



## City of Ketchum

P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340

November 10, 2014

Mayor Jonas and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Jonas and City Councilors:

### **Public Hearing re: Wick Strasse Street Right-of-way Vacation Petition**

#### Introduction/History

TBDBV, LLC BV, LLC – Dennis Hanggi, Glen H. Hamilton Trust is requesting to vacate the Wick Strasse Street right of way.

#### Current Report

See attached staff report.

#### Financial Requirement/Impact

Wick Strasse Street has been privately maintained in the past, and the Street Department would prefer not to maintain and perform snow removal on the dead end street in the future. In addition, the property contains a well, located on the lot line between Lots 4 and 6, that would be required to be abandoned upon application for building permits for those lots. The applicant should discuss with the Council the possibility of granting that water right to the City, which would be of benefit to the City.

#### Recommendation

- A. The Council may **CONTINUE** the public hearing to a date certain for gathering additional information and further deliberation;
- B. The Council may **DENY** the request for vacation of Wick Strasse Street and instead discuss terms of a land lease of Wick Strasse with the applicant; or
- C. The Council may make a motion to direct staff to develop an ordinance granting vacation of City right-of-way for Wick Strasse Street as shown in **Attachment A, Exhibits A and B**, subject to the following possible conditions:
  1. Vehicular access to the lots contiguous with the currently named Wick Strasse Street, whether in its present location or in a future location, shall come off of said street and not off of Bird Drive.
  2. Prior to issuance of a building permit for any lot served by the currently named Wick Strasse Street, the applicant shall submit civil engineered drawings, stamped by an engineer licensed in the State of Idaho, for street and utility improvements to serve all properties served by the

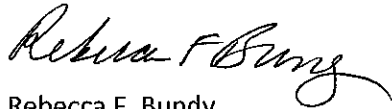
Wick Strasse easement. Said drawing shall be reviewed and approved by the Public Works Director prior to issuance of building permit.

3. Prior to issuance of a building permit for any lot served by the currently named Wick Strasse Street and/or abandonment of the well on Lot 1, the applicant shall transfer the water right for that well to the City. The means for said transfer shall be reviewed and approved by the City Attorney.

Suggested Motions

- A. "I move to **CONTINUE** the Wick Strasse Street Right-of-way Vacation Petition to a date certain.";
- B. "I move to **DENY** the Wick Strasse Street Right-of-way Vacation Petition and to direct staff to develop a lease agreement for use of the Wick Strasse right-of-way per the terms discussed in this meeting."; or
- C. "I move to **APPROVE** the Wick Strasse Street Right-of-way Vacation Petition, subject to conditions 1 – 3, and to direct staff to prepare an ordinance to formalize the vacation request approval."

Sincerely,



Rebecca F. Bundy  
Senior Planner



**STAFF REPORT  
KETCHUM CITY COUNCIL  
MEETING OF NOVEMBER 17, 2014**

- PROJECT:** Wick Strasse Street right of way vacation petition
- APPLICANT:** TBDBV, LLC; BV, LLC – Dennis Hanggi and Glen H. Hamilton Trust, owners of Lots 1 and 5-8, within the subject subdivision.
- REPRESENTATIVE:** Benchmark Associates
- REQUEST:** Request to vacate the Wick Strasse Street right of way (adjacent to Lots 5-8, Bavarian Village Subdivision).
- NOTICE:** All requirements of notice have been met. Legal notice was published in the Mountain Express, a newspaper of general circulation, on October 29, 2014 and November 5, 2014. A notice of the public hearing regarding this matter was mailed by certified mail to property owners within 300 feet of the boundaries of the subject property on November 4, 2014.
- ZONING:** The subject area proposed for vacation is located in the General Residential – High Density Zone District (GR-H).
- REVIEWER:** Rebecca F. Bundy, Senior Planner
- ATTACHMENTS:**
- A. Applicant's Submittal:
    - ROW Vacation Application
    - Applicant's Exhibit A & B
    - Draft Declarations of Special Covenants, Conditions and Restrictions, received November 10, 2014
    - Lawson letter dated, January 27, 2014
    - Lawson letter dated, July 11, 2014
  - B. Correspondence from the public for the Planning and Zoning Commission's September 22, 2014 public hearing. No comment has been received for the City Council hearing.
    - Cheryl Concannon, email, 9/11/14
    - Clyde Holt, email, 9/11/14
    - Elizabeth Insinger, email, 9/12/14

## BACKGROUND

1. The applicant is petitioning the City of Ketchum to vacate the full portion of the Wick Strasse Street right of way. This right of way (which is partially paved) served as a driveway and parking court for what was once the Bavarian Village housing complex. Bavarian Village has since been razed and the property is vacant, with the exception of a water pump house.
2. The Planning and Zoning Commission conducted a public hearing on this application on September 22, 2014, and recommended approval to the City Council, subject to the proposed conditions below.
3. Based on discussions with the applicant and Idaho Power representatives, there are reportedly utilities (notably water lines and underground electric lines and related facilities) that are located on the subject property but have not been mapped by the applicant.
4. The applicants do not have a development plan (subdivision, PUD, multi-family etc.) proposed in conjunction with the requested vacation petition. Presently, lots that adjoin the Wick Strasse Street right of way are under ownership of the applicants, with Lot 5 belonging to Glen H. Hamilton Trust, Lot 6 belonging to TBDBV, LLC, and Lots 7 and 8 belonging to BV, LLC. Considering that all of the parcels in the subdivision are legally defined lots, they may be sold separately (except Lot 1) and change ownership at any time. With this in mind the city needs to ensure that all of the properties upon development can be served with city utilities, adequate access and meet city and applicable codes. (Lots 2, 3 and 4 are unaffected by the vacation, as they have access from Rember Street or Bird Drive.) According to the proposed plat, Lots 5, 6, 7, and 8 have frontage on the proposed new private road and gain area within each re-platted lot.) The applicant has submitted Declarations of Special Covenants, Conditions and Restrictions which name the City as a third party beneficiary to Section 1.C Declarant's Responsibility for Construction, which requires installation of all required utilities prior to issuance of a building permit for any of the properties bordering Wick Strasse Street. This document has been reviewed by the City Attorney to ensure that it adequately ensures installation of the utility lines and protects the City.
5. The owners within the subdivision currently possess a well, located in a one hundred (100) square foot Lot 1 at the southwest corner of Lot 6. Upon development of the now vacant lots, the lots will be required to be served by Ketchum's municipal water service lines, and the well should be abandoned. The City may request, as a condition of approval, that prior to issuance of a building permit for any lot served by the currently named Wick Strasse Street or abandonment of the well on Lot 1, whichever comes first, the applicant shall transfer the water right for that well to the City. The means for said transfer shall be reviewed and approved by the City Attorney. The applicant has indicated that he is amenable to said transfer and is researching his water rights.
6. To better understand the developability of the land, the tables below provide an itemization based upon the zoning parameters of the GR-H Zoning District, if Wick Strasse

Street were to be vacated as requested, with some assumptions. Those assumptions include a maximum FAR of 1.4, that units would be 1,800 square feet in size, maximum 35 foot height (likely needed to achieve maximum FAR), and calculated on developable lot area (excludes areas committed to a public or private street, alley, fire lane, private driveway easement). Many scenarios are possible and these assumptions are not moderate or the extreme, but they are possible. **Table 1** illustrates the developability of all of the lots within the Bavarian Village. **Table 2** illustrates only those lots (Lots 5, 6, 7, and 8) that would take access from Wick Strasse Street if vacated. (Lots 6 and 8 have frontage on Bird Drive, however, with Wick Strasse as a public street or vacated, upon development the City would require access from Wick Strasse versus Bird Drive to manage curb cuts and vehicular turning movements.) The potential of a high number of new units is very possible and must be considered.

