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Eric Semerad - Gallatin County, MT MISC



## DECLARATION

for

## WEST PEACH CONDOMINIUM

TABLE OF CONTENTS

DECLARATION FOR THE WEST PEACH  
CONDOMINIUM.....3

DEFINITIONS.....3

REAL ESTATE .....5

EASEMENT, COMMON ELEMENT--INTERIOR REMODELING .....7

OWNERSHIP AND VOTING - EXHIBITS - USE.....8

PLAN OF DEVELOPMENT .....12

THE ASSOCIATION.....13

DECLARANT’S RIGHT TO CHANGE..... 16

AMENDMENT..... 16

CHANGES, REPAIRS AND LIENS ..... 18

INSURANCE..... 20

REMOVAL OR PARTITION - SUBDIVISION ..... 24

INTERPRETATION..... 25

REMEDIES..... 25

SEVERABILITY ..... 25

MISCELLANEOUS ..... 25

CERTIFICATE OF NAME ..... 27

CERTIFICATE OF FLOOR PLAN ..... 28

EXHIBIT A – SITE PLAN

EXHIBIT B – FLOOR PLANS

EXHIBIT C – CONDOMINIUM REVIEW DECISION APPROVAL LETTER

EXHIBIT D – MUNICIPAL FACILITIES EXCLUSION CERTIFICATION

**DECLARATION FOR  
WEST PEACH CONDOMINIUM**

This Declaration is hereby made and entered into this \_\_\_ day of December 2020, by West Peach, LLC, a Montana limited liability company, whose address is 212 N. Broadway Avenue, Bozeman, MT 59715 (referred to herein as the “Declarant”), whereby the lands and property hereinafter described are submitted and subject to the provisions of MCA 70-23-101, et. seq., and known as the “Unit Ownership Act”.

The property subject to this Declaration shall be known as the West Peach Condominium, (hereinafter referred to as the “condominium” or the “premises”). The addresses of the Condominium Units are 305, 307, 311 and 315 West Peach Street, Bozeman, Montana 59715 as shown on the site plan attached hereto as Exhibit A. This Declaration is intended to set for the rights and responsibilities of the owners and their lenders.

**I. DEFINITIONS**

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and the Bylaws for the condominium and the interpretation of either document:

1. Aggregate Votes or Voting shall mean the entire number of votes or persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Owners’ Association means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration. The Association has been incorporated as West Peach Condominium Association, a mutual benefit non-profit corporation.
3. Board or Board of Directors shall mean the Board of Directors of the Association, as more particularly defined in the Bylaws.
4. Building means the multiple Unit building or buildings comprising a part of the property. The Condominium, when fully built out, will have four (4) buildings containing a total of seventeen (17) Units as described and depicted on the Site Plan attached hereto as Exhibit A.
5. Bylaws means the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.
6. Clerk and Recorder means the Clerk and Recorder of Gallatin County, Montana.
7. Common Elements means both general common elements and limited common elements.
  - a. General Common Elements include all those areas which are for the use and benefit of all Unit Owners and guests of Unit Owners of the West Peach Condominium. Specifically included is the real property described in Paragraph II below (except for the portions designated as limited common elements in subparagraph I.7.b below)

including the grounds under and surrounding the buildings, footings, foundations, framework, floors, columns, trusses, walls, supports and other structural components of the buildings, the roofs of the buildings, equipment and all other improvements for sewage lines and water supply, electrical, cable television, gas and telephone lines and wires and connections serving all the Units; landscaping, sprinkler systems, plants and other materials and improvements separate from and outside of the buildings containing the Units, street lighting, sidewalks, the mechanical rooms next to each building and other areas necessary for the safety, maintenance and existence of the Condominium in which each Unit Owner shall have their designated percentage of interest, as set forth in Article IV below, and as described in the Unit Ownership Act.

- b. Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the Units in the condominium. Specifically, as to any given Unit Owner or Owners, limited common elements shall mean the building in which their Unit is located, together with the following common elements which are located within or affixed to his or her unit:

Footings, foundation, framework, floors, columns, trusses, walls, supports and other structural components of the buildings, the roofs of the buildings, electrical, cable television, gas and telephone lines and wires and connections serving all of the units within a building; the master water meter for each building; landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, doors, including garage doors, windows, flues, decks, patios, fences; yards enclosed by fences, chimneys, ducts, cables, conduits, public utility lines, water, water meters, sewer, electrical, cable television lines and hot and cold water pipes, (all such utility pipes and lines are limited common elements where they service only one unit or one building; where they service all of the units they shall be general common elements), and fixtures or other portions of the building servicing only a particular unit.

8. Common Expenses means expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon by the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act. Specifically included as Common Expenses are: (1) the cost of any special improvement districts ("SIDs") affecting the property, such as for streets, lighting or trees and the water costs as provided in subparagraph I.7.a above; (2) electricity expense and maintenance of street lighting on the northwest corner of 3<sup>rd</sup> Avenue and West Peach Street; and (3) the water costs allocated to as follows: (a) Each building has its own water meter for the Units therein and one of the meters is connected to the sprinkler system for the entire property (b) the collective total of all water costs shall be divided equally between all of the Unit Owners and included as part of the total Common Expenses.
9. Condominium means the West Peach Condominium as the same is created by this Declaration and the Bylaws and submitted to the Unit Ownership Act and the condominium units, general common elements, limited common elements, building and land and any other

improvements thereon, which constitute the condominium.

10. Declaration means this document and all parts attached hereto or incorporated by reference.
11. Limited Common Expenses or Limited Expenses means the expenses attributable to the maintenance, repair and replacement of limited common elements.
12. Manager means the manager, the Board of Directors, management company or any other person or group of persons retained or appointed by the Board, or by the Owners' Association for the purpose of conducting the day-to-day operations of the condominium.
13. Mortgagee means any mortgagee, beneficiary under a trust indenture, or a seller under a contract for deed.
14. Property and/or Premises means all the land described below, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.
15. Unit means the separate Units of West Peach Condominium and is a parcel of real property including and containing one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common areas or areas leading to a public street or highway.
16. Unit Designation is the combination of letters, numbers and words which identify the designated units.
17. Unit Owner, Owner, or Condominium Owner means the person or persons owning a Unit in fee simple absolute, or one who is a co-owner in any real estate relationship that is recognized under the laws of the state of Montana in a Unit of the West Peach Condominium. If two or more individuals own a Unit in the condominium, the term shall refer to all of the owners collectively, unless otherwise specified.

## II. REAL ESTATE

1. Description. The real property which is by this Declaration submitted and subject to the Act and is described as follows:

Lot 1A in Block 1 of Amended Plat of the Amended Plat of Lots 1, 2, 3 & 4 of Block 1, Correction Plat of Westlake's First Addition, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat No. F- 25B]

The condominium Units declared in the present declaration shall consist the Phase 1 building housing five (5) units and Phase 2 building housing four (4) units. In accordance with the Plan of Development stated below in Article V, the condominium may be expanded to include two (2) additional buildings each housing four (4) additional units. The Declarant shall not be obligated to annex additional property or to build additional buildings, but may

do so in its discretion. Only those Units specifically annexed shall be part of the condominium.

2. **Compliance with environmental health requirements.** The property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is located within a growth policy area of a first-class municipality and qualifies for a municipal facilities subdivision review exclusion in accord with Section 76-4-125(1)(d), Montana Code Annotated.

Declarant certifies that West Peach Condominium is excluded from review by the Department of Environmental Quality pursuant to 76-4-125 and 76-3-203, MCA.

76-4-125. Land divisions excluded from review (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(d) as certified pursuant to 76-4-127 (iii) divisions or parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203.

76-3-203. Exemption for certain condominiums and townhouses. Condominiums, town homes, town houses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

The Municipal Facilities Exclusion Certification is attached hereto as Exhibit C.

3. **Binding Covenants.** The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land, including every Unit, and shall be binding upon the Unit's Owners, their heirs, successors, personal representatives and assigns for so long as this Condominium Declaration and Bylaws are in effect.
4. **Condominium Units.** Each Unit, together with the appurtenant undivided interest in the common elements of the West Peach Condominium shall together comprise one condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a fee simple interest in a parcel of real property. Included in all Units, as a part of each Unit, are the porches and patios appurtenant to such unit.
5. **Encroachments.** If any portion of the general common elements or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the general common elements or limited common elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall

not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the Units for the purpose of marketability of title. In the event that the building or any portion thereof is destroyed and then rebuilt, the Owners of the Unit or Units agree that minor encroachments of parts of the general common or limited common elements because of such construction shall be permitted and that an easement for such encroachment and the maintenance and repair of the same shall exist.

6. Buildings. The Units initially comprising the condominium are located in two (2) buildings designated as Phases 1 and 2 on attached Exhibit - Site Plan. However, the condominium may be expanded to include two (2) additional buildings (Phases 3 and 4) each housing four (4) additional units. Each of the Units consists of a Basement including a two-car garage, a Main Level and an Upper Level, as shown on the floor plans attached hereto.
7. Unit Boundaries. Each Unit shall include the part of the building containing the Unit that lies within the boundaries of the floors, walls and ceilings of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof shall be considered part of the Unit, and all other portions of the unfinished walls, floors, or ceilings are a part of the common elements; provided, however, that to the extent possible, at such time as the Association procures insurance for the building(s), the Association shall, procure insurance which provides coverage for wallboard, flooring, appliances and fixtures. The finished portion of the garage within the boundaries of the interior walls, and the floors and ceilings thereof shall constitute a part of and be appurtenant to such unit.
8. Construction Materials. The principal materials of construction of the Units are concrete for the foundations, footings, and slabs; wood for the framing, structural, and finish work; sheetrock for the interior walls and ceilings; carpet, tile or vinyl for the floors; wood or composite siding for the exterior wall surfaces, and asphalt shingles on the roof of the building.

### III. EASEMENT - COMMON ELEMENT - INTERIOR REMODELING

1. Common Element Easements. A nonexclusive right of ingress and egress and support through the general common elements is appurtenant to each Unit and all the general common elements are subject to such rights. Such easements include an easement for ingress and egress from and to each Condominium Unit to the public roads or other means of access bounding the Condominium property.
2. Utilities. An easement shall exist over, across and into the general and limited common elements as shown on the site plan and in the condominium units themselves for installation, maintenance and repair of all utilities for lines, wires, pipes, equipment and other items necessary for supplying light, heat, water, sewer, power, telephone, any cable television and other means of communication to the condominium.
3. Interior Remodeling. Each Unit Owner shall have the exclusive right to paint, repair, tile, wallpaper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding their own

Unit, and the interior thereof, so long as such work does not affect the structural integrity of the building.

**IV. OWNERSHIP AND VOTING - EXHIBITS - USE**

1. Percentage of Interest. Each Unit Owner shall be entitled to the exclusive ownership, use and possession of their Unit and an undivided interest in the general common elements of the West Peach Condominium as set forth below. Such percentage represents each Unit Owner's ownership interest in the general common elements, their liability for common expenses and taxes, and the voting interests in all matters concerning the Association, as set forth below.

<u>BUILDING</u>	<u>UNIT</u>	<u>PERCENTAGE OF INTEREST*</u>
315 West Peach Street	1	11 1/9 <sup>th</sup>
	2	11 1/9 <sup>th</sup>
	3	11 1/9 <sup>th</sup>
	4	11 1/9 <sup>th</sup>
	5	11 1/9 <sup>th</sup>
311 West Peach Street	1	11 1/9 <sup>th</sup>
	2	11 1/9 <sup>th</sup>
	3	11 1/9 <sup>th</sup>
	4	11 1/9 <sup>th</sup>

\* Subject to expansion pursuant to Plan of Development stated below in Article V.

Exhibits: The West Peach Condominium consists of the real property described above, and, initially, a total of nine (9) separate Condominium Units (Phases 1 and 2) as shown on the floor plans for the condominium. For identification and descriptive purposes the following Exhibits are, by this reference, attached hereto and incorporated into and made a part of this Declaration:

Exhibit A: Showing the initial site plan of the West Peach Condominium and the location of the buildings containing the condominium units on the property and the common elements for 315 (Phase 1), 311 (Phase 2), 307 (Phase 3), and 305 (Phase 4) West Peach Street, Bozeman, Montana 59715.

Exhibit B: Showing the floor plans for each of the initial Units of the West Peach Condominium (Phases 1 and 2) the area of each, the dimensions and the designation for each Unit.

2. Use. The Units and common elements shall be occupied and used as follows:
  - a. No part of the property shall be used for other than single family residential purposes; except that an Owner may use a portion of his or her Unit for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant. Such use is further



conditioned upon the requirement that such activities do not violate any applicable zoning regulations or other use restrictions applicable to the property. Nothing contained herein shall prevent an Owner of a Unit from allowing a non-owner to occupy, rent or lease his or her unit for single family residential purposes as set forth below. Any use of the Unit by the Owner, or any party renting the Unit from the Owner, is made subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws. Each Owner shall be obligated to maintain and keep in good order and repair his or her own Unit and may pass on the requirement to keep and maintain the individual living areas consistent with the provisions of the Montana Landlord and Tenant Act.

