



City of Ketchum

May 2, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve the 131 N Washington Ave Condominium Subdivision Preliminary Plat and FAR Exceedance Agreement #22767

Recommendation and Summary

Staff recommends the Ketchum City Council approve the Preliminary Plat and adopt the findings of fact, conclusions of law, and decision for a condominium subdivision submitted by Mike Brunelle, of Brunelle Architects on behalf of the property owner, Bohica Idaho, LLC. Staff also recommends approval of FAR Exceedance Agreement #22767, memorializing the voluntary commitment of the applicant to provide community housing in exchange for increased floor area.

Recommended Motion: "I move to approve the 131 N Washington Ave condominium preliminary plat application, as conditioned, adopt the findings of fact, conclusion of law, and decision, and approve FAR Exceedance Agreement #22767."

The reasons for the recommendation are as follows:

- The request meets all applicable standards for Preliminary Plats and Condominium Subdivisions contained in Ketchum Municipal Code's Subdivision (Title 16) regulations.
- The Ketchum Planning and Zoning Commission approved the Design Review application and voted to recommend approval of the Condominium Preliminary Plat application, as conditioned, on April 12, 2022.
- All city departments have reviewed the proposal and have no issue with the proposed condominium subdivision.
- As outlined in the FAR Exceedance Agreement, the applicant will provide one on-site community housing unit.

Introduction and History

The Applicant is proposing a 9,983 square foot three-story mixed-use development known as Bohica Multi-Use (the "project"), located at 131 N Washington Avenue (the "subject property"). The subject property contains a vacant 6,245 square foot two story building originally approved as a restaurant with second floor outdoor patio/dining space initially constructed in 2008. Prior to vacancy of the structure, the building was the location of the Rustic Moose, Bora Restaurant, Globus, and Boho Lounge. The space has been vacant for at least a year but used for special events intermittently.

The subject property is zoned Community Core -Subdistrict 2 - Mixed Use (CC-2) which allows for various commercial uses and multi-family residential. As proposed, the project includes significantly reduced commercial space of approximately 1,400 square feet, a ground floor patio fronting Washington Ave, and three residential dwelling units:

- One 739 square foot community housing dwelling unit on the ground floor off the alley
- One 1,823 square foot dwelling unit on the second floor
- One 3,505 square foot dwelling unit with square footage on the second and third floors

The project is proposing to take advantage of the Floor Area Ratio (FAR) bonus for Community Housing, mitigating the additional floor area by dedicating one for-sale deed restricted unit on-site with no additional cash-in-lieu fee required. The proposed FAR for the project is 1.8, which is less than the maximum 2.25 FAR for density bonuses in the Community Core.

The City of Ketchum received an application for Pre-Application Design Review on January 3, 2022. During evaluation of the pre-application for completeness, the city passed Ordinance 1231 amending the types of projects that require pre-application design review. The proposed project did not fall under the amended project list and therefore staff gave the applicant the option to move forward with pre-application or resubmit for Final Design Review. The applicant resubmitted a Final Design Review and condominium preliminary plat application on February 14, 2022. The Design Review and Preliminary Plat applications have been reviewed concurrently and were deemed complete on March 30, 2022. The Planning and Zoning Commission reviewed both applications at their regular meeting on April 12, 2022, concluding with an approval of the Design Review application and a recommendation of approval for the condominium preliminary Plat. The staff report for the April 12, 2022, meeting is included as Attachment D.

Analysis

During Department Review, staff reviewed the preliminary plat application for conformance with KMC 16.04.030 – *Procedures for subdivision approval*, KMC 16.04.040 – *Development and Design*, and KMC 16.04.070 – *Condominiums*. The application materials and condominium preliminary plat are included as Attachments A and B. As shown in the draft Findings of Fact (Attachment C), the subdivision application meets all requirements for a preliminary plat and a condominium plat. Where “N/A” is checked, the standard is not applicable for one of the following reasons:

- The standard applies to the creation of new subdivisions or new infrastructure. The application does not propose any new streets, water or sewer extensions of main lines, or master drainage infrastructure.
- The standard applies to action that shall be taken at the final plat stage of the process and this application is for a preliminary plat.
- Per provisions of the standard, the City Engineer has determined that the standard does not apply.

Staff recommends approval of the Preliminary Plat application for a townhouse subdivision with the following recommended Conditions of Approval:

1. The preliminary plat is subject to all conditions of approval associated with Design Review approval P22-001. Changes to the design review approval may require changes to the preliminary or final plats filed for the project.

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.

Sustainability

The proposed preliminary plat does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

Financial Impact

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

Attachments

- A. Application and supporting materials
- B. Preliminary Plat Plan Set
- C. Draft City Council Findings of Fact, Conclusions of Law, and Decision
- D. Staff Report – April 12, 2022 Planning and Zoning Commission Meeting
- E. FAR Exceedance Agreement #22767

ATTACHMENT A:
Application and Supporting
Materials



City of Ketchum
Planning & Building

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

Subdivision Application

Submit completed application and payment to the Planning and Building Department electronically to planningandzoning@ketchumidaho.org. Once your application has been received, we will review it and contact you with 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: Bohica Idaho LLC			
Owner of Record: Bohica Idaho LLC			
Address of Owner: PO Box 1129, Ketchum, Idaho 83340			
Representative of Owner: Mike Brunelle			
Legal Description: Ketchum Lot 3, Block 39			
Street Address: 131 N Washington Ave			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 4			
Total Land Area: 5500sf			
Current Zoning District: Community Core - Subdistrict 2 (Mixed Use)			
Proposed Zoning District: Community Core - Subdistrict 2 (Mixed Use)			
Overlay District: NA			
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: NA			
Easements to be dedicated on the final plat: NA			
Briefly describe the improvements to be installed prior to final plat approval: (1) commercial unit, (3) residential units			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance			
One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations			
One (1) copy of current title report and owner's recorded deed to the subject property			
One (1) copy of the preliminary plat			
All files should be submitted in an electronic format 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.

Michael Brunelle

Digitally signed by Michael Brunelle
DN: C=US, E=mike@brunellearchitects.com, CN=Michael Brunelle
Date: 2022.02.14 14:52:27-0700

02/14/2022

Applicant Signature

Date

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

Instrument # 690831

HAILEY, BLAINE, IDAHO
01-21-2022 11:04:36 AM No. of Pages: 2
Recorded for: BLAINE COUNTY TITLE
STEPHEN MCDUGALL GRAHAM Fee: \$15.00
Ex-Officio Recorder Deputy: GWB
Electronically Recorded by Simplifile



WARRANTY DEED

FOR VALUE RECEIVED

131 Washington Avenue, LLC, an Idaho Limited Liability Company,

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

Bohica Idaho, LLC, an Idaho limited liability company

the Grantee, whose current address is: PO Box 1129, Ketchum, ID 83340

the following described premises, to-wit:


Lot 3 in Block 39, of the VILLAGE OF KETCHUM, as shown on the certified copy of the official map thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those to which this conveyance is expressly made subject 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 20 day of January, 2022.

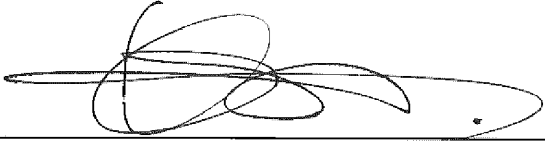
131 Washington Avenue, LLC
an Idaho limited liability company

By: Redwing Marine, Inc., its Sole Member

By: 
William Daniel Weidner, III
President

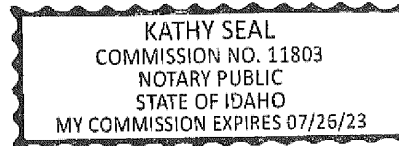
State of Idaho
County of Blaine

This record was acknowledged before me on 20 day of January, 2022, by William Daniel Weidner, III,
as President of Redwing Marine, Inc., Sole Member of 131 Washington Avenue, LLC.



Notary Public Kathy Seal
My Commission Expires: 7.26.2023

(STAMP)





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

ISSUED BY
STEWART TITLE GUARANTY COMPANY

NOTICE

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

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

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

COMMITMENT TO ISSUE POLICY

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

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

Countersigned by:


Authorized Countersignature




Frederick H. Eppinger
President and CEO


David Hisey
Secretary

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

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COMMITMENT CONDITIONS

1. DEFINITIONS

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

4. COMPANY'S RIGHT TO AMEND

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

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5. LIMITATIONS OF LIABILITY

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

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

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

7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

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

8. PRO-FORMA POLICY

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

9. CLAIMS PROCEDURES

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

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10. CLASS ACTION

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

11. ARBITRATION

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

STEWART TITLE GUARANTY COMPANY

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

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

ISSUED BY
STEWART TITLE GUARANTY COMPANY

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

Issuing Agent: Blaine County Title, Inc.
Issuing Office: 360 Sun Valley Road, P.O. Box 3176, Ketchum, ID 83340
Issuing Office's ALTA® Registry ID:
Loan ID Number:
Commitment Number: 2123662
Issuing Office File Number: 2123662
Property Address: 131 N Washington Ave., Ketchum, ID 83340
Revision Number: 1

1. **Commitment Date:** January 14, 2022 at 8:00 A.M.

2. Policy to be issued:	Proposed Amount of Insurance
(a) 2021 ALTA® Owner's Policy Standard	\$2,345,000.00

Proposed Insured: Bohica Idaho, LLC, an Idaho limited liability company

(b) 2021 ALTA® Loan Policy

Proposed Insured:

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

Fee Simple

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

131 Washington Avenue, LLC, an Idaho Limited Liability Company

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

Lot 3 in Block 39, of the VILLAGE OF KETCHUM, as shown on the certified copy of the official map thereof, recorded as Instrument No. 302967, records of Blaine County, Idaho.

STEWART TITLE GUARANTY COMPANY


Authorized Countersignature

STATEMENT OF CHARGES

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

Owner's Policy:	\$5,740.00
Underwriter remittance disclosure	\$688.80

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

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

ISSUED BY
STEWART TITLE GUARANTY COMPANY

Requirements

File No.: 2123662- Revision No. 1

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - a. Warranty Deed from 131 Washington Avenue, LLC, an Idaho Limited Liability Company to Bohica Idaho, LLC, an Idaho limited liability company to convey the property described herein.
5. The Company requires for its review satisfactory copy of the Operating Agreement and the regulations of the limited liability company, any amendment thereof and satisfactory evidence of authority of the officers, managers, or members to execute the documents for **131 Washington Avenue, LLC**.
6. The Company requires for its review satisfactory copy of the Operating Agreement and the regulations of the limited liability company, any amendment thereof and satisfactory evidence of authority of the officers, managers, or members to execute the documents for **Bohica Idaho, LLC**.
7. Delivery to the Company of the Affidavit as to Debts and Liens. Upon acceptance and review of said Affidavit, title will be subject to such further matters as appear necessary and appropriate following such review.
8. Pursuant to the State of Idaho Insurance Regulations, a cancellation fee is to be charged on all cancelled orders. Unless otherwise advised, orders will be considered cancelled six months after the effective date on the Commitment. The amount of the fee assessed shall be in accordance with our rate filing with the Idaho Department of Insurance.

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

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

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

SCHEDULE B PART II

ISSUED BY
STEWART TITLE GUARANTY COMPANY

Exceptions

File No.: 2123662- Revision No. 1

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

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

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

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

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File No. 2123662

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

Page 1 of 2



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

SCHEDULE B PART II

ISSUED BY
STEWART TITLE GUARANTY COMPANY

Exceptions

10. General taxes for the year 2021, a lien in the amount of \$10,944.06, of which the first half due December 20, 2021 are PAID and the second half are due on or before June 20, 2022. (Parcel No. RPK00000390030)
11. General taxes for the year 2022 and subsequent years, which are a lien not yet payable.
12. Water, sewer, rubbish charges of the City of Ketchum.
13. Ketchum rubbish charges billed by Clear Creek Disposal.
14. Right-of-Way Agreement, including the terms and provisions thereof, by and between Ketchum Tree LLC ("Owner") and the City of Ketchum, Idaho, a municipal corporation ("Ketchum"), recorded October 16, 2008 as Instrument No. 562278, records of Blaine County, Idaho.
15. Right-of-Way Agreement, including the terms and provisions thereof, by and between Ketchum Tree LLC ("Owner") and the City of Ketchum, Idaho, a municipal corporation ("Ketchum"), recorded October 16, 2008 as Instrument No. 562279, records of Blaine County, Idaho.
16. Notices of liens if any, in favor of the State Tax Commission, the Department of Labor and Department of Health and Welfare of the State of Idaho filed in the office of the Secretary of State pursuant to Chapter 19, Title 45, Idaho Code. (The Idaho State Tax Commission electronically files liens with the office of the Secretary of State and not with the Blaine County Recorder. Until final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.)

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

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

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

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

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File No. 2123662

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

Page 2 of 2



STG Privacy Notice Stewart Title Companies

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

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

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

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

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

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

SHARING PRACTICES

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

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

Privacy Notice for California Residents

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

Information Stewart Collects

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

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

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

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

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

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

Use of Personal Information

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

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

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

Disclosure of Personal Information to Affiliated Companies and Nonaffiliated Third Parties

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

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

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

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

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

Consumer Rights and Choices

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

Access to Specific Information and Data Portability Rights

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

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

Deletion Request Rights

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

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

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

Exercising Access, Data Portability, and Deletion Rights

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

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

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

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

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

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

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

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

Response Timing and Format

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

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

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

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

Non-Discrimination

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

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

Changes to Our Privacy Notice

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

Contact Information

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

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

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

Email: Privacyrequest@stewart.com

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

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

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

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

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

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

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

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

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

Contact Us	If you have any questions about this privacy notice, please contact us at: Blaine County Title, Inc. , 360 Sun Valley Road, PO Box 3176, Ketchum, ID 83340
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**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

DRAFT

**Lee P. Ritzau, Esq.
Luboviski, Wygle, Fallowfield & Williamson, P.A.
P.O. Box 1172
Ketchum, Idaho 83340**

(Space above line for Recorder's Use)

CONDOMINIUM DECLARATION FOR
BOHICA MULTI-USE BUILDING CONDOMINIUMS

THIS DECLARATION is made effective the ____ day of _____, 2022,
by Bohica Idaho, LLC, an Idaho Limited Liability Company("Declarant").

RECITALS

Declarant is the Owner of real property located in the City of Ketchum, Blaine County, Idaho, described in Exhibit "A" attached hereto and made a part hereof by this reference ("the Real Property"). Declarant has improved or intends to improve the real property by constructing improvements thereon consisting of residential and business or commercial condominiums and related facilities. By this Declaration, Declarant intends to establish a plan of Condominium ownership of the Real Property under the Condominium Property Act of the State of Idaho.

DECLARATION

Declarant declares that the real property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of Condominium ownership as described in Idaho Code Section 55-1501, *et seq.* for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the real property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the real property, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of Idaho Code Section 55-1505.

ARTICLE 1

DEFINITIONS

1.1 Articles. The “Articles” mean the Association’s Articles of Incorporation and their amendments. A copy of the proposed Articles is attached hereto as Exhibit “C” and made a part hereof.

1.2 Association Rules. The “Association Rules” mean the rules and regulations regulating the use and enjoyment of the Common Area adopted by the Board from time to time.

1.3 Association. The “Association” means the Bohica Multi-Use Building Condominium Association, Inc., an Idaho nonprofit corporation, its successors and assigns.

1.4 Board. The “Board” means the Board of Directors of the Association.

1.5 Building. The “Building” means any building constructed on the Real Property and in which the Units are located.

1.6 Bylaws. The “Bylaws” mean the Association’s Bylaws and their amendments. A copy of the proposed Bylaws is attached hereto as Exhibit “D” and made a part hereof.