The vacation of Wick Strasse Street results in a total of 5,719 square feet of lot area being added to Lots 5, 6, 7 and 8. This additional lot area results in an additional development potential of about 8,000 square feet of gross floor area on those lots. Total possible development, assuming vacation of Wick Strasse Street as requested, is summarized below:

**Table 1**

**Bavarian Village - Total Possible Development**

	Area (sf)	Max FAR	Possible GFA
Lot 2	9078	1.4	12709.2
Lot 3	9078	1.4	12709.2
Lot 4	9047	1.4	12665.8
Lot 5	10115	1.4	14161
Lot 6	11444	1.4	16021.6
Lot 7	9365	1.4	13111
Lot 8	11168	1.4	15635.2
Max possible GFA			97013 sf
Assume 1800 sf/unit			53.9 possible units

**Table 2**

**Possible Development Accessed by Wick Strasse**

	Area (sf)	Max FAR	Possible GFA
Lot 5	10115	1.4	14161
Lot 6	11444	1.4	16021.6
Lot 7	9365	1.4	13111
Lot 8	11168	1.4	15635.2
Max possible GFA			58928.8 sf
Assume 1800 sf/unit			32.7 possible units

## CONSIDERATIONS & RECOMMENDATION

1. All public rights of way and lands are entrusted to the City for the good of the community and should be evaluated with a long term perspective. Wick Strasse Street has been privately maintained in the past, and the Street Department would prefer not to maintain and perform snow removal on the dead end street in the future. In addition, the property contains a well, located on the lot line between Lots 4 and 6, that would be required to be abandoned upon application for building permits for those lots. The applicant should discuss with the Council the possibility of granting that water right to the City.
  
2. City staff have conducted site visits to the property, met with applicant representatives, and evaluated the value and potential purposes of the land proposed for vacation and the impact of the proposed vacation. Engaged in this review were representatives from the Fire Department, Streets Department, Utilities Department, and Parks and Recreation Department. One key concern of staff has to do with who would actually build the access road or driveway, and utilities to serve the adjoining lots. That has been determined in the Declarations of Special Covenants, Conditions and Restrictions to the City Attorney's satisfaction as follows, "Declarant's Responsibility for Construction. Declarant shall construct and install the right-of way described in paragraph A and the utility lines and facilities described in paragraph B, before the issuance by the City of a building permit for any improvement on the Property. As an incident of the work the well house on Lot 1 shall be removed. Declarant shall bear all costs related to the installation, operation, maintenance, repair and replacement of such right-of-way and utility facilities located in the Easement Area, shall repair to the original specifications any damage resulting from such use and shall provide as-built plans for all such improvements and facilities to the Owners within thirty (30) days after the date of completion of construction of same. An infrastructure construction plan shall be developed and submitted to the City before the commencement of any work by Declarant. "

## PROCESS AND CRITERIA FOR REVIEW

The Planning and Zoning Commission is a recommending body to the City Council on right of way vacations and has recommended approval of the current application. The City Council will conduct a duly-noticed public hearing on the matter. Title 16, Subdivision Ordinance, Ketchum Municipal Code offers the following for Vacations and Dedications:

### **16.04.050: VACATIONS AND DEDICATIONS:**

- A. *Application: Any property owner desiring to vacate an existing public street, alley or easement right of way, or desiring to dedicate a street or alley right of way shall file an application with the administrator. Upon receipt of the completed application and other information reasonably required by the administrator, the date of acceptance of the*

*application shall be affixed on the application. Thereafter, such application shall be placed upon the commission agenda for consideration at a regular meeting of the commission, and the procedures followed for such vacations shall comply with Idaho Code sections 50-1321, 50-1325 and 50-1306(A), including subsequent amendment or codification.*

- B. Commission Action: The commission shall consider the application and testimony of the applicant and such other information as may come before it with regard to the proposed vacation or dedication. The commission shall consider the interests of the adjacent property owners, public utilities, conformance of the proposal with the comprehensive plan and the future development of the neighborhood, and shall make its recommendations for accepting or rejecting such application. If dedication of a street is accepted, recommendations for improvements to be made prior to the acceptance shall be made by the commission.*
- C. Council Action: In considering an application for vacation of an existing street, alley or easement right of way, the council shall establish a date for public hearing and give such notice as required by law. The council shall hear and consider the public testimony, applicant testimony, recommendations of the commission, and any other information as may be brought before the council. Whenever the council vacates an existing public street, the city shall provide adjacent property owners with a quitclaim deed for the vacated street as prescribed by law. Such vacation shall become effective upon delivery of such deed(s). When considering an application for dedication to the public of a street, alley or easement right of way, the council may require certain improvements be constructed or performance bond furnished prior to acceptance of the dedication. To complete the acceptance of any dedication, the council shall accept same by resolution or by approval of a final subdivision plat.*
- D. Exemptions: The provisions of this section shall not apply to the widening of any street which is shown in the comprehensive plan or the dedication of non-vehicular easements to the city. (Ord. 316 § 5, 1979)*

Staff analysis:

1. This application has been made by the owner of all properties abutting the public right-of-way proposed for vacation, and said request for vacation has been adequately noticed, per I.C. 50-1321.
2. Portions of the right of way considered for vacation have been used by the surrounding properties for access and utility easements. Such uses may continue after vacation occurs.
3. The vacation may be found in the public interest provided access issues, water rights, and development of the road/installation of utilities to each of the lots are addressed to the Council's satisfaction.

## COUNCIL OPTIONS

- A. The Council may **CONTINUE** the public hearing to a date certain for gathering additional information and further deliberation;
- B. The Council may **DENY** the request for vacation of Wick Strasse Street and instead discuss terms of a land lease of Wick Strasse with the applicant; or
- C. The Council may make a motion to direct staff to develop an ordinance granting vacation of City right-of-way for Wick Strasse Street as shown in **Attachment A, Exhibits A and B**, subject to the following possible conditions:
  - 1. Vehicular access to the lots contiguous with the currently named Wick Strasse Street, whether in its present location or in a future location, shall come off of said street and not off of Bird Drive.
  - 2. Prior to issuance of a building permit for any lot served by the currently named Wick Strasse Street, the property owner shall submit civil engineered drawings, stamped by an engineer licensed in the State of Idaho, for street and utility improvements to serve all properties served by the Wick Strasse easement. Said drawing shall be reviewed and approved by the Public Works Director prior to issuance of building permit.
  - 3. Prior to issuance of a building permit for any lot served by the currently named Wick Strasse Street or abandonment of the well on Lot 1, whichever comes first, the applicant shall, if possible, transfer the water right for that well to the City. The means for said transfer shall be reviewed and approved by the City Attorney.



**Attachment A.**

**Applicant's Submittal:**

- ROW Vacation Application
- Applicant's Exhibit A & B
- Draft Declarations of Special Covenants, Conditions and Restrictions, received November 10, 2014
- Lawson letter dated, January 27, 2014
- Lawson letter dated, July 11, 2014

PETITION FOR VACATION APPLICATION

Pursuant to Idaho Code 50-1306A, a petition to the Ketchum City Council is required when vacating a lot, tract, street, alley, road, highway, common area, plat, or part thereof in the City of Ketchum. Per said requirement, please complete items (1) through (5) below.