- b. It is contemplated that Owners of units may allow non-owners to occupy or reside in the units in this condominium, in a rental arrangement or otherwise. In all such cases in which non-owners are occupying or residing within a unit in the West Peach Condominium, regardless of whether rent is charged to such person(s) to occupy or reside in the unit, the Unit Owners agree:
  - i) As a condition precedent to allowing others to occupy his or her Unit, each Unit Owner shall indemnify the other Owners and the Association against any damages caused to the common elements or any other Unit by the occupants of such Unit, including court costs and attorney fees. In the event that it becomes necessary to submit a claim to the Association insurance company, or an insurer providing insurance to another Owner, as a result of damage caused by a non-owning occupant of a Unit, the Owner of the Unit in which the non-owning occupant resides shall be responsible for the payment of the deductible, as well as any increased insurance premiums resulting from such claim; and
  - ii) In the event that any Units are rented, each Owner of a rental Unit shall be responsible for the behavior of his or her tenant(s). Should any tenant create a disturbance, or fail to adhere to the provisions of this Declaration, the Association shall have a separate cause of action for the removal of such tenant from the Condominium, if such behavior is not corrected following notice.
- c. There shall be no obstruction of the common elements, nor shall anything be stored in or on the common elements without the prior written consent of the Association, except as set forth herein. In particular, there shall be no storage of trailers, boats, snowmobiles, recreational vehicles, inoperable vehicles or any other similar object outside the garage for the Unit without the express written consent of the Association defining the goods to be stored, the location of such storage, the duration of such storage, and any other condition which may be imposed by the Association in its sole discretion. Recreational vehicles, motor homes, boats, trailers, snowmobiles, and other rolling equipment, may be parked in common areas if the Owner is in the process of readying such vehicle for use outside the condominium, or readying such vehicle for return to storage after use, and for no other purpose. The terms "readying such vehicle for use" and "readying such vehicle for return to storage" include loading and unloading such vehicle, performing minor tasks to

insure the road worthiness of such vehicle, such as checking tire pressure, checking oil, winterizing, etc. Those terms shall not include mechanical repairs or any action requiring disassembly of any component of such vehicle. Furthermore, the terms "readying such vehicle for use" and "readying such vehicle for return to storage" shall not be construed to allow such vehicle to remain parked within the common areas of the condominium for more than 24 consecutive hours, or more than a cumulative total of 48 total hours in a seven day period.

- d. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the other Units or contents thereof, above that which may be charged for a residential condominium, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or in the common elements which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law, this Declaration, or the Association Bylaws. No waste will be permitted in the common elements.
- e. Neither Owners nor renters of individual living areas shall cause or permit anything to be hung or displayed in, or upon the outside of windows, or placed on the outside walls of a building without the prior written consent of the Association Board. This restriction includes, but is not limited to signs, awnings, canopies, radio or television antennae, and satellite dishes. The restriction contained in this paragraph shall not be construed as a prohibition against satellite dishes, but as an opportunity for the Board to determine locations upon the building for the placement of satellite dishes which allow for optimum reception, while minimizing the visual impact of such dishes. Enforcement of this provision, or any other provision in which the consent of the Association is necessary shall be carried out in such a manner that all Unit Owners are treated substantially the same.
- f. No pets or other animals of any kind shall be raised, bred or kept in any living area, except that dogs, cats or other household pets, not to exceed a total of three (3) pets may be kept in any living area, provided that no living area houses more than two dogs or two cats. There shall be no chickens or roosters kept within the condominium and all animals shall be housed within the living areas, rather than in outdoor enclosures or kennel. Any animals kept in the living areas shall be subject to rules and regulations adopted by the Association and may not be kept, bred or maintained for any commercial purpose. While pets are on any of the common areas they shall be leashed and leash laws shall be strictly followed. All Owners or persons employed by Owners to care for animals shall immediately remove all waste left by their pets or pets for which they are providing care. Any pet which bites another animal or a human upon the premises shall be immediately removed unless it can be shown by clear and convincing evidence that the animal was unreasonably provoked into such action. For purposes of the foregoing sentence, any animal which is restrained in some reasonable fashion but is approached by another animal or human shall be presumed to be the non-aggressor. Failure to remove the pet(s) can result in a fine not to exceed:

\$20.00 per day for each day the pet remains on the property or in the

unit, which fines shall become part of the assessments for that unit. Failure to pick up after an animal immediately on the common grounds will result in a \$50.00 fine for each offense, which shall also become a part of the assessment for the Owner of the Unit. Failure of an Owner to adhere to pet regulations and requirements shall be grounds for the Association or the Owner(s) of other Unit(s) to maintain an injunctive action to remove the offending pet(s) as a nuisance. The Association shall have authority to ban certain breeds of dogs or individual dogs from the condominium, provided that such actions are based upon objective criteria related to aggressive tendencies of the breed or individual dogs.

- g. No nuisances shall be allowed upon the property, nor shall any use or practice be allowed which is a source of annoyance to residents of the Condominium, or which interferes with the peaceful possession and proper use of the property by its residents. Littering in any form, including cigarette butts, is considered a nuisance. In addition to other potential nuisances, it shall be considered a nuisance if any occupants or pets create noise that can be heard within neighboring Units during times that are considered quiet hours (10:00 p.m. - 7:00 a.m.), or that make noise continuously during the daytime hours. No immoral, improper, offensive or unlawful use shall be made of the property, nor any part thereof, and all valid laws, zoning ordinances and regulations or all governmental bodies having jurisdiction thereof shall be observed. In the event that a nuisance is maintained upon the property, the Association shall provide a written warning to the Unit Owner, regardless of whether the nuisance is maintained by the Owner or an occupant who is not an Owner. If the nuisance is not immediately abated, the Association shall be entitled to levy a fine on the Owner of the unit to which the nuisance is attributed, in an amount not to exceed \$50.00 per day. In addition, the Association, or any aggrieved Owner shall have the right to maintain a court action to enjoin the practice constituting the nuisance if it becomes necessary for the Association to send three (3) or more nuisance notices within a one year period.
  - h. Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as is otherwise provided herein.
  - i. Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.
  - j. Use by the Owners of the units in the West Peach Condominium and their renters shall at all times be in compliance with all applicable laws, regulations and ordinances. Such compliance shall also include and extend to any repair, remodeling or refurbishing of the units.
3. Exclusive Ownership. Owners shall be entitled to exclusive ownership and possession of their Units. Owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

## V. PLAN OF DEVELOPMENT

1. The Declarant reserves the right for itself, or any successor in interest of the Declarant, to expand the condominium by adding two (2) additional four-Unit buildings (referred to as Phases 3 and 4 on attached Exhibit A - Site Plan) and all references to the Declarant in this plan of development shall include any such successors in interest. Declarant may add the additional units contemplated herein without the necessity of receiving prior consent from the Association, Unit Owners, or mortgagees, subject to the following conditions:
  - a. Prior to conveyance or occupancy of any Unit created and added to the condominium pursuant to this plan of development, Declarant shall record an amendment to this Declaration with the Clerk and Recorder, which shall include floor plans for the new building(s), a site plan showing the location of the buildings then comprising the condominium and the changes to the percentages of ownership in the common elements, including those Units previously conveyed. Owners of newly completed Units will not be obligated to pay common expenses until such time as the above-described amendment is recorded.
  - b. Upon completion of the project, Declarant shall record a final amendment to this Declaration, setting forth the percentages of interest of each Unit in the common elements. Upon completion of the project, each Unit Owner will have an interest in the common elements as set forth in the final amendment.
  - c. The new buildings shall be similar in materials, style and quality to the other buildings, but Declarant reserves the right to modify the design and mixture of floor plans to meet market conditions.
  - d. All general common elements within a Phase shall be completed prior to conveyance of any Unit within a Phase.
  - e. Each Unit Owner and each holder of a mortgage or trust indenture on a Unit, by acceptance of the deed or security instrument, hereby consents to all amendments contemplated in this plan of development and grants unto the Declarant, as well as its successors and assigns, a limited, irrevocable power of attorney, coupled with an interest, to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentages of interest in common elements attached to each Unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment.
  - f. All liens arising in connection with the Declarant's ownership of, and construction of improvements upon the property to be included in the subsequent phase, including liens for taxes, shall be satisfied at the time of addition of the Units contemplated herein and no such lien shall be allowed to adversely affect the rights of any existing Unit Owners or holders of first mortgages within the condominium.
  - g. When additional Units are developed, they shall be added to the condominium

regime, but shall not be fully included for assessment purposes until they are sold by the Declarant, unless the Declarant retains ownership of one or more Units, in which case the date of the first occupancy of the Units owned by the Declarant shall be deemed the equivalent of a sale by the Declarant for purposes of full inclusion in the condominium regime. From the time that they are added to the condominium until the time of the first conveyance or occupancy, the additional Units shall be assessed for their share of insurance only.

- h. The right of the Declarant to complete an additional building is a property right of the Declarant and may be sold or otherwise transferred by the Declarant and the successor(s) in interest to the Declarant shall have all of the rights and privileges granted to the Declarant by this instrument. The right of the Declarant to add additional Units shall exist until such time as all Units contemplated by this Declaration are completed and added to the condominium regime.

## VI. THE ASSOCIATION

1. Membership. An Owner of a Unit in the West Peach Condominium shall automatically, upon becoming the Owner of the Unit, be a member of the West Peach Condominium Association, hereinafter referred to as the Association, and shall remain a member of the Association until such time as his or her ownership ceases for any reason. Cessation of membership within the Association shall not terminate any obligation to the Association that arises prior to membership termination. Regardless of whether an individual residing in one of the Units within West Peach Condominium is an Owner of the Unit, he or she shall be obligated to conform to the requirements of this Declaration in the same manner as an Owner. The Association may be incorporated as a Montana nonprofit corporation.
2. Function. It shall be the function of the Association to:
  - a. Be responsible for the upkeep, maintenance, repair, refurbishing and remodeling of the common elements of the condominium including the exteriors of the buildings comprising the condominium, lands, grounds, landscaping, shrubbery, and trees of the condominium, and the control of noxious weeds.
  - b. Adopt Bylaws for the governance of the Association.
  - c. Make provisions for the general management of the Condominium.
  - d. Levy and collect assessments as provided for in the Declaration, Bylaws, and the Unit Ownership Act.
  - e. Adopt and implement policies for the affairs of the Condominium.
  - f. Enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repair of the common area.
  - g. To represent the Owners of the West Peach Condominium in all affairs affecting the condominium.

- h. Additionally, the Association shall have the power to do such other things and take such other action as are deemed necessary, reasonable and proper to carry out its functions and as are allowed by law.
- 3. **Vote.** On all matters to be decided by the Association, unless excluded by this Declaration, each Unit Owner shall have a vote equal to his or her percentage of interest in the general common elements; except that when a Unit is owned by more than one person, the vote associated with that Unit may not be split between the various Owners. It shall be the responsibility of the Owners of each Unit to appoint one person who shall be entitled to cast the vote for that Unit. A majority vote shall be necessary to act on matters brought before the Association, unless a different percentage is designated for the particular action to be taken.
- 4. **Failure to Comply.** Each Owner shall comply strictly with the provisions of this Declaration and the Bylaws of the Association, as the same may be lawfully amended from time to time as well as the rules, regulations, decisions and resolutions of the Association adopted pursuant to the Declaration and Bylaws. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorney's fees incurred in connection therewith, which action may be maintained by the Association, or an aggrieved Owner, where there has been a failure of another Owner to correct a breach within a reasonable time and the Association has taken no action with respect to such breach.
- 5. **Payment of Assessments - When Due.** All assessments shall be due thirty (30) days from the date of mailing of such assessments to the Owners by the Association, following the meeting at which the assessments are levied by the Association. Assessments may be payable in installments monthly, quarterly, annually or at any other time at the option of the Board. The amount of the common expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner or Owners thereof. No Owner may exempt himself or herself from liability for this contribution toward the common expenses by waiver of the use or enjoyment of any of the general common elements or limited common elements or by abandonment of his or her Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable become delinquent and are subject to interest and penalty charges. In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to pay interest at the highest rate allowed by Montana law on the amount of the assessment from the due date thereof, which shall be payable to the Association. At the time of the creation of this Declaration, the highest rate allowed by law is fifteen percent (15%) per annum, which shall apply until amended by the Association. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same. At the time of creation of this Condominium, entities such as FHA and Fannie Mae have promulgated rules which require condominium associations to aggressively pursue delinquent assessments. Therefore, in the event that any assessment is not paid within thirty days of the due date for such assessment, the Association will, under normal circumstances, initiate a court action for the collection of such assessment. In such case, the prevailing party shall be entitled to recover all reasonable court costs and attorney fees. In addition, the following shall apply:
  - a. Common expenses and common profits, if any, and limited common expenses of the

Condominium shall be distributed among, and charged to the Unit Owners according to the percentage of interest of each in the common elements.

- b. Except as otherwise limited in this Declaration, each Unit Owner shall have the right to use the common elements for all purposes incident to the use of and occupancy of the respective family unit as a residence, and such other uses permitted by this Declaration, which rights shall be appurtenant to and run with the unit.
6. Unpaid Assessments – Mortgagee. Where a mortgagee or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such party acquiring title, as well as his or her successors and assigns, shall have no individual liability for the share of common expenses or assessments chargeable to such Unit which became due prior to the acquisition of title of such Unit through foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his or her successors and assigns. Nothing contained herein shall, however, relieve the owner of the Unit when the assessment is made from his or her liability for the assessment and such assessments may be collected by the Association even after foreclosure by a first mortgage holder.
7. Levying Assessments - When Made – Purposes. The Owners' Association shall levy assessments upon the Unit Owners (except as provided in paragraph 6 above) in the following manner and for the following reasons:
  - a. Assessments shall be made as a part of the regular, annual business meeting of the Association as provided in the Bylaws of the Association, or assessments can be made for special purposes at any other regular or special meeting thereof. The Board of Directors shall prepare an annual budget for income and expenses for the condominium. In the event that the members of the Board cannot agree upon a budget, the annual budget shall be increased by 10% over the previous budget, until such time as a new budget can be agreed upon by the Board. In the event that the budget is increased automatically, rather than through agreement of the Board, the Association shall continue to make all payments required to maintain the services acquired in the previous year, to the extent that funding is available, until such time as the Board can agree upon a new budget and spending priorities.
  - b. Assessments shall be made for the repair, replacement, insurance, general maintenance, creation of reserves, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas if any, and as more particularly provided in the Unit Ownership Act (Section 70-23-101, et. seq., MCA). In addition, the Association shall be responsible for all special improvement districts (SIDs) applicable to the condominium, including, but not limited to lighting districts, street maintenance, tree maintenance or any other properly created SID. Assessments shall be based upon and computed by using the percentage of interest that each Unit Owner has in relation to the common elements.
  - c. Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective Units. Unit Owners shall share in the payment of limited expenses

for the repair, maintenance and replacement of limited common elements of their respective Units in accordance with the percentage of interest they have in the limited common elements for which the assessment is being made. If only one Unit is associated with the limited common element involved, then the entire cost of such repair, maintenance or replacement shall be borne by that Unit.

- d. Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
- e. In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's rights to recover from the Grantor the amounts paid by the Grantee therefore. Any such Grantee shall be entitled to a statement from the Association, prior to acquisition of the Unit, setting forth the Grantor's assessments which are due and payable to the Association. Any Grantee requesting and receiving such a statement shall be absolved of liability for any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.
- f. At the time that the Association holds its first meeting, or at any meeting thereafter, a reserve account shall be set up to which assessments shall then be deposited, in an amount to be determined by the Association, but in no event less than 10% of the general maintenance assessments.

