

# CITY OF KIMBERLY

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PLANNING & ZONING COMMISSION  
MEETING AGENDA

AUGUST 5, 2014  
6:00PM

Planning & Zoning Commission meetings are televised, videotaped and/or recorded

Location: 242 Highway 30, Kimberly, Idaho 83341

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## **CALL TO ORDER**

**WELCOME – PLEASE TURN OFF CELL PHONES – THANK YOU.**

## **ROLL CALL OF COMMISSION MEMBERS**

### **1. CONSIDER APPROVAL OF:**

- a. Minutes from June 3, 2014 Meeting

### **2. PUBLIC HEARINGS**

- a. Public Hearing and consideration of an ordinance an application by Lucas and Jade Christensen to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicant has consented to sign a development agreement which includes conditions for the rezone. The proposed area for rezone is approximately 2.63 (+ or -) acres (recently adjusted from a larger 3.10 (+ or -) acres) and is within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), and is proposed to be rezoned from Agriculture to Commercial-Gateway (CG).

### **3. OLD BUSINESS**

- a. Consideration of Findings of Fact for an application on a preliminary plat submitted by EHM Engineers, Inc., representing the owners of Redcap Corner, the application proposing to re-plat Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as 2 unit condominium plat. The re-plat would allow each created condominium unit to be divided and sold off as separate units.

### **4. NEW BUSINESS**

- a. None

### **5. UPCOMING MEETINGS: –**

- a. May need a special meeting on August 18 or 19<sup>th</sup>, 2014
- b. Regular P&Z September 2, 2014 – 6 PM

### **6. STAFF REPORTS**

**Community Development Director**

**7. ADJOURNMENT**

**Questions concerning items appearing on this Agenda or requests for accommodation of special needs to participate in the meeting should be addressed to the Office of the City Clerk, 242 Highway 30, Kimberly, Idaho 83341 or call 208-423-4151.**

Ted Wasko	Leland Belin	Perry Dangerfield	Candy Weth	VACANT	Cindy Schmidt	Dan Shewmaker
		<i>Co-Chair</i>	<i>Chairperson</i>		<i>Area of Impact</i>	<i>Area of Impact</i>

# KIMBERLY PLANNING AND ZONING

June 3, 2014

## **Call to Order:**

The meeting was called to order at 6:03pm.

## **Roll Call of Commission Members:**

Members present were Perry Dangerfield, Candy Weth, Ted Wasko, and Leland Belin. Impact Area representatives Dan Shewmaker and Cindy Schmidt were also present.

## **1. Approve:**

The minutes of the May 2014 meeting were approved as presented.

## **2. Public Hearing:**

A. Public Hearing and consideration on a preliminary plat application submitted by EHM Engineers, Inc. representing the owners of Red Cap Corner, the application proposing to re-plat Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as 2 unit condominium plat. The re-plat would allow each created condominium to be divided and sold off as separate units. Ted Vawser representing EHM Engineers, Inc. stated that the owners of the building in this subdivision wish to be able to sell the individual units by having the building condominiumize the existing structure. When the building was constructed it met the requirements needed for condominiums. He is requesting the Commission allow the re-plat so that the units can be sold individually. The Commission felt that the building does meet the conditions for condominiumizing. The meeting was open to the public. There was no public comment. Cindy Schmidt made a motion to recommend the Council conditionally approve Red Cap, LLC's (represented by EHM Engineers) application for preliminary plat for re-plat of Lot 4, Block 1, Redcap Subdivision (22349 Kimberly Road) as a 2 unit condominium plat, conditioning the approval on completion of conditions (a-e) in the Kimberly City Staff Report. This conditional approval allows City Staff to determine when each of the conditions have been completed, and then complete approval upon completion of all the conditions. The motion was seconded by Perry Dangerfield. The motion was carried



unanimously.

B. Continue Public Hearings and consideration on the proposed City of Kimberly Pedestrian and Bicycle Plan which is proposed to be added by resolution to the City of Kimberly Transportation Plan adopted in 2009 to July 1, 2014 regular Commission Meeting. The amendment would allow the City to utilize the plan in seeking grant funding for the pedestrian and bicycle facilities. The City is waiting for engineers to bring proposals on construction to connect the downtown, schools and subdivisions. There presently is no money in the budget for this project. When the proposed plan is submitted the city will seek grant funding, but a total cost is unavailable because the project will be done piecemeal. The meeting was open to the Public. There was no public comment. Ted moved that the Commission continue the Kimberly Pedestrian and Bicycle Plan to the regular July 2014 meeting. Cindy Schmidt seconded the motion and it was carried unanimously.

### **3. Old Business:**

A. Consideration and action on Findings of Fact for an application by Agri-Service, LLC and an ordinance to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval of the rezone, a proposed development agreement was considered by the Commission and has been agreed upon by the applicant. The area for rezone is approximately 42.99 (+or-) acres and is within the SE 1/4, Section 17, Township 10 South, Range 18 East, Boise, Meridian, Twin Falls County, Idaho (approximately 22326 Kimberly Road), and the rezone is from Agriculture (AG) to Commercial Gateway (CG). Ted Wasko moved the Commission adopt the Findings of Fact as presented. The motion was seconded by Cindy Schmidt and was carried unanimously.

### **4. New Business:**

A. Zoning Administrator told the Commission that Jerry Mason will have a presentation for members on June 18th and all are encouraged to attend because much valuable information will be presented.

B. Operation Facelift will be painting a residence on Main St. South



this year. All volunteers are welcome to help.  
C. Good Neighbors Day will be July 12 and 13 this year.

**5. Adjournment:**

The meeting was adjourned at 6:36pm.

Respectfully submitted,

Perry Dangerfield

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Candy Weth, Commission Chair

Attest:

\_\_\_\_\_  
Bart Bingham, Community Development Director

## STAFF REPORT

**TO:** Kimberly Planning & Zoning Commission  
**FROM:** Bart Bingham, Community Development Director  
**RE:** Amendment to Zoning District Map (Rezone)

**PUBLIC HEARING:** August 5, 2014

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### Application

Applicants Lucas and Jade Christensen made application to amend the City of Kimberly Zoning Map, which was adopted on February 10, 2009. As a condition of approval, the applicant has consented to sign a development agreement which includes conditions for the rezone. The proposed area for rezone is approximately 2.63 (+ or -) acres (recently adjusted from a larger 3.10 (+ or -) acres) and is within the NE1/4 NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), and is proposed to be rezoned from Agriculture to Commercial-Gateway (CG).

### Notice

Notice for the public hearing was published in the Times News on July 21, 2014 and was mailed to owners within 300 feet and to public agencies on July 22, 2014. The property was also properly posted on July 22, 2014

### Procedural History

A public hearing will be conducted before the Kimberly P&Z Commission on August 5, 2014 to consider the rezone.

### Standards of Evaluation

**Note: Standards are in bold type.** Staff analysis is in lighter type.

### **17.14.040: COMMISSION ACTION – ZONING AMENDMENTS**

**Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:**

- A. Requests for an amendment to this title shall be submitted to the commission, which shall evaluate the request to determine the extent and nature of the amendment requested.**

**The Commission shall evaluate the request for the zone change.**

- B. (If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and**

The Comprehensive Plan designates Commercial Gateway (GC) as the land use extending approximately 300 feet in either direction appurtenant to Hwy 50. The present application is to rezone the proposed piece of property which extends approximately 740 feet south from Hwy 50.

- C. If the request is not in accordance with the comprehensive plan, the request shall be submitted to the commission or, in its absence, the council, which shall recommend and the council may adopt or reject an amendment to the comprehensive plan under the notice and hearing procedures provided in Idaho Code section 67-6509. After the comprehensive plan has been amended, this title may then be amended as hereinafter provided for.**

Staff was recently directed to use a “broad brush” in defining Commercial Gateway lines along the Kimberly Road corridor, including for 500’ to 1000’ beyond the shown periphery. Other goals in the Comprehensive Plan that the Commission may choose to consider are from the Economic and Community Development section in the plan which state:

1. Promote economic growth in the City as opportunities arise that are fitting with its goals and objectives.
2. And identify and zone areas for economic growth and development for commercial, light and heavy industrial use (as a policy).

### **Summary**

The Commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing at which interested persons shall have an opportunity to be heard.



**Motion Language**

Approval:

Motion to recommend the Council approve the development agreement and application to amend the zone district map and for the City of Kimberly Area of Impact to change the zoning of the approximately 2.63 (+ or -) acres within the NE1/4NW1/4 Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), from Agriculture to Commercial-Gateway (CG) zoning, finding that the proposed amendment will promote the public health, safety, and general welfare.

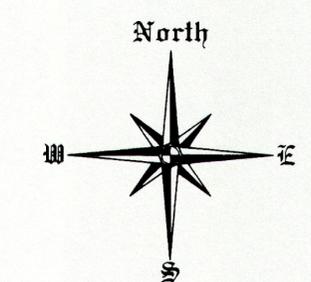
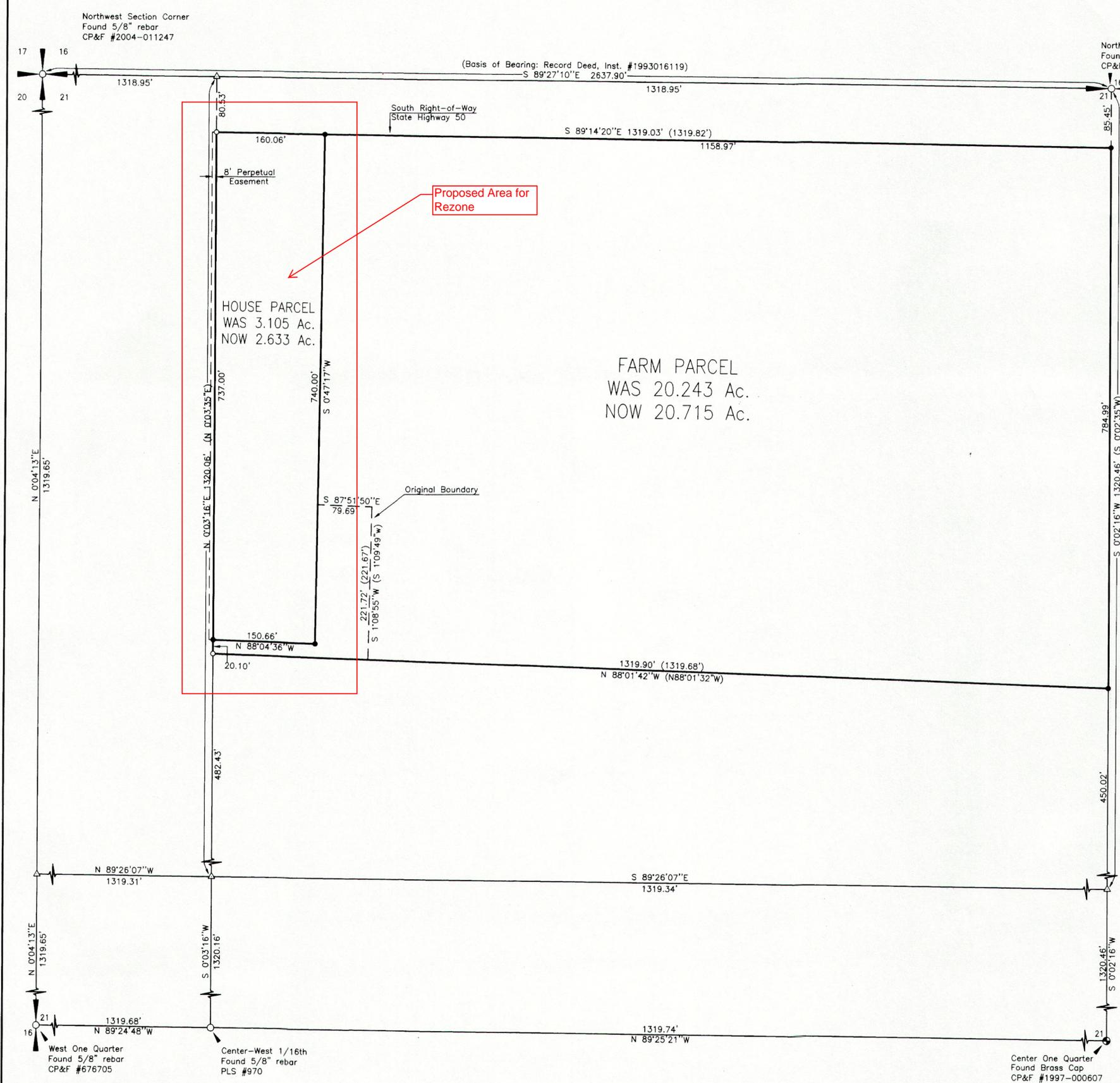
Denial:

Motion to deny the proposed development agreement and application to amend the zone district map for the City of Kimberly Area of Impact changing the zoning of the approximately 2.63 (+ or -) acres within the NE ¼ NW ¼ Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), from Agriculture to Commercial-Gateway (CG) zoning, finding that the proposed amendment will not promote the public health, safety and general welfare.

