



STAFF REPORT  
KETCHUM PLANNING & ZONING COMMISSION  
REGULAR MEETING OF SEPTEMBER 10, 2024

**PROJECT:** Tenth Street Light Industrial Units A-9A & A-9B Condominiums

**FILE NUMBER:** P24-060

**APPLICATION TYPE:** Condominium Subdivision Preliminary Plat

**REPRESENTATIVE:** David Patrie, Galena-Benchmark Engineering

**PROPERTY OWNER:** Glickman Investment Group LLC

**REQUEST:** subdivide existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units

**LOCATION:** 491 E 10<sup>th</sup> Street A9 (Tenth Street Light Industrial Complex: Building A: Unit 9)

**ZONING:** Light Industrial District Number 2 (LI-2 Zone)

**NOTICE:** A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on August 21, 2024. The notice was published in the Idaho Mountain Express on August 21, 2024. A notice was posted on the project site and the city's website on August 26, 2024.

**REVIEWER:** Abby Rivin – Senior Planner

**EXECUTIVE SUMMARY**

The subdivision preliminary plat application proposes to subdivide existing unit A9 within the Tenth Street Light Industrial Complex located at 491 E 10th Street within the Light Industrial District Number 2 (LI-2 Zone). Staff finds the project complies with all applicable subdivision regulations for preliminary plats, subdivision design and developments standards, and condominium requirements.

**BACKGROUND**

The Planning and Building Department received the subdivision preliminary plat application for the project on July 24, 2024. Following the receipt of the application, staff routed the application materials to all city departments for review. After one round of review, the application was scheduled for a public hearing.

The Tenth Street Light Industrial Building was built and subdivided into condominiums in 1981. Existing Unit A-9 is one 18 condominium units within Building A of the Tenth Street Light Industrial Complex. Existing unit A-9 is one of four condominium units in Building A that contain two floors extending across both the lower and upper levels.

The subdivision preliminary plat application proposes to subdivide existing unit A9 within the Tenth Street Light Industrial Complex into two condominium units. The lower level will become unit A-9B and the upper level will become unit A-9A. The details on sheet 1 of the preliminary plat (see Attachment A) provide the scaled dimensions for the proposed upper-level unit A-9A and lower-level unit A-9B. Proposed unit A-9A has an area of 1,025 square feet and proposed unit A-9B has an area of 1,100 square feet.

The owner of unit A-9 was issued Building Permit B23-002 for a remodel on March 15, 2023. The improvements proposed with the remodel included the removal of the interior stairwell that connected the lower and upper floors of unit A9 as well as the installation of a new garage door at the lower level on the west elevation of the existing unit. The remodel separated the two floors of unit A-9 by removing the shared, interior stairwell. The owner received a Certificate of Completion for these improvements on October 27, 2023.

## **ANALYSIS**

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

- The standard applies to the establishment of new subdivisions creating multiple new lots that will form blocks around new streets and not the subject property, which is an existing condominium within the Tenth Street Light Industrial Complex.
- The standard applies to an action that will be taken at the final plat stage of the process.
- The City Engineer has determined that the standard does not apply.
- The standard applies to new residential condominiums and not the subject property, which an existing condominium unit within the Tenth Street Light Industrial Complex.

A full analysis of the applicable standards can be found in draft Findings of Fact, Conclusions of Law, and Decision included as Attachment B. Staff finds the project complies with all applicable subdivision regulations for preliminary plats, subdivision design and developments standards, and condominium requirements.

**STAFF RECOMMENDATION:**

Staff recommends **approval** of the Condominium Subdivision Preliminary Plat application subject to the following condition:

1. Pursuant to Ketchum Municipal Code §16.04.030.I, failure to obtain final plat approval within two years of City Council’s approval of the preliminary plat shall cause all preliminary plat approvals to be null and void.

**RECOMMENDED MOTION:**

“I move to recommend approval of the Tenth Street Light Industrial Complex Units A-9A and A-9B Condominium Subdivision Preliminary Plat application to the City Council as conditioned and adopt the Findings of Fact, Conclusions of Law, and Decision.”

**ATTACHMENTS:**

- A. Tenth Street Light Industrial Complex Units A-9A & A-9B Condominium Subdivision Preliminary Plat Application Submittal
- B. Draft Findings of Fact, Conclusions of Law, and Decision

Attachment A

Tenth Street Light Industrial  
Complex

Units A-9A & A-9B

Condominium Subdivision  
Preliminary Plat Application  
Submittal



**City of Ketchum  
Planning & Building**

| OFFICIAL USE ONLY   |         |
|---------------------|---------|
| Application Number: | P24-060 |
| Date Received:      | 7/24/24 |
| By:                 | GB      |
| Fee Paid:           | \$3300  |
| Approved Date:      |         |
| By:                 |         |

**Subdivision Application-Preliminary Plat**

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

| APPLICANT INFORMATION   |                               |                              |                                    |
|---|-------------------------------|------------------------------|------------------------------------|
| Name of Proposed Subdivision: TENTH STREET LIGHT INDUSTRIAL COMPLEX, UNITS A-9A & A-9B  |                               |                              |                                    |
| Owner of Record: GLICKMAN INVESTMENT GROUP LLC  |                               |                              |                                    |
| Address of Owner: 2049 CENTURY PARK E STE 1400 LOS ANGELES CA 90067   |                               |                              |                                    |
| Representative of Owner: Galena-Benchmark Eng.  |                               | Phone #: 208-726-9512        |                                    |
| Email: dave@galena-benchmark.com  |                               |                              |                                    |
| Legal Description: TENTH ST LIGHT INDUST COMPLEX BLDG UNIT 9  |                               | RPK095300A0090               |                                    |
| Street Address: 491 E 10TH ST A9 KETCHUM ID   |                               |                              |                                    |
| SUBDIVISION INFORMATION   |                               |                              |                                    |
| Number of Lots/Parcels: ONE UNIT SUBDIVIDED INTO TWO UNITS  |                               |                              |                                    |
| Total Land Area: N/A - CONDOMINIUM  |                               |                              |                                    |
| Current Zoning District: LI-2   |                               |                              |                                    |
| Proposed Zoning District: LI-2  |                               |                              |                                    |
| Overlay District: N/A   |                               |                              |                                    |
| TYPE OF SUBDIVISION   |                               |                              |                                    |
| Condominium <input checked="" type="checkbox"/>   | Land <input type="checkbox"/> | PUD <input type="checkbox"/> | Townhouse <input type="checkbox"/> |
| Adjacent land in same ownership in acres or square feet: N/A  |                               |                              |                                    |
| Easements to be dedicated on the final plat:<br>N/A   |                               |                              |                                    |
| Briefly describe the improvements to be installed prior to final plat approval:<br>N/A  |                               |                              |                                    |
| ADDITIONAL INFORMATION  |                               |                              |                                    |
| All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance<br>One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations<br>One (1) copy of current title report and owner's recorded deed to the subject property<br>One (1) copy of the preliminary plat<br>All files should be submitted in an electronic format to <a href="mailto:planningandzoning@ketchumidaho.org">planningandzoning@ketchumidaho.org</a> |                               |                              |                                    |

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

*David Patric*

Applicant Rep

07/16/24

Applicant Signature

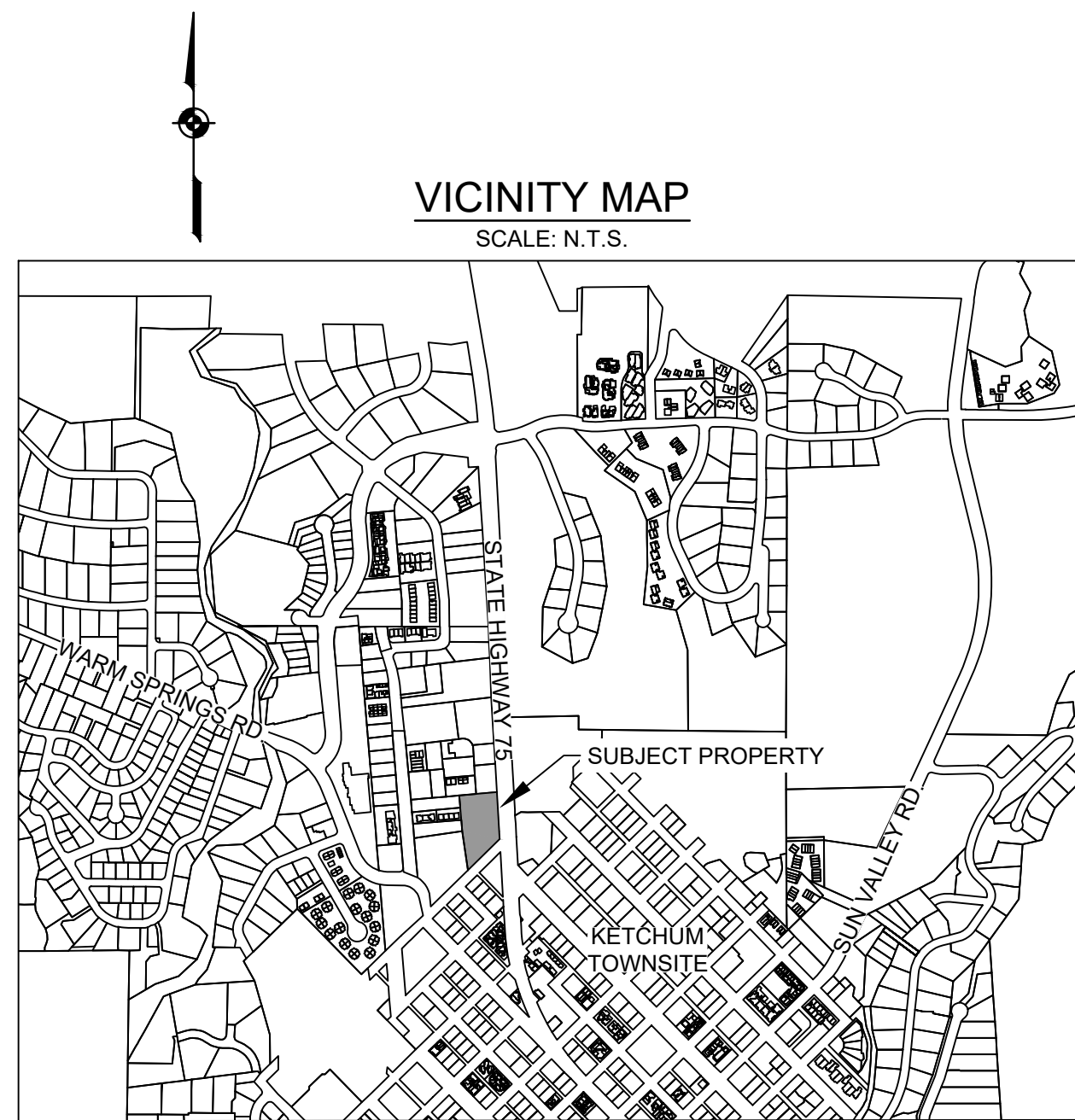
Date

# A CONDOMINIUM PLAT SHOWING TENTH STREET LIGHT INDUSTRIAL COMPLEX, UNITS A-9A & A-9B

LOCATED WITHIN T.4N., R.17E., SECTION 13, B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO

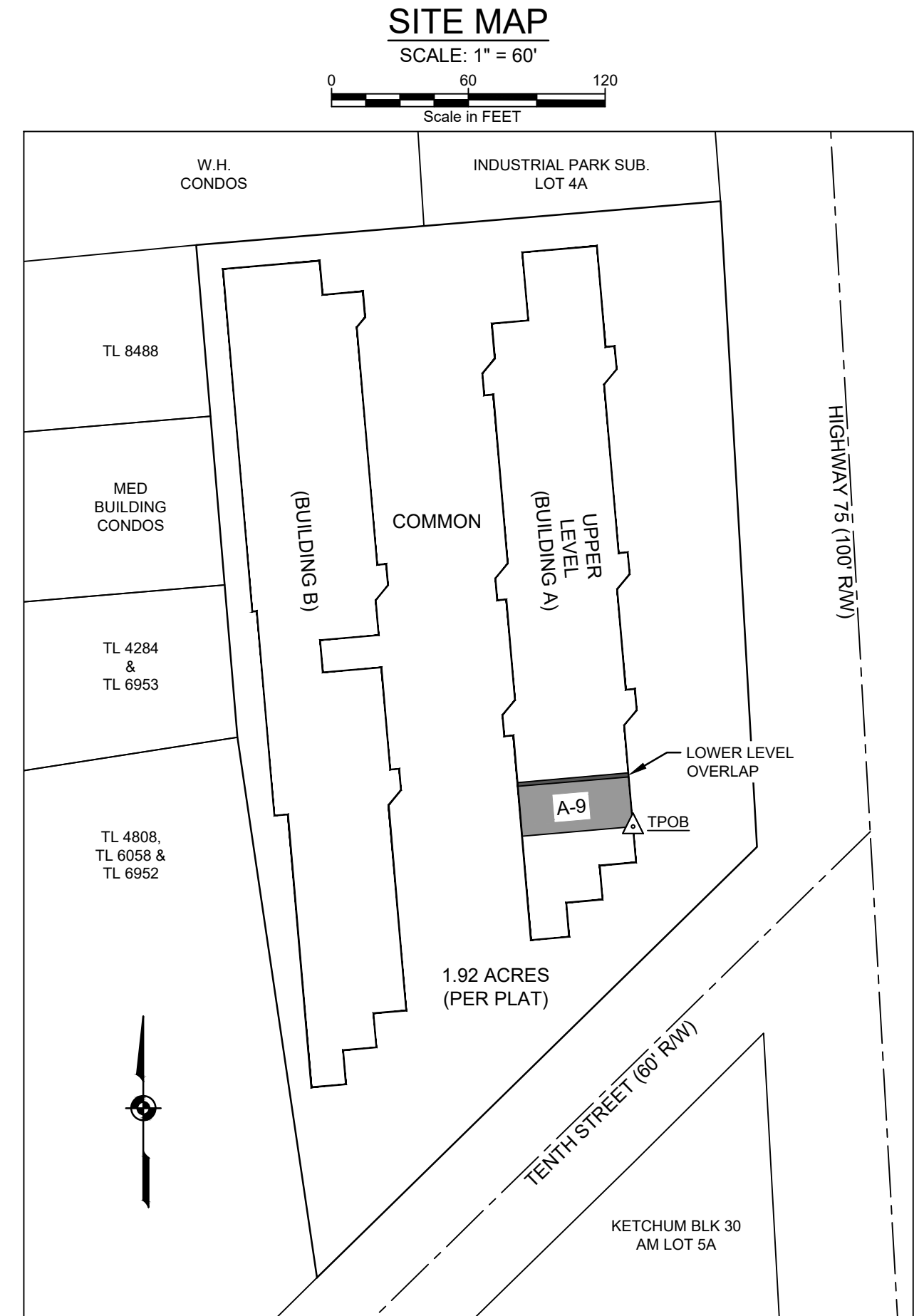
JULY 2024

WHEREIN UNIT A-9 IS SUBDIVIDED, CREATING UNITS A-9A & A-9B

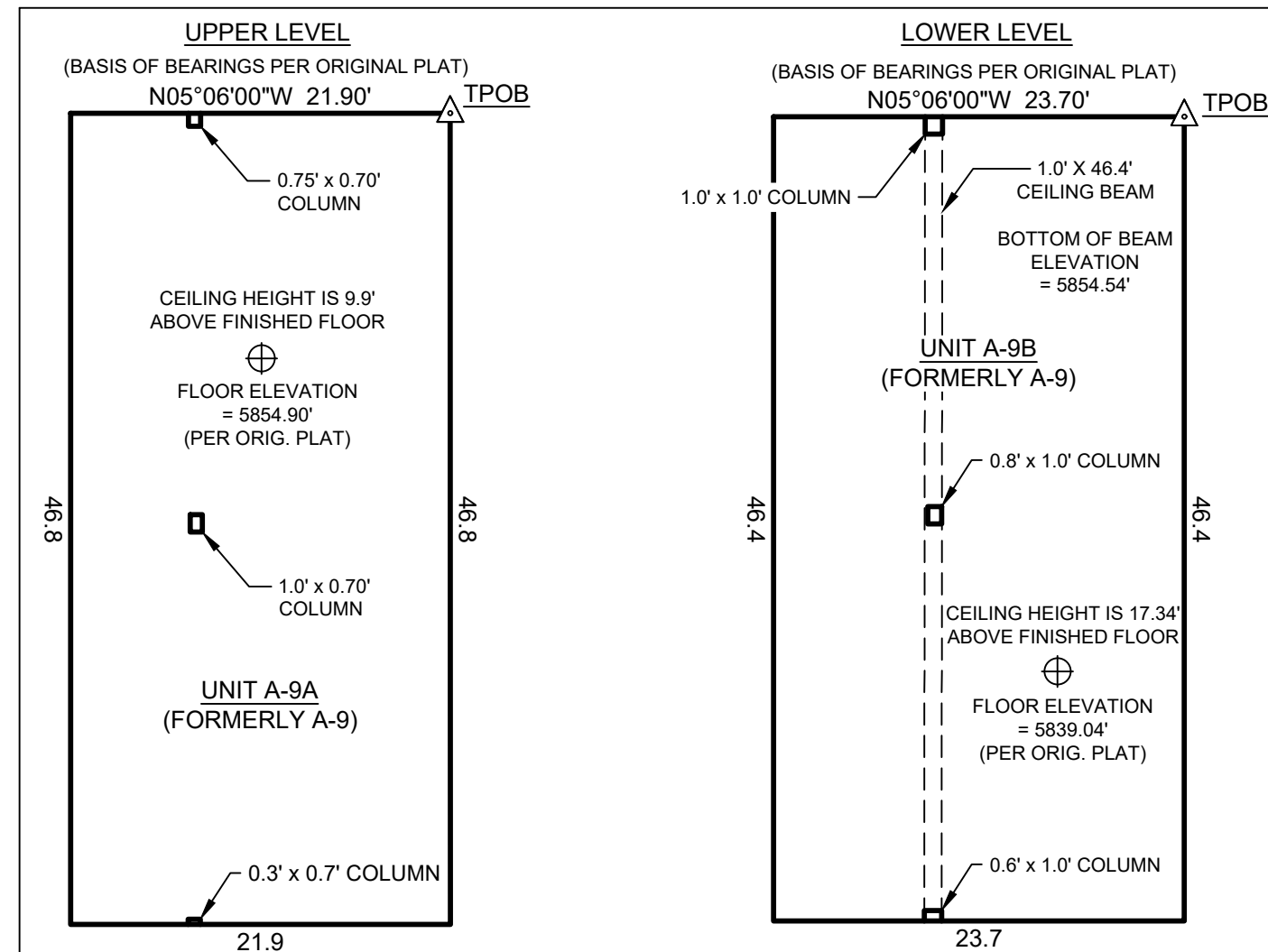
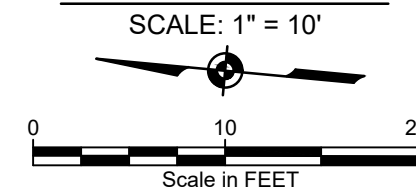


### NOTES & NARRATIVE:

1. THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE UNIT A-9 INTO SEPARATE UPPER AND LOWER LEVEL UNITS, A-9A & A-9B RESPECTIVELY. AN EXTERIOR BOUNDARY SURVEY WAS NOT PERFORMED. REFER TO THE ORIGINAL PLAT OF TENTH STREET LIGHT INDUSTRIAL COMPLEX, BUILDING A, AS SHOWN ON THE CONDOMINIUM MAP OF TENTH STREET LIGHT INDUSTRIAL COMPLEX, RECORDED AS INSTRUMENT NO. 217707, RECORDS OF BLAINE COUNTY, IDAHO.
2. DOCUMENTS USED IN THE COURSE OF THIS SURVEY:  
2.A. ORIGINAL PLAT AND CC&R'S OF TENTH STREET LIGHT INDUSTRIAL COMPLEX, INSTRUMENT NO. 217707  
2.B. TENTH STREET LIGHT INDUSTRIAL COMPLEX, UNITS A-6A & A-7A, INSTRUMENT NO. 565299  
2.C. WARRANTY DEED REVIEWED, INSTRUMENT NO. 694675
3. THE DISTANCES SHOWN ARE MEASURED. REFER TO THE ABOVE REFERENCED DOCUMENTS FOR PREVIOUS RECORD DATA.
4. REFER TO THE ORIGINAL PLAT OF TENTH STREET LIGHT INDUSTRIAL COMPLEX (INSTRUMENT NO. 217707) AND TO THE CONDOMINIUM DECLARATION FOR TENTH STREET LIGHT INDUSTRIAL COMPLEX (INSTRUMENT NO. 217708) AND ANY AMENDMENTS THERETO, RECORDS OF BLAINE COUNTY, IDAHO FOR CONDITIONS, RESTRICTIONS, AND PLAT NOTES AFFECTING THIS PROPERTY.
5. IN INTERPRETING THE DECLARATION, PLAT OR PLATS, AND DEEDS, THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT AS ORIGINALLY CONSTRUCTED, OR RECONSTRUCTED IN LIEU THEREOF, SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE MEETS AND BOUNDS EXPRESSED OR DEPICTED IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING AND REGARDLESS OF MINOR VARIANCES BETWEEN BOUNDARIES SHOWN IN THE DECLARATION, PLAT OR PLATS, AND/OR DEEDS, AND THE ACTUAL BOUNDARIES OF THE UNITS IN THE BUILDINGS.
6. HORIZONTAL OR SLOPING PLANES SHOWN HEREON ARE TOP OF FINISHED SUBFLOOR AND BOTTOM OF FINISHED CEILING; VERTICAL PLANES ARE FINISHED SURFACES OF INTERIOR WALLS. SOME STRUCTURAL MEMBERS EXTEND INTO UNITS.
7. DIMENSIONS SHOWN HEREON WILL BE SUBJECT TO SLIGHT VARIATIONS OWING TO NORMAL CONSTRUCTION TOLERANCES.
8. CONSULT THE CONDOMINIUM DECLARATIONS FOR THE DEFINITION OF THE COMMON AREA.
9. ELEVATIONS SHOWN ARE PER ORIGINAL PLAT.
10. BUILDING TIES ARE TO THE INTERIOR CORNERS OF UNIT WALLS.
11. BASIS OF BEARINGS IS PER ORIGINAL PLAT.
12. ALL UNIT WALLS ARE PARALLEL AND PERPENDICULAR UNLESS OTHERWISE NOTED.

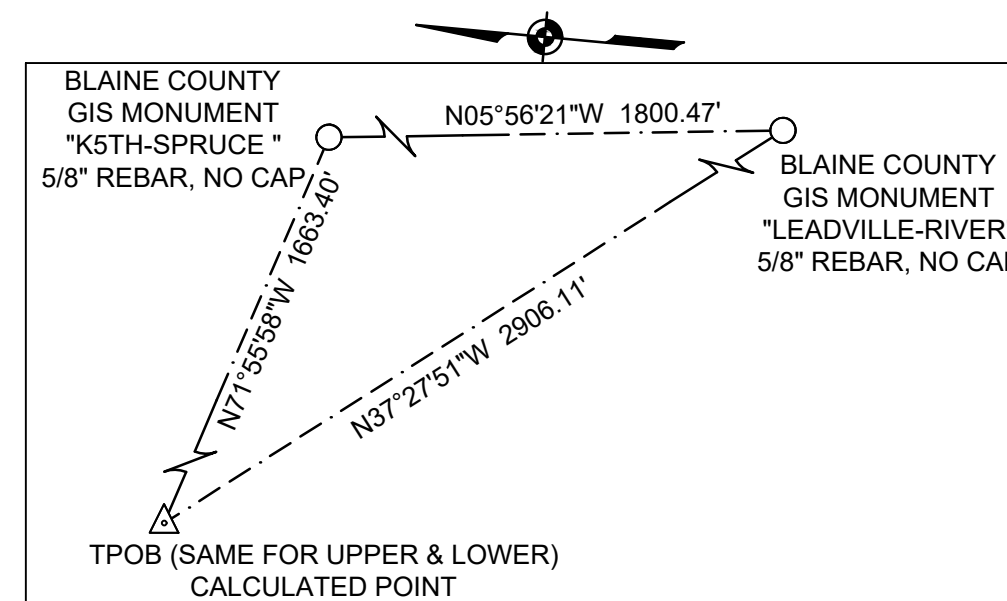


### UNIT DETAILS



CURRENT ZONING: LI-2  
OWNER: GLICKMAN INVESTMENT GROUP LLC  
ADDRESS: 2049 CENTURY PARK E STE 1400  
LOS ANGELES CA 90067

### GIS TIES



EXTERIOR BOUNDARY PER ORIGINAL PLAT OF TENTH STREET LIGHT INDUSTRIAL COMPLEX.  
REFER TO ORIGINAL PLAT RECORDED AS INSTRUMENT NO. 217707,  
RECORDS OF BLAINE COUNTY, IDAHO FOR ADDITIONAL INFORMATION.

### HEALTH CERTIFICATE

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

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

South Central Public Health District, REHS



A PLAT SHOWING  
TENTH STREET LIGHT INDUSTRIAL COMPLEX  
UNITS A-9A & A-9B

GALENA-BENCHMARK ENGINEERING  
KETCHUM, IDAHO

SHEET 1 OF 2  
Job No. 23199



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## WARRANTY DEED

FOR VALUE RECEIVED

Tenth Street Partners, LLC, an Idaho Limited Liability Company,

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

Glickman Investment Group, LLC, a California Limited Liability Company

the Grantee, whose current address is: 2049 Century Park East, Suite 1400, Los Angeles, CA 90067

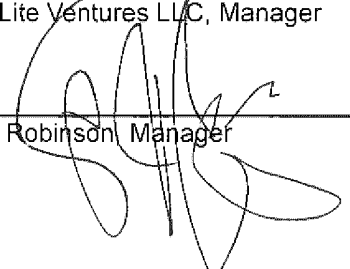
the following described premises, to-wit:

Condominium Unit A-9, Building A, as shown on the Condominium Map of TENTH STREET LIGHT INDUSTRIAL COMPLEX, recorded as Instrument No. 217707 and as defined and described in the Condominium Declaration for TENTH STREET INDUSTRIAL CENTER, recorded as Instrument No. 217708 and Amended as Instrument No.'s 218044, 257359, 276089, 276090, 289758, 297774, 340830, 433602, 567016, 571516 and 632586 records of Blaine County, Idaho.

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

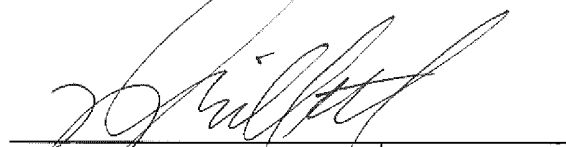
Dated this 29<sup>th</sup> day of June, 2022.

Tenth Street Partners LLC  
By First Lite Ventures LLC, Manager

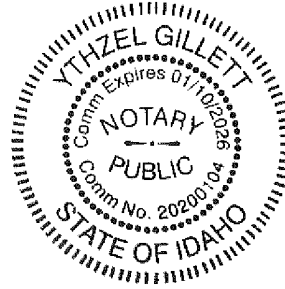
By:   
\_\_\_\_\_  
Scott Robinson, Manager

State of Idaho  
County of Blaine

This record was acknowledged before me on 29 day of June, 2022, by Scott Robinson, Manager of First Lite Ventures LLC, Manager of Tenth Street Partners, LLC.

  
\_\_\_\_\_  
Notary Public Ythzel Gillett  
My Commission Expires: 1/10/2026

(STAMP)







**CLTA GUARANTEE**

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

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

**GUARANTEES**

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

**Dated: March 19, 2024**

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

Countersigned by:


\_\_\_\_\_  
Authorized Countersignature

\_\_\_\_\_  
TitleOne  
Company Name

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



  
\_\_\_\_\_  
Frederick H. Eppinger  
President and CEO

  
\_\_\_\_\_  
David Hisey  
Secretary

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

## GUARANTEE CONDITIONS AND STIPULATIONS

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

## GUARANTEE CONDITIONS AND STIPULATIONS

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

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price. Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5, and the Guarantee shall be surrendered to the Company of cancellation.