1.7 Commercial Unit. A “Commercial Unit” means any Unit identified, which are to be used for uses as specified in the City of Ketchum Zoning Code, or for residential purposes, and no other purposes or uses.

1.8 Common Area. The “Common Area” means the entire Development, except the individual Units, as defined in this Declaration or as shown on the Condominium Plat. The percentage of ownership interest in the Common Area which is allocated to each Unit for purposes of tax assessment under Idaho Code Section 55-1514 and for purposes of liability determination as provided by Idaho Code Section 55-1515 is expressed as a percentage of the entire ownership interest in the Common Area in Exhibit “B”.

1.9 Common Expenses. “Common Expenses” mean all expenses incurred for the upkeep, maintenance, repair, replacement, management and operation of the Common Area, including any reserve for maintenance and repairs, reinstatement, rebuilding and replacement of the Common Area; all charges for taxes on or relating to the Common Area (except real property and other taxes assessed separately on the Condominiums or on the personal property or any other interest of an Owner); the cost of insurance permitted or required herein to be procured and maintained by the Association; the cost of landscaping, snow removal, janitorial and similar services for the Common Area; wages; accounting and legal fees; management fees; water and sewer service charges; trash collection; common lighting and heating; any deficit remaining for a

previous period; and any other expenses and liabilities incurred by the Association for the benefit of the Owners under or by reason of the Declaration.

1.10 Common Surplus. “Common Surplus” shall be the amount, if any, by which all receipts of the Association, including but not limited to assessments, rents, profits and revenues on account of the Common Area, shall exceed the amount of the Common Expenses for any one fiscal year of the Association.

1.11 Condominium. A “Condominium” means an estate in real property as defined in Idaho Code Section 55-1503, consisting of an undivided interest as a tenant-in-common in the Common Area, together with a fee interest in a Unit shown and described on the Condominium Plat, plus the Limited Common Area appurtenant to that Unit.

1.12 Condominium Plat. The “Condominium Plat” means the Condominium Plat for the Bohica Multi-Use Building Condominiums to be filed for record in the office of the County Recorder of Blaine County, Idaho consisting of a plat or survey map of the surface of the ground of the real property showing a survey and legal description thereof, the location of the Buildings with respect to the boundaries of the real property, Building letters identifying the Buildings, together with diagrammatic floor plans of the Buildings showing the boundaries of each Unit within each Building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, unit numbers identifying the Units, any Limited Common Area, together with such other information as may be included thereon in the discretion of the Declarant.

1.13 Declarant. The “Declarant” means Bohica Idaho, LLC, an Idaho Limited Liability Company, and its successors and assigns, if such successors and assigns acquire record title to any portion of the development for development purposes. Purchasers of Units in fee from Declarant shall not be considered “the Declarant.”

1.14 Development. The “Development” means the real property divided or to be divided into Condominiums or owned by the Association, including all structures and improvements on it, and any additional real property annexed to this Declaration.

1.15 Limited Common Areas. “Limited Common Areas” mean those Common Areas and facilities designated herein or on the Condominium Plat for use by Owners of particular Condominiums to the exclusion, limitation or restriction of others. The decks and patios of Residential Units are designated as Limited Common Area for the exclusive use of the Residential Unit to which they are connected.

1.16 Member. A “Member” means every person or entity who holds a membership in the Association.

1.17 Mortgage. A “Mortgage” means a mortgage or deed of trust encumbering a Condominium or other portion of the Development. A “mortgagee” shall include the beneficiary

under a deed of trust. An “institutional mortgagee” is a mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property, or any insurance company or any federal or state agency. A “first mortgage” or “first mortgagee” is one having priority as to all other mortgages or holders of mortgages encumbering the same condominium or other portions of the development, and who has notified the Associates in writing of its encumbrance.

1.18 Owner. An “Owner” means each person or entity holding a record ownership interest in a Condominium including Declarant, and contract purchasers under recorded contracts. “Owner” shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

1.19 Residential Unit. A “Residential Unit” means any of the Units located in the Building which are not designated as Commercial Units and are to be used for residential purposes only.

1.20 Unit. A “Unit” means the separate interest in a Condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof as shown and numbered on the Condominium Plat, together with all fixtures and improvements contained therein. A Unit shall not be deemed to include bearing walls, columns, floors and roofs (except for the interior surface thereof), foundations, central heating systems, tanks, pumps and other surfaces used by more than one Unit, or pipes, vents, ducts, conduits, wires, and other utility installations wherever located (except the outlets thereof when located within the Unit). The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area. In case of combination of two or more adjoining Units, those portions of the partition walls, floors or ceilings between Units which are from time to time used as door or stairway openings between such Units shall be deemed to be divided in half, parallel to such partition wall, floor or ceiling, and each half shall constitute part of the Unit which it adjoins, as Limited Common Area appurtenant to such Unit.

ARTICLE 2

DESCRIPTION OF COMMON INTERESTS, PROPERTY RIGHTS OF ENJOYMENT AND EASEMENTS

2.1 Ownership of Condominium; Easements. Ownership of each Condominium within the Development shall include a Unit, Limited Common Areas, and an undivided interest in the Common Area (which undivided interest shall be specified in the deed from Declarant to each Owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration), a membership in the Association, and any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration or the deed to the Condominium.

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

Condominium Unit ___ as shown on the Condominium Plat for Bohica Multi-Use Building Condominiums, recorded as Instrument No. _____, and as defined and described in the Condominium Declaration for Bohica Multi-Use Building Condominiums, recorded as Instrument No. _____, records of Blaine County, Idaho.

The description of the Condominium shall also include reference to the recording of any amendments to the Condominium Plat or Declaration. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the common area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

2.2 Owners Non-Exclusive Easements of Enjoyment, Etc. Every Owner of an Condominium shall have a non-exclusive easement of use and enjoyment in, to and throughout the Common Area and for ingress, egress and support over and through the Common Area; however, such non-exclusive easements shall be subordinate to, and shall not interfere with, exclusive easements appurtenant to Units over the Common Area, if any. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions;

2.2.1 The right of the Association to adopt and to enforce the Association rules.

2.2.2 The right of the Association to borrow money to improve, repair or maintain the Common Area.

2.2.3 The right of the Association to assign, rent, license or otherwise designate and control use of unassigned parking and storage spaces within the Common Area (other than those portions subject to exclusive easements appurtenant to Units, if any).

2.2.4 The right of Declarant to enter on the Development to make repairs and remedy construction defects if such entry shall not interfere with the use of any occupied Unit unless authorized by the Unit Owner.

2.2.5 The right of the Association, or its agent, to enter any Unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area, of the Owners in common, or to make necessary repairs that the Unit Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Unit, whether or not the Owner is present.

2.2.6 The right of any Owner, or his representatives, to enter the Unit of any other Owner to perform permissible installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, if requests for entry are made in advance and such entry is at a time convenient to the Owner whose Unit is being entered except that in case of emergency such right of entry shall be immediate.

2.3 Delegation of Use; Contract Purchasers; Tenants. Any Owner may delegate his rights of use and enjoyment in the Development, to his guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Association rules. However, if an Owner of a Condominium has sold his Condominium to a contract purchaser or rented it, the Owner, his guests and invitees shall not be entitled to use and enjoy the Common Area of the Development while the Owner's Unit is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such unit shall be entitled to use and enjoy the Common Area of the development and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy. Each Owner shall notify the secretary of the Association of the names of any contract purchasers or tenants of such Owner's Condominium. Each Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights to use and enjoyment in the Development and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners.

2.4 Easements Granted by Association. The Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over or under the common area for the purpose of construction, erecting, operating or maintaining lines, cables, wires, conduits, or other devices of electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Condominium expressly consents to such easement. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment by any Owner of his Unit.

2.5 Declarant's Rights Incident to Construction. Declarant and persons it shall select shall have the right to ingress and egress over, upon and across the common area, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to complete the Development.

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

2.7 Parking. _____ parking spaces located in the Common Area in the Building shall be designated Limited Common Area for exclusive use in connection with each of the Residential Units in such buildings. _____ parking spaces located in the Common Area in the Building shall be designated Limited Common Area for exclusive use in connection with each of the Commercial Units in such buildings. The remaining parking spaces located in the Common Area of the Development and on public rights of way shall be Common Area available for the use and enjoyment of all Owners, subject to the Association Rules. Parking spaces shall be used exclusively for the parking of motor vehicles.

ARTICLE 3

USE RESTRICTIONS

3.1 Commercial Use. The Commercial Units are restricted to commercial, restaurant, business and/or professional use and shall be used only for purposes which are consistent with and appropriate to the design of such Units and for which adequate stair, ventilation, plumbing and similar and related facilities exist, provided that no Commercial Condominium nor any portion thereof shall be used, leased or subleased for the manufacture or assembly of any product, as a pet store or any other type of retail business that could cause undue noise for the Owners, lessees, or sublessees of adjoining Units. Providing further that no Commercial Condominium nor any portion thereof shall be used, leased, or subleased by or for any purpose which shall increase the rate of fire insurance or which will make it impossible to obtain fire or other insurance required to protect the Buildings, or which will cause or be likely to cause structural damage to the Buildings or any part thereof, which will constitute a private or

public nuisance, or which may violate any restriction which may be of record and applicable to the Real Property. Nor shall any Owner, lessee, or sublessee place a load upon any floor of any Commercial Unit exceeding the floor load per square foot which such floor was designed to carry and which is allowed by law.

3.2 Residential Use. The Residential Units are restricted to residential use, which use shall include short or long-term rental of such Unit and shall also include a "home office" trade or business which creates no greater burden on the other Units as would be created by reasonable residential use, including, but not limited to any unreasonable burden on parking, foot traffic, noise, odors, trash, heating, air conditioning or Common Area maintenance. Any rental agreement shall be in writing and shall provide that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the Association Rules and further provide that the failure to comply with the provisions of these documents shall be a default under the rental agreement. No Residential Condominium nor any portion thereof shall be used for any purpose which shall increase the rate of fire insurance or which will make it impossible to obtain fire or other insurance required to protect the Buildings, or which will cause or be likely to cause structural damage to the Buildings or any part thereof, which will constitute a private or public nuisance, or which may violate any restriction which may be of record and applicable to the Real Property. Notwithstanding the foregoing restriction, the Declarant shall have the right to use any portion of the Development, including any Unit owned by Declarant, for a model condominium site and display and sales office during period of construction of the Development and the period during which Declarant is selling Units.

3.2.1 The Declarant hereby declares and imposes as an equitable servitude and as a restrictive covenant running with the land and running with each Condominium, binding upon the Declarant and all persons claiming by, through or under it, that no Condominium shall be used, leased or subleased for any use specifically prohibited in Section 3.1 above. The Declarant, its successors and assigns, or any Owner may enforce this use covenant by an appropriate action, but failure to enforce this use covenant shall not be construed as a waiver thereof. This use covenant shall continue in force until a termination of the Association as described in this Declaration.

3.2.2 The Declarant hereby declares and affirms that this use covenant is imposed as a limitation and burden upon each Condominium and Unit and upon the Declarant, its successors and assigns, and upon all future Owners of Condominiums.

3.3 Maintenance. Each Owner of a Condominium shall be responsible for maintaining his Unit, including the equipment and fixtures in the Unit and its interior walls, ceilings, windows and doors in a clean, sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings and interior decorating; but windows can be covered only by drapes or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner also shall be responsible for repair, replacement and cleaning of the windows and glass of his Unit both exterior and interior.

Unless otherwise provided in this Declaration, each Owner shall clean and maintain any exclusive easement appurtenant to his Condominium.

3.4 Offensive Conduct; Nuisances. No noxious or offensive activities shall be conducted within the Development. Nothing shall be done on or within the Development that may be or may become a nuisance or interference to the businesses of the Development, or that in any way interferes with the quiet enjoyment of occupants of Units.

3.5 Parking Restrictions. Unless otherwise permitted by the Board, no automobile shall be parked or left within the Development other than within an assigned parking stall or space. No boat, trailer, recreational vehicle, camper, truck or commercial vehicle shall be parked or left within the Development other than in a parking area designated by the Board for the parking and storage of such vehicles. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules.

3.6 Signs. No Owner, tenant or occupant of a Condominium shall place or suffer to be placed or maintained any advertising matter within the unit which shall be visible from the exterior thereof, or any sign, awning, canopy, decoration, lettering or advertising matter or other thing of any kind on any exterior door, wall, or window of the common area which does not satisfy all applicable restrictions, regulations and requirements of the City of Ketchum, whether now in effect or later enacted.

3.7 Antennae, External Fixtures, Etc. No television or radio poles, antennae, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Board and any replacements, shall be constructed, erected or maintained on or within the common area or any structures on it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Board, and their replacements, shall be constructed, erected or maintained on or within the common area, including any structures on it. Nothing contained herein shall be construed to prohibit the placement of antennae, including satellite "dishes," upon the roof of the Building if approved by the City of Ketchum. Also, fans, vents and hoods for heating, ventilation, and air conditioning may be placed on the roof of the Building if all applicable regulations and requirements of the City of Ketchum are satisfied.

3.8 Animals. No reptiles, rodents, livestock or poultry shall be kept in any Unit or elsewhere within the Development. A reasonable number of domestic dogs and cats, fish and birds ("pets") may be kept in Residential Units by Owners, but not by tenants of Owners, provided that such pets do not create or constitute a nuisance.

3.9 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacle customarily used for it, which shall be located only in places specifically designated for such purposes except on the scheduled day for trash pickup.

3.10 Structural Alterations. No structural alterations to the interior of or common area surrounding any unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board.

3.11 Exterior Alterations. No Owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railings or walls situated within the Development without the prior written consent of the Board.

3.12 Compliance with Laws, Etc. Nothing shall be done or kept in any Unit or in the common areas that might increase the rate of, or cause the cancellation of, insurance for the Development, or any portion of the Development, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings or other personalty belonging to such Owner to remain within any portion of the common area except portions subject to exclusive easements over common area appurtenant to such Owner's Condominium and except as may otherwise be permitted by the Board.

3.13 Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the common area that may be sustained by reason of the negligence of that Owner, his contract purchasers, tenants, guests or invitees, but only to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and his contract purchasers, tenants, guests or invitees, to indemnify each and every other Owner, and to hold him harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner and within any exclusive easements over the common area appurtenant to the Owner's Condominium, unless the injury of damage occurred by reason of the negligence of any other Owner or person temporarily visiting in said Unit or portion of the common area subject to an exclusive easement appurtenant to the Condominium or is fully covered by insurance.

3.14 Owner's Obligation for Taxes. To the extent allowed by law, all Condominiums, including their pro rata undivided interest in the common area and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to first mortgages under local law shall relate only to the individual Condominiums and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the Blaine County Assessor against his Condominium and against his personal property.

3.15 Maintenance of Interiors. Each Owner shall keep the interior of his Unit, including, without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition and good state of repair, and shall keep the limited common area designated for use in connection with his Unit in a clean, sanitary and attractive condition and good state of repair.

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

3.17 Enforcement. The failure of any Owner to comply with any provision of this Declaration or the Articles or Bylaws shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or for injunctive relief, or both.

ARTICLE 4

THE ASSOCIATION

4.1 Formation. The Association is a nonprofit corporation which shall be formed under the laws of Idaho. Upon recordation of this Declaration, the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws, and this Declaration, including, but not limited to, control and maintenance of the common area and ownership of any facilities on the common area.

4.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration or the Bylaws, and their amendments. Except as otherwise provided in this Declaration, the Articles or the Bylaws, all matters requiring the approval of members shall be deemed approved if members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of members at any regular or special meeting held in accordance with the Bylaws.