Continuation:

Motion to continue the public hearing upon the application for the development agreement and application to amend the zone district map for the City of Kimberly Area of Impact changing the zoning of approximately 2.63 (+ or -) acres within the NE ¼ NW ¼ Section 21, Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho (approximately at 27 Highway 50), from Agriculture to Commercial-Gateway (CG) zoning, to \_\_\_\_\_ [the Commission/Council should specify a date].





**SCALE**  
1" = 100'

**LOCATED IN**  
**NE<sup>4</sup> NW<sup>4</sup> SECTION 21,**  
**TOWNSHIP 10 SOUTH,**  
**RANGE 18 EAST,**  
**BOISE MERIDIAN**  
**TWIN FALLS COUNTY, IDAHO**  
**2011**

**LEGEND**

- SURVEY BOUNDARY LINE
- RIGHT-OF-WAY LINE
- FOUND BRASS CAP
- FOUND 5/8" STEEL PIN
- FOUND 1/2" STEEL PIN
- SET 1/2" REBAR & CAP
- CALCULATED POINT - NOT SET

DEED RECORD **TWIN FALLS COUNTY**  
Recorded for:  
**ALL POINTS LAND SURVEY**  
3:21:35 PM 10-13-2011  
**2011-019014**  
No. Pages: 1 Fee: \$ 5.00  
**KRISTINA GLASCOCK**  
County Clerk  
Deputy: DWRIGHT

I, JOHN O. ROOT, DO HEREBY CERTIFY THAT THIS MAP IS A TRUE AND ACCURATE MAP OF THE LAND SURVEYED UNDER MY SUPERVISION AND DIRECTION.



- REFERENCES**
- DEEDS:  
INST. #1993016119  
#1993018175  
#2010-003463
- RECORDS OF SURVEYS:  
INST. #1996-607116  
#2001-023504  
#2002-026915  
#2002-026916  
#2006-029819  
#2007-014480
- HIGHWAY PLANS: PROJECT 2741(8)

**ALL POINTS LAND SURVEYING**  
JOHN ROOT - P.L.S. #889  
SURVEYING - CONSTRUCTION MANAGEMENT

RECORD OF SURVEY FOR:  
**KELLY MUNSEE**

LOCATED IN: NE1/4 NW1/4 SEC. 21,  
T. 10 S., R. 18 E., B.M.

DRAWN BY: S. ROOT

DATE: 08/20/2011

JOB NO.: 11-061 SHEET NO.: 1 OF 1

TWIN FALLS COUNTY  
RECORDED FOR:  
ALLIANCE TITLE - TWIN FALLS OF  
02:59:24 PM 01-31-2014  
**2014001855**  
NO. PAGES 2 FEE: \$13.00  
KRISTINA GLASCOCK  
COUNTY CLERK  
DEPUTY: JWD  
Electronically Recorded by Simplifile

## WARRANTY DEED

Alliance Title & Escrow Corp. Order No.:215130

### FOR VALUE RECEIVED

**Kelly P. Munsee and Wendy R. Munsee, husband and wife, who acquired title as  
Kelly P. Munsee an unmarried man and Wendy R. Fullmer, an unmarried woman**

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

**Lucas W. Christensen and Jade B. Christensen, husband and wife**

whose current address is

**27 Highway 50  
Kimberly, ID 83341**

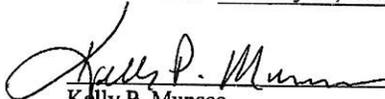
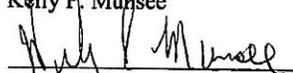
the grantee(s), the following described premises, in Twin Falls County, Idaho, TO WIT:

### SEE ATTACHED LEGAL DESCRIPTION

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: January 27, 2014

  
\_\_\_\_\_  
Kelly P. Munsee  
  
\_\_\_\_\_  
Wendy R. Munsee

State of Idaho } ss  
County of Twin Falls }

On this 31<sup>st</sup> day of January, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Kelly P. Munsee and Wendy R. Munsee, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed 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.

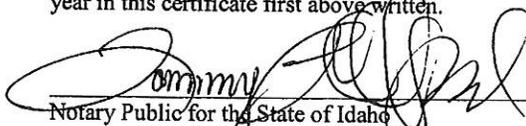
  
\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at: Twin Falls, ID  
Commission Expires: 11.14.2019



EXHIBIT "A"

215130

Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho

Section 21: A parcel of land located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$  being more particularly described as follows:

COMMENCING at the Northwest corner of Section 21 from which the North One Quarter (N $\frac{1}{4}$ ) corner of Section 21 bears South 89°27'10" East 2637.90 feet;

THENCE from the Northwest corner of Section 21 South 89°27'10" East along the North boundary of the NW $\frac{1}{4}$  of Section 21 for a distance of 1318.95 feet to the Northwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21;

THENCE South 00°03'16" West along the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21 for a distance of 80.53 feet to a point on the South right-of-way boundary of State Highway 50 and being the TRUE POINT OF BEGINNING;

THENCE South 89°14'20" East along the South right-of-way boundary of State Highway 50 for a distance of 160.06 feet;

THENCE South 00°47'17" West for a distance of 740.00 feet;

THENCE North 88°04'36" West for a distance of 150.66 feet to a point on the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21;

THENCE North 00°03'16" East along the West boundary of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 21 for a distance of 737.00 feet to the TRUE POINT OF BEGINNING.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

On June 3, 2014, the Kimberly Planning and Zoning Commission considered the application by Red Cap, LLC, represented by EHM Engineers, Inc. for Preliminary Plat – Replat of Redcap Corner (creating a two unit condominium plat). The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Recommendation.

### **FINDINGS OF FACT**

#### **Notice**

Notice for the public hearing was published in the Times News on May 19, 2014 and mailed to property owners within 300 feet and public subdivisions on May 20, 2014.

#### **Application**

Val Smith of EHM Engineers, Inc. submitted an application for preliminary plat (replat) approval of Lot 4, Block 1, Redcap Subdivision to be modified from being a single lot containing individual units for rent to being a 2 unit condominium plat, allowing for separate units to be divided and sold off as separate units.

#### **Department Comments:**

The application was reviewed by the City Engineer, the Public Works Director., and the Community Development Director. Attached are Draft Declarations of Covenants, Conditions, and Restrictions proposed for the re-plat condominium plat if it is approved.

#### **Procedural History**

On June, 3, 2014, the Planning and Zoning Commission conducted a public hearing to consider the preliminary plat noted above.

#### **Standards**

For each of the following pertinent standards (shown in bold print), the Commission makes the following Findings of Fact:

**2. Combining Preliminary And Final Plats: The applicant may request that the subdivision application be processed as both a preliminary and final plat if all the following exist:**

**a. The proposed subdivision does not exceed ten (10) lots;**

The re-plat contains two condominium units, so combined plats may be used.

**b. No new street dedication or street widening is involved;**

Not applicable.

**c. No major special development considerations are involved, such as development in floodplain or hillside development;**

Not applicable.

**3. Content Of Preliminary Plat: The contents of the preliminary plat and related information shall be in such a form as stipulated by the commission; however, additional maps or data as deemed necessary by the administrator may also be required.**

Applicant provided appropriate materials.

**c. Appropriate information that sufficiently details the proposed development within any special development area, such as hillside, planned unit development, floodplain, cemetery, mobile home, large scale development, hazardous and unique areas of development.**

Not applicable.

**d. To ensure adequate water supply to each new subdivision/development, all subdivision/development preliminary plat applications to the city will include water modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate water supply for domestic water and fire protection and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate domestic water and fire protection to the existing water system users.**

No new water supply is required to modify the condominiums from the previous use.

**e. To ensure adequate sewer treatment service by the city, each subdivision/development preliminary plat application to the city shall include sewer service treatment modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate sewer service and sewer treatment capacity by the city and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate sewer treatment capacity to the existing sewer system users.**

No new sewer treatment capacity will be needed or granted by the city to the applicant to modify the previous use to condominiums.

**f. The cost of the water and sewer modeling will be the responsibility of the developer.**

Not applicable for modification to condominiums.

**4. Requirement Of Preliminary Plats: The following shall be shown on the preliminary plat or shall be submitted separately together with any other pertinent information requested by the administrator:**

**a. The name of the proposed subdivision, which does not duplicate the name of any other subdivision in Twin Falls County.**

Name shown is Redcap Condominiums.

**b. The names, addresses and telephone numbers of the developers, the engineer or surveyor who prepared the plat and any other professional persons involved in the subdivision.**

Provided.



**c. The names and addresses of all surrounding property owners both adjacent to and beyond any public thoroughfares within three hundred feet (300') from the subject property on record in the county assessor's office.**

Provided.

**d. The legal description of the subdivision by section, township and range.**

Provided.

**e. A statement of the intended use of the proposed subdivision, such as: Residential single-family, two-family and multiple housing, commercial, industrial, recreational or agricultural and a showing of any sites proposed for parks, playgrounds, schools, churches or other public uses.**

Provided – Intended purpose is to create a condominium from the existing building constructed as a single owner building so separate owners may own the proposed two individual building units, which would have one common parcel.

**f. A map of the entire area scheduled for development if the proposed subdivision is a portion of a larger holding intended for subsequent development.**

Provided.

**g. A vicinity map showing the relationship of the proposed plat to the surrounding area (covering at least a 4 square mile area).**

Provided.

**h. The land use and existing zoning of the proposed subdivision and the adjacent land.**

Provided.

**i. Existing streets, street names, rights of way and roadway widths, including adjoining streets or roadways, along with type of surface and the existence of any curbs, gutters and/or sidewalks.**

Will not change.

**j. Approximate location and length of the boundary lines of each lot, parcel or site and the proposed lot and block numbers. Approximate acreage enclosed by subdivision.**

Provided.

**k. Contour lines, shown at five foot (5') intervals where land slope is greater than twenty percent (20%) and at two foot (2') intervals where land slope is twenty percent (20%) or less, referenced to an established bench mark of the city vertical control system, including its location and elevation.**

Not applicable.