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

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

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

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

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

- the amount of liability stated in Schedule A;
- the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

**9. Limitation of Liability**

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

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

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

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

**11. Payment Loss**

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

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

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

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

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

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

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

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

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

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

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

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

**LOT BOOK GUARANTEE**  
Issued By  
**Stewart Title Guaranty Company**

**SCHEDULE A**

**File No.** 24498409

**State:** ID

**County:** Blaine

| <u>Guarantee No.</u> | <u>Liability</u> | <u>Date of Guarantee</u>    | <u>Fee</u> |
|----------------------|------------------|-----------------------------|------------|
| G-2222-000090391     | \$1,000.00       | March 19, 2024 at 7:30 a.m. | \$140.00   |

**Name of Assured:**

Galena-Benchmark Engineering

The assurances referred to on the face page hereof are:

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

Condominium Unit A-9 in Building A as shown on the Condominium Map and Diagrammatic Floor Plans for TENTH STREET LIGHT INDUSTRIAL COMPLEX, BLAINE COUNTY, IDAHO, recorded as Instrument No. 217707, and as defined and described in that Condominium Declaration for TENTH STREET LIGHT INDUSTRIAL COMPLEX, recorded August 4, 1981, as Instrument No. 217708, records of Blaine County, Idaho and as amended.

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

Deed Type: Warranty Deed

Grantors: Tenth Street Partners, LLC, an Idaho limited liability company

Grantees: Glickman Investment Group, LLC, an Idaho limited liability company

Recorded Date: June 30, 2022

Instrument: 694675

[Click here to view](#)

3. There are no mortgages or deeds of trust which purport to affect title to said land, other than those shown below under Exceptions.
4. There are no (homesteads, agreements to convey, attachments, notices of non-responsibility, notices of completion, tax deeds) which purport to affect title to said land, other than shown below under Exceptions.
5. No guarantee is made regarding (a) matters affecting the beneficial interest of any mortgage or deed of trust which may be shown herein as an exception, or (b) other matters which may affect any such mortgage or deed of trust.
6. No guarantee is made regarding any liens, claims of liens, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said land is the same as said address.

**EXCEPTIONS:**

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

491 E 10th St, Unit A9, Ketchum, ID 83340

2. Taxes, including any assessments collected therewith, for the year 2023 for which the first installment is paid, and the second installment is due and payable on or before June 20, 2024.

Parcel Number: [RPK095300A0090](#)

Original Amount: \$4,650.00

NOTE: A property tax reduction (which reduction is shown as a credit on the property tax notice) was given in the amount of \$51.04. This property tax relief was appropriated by the Legislature, according to House Bill 292. The above tax amount does not reflect this reduction.

3. Taxes, including any assessments collected therewith, for the year 2024 which are a lien not yet due and payable.

4. The land described herein is located within the boundaries of the City of Ketchum and is subject to any assessments levied thereby.

5. Liens, levies, and assessments of the Tenth Street Association, Inc.

6. Easements, reservations, restrictions, and dedications as shown on the official plat of [Tenth Street Light Industrial Complex](#).

7. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded March 21, 1887 in Book 1 of Patents, at Page [188](#) and [189](#), records of Blaine County, Idaho.

8. Right of way for ditches, tunnels, telephone, and distribution lines constructed by authority of the United States, as granted to the United States under the provisions of Section 58-604 Idaho Code.

9. An easement, including the terms and conditions thereof, for the purposes shown below and rights incidental thereto as set forth in a/an Right of Way Deed.

Granted to: Mountain States Telephone and Telegraph Company

Purpose: Blanket telephone line easement

Recorded: September 20, 1943

Instrument No.: [86020](#), records of Blaine County, Idaho.

10. Exceptions and Reservations as contained in a/an Warranty Deed.

Executed by: Sprenger Land Investment, Inc, an Idaho corporation

Purpose: Restrictions

Recorded: June 5, 1974

Instrument No.: [154590](#), records of Blaine County, Idaho.

11. An easement, including the terms and conditions thereof, for the purposes shown below and rights incidental thereto as set forth in a/an Easement.

Granted to: Ketchum Spring Water Company

Purpose: Water line

Recorded: October 23, 1974

Instrument No.: [156739](#), records of Blaine County, Idaho.

12. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded August 12, 1980 as Instrument No. [205719](#), records of Blaine County, Idaho.

13. Terms, provisions, covenants, conditions, restrictions and easements provided in a Condominium Declaration but omitting any covenants, conditions or restrictions, if any, to the extent that such violates 42 USC 3604 (c) or any other ordinance, statute or regulation.

Recorded: August 4, 1981

Instrument No.: [217708](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.

Recorded: August 12, 1981

Instrument No.: [218044](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.

Recorded: October 19, 1984

Instrument No.: [257359](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: August 28, 1986  
Instrument No.: [276089](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: August 28, 1986  
Instrument No.: [276090](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: November 9, 1987  
Instrument No.: [289758](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: August 31, 1988  
Instrument No.: [297774](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: May 15, 1992  
Instrument No.: [340830](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: November 18, 1999  
Instrument No.: [433602](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: April 29, 2009  
Instrument No.: [567016](#), records of Blaine County, Idaho.

Amendments, supplements, annexations or modifications of said Condominium Declaration.  
Recorded: January 22, 2016  
Instrument No.: [632586](#), records of Blaine County, Idaho.

**Sun Valley Title**

**By:**

A handwritten signature in black ink, appearing to be 'NB' or similar initials, written in a cursive style.

**Nick Busdon, Authorized Signatory**

File No. 24498409

**JUDGMENT AND TAX LIEN GUARANTEE**

Issued By  
Stewart Title Guaranty Company

**SCHEDULE A**

**Amount of Liability:** \$1,000.00

**Fee Amount:** \$0.00

**Guarantee No.:** G-2222-000090391

**Name of Assured:** Galena-Benchmark Engineering

**Date of Guarantee:** March 19, 2024

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

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

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

The parties referred to in this guarantee are as follows:

Glickman Investment Group, LLC, an Idaho limited liability company

Sun Valley Title  
By:



Nick Busdon, Authorized Signatory

File No. 24498409

SCHEDULE B

Exceptions:

NONE



CONDOMINIUM DECLARATION

FOR

TENTH STREET INDUSTRIAL CENTER, INC.

ARTICLE I.

Recitals and Certain Definitions.

Section 1.1 The Declarant: The Real Property. Ketchum Investment Group, an Idaho Partnership, licensed to do business in the State of Idaho (together with its successors and assigns, collectively, the "Declarant") is the owner of that certain real property located in Ketchum, Blaine County, Idaho, described in Exhibit A attached hereto and made a part of this Declaration (The "Real Property").

Section 1.2 Intention of Declarant. Declarant intends to provide for condominium ownership of the Real Property under the Condominium Property Act of the State of Idaho.

Section 1.3 The Project. The term "Project" shall collectively mean the Real Property and all buildings and other improvements located on the Real Property.

Section 1.4 Type of Ownership. This condominium project will provide a means for ownership in fee simple of separate interests in Units and co-ownership with others, as tenants in common, of Common Area, as those terms are herein defined.

ARTICLE II.

Additional Definitions

The following terms shall have the following meanings when used herein unless the context otherwise requires.

Section 2.1 Building. "Building" means one of the buildings constructed on the Real Property pursuant to this Declaration, excepting structures containing no living quarters and used primarily for automobile parking.

Section 2.2 Unit. "Unit" means the separate interest in a condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof and the interior surfaces of built-in fireplaces as shown and numbered on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained. Notwithstanding such markings, the following are not a part of a Unit: bearing walls, columns, floors and roofs (except for the interior surface thereof, if a perimeter wall, floor or ceiling), foundations, clothes chutes, shafts, central heating, reservoirs, tanks, pumps and other

services used by more than one Unit, pipes, vents, ducts, flues, chutes, conduits, wires, garages, and other utility installations, wherever located, except the outlets thereof when located within the Unit. The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area, as herein defined. Each Unit also includes the interior of any storage areas which are shown on the Condominium Map as belonging to such Unit, bounded as described herein for the other portions of the Unit. In case of combination of two or more adjoining Units, those portions of partition walls between Units which are from time to time used as door openings between such Units shall be deemed to be divided in half longitudinally, parallel to the partition wall, and each half shall constitute part of the Unit which it adjoins, as Limited Common Area appurtenant to such Unit.

Section 2.3 Common Area. "Common Area" means the entire Project excepting all Units.

Section 2.4 Limited Common Area. "Limited Common Area" means that Common Area designated herein for exclusive use by Owners of particular Condominiums, as those terms are herein defined.

Section 2.5 General Common Area. "General Common Area" means all Common Area excepting all Limited Common Area.

Section 2.6 Condominium. "Condominium" means a separate interest in a Unit together with an undivided interest in common in the Common Area (expressed as a percentage of the entire ownership interest in the Common Area) as set forth in Exhibit B attached hereto and by this reference made a part hereof.

Section 2.7 Owner. "Owner" means any person or entity, including Declarant, at any time owning a Condominium; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 2.8 Mortgage. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

Section 2.9 Mortgagee. "Mortgagee" means any person, or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Article II, Section 2.8, under which the interest of any Owner, or successor to the interest of such Owner, is encumbered.

Section 2.10 Association. "Association" means Tenth Street Industrial Center, Inc., an Idaho partnership, not for profit, its successors and assigns, organized as provided herein.

Section 2.11 Condominium Map. "Condominium Map" means the Condominium Map for Tenth Street Industrial Center, Inc. to be filed for record in the office of the County Recorder of Blaine County, Idaho, consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of each Building with respect to the boundaries of the Real Property, together with diagrammatic floor plans of the Buildings showing the boundaries of each Unit within each Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, Unit number identifying the Units, together with such other information as may be included thereon in the discretion of the Declarant.

### ARTICLE III.

#### Statement of Intention and Purpose

Declarant hereby declares that the Project and every part thereof, is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in Article I and are further declared to be for the benefit of the Project and every part thereof and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Declarant and its assigns and to all persons hereafter acquiring or owning any interest in the project, however such interest may be obtained.

### ARTICLE IV.

#### Nature and Incidents of Condominium Ownership

Section 4.1 Estates of an Owner. The Project is hereby divided into Condominiums each consisting of a separate interest in a Unit and an undivided interest in common in the Common Area in accordance with the attached Exhibit B setting forth the Common Area appurtenant to each Unit. The percentage of ownership interest in the Common Area which is to be allocated to each Unit for purposes of tax assessment under Section 55-1514 of the Idaho Code and for purposes of liability as provided by Section 55-1515 of such Code shall be the same as set forth in Exhibit B. Exhibit B also contains a legal description of each Unit in the Project, consisting of the identifying number of such Unit as shown on the Condominium Map. Such undivided interests in the Common Area are hereby declared to be appurtenant to the respective Units.

Section 4.2 Limited Common Area. "Limited Common Area" shall consist of balconies, porches, automobile parking area, and heating equipment located in the crawl space under each Unit. The balcony or balconies and the porch or porches adjoining a Unit and the automobile parking area identified on the Condominium Map with the same number or other designation by which the Unit is identified on the Condominium Map

and the individual heating equipment, as referred to above, shall be used in connection with such Unit to the exclusion of the use thereof by the other Owners of Common Area except by invitation.

Section 4.3 Right to Combine or Divide Units. Declarant reserves the right to combine physically the area or space of one Unit with the area or space of one or more adjoining Units. Such combination shall not prevent separate ownership of such Condominiums in the future. Declarant reserves the right to designate and convey to any purchaser of such combined Units as additional Limited Common Area any walls, floors or other structural separations between Units so combined, or any space which would be occupied by such structural separations but for the combination of the Units. Such structural separations and such space shall automatically become General Common Area if the combined Units become subject to separate ownership in the future. Declarant may also divide any of the following units: A6, 7, 15 & 16 and A1 upper & A1 lower, within 5 years from this date.

Section 4.4 Title. Title to a Condominium may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Idaho.

Section 4.5 Inseparability. No part of a Condominium or of the legal rights comprising ownership of a Condominium may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Unit and the undivided interest in the Common Area appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium; together with all appurtenant rights created by law or by this Declaration.

Section 4.6 Partition Not Permitted. The Common Area shall be owned in common by all Owners of Condominiums, and no Owner may bring any action for partition thereof.

Section 4.7 Owner's Right to Common Area. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the General Common Area, and shall have the exclusive right to use and enjoy the Limited Common Area designated herein for exclusive use by such Owner.

Section 4.8 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may be reasonably specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes or special district or other assessments may, in the opinion of the Association, nevertheless be a lien on the Project or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible

therefor. Each Owner shall pay the taxes or assessments assessed against his Condominium, or interest therein, or his interest in the Common Area, or any part of any or all of the foregoing. Each Owner shall pay taxes, rates, impositions and assessments levied against the Project or any part of the Common Area in proportion to his interest in the Common Area, such payment to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at the rate of ten percent (10%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 9.6 hereof.

Section 4.9 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows, and doors forming the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries.

Section 4.10 Easements for Encroachments. If any part of the Common Area encroaches or shall hereinafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances whether on the Common Area or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

Section 4.11 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Area is or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Area as a result of emergency repairs within another Unit at the instance of the Association or of Owners shall be an expense of all of the Owners; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant thereto shall be collected by the Association by assessment pursuant to Article IX below.

Section 4.12 Owner's Right to Ingress and Egress and Support.

Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his Unit and to the Limited Common Area designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium.

Section 4.13 Association's Right to Use Common Area.

The Association shall have a non-exclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the General Common Area maintenance and storage facilities for use by the Association.

Section 4.14 Declarant's Right Incident to Construction.

Declarant and persons it shall select, shall have the right to ingress and egress over, upon and across the Common Area, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to complete development of the Project.

Section 4.15 Easements Deemed Created.

All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.10, 4.11, 4.12, 4.13 and 4.14 above, even though no specific reference to such easements or to those Sections appears in any such conveyance.

ARTICLE V.

Description of a Condominium

Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium may describe that Condominium by the number shown on the Condominium Map with the appropriate reference to the Condominium Map and to this Declaration as each appears on the records of the County Recorder of Blaine County, Idaho, in the following fashion:

"Condominium Unit \_\_\_\_\_ as shown on the Condominium Map for Tenth Street Industrial Center, Inc. appearing in the records of Blaine County, Idaho, as Instrument No. \_\_\_\_\_, and as defined and described in that Condominium Declaration for \_\_\_\_\_ recorded in the records of Blaine County, Idaho, as Instrument No. \_\_\_\_\_."

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

ARTICLE VI.

Mechanic's Lien Rights

No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner, or against any part thereof, or against any other property or any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

ARTICLE VII.