4.3 Powers and Duties of Association.

4.3.1 Powers. The Association shall act as the management body for the Development and shall have all the powers of a non-profit corporation organized under the General Nonprofit Corporation Law of Idaho subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles, and Bylaws, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

4.3.1.1 Assessments. The Association shall have the power to establish, fix and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration. However, the approval of members shall be required as to the amounts of all regular and special assessments except as otherwise provided in this Declaration.

4.3.1.2 Right of Enforcement. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or of the Articles or Bylaws, or of the Association rules or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can suspend the voting rights, can suspend use privileges of the common area, or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration or the Articles, Bylaws, Association rules, or Board resolutions.

4.3.1.3 Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent ("Manager"). Any agreement for professional management of the Development shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days' written notice. The term of any such agreement shall not exceed one (1) year, although such agreement may be renewed from year to year by the Board.

4.3.1.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Association rules as it deems reasonable. The Association rules shall govern the use of the common area by all Owners or their guests, invitees or by any contract purchaser, or tenant, or their respective guests or invitees. However, the Association rules shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles or the Bylaws. A copy of the Association rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development. In case of any conflict between any of the Association rules and any other

provisions of this Declaration, the Articles, or Bylaws, the conflicting Association rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws.

4.3.2 Duties of the Association. In addition to the powers delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, or persons or entities described in Section 4.3.1.3, has the obligation to conduct business affairs of common interest to all Owners and to perform each of the following duties:

4.3.2.1 Operation and Maintenance of Common Area. To operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the common area, and all its facilities, improvements, and landscaping including any private driveways, and any other property acquired by the Association, including personal property, in a first-class condition and in a good state of repair. The Association shall remove all snow from the property and haul it off-site in order to maintain clear access drives, parking areas and pedestrian parkways. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or the common area, including contracts with Declarant. The term of any such service contract shall not exceed one (1) year and shall be terminable by either party with or without cause and without payment of a termination fee upon thirty (30) days' written notice.

4.3.2.2 Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the common area and personal property owned by the Association or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.3.2.3 Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the common area and for Condominiums when the Condominiums are not separately billed. The term of any contract to supply any of the listed services shall not exceed one (1) year or, if the supplier is a regulated public utility, the shortest term not to exceed one (1) year for which the supplier will contract at the applicable regulated rate.

4.3.2.4 Insurance. To obtain, from reputable insurance companies, and maintain the insurance described in Article 8.

4.3.2.5 Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonable necessary to enforce any of the provisions of this Declaration, the Articles and Bylaws, and the Association's rules and Board Regulations.

4.3.3 Limitations on Authority of Board. Except with the vote or written assent of members of the Association holding fifty-one percent (51%) of the voting rights of the members, the Board shall not take any of the following actions:

4.3.3.1 Incur aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

4.3.3.2 Sell in any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

4.3.3.3 Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.4 Personal Liability. No member of the Board, or of any committees of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

4.5 Financial Statements of the Association. The Board shall prepare, or cause to be prepared, annual financial statements, including a balance sheet and operating statement of the Association, and copies of those statements shall be available to each member of the Association.

4.6 Inspection of Association Books and Records. Any membership register, books of account and minutes of meetings of the members, the Board and committees of the Board of the Association, shall be made available for inspection and copying by any member of the Association, or his duly-appointed representative, or any mortgagee, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the Development as the Board prescribes.

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS

5.1 Membership.

5.1.1 Qualifications. Each Owner of a Condominium, including Declarant, shall be a member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a member of the Association until his ownership or ownership interest in all Condominiums in the Development ceases at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as a security for performance of an obligation are not to be regarded as members.

5.1.2 Members Rights and Duties. Each member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association's rules, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner.

5.2 Voting.

5.2.1 Number of Votes. The members of the Association will have a total of 100 votes. On all matters coming before the membership of the Association, each Owner shall be entitled to vote the same percentage of all votes which such Owner's ownership interest in the Common Area bears to all Common Area. For example, if an Owner's interest in the Common Area is 12.5% according to Exhibit B, attached hereto, then such owner would be entitled to cast 12 ½ votes on all matters being voted upon by the membership of the Association.

5.2.2 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

ARTICLE 6

ASSESSMENTS

6.1 Agreement to Pay. The Declarant, for each Condominium owned by it in the Development that is expressly made subject to assessment as set forth in this Declaration, covenants and agrees, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration.

6.2 Personal Obligations. Each assessment or installment, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment became due and payable. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment, or installment respecting such Condominium shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the common area or by waiver of the use or enjoyment of, or by abandonment of, his Condominium.

6.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the members of the Association, the improvement, replacement, repair, operation and maintenance of the common area, and the performance of the duties of the Association as set forth in this Declaration.

6.4 Assessments.

6.4.1 Regular Assessments.

6.4.1.1 Not more than sixty (60) days nor less than thirty (30) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the regular annual assessment of common expenses of the Development for the forthcoming fiscal year. At such meeting the Board shall review written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the members of the Association, shall establish the regular assessment for the forthcoming fiscal year; provided, however, that the Board may not establish a regular assessment for any fiscal year of the Association which is more than one hundred ten percent (110%) of the regular assessment of the prior fiscal year of the Association (except with regard to the first fiscal year of the Association if it should be less than twelve (12) months) without the approval by vote or written consent of fifty-one percent (51%) the members. The Board may from time to time during each fiscal year make reasonable adjustments in the assessments on the basis of actual costs incurred. As soon as practicable after the end of each fiscal year, the aggregate amount of common expenses actually incurred for said year shall be determined by the Board.

6.4.1.2 Unless the Association or its assessment income shall be exempt from federal or state income taxes, to the extent possible, all reserves shall be accounted for and handled as contributions to the capital of the Association or in such other manner authorized by law or regulations of the Internal Revenue Service as will prevent such funds from being taxed as income of the Association.

6.4.2 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements to the common area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board may, in its discretion, pro rate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service to avoid, if possible, its taxation as income of the Association.

6.4.3 Limitation Respecting Special Assessments. Any special assessment in excess of five percent (5%) of the budgeted gross expense of the Association for the fiscal year in which a special assessment is levied shall require approval by vote or written consent of fifty-one percent (51%) of the members, except in case of a special assessment against an Owner as a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member or his Condominium into compliance with the provisions of this Declaration.

6.5 Rate of Assessment. Except as otherwise specifically provided in this Declaration, including Sections 4.3.1.2, 6.4.3 and 9.6, regular and special assessments shall be apportioned among all Condominiums in proportion to the interest in the common area appurtenant to such Condominium.

6.6 Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Board adopts some other basis for collection. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale of the first Condominium to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall terminate on December 31 of the year in which the initial sale is closed and recorded. The first regular assessment and all special assessments shall be adjusted according to the number of

months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

6.7 Notice and Assessment Installment Due Dates. A single ten (10) day prior written notice of each annual regular assessment and each special assessment shall be given to any Owner of every Condominium subject to assessment in which the due dates for the payments of installments normally shall be established by the Board. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date.

6.8 Estoppel Certificate. The Board or Manager, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to his Condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Condominium. Any such certificate may be relied on by any prospective purchaser or mortgagee of the Condominium, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

ARTICLE 7

COLLECTION OF ASSESSMENTS; LIENS

7.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including any Manager, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other amounts described in Section 6.2 shall be maintainable without foreclosing or waiving the lien rights.

7.2 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment of an assessment on a Condominium, any amounts that are delinquent and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys fees, shall be a lien against such Condominium upon the recordation in the office of the Blaine County Recorder of a notice of assessment as provided in Idaho Code §55-1518. The notice of assessment shall not be recorded unless and until the Board or its authorized representative has delivered to the delinquent Owner or Owners, not less than fifteen (15) days before the recordation of the notice of assessment, a written notice of default and a demand for payment, and unless such delinquency has not been accrued within said fifteen (15) day period. The lien shall expire and be void unless, within one (1) year after recordation of

the notice of assessment, the Board or its authorized representative records a notice of default as provided hereinafter or institutes judicial foreclosure proceedings with respect to such lien.

7.3 Notice of Default; Foreclosure. Not more than one (1) year nor less than fifteen (15) days after the recording of the notice of assessment, the Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under a power of sale in a deed of trust, or in any other manner permitted by law, or through judicial foreclosure. However, as a condition precedent to the holding of any such sale appropriate publication shall be made. In connection with any sale, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in Idaho as trustee for purpose of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Board or its authorized representative shall cause to be recorded in the office of the county recorder of the county in which the Development is located a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys fees, by any delinquent Owner. During the pendency of any foreclosure proceeding, whether judicial or by power of sale, the Owner shall be required to pay to the Association any assessments against the Condominium which shall become due, and such accruing assessments shall be secured by the lien and paid from the proceeds of any sale pursuant to the foreclosure proceedings. On becoming delinquent in the payment of any assessments or installments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium.

7.4 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Section 7, the benefit of any homestead or exemptions laws of Idaho in effect at the time any assessment, or installment, become delinquent or any lien is imposed.

7.5 Liability of Grantee. For Assessments subject to the provisions of Section 6.8, a grantee or purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of conveyance, without prejudice to the rights of the grantee or purchaser to recover from the seller the amount paid by the grantee or purchaser for such assessments.

ARTICLE 8

INSURANCE

8.1 Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any Manager, the Declarant and the Owners and occupants of Condominiums, and their respective guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the common area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability of non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

8.2 Fire and Extended Coverage Insurance. The Association also shall obtain and maintain a master or blanket policy for fire insurance for the full insurable value of all of the improvements within the development. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first mortgagees. If more than one institutional first mortgagee has a loan of record against a Condominium in the Development, the policy and endorsements shall meet the maximum standards of the various institutional first mortgagees represented in the Development. The policy shall contain an agreed amount of endorsement, replacement equivalent, an increased cost of construction endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association, the Owners, and Declarant, as long as Declarant is the Owner of any Condominium, and all mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

8.3 Owner's Own Insurance Limited. Notwithstanding the provisions of Sections 8.1 and 8.2 above, each Owner may obtain insurance at his expense providing coverage upon his condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Section. Further, all such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, and other Owners, and the servants, agents and guests of any of them. If a casualty loss is sustained and there is a reduction in the amount of proceeds which would otherwise be payable on the insurance purchased by the Association due to the purchase by the Owner of additional insurance, the Owner shall assign the proceeds of such additional insurance, to the extent of the amount of such reduction, to the trustee to be distributed as provided below.

8.4 Trustee. All insurance proceeds payable under Section 8.2 and 8.3, subject to the rights of mortgagees under Section 8.7, may be paid to a trustee, to be held and expended for the benefit of the Owners, mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in Blaine County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

8.5 Other Insurance. The Board may and, if required by any institutional first mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild. The Board also shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than one hundred fifty percent (150%) of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any institutional first mortgagee. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary or that is required by any institutional first mortgagee.

8.6 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 8.1, 8.2 and 8.5. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

8.7 Distribution of Mortgagees. Any mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the mortgage of such mortgagee.

ARTICLE 9

DESTRUCTION OF IMPROVEMENTS

9.1 Destruction; Proceeds Exceed Eighty-five Percent (85%) of Reconstruction Costs. If there is a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried pursuant to Article 8 are sufficient to cover more than eighty-five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, members then holding at least fifty-one percent (51%) of the total voting power of members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the Blaine County Recorder's Office not later

than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the members to rebuild.

9.2 Destruction; Proceeds Less than Eighty-five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of destruction, members then holding at least fifty-one percent (51%) of the total voting power of members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the Blaine County Recorder's Office not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention of the members to rebuild.

9.3 Rebuilding Procedures. If the members determine to rebuild, pursuant to Section 9.1 and 9.2, each Owner shall be obligated to contribute his proportionate share of the cost of reconstruction or restoration over and above the available insurance proceeds. The proportionate share of each Owner shall be equal to the percentage interest in the Common Area appurtenant to such Owner's Condominium. If any Owner fails or refuses to pay his proportionate share, the Board may levy a special assessment against the Condominium of such Owner which may be enforced under the lien provisions contained in Article 7 or in any other manner provided in this Declaration. If any Owner disputes the amount of his proportionate liability under this Section, such Owner may contest the amount of his liability by submitting to the Board within ten (10) days after notice to the Owner of his share of the liability written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which he may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of members for the purpose of acting upon the Board's recommendation, including making further adjustments, if deemed by the members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

9.4 Rebuilding Contract. If the members determine to rebuild, the Board or its authorized representative shall obtain bids from at least two (2) reputable contractors and shall award the repair and reconstruction work to the lowest bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

9.5 Rebuilding Not Authorized. If the members determine not to rebuild, then, subject to the rights of mortgagees under Section 8.7, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Condominium in proportion to his respective percentage undivided interest in the common area. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to execute, acknowledge and record in the office of the County Recorder of Blaine County, a certificate declaring the intention of the members not to rebuild.

9.6 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct improvements, without the consent of members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Five Thousand Dollars (\$5,000). The Board is expressly empowered to levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 9.3 (but without the consent or approval of members, despite any contrary provisions in this Declaration).

9.7 Revival of Right to Partition. On recordation of a certificate described in Section 9.5, the right of any Owner to partition through legal action as described in Article 11 shall revive immediately.

ARTICLE 10

CONDEMNATION

10.1 Sale on Unanimous Consent. If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and after written notice to all mortgagees, the Development, or a portion of it may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board but in no event less than the aggregate unpaid balance of all mortgages encumbering Condominiums in the Development if the Development is sold.

10.2 Distribution of Proceeds of Sale. On a sale occurring under Section 10.1, the proceeds shall be distributed to the Owner and the mortgagees of each Condominium as their respective interests may appear in proportion to each Owner's respective percentage undivided interest in the Common Area.

10.3 Distribution of Condemnation Award. If the Development, or a portion of it, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective mortgagees.

10.4 Revival of Right to Partition. On sale or on taking that renders more than fifty percent (50%) of the Units in the Development unusable as residential or commercial spaces, the right of any Owner to partition through legal action shall revive immediately.

10.5 Partial Taking. In the event that less than the entire Development is taken or condemned, or sold or otherwise disposed in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner by the Association:

10.5.1 The total amount allocated to taking of or injury to the common area shall be apportioned among the Owners according to the percentage interest in the common area appurtenant to the Condominiums of such Owners.

10.5.2 The total amount allocated to severance damages shall be apportioned to those Condominiums which were not taken or condemned.

10.5.3 The respective amounts allocated to the taking of or injury to a particular Condominium and/or improvements, including trade fixtures, the Owner has made within his Condominium, and any relocation, moving expenses or other allowance of a similar nature designated to facilitate relocation, shall be apportioned to the particular Condominium involved.

10.5.4 The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in these circumstances.

ARTICLE 11

PARTITION

11.1 Suspension. The right of partition is suspended pursuant to Idaho law as to the Development. Partition of the Development can be had on a showing that the conditions of such partition as stated in Section 9.7 or in Section 10.4 have been met. Nothing in this Declaration shall prevent partition or division of interest between joint or common Owners of any Condominium.

11.2 Distribution of Proceeds. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their mortgagees as their interests appear in proportion to each Owner's respective undivided percentage interest in the common area.

11.3 Power of Attorney. Each of the Owners hereby grants the Association an irrevocable power of attorney to sell the Development for the benefit of the Owners when

partition can be had. Exercise of said power is subject to the approval of members and their institutional first mortgagees.

ARTICLE 12

NON-SEVERABILITY OF COMPONENT INTERESTS IN A CONDOMINIUM

12.1 Prohibition Against Severance. An Owner shall not be entitled to sever his interest in any Condominium from his membership in the Association, and shall not be entitled to sever his Unit and his membership from his undivided interest in the common area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article 11 respecting the suspension of partition. It is intended hereby to restrict severability.