**l. A site report and/or the approval of the appropriate health district if individual wells or septic tanks are proposed.**

Not applicable.

**m. Location, size and direction of flow of all existing utilities, including, but not limited to, storm and sanitary sewers, irrigation laterals, ditches, drainage, bridges, culverts, water mains, fire hydrants, gas lines, power, telephone and streetlights. If utilities are not on or adjacent to the property, indicate direction and distance to nearest ones that can serve the subdivision.**

Will not change; not applicable.

**n. A copy of any proposed restrictive covenants and/or deed restrictions.**

Copy of proposed Covenants, Conditions, and Restrictions is attached. Parking as it is proposed to be allocated/divided between the lots (1, 2, & 4) in Section 7 titled "Limited Common Area" is a question whose answer shall be determined by the applicant. This application specifically pertains to Lot 4 with the proposed 2 units, but parking in the adjacent parking lot is proposed to be utilized for all three lots.

**o. Any dedications to the public and/or easements both public and private, together with a statement of location, dimensions and purpose of such on both the subject property and surrounding properties.**

Not applicable.

**p. Any additional required information for special developments as specified in this title.**

Not applicable.

**q. A statement as to whether or not any variance will be requested with respect to any provision of this title describing the particular provision, the variance requested and the reasons therefor.**

Not applicable.

**r. Location, right of way width and name of all public or private trafficways, the location, right of way width and use of any proposed public or private pedestrian ways or special ways, and a statement of intended improvements to be made thereto.**

Not applicable.

**s. A statement as to what improvements will be made to existing utilities and what other on site improvements will be made.**

Not applicable.

**t. Approximate lot, corner and easement locations of all adjacent subdivisions.**

Not applicable.



**u. Location, size and direction of flow of all drainage, irrigation, sewer and water line improvements that will be part of the subdivision development.**

Not applicable.

**v. Additional drainage requirements may be requested by the administrator.**

Not applicable.

## **CONCLUSIONS OF LAW AND RECOMMENDATION**

Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Decision:

1. Adequate notice was given for the public hearing.
2. Upon compliance with the conditions noted below, the application substantially meets the standards to recommend approval.
3. The application for Preliminary Plat, is approved by the Kimberly Planning & Zoning Commission Hailey, with the following conditions:
  - i. Attached Red Cap Owners Association, Inc. Articles of Incorporation shall be appropriately filed/recorded to form the Association prior to final plat recordation.
  - ii. Attached Red Cap Covenants, Conditions and Restrictions CC&Rs shall be appropriately filed/recorded to establish their creation prior to final plat recordation.
  - iii. For information and acknowledgement, the Red Cap Condos Bylaws are attached.

Findings approved this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Candy Weth, Commission Chair, City of Kimberly

Attest:

\_\_\_\_\_  
Bart Bingham, Community Development Director, City of Kimberly



## PROJECT NARRATAIVE

The purpose of this is to condominimize Lot 4, Block 1 of Red Cap Subdivision No.1 into two building units and one common area parcel to allow two owners of an existing building. The existing building was constructed as a single owner building in a platted subdivision lot.

TWIN FALLS COUNTY  
RECORDED FOR:  
TITLEFACT  
4:08:04 pm 12-31-2008  
2008-027146  
NO. PAGES: 1 FEE: \$3.00  
KRISTINA GLASCOCK  
COUNTY CLERK  
DEPUTY: CHICE

MISC

TitleFact, Inc.  
163 Fourth Avenue North  
P.O. Box 486  
Twin Falls, Idaho 83303

\*\*\*\* SPACE ABOVE FOR RECORDER \*\*\*\*

**QUITCLAIM DEED**

For Value Received **FIRST FEDERAL SAVINGS BANK**, does hereby convey, remise and forever quit claim unto **RED CAP, L.L.C., an Idaho Limited Liability Company**, whose address is: P.O. Box 249, Twin Falls, ID 83303-0249, the following described premises, to-wit:

**PARCEL NO. 1**

Township 10 South, Range 18 East, Boise Meridian, Twin Falls County, Idaho  
Section 20: Being all that certain tract of parcel of land situated in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , and being more particularly described by metes and bounds as follows, to wit:  
COMMENCING at the East quarter corner of the aforementioned Section 20, from which the Northeast corner of said Section 20 bears North 00°05'27" East 2639.31 feet;  
THENCE North 00°05'27" East 1776.16 feet along and with the Section line;  
THENCE North 89°34'35" West 25.97 feet to a point on the Westerly right of way line of U.S. Highway 30, said point being the Southeast corner and the POINT OF BEGINNING of the herein described tract;  
THENCE North 89°34'35" West 547.37 feet;  
THENCE North 80°08'40" West 143.29 feet;  
THENCE North 20°39'31" West 286.24 feet;  
THENCE North 52°03'58" West 420.61 feet;  
THENCE South 89°23'58" East 963.76 feet;  
THENCE South 28°32'13" East 315.18 feet;  
THENCE South 87°23'15" East 7.00 feet to a point on the Westerly right of way line of U.S. Highway 30;  
THENCE South 00°00'05" West 267.67 feet along and with the Westerly right of way line of U.S. Highway 30 to the POINT OF BEGINNING.

**EXCEPT:**

Lots 1, 4 and 5, Block 1, **RED CAP SUBDIVISION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 22 of Plats, page 37, records of Twin Falls County, Idaho.

**PARCEL NO. 2**

Lot 1, 2, 3 and 4, Block 1, **RED CAP SUBDIVISION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 22 of Plats, page 37, records of Twin Falls County, Idaho.

together with their appurtenances.

Dated: December 31, 2008

**FIRST FEDERAL SAVINGS BANK**

BY: C. Alan Horner  
President

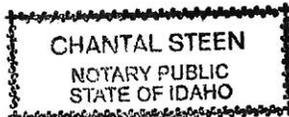
\* \* \* \* \*

STATE OF IDAHO  
County of Twin Falls

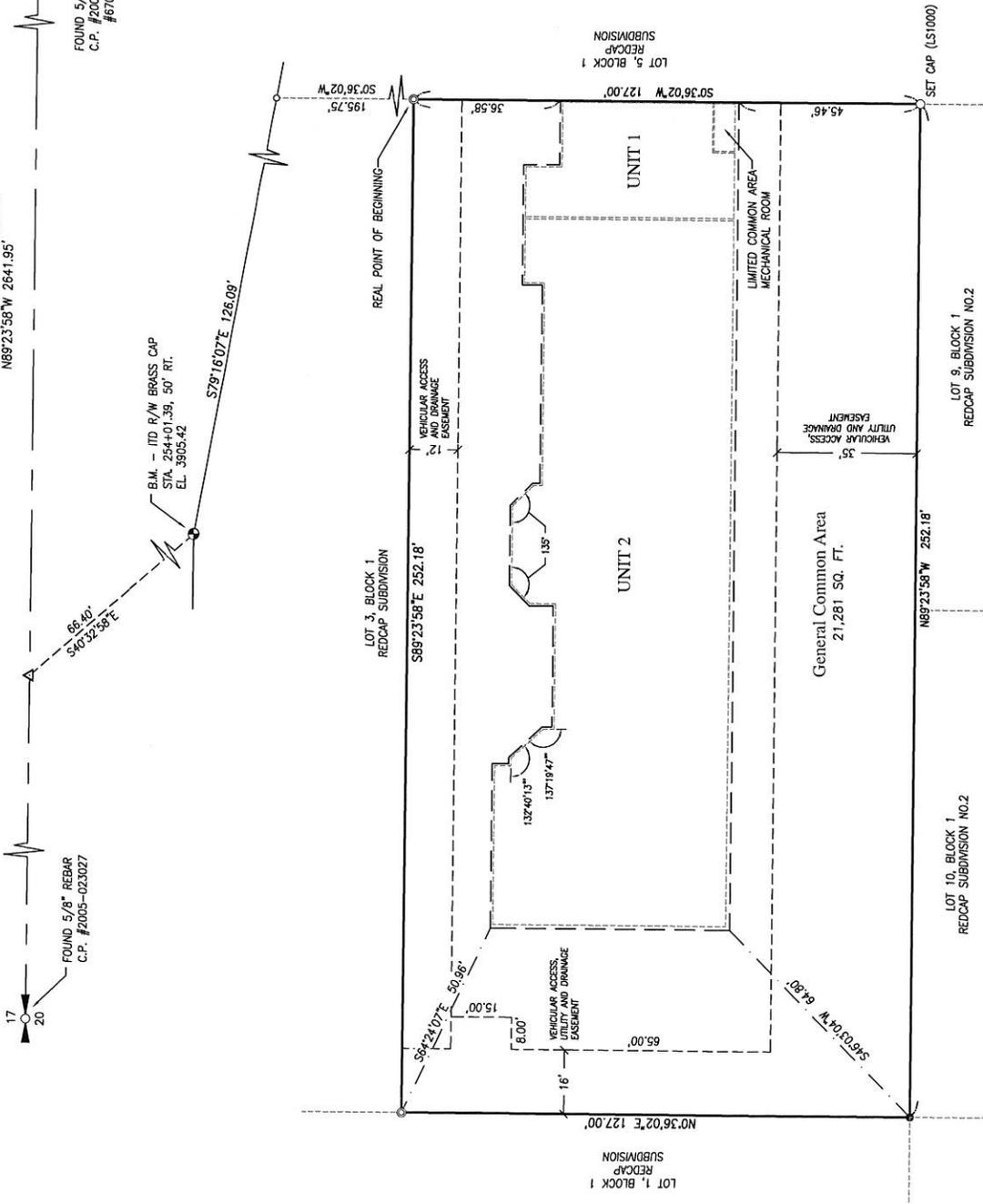
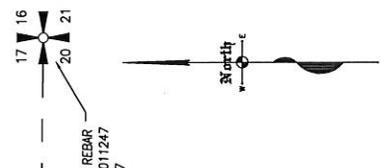
On this 31<sup>st</sup> day of December, 2008, before me, the undersigned, Notary Public in and for said State, personally appeared C. Alan Horner known or identified to me to be the President of the corporation that executed this instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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

Chantal Steen  
Notary Public for Idaho  
Residing at: Twin Falls County  
My Commission expires: 06/07/2012



# Redcap Condominiums A Re-Subdivision of Lot 4, Block 1 Redcap Subdivision Located In a Portion of NE 4 NE 4, Section 20 Township 10 South, Range 18 East, B.M. Twin Falls County, Idaho 2014



## NOTES

THE PHYSICAL BOUNDARIES OF THE UNIT ARE THE INTERIOR SURFACES OF PERIMETER WALLS, FLOOR, CEILING, BEAMS AND DOORS HEREIN SHOWN ON SHEET 1 OF THIS CONDOMINIUM LOT MAP TO BE CLEARED, RECORDED AND CONVEYED WITH THIS INSTRUMENT. THE FOLLOWING ARE NOT PART OF A UNIT: BEARING WALLS, NOTWITHSTANDING SUCH MARKINGS; THE INTERIOR SURFACE THEREOF OF A PERIMETER WALL, COLUMN, FLOOR AND ROOF (EXCEPT FOR THE INTERIOR SURFACE THEREOF OF A PERIMETER WALL, FLOOR OR CEILING), FOUNDATION, SKYLIGHTS, SHAWTS, CENTRAL HEATING SYSTEMS, RESERVOIRS, TANKS, PUMPS, AND OTHER SERVICES USED BY MORE THAN ONE UNIT; PIPES, VENTS, DUCTS, FLUES, CHUTES, SURFACES OF A PERIMETER WINDOW OR DOOR MEANS THE POINTS AT WHICH SUCH SURFACES ARE LOCATED WHEN SUCH WINDOWS OR DOORS ARE CLOSED; THE PHYSICAL WINDOWS AND DOORS THEMSELVES ARE PART OF THE COMMON AREA AS HEREIN DEFINED. IN INTERPRETING THE DECLARATION, PLAT, OR PLATS AND BEARS THE EXISTING PHYSICAL BOUNDARIES OF THE UNIT AS BORNENALLY TO BE CONSIDERED. THE BOUNDARIES OF THE UNIT ARE TO BE CONSIDERED TO BE CONSIDERED TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS EXPRESSED OR DEPICTED IN THE DECLARATION, PLAT OR PLATS, OR BEED REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING AND REGARDLESS OF MINOR VARIANCE BETWEEN BOUNDARIES SHOWN IN THE DECLARATION, PLAT OR PLATS AND THE ACTUAL BOUNDARIES OF THE UNIT AS BORNENALLY TO BE CONSIDERED. THE REDCAP CONDOMINIUMS DECLARATION RECORDED AS INSTRUMENT 1

## OWNERSHIP:

OWNERSHIP OF GENERAL COMMON AREA IS TO BE PROPORTIONALLY DIVIDED AS FOLLOWS:  
 UNIT 1: 12.58% (1,286/10,236)  
 UNIT 2: 87.42% (8,950/10,236)  
 GROSS BLDG.=10,746  
 NET BLDG.=10,236  
 LIMITED COMMON AREA (MECHANICAL) TO BE DIVIDED BETWEEN UNITS 1 AND 2.

