

5-29-2012

American Bank v. Wadsworth Golf Construction Co Clerk's Record v. 5 Dckt. 39415

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Vol. 5 of 25

**SUPREME COURT
OF THE
STATE OF IDAHO**

AMERICAN BANK,

Plaintiffs-Cross Defendant-Appellant,

v.

WADSWORTH GOLF CONSTRUCTION COMPANY OF,
THE SOUTHWEST, etal.,

Defendant-Cross Defendant-Respondent-
Cross-Appellant,

and

TAYLOR ENGINEERING, INC., etal.,

Defendant-Third Party Plaintiff

and

BRN DEVELOPMENT, INC., etal,

Defendants-Cross-Defendants,

FILED - COPY
MAY 29 2012
Supreme Court Court of Appeals
Entered on ATS by

*Appealed from the District Court of the First Judicial District of
the State of Idaho, in and for the County of Kootenai.*

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39415

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VOL. 5

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Attorney for BRN Development, Inc., BRN Investments, LLC,
Lake View AG, BRN-Lake View Joint Venture,
the Roland M. Casati Family Trust, dated June 5, 2008, and
the Ryker Young Revocable Trust

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana
banking corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an
Idaho corporation, BRN
INVESTMENTS, LLC, an Idaho
limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT
VENTURE, an Idaho general
partnership, ROBERT LEVIN,
Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated

Case No. CV09-2619

AMENDED ANSWERS AND
AFFIRMATIVE DEFENSES OF
CROSS DEFENDANTS BRN
DEVELOPMENT, INC., BRN
INVESTMENTS, LLC, LAKE VIEW
AG, BRN-LAKE VIEW JOINT
VENTURE, THE ROLAND M.
CASATI FAMILY TRUST, DATED,
JUNE 5, 2008, AND THE RYKER
YOUNG REVOCABLE TRUST TO
CROSS CLAIMS OF TAYLOR
ENGINEERING, INC., AND CROSS
CLAIM OF BRN DEVELOPMENT,
INC. AGAINST TAYLOR
ENGINEERING, INC.

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS

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CLERK DISTRICT COURT

DEPUTY

June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, MARSHALL CHESROWN, a single man, IDAHO ROOFING SPECIALIST, LLC, an Idaho limited liability company, THORCO, INC., an Idaho corporation, CONSOLIDATED SUPPLY COMPANY, an Oregon corporation, INTERSTATE CONCRETE & ASPHALT COMPANY, an Idaho corporation, CONCRETE FINISHING, INC., an Arizona corporation, THE TURF CORPORATION, an Idaho corporation, WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation, POLIN & YOUNG CONSTRUCTION, INC., an Idaho corporation, TAYLOR ENGINEERING, INC., a Washington corporation, PRECISION IRRIGATION, INC., an Arizona corporation, and SPOKANE WILBERT VAULT CO., a Washington corporation, d/b/a WILBERT PRECAST,

Defendants.

And

TAYLOR ENGINEERING, INC., a Washington corporation,

Third-Party
Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation; STRATA, INC., an Idaho corporation; and SUNDANCE INVESTMENTS, LLP, an Idaho limited liability limited partnership,

Third-Party
Defendants.

**ANSWERS AND AFFIRMATIVE DEFENSES
TO TAYLOR ENGINEERING'S
COUNTERCLAIM AND CROSS CLAIMS**

BRN Development, Inc., BRN Investments, LLC, Lake View AG, BRN-Lake View Joint Venture, the Roland M. Casati Family Trust, dated June 5, 2008, and the Ryker Young Revocable Trust (the "BRN Defendants"), by and through their attorney John R. Layman and LAYMAN, LAYMAN & ROBINSON, PLLP, answer as follows:

ANSWERS TO COUNTERCLAIM AND CROSS-CLAIM

I. Parties

- 1.1 Paragraph 1.1. Admitted.
- 1.2 Paragraph 1.2. Admitted.
- 1.3 Paragraph 1.3. Admitted.
- 1.4 Paragraph 1.4. Admitted.
- 1.5 Paragraph 1.5. Admitted that Lake View AG is a Liechtenstein company which has conducted an isolated business transaction within the State of

Page 3

Amended Answers and Affirmative Defenses to Cross
Claims of Taylor Engineering, Inc., and
Cross Claim of BRN Development, Inc.
BRN Defendants

Idaho, and claims an interest in the property. Denied to the extent the cross claimant seeks to establish that Lake View AG is conducting a business within the State of Idaho.

