



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motions:

FAR Exceedance Agreement 22845

- Option 1 Motion: "I move to direct the applicant to modify the range of income categories proposed for the community housing units to achieve an average no higher than 4."
- Option 2 Motion: "I move to approve the updated community housing proposal with the range of income categories proposed by the applicant and authorize the Mayor to sign FAR Exceedance Agreement 22845 with The Perry Building LLC."

Subdivision Applications

If Option 2 Motion is approved, then:

- Motion: "I move to approve The Perry Building Lot Consolidation Preliminary Plat Application File No. P22-045A subject to conditions 1 through 2."
- Motion: "I move to approve The Perry Building Condominium Subdivision Preliminary Plat Application File No. P22-045B subject to conditions 1 through 2."

Reasons for Recommendation:

- The City of Ketchum Planning and Zoning Commission (the "Commission") reviewed and approved The Perry Building Design Review Application File No. P22-045C and Variance Application File No. P22-045D and recommended approval of Lot Consolidation Preliminary Plat Application File No. P22-045A and Condominium Subdivision Preliminary Plat Application File No. P22-045B during their meeting on March 14, 2023.
- During their meeting on March 6, 2023, the City Council discussed the initial community housing proposal for The Perry Building project and provided direction to the applicant and staff. The City Council expressed support for targeting the seven community housing units for a range of income categories provided that the range achieves an average of 4. Following the City Council's discussion on the initial request, the applicant submitted a revised community housing proposal with a modified range of income categories that achieves an average of 4.6. Staff recommends the City Council review the applicant's modified community housing proposal and either: (1) direct the applicant to modify the range of income categories to achieve an average no higher than 4 or (2) approve the updated community housing proposal with the range of income categories proposed by the applicant.

- The Perry Building FAR Exceedance Agreement must be approved by the City Council before action may be taken on the subdivision applications. If the City Council approves the applicant's updated community housing proposal, Staff recommends the City Council approve the subdivision applications. The Lot Consolidation Preliminary Plat and Condominium Subdivision Preliminary Plat applications comply 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).

Policy Analysis and Background:

The applicant is proposing to develop a new mixed-use building located on three Ketchum Townsite lots (131 W 4th Street and 431 & 471 N 1st Avenue) at the northwest corner of 1st Avenue and 4th Street within the Mixed-Use Subdistrict of the Community Core. The Perry Building will contain a parking garage accessed from the alley, four retail units on the ground floor, seven community housing units, and sixteen market-rate multi-family dwelling units. The project is proposing to take advantage of the Floor Area Ratio ("FAR") bonus in exchange for community housing, mitigating the additional floor area by dedicating seven on-site community housing units as deed-restricted rentals. The applicant proposes to target these community housing units for a range of income categories.

Ketchum Municipal Code §17.124.040.B.2e requires that community housing units provided in exchange for a FAR bonus be targeted for Blaine County Housing Authority ("BCHA") Income Category 4 but states that, "The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category...This allowance shall be based on need for the category type." Pursuant to Ketchum Municipal Code §17.124.040.B.2g, "the City Council may consider alternative proposals by the applicant to fulfill the community housing incentive." The City Council has the authority to review and approve alternative categories for community housing units provided in exchange for an increase in permitted FAR.

The City Council discussed the initial community housing proposal during their meeting on March 6 and provided direction to the applicant and staff. The initial proposal targeted two units for Income Category 4, two units for Income Category 5, two units for Income Category 6, and one unit for BCHA Category L. During their discussion, the City Council expressed support for targeting the seven community housing units for a range of income categories provided that the range achieved an average of 4. The City Council was not supportive of designating community housing units for BCHA Category L, which has no income or rent limit, but must be targeted for full-time residents and employees of Blaine County. The March 6 staff report included as Attachment 2 provides staff's comprehensive analysis of the initial proposal.

Following the City Council discussion on March 6, the applicant modified the proposed range of income categories and submitted a revised community housing proposal. Staff reviewed the revised proposal and met with the applicant to provide feedback. After meeting with staff, the applicant further modified the range of income categories and submitted an updated community housing proposal on April 27, 2023. The applicant's updated community housing proposal is included in Attachment 1. Table 1 provides the range of income categories proposed with the initial request and updated proposal.

Table 1: The Perry Building Community Housing—Proposed Income Categories				
Unit No.	Bedrooms	Unit Size	Income Category (Initial Request)	Modified Income Category (Updated Proposal)
U104	one bedroom	625 square feet	4	4
U106	two bedrooms	914 square feet	4	4
U103	one bedroom	625 square feet	5	4
U105	one bedroom	625 square feet	5	4
U102	one bedroom	625 square feet	6	5
U107	one bedroom	624 square feet	6	5
U109	one bedroom	976 square feet	L	6
Average Income Category			5 + L	4.6
Median Income Category			5	4

The applicant’s updated community housing proposal designates four units for Income Category 4, two units for Income Category 5, and one unit for Income Category 6. Two units previously targeted for Income Category 5 in the initial proposal are designated for Income Category 4 in the updated proposal, and two units previously targeted for Income Category 6 are now proposed to be designated for Income Category 5. The unit targeted for BCHA Category L in the initial request is proposed to be designated for Income Category 6 in the updated proposal. The applicant has lowered the average category from 5 in the initial request to 4.6 in the updated proposal, and the median income category has been lowered from 5 to 4. Staff appreciates the changes made by the applicant in their updated proposal and their responsiveness to City Council feedback.

While the updated proposal is more favorable than the initial request, the average income category is higher than the average of 4 recommended by the City Council during their discussion on March 6. Staff recommends the City Council review the modified range of income categories and determine whether the updated community housing proposal meets the intent of the direction they provided during their consideration of the initial request on March 6. If the City Council determines the updated proposal does not sufficiently comply with their direction, Staff recommends the City Council direct the applicant to further modify the range of income categories to achieve an average no higher than 4. If the City Council believes the updated community housing proposal sufficiently meets the intent of their direction, Staff recommends the City Council move to approve the updated community housing proposal and authorize the Mayor to sign the FAR Exceedance Agreement included as Attachment 3.

The Perry Building community housing contribution and FAR Exceedance Agreement must be approved by the City Council before action may be taken on the subdivision applications. If the City Council approves the applicant’s updated community housing proposal, Staff recommends the City Council approve the Lot Consolidation Preliminary Plat and Condominium Subdivision applications. The Lot Consolidation Preliminary Plat will remove the shared property lines separating lots 2, 3A, and 4A within block 56 of the original Ketchum townsite to establish the development parcel. The Condominium Subdivision Preliminary Plat application will subdivide the building into four commercial condominium units, seven community

housing condominium units, sixteen multi-family dwelling condominium units, common area, and limited common area. During city department review, staff reviewed the Lot Consolidation Preliminary Plat and Condominium Subdivision Preliminary Plat applications for conformance with the city's subdivision regulations specified in Chapter 16.04 of Ketchum Municipal Code. The applications comply with all applicable subdivision regulations.

Sustainability Impact:

The project does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan. The project must be designed to comply with the 2018 International Energy Conservation Code and the city's Green Building Code standards specified in Chapter 15.20 of Ketchum Municipal Code.

Financial Impact:

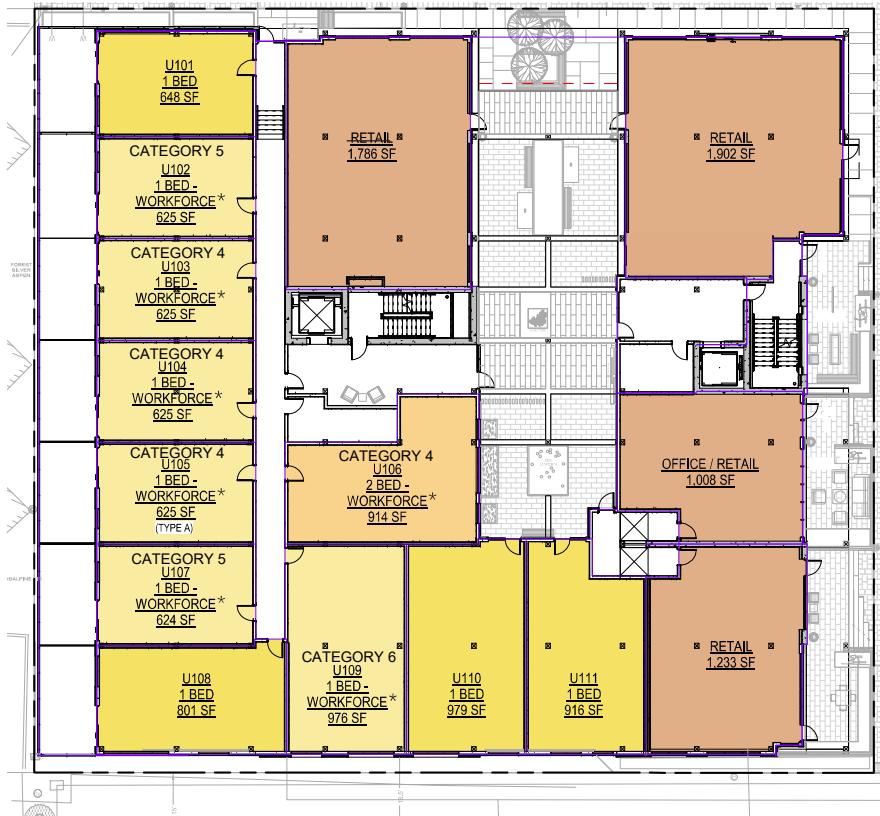
None OR Adequate funds exist in account:

There is no financial requirement from the city for this action at this time.

Attachments:

1. The Perry Building: Revised Community Housing Contribution Proposal
2. March 6, 2023 Staff Report: The Perry Building Preliminary Community Housing Contribution Discussion
3. The Perry Building FAR Exceedance Agreement 22845
4. Application Materials & Plan Set: Lot Consolidation Preliminary Plat Application File No. P22-045A
5. Application Materials & Plan Set: Condominium Subdivision Preliminary Plat Application File No. P22-045B
6. Draft City Council Findings of Fact, Conclusions of Law, and Decision: Lot Consolidation Preliminary Plat Application File No. P22-045A
7. Draft City Council Findings of Fact, Conclusions of Law, and Decision: Condominium Subdivision Preliminary Plat Application File No. P22-045B

Attachment 1
The Perry Building:
Revised
Community Housing Contribution
Proposal



LEVEL 1

NOT TO SCALE



Attachment 2
March 6, 2023 Staff Report:
The Perry Building
Preliminary
Community Housing Contribution
Discussion



City of Ketchum

March 6, 2023

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Discussion and Direction Regarding the Proposed Community Housing Contribution for The Perry Building Project Located at 131 W 4th Street and 471 & 431 N 1st Avenue.

Recommendation and Summary

Staff recommends the City Council review the alternative community housing contribution to mitigate the Floor Area Ratio ("FAR") increase proposed for The Perry Building project and provide feedback to the applicant.

The reasons for the recommendation are as follows:

- Planning staff has modified the sequence of FAR Exceedance Agreement review based on the direction provided by the City Council during their regular meeting on January 17, 2023. For projects proposing an alternative proposal as allowed per Ketchum Municipal Code ("KMC") §17.124.040.B.2g, the proposed community housing contribution will be scheduled as a discussion item for City Council review and feedback prior to design review. Following design review approval and before building permit issuance, the final FAR Exceedance Agreement will be brought back to the City Council for review and approval.
- Pursuant to KMC §17.124.040.B.2e, community housing units shall be targeted for Blaine County Housing Authority ("BCHA") income category 4, but "the applicant may seek the recommendation of the governing housing authority in the determination of an alternative category." This allowance shall be based on the need for the category type. Pursuant to KMC §17.124.040.B.2g, "the City Council may consider alternative proposals by the applicant to fulfill the community housing incentive."
- The project is required to provide a minimum of 4,936 square feet of community housing in exchange for the FAR bonus. The Perry Building project is proposing to mitigate the FAR increase by providing 5,014 square feet of community housing on site, dedicating seven community housing units on the ground floor of the mixed-use building as deed-restricted rentals. The rental units range in size from 624 square feet to 976 square feet. The applicant is proposing to target these community housing units for a mixture of income categories, including BCHA categories 4, 5, 6, and L.

Introduction and History

Ketchum Municipal Code §17.124.040 encourages new developments to include a reasonable supply of affordable and resident-occupied housing for sale or rent to help meet the demand and needs for housing of the community's workforce. Developments in the Community Core may be built to a permitted FAR of 1.0. An increased FAR up to a maximum of 2.25 may be permitted, subject to design

review approval, with an associated community housing contribution. Pursuant to KMC §17.124.040.B.2f, “the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to: (1) Housing constructed by the applicant on or off-site, within the City of Ketchum; (2) Payment of an in lieu fee; or (3) Acquisition of existing housing stock that meets with the governing housing authority’s requirements and approval.”

The applicant is proposing to develop a new mixed-use building located on three Ketchum Townsite lots (131 W 4th Street and 471 & 431 N 1st Avenue) at the northwest corner of 1st Avenue and 4th Street (the “subject property”) within the Mixed-Use Subdistrict of the Community Core (“CC-2 Zone”). The mixed-use building will contain a parking garage accessed from the alley, 4 retail units on the ground floor with frontage along 1st Avenue and 4th Street, 7 community housing rental units, and 16 market-rate multi-family dwelling units (the “project”).

The project is proposing to take advantage of the FAR bonus in exchange for community housing, mitigating the additional floor area by dedicating seven on-site community housing units as deed-restricted rentals. The FAR calculations and exceedance analysis for the project is provided in Table 1. The mixed-use building is 53,756 gross square feet and the proposed FAR is 2.18.

TABLE 1: THE PERRY BUILDING FAR EXCEEDANCE ANALYSIS	
CC-2 Zone Permitted FAR	
Permitted FAR	1.0
Permitted FAR with Community Housing	2.25
The Perry Building: Proposed FAR & Exceedance Analysis	
Subject Property Area	24,723 square feet
Permitted Gross Floor Area (1.0 FAR)	24,723 square feet
Proposed Gross Floor Area	53,756 square feet
Proposed FAR	2.18
Increase Above Permitted 1.0 FAR	29,033 square feet
20% of Increase	5,807 square feet
Net Livable (15% Reduction)	4,936 square feet
Minimum Required Community Housing Contribution	4,936 square feet

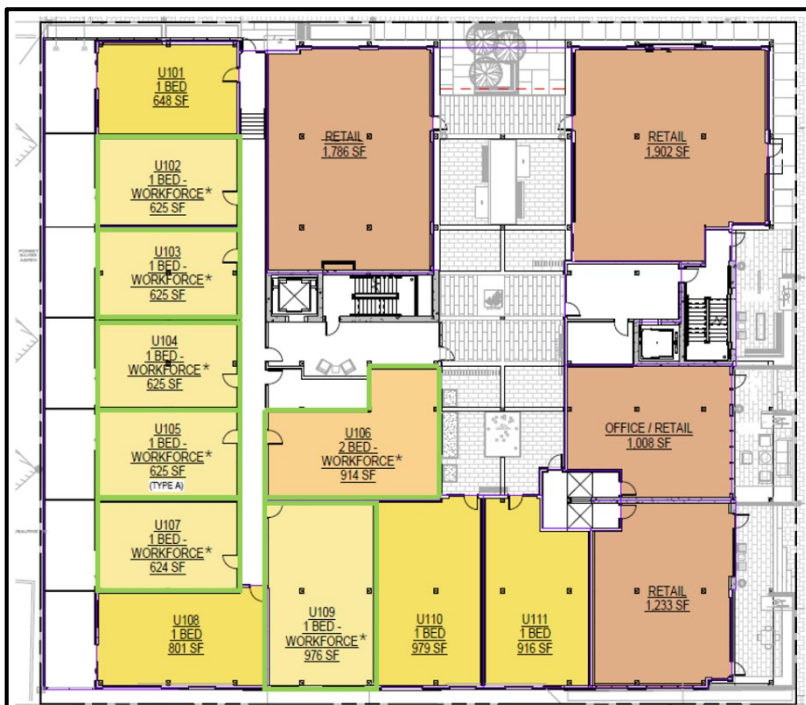


Figure 1: Ground-Level Floor Plan

As noted in the table above, the project is required to provide a minimum of 4,936 square feet of community housing in exchange for the FAR bonus. The Perry Building project is proposing to mitigate the FAR increase by providing 5,014 square feet of community housing on site, dedicating seven community housing units on the ground floor of the mixed-use building as deed-restricted rentals. The rental units range in size from 624 square feet to 976 square feet. Figure 1 shows the main-level floor plan with the proposed community housing units are outlined in green. The project’s community housing proposal, including floor plans and targeted income categories, is included as Attachment A to the staff report.

Pursuant to KMC §17.124.040.B.2e, community housing units shall be targeted for Blaine County Housing Authority (“BCHA”) income category 4, but “the applicant may seek the recommendation of the governing housing authority in the determination of an alternative category.” This allowance shall be based on the need for the category type. Pursuant to KMC §17.124.040.B.2g, “the City Council may consider alternative proposals by the applicant to fulfill the community housing incentive.” The applicant is proposing to target these community housing units for a mixture of income categories as follows:

Unit No.	Bedrooms	Unit Size	Proposed Income Category	Percentage of Area Median Income (AMI)
U104	one bedroom	625 square feet	4	80% to 100%
U106	two bedrooms	914 square feet	4	80% to 120%
U103	one bedroom	625 square feet	5	100% to 120%
U105	one bedroom	625 square feet	5	100% to 120%
U102	one bedroom	625 square feet	6	120% to 140%
U107	one bedroom	624 square feet	6	120% to 140%
U109	one bedroom	976 square feet	L	No Income Limit (must be a full-time resident and employee of Blaine County)

Staff appreciates the total number of community housing units provided on the ground-level of the mixed-use development and their integration with market-rate residential units; however, staff does not support the income categories targeted for each rental unit as proposed by the applicant. The analysis below provides an overview of staff’s position on the proposed community housing contribution. Staff requests the City Council provide feedback on the income category targets for the project. Goal 2 of the Housing Action Plan states that Ketchum should “Build a regulatory and policy environment that strongly encourages housing development with an emphasis on community and workforce housing, and which is consistent with other community goals.” As detailed in the analysis below, staff recommends more community housing units should be targeted for 80% and less AMI to provide an equitable distribution and help address Ketchum’s urgent need for more rental units for the local workforce. This is because 70% of Ketchum’s workforce earns below 80% AMI – the median earnings per individual for our area is about 50% AMI and more than half of BCHA’s waitlist are single-person households.

Analysis

Due to a significant population increase and severe housing shortage, Ketchum is losing its workforce and year-round residents because most local people cannot afford to live here. The *Ketchum Housing Matters: Housing Action Plan, 2022-2023* (the “Housing Action Plan”) identifies that the community’s workforce has the greatest unmet housing need stating that, “Ketchum’s workforce primarily consists of low- and middle-income households (under \$45,355 per year or \$23 per hour) that our local economy depends on. Sixty percent of local renters live in unaffordable housing, meaning they pay more than 30% of their gross/pre-tax income on housing costs.” The city’s economy depends on its workforce who primarily earn under 80% AMI based on industry median earnings data published by the US Census. While more housing is needed at every income level, the Housing Action Plan identifies that Ketchum’s most significant need is for rental units ranging from 0% to 120% AMI targeted for the local workforce. Pursuant to KMC §17.124.040.B.1, the purpose of the FAR bonus program is to, “encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for the housing of

community's employees." Community housing provided in exchange for FAR increases is intended to target Ketchum's workforce.

Staff believes the seven community housing units should be targeted to meet the objectives identified in the Housing Action Plan and targeted for income categories 4 or an equitable range of income categories with a median of income category 4 for the following reasons:

- Policy decisions related to income levels for the deed restricted community housing program should be informed by the recently adopted Housing Action Plan.
- The Housing Action Plan identifies that Ketchum most significantly needs more rental units for the local workforce housing that consists primarily of low- and middle-income households.
- The purpose of the FAR bonus in exchange for community housing program is to "help meet the demand and needs for housing of the community's employees" (KMC 17.124.040)
- Approximately 70% of Ketchum's workers earn less than 80% to 100% of area median income ("AMI").
- The most significant demand is for rental units targeted for income categories of 4 or less. Over 80% of households on the BCHA waitlist qualify for income categories of 4 or less.
- Staff has received an increased number of requests for higher income categories for on-site deed restricted community housing units. Allowance of higher income categories will erode the effectiveness of the program over time and diverge from the goals of the Housing Action Plan. The action on this project will set a precedent for other requests to increase income levels for on-site community housing units. The Housing Action Plan proposes alternative tools to increase housing production for higher income levels.

Staff would support a more equitable distribution of income categories with a median of income category 4. A more equitable range of income categories would include an income-category-3 unit for every income-category-5 unit and an income-category-2 unit for every income-category-6 unit. The median of the income categories should be 4 with an equitable distribution of units targeted for income categories of 3 or less and income categories of 5 or more. As proposed, 72% of the proposed community housing targets 100% and higher AMI and 43% of the community housing is proposed to target 120% and higher AMI. As income categories 5 and 6 are proposed, more community housing units should be targeted for 80% and less AMI to provide an equitable distribution and help address Ketchum's urgent need for more rental units for the local workforce.

The 976-square-foot one-bedroom unit is proposed to be targeted for BCHA Category L, which has no income or rent limit, but must be targeted for full-time residents and employees of Blaine County. Staff is not supportive of BCHA Category L because it does not fulfill the intent of the regulation. The 976 square feet of community housing proposed to be targeted for BCHA Category L would equate to an in-lieu fee of \$439,200. Staff believes that the in-lieu fee would be more desirable than providing a community housing unit with no income limit. Comparable, peer communities are able to buy category L deed-restrictions for \$100,000 to \$150,000 per unit: This \$439,200 could equate to three to four new deed-restrictions on existing units.

Sustainability

The project does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020. Ability to house employees and community participants locally decreases commuter vehicular trips.

Financial Impact

There is no financial requirement from the city for this action.

Attachments

- A. The Perry Building: Proposed Community Housing Contribution

Attachment A

The Perry Building: Proposed Community Housing Contribution

COMMERCIAL AREA CALCULATION

NAME	GROSS AREA
RETAIL	1,902 SF
OFFICE/RETAIL	1,008 SF
RETAIL	1,786 SF
RETAIL	1,233 SF
TOTAL:	5,929 SF

UNITS BY LEVEL

UNIT NO.	NAME	NET RENTABLE SF
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LEVEL 1

U101	1 BED	648 SF
U102	1 BED - WORKFORCE *	625 SF
U103	1 BED - WORKFORCE *	625 SF
U104	1 BED - WORKFORCE *	625 SF
U105	1 BED - WORKFORCE *	625 SF
U106	2 BED - WORKFORCE *	914 SF
U107	1 BED - WORKFORCE *	624 SF
U108	1 BED	801 SF
U109	1 BED - WORKFORCE *	976 SF
U110	1 BED	979 SF
U111	1 BED	916 SF
LEVEL 1: 11		8,356 SF

LEVEL 2

U201	3 BED PLUS	2,644 SF
U202	3 BED PLUS	3,056 SF
U203	1 BED PLUS	1,534 SF
U204	1 BED PLUS	2,035 SF
U205	1 BED PLUS	1,417 SF
U206	1 BED PLUS	1,657 SF
U207	2 BED PLUS	2,144 SF
U208	3 BED PLUS	3,083 SF
LEVEL 2: 8		17,570 SF

LEVEL 3

U301	3 BED PLUS	3,292 SF
U302	4 BED PLUS	3,751 SF
U303	3 BED PLUS	3,060 SF
U304	3 BED PLUS	3,047 SF
LEVEL 3: 4		13,149 SF
TOTAL UNITS: 23		39,075 SF

UNITS BY LEVEL FOR PARKING CALCULATION*

NET INTERIOR SF	PARKING REQUIRED
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LEVEL 1

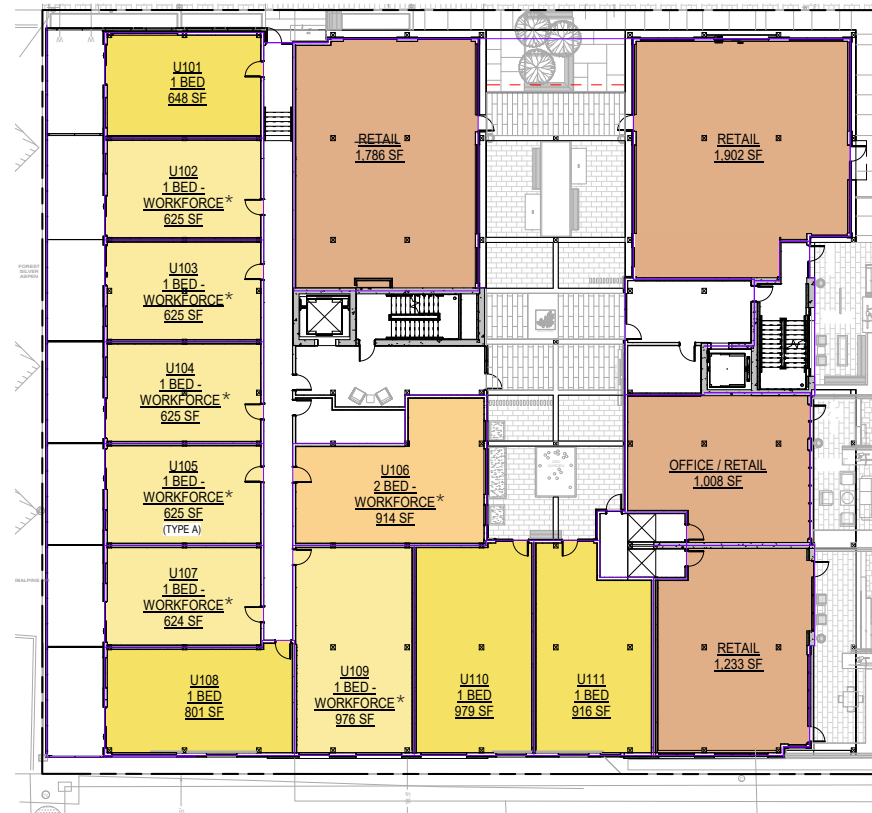
593 SF	0
575 SF	0
572 SF	0
573 SF	0
572 SF	0
836 SF	0
575 SF	0
731 SF	0
910 SF	0
916 SF	1
845 SF	1
LEVEL 1: 11	2

LEVEL 2

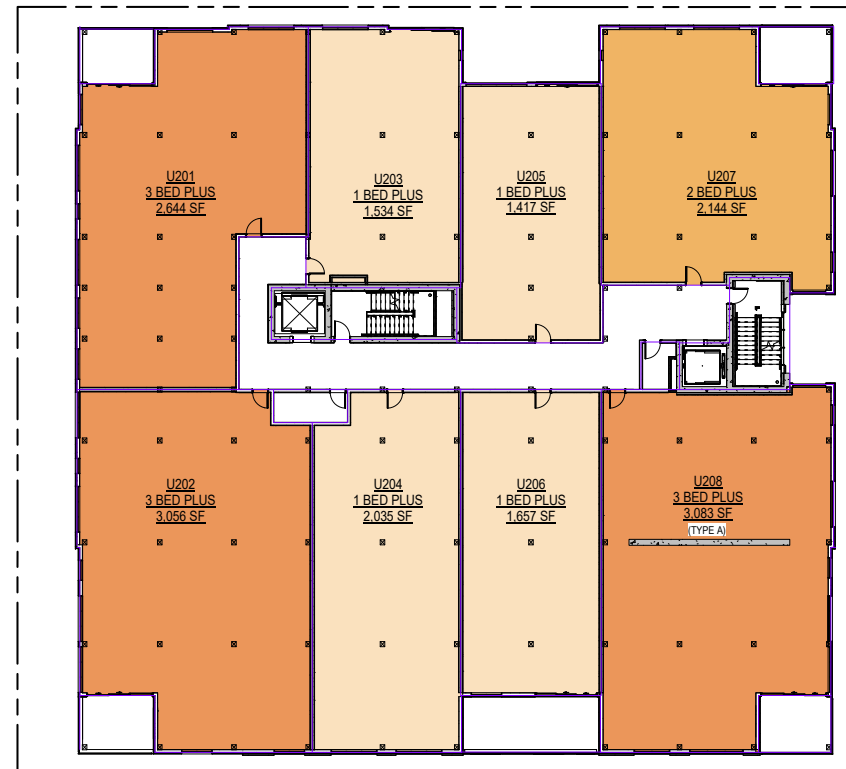
2,495 SF	2
2,920 SF	2
1,423 SF	1
1,929 SF	1
1,325 SF	1
1,567 SF	1
2,020 SF	2
2,892 SF	2
LEVEL 2: 8	12

LEVEL 3

3,096 SF	2
3,541 SF	2
2,880 SF	2
2,854 SF	2
LEVEL 3: 4	8
TOTAL UNITS: 23	22**



LEVEL 1
NOT TO SCALE



LEVEL 2
NOT TO SCALE



LEVEL 3
NOT TO SCALE

NOTE:
UNIT MIX AREA CALCULATED BY:
EXTERIOR FACE OF FRAMING
CORRIDOR FACE OF FRAMING
CENTERLINE OF DEMISING WALL
REFERENCE SHEET G-010 FOR AREA SUMMARIES

- 1 BED - WORKFORCE*
- 1 BED
- 1 BED PLUS
- 2 BED - WORKFORCE*
- 2 BED PLUS
- 3 BED PLUS
- 4 BED PLUS
- COMMERCIAL/RETAIL

Note:
Workforce* = Deed-Restricted Community Housing



LEVEL 1
SCALE: 1" = 20'-0"



LICENSED ARCHITECT
AR-987252

TINA I RITVAL
STATE OF IDAHO

Tina I. Ritval



PROPERTY LINE

4TH ST

ALLEY

LEVEL 1
SCALE: 1" = 20'-0"



LICENSED ARCHITECT
AR-987252

TINA I RITVAL
STATE OF IDAHO

Tina I. Ritval

Attachment 3
The Perry Building
FAR Exceedance Agreement 22845

**FAR EXCEEDANCE
AGREEMENT #22845**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 191 W 5 th Street, Ketchum, Idaho 83340
The Perry Building LLC	"Owner"	C/O Alston Courtnage & Bassetti LLP, 1420 Fifth Avenue Suite 3650, Seattle, WA 98101

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and The Perry Building LLC, a limited liability corporation, the owner of the development project.

RECITALS

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

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

- 1. **Attestation of Developer.** Developer, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Developer desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.

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

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

DATED THIS ____ DAY OF MAY 2023.

Developer

City of Ketchum, Idaho

Carson Palmer
Managing Member
The Perry Building LLC

Neil Bradshaw, Mayor

Broderick Smith
Managing Member
The Perry Building LLC

Attest:

Trent Donat, City Clerk

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

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared CARSON PALMER, known to me to be a managing member of THE PERRY BUILDING LLC, and the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

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

On this ____ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared BRODERICK SMITH, known to me to be a managing member of THE PERRY BUILDING LLC, and the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 2023, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

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

Notary Public for _____
Residing at _____
Commission expires _____

17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:

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

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

B. Inclusionary Housing Incentive:

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

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

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

**EXHIBIT B
EXCEEDANCE AGREEMENT COMPLIANCE**

PROJECT: The Perry Building

APPLICATIONS: Design Review Application File No. P22-045C
Lot Consolidation Preliminary Plat Application File No. P22-045A
Condominium Subdivision Preliminary Plat Application File No. P22-045B
Variance Request Application File No. P22-045D

PROPERTY OWNER: Carson Palmer and Broderick Smith, Managing Members, The Perry Building LLC

REPRESENTATIVE: Tiina Ritval (Architect), GGLO

REQUEST: Final Design Review, Variance Request, Lot Consolidation Preliminary Plat, and Condominium Subdivision Preliminary Plat applications for the development of a new 53,756 gross-square-foot mixed-use building

LOCATION: 131 W 4th Street and 471 & 431 N 1st Avenue
(Ketchum Townsite: Block 56: Lots 2, 3A, and 4A)

ZONING: Mixed-Use Subdistrict of the Community Core (CC-2 Zone)

BACKGROUND:

1. The applicant is proposing to develop a new 53,756-gross-square-foot mixed-use building (the “project”) located on three Ketchum townsite lots at the northwest corner of 4th Street and 1st Avenue (the “subject property”). As proposed, the project includes a parking garage accessed from the alley, 5,929 square feet of retail space within four commercial units on the ground floor with frontage along both 4th Street and 1st Avenue, and 23 multi-family dwelling units—seven community housing units and sixteen market-rate units.
2. The subject property is located within the Mixed-Use Subdistrict of the Community Core (“CC-2 Zone”). Multi-family dwelling units and retail are permitted uses in the CC-2 Zone.
3. The subject property has an area of 24,723 square feet.
4. The proposed gross floor area of the project is 53,756 square feet with the variance exempting the parking garage.
5. The mixed-use building has a proposed Floor Area Ratio (FAR) of 2.18 (53,756 sf gross floor area/25,723 sf subject property area).