Owner

Representative

Name: TBDBV,LLC, BV,LLC -Dennis Hanggi  
Glenn H. Hamilton Trust  
PO Box: 1322, Ketchum, ID 83340  
Phone: 720-0296

Benchmark Associates, P.A.  
PO Box 733, Ketchum, ID 83340  
726-9512

(2) TYPE OF TRACT TO BE VACATED (including tract name and legal description of property to be vacated): Street ROW - Wick Strasse

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

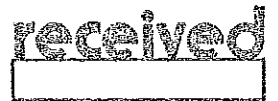
(3) REASON FOR VACATION REQUEST -

See attached petition for vacation by Ed Lawson Esq. attorney for applicant.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) ADDITIONAL SUBMISSION REQUIREMENTS - Please submit the following additional items with this application:

- A. Three (3) copies of applicable map(s), e.g., area map and lot and parcel map, and site map.
- B. Title Report
- C. A copy of the CC&R's (if applicable)
- D. Written approval from all individuals having an interest in the property

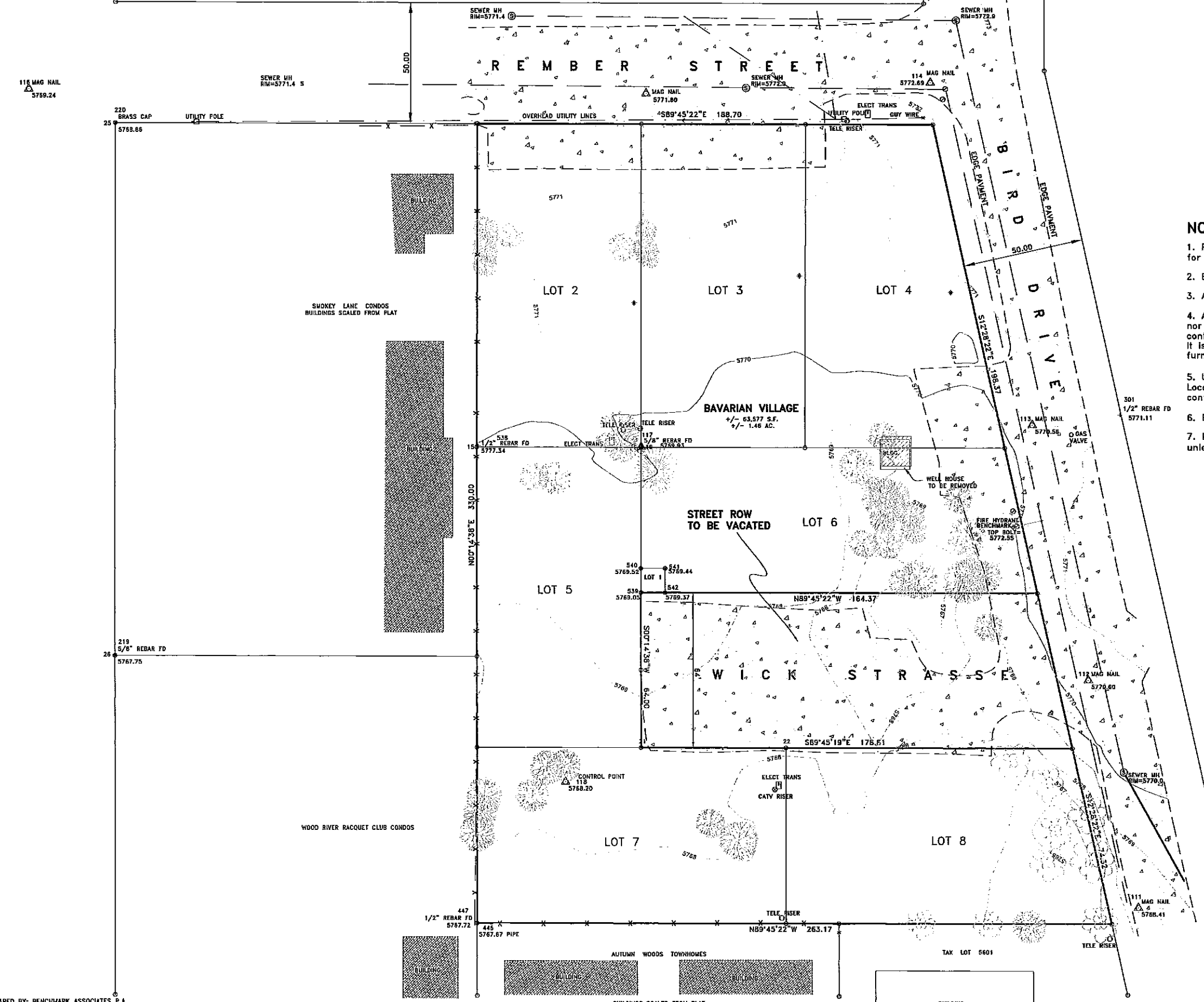


(5) ACKNOWLEDGMENT:

The undersigned certifies that he/she is the owner or authorized representative of the land in question and that he/she has filled in this application to the best of his/her knowledge. The applicant agrees in the event of a dispute concerning the interpretation or enforcement of the petition for vacation 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.

SIGNATURE OF APPLICANT: Dennis M. Hanggi  
Managing Member BV LLC  
and TBDBV LLC

DATE: 1/22/14



- NOTES:**
1. Refer to the original plat of: BAVARIAN VILLAGE SUBDIVISION for restrictions and conditions affecting this property.
  2. Boundary lines and easements shown hereon are per plat.
  3. A Title Search has not been performed.
  4. A Title Policy has not been submitted to Benchmark Associates, nor has a Title search been requested. Certain Information contained within said policy may not appear on this map. It is the responsibility of the owner or agent to request or furnish said Information.
  5. Utilities shown hereon are per surface evidence only. Location of underground utilities and services should be confirmed prior to excavation or design.
  6. Elevations from NGVD 29.
  7. Building walls shown hereon are outside face of building unless otherwise noted.

**LEGEND:**

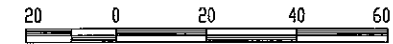
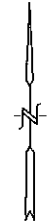
--- X --- X ---	PROPERTY BOUNDARY
---	FENCE
---	OVERHEAD UTILITY LINES
---	EDGE PAVEMENT
---	APPROXIMATE SEWER MAIN
---	APPROXIMATE WATER MAIN
○	WATER VALVE
+	LIGHT POLE
○	DECIDUOUS TREE
●	EVERGREEN TREE
○	BUSH

# EXHIBIT A

	<b>WICK STRASSE VACATION EXHIBIT</b>	
	LOCATED WITHIN: SEC. 13, T4N, R17E, B.M., BLAINE COUNTY, IDAHO.	
PREPARED FOR: DENNIS HANGGI		
A SITE MAP	PLOT BY: DWS/CPL	DATE: 01/07/2013
PROJECT NO. 12151	FILE: 12151-VACA.DWG	CO-ORD FILE: 00451.CRD

© PREPARED BY: BENCHMARK ASSOCIATES P.A.  
 P.O. BOX 735  
 KETCHUM, IDAHO, 83340  
 (208) 726-9512

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Scale: 1"=20'

**NOTES:**

1. Refer to the original plat of: BAVARIAN VILLAGE SUBDIVISION for restrictions and conditions affecting this property.
2. Boundary lines and easements shown hereon are per plat.
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5. Utilities shown hereon are per surface evidence only. Location of underground utilities and services should be confirmed prior to excavation or design.
6. Elevations from NGVD 29.
7. Building walls shown hereon are outside face of building unless otherwise noted.
8. A 26 foot wide and 60 foot diameter Private Access and Public Utility Easement is granted within Lots 5, 6, 7 & 8 to benefit Lots 5, 6, 7 & 8 as shown hereon.

**LEGEND:**

- PROPERTY BOUNDARY
- FENCE
- OVERHEAD UTILITY LINES
- LOT LINE ELIMINATED
- EASEMENT LINE (SEE NOTE 8.)
- WATER VALVE
- LIGHT POLE
- DECIDUOUS TREE
- EVERGREEN TREE
- BUSH