The Association

Section 7.1 Membership. A certified copy of the Articles of Incorporation and a copy of the By-Laws of the Association are attached hereto as Exhibits C and D, respectively, and hereby made a part of this Declaration. Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium is held by more than one person, the membership related to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. No person or entity other than an Owner may be a member of the Association, and the Articles of Incorporation or By-Laws of the Association state that the memberships in the Association may not be transferred except in connection with the transfer of a Condominium, provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium.

Section 7.2 Voting Rights. The total number of votes which may be cast by all members of the Association shall be as set forth in the Articles of Incorporation and By-Laws of the Association, and each Owner shall be entitled to vote the same percentage of the total number of votes of the Association as such Owner's percentage interest in the Common Area as set forth in Exhibit B attached hereto.

Section 7.3 Transfer. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set

forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

Section 7.4 Amplification. The provisions of this Article are amplified by the Articles of Incorporation of the Association and by the By-Laws of the Association; provided, however, that no present or future provision of such Articles of Incorporation or By-Laws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

## ARTICLE VIII.

### Certain Rights and Obligations of the Association

Section 8.1 The Management Body. The Association may designate a "Management Body" as provided by I.C. §55-1503(f); and in the event a Management Body is designated it shall administer the Project in accordance with the Condominium Property Act, this Declaration, the Articles of Incorporation and By-Laws of the Association.

Section 8.2 The Common Area. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair; however, each Owner of a Condominium Unit shall keep the Limited Common Area designated for use in connection with his Unit in a clean, sanitary and attractive condition, and shall maintain and repair the heating equipment and the water heater servicing his Unit exclusively. The Association shall be responsible for the maintenance and repair of exterior surfaces of Buildings and improvements located on the Project, including without limitation, the painting of the same as often as necessary, and replacement of trim and caulking, the maintenance and repair of roofs, the maintenance and repair of other Common Area, including utility lines, areas for access to any automobile parking structures constituting part of the Condominiums and all other improvements or materials located within or used in connection with the Common Area. The Association shall maintain in a proper, first class manner, all landscaping and natural vegetation constituting part of the Common Area, including assuring the preservation of good visual continuity between landscaped areas and natural vegetation. The specification of duties of the Association with respect to particular Common Area shall not be construed to limit its duties with respect to other Common Area, as set forth in the first sentence of this Section. The cost of such management, maintenance and repair by the Association shall be borne as provided in Article IX.

The Association shall have the right to grant easements for utility purposes over, upon, across, under or through any portion of the Common Area, and each Owner hereby irrevocably appoints this Association as attorney-in-fact for such purpose.



Section 8.3 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish electrical, water, sewer, trash collection services, and other common services to each Unit.

Section 8.4 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Common Area. Such interest shall not be transferable except with the transfer of a Condominium. A transfer of a Condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium under the foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium.

Section 8.5 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation, assignment of particular portions of storage areas within the Common Area for exclusive use by Owners of particular Condominiums. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law.

Section 8.6 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, an every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE IX.

### Assessments

Section 9.1 Agreement to Pay Assessment. Declarant, for each Condominium owned by it within the Project, and for and as the Owner of the Project and every part thereof, hereby covenants, and each Owner of any Condominium by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association periodic assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 9.2 Amount of Total Periodic Assessments. The total periodic assessments against all Condominiums shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area or furnishing electrical, water, sewer and trash collection and services, and other common services, to each Unit, which estimates may include, among other things, expenses of management; taxes and special assessments, until the Condominiums are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; landscaping and care of grounds; common lighting and heating; water charges; trash collection; sewer service charges, repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking funds; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

Section 9.3 Apportionment of Periodic Assessments. Expenses attributable to the Common Area and to the Project as a whole shall be apportioned among all Owners in proportion to the interest in the Common Area owned by each.

Section 9.4 Notice of Periodic Assessments and Time for Payment Thereof. The Association shall make periodic assessments, which assessments shall be annually, quarterly or monthly as the Association shall from time to time determine. The Association may, in its discretion, allow assessments to be paid in installments. Written notice of assessment shall be given to each Owner, which notice shall specify the amount of the assessment and the date or dates of payment of the same. No payment shall be due less than fifteen (15) days after the said written notice has been given. Each periodic assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Condominium for such assessment,

but the date when payment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given.

Section 9.5 Special Assessments for Capital Improvement. In addition to the annual assessments authorized by this Article, the Association may levy at any time a special assessment, payable over such a period as the Association may determine for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to the interest in the Common Area owned by each. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of ten percent (10%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

Section 9.6 Lien for Assessments. All sums assessed to any Condominium pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association upon recordation of a notice of assessment as herein provided. Such lien shall be superior to all other liens and encumbrances on such Condominium except only for: (a) valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority; (b) a lien for all sums unpaid on a first Mortgage, or on any Mortgage to Declarant, duly recorded in Blaine County, Idaho real estate records, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument; and (c) labor or materialmen's liens to the extent required by law. All other lienors acquiring liens on any Condominium after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To create a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of assessment setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the record owner of the Condominium and a description of the Condominium. Such a notice shall be signed by the Association and may be recorded in the office of the County Recorder of Blaine County, Idaho. No notice of assessment shall be recorded until there is a

delinquency in payment of the assessment. Such lien may be enforced by sale by the Association after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law in Idaho for the exercise of power of sale in deeds of trust or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of assessment and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in the Blaine County, Idaho real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of assessment.

Any encumbrancer holding a lien on a Condominium may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Condominium any unpaid assessment remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Unless sooner satisfied and released or the enforcement thereof initiated as provided earlier in this Section, any lien created pursuant to this Section shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment, provided, however, that said one year period may be extended by the Association for a period not to exceed one additional year by a written extension signed by the Association and recorded in the office of the County Recorder of Blaine County, Idaho, prior to expiration of said first one year period.

Section 9.7 Personal Obligation of Owner. The amount of any periodic or special assessment against any Condominium shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his Condominium.

Section 9.8 Statement of Account. Upon payment of a reasonable fee not to exceed \$ 50.00 and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium, the amount of the current periodic assessment and the date that such assessment becomes or became due, credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums, which statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments which became due prior to the date of making such request, shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Condominium.

Section 9.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 9.8, a purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### ARTICLE X.

##### Use of Condominiums

The Condominium Units and the Common Area shall be occupied and used only as follows:

Section 1. Unless otherwise specifically prohibited herein, any commercial operation or use shall be permitted within the Condominium Units if it is performed entirely within the Unit and is permitted by applicable laws, regulations and ordinances of the City, the County of Blaine, or other governmental agencies having jurisdiction, and by this Declaration; provided however, that Declarant reserves the right for a period of five (5) years from recordation hereof to carry on normal sales activity and leasing activity on the Project, including the operation of models and a sales/leasing office, if any, and Declarant shall have, during the above period, the non-exclusive right to use the Common Area and/or the Condominium building for such purposes.

Section 2. No noxious or offensive trade or activity shall be carried on within the Units or upon any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to any property or Owner within the Project, or which may be

inconsistent with or detrimental to the operation of the Project. The prohibition of uses shall include, but is not limited to, each of the following:

(a) No industrial operation or use shall produce noise at a level greater than the standards set by the appropriate local, state or federal agency;

(b) All equipment causing earth or floor vibrations shall be so mounted as to eliminate vibration hazard and to prevent unreasonable vibrations from extending to any other Unit in the Project;

(c) No industrial operations or use shall discharge into the atmosphere any odorous matter or air pollutants producing a hazard or nuisance to any other Unit in the Project. No process which by its nature is likely to cause air pollution shall be permitted unless there is available a method approved by Declarant and all applicable governmental agencies for controlling the emission of pollutants, and such controls are effectively implemented when required by Declarant or any governmental agency;

(d) No industrial operation or use shall discharge onto any portion of the Property, nor discharge into any sewer system or storm drain system for the Project, any toxic or noxious material or other substance which would create a hazard to or otherwise endanger the health, safety or welfare of any Owner of a Unit in the Project or his employees, tenants or customers.

Section 3. Unless otherwise specifically prohibited by this Declaration, any industrial use or operation shall be permitted within the Project if it is permitted under applicable City of Ketchum Zoning Ordinances provided, however, that none of the following operations and uses shall be permitted within the Project:

(1) Residential;

(2) Parking of mobile homes, motor homes and/or trailers for temporary or permanent residential or storage purposes unless parked inside the Unit;

(3) Storing of inoperable vehicles, junk or surplus materials;

(4) Mechanical or auto body shop or paint shop;

(5) Dumping, disposing, incinerating or other reduction of garbage, sewage, dead animals or refuse;

(6) Tire retreading;

(7) Breeding and/or keeping of any livestock, including but not limited to horses, cows, goats, sheep and hogs;

(8) Slaughtering of animals;

(9) Smelting of iron, tin or other minerals of any kind whatsoever; and

(10) Concrete batch plant.

Section 4. The Project has a Class II Sprinkler System; no use will be allowed which would not be permitted under that system.

Section 5. Nothing shall be done or kept in any Condominium Unit and/or the Common Area which will increase the rate of insurance on the Common Area without the approval of the Association. No Owner shall permit anything to be done or kept in his Condominium Unit, or the Common Area, which will result in the cancellation of insurance on any Common Area or which would be in violation of any law.

Section 6. All signs to be displayed to the public view on or from any Condominium Unit or the Common Area shall conform to the size, type, location, number and design as set forth in Exhibit E attached hereto and incorporated herein by this reference, and any sign not in conformity with the requirements set forth in Exhibit E shall not be displayed without the prior written approval of the Association's Architectural Control Committee. Notwithstanding the foregoing, the Declarant reserves the right for a period of time not to exceed five (5) years to display signs of any kind in connection with the development of the Project and sale of Condominiums; provided, however, any such sign displayed shall be erected so as to ensure uniformity of signs within the Project. Provided further that all signs permitted under this Section shall conform with the City sign ordinance, if any.

Section 7. No animals of any kind shall be raised, bred or kept in any Condominium Unit or on the Common Area, for any purpose, including commercial purposes, except such animals used for security purposes as may be approved by the Board of Directors.

Section 8. The Owner shall not permit or suffer anything to be done or kept upon said premises which will increase the rate of insurance on the building, or on the contents thereof, or which will obstruct or interfere with the rights of the other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. The Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If by reason of the occupancy or use of said premises by the Owner the rate of insurance on the building shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 9. Nothing shall be done in any Condominium Unit or in, on, or to any building in any Common Area which would structurally change any such building, except as is otherwise provided herein.

Section 10. There shall be no structural alteration, construction or removal of any building, fence, wall or other structure in the Project

(other than repairs or rebuilding provided for elsewhere in this Declaration) without the approval of the Architectural Control Committee, as set forth hereinbelow. No building, fence, wall or other structure shall be constructed upon any portion of any Common Area other than such buildings and structures as shall be constructed (a) by the Declarant (or a person to whom Declarant assigns its rights as developer), or (b) by the Association as provided elsewhere in this Declaration.

Section 11. Except as permitted by the Association, and except as permitted in Section 12 below, no vehicles other than passenger automobiles or station wagons or other vehicles up to 1-1/2 tons, shall be parked in any portion of the Common Area. Provided, further, that all motorcycles, bicycles, mopeds or other vehicles of a similar nature shall be parked inside the Condominium Units and not in or on the sidewalks, grass or parking areas except where specific racks or locations have been reserved specifically for such a purpose. The Common Area is hereby made subject to all State laws and City ordinances pertaining to the control of vehicular traffic, and the City through its authorized agents is hereby given the authority to enter upon the Common Area and enforce such laws and ordinances.

Section 12. No materials, supplies or equipment shall be stored outside the Unit. In no event shall any Owner, tenant or employee impede any means of ingress to or egress from another Owner's Unit. All loading and unloading of vans, trucks or other vehicles shall take place as quickly as possible and with as little inconvenience as possible to the Owners. Notwithstanding any provisions in the Declaration to the contrary, trucks or other vehicles in excess of 1-1/2 tons are permitted to be used for loading and unloading of materials, supplies and equipment.

Section 13. All Owners shall be Members of the Association and shall comply with the terms and conditions as set forth in the Articles of Incorporation and the By-Laws and any rule or regulation of the Association. No Owner shall transfer any membership or interest in the Association, except upon the transfer of the Condominium to which it is appurtenant.

Section 14. Nothing in this Article or elsewhere in these Restrictions shall limit the right of Declarant to complete construction of improvements to the Common Area and to Condominium Units owned by Declarant or to alter the foregoing or to construct such additional improvements as Declarant deems advisable prior to completion and sale of the entire Project. The rights of Declarant under these Restrictions may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor.

Section 15. No Owner shall install or cause to be installed any T.V. or radio antenna or other similar electronic receiving or broadcasting device on any portion of the exterior of any building in the Project without the prior written approval of the Association's Architectural Control Committee as to height, size, purpose, use and shape.



Section 16. No Owner shall install or cause to be installed any chimney, duct, flue or other similar apparatus without the prior written approval of the Architectural Control Committee. All plans and specifications for the installation of such equipment shall be submitted to the Architectural Control Committee for written approval as to shape, design, height, dimension, color, and proposed location.

Section 17. An Owner may lease all or some portion of his Condominium Unit, subject to the following restrictions: all lease agreements shall be in writing and shall provide that the term of the lease shall be subject in all respects to the provisions of the Declaration of Restrictions and By-Laws, and that any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease. Other than the foregoing, there are no restrictions on the right of an Owner to lease his Unit.

Section 18. There shall be no structural alterations, drilling, removal or other use of structural projections (including, but not limited to, supporting beams, purlins and rafters) within a Unit without the prior written approval of the Board of Directors and the Architectural Control Committee. All approved alterations made pursuant to this Section shall also comply with all applicable City ordinances and State laws.

Section 19. No inside or outside window coverings shall be applied to units or common area without the prior written approval of the Architectural Control Committee.

## ARTICLE XI.

### Insurance

Section 11.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

(a) Casualty Insurance. The Association shall obtain insurance on the Project in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project.

(c) Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(e) Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

Section 11.2 Optional Insurance. The Association may obtain the following types of insurance coverage, but it is not required to do so.

(a) Personal Property Casualty Insurance. The Association may in its discretion obtain insurance on the personal property and furnishings initially placed in the Units of Owners by Declarant upon completion of construction of the Project in such amounts as shall provide for the full replacement thereof in the event of damage or destruction from casualties against which such insurance is obtained.