6. The City of Ketchum Planning and Zoning Commission (the “Commission”) reviewed The Perry Building Design Review Application File No. P22-045C, Variance Application File No. P22-045D, Lot Consolidation Preliminary Plat Application File No. P22-045A, and Condominium Subdivision Preliminary Plat Application File No. P22-045B during their meeting on March 14, 2023. The applications were considered concurrently, and the public hearings were combined in accordance with Idaho Code §67-6522. The Commission approved the Design Review and Variance applications and recommended approval of the Lot Consolidation Preliminary Plat and Condominium Subdivision Preliminary Plat applications.
7. Pursuant to Condition of Approval No. 2 of Design Review Application File No. P22-045C, a FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution shall be signed and recorded prior to issuance of a building permit for the project.
8. Pursuant to Condition of Approval No. 9 of Design Review Application File No. P22-045C, the approval is based on the plans and information presented by the applicant at the March 14, 2023 Commission Meeting. The project plans for all on-site improvements submitted for the building permit must conform to the approved Design Review plans unless otherwise approved in writing by the Commission or Administrator.

EXCEEDANCE ANALYSIS

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

Permitted in Community Core Subdistrict 2 (CC-2)

Permitted Gross FAR: 1.0

Permitted Gross FAR with Inclusionary Housing Incentive: 2.25

The Perry Building: Proposed FAR

Proposed Gross Floor Area: 53,756 square feet with variance exempting parking garage

Subject Property Area: 24,723 square feet

Proposed FAR: 2.18 (53,756 sf gross floor area/25,723 sf subject property area)

Increase Above Permitted FAR: 29,033 square feet

20% of Increase: 5,087 square feet

Net Livable (15% Reduction): 4,936 square feet

Community Housing Required in Exchange for FAR Increase: 4,936 square feet

Proposed On-Site Community Housing: 5,014 square feet

The Perry Building: Community Housing Contribution

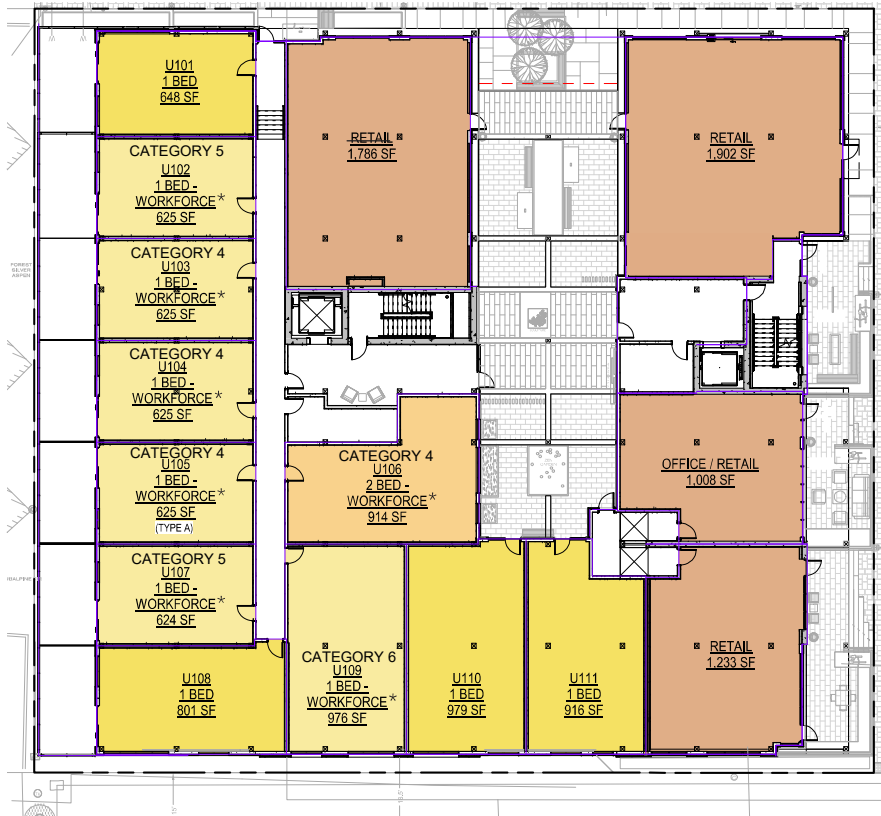
As shown on ground-level floor plan, the applicant has proposed mitigating the additional floor area by providing seven on-site community housing units within the new mixed-use building. The Perry Building

community housing units will be dedicated as deed-restricted rentals. The floor areas and targeted income categories for each of the seven community housing units as shown on the ground-level floor plan are specified in Table 1.

Table 1: The Perry Building Community Housing Contribution			
Unit No.	Bedrooms	Unit Size	Income Category
U104	one bedroom	625 square feet	4
U106	two bedrooms	914 square feet	4
U103	one bedroom	625 square feet	4
U105	one bedroom	625 square feet	4
U102	one bedroom	625 square feet	5
U107	one bedroom	624 square feet	5
U109	one bedroom	976 square feet	6

The following conditions apply to the community housing contribution for The Perry Building Mixed-Use Development:

1. Provide seven community housing units dedicated as deed-restricted rentals on the ground floor of the mixed-use building as shown in the attached ground-level floor plan and specified in Table 1. The total floor area of the community housing units is 5,014 square feet.
2. The community housing units shall be targeted for the Blaine County Housing Authority (BCHA) Income Categories specified in Table 1 and shown on the ground-level floor plan. The tenants chosen to occupy the community housing units shall be selected from the BCHA database of qualified households.
3. The community housing units shall be listed for rent through BCHA concurrent with the issuance of a Certificate of Occupancy by the city for the project.
4. The deed covenant for the community housing units shall be recorded prior to Certificate of Occupancy for the mixed-use building and notated on the condominium subdivision final plat.
5. If the total gross square footage of the project changes through building permit application review, a revised community housing contribution may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.



LEVEL 1

NOT TO SCALE



Attachment 4

Application Materials & Plan Set:
Lot Consolidation Preliminary Plat
Application File No. P22-045A



**City of Ketchum
Planning & Building**

OFFICIAL USE ONLY

Application Number:	P22-045A
Date Received:	11/18/22
By:	HN
Fee Paid:	\$1300
Approved Date:	11/28/22
By:	HN

Subdivision Application

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

APPLICANT INFORMATION			
Name of Proposed Subdivision: The Perry MU			
Owner of Record: The Perry Building, L.L.C.			
Address of Owner: 100 Lindsay Circle, Ketchum, ID 83340			
Representative of Owner: Carson Palmer, Broderick Smith			
Legal Description: Lot 2, 3A, & 4A, Block 56, Ketchum Townsite RPK: RPK00000560020, RPK0000056003A, & RPK0000056004A			
Street Address: 471 N 1st Ave., 431 N 1st Ave., & 131 W 4th St., Ketchum, ID 83340			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 3 Lots, Consolidating to 1 Lot (Lot 2A)			
Total Land Area: 24,723 SF (0.57 Acres)			
Current Zoning District: CC-2 (Community-Core Mixed)			
Proposed Zoning District: CC-2 (Community-Core Mixed)			
Overlay District: n/a			
TYPE OF SUBDIVISION			
Condominium <input type="checkbox"/>	Land <input checked="" 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: n/a			
Briefly describe the improvements to be installed prior to final plat approval: This is an application for a Lot Line Consolidation in Ketchum's Downtown District - Subdivision Application.			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations One (1) copy of current title report and owner's recorded deed to the subject property One (1) copy of the preliminary plat All files should be submitted in an electronic format to planningandzoning@ketchumidaho.org			

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


Applicant Signature

11/16/22
Date



CITY OF KETCHUM SUBDIVISION RECORDING PROCEDURES AND PLAT CERTIFICATES

Recording Procedures

Once a subdivision application is approved by the Ketchum City Council, signature and recording of plats shall be completed using the following process:

1. Applicant prints all sheets of the plat on mylar, with all required certificates, and gathers signatures from the owner, surveyor, and health department.
2. Applicant delivers all mylar sheets to Ketchum City Hall, 191 W 5th Street addressed to the Staff Planner on the application.
3. Staff Planner will gather required signatures from the City Engineer and City Clerk and sign the plat.
4. Once all signatures have been gathered, the Staff Planner will notify the applicant that the plat is ready for pick-up at City Hall.
5. The applicant is responsible for gathering all remaining signatures and recording the plat with the Blaine County Clerk and Recorder.

Per Section 16.04.030.K of the Ketchum Municipal Code, the following certificates are required for subdivision plats for property within the City of Ketchum:

- Certificate by registered engineer or surveyor preparing the map certifying to the accuracy of surveying plat.
- Certification of owner(s) of record and all holders of security interest(s) of record with regard to such property.
- Certification and signature of engineer (surveyor) verifying that the subdivision and design standards meet all City requirements.
- Certification and signature of the City Engineer verifying that the subdivision and design standards meet all City requirements.
- Certification and signature of the City Clerk of the City of Ketchum verifying that the subdivision has been approved by the council.



City of Ketchum
Planning & Building

Plat Certificates - The following certificate language shall be included on all plats for property within the Ketchum City Limits. The certificates listed below are in addition to certificates required by Blaine County.

Ketchum City Council Certificate

I, the undersigned, City Clerk, in and for the City of Ketchum, Blaine County, Idaho, do hereby certify that at a regular meeting of the City Council held on the ____ day of _____ 2022, this plat was duly accepted and approved.

Tara Fenwick, City Clerk, City of Ketchum

City Engineer Certificate

I, the undersigned, City Engineer in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Sherri Newland, City Engineer, City of Ketchum

City Planner Certificate

I, the undersigned, Planner in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2022, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

[insert name of planner], City of Ketchum

The following plat certificate is only required for all new subdivisions or projects that require the expertise of a civil engineer.

Project Engineer Certificate

I, the undersigned, project engineer for the [insert name of plat] certify that the subdivision is in accordance with the City of Ketchum Subdivision standards.

[Insert Engineer Name], [Insert Company Name]

For questions or comments on the information provided above, please contact the Planning Department at planningandzoning@ketchumidaho.org or call (208) 726-7801.



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: September 30, 2022

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. 22463680
State: ID
County: Blaine

<u>Guarantee No.</u>	<u>Liability</u>	<u>Date of Guarantee</u>	<u>Fee</u>
G-0000715795778	\$1,000.00	September 30, 2022 at 7:30 a.m.	\$200.00

Name of Assured:
Galena Engineering

The assurances referred to on the face page hereof are:

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

Parcel I

Lot 2, Block 56 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

Parcel II and III

Lots 3A and 4A, Block 56, KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 403336, records of Blaine County, Idaho.

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

Deed Type: Warranty Deed
Grantors: 431-471 N. 1st Avenue, LLC, an Idaho limited liability company
Grantees: Center of Ketchum LLC, a Washington limited liability company
Recorded Date: March 29, 2021
Instrument: 680819
[Click here to view](#)

Affects Lots 2 and 3A

Deed Type: Warranty Deed
Grantors: Harry Investments, LLC, an Idaho limited liability company
Grantees: The Perry Building LLC, a Washington limited liability company
Recorded Date: June 30, 2021
Instrument: 684042
[Click here to view](#)

Affects Lot 4A

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:

131 W 4th St, Ketchum, ID 83340

431 N 1st Ave, Ketchum, ID 83340

471 N 1st Ave, Ketchum, ID 83340

2. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK00000560020](#)

Original Amount: \$5,363.44

Affects Lot 2

3. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK0000056003A](#)

Original Amount: \$5,418.68

Affects Lot 3A

4. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK0000056004A](#)

Original Amount: \$8,407.66

Affects Lot 4A

5. Taxes, including any assessments collected therewith, for the year 2022 which are a lien not yet due and payable.

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

7. Easements, reservations, restrictions, and dedications as shown on the official plat of [Ketchum Townsite](#).

8. Easements, reservations, restrictions, and dedications as shown on the official plat of [Ketchum: Block 56: Lots 3A and 4A](#).

9. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded December 26, 1917 as Instrument No. [38922](#), records of Blaine County, Idaho.

10. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded June 23, 1947 as Instrument No. [91864](#), records of Blaine County, Idaho.

11. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded July 1, 1947 as Instrument No. [91974](#), records of Blaine County, Idaho.

12. 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.

13. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded September 9, 1980 as Instrument No. [203470](#), records of Blaine County, Idaho.

14. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded January 11, 2021 as Instrument No. [678114](#), 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. 22463680

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-0000715795778

Name of Assured: Galena Engineering

Date of Guarantee: September 30, 2022

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:

Parcel I and II

Center of Ketchum LLC, a Washington limited liability company

Parcel III

The Perry Building LLC, a Washington limited liability company

Sun Valley Title
By:



Nick Busdon, Authorized Signatory

File No. 22463680

SCHEDULE B

Exceptions:


NONE

Instrument # 680819

HAILEY, BLAINE, IDAHO
03-29-2021 8:11:20 AM No. of Pages: 2
Recorded for: TITLEONE - TWIN FALLS
JOLYNN DRAGE Fee: \$15.00
Ex-Officio Recorder Deputy: JB
Electronically Recorded by Simplifile

Order Number: 21400671

Sun Valley Title

 A TitleOne Company

Warranty Deed

For value received,

431-471 N. 1st Avenue, LLC, an Idaho limited liability company

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

Center of Ketchum LLC, a Washington limited liability company

whose current address is PO Box 7146 Ketchum, ID 83340

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

Lot 2, Block 56 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho

AND

Lot 3A, Block 56 of KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 403336, records of Blaine County, Idaho.

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

Order Number: 21400671

Warranty Deed - Page 1 of 2

Dated: March 18, 2021

431-471 N. 1st Avenue, LLC, an Idaho limited liability company


By: Charles P. Stevenson, Jr., Sole Member

State of Idaho,

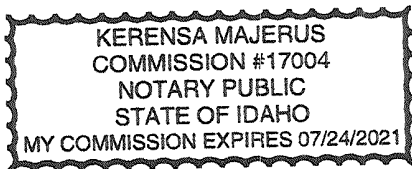
County of Blaine, ss.

On this 26 day of MARCH 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles P. Stevenson, Jr., known or identified to me to be a Sole Member of the limited liability company that executed the within instrument and acknowledged to me that he executed the same for and on behalf of said limited liability company and that such limited liability company executed it.

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



Notary Public for Idaho
Residing In: Ketchum
My Commission Expires: 7.24.21





WARRANTY DEED

FOR VALUE RECEIVED

Harry Investments, LLC, an Idaho Limited Liability Company,

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

The Perry Building LLC, a Washington limited liability company

the Grantee, whose current address is: c/o Alston, Courtnage & Bassetti LLP, 1420 Fifth Avenue, Suite 3650, Seattle, WA 98101-4011

the following described premises, to-wit:

Lot 4A in Block 56 of KETCHUM: BLOCK 56: LOTS 3A AND 4A, according to the official plat thereof, recorded June 30, 1997 as Instrument No. 403336, records of Blaine County, Idaho.

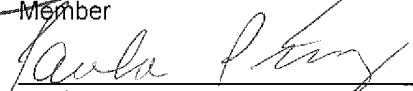
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those 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 day of June, 2021.


HARRY INVESTMENTS, LLC



Scott Harder
Member



Paula Perry
Member

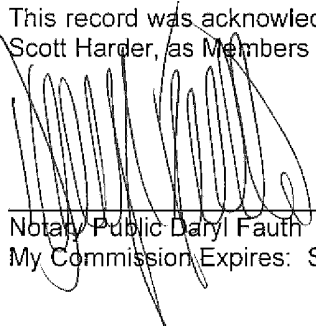


Keith Perry

Member

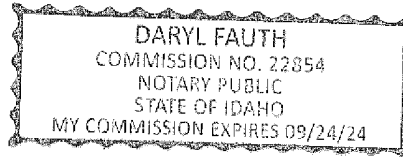
State of Idaho
County of Blaine

This record was acknowledged before me on 29th day of June, 2021, by Keith Perry, Paula Perry, and Scott Harder, as Members of Harry Investments, LLC.



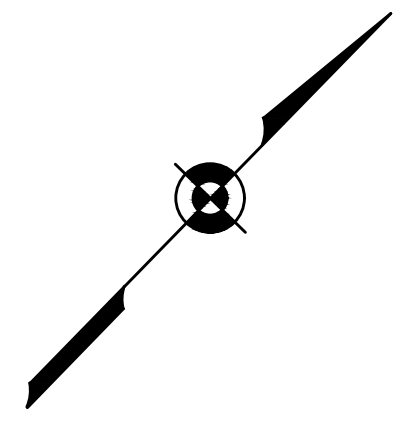
Notary Public Daryl Fauth
My Commission Expires: September 24, 2024

(STAMP)

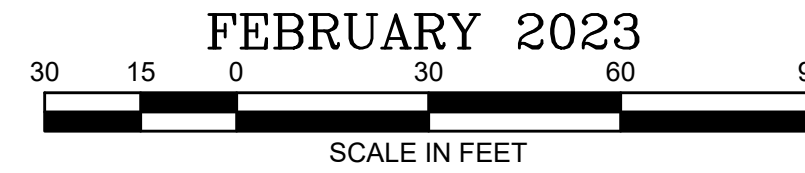


A PLAT SHOWING LOT 2A, BLOCK 56, KETCHUM TOWNSITE

WHEREIN THE INTERIOR LOT LINES OF LOTS 2, 3A & 4A, BLOCK 56, KETCHUM TOWNSITE, ARE VACATED AS SHOWN HEREON
LOCATED WITHIN SECTION 13, T.4 N., R.17 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO



SCALE: 1" = 30'

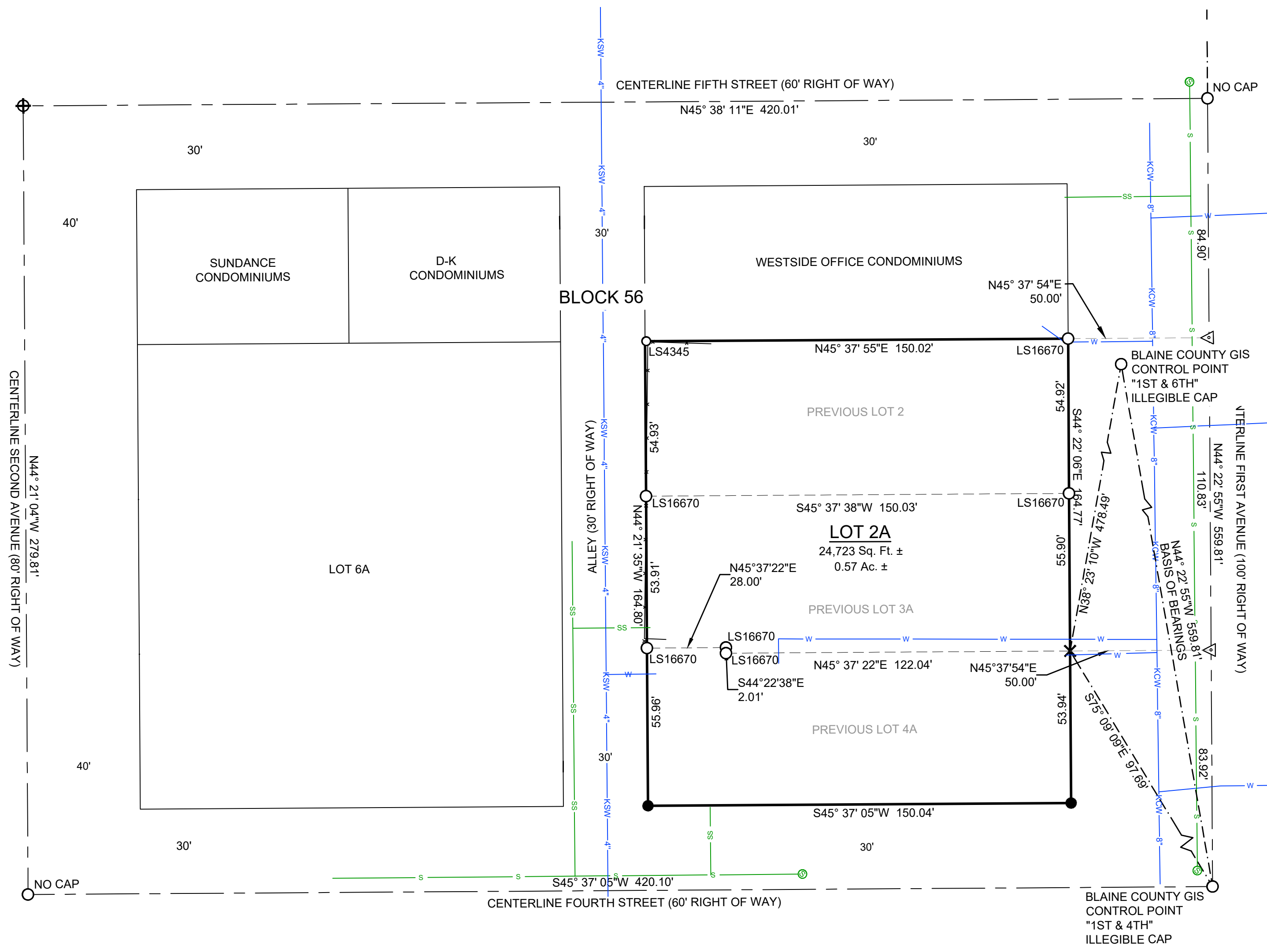


LEGEND

- Property Line
- Lot Line to be Vacated
- Adjoiner's Lot Line
- Centerline of Right of Way
- Fence Line
- Survey Tie Line
- GIS Tie Line
- KCW 8" Ketchum City Water
- KSW 4" Ketchum SpringLine Water
- W Water Service Tie Line
- S Sewer Main
- SS Sewer Service
- Sewer Manhole
- Found Magnetic Nail
- Calculated Point, Not Set
- Found 1" Survey Marker
- Found 1/2" Rebar
- Found 5/8" Rebar
- Set 5/8" Rebar, P.L.S. 16670

SURVEY NARRATIVE & NOTES

1. The purpose of this survey is to show the monuments found and set during the boundary retracement of Lot 2A, Block 56, Ketchum Townsite. The boundary shown is based on found centerline monuments, on the recorded plat of Ketchum: Block 56: Lots 3A and 4A, Instrument Number 403336 and the plat of the Village of Ketchum, Instrument Number 302962, both records of Blaine County, Idaho. All found monuments have been accepted. The missing monuments were reset by block breakdown and proportioning record distances between found monuments. Additional documents used during the course of this survey include the Record of Survey for Lots 2 & 3A, Block 56, Ketchum Townsite, Instrument Number 678114, the Record of Survey for D-K Condos, The N.E. 1/2 of Lots 5, Block 56, Ketchum Townsite, Instrument Number 694650, the plat of Ketchum, Block 56, Lot 6A, Instrument Number 438337 and the plat for D-K Condominiums, Instrument Number 195387, all records of Blaine County, Idaho.
2. The distances shown are measured. Refer to the above referenced documents for previous record data.
3. This survey does not purport to reflect any of the following which may be applicable to subject real property: natural hazards, encroachments, wetlands, ditches, easements, building setbacks, restrictive covenants, subdivision restrictions, zoning or any other land-use regulations.
4. A Title Commitment for Lot 2, Block 56, Village of Ketchum, Blaine County, Idaho and Lots 3A and 4A, Block 56, Ketchum: Block 56: Lots 3A and 4A, Blaine County, Idaho, have been issued by Stewart Title Guaranty Company, File Number 22463680, with a Date of Guarantee of September 30, 2022. Certain information contained in said title policy may not appear on this map or may affect items shown hereon. It is the responsibility of the owner or agent to review said title policy. All plottable encumbrances and easements listed in the title report are shown hereon. Review of specific documents is required, if further information is desired.
5. Zoning is CC-2, Community Core-Mixed Use Zone. Refer to City of Ketchum Zoning Ordinance for more specific information about this zone.
6. The owner/subdivider is The Perry Building L.L.C., c/o Alston, Courtnage & Bassetti L.L.P. 1420 Fifth Ave. Ste. 3650 Seattle, WA 98101-4011. The surveyor/representative is Mark E. Phillips, Galena Engineering, Inc., 317 N. River St., Hailey, Idaho 83333.



MARK E. PHILLIPS, P.L.S. 16670

LOT 2A, BLOCK 56,
KETCHUM TOWNSITE

GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 1 OF 2
Job No. 8059-02

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned is the owner in fee simple of the following described parcel of land:

A parcel of land located within Section 13, T.4N., R.17E., B.M., City of Ketchum, Blaine County, Idaho, more particularly described as follows:

- LOT 2, BLOCK 56, VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO
- LOT 3A, BLOCK 56, KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO
- LOT 4A IN BLOCK 56 OF KETCHUM: BLOCK 56: LOTS 3A AND 4A

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements.

I do hereby certify that all lots in this plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of units shown within this plat.

It is the intent of the owner to hereby include said land in this plat.

- LOT 2, BLOCK 56, VILLAGE OF KETCHUM, BLAINE COUNTY IDAHO
- LOT 3A, BLOCK 56, KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO

Center of Ketchum L.L.C., A Washington Limited Liability Company.
By: Carson Palmer, Member/Manager

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss

On this ____ day of _____ 2023, before me, a Notary Public in and for said State, personally appeared Carson Palmer, known or identified to me to be a Member/Manager of the Center of Ketchum L.L.C., a Washington Limited Liability Company, and acknowledged to me that he executed the same in said Limited Liability Company name

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

Notary Public in and for said State
Residing in _____
My Commission Expires _____

LOT 4A IN BLOCK 56 OF KETCHUM: BLOCK 56: LOTS 3A AND 4A

The Perry Building L.L.C., A Washington Limited Liability Company.
By: Carson Palmer, Member/Manager

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss

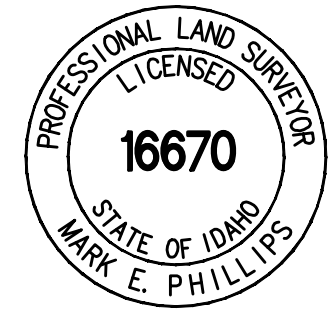
On this ____ day of _____ 2023, before me, a Notary Public in and for said State, personally appeared Carson Palmer, known or identified to me to be a Member/Manager of The Perry Building L.L.C., a Washington Limited Liability Company, and acknowledged to me that he executed the same in said Limited Liability Company name.

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

Notary Public in and for said State
Residing in _____
My Commission Expires _____

SURVEYOR'S CERTIFICATE

I, Mark E. Phillips, a duly Licensed Professional Land Surveyor in the State of Idaho, do hereby certify that this plat is a true and accurate map of the land and points surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to Plats, Surveys, and Condominiums and the Corner Perpetuation and Filing Act, 55-1601 through 55-1612.



MARK E. PHILLIPS, P.L.S. 16670

BLAINE COUNTY SURVEYOR'S APPROVAL

I, Sam Young County Surveyor for Blaine County, Idaho, do hereby certify that I have checked the foregoing Plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating to Plats and Surveys.

Sam Young, P.L.S. 11577
Blaine County Surveyor

KETCHUM CITY COUNCIL CERTIFICATE

I, the undersigned, City Clerk, in and for the City of Ketchum, Blaine County, Idaho, do hereby certify that at a regular meeting of the City Council held on the ____ day of _____, 2023, this plat was duly accepted and approved.

Lisa Enourato, Interim City Clerk, City of Ketchum

KETCHUM CITY ENGINEER CERTIFICATE

I, the undersigned, City Engineer in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2023, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Robyn Mattison, City Engineer, City of Ketchum

KETCHUM CITY PLANNER CERTIFICATE

I, the undersigned, Planner in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2023, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Abby Rivin, Senior Planner, City of Ketchum

BLAINE COUNTY TREASURER'S APPROVAL

I, the undersigned County Treasurer in and for Blaine County, State of Idaho per the requirements of Idaho Code 50-1308, do hereby certify that any and all current and/or delinquent county property taxes for the property included in this subdivision have been paid in full. This certification is valid for the next thirty (30) days only.

Blaine County Treasurer

Date

BLAINE COUNTY RECORDER'S CERTIFICATE

LOT 2A, BLOCK 56,
KETCHUM TOWNSITE

GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 1 OF 2
Job No. 8059-02

Attachment 5

Application Materials & Plan Set:
Condominium Subdivision
Preliminary Plat
Application File No. P22-045B



**City of Ketchum
Planning & Building**

OFFICIAL USE ONLY
Application Number:
Date Received:
By:
Fee Paid:
Approved Date:
By:

Subdivision Application

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

APPLICANT INFORMATION			
Name of Proposed Subdivision: The Perry MU			
Owner of Record: The Perry Building, L.L.C.			
Address of Owner: 100 Lindsay Circle, Ketchum, ID 83349			
Representative of Owner: Carson Palmer, Broderick Smith			
Legal Description: Lot 2A, Block 56, Ketchum Townsite RPK 0000056004A			
Street Address: 131 4th St. W, Ketchum, ID 83340			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 1			
Total Land Area: 24,723 SF (0.57 Acres)			
Current Zoning District: CC-2 (Community-Core Mixed)			
Proposed Zoning District: CC-2 (Community-Core Mixed)			
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: n/a			
Briefly describe the improvements to be installed prior to final plat approval: Construction of a three story mixed-use commercial and residential building, with underground parking garage.			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations One (1) copy of current title report and owner's recorded deed to the subject property One (1) copy of the preliminary plat All files should be submitted in an electronic format to planningandzoning@ketchumidaho.org			

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

Applicant Signature _____

Date _____



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: September 30, 2022

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:

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

9. Limitation of Liability

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

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

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

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

11. Payment Loss

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

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

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

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

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

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

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

14. Liability Limited to This Guarantee; Guarantee Entire Contract

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

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

(c) No amendment 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. 22463680
State: ID
County: Blaine

<u>Guarantee No.</u>	<u>Liability</u>	<u>Date of Guarantee</u>	<u>Fee</u>
G-0000715795778	\$1,000.00	September 30, 2022 at 7:30 a.m.	\$200.00

Name of Assured:
Galena Engineering

The assurances referred to on the face page hereof are:

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

Parcel I

Lot 2, Block 56 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

Parcel II and III

Lots 3A and 4A, Block 56, KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 403336, records of Blaine County, Idaho.

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

Deed Type: Warranty Deed
Grantors: 431-471 N. 1st Avenue, LLC, an Idaho limited liability company
Grantees: Center of Ketchum LLC, a Washington limited liability company
Recorded Date: March 29, 2021
Instrument: 680819
[Click here to view](#)

Affects Lots 2 and 3A

Deed Type: Warranty Deed
Grantors: Harry Investments, LLC, an Idaho limited liability company
Grantees: The Perry Building LLC, a Washington limited liability company
Recorded Date: June 30, 2021
Instrument: 684042
[Click here to view](#)

Affects Lot 4A

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:

131 W 4th St, Ketchum, ID 83340

431 N 1st Ave, Ketchum, ID 83340

471 N 1st Ave, Ketchum, ID 83340

2. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK00000560020](#)

Original Amount: \$5,363.44

Affects Lot 2

3. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK0000056003A](#)

Original Amount: \$5,418.68

Affects Lot 3A

4. Taxes for the year 2021 are paid in full.

Parcel Number: [RPK0000056004A](#)

Original Amount: \$8,407.66

Affects Lot 4A

5. Taxes, including any assessments collected therewith, for the year 2022 which are a lien not yet due and payable.

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

7. Easements, reservations, restrictions, and dedications as shown on the official plat of [Ketchum Townsite](#).

8. Easements, reservations, restrictions, and dedications as shown on the official plat of [Ketchum: Block 56: Lots 3A and 4A](#).

9. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded December 26, 1917 as Instrument No. [38922](#), records of Blaine County, Idaho.

10. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded June 23, 1947 as Instrument No. [91864](#), records of Blaine County, Idaho.

11. Reservations and exceptions in a United States Patent, and in the act authorizing the issuance thereof, recorded July 1, 1947 as Instrument No. [91974](#), records of Blaine County, Idaho.

12. 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.

13. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded September 9, 1980 as Instrument No. [203470](#), records of Blaine County, Idaho.

14. All matters, and any rights, easements, interests or claims as disclosed by a Record of Survey recorded January 11, 2021 as Instrument No. [678114](#), 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. 22463680

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-0000715795778

Name of Assured: Galena Engineering

Date of Guarantee: September 30, 2022

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:

Parcel I and II

Center of Ketchum LLC, a Washington limited liability company

Parcel III

The Perry Building LLC, a Washington limited liability company

Sun Valley Title
By:



Nick Busdon, Authorized Signatory

File No. 22463680

SCHEDULE B

Exceptions:


NONE

Instrument # 680819

HAILEY, BLAINE, IDAHO
03-29-2021 8:11:20 AM No. of Pages: 2
Recorded for: TITLEONE - TWIN FALLS
JOLYNN DRAGE Fee: \$15.00
Ex-Officio Recorder Deputy: JB
Electronically Recorded by Simplifile

Order Number: 21400671

Sun Valley Title

 A TitleOne Company

Warranty Deed

For value received,

431-471 N. 1st Avenue, LLC, an Idaho limited liability company

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

Center of Ketchum LLC, a Washington limited liability company

whose current address is PO Box 7146 Ketchum, ID 83340

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

Lot 2, Block 56 of the VILLAGE OF KETCHUM, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho

AND

Lot 3A, Block 56 of KETCHUM: BLOCK 56: LOTS 3A AND 4A, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 403336, records of Blaine County, Idaho.