RIGHT-OF-WAY  
TO BE DEEDED TO  
ADJOINING LOTS

**EXHIBIT B**

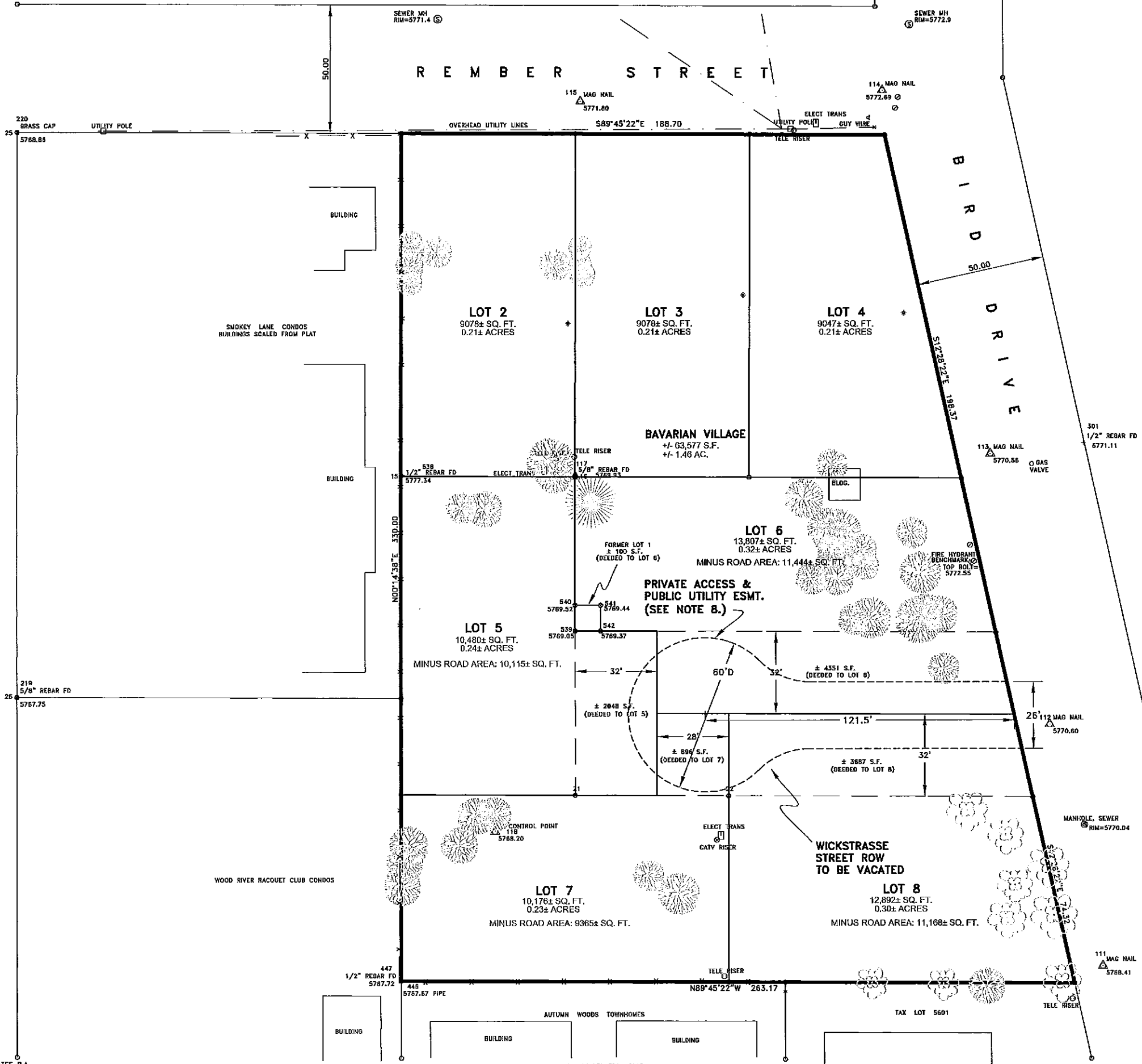


**WICK STRASSE  
VACATION EXHIBIT**

LOCATED WITHIN:  
SEC. 13, T4N, R17E, B.M., BLAINE COUNTY, IDAHO.

PREPARED FOR: DENNIS HANGGI

A SITE MAP	PLOT BY: DWS/CPL	DATE: 05/14/2014
PROJECT NO. 12151	FILE: 12151-VAC2.DWG	CD-ORD FILE: 00451.CRD



<b>RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:</b>	
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(Space Above Line For Recorder's Use)

**DECLARATION OF SPECIAL COVENANTS,  
CONDITIONS AND RESTRICTIONS**

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THIS DECLARATION OF SPECIAL COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by Christine Hamilton, Trustee of the GLENN H. HAMILTON TRUST under agreement dated \_\_\_\_\_ BV, LLC, an Idaho limited liability company and TBDBV LLC, an Idaho limited liability company (collectively, "Declarant", and any subsequent owner of any portion of the Property [defined below] collectively being referred to herein as "Owners").

Declarant is the current owner of the real property in the City of Ketchum, Idaho ("City"), commonly known as Condominium Units A, B, C, D and E, as shown on the Condominium Map of Salzburg Bavarian Condominiums, recorded as Instrument No. 200205, and as defined and described in the Condominium Declaration for Salzburg Bavarian Condominiums recorded as Instrument No. 339628, records of Blaine County, Idaho ("Condominiums"), and Lots 1, 6, 7 and 8 of Bavarian Village Subdivision, according to the official plat thereof, recorded as Instrument No. 139821, records of Blaine County, Idaho ("Lots", respectively and together with the Condominiums, collectively the "Property").

Declarant has received or is about to receive approval from the City for the vacation of Wick Strasse street and desires to place certain special and limited restrictive covenants upon, and to create certain non-exclusive easements over and across, the Property to promote orderly development effective upon the recordation of the City ordinance vacating said Wick Strasse street ("Effective Date").

**1. IMPOSITION OF COVENANTS.**

A. Declaration. 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, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

B. 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

**received**  
 11/10/14

binding upon and shall inure to the benefit of Declarant, and its heirs, executors, administrators, personal representatives, successors, and assigns.

## 2. EASEMENTS.

A. Right of Way. Declarant, Owners and their Permittees (defined below), shall have in common with all others entitled to the use of the same, a nonexclusive, perpetual easement for the passage of vehicles over, across and upon the street, road, and parking area of the Property described in Exhibit A attached hereto and depicted on the map attached hereto as Exhibit B attached hereto ("Easement Area") as the same may from time to time be constructed and maintained for such use; and for the passage and accommodation of pedestrians over, upon and across the Easement Area as the same may from time to time be constructed and maintained for such use. The Owners of Lots 5, 6, 7, and 8 as depicted on Exhibit B, and any other portion of the Property that is contiguous to the Easement Area, shall use the Easement Area for vehicular ingress and egress to and from Bird Drive. For purposes of this provision the term "Permittees" includes all persons from time to time entitled to the use and occupancy of any portion of the Property or any portion thereof under an ownership right or pursuant to a lease, sublease, license, concession or other similar agreement, and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, and subtenants, of any of the foregoing persons.

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B. Utility Lines and Facilities. Declarant and Owners shall have a nonexclusive easement under, through and across the Easement Area for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains, cable television and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Property).

C. Declarant's Responsibility for Construction. Declarant shall construct and install the right-of way described in paragraph A and the utility lines and facilities described in paragraph B, before the issuance by the City of Ketchikan, Idaho of a building permit for any improvement on the Property. As an incident of the work the well house on Lot 1 shall be removed. Declarant shall bear all costs related to the installation, operation, maintenance, repair and replacement of such right-of-way and utility facilities located in the Easement Area, shall repair to the original specifications any damage resulting from such use and shall provide as-built plans for all such improvements and facilities to the Owners within thirty (30) days after the date of completion of construction of same. An infrastructure construction plan shall be developed and submitted to the City before the commencement of any work by Declarant.

## 3. MAINTENANCE AND INSURANCE.

A. Maintenance Director. The Owners hereby appoint the Owner of Lot \_\_\_\_\_, as Maintenance Director of the Easement Area from and after the Effective Date. The Owners of at a majority of the least \_\_\_\_\_ (---) Lots may remove the Maintenance

Director upon written notice to the Owners of the remaining Lots, in which event the Owners of a majority of the Lots shall appoint another person to be the Maintenance Director (sometimes referred to herein as the “Successor Maintenance Director”). The Maintenance Director shall have the right, upon giving ninety (90) days’ prior written notice to the Owners, to resign as Maintenance Director, in which event the Owners of a majority of the Lots shall appoint another Owner of a Lot to be the Maintenance Director (said other Owner also being included with the definition of “Successor Maintenance Director”).

B. Maintenance. Commencing on the Effective Date the Maintenance Director shall, except as hereinafter provided, maintain the Easement Area and any improvements thereon at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

1. Maintaining, repairing, and resurfacing, when necessary, all vehicular and pedestrian surfaces in a level, smooth and evenly covered condition with the type of material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
2. Removing all snow, papers, debris, filth and refuse and thoroughly raking the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
3. Maintaining, repairing and replacing, when necessary, all signs and markers;
4. Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic landscape sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;
5. Maintaining, repairing and replacing, when necessary, all fencing;
6. Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall give prior written notice to the other Owners of its appointment of a third party to perform any of the services described herein and shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Agreement and for the performance by any such third party or parties of such services.