(b) Casualty and Public Liability Insurance. The Association may in its discretion obtain casualty and public liability insurance coverage, in amounts it may select, with respect to an Owner's activities within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Area.

Section 11.3 Form. Casualty insurance shall be carried in a form or forms naming the Association the insured as trustee for the Owners, which policy or policies shall specify the interest of each Condominium Owner (Owner's name, Unit Number, the appurtenant undivided interest in the Common Area) and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first Mortgagees which from time to time shall give notice to the Association of such first Mortgages, such proceeds to be used in accordance with this Declaration. Each policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice is first given to each Owner and to each

first Mortgagee. The Association shall furnish to each Owner who requests it and to the Declarant a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Association the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Project.

Section 11.4 Owner's Responsibility. Insurance coverage on the furnishings initially placed in the Unit by Declarant, unless the Association pursuant to Section 11.2 hereof elects to arrange for such casualty insurance, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Area, unless the Association pursuant to Section 11.2 hereof elects to arrange for such casualty insurance, and regardless of the Association's election, insurance coverage against loss from theft on all personal property and insurance coverage on items of personal property placed in the Unit by Owner, shall be the responsibility of the respective Owners.

Section 11.5 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. The Association shall apportion the proceeds to the portions of the Project which have been damaged and shall determine the amount of the proceeds attributable to damage to the Common Area. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Units, as set forth in Section 13.4. Each Owner and each Mortgagee shall be bound by the apportionments of damage and of the insurance proceeds made by the Association pursuant hereto.

Section 11.6 Owner's Own Insurance. Notwithstanding the provisions of Sections 11.1 and 11.2 hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does

not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, and other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained of subrogation.

## ARTICLE XII.

### Casualty Damage or Destruction

Section 12.1 Affects Title. Title to each Condominium is hereby made subject to the terms and conditions hereof, which bind the Declarant and all subsequent Owners, whether or not it be so expressed in the deed by which any Owner acquires his Condominium.

Section 12.2 Association as Agent. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. ~~Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.~~

Section 12.3 General Authority of Association. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Condominium Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs mean restoring the Project to substantially the same condition in which it existed prior to damage, with each Unit and the Common Area having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless the Owners and the first Mortgagees unanimously agree not to rebuild in accordance with the provisions set forth hereinafter.

In the event any Mortgagee should not agree not to rebuild, the Association shall have the option to purchase such Mortgage by payment in full of the amount secured thereby if the Owners are in unanimous agreement not to rebuild. The Association shall obtain the funds for such purpose by special assessments under Article IX of this Declaration.

Section 12.4 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Project, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

Section 12.5 Repair and Reconstruction. As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of that part of the Project

damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Project or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the Buildings shall be substantially the same as prior to damage or destruction.

Section 12.6 Funds for Reconstruction. The proceeds of any insurance collection shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association, pursuant to Article IX hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

Section 12.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 12.6 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner pursuant to the assessments by the Association under Section 12.6 of this Declaration.

Section 12.8 Decision Not to Rebuild. If all Owners and all holders of first Mortgages on Condominiums agree not to rebuild, as provided herein, the Project shall be sold and the proceeds distributed in the same manner herein provided in the event of sale of obsolete Units, as set forth in Section 13.4.

#### ARTICLE XIII.

##### Obsolescence

Section 13.1 Adoption of a Plan. The record Owners, as reflected on the real estate record of Blaine County, Idaho, representing an aggregate record ownership interest of sixty-six and two thirds percent (66 2/3%) or more of the Units may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction which plan has the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such plan shall be given to all Owners. Such plan shall be recorded in Blaine

County, Idaho, real estate records.

Section 13.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominiums. These assessments shall be levied in advance pursuant to Article IX hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

Section 13.3 Dissents from the Plan. An Owner not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Owners within five (5) days after the expiration of such fifteen (15) day period. Within fifteen (15) days of receipt of such notice from the Association, the record Owners, representing an aggregate record ownership of more than sixty-six and two thirds percent (66 2/3%) of the Units may cancel the plan by written instrument recorded in Blaine County, Idaho real estate records. If the plan is not cancelled, then the Condominium of each dissenter shall be purchased according to the following procedures. If the Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencing date" from which all period of time mentioned herein shall be measured. Within ten (10) days following the commencing date each party shall nominate a qualified appraiser by written nomination and shall give notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five (5) days after default by the other party appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, they shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two qualified appraisers, and from the names of the four persons so nominated one shall be drawn by lot by judge of any Court of record in Idaho, and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten (10) days after the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within sixty (60) days after the decision of the appraisers, and the Association as attorney-in-fact shall disburse the proceeds in the same manner provided in Section 13.4 of this Declaration. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the

Condominium exceeding the obligations secured by liens on such Condominium, and upon the marketability of the title of the Owner. Owner shall furnish the Association an appropriate abstract of title or commitment for title insurance evidencing marketability of this title not less than fifteen (15) days prior to the date set for completion of the sale.

The Association, pursuant to Article IX hereof, may levy a special assessment sufficient to provide funds to pay for the Condominiums of the Dissenters, provided that such assessments shall not apply to any of the Owners who are among the Dissenters and shall not be liens against the Condominiums of such Owners.

Section 13.4 Sale of Obsolete Units. The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Units may agree that the condominiums are obsolete and that the project should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of records at the time such agreement is made. In such instance the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Project shall be sold by the Association as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Map, and the By-Laws. The sale proceeds shall be apportioned among the Owners in proportion to the respective amounts originally paid to Declarant for the purchase of the Condominium exclusive of the amounts paid for personal property, and such apportioned proceeds shall be paid into separate accounts, each account representing one Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other liens and the balance remaining to each respective Owner.

Section 13.5 Distribution of Excess. In the event amounts collected pursuant to Section 13.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

#### ARTICLE XIV.

##### Condemnation

Section 14.1 Consequences of Condemnation. If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 14.2 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

Section 14.3 Complete Taking. In the event that the entire project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to the respective amounts paid to Declarant for the purchase of the Condominium exclusive of the amounts paid for personal property, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principal set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 13.4 of this Declaration.

Section 14.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(a) the total amount allocated to taking of or injury to the Common Area shall be apportioned equally among the Owners; (b) the total amount allocated to severance damages shall be apportioned to those Condominiums which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 13.4 of this Declaration.

Section 14.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the Ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided in Article XV thereof.

Section 14.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XII above.



ARTICLE XV.

Revocation or Amendment to Declaration

This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the Owners representing an aggregate ownership interest of sixty-six and two thirds percent (66 2/3%) or more of the Condominiums, as reflected on the real estate records of Blaine County, Idaho, and all holders of any recorded Mortgage covering or affecting any or all of the Condominiums, whose interests as Mortgagees appear in such records, consent and agree to such revocation or amendment by instruments duly recorded. Any such revocation or amendment shall be binding upon every Owner and every Condominium whether the burdens thereon are increased or decreased by any such amendment and whether or not the Owner of each and every Condominium consents thereto.

ARTICLE XVI.

Period of Condominium Ownership

The Condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is revoked in the manner provided in Article XV of this Declaration or until terminated in the manner provided in Articles XIII (Obsolescence) or XIV (Condemnation) of this Declaration.

ARTICLE XVII.

Miscellaneous

Section 17.1 Compliance with Provisions of Declaration and By-Laws of the Association. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

Section 17.2 Registration of Mailing Address Each owner shall register his mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the By-Laws of the Association. All notices or demands to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided

for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

Section 17.3 Transfer of Declarant's Rights. Any rights or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant either separately or with one or more of such rights or interests, to any person or entity.

Section 17.4 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented said interest as provided herein, but the Owner of a Condominium shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

Section 17.5 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 17.6 Severability. If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

Section 17.7 Statute. The provisions of this Declaration shall be in addition and supplemental to the Condominium Property Act of the State of Idaho and to all other provisions of law.

Section 17.8 Consent. The undersigned Declarant, pursuant to a Resolution duly adopted by its Board of Directors, HEREBY CERTIFIED that the said Ketchum Investment Group has consented, and does hereby consent, to the recordation of the within Condominium Declaration, together with a plat or plats of the real property affected hereby, pursuant to the Condominium Property Act of the State of Idaho.

Section 17.9 Declarant's Liability. Declarant's liability arising from construction of the project shall terminate one (1) year from the date of completion of the buildings making up the project.

This Declaration is executed this 3rd day of August, 1981.

KETCHUM INVESTMENT GROUP,  
an Idaho Partnership

By [Signature]  
JAMES DOUB

STATE OF IDAHO            )  
                                  ) ss.  
COUNTY OF BLAINE        )

On this 3rd day of August, in the year 1981, before me a Notary Public in and for said State, personally appeared JAMES DOUB, known to me to be one of the partners in the partnership of KETCHUM INVESTMENT GROUP, and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.

GIVEN UNDER my hand and official seal the 3rd day of August, 1981.

JK Greenland  
NOTARY PUBLIC for Idaho  
Residing at Ketchum, Idaho



EXHIBIT "A"

TOWNSHIP 4 NORTH, RANGE 17 EAST, BOISE MERIDIAN, BLAINE COUNTY, STATE OF IDAHO.

SECTION 13: A parcel of land more particularly described as follows:

Commencing at the North corner of the Town of Ketchum a  $1\frac{1}{2}$ " pipe; thence  
S.  $45^{\circ} 23' 42''$  W., along the Northwesterly boundary of the Town of Ketchum a distance of 871.94 feet to the intersection of westerly right of way line of Highway 75 and Northerly right of way line of Tenth Street a  $\frac{1}{2}$ " bar; thence  
N.  $3^{\circ} 25' 51''$  W., along said Westerly right of line of Highway 75 a distance of 160.00 feet to the TRUE POINT OF BEGINNING, a  $\frac{5}{8}$ " bar; thence  
S.  $86^{\circ} 24' 13''$  W., a distance of 227.47 feet to a  $\frac{5}{8}$ " bar; thence  
N.  $4^{\circ} 58' 29''$  W., a distance of 117.45 feet to a point on the Southerly boundary of Industrial Park Subdivision a  $\frac{5}{8}$ " bar; thence  
N.  $85^{\circ} 01' 31''$  E., along the Southerly boundary of Industrial Park Subdivision a distance of 230.72 feet to said Westerly right of way line of Highway 75 a  $\frac{1}{2}$ " bar; thence  
S.  $3^{\circ} 25' 51''$  E., along said Westerly right of way line of Highway 75 a distance of 123.63 feet to the TRUE POINT OF BEGINNING.

PARCEL I

A parcel of land in SECTION 13, TOWNSHIP 4 NORTH, RANGE 17  
EAST OF THE BOISE MERIDIAN, BLAINE COUNTY, IDAHO, more particularly  
described as follows:

Commencing at the N.E. corner of said Section 13;  
Thence S.  $77^{\circ} 14' 43''$  E., 262.30 feet to the north  
corner of the original Ketchum, Townsite;  
Thence S.  $45^{\circ} 23' 42''$  W., 869.75 feet along the  
northwesterly boundary of the original Ketchum Townsite to the  
westerly boundary of U.S. Highway 93 and the True Point of Beginning.

Thence S.  $45^{\circ} 23' 42''$  W., 269.97 feet along the northwesterly  
boundary of the original Ketchum Townsite;  
Thence N.  $8^{\circ} 36' 18''$  W., 239.50 feet;  
Thence N.  $4^{\circ} 58' 29''$  W., 99.25 feet;  
Thence N.  $86^{\circ} 34' 09''$  E., 227.48 feet to the westerly boundary  
of U.S. Highway 93;  
Thence S.  $3^{\circ} 25' 51''$  E., 160.00 feet along the westerly boundary  
of U.S. Highway 93 to the True Point of Beginning.

PARCEL II

EXHIBIT B

Tenth Street Light Industrial Complex

% Ownership

Total = 41085.1

| <u>Unit</u> | <u>%</u>       | <u>Unit</u> | <u>%</u>   |
|-------------|----------------|-------------|------------|
| A-1         | 4.4            | B-1         | 3.6        |
| A-2         | 1.8            | B-2         | 3.7        |
| A-3         | 5.3            | B-3         | 3.9        |
| A-4         | 1.7            | B-4         | 1.9        |
| A-5         | 1.7            | B-5         | 1.7        |
| A-5A        | 1.7            | B-6         | 4.0        |
| A-6         | 4.3            | B-7         | 1.8        |
| A-7         | 5.4            | B-8         | 4.6        |
| A-8         | 2.5            | B-9         | 3.8        |
| A-9         | 5.2            | B-10        | 1.5        |
| A-10        | 1.7            | B-11        | 3.1        |
| A-11        | 3.3            | B-12        | 3.1        |
| A-12        | 3.4            | B-13        | <u>3.1</u> |
| A-13        | 2.6            |             |            |
| A-14        | 2.3            |             | 40.2       |
| A-14        | <del>3.5</del> |             |            |
| A-15        | 3.5            |             |            |
| A-16        | 5.1            |             |            |
| A-17        | 2.3            |             |            |
| A-18        | <u>1.6</u>     |             |            |
|             | 59.8           |             |            |

Combined Total: 59.8 + 40.2 = 100.0%

ARTICLES OF INCORPORATION  
OF  
TENTH STREET INDUSTRIAL CENTER, INC.

The undersigned, acting as incorporator of a corporation under the Idaho Nonprofit Corporation Act, adopt the following Articles of Incorporation.

ARTICLE I

The name of the corporation is Tenth Street Industrial Center, Inc. hereinafter called "Association".

ARTICLE II

The location and principal office of the Association is 471 10th Street East, Ketchum, Idaho and the post office address is P.O. Box 1250A, Ketchum, Idaho 83340. The registered agent of the Association is James Doub, whose address is the same.

ARTICLE III

The incorporator(s) and their addresses are as follows:  
James Doub, Box 125A, Ketchum, Idaho 83340.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of the condominium units and common area within that certain tract of property

described in Exhibit A attached hereto and made a part hereof; and to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Restrictions of and any supplemental declaration hereinafter called the "declaration", applicable to the property and recorded or to be recorded in the Office of the Blaine County Recorder and as the same may be amended from time to time as therein provided, said declaration being incorporated herein as if set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

(d) Borrow money and with the assent of two-thirds (2/3) of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of members agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional property and common area, provided that any such merger, consolidations or annexation shall have the assent of two-thirds (2/3) of the association's members.