1.6 Paragraph 1.6. Admitted.

1.7 Paragraph 1.7. Admitted.

1.8 Paragraph 1.8. Admitted.

1.9 Paragraph 1.9. Admitted as to Marshall Chesrown's ("Chesrown") marital status and claimed interest, but denied as to residency.

1.10 Paragraph 1.10. Admitted that Idaho Roofing Specialists, LLC is believed to claim an interest in a portion of the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.11 Paragraph 1.11. Admitted that Thorco, Inc. is believed to claim an interest in a portion of the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.12 Paragraph 1.12. Denied. Consolidated Supply Company is believed to have released any interest in the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.13 Paragraph 1.13. Admitted that Concrete & Asphalt Company is believed to claim an interest in a portion of the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.14 Paragraph 1.14. Admitted that Concrete Finishing, Inc. is believed to claim an interest in a portion of the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.15 Paragraph 1.15. Admitted that The Turf Corporation is believed to claim an interest in a portion of the real property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

1.16 Paragraph 1.16. Admitted.

1.17 Paragraph 1.17 Admitted.

1.18 Paragraph 1.18. Admitted.

1.19 Paragraph 1.19. Admitted.

II. Factual Background

2.1 Paragraph 2.1. Denied to the extent that such allegations characterize any written agreements as any such writing speaks for itself.

2.2 Paragraph 2.2. Admitted that Taylor Engineering, Inc. ("Taylor Engineering") performed to some extent. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

2.3 Paragraph 2.3. Admitted.

2.4 Paragraph 2.4. Admitted.

2.5 Paragraph 2.5. Admitted.

2.6 Paragraph 2.6. Admitted that the lien was filed as alleged. BRN Defendants reserve all rights to dispute the amount, sufficiency, rank, and priority of the lien.

2.7 Paragraph 2.7. Admitted that the Amended Notice of Claim of Lien was filed as alleged. BRN Defendants reserve all rights to dispute the amount, sufficiency, rank, and priority of the lien.

2.7 (*sic*) Second Paragraph 2.7. Admitted that other parties claim an interest in the property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

III. Breach of Contract

3.1 Paragraph 3.1. With respect to allegations contained in paragraph 3.1, BRN Defendants incorporate and restate the answers set forth above as if fully set forth herein.

3.2 Paragraph 3.2. Denied that Chesrown was a contracting party. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

3.3 Paragraph 3.3. Denied to the extent that such allegations characterize the provision of any written agreements as such documents speak for themselves and denied to the extent that such allegations seek to establish unproven balances due.

IV. Lien Foreclosure

4.1 Paragraph 4.1. With respect to allegations contained in paragraph 4.1, BRN Defendants incorporate and restate the answers set forth above as if fully set forth herein.

4.2 Paragraph 4.2. Admitted.

4.3 Paragraph 4.3. BRN Defendants lack information sufficient to form a belief as to these allegations and therefore deny the same.

4.4 Paragraph 4.4. Admitted that the liens were filed as alleged. BRN Defendants reserve all rights to dispute the amount, sufficiency, rank, and priority of the liens.

4.5 Paragraph 4.5. BRN Defendants lack information sufficient to form a belief as to these allegations and therefore deny the same.

4.6 Paragraph 4.6. Admitted that the Court should determine the priority of the interests in the property. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

4.7 Paragraph 4.7. Denied to the extent that such allegations seek to establish unproven balances due. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

4.8 Paragraph 4.8. Denied.

V. Unjust Enrichment

5.1 Paragraph 5.1. With respect to allegations contained in paragraph 5.1, BRN Defendants incorporate and restate the answers set forth above as if fully set forth herein.