C. Reimbursement of Maintenance Director/Budget Basis. The Maintenance Director shall contract and pay for all of the items set forth in Paragraph 3B herein (the expenses therefore sometimes collectively being referred to as "Easement Area Expenses"), on a budget basis, pursuant to (and subject to) the provisions of Paragraphs 3C and 3D. All contracts entered into by the Maintenance Director for the services described herein (sometimes referred to as "Maintenance Contracts") shall be made expressly assignable to a Successor Maintenance Director or the Consenting Owners if no Successor Maintenance Director exists. A copy of all Maintenance Contracts shall be distributed to any Owner requesting the same.

Prior to October 31 of each year, the Maintenance Director shall put all contracts for Easement Area maintenance work out to bid. Thereafter, the names of the bidding contractors or companies, the specifications and the amount of their respective bids shall be furnished to the Owners by the Maintenance Director within ten (10) days after the Maintenance Director's receipt thereof, and the Maintenance Director shall award the pertinent contract to the lowest bidder, unless the Maintenance Director obtains the Owners' prior written consent to award the contract to a higher bidder. The foregoing bid items and amounts shall be integrated into the pertinent budget.

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Prior to January 1 of each year, the Maintenance Director shall submit to each Owner, for such Owner's review and approval, a proposed annual budget for Easement Area Expenses ("Budget") covering the applicable Budget year, together with a copy of the bids required herein and any backup materials reasonably requested by any Owner. The Budget may provide for a Service Charge (as defined below). Each Owner shall, within thirty (30) days after receipt of the Budget, deliver written notice of its approval or disapproval of the Budget to the Maintenance Director ("Budget Approval Notice"). In the event an Owner fails to deliver written notice, such Owner shall be deemed to have approved of the Budget.

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Notwithstanding anything herein to the contrary, an Owner shall not be obligated to reimburse the Maintenance Director for any Expense Item which is not part of the Budget except: (i) emergency expenses in accordance with Paragraph 3D, (ii) unforeseen or extraordinary expenses in accordance with Paragraph 3E, and (iii) necessary expenditures over which the Maintenance Director has no control (such as utility rate increases or extraordinary demand created by forces of nature and governmentally regulated services).

D. Emergency Expenses. If the Maintenance Director is required to incur an expense for the emergency repair or replacement of any portion of the Easement Area, which expense has not been set forth in an approved Budget, then each Owner shall pay its pro rata share of such expense provided that the Maintenance Director has given each Owner the best and earliest notice of the same that is feasible under the circumstances. For purposes of this paragraph, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property.

E. Unforeseen or Extraordinary Expenses. If the Maintenance Director reasonably deems it necessary to incur an unforeseen or extraordinary expense (which is not on an emergency basis) for the repair or replacement of any portion of the Easement Area, which expense has not been set forth in an approved Budget, the Maintenance Director shall request written approval of such expenditure from the Owners as far in advance of such repair or



replacement as is reasonably possible, and such approval shall not be unreasonably withheld or delayed. Any such item which is approved by the majority of the Owners shall be considered a reimbursable expense provided, however that if requested by any Owner, the Maintenance Director shall follow the bidding procedures set forth in Paragraph 3C with regard to such item and the lowest bid therefore shall be utilized in the Budget.

F. Service Charge. The Maintenance Director may, subject to the provisions hereof, charge a maximum service charge of ~~ten~~ \_\_\_\_\_ percent (~~10~~\_\_\_\_%) of all out-of-pocket expenses incurred by the Maintenance Director in performing the services described in Paragraph 3B to cover management and administration costs ("Service Charge").  
Notwithstanding the foregoing,

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1. The Service Charge shall not exceed ~~one~~ \_\_\_\_\_  
~~hundred~~ \_\_\_\_\_ Dollars (\$~~100.00~~\_\_\_\_\_) for any item of Easement Area maintenance without the Consenting Owners' prior written approval, and
2. If the Maintenance Director contracts with a management company ("Management Company"), then the Maintenance Director shall not be entitled to a Service Charge. The fee of the Management Company shall be a reimbursable expense and the Easement Area expenses shall not include any costs incurred by the Maintenance Director or its agent for office overhead or compensation of its employees except to the extent included in the Service Charge.

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G. Billing for Expenses. Beginning on the first day of February each year and continuing on the first day of each calendar month thereafter, the Owner of each Lot (or its respective tenants or agents, as it may direct) shall pay to the Maintenance Director such Owner's monthly proportionate share of the total Easement Area Expenses, as set forth in the approved Budget. The first of such payments shall include such Owner's pro rata share of the Budget amounts for the period between the Effective Date and the first day of the first calendar month of the first Budget period, calculated on a per diem basis for those days. Within ninety (90) days after the end of the calendar year, the Maintenance Director shall send to each Owner a written statement of the total Common Area Expenses actually paid by the Maintenance Director during said Maintenance Budget Year ("Actual Expenses") and the difference between said Owner's pro rata share of the Actual Expenses and the sum of all the monthly payments made by each Owner relative to said Maintenance Budget Year ("Reconciliation Statement"). The Reconciliation Statement shall be accompanied by complete copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, "Backup Invoices"). The Maintenance Director shall, within fifteen (15) days after receipt of an Owner's written request, provide to such Owner such additional documentation as the Owner reasonably requests to substantiate the expenses (sometimes referred to herein as "Additional Documentation"), and such Owner's obligation to pay any invoice submitted by the Maintenance Director in the Reconciliation Statement shall be contingent upon its receipt of said Additional Documentation. The Owners and the Maintenance Director shall, within thirty (30) days after the Maintenance Director submits the Reconciliation Statement to the Owners, make such adjustments and payments as necessary so that the Maintenance Director receives the entire amount (but no more) of each Owner's proportionate share of the Actual Expenses for the applicable Maintenance Budget Year. The proportionate share of the total Easement Area expenses to be borne by each Owner shall be the percentage obtained by dividing the number of Lots owned by each Owner by the total number of Lots.

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H. Inspection of Records. Any Owner may, upon not less than ten (10) days' prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Easement Area maintenance and insurance expenses incurred during the preceding calendar year at such location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said calendar year.

4.  
I. DEFAULT.

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A. Failure to Pay Easement Area Expenses. In the event any Owner fails or refuses to pay when due its share of any bill for the Easement Area Expenses (including the Service Charge), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the expense (including the Service Charge) of the defaulting Owner ("Curing Party") for reimbursement plus interest. Interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate five percent (5%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by Bank of America (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the

defaulting Owner's Lot for the amount of said expenses (including the Service Charge) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Lot until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

B. Failure of Owner to Perform. In the event any Owner fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

C. Attorneys' Fees. In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal) as determined by the court in the same or a separate proceeding.

D. No Waiver. The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

E. Remedies. In addition to the remedies set forth in this Agreement, each person entitled to enforce this Agreement shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

F. Lien for Expenses or Taxes. The lien provided for in Paragraph 4A shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of Blaine County, Idaho, signed and verified, which shall contain at least: (1) an itemized statement of all amounts due and payable pursuant hereto; (2) a description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien; (3) the name of the defaulting Owner; and (4) the name and address of the Curing Owner or Curing Party. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

**5. RESPONSIBILITY IF NO MAINTENANCE DIRECTOR.**

In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance of the Easement Area according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Paragraph I shall apply. If there is no Maintenance Director, each Owner shall indemnify, defend and hold harmless the other Owners and occupants of all other Lots from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever, for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner, its agents, contractors or employees.