## AREA SQUARE FOOTAGE:

TOTAL LOT AREA 32,027 SQ. FT.  
 AND INCLUDING FOUNDATION WALL 21,281 SQ. FT.  
 GENERAL COMMON AREA 21,281 SQ. FT.  
 UNIT 1 1,286 SQ. FT.  
 UNIT 2 8,950 SQ. FT.  
 LIMITED COMMON AREA - MECHANICAL 61 SQ. FT.

## Legend

- SUBDIVISION BOUNDARY LINE
- EXTERIOR OF BUILDING FOUNDATION
- SECTION LINE
- PLATTED EASEMENT LINE
- TIE TO EXTERIOR FOUNDATION
- FOUND 5/8" REBAR
- FOUND 1/2" REBAR (LS 1000)
- SET 5/8" X 24" REBAR & CAP (LS 1000)
- CALCULATED POINT (NOT SET)
- FOUND BRASS CAP (ITD R/W MONUMENT)
- FOUND 1/2" REBAR & CAP (LS1000) REPLACED WITH 5/8" X 24" REBAR & CAP (LS 1000)

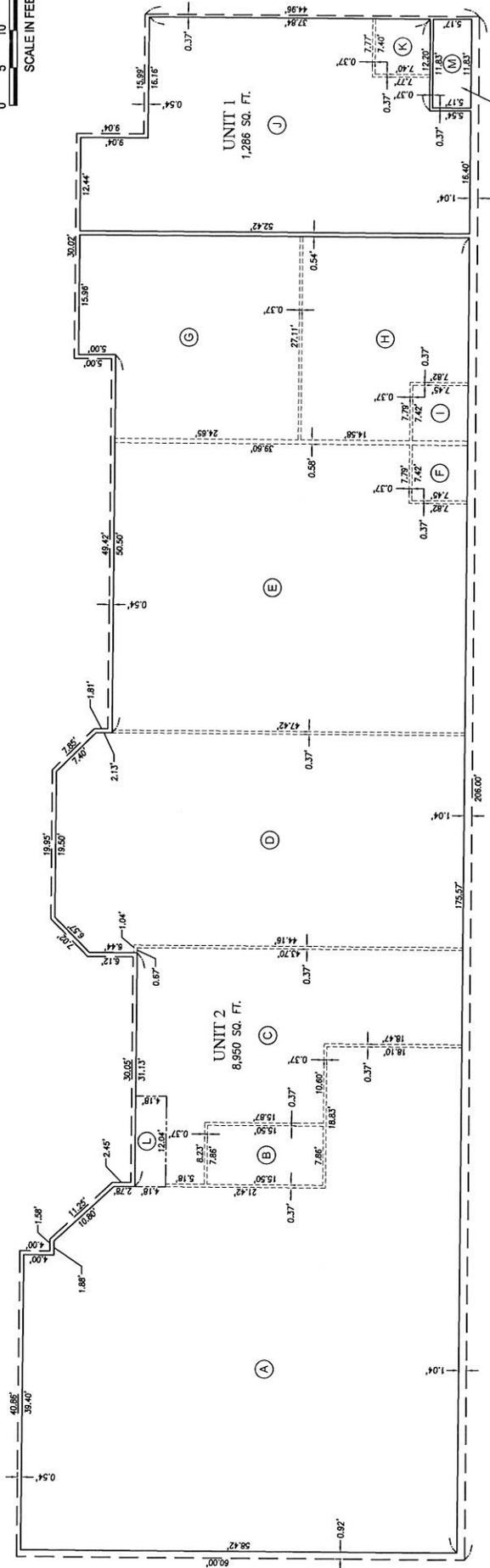
**EHM Engineers, Inc.**

Engineers / Surveyors / Planners  
 621 North College Road, Suite 100  
 Twin Falls, Idaho 83301  
 p (208)-734-4888 fax (208)-734-6049  
 web: ehmic.com

Date: \_\_\_\_\_ South Central District Health Dept., EHS

# NOTES

1. VERTICAL PLANES SHOWN HEREON ARE MEASURED TO FINISHED FACE OF WALLS.
2. ALL WALLS ARE PARALLEL WITH AND/OR PERPENDICULAR TO EACH OTHER UNLESS NOTED OTHERWISE. ALL AREA WITHIN THE BOUNDARIES OF THIS SUBDIVISION EXCLUSIVE OF UNITS 1, 2 AND THE LIMITED COMMON AREA, MECHANICAL ROOM ARE DESIGNATED AS GENERAL COMMON AREA AND IS SUBJECT TO NON-EXCLUSIVE CROSS USE EASEMENT FOR SURFACE DRAINAGE, PARKING, UTILITIES, EMERGENCY AND SERVICE VEHICLE ACCESS AND LANDSCAPING.
3. ELEVATIONS ARE IN REFERENCE TO I.D. R/W BRASS CAP 50 FT. RT. OF STA. 100+00.00 WITH AN ELEVATION OF 3905.92 BASED ON THE NAD 1988 DATUM.
4. HORIZONTAL PLANS SHOWN HEREON ARE THE TOP OF FINISHED FLOORS AND BOTTOM OF CEILINGS.
5. THE BOUNDARY BETWEEN THE UNITS IS THE FINISHED FACE OF THE WALLS AS SHOWN.



## FLOOR PLAN

### ELEVATION SCHEDULE

AREA	FLOOR ELEVATION	CEILING ELEVATION	REMARKS
(A)	3901.56	3910.76	FLAT FALSE CEILING
(B)	3901.56	3909.56	FLAT DRYWALL CEILING
(C)	3902.56	3911.76	FLAT FALSE CEILING
(D)	3902.56	3914.12	FLAT FALSE CEILING
(E)	3903.56	3912.81	FLAT FALSE CEILING
(F)	3903.56	3911.56	FLAT DRYWALL CEILING
(G)	3904.56	3913.76	FLAT FALSE & DRYWALL CEILING

AREA	FLOOR ELEVATION	CEILING ELEVATION	REMARKS
(H)	3904.56	3913.50	FLAT FALSE CEILING
(I)	3904.56	3912.56	FLAT DRYWALL CEILING
(J)	3904.56	3913.76	FLAT FALSE CEILING
(K)	3904.56	3912.56	FLAT DRYWALL CEILING
(L)	3901.56 3902.56	3911.76	FLAT FALSE CEILING RAMP FLOOR
(M)	3904.56	3913.76	FLAT FALSE CEILING

### LEGEND

- OUTSIDE OF FOUNDATION WALL
- INTERIOR FINISHED WALL
- UNIT BOUNDARY
- INTERIOR FINISHED WALL
- FLOOR ELEV. AND/OR CEILING HEIGHT CHANGE
- FLOOR ELEVATION CHANGE

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CERTIFICATE OF OWNERS

THIS IS TO CERTIFY THAT THE UNDERSIGNED IS THE OWNER, OR REPRESENTATIVE OF THE OWNER, OR REPRESENTATIVE OF THE OWNER IN FEE SIMPLE OF THE FOLLOWING DESCRIBED PROPERTY BEING LOT 4, BLOCK 1, REDCAP SUBDIVISION IN A PORTION OF THE NE1/4 NE1/4 OF SECTION 20, TOWNSHIP 10 SOUTH, RANGE 18 EAST, BOISE MERIDIAN, TWIN FALLS COUNTY, IDAHO. SAID PROPERTY BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20. THENCE N89°23'58"W 349.42 FEET ALONG THE NORTH BOUNDARY OF SECTION 20. THENCE S40°32'58"E 86.40 FEET. THENCE SOUTH 79°16'07" EAST 126.09 FEET ALONG THE SOUTHERLY RIGHT OF WAY OF U.S. HIGHWAY 30. THENCE SOUTH 00°36'02" WEST 195.75 FEET ALONG THE EASTERLY BOUNDARY OF LOT 3, BLOCK 1, "REDCAP SUBDIVISION" TO THE REAL POINT OF BEGINNING. THENCE SOUTH 00°36'02" WEST 127.00 FEET ALONG THE EASTERLY BOUNDARY OF LOT 4, BLOCK 1, "REDCAP SUBDIVISION". THENCE NORTH 89°23'58" WEST 252.18 FEET ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 4. THENCE NORTH 00°36'02" EAST 127.00 FEET ALONG THE WESTERLY BOUNDARY OF SAID LOT 4. THENCE SOUTH 89°23'58" EAST 252.18 FEET ALONG THE NORTHERLY BOUNDARY OF SAID LOT 4 TO THE REAL POINT OF BEGINNING. THE GROSS AREA CONTAINED IN THIS PLATTED LAND AS DESCRIBED IS 0.74 ACRES.

IT IS THE INTENTION OF THE UNDERSIGNED TO, AND THEY DO HEREBY INCLUDE SAID LAND IN THIS PLAT. THE EASEMENTS INDICATED ON THIS PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC UTILITIES AND SUCH OTHER USES DESIGNATED ON THIS PLAT. NO STRUCTURES OTHER THAN FOR SUCH UTILITY AND OTHER DESIGNATED PUBLIC USES ARE TO BE ERRECTED WITHIN THE LINES OF SAID EASEMENTS.

PURSUANT TO IDAHO CODE 50-1334, I, THE UNDERSIGNED, AS OWNER, DO HEREBY STATE THAT THE UNITS ON THIS PLAT ARE ELIGIBLE TO RECEIVE WATER SERVICE FROM THE CITY OF KIMBERLY MUNICIPAL WATER SYSTEM.

PURSUANT TO IDAHO CODE 31-3805, I, THE UNDERSIGNED, AS OWNER, DO HEREBY STATE THAT THE IRRIGATION WATER RIGHTS APPURTENANT AND THE ASSESSMENT OBLIGATION OF THE LANDS IN THIS PLAT HAVE BEEN TRANSFERRED FROM SAID LANDS. UNITS WITHIN THE SUBDIVISION WILL NOT BE ENTITLED TO ANY IRRIGATION WATER RIGHTS AND WILL NOT BE OBLIGATED FOR ASSESSMENTS FROM ANY IRRIGATION DISTRICT AND / OR CANAL COMPANY.