5.2 Paragraph 5.2. Denied as to any allegations that suggest Chesrown ever acted in an individual capacity. BRN Defendants lack information sufficient to form a belief as to these allegations and therefore deny the same.

5.3 Paragraph 5.3. Admitted that Taylor Engineering was not paid the full amount it billed, but denied as to any allegations that suggest Chesrown ever acted in an individual capacity. BRN Defendants lack information sufficient to form a belief as to the remaining allegations and therefore deny the same.

5.4 Paragraph 5.4. Denied to the extent that the allegations seek to establish unproven balances due.

AFFIRMATIVE DEFENSES

1. Cross-claimant fails to state a claim upon which relief can be granted.
2. Cross-claimant's claims are barred by the doctrines of waiver, laches and/or estoppel.
3. Cross-claimant's claims are barred by the doctrine of unclean hands.
4. Cross-claimant's claims and the relief sought therefrom would constitute unjust enrichment of Cross-claimant to the detriment of BRN Defendants.
5. The damages, if any, alleged by Cross-claimant were directly and proximately caused by the unreasonableness, failure, neglect, and refusal of Cross-claimant to exercise reasonable diligence and effort to mitigate the damages alleged.
6. Cross-claimant's claims are barred by failure of consideration.
7. Cross-claimant's claims are barred by express contract.
8. Cross-claimant's claims are barred by implied contract, either in law or in fact.
9. Cross-claimant's claims are barred by breach of contract.

10. Cross-claimant's claims are barred by the statute of frauds.
11. Cross-claimant fails to state facts sufficient to allow for Cross-claimant's recovery of attorneys' fees.
12. Cross-claimant's recovery in this action, if any, should be barred or reduced in accordance with the Doctrine of Avoidable Consequences.
13. Cross-claimant's recovery in this action, if any, should be barred or reduced in accordance with the Doctrine of Force Majeure.

ATTORNEYS' FEES

To defend against this action, BRN Defendants retained the services of Layman, Layman & Robinson, PLLP. BRN Defendants are entitled to an award of attorneys' fees and costs pursuant to Idaho Code §§ 12-120 and 12-121, and Rule 54 of the Idaho Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, BRN Defendants pray for judgment as follows:

- A. That Cross-claimant takes nothing by way of its cross claims;
- B. For an award of attorneys' fees and costs in defending this action;
- C. For such other and further relief as this Court deems just and proper.

BRN DEVELOPMENT, INC.'s CROSS CLAIMS

BRN Development, Inc. ("BRN Development") by and through its attorney John R. Layman and LAYMAN, LAYMAN & ROBINSON, PLLP, cross claims against Taylor Engineering as follows:

CROSS CLAIM

1. BRN Development is an Idaho corporation conducting business in Kootenai County, Idaho. BRN Development claims an interest in a portion of the real property that is the subject of this action.

2. Chesrown is a single man and resident of Spokane County, Washington. Chesrown claims an interest in a portion of the real property that is the subject of this action.

3. Taylor Engineering is a Washington corporation conducting business in Kootenai County, Idaho.

4. American Bank is a Montana banking corporation, and its primary place of business is Bozeman, Montana. American Bank has a secured interest in the real property that is the subject of this action, securing the outstanding balance of a loan to BRN Development in the initial lent amount of \$15,000,000.00 (the "American Bank Loan"). The legal and economic interests of American Bank as a lender to BRN Development and a Plaintiff in this action are adverse to the legal and economic interests of BRN Development as a borrower from American Bank and a Defendant in this action.

5. Taylor Engineering entered into an oral agreement (the "Agreement") with BRN Development, under which Taylor Engineering would provide certain professional services and engineering services (the "Services") relating to the Black Rock North Project in Kootenai County, Idaho (the "BRN Property," as legally described in American Bank's Complaint).