(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-profit Corporation Law of the State of Idaho by law may now or hereafter have or exercise.

Under no circumstances shall the income of the corporation be distributed to the members, directors or officers.

#### ARTICLE V

##### MEMBERSHIP

Every person or entity who is a record owner of a fee interest in any unit which is subject by the declaration to assessment by the Association, including contract sellers who retain fee title, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any condominium unit which is subject to assessment by the Association.

#### ARTICLE VI

##### VOTING RIGHTS

The total number of votes available to all the members of the Association is 100. Each member shall have and be entitled to vote the same percentage of the total number of votes as are attributable to that member as provided by the Condominium Declaration for Tenth Street Industrial Center, Inc. as recorded in records of Blaine County, State of Idaho, or any supplemental declaration thereof.

ARTICLE VII

BOARD OF DIRECTORS

The affairs of the Association shall be managed by a board of three (3) directors. The number of directors may be changed by amendment of the Bylaws of the Association. The Bylaws may be changed by amendment to provide that the directors must be members of the Association.

The initial directors of the Association and their addresses are as follows:

|              |           |                |
|--------------|-----------|----------------|
| James Doub   | Box 1050A | Ketchum, Idaho |
| Gerald Bruck | Box 1050A | Ketchum, Idaho |
| Lane Monroe  | Box 258   | Ketchum, Idaho |

ARTICLE VIII

DISSOLUTION

The Association may be dissolved as provided by law.

ARTICLE IX

DURATION

The Association shall exist perpetually.

ARTICLE X

AMENDMENTS

Amendments of these Articles shall require the assent of two-thirds (2/3) of the Association members.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Idaho, the undersigned, constituting the incorporator(s) of this Association, has executed these Articles of Incorporation this 3rd day of August, 1980.

JAMES DOUB

STATE OF IDAHO            )  
                                  )    ss.  
County of Blaine         )

On this 3rd day of August, 1980, before me, a Notary Public in and for said State, personally appeared JAMES DOUB known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(s) G.R. Kneeland  
NOTARY PUBLIC FOR IDAHO  
Residing at Ketchum, Idaho

(seal)

BYLAWS  
OF  
TENTH STREET INDUSTRIAL CENTER, INC.  
IDAHO NONPROFIT CORPORATION ACT

ARTICLE I - OFFICES

The principal office of the corporation in the State of Idaho shall be located in the City of Ketchum, County of Blaine. The corporation may have such other offices, either within or without the state of incorporation as the board of directors may designate or as the business of the corporation may from time to time require.

The registered office of the corporation required by the Idaho Nonprofit Corporation Act to be maintained in the State of Idaho may be, but need not be, identical with the principal office in the State of Idaho, and the address of the registered office may be changed from time to time by the board of directors.

ARTICLE II - OBJECTIVE

ARTICLE III - MEMBERS

1. ANNUAL MEETING.

The annual meeting of the members shall be held on the 15th day of August in each year, beginning with the year 1982 at the hour of 10:00 o'clock a.m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the date fixed for the annual meeting shall be a legal holiday such meeting shall be held on the next succeeding business day.

2. SPECIAL MEETINGS.

Special meetings of the members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president or by the directors, and shall be called by the president at the request of the members of not less than 10 percent of all the outstanding shares of the corporation entitled to vote at the meeting.

3. PLACE OF MEETING.

The directors may designate any place, either within or without the state unless otherwise prescribed by statute, as the place of meeting for any annual meeting or for any special meeting called by the directors. A waiver of notice signed by all members entitled to vote at a meeting may designate any place either within or without the state unless otherwise prescribed by statute, as the place for holding such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the corporation.

4. NOTICE OF MEETING.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each member stockholder of record entitled to vote at such Meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his address as it appears on the membership books of the corporation, with postage thereon prepaid.

5. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE.

For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the directors of the corporation may provide that the membership books shall be closed for a stated period but not to exceed, in any case, 10 days. If the membership books shall be closed for the purpose of determining members entitled to notice of or to vote at a meeting of members such books shall be closed for at least 15 days immediately preceding such meeting. In lieu of closing the membership books, the directors may fix in advance a date as the record date for any such determination of members, such date in any case to be not more than 15 days and, in case of a meeting of members not less than 30 days prior to the date on which the particular action requiring such determination of members is to be taken. If the membership books are not closed and no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is mailed shall be the record

date for such determination of members. When a determination of members entitled to vote at any meeting of members has been made as provided in this section, such determination shall apply to any adjournment thereof.

#### 6. VOTING LISTS.

The officer or agent having charge of the membership books for shares of the corporation shall make, at least 15 days before each meeting of members, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list shall be kept on file at the principal office of the corporation, and shall be subject to inspection by any member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting. The original membership book shall be prima facie evidence as to who are the members entitled to examine such list or transfer books or to vote at the meeting of members.

#### 7. QUORUM.

At any meeting of members, members holding one-tenth (1/10) of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of members. If less than said number of the outstanding shares are represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

#### 8. PROXIES.

At all meetings of members, a member may vote by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. Each proxy shall be revocable at the pleasure of the member who executed it.

#### 9. VOTING.

Each member entitled to vote in accordance with the terms and provisions of the certificate of incorporation and

these bylaws shall be entitled to one (1) vote for each membership share, in person or by proxy, for each membership share entitled to vote held by such member. Upon the demand of any member, the vote for directors and upon any question before the meeting shall be by ballot. All elections for directors shall be decided by cumulative vote; all other questions shall be decided by majority vote except as otherwise provided by the certificate of incorporation or the laws of this state.

#### 10. ORDER OF BUSINESS.

The order of business at all meetings of the members shall be as follows:

1. Roll call.
2. Proof of notice of meeting or waiver of notice.
3. Reading of minutes of preceding meeting.
4. Reports of officers.
5. Reports of committees.
6. Election of directors.
7. Unfinished business.
8. New business.

#### 11. VOTING OF SHARES BY CERTAIN HOLDERS.

Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained

in an appropriate order of the court by which such receiver was appointed.

A member whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

#### 12. INFORMAL ACTION BY MEMBERS.

Unless otherwise provided by law, any action required to be taken at a meeting of the members, or any other action which may be taken at a meeting of the members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

#### 13. CUMULATIVE VOTING.

At each election for directors every member entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected, and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principal among any number of such candidates.

### ARTICLE IV - BOARD OF DIRECTORS

#### 1. GENERAL POWERS.

The business and affairs of the corporation shall be managed by its board of directors. The directors shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the corporation, as they may deem proper, not inconsistent with these bylaws and the laws of this state.

#### 2. NUMBER, TENURE AND QUALIFICATIONS.

The number of directors of the corporation shall be three (3). Each director shall hold office until the next annual meeting of members and until his successor shall have been elected and qualified.

#### 3. REGULAR MEETINGS.

A regular meeting of the directors shall be held without other notice than this bylaw immediately after and



at the same place as the annual meeting of members. The directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

4. SPECIAL MEETINGS.

Special meetings of the directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the directors may fix the place for holding any special meeting of the directors called by them.

5. NOTICE.

Notice of any special meeting shall be given at least 10 days previously thereto by written notice delivered personally or by telegram or mailed to each director at his business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6. QUORUM.

At any meeting of the directors a majority shall constitute a quorum for the transaction of business, but if less than said number is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

7. MANNER OF ACTING.

The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the directors.

8. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors without cause may be filled by a vote of a majority of the directors then in office, although less than a quorum exists. Vacancies occurring by reason of the removal of directors without

cause shall be filled by vote of the members. A director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his predecessor.

9. REMOVAL OF DIRECTORS.

Any or all of the directors may be removed for cause by vote of the members or by action of the board. Directors may be removed without cause only by vote of the members.

10. RESIGNATION.

A director may resign at any time by giving written notice to the board, the president or the secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

11. COMPENSATION.

By resolution of the board of directors, each director may be paid his expenses, if any, of attendance at each meeting of the board of directors, and may be paid a stated salary as director of a fixed sum for attendance at each meeting of the board of directors, or both. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

12. PRESUMPTION OF ASSENT.

A director of the corporation who is present at a meeting of the directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

13. EXECUTIVE AND OTHER COMMITTEES.

The board, by resolution, may designate from among its members an executive committee and other committees, each consisting of two (2) or more directors. Each such committee shall serve at the pleasure of the board.

## ARTICLE V - OFFICERS

### 1. NUMBER.

The officers of the corporation shall be a president, a vice-president, a secretary and a treasurer, each of whom shall be elected by the directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the directors.

### 2. ELECTION AND TERM OF OFFICE.

The officers of the corporation to be elected by the directors shall be elected annually at the first meeting of the directors held after each annual meeting of the members. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

### 3. REMOVAL.

Any officer or agent elected or appointed by the directors may be removed by the directors whenever in their judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

### 4. VACANCIES.

A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the directors for the unexpired portion of the term.

### 5. PRESIDENT.

The president shall be the principal executive officer of the corporation and, subject to the control of the directors, shall in general supervise and control all of the business and affairs of the corporation. He shall, when present, preside at all meetings of the stockholders and of the directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the directors, certificates for shares of the corporation, any deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in

general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

6. VICE-PRESIDENT.

In the absence of the president or in the event of his death, inability or refusal to act, the vice-president shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president. The vice-president shall perform such other duties as from time to time may be assigned to him by the president or by the directors.

7. SECRETARY.

The secretary shall keep the minutes of the members, and of the directors' meetings in one or more books provided for that purpose, see all notices are duly given in accordance with the provisions of these bylaws or as required, be custodian of the corporate records and of the seal of the corporation and keep a register of the post office address of each member which shall be furnished to the secretary by such member, have general charge of the stock transfer books of the corporation and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the directors.

8. TREASURER.

If required by the directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with these bylaws and in general perform all of the duties as from time to time may be assigned to him by the president or by the directors.

9. SALARIES.

The salaries of the officers shall be fixed from time to time by the directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

## ARTICLE VI - CONTRACTS, LOANS, CHECKS AND DEPOSITS

### 1. CONTRACTS.

The directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

### 2. LOANS.

No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the directors. Such authority may be general or confined to specific instances.

### 3. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the directors.

### 4. DEPOSITS.

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the directors may select.

## ARTICLE VII - MEMBERSHIP CERTIFICATES AND THEIR TRANSFER

Membership certificates representing shares of the corporation shall be in such form as shall be determined by the directors. Such certificates shall be signed by the president and by the secretary or by such other officers authorized by law and by the directors. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the member, the number of shares and the date of issue shall be entered on membership transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the corporation as the directors may prescribe.

ARTICLE VIII - ACCOUNTING YEAR

The accounting year of the corporation shall begin on the first day of January in each year.

ARTICLE IX - SEAL

The directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the corporation, the state of incorporation, year of incorporation and the words "Corporate Seal".

ARTICLE X - WAIVER OF NOTICE

Unless otherwise provided by law, whenever any notice is required to be given to any member or director of the corporation under the provisions of these bylaws or under the provisions of the articles of incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XI - AMENDMENTS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by a vote of the members representing a majority of all the shares issued and outstanding, at any annual members' meeting or at any special members' meeting when the proposed amendment has been set out in the notice of such meeting.

ARTICLE XII - INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER PERSONS

The corporation shall indemnify, to the fullest extent permitted by law, any person who is made, or threatened to be made, a party to an action, suit or proceeding (whether civil, criminal, administrative or investigative), by reason of the fact that he is or was a director, officer or employee of the corporation or serves any other enterprise at the request of the corporation.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Secretary

APPROVED:

\_\_\_\_\_  
Director

Director

Director

EXHIBIT E

All signs shall be approved by the Architectural Control Committee prior to being displayed. The committee shall consider size, material, appropriateness, and such other matters as it may determine to be relevant asthetically and practically.

No. 217708

STATE OF IDAHO, }  
COUNTY OF BLAINE, } SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT THE REQUEST OF

*June Volley*

AT 9:05 O'CLOCK A. M.

RECORDED IN BOOK ..... ON PAGE

OF None

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EX-OFFICIO RECORDER

BY Mary Hase  
DEPUTY

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# Attachment B

Draft

Findings of Fact, Conclusions of  
Law, and Decision



**City of Ketchum  
Planning & Building**

IN RE: )  
Tenth Street Light Industrial Complex )  
Units A-9A & A-9B ) KETCHUM PLANNING AND ZONING COMMISSION  
Condominium Subdivision Preliminary Plat ) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
File Number: P24-060 ) DECISION  
)  
Date: September 10, 2024 )  
)

**PROJECT:** Tenth Street Light Industrial Complex Units A-9A & A-9B  
**APPLICATION TYPE:** Condominium Subdivision Preliminary Plat  
**FILE NUMBER:** P24-060  
**PROPERTY OWNER:** Glickman Investment Group LLC  
**REPRESENTATIVE:** David Patrie, Galena-Benchmark Engineering  
**LOCATION:** 491 E 10th Street A9 (Tenth Street Light Industrial Complex: Building A: Unit 9)  
**ZONING:** Light Industrial District Number 2 (LI-2 Zone)

**RECORD OF PROCEEDINGS**

The Planning and Building Department received the subdivision preliminary plat application for the project on July 24, 2024. Following the receipt of the application, staff routed the application materials to all city departments for review. After one round of review, the application was scheduled for a public hearing. A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on August 21, 2024. The notice was published in the Idaho Mountain Express on August 21, 2024. A notice was posted on the project site and the city’s website on August 26, 2024. The Planning and Zoning Commission (“Commission”) considered the Tenth Street Light Industrial units A-9A and A-9B Condominium Subdivision Preliminary Plat Application File No. P24-060 during their meeting on September 10, 2024.

**FINDINGS OF FACT**

The Commission having reviewed the entire project record, provided notice, and conducted the required public hearing does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

Project History and Background

The subdivision preliminary plat application proposes to subdivide existing unit A9 within the Tenth Street Light Industrial Complex located at 491 E 10<sup>th</sup> Street within the Light Industrial District Number 2 (LI-2 Zone). Existing Unit A9 is comprised of two levels. The lower level will become unit A-9B and the upper level will become unit A-9A.

The Tenth Street Light Industrial Building was built and subdivided into condominiums in 1981. Existing Unit A-9 is one 18 condominium units within Building A of the Tenth Street Ligh Industrial Complex. Existing unit A-9 is one of four condominium units in Building A that contain two floors extending across both the lower and upper levels. The other 14 condominium units are comprised of only one floor and are located in their entirety on either the lower or upper level of the building.

