



City of Ketchum

### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:	May 15, 2023	Staff Member/Dept:	Morgan Landers, AICP – Director of Planning and Building
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Agenda Item:	Recommendation to review and approve the Westcliff Townhomes Final Plat and adopt the Findings of Fact, Conclusions of Law, and Decision.
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Recommended Motion:

I move to approve the Westcliff Townhomes Final Plat and adopt the Findings of Fact, Conclusions of Law, and Decision.
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Reasons for Recommendation:

- |  |
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| <ul style="list-style-type: none"> <li>The Westcliff Townhomes project received Design Review approval on April 27, 2021 and the City Council approved the Townhouse Preliminary Plat and Phased Development Agreement on May 17, 2021.</li> </ul> |
| <ul style="list-style-type: none"> <li>The phased development agreement allows review and approval of the final plat following a certificate of occupancy being issued on the first townhouse unit.</li> </ul>                                     |
| <ul style="list-style-type: none"> <li>A certificate of occupancy for the first townhouse was issued on May 9, 2023.</li> </ul>  |
| <ul style="list-style-type: none"> <li>The final plat meets all the conditions of approval of the design review, preliminary plat, phased development agreement, and subdivision requirements.</li> </ul>  |

Policy Analysis and Background (non-consent items only):

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Sustainability Impact:

None OR state impact here: Approval of the final plat does not limit the city’s ability to reach its sustainability goals outlined in the Sustainability Action Plan.
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Financial Impact:

None OR Adequate funds exist in account:	None
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Attachments:

- |   |
|---|
| 1. Application and Supporting Materials                     |
| 2. Final Plat   |
| 3. Draft Findings of Fact, Conclusions of Law, and Decision |



City of Ketchum

# Attachment A: Application and Supporting Materials



**City of Ketchum  
Planning & Building**

OFFICIAL USE ONLY
Application Number: P23-011
Date Received: 2/22/23
By: HLN
Fee Paid: \$1500
Approved Date:
By:

**Subdivision Application**

Submit completed application and payment to the Planning and Building Department, PO Box 2315, Ketchum, ID 83340 or hand deliver to Ketchum City Hall, 480 East Ave. N., Ketchum. If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the City website at: [www.ketchumidaho.org](http://www.ketchumidaho.org) and click on Municipal Code.

APPLICANT INFORMATION			
Name of Proposed Subdivision: Westcliff Townhomes			
Owner of Record: Westcliff LLC c/o Layne Thompson			
Address of Owner: PO Box 2490, Ketchum, ID 83340			
Representative of Owner: Benchmark Associates			
Legal Description: Bavarian Subdivision, Lot 3B			
Street Address: 106/110 Rember Street			
SUBDIVISION INFORMATION			
Number of Lots/Parcels: 4 townhouse sublots			
Total Land Area: 18,130 sf			
Current Zoning District: GR-H			
Proposed Zoning District: GR-H			
Overlay District: none			
TYPE OF SUBDIVISION			
Condominium <input type="checkbox"/>	Land <input type="checkbox"/>	PUD <input type="checkbox"/>	Townhouse <input checked="" type="checkbox"/>
Adjacent land in same ownership in acres or square feet: n/a			
Easements to be dedicated on the final plat: Existing 10' utility esmts. per Inst. Nos. 660804 & 661178; 20' ingress, egress, public utility & emergency vehicle access esmt.			
Briefly describe the improvements to be installed prior to final plat approval: Building 4 completion & C of O, utilities, drainage infrastructure & driveways installed.			
ADDITIONAL INFORMATION			
All lighting must be in compliance with the City of Ketchum's Dark Sky Ordinance			
One (1) copy of Articles of Incorporation and By-Laws of Homeowners Associations and/or Condominium Declarations			
One (1) copy of current title report and owner's recorded deed to the subject property			
One (1) copy of the preliminary plat			
All files should be submitted in an electronic format.			

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

Resigned by:  
  
 35183D4CA51A49E...  
 Applicant Signature

2/7/2023

Date

**Instrument # 685567**

HAILEY, BLAINE, IDAHO  
08-16-2021 2:18:16 PM No. of Pages: 3  
Recorded for: BLAINE COUNTY TITLE  
JOLYNN DRAGE Fee: \$15.00  
Ex-Officio Recorder Deputy: JB  
Electronically Recorded by Simplifile



**WARRANTY DEED**

FOR VALUE RECEIVED

Westcliff Investments LLC, an Ohio limited liability company,

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

Westcliff, LLC, an Idaho Limited Liability Company

the Grantee, whose current address is: 4755 Lake Forest Dr. Suite 100, Cincinnati, OH 45242

the following described premises, to-wit:

Lot 3B, of BAVARIAN VILLAGE SUBDIVISION: LOT 3B, as shown on the official plat thereof recorded as Instrument No. 680918, records of Blaine County, Idaho.

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

Dated this 29<sup>th</sup> day of July, 2021.

WESTCLIFF INVESTMENTS LLC

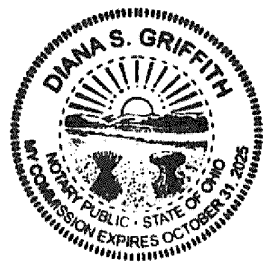
  
\_\_\_\_\_  
Gary Green  
Manager

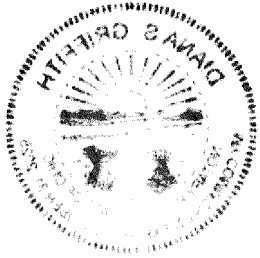
State of OHIO  
County of Hamilton

This record was acknowledged before me on 29<sup>th</sup> day of July, 2021, by Gary Green, as Manager of Westcliff Investments, LLC.

Diana S. Griffith  
Notary Public  
My Commission Expires: 10/31/2025

(STAMP)





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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**WESTCLIFF HOMEOWNERS ASSOCIATION, INC.**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FOR WESTCLIFF HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION (the “**Declaration**”) dated for reference purposes \_\_\_\_\_, 2021, shall be effective upon recordation. This Declaration is made by Westcliff, LLC, an Idaho limited liability company (the “**Declarant**”). Declarant is the owner of certain real property in Ketchum, Idaho, more particularly described Lot 3B, of BAVARIAN VILLAGE SUBDIVISION: LOT 3B, as shown on the official plat thereof recorded as Instrument No. 680918, records of Blaine County, Idaho (the “**Property**”). Declarant hereby makes the following grants, submissions, and declarations:

#### ARTICLE 1. IMPOSITION OF COVENANTS

##### Section 1.1 Purpose.

The purpose of this Declaration is to provide a structured system of management and maintenance of the Property within the scope of the Project. To accomplish the purposes and intentions recited above, Declarant hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, occupied, and improved subject to the provisions of this Declaration.

##### Section 1.2 Covenants Running With the Land.

All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

#### ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1 “Articles of Incorporation” means the Articles of Incorporation of the Association, as filed with the Idaho Secretary of State, a copy of which is attached hereto as Exhibit A.

Section 2.2 “Assessments” means the annual, special and default Assessments levied pursuant to this Declaration.

Section 2.3 “Association” means the Westcliff Homeowners Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.



Section 2.4 “Board of Directors” means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association and in the Act.

Section 2.5 “Bylaws” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto, copies of which are attached hereto as Exhibit B.

Section 2.6 “City” means the City of Ketchum, Idaho.

Section 2.7 “Common Elements” means all of the Property, other than the Sublots or streets dedicated to the City.

Section 2.8 “Common Expenses Liability” means the liability for Common Expenses allocated to each Sublot pursuant to this Declaration.

Section 2.9 “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

- (a) expenses of administration, insurance, operation, and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;
- (b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;
- (d) all sums lawfully assessed against the Sublots by the Board of Directors;
- (e) expenses agreed upon as Common Expenses by the members of the Association; and
- (f) expenses provided to be paid pursuant to any Management Agreement with a property manager.

