

STAFF REPORT

TO: Hailey City Council
FROM: Mariel Platt, Planner 
RE: Final Plat Townhouse Subdivision - Rimrock Cottages, Phase I
HEARING: February 9, 2009

Applicant: Old Cutters Inc.
Location: Lot 4, Block 10, Old Cutters Subdivision (940 Myrtle Street East)
Zoning: General Residential (GR)
Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet, on December 24, 2008. On January 12, 2009, the application was continued on the record until February 9, 2009.

Application

Old Cutters, Inc., represented by Alpine Enterprises, Inc., has submitted an application for final Plat approval for the subdivision of Rimrock Cottages, Phase 1, into 7 townhouse sub-lots. The total land area of Lot 4, Block 10, is 40,512 square feet. The cottages are shown on a portion of Lot 4, which is 21,780 square feet, to be known as Phase 1.

Section 3.4.1 of the Subdivision Ordinance allows for applications for platting townhouse units in existing or approved structures to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon approval, the applicant submits a final plat for Council approval.

Procedural History

The preliminary plat application was heard by the Hailey Hearing Examiner on November 7, 2008, and November 14, 2008 and approved with conditions.

Hailey Hearing Examiner Conditions of Preliminary Plat Approval

- a) **The applicant shall submit a phasing plan, prior to final plat application, including, but not limited to the following items:**
 - **Number of sub-lots on each phase**

- **Deadline for completion of each phase**
- **Amenities to be constructed with each phase**
- **Infrastructure planned for completion with each phase**

This condition has been met.

- b) **A phasing agreement shall be submitted prior to final plat application and shall incorporate the elements of the phasing plan. The phasing plan shall be reviewed and approved by the City Council prior to final plat approval.**

A portion of this condition has been met. The City Council should concurrently review the Phasing Agreement and approve, amend, or deny. The approval of this application is contingent on the approval of the Phasing Agreement.

- c) **The final plat shall eliminate plat notes 2 and 6, include plat notes 1, and 3-5 as stated on the approved preliminary plat, received on November 12, 2008, as follows:**

- 1) **Basis of Bearing is Idaho State Plane Coordinate System, NAD83(1992), Central Zone, at Grid, in US Survey Feet. Vertical Datum is NAV83.**
- 3) **Utility locations are based on field data and construction plane. Locations should be verified before any excavation.**
- 4) **The Current Zoning is GR.**
- 5) **All Owners shall have mutual reciprocal easements for existing water cable TV, sewage, telephone and electrical lines over, under and across their sub-lots for the repair, maintenance and replacement thereof subject to any restoration of the easement premises for any damage resulting from such repair or replacement.**

And add three (3) additional plat notes to the final plat:

- **The final plat shall include a note stating that the subdivision is subject to the recorded Party Wall Agreement and CC&R's, along with the instrument numbers thereof.**
- **The final plat shall include a note stating, sub-lots 3, 4, and 5 shall not install fences closer than five (5) feet from the south property line of Lot 4 and the five (5) foot fire access lane shall be maintained in a manner that ensures no pathway obstructions exist.**
- **The final plat shall include a note stating that the subdivision is subject to the Old Cutters Annexation Agreement recorded as Instrument No. 534733 and the Community Housing Agreement recorded as Instrument No. 559842, and the original Old Cutters Subdivision plat recorded as Instrument No. 553651, records of Blaine County, Idaho.**

This condition has been met.

- d) **All Fire Department and Building Department requirements shall be met. The following is a recommended condition of approval and is required for compliance with the IBC:**

- **The sub-lot line between sub-lot 1 and 2 shall be moved one (1) foot north.**
- **The south eave of cottage 1 shall be fire rated to one (1) hour construction.**
- **The western portion of the north sub-lot line of sub-lot 4 shall be moved at**

least one (1) foot north.

- The sub-lot line between sub-lot 6 and 7 shall be moved one (1) foot south.
- The north eave of cottage 6 shall be fire rated to one (1) hour construction.

The sub-lot lines have been moved accordingly; however, the condition regarding the requirement for the cottage eaves to be built to one (1) hour fire-rated construction, shall be carried over.