The owner of unit A-9 was issued Building Permit B23-002 for a remodel on March 15, 2023. The improvements proposed with the remodel included the removal of the interior stairwell that connected the lower and upper floors of unit A9 as well as the installation of a new garage door at the lower level on the west elevation of the existing unit. The remodel separated the two floors of unit A-9 by removing the shared, interior stairwell. The owner received a Certificate of Completion for these improvements on October 27, 2023.

Conformance with Subdivision Standards

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

- The standard applies to the establishment of new subdivisions creating multiple new lots that will form blocks around new streets and not the subject property, which is an existing condominium within the Tenth Street Light Industrial Complex.
- The standard applies to an action that will be taken at the final plat stage of the process.
- The City Engineer has determined that the standard does not apply.
- The standard applies to new residential condominiums and not the subject property, which an existing condominium unit within the Tenth Street Light Industrial Complex.

**FINDINGS REGARDING PRELIMINARY PLAT SUBDIVISION REQUIREMENTS**

| Preliminary Plat Requirements       |                          |                          |                 |  |  |
|-------------------------------------|--------------------------|--------------------------|-----------------|--|--|
| Compliant                           |                          |                          | City Code       | City Standards   |  |
| Yes                                 | No                       | N/A                      |                 |  |  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16.04.030.C.1   | <b>The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.</b>  |  |
|                                     |                          |                          | <i>Findings</i> | <i>The City of Ketchum Planning and Building Department received the subdivision application and all applicable application materials on July 24, 2024.</i>  |  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16.04.030.J     | <b>Application and preliminary plat contents. A preliminary plat application shall include the following: the preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application. The preliminary plat shall be drawn to a scale of not less than one inch equals 100 feet and shall show the following:</b> |  |
|                                     |                          |                          | <i>Findings</i> | <i>The subdivision application submittal included the warranty deed, a lot book guarantee, a copy of the Condominium Declaration for Tenth Street Industrial Center, and the preliminary plat. The subdivision application was deemed complete on July 24, 2024. The preliminary plat is drawn to a scale 1-inch equals 60-feet as shown on sheet 1 of the preliminary plat.</i>   |  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16.04.030.J.1   | <b>The scale, north point and date.</b>  |  |
|                                     |                          |                          | <i>Findings</i> | <i>This standard is met as shown on Sheet 1 of the preliminary plat.</i>   |  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16.04.030.J.2   | <b>The name of the proposed subdivision.</b>   |  |

|                                     |                          |                                     |                 |   |
|-------------------------------------|--------------------------|-------------------------------------|-----------------|---|
|                                     |                          |                                     | <i>Findings</i> | As shown on Sheet 1 of the preliminary plat, the subdivision is named "Tenth Street Light Industrial Complex, Units A-9A & A-9B."   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.3   | The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.  |
|                                     |                          |                                     | <i>Findings</i> | As shown on Sheet 1 of the preliminary plat, the owner and subdivider is Glickman Investment Group LLC and the professional land surveyor who prepared the plat is Robert O. Breier, PLS.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.4   | Legal description of the area platted.  |
|                                     |                          |                                     | <i>Findings</i> | The legal description of the area platted is shown on sheet 1 of the preliminary plat.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.5   | The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.  |
|                                     |                          |                                     | <i>Findings</i> | The site map on sheet 1 of the preliminary plat shows the names and boundary lines of parcels of property that are adjacent to the Tenth Street Light Industrial Complex buildings, including the Med Building Condos, Industrial Park Subdivision: Lot 4A, W.H. Condos, Ketchum Block 30 AM Lot 5A, and Tax Lots 4284, 6953, 4808, 6058, and 6952.   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.030.J.6   | A contour map of the subdivision with contour lines and a maximum interval of two feet to show the configuration of the land based upon the United States Geodetic Survey data, or other data approved by the City Engineer.  |
|                                     |                          |                                     | <i>Findings</i> | N/A as the application proposes to subdivide existing Unit A-9 within existing Building A of the the Tenth Street Light Industrial Complex.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.7   | The scaled location of existing buildings, water bodies and courses and location of the adjoining or immediately adjacent dedicated streets, roadways and easements, public and private.  |
|                                     |                          |                                     | <i>Findings</i> | Sheet 1 of the preliminary plat shows the scaled location of Building A and Building B within the Tenth Street Light Industrial Complex as well as the location of Unit A-9 within Building A. The site map on sheet 1 of the preliminary plat also shows the scaled location and widths of Highway 75 and Tenth Street. No water bodies or courses exist adjacent to the subject property. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.8   | Boundary description and the area of the tract.   |
|                                     |                          |                                     | <i>Findings</i> | The unit details on sheet 1 of the preliminary plat provide the boundary descriptions and scaled locations of the proposed upper-level unit A-9A and lower-level unit A-9B.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.9   | Existing zoning of the tract.   |
|                                     |                          |                                     | <i>Findings</i> | Sheet 1 of the preliminary plat lists the existing zoning of the subject property—the Tenth Street Light Industrial Complex is located in the LI-2 Zone.  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.030.J.10  | The proposed location of street rights-of-way, lots, and lot lines, easements, including all approximate dimensions, and including all proposed lot and block numbering and proposed street names.  |
|                                     |                          |                                     | <i>Findings</i> | N/A as the application proposes to subdivide existing condominium unit A-9 within Building A of the Tenth Street Light Industrial Complex into two condominium units. No new streets, blocks, lots, or easements are proposed with this request to subdivide an existing condominium unit into two units.   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.030.J.11  | The location, approximate size and proposed use of all land intended to be dedicated for public use or for common use of all future property owners within the proposed subdivision.  |
|                                     |                          |                                     | <i>Findings</i> | This standard is not applicable as there is no requirement or proposal for land dedicated for public or common use with this request to subdivide an existing condominium unit into two separate units. The original plat for the Tenth Street  |

|                                     |                          |                                     |                       |  |
|-------------------------------------|--------------------------|-------------------------------------|-----------------------|--|
|                                     |                          |                                     |                       | <i>Light Industrial Complex dated April 1981 and recorded as Instrument No. 217707 shows the land intended for common use of all property owners within the subdivision.</i>   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.12</b> | <b>The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.</b>  |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as no new sanitary and storm sewers, water mains, storage facilities, street improvements, street lighting, curbs, gutters, or utilities are proposed with this request to subdivide existing condominium Unit A-9 into two separate units.</i>   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.13</b> | <b>The direction of drainage, flow and approximate grade of all streets.</b>   |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as no new drainage or street improvements are required or proposed with the request to subdivide existing condominium Unit A-9 into two separate units.</i>   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.14</b> | <b>The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.</b>   |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as the request to subdivide existing Unit A-9 into two separate condominium units does not require or propose any new drainage canals, structures, or easements.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <b>16.04.030.J.15</b> | <b>Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.</b>  |
|                                     |                          |                                     | <i>Findings</i>       | <i>The vicinity map shows the subject property in reference to State Highway 75, Warm Springs Road, and Ketchum Townsite.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.16</b> | <b>The boundaries of the floodplain, floodway and avalanche overlay district shall also be clearly delineated and marked on the preliminary plat or a note provided if the entire project is in the floodplain, floodway or avalanche overlay district.</b>  |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as the property is not located in the floodplain, floodway, or avalanche overlay district.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.17</b> | <b>Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of 25 percent or greater; or upon any lot which will be created adjacent to the intersection of two or more streets.</b> |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as the subject property is not located within the floodway, floodplain, or avalanche zone and not adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek. No new lots are created with this subdivision application.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <b>16.04.030.J.18</b> | <b>Lot area of each lot.</b>   |
|                                     |                          |                                     | <i>Findings</i>       | <i>The unit details on sheet 1 of the preliminary plat provide the scaled dimensions for the proposed upper-level unit A-9A and lower-level unit A-9B. Proposed unit A-9A has an area of 1,025 square feet and proposed unit A-9B has an area of 1,100 square feet.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.19</b> | <b>Existing mature trees and established shrub masses.</b>   |
|                                     |                          |                                     | <i>Findings</i>       | <i>N/A as the applications proposes to subdivide existing unit A-9 within the Tenth Street Light Industrial Complex into two separate condominium units.</i>   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.030.J.20</b> | <b>To be provided to Administrator:<br/>All subdivision applications for consolidation of lots must be submitted concurrently with a building permit application or land use development application as applicable.</b>  |

|                                     |                          |                                     |                 |   |
|-------------------------------------|--------------------------|-------------------------------------|-----------------|---|
|                                     |                          |                                     | <i>Findings</i> | <i>N/A as the application proposes to subdivide existing unit A-9 into two separate condominium units and does not propose a consolidation.</i>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.21  | Subdivision names shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho and shall be approved by the Blaine County Assessor.   |
|                                     |                          |                                     | <i>Findings</i> | <i>The subdivision name is, "Tenth Street Light Industrial Complex, Units A-9A &amp; A-9B," which is not the name of any other subdivision in Blaine County.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.030.J.22  | All percolation tests and/or exploratory pit excavations required by state health authorities.  |
|                                     |                          |                                     | <i>Findings</i> | <i>N/A as the application proposes to subdivide existing unit A-9 into two separate condominium units and percolation tests/exploratory pit excavations are not required as no new improvements are proposed.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.23  | A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.                               |
|                                     |                          |                                     | <i>Findings</i> | <i>The applicant submitted a copy of the Condominium Declaration for the Tenth Street Light Industrial Center, Inc. with the preliminary plat application.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.24  | A current title report shall be provided at the time that the preliminary plat is filed with the Administrator, together with a copy of the owner's recorded deed to such property.                               |
|                                     |                          |                                     | <i>Findings</i> | <i>The applicant submitted a Lot Book Guarantee issued by Stewart Title Guaranty Company and dated March 19, 2024.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.030.J.25  | A digital copy of the preliminary plat shall be filed with the Administrator.   |
|                                     |                          |                                     | <i>Findings</i> | <i>The applicant submitted a digital copy of the preliminary plat with the subdivision application.</i>   |

**FINDINGS REGARDING COMPLIANCE WITH SUBDIVISION DEVELOPMENT & DESIGN STANDARDS**

| Subdivision Development & Design Standards (Ketchum Municipal Code §16.04.040) |                          |                                     |                 |   |
|--|--------------------------|-------------------------------------|-----------------|---|
| Compliant  |                          |                                     | City Code       | City Standards  |
| Yes  | No                       | N/A                                 |                 |   |
| <input type="checkbox"/>   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.A     | Required Improvements: The improvements set forth in this section shall be shown on the preliminary plat and installed prior to approval of the final plat. Construction design plans shall be submitted and approved by the city engineer. All such improvements shall be in accordance with the comprehensive plan and constructed in compliance with construction standard specifications adopted by the city. Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.            |
|  |                          |                                     | <i>Findings</i> | <i>N/A as no improvements are required or proposed with the request to subdivide existing unit A-9 into two condominium units. The owner of unit A-9 was issued Building Permit B23-002 for a remodel on March 15, 2023. The improvements proposed with the remodel included the removal of the interior stairwell that connected the lower and upper floors of unit A9 as well as the installation of a new garage door at the lower level on the west elevation of the existing unit. The remodel separated the two floors of unit A-9 by removing the shared, interior stairwell. The owner received a Certificate of Completion for these improvements on October 27, 2023.</i> |
| <input type="checkbox"/>   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.B     | Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer  |

|                          |                          |                                     |                 |  |
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|                          |                          |                                     |                 | shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.  |
|                          |                          |                                     | <i>Findings</i> | <i>All improvements were reviewed and approved at the time of building permit issuance and final inspection for Building Permit B23-002. No additional improvements are required or proposed.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.C     | Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider. |
|                          |                          |                                     | <i>Findings</i> | <i>N/A. All improvements were reviewed and approved at the time of building permit issuance and final inspection for Building Permit B23-002.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.D     | <b>As Built Drawing:</b> Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.  |
|                          |                          |                                     | <i>Findings</i> | <i>N/A All improvements were reviewed and approved at the time of building permit issuance and final inspection for Building Permit B23-002.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.E     | <b>Monumentation:</b> Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows: <ol style="list-style-type: none"> <li>1. All angle points in the exterior boundary of the plat.</li> <li>2. All street intersections, points within and adjacent to the final plat.</li> <li>3. All street corner lines ending at boundary line of final plat.</li> <li>4. All angle points and points of curves on all streets.</li> <li>5. The point of beginning of the subdivision plat description.</li> </ol>  |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as monumentation will occur at the final plat stage of the subdivision process.</i>   |
|                          |                          |                                     | 16.04.040.F     | <b>Lot Requirements:</b>   |

|                          |                          |                                     |                 |   |
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| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |                 | <p>1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings.</p> <p>2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates corner lots at the intersection of two (2) or more streets, building envelopes shall be shown for the lot(s) so affected on the preliminary and final plats. The building envelopes shall be located in a manner designed to promote harmonious development of structures, minimize congestion of structures, and provide open space and solar access for each lot and structure. Also, building envelopes shall be located to promote access to the lots and maintenance of public utilities, to minimize cut and fill for roads and building foundations, and minimize adverse impact upon environment, watercourses and topographical features. Structures may only be built on buildable lots. Lots shall only be created that meet the definition of "lot, buildable" in section 16.04.020 of this chapter. Building envelopes shall be established outside of hillsides of twenty five percent (25%) and greater and outside of the floodway. A waiver to this standard may only be considered for the following:</p> <p>a. For lot line shifts of parcels that are entirely within slopes of twenty five percent (25%) or greater to create a reasonable building envelope, and mountain overlay design review standards and all other city requirements are met.</p> <p>b. For small, isolated pockets of twenty five percent (25%) or greater that are found to be in compliance with the purposes and standards of the mountain overlay district and this section.</p> <p>3. Corner lots shall have a property line curve or corner of a minimum radius of twenty five feet (25') unless a longer radius is required to serve an existing or future use.</p> <p>4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line.</p> <p>5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible zoning districts.</p> <p>6. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.</p> |
|                          |                          |                                     | <i>Findings</i> | <i>This standard is not applicable as no new lots are created with the condominium subdivision.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.G     | <p>G. Block Requirements: The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements:</p> <ol style="list-style-type: none"> <li>1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots.</li> <li>2. Blocks shall be laid out in such a manner as to comply with the lot requirements.</li> <li>3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision</li> </ol>   |