#### VII. DECLARANT'S RIGHT TO CHANGE

The Declarant reserves the right to change the interior design and arrangement of all Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units, or alter the boundary of the general common elements, without an amendment of this Declaration.

#### VIII. AMENDMENT

1. Amendment of this Declaration, other than an Amendment by the Declarant to expand the condominium, shall be made by the Unit Owners in the following manner:
  - a. At any regular or special meeting of the Owners' Association such amendment may be proposed as a resolution by any Unit Owner. Upon adoption of the resolution by a majority vote of those present, the amendment shall be made subject for consideration at the next succeeding meeting of the Association with notice thereof, together with a copy of the amendment to be furnished to each Owner and each holder of a first lien on any unit or ownership interest in any unit, if required, no later than thirty (30) days in advance of such meeting. At such meeting, the amendment shall be approved upon receiving the favorable vote of seventy-five percent (75%) of Aggregate Votes of the Unit Owners, unless another percentage is required by the Montana Unit Ownership Act, in which case the latter percentage shall apply, and any required mortgagee approval is obtained. If so approved, it shall be the responsibility of the Association to file the amendment with the office of the



County Clerk and Recorder of Gallatin County, Montana.

- b. If an amendment is proposed by the Board and notice of the proposed Amendment is given to all of the Owners at least thirty days in advance of the meeting at which the amendment is to be discussed and voted upon, such amendment may be adopted without the need to hold a second meeting. In addition, an amendment may be adopted at any time without a meeting if it is approved in writing by the signatures of one hundred percent (100%) of the Owners and approved by the holders of first liens upon the Units, if required, as set forth below.
  - c. Notwithstanding the amendment procedures set forth above, for as long as Declarant continues to own a Unit within the Condominium (including Units within Phases 3 and 4), Declarant shall have the right to amend this Declaration: (1) to include or delete any provision required by HUD, Fannie Mae, or VA, to make this Declaration comply with their requirements; and (2) as Declarant deems necessary.
2. Mortgagee approvals of Declaration changes shall be as follows:

Eligible Mortgagee Approvals. A change to any of the provisions of the Declaration pertaining to the following items requires the affirmative vote of eligible mortgagees who represent at least fifty-one percent (51%) of the Units that are subject to mortgages held by eligible mortgagees:

- a. voting rights;
- b. increases in assessments that increase the previous assessment amount by more than twenty-five percent (25%), assessments liens, or the priority of assessment liens;
- c. reductions in reserves for maintenance, repair, and replacement of common elements;
- d. responsibility for maintenance repair;
- e. reallocation of interests in the general or limited common elements, or rights to their use;
- f. changes in the descriptions of any unit boundaries;
- g. convertibility of units to common elements, or vice-versa;
- h. expansion or contraction of the condominium, annexation or withdrawal of property from the condominium, except an expansion in accordance with the provisions of Article V, above;
- i. restoration or repair of the condominium (after damage or partial condemnation) in a manner other than that specified in the Declaration;
- j. any provisions that expressly benefit mortgagees, insurers or guarantors; or

- k. any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs, or for any other reason.

Deemed Approvals. If any eligible mortgagee fails to attend any meeting, in person or by proxy, which is called for the purpose of amending the Declaration, notice of which is properly sent to the eligible mortgagee by certified mail, return receipt requested, or if any eligible mortgage holder fails to submit a response to any written proposal for an amendment to the Declaration within sixty (60) days after proper notice of the proposal is deemed delivered to the mortgagee by certified mail, return receipt requested, then the eligible mortgagee is deemed to have approved the proposed amendment. Delivery is deemed to be made three days after the document is placed in the United States mail.

#### IX. CHANGES, REPAIRS AND LIENS

1. Alterations by Unit Owners. The interior plan of a Unit may be changed by its Owner, with the exception of the bearing walls, which may not be moved or altered, without the prior approval of the Association. In the event that an Owner proposes any change to a bearing wall, the Owner must first obtain a certification by a registered architect or engineer that the proposed action will not affect the structural integrity of the building. No Units may be subdivided, nor may any change in the boundaries of the Units encroach upon the boundaries of the common elements, except by amendment to this Declaration. Boundary walls must be equal in quality of design and construction to the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of paragraph VIII above, such an amendment must further set forth and contain plans for the Units, showing the Units after the change in boundaries, and shall be attached to the amendment as exhibits. Such an amendment shall be signed and acknowledged by the Owners of the Units concerned, together with words of conveyance in the amendment conveying interests acquired in the Units or common elements by such change. The amendment shall also be signed and acknowledged by all lienholders and mortgagees of the Units concerned. It shall be the responsibility of the Owner(s) causing the change to record the Amendment.
2. Maintenance by Unit Owner. An Owner shall maintain and keep in repair the interior of his or her own Unit and the fixtures thereof; all fixtures, utility lines and equipment installed in the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair the structural soundness or integrity of the building or impair any easement. An Owner shall also keep all areas and limited common elements appurtenant to his or her Unit in a clean and sanitary condition. The right of each Owner to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar types or kinds of materials. No acts of alteration, repairing or remodeling by any Unit Owner shall impair in any way the structural integrity of the adjoining Units or the structural integrity of limited common elements or general common elements.
3. Exterior Alterations. No Owner may change, alter, paint or remodel the exterior of their Unit, or the building within which their Unit is situated, without the prior written approval of the Association, except as specifically set forth herein.

4. Exterior Maintenance by Association: Except as specifically set forth herein, the Association shall take all necessary steps, including, but not limited to, painting and staining, lawn care, roof maintenance and repair, repair and maintenance of exterior walls, entrances, concrete repairs, ice and snow removal and replacement or repair of all broken or worn parts, to ensure that the condominium shall not unnecessarily deteriorate. The Association shall also provide maintenance, upkeep and repair of the driveways. The Board of Directors of the Association, or its agent, shall annually inspect the buildings and proceed with any necessary maintenance or repairs. Failure by the Board of Directors of the Association to make annual inspections and/or proceed with any necessary maintenance shall give any mortgagee or beneficiary of any trust indenture the right to order such work done and bill the Association therefore, after notice to the Association of such intent by the lienholder and giving the Association a reasonable time to perform such work. Any lienholder, or representative of the same, upon written request, shall have the right to join the annual inspection made by the Board of Directors and suggest needed repairs and maintenance necessary to preserve the value of the condominium project.
  
5. Snow Removal – Owners Responsibility. Snow and ice removal shall be the responsibility of the Owners in the following general and limited common areas adjacent to their respective Units:
  1. Decks off the 1<sup>st</sup> and 2<sup>nd</sup> Floors; and
  2. Patio on ground level.
  
6. Liens for Alterations. Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless the other Owners from and against all liability arising from the claim of any lien against the Unit or against the general common elements, or limited common elements, for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.
  
7. Liens and Foreclosure. All sums assessed, but unpaid, for the share of general common expenses and limited common expenses chargeable to a Unit shall constitute a lien on such Unit, superior to all other liens and encumbrances, except only for taxes and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on the first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the Association shall prepare a written notice of lien assessment, setting forth the amount of such unpaid indebtedness, the amount of accrued interest, the name of the Owner(s) of the Unit and a description of the Unit. Such notice shall be signed and verified by an officer of the Board or the manager filing the lien, and shall be recorded in the office of the Clerk and Recorder of Gallatin County, Montana. Copies of such notice shall be mailed to the Owner against whose interest the lien has been filed, as well as the holder of any first lien of record, and shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association, in the manner provided in the Unit Ownership Act and as provided for the foreclosure of a mortgage on real property, upon the recording of

a notice of claim thereof. In any such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner shall be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings or suit for money damages, additional costs, expenses and attorney's fees incurred.

8. Bidding at Foreclosure. The Association, acting through its Board, shall have the power to bid on and purchase the Condominium Unit at a foreclosure or other legal sale, including the appurtenant interest in the common elements. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment, the Association shall assign to such person or entity its lien upon the Unit, which shall retain the same priority as the lien of the Association.

## X. INSURANCE

1. All insurance policies upon the condominium buildings, common elements and real property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana.
  - a. Named Insured - Personal Property. The named insured shall be the Association, as agent for the Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses for alternate accommodations if they are dispossessed.
  - b. Copies to Mortgagees. One (1) copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner upon request.
2. Coverage. The Board of Directors shall be empowered to seek appropriate coverage on behalf of the Association and shall not be limited or bound by any language contained in this Declaration in the event that the appropriate insurance product provides for coverage different than that set forth herein. The foregoing sentence shall include, but not be limited to the ability of the Association to insure not only the common elements, but also the Units themselves, including parts of the Units which are not common elements, such as cabinets, fixtures, flooring materials and similar portions of the Units which are affixed to the Unit and are not moveable. Whenever reasonably possible, the Association shall acquire insurance coverage as set forth in the preceding sentences, rather than strictly adhering to the definition of common elements. In general, the coverage shall provide for the following:
  - a. Casualty. All buildings and improvements upon the land, and all personal property included as part of the common elements shall be insured to any amount equal to the

full insurable replacement value, subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:

- i) Loss or damage to the common elements by fire and other hazards covered by a standard coverage endorsement for residential condominiums, and such other coverage deemed appropriate by the Board or Association as a whole. In no event shall insurance coverage be in an amount less than the replacement value of the condominium.
    - ii) Such other risks as may, from time to time, occur shall customarily be covered with respect to buildings similar in construction, location and use as the building which is the subject of this Declaration, and
    - iii) Errors and Omissions insurance for the Directors, Officers and Managers if the Association so desires, in amounts to be determined by the Board.
  - b. The policies shall state whether the following items are included within the coverage in order that the Unit Owners may insure themselves if the items are not insured by the Association:
    - i) Airhandling equipment for space cooling and heating, service equipment such as dishwashers, disposals, laundry, fireplaces, refrigerator, stove, oven, whether or not such items are built-in equipment, interior fixtures such as electrical and plumbing fixtures, floor coverings, inside paint and other inside wall finishings.
  - c. Public Liability. In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to hired automobile and non-owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.
  - d. Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.
3. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of a Unit or its appurtenances, or of the common elements by a Unit Owner shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each lienholder listed in the roster of lienholders.
4. Insurance Trustee. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interest may appear. Such policies shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance

trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees as follows:

- a. Unit Owners. An undivided share for each Unit Owner, such share being the same as the undivided share in the common elements appurtenant to his or her Unit.
  - b. Mortgagees. In the event that a mortgagee endorsement has been issued for a Unit, the share of the Unit Owner shall be held in Trust for the mortgagee and the Unit Owner as their interests may appear; provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have the right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration. The Association shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00, within 30 days of such loss.
5. Distribution of Proceeds. Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners and mortgagees in the following manner only:
- a. Miscellaneous. Expenses of administration, insurance trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
  - b. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided.
  - c. If there is no reconstruction or repair, the first proceeds for distribution after paying the insurance trustee shall be made to the first lienholders for such Units before distribution to the Unit Owner.
  - d. Certificate: In making distribution to Unit Owners and their lienholders, the insurance trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit Owners and their respective shares of the distribution.
6. Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
7. Benefit of Mortgagees. Certain provisions in this paragraph entitled "Insurance" are for the

benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

8. Reconstruction.

- a. Repair after Casualty. If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:
  - i) If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.
  - ii) If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property may be rebuilt or reconstructed, or, if not, then the property shall be subject to the applicable provisions of the Unit Ownership Act.
  - iii) In the event the Association elects not to rebuild as herein provided and set forth in the Unit Ownership Act, the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the property. The only circumstances under which the Association can elect not to rebuild the condominium Units after a casualty loss is if the Units in the building are damaged to the extent that they cannot be made tenantable.
  - iv) Certificate. The insurance trustee may rely upon a certificate of the Association made by its Chairperson, President or manager to determine whether or not the damaged property is to be reconstructed.
- b. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by not less than seventy-five percent (75%) of the Unit Owners, including the approval of Owners of all Units which are to be altered, unless another percentage is required by the Montana Unit Ownership Act, in which case the latter percentage shall apply. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and recorded in accordance with the provisions governing amendments, more particularly set forth above.
- c. Responsibility. The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair in the condominium property.
- d. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the

payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements.

- e. Construction Funds. The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board of the Unit Owners involved.
  - f. Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.
9. Payment of insurance deductible: In the event that the condominium sustains any damage for which insurance proceeds are available for reconstruction and it can be shown that the loss is the result of a negligent or intentional act or omission of a particular Owner or Owners, then the Owner or Owners at fault shall be responsible for the payment of the insurance deductible and the Association shall have the right to collect such insurance deductible in the same manner as an unpaid assessment.

#### XI. REMOVAL OR PARTITION - SUBDIVISION

- 1. The West Peach Condominium may only be removed from condominium ownership, and may only be partitioned or sold, upon compliance with each of the conditions hereof:
  - a. The Board of Directors of the Association must approve the plan of removal, partition or sale, including the details of how any partition or sale and the distribution of property or funds shall be accomplished.
  - b. The plan of removal, partition, subdivision, abandonment, termination or sale must be unanimously approved. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale.
  - c. No Unit may be divided or subdivided into smaller Units, nor any portion thereof sold or otherwise transferred, except as provided above.
  - d. This section shall not apply to the sale of individual condominium units and shall not be considered as a right of first refusal.
  - e. The common elements of the West Peach Condominium shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred without compliance with all of the above requirements.
  - f. If all of the units are owned by the same party at any time, that party may remove the



condominium from the effects of the Unit Ownership Act without the need to comply with sections XI.1a. - e. above.

## XII. INTERPRETATION

The provisions of this Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purposes of this Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

## XIII. REMEDIES

The remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by law.