Section 2.10 “Costs of Enforcement” means all monetary fees, fines, late charges, interest, expenses, costs, including receiver’s and appraiser’s fees, and reasonable attorneys’ fees and disbursements, including legal assistants’ fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

Section 2.11 “Declarant” means Westcliff, LLC, an Idaho limited liability company, its successors and assigns.

Section 2.12 “Declaration” means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that

exercises a Development Right, executed by Declarant and recorded in the Records. The term Declaration includes all Maps and Plats recorded with this Declaration and all amendments to the Declaration and supplements to the Maps and Plats without specific reference thereto.

Section 2.13 “Deed” means each initial Warranty Deed recorded after the date hereof by which Declarant conveys a Sublot.

Section 2.14 “Eligible First Mortgagee” means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee.

Section 2.15 “First Mortgagee” means a holder of a Security Interest in a Sublot that has priority over all other Security Interests in the Sublot.

Section 2.16 “Lot” means one of the separate numbered parcels of real estate within the Project and depicted on a plat or map of the Project.

Section 2.17 “Majority of Owners” means a majority (or any greater percentage that may be specifically required for a particular action or authorization by the terms of this Declaration) of the total voting power of the members of the Association.

Section 2.18 “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.19 “Managing Agent” means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.20 “Owner” means the Declarant or any other person who owns record title to a Sublot (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Sublot unless such person has acquired record title to the Sublot pursuant to foreclosure or any proceedings in lieu of foreclosure.

Section 2.21 “Person” means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or any combination thereof.

Section 2.22 “Plat” or “Map” means that part of a Declaration that is a land survey plat as set forth in Idaho Code § 50-1301, as amended, depicts all or any portion of the Property in two dimensions, and is recorded in the Records.

Section 2.23 “Project” means the term as defined in Section 1.1 hereof.

Section 2.24 “Project Documents” means the basic documents creating and governing the Project, including, but not limited to the Articles of Incorporation and Bylaws, the plat or

Map of the Project, and any procedures, Rules and Regulations, or policies relating to the Project adopted under such documents by the Master Association or its board of directors.

Section 2.25 “Real Estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance.

Section 2.26 “Records” means the Office of the Clerk and Recorder in Blaine County, Idaho.

Section 2.27 “Rules and Regulations” means the rules and regulations promulgated by the Board of Directors for the management, preservation, safety, control, and orderly operation of the Property, as amended or supplemented from time to time.

Section 2.28 “Security Interest” means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.29 “Special Declarant Rights” means those rights reserved by Declarant in this Declaration.

Section 2.30 “Sublot” means one separate numbered parcels of real estate within the Property and depicted on a Plat or Map.

### **ARTICLE 3. DEVELOPMENT**

#### **Section 3.1 Subdivision.**

The Property shall be subdivided into Sublots which shall be developed in accordance with this Declaration and the Master Declaration. The Map shall be filed in the Records. The Map shall be filed following substantial completion of the infrastructure improvements required by the City and prior to the conveyance of any Sublot depicted on the Map to a purchaser.

#### **Section 3.2 Contracts to Convey Entered into Prior to Recording of Declaration and Map.**

A contract or other agreement for the sale of a Sublot entered into prior to the filing of this Declaration in the Records may legally describe such Sublot in substantially the manner set forth in this Article 3 and may indicate that this Declaration and Map are to be recorded.

**Section 3.3 Separate Tax Assessments.**

Upon the filing for record of this Declaration and the Map in the Records, the lien for taxes assessed shall be confined to the Sublots. No forfeiture or sale of any Sublot for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Sublot.

**Section 3.4 Owners' Property Rights in Common Elements.**

Every Owner shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of access to and from the Sublot from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Sublot; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, the Master Declaration and the Map; and
- (b) the right of the Association to adopt, from time to time, any and all rules and regulations concerning the Project as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Project for the benefit of all Owners, and for facilitating the greatest and most convenient availability and use of the Sublots and Common Elements by Owners.

**ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 4.1 Association Membership.**

Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Sublot. No Owner, whether one or more persons or entity, shall have more than one membership per Sublot owned, but all of the persons or entities owning a Sublot shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Sublot. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Sublot. If title to a Sublot is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity or entities shall appoint and authorize one person or alternate persons to represent the Owners of the Sublot. Such representative shall be a natural person who is an Owner, or a designated board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Owners as a member of the Association, and

serve on the Board of Directors if elected, subject to the provisions of, and in accordance with, the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if only one of the multiple Owners of a Sublot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Sublot. If more than one of the multiple Owners are present and there is no written designation of an authorized representative, the vote allocated to that Sublot may be cast only in accordance with the agreement of a majority in interest of the Owners, which majority agreement may be assumed for all purposes if any one of the multiple Owners casts the vote allocated to that Sublot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Sublot.

#### Section 4.2 Voting Rights and Meetings.

Each Sublot in the Property shall have a single vote; provided, however, no vote allocated to a Sublot owned by the Association may be cast. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Owners of more than fifty percent (50%), of the votes in the Association. Not less than ten (10) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States Mail to the mailing address of each Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Directors. Unless the Bylaws provide for a lower percentage, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast fifty percent (50%) of the votes which may be cast for election of the Board of Directors are present, in person or by proxy, at the beginning of the meeting.

#### Section 4.3 Meeting to Approve Annual Budget and Elect Representative to Master Association.

At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the proposed budget approved by the Board of Directors shall be mailed to the Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than ten (10) nor more than fifty (50) days after mailing of the summary to the Owners. Unless at the meeting a Majority of Owners, rather than a majority of those present and voting in person or by proxy, reject the proposed budget, the budget is ratified whether or not a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Board of Directors as provided above. At the same meeting, the Owners shall elect a representative of the Association to

represent the Association's interests as a member of the Master Association and to vote in the collective interest of the Owners of the Property as a member of the Master Association.

Section 4.4 Owners' and Association's Addresses for Notices.

All Owners of each Sublot shall have one and the same registered mailing and email address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Sublot shall furnish such addresses to the secretary of the Association within ten days after transfer of title to the Sublot to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Sublot or by such persons as are authorized to represent the interests of all Owners of the Sublot. If no address is registered or if all of the Owners cannot agree, then the address of the Sublot shall be deemed their registered address until another registered address is furnished as required under this Section 4.4. If the address of the Sublot is the registered address of the Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Sublot or, if the Sublot is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to such address as the Board of Directors may designate from time to time by notice to the Owner(s).

Section 4.5 Transfer Information.

All Persons who acquire Sublot(s) other than from Declarant shall provide to the Association written notice of the Person's name, address (mailing and email), Sublot owned, date of transfer, and name of the former Owner within ten (10) days of the date of transfer. The Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Sublot or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Sublots. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 4.6 Required Election of Owners.

Until 100 percent (100%) of the Sublots that may be created have been sold by Declarant, Declarant shall appoint the Board of Directors, who may be individual owners or affiliates of Declarant. Not later than sixty (60) days after conveyance of 100 percent (100%) of the Sublots that may be created to Owners other than Declarant, each of the Owners (one appointed individual for each Sublot), shall become a Director and member of the Board of Directors (four (4) members). The members of the Board of Directors and officers shall take office upon election.

Section 4.7 Requirements for Turnover of Declarant Control.

Upon the appointment of Owners set forth in Section 4.6, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- (a) the original or a certified copy of the recorded Declaration as amended, the Association's articles of incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;
- (b) financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends.
- (c) the Association funds or control thereof;
- (d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;
- (e) all insurance policies then in force, in which the Owners, the Association or its members of the Board of Directors and officers are named as insured persons;
- (f) any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;
- (g) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- (h) employment contracts in which the Association is a contracting party; and
- (i) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

**ARTICLE 5. ASSOCIATION POWERS AND DUTIES**

Section 5.1 Association Management Duties.

Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Property as a subdivided Lot within the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be

part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association may establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

#### Section 5.2 Association Powers.

The Association shall have, subject to the limitations contained in this Declaration, the Master Declaration, and the Act, the powers necessary for the administration of the affairs of the Association and the upkeep of the Property which shall include, but not be limited to, the power to:

- (a) adopt and amend Bylaws and Rules and Regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments for Common Expenses from Owners;
- (d) hire and discharge managing agents;
- (e) hire and discharge employees and agents, other than managing agents, and independent contractors;
- (f) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, the Master Declaration, Bylaws or Rules and Regulations or other provisions of the Project Documents in the Association's name on behalf of the Association or two or more Owners on matters affecting the Property;
- (g) make contracts and incur liabilities;
- (h) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) cause additional improvements to be made as part of the Common Elements;
- (j) acquire, hold, encumber, and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act;



(k) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;

(l) impose and receive a payment, fee, or charge for the use, rental or operation of the Common Elements, and for services provided to Owners;

(m) impose a reasonable charge for late payment of Assessments, recover Costs of Enforcement for collection of Assessment and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and hearing, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;

(n) impose a reasonable charge for the preparation and recordation of amendments to this Declaration or for preparation of statements of unpaid Assessments;

(o) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;

(p) assign the Association's right to future income, including the right to receive Assessments;

(q) by resolution, establish committees of the Board of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee;

(r) exercise any other powers conferred by this Declaration or the Bylaws;

(s) exercise any other power that may be exercised in Idaho by legal entities of the same type as the Association; and

(t) exercise any other power necessary and proper for the governance and operation of the Association.

### Section 5.3 Actions by Board of Directors.

Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Directors may act in all instances on behalf of the Association.

### Section 5.4 Board of Directors Meetings.

All meetings of the Board of Directors, at which action is to be taken by vote, will be open to the Owners and agendas for meetings of the Board of Directors shall be made reasonably available for examination by all members of the Association or their representatives, except that meetings of the Board of Directors may be held in executive session(s), without giving notice and without the requirement that they be open to Owners, in the following situations:

- (a) matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;
- (b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- (c) investigative proceedings concerning possible or actual criminal misconduct;
- (d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- (e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

#### Section 5.5 Right to Notice and Hearing.

Whenever the Declaration requires that an action be taken after “notice and hearing,” the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Managing Agent, etc.) shall give notice of the proposed action to all Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

#### Section 5.6 Payments to Working Capital Account.

In order to provide the Association with adequate working capital funds, the Association may collect from purchasers at the time of the initial sale of each Sublot by Declarant an amount equal to three months’ worth of annual Assessments based on the Association’s budget in effect at the time of the sale. Such payments to this fund shall not be considered advance payments of annual Assessments.

## ARTICLE 6. ASSESSMENTS

### Section 6.1 Commencement of Annual Assessments.

Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

### Section 6.2 Annual Assessments.

The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Sublot pursuant to this Declaration. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Property including maintenance, repair and replacement of the Common Elements, as well as the Association's obligations to the Master Association pursuant to the Project Documents. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be credited to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses.

### Section 6.3 Apportionment of Annual Assessments.

The total annual Assessment for any fiscal year of the Association shall be assessed to the Sublots on as set forth in (see Exhibit C) subject to: (a) Common Expenses which are separately metered or assessed to the Sublots by third parties; (b) any increased cost of insurance based upon risk which shall be assessed to Sublots in proportion to the risk; and (c) any Common Expense caused by the misconduct of any Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Owner(s).

### Section 6.4 Special Assessments.

In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Sublots pursuant to the provisions in Section 6.3 entitled "Apportionment of Annual Assessments" set forth above.

### Section 6.5 Due Dates for Assessment Payments.

Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the first day of each month. If any such installment shall not be paid within thirty (30) days after it shall have become due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Sublot commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period. However, if the Common Expenses Liability is re-allocated, any installment(s) of an assessment not yet due shall be recalculated in accordance with the re-allocated Common Expenses Liability.

Section 6.6 Default Assessments.

All Costs of Enforcement assessed against an Owner pursuant to the Declaration, or any expense of the Association which is the obligation of an Owner pursuant to the Declaration shall become a default Assessment assessed against the Owner's Sublot. Notice of the amount and demand for payment of such default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 6.7 Covenant of Personal Obligation for Assessments.

Declarant, by creating the Sublots pursuant to this Declaration, and all other Owners, by acceptance of the deed or other instrument of transfer of his Sublot (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Sublot. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Sublot.

Section 6.8 Lien for Assessments; Assignment of Rents.

The annual, special, and default Assessments (including installments of the Assessments) shall be burdens running with the specific Sublot to which such Assessments apply. The Association may impose a lien upon a specific Sublot, by preparing a written lien notice setting forth the description of the Sublot, the amount of Assessments on the Sublot unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Owner or Owners of the Sublot, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Upon any default in the payment of annual, special, or default Assessments, the Association shall also

have the right to appoint a receiver to collect all rents, profits, or other income from the Sublot payable to the Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Owner, by ownership of a Sublot, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or default Assessments.

#### Section 6.9 Remedies for Nonpayment of Assessments.

If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment, (b) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (c) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, (d) the Association may proceed to foreclose its lien against the particular Sublot pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Idaho law for foreclosure of real estate mortgages and (e) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Sublot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Sublot acquired in such proceedings.

#### Section 6.10 Purchaser's Liability for Assessments.

Notwithstanding the personal obligation of each Owner to pay all Assessments on the Sublot, and notwithstanding the Association's perpetual lien upon a Sublot for such Assessments, all purchasers shall be jointly and severally liable with the prior Owner(s) for any and all unpaid Assessments against such Sublot, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Owner of a Sublot. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner of a Sublot upon the execution and delivery of

the deed or other instruments conveying or transferring title to the Sublot, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Sublot, irrespective of the date the deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

#### Section 6.11 Subordination of Association's Lien for Assessments.

The Association's perpetual lien on a Sublot for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by an Idaho governmental or political subdivision or special taxing district, or any other liens made superior by statute;
- (b) liens recorded prior to this Declaration unless otherwise agreed by the parties thereto; and
- (c) the lien of any First Mortgagee except to the extent Idaho law grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Sublot by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Sublot free of any claims for unpaid Assessments and Costs of Enforcement against the Sublot which accrue prior to the time such First Mortgagee acquires title to the Sublot except to the extent the amount of the extinguished lien may be reallocated and assessed to all Sublots as a Common Expense. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Sublot after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Sublot, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Sublot for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser of a Sublot from liability for, or the Sublot from the lien of, any Assessments made after the sale or transfer.

#### Section 6.12 Statement of Status of Assessments.

On or before fourteen (14) calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors, any Owner, holder of a Security Interest, prospective purchaser of a Sublot or their designees shall be furnished a statement of the Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Sublot;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- (c) the date(s) for payment of any installments of any special Assessments outstanding against the Sublot; and
- (d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

#### Section 6.13 Liens.

Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Owner in the Common Elements.

### **ARTICLE 7. MAINTENANCE RESPONSIBILITY**

#### Section 7.1 Responsibility of the Owner.

Each Owner shall be responsible for ongoing maintenance and care of the Sublots and for keeping the same in an excellent, clean, sanitary, and attractive condition.

#### Section 7.2 Owner's Negligence.

In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall

automatically become a default Assessment determined and levied against such Sublot, enforceable by the Association in accordance with this Declaration.

Section 7.3 Responsibility of the Association.

The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Property not required in this Declaration to be maintained and kept in good repair by an Owner or by Declarant. Without limiting the foregoing, the Association shall be responsible for the maintenance and repair of the following:

a) all landscape areas, including landscaped areas within the dedicated street right-of-ways and those areas set aside as parks for the enjoyment of the community at large, if any. This maintenance shall include, but not be limited to, irrigation, planting, pruning, replacement of dying trees, grasses, and shrubs, and maintenance and replacement of park amenities such as tables and benches.

b) all streets, ways, alleys, and parking areas not dedicated to the public. These areas shall be maintained in a neat, attractive and safe manner and shall include necessary paving, drainage, and snow removal.

c) removal of snow from sidewalks within the public right of way.

d) snow removal and snow storage areas not located on land dedicated to the City.

Section 7.4 Mechanics' Liens.

Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Sublot with the consent of or at the request of the Owner or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Sublot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Sublot of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Sublot, against the Sublot of another Owner or against the Common Elements, or any part thereof.

Section 7.5 Enforcement by the Association.

At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of this Article 7 by collecting from the Owner of the



Sublot on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Owner of the Sublot on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 7.5, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Sublot, and enforceable by the Association pursuant to this Declaration.

## **ARTICLE 8. USE RESTRICTIONS**

### **Section 8.1 Use of Sublots.**

No alterations to any Sublot, including painting, excavation, construction or other alteration shall be made or caused to be made by any Owner without the prior written consent of the Board of Directors.

### **Section 8.2 Short Term Rentals.**

No Sublot or unit shall be rented or leased for a period of less than thirty (30) days, and any rental or lease below this threshold shall be forbidden.

## **ARTICLE 9. EASEMENTS**

### **Section 9.1 Easement of Enjoyment.**

Every Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Sublot, subject to the easements set forth in this Agreement.

### **Section 9.2 Delegation of Use.**

Any Owner may delegate, in accordance with the Project Documents, the Owner's right of enjoyment in the Common Elements to an Occupant of the Owner's Sublot.

### **Section 9.3 Recorded Easements.**

The Property shall be subject to any easements shown on any recorded plat affecting the Property, shown on the recorded Map or reserved or granted under this Declaration.

### **Section 9.4 Utility Easements.**

There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable

communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association, and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant during the Period of Declarant Control and, thereafter, the Association, shall have the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 9.4 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 9.5 Emergency Access Easement.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 9.6 Easements of Access for Repair, Maintenance, and Emergencies.

Some of the Common Elements are or may be located within the Sublots or may be conveniently accessible only through the Sublots. The Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Sublot and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Sublot.

Section 9.7 Easements Deemed Created.

All conveyances of Sublots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 9, even though no specific reference to such easements or to this Article 9 appears in the instrument for such conveyance.

## **ARTICLE 10. DURATION OF COVENANTS; AMENDMENT AND TERMINATION**

Section 10.1 Term.

This Declaration and any amendments or supplements to it shall remain in effect from the date of recordation for a period of fifty (50) years. Thereafter, this Declaration shall be

automatically extended for successive periods of ten (10) years each, unless otherwise terminated or modified as provided in this Article.

Section 10.2 Amendment of Declaration.

Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration (including the Map) may be amended only by a vote or agreement of Owners to which seventy-five (75%) of the votes in the Association are allocated.

Section 10.3 Execution of Amendments; Expenses.

Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 10.4 Recording of Amendments.

Any amendment to this Declaration shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable) were obtained and are on file in the office of the Association. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

**ARTICLE 11. MISCELLANEOUS**

Section 11.1 Enforcement.

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration shall be through any proceedings at law or in equity brought by any aggrieved Owner, the Association, or Declarant against the Association or any Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 11.2 Notices.

All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly

delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopier or email.

Section 11.3 Nonwaiver.

Failure by Declarant, the Association, or any Owner to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 11.4 Severability.

The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 11.5 Number and Gender.

Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 11.6 Captions.

The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 11.7 Conflicts in Legal Documents.

. In case of conflicts between the provisions in this Declaration and the Master Declaration, the Master Declaration shall control. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control

Section 11.8 Exhibits.

All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 11.9 Choice of Law.

This Declaration shall be construed and interpreted in accordance with the laws of the State of Idaho.

Section 11.10 Negotiation and Mediation. If any dispute arises by and among the Owners or Directors, the parties shall negotiate in good faith in an attempt to resolve the dispute or claim. If the parties are unable to resolve the dispute, prior to initiating any legal proceedings, the parties shall submit the dispute to a mediator or mediation service as may be mutually agreed upon by the parties. If the parties do not settle the claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings.

Executed as of \_\_\_\_\_, 2021

WESTCLIFF LLC

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

Its:

STATE OF IDAHO )

County of Blaine )

)  
ss

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for said state, personally appeared \_\_\_\_\_, known or identified to me to be an authorized agent of WESTCLIFF, LLC, an Idaho limited liability company, who subscribed said limited partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said name.

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

\_\_\_\_\_  
Notary Public for Idaho

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

DRAFT

**EXHIBIT A  
TO  
DECLARATION**

**ASSOCIATION ARTICLES OF INCORPORATION**

DRAFT

**EXHIBIT B  
TO  
DECLARATION**

**ASSOCIATION BYLAWS**

DRAFT



**EXHIBIT C  
TO  
DECLARATION**

**COMMON AREA OWNERSHIP INTEREST**

Allocation of Garage and Livable Square Footage in Common Area  
and Project Building

<u>Lot Number</u>	<u>Interest in Common Area (% of Lot Area of Project Building Area)</u>
1	25%
2	25%
3	25%
3	25%
	100.00%

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:  
Michael D. Pogue  
Gravis Law, PLLC  
P.O. Box 3020  
Sun Valley, ID 83353

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(space above line for recorder's use)

## ACCESS EASEMENT

This Easement Agreement ("Agreement") is dated for reference purposes the \_\_\_\_ day of \_\_\_\_\_, 2023, and is made and entered by Westcliff, LLC, an Idaho limited liability company ("Owner").

- 1) Recitals. This Agreement is made in contemplation of the following facts and purposes:
  - b) Westcliff, LLC is the owner in fee simple of a parcel of property located in Blaine County, Idaho, 110 Rember St., Ketchum, ID, more particularly described as Bavarian Village Sub Lot 3B, Blaine County, Idaho (the "Property").
  - c) The Property shall be subdivided into four (4) sublots as reflected in the Attached Exhibit A (page 2).
  - d) Owner desires to create and designate a 20-foot-wide easement within Sublot 2 for ingress, egress, public utilities and emergency vehicle access (the "Easement Area") to benefit Sublot 1. Sublot 1, Sublot 2 and the Easement Area are reflected in Exhibit A.
  - e) The Easement Area is more particularly described on Exhibit A.

Now, therefore, on the basis of the foregoing Recitals, and intending to be bound thereby:

- 2) Grant of Easement
  - a) Owner hereby grants and conveys to Sublot 1, its owners, successors and assigns (collectively, "Grantee"), a non-exclusive easement over and across the Easement Area for the purposes of ingress, egress, public utilities and emergency vehicle access.
  - b) Grantee shall keep and maintain the Easement Area in a clean and safe condition, and shall be responsible for improving, repairing and removing snow from the Easement Area and all improvements thereto at its sole expense. In particular, Grantee shall maintain and perform necessary repairs on the boiler and snowmelt system that relates and benefits Grantee's Sublot 1 property and the Easement Area.
- 3) Grantee hereby indemnifies and agrees to hold Owner, Sublot 2 (and its owners and successors and assigns) and the Westcliff Townhomes Owners Association, Inc. safe and

harmless from and against any and all loss, cost, damage and expense (including attorney's fees and court costs), suffered or incurred by reason of this Agreement or the use of the Easement Area by Grantee, Grantee's invitees, or anyone claiming, by, through or under Grantee.