12.2 Conveyances. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE 13

TERM OF DECLARATION

This Declaration shall run with the land and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all covenants, conditions, restrictions, and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by seventy five percent (75%) of the Owners of all the Condominiums in the Development and recorded in the office of the Blaine County Recorder.

ARTICLE 14

PROTECTION OF MORTGAGEES

14.1 Mortgage Permitted. Any Owner may encumber his Condominium with a mortgage.

14.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any mortgage that encumbers all or a portion of the Development, or any Condominium, made in good faith and for

value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

14.3 Amendment. The prior written consent, as provided in Section 14.3.9, below, of all holders of all first mortgages shall be required for any material amendment to this Declaration, to the Articles or to the Bylaws. As used in this Section 14.3, the term “any material amendment” is defined to mean amendments to provisions of this Declaration, to the Articles or to the Bylaws governing the following subjects:

14.3.1 The purpose for which the Development may be used;

14.3.2 Voting;

14.3.3 Assessments, collection of assessments, creating and subordination of assessment liens;

14.3.4 Reserves for repair and replacement of common area improvements;

14.3.5 Maintenance of common area and improvements thereon;

14.3.6 Casualty and liability insurance;

14.3.7 Rights of use to and in the common area;

14.3.8 Any provision, which by its terms, is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees.

14.3.9 The Association shall provide notice of such amendment by United States mail, return receipt requested, to the holders of all first mortgages that have previously disclosed their interest in writing to the Association. In the event that no response from said first mortgagee is received by the Association within thirty (30) days of the mailing of said notice, the non-responding first mortgagee shall be deemed to have consented to the amendment.

14.4 Restrictions on Certain Changes. Unless the holders of all first mortgages of have given their prior written approval, as provided in Section 14.4.7, below, neither the Association nor the Owners shall be entitled:

14.4.1 By act or omission to seek to abandon or terminate the condominium project, except for abandonment provided by statute in case of substantial loss to the Units and common area;

14.4.2 To change the method of determining the obligations, assessment, dues or other charges which may be levied against any Owner, or to change the pro rata interest

or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the common area;

14.4.3 To partition or subdivide any Unit; any partition or subdivision shall be subject to the applicable laws of all government entities with jurisdiction thereover;

14.4.4 By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the common area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause.

14.4.5 To use hazard insurance proceeds for losses to Units or common area improvements in the development or to any other Association property, for other than the repair, replacement or reconstruction of such improvements or property except as provided by statute in case of substantial loss to the Units or common area of the development.

14.4.6 By act or omission to change, waive, or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to architectural design or control of the exterior appearance of structures in the development, the maintenance of the common area, walks or fences and driveways, or the upkeep of lawns and plantings in this Development.

14.4.7 The Association shall provide notice of such acts referred to in paragraphs 14.4.1. through 14.4.6, above, by United States mail, return receipt requested, to the holders of all first mortgages that have previously disclosed their interest in writing to the Association. In the event that no response from said first mortgagee is received by the Association within thirty (30) days of the mailing of said notice, the non-responding first mortgagee shall be deemed to have consented to the act.

14.5 Right to Examine Books and Records. First mortgagees can examine the books and records of the Association or the condominium project and can require the submission of financial data concerning the Association or the condominium project, including annual audit reports and operating statements as furnished by the Owners.

14.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of first mortgagees of Condominiums pursuant to their mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or common area. Any provisions to the contrary in this Declaration or in the Bylaws or other documents relating to the development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected first mortgagees naming the mortgagees, as their interests may appear.

14.7 Notices to First Mortgagees of Record. Upon any loss to any Unit covered by a mortgage, if such loss exceeds Five Thousand Dollars (\$5,000) or any loss to the common area, if such loss exceeds Ten Thousand Dollars (\$10,000), or on any taking of the common area, notice in writing of such loss or taking shall be given to each first mortgagee of record. If any Owner of a unit is in default under any provision of these covenants, conditions and restrictions, or under any provision of the Bylaws or the Association rules, which default is not cured within thirty (30) days after written notice to such Owner, the Association shall give the first mortgagee of record of such Owner written notice of such default and of the fact that said thirty (30) day period has expired.

14.8 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any first mortgage encumbering such Owner's Condominium, or the promissory note secured by the mortgage, the first mortgagee or his representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the members held during such time as such default may continue.

14.9 Payments by First Mortgagees. First mortgagees of Condominiums may, jointly or singularly, pay taxes or other charges against common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for common area improvements or other insured property of the Association and, upon making any such payments, such first mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all first mortgagees and upon the request of any first mortgagee the Association shall execute and deliver to such first mortgagee a separate written agreement embodying the provisions of this Section 14.9.

14.10 Effect of Breach. No breach of any provision of these covenants, conditions, and restrictions shall invalidate the lien of any mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustees's sale, or otherwise.

14.11 Foreclosure. If any condominium is encumbered by a mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the mortgage. On foreclosure of the mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include

previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

14.12 Loan to Facilities. Any mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article 14.

14.13 Appearance at Meetings. Because of its financial interest in the development, any mortgagee may appear (but cannot vote except under the circumstances set forth in Section 14.8) at meetings of the members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings and assessments.

14.14 Right to Furnish Information. Any mortgagee can furnish information to the Board concerning the status of any mortgage.

14.15 Contracts with Declarant. Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days' written notice and shall have a maximum contract term of one (1) year; provided that the Board can renew any such contract on year-to-year basis.

14.16 Mortgagee to Notify Board of Owners Default. Upon the happening of a default under the terms of a mortgage of a Condominium which would permit the holder to declare the entire principal sum due, notice of the intention of the holder to do so shall be given to the Board but failure to give such notice shall not prevent the holder from instituting a foreclosure action and joining the Association as a party defendant therein.

14.17 Rights of Association with Respect to Mortgages in Default. The Association shall have the following rights, powers and privileges with respect to mortgages in default:

14.17.1 By and with the consent of the holder thereof, to remedy the defaults existing under the terms of the mortgage and to put the same in good standing. In the event the Board shall make the advances necessary to remedy the defaults, the Association shall be deemed to hold a junior participating interest in the obligation and mortgage for the sum of principal together with interest, costs, disbursements, counsel fees, insurance, taxes or other charges so advanced with the right to foreclosure of such junior participating interest against the defaulting Unit Owner for the benefit of the remaining Unit Owners. The holder of the mortgage shall in no event be required or have the obligation to collect the junior interest so created on behalf of the Association.

14.17.2 To acquire such mortgage by assignment from the holder thereof either before or after the institution of a foreclosure action. The mortgage shall be acquired in the name of the Association with all the powers and rights of the holder against the defaulting Unit Owner including the right to foreclose the same for the benefit of the remaining Owners.

14.17.3 To accept from the defaulting unit Owner a deed transferring the unit and its common interest and, by and with the consent of the holder of the mortgage, to remedy the defaults existing under the terms thereof for the benefit of the other Unit Owners.

14.17.4 To continue any pending action or to institute an action to foreclose any mortgage taken by assignment under subsection 14.18.2 above, or to take a deed in lieu of such foreclosure.

In no event shall a Unit Owner be relieved from liability already incurred for past due common expenses and charges or be relieved from personal liability on the bond, note or other obligation by reason of any conveyance made under the provisions set forth above.

14.18 Association Shall be Necessary Party in All Mortgage or other Lien Foreclosures. The Association shall be a necessary party in every action brought to foreclosure any mortgage or other lien affecting a Condominium. The Association shall be entitled to bid at any sale, whether the Association is the plaintiff or a defendant, and to purchase any Condominium at such sale for such amount as shall be approved by the Board taking into consideration the amount due, the costs and disbursements, and all other charges affecting the Condominium. The Association shall not, however, be limited in its bidding to such amount or total but may bid any higher sum it finds necessary in order to protect the interests of the other unit Owners.

ARTICLE 15

RETAINED RIGHTS OF DECLARANT

15.1 Retained Right to Develop and Include Adjacent Property. The Declarant hereby expressly retains the right to acquire property adjacent to the Real Property at any time and to develop such additional property and include such additional property to the Development subject to all of the provisions of this Declaration and the Bylaws. "Adjacent property" shall mean property which adjoins the Real Property or which is separated from the Real Property by a road, street or easement, but would adjoin the Real Property but for such road, street or easement, whether the road, street or easement is public or private. Any additional property to be added to the Development, if improved, shall be improved and developed with condominium buildings and other facilities which are substantially similar in architectural style, construction and materials to the Development; provided, however, that if Declarant acquires Lot 1, Sun Mountain Subdivision, Blaine County, Idaho, which has existing condominiums built on it, Declarant may include such property and such condominiums in the Development "as is" without any obligation to remodel, repaint or otherwise change such structures. In addition, Declarant reserves the right

to change the size, design, and allocation of commercial or residential use of the Units to meet market demands. The Declarant specifically retains the right to amend this Declaration and the Condominium Plat to include the additional property, condominium units, and common areas. Any Owner's acceptance of a deed to any Unit of the Development constitutes express consent to such amendments.

15.2 Adjustments to Common Areas. If the Declarant acquires additional property and adds such additional property to the Development as provided above, all interests in the Common Areas shall be adjusted appropriately. A revised Exhibit B setting forth the Common Area ownership percentages of all of the Units shall be prepared and recorded as part of the amended Declaration.

15.3 Adjustments to Assessments. If additional Units are added to the Development as provided above, the Assessments shall be recalculated to include the Common Expenses of the additional property added to the Development and allocated as provided in Article 6. Each additional Unit which is added to the Development as provided in this Article 15 shall be subject to Assessments commencing on the first day of the month which is six (6) months after issuance of a Certificate of Occupancy for such Unit; provided that any Owner of a Unit other than Declarant shall pay full assessments for such Owner's Unit from the date of conveyance of such Unit to such Owner.

ARTICLE 16

AMENDMENT

16.1 Amendment of Declaration. This Declaration may be amended or revoked in any respect by the vote or written consent of seventy five percent (75%) of the members of the Association. Also, if the consent or approval of any governmental authority, mortgagee, or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

16.2 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE 17

GENERAL PROVISIONS

17.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

17.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions or portions of it shall not invalidate any other provisions.

17.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

17.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any member of the Board, the Manager, or the Association.

17.5 Access to Books. Any Owner may, at any reasonable time and upon reasonable notice to the Board or Manager at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

17.6 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

17.7 Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the mortgagee's mailing address, the date of sale, the amount of such mortgages and the recording information pertinent to identify same. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the Manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Board has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notice shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Condominium over the age of eighteen (18) years.

17.8 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine or neuter, as the context requires.

17.9 Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

17.10 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

17.11 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors, and assigns of the Owners.

17.12 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the Blaine County Assessor, they shall be paid by the respective Owners of Condominiums. The proportionate share of the taxes for a particular Condominium shall be determined by dividing the initial sales price or offered initial sales price of the Condominium by the total initial sales prices and offered initial sales prices of all Condominiums within the Development (the term "offered initial sales price" means the price at which an unsold Condominium is then being offered for sale by Declarant). If, and to the extent, that taxes are not paid by any Owner of a Condominium and are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association.

17.13 Designation of Person to Receive Service. Declarant, as the Owner of the development and every part thereof, and for all subsequent Owners of Condominiums, has executed pursuant to Idaho Code Section 55-1512 a Designation of Person to Receive Service, a copy of which is attached hereto as Exhibit "E" and made a part hereof. This Designation shall be filed with the recorder of Blaine County, Idaho. Upon termination of the authority to receive service of the person designated herein, the Board shall prepare and file with said recorder a new such Designation naming another person to receive service.

17.14 Consent of Recordation. Declarant, as the Owner of the fee simple title to the real property, hereby consents to the recordation of this Condominium Declaration and the Condominium Plat in the records of Blaine County, Idaho. Further, Declarant hereby certifies that all holders of recorded liens or other security interests in the real property have also consented to the recordation of such documents by virtue of the fully executed Certificates of Consent attached hereto as Exhibit "F" and made a part hereof, all as required by Idaho Code Section 55-1504(c) (iii).

17.15 Governing Law. This Agreement shall be governed by the laws, including conflicts of laws, of the State of Idaho, as an agreement between residents of the State of Idaho, and to be performed in the State of Idaho.

17.16 Attorney's Fees. In the event that any party hereto has to retain counsel for the purpose of enforcing any of the rights, duties or obligations arising out of or relating to this Agreement, the non-prevailing party shall pay to the prevailing party the latter's reasonable attorneys' fees and costs, whether or not litigation is actually instituted, and including attorneys' fees and costs on appeal and in any bankruptcy proceeding.

Declarant has executed this instrument as of the ____ day of _____ 2022.

Bohica Multi-Use Building LLC

By _____
Kirsten Ritzau, Member

STATE OF IDAHO)
) ss.
COUNTY OF BLAINE)

On this ____ day of _____, in the year 2022, before me, a Notary Public for the State of Idaho, personally appeared KIRSTEN RITZAU, known or identified to me to be the Member of BOHICA IDAHO, LLC., and the person who executed the instrument, and acknowledged to me that he executed the same on behalf of such corporation.

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

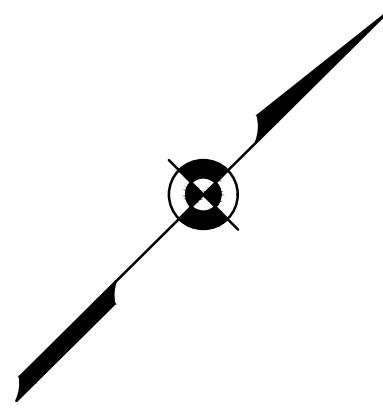
Notary Public for Idaho
Residing at: _____
My commission expires: _____

ATTACHMENT B:
Preliminary Plat Plan Set

A PRELIMINARY CONDOMINIUM PLAT SHOWING BOHICA MULTI-USE CONDOMINIUMS

WHEREIN THE BUILDING ON LOT 3, BLOCK 39, KETCHUM TOWNSITE IS CONVERTED TO CONDOMINIUMS
LOCATED WITHIN SECTION 18, T.4 N., R.18 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO

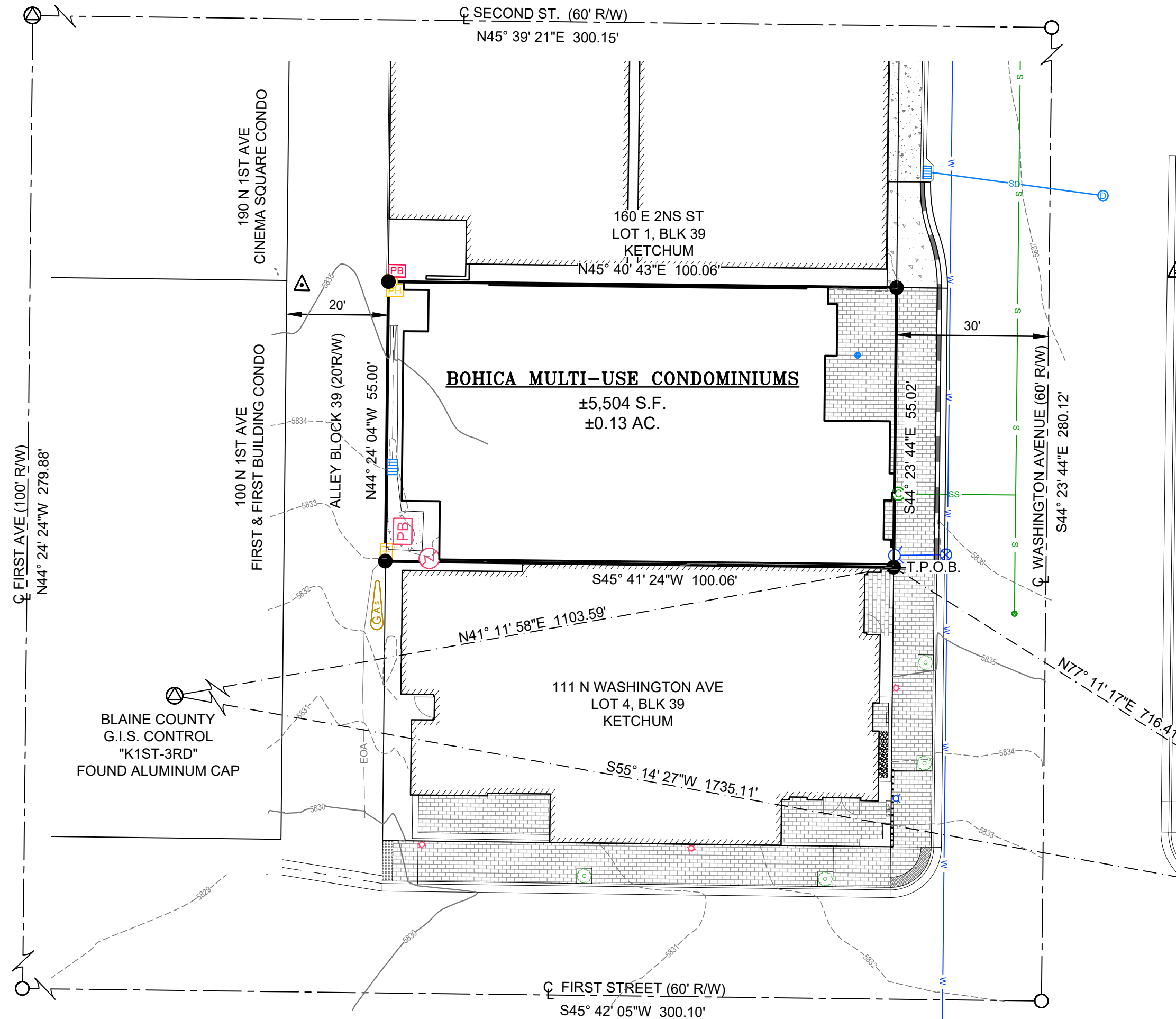
MARCH 2022



SCALE: 1" = 20'

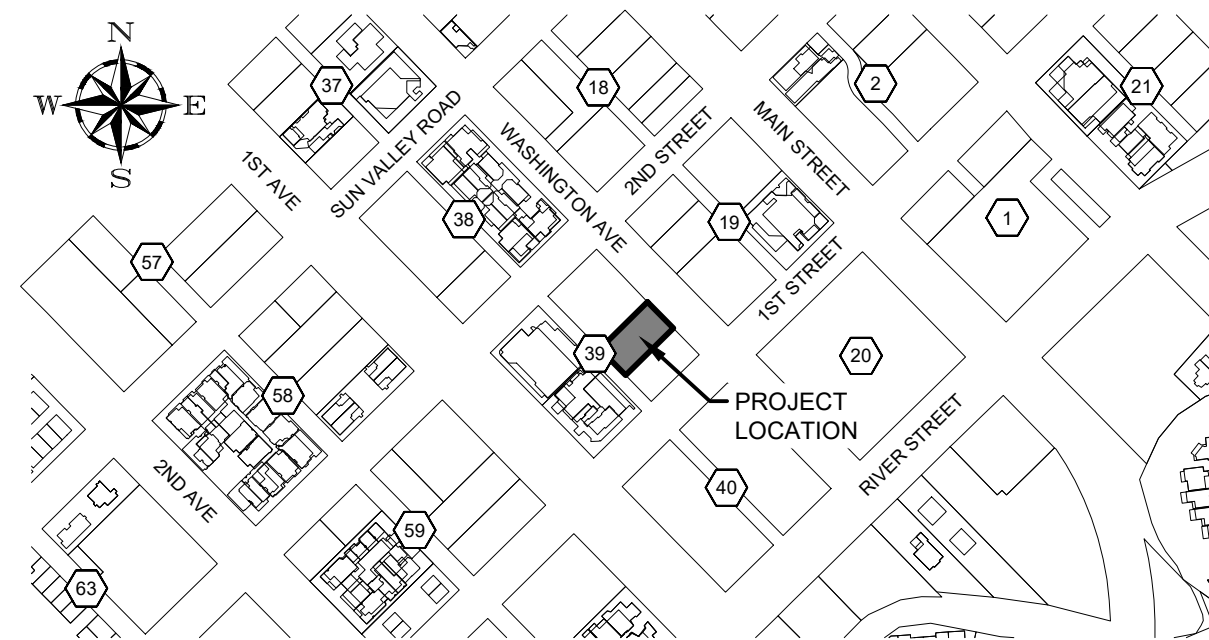
SURVEY NARRATIVE & NOTES

- The purpose of this survey is to show the monuments found and set during the boundary retracement of Lot 3, Block 39, Ketchum Townsite, Instrument Number 302967, records of Blaine County, Idaho, and to condominiumize said property as shown hereon. All found monuments have been accepted. Lot corner monuments were set by block breakdown and proportioning record distances. Vertical Datum is NAVD 1988.
- The distances shown are measured. Refer to the above referenced survey for previous record data.
- Unless 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, easements, building setbacks, restrictive covenants, subdivision restrictions, zoning or any other land-use regulations.
- A Title Commitment has been issued by Stewart Title Guaranty Company, File Number 2123662, with a Date of Guarantee of January 14, 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.
- 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.
- Dimensions shown hereon will be subject to slight variations, owing to normal construction tolerances.
- Horizontal or sloping planes shown hereon are top of finished subfloor and bottom of finished ceiling; vertical planes are finished surfaces of interior walls. Some structural members extend into units, limited common areas and parking spaces.
- Property shown hereon is subject to terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by applicable Condominium Law or the Condominium Declaration recorded under Instrument Number _____, records of Blaine County, Idaho. Consult the Condominium Declarations for the definition of common and limited common area.
- All area outside of units that is not designated as limited common is common area. areas of "common" or "limited common" are shown by diagram.
- Building ties are to the interior corners of unit walls.
- 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.
- No garage may be condominiumized or sold separate from a condominium unit.
- The current zoning is Community Core - Subdistrict 2 - Mixed Use. Refer to the City of Ketchum Zoning Ordinance for specific information about this zone.
- The owner of the property is Bohica Idaho LLC, PO Box 1129, Ketchum, ID. The surveyor/representative is Mark E. Phillips, Galena Engineering, Inc., 317 N. River St., Hailey, Idaho 83333.



LEGEND

	Property Line
	Adjoiner's Lot Line
	Centerline of Right-of-way
	Blaine County G.I.S. Tie
	Found Aluminum Cap
	Found 5/8" Rebar
	Found 1/2" Rebar
	Set 5/8" Rebar
	Survey Control
	Existing Building
	Edge of Asphalt
	Existing Concrete Curb, Gutter, & Sidewalk
	Existing Paver Sidewalk
	Proposed Curb and Gutter
	Concrete Valley Gutter
	GMTR = Gas Meter
	GMKR = Gas Marker
	TVBOX = Cable TV Riser
	PHBOX = Telephone Riser
	PBOX = Power Box
	Water Main
	Sewer Main
	Sewer Service
	Storm Drain
	Power Meter
	Sewer Manhole
	Sewer Cleanout
	Catch Basin
	Drywell
	Fire Hydrant
	Water Valve
	1' Contour Interval
	5' Contour Interval
	CA = Common Area
	ELEV. = Elevator
	LC = Limited Common Area
	MECH. = mechanical Room
	T.P.O.B. = True Point of Beginning



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

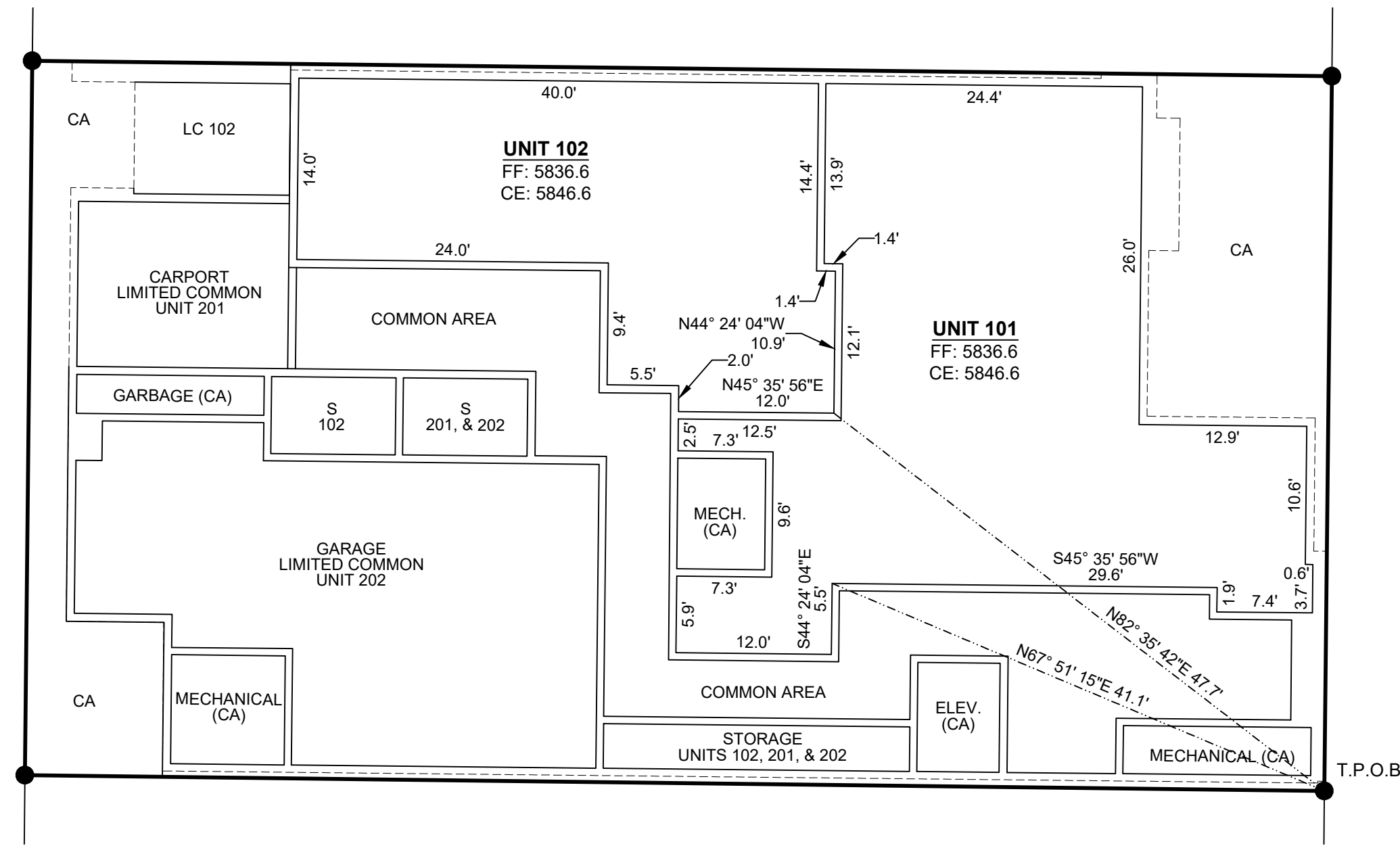
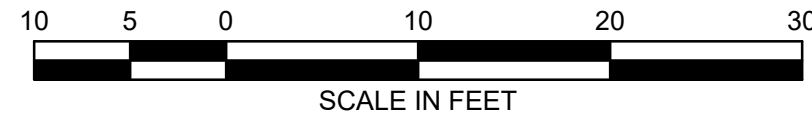