**6. MISCELLANEOUS PROVISIONS.**

A. Modification or Termination. This Declaration may be modified or terminated, in whole or in part, only with the consent of all of the Owners and then only by written instrument duly executed and acknowledged by all of the Owners and recorded in the office of the recorder of the county in which the Property is located. No modification or termination of this Declaration shall affect the rights of any lienholder or third party beneficiary unless the lienholder or third party beneficiary consents in writing to the modification or termination. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Lot shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Lot shall agree among themselves and designate in writing to the Owners of each of the other Lots a single person who is entitled to cast the vote for that Lot. If the Owners of any such Lot cannot agree who shall be entitled to cast the single vote of that Lot, or if the Owners fail to designate the single person who is entitled to cast the vote for that Lot within thirty (30) days after receipt of request for same from any other Owner, then that Lot shall not be entitled to vote. In the event a Lot is not entitled to vote, its consent or approval shall not be necessary and shall be disregarded.

B. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

C. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

D. Notices. All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address shown on the then current real property tax rolls of the county in which the Property is located. The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

E. Waiver. The failure of any Owner to insist upon strict performance of any of the obligations contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms and provisions contained herein by the same or any other person.

F. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

G. Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

H. Third Party Beneficiary Rights. Except as expressly provided in this paragraph, ~~This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.~~ The City is hereby expressly made a third party beneficiary of the following provisions of this Declaration: (1) that portion of Paragraph 2 A which states "The Owners of Lots, 5, 6, 7, and 8 as depicted on Exhibit B, and any other portion of the Property that is contiguous to the Easement Area, shall use the Easement Area for vehicular ingress and egress to and from Bird Drive.", and (2) that portion of paragraph 2C which states "An infrastructure construction plan shall be developed and submitted to the City before the commencement of any work by Declarant".

I. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

J. Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

K. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

L. Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Property is located.

M. Governing Law. This Declaration shall be construed in accordance with the laws of the State of Idaho.

EXECUTED as of the day and year first above written.

TBDBV, LLC, an Idaho limited liability company

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

Name:

Title:

BV, LLC, an Idaho limited liability company

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

Name:

Title:

The Glenn H. Hamilton Trust u/a/d

\_\_\_\_\_

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

Christine Hamilton, Trustee

State of Idaho        )  
                              ) ss.  
County of Blaine     )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be a member of TBDBV, LLC, a limited liability company, the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same in said limited liability company name.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

State of Idaho        )  
                              )ss.  
County of Blaine    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public in and for said State, personally appeared CHRISTINE HAMILTON, known or identified to me to be the Trustee, or one of the Trustees of the Glenn H. Hamilton Trust under trust agreement dated \_\_\_\_\_, 19\_\_\_\_, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

State of Idaho        )  
                              ) ss.  
County of Blaine    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be a member of BV, LLC, a limited liability company, the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same in said limited liability company name.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**EXHIBIT A - DESCRIPTION OF EASEMENT AREA**

**EXHIBIT B – MAP OF THE EASEMENT AREA**



received 9/22/14

**COPY**

**LAWSON LASKI CLARK & POGUE, PLLC**  
ATTORNEYS AT LAW

Edward A. Lawson  
eal@lawsonlaski.com

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KETCHUM, IDAHO 83340  
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WWW.LAWSONLASKI.COM

September 22, 2014

Via Email Only

Planning & Zoning Commissioners  
City of Ketchum  
PO Box 2315  
Ketchum, ID 83340

Re: Application To Vacate Wick Strasse Street  
Our File No. 11271

Dear Commissioners:

Please consider this a supplement to the Application to Vacate Wick Strasse Street ("Application") made on January 22, 2014. The information below was provided to Staff at a meeting held in the City offices on June 17, 2014 and followed up with a July 31, 2014 letter from me in which was enclosed a Special Declaration which we believed addressed the Staff's concerns. It was only upon receipt of the Staff Report on Friday, September 19, 2014 that we realized that the information was not understood or was considered deficient.

What is critical to understanding this Application is that all of the adjoining property (that is, Lots 5, 6, 7, and 8) is owned by the Applicant. Further, the Applicant is responsible for addressing every conceivable issue associated with installing the private right-of-way and providing the water, sewer, power and other utilities needed to develop any of the four lots prior to the issuance of a building permit by the City. The Special Declaration submitted on July 31, 2014 was intended to memorialize these obligations. Never receiving any comment on the Special Declaration we assumed it met with Staff's approval. It is apparent, however, from a reading of the Staff Report that Staff feels a description of the event triggering the obligation to install the right-of-way and utilities is needed. Toward that end, "redlined" and "clean" drafts of the Supplemental Declaration are submitted herewith adding such a provision. By requiring the installation of the right-of-way and utilities before a building permit issues any concern for the general public is sufficiently addressed

In addition, to the requirements set forth in the Special Declaration the City has the right to refuse to issue a building permit for a single family residence on any of the lots if the access

Commissioners  
September 22, 2014  
Page 3

8. Exhibit B to the Special Declaration illustrates the outcome of the vacation.

Thank you for your attention to this Supplement to the Application. We look forward to discussing this with you at the meeting tonight.

Sincerely,

LAWSON LASKI CLARK & POGUE, PLLC

A handwritten signature in black ink, appearing to read "E. Lawson", written in a cursive style.

Edward A. Lawson

Encl: (1)  
Pdf (w/encl): client  
G. McClure

binding upon and shall inure to the benefit of Declarant, and its heirs, executors, administrators, personal representatives, successors, and assigns.

## 2. EASEMENTS.

A. Right of Way. Declarant, Owners and their Permittees (defined below), shall have in common with all others entitled to the use of the same, a nonexclusive, perpetual easement for the passage of vehicles over, across and upon the street, road, and parking area of the Property described in Exhibit A attached hereto and depicted on the map attached hereto as Exhibit B-1 and described in Exhibit 2 attached hereto ("Easement Area") as the same may from time to time be constructed and maintained for such use; and for the passage and accommodation of pedestrians over, upon and across the Easement Area as the same may from time to time be constructed and maintained for such use. For purposes of this provision the term "Permittees" includes all persons from time to time entitled to the use and occupancy of any portion of the Property or any portion thereof under an ownership right or pursuant to a lease, sublease, license, concession or other similar agreement, and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, and subtenants, of any of the foregoing persons.

B. Utility Lines and Facilities. Declarant and Owners shall have a nonexclusive easement under, through and across the Easement Area for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains, cable television and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Property).

C. Declarant's Responsibility for Improvements. Declarant shall construct and install the right-of-way described in paragraph A and the utility lines and facilities described in paragraph B, before the issuance by the City of Ketchum, Idaho of a building permit for any improvement on the Property. As an incident of such work the well house on Lot 1 shall be removed. Declarant shall bear all costs related to the installation, operation, maintenance, repair and replacement of such right-of-way and utility facilities located in the Easement Area, shall repair to the original specifications any damage resulting from such use and shall provide as-built plans for all such improvements and facilities to the Owners within thirty (30) days after the date of completion of construction of same. An infrastructure construction plan shall be developed and submitted to the City before the commencement of any work by Declarant.

## 3. MAINTENANCE AND INSURANCE.

A. Maintenance Director. The Owners hereby appoint the Owner of Lot \_\_\_\_, as Maintenance Director of the Easement Area from and after the Effective Date. The Owners of at least \_\_\_\_\_ (\_\_\_\_) Lots may remove the Maintenance Director upon written notice to the Owners of the remaining Lots, in which event the Owners of a majority of the Lots shall appoint another person to be the Maintenance Director (sometimes referred to herein as the "Successor

furnished to the Owners by the Maintenance Director within ten (10) days after the Maintenance Director's receipt thereof, and the Maintenance Director shall award the pertinent contract to the lowest bidder, unless the Maintenance Director obtains the Owners' prior written consent to award the contract to a higher bidder. The foregoing bid items and amounts shall be integrated into the pertinent budget.

Prior to January 1 of each year, the Maintenance Director shall submit to each Owner, for such Owner's review and approval, a proposed annual budget for Easement Area Expenses ("Budget") covering the applicable Budget year, together with a copy of the bids required herein and any backup materials reasonably requested by any Owner. The Budget may provide for a Service Charge (as defined below). Each Owner shall, within thirty (30) days after receipt of the Budget, deliver written notice of its approval or disapproval of the Budget to the Maintenance Director ("Budget Approval Notice"). In the event an Owner fails to deliver written notice, such Owner shall be deemed to have approved of the Budget.