- e) **All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.**

This condition has been met.

- f) **Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.**

This condition should be carried over.

- g) **All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition should be carried over.

- h) **The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

This condition has been met.

- i) **Any subdivision inspection fees due shall be paid prior to recording the final plat.**

This condition should be carried over.

Department Head Comments

Life/safety: The five (5) foot wide access lane, located south of Lot 4 shall be labeled “emergency access” instead of “fire lane.” Plat note #3 shall reflect this change in language as well.

Water and Sewer: No comment was provided.

Engineering: No comment was provided.

Standards of Evaluation

4.3.5 Bulk Requirements. For other supplementary location and bulk regulations, see Article VII.

- a. **Minimum Lot size - six thousand (6,000) square feet except as follows:**

1. Townhouse sub-lots shall have an aggregate density of no more than ten lots per acre.

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or “cottage” units and one (1) duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

The City Council shall review and approve the Phasing Agreement prior to or concurrently with approval of the final plat application.

b. Maximum Multi-Family Residential Density - One (1) dwelling unit for each one-tenth (1/10) of an acre.

Lot 4, Block 10 is a 40,512 square foot lot (0.93 acres) will, in accordance with this standard, accommodate nine (9) units. The Old Cutters Subdivision Preliminary and Final Plat Findings of Fact, signed by the Council on February 26, 2007 and August 13, 2007, allowed nine (9) units, platted by sub-lots, on Lot 4, Block 10, Old Cutters Subdivision. The Old Cutters Subdivision Findings state that there are to be seven (7) single townhouse or “cottage” units and one (1) duplex (two (2) units) on Lot 4. The two-unit duplex will be platted during Phase two (2), on the remainder of Lot 4.

c. Minimum Lot Width - fifty (50) feet except as follows:

1. Townhouse sub-lots shall conform to the standards established in the IFC.

Sub-lot widths are exempt from the 50 foot minimum standard; however, they shall conform to IFC standards. The Fire Department has reviewed this application and has no issue with the lot widths shown on the plat. The width of Lot 4 (Phase 1 and 2), is approximately 302 feet.

d. Maximum Building Height - thirty five (35) feet.

The applicant is hereby notified of this standard.

e. Minimum Front Yard Setback - twenty (20) feet.

The front yard setback measures twenty (20) feet from the northern (front) wall plane of sub-lots 1 and 7 to Myrtle Street. The eaves of the cottages residing on these two sub-lots extend into the twenty (20) foot front yard setback by two (2) feet. Eaves may extend into required setbacks by three (3) feet.

f. Minimum Side and Rear Yard Setback - ten (10) feet except as follows:

1. Townhouse Units shall be allowed zero setbacks from the lot lines created by a Townhouse Sub-Lot; and

The easterly side yard setback of Lot 4 cannot be determined until the building footprint for the duplex unit and the sub-lot lines are established on the remainder of Lot 4 (Phase 2). To the west, the side yard setback is ten (10) feet from west lot line to the cottages' west wall plane and eight (8) feet from the eaves. The rear setback is ten (10) feet from

the rear lot line to the cottages' south wall and eight (8) feet from the eaves.

2. **The separation of the buildings containing Townhouse Units in a Townhouse Development parcel shall be not less than six (6) feet as measured between any wall or any projection of a building, including but not limited to eaves, cornices, canopies or other similar roof overhang features, pergolas, chimney chases, bay windows, decks, steps, wainscot, and utility meters; or the minimum distance required by the IBC and IFC, whichever is greater.**

The minimum separation, measured between cottage eaves, found within the development of the seven (7) cottages is eight (8) feet. Some cottages show greater separation.

The Building Department has reviewed the application and has determined that the separation between the seven (7) cottage units does not comply with the IBC. Separation between each cottage's deck eave or building eave must be at least five (5) feet from the sub-lot line, unless fire-rated construction of one (1) hour or more is used. The following is a condition of approval and is required for compliance with the IBC:

- The south eave of cottage 1 shall be fire rated to one (1) hour construction.
- The north eave of cottage 6 shall be fire rated to one (1) hour construction.