RED CAP, L.L.C., AN IDAHO LIMITED LIABILITY COMPANY

BY: C. ALAN HORNER, PRESIDENT

ACKNOWLEDGMENT

STATE OF ) ss  
COUNTY OF )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014, AT \_\_\_\_\_, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED C. ALAN HORNER, PERSONALLY KNOWN OR IDENTIFIED TO ME TO BE ONE OF THE MEMBERS OF RED CAP, L.L.C., AN IDAHO LIMITED LIABILITY COMPANY, AND THE MEMBER WHO SUBSCRIBED SAID COMPANY NAME TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED IN THE PRESENCE OF ME AND IN THE HEARING OF MY OFFICIAL SEAL THE VERACITY OF THE FOREGOING INSTRUMENT. IN WITNESS WHEREOF, I HAVE HERUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC

RESIDING AT

COMMISSION EXPIRES



EHM Engineers, Inc.

Engineers / Surveyors / Planners  
621 North College Road, Suite 100  
Twin Falls, Idaho 83301  
Phone: 208-734-4888 fax: 208-734-6049  
web: ehm-inc.com

CERTIFICATE OF SURVEYOR

THIS IS TO CERTIFY THAT I, ROGER A. KRUGER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, MADE THE SURVEY OF THE LAND DESCRIBED IN THE CERTIFICATE OF OWNER AND THAT THIS PLAT IS A TRUE AND ACCURATE REPRESENTATION OF SAID SURVEY AS MADE AND STAKED UNDER MY SUPERVISION AND DIRECTION.

APPROVAL OF CITY COUNCIL

THIS PLAT WAS ACCEPTED BY THE CITY COUNCIL OF KIMBERLY, IDAHO AT THEIR MEETING ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

MAYOR \_\_\_\_\_ CITY CLERK \_\_\_\_\_

APPROVAL OF CITY ENGINEER

I HAVE REVIEWED THE ACCOMPANYING PLAT AND HEREBY CERTIFY THAT IT CONFORMS WITH THE APPLICABLE ORDINANCES OF THE CITY OF KIMBERLY, IDAHO.

CITY ENGINEER \_\_\_\_\_ ATTEST: CLERK \_\_\_\_\_

COUNTY SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT I, RICHARD H. CARLSON, HAS CHECKED THE FOREGOING PLAT AND COMPUTATIONS FOR MAKING THE SAME AND HAS DETERMINED THAT THEY COMPLY WITH THE LAWS OF THE STATE OF IDAHO AND THE COUNTY OF TWIN FALLS RELATED THERETO. DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

ACTING COUNTY SURVEYOR \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014, AT \_\_\_\_\_, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED RICHARD H. CARLSON, PERSONALLY KNOWN OR IDENTIFIED TO ME TO BE WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.  
IN WITNESS WHEREOF, I HAVE HERELINTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC \_\_\_\_\_  
RESIDING AT \_\_\_\_\_  
COMMISSION EXPIRES \_\_\_\_\_

COUNTY TREASURER'S CERTIFICATE

I, \_\_\_\_\_ COUNTY TREASURER IN AND FOR THE COUNTY OF TWIN FALLS, IDAHO, PER THE REQUIREMENTS OF IDAHO CODE 50-1308, DO HEREBY CERTIFY THAT ALL COUNTY PROPERTY TAXES DUE FOR THE PROPERTY INCLUDED IN THIS PLAT HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY DAYS ONLY.

COUNTY TREASURER \_\_\_\_\_ DATE \_\_\_\_\_

COUNTY RECORDER'S CERTIFICATE

INSTRUMENT NO. \_\_\_\_\_  
STATE OF IDAHO )  
COUNTY OF TWIN FALLS ) ss  
ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014, AT \_\_\_\_\_, M, THE FOREGOING PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF TWIN FALLS COUNTY, IDAHO AND DULY RECORDED IN PLAT BOOK \_\_\_\_\_ ON PAGE \_\_\_\_\_

DEPUTY \_\_\_\_\_ EX-OFFICIO RECORDER \_\_\_\_\_



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DECLARATION OF  
CONDOMINIUM COVENANTS, CONDITIONS AND RESTRICTIONS  
OF RED CAP CONDOMINIUMS, A RESUBDIVISION OF  
LOT 4, BLOCK 1, RED CAP SUBDIVISION

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by **RED CAP, L.L.C.**, an Idaho limited liability company, hereinafter referred to as "Declarant".

RECITALS:

- A. Declarant is the owner of certain real property located in the City of Twin Falls, County of Twin Falls, State of Idaho, which is more particularly described in the official plat for the Red Cap Condominiums, A Resubdivision of Lot 4, Block 1, Red Cap Subdivision, recorded as Instrument No. \_\_\_\_\_, records of Twin Falls County, Idaho, which real property is sometimes hereinafter referred to as the "Subdivision"; "Red Cap Condominiums"; or as "Red Cap Condominiums Subdivision".
- B. The Subdivision is a two unit condominium professional office complex created pursuant to the applicable laws and requirements of the Condominium Property Act of the State of Idaho (I.C. § 55-1501, et seq.), and the applicable ordinances of the City of Twin Falls, Idaho.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Subdivision and all Condominium Units, Limited Common Area and General Common Area contained therein, shall hereafter be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, and equitable servitudes imposed in furtherance of a condominium office project. The restrictions set forth herein shall run with the real property included within the Subdivision; shall be binding upon, and inure to the benefit of, all persons having or acquiring any interest in a Condominium Unit or other interest in said real property, or any part thereof; and may be enforced by any Owner of any Condominium Unit within said Subdivision, or its successors in interest, or by the Association.

These restrictions shall not be construed so as to unreasonably interfere with or prevent normal construction activities during any construction of improvements by any Owner, including Declarant, upon property owned within the Subdivision, provided that when completed such improvements shall in all ways conform to these restrictions. Specifically, no such construction activity shall be deemed to constitute a nuisance or violation of these restrictions by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including, but not limited to, any provision prohibiting temporary structures, may be granted by the Association, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form.

ARTICLE I  
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in the Subdivision Restrictions shall have the meanings hereinafter specified.

1.01 ARTICLES shall mean the Articles of Organization of the Association which shall be filed in the office of the Idaho Secretary of State, as such Articles may be amended from time to time.

1.02 ASSESSMENTS shall mean all assessments of the Association, including both regular and special assessments.

1.03 ASSOCIATION shall mean the Red Cap Condominium Owners Association, Inc., the Idaho nonprofit corporation described in Article IV herein.

1.04 ASSOCIATION PROPERTY shall mean all real and personal property now or hereafter owned by or leased to the Association.

1.05 BENEFICIARY shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and/or the assignees of such mortgagee, beneficiary or holder.

1.06 RED CAP CONDOMINIUMS OPERATING AND MAINTENANCE FUND shall mean the fund created for the receipts and disbursements of the Association pursuant to Section 6.01 hereof.

1.07 RED CAP CONDOMINIUM RESTRICTIONS and/or RED CAP CONDOMINIUM CC&R's, shall mean this Declaration, together with any and all amendments or additions hereto which may be duly adopted and recorded by the Association.

1.08 RED CAP CONDOMINIUM RULES shall mean the rules governing the use of the Common Area adopted by the Board pursuant to Section 4.6 hereof, as they now read or may be hereafter amended to read.

1.09 BOARD shall mean the Board of Directors of the Association.

1.10 BYLAWS shall mean the Bylaws of the Association which shall be adopted by the Board, as such Bylaws may be amended from time to time.

1.11 COMMON AREA shall mean all portions of the Subdivision with the exception of the Condominium Units situated thereon, and expressly including all portions of the Subdivision designated on the official plat therefor as a Limited Common Area or General Common Area, together with the exterior surfaces of all Condominium Units. All Common Area shall be owned and held by the Owners of Condominium Units as tenants in common, and shall be exclusively managed by the Association for the primary benefit of said Owners.

1.12 COMMON AREA OWNERSHIP INTEREST shall mean and refer to the percentage of undivided interest in the Common Area which is appurtenant to each Condominium Unit, and owned as a tenant in common by the owner of said Unit which is as follows:

Condominium Unit No. 1	13%
Condominium Unit No. 2	87%

1.13 CONDOMINIUM shall mean a form of ownership as defined in § 55-101B of the Idaho Code.

1.14 CONDOMINIUM UNIT (or UNIT) shall mean and refer to Condominium Unit No. 1 and Condominium Unit 2, as shown on the official plat of the Subdivision, together with an appurtenant interest in common tenancy in the Common Area shown on said Plat.

1.15 DECLARATION shall mean this instrument as it may be amended from time to time.

1.16 DEED OF TRUST shall mean a mortgage or a deed of trust, as the case may be.

1.17 IMPROVEMENT shall mean all buildings and structures within the Subdivision, and appurtenances thereto, including, but not limited to, Condominium Units 1 and 2, driveways, sidewalks, parking areas, stairs, decks, landscaping, signs, exterior heating and/or air conditioning units, utility meters and water softener fixtures or equipment.

1.18 MEMBER shall mean any person who is a member of the Association pursuant to Section 4.02 hereof.

1.19 NOTICE and HEARING shall mean thirty (30) days written notice and a hearing before the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense.

1.20 OWNER shall mean: (1) the person or persons or other legal entity or entities, including Declarant, holding, in the aggregate, fee simple title to a Condominium Unit.

1.21 PASS THROUGH ASSESSMENTS shall mean and refer to any and all assessments duly levied against the real property comprising the Subdivision (which was formerly Lot 4, Block 1, Red Cap Subdivision) by the Red Cap Owners Association pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions of Red Cap Subdivision, Red Cap Subdivision No. 2 and Red Cap Subdivision No. 3 (Twin Falls County Instrument No. \_\_\_\_\_), including all duly adopted and recorded amendments thereto.

1.22 PERMITTED USERS shall mean Owners of Condominium Units, and the employees, agents, invitees, licensees and lessees of any such Owners.

1.23 PLAT shall mean and refer to the official plat of the Subdivision, as recorded in the records of Twin Falls County, Idaho, and any amended plats therefor which may hereafter be duly approved and recorded.

1.24 RECORD, RECORDED and RECORDATION shall mean, with respect to any documents, the filing and recordation of such documents in the office of the County Recorder of the County of Twin Falls, State of Idaho.

## ARTICLE II GENERAL RESTRICTIONS

All real property within the Subdivision shall be held, used and enjoyed subject to the following limitations and restrictions:

2.01 **Insurance Rates.** Nothing shall be done or kept in any Condominium Unit which will increase the rate of insurance on any other Condominium Unit or Common Area without the approval of the Board.

2.02 **Owners Insurance.** Each Owner shall be solely responsible for acquiring and maintaining such policies of insurance as it deems appropriate insuring against damage and loss to contents and personal property located within its Condominium Unit, and also against personal liability for bodily injury and death.

2.03 **No Further Subdividing.** No Common Area or Condominium Unit may be further subdivided without the prior written consent of all Condominium Unit Owners.

2.04 **Signs.** All signs shall require the approval of the Association.

2.05 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property within the Subdivision, and no odors or noise shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Subdivision without the prior written approval of the Association.

2.06 **Repair of Buildings.** No improvement within the Subdivision shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair.

2.07 **Improvements and Alterations.** There shall be no excavation, construction, alteration or demolition which in any way alters the exterior appearance of any improvement within the Subdivision, without the prior written approval of all Condominium Unit Owners.

2.08 **No Hazardous Activities.** No activities shall be conducted within the Subdivision, and no improvements constructed, which are unsafe or hazardous to any person or property.