MARK E. PHILLIPS, P.L.S. 16670

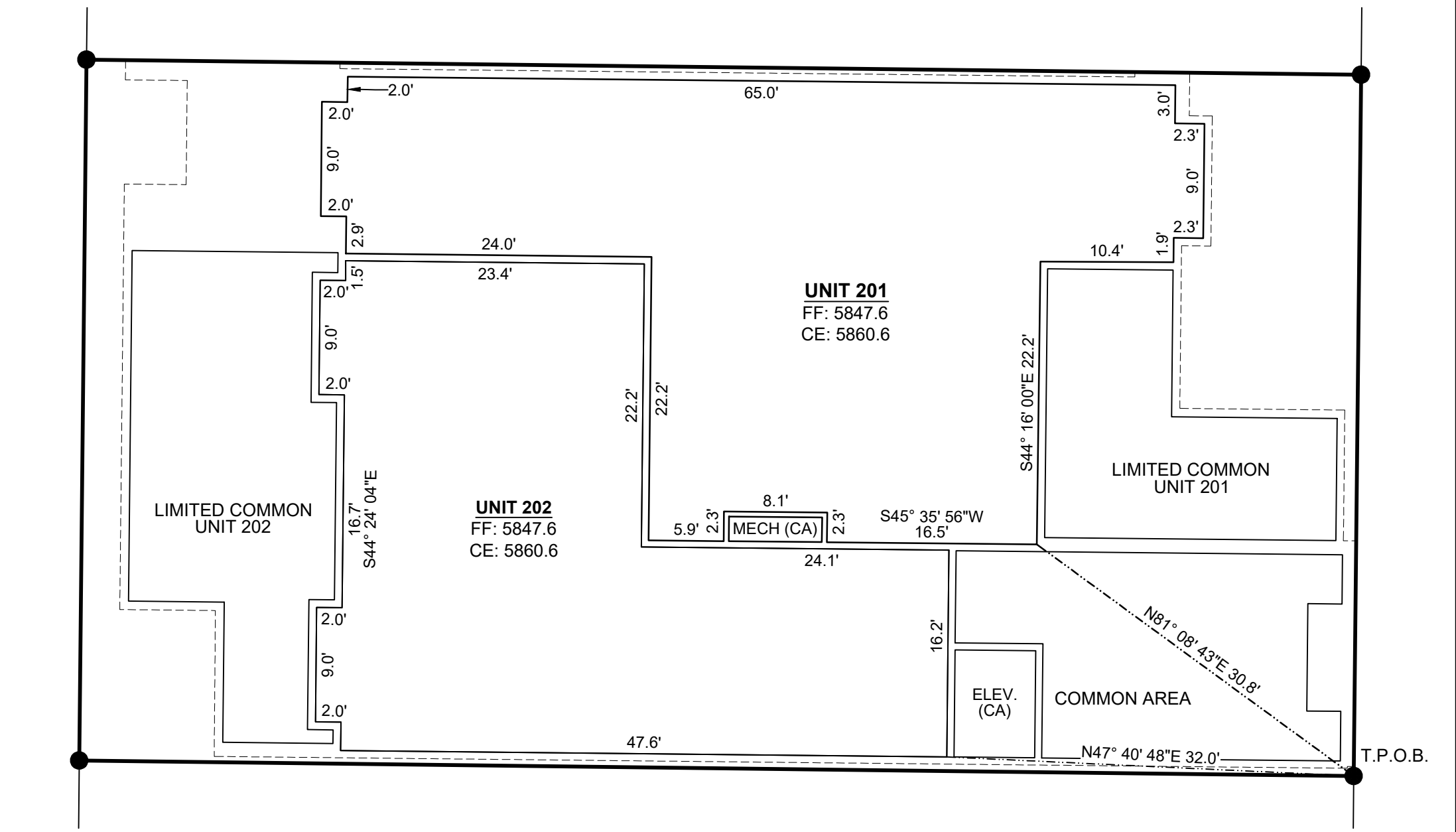
BOHICA MULTI-USE CONDO'S
GALENA ENGINEERING, INC.
HAILEY, IDAHO

1 OF 3
Job No. 8229

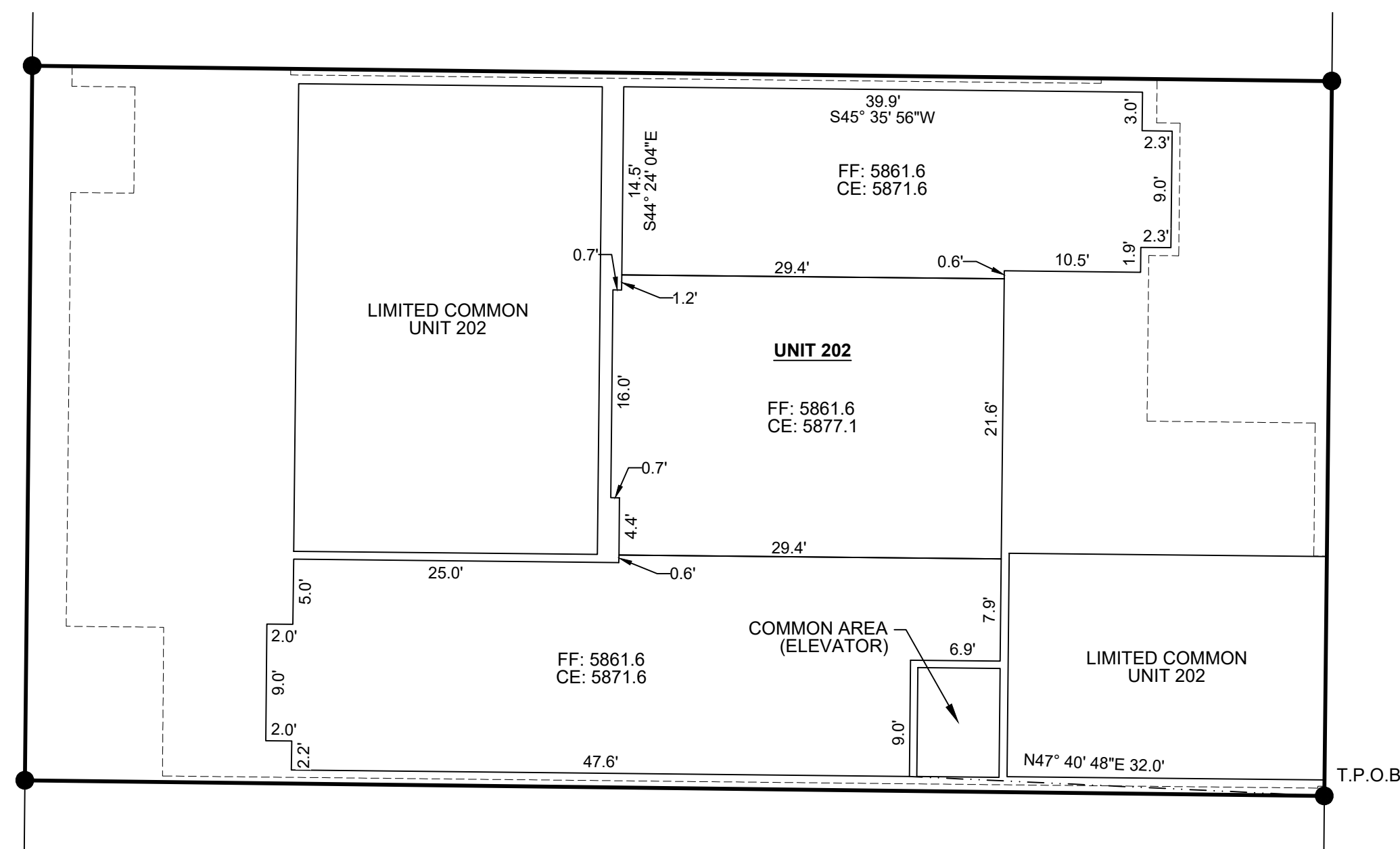
A PRELIMINARY CONDOMINIUM PLAT SHOWING BOHICA MULTI-USE CONDOMINIUMS MARCH 2022



FIRST FLOOR

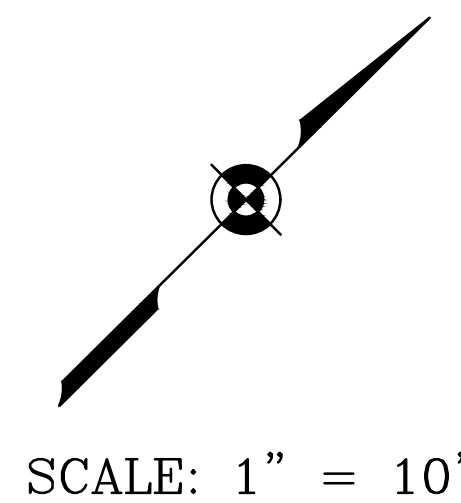


SECOND FLOOR



THIRD FLOOR

- LEGEND**
- Property Line
 - Unit Boundary
 - Building Footprint
 - Survey Tie Line
 - Set 5/8" Rebar, P.L.S. 16670
 - FE** Floor Elevation
 - CE** Ceiling Elevation
 - CA** Common Area
 - S** Storage



BOHICA MULTI-USE CONDO'S
GALENA ENGINEERING, INC.
HAILEY, IDAHO

CERTIFICATE OF OWNERSHIP

This is to certify that the undersigned are the owners in fee simple of the following described condominium property:

A parcel of land located within Section 18, T.4N., R.18E., B.M., City of Ketchum, Blaine County, Idaho, more particularly described as follows:

LOT 3, BLOCK 39, KETCHUM TOWNSITE

The easements indicated hereon are not dedicated to the public, but the right to use said easements is hereby reserved for the public utilities and for any other uses indicated hereon and no permanent structures are to be erected within the lines of said easements. I do hereby certify that all units within this condominium plat will be eligible to receive water service from an existing water distribution system and that the existing water distribution system has agreed in writing to serve all of units shown within this plat.

It is the intent of the owners to hereby include said condominium property in this plat.

Bohica Idaho LLC, An Idaho Limited Liability Company

BY: Kirsten Ritzau, Member

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss

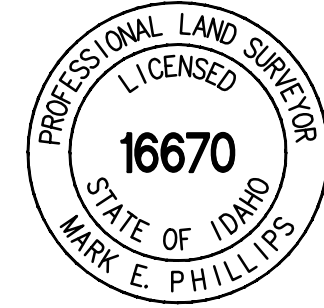
On this ____ day of _____, 2022, before me, a Notary Public in and for said State, personally appeared Kirsten Ritzau, known or identified to me to be the Governor of the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

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

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

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 _____, 2022, this plat was duly accepted and approved.

Tara Fenwick, City Clerk, City of Ketchum

KETCHUM CITY ENGINEER CERTIFICATE

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

Sherri Newland, City Engineer, City of Ketchum

KETCHUM CITY PLANNER CERTIFICATE

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

_____, 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

BOHICA MULTI-USE CONDO'S
GALENA ENGINEERING, INC.
HAILEY, IDAHO
3 OF 3
Job No. 8229

ATTACHMENT C:

Draft City Council Findings of
Fact, Conclusions of Law, and
Decision



**City of Ketchum
Planning & Building**

IN RE:)
)
131 N Washington Ave) KETCHUM CITY COUNCIL
Condo Preliminary Plat) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Date: May 2, 2022) DECISION
)
File Number: P22-012)

PROJECT: 131 N Washington Ave
APPLICATION TYPE: Condominium Preliminary Plat
FILE NUMBER: P22-012
ASSOCIATED APPLICATIONS: Design Review (P22-001)
REPRESENTATIVE: Mike Brunelle, Brunelle Architects (Architect)
OWNER: Bohica Idaho, LLC
LOCATION: 131 N Washington Ave – Lot 3 Block 39, Ketchum Townsite
ZONING: Community Core – Subdistrict 2 – Mixed Use (CC-2)
OVERLAY: None

RECORD OF PROCEEDINGS

The City of Ketchum received an application for Pre-Application Design Review on January 3, 2022. During evaluation of the pre-application for completeness, the city passed Ordinance 1231 amending the types of projects that require pre-application design review. The proposed project did not fall under the amended project list and therefore staff gave the applicant the option to move forward with pre-application or resubmit for Final Design Review. The applicant resubmitted a Final Design Review and condominium preliminary plat application on February 14, 2022. The Design Review and Preliminary Plat applications have been reviewed concurrently and were deemed complete on March 30, 2022. Department comments were provided to the applicant on March 11, 2022. All department comments have been addressed satisfactorily through applicant revision of project plans or conditions of approval.

A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on March 23, 2022. The public hearing notice was published in the Idaho Mountain Express the on March 23, 2022. A notice was posted on the project site and the city’s website on March 23, 2022.

The Planning and Zoning Commission (the “Commission”) considered the Bohica Multi-Use Design Review (Application No. P22-001) and the Condominium Subdivision Preliminary Plat (Application No. P22-012) applications during a regular meeting on April 12, 2022. The development applications were considered concurrently, and the associated public hearings were combined in accordance with Idaho Code §67-6522. After considering staff’s analysis, the applicant’s presentation, and public comment, the Commission approved the Design Review application with a vote of three to one and recommended approval of the Condominium Subdivision Preliminary Plat application to the City Council.

The City Council reviewed the condominium preliminary plat application at their regular meeting on May 2, 2022. The application was approved by City Council with no changes to the application.

BACKGROUND

The Applicant is proposing a 9,764 square foot three-story mixed-use development known as Bohica Multi-Use (the “project”), located at 131 N Washington Avenue (the “subject property”). The subject property contains a vacant 6,245 square foot two story building originally approved as a restaurant with second floor outdoor patio/dining space initially constructed in 2008. Prior to vacancy of the structure, the building was the location of the Rustic Moose, Bora Restaurant, Globus, and Boho Lounge. The space has been vacant for at least a year but used for special events intermittently.

The subject property is zoned Community Core -Subdistrict 2 - Mixed Use (CC-2) which allows for various commercial uses and multi-family residential. As proposed, the project includes significantly reduced commercial space of approximately 1,400 square feet, a ground floor patio fronting Washington Ave, and three residential dwelling units:

- One 739 square foot community housing dwelling unit on the ground floor off the alley
- One 1,823 square foot dwelling unit on the second floor
- One 3,505 square foot dwelling unit with square footage on the second and third floors

To achieve this development program, the applicant proposes to:

- Ground Level – Convert the ground floor restaurant to retail space, parking, one community housing unit with patio, storage for all residential units, and common/mechanical areas. Retain the ground level façade of the building and ground floor patio fronting Washington Ave.
- Second Level – Convert the restaurant space to residential and expand the existing square footage to accommodate one full dwelling unit, a portion of a second dwelling unit and outdoor private patios for each. Retain a portion of the front outdoor patio for residential use and retain the southernmost portion of the façade. Removal of a semi-circle architectural element that encroaches into the public right-of-way.
- Third Level – Addition of a third floor to accommodate the second level of a dwelling unit and outdoor private patios.

Per the project plans, the commercial space is intended to be retail because it does not generate a parking demand per Chapter 17.125 of the Ketchum Municipal Code (KMC). The project proposes one surface parking space and two garage spaces accessed from the alley which meet the parking requirements for the residential uses proposed. The project is proposing to take advantage of the Floor Area Ratio (FAR) bonus for Community Housing, mitigating the additional floor area by dedicating one for-sale deed restricted unit on-site with no additional cash-in-lieu fee required. The proposed FAR for the project is 1.8, which is less than the maximum 2.25 FAR for density bonuses in the Community Core. See below for the FAR calculations for the project.

The project proposes to construct improvements to the right-of-way per the City of Ketchum improvement standards including, asphalt, curb and gutter, and sidewalks. All improvements to the right-of-way will be reviewed and approved by the City Engineer and Streets Department prior to issuance of a building permit. The project proposes to snowmelt the sidewalks adjacent to the project and all ground level patios adjacent to the alley and Washington Ave. An encroachment permit approved by the City Council will be required for the snow melt system.

FINDINGS OF FACT

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

COMPLIANCE WITH PRELIMINARY PLAT SUBDIVISION REQUIREMENTS

Preliminary Plat Requirements				
Compliant			City Code	City Standards
Yes	No	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	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>	The City of Ketchum Planning and Building Department received the subdivision application and all applicable application materials on February 14, 2022.
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	16.04.030.I	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>	The subdivision application was deemed complete on March 30, 2022.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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>	This standard is met as shown on Sheet 1 of the preliminary plat.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .2	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>	As shown on Sheet 1 of the preliminary plat, the subdivision is named "Bohica Multi-Use Condominiums" which is not the same as any other subdivision in Blaine County, Idaho.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .3	The name and address of the owner of record, the subdivider, and the engineer, surveyor, or other person preparing the plat.
			<i>Findings</i>	As shown on Sheets 1 and 2, the owner and subdivider is Bohica Idaho, LLC. The plat was prepared by Mark E. Phillips of Galena Engineering.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .4	Legal description of the area platted.
			<i>Findings</i>	The legal description of the area platted is shown in the Certificate of Ownership on Sheet 3 of the preliminary plat.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .5	The names and the intersecting boundary lines of adjoining subdivisions and parcels of property.

			<i>Findings</i>	Sheet 1 of the preliminary plat indicates the boundary lines of the adjoining Ketchum Townsite lots to the north, west, and south.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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>	Sheet 1 of the preliminary plat shows the contour lines for the subject property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .7	The scaled location of existing buildings, water bodies and courses and location of the adjoining or immediately adjacent dedicated streets, roadways and easements, public and private.
			<i>Findings</i>	Sheet 1 of the preliminary plat shows the location of the existing building on the adjacent property to the north and south and all adjacent streets and easements.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .8	Boundary description and the area of the tract.
			<i>Findings</i>	Sheet 1 provides the boundary description of the area and includes square footage and acreage of the lot. Sheet 2 indicates the area of each unit as will be platted.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .9	Existing zoning of the tract.
			<i>Findings</i>	Plat note #13 on Sheet 1 of the preliminary plat lists the existing zoning of the subject property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .10	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>	Sheets 1 and 2 of the preliminary plat shows the locations and lot lines for the master lot and lot lines of condominium units. No new streets or blocks are being proposed with this application.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .11	The location, approximate size and proposed use of all land intended to be dedicated for public use or for common use of all future property owners within the proposed subdivision.
			<i>Findings</i>	This standard is not applicable as there is no requirement or proposal for land dedicated for public or common use.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .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>	Sheet 1 of the preliminary plat shows all existing and proposed water mains, sanitary sewer mains.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .13	The direction of drainage, flow and approximate grade of all streets.
			<i>Findings</i>	This standard does not apply as no new streets are proposed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .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>	This standard does not apply as no new drainage canals or structures are proposed.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .15	All percolation tests and/or exploratory pit excavations required by state health authorities.
			<i>Findings</i>	This standard does not apply as no addition tests are required.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .16	A copy of the provisions of the articles of incorporation and bylaws of homeowners' association and/or condominium declarations to be filed with the final plat of the subdivision.
			<i>Findings</i>	The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .17	Vicinity map drawn to approximate scale showing the location of the proposed subdivision in reference to existing and/or proposed arterials and collector streets.
			<i>Findings</i>	Sheet 1 of the preliminary plat includes a vicinity map that satisfies this requirement.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .18	The boundaries of the floodplain, floodway and avalanche zoning district shall also be clearly delineated and marked on the preliminary plat.
			<i>Findings</i>	The subject property is not within a floodplain, floodway, or avalanche zone district.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .19	Building envelopes shall be shown on each lot, all or part of which is within a floodway, floodplain, or avalanche zone; or any lot that is adjacent to the Big Wood River, Trail Creek, or Warm Springs Creek; or any lot, a portion of which has a slope of twenty five percent (25%) or greater; or upon any lot which will be created adjacent to the intersection of two (2) or more streets.
			<i>Findings</i>	A building envelope is not required as the subject property is not within the floodway, floodplain, or avalanche zone. The subject property is not adjacent to the Big Wood River, Trail Creek or Warm Springs. The subject property does not contain slopes greater than 25% and is not adjacent to an intersection.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .20	Lot area of each lot.
			<i>Findings</i>	Sheets 1 and 2 of the preliminary plat shows the area of the overall lot and area of each individual unit.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.I .21	Existing mature trees and established shrub masses.
			<i>Findings</i>	There are no existing trees or shrub masses on the property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .22	A current title report shall be provided at the time that the preliminary plat is filed with the administrator, together with a copy of the owner's recorded deed to such property.
			<i>Findings</i>	The applicant provided a title commitment issued by Sun Valley Title dated January 14, 2022, and a warranty deed recorded at Instrument Number 690831 with the initial application.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.I .23	Three (3) copies of the preliminary plat shall be filed with the administrator.
			<i>Findings</i>	The City of Ketchum received hard and digital copies of the preliminary plat at the time of application.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.A	Required Improvements: The improvements set forth in this section shall be shown on the preliminary plat and installed prior to approval of the final plat. Construction design plans shall be submitted and approved by the city engineer. All such improvements shall be in accordance with the comprehensive plan and constructed in compliance with construction standard specifications adopted by the city. Existing natural features which enhance the attractiveness of the