6. The Services included certain work relating to the application for approval of a planned unit development approval for Black Rock North (the "BRN

PUD”), approval of a subdivision within the BRN PUD known as Black Rock North Phase 1, and approval of a subdivision within the BRN PUD known as Black Rock North 1st Addition.

7. As of May 18, 2009, Taylor Engineering had not been fully paid for the invoices that had been presented to BRN Development for the Services and had filed an Amended Claim of Lien against the BRN Property in the amount of \$150,938.77. On that date, through their counsel, Taylor Engineering transmitted a letter (the “Taylor Letter”) to BRN Development, Chesrown, American Bank, and Samuel demanding payment of the amount of the Claim of Lien, together with interest, fees, and costs totaling \$177,274.08. A copy of the Taylor Letter is attached hereto as Exhibit A.

8. The Taylor Letter contained numerous representations of fact regarding the deadline for final subdivision approval, including:

The deadline for final subdivision approval for Black Rock North - 1st Addition was extended for an additional 120 days until May 29, 2009. . . if the final subdivision approval is not completed and recorded by May 29, 2009, the PUD and preliminary plat approval will expire, the PUD and plat will not vest in the recorded ownership to the real property involved, and the property will revert to its prior zoning and density. . . If the property use reverts to the above zones, a significant number of the existing proposed lots will be lost as they won't comply with the requirements of the applicable zones.

9. The representations of fact set forth in the Taylor Letter regarding the deadline for final subdivision approval were false. The two year period following preliminary plat approval actually expired on October 24, 2009. The PUD was already vested, and the preliminary plat would not expire if final approval was not obtained by May 29, 2009.

10. The Taylor Letter also offered to proceed with engineering services on behalf of "whoever pays the amount owed" and "assign its rights" to that party, as follows:

Taylor Engineering, Inc. has been very involved with the survey, design, and preliminary plat approval process for this property since 2005. It has obviously invested a great deal of work product and it holds a great deal of knowledge and expertise regarding this property. Once paid the amount set forth below, Taylor Engineering, Inc. is prepared to complete the necessary documents, request the signatures from Kootenai County, the Worley Highway District, and the Panhandle Health District, and then deliver the documents to whoever pays the amount owed. Taylor Engineering, Inc. will also assign its rights in this matter to that party.

11. The numerous factual representations set forth in the Taylor Letter are consistent with numerous previous factual representations made by Taylor Engineering (collectively, the "Taylor Representations") to BRN Development and Chesrown. The Taylor Representations have been relied upon by BRN Development and Chesrown, and have been incorporated by BRN Development

and Chesrown in multiple communications to American Bank, Samuel, and other parties.

12. The Taylor Representations, by intentional design or negligence, misled BRN Development and Chesrown into believing that additional Services were necessary to preserve the economic value of Black Rock North. Based on the Taylor Representations, BRN Development and Chesrown engaged Taylor Engineering to perform such additional Services.

13. The Taylor Representations, by intentional design or negligence, misled American Bank and Samuel into believing that additional Services were necessary to preserve the economic value of Black Rock North. The Taylor Representations created a false sense of urgency that was detrimental to the efforts of BRN Development and Chesrown to rehabilitate Black Rock North.

14. Taylor provided the Taylor Representations in the course of business dealings and for Taylor's business and economic interest as part of business transactions. Taylor provided the Taylor Representations with the intention that the BRN Defendants would rely on the Taylor Representations and pay Taylor for services claimed necessary. The Taylor Representations were not correct and were instead apparently based on results that would obtain under Spokane County ordinances, not the applicable Kootenai County ordinances. Taylor was aware that it had not confirmed or researched applicable Kootenai County ordinances,

but did not disclose that its representations and advice were based on Spokane County ordinances or that it had not performed adequate investigation or research in order to offer expert opinions on Kootenai County requirements.

15. Taylor was, in fact, not familiar with and ignorant of the applicable Kootenai County ordinances when the representations and advice referred to in the previous paragraph were given. Taylor did not disclose this ignorance and/or lack of familiarity to BRN.