Notwithstanding anything herein to the contrary, an Owner shall not be obligated to reimburse the Maintenance Director for any Expense Item which is not part of the Budget except: (i) emergency expenses in accordance with paragraph 3D, (ii) unforeseen or extraordinary expenses in accordance with paragraph 3E, and (iii) necessary expenditures over which the Maintenance Director has no control (such as utility rate increases or extraordinary demand created by forces of nature and governmentally regulated services).

D. Emergency Expenses. If the Maintenance Director is required to incur an expense for the emergency repair or replacement of any portion of the Easement Area, which expense has not been set forth in an approved Budget, then each Owner shall pay its pro rata share of such expense provided that the Maintenance Director has given each Owner the best and earliest notice of the same that is feasible under the circumstances. For purposes of this paragraph, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property.

E. Unforeseen or Extraordinary Expenses. If the Maintenance Director reasonably deems it necessary to incur an unforeseen or extraordinary expense (which is not on an emergency basis) for the repair or replacement of any portion of the Easement Area, which expense has not been set forth in an approved Budget, the Maintenance Director shall request written approval of such expenditure from the Owners as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld or delayed. Any such item which is approved by the majority of the Owners shall be considered a reimbursable expense provided, however that if requested by any Owner, the Maintenance Director shall follow the bidding procedures set forth in paragraph 3C with regard to such item and the lowest bid therefore shall be utilized in the Budget.

F. Service Charge. The Maintenance Director may, subject to the provisions hereof, charge a maximum service charge of \_\_\_\_\_ percent (\_\_\_%) of all out-of-pocket expenses incurred by the Maintenance Director in performing the services described in paragraph 3B to cover management and administration costs ("Service Charge"). Notwithstanding the foregoing,

A. Failure to Pay Easement Area Expenses. In the event any Owner fails or refuses to pay when due its share of any bill for the Easement Area Expenses (including the Service Charge), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the expense (including the Service Charge) of the defaulting Owner ("Curing Party") for reimbursement plus interest. Interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate five percent (5%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by Bank of America (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the defaulting Owner's Lot for the amount of said expenses (including the Service Charge) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Lot until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

B. Failure of Owner to Perform. In the event any Owner fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

C. Attorneys' Fees. In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal) as determined by the court in the same or a separate proceeding.

D. No Waiver. The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

E. Remedies. In addition to the remedies set forth in this Agreement, each person entitled to enforce this Agreement shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

C. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

D. Notices. All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address shown on the then current real property tax rolls of the county in which the Property is located. The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

E. Waiver. The failure of any Owner to insist upon strict performance of any of the obligations contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms and provisions contained herein by the same or any other person.

F. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

G. Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

H. Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

I. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

J. Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

State of Idaho            )  
                                  ) ss.  
County of Blaine        )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be a member of TBDBV, LLC, a limited liability company, the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same in said limited liability company name.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_

| EXHIBIT A4 - DESCRIPTION OF EASEMENT AREA ~~MAP OF THE PROPERTY~~



**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

(Space Above Line For Recorder's Use)

**DECLARATION OF SPECIAL COVENANTS,  
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF SPECIAL COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by Christine Hamilton, Trustee of the GLENN H. HAMILTON TRUST under agreement dated \_\_\_\_\_ BV, LLC, an Idaho limited liability company and TBDBV LLC, an Idaho limited liability company (collectively, "Declarant", and any subsequent owner of any portion of the Property [defined below] collectively being referred to herein as "Owners").

Declarant is the current owner of the real property in the City of Ketchum, Idaho ("City"), commonly known as Condominium Units A, B, C, D and E, as shown on the Condominium Map of Salzburg Bavarian Condominiums, recorded as Instrument No. 200205, and as defined and described in the Condominium Declaration for Salzburg Bavarian Condominiums recorded as Instrument No. 339628, records of Blaine County, Idaho ("Condominiums"), and Lots 1, 6, 7 and 8 of Bavarian Village Subdivision, according to the official plat thereof, recorded as Instrument No. 139821, records of Blaine County, Idaho ("Lots", respectively and together with the Condominiums, collectively the "Property").

Declarant has received or is about to receive approval from the City for the vacation of Wick Strasse street and desires to place certain special and limited restrictive covenants upon, and to create certain non-exclusive easements over and across, the Property to promote orderly development effective upon the recordation of the City ordinance vacating said Wick Strasse street ("Effective Date").

**1. IMPOSITION OF COVENANTS.**

A. Declaration. 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, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

B. 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

Clean Draft

Director (said other Owner also being included with the definition of "Successor Maintenance Director").

B. Maintenance. Commencing on the Effective Date the Maintenance Director shall, except as hereinafter provided, maintain the Easement Area and any improvements thereon at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

1. Maintaining, repairing, and resurfacing, when necessary, all vehicular and pedestrian surfaces in a level, smooth and evenly covered condition with the type of material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
2. Removing all snow, papers, debris, filth and refuse and thoroughly raking the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
3. Maintaining, repairing and replacing, when necessary, all signs and markers;
4. Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic landscape sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;
5. Maintaining, repairing and replacing, when necessary, all fencing;
6. Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall give prior written notice to the other Owners of its appointment of a third party to perform any of the services described herein and shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Agreement and for the performance by any such third party or parties of such services.

C. Reimbursement of Maintenance Director/Budget Basis. The Maintenance Director shall contract and pay for all of the items set forth in Paragraph 3B herein (the expenses therefore sometimes collectively being referred to as "Easement Area Expenses"), on a budget basis, pursuant to (and subject to) the provisions of paragraphs 3C and 3D. All contracts entered into by the Maintenance Director for the services described herein (sometimes referred to as "Maintenance Contracts") shall be made expressly assignable to a Successor Maintenance Director or the Consenting Owners if no Successor Maintenance Director exists. A copy of all Maintenance Contracts shall be distributed to any Owner requesting the same.

Prior to October 31 of each year, the Maintenance Director shall put all contracts for Easement Area maintenance work out to bid. Thereafter, the names of the bidding contractors or companies, the specifications and the amount of their respective bids shall be furnished to the Owners by the Maintenance Director within ten (10) days after the Maintenance

1. The Service Charge shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for any item of Easement Area maintenance without the Consenting Owners' prior written approval, and
2. If the Maintenance Director contracts with a management company ("Management Company"), then the Maintenance Director shall not be entitled to a Service Charge. The fee of the Management Company shall be a reimbursable expense and the Easement Area expenses shall not include any costs incurred by the Maintenance Director or its agent for office overhead or compensation of its employees except to the extent included in the Service Charge.

G. Billing for Expenses. Beginning on the first day of February each year and continuing on the first day of each calendar month thereafter, the Owner of each Lot (or its respective tenants or agents, as it may direct) shall pay to the Maintenance Director such Owner's monthly proportionate share of the total Easement Area Expenses, as set forth in the approved Budget. The first of such payments shall include such Owner's pro rata share of the Budget amounts for the period between the Effective Date and the first day of the first calendar month of the first Budget period, calculated on a per diem basis for those days. Within ninety (90) days after the end of the calendar year, the Maintenance Director shall send to each Owner a written statement of the total Common Area Expenses actually paid by the Maintenance Director during said Maintenance Budget Year ("Actual Expenses") and the difference between said Owner's pro rata share of the Actual Expenses and the sum of all the monthly payments made by each Owner relative to said Maintenance Budget Year ("Reconciliation Statement"). The Reconciliation Statement shall be accompanied by complete copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, "Backup Invoices"). The Maintenance Director shall, within fifteen (15) days after receipt of an Owner's written request, provide to such Owner such additional documentation as the Owner reasonably requests to substantiate the expenses (sometimes referred to herein as "Additional Documentation"), and such Owner's obligation to pay any invoice submitted by the Maintenance Director in the Reconciliation Statement shall be contingent upon its receipt of said Additional Documentation. The Owners and the Maintenance Director shall, within thirty (30) days after the Maintenance Director submits the Reconciliation Statement to the Owners, make such adjustments and payments as necessary so that the Maintenance Director receives the entire amount (but no more) of each Owner's proportionate share of the Actual Expenses for the applicable Maintenance Budget Year. The proportionate share of the total Easement Area expenses to be borne by each Owner shall be the percentage obtained by dividing the number of Lots owned by each Owner by the total number of Lots.