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

Order Number: 21400671

Warranty Deed - Page 1 of 2

Dated: March 18, 2021

431-471 N. 1st Avenue, LLC, an Idaho limited liability company


By: Charles P. Stevenson, Jr., Sole Member

State of Idaho,

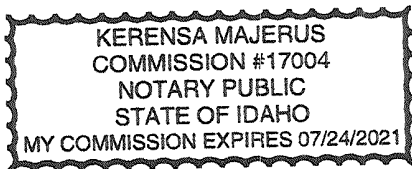
County of Blaine, ss.

On this 26 day of MARCH 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles P. Stevenson, Jr., known or identified to me to be a Sole Member of the limited liability company that executed the within instrument and acknowledged to me that he executed the same for and on behalf of said limited liability company and that such limited liability company executed it.

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



Notary Public for Idaho
Residing In: Ketchum
My Commission Expires: 7.24.21





WARRANTY DEED

FOR VALUE RECEIVED

Harry Investments, LLC, an Idaho Limited Liability Company,

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

The Perry Building LLC, a Washington limited liability company

the Grantee, whose current address is: c/o Alston, Courtnage & Bassetti LLP, 1420 Fifth Avenue, Suite 3650, Seattle, WA 98101-4011

the following described premises, to-wit:

Lot 4A in Block 56 of KETCHUM: BLOCK 56: LOTS 3A AND 4A, according to the official plat thereof, recorded June 30, 1997 as Instrument No. 403336, records of Blaine County, Idaho.

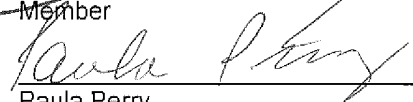
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those 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 day of June, 2021.


HARRY INVESTMENTS, LLC



Scott Harder
Member



Paula Perry
Member

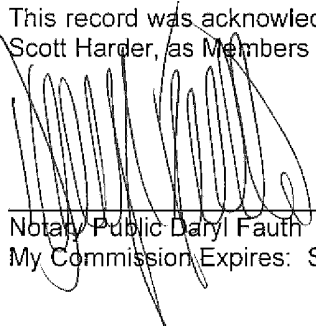


Keith Perry

Member

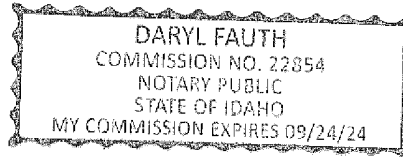
State of Idaho
County of Blaine

This record was acknowledged before me on 29th day of June, 2021, by Keith Perry, Paula Perry, and Scott Harder, as Members of Harry Investments, LLC.



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

(STAMP)





SILENTWATER
R E A L E S T A T E

CONDOMINIUM DECLARATION

FOR

THE PERRY

Ketchum, Idaho

NOTICE

THE FOLLOWING IS A VERY IMPORTANT DOCUMENT WHICH EACH AND EVERY POTENTIAL BUYER AND OWNER OF A CONDOMINIUM WITHIN THE PERRY SHOULD READ AND UNDERSTAND. THIS DOCUMENT DETAILS THE OBLIGATIONS, RESPONSIBILITIES AND PROHIBITIONS IMPOSED UPON ALL OWNERS AND UNITS LOCATED WITHIN THE PERRY.

THE PERRY IS A UNIQUE LIVING AND COMMERCIAL ENVIRONMENT. EACH POTENTIAL OWNER IS ADVISED TO MAKE FULL AND COMPLETE INQUIRY ABOUT THE PERRY BEFORE ACQUIRING A UNIT. EACH OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE UNITS WILL BE SUBJECT TO ASSESSMENTS LEVIED BY THE PERRY OWNERS' ASSOCIATION.

THE GRANTOR, AS DEFINED IN THIS CONDOMINIUM DECLARATION, EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY THE GRANTOR.

POTENTIAL OWNERS ARE ADVISED TO REVIEW THIS CONDOMINIUM DECLARATION PRIOR TO ACQUIRING A UNIT.

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CONDOMINIUM DECLARATION

FOR

THE PERRY

This Condominium Declaration for The Perry (this “**Declaration**”) is made effective as of the date that this Declaration is recorded in the real property records of Blaine County, Idaho (the “**Effective Date**”), by [_____], an Idaho limited liability company (“**Declarant**”).

ARTICLE 1 RECITALS

1.1 Property Covered. Declarant is the owner of that certain real property located in Ketchum, Blaine County, Idaho, legally described on Exhibit A attached hereto (the “**Property**”), as shown on the final plat for The Perry, a copy of which is attached hereto as Exhibit B (the “**Plat**”).

1.2 Mixed Use. Declarant intends to develop the Project as a mixed use condominium development including residential, commercial and parking uses, in accordance with this Declaration, the Plat, and the development approvals now or hereinafter obtained from the City of Ketchum and other governing authorities.

1.3 Purpose. The purpose of this Declaration is to provide for condominium ownership of the Project pursuant to Condominium Act, designate Common Area and Limited Common Area, create the Association as the management body to administer the Project pursuant to the Condominium Act, and to set forth the restrictions, covenants, limitations, easements, conditions, and equitable servitudes that apply to and are unique to the Project and this condominium ownership regime.

ARTICLE 2 DECLARATION

Declarant hereby declares that the Project and every Unit and portion thereof is and will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved in accordance with this Declaration, which are hereby declared to be in furtherance of a general plan: (a) for the creation, maintenance, and sale of an ownership in fee simple of separate interests in Units and for co-ownership with others, as tenants-in-common, of Common Area and Limited Common Area, all pursuant to the Condominium Act; (b) to protect, enhance, and preserve the value, amenities, desirability and attractiveness of the Project; and (c) to ensure a well-integrated, high quality mixed use condominium development. This Declaration will: (i) run with the land and will be binding upon any Person having or acquiring any right, title, or interest in the Project or any Unit or portion thereof; (ii) inure to the benefit of the Project and any Unit or portion thereof; and (iii) inure to the benefit of, and be binding upon, Declarant and any Owner having or holding any right, title, or interest in any Unit or portion of the Project.

ARTICLE 3 ADDITIONAL DEFINITIONS

In addition to other defined terms in this Declaration and the exhibits attached hereto, the following terms will have the indicated meanings.

“**Applicable Laws**” means all applicable federal, state, and local laws, rules, regulations, ordinances, and orders relating to the use, occupancy, and/or ownership of the Project or any portion thereof.

“**Articles**” mean the Articles of Incorporation of the Association, a true, correct, and certified copy of which is attached hereto as Exhibit C and incorporated herein by this reference, as the same may be amended from time to time in accordance with the provisions thereof; provided, however, in order to be effective, the amendment must reference this Declaration, as amended, and be recorded in the real property records of Blaine County, Idaho.

“**Assessments**” mean the Regular Assessments, Special Assessments, and Limited Assessments, together with any late payment charges, interest, administrative fees, and costs (including without limitation attorneys’ fees) incurred in collecting the same.

“**Association**” means the The Perry Owners’ Association, Inc., an Idaho nonprofit corporation.

“**Association Rules**” means the rules and regulations relating to the Project that the Board may adopt, amend or repeal from time to time, as more particularly described in Section 8.7.3 hereof.

“**Bike Space**” means each of those bike storage areas, identified with signage, and located in the Bike Storage Area identified on the Plat.

“**Board**” means the board of directors of the Association.

“**Bylaws**” mean the bylaws of the Association, as the same maybe amended from time to time in accordance with the provisions thereof.

“**Commercial Assessments**” means a limited assessment by the Association to provide for the payment of all estimated expenses growing out of or connected solely to the Commercial Units.

“**Commercial Owner**” means any person or entity, including Declarant, at any time owning a Commercial Unit. The term “Commercial Owner” shall not refer to any Mortgagee, as herein defined unless such Mortgagee has acquired title pursuant to foreclosure or any other proceeding in lieu of foreclosure.

“**Commercial Unit**” means Units 1-R01, 1-R02, 1-R03 and 1-R04 depicted on the Plat as “Commercial.”

“**Common Area**” means: (a) all portions of the Project other than the Units, including all Limited Common Area; (b) all leases, licenses, use rights, or agreement rights for amenities or facilities owned or held by or for the benefit of the Association from time-to-time; and (c) any personal property owned or held by or for the benefit of the Association from time to time. Common Area may be established from time to time by Declarant or the Association on any portion of the Project by describing the area on the Plat, by granting or reserving it in a deed or other instrument, or by designating it as Common Area in this Declaration. In addition, the Association may acquire any Common Area that the Association deems necessary or beneficial to the Project.

“**Condominium**” means a separate ownership interest in a Unit together with an undivided tenant-in-common interest in the Common Area, expressed as the Percentage Ownership.

“**Condominium Act**” means the Condominium Property Act of the State of Idaho, Idaho Code Section 55-1501 *et seq.*, as it may be amended from time to time.

“**Condominium Documents**” means this Declaration, the Plat, the Articles, the Bylaws, the Association Rules, the Management Agreement and the Owner Maintenance Manual, as the same may be

amended from time to time according to their terms. The Condominium Documents also include any other procedures, rules, regulations or policies that the Board may adopt under the foregoing documents.

“Financing Programs” means any financing programs offered or supported by the Federal Housing Finance Agency (“**FHFA**”), Federal National Mortgage Association (“**FNMA**” or “**Fannie Mae**”), the Federal Home Loan Mortgage Corp (“**FMCC**” or “**Freddie Mac**”), the Government National Mortgage Association (“**GNMA**” or “**Ginnie Mae**”), the Federal Housing Administration (“**FHA**”), the Veterans Administration (“**VA**”), Idaho Housing and Finance Association (“**IHFA**”) or any similar federal, state or local governmental or quasi-governmental program.

“Financing Rider” means the document attached hereto as Exhibit F.

“Limited Assessment” means a charge against a particular Owner for an expense directly attributable to the Owner, equal to the cost incurred or estimated to be incurred by the Association in connection with corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration, including damage to or maintenance, repair, replacement and operation activities performed for any Common Area or the failure of an Owner to keep the Owner’s Condominium in proper repair, and including interest thereon as provided in this Declaration or for any goods or services provided by the Association benefiting less than all Owners, as more particularly described in Section 9.5 herein.

“Limited Common Area” means those portions of the Common Area designated for the exclusive use of an Owner or Owners to the exclusion, limitation, or restriction of other Owners, including, but not limited to, those items identified on Exhibit G. Limited Common Area may be established from time to time by Declarant or the Association on any portion of the Project by describing the area on the Plat, by granting or reserving it in a deed or other document or instrument, or by designating it as Limited Common Area in this Declaration. The term Common Area as used in this Declaration will include Limited Common Area.

“Management Agreement” means any agreement and all amendments thereto entered into by the Association and the Management Company, providing for the management, maintenance, and operation of the Project, including, without limitation the Common Area, by the Management Company.

“Management Company” means the Person hired by the Association to manage the Project on the terms and conditions set forth in a Management Agreement.

“Material Amendment” means any amendment that adds, deletes or materially modifies any of the following provisions of this Declaration (provided, however, a Material Amendment does not include any amendment that is reasonably necessary, in the reasonable opinion of the Association, to comply with Applicable Law):

- (1) assessment basis (except as required by Idaho Code § 55-1505(1)(c) or its successor, which amendment may be done by the Board);
- (2) assessment liens (except as may be reasonably necessary or convenient to comply with Applicable Law for the creation, filing and enforcement of assessment liens);
- (3) any method of imposing or determining any charges to be levied against individual Unit owners;
- (4) reserves for maintenance, repair or replacement of Common Area improvements;
- (5) the maintenance obligations of the Association or Owners;
- (6) allocation of rights to use Common Areas;

- (7) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;
- (8) reduction of insurance requirements;
- (9) limiting the restoration or repair of Common Area improvements;
- (10) the addition, annexation or withdrawal of land to or from the Project;
- (11) voting rights of the Members;
- (12) restrictions affecting leasing or sale of a unit; or
- (13) any provision which is for the express benefit of mortgagees.

“**Minor Amendment**” means any amendment other than a Material Amendment.

“**Mortgage**” means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

“**Mortgagee**” means any Person or any successor to the interest of the Person named as the mortgagee, trust beneficiary, or creditor pursuant to any Mortgage under which the interest of an Owner’s interest in its Condominium, or successor to the interest of the Owner, is encumbered.

“**Occupant**” means any Person, other than an Owner, that resides in or otherwise occupies a Unit, including, without limitation, family members, guests, and Tenants.

“**Owner**” means the record owner, whether one or more Persons, holding fee simple title to a Unit, excluding Mortgagees, unless and until the Mortgagee has acquired fee simple title pursuant to foreclosure or other proceedings or obtains a deed to the Unit in lieu of foreclosure or other proceedings.

“**Parking Spaces**” means each of the [thirty-three (33)] vehicular parking spaces located in the underground parking garage shown on the Plat. Such Parking Spaces shall be Limited Common Area as designated and assigned by Declarant pursuant to deed or other recorded document or instrument.

“**Patio**” means each of the patios identified on the Plat. A patio includes the railings or fences thereon. Each Patio will be Limited Common Area appurtenant to, and for the exclusive use of, the Unit with the corresponding Unit number (e.g. Patio P101 is Limited Common Area for the exclusive use of Unit 101, and so forth), to the exclusion of all others. Patios may not be conveyed separately from the Unit to which they are appurtenant, and any attempt to do so will be void.

“**Percentage Ownership**” means, for each Unit, the Unit’s respective Percentage Ownership in the Common Area for the Project, as set forth in Exhibit D as the same is amended from time to time. The Percentage Ownership is the percentage of ownership interest in the Common Area which is allocated to each Condominium as a whole for purposes of Assessments, tax assessment under Section 55-1514 of the Condominium Act, and liability as provided by Section 55-1515 of the Condominium Act.

“**Person**” means any individual, governmental unit or agency, entity (of any kind), estate, joint venture, partnership, trust, and any other legal formation or entity. Any reference to a Person includes the Person’s heirs, successors and permitted assigns.

“**Project**” means the entire Property, together with every building, improvement or structure thereon, and every easement or right appurtenant thereto.

“**Qualified Meeting**” means a meeting for a Material Amendment (or Extraordinary Action, if required by the Financing Rider). A Qualified Meeting must: (a) have at least twenty-five (25) days advance notice thereof to all members (at least seven (7) days’ advance notice is required in the case of a

meeting for other purposes); (b) be called by notice that states the purpose of the meeting and contains a summary of any Material Amendments or Extraordinary Actions proposed; (c) be called by notice that contains a copy of the proxy that can be cast in lieu of attendance at the meeting; and (d) have a quorum as set forth in the Bylaws of the Association.

“Regular Assessment” means an assessment by the Association to provide for the payment of all estimated expenses growing out of or connected with the Project as a whole, as more particularly described in Section 9.3.

“Residential Assessment” means a limited assessment by the Association to provide for the payment of all estimated expenses growing out of or connected solely to the Residential Units.

“Residential Owner” means any person or entity, including Declarant, at any time owning a Residential Condominium. The term **“Residential 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.

“Residential Unit” means singularly or collectively all Units that are not Commercial Units, namely Units U101-U111, Units U201-U208 and Units U301-U304, as depicted on the Plat.

“Ski Lockers” means each of those ski locker areas, identified with signage, and located in the Ski Storage Area identified on the Plat.

“Special Assessment” means that portion of the costs of the capital improvements, replacements, equipment purchases and replacements, or shortages in Regular Assessments which are authorized to be paid to the Association pursuant to the provisions of this Declaration as more particularly described in Section 9.4.

“Storage Unit” means each of the storage units identified on the Plat. The Storage Units are contained within certain Parking Spaces and shall be part of the applicable Parking Space Limited Common Area as designated and assigned by Declarant pursuant to deed or other recorded document or instrument. A Storage Unit may not be conveyed separately from the Parking Space within which it is located.

“Tenant” means any Person leasing all or any part of a Condominium from any Owner.

“Unit” means the separate ownership interest component of a Condominium, as bounded by the unfinished interior surfaces of the perimeter: (a) walls (from the centerline of a wall between 2 Units; inside exterior face of the studs forming a wall for a wall between and Unit and interior Common Area; and from the inside face of the glazing or wall between a Unit and exterior Common Area); (b) floors; (c) ceilings; (d) windows (including window frames and window trim); and (e) doors (including door frames and door trim) of each Unit as shown the applicable Plat, together with the airspace so encompassed. The Unit includes all of the following within the boundaries of each Unit as shown on the applicable Plat: (i) all finishes and coverings on the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors, including without limitation paneling, wood, tile, paint, paper, carpeting, and texturing; (ii) all fixtures, improvements, hardware, and appliances; and (iii) all heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, and utility services located within and serving only the Unit. The following are not part of a Unit: (A) bearing walls; (B) structural columns; (C) floors; (D) roofs; (E) foundations; (F) elevator equipment and shafts; (G) central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other

central services that serve more than one Unit, except the outlets thereof when located within the Unit; and (H) pipes, ducts, flues, chutes, conduits, wires and other utility installations that serve more than one Unit, except the outlets thereof when located within the Unit. Provided, however, that a Unit will not include any of the structural components of the Project or utility or service lines located within a Unit that serve more than one Unit.

ARTICLE 4 NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.1 Estates of an Owner of a Condominium. The Project is hereby divided into Condominiums, each consisting of a separate interest in a Unit and an undivided tenant-in-common interest in the Common Area equal to the Percentage Interest.

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

4.3 No Further Division. No Owner may divide, adjust, or further condominiumize the Owner's Unit (each a "**Condo Division**") without the prior written approval of the Board, the City of Ketchum, and any other governing authorities whose approval is required, and any Condo Division must comply with any condominium project amendment requirements of Blaine County, and otherwise comply with all Applicable Laws. Since any Condo Division will necessarily result in a reallocation of the Common Area for purposes of Section 4.1, Condo Division will thus require an amendment to Exhibit D of this Declaration setting forth the reallocation of Percentage Ownership.

4.4 Inseparability of Condominiums. 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 the Unit will always be conveyed, devised, encumbered, transferred, and otherwise affected only as a complete Condominium and will not be transferred in any way resulting in the division of the Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of the Condominium or any part thereof will 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 this Declaration.

4.5 Partition of Common Area Not Permitted. The Common Area will be owned in common by all of the Owners of Units, and no Owner may bring any action for partition thereof.

4.6 Taxes and Assessments. Each Owner will execute any instruments and take any actions as may be reasonably requested by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium. If any taxes of special districts or other assessments may, in the opinion of the Association, nevertheless, be a lien on the Project or any part thereof, the Association will pay the same and assess the same to the responsible Owner or Owners. Each Owner will pay the taxes and assessments assessed against the Owner's Condominium, or interest therein, and the Owner's interest in the Common Area, or any part of any or all of the foregoing. The Association reserves the right to protest any tax valuations or assessments by any taxing government agency and to pay for any costs associated with the protests. Each Owner agrees to reimburse the Association for any costs associated with the protests as related to that Owner's Unit.

4.7 Owner's Rights with Respect to Interiors. Subject to the terms and conditions of the Condominium Documents, including without limitation Article 7 of this Declaration, each Owner will have the exclusive right to maintain, finish, refinish, and decorate the interior surfaces of the walls, floors, ceilings, windows (including window frames and window trim), and doors (including door frames

and door trim) forming and within the interior boundaries of the Owner's Unit, including but not limited to the installation of carpet or other floor coverings, paint or wallpaper, cabinets, and plumbing and electrical fixtures.

ARTICLE 5 EASEMENTS

5.1 Easements for Encroachments. If any part of the Common Area encroaches or will hereafter encroach upon a Unit or Units, an easement for the encroachment and for the maintenance of the same will and does exist. If any part of a Unit encroaches or will hereafter encroach upon the Common Area, or upon an adjoining Unit or Units, an easement for the encroachment and for the maintenance of the same will and does exist. The encroachments will not be considered encumbrances 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 under the Project, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Notwithstanding the foregoing, no Owner will be entitled to deliberately and intentionally encroach on the Common Area without the prior written approval of the Board, or on any other Unit without the prior written consent of the other Unit Owner.

5.2 Easements of Access for Repair, Maintenance, and Emergencies. Portions of the Common Area and/or easement areas granted pursuant to this Declaration or any other Condominium Document, are or may be located within the Units or may be conveniently accessible only through the Units. The Owners have the irrevocable right, to be exercised by the Association as their agent, of access to each Unit and to all Common Area from time to time during reasonable hours as may be necessary and established by the Board for the construction, installation, inspection, operation, maintenance, repair or replacement of any of the Common Area located therein or accessible therefrom, or the construction, installation, inspection, operation, maintenance, repair or replacement of any improvements and facilities located within the Common Area, or for making repairs, maintenance and emergencies therein necessary to prevent damage to the Common Area or to another Unit or Units or to correct a violation of any covenant, condition or restriction of the Declaration when, after reasonable efforts by the Association, the Owner fails to do so. The Association will also have the right of access independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the construction, installation, inspection, operation, maintenance, repair, emergency repair or replacement of any of the Common Area or as a result of emergency repairs within another Unit at the insistence of the Association or of Owners will be an expense of all of the Owners; provided, however, that if the damage is the result of the negligence of an Owner or the Owner's Occupants, invitees, or licensees, then the Owner will be financially responsible for all of the damage. The damage will be repaired and the Unit will be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto will be collected by the Association as an Assessment pursuant to Article 9.

5.3 Owner's Right to Ingress, Egress, and Support. Each Owner will have the right to ingress and egress over, upon, and across the Common Area necessary for access to that Owner's Condominium, and will have the right to the horizontal and lateral support of the Owner's Condominium, and the rights will be appurtenant to and pass with the title to each Condominium. In exercising the rights granted in this Section, each Owner agrees to use reasonable efforts to avoid interference with the access to other Condominiums.

5.4 Association's Right to Use of Common Area. The Association will have the right to make 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 the Condominium Documents, including the right to grant utility easements, alter the Common Areas, and to construct and maintain maintenance and storage facilities in the Common Area for use by the Association.

5.5 Declarant's Right Incident to Construction. Declarant, and Persons it shall select, will have the express and unconditional right to ingress and egress over, upon and across the Project, including Common Area and all Units, the right to store materials thereon and to make other use thereof as may be reasonably necessary or incident to completion of development and construction of the Project and Units shown on the Plats or any amendment thereto and the completion of all Units for use and occupancy; provided, however, that none of the rights will be exercised by Declarant in a way that is expected to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Condominium by that Owner or the Owner's Occupants, invitees, or licensees.

5.6 Certain Easements Benefit. The easements herein granted to an Owner for ingress and egress to and from the Owner's Condominium over, upon, and across the Common Area are hereby recognized to be a condition of approval the Project imposed by the City of Ketchum. The easements will not be dissolved or altered in any material way that would prevent their beneficial use for their intended purposes without the express written consent of the City of Ketchum.

5.7 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and property within the Project in the proper performance of their duties. The easement granted herein is recognized to be a condition of the approval of the Project imposed by the City of Ketchum. The easement will not be dissolved or altered in any material way that would prevent its beneficial use for its intended purpose without the written consent of the City of Ketchum. The Owners expressly acknowledge that the Association and the Ketchum City Fire Department will each have one master key capable of accessing all doors connected to the common security system or access system of the Project. The Owners expressly agree to notify the Association prior to re-keying any lock in the Project controlled by a common security or access system and agree to use a locksmith approved by the Board.

5.8 Recorded Easements. The Project, and any applicable portions thereof, will be subject to the easements shown on any recorded Plats affecting the Project, or any applicable portion thereof, and to any other easements of record or of use, now existing or hereafter created, including without limitation any storm drainage easements, street light easements, sanitary sewer easements, or any other public utility easements shown on the applicable Plat.

5.9 Easements for Annual Inspection. Any Person authorized by the Board will have the right (but not the obligation) of access to all Units on an annual basis for the purpose of inspecting the Units for compliance with the terms and conditions of the Condominium Documents.

5.10 Easements Deemed Created. Any conveyance of Condominiums hereafter made, whether by the Declarant or otherwise, will be construed to grant and reserve reciprocal easements as will give effect to Sections 5.1 through 5.9 above, even though no specific reference to the easements appear in the conveyance.

ARTICLE 6 DESCRIPTION OF CONDOMINIUM

Every contract for the sale of a Condominium and every other instrument affecting title to the Condominium will describe that Condominium by the Unit shown on the applicable Plat with appropriate reference to the applicable Plat and to this Declaration, as each appears on the records of Blaine County, Idaho, substantially in the form of the following:

Unit ___ as shown on the final plat of _____,
recorded in the real property records of Blaine County, Idaho, on
_____, 202__, as Instrument No. ____-_____

(as amended and supplemented from time to time), and as each are further defined and described in that certain Condominium Declaration for The Perry recorded in the real property records of Blaine County, Idaho, on _____, 202__, as Instrument No. ____-_____ (as amended and supplemented from time to time).

The description will be construed to describe the separate ownership interest in the identified Unit, together with the appurtenant undivided tenant-in-common interest in the Common Area (including its appurtenant Patio, Parking Space(s) and Storage Unit, as applicable), and to incorporate all rights incident to ownership of a Condominium interest and all the limitations on the Ownership as described in the Condominium Documents or any amendments or supplements thereto, whether or not so specified in the instrument.

ARTICLE 7 USE AND MAINTENANCE OF CONDOMINIUMS

7.1 Residential Units. The Residential Units will be used exclusively for single-family residential purposes and other uses incidental thereto as permitted by Applicable Law. Except for Home Occupations permitted pursuant to this Section, no Residential Unit will be used at any time for commercial or business activity. A “**Home Occupation**” will be any gainful occupation conducted in a Residential Unit by an Occupant thereof, provided that the home office or studio located thereon does not exceed five hundred (500) square feet in size and is located entirely within the Unit, and further provided that the Home Occupation is conducted in accordance with the other terms and limitations of the Condominium Documents and Applicable Law. A Residential Unit may be used for other Home Occupations only upon a written approval of the Association, which approval may be subject to requirements and conditions as the Association deems appropriate, and which Home Occupation must in conducted accordance with the other terms and limitations of the Condominium Documents and Applicable Law. No Home Occupation may: (a) involve highly combustible materials; (b) involve retail operations; (c) use power equipment or tools; (d) cause abnormal automotive or pedestrian traffic at the Project; (e) be, in the reasonable opinion of the Board, objectionable due to unsightliness, odor, dust, smoke, noise, glare, heat, vibration or similar disturbances; (f) involve dispatch activities where employees meet at the Project and are sent to other locations; (g) involve other uses that, in the reasonable opinion of the Board, would detract from the residential character of the Project. It will not be a violation of this Section for an Owner to lease its Condominium in accordance with Section 7.2. The use of a Condominium for a shelter home, as the same is defined in Idaho Code § 67-6530, whether or not operated for profit, will for the purposes of this Declaration be a commercial or business use to the fullest extent permitted by Applicable Law.

7.2 Residential Leasing. In order to foster and maintain the stable, residential character of the Residential Units in the Project and to preserve the value of the Project and the Condominiums, no Owner may lease, in whole or part, the Owner’s Residential Unit to any Person except as expressly permitted in this Section 7.2. For purposes of this Section 7.2, the term “lease” as applied to a Condominium will be deemed to include, without limitation, any rental, letting, licensing, subletting, demising or assignment of any interest, estate or right of use, enjoyment, occupancy or possession of any Condominium (or portion thereof) to any Person other than a Person who is a member of the Owner’s family. For purposes of this Section 7.2, a “member of the Owner’s family” will be defined as any individual who is related to the Owner by blood, marriage, or adoption. If an Owner leases a Residential Unit in violation of the restrictions set forth in this Section or otherwise fails to comply with this Section, the Owner will indemnify, defend and hold harmless the Association and the other Owners from and against any and all loss or damage arising from or related to the violation. The Association will be entitled to exercise all rights and remedies specified herein or otherwise as a result of the violation, including an action for injunctive relief and an action to evict any unauthorized occupant if allowable by law.

7.2.1 Leasing and Vacation Rentals. Except as provided in subsection 7.2.2, an Owner may lease its entire Residential Unit for any term, including short term vacation rentals, but only through a professional rental management company that has been approved by the Association. Owners are prohibited from self-managing rentals of Residential Units through online services such as AirBnB and VRBO, or in any other manner. Upon execution of any agreement with an Association-approved rental management company, the Owner shall notify the Association.

7.2.2 Workforce Housing Program. Declarant may, at its sole option, include (through lease, sale or operation) up to seven (7) Residential Units in a Workforce Housing Program. A “**Workforce Housing Program**” is any program operated by Declarant, an Association-approved manager, a governmental entity or any 501(c)(3) public charity whereby residential dwellings are leased to households where, at first occupancy, the gross income of all members of the household (i.e., any person who will occupy the dwelling) is not more than 140% of the then current average median income for Blaine County, Idaho, under Section 8 of the United States Housing Act of 1937, as amended (including adjustments for family size) (or any successor approved by Association). No Residential Unit that is part of a Workforce Housing Program may be further leased or used for a vacation rental under subsection 7.2.1.

7.2.3 No Animals in Rental Units. Except as required by Applicable Law or otherwise approved by the Board, no animals will be allowed in a leased Residential Unit.

7.2.4 Owner’s Responsibility. An Owner who leases a Residential Unit will be fully responsible for the actions and inactions of, and damage caused by, the occupants of the leased Residential Unit as if the actions, omissions or damages were caused by the Owner. Any Owner who leases a Residential Unit will comply with this Declaration and all Applicable Laws.

7.2.5 Leases Subject to Declaration. Each lease must (i) be in writing; (ii) provide that the lease will be subject in all respects to the Condominium Documents; and (iii) provide that any failure by the Tenant to comply with the terms of the Condominium Documents will be a default under the lease. Upon execution of any lease of a Residential Unit, the Owner (or operator of the Workforce Housing Program, as applicable) of the leased Residential Unit will provide the Association with a copy of the lease and the name and contact information of the Tenant.

7.3 Commercial Units. Commercial Units and their appurtenant Limited Common Areas are restricted to those office, commercial and retail uses permitted under applicable City of Ketchum ordinances subject to the restrictions set forth in this Article 7 or elsewhere in this Declaration. Commercial Units may be leased, provided each lease must (i) be in writing; (ii) provide that the lease will be subject in all respects to the Condominium Documents; (iii) provide that any failure by the Tenant to comply with the terms of the Condominium Documents will be a default under the lease; and (iv) be in compliance with Applicable Law. Upon execution of any lease of a Commercial Unit, the Owner of the leased Commercial Unit will provide the Association with the name and contact information of the tenant.

7.4 Obstructions of Common Area. Except to the extent installed or placed by the Association in a manner that is not expected to create a life safety issue, there will be no obstruction of the Common Area, nor will anything be stored on any part of the Common Area without the prior written consent of the Association. Nothing will be altered on, planted in, constructed on, or removed from the Common Area except upon the prior written consent of the Board.

7.5 Maintenance of Interiors and Limited Common Area. Except as otherwise set forth herein, or except as otherwise agreed by the Association, each Owner shall, at its sole expense, keep the interior of the Unit and the equipment, appliances, and appurtenances relating thereto, in a good and

sanitary condition, free of rodents, pests and mold, in good order, condition, repair and appearance in accordance with maintenance schedules contained in any preventative maintenance manual provided by the Declarant or the Association containing minimum maintenance or other standards applicable to the individual Units and/or the Limited Common Area appurtenant thereto (an “**Owner Maintenance Manual**”), and shall do all decorating and painting at any time necessary to maintain the good appearance and condition of the Unit. The requirements set forth in any Owner Maintenance Manual are in addition to the requirements of any warranty or other operating guidelines and instructions. Each Owner shall be responsible for the maintenance, repair or replacement of: the sliding deck doors and related door hardware and door jams; plumbing lines, hoses and fixtures; water heaters, fans, heating, cooling, or other equipment; fireplace flues (including required inspections and cleaning); and electrical fixtures or appliances which may be in, or are part of, the Owner’s Unit. The Association may, as a Common Area expense, provide for the inspection of any Unit or Limited Common Area, where the failure to maintain the same may cause damage to the Common Areas or any other Unit or cause unnecessary expenses, including water heaters, toilets, sinks, showers, bathtubs, deck drains, deck surfaces, flashing, membranes, other weatherproofing components, fireplace flues, and plumbing and electrical fixtures (referred to herein as “**High-Risk Components**”). The Association shall give written notice to the Occupant at least three days before entering, stating the items to be inspected and time of the inspection. The Association may impose any reasonable requirements for the purpose of mitigating the risk of damage from High-Risk Components including: (i) installation protective pans and alarms; (ii) imposing a schedule for inspections or replacement at specified times; (iii) establishing minimum standards for replacements of the High-Risk Components; (iv) imposing standards for those people performing any inspections, repairs or replacements; (v) requiring notice to the Board and the opportunity for the Board to supervise all work relating to the High-Risk Components; and (vi) provide the Board with any evidence the Board may reasonably request to confirm that the Owner has complied with its obligations regarding the High-Risk Components. Each Owner will notify the Association of any unsafe condition existing in, on, or around the Limited Common Area. In addition, nothing unsightly, in the reasonable opinion of the Board, will be kept on any exterior Limited Common Area (including, without limitation, all Patios).

7.6 Window Washing. Each Owner of a Commercial Unit shall be responsible for washing its own windows (interior and exterior). The Association shall be responsible for washing the exterior of all other windows in the Project, the cost of which shall be allocated to the Owners of the Residential Units. Each Owner of a Residential Unit is responsible for washing the inside of the windows for such Unit.