## XIV. SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision hereof.

## XV. MISCELLANEOUS

1. Utility and Structural Easement. Easements are reserved through the condominium property as may be required for utility services, including water, sewer, power, telephone, natural gas and cable television, in order to serve the condominium adequately; provided however, such easements through the property or through a Unit shall only be according to the plans and specifications for the Unit or building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner. Every portion of a unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.
2. Benefit. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each, as well as holders of any liens or encumbrances.
3. Service of Process. The name and address of the person to receive service of process for the West Peach Condominium until another designation is filed of record shall be Julien Morice, whose address is 212 North Broadway Avenue, Bozeman, Montana, 59715.
4. A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by an individual Unit Owner of any obligation under the condominium documents which is not cured within sixty (60) days.
5. First lienholders shall have the right to examine the books and records of the Association and any Manager for the condominium upon reasonable notice during regular business hours.



CERTIFICATE OF NAME

The undersigned being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin, herewith executes the following certificate relating to the WEST PEACH CONDOMINIUM are situated as follows:

Lot 1A in Block 1 of Amended Plat of the Amended Plat of Lots 1, 2, 3 & 4 of Block 1, Correction Plat of Westlake's First Addition, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat No. F- 25B]

1. That the name the WEST PEACH CONDOMINIUM is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision within Gallatin County, except for the word "CONDOMINIUM", and
2. All taxes and assessments due and payable for the said WEST PEACH CONDOMINIUM have been paid to date.

Dated: 11/19/2020

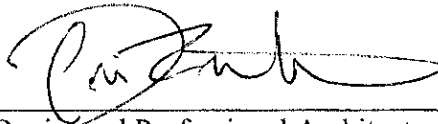
Maureen Horton  
County Assessor  
Data Control Tech

CERTIFICATE OF FLOOR PLAN

The undersigned, being a duly registered professional architect in the State of Montana, hereby certifies:

That the floor plans for the WEST PEACH CONDOMINIUM situated according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout, location, unit designation and dimensions of the WEST PEACH CONDOMINIUM as built, and that such floor plans are an accurate copy of the plans filed with and approved by the officials and officers of the City of Bozeman having jurisdiction to issue building permits.

Dated: 11/10/2020

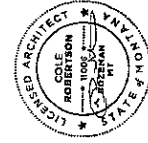


Registered Professional Architect

Number: 11006

**EXHIBIT A  
(SITE PLAN)**

3RD AVE. N



DATE: SEP 24 | 2020

**SITE PLAN  
FOR CONDOMINIUM**

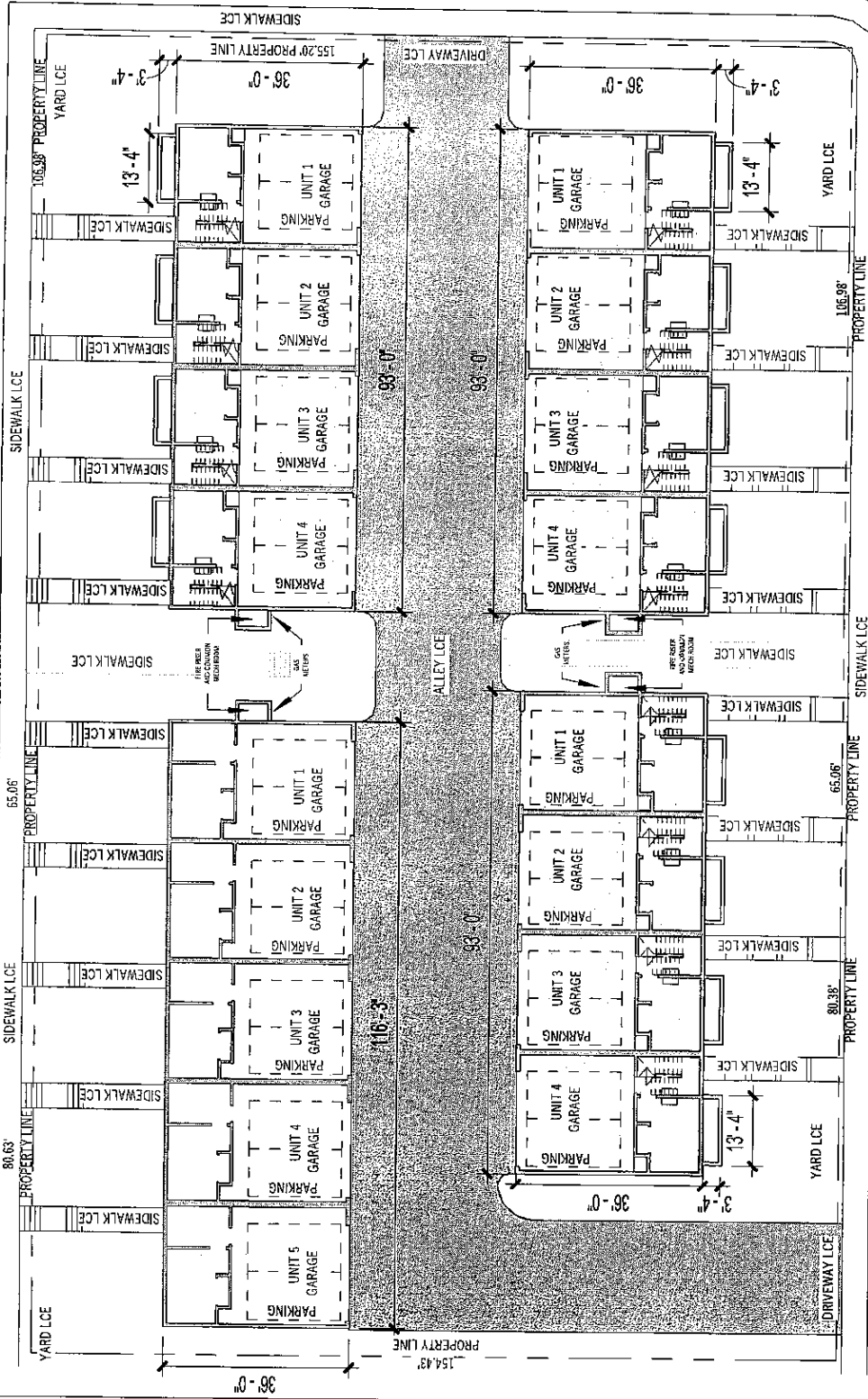
PEACH STREET

305, 307, 311, & 315 PEACH STREET, BOZEMAN, MT

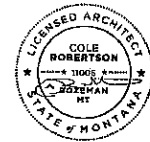
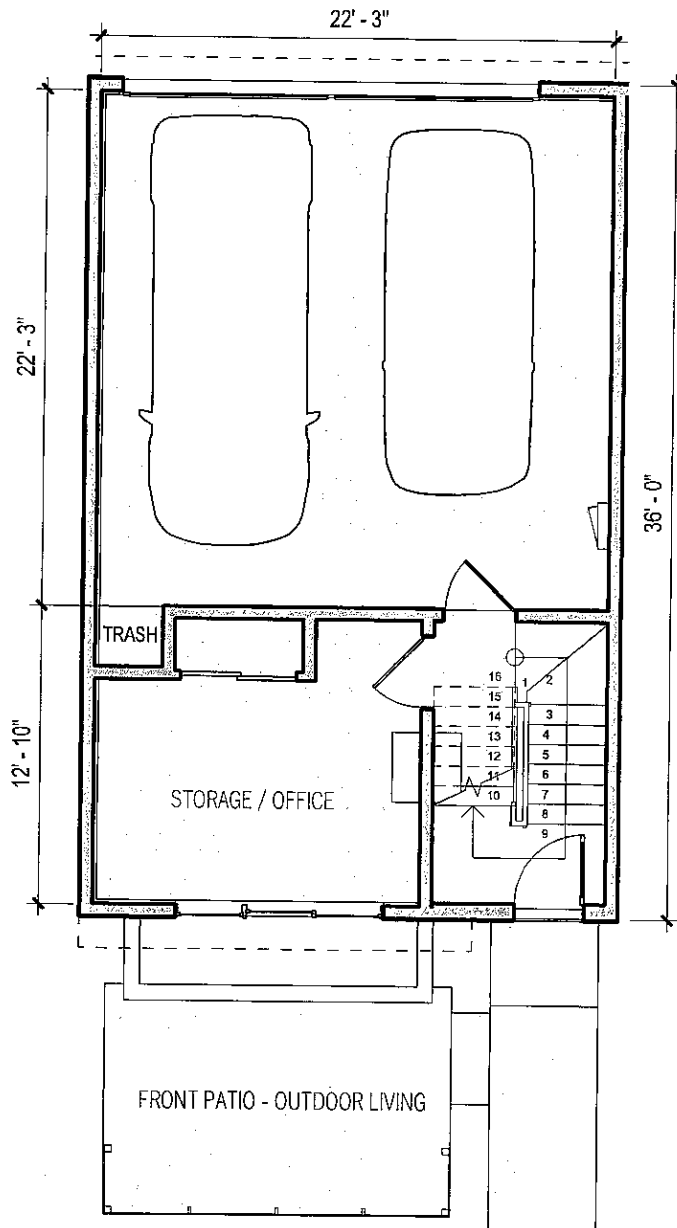
WESTLAKES 1ST ADD, S01, T02 S, R05 E, BLOCK 1,  
Lot 1A, ACRES 0.898, AMND PLAT F-25B

**SITE PLAN**

1/32" = 1'-0"



**EXHIBIT B  
(FLOOR PLANS)**

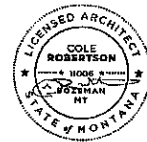
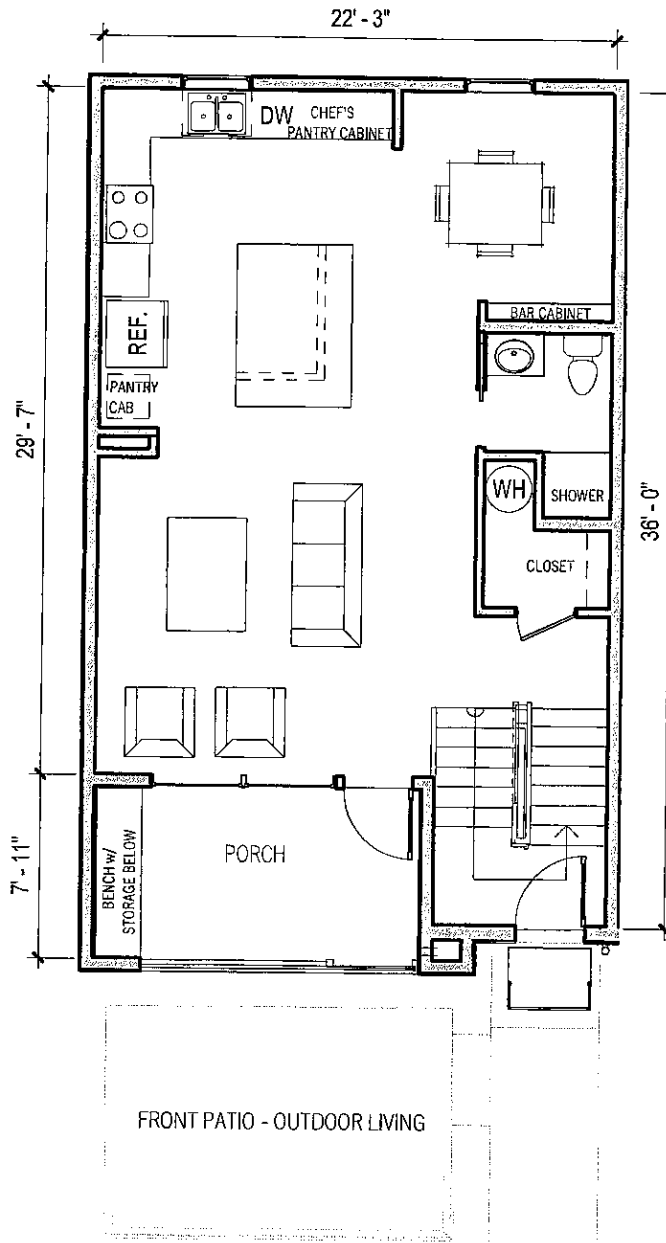