				subdivision and community, such as mature trees, watercourses, rock outcroppings, established shrub masses and historic areas, shall be preserved through design of the subdivision.
			<i>Findings</i>	As shown on Sheet 1 of the preliminary plat, all proposed improvements to the public right-of-way are shown. The applicant also submitted a set of preliminary construction design plans for review by the City Engineer. Final review and approval of the right-of-way improvements will be conducted during building permit review. The subject property does not include any watercourses, rock outcroppings, shrub masses or historic areas.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.B	Improvement Plans: Prior to approval of final plat by the commission, the subdivider shall file two (2) copies with the city engineer, and the city engineer shall approve construction plans for all improvements required in the proposed subdivision. Such plans shall be prepared by a civil engineer licensed in the state.
			<i>Findings</i>	This standard does not apply as this is a preliminary plat application, not a final plat application.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.C	Prior to final plat approval, the subdivider shall have previously constructed all required improvements and secured a certificate of completion from the city engineer. However, in cases where the required improvements cannot be constructed due to weather conditions or other factors beyond the control of the subdivider, the city council may accept, in lieu of any or all of the required improvements, a performance bond filed with the city clerk to ensure actual construction of the required improvements as submitted and approved. Such performance bond shall be issued in an amount not less than one hundred fifty percent (150%) of the estimated costs of improvements as determined by the city engineer. In the event the improvements are not constructed within the time allowed by the city council (which shall be one year or less, depending upon the individual circumstances), the council may order the improvements installed at the expense of the subdivider and the surety. In the event the cost of installing the required improvements exceeds the amount of the bond, the subdivider shall be liable to the city for additional costs. The amount that the cost of installing the required improvements exceeds the amount of the performance bond shall automatically become a lien upon any and all property within the subdivision owned by the owner and/or subdivider.
			<i>Findings</i>	This standard does not apply as this is a preliminary plat application, not a final plat application.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.D	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>	This standard does not apply as this is a preliminary plat application, not a final plat application.

		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>	This standard does not apply as this is a preliminary plat application, not a final plat application.
		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.

				<p>5. Double frontage lots shall not be created. A planting strip shall be provided along the boundary line of lots adjacent to arterial streets or incompatible zoning districts.</p> <p>6. Every lot in a subdivision shall have a minimum of twenty feet (20') of frontage on a dedicated public street or legal access via an easement of twenty feet (20') or greater in width. Easement shall be recorded in the office of the Blaine County recorder prior to or in conjunction with recordation of the final plat.</p>
			<i>Findings</i>	This standard is not applicable as no new lots are being created.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.G	<p>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>	This standard is not applicable as no new lots are being created.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.H	<p>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 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>7. Dead end streets may be permitted only when such street terminates at the boundary of a subdivision and is necessary for the development of the subdivision or the future development of the adjacent property. When such a dead end street serves more than two (2) lots, a temporary turnaround easement shall be provided, which easement shall revert to the adjacent lots when the street is extended;</p> <p>8. A cul-de-sac, court or similar type street shall be permitted only when necessary to the development of the subdivision, and provided, that no such street shall have a maximum length greater than four hundred feet (400') from entrance to center of turnaround, and all cul-de-sacs shall have a minimum turnaround radius of sixty feet (60') at the property line and not less than forty five feet (45') at the curb line;</p> <p>9. Streets shall be planned to intersect as nearly as possible at right angles, but in no event at less than seventy degrees (70°);</p> <p>10. Where any street deflects an angle of ten degrees (10°) or more, a connecting curve shall be required having a minimum centerline radius of three hundred feet (300') for arterial and collector streets, and one hundred twenty five feet (125') for minor streets;</p> <p>11. Streets with centerline offsets of less than one hundred twenty five feet (125') shall be prohibited;</p> <p>12. A tangent of at least one hundred feet (100') long shall be introduced between reverse curves on arterial and collector streets;</p> <p>13. Proposed streets which are a continuation of an existing street shall be given the same names as the existing street. All new street names shall not duplicate or be confused with the names of existing streets within Blaine County, Idaho. The subdivider shall obtain approval of all street names within the proposed subdivision from the commission before submitting same to council for preliminary plat approval;</p> <p>14. Street alignment design shall follow natural terrain contours to result in safe streets, usable lots, and minimum cuts and fills;</p> <p>15. Street patterns of residential areas shall be designed to create areas free of through traffic, but readily accessible to adjacent collector and arterial streets;</p> <p>16. Reserve planting strips controlling access to public streets shall be permitted under conditions specified and shown on the final plat, and all landscaping and irrigation systems shall be installed as required improvements by the subdivider;</p> <p>17. In general, the centerline of a street shall coincide with the centerline of the street right of way, and all crosswalk markings shall be installed by the subdivider as a required improvement;</p> <p>18. Street lighting may be required by the commission or council where appropriate and shall be installed by the subdivider as a requirement improvement;</p> <p>19. Private streets may be allowed upon recommendation by the commission and approval by the council. Private streets shall be constructed to meet the design standards specified in subsection H2 of this section;</p> <p>20. Street signs shall be installed by the subdivider as a required improvement of a type and design approved by the administrator and shall be consistent with the type and design of existing street signs elsewhere in the city;</p>
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				<p>21. Whenever a proposed subdivision requires construction of a new bridge, or will create substantial additional traffic which will require construction of a new bridge or improvement of an existing bridge, such construction or improvement shall be a required improvement by the subdivider. Such construction or improvement shall be in accordance with adopted standard specifications;</p> <p>22. Sidewalks, curbs and gutters may be a required improvement installed by the subdivider; and</p> <p>23. Gates are prohibited on private roads and parking access/entranceways, private driveways accessing more than one single-family dwelling unit and one accessory dwelling unit, and public rights of way unless approved by the city council.</p>
			<i>Findings</i>	No new streets are proposed, and N Washington Ave meets the city's street requirements. The existing sidewalk and drainage will be repaired or replaced as necessary during construction.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.I	<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>
			<i>Findings</i>	The existing alley is paved, however, improvements are required to bring the alley into conformance with city standards. The project plans included with the Design Review application P22-001 indicate proposed improvements that will be reviewed and approved at the time of building permit application.
<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>	This standard does not apply as no easements additional easements are required.
<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>	The property is served by city sewer services. Sheet 1 of the preliminary plat shows the location of sewer service to the project.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.040.L	<p>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>	The property is served by city water services. Sheet 1 of the preliminary plat shows the location of water service to the project.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.M	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>	This standard does not apply as this application does not create a new subdivision. There are no incompatible uses adjacent to the proposed condominium subdivision.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.N	<p>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. 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 hydrology shall be allocated for open space for the benefit of future property owners within the subdivision. 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. 6. Where cuts, fills, or other excavations are necessary, the following development standards shall apply: <ol style="list-style-type: none"> a. Fill areas shall be prepared by removing all organic material detrimental to proper compaction for soil stability.

				<p>b. Fills shall be compacted to at least ninety five percent (95%) of maximum density as determined by AASHO T99 (American Association of State Highway Officials) and ASTM D698 (American standard testing methods).</p> <p>c. Cut slopes shall be no steeper than two horizontal to one vertical (2:1). Subsurface drainage shall be provided as necessary for stability.</p> <p>d. Fill slopes shall be no steeper than three horizontal to one vertical (3:1). Neither cut nor fill slopes shall be located on natural slopes of three to one (3:1) or steeper, or where fill slope toes out within twelve feet (12') horizontally of the top and existing or planned cut slope.</p> <p>e. Toes of cut and fill slopes shall be set back from property boundaries a distance of three feet (3'), plus one-fifth (1/5) of the height of the cut or the fill, but may not exceed a horizontal distance of ten feet (10'); tops and toes of cut and fill slopes shall be set back from structures at a distance of at least six feet (6'), plus one-fifth (1/5) of the height of the cut or the fill. Additional setback distances shall be provided as necessary to accommodate drainage features and drainage structures.</p>
			<i>Findings</i>	This standard does not apply as this application is a condominium subdivision of an existing lot. On-site grading for the new condominium building meets all grading requirements. Final grading plan will be reviewed and approved by the City Engineer prior to issuance of a building permit.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.040.O	<p>Drainage Improvements: The subdivider shall submit with the preliminary plat application such maps, profiles, and other data prepared by an engineer to indicate the proper drainage of the surface water to natural drainage courses or storm drains, existing or proposed. The location and width of the natural drainage courses shall be shown as an easement common to all owners within the subdivision and the city on the preliminary and final plat. All natural drainage courses shall be left undisturbed or be improved in a manner that will increase the operating efficiency of the channel without overloading its capacity. An adequate storm and surface drainage system shall be a required improvement in all subdivisions and shall be installed by the subdivider. Culverts shall be required where all water or drainage courses intersect with streets, driveways or improved public easements and shall extend across and under the entire improved width including shoulders.</p>
			<i>Findings</i>	The applicant submitted a site grading and drainage plan with the condominium subdivision application showing drainage for the subject property. No common drainage courses are utilized or disturbed. The grading and drainage plan meets all requirements, not impacting adjacent properties.
<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>	As shown on Sheet 1 of the preliminary plat and Sheet C1.0 of the project plans, all utilities will be installed underground. A three-phase transformer is currently

				located on the property off the alley. No upgrade or change to this transformer is required for the project.
<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>	The proposed condominium development does not create substantial additional traffic; therefore, no off-site improvements are required.

FINDINGS REGARDING COMPLIANCE WITH CONDOMINIUM SUBDIVISION REQUIREMENTS

Condominium Plat Requirements				
Compliant			City Code	Standards
Yes	No	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.B	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>	The applicant provided a draft copy of the articles of incorporation, bylaws, and declarations with the application submittal.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.D	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>	As shown on Sheet 2 of the preliminary plat, the garage units and carport are designated as limited common elements and specifically referenced to a unit number.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.E	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>	As shown on Sheet 2 of the preliminary plat, each residential unit is provided storage on the ground floor of the project and is adequate for the residential use.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.F	A maintenance building or room shall be provided of adequate size and location for the type and size of the condominium project for storage of maintenance equipment and supplies for common areas.
			<i>Findings</i>	Mechanical equipment rooms are designated on each floor. The ground floor includes a larger mechanical/maintenance area for the building.
<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>	Each condominium unit includes limited common elements. These elements are outdoor patio spaces as indicated on the project plans.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.070.H	All other provisions of this chapter and all applicable ordinances, rules and regulations of the city and all other governmental entities having jurisdiction shall be complied with by condominium subdivisions.
			<i>Findings</i>	The project has been reviewed for compliance with all other section of the subdivision standards. The project is in compliance as discussed above.

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 application for the development and use of the project site.
2. The Council has authority to hear the applicant’s Condominium Preliminary Plat Application pursuant to Ketchum Municipal 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 application is governed under Ketchum Municipal Code Chapter 16.04.
5. The Condominium Preliminary Plat application meets all applicable standards specified in Title 16 of Ketchum Municipal Code.

DECISION

THEREFORE, the Council **approves** of this Condominium Preliminary Plat Application File No. P22-012 this Monday, May 2, 2022, subject to the following conditions of approval.

CONDITIONS OF APPROVAL

1. The preliminary plat is subject to all conditions of approval associated with Design Review approval P22-001. Changes to the design review approval may require changes to the preliminary or final plats filed for the project.
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 2nd day of May 2022.

Neil Bradshaw, Mayor
Ketchum City Council

ATTACHMENT D:

Staff Report – April 12, 2022

Planning and Zoning
Commission meeting



City of Ketchum
Planning & Building

STAFF REPORT
KETCHUM PLANNING AND ZONING COMMISSION
REGULAR MEETING OF APRIL 12, 2022

- PROJECT:** Bohica Multi-Use
- APPLICATION TYPE:** Design Review (File No. P21-001)
Condominium Subdivision – Preliminary Plat (File No. P21-012)
- APPLICANT:** Mike Brunelle, Brunelle Architects (Architect)
Sean Flynn, Galena Engineering (Engineer)
- PROPERTY OWNER:** Bohica Idaho, LLC
- REQUEST:** Design Review and Preliminary Plat application for the conversion of an existing 6,245 square foot restaurant space and the addition of 3,409 square feet for a 9,764 square foot three story mixed-use building
- LOCATION:** 131 N Washington Avenue - Ketchum Townsite: Block 39: Lot 3
- ZONING:** Community Core – Subdistrict 2 – Mixed Use (CC-2)
- REVIEWER:** Morgan R. Landers, AICP – Senior Planner
- NOTICE:** A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site and all political subdivisions on March 23, 2022. The public hearing notice was published in the Idaho Mountain Express the on March 23, 2022. A notice was posted on the project site and the city’s website on March 23, 2022.

EXECUTIVE SUMMARY

The Applicant is proposing a 9,764 square foot three-story mixed-use development known as Bohica Multi-Use (the “project”), located at 131 N Washington Avenue (the “subject property”). The subject property contains a vacant 6,245 square foot two story building originally approved as a restaurant with second floor outdoor patio/dining space initially constructed in 2008. Prior to vacancy of the structure, the building was the location of the Rustic Moose, Bora Restaurant, Globus, and Boho Lounge. The space has been vacant for at least a year but used for special events intermittently. Sheet A-001 of Attachment C shows the existing building elevations and floor plans.

The subject property is zoned Community Core -Subdistrict 2 - Mixed Use (CC-2) which allows for various commercial uses and multi-family residential. As proposed, the project includes significantly reduced commercial space of approximately 1,400 square feet, a ground floor patio fronting Washington Ave, and three residential dwelling units:

- One 739 square foot community housing dwelling unit on the ground floor off the alley
- One 1,823 square foot dwelling unit on the second floor
- One 3,505 square foot dwelling unit with square footage on the second and third floors

To achieve this development program, the applicant proposes to:

- Ground Level – Convert the ground floor restaurant to retail space, parking, one community housing unit with patio, storage for all residential units, and common/mechanical areas. Retain the ground level façade of the building and ground floor patio fronting Washington Ave.
- Second Level – Convert the restaurant space to residential and expand the existing square footage to accommodate one full dwelling unit, a portion of a second dwelling unit and outdoor private patios for each. Retain a portion of the front outdoor patio for residential use and retain the southernmost portion of the façade. Removal of a semi-circle architectural element that encroaches into the public right-of-way.
- Third Level – Addition of a third floor to accommodate the second level of a dwelling unit and outdoor private patios.