|                          |                          |                                     |                 |  |
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|                          |                          |                                     |                 | <p>and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features.</p> <p>4. Corner lots shall contain a building envelope outside of a seventy five foot (75') radius from the intersection of the streets.</p>  |
|                          |                          |                                     | <i>Findings</i> | <i>This standard is not applicable as no new lots or blocks are proposed with the condominium subdivision application.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.H     | <p><b>Street Improvement Requirements:</b></p> <p>1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land;</p> <p>2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable ordinances, resolutions or regulations of the city or any other governmental entity having jurisdiction, now existing or adopted, amended or codified;</p> <p>3. Where a subdivision abuts or contains an existing or proposed arterial street, railroad or limited access highway right of way, the council may require a frontage street, planting strip, or similar design features;</p> <p>4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods;</p> <p>5. Street grades shall not be less than three-tenths percent (0.3%) and not more than seven percent (7%) so as to provide safe movement of traffic and emergency vehicles in all weather and to provide for adequate drainage and snow plowing;</p> <p>6. In general, partial dedications shall not be permitted, however, the council may accept a partial street dedication when such a street forms a boundary of the proposed subdivision and is deemed necessary for the orderly development of the neighborhood, and provided the council finds it practical to require the dedication of the remainder of the right of way when the adjoining property is subdivided. When a partial street exists adjoining the proposed subdivision, the remainder of the right of way shall be dedicated;</p> <p>7. Dead end streets may be permitted only when such street terminates at the boundary of a subdivision and is necessary for the development of the subdivision or the future development of the adjacent property. When such a dead end street serves more than two (2) lots, a temporary turnaround easement shall be provided, which easement shall revert to the adjacent lots when the street is extended;</p> <p>8. A cul-de-sac, court or similar type street shall be permitted only when necessary to the development of the subdivision, and provided, that no such street shall have a maximum length greater than four hundred feet (400') from entrance to center of turnaround, and all cul-de-sacs shall have a minimum turnaround radius of sixty feet (60') at the property line and not less than forty five feet (45') at the curb line;</p> <p>9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°);</p> <p>10. Where any street deflects an angle of ten degrees (10°) or more, a connecting curve shall be required having a minimum centerline radius of three hundred feet (300') for arterial and collector streets, and one hundred twenty five feet (125') for minor streets;</p> |

|                          |                          |                                     |  |
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|                          |                          |                                     | <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p> <p>12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets;</p> <p>13. Proposed streets which are a continuation of an existing street shall be given the same names as the existing street. All new street names shall not duplicate or be confused with the names of existing streets within Blaine County, Idaho. The subdivider shall obtain approval of all street names within the proposed subdivision from the commission before submitting same to council for preliminary plat approval;</p> <p>14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills;</p> <p>15. Street patterns of residential areas shall be designed to create areas free of through traffic, but readily accessible to adjacent collector and arterial streets;</p> <p>16. Reserve planting strips controlling access to public streets shall be permitted under conditions specified and shown on the final plat, and all landscaping and irrigation systems shall be installed as required improvements by the subdivider;</p> <p>17. In general, the centerline of a street shall coincide with the centerline of the street right of way, and all crosswalk markings shall be installed by the subdivider as a required improvement;</p> <p>18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement;</p> <p>19. Private streets may be allowed upon recommendation by the commission and approval by the council. Private streets shall be constructed to meet the design standards specified in subsection H2 of this section;</p> <p>20. Street signs shall be installed by the subdivider as a required improvement of a type and design approved by the administrator and shall be consistent with the type and design of existing street signs elsewhere in the city;</p> <p>21. Whenever a proposed subdivision requires construction of a new bridge, or will create substantial additional traffic which will require construction of a new bridge or improvement of an existing bridge, such construction or improvement shall be a required improvement by the subdivider. Such construction or improvement shall be in accordance with adopted standard specifications;</p> <p>22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and</p> <p>23. Gates are prohibited on private roads and parking access/entranceways, private driveways accessing more than one single-family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.</p> |
|                          |                          |                                     | <p><i>Findings</i></p> <p><i>N/A as no new street improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i></p>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <p><b>16.04.040.I</b></p> <p>Alley Improvement Requirements: Alleys shall be provided in business, commercial and light industrial zoning districts. The width of an alley shall be not less than twenty feet (20'). Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be provided to permit safe vehicular movement. Dead end alleys shall be prohibited. Improvement of alleys shall be done by the subdivider as required improvement and in conformance with design standards specified in subsection H2 of this section.</p>  |

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|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new alley improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.J     | <p>Required Easements: Easements, as set forth in this subsection, shall be required for location of utilities and other public services, to provide adequate pedestrian circulation and access to public waterways and lands.</p> <p>1. A public utility easement at least ten feet (10') in width shall be required within the street right of way boundaries of all private streets. A public utility easement at least five feet (5') in width shall be required within property boundaries adjacent to Warm Springs Road and within any other property boundary as determined by the city engineer to be necessary for the provision of adequate public utilities.</p> <p>2. Where a subdivision contains or borders on a watercourse, drainageway, channel or stream, an easement shall be required of sufficient width to contain such watercourse and provide access for private maintenance and/or reconstruction of such watercourse.</p> <p>3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that easement along the portion of the riverbank which runs through the proposed subdivision.</p> <p>4. All subdivisions which border on the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a twenty five foot (25') scenic easement upon which no permanent structure shall be built in order to protect the natural vegetation and wildlife along the riverbank and to protect structures from damage or loss due to riverbank erosion.</p> <p>5. No ditch, pipe or structure for irrigation water or irrigation wastewater shall be constructed, rerouted or changed in the course of planning for or constructing required improvements within a proposed subdivision unless same has first been approved in writing by the ditch company or property owner holding the water rights. A written copy of such approval shall be filed as part of required improvement construction plans.</p> <p>6. Nonvehicular transportation system easements including pedestrian walkways, bike paths, equestrian paths, and similar easements shall be dedicated by the subdivider to provide an adequate nonvehicular transportation system throughout the city.</p> |
|                          |                          |                                     | <i>Findings</i> | <i>This standard is not applicable as no easements are proposed or required for this project. The project does not create a new private street. This property is not adjacent to Warm Springs Road. The property does not border a watercourse, drainage way, channel, or stream.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.K     | <p>Sanitary Sewage Disposal Improvements: Central sanitary sewer systems shall be installed in all subdivisions and connected to the Ketchum sewage treatment system as a required improvement by the subdivider. Construction plans and specifications for central sanitary sewer extension shall be prepared by the subdivider and approved by the city engineer, council and Idaho health department prior to final plat approval. In the event that the sanitary sewage system of a subdivision cannot connect to the existing public sewage system,</p>   |

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|                          |                          |                                     |                 | <p>alternative provisions for sewage disposal in accordance with the requirements of the Idaho department of health and the council may be constructed on a temporary basis until such time as connection to the public sewage system is possible. In considering such alternative provisions, the council may require an increase in the minimum lot size and may impose any other reasonable requirements which it deems necessary to protect public health, safety and welfare.</p>   |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new sanitary sewage disposal improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.L     | <p><b>Water System Improvements:</b> A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision according to specifications and requirements of the city under the supervision of the Ketchum fire department and other regulatory agencies having jurisdiction. Furthermore, the central water system shall have sufficient flow for domestic use and adequate fire flow. All such water systems installed shall be looped extensions, and no dead end systems shall be permitted. All water systems shall be connected to the municipal water system and shall meet the standards of the following agencies: Idaho department of public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.</p>   |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new water system improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.M     | <p><b>Planting Strip Improvements:</b> Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.</p>  |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as the application to requests to subdivide existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.N     | <p><b>Cuts, Fills, And Grading Improvements:</b> Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following:</p> <ol style="list-style-type: none"> <li>1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application.</li> <li>2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: <ol style="list-style-type: none"> <li>a. Proposed contours at a maximum of five foot (5') contour intervals.</li> <li>b. Cut and fill banks in pad elevations.</li> <li>c. Drainage patterns.</li> <li>d. Areas where trees and/or natural vegetation will be preserved.</li> <li>e. Location of all street and utility improvements including driveways to building envelopes.</li> </ol> </li> </ol> |

|                          |                          |                                     |                 |  |
|--------------------------|--------------------------|-------------------------------------|-----------------|--|
|                          |                          |                                     |                 | <p>f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements.</p> <p>3. Grading shall be designed to blend with natural landforms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways.</p> <p>4. Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or hydrology shall be allocated for open space for the benefit of future property owners within the subdivision.</p> <p>5. Where existing soils and vegetation are disrupted by subdivision development, provision shall be made by the subdivider for revegetation of disturbed areas with perennial vegetation sufficient to stabilize the soil upon completion of the construction. Until such times as such revegetation has been installed and established, the subdivider shall maintain and protect all disturbed surfaces from erosion.</p> <p>6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply:</p> <ul style="list-style-type: none"> <li>a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability.</li> <li>b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).</li> <li>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</li> <li>d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope.</li> <li>e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.</li> </ul> |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new cut, fill, or grading improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.O     | <p>Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or</p>  |

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|                          |                          |                                     |                 | improved public easements and shall extend across and under the entire improved width including shoulders.   |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new drainage improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.P     | Utilities: In addition to the terms mentioned in this section, all utilities including, but not limited to, electricity, natural gas, telephone and cable services shall be installed underground as a required improvement by the subdivider. Adequate provision for expansion of such services within the subdivision or to adjacent lands including installation of conduit pipe across and underneath streets shall be installed by the subdivider prior to construction of street improvements. |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as no new utilities improvements are proposed or required for the request existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.Q     | Off Site Improvements: Where the offsite impact of a proposed subdivision is found by the commission or council to create substantial additional traffic, improvements to alleviate that impact may be required of the subdivider prior to final plat approval, including, but not limited to, bridges, intersections, roads, traffic control devices, water mains and facilities, and sewer mains and facilities.   |
|                          |                          |                                     | <i>Findings</i> | <i>The proposed condominium subdivision application does not create substantial additional traffic; therefore, no off-site improvements are required.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.R     | Avalanche And Mountain Overlay: All improvements and plats (land, planned unit development, townhouse, condominium) created pursuant to this chapter shall comply with City of Ketchum Avalanche Zone District and Mountain Overlay Zoning District requirements as set forth in Title 17 of this Code.  |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as this property is not located within the Avalanche Zone or Mountain Overlay.</i>  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.040.S     | Existing natural features which enhance the attractiveness of the subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.   |
|                          |                          |                                     | <i>Findings</i> | <i>N/A as the application proposes subdividing existing unit A-9 within the Tenth Street Light Industrial Complex into two condominium units.</i>  |

**FINDINGS REGARDING COMPLIANCE WITH CONDOMINIUM SUBDIVISION REQUIREMENTS**

| Condominium Plat Requirements       |                          |                                     |                 |   |
|-------------------------------------|--------------------------|-------------------------------------|-----------------|---|
| Compliant                           |                          |                                     | City Code       | Standards   |
| Yes                                 | No                       | N/A                                 |                 |   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | 16.04.070.B     | The subdivider of the condominium project shall submit with the preliminary plat application a copy of the proposed bylaws and condominium declarations of the proposed condominium development. Said documents shall adequately provide for the control and maintenance of all common areas, recreational facilities and open space. |
|                                     |                          |                                     | <i>Findings</i> | <i>The applicant provided a copy of the Condominium Declaration for Tenth Street Industrial Center with the application submittal.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 16.04.070.D     | All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular condominium units. No garage may be condominiumized or sold separate from a condominium unit.   |

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|-------------------------------------|--------------------------|-------------------------------------|--------------------|--|
|                                     |                          |                                     | <b>Findings</b>    | <i>N/A as this standard pertains to garages appurtenant to residential condominium units and does not apply to the request to subdivide an existing condominium unit within the Tenth Street Light Industrial Complex.</i>   |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.070.E</b> | <b>Adequate storage areas shall be provided for boats, campers and trailers, as well as adequate interior storage space for personal property of the resident of each condominium unit.</b>  |
|                                     |                          |                                     | <b>Findings</b>    | <i>N/A as the request proposes to subdivide an existing condominium unit within an industrial building.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.070.F</b> | <b>A maintenance building or room shall be provided of adequate size and location for the type and size of the condominium project for storage of maintenance equipment and supplies for common areas.</b>   |
|                                     |                          |                                     | <b>Findings</b>    | <i>N/A as the application proposes to subdivide an existing condominium unit within an industrial building.</i>  |
| <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <b>16.04.070.G</b> | <b>The subdivider shall dedicate to the common use of the homeowners adequate open space of such shape and area usable and convenient to the residents of the condominium subdivision. Location of building sites and common area shall maximize privacy and solar access.</b> |
|                                     |                          |                                     | <b>Findings</b>    | <i>N/A as the application proposes to subdivide an existing condominium unit within an industrial building.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <b>16.04.070.H</b> | <b>All other provisions of this chapter and all applicable ordinances, rules and regulations of the city and all other governmental entities having jurisdiction shall be complied with by condominium subdivisions.</b>   |
|                                     |                          |                                     | <b>Findings</b>    | <i>The project has been reviewed for compliance with the city's subdivision standards and all applicable ordinances. The project complies with all applicable city ordinances, rules, and regulations.</i>   |

### CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code (“KMC”) and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the applicant’s Townhouse Preliminary Plat application for the development and use of the project site.
2. The Commission has authority to review and recommend approval of the applicant’s Subdivision Preliminary Plat Application pursuant to Chapter 16.04 of Ketchum Code Title 16.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §16.04.030.
4. The Subdivision Preliminary Plat application is governed under Chapter 16.04 of Ketchum Municipal Code.
5. The Tenth Street Light Industrial Complex Units A-9A & A-9B Condominium Subdivision Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

### DECISION

**THEREFORE**, the Commission **recommends approval** of this Condominium Subdivision Preliminary Plat Application File No. P24-060 to City Council this Tuesday, September 10, 2024 subject to the following conditions of approval.

### CONDITIONS OF APPROVAL

1. Pursuant to Ketchum Municipal Code §16.04.030.I, failure to obtain final plat approval within two years of City Council’s approval of the preliminary plat shall cause all preliminary plat approvals to be null and void.

Findings of Fact **adopted** this 10<sup>th</sup> day of September 2024.

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Neil Morrow, Chair  
City of Ketchum  
Planning and Zoning Commission