7.7 Prohibition of Damage and Certain Activities.

7.7.1 Damage or Waste. No damage to, or waste of, the Common Area or any part thereof will be committed by any Owner or the Owner’s Tenants, Occupants, invitees, or licensees, and each Owner will indemnify and hold the Association and the other Owners harmless against all loss resulting from any damage or waste caused by the Owner or the Owner’s Tenants, Occupants, invitees, or licensees. Not by way of limitation of the foregoing, each Owner will pay the cost to repair any damage caused to a Unit or Common Area as a result of the Owner’s moving in or out of the Unit.

7.7.2 Trash Removal and Nuisances. Each Owner shall be responsible for removing all trash and garbage from its Unit and depositing it promptly in proper receptacles as designated by the Association in accordance with such rules and regulations as the Board may adopt. No rubbish or debris of any kind will be placed or permitted to accumulate anywhere upon the Project or any portion thereof, except in such receptacles, and no odor will be permitted to arise from any portion of the Project so as to render, in the reasonable opinion of the Board, the Project or any portion thereof unsanitary, offensive, or detrimental to the Project, or to any other property in the vicinity of the Project. No exterior fires and no obstructions of pedestrian walkways will be permitted to exist at the Project. No business or Home

Occupation, no noise, vibrations, unsightliness or other nuisance will be permitted to exist or operate upon any portion of the Project in violation of Applicable Law or so as to be, in the reasonable opinion of the Board, offensive or detrimental to the Project or to its Owners or their Occupants or to other property in the vicinity Project. Without limiting the generality of any of the foregoing, no Owner will use or install or permit to be used or installed any whistles, bells or other sound devices, or flashing lights or search lights within the Project without the Board's approval. Owners shall keep music, subwoofers and other noises at a level so as not to be audible outside such Owner's Unit. No unsightly articles will be permitted to remain on any Condominium so as to be visible from any other portion of the Project. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, heat pumps, compressors, and containers will be kept in the containers and other areas designated for that purpose by Declarant or the Board. No clothing or fabric may be hung, dried, or aired in a way that is visible from the exterior of the Unit it in which it is hung, dried or aired. Window air-conditioning units are not allowed.

7.7.3 Violation of Law. Owners will not use or suffer or permit any Person to use any Condominium or any part thereof for any use or purpose in violation of Applicable Law.

7.7.4 Violation of Condominium Documents. Owners will not use or suffer or permit any Person to use any Condominium or any portion thereof, for any use or purpose in violation of any of the terms and conditions of the Condominium Documents.

7.7.5 Advertising. Except as allowed by Association Rules or by prior written approval of the Board, Owners will not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Residential Units. Owners of Commercial Units may use exterior Limited Common Areas appurtenant to their Units and, subject to Applicable Law and/or permitting, sidewalks, for commercial uses allowed under this Declaration. Owners further agree not to install any exterior lighting, shades or awnings, amplifiers or similar devices or use in or about the Project, or any advertising medium or promotional materials or facilities which may be distributed, heard or seen outside the Unit, such as flyers, flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts, or make any changes to the facade of the Project or operate any customer service windows without Board's prior written consent. Owners will not conduct or permit to be conducted any sale by auction in, upon or from the Units, whether the auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other solvency proceeding.

7.7.6 Increase in Insurance Rates. Except with the prior consent of the Association, no Owner may do or permit anything to be done in or about any Unit or Common area that would result in the cancellation of, or an increase in the rate of, the insurance on the Project. Any Owner taking or permitting any such action with Board approval will be solely responsible for the payment of any increase in insurance premiums.

7.7.7 Disruption. Owners will not do or permit anything to be done in or about the Unit or Common Area which will in any way obstruct or interfere with the rights of other Owners or Occupants in the Project, create undue noise and disruption, or injure or annoy them or use or allow the Unit to be used for an unlawful or objectionable purpose, nor will Owner cause, maintain or permit any nuisance in, on, or about the Project.

7.8 Commercial Unit Restrictions. In addition to the other restrictions set forth in this Section 7, Commercial Units shall be subject to the following requirements:

7.8.1 Commercial Units shall not be used for any of the following: copy center; medical laboratory; food processing; manufacturing activities; wholesale or retail sales of pornographic literature, photographs or movies; card room; dance hall, pool hall; video arcade or other similar form of amusement center; musical school or studio; adult motion picture theater; laundry; dry-cleaning (drop off and pick up facility is permitted), dyeing or rug cleaning plant; jail; hotel, apartment hotel or motel; bar or tavern (however, specialty bars which are compatible with high-end, mixed-use communities are permitted, such as a wine bar, mocha martini bar, or brew pub); package liquor store (however, specialty shops which are compatible with high-end, mixed-use communities are permitted such as a wine shop); taxidermy shop; retail pet shop or animal clinic (a pet supply store which does not sell live animals is permitted); work release center, drug rehabilitation center or social service agency; tattoo parlor or body piercing business (a beauty shop offering ear piercing services is permitted); church, synagogue, mosque or place of religious worship; any public meeting place or place of public assembly; mortuary, crematorium or funeral home; automobile, truck, trailer or recreational vehicle sales, leasing or display or body shop repair operation; pawn shop; or flea market.. No Commercial Unit may be used for restaurant or related uses which require grease traps or Type 1 hood/ventilation for cooking facilities. Unless the Board allows longer operating hours, the Commercial Units shall maintain hours of operation no earlier than 8:00 AM and no later than 10:00 PM

7.8.2 The delivery or shipment of merchandise, supplies, and fixtures to and from a Commercial Unit shall be accomplished in a manner that shall not unreasonably interfere with the quiet enjoyment or the security of the Residential Units.

7.8.3 The Owner of any Commercial Unit shall not allow or permit any continuing vibration or any offensive or obnoxious and continuing noise or any offensive or obnoxious and continuing odor to emanate from the Commercial Unit into the Residential Units or other Commercial Units, nor shall the Owner allow or permit any machine or other installation therein to constitute a nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owners of other Units. Upon the failure of the Owner of any Commercial Unit to remedy any such noise, vibration or odor, then the Board may at its option either: (1) cure such condition at the Owner's cost and expense; or (2) pursue any other available legal or equitable remedy.

7.8.4 The Owner of any Commercial Unit shall bear the expenses relating to any changes in electrical, gas or water service necessitated by the use of the Unit.

7.8.5 The Owner of any Commercial Unit must screen the interior of the Unit from public view when those Units are vacant to keep those Units from appearing abandoned and to otherwise make those Units compatible with the nature of the community.

7.8.6 The Owner of any Commercial Unit, with appropriate permits from the City, may use the sidewalk adjacent to the Unit for outdoor seating, sidewalk sales, or similar uses relating to the business conducted at the Unit. The Owner shall be responsible for complying with all requirements of the City regarding its use and shall perform any clean up required by its use.

7.9 No Hazardous Activities. No activities will be conducted on the Project which are or might be unsafe or hazardous to any Person or property including, without limitation, any open fires (except in a contained in a Declarant or Board-approved barbecue or gas fireplace or fire pit) and/or the discharge of firearms.

7.10 Over the Air Reception Devices. All Owners who desire to use any device or antenna to receive over the air transmissions will be required to use one Declarant or the Association may install one common antenna or other device to receive over the air transmissions, which antenna or device will be

located on the Project in a location designated and approved by the Declarant or the Board (a “**Common Antenna**”). In event a Common Antenna is installed, all Owners who desire to use any antenna or device to receive over the air transmissions will be required to use the Common Antenna, subject to reasonable restrictions related thereto established by the Board. Notwithstanding the foregoing, no portion of this restriction will apply to the extent that it conflicts with any Applicable Law governing such antenna or devices. Those Owners using the Common Antenna will share the costs and expenses associated therewith in the manner reasonably determined by the Board.

In the event a Common Antenna has not been installed, Owners will be permitted to install small satellite dishes or other devices within the service well on the roof of the Project for cable services using the electrical conduit system located in the core of the Project, subject to the prior written approval of the Board. In the event that a satellite dish or other device is approved by the Board, it (and any related equipment) must be installed and/or screened in the manner approved by the Board.

7.11 Energy Devices, Outside. No energy production devices or generators of any kind (including without limitation solar energy devices and windmills), will be constructed or maintained on or in any portion of the Common Area without the prior written approval of the Board. In the event that the addition or use of such a device is approved by the Board, it (and any related equipment) must be installed and/or screened in the manner approved by the Board.

7.12 Signs. No signs of any kind, including, without limitation, “for sale,” “for lease,” “for rent,” and “open house” signs, holiday signs, social commentary signs, decorations, or banners, or political or commercial signs, will be displayed on or from any portion of the Project except as approved by the Board in its reasonable direction, except that political signs in support of or opposition to any candidate for office or a ballot measure may be displayed thirty (30) days prior to the date on which votes are cast for such candidate or ballot measure, and will be removed within two (2) days after any such date. Notwithstanding the foregoing, no portion of this restriction will apply to the extent that it conflicts with any Applicable Law governing signs, and, provided, further, Commercial Units may display signs identifying the businesses located therein as allowed under Applicable Law.

7.13 Window Treatments. No window or glass tinting or coverings will be permitted, including any appliques, decals, or other materials, that would be visible from the exterior of any Unit, or that would otherwise in any manner change the exterior appearance of any glass or window in terms of color, reflectivity, tint, or appearance, except as otherwise may be permitted by the Board. In the event replacement of any glass pane constituting Common Area will become necessary, such glass will be replaced by the Association; provided, however, an Owner may be required to pay for such replacement pursuant to Section 9.5. This paragraph will be interpreted in such manner as to favor and facilitate a uniform appearance of the Project from the exterior thereof. Each Unit will be equipped with MechoShades. No Owner may change the shades in its Unit, except to replace damaged or malfunctioning MechoShades with either the same shade or a substantially similar shade approved by the Board. Owners may install interior drapes, so long as the color and material of the drapes are either set forth as approved items in the Association Rules or are otherwise approved by the Board. Items including, but not limited to, paper shades, aluminum foil, newspaper, sheets, cardboard, reflective tint, paint, etc. are not permitted to be used as window covering.

7.14 Water Beds. No water beds are permitted in any Unit. Each Owner acknowledges that substantial damage to other Units and/or Common Areas may occur as a result of a violation of this restriction.

7.15 Space Heaters. No space heaters are permitted in any Unit. Each Owner acknowledges that substantial damage to other Units and/or Common Areas may occur as a result of a violation of this restriction.

7.16 Appliances. No appliances will be installed or maintained in a Unit that are inconsistent in terms of energy source or energy usage from those utility lines and hookups initially installed or made available by Declarant with respect to a Unit. By way of illustration, but not of limitation, if and to the extent that the Unit was originally equipped with a gas utility hookup for clothes dryers, stoves, ovens, or other appliances, no modifications will be permitted for the installation of electricity powered clothes dryers, stoves, ovens or other appliances, unless electricity powered clothes dryers, stoves, ovens or other appliances were originally available for use and operation in the Unit and can be installed with minimal disruption to Common Areas. Likewise, if the Unit was originally equipped and/or designed for any electrical appliances, no modifications will be permitted for the installation of gas-powered appliances, unless gas powered appliances were originally available for use and operation in the Unit and can be installed with minimal disruption to Common Areas. The Board reserves the right to designate specific Association Rules pertaining to the minimum design and performance characteristics of appliances to be installed in the Units. All installation and use of any appliances will comply with and not violate the terms of any warranty guidelines or manufacturers' guidelines or recommendations.

7.17 Construction and Structural Alterations. An Owner may make improvements or alterations to the interior of the Owner's Unit and the Limited Common Area appurtenant to such Unit, provided that such improvements or alterations: (a) do not impair the structural integrity, mechanical systems or Common Area of the Project; (b) are not to walls, doors, windows, or other portions of the Project that are visible from the outside of the Unit; and (c) do not otherwise penetrate any Common Area. To the extent an Owner desires to make an improvement or alteration in violation of any portion of the foregoing, the Owner will first obtain the prior written consent of the Board, which consent will not be unreasonably withheld or delayed. All improvements and alterations constructed pursuant to the terms of this Section 7.17 will comply with all Applicable Laws.

The Board may adopt work rules and work hours provided the same are reasonable, apply to all Owners, are enforced on a nondiscriminatory basis, and serve the primary purpose of ensuring safe and orderly construction, limiting disruption of Owners, Occupants and their invitees, and preventing damage to the Common Areas and Units. All work shall be done by licensed contractors and shall comply with all Applicable Laws. All work shall be done in a workmanlike manner and in accordance with a sound engineering design. All work affecting the structural portions shall be approved by a licensed structural engineer. All work affecting the weatherproofing systems shall be monitored during construction and upon completion approved by a qualified building enclosure inspector. All work which increases the load on shared utility systems and facilities, if any, shall be approved by a properly licensed and qualified engineer. Each Owner shall notify the Board of any work which will take longer than 180 days to complete, or will involve project costs in excess of \$250,000, and shall include with that notice evidence of compliance with the insurance requirements stated in Section 7.17.

7.18 Sewer System Restrictions. No Owner or other Person will deposit any glass, metal, seafood shells, diapers, clothing, rags, plastic, sanitary napkins, tampons, flammable material, oil, gas, grease, chemicals or other objects or materials other than natural human waste and generally accepted household cleaners into the sewer system either directly or through any Owner's waste disposal unit(s). The cost of any and all damage sustained by the sewer system caused by an Owner's deposit in the sewer system of any of the items listed above will be the sole responsibility of the Owner.

7.19 Hard Surface Flooring. No Owner will install any hard surface flooring (including tile or hardwood floors) or replace any flooring with any hard surface flooring without the prior written

consent of the Board. Such hard surface flooring or replacement flooring will meet the standards set forth by the Board as may from time to time be set forth in the Association Rules.

7.20 No Smoking. The Project is hereby designated as “smoke free,” and no smoking of any kind is allowed at the Project, including without limitation “vapor” smoking. Notwithstanding the foregoing, the Board may from time to time designate certain outdoor areas of the Project as “**Permitted Smoking Areas**,” in which event smoking will be allowed only in such designated areas. Neither Declarant nor the Association guarantees a smoke free environment at the Project or any portion thereof.

7.21 Parking Restrictions. Parking Spaces may be used only for the parking of operable vehicles in good condition and small boats, and then only in accordance with the Association Rules. No recreational vehicles, camper vans or similar vehicles may be stored in the Parking Spaces without the prior consent of the Board. Each Parking Space (which specifically exclude all handicapped parking spaces identified on each Plat) will initially be designated and assigned by Declarant pursuant to a deed or other recorded document or instrument, and once so designated and assigned, such Parking Space will be Limited Common Area appurtenant to, and for the exclusive use of, the Unit to which the Parking Space is designated and assigned, to the exclusion of all other Unit Owners. The Association will keep a list of the Parking Spaces so assigned and designated by Declarant. After being assigned and designated by Declarant, Parking Spaces will not be conveyed separate and apart from the Unit to which they are appurtenant, and any attempt to do so will be void *ab initio*; provided, however, that certain of the Parking Spaces may be assigned to the Association, which Parking Spaces may be used as permitted by the Association, which uses may include excess parking for Owners, visitor parking for guests, or for the exclusive use of a Unit (with or without rental payment), and the Association will have the further right to convey such spaces by deed to an Owner of a particular Unit, in which event such Parking Space will be Limited Common Area appurtenant to, and for the exclusive use of, the Unit to which the Parking Space is designated and assigned, to the exclusion of all other Unit Owners.

7.22 Patio Restrictions. Patios will not be used for storage purposes, including for the storage of pets, pet equipment, bicycles, boxes, storage sheds, and so forth, except that patio furniture will be permitted on Patio in accordance with this Section. Any plants or similar items kept on a Patio will be in accordance with the approved plant list or otherwise subject to approval by the Board, will be watered and maintained in good condition, and dead plants, leaves, and other items will be promptly removed and discarded. No over-watering of any plants located on a Patio (i.e., of such a nature to cause water run-off) will be permitted. Patio furniture as approved by the Board or that otherwise complies with the Association Rules will be permitted on the Patios. Patios will be kept in a clean and orderly fashion. Owners will not hang any items from the Patios or the railings thereon, and Residential Owners will not place any temporary lighting, whether electric, battery-operated, solar, or otherwise, on the Residential Owner’s Patio. Commercial Owners may put lighting on Patios, subject to compliance with Association Rules. No shelving, storage devices or apparatuses, or other improvements or alterations will be permanently affixed to any Patio, except upon the prior written approval of the Board. No charcoal grills are permitted on Patios or in any Unit.

7.23 Storage Areas. All storage areas (excluding Storage Units) made available by the Association to the Owners will be used only for the storage of non-combustible and otherwise non-hazardous items. To the extent such storage areas contain enclosed units, then Owners will only store items that will fit therein when the door to such enclosed area is closed, and such doors will remain closed at all times except when depositing or retrieving items therefrom.

7.24 Bike Spaces. Bike Spaces will be used by their respective Owners only for the storage of storage of bicycles. The right to use each Bike Space will be assigned to a Unit by the Association, and once so assigned, such Bike Space will be Limited Common Area appurtenant to, and for the exclusive

use of, the Unit to which the Bike Space is assigned, to the exclusion of all other Unit Owners. The Association will keep a list of the Bike Spaces so assigned. After being assigned by the Association, the right to use the assigned Bike Spaces will not be conveyed separate and apart from the Unit to which they are appurtenant, and any attempt to do so will be void *ab initio*. Unit owner may request a re-assignment of Bike Spaces by the Association, which the Association may grant with the consent of any affected Units.

7.25 Animals/Pets. No animals, livestock, or poultry of any kind will be raised, bred, or kept on or in any portion of the Project except that Household Pets (defined below) may be kept for an Owner's personal use provided that: (a) such Household Pets are not bred or maintained for any commercial purpose; (b) no more than two (2) of any combination of Household Pets may be kept in a Unit; and (c) all Household Pets must be properly restrained and controlled at any time they are within the Project. "**Household Pets**" means indoor domesticated dogs, indoor domesticated cats and indoor parrots, parquets and similar birds (but not any domestic birds, such as any type of chicken), and any other animal specifically approved by the Board to be a Household Pet. Any Household Pet which, in the reasonable opinion of the Board, is vicious or excessively noisy, or which damages or destroys property will be deemed a nuisance and will be removed from the Project upon the written request of the Board. An "excessively noisy" Household Pet is any Household Pet that habitually or frequently disturbs the sleep, peace, or quiet of any Occupant. Owners will contact the local animal control agency regarding noisy Household Pets prior to complaining to the Board about such animals. Any costs associated with responding to complaints relating to animals (including without limitation Household Pets), livestock, or poultry at the Project may be levied as a Limited Assessment against the Owner of the Unit in which such animals, livestock, or poultry are being kept. The Owner of the Unit where a Household Pet is kept, as well as the legal owner of the Household Pet (if not the Owner), will be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of any portion of the Project necessitated by such Household Pet. Household Pets will not be allowed on any Common Areas unless they are on a leash and accompanied by their owner or handler. The Owner of any Household Pet shall be responsible for any damage to person or property caused by the Household Pet and shall defend, indemnify and hold the Association and the Board harmless from all liability arising from or caused by the Household Pet. Subject to the requirements of Applicable Law, the Board may adopt rules and regulations prohibiting Household Pets over a particular size or weight, or Household Pets wholly or partially of breeds which the Board deems inappropriate for condominium living.

7.26 Assistance Animals. Notwithstanding anything to the contrary contained in this Section hereof, assistance animals are welcome in the Project in accordance with the Fair Housing Act (42 U.S.C. § 3601 *et seq.*, as amended) and the implementing regulations promulgated thereunder. An assistance animal will be as defined in the Fair Housing Act, which is currently any animal needed by a disabled individual to have an equal opportunity to use and enjoy a dwelling. Examples of assistance animals are guide animals, animals that alert people who are deaf, animals that pull a wheelchair, animals that alert and protect a guest who is having a seizure, animals that remind an individual with mental illness to take prescribed medications, animals that calm an individual with Post Traumatic Stress Disorder (PTSD) during an anxiety attack and animals that provide comfort or emotional support. Assistance animals in training are to be treated as assistance animals, even if the handler is not disabled. An assistance animal need not be licensed or certified by any government. Individuals with assistance animals will not be treated less favorably than other Occupants or charged fees that are not charged to other Occupants without animals. The Association will have the right, to the extent permitted under the Fair Housing Act, to prohibit or restrict any assistance animal that: (a) is out of control and the handler does not take effective action to control it; or (b) the animal's behavior poses a threat to the health or safety of others. The Owner of the Unit where an assistance animal is kept, as well as the legal owner of the assistance animal (if not the Owner), will be jointly and severally liable for any and all damage and destruction

caused by the assistance animal, and for any clean-up of any portion of the Project necessitated by such assistance animal.

7.27 Right to Enjoy and Use Units. Each Owner will be entitled to use and enjoy the Owner's Unit for its intended purpose and nothing herein is intended to impose or grant the authority to impose any restrictions, limitations or prohibitions which would deprive an Owner of the reasonable use and enjoyment of the Owner's Unit. Notwithstanding the foregoing, no Owner will be entitled to use the Owner's Unit for any uses not allowed under the Ketchum Municipal Code or otherwise limited by this Declaration or any other Condominium Documents.

ARTICLE 8 THE PERRY OWNERS ASSOCIATION

8.1 Creation and Designation of Association. Declarant has incorporated the Association as a nonprofit corporation under the laws of the State of Idaho, and Declarant hereby designates the Association as the "management body" of the Project in accordance with the Condominium Act. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its Articles, Bylaws, this Declaration (as it relates to the Association's management of the Project), and the other Condominium Documents, as each may be amended and/or supplemented from time to time according to their respective terms. Neither the Articles nor the Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to conflict with this Declaration.

8.2 Membership and Voting. "Member" means each Person holding a membership in the Association, including Declarant. Every Owner of a Condominium is a Member of the Association and has one (1) membership for each Condominium in the Project owned by the Owner. If the Owner of the a Condominium will be more than one (1) Person, all such Persons will have a membership in the Association and be deemed Members, but the voting rights in the Association attributable to that Condominium may not be split and will be exercised by one (1) representative selected by such Persons as they, among themselves, may determine. In the event such Persons are unable to agree among themselves on any matter put to a vote as to how the vote will be cast, such Persons will not be entitled to vote on the matter in question. If only one such Person casts a vote, it will thereafter be conclusively presumed for all purposes that such Person was acting with the authority and consent of all other co-Owners of such Condominium. To this end, only one (1) vote is allocated to each Condominium, regardless of the number of Persons that hold an ownership interest in such Condominium. Memberships in the Association will be appurtenant to the Unit owned by the Owner. The memberships in the Association will not be transferred, pledged, assigned, or alienated in any way except upon the transfer of Owner's title to a Unit and then only to the transferee of such title. Any attempt to make a prohibited membership transfer will be void and will not be reflected on the books of the Association. The Association will have two (2) classes of membership as follows:

8.2.1 Owner Members. "Owner Members" will be the Owners of the Units, with the exception of the Declarant for so long as the Declarant Member exists. Upon the Declarant Member Termination Date (defined below), at all meetings of the Association each Member will be entitled to the number of votes allocated to each Owner's Unit, as identified on Exhibit D, representing that Owner's Percentage Ownership. Prior to the Declarant Member Termination Date, Owner Members are not entitled to vote.

8.2.2 Declarant Member. The "Declarant Member" is Declarant. Until the Transfer of Control Date (the "Initial Development Period"), the Declarant Member will be entitled to (a) to the exclusive power to appoint, remove and replace directors of the Association; and (b) three (3) votes for each Unit until the Unit is conveyed to an Owner Member. The Declarant Member will cease to exist upon the earlier to occur of the following: (a) one hundred twenty (120) days after Declarant has

conveyed seventy-five percent (75%) of the Units in the Project; (b) three (3) years after completion of the Project as evidenced by the first conveyance of an Unit to an Owner; or (c) the date that Declarant informs the Board that Declarant no longer wishes to exercise its rights as the Declarant Member (as applicable, the “**Transfer of Control Date**”).

8.3 Member Meetings. The Association will hold an annual meeting of the members and periodic special meetings of the members as set forth in the Condominium Documents.

8.4 Proxies. A membership in the Association will be appurtenant to and inseparable from the Condominium owned by such Member. A membership in the Association will not be assigned, transferred, pledged, or alienated in any way except: (a) that an Owner may give a proxy pursuant to the Bylaws; and (b) upon the transfer of title to the Condominium and then only to the transferee of title to the Condominium. Any attempt to make a prohibited transfer of a membership will be void and will not be reflected on the books of the Association. 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 or to any Person that has assumed by contract, or otherwise, liability for paying Assessments of any Owner.

8.5 Board of Directors. The business and affairs of the Association are managed by the Board. The Board will consist of not less than three (3) directors and no more than five (5) directors. Directors need not be Owners. During the Initial Development Period, Declarant has the exclusive right to appoint, remove, and replace directors at any time and from time-to-time in Declarant’s sole discretion, and to otherwise fill vacancies on the Board as they arise. After the Initial Development Period, the Owners have the right to elect and remove directors as provided in the Bylaws. After the Initial Development Period, any vacancy on the Board will be filled by a plurality of the votes cast by the remaining Directors through a special election at any meeting of the Board.

8.6 Delegation of Authority. The Board may at any time and from time-to-time delegate all or any portion of its powers and duties to committees, officers, employees, or to any Person to act as manager, including the Management Company.

8.7 Powers of the Association. The Association will have all the powers of a nonprofit corporation incorporated under the laws of the State of Idaho and all of the powers and duties set forth in the Condominium Documents, including the power to perform any and all acts which may be necessary to, proper for, or incidental to the foregoing powers. The powers of the Association include, by way of illustration and not limitation:

8.7.1 Assessments. The power and authority to levy Assessments on the Owners of Condominiums and to enforce payment of such Assessments, including the power and authority to establish and fund via Assessments such operating and capital reserves as the Board deems necessary or prudent.

8.7.2 Right of Enforcement. The power and authority at any time and from time-to-time, on its own behalf or on behalf of any consenting Owners, to take any action, including any legal action, to prevent, restrain, enjoin, enforce, or remedy any breach or threatened breach of the Condominium Documents. The power of enforcement includes:

8.7.2.1 The right to remove, alter, rebuild, or restore any improvements constructed, reconstructed, refinished, added, altered, or maintained in violation of the Condominium Documents. If such improvements are located in a Unit, the Board must first provide the Owner thereof with a notice specifying the default and a reasonable period (no less than ten (10) days and not to exceed

thirty (30) days) to cure, and the Owner of the improvements must immediately reimburse the Association for all expenses incurred with such removal.

8.7.2.2 The right to enforce the obligations of the Owners to pay each and every Assessment or charge provided for in the Condominium Documents.

8.7.2.3 The right to perform any duty or obligation of an Owner under the Condominium Documents if such duty or obligation is not timely performed by the Owner. In such event, the defaulting Owner must immediately reimburse the Association for all costs reasonably incurred by the Association in performing such duty or obligation. Except in the event of an emergency, the Association must provide the defaulting Owner with a notice specifying the default and a reasonable period (no less than five (5) days and not to exceed thirty (30) days) to cure prior to exercising its power and authority hereunder.

8.7.2.4 The right to authorize variances from the requirements of this Declaration when required by Applicable Law (such as the Fair Housing Act) or when needed to prevent the requirements would impose an undue hardship on an Owner that would be inequitable for the Owner to bear. The granting of a variance does not waive any element of the Declaration for any purpose except as to the particular Condominium and the particular provision covered by the variance. Approval of a variance does not affect the Owner's obligation to comply with the other elements of this Declaration or Applicable Law.

8.7.3 Association Rules. The power and authority to adopt, amend, and repeal the Association Rules as the Board deems reasonable and appropriate to govern the Project, including rules and regulations regarding: (a) the use of the Common Area; (b) imposition of fines for violations of the Condominium Documents (subject to Applicable Law, such as Idaho Code § 55-115); and (c) procedures in the conduct of business and affairs of the Association. Except when inconsistent with this Declaration, the Association Rules have the same force and effect as if they were set forth in and were made a part of this Declaration. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, will be mailed or otherwise delivered to each Owner.

8.7.4 Emergency Powers. The power and authority to enter upon any Unit as necessary in connection with any maintenance or construction for which it is responsible, or when necessitated by violation of the Declaration or other Condominium Documents, or in the event of any emergency involving potential danger to life or property and the power to take corrective action. Such entry will be made with as little inconvenience to the Owners as practicable and any damage caused thereby will be repaired by the Association, except as otherwise provided herein. Owners acknowledge that the Ketchum City Fire Department and the Association may have a master key to all locks in the Project. Owners further agree to notify the Board and employ a locksmith approved by the Board before any locks may be changed to preserve the system.

8.7.5 Common Area. The power and authority to manage, operate, maintain, repair, and replace the Common Area for the benefit of the Project and the Owners, and the power and authority to construct, install, maintain, repair, replace, and operate any improvements in the Common Area, any public right-of-way serving the Project or any other location deemed by the Board to benefit the Project, including any fences, signs or other improvements at Project entrances or otherwise in the vicinity of the Project, and any berms, retaining walls, fences, and other amenities within or abutting any Common Area.

8.7.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Project, and/or

for the preservation of health, safety, convenience and welfare of the Owners. The foregoing power includes, without limitation, the power to grant and convey to such third parties licenses, easements, and rights-of-way for the purpose of constructing, erecting, operating, or maintaining any of the following:

8.7.6.1 Lines, cables, wires, conduits, or other devices for the transmission of electricity, heating, power, telephone, television and data, other utility services and, meters and other facilities associated with the foregoing;

8.7.6.2 Sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and

8.7.6.3 Cross parking easements, sidewalk abutments, drive lanes, parking areas, curb cuts, landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose.

8.7.7 Property for Common Use. The power and authority to acquire and hold for the use and benefit of all of the Owners, or for the benefit of only those Owners within a particular Condominium, tangible and intangible personal property and real property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property will be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Area.

8.7.8 Amenity Agreements. The power and authority to enter into any lease, license, use, or other agreement as the Board deems proper or convenient to secure the use of off-site amenities or facilities for the benefit of the Project. Without limiting the generality of the foregoing, and only by way of example, the Association may enter into such agreements with others for the use of any recreational amenities or facilities, including clubhouses and swimming pools, by the Owners on such terms as the Board deems reasonable or prudent.

8.7.9 Inspection. The power and authority to enter a Unit for the purpose of conducting a regular maintenance inspections.

8.7.10 Taxes. The power and authority to pay all real and personal property taxes and assessments (if any) levied against the Common Area, the Association, and any other property owned by the Association. In addition, the Association must pay all taxes, including income, revenue, corporate, or other taxes (if any) levied against the Association.

8.7.11 Entitlement Obligations. The power and authority to fulfill any duties imposed by any governmental or other quasi-governmental agencies as part of the entitlements for the development of Project, including any requirements or obligations identified in such entitlements as the responsibility of community association or homeowners' association or management body, such as plat notes, development agreements, or conditions of approval.

8.7.12 Financing. The power and authority to enter into any agreements necessary or convenient to allow Owners to take full advantage of, or secure the full availability of, any Financing Programs.

8.7.13 Estoppel Certificates. The power and authority to execute a written statement stating: (a) whether or not, to the knowledge of the Association, a particular Owner or Owner's Condominium is in default of the Condominium Documents; (b) the dates to which any Assessments have been paid by a particular Owner; and (c) such other matters as the Board deems reasonable. Any such certificate may be relied upon by a bona-fide prospective purchaser or Mortgagee of the Owner's

Condominium, but only to the extent such prospective purchaser or Mortgagee has no knowledge to the contrary. The Association may charge a reasonable fee for such statements.

8.7.14 Improvements in Public Right-of-Way. The power and authority to enter into license and easement agreements with the City of Ketchum (or assume the duties and obligations under any such license agreement entered into by Declarant) to install, maintain, improve, irrigate, trim, repair, and replace improvements and landscaping in the public rights-of-way (including sidewalk easements and planter strips).

8.7.15 Implied Rights. Notwithstanding the foregoing, the Association may exercise any other right or privilege given to it expressly by this Declaration or by Applicable Law, and every other right or privilege reasonable 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. Such rights will include without limitation the right to acquire water meters for each Unit.

8.7.16 Use of Association Powers. Notwithstanding the foregoing, the Association will not take any action that would impair an Owner's right to enjoy and use his/her Unit as set forth herein, in particular Section 7.27.

8.7.17 Power to Levy Fines. The power to impose reasonable monetary fines which will constitute a lien upon the Unit owned or occupied by the Owner, Lessee, or other Person determined by the Board to be in violation of the Condominium Documents (each a "**Violation**"). Provided, however, the Association will not impose a fine on an Owner for a Violation unless: (a) the Board votes to impose the fine at any regular or special meeting of the Board or the Association (individually, a "**Levy Meeting**"); (b) the Owner is provided at least thirty (30) days advance notice of the Levy Meeting by personal service or certified mail at the last known address of the Owner as shown in the records of the Association; and (c) the Owner is given a reasonable opportunity to respond to the Violation during the Levy Meeting. Provided further, the Association will not impose a fine on an Owner if the Owner, prior to the Levy Meeting, begins resolving the Violation and continues to address the Violation in good faith until the Violation is fully resolved (the "**Remedial Period**"). For purposes of this Section, the phrase "address the violation in good faith until the Violation is fully resolved" means the Owner must resolve the Violation within thirty (30) calendar days of the Notice; provided, however, if the nature of the Violation is such that more than thirty (30) calendar days are required for its resolution, then the Owner must diligently prosecute the same to completion within sixty (60) calendar days. All such fines will be deemed to be a part of the Assessments to which the Owner's Unit is subject under this Declaration. In all events, no portion of such fines may be used to increase the compensation to the Board or agent thereof.