- 4) **Successors and Assigns.** All provisions of this Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the parties hereto.
- 5) **Recordation of Instrument.** The parties agree that this Agreement may be duly recorded.
- 6) **Owner Indemnification.** The owners of Sublot 1, Sublot 2 and the Westcliff Townhomes Owners Association, Inc. agree to hold Owner harmless from any and all claims relating to the preparation, force and effect of this Access Agreement.
- 7) **Miscellaneous Provisions**
  - a) The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.
  - b) Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.
  - c) Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees as may be determined by any court of competent jurisdiction wherein such action is brought.
  - d) This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matter.
  - e) This Agreement shall be construed in accordance with the laws of the State of Idaho.
  - f) No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

WESTCLIFF, LLC

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

STATE OF IDAHO                    )  
  ) ss.  
County of Blaine                 )

On this \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, known to me or proved to me upon satisfactory evidence to be the authorized agent for Westcliff, LLC, the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

# Benchmark Associates

ENGINEERING, PLANNING, SURVEYING & MAPPING  
P.O. Box 733 - 100 Bell Drive  
Ketchum, Idaho 83340  
208/726-9512 Fax 208/726-9514 www.benchmark-associates.com

## EASEMENT DESCRIPTION

A parcel of land lying within Lot 3B of Bavarian Village Subdivision, Instrument No. 680918, Section 13, Township 4 North, Range 17 East, B.M., Ketchum, Blaine County, Idaho. Said parcel of land being more particularly described by metes and bounds as follows:

**Commencing** at a 1/2" rebar with cap marked LS 11179, marking the southeast corner of Lot 3B of Bavarian Village Subdivision, said point being the **Point Of Beginning**;

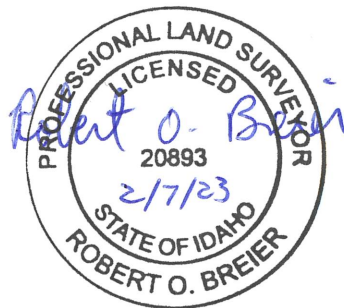
thence N89°25'35"W, 79.65 feet along the southerly boundary of said Lot 3B;

thence departing said southerly boundary, N00°34'38"E, 20.00 feet;

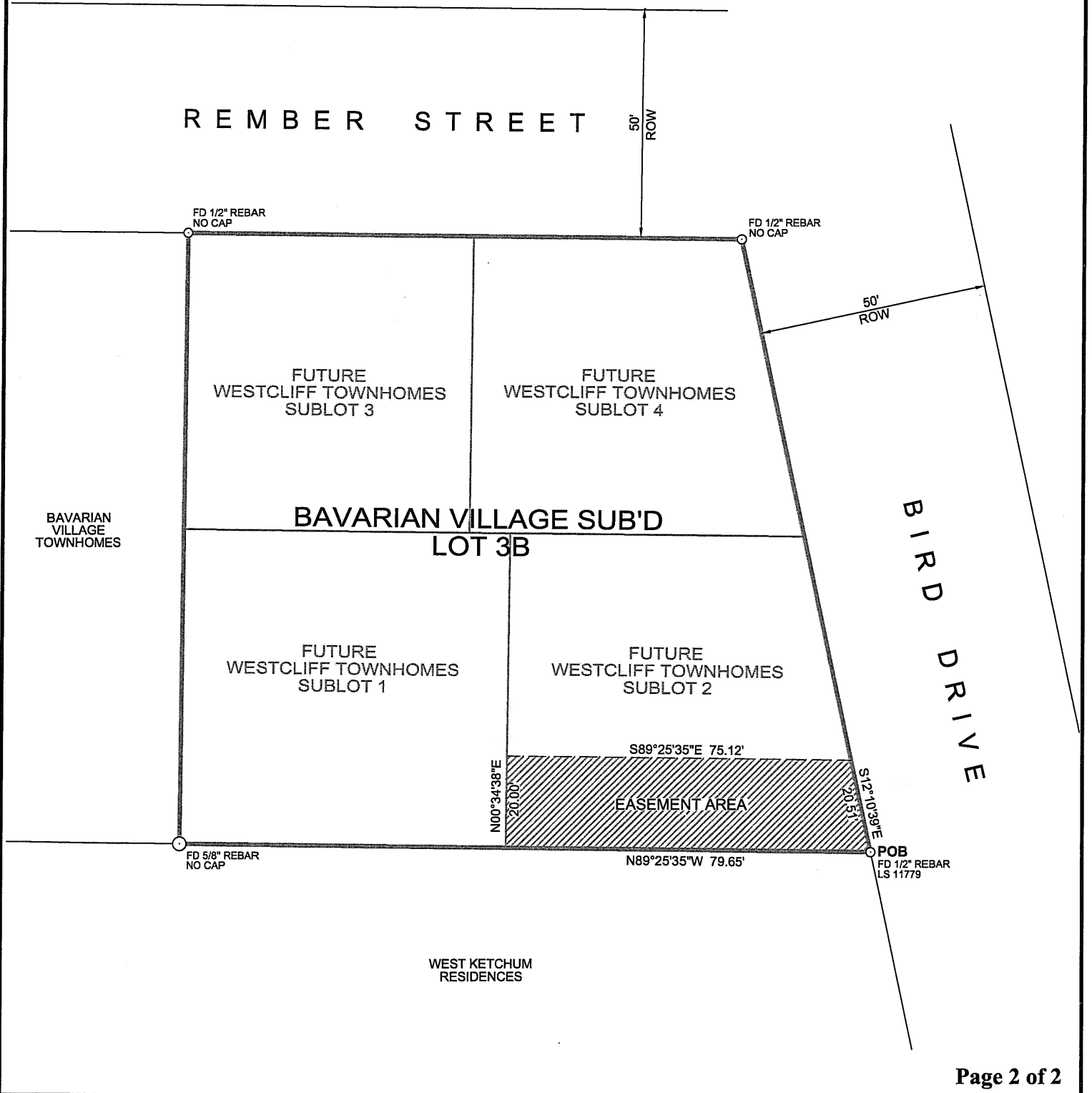
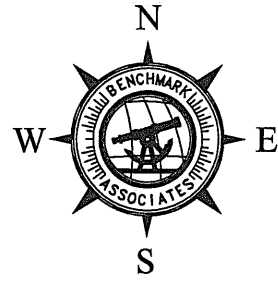
thence S89°25'35"E, 75.12 feet to the westerly right-of-way of Bird Drive;

thence S12°10'39"E along said westerly right-of-way, 20.51 feet to the **Point of Beginning**.

Said parcel having an approximate area of 0.04 acres (1548 square feet), more or less. See exhibit map attached hereto and made a part of this description.



# EASEMENT EXHIBIT





City of Ketchum

# Attachment B: Final Plat

# WESTCLIFF TOWNHOMES

FILE NO. P23-011

LOCATED WITHIN: SECTION 13, TOWNSHIP 4 NORTH, RANGE 17 EAST, B.M.,  
CITY OF KETCHUM, BLAINE COUNTY, IDAHO

A TOWNHOUSE SUBDIVISION OF BAVARIAN VILLAGE SUBDIVISION, LOT 3B.

MARCH 2023

## LEGEND:

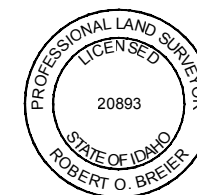
- PROPERTY BOUNDARY
- SUBLOT LINE
- ADJOINING PROPERTY LINE
- EASEMENT LINE AS SHOWN
- BE
- BUILDING ENVELOPE
- BLAINE COUNTY GIS TIES
- FOUND 5/8" REBAR (MARKED AS NOTED)
- FOUND 1/2" REBAR (MARKED AS NOTED)
- SET 5/8" REBAR, PLS 20893

## SURVEYOR'S NARRATIVE:

- THE PURPOSE OF THIS PLAT IS TO CREATE FOUR TOWNHOUSE SUBLOTS WITHIN BAVARIAN VILLAGE SUBDIVISION, LOT 3B. FOUND MONUMENTS WERE ACCEPTED AS EITHER ORIGINAL OR REPLACEMENTS OF ORIGINAL CORNERS.
- DIMENSIONS SHOWN HEREON ARE MEASURED. FOR RECORD DIMENSIONS, SEE REFERENCED SURVEYS.
- DOCUMENTS USED IN THE COURSE OF THIS SURVEY:
  - ORIGINAL PLAT OF "BAVARIAN VILLAGE SUBDIVISION", INST. NO. 139821.
  - PLAT OF "BAVARIAN VILLAGE SUBDIVISION: LOTS 3A, 4A, 5A, 6A, 7A & 8A", INST. NO. 631181.
  - PLAT OF "BAVARIAN VILLAGE SUBDIVISION: LOT 3B", INST. NO. 680918.