- g. **Detached Accessory Dwelling Units shall have a minimum gross floor area of 300 square feet and a maximum gross floor area of 950 square feet.**
No detached accessory dwelling units are proposed.

- h. **Total lot coverage of all buildings on any property which includes an accessory detached dwelling unit shall not exceed 40%.**

The preliminary plat shows seven (7) cottage buildings, which comprise 3,600 square feet; and a carport, which comprises an additional 2,125 square feet of lot coverage. Phase one (1) as proposed is 21,780 square feet, which equates to a lot coverage of 26%. The lot coverage of Phase 1 for the entire Lot 4 (40,152 square feet) is 14%. The remaining portion of Lot 4 should be developed in a manner that does not exceed the maximum standard of 40% lot coverage. The seven (7) cottages, carport, future duplex (Phase 2), and any other future structures shall all be considered when determining the lot coverage of any future applications (i.e. Phase 2).

SECTION 2 - PERMITS.

- 2.9 **No permit for the construction of any building shall be issued upon any land for which all improvements required for the protection of health and the provision of safety, (including but not necessarily limited to an approved potable water system, an approved wastewater system to accept sewage, and asphalt paving of the streets) have not been installed, inspected, and accepted by the City of Hailey, with the following exception:**

Building permits may be issued for any building in a development for which plats have been recorded and security provided, but the streets have not yet been

completed with asphalt due to winter conditions. In such instances, the street shall be constructed as an all-weather surface to City Standards to the satisfaction of the City Engineer, and shall be kept clear to the satisfaction of the Fire Chief. Final Inspection approval or Certificate of Occupancy shall not be granted until all improvements, including asphalt, have been installed, inspected and accepted.

All seven (7) cottages have received Building Permits, but have yet to receive Certificates of Occupancy. Notice of this requirement is hereby given to the applicant, and included as a recommended condition of approval.

SECTION 3 – PROCEDURE

3.3 The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement, shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.

The Hearing Examiner's approval of the preliminary plat was on November 14, 2008.

3.3.2 The administrator shall review the final plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.

The final plat is consistent with the preliminary plat approved by the Hearing Examiner. Conditions of preliminary plat approval have been met or are carried over.

SECTION 4 – DEVELOPMENT STANDARDS

4.11 Inclusionary Community Housing.

Pursuant to the Annexation Agreement, the Community Housing (CH) Agreement was recorded on June 23, 2008, which requires 25 CH units throughout Old Cutters Subdivision. The CH Plan, incorporated into the CH agreement as Exhibit B, states, 13 of the CH units shall be income restricted and 12 shall be alternatively deed restricted. In addition, the CH plan states, Lot 4, Block 10, shall have one (1) income restricted and four (4) resident/worker restricted cottages. The plat shows seven (7) cottages; therefore, the additional two cottages shall be market rate units. The one (1) duplex (two (2) units) proposed for the remainder of Lot 4 shall be market rate as well. No additional CH is required with this subdivision application.

All development standards pertaining to Section 4, were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval, other than those required by the preliminary plat Findings of Fact and Decision.

SECTION 8 - TOWNHOUSES

8.1 Plat Procedure. The Developer of the townhouse development shall submit with

the preliminary plat application and all other information required herein a copy of the proposed party wall agreement and the proposed document(s) creating an association of owners of the proposed townhouse sub-lots, which shall adequately provide for the control (including billing where applicable) and maintenance of all common utilities, commonly held facilities, garages, parking and/or Green Spaces. Prior to final plat approval, the Developer shall submit to the City a final copy of the party wall agreement and any other such documents and shall record the documents prior to or at the same time of the recordation of the plat, which plat shall reflect the recording instrument numbers thereupon.

Draft CC&Rs have been submitted. Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat. The City has not and will not in the future determine the enforceability or validity of townhouse declarations, party wall agreements, or other private agreements.

8.2 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 sub-lots, provided that the ownership of detached garages is appurtenant to specific townhouse units on the townhouse plat and that the detached garage(s) may not be sold and/or owned separate from any dwelling unit(s) within the townhouse development.

There is a carport, with an attached 50 square foot storage space for each of the eight parking spaces within the carport structure.