8.7.18 Common Parking Spaces. The power to manage and regulate the use of any Parking Spaces owned by the Association as Common Area in any manner the Association deems appropriate, including (a) the power to lease or sell the Parking Spaces to any Unit Owners; (b) the power to reserve or limit the spaces for guests, employees, disabled persons, charging station use or other users or uses. The Association may designate the Parking Spaces that are Common Area for the primary or exclusive use of parking and/or charging of electric vehicles. If the Association provides for electric vehicle charging, the Association may elect to have some or all of the cost of electricity be an Expense, and the Association may elect to charge some or all of the cost of electricity to the users thereof on such terms as the Association deems appropriate.

8.8 Duties of the Association. In addition to the power delegated to it by the Condominium Documents, the Association or its agents will have the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

8.8.1 Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area and all improvements thereon (subject to exclusions in this Declaration **Error! Reference source not found.**), including parking areas, landscaping, drive lanes, common seepage beds and the exterior of the Project, including the repair and replacement of property damaged or destroyed by casualty loss and all other property acquired by the Association, and will maintain the same in a good, clean, attractive and sanitary condition, order and repair. The Association shall obtain a capital reserve study at least every [____] years and maintain sufficient reserves to offset major common area expenditures.

8.8.2 Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area, the Association, or property owned by the Association and all such taxes will be paid or a bond insuring payment posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association will pay all other taxes, federal, state or local, including income or corporate taxes levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

8.8.3 Water and Other Utilities. Acquire, provide and/or pay for water, storm drainage system maintenance, sewer, electric systems, garbage, disposal, refuse and rubbish collection and other necessary services for the Common Area and Units, except to the extent separately billed or separately metered, as may be determined by the Board from time to time in its discretion.

8.8.4 Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect the policies of insurance described in Article 13 hereof.

8.8.5 Maintenance of Exteriors and Improvements. Maintain and repair the exterior surfaces of the Project and improvements in the Project. The exterior maintenance will include: painting, staining, repairing, replacing and caring for all exterior surfaces including roofs and exterior portions of doors as necessary to maintain them in good condition consistent with similar properties in the location of the Project.

8.8.6 Inspection and Maintenance Guidelines. The Board will adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area, including, without limitation, the sewer system and drainage facilities. The Board periodically, and at least once every two (2) years, will review and update the inspection and maintenance guidelines. The Board will take all appropriate steps to implement and comply with the inspection and maintenance guidelines, and will keep records of such implementation and compliance.

8.8.7 Maintenance of Records and Right of Inspection. The Association will keep such records of its business and affairs as is customary for community or homeowner associations, including a membership register, accounting records, financial statements, operating budgets, balance sheets, and minutes of meetings of the Board and committees. Such records will be available at the Association's regular offices for inspection and copying by any Owner at the Owner's expense. The Board may establish reasonable rules with respect to: (a) notice to be given to the custodians of the records by persons desiring to make the inspection; (b) hours and days of the week when such an inspection may be made; and (c) payment of the cost of reproducing copies of documents requested pursuant to this Section 8.8.7. The Association's obligations hereunder may be fulfilled by making the records available to an Owner electronically, including delivery by electronic mail or the posting of such records on a website.

8.9 Immunity and Indemnification. Each Owner understands and agrees that: (a) Declarant and its members, managers, agents, and employees, and (b) the Association, its directors, officers, agents,

employees, and committee members (each individually a “**Released Party**”) will be immune from personal liability to the Owner, and the Owner hereby knowingly and voluntarily waives and releases each Released Party, for such Released Party’s actions or failure to act with respect to the Condominium Documents to the extent that such acts or failures to act do not constitute willful misconduct on the part of such Released Party. The Association will indemnify, defend, and hold each Released Party harmless from any action, expense, loss or damage caused by or resulting from such Released Party’s actions or failure to act with respect to the Condominium Documents; provided, however, the Association will not be obligated to indemnify, defend, and hold harmless any Released Party for their own gross negligence or willful misconduct. Further, except to the extent covered by insurance obtained by the Board, none of the Association, the Board, or the Declarant shall be held liable for: the failure of any utility or other service obtained and paid for by the Association; any injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, snow, dust, or sand which may lead or flow from outside or from any parts of the Project, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such liability or service failure, or for such injury or damage, or for such inconvenience or discomfort.

8.10 Waiver of Consequential Damages. Neither the Declarant nor the Association will be liable to any Owner for, and each Owner releases the Declarant and the Association from, any form of indirect, special, punitive, exemplary, incidental, consequential, or similar costs, expenses, damages, or losses.

ARTICLE 9 ASSESSMENTS

9.1 Covenant to Pay Assessments. By acceptance of a deed to any Condominium, each Owner covenants and agrees to pay when due (without deduction, setoff, abatement of counterclaim of any kind whatsoever) all Assessments or charges made against the Owner or the Owner’s Condominium pursuant to the Condominium Documents. Assessments against a Condominium will be a continuing lien on such Condominium until paid, whether or not ownership of such Condominium is transferred. Assessments against a Condominium are also the personal obligation of the Owner of the Condominium when the Assessment becomes due and payable. Such personal obligation will remain with the Owner regardless of whether the Owner remains the owner of the Condominium. Delinquent Assessments related to a Condominium will not pass to the Owner’s successors in title unless expressly assumed by them. Such Assessments and charges, together with interest, costs and reasonable attorneys’ fees, which may be incurred in collecting the same, will be a charge on the Condominium and will be a continuing lien upon the Condominium against which each such Assessment or charge is made. The due date, manner and method of payment will be as set forth in this Declaration or as established by the Board from time to time.

9.2 Rate of Assessment. Except as otherwise provided herein, all Owners will be responsible for Regular Assessments and Special Assessments levied by the Association in proportion to their Percentage Ownership. Owners will be responsible for Limited Assessments levied by the Association, as set forth in Section 9.5.

9.3 Regular Assessments.

9.3.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including attorneys’ fees and other professional fees, for the conduct of its affairs as provided in this Declaration (including without limitation Article 8 hereof) and other Condominium Documents, including without limitation the costs

and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Area and furnishing utility services, including water, sewer, gas, geothermal systems, trash and electricity and other common services to the Common Area, and each Condominium (if not separately metered), insurance, and any deficit remaining from previous periods (collectively the “**Expenses**”). “**Expenses**” will also include an amount to fund adequate reserves for repairs, replacement, maintenance, and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis, and for extraordinary operating expenses, contingent risks or liabilities (such as indemnification and defense expenses), capital repairs, capital replacements, and any other expenses for which the Board, in its reasonable opinion, deems prudent to fund a reserve. If not already separately metered, the Board reserves the right to separately meter utility services provided to each Condominium, and in such event the Owner of the Condominium will be fully responsible for the costs of providing utilities for the Owner’s individual use.

9.3.2 Computation of Allocation for Regular Assessments. Unless otherwise determined by the Board, the Association will compute and forecast the amount of its Expenses and Regular Assessments on an annual basis. The computation of Regular Assessments will take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, unless a change in the Members or other circumstance makes its impracticable to compute the Regular Assessments in that timeframe. In such event, the Owners will be immediately notified upon completion of such computation. Notwithstanding the foregoing, the computation of Regular Assessments will be completed in good faith and will be valid upon completion. The computation of the Regular Assessments for the period from the recordation of this Declaration until the beginning of the next fiscal year will be reduced by an amount which fairly reflects the fact that such period was less than one year. The Board will have the exclusive right to approve any Assessment under this Article 9.

Except as provided herein, Regular Assessments will be levied by the Association against Units in proportion to their respective Percentage Ownerships. Certain Expenses which exist only for the benefit of or only to serve a single Condominium or group of Condominiums (but not all Condominiums) will only be levied against the Owners thereof in proportion to their Percentage Ownerships, as among each other, as set forth on Exhibit D, and as to Parking Garage Assessments as set forth on Exhibit E.

9.3.3 Parking Garage Assessments. Any Owner of a Parking Space (and Storage Area, if applicable) shall be responsible in that Owner’s proportional share as shown on Exhibit E, attached hereto and incorporated herein, for all expense associated with the costs of operation, maintenance, inspection, management and repair of the parking garage.

9.4 Special Assessments. In the event that the Board will determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including, without limitation, costs of construction, reconstruction, unexpected repairs or replacement of improvements upon the Common Area, attorneys’ fees and/or litigation costs, other professional fees, or for any other reason, the Board will determine the approximate amount necessary to defray such Expenses and levy a Special Assessment for such amount. The Board will, in its discretion, determine the schedule under which such Special Assessment will be paid. If such Special Assessment will affect more than one Condominium or group of Condominiums (but not all Condominiums), the Owners of the affected Condominiums will pay those costs associated solely with their Condominiums in proportion to their Percentage Ownerships, as among each other, as set forth on Exhibit D, while all Owners will share such costs associated with the Common Area in proportion to their respective Percentage Ownerships.

9.5 Limited Assessments. Notwithstanding the above provisions with respect to Regular Assessments and Special Assessments, the Association may levy a Limited Assessment against an

Owner: (a) for any fines (in accordance with Section 8.7.17 hereof), fees or charges levied against the Owner under the Condominium Documents; (b) to reimburse the Association for any costs incurred to bring the Owner's Condominium or any improvements therein into compliance with the Condominium Documents; (c) to reimburse the Association for any damages caused by an Owner or the Owner's Tenants, Occupants, invitees, or licensees to any Common Area or improvements or other property owned or maintained by the Association; and (d) for the cost of providing any goods or services under the Condominium Documents that benefit the Owner or Owner's Condominium, but less than all Owners or all Owners' Condominiums. If such Limited Assessment will affect more than one (1) Condominium, but not all Condominiums, the Owners of the effected Condominiums will pay those costs associated solely with their Condominiums in proportion to their percentage ownership, as among each other, while all Owners will share such costs associated with the Common Area in proportion to their respective Percentage Ownerships.

9.6 Notice and Assessment Due Date. Unless the Board establishes a different schedule for the payment of Regular Assessments, monthly installments of the Regular Assessments will be paid on or before the 1st of each month. The Board will, in its reasonable discretion, determine the schedule under Assessments (other than Regular Assessments) will be paid. If not paid within five (5) days after the due date, a one-time late charge equal to ten percent (10%) of the Regular Assessment will be charged to the Owner. Each Assessment, other than a Regular Assessment, will become delinquent if not paid within ten (10) days after the date of notice thereof to the Owner. If all or any part of an Assessment is not paid within five (5) days after its due date, then: (a) the delinquent Owner will pay to the Association a late payment charge equal to 5% of the delinquent amount; and (ii) interest will accrue on the delinquent amount at the rate of twelve percent (12%) per annum until paid in full. In the event an Owner's payment is returned for any reason, the Owner will pay to the Association an administrative fee in an amount set by the Board and thereafter the Association will have the right to require future Assessments due from the Owner to be paid in the form of a cashier's check, certified check, or other form of immediately collectible funds acceptable to the Association in the Board's discretion.

9.7 Transfer Assessments. Upon the transfer of fee simple title to a Condominium to an Owner, and upon each subsequent transfer of the Condominium thereafter, the transferee will pay a transfer assessment to the Association in an amount determined by the Board from time to time (the "**Transfer Assessment**"). Each Transfer Assessment will be paid to the Association at the closing of the transfer of the Unit. The Transfer Assessments are to be used to pay for Expenses and are not be used for any purpose prohibited by law. Transfer Assessments are not be considered prepayment of any other type of Assessments, are in addition to the Owner's continuing obligation to pay all other types of Assessments, and are not refundable.

9.8 Declarant's Exemption from Assessments. During the first two (2) years following the date Assessments are first assessed against the Owners of Condominiums, Declarant will not be assessed any Regular Assessments or Special Assessments for any Condominiums owned by Declarant. If Declarant owns at least one Condominium during such period, Declarant will pay the shortfall, if any, in the operating Expenses of the Association; provided, however, such obligation will not exceed the amount that the Regular Assessments and Special Assessments that Declarant would otherwise be assessed as an Owner multiplied by the total number of Condominiums owned by Declarant on the date Regular Assessments or Special Assessments are assessed against the Owners of Condominiums. After the foregoing period, Declarant will be assessed Regular Assessments and Special Assessments for each Condominium owned by Declarant.

ARTICLE 10 ENFORCEMENT OF ASSESSMENTS; LIENS

10.1 Right to Enforce. The Association has the right to collect and enforce its Assessments, including any late charges and/or interest accrued thereon pursuant to the provisions hereof. Each Owner will be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration, including any late charges and/or interest accrued thereon, and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay (and agrees that the lien may include) reasonable attorneys' fees and costs, including the costs and expenses for any lien releases, in addition to any other relief or remedy obtained against the Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to this Section to enforce the liens created pursuant to this Section. A suit to recover a money judgment for an unpaid Assessment will be maintainable without foreclosing or waiving the lien hereinafter provided.

10.2 Assessment Liens. There is hereby created a claim of lien with power of sale on each and every Condominium to secure payment of any and all Assessments levied against such Condominium pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration will constitute a lien on such respective Condominium upon recordation of claim of lien with the Blaine County Recorder, which claim of lien will be the "notice of assessment" described in the Condominium Act. Each delinquency will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. Such claim of lien may be foreclosed in any manner permitted by Applicable Law. Upon payment of such lien in full, the Association will prepare and record a release of such claim of lien.

10.3 Method of Foreclosure. To the extent permitted by law, such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other Person authorized to make the sale. Such sale will be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by Applicable Law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

10.4 Required Notice. No action may be brought to foreclose the claim of lien provided for herein, whether judicially, by power of sale, or otherwise, until the expiration of thirty (30) days after a copy of such notice of claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner described in such notice of assessment, and to the Person in possession of such Condominium(s).

10.5 Subordination. Upon recordation of a claim of lien for delinquent Assessments in accordance with Applicable Law, such lien will be prior and superior to all other liens or claims created subsequent to the recordation of the claim of lien except for: (a) liens which, by law, would be superior thereto; and (b) the lien of a first priority Mortgage given and made in good faith and for value that is of record as an encumbrance against such Condominium prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Section 10.5, the sale or transfer of any Condominium will not affect the lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer,

nor will such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

ARTICLE 11 RIGHTS TO COMMON AREAS

11.1 Use of Common Area. Every Owner will have a nonexclusive right and easement to use the Common Area (exclusive of Limited Common Area) and an exclusive or semi-exclusive right to use Limited Common Area designated for exclusive or semi-exclusive use by the Owner, which will be appurtenant to and will pass with the title to every Condominium, subject to the following provisions:

11.1.1 Assessments. The rights of the Association to levy Assessments as provided herein and the payment by an Owner of all such Assessments;

11.1.2 Voting. The right of the Association to suspend the voting rights and rights to use of, or interest in Common Area by an Owner for any period during which any Assessments or charges against the Owner's Condominium remains unpaid;

11.1.3 Dedication or Transfer. The right of the Association to dedicate or transfer all or any part of Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No dedication or transfer will be effective unless an instrument is executed and recorded by the Association verifying that such dedication or transfer has been approved by: (i) the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association, and (ii) more than sixty-five percent (65%) or more of all Mortgagees; and

11.1.4 Association Rules. The right of the Association to establish and enforce such Association Rules as the Association deems proper regarding the Project and use of Common Area.

11.2 Delegation of Right to Use. Any Owner may delegate in accordance with the respective Condominium Documents, the Owner's reasonable right to the use and enjoyment of the Common Area to the Owner's Tenants, Occupants, invitees, or licensees.

11.3 Damages. To the extent permitted by law, each Owner will be liable for expenses for corrective action necessitated by violation of the Declaration or Association Rules or for any damage to such Common Area which may be sustained by reason of the Owner's Tenants, Occupants, invitees, or licensees. In the case of joint ownership of a Condominium, the liability of the Owners will be joint and several. The cost of corrective action will be assessed as an Assessment against the Condominium and may be collected as provided herein for the collection of other Assessments.

ARTICLE 12 MECHANIC'S LIEN RIGHTS

No labor performed or services or materials furnished with the consent of or at the request of an Owner or the Owner's agent, contractor or subcontractor will 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 of 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 written consent will be deemed to have been given by the Owner of any Condominium in the case of emergency corrective action undertaken by the Association. Labor performed or services or materials furnished for the Project if duly authorized by the Association will be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his/her Condominium from a lien against two or more Condominiums or any part thereof by payment of sums secured by such lien which is attributable to the Owner's Condominium.

ARTICLE 13 INSURANCE

13.1 Types of Insurance. Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance, (b) commercial general liability insurance, (c) fidelity insurance, (d) worker's compensation insurance to the extent required by Applicable Laws, (e) directors and officers liability insurance, and (f) such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. Unless otherwise authorized by the Board, the Association will procure at least the following insurance policies to the extent such policies are available on commercially reasonable terms:

13.1.1 Property Insurance. The property insurance shall, at a minimum, provide special cause of loss coverage in an amount equal to the full replacement cost of the Common Areas, the Limited Common Areas, the Units, and personal property of the Association. The property insurance shall also cover betterments and improvements including permanently-installed wall and floor coverings, equipment, fixtures (such as cabinets) and appliances, and replacements or upgrades of the same, in or serving the Units, whether installed by the Declarant, Owners, or their tenants, with an "Agreed Amount" or equivalent endorsement. Each Owner of a Unit shall promptly inform the Board in writing of any betterment or improvement intended as a permanent part of its Unit which cost in excess of \$5,000. The cost of any such increases in insurance may be assessed to the affected Owner as a Specially Allocated Expense as provided in Section 9.7 above. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage to be purchased by FNMA (regardless of whether or not such property is part of the Common Areas) must be covered by such policy. The Association's policy must provide for the recognition of any insurance trust agreement. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with the Allocated Interest allocated to the Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. The name of the insured under such policy must be the Association for the use and benefit of the Owners. A loss payable shall be in favor of the Association as a trustee for each Owner and each Mortgagee of a Unit. The Association or such trustee shall hold any proceeds of insurance in trust for Owners and Mortgagees of a Unit, as their interests may appear. Each Owner and each Mortgagee of a Unit, if any, shall be beneficiaries of the policy in accordance with their Allocated Interests. Such policy shall contain a standard mortgagee clause or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in Blaine County, Idaho, which appropriately names FNMA if FNMA is a Mortgagee or Owner of a Unit.

13.1.2 Commercial General Liability Insurance. The liability insurance policy shall insure the Board, Association, Owners, Declarant, and Manager. The policy will cover all of the Common Areas in the Condominium with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Areas, host liquor liability, employers' liability insurance, automobile liability insurance, and such other risks as are customarily covered with respect to condominium projects of similar construction, location and use. The liability policy shall also cover any commercial space owned and leased by the Association, and any public ways of the Condominium. Coverage shall also include legal liability arising out of lawsuits related to employment contracts of the Association. The limits of liability shall be in amounts generally required by Mortgagees for projects of similar construction, location and use but shall be at least \$2,000,000 combined single limit for bodily injury and property damage per occurrence and \$3,000,000 general aggregate.

13.1.3 Workers Compensation and Employer's Liability Insurance. The Association will cause the Management Company to purchase and maintain workers compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by Applicable Law.

13.1.4 Fidelity Insurance. The required fidelity insurance shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, employees or the Association and Manager and all other persons who handle or are responsible for handling funds of or administered by, the Association. All such fidelity insurance shall name the Association as obligees and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time during the term of each policy, but, in no event, shall the aggregate amount of insurance be less than three months' aggregate Assessments including reserve funds. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

13.1.5 Boiler and Machinery coverage. If the Condominium has central heating or cooling, the Association shall maintain coverage at least equal to the lesser of \$2,000,000 per accident or the insurable value of the building(s) housing the boiler or machinery.

13.1.7 Other insurance. The Board of Directors may obtain other insurance it deems advisable.

13.1.8 Flood Insurance. The Association shall obtain flood insurance if the Project is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"). Such insurance shall be obtained by the Association, as a Common Expense, under a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein "**insurable property**"), in an amount deemed appropriate by the Association, but not less than the following: The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement costs of all such buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most recent guidelines on the subject issued by the Federal Insurance Administrator.

13.2 Form. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects, authorized to do business in the state of Idaho, and meet the specific requirements of FNMA, so long as FNMA is a Mortgagee or Owner of a Unit, regarding the qualifications of insurance carriers. Notwithstanding any other provision herein, the Association shall continuously maintain in effect property, liability and fidelity insurance that meets the insurance requirements for condominium projects established by FNMA, so long as FNMA is a Mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by them. Casualty insurance on the Project will be carried in a form or forms naming the Association as the insured as trustee for the Owners, which policy or policies will specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Area) and which policy or policies will 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 priority Mortgagees of Owners which from time to time will give notice to the Association of such Mortgages, such proceeds to be used in accordance with this Declaration. Each policy will also provide that it cannot be canceled by either the

insured or the insurance company until after thirty (30) days' prior notice is first given to each Owner and to each first priority Mortgagee requesting such notice. The Association will furnish to each Owner and to Declarant a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance will provide that the insurance thereunder will be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance 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 will 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, will not be invalidated or suspended and will remain in full force and effect.

The commercial general liability policy must name Declarant, the Management Company, and the Association as the insured, with the Association as trustee for the Owners, and will protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance, or other use of the Project.

13.3 Owner's Additional Insurance. Each Owner shall obtain additional property and liability insurance as is typically maintained by Owners of similar homes at his or her own expense; no Owner shall, however, maintain insurance coverage in any manner which would decrease the amount which the Board of Directors, or any trustee for the Board of Directors, on behalf of all of the Owners, will realize under any insurance policy which the Board of Directors may have in force on the Project at any particular time. Coverage amounts, terms and conditions are at the Owner's discretion but should, at a minimum, be enough to cover any obligation to reimburse the Association for the Association's property deductible. Each Owner shall file with the Board of Directors a Certificate of Insurance evidencing the coverage required by this Section within thirty (30) days after purchase of such insurance, and the Board of Directors shall immediately review its effect with its insurance broker, agent or carrier.

13.4 Insurance Proceeds. Insurance proceeds for damage or destruction to any part of the property shall be paid to the Board of Directors on behalf of the Association which shall hold such proceeds in trust for each Owner and their first Mortgage holders, as their interests may appear, and shall segregate such proceeds from other funds of the Association. The Association acting through its Board of Directors shall have the authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board of Directors on behalf of the named insureds under the policy.

13.5 Additional Provisions. The Board of Directors shall, to the extent they are reasonably available, obtain insurance policies containing (or omitting, as indicated below) the following provisions:

13.5.1 Each Owner of a Unit is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Areas or membership in the Association.

13.5.2 The policy shall not provide for contribution by or Assessment against Mortgagees or become a lien on the Project superior to the lien of a First Mortgage.

13.5.3 A provision that the liability of the insurer thereunder is primary and shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for any Owner or any Mortgagee;

13.5.4 Coverage shall not be prejudiced by (a) any act, omission or neglect of an Owner when such act or neglect is not within the scope of the Owner's authority to act on behalf of the Association, or (b) failure of the Association to comply with any warranty or condition regarding any portion of the Premises over which the Association has no control;

13.5.5 A waiver of subrogation by the insurer for any and all claims against the Association, the Owner of any Unit and/or their respective household members, agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

13.5.6 A provision prohibiting the insurer from electing to restore damage in lieu of making a cash settlement without first obtaining the written approval of the Association or, if the Association is a party to an insurance agreement, the written approval of the trustee.

13.5.7 A provision that the insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with Applicable Law pertaining to the cancellation or non-renewal of contracts of insurance.

13.5.8 The standard mortgagee clause included with the Association's property insurance policy shall: (a) Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit in their respective order of preference, whether or not named therein; (b) Provide that such insurance as to the interest of any such Mortgagee shall not be invalidated by any act or neglect of the Board or any persons under any of them; (c) Waive any provision invalidating such mortgage clause by reason of the failure of any such Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that such Mortgagee pay any premium thereon, and any contribution clause; and (d) Provide that, without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

13.5.9 An "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement," which increases coverage and policy limits to the same extent inflation causes the value of the dollar to decrease.

13.5.10 Each Owner appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance provided for under this Article 13, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

ARTICLE 14 CASUALTY, DAMAGE OR DESTRUCTION

14.1 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 is expressed in the deed by which any Owner acquires a Condominium.

14.2 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 their Condominium upon the Condominium's damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner will constitute such appointment.

14.3 General Authority of Association. As attorney-in-fact, the Association will 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 an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in succeeding Sections means restoring the Condominiums, including the site improvements, equipment and facilities therein, 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 will be available to the Association for the purpose of repair or reconstruction unless: (a) Owners representing eighty percent (80%) or more of the total voting power in the Association; and (b) more than fifty percent (50%) of all first priority Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

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

14.5 Repair or Reconstruction. As soon as practicable after receiving these estimates and subject to receiving all governmental approvals, the Association will diligently pursue to completion the repair or construction 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 will be necessary in connection therewith. Such repair or reconstruction will 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 without the written consent of all affected Owners, and the location of the Units will be substantially the same as prior to damage or destruction.

14.6 Funds for Reconstruction. The proceeds of any insurance collected will 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 Section 9.4 hereof, may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such Special Assessments will be allocated and collected as provided in that Section. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

14.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided in Section 14.6 constitute a fund for the payment of costs of repair and reconstruction after casualty. It will be deemed that the first money disbursed in payment for the cost of repair or reconstruction will be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance will be distributed to the Owners requiring repair and/or reconstruction of the Owner's Unit in proportion to the contributions by the Owner pursuant to the assessments by the Association under Section 14.6 of this Declaration.

14.8 Decision not to Rebuild. If eighty percent (80%) or more of the Owners and more than fifty-one percent (51%) of the first priority Mortgagees agree not to rebuild, the Project will be sold. All insurance proceeds and all sale proceeds will be apportioned among the Owners in the same proportions as their respective Percentage Ownerships; and such apportioned proceeds will be paid into separate accounts, each such account representing one (1) Condominium. Each such account will remain in the name of the Association, and will be further identified by the Condominium designation and the name of

the Owner. From each separate account the Association, as attorney in fact, will use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens, and the balance remaining to each respective Owner.

ARTICLE 15 CONDEMNATION

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

15.2 Proceeds. All compensation, damages, and other proceeds therefrom, the sum of which is hereinafter called the “**Condemnation Award**,” will be payable to the Association.

15.3 Complete Taking. In the event that all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime pursuant hereto will terminate. The Condemnation Award will be apportioned among the Owners in the same proportions as their respective Percentage Ownerships, provided that if a standard different from the value of the Condominiums 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 will be employed to the extent it is relevant and applicable. On the basis of the principle set forth in this Section 15.3, the Association will, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled and pay such amounts as soon as practicable.

15.4 Partial Taking. In the event that less than all of the Units are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership regime hereunder will not terminate. Each Owner will be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association will, reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and will apportion the amounts so allocated among the Owners as follows:

15.4.1 Allocation to Common Area. The total amount allocated to taking of or injury to the Common Area will be apportioned among the Owners in the same proportions as their respective Percentage Ownerships;

15.4.2 Allocation to Condominiums. The total amount allocated to severance damages will be apportioned to those Condominiums which were taken or condemned as follows: (a) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within the Owner’s own Unit will be apportioned to the particular Unit involved; and (b) the total amount allocated to consequential damages and any other takings or injuries will be apportioned as the Board, in its reasonable opinion, 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 will employ such allocation to the extent it is relevant and applicable.

15.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, then, upon the distribution of the Owner’s apportioned proceeds, the Owner thereof automatically will cease to be a member of the Association. Thereafter the Association will re-allocate 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 will submit such re-allocation to the remaining Owners for approval and amendment of this Declaration as provided in Section 20.1 hereof.

15.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation will be governed by the procedures specified in Article 14 above.

ARTICLE 16 DISCLAIMERS, WAIVERS, AND ACKNOWLEDGMENTS

Without limiting any other provision in this Declaration, by acceptance of deed to a Condominium, each Owner will conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

16.1.1 That Declarant hereby disclaims any and all warranties, express and implied, including without limitation the implied warranty of habitability and the implied warranty of fitness for a particular purpose, and by acceptance of a deed to a Condominium, each Owner waives and releases Declarant with respect to any such warranties;

16.1.2 That the Project is or may be located adjacent to or nearby roadways and subject to levels of traffic thereon, and to noise, dust, and other nuisances arising from such roadways and levels of traffic; that Declarant hereby specifically disclaims any and all representations and warranties, express and implied, arising from or related to such roadways and levels of traffic thereon, and to noise, dust, and other nuisances arising from such roadways and levels of traffic; and each Owner hereby waives and releases Declarant from any and all claims arising from or related to roadways and levels of traffic thereon, and to noise, dust, and other nuisances arising from such roadways and levels of traffic;

16.1.3 That construction and installation of improvements by Declarant or other Owners, or third parties, may involve the operation of noisy equipment, generate dust, and may impair or eliminate the view, if any, of or from any Unit and/or Common Areas; and each Owner hereby waives and releases Declarant from any and all claims arising from or relating to such construction and installation, view impairment or elimination including but not limited to, any claims for nuisance or health hazards;

16.1.4 That construction is an industry inherently subject to variations and imperfections, and items that do not materially affect safety or structural integrity will be deemed “**Expected Minor Flaws**” (including, but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and not constructional defects; and that and each Owner hereby waives and releases Declarant from any and all claims arising from or relating to such Expected Minor Flaws; and

16.1.5 That creation of the Project will not create any presumption, or duty whatsoever of Declarant with regard to security or protection of Person or property within or adjacent to the Project; and each Owner hereby waives and releases Declarant from any and all claims arising from or related to such security or protection, or lack thereof.

16.1.6 That there are no understandings, representations, warranties or promises of any kind that have been made to induce the Owners from owning Units in the Project except as set forth in this Declaration or any other written valid and binding agreement between the Declarant and the Owners, that this Declaration or any other written valid and binding agreement (including without limitation the other Condominium Documents) between the Declarant and the Owners sets forth in full the entire

agreement between the parties and governing the Project, and the Owners have not relied on any verbal agreement, statement, representation, warranty or other promises that is not expressed in this Declaration or any other written agreement between the Declarant and the Owners. Except as may be set forth in any written agreement between Owner and Declarant, each Owner has acquired and accepted its Condominium Unit “as is, where is” with all faults.

ARTICLE 17 RESOLUTION OF DISPUTES

17.1 Agreement to Avoid Litigation. Declarant, the Association and the Owners agree that it is in their best interests to provide a fair, impartial, and expeditious procedure for the resolution of disputes related to the Condominium Documents instead of costly, lengthy, and unpredictable litigation. Accordingly, Declarant, the Association (including its Board, officers, and committee members), each Owner and any party claiming a right or interest under the Condominium Documents (each, a “**Bound Party**”) agree to encourage the efficient resolution of disputes within the Project without the emotional and financial costs of litigation. Each Bound Party therefore covenants and agrees that all claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of the Condominium Documents or the rights, obligations, or duties of any Bound Party under the Condominium Documents, or any disputes among the Bound Parties relating to the Common Area (each a “**Claim**” and collectively, “**Claims**”) will be subject to the provisions of Section 17.3 unless exempt under Section 17.2. All Claims will be subject to resolution pursuant to this Article 17 as a condition precedent to the institution or continuation of any legal or equitable proceeding; provided, however, any Bound Party may proceed in accordance with Applicable Law to comply with any notice or filing deadlines prior to resolution of the Claim.

17.2 Exemptions. None of the following Claims will be subject to this Article 17 unless all Bound Parties thereto agree to submit such Claim to the dispute resolution procedures set forth in this Article 17:

17.2.1 Any Claim by the Association against any Bound Party to enforce the obligation to pay any Assessment to the Association under the Condominium Documents;

17.2.2 Any Claim by Declarant or the Association to obtain injunction or equitable relief to enforce any provision of the Condominium Documents;

17.2.3 Any Claim between Owners where the Declarant or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Condominium Documents;

17.2.4 Any Claim in which any indispensable party is not a Bound Party;

17.2.5 Any Claim against a Released Party that would be barred by Section 8.9;

17.2.6 Any Claim which otherwise would be barred by Applicable Law (such as, for example, the applicable statute of limitations); or

17.2.7 Any Claim arising out of or relating to the interpretation, application or enforcement of any purchase, sale or construction agreement with Declarant or any builder related to the construction of improvements within the Project, or the rights, obligations, or duties of any Bound Party under such agreements, it being understood that Applicable Law and the provisions of such agreements will control the resolution of any claims or disputes related thereto.