DATE: SEP 24 | 2020

**1 FLOOR PLAN - BASEMENT**  
1/8" = 1'-0"

**BASEMENT PLAN  
FOR CONDOS  
307 UNITS 1, 2, 3, & 4  
311 UNITS 1, 2, 3, & 4**

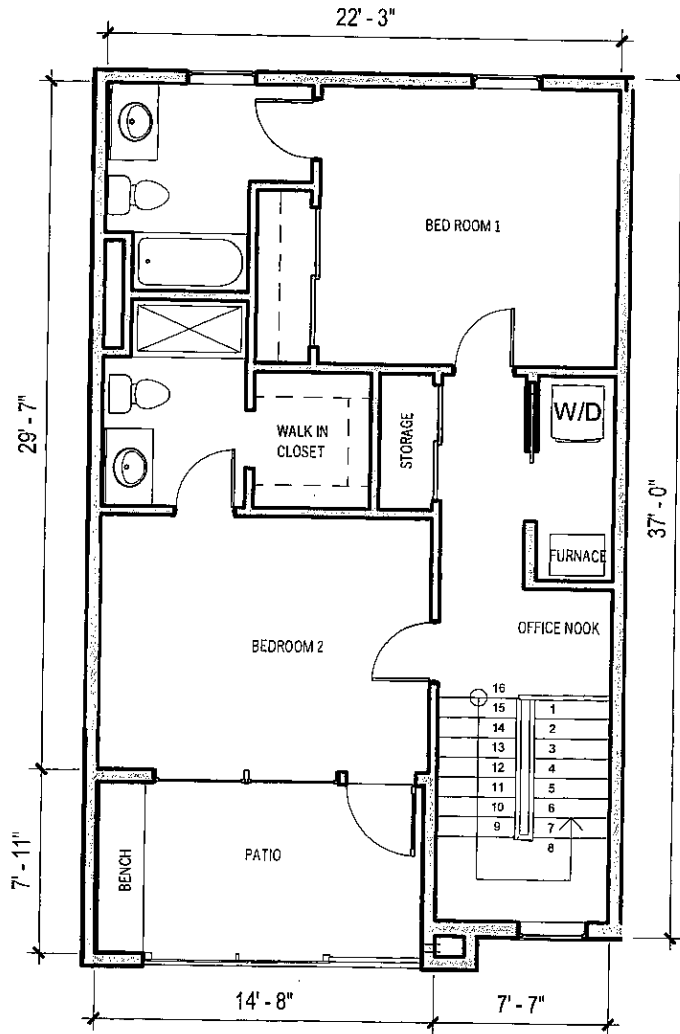




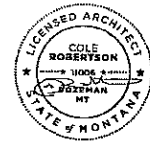
DATE: SEP 24 | 2020

**1 MAIN LEVEL**  
1/8" = 1'-0"

**MAIN PLAN  
FOR CONDOS  
307 UNITS 1, 2, 3, & 4  
311 UNITS 1, 2, 3, & 4**

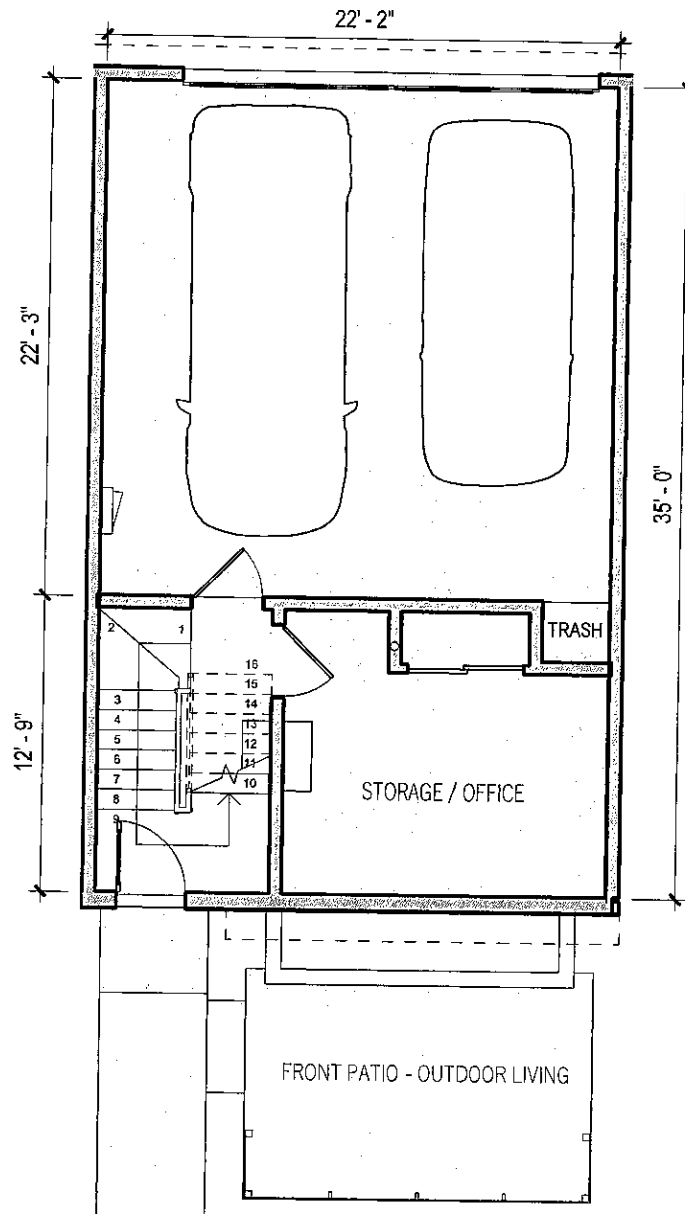


① **UPPER LEVEL**  
1/8" = 1'-0"

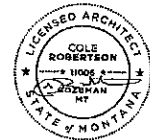


DATE: SEP 24 | 2020

**UPPER PLAN  
FOR CONDOS  
307 UNITS 1, 2, 3, & 4  
311 UNITS 1, 2, 3, & 4**

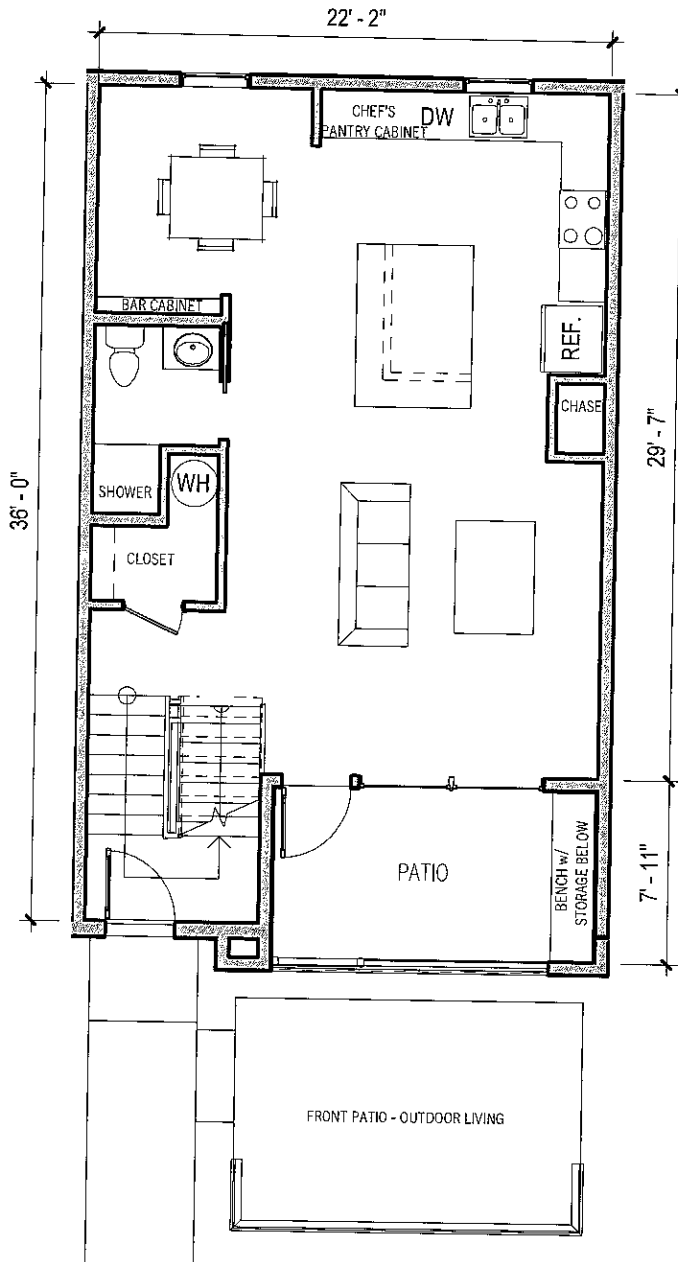


**1 FLOOR PLAN - BASEMENT**  
1/8" = 1'-0"

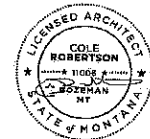


DATE: SEP 28 | 2020

**BASEMENT PLAN  
FOR CONDOS  
305 UNITS 1, 2, 3, & 4  
315 UNITS 1, 2, 3, 4, & 5**

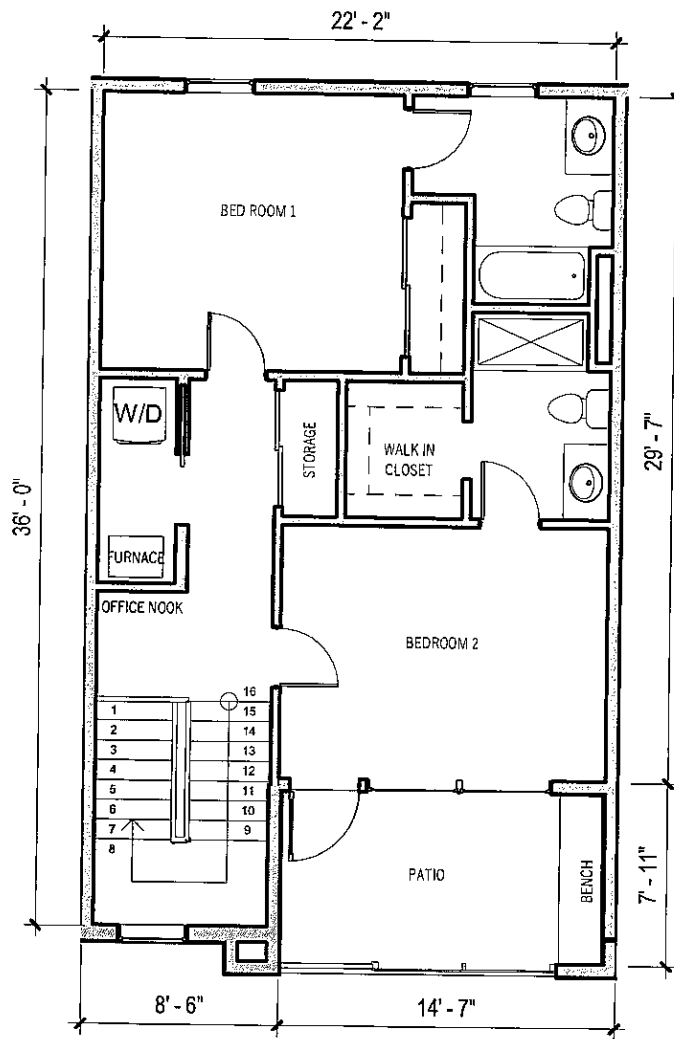


1 MAIN LEVEL  
1/8" = 1'-0"

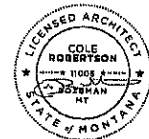


DATE: SEP 28 | 2020

MAIN PLAN  
FOR CONDOS  
305 UNITS 1, 2, 3, & 4  
315 UNITS 1, 2, 3, 4, & 5



1 **UPPER LEVEL**  
1/8" = 1'-0"



DATE: SEP 28 | 2020

**UPPER PLAN  
FOR CONDOS  
305 UNITS 1, 2, 3, & 4  
315 UNITS 1, 2, 3, 4, & 5**

**EXHIBIT C**  
**(CONDOMINIUM REVIEW DECISION APPROVAL LETTER)**

# BOZEMAN<sup>MT</sup>

Community Development

## CONDOMINIUM REVIEW DECISION

### APPLICATION

Date: 11/20/2020

Number of Units total / this phase: 17 units

File Number:  
20-379

Original Project File number, If applicable: 18-295

Condominium Name: West Peach Condominium

Legal Description: WESTLAKES 1ST ADD, S01, T02 S, R05 E, BLOCK 1, Lot 1A, ACRES 0.898, AMND PLAT F-25B

### STATUTE

**“76-3-203. Exemption for certain condominiums.** Condominiums constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- (1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76 -3-621 are complied with; or
- (2) the condominium proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.”

### FINDING

Per the above statute, the Department of Community Development finds the condominium development noted above meets the Subdivision & Platting Act (SPA) and Sanitation in Subdivision Act (SiS) by:

- SPA) Does not require subdivision review and has satisfied the exemption criteria.
- SPA) Has completed review as a subdivision.
- SiS) A municipal facilities exemption has been granted (see attached).
- SiS) Exempt from Sanitation Review per:

### DIRECTOR SIGNATURE

*Chris Saunders* for

Martin Matsen, AICP, Director, City of Bozeman Department of Community Development

Alfred M. Stiff Professional Building  
20 East Olive Street 59715 (FED EX and UPS Only)  
PO Box 1230  
Bozeman, MT 59771

phone 406-582-2260  
fax 406-582-2263  
planning@bozeman.net  
www.bozeman.net

**EXHIBIT D**  
**(MUNICIPAL FACILITIES EXCLUSION CERTIFICATION)**





November 24, 2020

Chris Budeski PE  
Madison Engineering  
895 Technolgy BLVD Suite 203  
Bozeman MT 59718-5858

RE: West Peach Condominium  
Municipal Facilities Exclusion  
EQ# 21-1496  
City of Bozeman  
Gallatin County

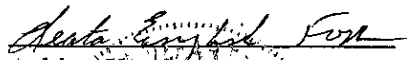
Dear Mr. Budeski;

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA. Under 76-4-125(1)(d), MCA, this subdivision is not subject to review, and the Declaration can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed 76-4-131. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

West Peach Condominium Municipal Facilities Exclusion will consist of Seventeen Units.

Sincerely,

  
Ashley Kroon  
Department of Environmental Quality  
Engineering Bureau  
Public Water & Subdivision Review  
(406) 461-9844  
email: akroon@mt.gov

cc: City Engineer  
County Sanitarian  
Owner  
file

Upon Recording, please return to:

Browning, Kaleczyc, Berry & Hoven, P.C.  
Attn: Troy L. Bentson  
801 W. Main St., Suite 2A  
Bozeman, Montana 59715

**2710841**

Page: 1 of 9 12/01/2020 10:43:14 AM Fee: \$63.00  
Eric Semerad - Gallatin County, MT MISC



**BYLAWS  
OF  
WEST PEACH CONDOMINIUM ASSOCIATION**

(A nonprofit corporation organized under the Montana Nonprofit Corporation Act)

**ARTICLE I  
SCOPE AND DEFINITIONS**

1. These articles are and shall be the Bylaws of the WEST PEACH CONDOMINIUM ASSOCIATION, a nonprofit corporation organized under the Montana Nonprofit Corporation Act and situated in Bozeman, Gallatin County, Montana (the "Association"), which governs the WEST PEACH CONDOMINIUM, a condominium subject to the Montana Unit Ownership Act (here referred to as "Condominium").

2. The Condominium is subject to the Declaration of Condominium for West Peach Condominium (the "Declaration") dated the same date as these Bylaws. These Bylaws and the Declaration shall, upon being recorded with the Clerk and Recorder of Gallatin County, State of Montana, govern and control the administration of the Condominium. These Bylaws supplement the Declaration, and the Declaration is made a part hereof by reference. The definitions set forth in the Declaration apply to the terms used in these Bylaws unless the context states or clearly implies otherwise. All Unit Owners, their guests, and any renters or sub-lessees, present and future, shall have the rights, obligations, and responsibilities described in these Bylaws and shall be subject to the provisions thereof. These Bylaws shall be deemed to be covenants imposed upon the land and Units, the Building, the Common Elements, and the use thereof. By acquisition of an ownership interest in a Unit in the Condominium, the Owner accepts, ratifies and agrees to comply with these Bylaws.