## NOTES:

- REFER TO THE ORIGINAL PLAT OF BAVARIAN VILLAGE SUBDIVISION, INST. NO. 139821, TO THE PLAT OF BAVARIAN VILLAGE SUBDIVISION: LOTS 3A, 4A, 5A, 6A, 7A & 8A, INST. NO. 631181 AND TO THE PLAT OF BAVARIAN VILLAGE SUBDIVISION: LOT 3B, INST. NO. 680918 FOR CONDITIONS, RESTRICTIONS AND PLAT NOTES GOVERNING THIS PROPERTY.
- THE TOWNHOME DECLARATION FOR WESTCLIFF TOWNHOMES WERE RECORDED AS INST. NO. \_\_\_\_\_, RECORDS OF BLAINE COUNTY, IDAHO.
- THE PHASED DEVELOPMENT AGREEMENT FOR WESTCLIFF TOWNHOMES WAS RECORDED AS INST. NO. 683171, RECORDS OF BLAINE COUNTY, IDAHO.
- ALL TOWNHOUSE OWNERS SHALL HAVE MUTUAL RECIPROCAL EASEMENTS FOR EXISTING AND FUTURE PUBLIC AND PRIVATE UTILITIES INCLUDING, BUT NOT LIMITED TO, WATER, CABLE TV, SEWER, NATURAL GAS, TELEPHONE, AND ELECTRIC LINES OVER, UNDER AND ACROSS THEIR TOWNHOUSE SUBLOTS AND COMMON AREA FOR THE REPAIR, MAINTENANCE AND REPLACEMENT THEREOF.
- A 20 FOOT WIDE EASEMENT WITHIN SUBLOT 2 FOR INGRESS, EGRESS, PUBLIC UTILITIES AND EMERGENCY VEHICLE ACCESS PER INST. NO. \_\_\_\_\_.



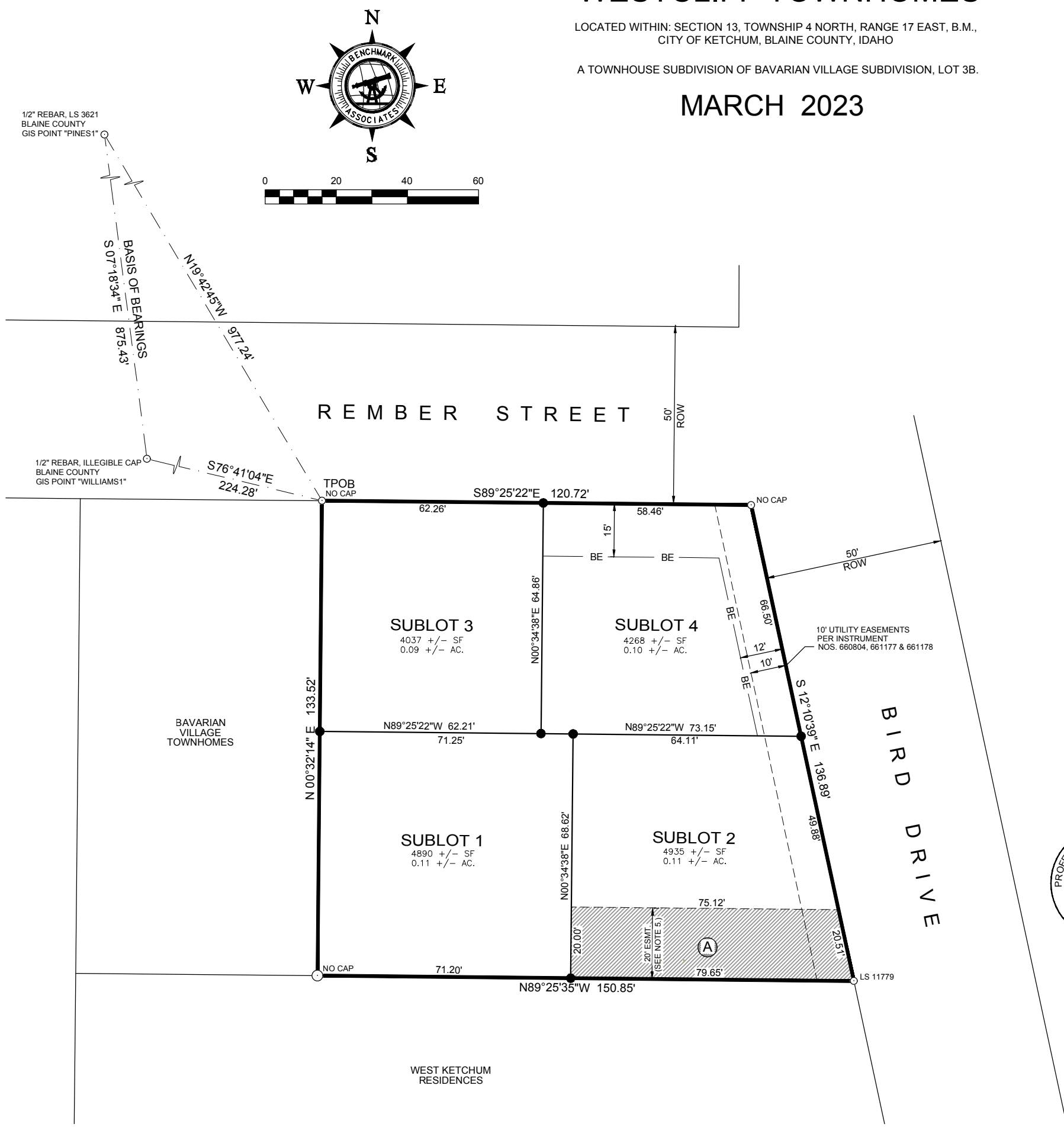
## HEALTH CERTIFICATE

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

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

South Central Public Health District, REHS

	<b>WESTCLIFF TOWNHOMES</b>	
	LOCATED WITHIN: SECTION 13, T4N, R17E, B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO	
PREPARED FOR: WESTCLIFF, LLC		
PROJECT NO. 20261	DWG BY: DWS/CPL	FILE: 20261pg1.DWG
FINAL PLAT	DATE: 03/27/2023	SHEET: 1 OF 3





WESTCLIFF TOWNHOMES

OWNER'S CERTIFICATE

THIS IS TO CERTIFY that WESTCLIFF, LLC, an Idaho limited liability company is the owner in fee simple of Real Property described as follows:

A parcel of land located within Section 13, Township 4 North, Range 17 East, Boise Meridian, Ketchum, Idaho, more particularly described as follows:

Lot 3B of BAVARIAN VILLAGE SUBDIVISION: LOT 3B, as shown on the official plat thereof, recorded as Instrument No. 680918, records of Blaine County, Idaho.

The easements shown hereon are not dedicated to the public, but the right to use said easements for the intended purposes is hereby reserved. No structures other than for such utility and other designated uses are to be erected within the lines of said easements.

Pursuant to Idaho Code 50-1334, the undersigned, as owner, does hereby state that the lots on this plat are eligible to receive water service from the Ketchum Water Department, and that said district has agreed in writing to serve the lots shown on this plat.

IN WITNESS WHEREOF, I have hereunto set my hand.

WESTCLIFF, LLC, an Idaho limited liability company

By: WESTCLIFF INVESTMENTS, LLC, an Ohio limited liability company

By: \_\_\_\_\_  
LAYNE THOMPSON, Manager

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year of 20\_\_, before me, the undersigned, personally appeared LAYNE THOMPSON, known or identified to me (or proved to me), to be the manager of Westcliff Investments, LLC, the manager of Westcliff, LLC and acknowledged to me that he and said limited liability company executed the same.

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

\_\_\_\_\_  
Notary Public

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_



WESTCLIFF TOWNHOMES

LOCATED WITHIN: SEC. 12, T4N, R17E, B.M.,  
CITY OF KETCHUM, BLAINE COUNTY, IDAHO

PREPARED FOR: WESTCLIFF, LLC

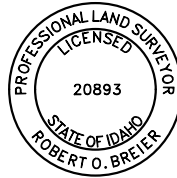
PROJECT NO. 20261	DWG BY: CPL	FILE: 20261CRT.DWG
FINAL PLAT	DATE: 01/26/2023	SHEET: 2 OF 3

# WESTCLIFF TOWNHOMES

**SURVEYOR'S CERTIFICATE**

I, Robert O. Breier, a duly Registered Professional Land Surveyor in the State of Idaho, do hereby certify that this is a true and accurate map of the land surveyed under my direct supervision in accordance with the State of Idaho Code relating to plats and surveys.