17.3 Dispute Resolution.

17.3.1 Direct Discussions. Any Bound Party having a Claim against any other Bound Party will notify such party(ies) of the Claim, stating plainly and concisely the following: (a) the nature of the Claim; (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (c) the basic facts supporting the allegations in the Claim; (d) the other Persons involved in the Claim or with personal knowledge of the facts alleged; and (e) the claimant's proposed remedy, including the specific monetary amounts (if any) demanded. The Bound Parties to the Claim will make reasonable efforts to meet in person to resolve the Claim by good faith discussions and negotiations – it being understood that the best opportunity to achieve a fair and satisfactory resolution to a Claim is ordinarily through early discussions and negotiations held in good faith.

17.3.2 Dispute Resolution. If the Bound Parties to a Claim are unable to resolve the Claim through direct discussions within a reasonable time, either Bound Party may submit the Claim to the Board for assistance in resolving the Claim. In such event, the Board may, by notice to each Bound Party to the Claim within thirty (30) days of its receipt of a request for assistance, do any of the following. If the Board fails to notify the Bound Parties within thirty (30) days of its receipt of a request for assistance, the Board will be deemed to have elected to exempt the Claim from this Article 17.

17.3.3 Order the Bound Parties to continue direct discussions and negotiations for a period of up to thirty (30) days. If the Claim is not resolved in such period, any Bound Party may request the Board's further assistance to resolve the Claim;

17.3.3.1 Order the Bound Parties to mediate the Claim with an independent real estate attorney, real estate professional, or judge selected by the Board. The mediator will set the rules of the mediation. Any party to the mediation can invite additional parties to the mediation if the presence of such additional party is required for a complete resolution of any Claim. The parties will share the mediator's fee and any filing fees equally. Unless otherwise agreed, the mediation will be held within thirty (30) days of the order for mediation and will be held in a neutral location near the Project selected by the mediator. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof. If the mediation does not resolve the Claim, the Bound Parties may proceed to litigation of the Claim in any court of competent jurisdiction;

17.3.3.2 Order the Bound Parties to settle the Claim through arbitration by a single arbitrator conducted in accordance with the Idaho Uniform Arbitration Act (Idaho Code, Title 7, Chapter 9) except as otherwise provided herein. The arbitrator will be any independent real estate attorney or judge appointed by the Board. The arbitrator will set the rules of the arbitration. The arbitrator may, in its discretion, order parties to produce documents relevant to the dispute and may order written discovery and depositions (but with care to avoid burdensome discovery or depositions). The arbitrator will endeavor to hold the arbitration at mutually convenient times and locations; provided, however, the arbitrator will endeavor to complete the arbitration within forty-five (45) days after appointment of the arbitrator. The parties will bear their own attorneys' fees (if any) and share the arbitrator's fees equally; provided, however, the arbitrator may award costs, arbitrator's fees and attorneys' fees to the substantially prevailing party. The arbitrator's award will be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof

17.3.3.3 If the Claim is within the jurisdiction of the Small Claims Department of the Magistrate Division (currently, monetary claims for \$5,000 or less), order a Bound Parties to file such Claim exclusively therein;

17.3.3.4 Elect to exempt the Claim from this Article 17, at which time the Bound Parties are free to exercise any right or remedy in accordance with Applicable Law.

17.3.4 Enforcing Resolutions. If the Bound Parties resolve any Claim through mediation or arbitration pursuant to this Article 17 and any Bound Party thereafter fails to abide by the terms of such resolution (i.e., settlement agreement or arbitrator's award), then any other Bound Party may take any legal or other action to enforce such settlement agreement or arbitrator's award without the need to comply again with the procedures set forth in this Article 17. In such event, the Bound Party taking action to enforce the resolution will be entitled to recover from any non-complying Bound Party all costs and attorneys' fees reasonably incurred in such enforcement.

ARTICLE 18 INITIAL DEVELOPMENT PERIOD

18.1 Project Management. Each Owner recognizes that the Project will require a high level of knowledge, effort, judgment, diligence, and attention during the Initial Development Period, and that level is beyond what can reasonably be expected from Project volunteers. Accordingly, each Owner agrees that it is in the best interest of the Project for Declarant to have full management authority for the Project during the Initial Development Period, including the sole and exclusive right to appoint, remove, and replace directors of the Board, and to fill vacancies on the Board, at any time and from time-to-time in Declarant's sole discretion by virtue of its voting rights as the Declarant Member.

18.2 Declarant Exemptions. Declarant may, from time-to-time in Declarant's discretion and without first seeking or obtaining the approval of Association:

18.2.1 Make modifications or improvements to the Common Area as Declarant deems appropriate, and may also may modifications or improvements to any Unit prior to the conveyance thereof as Declarant deems appropriate;

18.2.2 Place or authorize signs of such size, design, and number as Declarant deems appropriate for the initial development of the Project, including signs to identify the Project, display information pertaining to the Project, display information or instructions to builders, advertise Condominiums for sale (including sale events and open houses), and to advertise Project elements or events;

18.2.3 Use or allow any third party to use any Condominium as a model home, sales office, or construction office; or

18.2.4 Place or authorize portable or temporary structures upon the Common Area of the Project, and otherwise allow the Common Area to be used as a construction storage yard.

18.3 Assignment of Declarant's Rights. Declarant may assign any or all of its rights under the Condominium Documents to any Person in a written instrument(s) that contains the assignee's acceptance of such assignment and agreement to assume any of Declarant's obligations pertaining to the rights assigned, which acceptance and assumption will be effective upon the recordation of such written instrument(s) recorded in the real property records of Blaine County, Idaho. Declarant will promptly provide a copy of the recorded instrument to the Association and, thereupon, be released from Declarant's obligations pertaining to the rights assigned and the obligations assumed.

ARTICLE 19 TERM

The Declaration will be perpetual, subject only to termination at the removal of the Project from the Condominium Act in accordance with Applicable Law (i.e., Idaho Code Section 55-1510, or its successor provision), which termination must be separately approved and performed in the same manner as removal of the Project from the Condominium Act.

ARTICLE 20 AMENDMENT

20.1 Written Instrument; Recordation. No amendment or termination of this Declaration will be effective unless in a written instrument, and will not take effect until the amendment or termination is recorded in the Blaine County Recorder's Office.

20.2 By Declarant Prior to Conveyance of First Unit. Prior to Declarant's conveyance of a Unit, Declarant may amend or terminate this Declaration by recording written instrument setting forth such amendment or termination in the Blaine County Recorder's Office.

20.3 Material Amendments. Except as other amendments are permitted under this Declaration, any Material Amendment to this Declaration must be by a written instrument setting forth such amendment, signed and acknowledged by the president and secretary of the Association certifying and attesting that the amendment has been approved at a Qualified Meeting by members entitled to cast at least sixty-seven percent (67%) of the votes of members present, in person or by proxy, and if Declarant votes at the Qualified Meeting, that the amendment has been approved by the vote of a majority of all members other than Declarant. The amendment will be effective upon the recordation thereof with the Blaine County Recorder's Office. Any Material Amendment which changes the rights of any specific class of members must also be approved by members entitled to cast at least fifty-one percent (51%) of the votes of all members of such class present, in person or by proxy, and voting at any Qualified Meeting, or at least fifty-one percent (51%) of the total authorized votes of all members of such class.

20.4 Minor Amendments. The Association may make a Minor Amendment to this Declaration by a written instrument setting forth such amendment, signed and acknowledged by the president and secretary of the Association certifying and attesting that the amendment has been approved by the vote or written consent of Members representing a majority of the total voting power in the Association.

20.5 Financing Amendments. Declarant and the Association will each have the power and authority, acting individually or collectively, to amend to this Declaration (including the Financing Rider) by a written instrument setting forth such amendment, if the amendment is necessary or convenient (in the reasonable opinion of Declarant or the Association) to allow Owners to take full advantage of, or secure the full availability of, any Financing Programs.

20.6 Mortgagee Protection. Any amendment that may have a material adverse nature to mortgagees must be approved by first priority Mortgage holders of Units that represent at least fifty-one percent (51%) of the voting power of Units that are subject to first priority Mortgages. Any Mortgage holder will be deemed to have given its implied approval of any amendment proposal if the Mortgage holder fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgage Holder receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

20.7 Effect of Amendment. Any amendment of this Declaration approved in the manner specified in this Article 20 will be binding on all Owners, notwithstanding that some or all Owners may

not have voted for or consented to such amendment. Such amendment may add to and increase the covenants, conditions, restrictions, and easements applicable to the Project but will not prohibit or unreasonably interfere with the allowed uses of the Owner's Condominium which existed prior to the amendment.

ARTICLE 21 FINANCING

21.1 Financing Rider. The Condominium Documents are subject to the provisions of the Financing Rider. To the extent that any provision of the other Condominium Documents conflict with, or are inconsistent with, the provisions of the Financing Rider, then the provisions of the Financing Rider will govern.

21.2 Mortgage Protection. The Association must provide notice of the following to any holder, insurer or guarantor of any first position Mortgage, The notice will delivered to the address for the holder, insurer or guarantor in the real property records of Blaine County, unless the holder, insurer or guarantor provides another address by notice to the Association. The Association need not send any notice to any holder, insurer or guarantor that is not of public record, or that has not provided its name, address and the Unit number or address of the Unit on which it has its first position Mortgage.

21.2.1 Any condemnation or casualty loss that affects either a material portion of a Building or a Unit encumbered by such first Mortgage;

21.2.2 Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds a first Mortgage;

21.2.3 A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

21.2.4 Any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

ARTICLE 22 NOTICES; REGISTRATION OF ADDRESSES

Each Owner must register the Owner's email address and mailing address with the Association, and update the addresses as frequently as necessary for the Association to always have the Owner's current addresses. All notices or demands intended to be served upon any Owner will be sent by United States Mail postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner fails to provide the Association with a valid address, all notices will be sent to that Owner's address on record with the Blaine County Assessor's office. All notices or demands intended to be served upon the Association will be given by registered or certified mail, postage prepaid, to the address of the Association's registered agent on file with the Idaho Secretary of State. All notices or demands to be served on Mortgagees pursuant hereto will 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. Unless the Mortgagee furnishes the Association such address, the Mortgagee will not be entitled to receive any of the notices provided for in this Declaration. Any notice referred to in this Section will be deemed given when deposited in the United States mail in the form provided for in this Section.

ARTICLE 23 MISCELLANEOUS

23.1 Enforcement and Non-Waiver.

23.1.1 Right of Enforcement. Except as otherwise provided herein, any Owner, the Association, and Declarant will each have the right to enforce any or all of the provisions of this Declaration against any Condominium or any part or portion of the Project and against the Owners thereof. The failure of any Owner or Occupant to comply with Applicable Law pertaining to the ownership, use, or occupancy of any Condominium or other portion of the Project, or to comply with any provision of the Condominium Documents, is hereby declared a nuisance and gives rise to a cause of action (subject to Article 17) in Declarant, the Association (on its own and/or on behalf of any consenting Owners) and any affected Owner for recovery of damages or for negative or affirmative injunctive relief or both enforce the provisions hereof only as set forth in this Declaration. Each remedy provided herein is cumulative and not exclusive. If any party initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the substantially prevailing party will be entitled to recover any costs and attorneys' fees reasonably incurred therein

23.1.2 Non-Waiver. Failure of the Declarant or the Board to insist upon strict compliance with the Condominium Documents, or to exercise any right contained in such documents, or to serve any notice or to institute any action, will not be construed as a waiver or a relinquishment of the right to insist on compliance in the future with any term, covenant, condition or restriction. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, will not be a waiver of the breach. No waiver by the Board of any requirement will be effective unless expressed in a writing signed for by the Board.

23.2 Interpretation. The provisions of this Declaration will be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. This Declaration will be construed and governed under the laws of the State of Idaho without regard to its conflicts of law principles. Any legal action to interpret or enforce this Declaration must be filed exclusively in the state or federal courts situated in Blaine County, Idaho. The interpretation of this Declaration will also be governed by the following:

23.2.1 Restrictions Construed Together. All of the provisions hereof will be liberally construed together to promote and effectuate the fundamental concepts of the development of the Project as set forth in the recitals to this Declaration.

23.2.2 Restrictions Severable. Notwithstanding the provisions of the foregoing Section 23.2.1, each of the provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision herein.

23.2.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will each include the masculine, feminine and neuter. As used herein, the word "including" will be deemed to be followed by "but not limited to" unless otherwise indicated.

23.2.4 Captions. All captions, titles and the table of contents used in this Declaration are intended solely for convenience of reference and will not affect that which is set forth in any of the provisions hereof.

23.2.5 Board Interpretation. In the event that any provision of this Declaration is deemed ambiguous on any matter (by the Board or any court of competent jurisdiction), the Board's interpretation such provision will be given deference so long as the interpretation is not arbitrary, capricious or in direct conflict with the unambiguous express provisions of this Declaration.

23.3 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration will continue, notwithstanding that the Owner may have leased, rented or entered a contract of sale of his interest as provided herein, but the Owner of a Condominium will have no obligation for Assessments or other obligations accruing after the Owner conveys such Condominium.

23.4 Exhibits. All exhibits attached hereto are incorporated herein as if set forth in full herein. However, in the event of any conflict between such exhibits and the text of the Declaration, the Declaration will control. Any reference to an exhibit (or a document in an exhibit) will mean the Exhibit or document as it is amended or supplemented from time to time.

[end of text; signature page follows]

This Declaration is executed effective as of the Effective Date.

“Declarant”

THE PERRY BUILDING LLC,
an Idaho limited liability company

By: _____
Name: _____
Its: _____

STATE OF IDAHO)
) ss.
County of Blaine)

This record was signed before me on September ____, 2022 by _____
as [Manager] of The Perry Building LLC.

Notary Signature

**LENDER CONSENT
(IF PROPERTY ENCUMBERED BY MORTGAGE PRIOR TO RECORDATION)**

The undersigned holder of a recorded security interest in the Property hereby consents to the recordation of the Plat and this Declaration.

[_____]

By: _____
Name: _____
Title: _____

STATE OF IDAHO)
 : ss.
County of Blaine)

This record was signed before me on _____, 2022 by _____
as _____ of [_____].

Notary Signature

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

PLAT

[attach reduced size copies of the plat prior to recordation]

EXHIBIT C
COPY OF ARTICLES OF INCORPORATION

EXHIBIT D

PERCENTAGE OF OWNERSHIP INTEREST IN THE COMMON AREA

Unit	Unit Type	Percentage Ownership in Common Area	Votes
1-R01	Commercial		
1-R02	Commercial		
1-R03	Commercial		
1-R04	Commercial		
U101	Residential		
U102	Residential		
U103	Residential		
U104	Residential		
U105	Residential		
U106	Residential		
U107	Residential		
U108	Residential		
U109	Residential		
U110	Residential		
U111	Residential		
U201	Residential		
U202	Residential		
U203	Residential		
U204	Residential		
U205	Residential		
U206	Residential		

Unit	Unit Type	Percentage Ownership in Common Area	Votes
U207	Residential		
U208	Residential		
U301	Residential		
U302	Residential		
U303	Residential		
U304	Residential		

Storage Area		
TOTAL		100%

EXHIBIT F

FINANCING RIDER

The purpose of this Financing Rider is to set forth provisions that Declarant or the Association may (now or in the future) deem necessary or convenient (in the reasonable opinion of Declarant or the Association) to allow Owners to take full advantage of, or secure the full availability of, any Financing Programs. Capitalized terms not otherwise defined in this Financing Rider, and defined in the Declaration to which this Financing Rider is attached, will have the meaning set forth in the Declaration. To the extent that any provision of the other Condominium Documents conflict with, or are inconsistent with, the provisions of this Financing Rider, then the provision of this Financing Rider will govern.

F.1 Compliance with Laws. The Project has been created and exists in full compliance with the state law requirements of Idaho and all other Applicable Laws and regulations. To the extent the Condominium Documents conflict with any Applicable Laws and regulations, the Applicable Laws and regulations will govern.

F.2 Limitations on Ability to Sell/Right of First Refusal. Any limitations in the Condominium Documents on the ability of an Owner to sell a Unit (including rights of first refusal, if any) will not adversely impact the rights of a Mortgagee or its assignee to:

- (1) Foreclose or take title to a Condominium pursuant to the remedies in the Mortgage;
- (2) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor;
or
- (3) Sell or lease a unit acquired by the Mortgagee or its assignee.

F.3 Limitations on Amendments to Condominium Documents

- (1) Any amendment to the Condominium Documents of a material adverse nature to Mortgagees must be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes of Unit estates that are subject to Mortgages.
- (2) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs or for other reasons to be agreed to by Mortgagees that represent at least fifty-one percent (51%) percent of the votes of the Unit estates that are subject to Mortgages.
- (3) A Mortgagee will be deemed to have given implied approval when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

F.4 Rights of Condominium Mortgagees and Guarantors. The Association must provide each Mortgagee and guarantor of the Mortgage on any Unit in the Project timely written notice of:

- (1) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage;
- (2) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;

- (3) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (4) Any proposed action that requires the consent of a specified percentage of Mortgagees.

F.5 First Mortgagee's Rights Confirmed. No provision of the Condominium Documents gives a Unit owner or any other party priority over any rights of the first Mortgagee of the Unit pursuant to its Mortgage in the case of payment to the Unit owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Area.

F.6 Unpaid Dues. Any first Mortgagee who obtains title to a Unit pursuant to the remedies in the Mortgage or through foreclosure will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the Unit by the Mortgagee. If the Association lien priority includes costs of collecting unpaid dues, the lender will be liable for any fees or costs related to the collection of the unpaid dues.

F.7 Fidelity Insurance. The Association must maintain fidelity insurance for all of its officers, directors and employees, and all other persons handling or responsible for funds administered by the Association. The insurance coverage must be the greater of (a) three(3) months of aggregate assessments on all Units plus reserve funds; or (b) the minimum required by state law. If the Association engages a management company, the policy must demonstrate that they must meet the standard for both the Association and the management company. Fidelity insurance is insurance that protects the Association against employee dishonesty, crime or other fraudulent acts by one or more employees.

F.8 Department of Veterans Affairs Financing. To the extent that any provision of the Condominium Documents is inconsistent with the requirements of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("**DVA Financing**"), such provision will not apply to any Unit that is: (a) encumbered by DVA Financing or; (b) owned by the Department of Veterans Affairs.

F.9 Extraordinary Action Limitation.

- (1) If required by Applicable Law or the requirements of any then current Mortgagee of a Mortgage under the Financing Programs, any Extraordinary Action of the Association must be approved at a Qualified Meeting by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and if Declarant votes at the Qualified Meeting, that the Extraordinary Action must be approved by the vote of a majority of all Owner Members present. The following Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members, including at least a majority of the total authorized votes entitled to be cast by Owner Members: (x) dissolution of the Association except pursuant to a consolidation or merger; and (y) conveyance of all Common Areas.
- (2) "**Extraordinary Action**" includes: (1) merging or consolidating the Association (other than with another nonprofit entity formed for purposes similar to the Association); (2) determining not to require professional management if that management is required by the Condominium Documents, a majority of eligible Mortgagees or a majority vote of the Owners; (3) expanding the Association to include land not previously described as additional land which increases the overall land area of the Project or number of units by

more than ten percent (10%) percent; (4) abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Areas (except for (a) granting easements which are not inconsistent with or which do not interfere with the intended Common Area use; (b) dedicating common area as required by a public authority; (c) limited boundary-line adjustments made in accordance with the Condominium Documents; or (d) transferring Common Area pursuant to a merger or consolidation with a nonprofit entity formed for purposes similar to the Association); (5) using insurance proceeds for purposes other than construction or repair of the insured improvements; or (6) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the Association's annual operating budget).

EXHIBIT G

Description of Limited Common Areas

A. Limited Common Areas Assigned to Each Commercial Unit:

- (1) Storefront.
- (2) Area reserved for signage.
- (3) Unit Entry.
- (4) Right to use the sidewalk immediately outside each Commercial Unit to the extent allowed by City of Ketchum ordinances including for outdoor seating, displays or sales.
- (5) Awning.
- (6) Assigned parking spaces and storage rooms, if any.

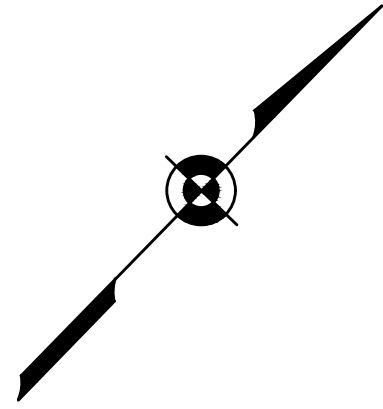
B. Residential Limited Common Areas:

- (1) Residential amenities on Level 1 including the residential entry, vestibule, and lobbies.
- (2) Electrical room and trash room on P1.
- (3) Stairs and corridors providing access to only the Residential Units.

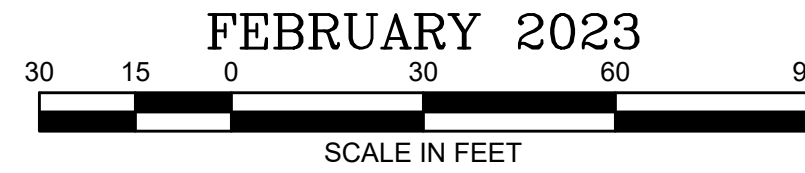
C. Limited Common Areas assigned to certain Residential Units:

Parking spaces and storage rooms assigned to individual Units on Exhibit D.

Decks, terraces, patios, or balconies designed to serve a single Unit.



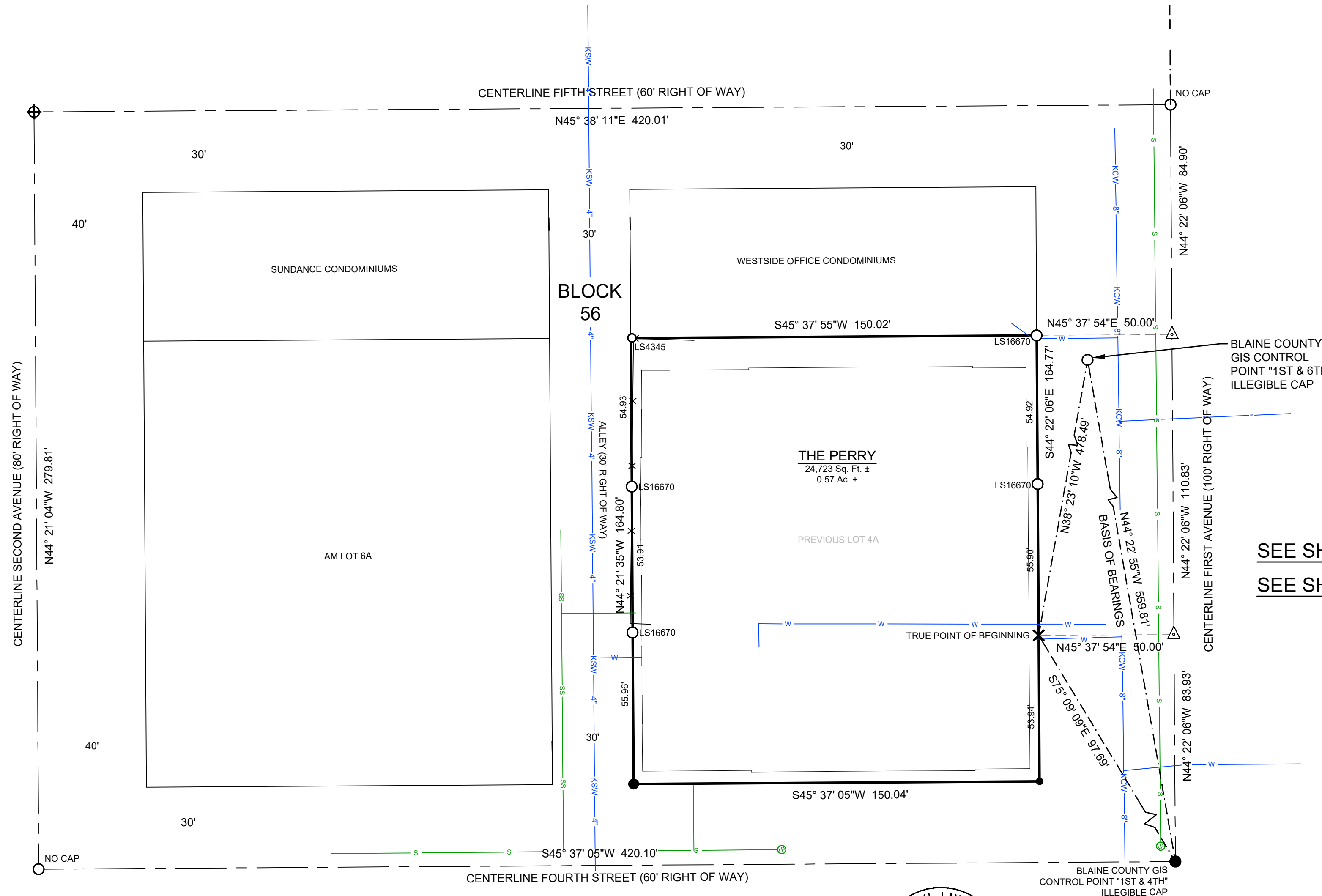
A PLAT SHOWING
THE PERRY
 WHEREIN LOT 2A, BLOCK 56, KETCHUM TOWNSITE, IS CONVERTED INTO CONDOMINIUMS AS SHOWN HEREON
 LOCATED WITHIN SECTION 13, T.4 N., R.17 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO



SCALE: 1" = 30'

LEGEND

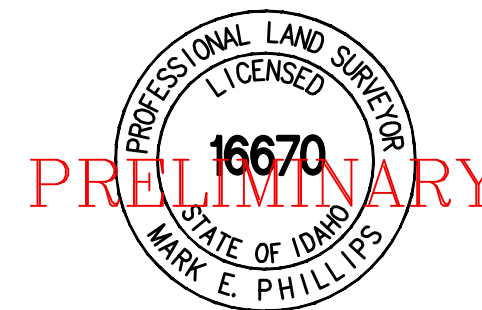
- Property Line
- Building Footprint
- Adjoinder's Lot Line
- Centerline of Right of Way
- Fence Line
- Survey Tie Line
- GIS Tie Line
- Ketchum City Water
- Ketchum Spring Line Water
- Water Service Tie Line
- Sewer Main
- Sewer Service
- Sewer Manhole
- Set Mag Nail
- Calculated Point, Not Set
- Found 1" Survey Marker
- Found 1/2" Rebar
- Found 5/8" Rebar
- Set 5/8" Rebar, P.L.S. 16670



SEE SHEET 2 FOR SURVEY NARRATIVE & NOTES
SEE SHEET 5 FOR VICINITY MAP

HEALTH CERTIFICATE: Sanitary restrictions as required by Idaho Code Title 50, Ch. 13, have been satisfied. Sanitary restrictions may be reimposed in accordance with Idaho Code Title 50, Ch. 13, Sec. 50-1326, by issuance of a Certificate of Disapproval.

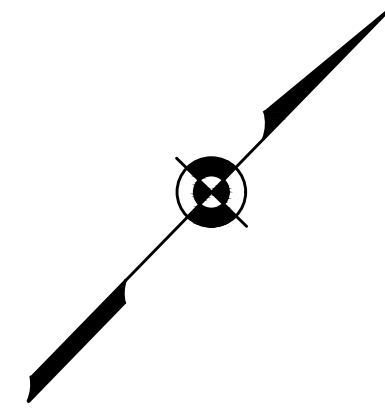
Date _____ South Central District Health Dept., EHS



MARK E. PHILLIPS, P.L.S. 16670

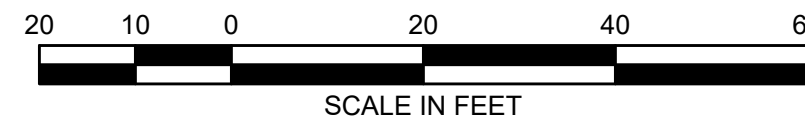
THE PERRY
 GALENA ENGINEERING, INC.
 HAILEY, IDAHO

SHEET 1 OF 6
 Job No. 8059-02



SCALE: 1" = 20'

A PLAT SHOWING THE PERRY



FIRST FLOOR

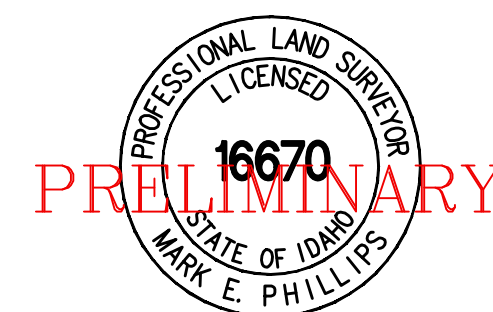
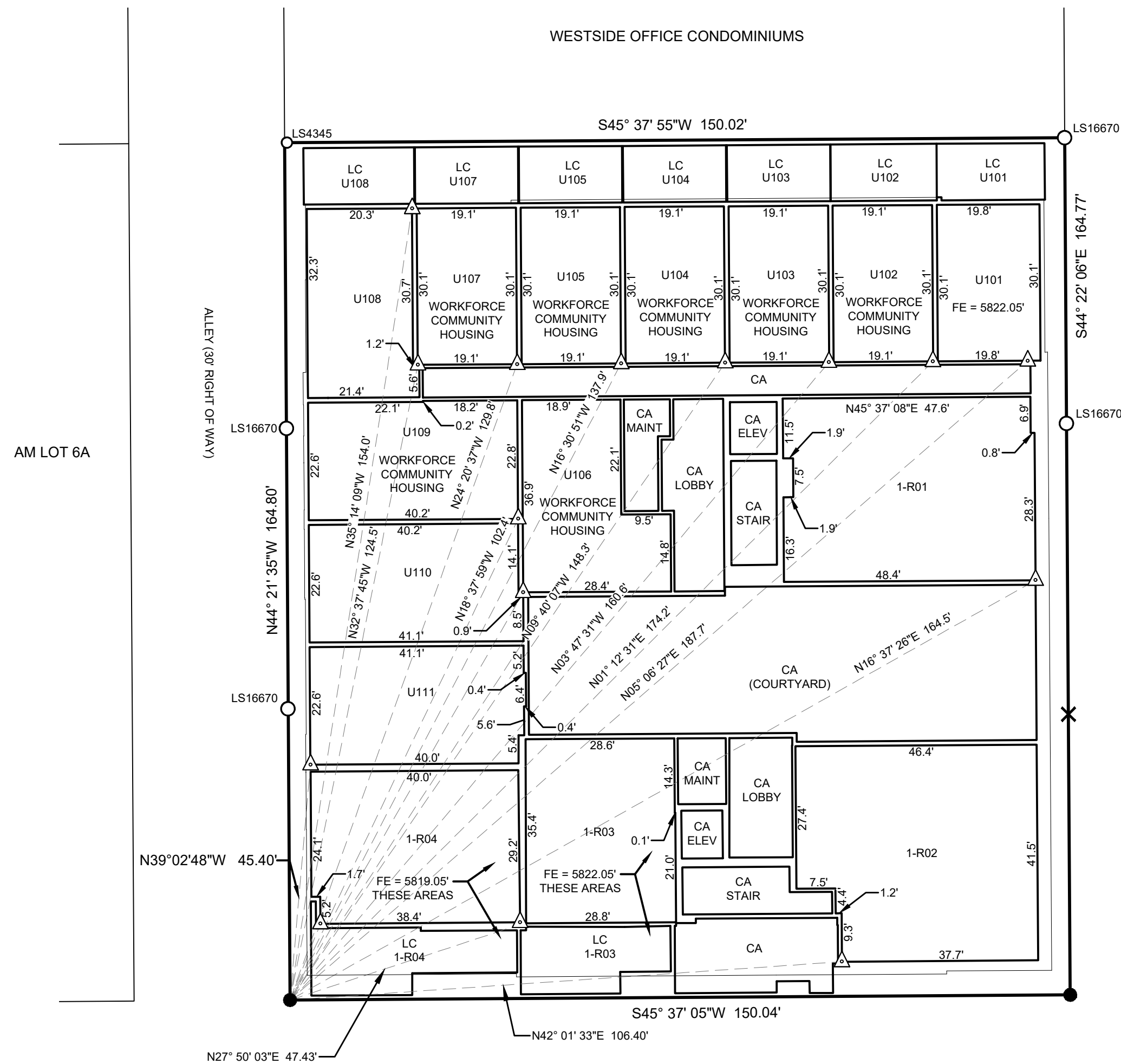
FE = 5825.30' (UNLESS OTHERWISE NOTED)
CE = 5836.56

LEGEND

	Property Line
	Adjoinder's Lot Line
	Building Footprint
	Unit Line
	Survey Tie Line
	Found 1/2" Rebar
	Found 5/8" Rebar
	Found Magnetic Nail & Chiseled X
	To Be Set 5/8" Rebar, P.L.S. 16670
	Calculated Point, Nothing Set
	Floor Elevation
	Ceiling Elevation
	Limited Common
	Common Area
	Maintenance Storage
	Elevator

SURVEY NARRATIVE & NOTES

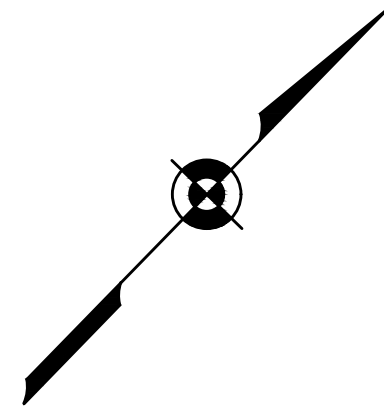
- The purpose of this survey is to show the monuments found during the boundary retracement of Lot 4A, Block 56, Ketchum Townsite and convert said property into condominiums as shown hereon. The boundary shown is based on found centerline monuments, on the recorded plat of Ketchum: Block 56: Lots 3A and 4A, Instrument Number 403336 and the plat of the Village of Ketchum, Instrument Number 302962, both records of Blaine County, Idaho. All found monuments have been accepted. The missing monuments were reset by block breakdown and proportioning record distances between found monuments. Additional documents used during the course of this survey include the Record of Survey for Lots 2 & 3A, Block 56, Ketchum Townsite, Instrument Number 678114, the Record of Survey for D-K Condos, The N.E. 1/2 of Lots 5, Block 56, Ketchum Townsite, Instrument Number 694650, the plat of Ketchum, Block 56, Lot 6A, Instrument Number 438337 and the plat for D-K Condominiums, Instrument Number 195387, all records of Blaine County, Idaho.
- The distances shown are measured. Refer to the above referenced documents for previous record data.
- In interpreting the Declaration, Plat or Plats, and Deeds, the existing physical boundaries of the unit as originally constructed, or reconstructed in lieu thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, plat or plats, and/or deeds, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown in the declaration, plat or plats, and/or deeds, and the actual boundaries of the units in the buildings.
- Unless otherwise shown hereon, this survey does not purport to reflect any of the following which may be applicable to subject real property: natural hazards, encroachments, wetlands, ditches, easements, building setbacks, restrictive covenants, subdivision restrictions, zoning or any other land-use regulations.
- A Title Commitment for 471 North 1st Avenue, has been issued by Pioneer Title Co., File Number 251444, with a Commitment Date of December 3, 2020. Certain information contained in said title policy may not appear on this map or may affect items shown hereon. It is the responsibility of the owner or agent to review said title policy. Some of the encumbrances and easements listed in the title report are NOT plotted hereon.
- Property shown hereon is subject to terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by applicable Condominium Law or the Condominium Declaration recorded under Instrument Number _____, records of Blaine County, Idaho. Consult the Condominium Declarations for the definition of common and limited common area.
- All area outside of units that is not designated as limited common is common area. areas of "common" or "limited common" are shown by diagram.
- Building ties are to the interior corners of unit walls. Elevation datum is NAVD 1988.
- Utility easements necessary to allow for access and maintenance of utilities serving units other than the unit they are located in are hereby granted by this plat.
- Zoning is CC-2, Community Core-Mixed Use Zone. Refer to City of Ketchum Zoning Ordinance for more specific information about this zone.
- The owner/subdivider is The Perry Building L.L.C. of 100 Lindsay Circle, Ketchum, ID 83349. The surveyor/representative is Mark E. Phillips, Galena Engineering, Inc., 317 N. River St., Hailey, Idaho 83333.
- All accessible area outside of units that is not designated as Limited Common is Common Area. Areas of "Common" or "Limited Common" are shown by diagram.
- Workforce community housing units are subject to FAR Exceedance Agreement, Instrument Number _____, and Deed Covenant, Instrument Number _____, both records of Blaine County.