Figures 1 and 2 below show the front elevation of the existing building and proposed building respectively for comparison. Attachment C show the floorplans for the proposed project.



Figure 2: Existing Building



Figure 1: Proposed Building (rendering)

Per the project plans, the commercial space is intended to be retail because it does not generate a parking demand per Chapter 17.125 of the Ketchum Municipal Code (KMC). The project proposes one surface parking space and two garage spaces accessed from the alley which meet the parking requirements for the residential uses proposed. The project is proposing to take advantage of the Floor Area Ratio (FAR) bonus for Community Housing, mitigating the additional floor area by dedicating one for-sale deed restricted unit on-site with no additional cash-in-lieu fee required. The proposed FAR for the project is 1.8, which is less than the maximum 2.25 FAR for density bonuses in the Community Core. See Attachment F for the FAR calculations for the project.

The project proposes to construct improvements to the right-of-way per the City of Ketchum improvement standards including, asphalt, curb and gutter, and sidewalks. All improvements to the right-of-way will be reviewed and approved by the City Engineer and Streets Department prior to issuance of a building permit. The project proposes to snowmelt the sidewalks adjacent to the project and all ground level patios adjacent to the alley and Washington Ave. An encroachment permit approved by the City Council will be required for the snow melt system.

Design Review Approval

The existing building received Design Review approval in 2008 (File No 08-001). As the proposed project is not the full demolition and reconstruction of a new building, staff reviews the partial demolition and expansion of the building against the original design review approval to ensure all conditions and restrictions are met with the new project. See below for information regarding the original design review approval.

Emergency Ordinance and Policy Statement

Prior to the submittal of the applications, staff met with the applicant to review the proposed project and provide feedback. Initial comments to the applicant indicated that the proposed project did not meet the goals

and objectives of the comprehensive plan related to diversity of housing and vibrancy in the downtown the community is trying to achieve. Specifically, staff expressed concerns related to the significant reduction in commercial space, the low number of total dwelling units, and the large size of the proposed dwelling units. The applicant elected to move forward with the proposed project with minimal changes. Through the processing of the applications, staff kept the applicant abreast of the activities of the Commission related to the pending emergency ordinance and policy statement for successful projects and provided opportunities for the applicant to revise the project. Under the proposed ordinance, the project would be required to provide five dwelling units instead of the three proposed. Keeping the existing residential square footage would mean an average unit size of 1,213 square feet. Larger unit sizes could be accommodated by increasing the proposed floor area as the proposed project is under the maximum FAR for density bonus projects.

The interim ordinance and policy statement recommended to City Council at the March 29, 2022, meeting of the Commission has not been approved as of the date of this report. Staff believe this project is a good example of what the city is hoping to limit with the proposed ordinance and policy statement and shows that the proposed ordinance is feasible for interior lots within the Community Core. Development projects of this program are not only contrary to the goals and objectives of the comprehensive plan, but they erode the vibrancy of the downtown by reducing active commercial uses and limiting high density residential development potential.

BACKGROUND

The City of Ketchum received an application for Pre-Application Design Review on January 3, 2022. During evaluation of the pre-application for completeness, the city passed Ordinance 1231 amending the types of projects that require pre-application design review. The proposed project did not fall under the amended project list and therefore staff gave the applicant the option to move forward with pre-application or resubmit for Final Design Review. The applicant resubmitted a Final Design Review and condominium preliminary plat application on February 14, 2022. The Design Review and Preliminary Plat applications have been reviewed concurrently and were deemed complete on March 30, 2022.

CONFORMANCE WITH DESIGN REVIEW APPROVAL 08-001

Development of the subject property began in 2007 with a pre-application design review request (P07-019) for a two-story restaurant with a significant glass solarium on the front building façade, surface parking in the rear, and minimal outdoor space. Comments from the Planning and Zoning Commission at the pre-application meeting resulted in a redesign of the building in 2008 when the final design review application was submitted for what exists today (P08-001). Prior to construction of the existing building, the property was vacant.

Design Review criteria in 2008 varies from today. The Design Review criteria was much more detailed by architectural element or component of the project, and included individual criteria for building facade, roofs, awnings, mechanical equipment and service areas, public open space, lighting, bicycle parking and streetscape. See Attachment A for the findings of fact for the existing building. As outlined above, the proposed project retains the full ground floor façade and public plaza. and much of the second-floor façade. As such, the project is retaining much of the character defining architectural elements reviewed and approved in the initial design review approval.

The design review application was approved with 14 conditions of approval as outlined in Attachment A. All conditions were related to items required prior to building permit application for the approved project or other elements of public improvements that have since been completed. No conditions of approval relate to elements of the project that would influence redevelopment or expansion of the building in the future.

CONFORMANCE WITH COMPREHENSIVE PLAN

The City of Ketchum's 2014 Comprehensive Plan is the guiding document to assist the city in decision making when addressing population growth and the systems that support that growth, such as housing, transportation, and the economy. The comprehensive plan contains the community's vision for Ketchum and sets goals and policies to guide future development. This vision is shaped by 10 core values identified by Ketchum residents as important to consider for all future land use decision. The community's core values include enhancing downtown vibrancy and protecting Ketchum's character.

- **VIBRANT DOWNTOWN** - Our downtown core is critical to the economic health and well-being of Ketchum. It functions as both an economic engine and the symbolic "heart and soul" of the City. We will preserve this vibrant commercial area as a place where local businesses can thrive and where people can congregate. Downtown must be a place that people can reach easily by foot, bike, and transit. We will continue to reinforce the downtown as the City's primary business district, retail core, and key gathering place for residents and visitors for shopping, dining, and entertainment. Enhancements and efforts to support events, the arts, and Ketchum's history and culture will make downtown an even greater community asset.
- **A VARIETY OF HOUSING OPTIONS** - Ketchum values a community where people who wish to work and live here can do so. With housing and land prices expected to grow and wages expected to remain relatively constant, the community must explore ways to ensure that citizens have a reasonable choice of housing. Ketchum strives to use creative solutions to housing diversity by looking to partnerships, evaluating zoning, density, and infill policies; removing barriers, and creating incentives to achieve our goals. In order to maintain a strong economy with a base of jobs and a diverse demographic of residents, it is important for the community to provide a varied supply of housing choices—both year-round work force housing and second homes for seasonal residents.

Housing and the economy are inextricably linked. The comprehensive plan states that one of the primary issues to achieving a strong and diverse economy is housing. "There are not enough affordable or varied housing options for existing employees and potential new workers" as noted on page 15. The comprehensive plan includes numerous goals and objectives related to achieving a vibrant downtown and housing options for the community including:

- **Goal E-1:** Ketchum will work to retain and help expand existing independent small local businesses and corporations.
- **Goal H-1:** Ketchum will increase its supply of homes, including rental and special-needs housing for low-, moderate- and median-income households.
- **Policy H-1.4 Integrated Housing in Business and Mixed-Use Areas:** Housing should be integrated into the downtown core and light industrial areas, and close to the ski bases. The resulting mix of land use will help promote a greater diversity of housing opportunities as well as social interactions.
- **Policy H-3.1 Mixture of Housing Types in New Development:** The City will promote the siting of higher density housing near public transportation, the ski base areas, shopping, and designated neighborhoods and districts.

The proposed project does not move the goals and objectives of the comprehensive plan forward. Specifically, the elimination of a large restaurant space for smaller retail space exchanges a vibrant and active evening use for less active day-time use. Locating and constructing restaurant space is known to be very difficult as land prices are high and restaurant equipment is extremely expensive. Losing an existing restaurant space eliminates the opportunity for another restaurant to locate there.

Although the project proposes to include one on-site community housing unit, the remaining use of the space is not well utilized to maximize commercial or residential potential of the site. The ground floor of the project dedicates significant available square footage to circulation and common areas, garage, and storage space for

the upper floor residential units rather than providing smaller units that require less parking and increased commercial space on the ground floor.

CONFORMANCE WITH ZONING AND DESIGN REVIEW STANDARDS

Per Ketchum Municipal Code (KMC) §17.96.010.A – *Applicability*, design review is required for all new multi-family dwellings. Before granting Design Review approval, the Commission must determine that the application meets two criteria: (1) the project doesn't jeopardize the health, safety, or welfare of the public, and (2) the project conforms to all Design Review standards and zoning regulations (KMC §17.96.050.A).

Conformance with Zoning Regulations

During department review, city staff reviewed the project for conformance with all applicable zoning code requirements including uses, dimensional limitations, signage, parking, development standards, and dark skies. The project is in conformance with all applicable zoning code requirements and standards. Please see Attachment F for a full review of dimensional standards.

Conformance with Design Review Improvements and Standards

During department review, city staff reviewed the project for conformance with all applicable design review improvements and standards outlined in KMC §17.96.060 – *Improvements and Standards*. Staff also review the project for conformance with KMC §17.96.070 – *Community Core (CC) Projects*. Finally, staff reviewed the project for conformance with all corresponding city code requirements related to right-of-way improvements including but not limited to sidewalks, street lighting, alleys, and on-street parking. Staff believes that either a requirement is not applicable due to the scope of the project, or requirements are met. Please see Attachment G for a review of all design review improvements and standards.

CONFORMANCE WITH SUBDIVISION STANDARDS

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

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

STAFF RECOMMENDATION

Staff does not believe the project meets the goals and objectives of the comprehensive plan. The proposed project does conform with the design review improvements and standards and the requirements for a condominium preliminary plat. As such, staff recommends the Commission consider the project materials and staff analysis and provide direction to staff and the applicant on the applications.

Should the commission choose to support the application as proposed, staff recommends the following conditions of approval for each application as follows:

Design Review (P22-001)

1. This design review approval is based upon the project plan set dated March 15, 2022, as prepared by the project team outlined on the Cover Sheet (CS). Any change in use, square footage of uses, or

exterior facades must be reviewed and approved through the design review process and criteria as stipulated in the Ketchum Municipal Code at the time of design review application.

2. In exchange for an increase in FAR, a voluntary community housing contribution of 679 square feet is required. A Floor Area Ratio Exceedance Agreement between the applicant and the City to memorialize the community housing contribution shall be signed prior to approval of the condominium preliminary plat for the project.
3. A photometric study to determine whether a streetlight is required must be completed and submitted with the building permit application for the project to be reviewed and approved by the City Engineer.
4. Prior to issuance of a building permit for the project, an Encroachment Agreement shall be approved by the City Council addressing the snowmelt within the public right-of-way.
5. Final civil drawings prepared by an engineer registered in the State of Idaho which include specifications for right-of-way, utilities, and drainage improvements shall be submitted for review and approval by the City Engineer, Streets, and Utilities departments prior to issuance of a building permit for the project.
6. The term of Design Review approval shall be twelve (12) months from the date that the Findings of Fact, Conclusions of Law, and Decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council subject to changes in zoning regulations.
7. In addition to the requirements set forth in this Design Review approval, this project shall comply with all applicable local, state, and federal laws.

Condominium Preliminary Plat (P22-012)

1. The preliminary plat is subject to all conditions of approval associated with Design Review approval P22-001. Changes to the design review approval may require changes to the preliminary or final plats filed for the project.
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.

ATTACHMENTS:

- A. Design Review Approval 08-012 Findings of Fact
- B. Application Materials – Design Review application and supplemental materials
- C. Application Materials - Design Review Plan Set
- D. Application Materials – Preliminary Plat application and supplemental materials
- E. Application Materials – Preliminary Plat Plan Set
- F. Zoning and Dimensional Standards Evaluation
- G. Design Review Standards Evaluation
- H. Preliminary Plat Requirements Evaluation

ATTACHMENT E:
FAR Exceedance Agreement
#22767

**FAR EXCEEDANCE
AGREEMENT #22767**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 191 5 th Street W, Ketchum, Idaho 83340
Bohica Idaho LLC	"Developer"	Mailing: PO Box 1129, Ketchum, ID 83340 Physical Address: 131 N Washington Avenue (Ketchum Townsite: Block 39: Lot 3)

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

RECITALS

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

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

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

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

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

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

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS ____ DAY OF _____, 2022.

Developer

City of Ketchum, Idaho

Kirsten Ritzau – Managing Member
Bohica Idaho, LLC

Neil Bradshaw, Mayor

Attest:

Tara Fenwick, City Clerk

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:	Bohica Multi-Use
APPLICATION FILE NUMBERS:	Design Review P22-001
OWNER:	Bohica Idaho, LLC
REPRESENTATIVE:	Brunelle Architects
REQUEST:	Conversion of an existing 6,245 square foot restaurant space and the addition of 3,738 square feet for a 9,983 square foot three story mixed-use building
LOCATION:	131 N Washington Avenue (Ketchum Townsite: Block 39: Lot 3)
ZONING:	Mixed-Use Subdistrict of the Community Core (CC-2)

BACKGROUND:

1. The applicant is proposing to convert an existing 6,245 square foot restaurant space and add 3,738 square feet for a 9,983 square foot three story mixed-use building consisting of 1400 square feet of commercial space, three residential dwelling units, common areas, and outdoor patios.
2. The site is located at 131 N Washington Avenue (Ketchum Townsite: Block 39: Lot 3) within the Mixed-Use Subdistrict of the Community Core (CC-2). Multi-family dwelling units and commercial spaces are permitted uses in the CC-2 Zone.
3. The subject property has an area of 5,505 sq ft.
4. The proposed floor area of the project will have a total area of 9,983 gross square feet.
5. Pursuant to the definition of gross floor area (KMC §17.08.020), up to four parking stalls for developments on single Ketchum Townsite lots of 5,600 sq ft or less are not included in the gross floor area calculation. As the project has three garage spaces, the project receives a reduction of 486 sq ft.
6. With the parking stall discount, the multi-family residential building has a proposed Floor Area Ratio (FAR) of 1.7 (9,497 gross sq ft/5,505 sq ft lot area).
7. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.
8. The Planning and Zoning Commission approved the Design Review application (P22-001) for the Bohica Multi-Use building on April 12, 2022. Building Permit plans must conform to the

approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

EXCEEDANCE ANALYSIS

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

Permitted in Community Core Subdistrict 2 (CC-2)

Permitted Gross FAR: 1.0

Permitted Gross FAR with Inclusionary Housing Incentive: 1.8

Proposed Gross Floor Area: 9,983 gross square feet

Gross Floor Area with Parking Discount: 9,497 sq ft (reduction of 486 square feet for three stalls that are 9 x 18 feet)

Ketchum Townsite Lot Area: 5,505 sq ft

FAR Proposed: 1.7 (9,497 gross sq ft/5,505 sq ft lot area)

Increase Above Permitted FAR: 3,992 sq ft

20% of Increase: 798 sq ft

Net Livable (15% Reduction): 679 sq ft community housing required.

The applicant proposes to dedicate Unit 102, a 739 square foot ground floor residential unit. The proposed unit is a for-sale unit.

Total Proposed Community Housing Net Livable Sq Ft Contribution: 739 sq ft

Remainder Community Housing In-Lieu Fee: \$0

131 N WASHINGTON COMMUNITY HOUSING CONTRIBUTION

The applicant shall provide the following:

1. Provide one 739 sq ft for-sale community housing unit (Unit 102) on the ground floor of the proposed multi-family residential building.
2. Purchase price for said for-sale unit shall be set according to Blaine County Housing Authority Income Category 4 and shall be listed through the Blaine County Housing Authority concurrent with the issuance of Certificate of Occupancy for the building.
3. Deed covenant for Unit 102 shall be recorded prior to Certificate of Occupancy for the building and notated on the Final Condominium Plat.