8.3 Storage/Parking Areas. Residential townhouse developments shall provide parking spaces according to the requirements of Article IX of the Zoning Ordinance.

The following standards are taken from Article IX of the Zoning Ordinance:

9.4.1 Residential: No parking space, or portion thereof, shall be located in any right-of-way or public thoroughfare, unless otherwise provided herein. Parking spaces within any garage, carport or similar structure shall be credited at 1 space per nine (9) feet of floor width and 21 feet of floor length.

- a. Single family residences: 2 per residence minimum, 6 per residence maximum. The City will allow the use of 100' right-of-ways within the Hailey Original Townsite for licensed passenger vehicle parking for single family dwellings. Parking for accessory dwelling units must be provided on site.**
- b. All residences less than 1,000 square feet, including accessory dwelling units: a minimum of 1 space per unit.**
- c. Multiple family dwellings: A minimum of 1.5 spaces per unit.**

The applicant proposes seven (7) cottage units, which under standard c., the calculations would be 10.5 spaces. Pursuant to Section 9 of the Zoning Ordinance, parking calculations that exceed ten (10) are rounded down to the nearest whole number. Therefore, 10.5 is rounded down to ten (10) spaces required. There are eleven (11) spaces shown. Eight (8) spaces are provided under a carport structure. The spaces under the carport measure 10 feet wide and are striped to show 21

feet long.

8.4 Construction standards. All townhouse development construction shall be in accordance with the IBC, IRC and IFC. Each townhouse unit must have separate water, sewer and utility services, which do not pass through another building or unit.

8.5 General Applicability. All other provisions of this Ordinance and all applicable ordinances, rules and regulations of the City and all other governmental entities having jurisdiction shall be complied with by townhouse developments.

Upon meeting proposed conditions of approval, the proposed application does not appear to conflict with other provisions.

8.6 Expiration. Townhouse developments which have received final plat approval shall have a period of three calendar years from the date of final plat approval by the Council to obtain a building permit. Developments which have not received a building permit shall be null and void and the plats associated therewith shall be vacated by the Council. If a development is to be phased, construction of the second and succeeding phases shall be contingent upon completion of the preceding phase unless the requirement is waived by the Council. Further, if construction on any townhouse development or phase of any development ceases or is not diligently pursued for a period of three years without the prior consent of the Council, that portion of the plat pertinent to the undeveloped portion of the development shall be vacated.

The applicant is hereby notified of this requirement.

8.7 Conversion. The conversion by subdivision of existing units into Townhouses shall not be subject to Section 4.10 of this Ordinance.

Rimrock Cottages, Phase I subdivision is not a conversion by subdivision. The seven (7) cottage units have been newly constructed.

Section 4.10.3.1 required the applicant to provide at least 3.43 acres of park land for the subdivision of Old Cutters. In accordance with the annexation agreement, the applicant has provided a 5.08 acre park. No additional parks shall be required by this subdivision application.

8.8 The maximum number of Cottage Townhouse Units on any parcel shall be twelve (12), and not more than two (2) Cottage Townhouse Developments shall be constructed adjacent to each other.

The proposal would create seven (7) cottage units in Phase I and one (1) duplex in Phase II. The proposal does not exceed the maximum number of cottage townhouse units allowed on a parcel. In accordance with the Annexation Agreement and Community Housing Agreement, there are no other proposed cottage townhouse developments adjacent to Lot 4.

Summary And Suggested Conditions

The City Council shall hold a public hearing and approve, conditionally approve, or deny the final plat application. The following conditions are suggested to be placed on any approval of

this application:

- a) The final plat submitted for signature shall include plat notes 1 through 6 as stated on the submitted final plat, with the following amendments and additions:
 - Plat note #3 shall replace “fire access lane” with “emergency access lane.”
 - A plat note shall be added to the plat that states, “Sub-lots 3, 4, 5, and 6, shall be resident/worker restricted. Sub-lot 1 shall be income restricted to Category 3, as defined by Blaine County Housing Authority.”
- b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required.
- c) The five (5) foot wide access lane, located south of Lot 4 shall be labeled on the plat as “emergency access” instead of “fire lane.”
- d) Prior to recordation of the final plat, the final CC&Rs shall be received by the City and recorded prior to or at the same time of the recordation of the plat.
- e) All provisions of the Zoning Ordinance #532, including but not limited to use regulations and parking requirements shall continue to be met. Additional parking may also be required upon subsequent change in use, in conformance with Hailey’s Zoning Ordinance at the time of the new use.
- f) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
- g) The final plat shall be recorded within one year of the date of final plat approval. The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
- h) This approval is contingent on the applicant executing a Phasing Agreement acceptable to the City. The subdivision shall be developed in Phase I and Phase II.
- i) All Fire Department and Building Department requirements shall be met. The following is a recommended condition of approval and is required for compliance with the IBC:
 - The south eave of cottage 1 shall be fire rated to one (1) hour construction.
 - The north eave of cottage 6 shall be fire rated to one (1) hour construction.
- h) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance, requiring certain improvements.

- i) Any subdivision inspection fees due shall be paid prior to recording the final plat.

AGENDA ITEM SUMMARY

DATE: 02-09-09

DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: 

SUBJECT: Rimrock Phasing Agreement

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Old Cutters Inc. is concurrently being considered for final plat approval of Phase I. They propose to construct the project in two phases. Section 3.3 of the Subdivision Ordinance allows for phasing of subdivision applications. The City Attorney and Planning Director have reviewed the Phasing Agreement.

The timeline for subdivision of Phase II, needs to be discussed by the council and applicant and incorporated into the agreement.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: None

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---|--|---|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Safety Committee |
| <input checked="" type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Review the phasing agreement, determine a timeline for Phase II subdivision to be incorporated into the agreement and move to approve.

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

**PHASING AGREEMENT
RIMROCK COTTAGES AND TOWNHOUSES
OLD CUTTERS SUBDIVISION**

THIS AGREEMENT ("Agreement") is dated this ___ day of February, 2009, by and between the CITY OF HAILEY, IDAHO, a municipal corporation (the "City") and OLD CUTTERS, INC., an Idaho corporation ("OCI", and together with the City, the "Parties").

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to approve the subdivisions of property within its municipal boundaries pursuant to the provisions of its Subdivision Ordinance No. 821 and other relevant ordinances, and the power to contract.

B. OCI owns Lot 4, Block 10, OLD CUTTERS SUBDIVISION, City of Hailey, Blaine County, Idaho, according to the official plat thereof recorded at the Office of the County Recorder for Blaine County, Idaho as Instrument No. 553634 (the "Lot"). On _____, 2009, the City Council signed and entered its Findings of Fact, Conclusions of Laws and Decision (the "Decision") approving the subdivision of the Lot into seven (7) townhouse sub-lots to be known as the Rimrock Cottages and Townhouses: Phase 1 and a future Phase 2 consisting of two (2) townhouse sub-lots (the "Townhouse Development"). A copy of the approved plat is attached hereto as **Exhibit "A"** and made a part hereof by this reference (the "Plat").

C. Condition __ (h) of the Decision provides for the Townhouse Development to be developed in two (2) phases. The parties desire to enter into this Agreement to address the requirements of the Ordinance for this phased development.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties covenant and agree as follows:

1. INCORPORATION OF RECITALS. The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2. PHASE 1. Phase 1 shall consist of Sub-lots 1 through 7 on which Cottages shall be constructed and related common areas as depicted on the Plat. All infrastructure, amenities and other improvements depicted on the Plat and required by the Decision within Phase 1 shall be completed and a final certificate of occupancy issued for the seven Cottages on or before February 28, 2009. This shall include the construction of the Cottage buildings, covered parking structures, other parking spaces, sidewalks and utilities.

3. **PHASE 2.** Phase 2 shall consist of two townhouse sub-lots on which two townhouse units in a single duplex building shall be constructed. The two townhouse sub-lots will cover all of the Phase 2 property designated on the Plat. The water and sewer service lines serving these two townhouse sub-lots have already been installed. The application for subdivision of Phase 2 property into the two townhouse sub-lots shall be filed with the City on or before _____, 2009.