MARK E. PHILLIPS, P.L.S. 16670

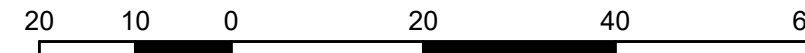
THE PERRY
GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 2 OF 6
Job No. 8059-02



SCALE: 1" = 20'

A PLAT SHOWING THE PERRY



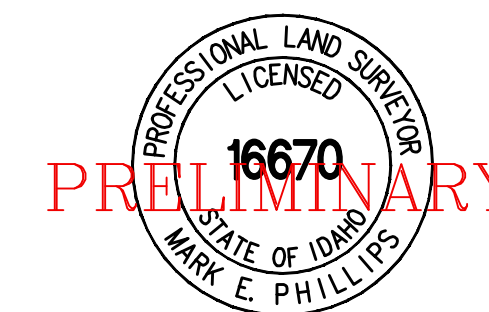
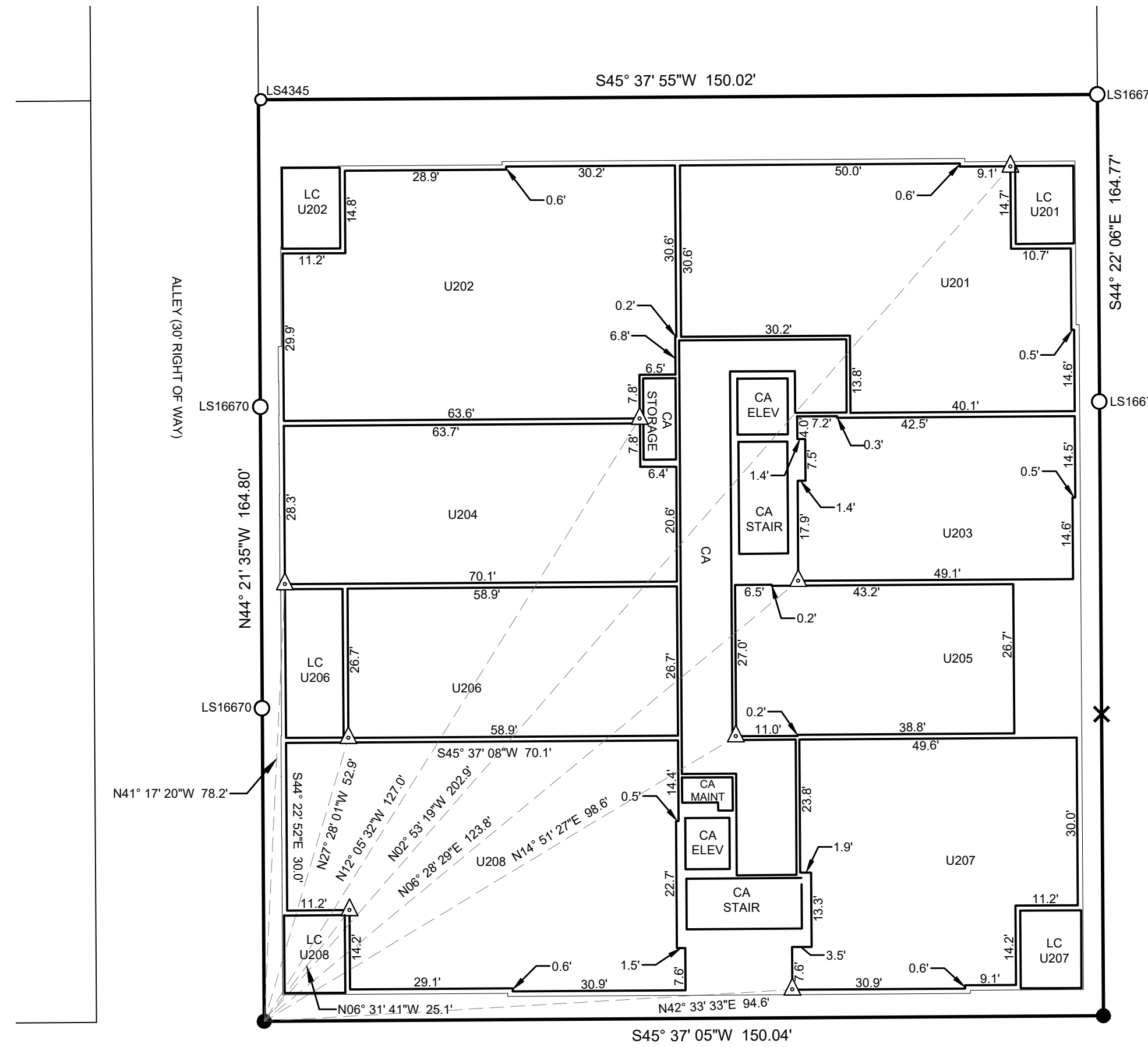
SCALE IN FEET

SECOND FLOOR

FE = 5838.05'
CE = 5848.73'

LEGEND

- Property Line
- Adjoiner's Lot Line
- Building Footprint
- Unit Line
- Survey Tie Line
- Found 1/2" Rebar
- Found 5/8" Rebar
- Found Magnetic Nail & Chiseled X
- To Be Set 5/8" Rebar, P.L.S. 16670
- Calculated Point, Nothing Set
- FE Floor Elevation
- CE Ceiling Elevation
- LC Limited Common
- CA Common Area
- MAINT Maintenance Storage
- ELEV Elevator

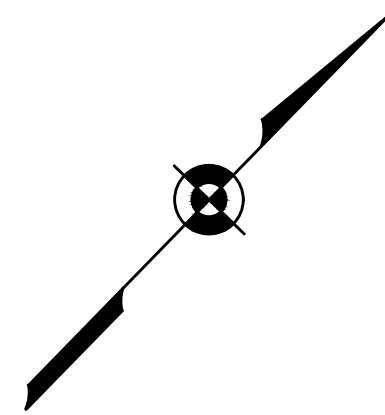


MARK E. PHILLIPS, P.L.S. 16670

THE PERRY

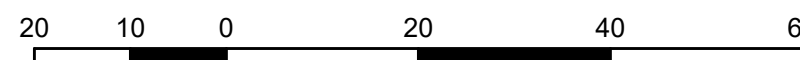
GALENA ENGINEERING, INC.
HAILEY, IDAHO

SHEET 3 OF 6
Job No. 8059-02



SCALE: 1" = 20'

A PLAT SHOWING THE PERRY



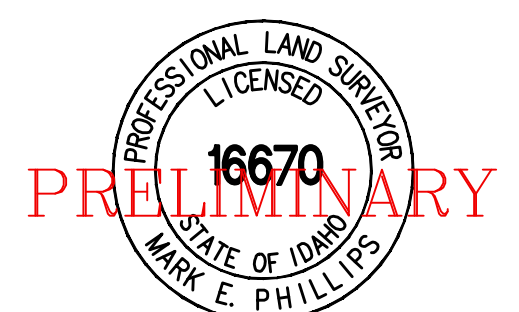
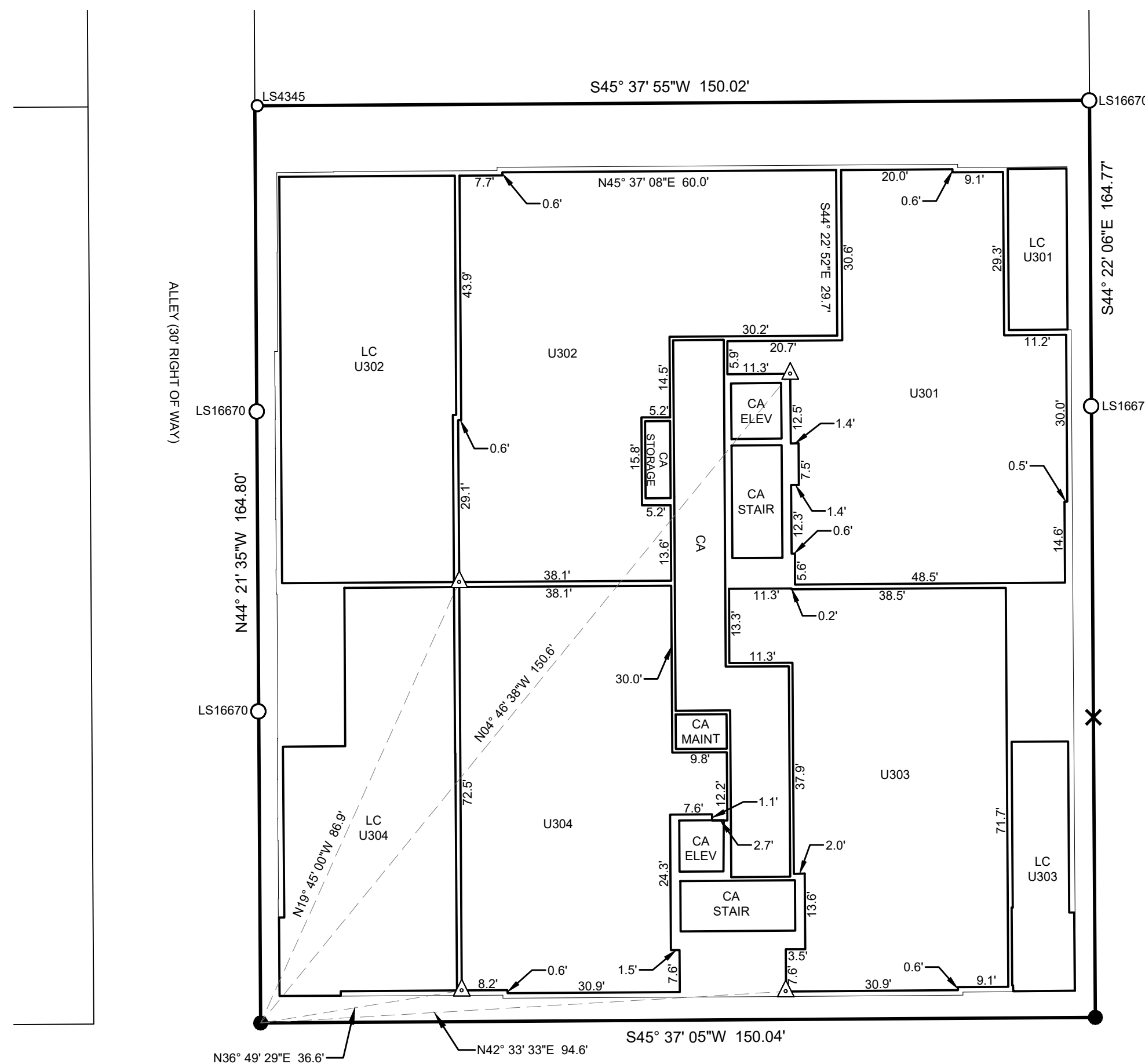
SCALE IN FEET

THIRD FLOOR

FE = 5850.22'
CE = 5861.05'

LEGEND

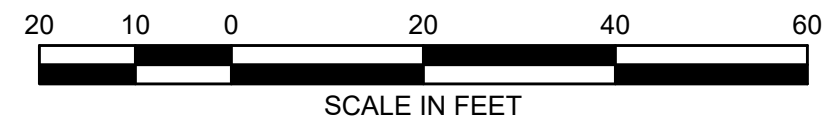
- Property Line
- Adjoinder's Lot Line
- Building Footprint
- Unit Line
- Survey Tie Line
- Found 1/2" Rebar
- Found 5/8" Rebar
- Found Magnetic Nail & Chiseled X
- To Be Set 5/8" Rebar, P.L.S. 16670
- Calculated Point, Nothing Set
- FE Floor Elevation
- CE Ceiling Elevation
- LC Limited Common
- CA Common Area
- MAINT Maintenance Storage
- ELEV Elevator



MARK E. PHILLIPS, P.L.S. 16670

THE PERRY
 GALENA ENGINEERING, INC.
 HAILEY, IDAHO
 SHEET 4 OF 6
 Job No. 8059-02

A PLAT SHOWING THE PERRY



PARKING

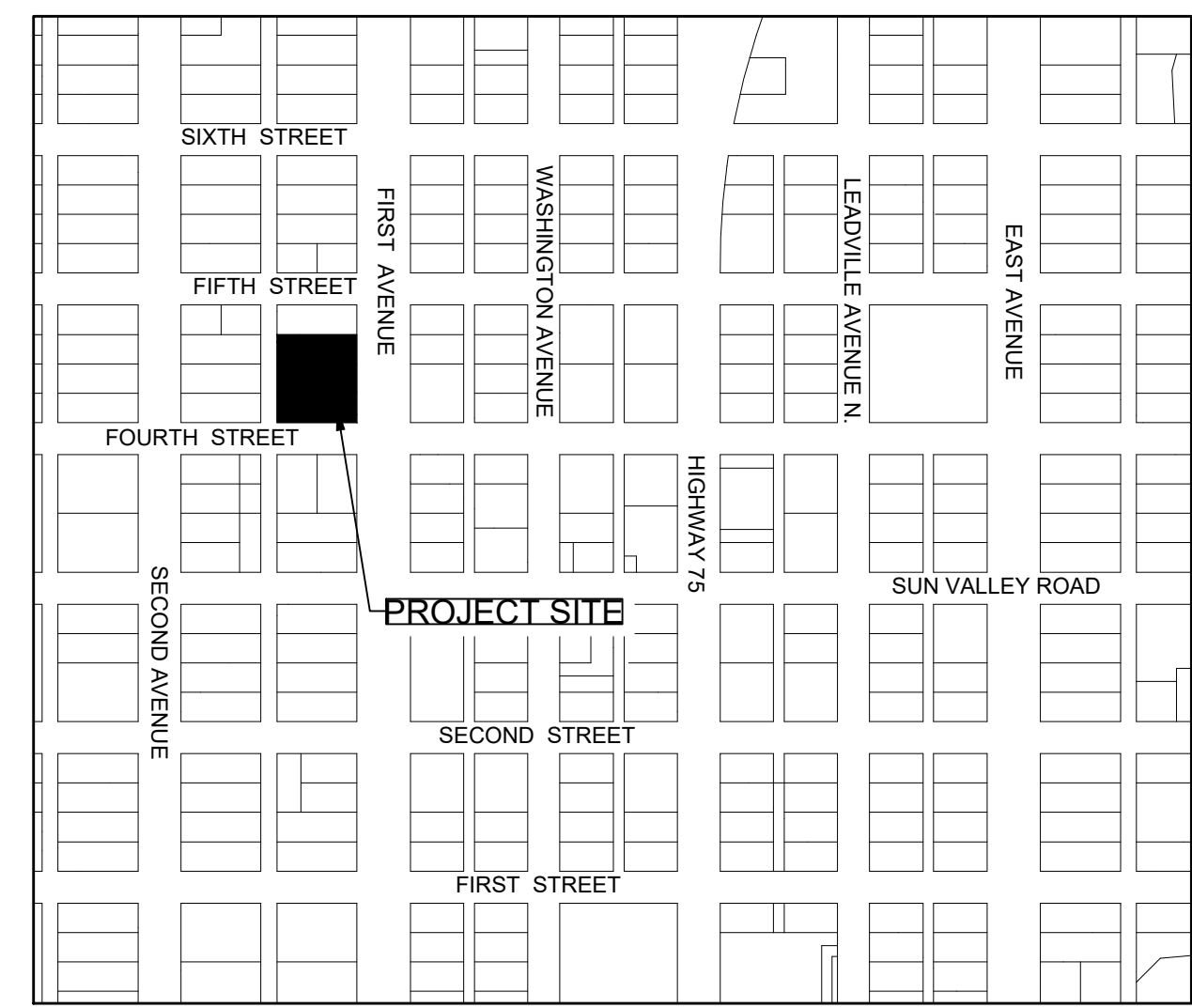
FE = 5810.63'
CE = 5823.81' (UNLESS OTHERWISE NOTED)

SCALE: 1" = 20'



LEGEND

- Property Line
- Adjoiner's Lot Line
- Building Footprint
- Unit Line
- Found 1/2" Rebar
- Found 5/8" Rebar
- ⊗ Found Magnetic Nail & Chiseled X
- Set 5/8" Rebar, P.L.S. 16670
- △ Calculated Point, Nothing Set
- FE Floor Elevation
- CE Ceiling Elevation
- LC Limited Common
- CA Common Area
- MECH Mechanical or Electrical Room
- ELEV Elevator



MARK E. PHILLIPS, P.L.S. 16670

THE PERRY
GALENA ENGINEERING, INC.
HAILEY, IDAHO
SHEET 5 OF 6
Job No. 8059-02

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned is the owner in fee simple of the following described parcel of land:

A parcel of land located within Section 13, T.4N., R.17E., B.M., City of Ketchum, Blaine County, Idaho, more particularly described as follows:

LOT 2A OF LOT 2A, BLOCK 56, KETCHUM TOWNSITE

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements.

I do hereby certify that all lots in this plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of units shown within this plat.

It is the intent of the owner to hereby include said land in this plat.

LOT 2A, BLOCK 56, KETCHUM TOWNSITE, BLAINE COUNTY IDAHO

The Perry Building L.L.C., A Washington Limited Liability Company.
By: Carson Palmer, Member/Manager

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss

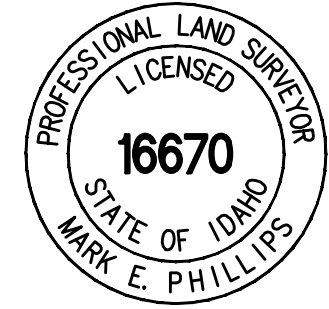
On this ____ day of _____ 2023, before me, a Notary Public in and for said State, personally appeared Carson Palmer, known or identified to me to be a Member/Manager of The Perry Building L.L.C., a Washington Limited Liability Company, and acknowledged to me that he executed the same in said Limited Liability Company name

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

Notary Public in and for said State
Residing in _____
My Commission Expires _____

SURVEYOR'S CERTIFICATE

I, Mark E. Phillips, a duly Licensed Professional Land Surveyor in the State of Idaho, do hereby certify that this plat is a true and accurate map of the land and points surveyed under my direct supervision and that it is in accordance with the Idaho State Code relating to Plats, Surveys, and Condominiums and the Corner Perpetuation and Filing Act, 55-1601 through 55-1612.



BLAINE COUNTY SURVEYOR'S APPROVAL

I, Sam Young County Surveyor for Blaine County, Idaho, do hereby certify that I have checked the foregoing Plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating to Plats and Surveys.

Sam Young, P.L.S. 11577
Blaine County Surveyor

KETCHUM CITY COUNCIL CERTIFICATE

I, the undersigned, City Clerk, in and for the City of Ketchum, Blaine County, Idaho, do hereby certify that at a regular meeting of the City Council held on the ____ day of _____, 2023, this plat was duly accepted and approved.

Lisa Enourato, Interim City Clerk, City of Ketchum

KETCHUM CITY ENGINEER CERTIFICATE

I, the undersigned, City Engineer in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2023, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Robyn Mattison, City Engineer, City of Ketchum

KETCHUM CITY PLANNER CERTIFICATE

I, the undersigned, Planner in and for the City of Ketchum, Blaine County, Idaho, do hereby approve this plat on this ____ day of _____, 2023, and certify that it is in accordance with the City of Ketchum subdivision ordinance.

Abby Rivin, Senior Planner, City of Ketchum

BLAINE COUNTY TREASURER'S APPROVAL

I, the undersigned County Treasurer in and for Blaine County, State of Idaho per the requirements of Idaho Code 50-1308, do hereby certify that any and all current and/or delinquent county property taxes for the property included in this subdivision have been paid in full. This certification is valid for the next thirty (30) days only.

Blaine County Treasurer

Date

BLAINE COUNTY RECORDER'S CERTIFICATE

THE PERRY
GALENA ENGINEERING, INC.
HAILEY, IDAHO
SHEET 6 OF 6
Job No. 8059-02

Attachment 6

Draft City Council Findings of Fact,
Conclusions of Law, and Decision:
Lot Consolidation Preliminary Plat
Application File No. P22-045A



**City of Ketchum
Planning & Building**

IN RE:)
)
The Perry Building) KETCHUM CITY COUNCIL
Lot Consolidation Preliminary Plat) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
File Number: P22-045A) DECISION
)
Date: May 15, 2023)
)

PROJECT: The Perry Building

APPLICATION TYPE: Lot Consolidation Subdivision Preliminary Plat

FILE NUMBER: P22-045A

ASSOCIATED APPLICATIONS: Design Review (Application File No. P22-045C)
Condominium Subdivision – Preliminary Plat (Application File No. P22-045B)
Variance Request (Application File No. P22-045D)

PROPERTY OWNER: Carson Palmer and Broderick Smith, Managing Members, The Perry Building LLC

REPRESENTATIVE: Tiina Ritval (Architect), GGLO

LOCATION: 131 W 4th Street and 471 & 431 N 1st Avenue
(Ketchum Townsite: Block 56: Lots 2, 3A, and 4A)

ZONING: Community Core – Subdistrict 2 – Mixed-Use Subdistrict (CC-2)

OVERLAY: None

RECORD OF PROCEEDINGS

The City of Ketchum Planning and Zoning Commission (the “Commission”) considered The Perry Building project Lot Consolidation Subdivision Preliminary Plat Application File No. P22-045A during their meeting on March 14, 2023. The application was considered concurrently with Design Review Application File No. P22-045C, Variance Request Application File No. P22-045D, and Condominium Subdivision Preliminary Plat Application File No. P22-045B and the public hearings were combined in accordance with Idaho Code §67-6522. The Commission approved The Perry Building Design Review

and Variance applications and recommended approval of the Lot Consolidation Preliminary Plat and Condominium Subdivision Preliminary Plat applications.

Public Hearing Notice & Public Comment

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 February 22, 2023. The public hearing notice was published in the Idaho Mountain Express on February 22, 2023. A notice was posted on the project site and the city’s website on January 30, 2023. The building corners were staked and the story pole was installed on the project site on February 27, 2023.

FINDINGS OF FACT

The Ketchum City Council having reviewed the project record does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

The applicant is proposing to develop a new 53,756-gross-square-foot mixed-use building, called The Perry Building (the “project”), at the northwest corner of 4th Street and 1st Avenue (the “subject property”) located within the Mixed-Use Subdistrict of the Community Core (“CC-2 Zone”). The project site is adjacent to: (a) the Westside Office Condominiums to the north on 1st Avenue, (b) the post office across the alley to the west, and (c) the Gail Severn Gallery building across 1st Avenue to the east. The 1st & 4th Mixed-Use Building is currently under construction across 4th Street south of the project site. The subject property is comprised of 3 lots within the original Ketchum townsite that was created in 1948. The corner lot is developed with an existing building that was originally constructed as a racquetball court in 1975 and was the home of Perry’s Restaurant for 37 years and a variety of local businesses. The two interior lots are vacant.

Policy CD-1.3 of the comprehensive plan states that “Infill and redevelopment projects should be contextually appropriate to the neighborhood and development in which they occur. Context refers to the natural and manmade features adjoining a development site; it does not imply a certain style”(page 26). This area contains both smaller-scaled older buildings as well as new, larger-scaled developments like the mixed-use building currently under construction at the southwest corner of 1st Avenue and 4th Street. Older, historic buildings in the neighborhood are comprised of small one- and two-story rectangular structures. Gold Mine Consign, the Open Room, the commercial building located at 100 E 5th Street, and La Cabañita are all single-story structures approximately 1,500 square feet in size. Two existing nonconforming residences located at 140 E 5th Street and 460 N 1st Avenue are single-story buildings less than 1,000 square feet in size. This area of downtown is quickly transitioning through recent redevelopment projects that are changing the character of the neighborhood from smaller-scaled historic buildings to larger mixed-used developments.

The project proposes to consolidate 3 lots that were created by Ketchum’s original townsite plat map in 1948. Blocks within the original townsite were historically platted into 55-foot-wide lots oriented towards the avenue rights-of-way that run north to south. The configuration of these townsite lots enriches Ketchum’s urban fabric by providing opportunities to diversify the buildings along a block.

This variety in building type, age, design and size contribute to Ketchum’s authenticity. The comprehensive plan states, “New development in the downtown will continue the traditional lot and block pattern, oriented around sidewalks and pedestrian-friendly places” (page 64). The urban pattern created by the original townsite plat map is changing as Ketchum continues to grow with new infill and redevelopment projects.

The consolidated lot will have a total area of 24,723 square feet with 165 feet of frontage along 1st Avenue and 150 feet of frontage along 4th Street. The project employs a variety of design treatments to make the building more contextually compatible with the scale of the surrounding built environment and the traditional pattern of downtown development. The carves in building mass and varying roof-plane heights along 1st Avenue minimize the perceived size of the development.

The lot consolidation preliminary plat will remove the shared property lines separating lots 2, 3A, and 4A within block 56 of the original Ketchum townsite to establish the development parcel. The lot consolidation preliminary plat plan set is attached as Exhibit A. During city department review, staff reviewed the lot consolidation and condominium subdivision preliminary plat applications for conformance with the procedures for subdivision approval (KMC §16.04.030), subdivision development and design standards (KMC §16.04.040), and condominium requirements (KMC §16.04.070). Certain standards are not applicable for one of the following reasons:

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

The proposed lot consolidation and condominium preliminary plat applications comply with all applicable subdivision requirements and standards.

FINDINGS REGARDING COMPLIANCE WITH PRELIMINARY PLAT REQUIREMENTS

Preliminary Plat Requirements (Ketchum Municipal Code §16.04.030)				
Compliant			City Code	City Standards
Yes	No	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.C.1	The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.
			<i>Findings</i>	<i>The City of Ketchum Planning and Building Department received the subdivision application and all applicable application materials on November 28, 2022. The applications were reviewed concurrently by planning staff and city departments. Staff review comments were provided to the applicant on February 1, 2023. The applications were deemed complete on February 17, 2023.</i>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J	Contents Of Preliminary Plat: The preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application.
			<i>Findings</i>	<i>The subdivision application was deemed complete on February 17, 2023.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.1	The preliminary plat shall be drawn to a scale of not less than one inch equals one hundred feet (1" = 100') and shall show the following: The scale, north point and date.
			<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	The name of the proposed subdivision, which shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho.
			<i>Findings</i>	<i>As shown on Sheet 1 of the preliminary plat, the plat is titled "Lot 2A, Block 56, Ketchum Townsite" which is not the same as any other subdivision in Blaine County, Idaho.</i>
<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>	<i>The name of the owner and surveyor is shown on Sheet 1 of the plat. The plat was prepared by Mark E. Phillips of Galena Engineering.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.4	Legal description of the area platted.
			<i>Findings</i>	<i>The legal description of the area platted is shown on page 1 of the preliminary plat.</i>
<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>	<i>The preliminary plat shows adjacent properties within block 56 of the original Ketchum townsite, including Lot 6A, the Sundance Condominiums, D-K condominiums, and the West Side Office Condominiums.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.6	A contour map of the subdivision with contour lines and a maximum interval of five feet (5') to show the configuration of the land based upon the United States geodetic survey data, or other data approved by the city engineer.
			<i>Findings</i>	<i>Existing site conditions, including topography, are included on the project plans submitted with Design Review Application File No. P22-045C.</i>
<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>	<i>Sheet 1 of the preliminary plat shows the location of the adjacent streets and block 56 alley. The property does not contain any public or private easements. The corner lot is developed with an existing building that was originally constructed as a racquetball court in 1975 and was the home of Perry's Restaurant for 37 years that is proposed to be demolished. The project plans submitted with Design Review Application File No. P22-045C</i>

				<i>showed the scaled location of the existing building. The two interior lots are vacant.</i>
<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>	<i>Sheet 1 provides the boundary description of the area. The total area of Lot 2A is 24,723 as noted on the preliminary plat map.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.9	Existing zoning of the tract.
			<i>Findings</i>	<i>Plat note #5 on Sheet 1 of the preliminary plat specifies the existing zoning of the subject property.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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>	<i>The preliminary plat shows the location and property lines for consolidated Lot 2A. No new streets or blocks are being proposed with this application.</i>
<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>	<i>This standard is not applicable as there is no requirement or proposal for land dedicated to public use. The condominium subdivision preliminary plat for the project shows the land that will be dedicated for common use of all future property owners.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.12	The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.
			<i>Findings</i>	<i>This standard does not apply as this preliminary plat proposes to consolidate two existing lots within the original Ketchum townsite. No utility, drainage, or right-of-way improvements are proposed or required for the lot consolidation preliminary plat application. The project plans submitted with Design Review Application File No. P22-045C show the proposed utility, drainage, or right-of-way improvements proposed for the project.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.13	The direction of drainage, flow and approximate grade of all streets.
			<i>Findings</i>	<i>This standard does not apply as no new streets are proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.14	The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.
			<i>Findings</i>	<i>This standard does not apply as no new drainage canals or structures are proposed.</i>

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			<i>Findings</i>	<i>This standard does not apply as no additional tests are required.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			<i>Findings</i>	<i>This standard does not apply to the subdivision application for the lot consolidation. The applicant has provided a draft copy of the articles of incorporation, bylaws, and declarations with the condominium subdivision preliminary plat application submittal.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.
			<i>Findings</i>	<i>Sheet 1 of the preliminary plat includes a vicinity map.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Findings</i>	<i>The subject property is not within a floodplain, floodway, or avalanche zone district.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			<i>Findings</i>	<i>A building envelope is not required as the subject property is not within the floodway, floodplain, or avalanche zone. The subject property is not adjacent to the Big Wood River, Trail Creek or Warm Springs. The subject property does not contain slopes greater than 25% and is not adjacent to an intersection.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.20	Lot area of each lot.
			<i>Findings</i>	<i>Sheet 1 of the preliminary plat shows the area of Lot 1A.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.21	Existing mature trees and established shrub masses.
			<i>Findings</i>	<i>The existing site survey on page 11 of the project plans shows 5 existing trees on the subject property. These trees are proposed to be removed to accommodate the mixed-use development. The City Arborist conducted a site inspection on January 25, 2023 and determined that the existing trees are not healthy or mature, and therefore, do not require replacement.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.