**ARTICLE II  
MEMBERSHIP**

Each Person owning a Unit in the Condominium or an interest in a Unit, or owning a Unit in any real estate tenancy relationship recognized by the State of Montana, shall be a Member of

the Association. A Unit Owner may not decline membership in the Association. Membership begins concurrently with the acquisition of an ownership interest and terminates at the time such ownership interest is terminated. Such termination shall not relieve any owner of liability for obligations incurred while a Member of the Association; further, membership in the Association does not in any way negate or impair any owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other Unit Owners, or the Manager, which may arise from or be incidents of Unit ownership.

### ARTICLE III OBLIGATIONS

Each Unit Owner shall be obligated to comply with these Bylaws, the Declaration, and the laws of the City of Bozeman, the County of Gallatin, the State of Montana and any other governing body with jurisdiction. Such obligations shall include, but not be limited to, the paying of assessments levied by the Association, and the adherence to the protective covenants which are a part of the Declaration. Failure of any Owner to abide by these Bylaws, and all rules made pursuant thereto, the Declaration, and the laws of the City of Bozeman, the County of Gallatin, and the State of Montana, shall be grounds for appropriate legal action by the Association or by an aggrieved Unit Owner against such noncomplying owner. Each Unit Owner shall also comply with applicable subdivision covenants, rules and regulations for the subdivision in which the Condominium is located, if any.

### ARTICLE IV MEETING AND VOTING

There shall be a regular meeting of the Association annually at a date, time and place fixed by the Board. The first annual meeting shall be called by the Declarant during the year the Condominium regime is established.

Pursuant to these Bylaws, the Association may at any time hold special meetings. Such special meetings may be called on the initiative of the President of the Association, by the Board of Directors, a signed request of the Manager, or a petition signed by Unit Owners representing at least fifty percent (50%) of the Allocated Percentages. Notice of any special meeting must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such special meeting, unless 100% of the Aggregate Voting interests are present and agree otherwise.

All regular and special meetings shall be held within Gallatin County, Montana, and all such meetings, regular and special, shall be held at such particular time and place (which may or may not be at the principal office of the Association) as is set forth in the notice.

Members may participate in a meeting, regular or special, by means of conference telephone calls or similar remote communication which participation in this manner constitutes presence in person at a meeting.

A. Notice

Notice of all meetings, regular or special, shall be mailed by the Association's secretary to every Unit Owner of record at their address of record at least ten (10) days prior to the time and place of the meeting and shall make provisions to allow for the voting of each Unit's interest by proxy at the discretion of the Unit Owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served.

B. Quorum

No meeting, regular or special, shall be convened to conduct business unless a quorum is present in person or by proxy. At any meeting, regular or special, the presence of Members in person or by proxy who are entitled to cast a majority of the total number of votes outstanding as determined by the Declaration shall constitute a quorum for the transaction of business. At any time during any meeting that quorum is not present in person or by proxy, such meeting shall be adjourned forthwith.

ARTICLE V  
VOTING INTEREST

Each Member at Association meetings shall have the number of votes equal their respective Percentage of Interest as set forth in the Declaration, a copy of which is being filed concurrently with the filing of these Bylaws with the Clerk and Recorder of Gallatin County, State of Montana.

Such Percentage of Interest shall be the voting interest for each Member on all matters affecting the general business of the Condominium, on all matters affecting the General Common Elements, assessments for the General Common Elements, and on all matters upon which the Association agreed to have voting by the Common Elements' interests. Voting upon matters affecting Limited Common Elements and assessments for Limited Expenses shall be only by Owners having a Unit or interest in the Limited Common Elements affected. In the event that a Unit Owner is delinquent in payment of assessments, that Unit Owner's vote shall be suspended until such time as said delinquent assessment is brought current.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, those present may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Declaration, or the laws of the State of Montana direct otherwise.

ARTICLE VI  
BOARD OF DIRECTORS

The Association and its affairs shall be governed by a Board Directors. The directors need not be Unit Owners. The initial Board of three (3) directors shall be appointed by the Declarant. Until seventy-five percent (75%) of the Units in all phases of the condominium have been sold or Declarant turns over control of the Board and Association to the Owners, whichever

occurs first, the Declarant reserves the right to appoint and remove all members of the Board and to exercise all powers and responsibilities otherwise assigned by the Declaration of the Association. By express written declaration, Declarant shall have the option to at any time turn over to the Association the total responsibility for electing and removing member of the Board.

After control of the Association is turned over to the Owners, the Owners shall elect three (3) directors. The term of office of each Director shall be three (3) years, except that at the first meeting when the Owners elect their Board, one (1) Director shall be elected for a one-year term, one (1) Director shall be elected to a two-year term, and one Director shall be elected for a three-year term so that at each regular meeting thereafter the terms of office of one-third (1/3) of the Board shall expire and a new Director shall be elected accordingly, but there shall be no limitation on the number of terms during which a Director may serve. All Directors shall serve until their successors are duly designated and qualified.

The manner of election of the Board of Directors shall be as follows:

At the first and all subsequent regular meetings of the Association, nominations for positions on the Board shall be accepted from any of the Unit Owners present. Voting will be noncumulative. Board members shall be elected by majority vote of the interests present or voting by proxy at any regular or special meeting.

#### ARTICLE VII OFFICERS

The officers of the Association shall be the President, who shall be a director, the Vice-President, who shall be a director, and the Secretary/Treasurer, who need not be a director or Member, all whom shall be elected annually by the Board of Directors, except that the initial officers shall be appointed by the Declarant and shall serve until the first annual meeting of the Members, and need not be Members of the Association.

#### ARTICLE VIII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and duties:

- A. To call regular meetings of the Association and give due notice thereof.
- B. To conduct elections of the Board of Directors.
- C. To enforce the provisions of the Declaration, Bylaws, and protective covenants of the Condominium by appropriate action.
- D. To promulgate and adopt rules and regulations for the use of the Common Elements and for the occupancy of the Units so as not to interfere with the peace and quiet of all the occupants.

- E. To provide for the management of the Condominium by hiring or contracting with suitable and capable management and personnel for the day-to-day operation, maintenance, upkeep and repair of the General Common and Limited Common Elements.
- F. To levy assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditure and accounting of said assessments.
- G. To pay for the expenses of the maintenance, repair and upkeep of the General Common Elements and the Limited Common Elements, and to approve payment vouchers either at regular or special meetings.
- H. To delegate authority to the Manager for the routine conduct of the Condominium business, however, such authority shall be precisely defined with ultimate authority at all-time residing in the Board of Directors.
- I. To provide a means of hearing grievances of Unit Owners and to respond appropriately thereto.
- J. To meet at regularly scheduled times and to hold such meetings open to all Unit Owners or their agents.
- K. To prepare an annual budget for the Condominium in order to determine the amount of the assessments payable by the Unit Owners to meet the General Common and Limited Common Expenses, and allocate and assess such charges among the Unit Owners according to their respective Allocated Percentages in the General Common and Limited Common Elements.
- L. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.
- M. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Unit Owners, or from any person or persons owing money to the Association, and to levy a penalty and to charge interest on unpaid amounts due and owing. However, other than for the collection of delinquent assessments or accounts, the Board shall not initiate any litigation or lawsuit without prior approval of at least two-thirds of the Allocated Percentages of the Unit Owners in the Condominium.
- N. To defend in the name of the Association any and all lawsuits wherein the Association is a party defendant.
- O. To enter into contracts necessary to carry out the duties herein set forth.
- P. To establish a bank account for the Association, and to keep therein all funds of the

Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.

- Q. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration, and to do all those things which are necessary and reasonable in order to carry out the governance and operation of the Condominium.
- R. To make repairs, alterations, additions, and improvements to the General Common and Limited Common Elements consistent with managing the In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration, and to do all those things which are necessary and reasonable in order to carry out the governance and operation of the Condominium in a first class manner and in the best interest of the Unit Owners.
- S. To provide for the perpetual maintenance of the Common Elements, and to make any assessments necessary for such maintenance as provided herein.
- T. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration.
- U. If applicable, to receive and make payment of common utility expenses for all of the Condominium Units. The pro-rata portion of the utility expenses shall be paid by the Unit Owners as part of, or in addition to, their Condominium assessment, with the method of payment to be determined by the Board.
- V. To levy fines as more particularly set forth in the Declaration.
- W. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

#### ARTICLE IX VACANCIES AND REMOVAL

Should a vacancy occur on the Board of Directors, the Board, subject to the exception described below, shall appoint a Member of the Association to serve for the unexpired term. Such vacancy shall be filled no later than the next regular Board meeting after which it occurs. Should such vacancy not be filled by the Board at the next regular meeting of the Association, the Association may fill such vacancy.

At any regular or special meeting of the Association, any member of the Board may be removed by a majority vote of the Allocated Percentages of the Unit Owners. Such vacancy shall be filled by the Association. Such removal matter must be announced in the notice of such regular or special meeting. The personal delivery of such notice by the Secretary of the Association shall be considered notice served.

ARTICLE X  
COMPENSATION

No member of the Board of Directors shall receive any compensation for acting as such. Nothing herein, however, shall be construed to preclude compensation being paid to Managers who are hired by the Board of Directors.

ARTICLE XI  
MANAGER

If the Board of Directors elects to hire a Manager, the Manager shall be hired and/or removed by the Board. The Manager (or any member of the Board or Association handling Association funds or having power to withdraw or spend such funds) shall be bonded if required by the Board, and shall maintain the records of the financial affairs of the condominium. Such records shall detail all assessments made by the Association and the status of payments of said assessments by all Unit Owners. All records shall be available for examination during normal business hours to any Unit Owner or his assigned representative. All functions and duties herein provided for the Manager may be performed by the Board, or the President, if the Board should decide not to have a Manager.

Accounts: The receipts and expenditures of the Association shall be under the direction of the Manager and be classified as appropriate into General Common Expenses and Limited Common Expenses, and shall include a provision for current expenses which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or betterments. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year. Other budget items may be provided for at the discretion of the Manager.

Budget: The Manager shall prepare and submit to the Board each calendar year, a budget, which must be approved and adopted by the Board. The budget shall include the estimated funds required to defray the General Common and Limited Common Expenses and to provide and maintain funds for the foregoing accounts according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 15 of the year preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each member.

Financial Report: An audit and financial report of the accounts of the Association may be made annually by a Certified Public Accountant, if required by the Board of Directors, and a copy of the report shall be furnished to each Member no later than March 1<sup>st</sup> of each year for which the audit is made.

The Manager shall generally operate and manage the Condominium for and on behalf of the Unit Owners and shall have such other powers and authority as the Board may designate. If there is no Manager or if the Manager resigns, is terminated or his contract expires, the Board shall perform all the duties of the Manager.



ARTICLE XII  
AMENDMENT OF BYLAWS

These Bylaws may be amended at any regular or special meeting of the Association providing that a copy of the proposed revision is included in the notice of such meeting. Upon a vote of at least seventy-five percent (75%) of the Percentages of Interests (and not 75% of the total number of units), the amendment shall be declared adopted. The Secretary shall as soon as practicable after adoption, prepare a copy of these Bylaws as amended for certification by the Chairman and Secretary of the Association. Such amended and certified Bylaws shall then be filed and recorded in the office of the Clerk and Recorder of Gallatin County, State of Montana. Bylaws as amended shall become effective at the time of such recording.

ARTICLE XIII  
ASSESSMENTS

In accordance with the Allocated Percentages in the General Common Elements as set forth in the Declaration, each Unit Owner shall be assessed for General Common Expenses. Such assessments, and assessments for Limited Common Expenses, shall be collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amount of assessments described above and any other assessments allowed by these Bylaws, the Declaration, and by the State of Montana, shall be fixed by the Board of Directors. Notice of each owner's assessments shall be mailed to said owner at his address of record.

ARTICLE XIV  
THE DECLARATION

The undersigned has filed, along with these Bylaws, a Declaration whereby the properties known as the WEST PEACH CONDOMINIUM are submitted subject to Title 70, Chapter 23, M.C.A. The Declaration shall govern the acts, powers, duties and responsibilities of the Association, and in the event these Bylaws and the Declaration are in conflict, the Declaration shall prevail.

The definition of terms set forth in the Declaration shall be applicable throughout these Bylaws and the interpretation thereof.

By virtue of these Bylaws and the Declaration, the owner or owners of each Unit has the right to membership in the Association and any Unit Owner may be on the Board of Directors of the Association.

The Association and its Board of Directors shall have the primary and final authority on all matters solely affecting the Condominium, subject to the laws, rules and regulations of the City of Bozeman, the County of Gallatin, and the State of Montana.

IN WITNESS WHEREOF, the undersigned, as the owner of record of all of the Units and 100% of the voting interests of the WEST PEACH CONDOMINIUM as of the date hereof, hereby appoints the following persons to serve on the Board of Directors and as officers until the



**Return original to:**  
Browning, Kaleczyc, Berry & Hoven, P.C.  
Attn: Troy L. Bentson  
801 W. Main St., Suite 2A  
Bozeman, Montana 59715

**2712725**

Page: 1 of 2      12/16/2020 09:26:15 AM      Fee: \$14.00  
Eric Semerad - Gallatin County, MT      MISC



**FIRST AMENDMENT TO DECLARATION FOR  
WEST PEACH CONDOMINIUM**

This First Amendment to the Declaration for West Peach Condominium amends the Declaration for West Peach Condominium made December 1, 2020 and recorded in the office of the Clerk and Recorder of Gallatin County, Montana as Document Number 2710840 on December 1, 2020 (the "Declaration") with respect to the following real property made subject to the Montana Unit Ownership Act as provided in that Declaration:

Lot 1A in Block 1 of Amended Plat of the Amended Plat of Lots 1, 2, 3 & 4 of Block 1, Correction Plat of Westlake's First Addition, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat No. F- 25B]

Except as amended by the terms of this First Amendment, the terms of the Declaration remain in full force and effect.

The Declaration is hereby amended as follows:

**XV. MISCELLANEOUS** is amended by adding the following as paragraph 7:

7. Upon receipt of a written request from the Mortgagee or guarantor of a mortgage on any Unit, the Association must provide timely written notice, to the address specified in the writing from the Mortgagee or guarantor, of any of the following:
  - (a) any condemnation or casualty loss that affects either a material portion of the Condominium project or the Unit securing the mortgage;
  - (b) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

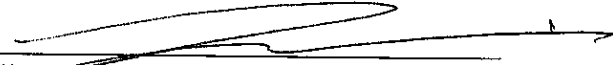
(c) any proposed action that requires the consent of a specified, eligible mortgagees.