2.09 **Unsightly Articles.** No unsightly articles shall be stored or otherwise permitted to remain on the Common Area.

2.10 **Vehicles.** The use of all vehicles in the Common Area shall be subject to all parking regulations, or other rules or regulations adopted by the Association.

2.11 **Reciprocal Easement.** A mutual reciprocal easement is declared to exist over, under and across each Condominium Unit, and the Common Areas for necessary utilities and related facilities, including all existing water, sewer, electrical, telephone and gas lines.

### ARTICLE III COMMON AREA

3.01 **Common Area Ownership.** Each Condominium Unit Owner shall, as an appurtenance to said Unit, own an interest in common, with all other Condominium Unit Owners, in the Common Area, which interest in common shall be in the proportional percentage identified as the Common Area Ownership Interest for each Unit in Section 1.12 hereinabove. Every instrument or document describing, conveying or otherwise affecting title to any Condominium Unit within the Subdivision may refer to said Condominium Unit by the number shown on the Plat, and such reference shall mean and be construed to describe the Condominium Unit, together with the undivided interest in common in the Common Area which is appurtenant to said Condominium Unit as set forth in Section 1.12.

3.02 **Use of the Common Area.** Control over the use, maintenance and management of the Common Area shall be, and hereby is, irrevocably and exclusively delegated to the Association. Without limiting the foregoing, the Association shall undertake such maintenance of the Common Area, and shall promulgate and enforce such rules and regulations concerning its use as may be consistent with the provisions of Section 4.04 of this Declaration. The Association may further grant easements over, under and across said Common Area for utility services lines and roads, and may permit the erection and installation of such improvements and furnishings thereon as it deems appropriate, and may further limit, restrict and/or regulate the use of said Common Area in a manner consistent with the use and enjoyment thereof by the Owners of Condominium Units.

**ARTICLE IV**  
**ASSOCIATION**

4.01 **Association.** The Association shall be incorporated by the Declarant as a nonprofit Idaho corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 **Membership.**

A. **Qualifications.** Each Owner, including Declarant, of a Condominium Unit, by virtue of being an Owner and for so long as said ownership lasts, shall be a member of the Association.

B. **Transfer of Membership.** The Association membership of each Owner, including Declarant, shall be appurtenant to that Owner's Condominium Unit, and shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any absolute transfer of title to said Unit, whether voluntary or by operation of law, shall operate automatically to transfer said membership to the new Owner thereof.

4.03 **Voting.**

A. **Number of Votes.** The Association shall have only one class of membership which shall consist solely of two (2) voting memberships, one appurtenant to the ownership of each of the Condominium Units within the Subdivision. The total number of votes entitled to be cast by all such memberships shall be 100, 13 of which shall be appurtenant to, and be issued to the Owner of, Condominium Unit No. 1, and the remaining 87 of which shall be appurtenant to, and be issued to the Owner of, Condominium Unit No. 2. The Owner of each Unit may, by written notice to the Association, designate a person (who need not be an Owner) to exercise the vote for such Unit. Said designation shall be revocable at any time by notice to the Association by the Owner. Such powers of designation and revocation may be exercised by the guardian of an Owner's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of an Owner's estate, by his Personal Representative.

B. **Joint Owner Disputes.** The total votes for the membership appurtenant to each Condominium Unit shall be cast as a whole, and split or fractional votes shall not be allowed. In the event that joint Owners of a single Unit are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any such joint Owner casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that said joint Owner was acting with the authority and consent of all other Owners of the same Condominium Unit.

C. Meetings of Owners. There shall be an annual meeting of the members of the Association in the month of January of each year at such place or time as may be designated by notice of the Board given to the Owners not less than fifteen (15) days prior to the date fixed for said meeting. A special meeting of the members may be called at any reasonable time and place by notice of the Board given to each Unit Owner not less than fifteen (15) days prior to the date fixed for said meeting. The presence at any meeting, in person or by proxy, of persons entitled to cast at least a majority of the total votes entitled to be cast by all members shall constitute a quorum. The president of the Association (or the vice present in his absence) shall act as chairman of all meetings of the Owners, and the secretary of the Association (or an assistant secretary thereof in his absence) shall act as secretary of all such meetings. Except as otherwise provided herein, any action may be taken at any duly constituted meeting of the Owners upon the affirmative vote of the Owners having a majority of the total votes present at such meeting in person or by proxy. At each annual meeting, the Board shall present a written statement of the Red Cap Condominiums Operating and Maintenance Fund, itemizing receipts and disbursements for the preceding calendar year and the Association's proposed budget for the ensuing year, and the proposed allocation of expenses to each Owner. Within ten (10) days after the date set for each annual meeting, the assessment statement shall be delivered to the Owners.

D. Transfer of Voting Right. The right to vote may not be severed or separated from the ownership of the Condominium Unit to which an Association membership is appurtenant, except that any Owner may give a revocable proxy, or may assign his right to vote for the term of the lease or deed of trust, and any sale, transfer of conveyance of such Condominium Unit to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a lessee or beneficiary as provided herein.

#### 4.04 Duties of the Association.

The Association shall have the obligation, in accordance with this Declaration, to perform each of the following duties for the benefit of the Owners:

A. Association Property. To accept and exercise exclusive management and control over the Common Area, and any property, real and personal, hereafter acquired or owned by the Association, or over which the Association is authorized to exercise management and control.

B. Operation of Common Areas. To operate and maintain, or provide for the operation and maintenance of all Common Area, and to keep all improvements located thereon in good order and repair, expressly including the exterior surfaces of all Units, buildings and improvements (including, roofs, exterior walls, exterior windows, parking areas, and exterior utility service facilities).

C. Payment of Taxes. To pay all real property taxes and assessments levied upon any property conveyed, leased or otherwise transferred to the Association, to the extent not assessed separately to the Condominium Unit Owners.

D. Payment of Certain Assessments. To pay when due, all Pass Through Assessments, as defined in Section 1.21 above, which are duly levied against the Subdivision by the Red Cap Owners Association, Inc., an Idaho non-profit corporation, pursuant to that certain Declaration of Covenants, Conditions and Restrictions of Red Cap Subdivision, Red Cap Subdivision No. 2 and Red Cap Subdivision No. 3, recorded as Instrument No. \_\_\_\_\_, records of Twin Falls County, Idaho, and amendments thereto.

E. Insurance. To obtain and maintain in force the following policies of insurance:

1. Fire, extended coverage and all risk insurance on all structures and improvements within the Common Area (including the buildings within which the Condominium Units are situated), the amount of such insurance shall be not less than full insurable value, meaning actual replacement value. Such insurance shall insure the Association, the Owners and their respective mortgagees, as their interests may appear.
2. A policy of insurance in an amount not less than \$1,000,000, combined single limit, providing coverage for bodily injury and property damage liability. Said policy shall include the Owners and the Association as named insureds, and shall insure against liability for bodily injury, death and property damage arising from any activities or condition within the Common Area, and with respect to property or equipment under its jurisdiction.
3. Such other insurance as the Board shall deem necessary or prudent for the Association functions as set forth in the Declaration, Articles and Bylaws.
4. **Fire, casualty and liability insurance covering all interior spaces comprising Condominium Units within the Subdivision, and all personal property, including, but not limited to, furniture, fixtures, equipment, carpets, clothing and personal belongings, situated within any Unit shall be the sole responsibility of the Owner of the Unit.**

G. Miscellaneous Duties. To perform such other acts, whether or not expressly authorized, as may be reasonably necessary to carry out or enforce any of the provisions hereof.

H. Books and Records. To provide an annual accounting of the fiscal affairs of the Association, and to deliver a copy thereof to each Owner within thirty (30) days after completion thereof. Any Owner may at any time, and at his own expense, cause an audit or inspection to be made of the books and records of the Association by a certified public accountant; provided that such audit or inspection is made without unnecessary interference with the operations of the Association.

I. Maintenance of Facilities. To maintain in good condition, repair and appearance all Common Area improvements, structures, equipment and facilities, including sidewalks, landscaping, parking areas, foundations, water system, sanitary sewer system, and exterior surfaces, including glass and roofs, of all condominium buildings within the Subdivision, and other incidental improvements and facilities. The Association shall not, however, have any responsibility or liability for any fixtures, utilities, interior surfaces or fixtures situated within any Unit, including, without limitation, lighting and plumbing fixtures, or heating and air conditioning equipment or appliances are serve less than all Units within the Project.

J. Budget for Assessment Purposes. To adopt an annual budget to cover the cost of such maintenance and repairs, including legal and accounting fees and costs of insurance, and to levy and enforce, by lien or otherwise, assessments against such members in the manner set forth in Article VII hereof as may be required to defray Association expenses.

4.05 **Powers and Authority of the Association**. The Association shall have all of the powers of an Idaho nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws. Its powers and authorities shall include, but not necessarily be limited to, the following:

A. Assessments. To levy, collect and manage Assessments on each Condominium Unit to the Owners thereof, in amounts necessary to defray the costs incurred by the Association in carrying out

its duties and obligations, and to enforce payment of such Assessments in accordance with the provisions of Article VII hereof. Said Assessments shall be levied against each of the Condominium Units, and the Owners thereof, in the same proportions indicated for its appurtenant Common Area Ownership Interest identified in Section 1.12 hereinabove.

B. Right of Entry and Enforcement. After twenty-four (24) hours' written notice, the Association or its agents may enter, without being liable to any Owner, any Unit for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration. The Association shall also have the power and authority from time to time in its own name on its own behalf or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration.

C. Manager. To retain and pay for the services of any contractors, agents, professional persons or entities or other personnel as the Board shall determine shall be necessary or proper for the conduct of the business of the Association.

D. Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association, enforcement of this Declaration, or in performing any of the other duties or rights of the Association.

E. Common Area Services. To pay for water, sewer, garbage, electrical, telephone, gas, maintenance, snow removal and gardening service, and other necessary utility or other services for the Common Area and Common Area facilities.

F. Construction on Common Area Property. The Association may construct new improvements or additions to the Common Area or demolish existing improvements, provided that in the case of any improvements, addition or demolition (other than maintenance or repairs to existing improvements) involving a total expenditure in excess of \$5,000, only upon the affirmative vote of a majority of the total votes entitled to be cast by all members, voting in person or by proxy at a regular or special meeting called for that purpose. The Association may, if necessary, levy a special assessment on all Owners for the cost of any such work that is approved.

4.06 Rules. The Board may adopt, and from time to time alter or amend, such rules as it deems proper for the use and occupancy of the Common Area. A copy of said Rules shall be delivered to each Owner. Upon such delivery, said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

4.07 Liability of Board Members. No member of the Board shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, or any other representatives, agents, contractors or employees of the Association, provided that such Board member has, upon the basis of such information as may be possessed by him, acted in good faith.

4.08 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain and satisfy separate real estate tax assessment of said Owner's Condominium Unit and the appurtenant Common Area Ownership Interest as identified in Section 1.12 hereinabove.

4.09 Enforcement. The Association shall have the power and authority to enforce this Declaration, and all rules and regulations promulgated pursuant hereto.

ARTICLE V  
COMMON AREA PROPERTIES

5.01 Each Owner of a Condominium Unit, its agents, employees, licensees, invitees and lessees, who utilize the property, shall be entitled to use the Common Area subject to:

- A. The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and any applicable Rules promulgated by the Association pursuant hereto.
- B. Applicable provisions of the Declaration of Covenants, Conditions and Restrictions of Red Cap Subdivision, Red Cap Subdivision No. 2 and Red Cap Subdivision No. 3, recorded as Instrument No. \_\_\_\_\_, in the records of Twin Falls County, Idaho, including all duly adopted and recorded amendments thereto.
- C. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be permitted by this Declaration.