H. Inspection of Records. Any Owner may, upon not less than ten (10) days' prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Easement Area maintenance and insurance expenses incurred during the preceding calendar year at such location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said calendar year.

I. DEFAULT.

F. Lien for Expenses or Taxes. The lien provided for in Paragraph 4A shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of Blaine County, Idaho, signed and verified, which shall contain at least: (1) an itemized statement of all amounts due and payable pursuant hereto; (2) a description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien; (3) the name of the defaulting Owner; and (4) the name and address of the Curing Owner or Curing Party. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

## 5. RESPONSIBILITY IF NO MAINTENANCE DIRECTOR.

In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance of the Easement Area according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Paragraph I shall apply. If there is no Maintenance Director, each Owner shall indemnify, defend and hold harmless the other Owners and occupants of all other Lots from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever, for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner, its agents, contractors or employees.

## 6. MISCELLANEOUS PROVISIONS.

A. Modification or Termination. This Declaration may be modified or terminated, in whole or in part, only with the consent of all of the Owners and then only by written instrument duly executed and acknowledged by all of the Owners and recorded in the office of the recorder of the county in which the Property is located. No modification or termination of this Declaration shall affect the rights of any lienholder unless the lienholder consents in writing to the modification or termination. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Lot shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Lot shall agree among themselves and designate in writing to the Owners of each of the other Lots a single person who is entitled to cast the vote for that Lot. If the Owners of any such Lot cannot agree who shall be entitled to cast the single vote of that Lot, or if the Owners fail to designate the single person who is entitled to cast the vote for that Lot within thirty (30) days after receipt of request for same from any other Owner, then that Lot shall not be entitled to vote. In the event a Lot is not entitled to vote, its consent or approval shall not be necessary and shall be disregarded.

B. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public,

K. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

L. Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Property is located.

M. Governing Law. This Declaration shall be construed in accordance with the laws of the State of Idaho.

EXECUTED as of the day and year first above written.

TBDBV, LLC, an Idaho limited liability company

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

Name:

Title:

BV, LLC, an Idaho limited liability company

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

Name:

Title:

The Glenn H. Hamilton Trust u/a/d

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

Christine Hamilton, Trustee

**EXHIBIT A - DESCRIPTION OF EASEMENT AREA**



**LAWSON LASKI CLARK & POGUE, PLLC**  
ATTORNEYS AT LAW

Edward A. Lawson  
eal@lawsonlaski.com

675 SUN VALLEY ROAD, SUITE A  
POST OFFICE BOX 3310  
KETCHUM, IDAHO 83340  
TELEPHONE: 208-725-0055  
FACSIMILE: 208-725-0076  
WWW.LAWSONLASKI.COM

July 11, 2014

Via Email & US Mail

Ms. Joyce Allgaier, AICP  
Planning Manager  
City of Ketchum  
PO Box 2315  
Ketchum, ID 83340

Re: Application To Vacate Wick Strasse Street  
Our File No. 11271

Dear Joyce:

Thank you for meeting with Dennis Hanggi, Garth McClure and me yesterday.

As promised, I am delivering with this letter a copy of the Declaration of Special Covenants, Conditions and Restrictions which would be recorded to maintain legal access to the properties now served by Wick Strasse street upon its vacation.

As discussed, with you and Brian Christiansen the Applicant has not finalized its plans for the Properties accessed by Wick Strasse. However, we do not believe it is necessary to present any finalized design or engineering plans for this vacated land area as part of the vacation application. The basic premise is that the vacation of Wick Strasse will not prejudice any legitimate public interest of the City. Specifically, any issues (we don't know of any) concerning the adequacy of water and sewer service will not be affected by the vacation. All such concerns can and would be addressed if and when a building permit is sought.

In the absence of written assurance from the City to improve and maintain this street, Owners' lots are not saleable to a potential 3<sup>rd</sup> party Buyer. The Declaration of Special Covenants provides assurance to current and future owners that the Easement Area will continue to provide well maintained legal access to their properties.

Hopefully, we have adequately addressed your concerns and you will proceed to put the matter on the Planning and Zoning Commission's agenda.

Sincerely,



Ms. Joyce Allgaier  
July 11, 2014  
Page 2

LAWSON LASKI CLARK & POGUE, PLLC

A handwritten signature in black ink, appearing to read "E. Lawson", written in a cursive style.

Edward A. Lawson

Encl: (1)  
Pdf (w/o encl):client

**Attachment B.**  
**Correspondence from the public for the Planning and Zoning Commission's**  
**September 22, 2014 public hearing.**

No comment has been received for the City Council hearing.

- Cheryl Concannon, email, 9/11/14
- Clyde Holt, email, 9/11/14
- Elizabeth Insinger, email, 9/12/14

**Rachel Martin**

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**Subject:** FW: Wick Strasse Street hearing

**From:** [concannon1883@aol.com](mailto:concannon1883@aol.com) [mailto:[concannon1883@aol.com](mailto:concannon1883@aol.com)]

**Sent:** Thursday, September 11, 2014 8:29 PM

**To:** Joyce Allgaier

**Subject:** Wick Strasse Street hearing

Joyce,

Recently I received a certified letter from the City of Ketchum with a letter of public notice regarding the vacation of Wick Strasse Street on September 22.

As there was no map provided by the city and I'd not heard of the street, I called the city. Apparently the exclusion of a map was an oversight. Upon further inquiry, I discovered that the mystery street was directly across Bird Drive from my home.

Imagine my surprise to learn that the city held an easement on property when I knew owners had maintained the land for years.

I wholeheartedly support the city vacating the Wick Strasse Street easement. I would love to see more appropriate use of the land that the neighborhood might welcome.

I call it the 'road to nowhere'. Due to existing housing on several sides of the easement, no practical use of the easement area could be imagined, as long as it exists.

Furthermore, I believe the entire neighborhood surrounding the easement would welcome vacating it if they knew where it was located.

Respectfully,

Cheryl Concannon

**Rachel Martin**

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**Subject:** FW: street closing petition for Wick Strasse Street

**From:** Clyde Holt [<mailto:Clyde.Holt@smithmoorelaw.com>]

**Sent:** Thursday, September 11, 2014 12:56 PM

**To:** Joyce Allgaier

**Cc:** 'Elizabeth Holt'

**Subject:** street closing petition for Wick Strasse Street

Dear Joyce,

Thank you for returning my phone call and the copy of the map which was not contained in the original notice. As you know, my wife and I own and reside at 148A Bird Drive, abutting the former Bavarian village apartments. We have no opposition and in fact support the closing of Wick Strasse Street and trust you will so inform the Mayor and Council. We are in contact with the current owners of the property and support their long range efforts to redevelop the site for market rate housing complementing the existing homes on Bird Drive immediately to the north and south.

IRS CIRCULAR 230 NOTICE: To ensure compliance with the requirements of IRS Circular 230, we inform you that any U.S. tax advice contained in this communication or attachment hereto is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or for promoting, marketing or recommending to another party any transaction or matter addressed in this communication or attachment.

## Rachel Martin

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**Subject:** FW: Wick Strasse - West Ketchum

**From:** Elizabeth Insinger [<mailto:insingerl@comcast.net>]

**Sent:** Friday, September 12, 2014 9:59 AM

**To:** Joyce Allgaier

**Cc:** 'Liz Insinger'

**Subject:** Wick Strasse - West Ketchum

Hello Joyce,

My husband and I live in West Ketchum at 301 Williams St. We are writing to let you know that we support the application to vacate Wick Strasse and hope the City will approve the application.

Thank you,

Elizabeth Insinger

Ted King