In any such written request for notice, the mortgage holder, insurer, or guarantor must identify the name and address of the mortgage holder, insurer, or guarantor and the number or address of the applicable Unit.

The foregoing First Amendment has been submitted and approved by the Declarant in accordance with Article VIII, Paragraph 1.b. of the Declaration as Declarant constitutes one hundred percent (100%) of Unit Owners.

**DECLARANT:**

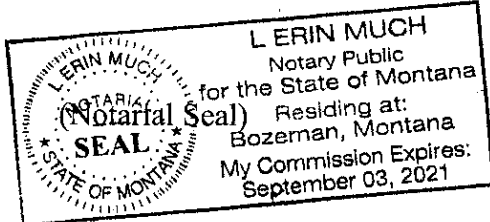
WEST PEACH, LLC, a Montana limited liability company, by  
IRONWOOD, Inc., a Montana Corporation, Manager and Authorized Member

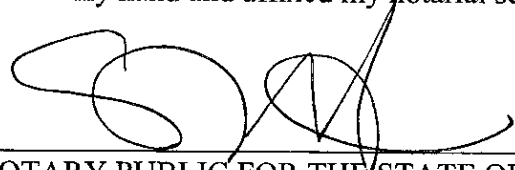
By:   
Julien Morice, President of Ironwood, Inc.

STATE OF MONTANA                    )  
  : ss.  
County of Gallatin                    )

On this 16 day of December, 2020, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Julien Morice, President of Ironwood, Inc., a Montana Corporation, Manager and Authorized Member of West Peach, LLC, a Montana limited liability company, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA

Return original to:  
Browning, Kaleczyc, Berry & Hoven, P.C.  
Attn: Troy L. Bentson  
801 W. Main St., Suite 2A  
Bozeman, Montana 59715

**2727315**

Page: 1 of 12 04/05/2021 02:41:04 PM Fee: \$84.00  
Eric Semerad - Gallatin County, MT MISC

### SUPPLEMENT DECLARATION FOR WEST PEACH CONDOMINIUM

THIS SUPPLEMENT DECLARATION for West Peach Condominium is hereby made and entered into this 5 day of April, 2021 by the undersigned **West Peach, LLC**, a Montana limited liability company, as the Declarant pursuant to the Declaration defined below.

#### RECITALS:

- A. Reference is hereby made to that certain Declaration for West Peach Condominium recorded December 1, 2020 as Document No. 2710840 and the First Amendment to Declaration for West Peach Condominium recorded on made December 1, 2020 and recorded on December 16, 2020 as Document No. 2712725 in the office of the Clerk and Recorder of Gallatin County, Montana (the "Declaration")
- B. The Property which by the Declaration was submitted and made subject to the Montana Unit Ownership Act is described as follows:

Lot 1A in Block 1 of Amended Plat of the Amended Plat of Lots 1, 2, 3 & 4 of Block 1, Correction Plat of Westlake's First Addition, City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana. [Plat No. F- 25B]
- C. Pursuant to Article V., Planned Development, of the Declaration, Declarant reserved the right to add expand the number of Units to the total of seventeen (17).
- D. Declarant initially constructed one (1) building containing five (5) Units (Phase 1) and another building containing four (4) Units (Phase 2). Pursuant to the expansion provisions set forth in Article V., Planned Development, of the Declaration, Declarant now desires to

expand the project by adding the additional eight (8) Units in two (2) buildings each containing four (4) Units (Phases 3 and 4), for a total of four (4) buildings and seventeen (17) Units located on the Property as contemplated by the Declaration.

- E. The Property has already been approved by the City of Bozeman for seventeen (17) condominium units as evidenced by Exhibit C attached to the Declaration; and a Municipal Exclusion Certification has been issued by the Montana Department of Environmental Quality as evidenced by Exhibit D attached to the Declaration.

### SUPPLEMENTAL DECLARATION

NOW THEREFORE, the Declarant hereby amends and supplements the Declaration as follows:

1. Site Plan. Exhibit A attached to the Declaration shall be supplemented by Exhibit A attached to this Supplemental Declaration and incorporated herein by reference.
2. Floor Plans. Exhibit B attached to the Declaration shall be supplemented by Exhibit B attached to this Supplemental Declaration and incorporated herein by reference.
3. Percentage of Interests. Article IV., OWNERSHIP AND VOTING – EXHIBITS – USE, Paragraph 1, shall be amended to read as follows:

Percentage of Interest. Each Unit Owner shall be entitled to the exclusive ownership, use and possession of their Unit and an undivided interest in the general common elements of the West Peach Condominium as set forth below. Such percentage represents each Unit Owner's ownership interest in the general common elements, their liability for common expenses and taxes, and the voting interests in all matters concerning the Association, as set forth below.

<u>BUILDING</u>	<u>UNIT</u>	<u>PERCENTAGE OF INTEREST</u>
315 West Peach Street (Phase 1)	1	5 and $\frac{15}{17}$ ths
	2	5 and $\frac{15}{17}$ ths
	3	5 and $\frac{15}{17}$ ths
	4	5 and $\frac{15}{17}$ ths
	5	5 and $\frac{15}{17}$ ths
311 West Peach Street (Phase 2)	1	5 and $\frac{15}{17}$ ths
	2	5 and $\frac{15}{17}$ ths
	3	5 and $\frac{15}{17}$ ths
	4	5 and $\frac{15}{17}$ ths
307 West Peach Street (Phase 3)	1	5 and $\frac{15}{17}$ ths
	2	5 and $\frac{15}{17}$ ths
	3	5 and $\frac{15}{17}$ ths
	4	5 and $\frac{15}{17}$ ths

305 West Peach Street	1	5 and <sup>15</sup> / <sub>17</sub> ths
(Phase 4)	2	5 and <sup>15</sup> / <sub>17</sub> ths
	3	5 and <sup>15</sup> / <sub>17</sub> ths
	4	<u>5 and <sup>15</sup>/<sub>17</sub>ths</u>
	TOTAL	100

Exhibits: The West Peach Condominium consists of the real property described above, and a total of seventeen (17) separate Condominium Units (Phases 1, 2, 3 and 4) as shown on the floor plans for the condominium. For identification and descriptive purposes the following Exhibits are, by this reference, attached hereto and incorporated into and made a part of this Declaration:

Exhibit A: Showing the site plan of the West Peach Condominium and the location of the buildings containing the condominium units on the property and the common elements for 315 (Phase 1), 311 (Phase 2), 307 (Phase 3), and 305 (Phase 4) West Peach Street, Bozeman, Montana 59715.

Exhibit B: Showing the floor plans for each of the initial Units of the West Peach Condominium (Phases 1, 2, 3 and 4) the area of each, the dimensions and the designation for each Unit.

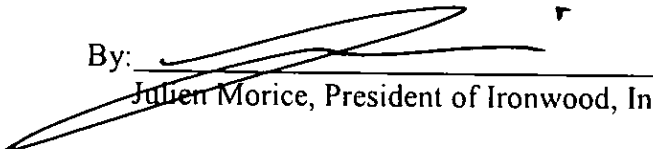
4. Construction Materials. The principal materials of which the additional buildings and Units are constructed is unchanged from the building materials set forth on in the Declaration.
5. Ratification. Except for the modification stated hereinabove, the Declaration is hereby ratified and confirmed and the additional buildings shall be subject to all the terms and conditions of the Declaration and the Units comprising the additional buildings (Phases 3 and 4 as shown on the attached Site Plan) and original two buildings (Phases 1 and 2) shall be subject to condominium ownership with all the incidents thereto as specified in the Declaration.

DATED this 5 day of April, 2021.

**DECLARANT:**

WEST PEACH, LLC, a Montana limited liability company, by

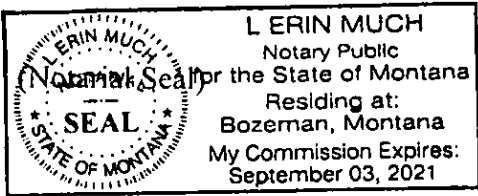
IRONWOOD, Inc., a Montana Corporation, Manager and Authorized Member

By:   
 Julien Morice, President of Ironwood, Inc.

STATE OF MONTANA )  
 : ss.  
County of Gallatin )

On this 5 day of April, 2021, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Julien Morice, President of Ironwood, Inc., a Montana Corporation, Manager and Authorized Member of West Peach, LLC, a Montana limited liability company, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

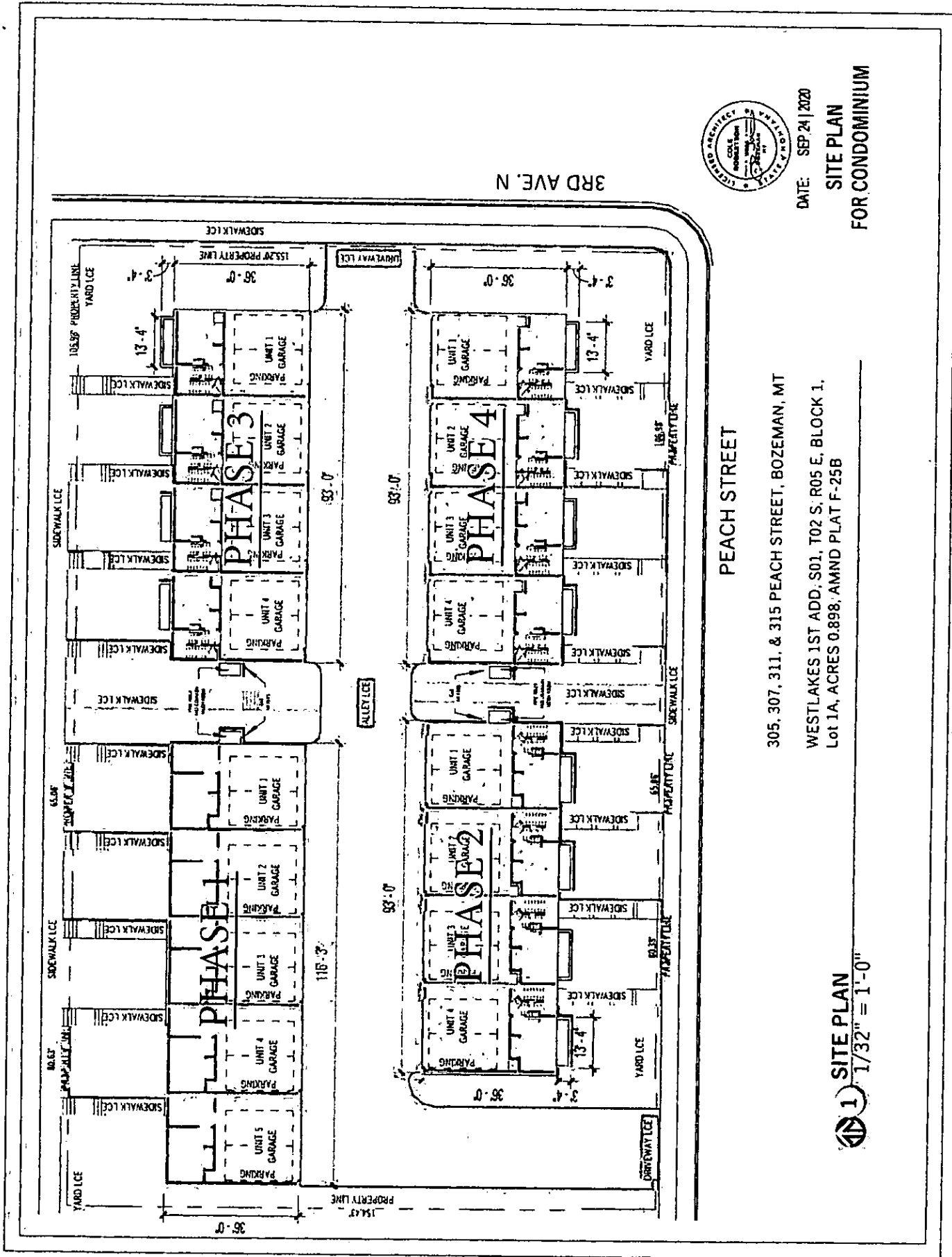
In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF MONTANA