5.02 **Damages**. Each Owner shall be liable to the Association for any damage to the Common Area which may be sustained by reason of the negligence or willful misconduct of said Owner or of its agents, employees, licensees, lessees, and invitees. In the case of joint ownership of a Unit, the liability of such Owners shall be joint and several. The amount of such damage shall be an Assessment against the Condominium Unit of such Owner, and may be collected as provided herein for the collection of other Assessments.

5.03 **Damage and Destructions**. In the case of damage by fire or other casualty to the Common Area and condominium buildings within the Subdivision:

A. **Destruction and Insurance Proceeds**. If insurance proceeds do not exceed the sum of One Hundred Fifty Thousand Dollars (\$150,000), and the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Ten Thousand Dollars (\$10,000), such insurance proceeds shall be paid to the Association, which thereupon shall contract to repair or rebuild all the Association Property so damaged; and if the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding the damage, the Association shall levy a special Assessment on all Owners to make good any deficiency.

B. **Reconstruction**. If insurance proceeds exceed One Hundred Fifty Thousand Dollars (\$150,000), or the cost of repairing or rebuilding exceeds available insurance proceeds by more than Ten Thousand Dollars (\$10,000), then:

1. The insurance proceeds arising out of the damages in each project affected shall be paid to the Association or to such bank or other trust company as may be designated by the Board, to be held in trust for the benefit of the Owners whose Units have been damaged or destroyed, as their respective interests shall appear.
2. The Association shall obtain firm bids from two (2) or more responsible contractors to rebuild any portions of the damaged structures in accordance with the original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the Owners to consider such bids. At such meeting, upon the affirmative vote representing not less than fifty-one percent (51%) of the total number of votes

entitled to be cast by the total membership, the Association may elect to accept any of such bids.

3. If a bid is accepted by the Association, it shall levy a special assessment or special assessments on the Owners of all Units to make up the deficiency between the total insurance proceeds and the contract price of repairing or rebuilding the damaged portions of the Association Property and such assessment or assessments and all insurance proceeds, whether or not subject to liens of mortgages, shall be paid to said insurance bank or trustee to be used for such rebuilding. If such special assessments are levied, they may be made due on such dates as the Association may designate over a period not to exceed twenty (20) years, and the Association may borrow money to pay the aforesaid deficiency, and may secure such borrowing any an assignment of its right to collect such assessments, or by a pledge of any personal property held by it in trust for the Owners, or by both.
4. If the Owners elect not to rebuild, the proceeds, to the extent possible, shall be utilized in the following manner:
  - a. First, to compensate the Owner of any damaged or destroyed Unit, the amount of said damage or destruction not to exceed the fair market value of the Unit, immediately prior to said damage or destruction. If the proceeds are insufficient to so compensate all Owners suffering damage or destruction to their respective Condominium Units, each such Owner will receive that proportion of its compensatory loss which is equal to the proportion of total losses incurred which are covered by insurance proceeds.
  - b. Second, the remainder of the proceeds, if any, shall be retained by the Association for its use.
  - c. The balance, if any, shall be distributed to the Owners in the same proportion as their respective interests in the Common Area, as set forth in Section 1.12 hereinabove.

## ARTICLE VI FUNDS AND ASSESSMENTS

6.01 **Red Cap Condominium's Operating and Maintenance Fund.** The Board shall establish a fund (the "Red Cap Condominium's Operating and Maintenance Fund") into which shall be deposited all monies paid to the Association, and from such fund disbursements shall be made to defray all costs and expenses reasonably incurred in performing the functions of the Association. Funds of the Association must be used solely for purposes authorized by this Declaration as it now reads, or may from time to time be amended to read.

6.02 **Yearly Estimates of Assessments.** At the Annual Meeting of the Association, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund). A sum sufficient to pay such estimated net charges will be assessed against each Condominium Unit. If said sum estimated proves inadequate for any reason, including non-payment of any Owner's Assessment, the Association may, at any time, levy a further Special Assessment which shall be assessed upon each Condominium Unit.

6.03 **Interest.** Simple interest, at the rate of 18% per annum shall accrue, and be payable on, all unpaid assessments from and after the date on which such assessment became due until paid.

6.04 **Unpaid Assessments as Liens.** The amount of any assessment, whether regular or special, plus interest accrued on such assessment (or such other rate as the board may designate from time to time), and costs, including reasonable attorneys fees, shall become a lien upon such Condominium Unit upon recordation of a notice of assessment stating the amount of the claim of delinquency, the interest and costs which have accrued thereon, the legal description and street address of the Condominium Unit against which is has been assessed, and the name of the record Owner thereof. Such notice shall be signed and acknowledged by an officer of the Association. Upon recordation it shall create a lien upon the Condominium Unit described in the amount set forth. Such assessment lien shall be deemed prior and superior to any declaration of homestead recorded after the recording of this Declaration. The lien shall continue until fully paid or satisfied, a further notice releasing the lien shall be recorded. Such lien may be foreclosed in the same manner as the foreclosure of liens on real property or with respect to a lien against a Condominium Unit as provided in § 55-1515 of the Idaho Code or as otherwise provided by law.

## ARTICLE VII MISCELLANEOUS

### 7.01 **Amendment.**

A. **By Owners.** This Declaration, or any of the provisions of this Declaration, may be amended or extinguished by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying that such amendment has been approved by the affirmative vote of, or written consent of, the Owners that have, or are entitled to, cast a majority of the total votes entitled to be cast by all of the membership interests in the Association, and any such amendment or extinguishment shall be effective upon its recordation with the Twin Falls County Recorder.

B. **Limitations.** Notwithstanding any other provision of this Declaration, no amendment or extinguishment of this Declaration shall operate to defeat and render invalid the rights of the beneficiary under any recorded deed of trust upon a Condominium Unit made in good faith and for value, provided that after the foreclosure of any such deed of trust such Condominium Unit shall remain subject to this Declaration, as amended.

7.02 **Notices.** Any permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the last known residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

7.03 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the operation and development of Subdivision, and shall be further construed so as to be in conformance with the Condominium Property Act of Idaho.

### 7.04 **Enforcement and Non-Waiver.**

A. **Right of Enforcement.** Except as otherwise provided herein, any Owner of any Condominium Unit within Subdivision shall have the right to enforce any or all of the provisions of this Declaration.

B. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by the Association or any Owner of a Condominium Unit, within the Subdivision.

C. Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Units or Common Area within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

D. Remedies Cumulative. Each remedy provided herein is cumulative and non-exclusive.

E. Non-Waiver. The failure to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of this Declaration.

7.05 Construction.

A. Restrictions Severable. Each of the provisions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

B. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine and neuter.

C. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

RED CAP, L.L.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Twin Falls )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public for said County and State, personally appeared \_\_\_\_\_, known or identified to me, to be the Manager or one of the members in the limited liability company of **RED CAP, L.L.C.**, and the Manager or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at \_\_\_\_\_  
Commission expires \_\_\_\_\_  
!rlm\realest\ccr condo\_Red Cap

BYLAWS

OF

RED CAP CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I

Offices

Section 1. Principal Office. The principal office of Red Cap Condominium Owners Association, Inc., an Idaho non-profit corporation (the "Corporation") shall be located at \_\_\_\_\_, Twin Falls, Idaho, 83301, or at such other location as may, from time to time, be designated by the board of directors of the Corporation.

Section 2. Registered Office. The registered office of the Corporation to be maintained in the State of Idaho shall be located at \_\_\_\_\_, Twin Falls, Idaho, 83301, and may be changed from time to time by the board of directors.

ARTICLE II

Members

Section 1. Admission to Membership. For purposes of these Bylaws, the term "Unit" shall have the same meaning as that term is defined to have in that certain Declaration of Covenants, Conditions and Restrictions, recorded as Instrument No. \_\_\_\_\_, in the records of Twin Falls County, Idaho, ("Declaration"). Every person or entity owning a Unit from and after the date of incorporation for the Corporation shall be entitled and required to be a member of the Corporation for so long as said person or entity continues to be an owner of a Unit. If title to any such Unit is held by more than one person or entity, the membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of tenancy in which title to the Unit is held; provided that only one membership shall be appurtenant to each Unit, and any joint or common owners of said membership shall collectively appoint one person to vote that membership in the Corporation. No person or entity other than an owner of a Unit may be a member of the Corporation, and a membership may not be transferred except in connection with the transfer of the Unit to which it is appurtenant, or an interest in such Unit. Conditions of membership and procedures for suspension or termination of a membership by the Corporation may be established from time to time by the Board of Directors.

Section 2. Classes of Membership. The Corporation shall have one class of membership.

## ARTICLE III

### Meetings

Section 1. Annual Meetings. An annual meeting of the members shall be held during the month of January in each year beginning in the year 2015, with the exact date, time, and place of the meeting to be established by the Board of Directors, for the purpose of electing Directors, and for the transaction of such other business as may come before the meeting.

Section 2. Special Meetings. Special meetings of the members may be called by the Board of Directors or upon the written request of either member of the Corporation.

Section 3. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Idaho, as the place of meeting for any annual meeting or any special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Corporation in the State of Idaho.

Section 4. Notice of Meeting. Not later than fifteen (15) days prior to the date of any regular or special meeting of the members, notice of said meeting, including the time, place, and purpose of the meeting, shall be given to each member by personal service, by telephone, facsimile, email, or by mail; provided, however, that if notice is given by mail, it shall be placed in the U.S. mail, postage prepaid, addressed to the member to whom it is directed at his last known address, not later than seven days prior to the date of the meeting.

Section 5. Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the Idaho Non-Profit Corporation Act as set forth in Title 30, Chapter 3, Idaho Code (the "Act") or under the provisions of the Articles of Incorporation for the Corporation (the "Articles") or these Bylaws, or by the Declaration, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 6. Officers of the Members Meeting. The presiding officer at all meetings of the membership shall be the president of the Corporation or, in the absence of the president, the vice president or, in the absence of both the president and the vice president, a chairman elected by the members present at the meeting. The secretary of the Corporation or, in the absence of the secretary, any person appointed to do so by the presiding officer of the meeting, shall act as secretary for the meeting.

Section 7. Quorum and Voting Requirements. Attendance by members entitled to cast a

majority of the total votes to which all members are entitled to cast, represented in person or by proxy, shall constitute a quorum at a meeting of the members. The members present or duly organized and convened meeting where a quorum is present can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum present after the meeting has started. If a quorum is present, the affirmative vote of the majority of total votes which the memberships represented at the meeting and entitled to vote on the subject matter shall be conclusively deemed the act of the Association and its membership, unless the vote of a greater number is required by the Act, the Articles, these Bylaws, or the Declaration.

Section 8. Proxies. A member may vote either in person or by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. Every proxy shall be revocable at the pleasure of the member who executed it.

Section 9. Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the members of the Corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of the membership, and may be stated as such in any articles or documents filed with the Idaho Secretary of State under the Act.

## ARTICLE IV

### Directors

Section 1. General Powers and Standard of Care. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. A director shall perform his duties in good faith, in a manner which such director reasonably believes to be in the best interest of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such persons professional area of competence; or

(c) A committee appointed by the Board of Directors upon which such director does not serve, duly designated in accordance with the provisions of these Bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

Section 2. Tenure and Qualifications. The number of directors shall be three (3), and each director shall be elected for a three (3) year term, and shall hold office until the end of that term or until a successor has been elected and qualified, whichever shall last occur. Two (2) directors must have an ownership interest in one or more Units at the time of election and throughout their terms, and one (1) does not have to have an ownership interest in a Unit. Notwithstanding the foregoing, until the 2015 annual meeting of the membership, at which meeting three (3) directors shall be elected, or until such other time as their successors are in fact duly elected by the membership, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall serve as the members of the Board of Directors.