ROBERT O. BREIER, P.L.S. #20893



**PROJECT ENGINEER'S CERTIFICATE**

I, the undersigned, Project Engineer for Westcliff Townhomes do hereby certify that the subdivision is in accordance with the City of Ketchum subdivision standards, on this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

**COUNTY SURVEYOR'S APPROVAL**

This is to certify that I, SAM YOUNG, County Surveyor for Blaine County, Idaho, have checked the foregoing plat and computations for making the same and have determined that they comply with the laws of the State of Idaho relating thereto.

\_\_\_\_\_  
BLAINE COUNTY SURVEYOR

\_\_\_\_\_  
DATE

**BLAINE COUNTY TREASURER'S CERTIFICATE**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the foregoing plat was approved and accepted by the Blaine County Treasurer, Blaine County, Idaho.

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

**BLAINE COUNTY RECORDER'S CERTIFICATE**

**KETCHUM CITY COUNCIL CERTIFICATE**

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

By: \_\_\_\_\_  
TRENT DONAT, City Clerk

**CITY ENGINEER'S CERTIFICATE**

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

\_\_\_\_\_  
ROBYN MATTISON, City Engineer

**CITY PLANNER'S CERTIFICATE**

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

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

	<b>WESTCLIFF TOWNHOMES</b>	
	LOCATED WITHIN: SECTION 13, T4N, R17E, B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO PREPARED FOR: WESTCLIFF, LLC	
PROJECT NO. 20261	DWG BY: CPL	FILE: 20261CRT.DWG
FINAL PLAT	DATE: 05/09/2023	SHEET: 3 OF 3



City of Ketchum

# Attachment C: Draft Findings of Fact, Conclusions of Law, and Decision



City of Ketchum  
Planning & Building

IN RE: )  
)  
Westcliff Townhomes ) KETCHUM CITY COUNCIL  
Townhouse Final Plat ) FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
Date: May 15, 2023 ) DECISION  
)  
File Number: P23-011 )

PROJECT: Westcliff Townhomes  
FILE NUMBERS: P23-011  
APPLICATION: Townhouse Subdivision Final Plat  
REPRESENTATIVE: Cinda Williams, Galena/Benchmark Engineering  
OWNER: Westcliff, LLC  
LOCATION: 110 Rember Street (Bavarian Village Subdivision, Lot 3B)  
ZONING: General Residential High Density (GR-H) Zoning District  
OVERLAY: None  
NOTICE: A public hearing was conducted for the townhouse preliminary plat approval. Public hearings are not required for townhouse final plats; therefore, no public hearing was scheduled for the application.

**RECORD OF PROCEEDINGS**

The City of Ketchum received the application for the Westcliff Townhomes final plat on February 22, 2023. The application was deemed complete on March 24, 2023. City departments conducted a thorough review of the application. Per the conditions of approval for the townhouse preliminary plat, all conditions of the Design Review approval, townhouse preliminary plat, and phased development agreement must be met prior to approval of the final plat. As of the date of these findings, all conditions have been met and all department comments have been addressed satisfactorily through applicant revision of project plans or conditions of approval.

The Ketchum City Council conducted their final consideration of the Townhouse Subdivision Final Plat (File No. P23-011) application at their May 15, 2023, meeting. After considering the staff's analysis and the application materials, the Council approved the application unanimously.

**BACKGROUND**

The Westcliff Townhomes is a 4-unit detached townhome development on a 0.42 acre vacant lot at the southwest corner of Rember Street and Bird Drive within the General Residential High Density (GR-H) Zoning District. The Planning & Zoning Commission held a public hearing and approved the Design Review (Application No. P20-019) and unanimously recommended approval of the Townhouse Subdivision Preliminary Plat and Phased Development Agreement (Application P21-008) to the City Council on April 27, 2021. The Ketchum City Council considered and approved the Townhouse Subdivision application and Phased Development Agreement at their May 17, 2021 meeting.

**FINDINGS OF FACT**

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

**FINDINGS REGARDING COMPLIANCE WITH TOWNHOUSE SUBDIVISION REQUIREMENTS**

Townhouse Plat Requirements					
Compliant			Standards and City Council Findings		
Yes	No	N/A	City Code	City Standards and City Council Findings	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.B	Townhouse Owners' Documents: The subdivider of the townhouse project shall submit with the preliminary plat application a copy of the proposed party wall agreement and any proposed document(s) creating an association of owners of the proposed townhouse sublots, which shall adequately provide for the control and maintenance of all commonly held facilities, garages, parking and/or open spaces. Prior to final plat approval, the subdivider shall submit to the city a final copy of such documents and shall file such documents prior to recordation of the plat, which shall reflect the recording instrument numbers.	
			<i>Findings</i>	<i>The applicant has submitted a complete final plat application including the CC&amp;Rs. Per condition of approval #1, the applicant shall file such document for recording in conjunction with the final plat for recording.</i>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.C. 2	The subdivider may apply for preliminary plat approval from the City Council pursuant to subsection 16.04.030D of this chapter at the time application is made for design review approval pursuant to title 17, chapter 17.96 of this code. The City Council may approve, deny or conditionally approve such preliminary plat upon consideration of the action taken on the application for design review of the project.	
			<i>Findings</i>	<i>The townhome subdivision preliminary plat and design review applications for the development were reviewed concurrently. The design review was approved by the Planning and Zoning Commission on April 27, 2021 and the Preliminary Plat was approved by the City Council on May 17, 2021.</i>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.C. 3	The preliminary plat, other data, and the commission's findings may be transmitted to the council prior to commencement of construction of the project under a valid building permit issued by the City. The council shall act on the preliminary plat pursuant to subsection 16.04.030E and F of this chapter.	

			<i>Findings</i>	<i>The Ketchum City Council reviewed the preliminary plat per the requirements of all applicable sections and approved the plat as outlined in the findings of fact dated May 17, 2021.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.C.4	In the event a phased townhouse development project is proposed, after preliminary plat is granted for the entirety of a project, the final plat procedure for each phase of a phased development project shall follow §16.04.030.G and comply with the additional provisions of §16.04.110 of this code.
			<i>Findings</i>	<i>A Phased Development Agreement was approved by City Council on May 17, 2021 and recorded under Instrument #683171. All requirements of the agreement have been met as of the date of these findings.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.D	D. Final Plat Procedure: 1. The final plat procedure contained in subsection 16.04.030G of this chapter shall be followed. However, the final plat shall not be signed by the city clerk and recorded until the townhouse has received either: a. A certificate of occupancy issued by the city of Ketchum for all structures in the townhouse development and completion of all design review elements as approved by the planning and zoning administrator; or b. Signed council approval of a phased development project consistent with §16.04.110 herein. 2. The council may accept a security agreement for any design review elements not completed on a case by case basis pursuant to title 17, chapter 17.96 of this code.
			<i>Findings</i>	<i>Per the phased development agreement, a certificate of occupancy for one unit was required prior to approval of the final plat. A certificate of occupancy for the first unit was issued on May 9, 2023, and therefore the final plat can be approved and recorded.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.E.1	E. Required Findings: In addition to all Townhouse Developments complying with the applicable provisions of Title 17 and this Subdivision Chapter (§16.04), the Administrator shall find that  All Townhouse Developments, including each individual subplot, shall not exceed the maximum building coverage requirements of the zoning district.
			<i>Findings</i>	<i>The townhome project is located within the GR-H Zone. Building coverage requirements do not apply to the project as the size of the project is dictated by Floor Area Ratio. The townhomes development has a Floor Area Ratio of 0.72. As the FAR exceeds the 0.5 FAR maximum, a community housing contribution was made in the form of a fee-in-lieu payment. The fee was paid prior to issuance of the first building permit for the project.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.E.2	Garage: All garages shall be designated on the preliminary and final plats and on all deeds as part of the particular townhouse units. Detached garages may be platted on separate sublots; provided, that the ownership of detached garages is tied to specific townhouse units on the townhouse plat and in any owner's documents, and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the townhouse development.

