town that is vibrant and active. I applaud new businesses that open and hope that they will succeed. My concern is that this proposed project be done thoughtfully and carefully and that it will be in the best interest of the City.

This letter is intended for the members of the planning and zoning board and is confidential. If you would care to contact me, please do so.

I thank you in advance for your time and consideration. You have a very important job to do and I trust that this

project will be carefully looked at and evaluated.

Respectfully,
Carol Thielen

Subject: FW: Bariteau proposed development, First Ave. North
Date: Thursday, September 12, 2019 at 9:50:55 AM Mountain Daylight Time
From: Participate
To: AllCouncil
CC: Suzanne Frick, John Gaeddert, Robin Crotty

Mayor and Council, please see public comment below.

LISA ENOURATO | CITY OF KETCHUM
Assistant City Administrator
P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340
o: 208.726.7803 | f: 208.726.7812
lenourato@ketchumidaho.org | www.ketchumidaho.org

-----Original Message-----

From: Carol Thielen <consigndesign1@icloud.com>
Sent: Thursday, September 12, 2019 9:23 AM
To: Participate <participate@ketchumidaho.org>
Cc: James Speck <jim@speckandaanestad.com>; David Wilson <dwilson@wilsonconstructions.com>
Subject: Bariteau proposed development, First Ave. North

Dear City Leaders,

I am writing to you to express my concerns about the alley vacation that Mr. Bariteau has asked for to allow him to move forward with his proposed development. It seems to me that Mr. Bariteau should have done his research before he purchased the property. Had he known that dead end alleys are prohibited in the city he may not have gone through with the purchase. Or perhaps he thought that the city would just waive this in his favor. Aa very big presumption on his part. This would create a myriad of problems. There are forty one alleys, I believe, in the city. Tens lots adjoining each alley, making that over four hundred residents/tax payers involved and affected by this. My concern is that if Mr. Bariteau's request is granted, it could potentially cause some major issues down the road. The biggest one being access by emergency personnel and vehicles, fire, police, ambulance. Also snow and trash removal. How would this be managed? Who would pay for it? How would any future requests by private individuals be handled if this precedent is set? Would adjacent alley property owners be able to use the alley as they wish? Put up storage sheds, plant trees, create parking areas? How would that affect alley traffic? Who would be responsible for maintenance of the alleys? Would HOA's have to be formed to take care of these issues? Alleys are public property and public thoroughfares and the public should have the right to use them at will. Because one individual would like to change all of that for personal benefit would be saying that that the majority of residents/taxpayers of Ketchum are secondary to one person. That would be very wrong. The responsibility of city leaders is to do what is best for the MAJORITY of their constituents, not one person or entity.

I don't believe that Mr. Bariteau's problem should be the city's problem, nor the taxpayers and residents. Had he done the research before hand, knowing that he would be trying to create a dead end alley, this situation may not be before you now.

I thank you for your time and consideration and believe that you will do what is correct for the city, its residents and its taxpayers.

Respectfully,
Carol Thielen

Sent from my iPad

From: [John Gaeddert](#)
To: [Abby Rivin](#); [Maureen Puddicombe](#)
Subject: FW: Bariteau 1st & 4th Mixed Use Project
Date: Wednesday, April 17, 2019 4:37:26 PM

Please add to public record.

On 4/17/19, 2:56 PM, "Carol Thielen" <consigndesign1@me.com> wrote:

Thank you so much. I appreciate your help and diligence in making sure this project wont be doomed from the start and that it will be viable and a good addition to the neighborhood and contribute to the city core with a quality development that will bring tourists and locals alike to West Ketchum and find a pleasant and enjoyable atmosphere. We need restaurants and retail, not a culinary school which could be housed anywhere in the county. We need a vibrant neighborhood and one that will produce some sales tax revenue.

Best,
Carol Thielen

Sent from my iPad

> On Apr 17, 2019, at 2:03 PM, John Gaeddert <JGaeddert@ketchumidaho.org> wrote:

>

> Thank you Carol. I will pass these comments on to the Commission and Council. Notably, the PZ has perview on quality and suitability of the design consistent with the city's design review regulations. In like manner, the Council at it's discretion can look into applicant financing and performer assurances aspart of project development agreement.

> My best John

>

> Sent from my iPhone

>

>> On Apr 17, 2019, at 7:13 AM, Carol Thielen <consigndesign1@me.com> wrote:

>>

>> Thank you so much for your response. My concern is two fold. One, that Mr. Bariteau actually has the funds to do the project in advance of demolishing the buildings and can follow through to completion. The other is that the project is correct for the site and for Ketchum, not only correct for Mr. Bariteau or in his best interests. The last thing we need is another giant hole in the ground.

>> Best,

>> Carol Thielen

>>

>> Sent from my iPad

>>

>>> On Apr 16, 2019, at 8:14 PM, John Gaeddert <JGaeddert@ketchumidaho.org> wrote:

>>>

>>> Thank you for your previous letter. Yes, your comments were entered into the record and provided to the PZ Commission. After considering numerous issues at two hearing and hours of deliberation, the PZ Commission moved the matter to its next hearing agenda of May 13th. Please let our office know if further questions. My best,
John

>>>

>>> Sent from my iPhone