Section 3. Vacancies. Any vacancy occurring on the Board of Directors in a directorship to be filled by reason of any increase in the number of directors shall be filled by the remainder of the Board of Directors. Directors so appointed to fill a vacancy or a newly created directorship, shall stand for election at the next annual meeting of the membership.

Section 4. Removal of Directors. Any director may be removed from office for cause by the affirmative vote of not less than two-thirds (2/3) of the total number of votes all members of the Association are entitled to cast.

Section 5. Meetings. The Board of Directors may hold regular meetings at such times and places as it may establish, provided that in no event shall said meetings be held less frequently than once a year. Special meetings of the Board of Directors may be called by or at the request of the president of the Corporation, or by any two directors. The person or persons authorized to call special meetings of the Board of Directors may designate the time and place for holding such meetings, and the agenda for such special meetings.

Section 6. Notices. Unless waived in writing by the person entitled thereto, notice of any regular or special meeting of the Board of Directors shall be given at least three (3) days previous thereto if delivered personally or seven (7) days previous thereto if sent by mail to each director at his address as shown by the records of the Corporation. The purpose of any special meeting of the Board of Directors shall be specified in the notice or waiver of notice of such meeting. Waiver of

the notice requirement herein set forth must be in writing and be signed by the director waiving notice.

Section 7. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, but if fewer than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting without further notice. Once a quorum is established, it shall remain for the duration of the meeting, despite subsequent withdrawals from the meeting by one or more directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by law or by the Articles or Bylaws of the Association.

Section 8. Informal Action. Any action required to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent, in writing, setting forth the action as taken shall be signed by a majority of the directors.

Section 9. Compensation. The officers and directors shall serve without compensation, but reasonable expenses incurred may be reimbursed when expended for and in the interests of the Corporation, and approved by the Board of Directors.

Section 10. Director Conflicts of Interest. No contract or other transaction between the Corporation and one or more of its directors or any other Corporation, firm, association, or entity in which one or more of the directors are directors or officers, or are financially interested, shall be void or voidable simply because of such relationship or interest, or because such director or directors are present at the meeting of the Board of Directors, or a committee thereof, which authorizes, approves, or ratifies such contract or transaction, or because such director or directors' votes are counted for such purposes, if:

(a) The fact of such relationship or interest is disclosed or known to the Board of Directors, or committee, which authorizes, approves, or ratifies the contract or transaction; and

(b) The contract or transaction is fair and reasonable to the Corporation, and the fact of such relationship or interest is fully and fairly disclosed or known to the Corporation.

Section 11. Loans to Directors. The Corporation shall not lend money to or use its credit to assist its directors or officers.

## ARTICLE IV

### Officers

Section 1. Number and Title. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer, and such other officers as may be appointed by the Board of Directors. Any two or more offices may be held by the same person, except the office of president.

Section 2. Term of Office. The officers of the Corporation shall be appointed by, and serve at the pleasure of, the Board of Directors. All vacancies in any of the offices may be filled by the Board of Directors.

Section 3. President. The president shall preside at all meetings of the Board of Directors and the meetings of the general membership. The president may sign, with the secretary, or any other proper officer, any deed, mortgage, bond, contract, or other instrument which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated to some other officer or agent of the Corporation. The president shall perform all duties incident to the office, and such other specific duties as shall be prescribed from time to time by the Board of Directors.

Section 4. Vice President. In the absence of the president, or in the event of the president's inability or refusal to act, the vice president shall perform the duties of the president, and when so acting, shall have all the powers and be subject to all of the restrictions upon the president. The vice president shall perform such other duties as may from time to time be assigned by the Board of Directors.

Section 5. Secretary. The secretary shall keep the permanent minutes of the meetings of the Board of Directors and of the meetings of the general membership, in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these Bylaws, or as required by law, be the custodian of the corporate records and corporate seal, keep a register of the name and post office address of each member of the corporation, and in general perform all duties incident to the office of secretary, and such other specific duties as may from time to time be assigned to the office by the president or the Board of Directors.

Section 6. Treasurer. The treasurer shall have charge and custody, and be responsible for, all funds and securities of the Corporation, and deposit all monies in the name of the Corporation at such bank or other financial institution as shall be selected by the Board of Directors, and in general perform all of the duties incident to the office of treasurer, and such other specific duties as may

from time to time be assigned by the Board of Directors or the president.

## ARTICLE VI

### Miscellaneous

Section 1. Indemnification. The Corporation shall indemnify any director, officer, or former director or officer, of the Corporation against expenses actually and reasonably incurred in connection with the defense of any action, suit, or proceeding, civil or criminal, in which such officer or director is made a party by reason of having been a director or officer, except in relation to matters as to which said director or officer is adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of any duty owed to the Corporation.

Section 2. Depositories. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, savings and loan associations, trust companies, or other institutional depositories as the Board of Directors may elect.

Section 3. Contracts. The Board of Directors may authorize any officer of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 4. Checks and Drafts. All checks, drafts or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the president.

Section 5. Investment. Any funds of the Corporation which are not needed currently for the activities of the Corporation may, at the discretion of the Board of Directors, be invested in such investments as are permitted by law.

Section 6. Financial Statements. Statements of the financial condition of the Corporation shall be provided to the members not less frequently than once a year, and at the request of any member, or at the discretion of the Board of Directors, said financial statements shall be prepared and reviewed by a certified public accountant to be selected by the Board of Directors.

Section 7. Books and Records. The Corporation shall keep correct and complete books and records of all accounts, and shall also keep minutes of the proceedings of all meetings of its members and Board of Directors, and shall keep the record giving the name and address of the members entitled to vote. All books and records of the Corporation may be inspected by any member or his agent or attorney at any reasonable time upon request.

Section 8. Amendments. These Bylaws may be altered, amended, or repealed, and a new set of Bylaws adopted, by an affirmative vote of a majority of the total votes all members of the Association are entitled to cast, at a meeting duly noticed and convened for that purpose.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
\_\_\_\_\_, DIRECTOR

\_\_\_\_\_  
\_\_\_\_\_, DIRECTOR

\_\_\_\_\_  
\_\_\_\_\_, DIRECTOR

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ARTICLES OF INCORPORATION  
OF  
RED CAP CONDOMINIUM OWNERS ASSOCIATION, INC.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, acting as the incorporator, hereby adopts the following Articles of Incorporation to incorporate and establishes the Red Cap Condominium Owners Association, Inc., pursuant to the Idaho Non-Profit Corporation Act.

ARTICLE I  
NAME

The name of said corporation shall be the Red Cap Condominium Owners Association, Inc.

ARTICLE II  
PURPOSE

The purpose for which this corporation is organized is to function as a condominium property owners association for the two Condominium Units situated within the Red Cap Condominium Subdivision ("Subdivision"), the official plat for which is recorded as Instrument No. \_\_\_\_\_, records of Twin Falls County, Idaho, and in that capacity to undertake all duties and obligations imposed upon it by the Declaration of Covenants, Conditions and Restrictions of Red Cap Condominiums, A Resubdivision of Lot 4, Block 1, Red Cap Subdivision, recorded \_\_\_\_\_, as Instrument No. \_\_\_\_\_, in the records of Twin Falls County, Idaho ("Declaration"), which relate to, and govern the use of certain real property within the Red Cap Condominiums located in the City of Twin Falls, Twin Falls County, Idaho, and to otherwise transact all lawful activities related thereto.

ARTICLE III  
TERM

This corporation shall be perpetual in duration, unless sooner terminated according to law.

ARTICLE IV  
INITIAL REGISTERED AGENT AND OFFICE

The initial Registered Office of the corporation shall be \_\_\_\_\_, Twin Falls, Idaho, 83301, and the initial Registered Agent at that office shall be \_\_\_\_\_. All future correspondence for the corporation should be sent to \_\_\_\_\_, Twin Falls, Idaho, 83301.

ARTICLE V  
INCORPORATOR

The Incorporator of this corporation is \_\_\_\_\_, \_\_\_\_\_, Twin Falls, Idaho, 83301.

ARTICLE VI  
MEMBERSHIP, VOTING

Interest in this non-profit corporation shall be evidenced by certificates of membership one of which shall be issued for, and be appurtenant to, each of the two Condominium Units in the Subdivision. The owner or collectively the owners of each Condominium Unit, as that term is defined in the Declaration ("Unit"), shall be a member of the corporation and shall be issued one membership certificate. Such membership shall at all times be identified with, and appurtenant to, the ownership of said Unit, and no membership shall be subject to or conditioned upon the approval of the Board of Directors of the corporation, or the other members of the corporation. Each membership shall include the right to one (1) vote for each percentage interest in the Common Area appurtenant to the Unit to which the membership pertains, as set forth in the Declaration, whether said membership, and the appurtenant ownership in a Unit is held in common, jointly or separately. In the event any one (1) of said Units is owned by more than one (1) person or entity, the membership or memberships appurtenant to that Unit shall be held by said persons or entities in the same fractional interest; provided, however, that all such owners shall be entitled to cast only one (1) ballot for each of the total number of votes to which their membership in the corporation is entitled. No person or entity who is not the owner of a Unit, or an interest therein, shall become or remain a member of the corporation, and each membership, or interest therein, shall be transferred automatically upon the transfer of ownership of the Unit, or interest therein, to which it is appurtenant.

ARTICLE VII  
ASSESSMENTS

Each member shall be deemed to covenant and agree with every other member, and with the corporation, to pay assessments duly levied by the corporation for the purposes provided in the Declaration and these Articles of Incorporation. Dues and assessments shall be made, secured, and collected as to each Unit, and the owners thereof, as provided for in the Declaration and/or the By-laws of the Corporation.

ARTICLE VIII  
BY-LAWS

By-laws not inconsistent with the Articles of Incorporation may be adopted, altered, amended or repealed at any duly constituted meeting of the members, by an affirmative vote of a majority of the total votes all members of the Association are entitled to cast.

ARTICLE IX  
DIRECTORS

The corporation shall initially be managed by a Board of Directors comprised of three (3) persons. The initial Board of Directors shall consist of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, the mailing address for all of whom is \_\_\_\_\_, Twin Falls, Idaho, 83301, who shall serve until the first organizational meeting of the members, at which time a new Board of Directors shall be elected, comprised of three (3) persons, who shall be elected by affirmative vote of a majority of the total votes entitled to be cast by all of the members of the corporation, and who shall serve a term of three (3) years from the date he or she is elected, or until his or her successor has been duly elected, which ever shall last occur.

ARTICLE X  
DISTRIBUTION OF ASSETS ON DISSOLUTION

Upon dissolution, the assets of the corporation shall first be distributed toward the payment of its outstanding indebtedness, with the remainder, if any, then distributed to its members.

ARTICLE XI  
AMENDMENT

These Articles of Incorporation may be amended only upon receiving the following approvals:

A. By the affirmative vote for the amendment by a majority of the full Board of Directors at a duly constituted meeting thereof called for the purpose of considering said amendment; and

B. The affirmative vote for the amendment by a majority of the total number votes entitled to be cast by all members of the corporation, cast at a duly constituted meeting of the members called for that purpose.

IN WITNESS WHEREOF, the undersigned has set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
\_\_\_\_\_, Incorporator

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