			<i>Findings</i>	<i>Each townhome unit includes an attached 2-car garage within each subplot.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.080.E.3	General Applicability: All other provisions of this chapter and all applicable ordinances, rules and regulations of the city and all other governmental entities having jurisdiction shall be complied with by townhouse subdivisions. (Ord. 1061 § 3, 2009: Ord. 879 § 4, 2001: Ord. 460 § 2, 1987)
			<i>Findings</i>	<i>This townhouse subdivision will comply with all applicable local, state, and federal ordinances, rules, and regulations.</i>

**FINDINGS REGARDING COMPLIANCE WITH SUBDIVISION FINAL PLAT REQUIREMENTS**

Final Plat Requirements				
Compliant			Standards and City Council Findings	
YES	NO	N / A	Ketchum Municipal Code	City Standards and <i>City Council Findings</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K	<p>Contents Of Final Plat: The final plat shall be drawn at such a scale and contain such lettering as to enable same to be placed upon sheets of eighteen inch by twenty four inch (18" x 24") Mylar paper with no part of the drawing nearer to the edge than one-half inch (1/2"), and shall be in conformance with the provisions of title 50, chapter 13, Idaho Code. The reverse side of such sheet shall not be used for any portion of the drawing, but may contain written matter as to dedications, certificates, signatures, and other information. The contents of the final plat shall include all items required under title 50, chapter 13, Idaho Code, and also shall include the following:</p> <p><i>Findings</i> <i>The Final Plat mylar shall be prepared following Ketchum City Council review and approval of the Final Plat application and shall meet these standards.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.1	<p>Point of beginning of subdivision description tied to at least two (2) governmental survey corners, or in lieu of government survey corners, to monuments recognized by the city engineer.</p> <p><i>Findings</i> <i>As shown on sheet 1, there are two points of beginning for the proposed subdivision. Therefore, this standard is met.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.2	<p>Location and description of monuments.</p> <p><i>Findings</i> <i>As shown on Sheet 1, all monuments are noted and described. Therefore, this standard is met.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.3	<p>Tract boundary lines, property lines, lot lines, street right of way lines and centerlines, other rights of way and easement lines, building envelopes as required on the preliminary plat, lot area of each lot, boundaries of floodplain and floodway and avalanche district, all with bearings, accurate dimensions in feet and decimals, in degrees and minutes and radii, arcs, central angles, tangents and chord lengths of all curves to the above accuracy.</p>

			<i>Findings</i>	<i>Sheet 1 provides property lines and boundary lines for the subject property, adjacent subdivisions, easements, and adjacent streets. As shown, this standard is met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.4	Names and locations of all adjoining subdivisions.
			<i>Findings</i>	<i>As shown on Sheet 1, the adjacent subdivisions of Bavarian Village Townhomes and West Ketchum Residences are all labeled.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.5	Name and right of way width of each street and other public rights of way.
			<i>Findings</i>	<i>As shown on Sheet 1, the right of ways for Rember St and Bird Dr are both named and dimensioned.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.6	Location, dimension and purpose of all easements, public or private.
			<i>Findings</i>	<i>Sheet 1 outlines all applicable easements on the property, public and private, including easements for utilities and access.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.K.7	The blocks numbered consecutively throughout each block.
			<i>Findings</i>	<i>This townhouse subdivision is part of an existing subdivision and no additional blocks are being created or numbered.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.K.8	The outline of any property, other than a street, alley or easement, which is offered for dedication to public use, fully dimensioned by distances and bearings with the area marked "Dedicated to the City of Ketchum for Public Use", together with any other descriptive language with regard to the precise nature of the use of the land so dedicated.
			<i>Findings</i>	<i>N/A as no dedications have been required or proposed for this townhouse subdivision.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.9	The title, which shall include the name of the subdivision, the name of the city, if appropriate, county and state, and the location and description of the subdivision referenced to section, township, range.
			<i>Findings</i>	<i>This standard has been met. The name of the proposed subdivision is Westcliff Townhomes.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.10	Scale, north arrow and date.
			<i>Findings</i>	<i>As shown on Sheet 1, this standard has been met.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.11	Location, width, and names of all existing or dedicated streets and other public ways within or adjacent to the proposed subdivision
			<i>Findings</i>	<i>As shown on Sheet 1, the right of ways for Rember St and Bird Dr are both named and dimensioned. No new public streets are being proposed or required for the development.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.12	A provision in the owner's certificate referencing the county recorder's instrument number where the condominium declaration(s) and/or articles of incorporation of homeowners' association governing the subdivision are recorded.
			<i>Findings</i>	<i>Plat note 2 on Sheet 1 includes the required note with a space to put the instrument number for the recorded declarations.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.13	Certificate by registered engineer or surveyor preparing the map certifying to the accuracy of surveying plat.



			<i>Findings</i>	<i>Sheet 3 includes the required signature block that will be signed prior to recording of the final plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.14	A current title report of all property contained within the plat.
			<i>Findings</i>	<i>This standard has been met. A title report and warranty deed were submitted with the Final Plat application and both are current.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.15	Certification of owner(s) of record and all holders of security interest(s) of record with regard to such property.
			<i>Findings</i>	<i>Sheet 2 includes the required signature block for signature of the applicable property owners.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.16	Certification and signature of engineer (surveyor) verifying that the subdivision and design standards meet all city requirements.
			<i>Findings</i>	<i>Sheet 3 includes the required certificate and signature space for the project Engineer to sign the plat prior to recording of the final plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.17	Certification and signature of the city engineer verifying that the subdivision and design standards meet all city requirements.
			<i>Findings</i>	<i>Sheet 3 includes the required certificate and signature space for the City Engineer to sign the plat prior to recording of the final plat.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.K.18	Certification and signature of the city clerk of the city of Ketchum verifying that the subdivision has been approved by the council.
			<i>Findings</i>	<i>Sheet 3 includes the required certificate and signature space for the City Clerk to sign the plat prior to recording of the final plat.</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	16.04.030.K.19	Notation of any additional restrictions imposed by the council on the development of such subdivision to provide for the public health, safety and welfare.
			<i>Findings</i>	<i>N/A as no restrictions were imposed by the Planning &amp; Zoning Commission or Ketchum City Council during review of the Preliminary Plat application.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	16.04.030.L	Final Plat Copies: Both a hard copy and a digital copy of the final plat shall be filed with the administrator prior to being placed upon the Council's agenda. A digital copy of the final plat as approved by the council and signed by the city clerk shall be filed with the administrator and retained by the city. The Applicant shall also provide the city with a digital copy of the recorded document with its assigned legal instrument number.
			<i>Findings</i>	<i>The city received the required application materials on February 22, 2023.</i>

#### **CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code.
2. Under Chapter 65, Title 67, of the Idaho Code the City has passed a subdivision ordinance, Title 16.
4. The City Council has authority to review and approve the applicant's Townhouse Subdivision Final Plat Application pursuant to Chapter 16.04 of Ketchum Code Title 16.

5. The project does meet the standards of approval under Chapter 16.04 of Subdivision Code Title 16.

### **DECISION**

THEREFORE, the Ketchum City Council approves this Final Plat application this Monday, May 15, 2023 subject to the following conditions of approval.

### **CONDITIONS OF APPROVAL**

1. The Townhouse Declaration shall be simultaneously recorded with the Final Plat. The City will not now, nor in the future, determine the validity of the Townhouse Declaration.
2. The final plat shall be filed with the Blaine County Recorder within one year after final plat approval by the council. Failure to file such final plat within that time shall cause all approvals of such final plat to be null and void.

Findings of Fact adopted this 15<sup>th</sup> day of May 2023.

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Neil Bradshaw  
Mayor  
City of Ketchum

Attest:

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Trent Donat, City Clerk