			<i>Findings</i>	<i>The applicant submitted a title commitment issued by Stewart Title Guarantee Company, and a warranty deed with the preliminary plat application.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Findings</i>	<i>The City of Ketchum received digital copies of the preliminary plat at the time of application.</i>

FINDINGS REGARDING COMPLIANCE WITH SUBDIVISION DEVELOPMENT & DESIGN STANDARDS

Subdivision Development & Design Standards (Ketchum Municipal Code §16.04.040)				
Compliant				
Yes	No	N/A	City Code	City Standards
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.A	<p>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.</p> <p><i>Findings</i></p> <p><i>This standard is not applicable as this project combines three lots within the original Ketchum townsite. No improvements are proposed or required for the lot consolidation.</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.B	<p>Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.</p> <p><i>Findings</i></p> <p><i>This standard is not applicable as this project combines three lots within the original Ketchum townsite. No additional improvements are proposed or required for the lot consolidation.</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.C	<p>Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of</p>

				<p>the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider.</p>
			<i>Findings</i>	<i>This standard is not applicable as this project combines three lots within the original Ketchum townsite. No additional improvements are proposed or required for the lot consolidation.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.D	<p>As Built Drawing: Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.</p>
			<i>Findings</i>	<i>This standard is not applicable as this project combines three lots within the original Ketchum townsite. No additional improvements are proposed or required for the lot consolidation.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.E	<p>Monumentation: Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows:</p> <ol style="list-style-type: none"> 1. All angle points in the exterior boundary of the plat. 2. All street intersections, points within and adjacent to the final plat. 3. All street corner lines ending at boundary line of final plat. 4. All angle points and points of curves on all streets. 5. The point of beginning of the subdivision plat description.

			<i>Findings</i>	<i>The applicant shall meet the required monumentation standards prior to recordation of the final plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.F	<p>Lot Requirements:</p> <ol style="list-style-type: none"> 1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings. 2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates corner lots at the intersection of two (2) or more streets, building envelopes shall be shown for the lot(s) so affected on the preliminary and final plats. The building envelopes shall be located in a manner designed to promote harmonious development of structures, minimize congestion of structures, and provide open space and solar access for each lot and structure. Also, building envelopes shall be located to promote access to the lots and maintenance of public utilities, to minimize cut and fill for roads and building foundations, and minimize adverse impact upon environment, watercourses and topographical features. Structures may only be built on buildable lots. Lots shall only be created that meet the definition of "lot, buildable" in section 16.04.020 of this chapter. Building envelopes shall be established outside of hillsides of twenty five percent (25%) and greater and outside of the floodway. A waiver to this standard may only be considered for the following: <ol style="list-style-type: none"> a. For lot line shifts of parcels that are entirely within slopes of twenty five percent (25%) or greater to create a reasonable building envelope, and mountain overlay design review standards and all other city requirements are met. b. For small, isolated pockets of twenty five percent (25%) or greater that are found to be in compliance with the purposes and standards of the mountain overlay district and this section. 3. Corner lots shall have a property line curve or corner of a minimum radius of twenty five feet (25') unless a longer radius is required to serve an existing or future use. 4. Side lot lines shall be within twenty degrees (20°) to a right angle or radial line to the street line. 5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible zoning districts. 6. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of

				twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.
			<i>Findings</i>	<i>Standard #1 has been met as the size, width, depth, shape, and orientation of Lot 2A comply with the dimensional standards required in the Community Core Zone. Pursuant to Ketchum Municipal Code §17.12.040, lots in the Community Core Zone must have a minimum size of 5,500 square feet and minimum width of 55 feet average. The consolidated lot will have a total area of 24,723 square feet with 165 feet of frontage along 1st Avenue and 150 feet of frontage along 4th Street. Standard #2 is not applicable is not located in the floodplain and does not contain land with slopes of 25%. Standard #3 through #6 are not applicable as the preliminary plat consolidates two existing lots and no new lots will be created.</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"> 1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots. 2. Blocks shall be laid out in such a manner as to comply with the lot requirements. 3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features. 4. Corner lots shall contain a building envelope outside of a seventy five foot (75') radius from the intersection of the streets.
			<i>Findings</i>	<i>N/A. This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. This application does not create a new block.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.H	<p>Street Improvement Requirements:</p> <ol style="list-style-type: none"> 1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land; 2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable

			<p>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> <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p>
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			<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-</p>
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				family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.
			<i>Findings</i>	<i>This standard is not applicable as this application proposes to combine three existing lots within the Ketchum townsite. This proposal does not create a new street, private road, or bridge.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.I	Alley Improvement Requirements: Alleys shall be provided in business, commercial and light industrial zoning districts. The width of an alley shall be not less than twenty feet (20'). Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be provided to permit safe vehicular movement. Dead end alleys shall be prohibited. Improvement of alleys shall be done by the subdivider as required improvement and in conformance with design standards specified in subsection H2 of this section.
			<i>Findings</i>	<i>This standard is not applicable as this project combines three existing lots within the original Ketchum townsite. The project proposes alley improvements, including grading and resurfacing the alley with asphalt. These improvements are shown on the project plans submitted with Design Review Application File No. P22-045C.</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, drainageway, 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, 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>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. Sewer system improvements are not required for this lot consolidation.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.L	<p>Water System Improvements: A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision</p>

				<p>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>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum Townsite. Water system improvements are not required for this lot consolidation.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	<p>Planting Strip Improvements: Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.</p>
			<i>Findings</i>	<i>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. Planting strip improvements are not required for this project.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.N	<p>Cuts, Fills, And Grading Improvements: Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following:</p> <ol style="list-style-type: none"> 1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application. 2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: <ol style="list-style-type: none"> a. Proposed contours at a maximum of five foot (5') contour intervals. b. Cut and fill banks in pad elevations. c. Drainage patterns. d. Areas where trees and/or natural vegetation will be preserved.

			<p>e. Location of all street and utility improvements including driveways to building envelopes.</p> <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> <p>a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability.</p> <p>b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).</p> <p>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</p> <p>d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope.</p> <p>e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.</p>
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			<i>Findings</i>	<i>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. No grading improvements are proposed or required for the lot consolidation. The grading improvements are shown the project plans submitted with Design Review Application File No. P22-045C.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.O	Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.
			<i>Findings</i>	<i>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. No drainage improvements are proposed or required for the lot consolidation. The drainage improvements are shown on the project plans approved with Design Review Application File No. P22-045C.</i>
			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>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. No utility improvements are proposed or required for the lot consolidation. The drainage improvements are shown on the project plans approved with Design Review Application File No. P22-045C.</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>This standard is not applicable as this project proposes to combine three existing lots within the original Ketchum townsite. Off-site improvements are not required or proposed with this project.</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>The existing site survey on page 11 of the project plans shows 5 existing trees on the subject property. These trees are proposed to be removed to accommodate the mixed-use development. The City Arborist conducted a site inspection on January 25, 2023 and determined that the existing trees are not healthy or mature, and therefore, do not require replacement.</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 Lot Consolidation Subdivision Preliminary Plat application for the development and use of the project site.
2. The City Council has authority to review and approve the applicant’s Lot Consolidation 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 Lot Consolidation Subdivision Preliminary Plat application is governed under Chapter 16.04 of Ketchum Municipal Code.

5. The Perry Building Lot Consolidation Subdivision Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

DECISION

THEREFORE, the Ketchum City Council **approves** this Lot Consolidation Preliminary Plat Application File No. P22-045A this Monday, May 15, 2023 subject to the following conditions of approval.

CONDITIONS OF APPROVAL

1. The lot consolidation preliminary plat is subject to all conditions of approval associated with Design Review Application File No. P22-045C.
2. Failure to record a Final Plat within two (2) years of Council's approval of a Preliminary Plat shall cause the Preliminary Plat to be null and void.

Findings of Fact **adopted** this 15th day of May 2023.

Neil Bradshaw, Mayor
City of Ketchum

Attachment 7

Draft City Council Findings of Fact,
Conclusions of Law, and Decision:
Condominium Subdivision
Preliminary Plat
Application File No. P22-045B



**City of Ketchum
Planning & Building**

IN RE:)
)
The Perry Building) KETCHUM CITY COUNCIL
Condominium Subdivision Preliminary Plat) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
File Number: P22-045B) DECISION
)
Date: May 15, 2023)
)

PROJECT: The Perry Building

APPLICATION TYPE: Condominium Subdivision – Preliminary Plat

FILE NUMBER: P22-045B

ASSOCIATED APPLICATIONS: Design Review (Application File No. P22-045C)
Lot Consolidation – Preliminary Plat (Application File No. P22-045A)
Variance Request (Application File No. P22-045D)

PROPERTY OWNER: Carson Palmer and Broderick Smith, Managing Members, The Perry Building LLC

REPRESENTATIVE: Tiina Ritval (Architect), GGLO

LOCATION: 131 W 4th Street and 471 & 431 N 1st Avenue
(Ketchum Townsite: Block 56: Lots 2, 3A, and 4A)

ZONING: Community Core – Subdistrict 2 – Mixed-Use Subdistrict (CC-2)

OVERLAY: None

RECORD OF PROCEEDINGS

The City of Ketchum Planning and Zoning Commission (the “Commission”) considered The Perry Building project Condominium Subdivision Preliminary Plat Application File No. P22-045B during their meeting on March 14, 2023. The application was considered concurrently with Design Review Application File No. P22-045C, Variance Request Application File No. P22-045D, and Lot Consolidation Preliminary Plat Application File No. P22-045A and the public hearings were combined in accordance with Idaho Code §67-6522. The Commission approved The Perry Building Design Review and Variance applications and recommended approval of the Lot Consolidation Preliminary Plat and Condominium Subdivision Preliminary Plat applications.

Public Hearing Notice & Public Comment

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 February 22, 2023. The public hearing notice was published in the Idaho Mountain Express on February 22, 2023. A notice was posted on the project site and the city's website on January 30, 2023. The building corners were staked and the story pole was installed on the project site on February 27, 2023.

FINDINGS OF FACT

The Ketchum City Council having reviewed the project record does hereby make and set forth these Findings of Fact, Conclusions of Law, and Decision as follows:

The applicant is proposing to develop a new 53,756-gross-square-foot mixed-use building, called The Perry Building (the "project"), at the northwest corner of 4th Street and 1st Avenue (the "subject property") located within the Mixed-Use Subdistrict of the Community Core ("CC-2 Zone"). The project site is adjacent to: (a) the Westside Office Condominiums to the north on 1st Avenue, (b) the post office across the alley to the west, and (c) the Gail Severn Gallery building across 1st Avenue to the east. The 1st & 4th Mixed-Use Building is currently under construction across 4th Street south of the project site. The subject property is comprised of 3 lots within the original Ketchum townsite that was created in 1948. The corner lot is developed with an existing building that was originally constructed as a racquetball court in 1975 and was the home of Perry's Restaurant for 37 years and a variety of local businesses. The two interior lots are vacant.

As proposed, the project includes 5,929 square feet of retail space on the ground-level with frontage along both 4th Street and 1st Avenue and 23 multi-family dwelling units. Seven of these multi-family dwelling units will be deed-restricted as community housing rentals. The community housing units are one- and two-bedroom apartments ranging in size from 624 to 976 square feet located on the ground floor. The 16 market-rate multi-family dwelling units range in size from 648 to 3,751 square feet.

The seven community housing units are exempt from providing parking pursuant to KMC §17.125.040.C.1a. 5,500 square feet of the retail space is also exempt from providing parking pursuant to KMC §17.125.040.C.1c. One parking space is required for the remaining 429 square feet of retail. 22 parking spaces are required for the market-rate multi-family dwelling units. The project is required to provide 23 total parking space on site to satisfy the retail and multi-family residential parking demand pursuant KMC §17.125.040.B. As shown on page 26 of the project plans, 29 spaces are proposed to be provided on site within the parking garage accessed from the alley to satisfy the demand.

The project proposes to construct improvements to the public rights-of-way adjacent to the subject property, including: (a) grading and resurfacing the alley with asphalt, (b) installing a new heated, paver 8-foot-wide sidewalk along 1st Avenue, (c) installing a new heated, paver 12-foot-wide sidewalk along 4th Street, (d) constructing new curb and gutter with drainage facilities, and (e)

providing new streetlights and street trees. The snowmelt system proposed for the new sidewalks will require a right-of-way encroachment permit approved by the Ketchum City Council. All final right-of-way improvements will be reviewed and approved by the City Engineer and Streets Department to ensure compliance with city standards prior to issuance of a building permit for the project.

The condominium subdivision preliminary plat application will subdivide the building into 4 commercial condominium units, 7 community housing condominium units, 16 multi-family dwelling condominium units, common area, and limited common area. The condominium subdivision preliminary plat plan set is attached as Exhibit A. During city department review, staff reviewed the lot consolidation and condominium subdivision preliminary plat applications for conformance with the procedures for subdivision approval (KMC §16.04.030), subdivision development and design standards (KMC §16.04.040), and condominium requirements (KMC §16.04.070). Certain standards are not applicable for one of the following reasons:

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

The proposed lot consolidation and condominium preliminary plat applications comply with all applicable subdivision requirements and standards.

FINDINGS REGARDING COMPLIANCE WITH PRELIMINARY PLAT REQUIREMENTS

Preliminary Plat Requirements (Ketchum Municipal Code §16.04.030)				
Compliant				
Yes	No	N/A	City Code	City Standards
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.C.1	The subdivider shall file with the administrator copies of the completed subdivision application form and preliminary plat data as required by this chapter.
			<i>Findings</i>	<i>The Planning and Building Department received the final design review, variance request, lot consolidation preliminary plat, and condominium subdivision preliminary plat applications on November 28, 2022. The applications were reviewed concurrently by planning staff and city departments. Staff review comments were provided to the applicant on February 1, 2023. The applications were deemed complete on February 17, 2023.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J	Contents Of Preliminary Plat: The preliminary plat, together with all application forms, title insurance report, deeds, maps, and other documents reasonably required, shall constitute a complete subdivision application.
			<i>Findings</i>	<i>The subdivision application was deemed complete on February 17, 2023.</i>

☒	☐	☐	16.04.030.J.1	The preliminary plat shall be drawn to a scale of not less than one inch equals one hundred feet (1" = 100') and shall show the following: The scale, north point and date.
			<i>Findings</i>	<i>This standard is met as shown on Sheet 1 of the preliminary plat.</i>
☒	☐	☐	16.04.030.J.2	The name of the proposed subdivision, which shall not be the same or confused with the name of any other subdivision in Blaine County, Idaho.
			<i>Findings</i>	<i>As shown on Sheet 1 of the preliminary plat, the plat is titled "The Perry" which is not the same as any other subdivision in Blaine County, Idaho.</i>
☒	☐	☐	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>	<i>The name of the owner and surveyor is shown on Sheet 1 of the plat. The plat was prepared by Mark E. Phillips of Galena Engineering.</i>
☒	☐	☐	16.04.030.J.4	Legal description of the area platted.
			<i>Findings</i>	<i>The legal description of the area platted is shown on page 1 of the preliminary plat.</i>
☒	☐	☐	16.04.030.J.5	The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.
			<i>Findings</i>	<i>The preliminary plat shows adjacent properties within block 56 of the original Ketchum townsite, including Lot 6A, the Sundance Condominiums, and the West Side Office Condominiums.</i>
☒	☐	☐	16.04.030.J.6	A contour map of the subdivision with contour lines and a maximum interval of five feet (5') to show the configuration of the land based upon the United States geodetic survey data, or other data approved by the city engineer.
			<i>Findings</i>	<i>Existing site conditions, including topography, are shown on the project plans submitted with Design Review Application File No. P22-045C.</i>
☒	☐	☐	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>	<i>Sheet 1 of the preliminary plat shows the location of the adjacent streets and block 56 alley. The property does not contain any public or private easements. The corner lot is developed with an existing building that was originally constructed as a racquetball court in 1975 and was the home of Perry's Restaurant for 37 years that is proposed to be demolished. The project plans submitted with Design Review Application File No. P22-045C showed the scaled location of the existing building. The two interior lots are vacant.</i>
☒	☐	☐	16.04.030.J.8	Boundary description and the area of the tract.
			<i>Findings</i>	<i>Sheet 1 provides the boundary description of the area. The total area of Lot 2A is 24,723 as noted on the preliminary plat map.</i>
			16.04.030.J.9	Existing zoning of the tract.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<i>Findings</i>	<i>Plat note #10 on Sheet 2 of the preliminary plat specifies the existing zoning of the subject property.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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>	<i>The preliminary plat shows the locations and lot lines for the master lot and lot lines of condominium units. No new streets or blocks are being proposed with this application.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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>	<i>The plat shows all common area elements within the condominium subdivision. Plat note #12 states, "All accessible areas outside of units that is not designated as limited common is common area."</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.12	The location, size and type of sanitary and storm sewers, water mains, culverts and other surface or subsurface structures existing within or immediately adjacent to the proposed sanitary or storm sewers, water mains, and storage facilities, street improvements, street lighting, curbs, and gutters and all proposed utilities.
			<i>Findings</i>	<i>The project plans submitted with Design Review Application File No. P22-045C show the proposed drainage and right-of-way improvements proposed for the project.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.13	The direction of drainage, flow and approximate grade of all streets.
			<i>Findings</i>	<i>This standard does not apply as no new streets are proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.14	The location of all drainage canals and structures, the proposed method of disposing of runoff water, and the location and size of all drainage easements, whether they are located within or outside of the proposed plat.
			<i>Findings</i>	<i>This standard does not apply as no new drainage canals or structures are proposed.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			<i>Findings</i>	<i>This standard does not apply as no additional tests are required.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			<i>Findings</i>	<i>The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.

			<i>Findings</i>	<i>Sheet 5 of the preliminary plat includes a vicinity map.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Findings</i>	<i>The subject property is not within a floodplain, floodway, or avalanche zone district.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.J.19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			<i>Findings</i>	<i>A building envelope is not required as the subject property is not within the floodway, floodplain, or avalanche zone. The subject property is not adjacent to the Big Wood River, Trail Creek or Warm Springs. The subject property does not contain slopes greater than 25% and is not adjacent to an intersection.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.20	Lot area of each lot.
			<i>Findings</i>	<i>The preliminary plat shows the area of the overall lot and the area of each condominium unit.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.21	Existing mature trees and established shrub masses.
			<i>Findings</i>	<i>The existing site survey on page 11 of the project plans shows 5 existing trees on the subject property. These trees are proposed to be removed to accommodate the mixed-use development. The City Arborist conducted a site inspection on January 25, 2023 and determined that the existing trees are not healthy or mature, and therefore, do not require replacement.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.
			<i>Findings</i>	<i>The applicant submitted a title commitment issued by Stewart Title Guarantee Company, and a warranty deed with the preliminary plat application.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.J.23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Findings</i>	<i>The City of Ketchum received digital copies of the preliminary plat at the time of application.</i>

FINDINGS REGARDING COMPLIANCE WITH SUBDIVISION DEVELOPMENT & DESIGN STANDARDS

Subdivision Development & Design Standards (Ketchum Municipal Code §16.04.040)				
Compliant				
Yes	No	N/A	City Code	City Standards
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.A	<p>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.</p> <p><i>Findings</i> The project plans submitted with Design Review Application File No. P22-045C show the proposed utility, drainage, or right-of-way improvements proposed for the project. The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.B	<p>Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.</p> <p><i>Findings</i> This standard is not applicable to the preliminary plat application.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.C	<p>Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the</p>

				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>This standard is not applicable to the preliminary plat application.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.D	As Built Drawing: Prior to acceptance by the city council of any improvements installed by the subdivider, two (2) sets of as built plans and specifications, certified by the subdivider's engineer, shall be filed with the city engineer. Within ten (10) days after completion of improvements and submission of as built drawings, the city engineer shall certify the completion of the improvements and the acceptance of the improvements, and shall submit a copy of such certification to the administrator and the subdivider. If a performance bond has been filed, the administrator shall forward a copy of the certification to the city clerk. Thereafter, the city clerk shall release the performance bond upon application by the subdivider.
			<i>Findings</i>	<i>This standard is not applicable to the preliminary plat application.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.E	<p>Monumentation: Following completion of construction of the required improvements and prior to certification of completion by the city engineer, certain land survey monuments shall be reset or verified by the subdivider's engineer or surveyor to still be in place. These monuments shall have the size, shape, and type of material as shown on the subdivision plat. The monuments shall be located as follows:</p> <ol style="list-style-type: none"> 1. All angle points in the exterior boundary of the plat. 2. All street intersections, points within and adjacent to the final plat. 3. All street corner lines ending at boundary line of final plat. 4. All angle points and points of curves on all streets. 5. The point of beginning of the subdivision plat description.
			<i>Findings</i>	<i>The applicant shall meet the required monumentation standards prior to recordation of the final plat.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.F	<p>Lot Requirements:</p> <ol style="list-style-type: none"> 1. Lot size, width, depth, shape and orientation and minimum building setback lines shall be in compliance with the zoning district in which the property is located and compatible with the location of the subdivision and the type of development, and preserve solar access to adjacent properties and buildings. 2. Whenever a proposed subdivision contains lot(s), in whole or in part, within the floodplain, or which contains land with a slope in excess of twenty five percent (25%), based upon natural contours, or creates

			<p>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. The development parcel, Lot 2A, is created by Lot Consolidation Subdivision Preliminary Plat Application File No. P22-045A.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.G G. Block Requirements: The length, width and shape of blocks within a proposed subdivision shall conform to the following requirements:

				<ol style="list-style-type: none"> 1. No block shall be longer than one thousand two hundred feet (1,200'), nor less than four hundred feet (400') between the street intersections, and shall have sufficient depth to provide for two (2) tiers of lots. 2. Blocks shall be laid out in such a manner as to comply with the lot requirements. 3. The layout of blocks shall take into consideration the natural topography of the land to promote access within the subdivision and minimize cuts and fills for roads and minimize adverse impact on environment, watercourses and topographical features. 4. Corner lots shall contain a building envelope outside of a seventy five foot (75') radius from the intersection of the streets.
			<i>Findings</i>	<i>This standard is not applicable as no new lots or blocks are proposed with the condominium subdivision preliminary plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.H	<p>Street Improvement Requirements:</p> <ol style="list-style-type: none"> 1. The arrangement, character, extent, width, grade and location of all streets put in the proposed subdivision shall conform to the comprehensive plan and shall be considered in their relation to existing and planned streets, topography, public convenience and safety, and the proposed uses of the land; 2. All streets shall be constructed to meet or exceed the criteria and standards set forth in chapter 12.04 of this code, and all other applicable ordinances, resolutions or regulations of the city or any other governmental entity having jurisdiction, now existing or adopted, amended or codified; 3. Where a subdivision abuts or contains an existing or proposed arterial street, railroad or limited access highway right of way, the council may require a frontage street, planting strip, or similar design features; 4. Streets may be required to provide access to adjoining lands and provide proper traffic circulation through existing or future neighborhoods; 5. Street grades shall not be less than three-tenths percent (0.3%) and not more than seven percent (7%) so as to provide safe movement of traffic and emergency vehicles in all weather and to provide for adequate drainage and snow plowing; 6. In general, partial dedications shall not be permitted, however, the council may accept a partial street dedication when such a street forms a boundary of the proposed subdivision and is deemed necessary for the orderly development of the neighborhood, and provided the council finds

			<p>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> <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>
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			<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>The project plans submitted with Design Review Application File No. P22-045C show the right-of-way improvements proposed for the project. The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>16.04.040.I</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>
			<p><i>Findings</i></p> <p>The project proposes alley improvements, including grading and resurfacing the alley with asphalt. These improvements are shown on the</p>

				<p><i>project plans submitted with Design Review Application File No. P22-045C. . The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer.</i></p>
<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> <ol style="list-style-type: none"> 1. A public utility easement at least ten feet (10') in width shall be required within the street right of way boundaries of all private streets. A public utility easement at least five feet (5') in width shall be required within property boundaries adjacent to Warm Springs Road and within any other property boundary as determined by the city engineer to be necessary for the provision of adequate public utilities. 2. Where a subdivision contains or borders on a watercourse, drainageway, channel or stream, an easement shall be required of sufficient width to contain such watercourse and provide access for private maintenance and/or reconstruction of such watercourse. 3. All subdivisions which border the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a ten foot (10') fish and nature study easement along the riverbank. Furthermore, the council shall require, in appropriate areas, an easement providing access through the subdivision to the bank as a sportsman's access. These easement requirements are minimum standards, and in appropriate cases where a subdivision abuts a portion of the river adjacent to an existing pedestrian easement, the council may require an extension of that easement along the portion of the riverbank which runs through the proposed subdivision. 4. All subdivisions which border on the Big Wood River, Trail Creek and Warm Springs Creek shall dedicate a twenty five foot (25') scenic easement upon which no permanent structure shall be built in order to protect the natural vegetation and wildlife along the riverbank and to protect structures from damage or loss due to riverbank erosion. 5. No ditch, pipe or structure for irrigation water or irrigation wastewater shall be constructed, rerouted or changed in the course of planning for or constructing required improvements within a proposed subdivision unless same has first been approved in writing by the ditch company or property owner holding the water rights. A written copy of such approval shall be filed as part of required improvement construction plans. 6. Nonvehicular transportation system easements including pedestrian walkways, bike paths, equestrian paths, and similar easements shall be dedicated by the subdivider to provide an adequate nonvehicular transportation system throughout the city.

			<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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, 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>The project plans submitted with Design Review Application File No. P22-045C show the proposed sewer improvements for the project. The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer and Wastewater Department.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.L	<p>Water System Improvements: A central domestic water distribution system shall be installed in all subdivisions by the subdivider as a required improvement. The subdivider shall also be required to locate and install an adequate number of fire hydrants within the proposed subdivision according to specifications and requirements of the city under the supervision of the Ketchum fire department and other regulatory agencies having jurisdiction. Furthermore, the central water system shall have sufficient flow for domestic use and adequate fire flow. All such water systems installed shall be looped extensions, and no dead end systems shall be permitted. All water systems shall be connected to the municipal water system and shall meet the standards of the following agencies: Idaho department of public health, Idaho survey and rating bureau, district sanitarian, Idaho state public utilities commission, Idaho department of reclamation, and all requirements of the city.</p>
			<i>Findings</i>	<i>The project plans submitted with Design Review Application File No. P22-045C show the proposed water service improvements for the project. The construction design plans will be submitted with the building permit</i>

				<i>application for the mixed-use development for review and approval by City Departments, including the City Engineer and Utilities Department.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	Planting Strip Improvements: Planting strips shall be required improvements. When a predominantly residential subdivision is proposed for land adjoining incompatible uses or features such as highways, railroads, commercial or light industrial districts or off street parking areas, the subdivider shall provide planting strips to screen the view of such incompatible features. The subdivider shall submit a landscaping plan for such planting strip with the preliminary plat application, and the landscaping shall be a required improvement.
			<i>Findings</i>	<i>This standard does not apply as this application does not create a new subdivision. There are no incompatible uses adjacent to the proposed condominium subdivision.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.N	Cuts, Fills, And Grading Improvements: Proposed subdivisions shall be carefully planned to be compatible with natural topography, soil conditions, geology and hydrology of the site, as well as to minimize cuts, fills, alterations of topography, streams, drainage channels, and disruption of soils and vegetation. The design criteria shall include the following: <ol style="list-style-type: none"> 1. A preliminary soil report prepared by a qualified engineer may be required by the commission and/or council as part of the preliminary plat application. 2. Preliminary grading plan prepared by a civil engineer shall be submitted as part of all preliminary plat applications. Such plan shall contain the following information: <ol style="list-style-type: none"> a. Proposed contours at a maximum of five foot (5') contour intervals. b. Cut and fill banks in pad elevations. c. Drainage patterns. d. Areas where trees and/or natural vegetation will be preserved. e. Location of all street and utility improvements including driveways to building envelopes. f. Any other information which may reasonably be required by the administrator, commission or council to adequately review the affect of the proposed improvements. 3. Grading shall be designed to blend with natural landforms and to minimize the necessity of padding or terracing of building sites, excavation for foundations, and minimize the necessity of cuts and fills for streets and driveways. 4. Areas within a subdivision which are not well suited for development because of existing soil conditions, steepness of slope, geology or

			<p>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"> a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability. b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods). c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability. d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope. e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.
			<p><i>Findings</i></p> <p><i>This standard does not apply as this application does not create a new subdivision. The preliminary plat proposed to subdivide the mixed-use building into condominium units. There are no incompatible uses adjacent to the proposed condominium subdivision.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>16.04.040.O</p> <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</p>

				<p>preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.</p>
			<i>Findings</i>	<p>The project plans submitted with Design Review Application File No. P22-045C show the proposed drainage improvements for the project. The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer and Streets Department.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.P	<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.</p>
			<i>Findings</i>	<p>The project plans submitted with Design Review Application File No. P22-045C show the proposed utility improvements for the project. The construction design plans will be submitted with the building permit application for the mixed-use development for review and approval by City Departments, including the City Engineer and Utilities Department.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.Q	<p>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.</p>
			<i>Findings</i>	<p>The proposed condominium development does not create substantial additional traffic; therefore, no off-site improvements are required.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.R	<p>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.</p>
			<i>Findings</i>	<p>N/A as this property is not located within the Avalanche Zone or Mountain Overlay.</p>

<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>The existing site survey on page 11 of the project plans shows 5 existing trees on the subject property. These trees are proposed to be removed to accommodate the mixed-use development. The City Arborist conducted a site inspection on January 25, 2023 and determined that the existing trees are not healthy or mature, and therefore, do not require replacement.</i>

FINDINGS REGARDING COMPLIANCE WITH CONDOMINIUM PLAT REQUIREMENTS

Condominium Plat Requirements (Ketchum Municipal Code §16.04.070)

Compliant				
Yes	No	N/A	City Code	Standards
<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 draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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.
			<i>Findings</i>	<i>As shown on Sheet 5 of the preliminary plat, the open parking area within the garage is designated as common area and the private garages are designated as limited common elements and specifically referenced to a unit number.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.E	Adequate storage areas shall be provided for boats, campers and trailers, as well as adequate interior storage space for personal property of the resident of each condominium unit.
			<i>Findings</i>	The applicant addressed storage in their response to the completeness review comments stating: <i>Adequate storage is provided as follows:</i> <ul style="list-style-type: none"> • <i>Interior Storage Space within residential units: Residential units were thoughtfully designed with an abundance of internal storage space options per the floor plans.</i> <ul style="list-style-type: none"> ○ <i>L1 Units: Interior closet @ entry to each unit for storage. Large closet in primary bedrooms. Patio areas provide additional storage options for bicycles and other recreational equipment.</i> ○ <i>L2 Units: Large closets throughout all units.</i>

				<ul style="list-style-type: none"> ○ L3 Units: Large closets throughout all units. ● Interior Storage space within detached storage areas: <ul style="list-style-type: none"> ○ PARKING STALL STORAGE SYSTEM: L1 & L2 units may install “Urban Storage Unit” like systems on the wall adjacent to their parking stall(s). The Developer has successfully utilized these types of systems on other residential projects. ○ L3 LIMITED COMMON AREA STORAGE: L3 Units own storage rooms within the parking garage for ski and cycle storage, among other items. ○ SKI LOCKER ROOM: Designated ski storage room on level P1. ○ BICYCLE ROOM: Designated bike storage on level P1. ○ ABOVE STALL STORAGE: Given the higher than typical parking garage ceiling height, the Developer is planning for systems that allow occupants to store items above their parking stall.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.F	A maintenance building or room shall be provided of adequate size and location for the type and size of the condominium project for storage of maintenance equipment and supplies for common areas.
			<i>Findings</i>	Rooms designated for maintenance equipment and supplies have been noted on the preliminary plat as well as the floor plans submitted with Design Review Application File No. P22-045C.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.G	The subdivider shall dedicate to the common use of the homeowners adequate open space of such shape and area usable and convenient to the residents of the condominium subdivision. Location of building sites and common area shall maximize privacy and solar access.
			<i>Findings</i>	<i>The preliminary plat designates the balconies as limited common area assigned to a specific dwelling unit. The terrace in front of the stairwell and elevator feature along 4th Street is designated as common area. The covered courtyard is designated as common area. The terraces in front of the two retail spaces fronting 4th Street are designated as limited common area designated to the commercial retail units.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.H	All other provisions of this chapter and all applicable ordinances, rules and regulations of the city and all other governmental entities having jurisdiction shall be complied with by condominium subdivisions.
			<i>Findings</i>	<i>The project has been reviewed for compliance with all other section of the subdivision standards. The project conforms with all subdivision regulations as discussed above.</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 Condominium Subdivision Preliminary Plat application for the development and use of the project site.
2. The City Council has authority to review and approve the applicant’s Condominium Subdivision Preliminary Plat Application pursuant to Chapter 16.04 of Ketchum Code Title 16.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §16.04.030.
4. The Condominium Subdivision Preliminary Plat application is governed under Chapter 16.04 of Ketchum Municipal Code.
5. The Perry Building Condominium Subdivision Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

DECISION

THEREFORE, the Ketchum City Council **approves** this Condominium Subdivision Preliminary Plat Application File No. P22-045B this Monday, May 15, 2023 subject to the following conditions of approval.

CONDITIONS OF APPROVAL

1. The condominium subdivision preliminary plat is subject to all conditions of approval associated with Design Review Application File No. P22-045C.
2. Failure to record a Final Plat within two (2) years of Council’s approval of a Preliminary Plat shall cause the Preliminary Plat to be null and void.

Findings of Fact **adopted** this 15th day of May 2023.

Neil Bradshaw, Mayor
City of Ketchum