4. **SECURITY.** In the event OCI fails to obtain final plat approval for the two sub-lots in Phase 2 or fails to complete construction of the two townhomes on or before the dates set forth in Paragraph 3, above, then City shall have the right, but not the obligation, to revegetate and seed the remainder of the Property with native drought resistant grasses ("Landscaping"), after first giving OCI notice and a sixty (60) day period within which to complete the Landscaping. Landscaping shall also include sufficient irrigation for two growing seasons. At the time of the execution of this Agreement, OCI has posted sufficient security in the form of a cash deposit, a set aside agreement or a letter of credit, equivalent to 150% of an engineer's estimate for the complete performance of the Landscaping and to provide irrigation. The City shall retain such security until all Landscaping has been completed as set forth in this Agreement, at which time the City shall release such security. If the cost to complete the Landscaping is greater than the amount of the security, OCI agrees to reimburse the City within ten (10) days of demand by the City and hold harmless the City for any and all reasonable additional costs incurred by the City when completing the Landscaping. Notwithstanding the foregoing, the security posted may be reduced on a pro rata basis to reflect the partial completion of the Landscaping, such that the amount of the security shall at all times be equal to at least 150% of the cost to complete the remaining Landscaping.

5 **REMEDIES.** In the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

6 **NOTICES.** All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address as follows:

To City:

The City of Hailey
c/o Director, Planning Department
115 Main Street South, Suite H
Hailey, Idaho 83333
(208) 788-4221 (telephone)
(208) 788-2924 (facsimile)

To OCI:

Old Cutters, Inc.
P.O. Box 4944
Ketchum, Idaho, 83340
(208) 578-3636 (telephone)
(208) 578-7682 (facsimile)

With a copy to:

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
PO Box 987
120 East Avenue
Ketchum, Idaho, 83340
(208) 726-4421 (telephone)
(208) 726-0752 (facsimile)

or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

7 RELIANCE BY PARTIES. This Agreement is intended by OCI to be considered by the City as part of OCI's application for subdivision plat approval, and is contingent upon final plat approval for the Subdivision. OCI acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said subdivision application.

8 RELATIONSHIP OF PARTIES. It is understood that the contractual relationship between the City and OCI is such that neither party is the agent, partner, or joint venturer of the other party.

9 SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND. This Agreement shall inure to the benefit of the City and OCI and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

10. RECORDATION. This Agreement shall be recorded with the Blaine County Recorder.

11. NO WAIVER. In the event that the City or OCI, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by OCI, the City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

12. PARTIAL INVALIDITY. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

13. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the parties hereto, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

14. EXHIBITS. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

15. AUTHORITY. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

16. **NO THIRD PARTY RIGHTS.** This Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

17. **GOVERNING LAW.** The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

18. **TIME OF ESSENCE.** Time is of the Essence in this Agreement.

19. **NECESSARY ACTS.** Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

20. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

21. **ATTORNEY'S FEES.** If a suit, action, or other proceeding arising out of or related to this Agreement is instituted by any party to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting or defending any suit, action, or other proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal of any suit, action, or other proceeding. For the purpose of this section, "attorney's fees" shall mean and include (i) attorney's fees and (ii) paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Agreement or a determination by a court of competent jurisdiction that all or any portion of the remainder of this Agreement is void, illegal, or against public policy.

22. **POLICE POWERS.** Except as otherwise provided, nothing contained herein is intended to limit the police powers of City or its discretion in review of subsequent applications regarding development of the Lot. Except as provided herein, this Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulations, including, without limitation, applicable building codes, fire codes, the City's Zoning Ordinance, and the City's Subdivision Ordinance requirements for the Property.

23. **AMENDMENT.** This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by all parties hereto.

24. **FORCE MAJEURE.** Neither party shall be responsible for any loss, damage, detention or delay caused by fire, strike, civil or military authority, governmental restrictions, moratoriums or controls, insurrection or riot, railroad, marine or air embargoes, lockout, tempest, accident, breakdown of machinery, delay in delivery of material by other parties, or any other cause which is unavoidable or beyond its reasonable control. Any time periods provided herein shall be