# EXHIBIT A



DATE: SEP 24 2020

**SITE PLAN  
FOR CONDOMINIUM**

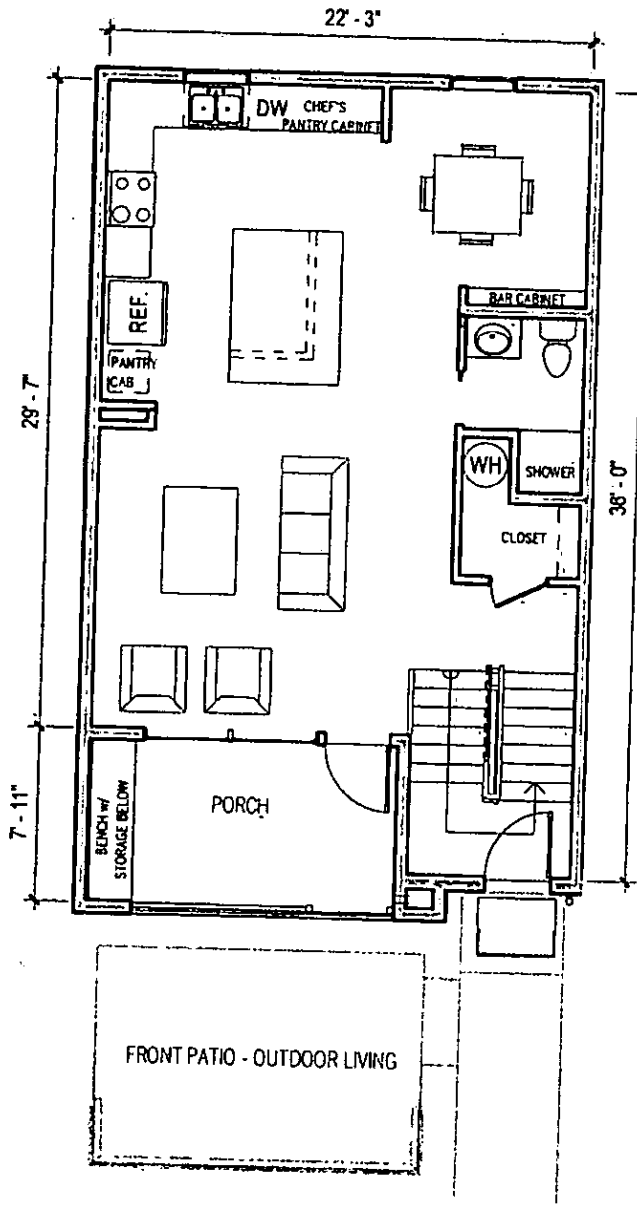
PEACH STREET

305, 307, 311, & 315 PEACH STREET, BOZEMAN, MT

WESTLAKES 1ST ADD; S01, T02 S, R05 E, BLOCK 1,  
Lot 1A, ACRES 0.898, AMND PLAT F-25B

**1 SITE PLAN**  
1/32" = 1'-0"

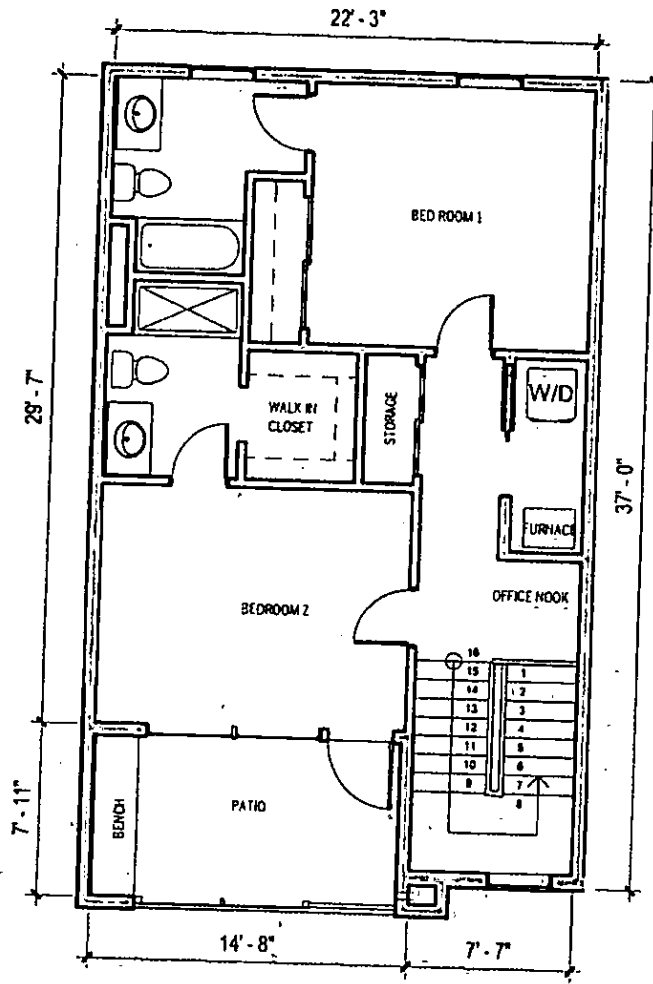
**EXHIBIT B  
(FLOOR PLANS)**



DATE: SEP 24 | 2020

① MAIN LEVEL  
1/8" = 1'-0"

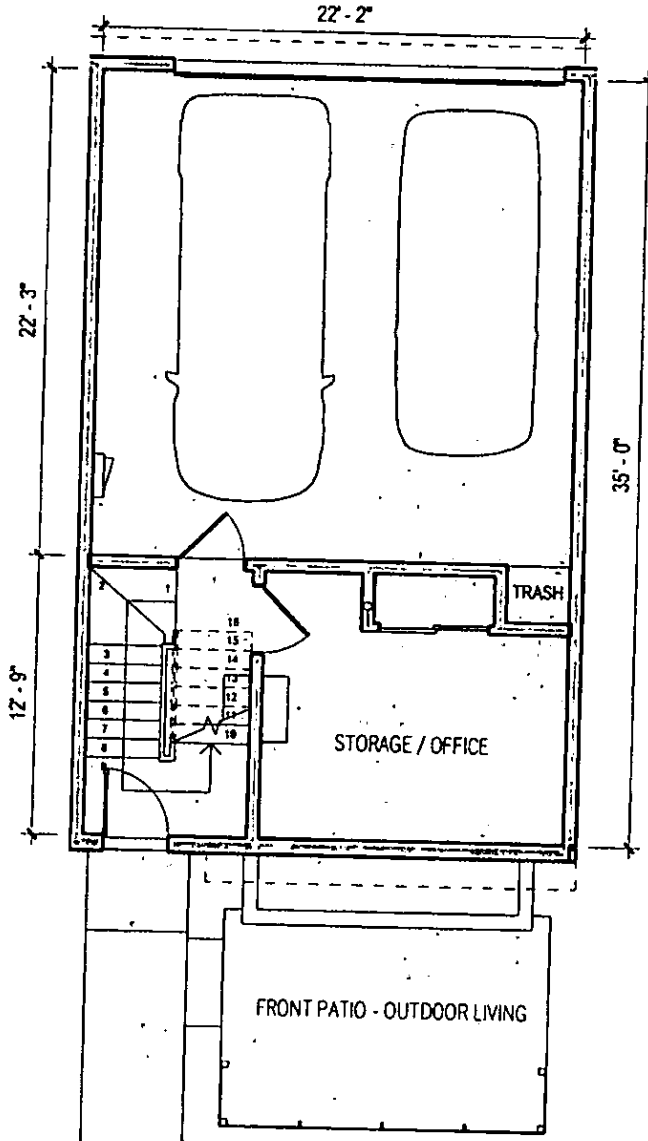
MAIN PLAN  
FOR CONDOS  
Phase 3 - 307 UNITS 1, 2, 3, & 4  
Phase 2 - 311 UNITS 1, 2, 3, & 4



DATE: SEP 24 | 2020

① **UPPER LEVEL**  
1/8" = 1'-0"

**UPPER PLAN  
FOR CONDOS**  
Phase 3 - 307 UNITS 1, 2, 3, & 4  
Phase 2 - 311 UNITS 1, 2, 3, & 4

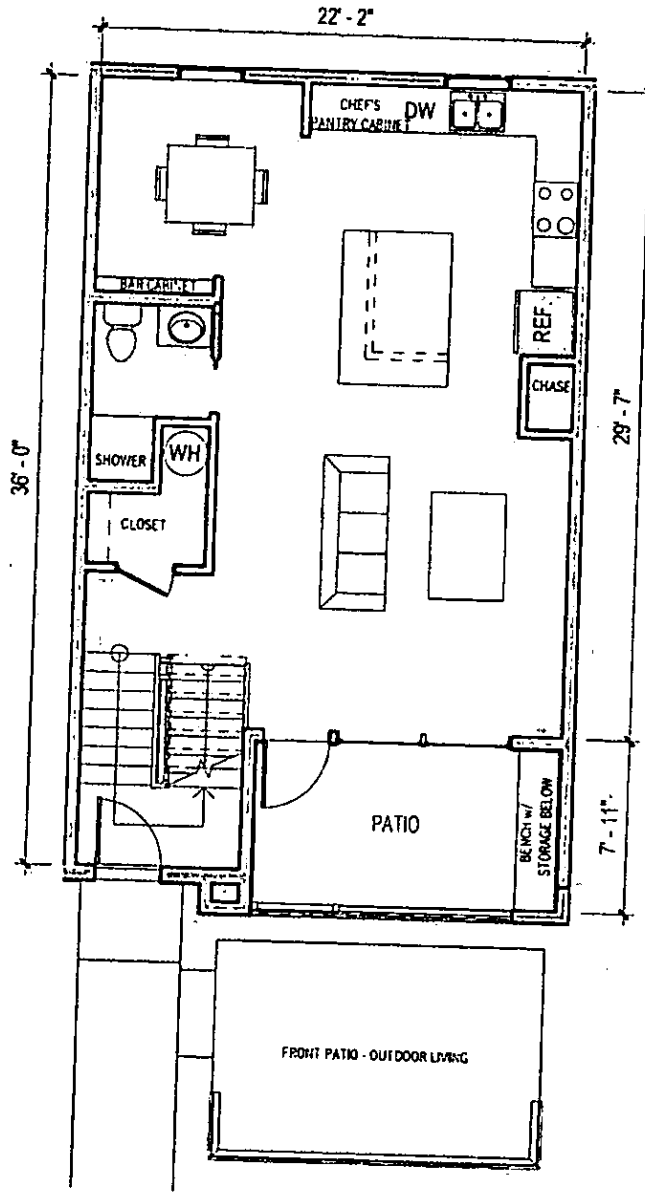


① FLOOR PLAN - BASEMENT  
1/8" = 1'-0"



DATE: SEP 28 | 2020

**BASEMENT PLAN  
FOR CONDOS**  
Phase 4 - 305 UNITS 1, 2, 3, & 4  
Phase 1 - 315 UNITS 1, 2, 3, 4, & 5



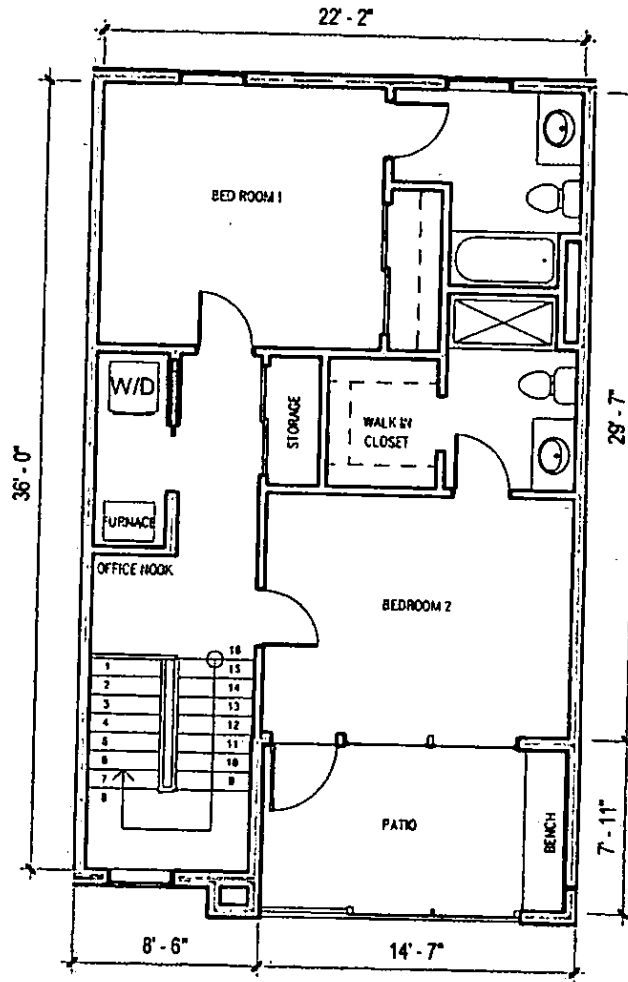
DATE: SEP 28 | 2020

① MAIN LEVEL  
1/8" = 1'-0"

MAIN PLAN  
FOR CONDOS

Phase 4 - 305 UNITS 1, 2, 3, & 4

Phase 1 - 315 UNITS 1, 2, 3, 4, & 5

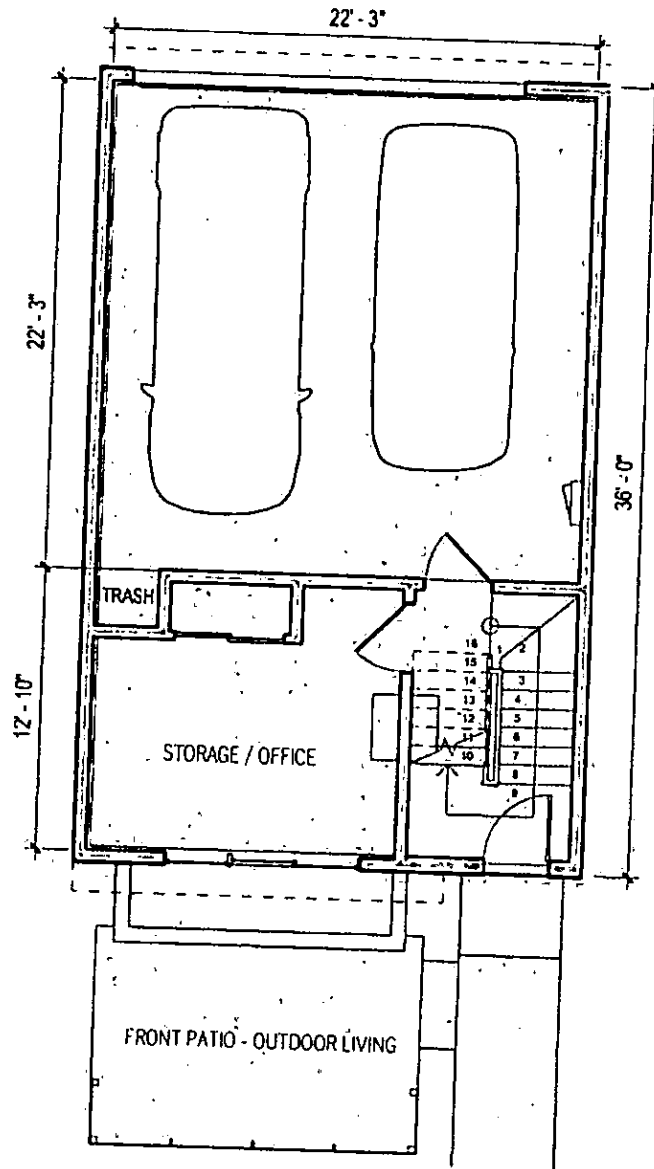


DATE: SEP 28 | 2020

① **UPPER LEVEL**  
1/8" = 1'-0"

**UPPER PLAN  
FOR CONDOS**

Phase 4 - 305 UNITS 1, 2, 3, & 4  
Phase 1 - 315 UNITS 1, 2, 3, 4, & 5



DATE: SEP 24 | 2020

① **FLOOR PLAN - BASEMENT**  
1/8" = 1'-0"

**BASEMENT PLAN  
FOR CONDOS**

Phase 3 - 307 UNITS 1, 2, 3, & 4  
Phase 2 - 311 UNITS 1, 2, 3, & 4