16. BRN justifiably relied on Taylor's inaccurate representations and advice. As a direct and proximate result, BRN made substantial and unnecessary expenditures, large portions of which inured to the economic benefit of Taylor.

17. Taylor also had a duty to conscientiously avoid any conflict of interest with an employer or client, and, when unavoidable, to disclose the circumstances in writing to the employer or client. In addition, Taylor Engineering had a duty to promptly inform BRN Development and Chesrown in writing of any business association, interests, or circumstances which could influence Taylor Engineering's judgment or quality of service, or jeopardize the clients' interests.

18. Taylor Engineering breached its duty to avoid any conflict of interest with its duties to BRN Development and Chesrown.

19. Taylor Engineering had a duty to not accept compensation, financial or otherwise, from more than one party for services on Black Rock North, or for services pertaining to Black Rock North, without fully disclosing those circumstances, in writing, in advance and with the consent of BRN Development and Chesrown.

20. Taylor Engineering breached its duty to BRN Development and Chesrown by seeking compensation from more than one party for services on the same project, or for services pertaining to the same project, as those circumstances had not been fully disclosed, in writing, in advance and agreed to by all interested parties.

21. Taylor Engineering had a duty to not reveal confidential facts, data, or information obtained in a professional capacity without prior written consent of the client or employer except as authorized or required by law.

22. Taylor Engineering breached its duty to BRN Development and Chesrown by offering to reveal confidential facts, data, or information obtained in its professional capacity without prior written consent of BRN Development and Chesrown.

I. First Cause of Action
Professional Negligence

23. Taylor Engineering had a duty to BRN Development and Chesrown to exercise such care, skill, and diligence in the performance of the Services as

others in its profession would ordinarily exercise under like circumstances, in accordance with the standard of care for the profession of Professional Engineers and Professional Land Surveyors within the State of Idaho. That standard, at minimum, is set forth by the standards governing the conduct of the business of Professional Engineers and Professional Land Surveyors, as regulated by the Rules Of Professional Responsibility of the Idaho Board of Registration of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, Rules of Professional Responsibility (the "Rules")¹, which are binding in the state of Idaho upon every person holding a certificate of registration as a Professional Engineer or Professional Land Surveyor, and on all entities authorized to offer or perform engineering or land surveying services through a business entity.

24. Taylor Engineering breached its duty to exercise such care, skill, and diligence to BRN Development and Chesrown.

II. Second Cause of Action **Negligent Misrepresentation**

25. BRN Development re-alleges the allegations of Paragraphs 1 through 24 as though set forth in full herein.

¹ The Rules, although illustrative of Taylor Engineering's standard of care, are not an independent basis for an action involving civil liability.

26. Taylor Engineering had a duty to BRN Development and Chesrown to be complete, objective, and truthful in all communications with BRN Development and Chesrown.

27. Taylor Engineering, through its negligence, breached its duty to be complete, objective, and truthful in all communications with BRN Development and Chesrown, and misrepresented material facts regarding the scope of Services required by BRN Development and Chesrown to preserve the economic value of Black Rock North.

III. Third Cause of Action
Intentional Misrepresentation

28. BRN Development re-alleges the allegations of Paragraphs 1 through 27 as though set forth in full herein.

29. Taylor Engineering had a duty to BRN Development and Chesrown to be complete, objective, and truthful in all communications with BRN Development and Chesrown.

30. Taylor Engineering, through its intentional misrepresentations, breached its duty to be complete, objective, and truthful in all communications with BRN Development and Chesrown, and misrepresented material facts regarding the scope of Services required by BRN Development and Chesrown to preserve the economic value of Black Rock North.

IV. Fourth Cause of Action
Failure to Disclose

31. BRN Development re-alleges the allegations of Paragraphs 1 through 30 as though set forth in full herein.

32. Taylor Engineering undertook to advise BRN in its business and financial dealings related to Black Rock North and, as a result, had a duty to BRN to use reasonable care to disclose

- a. matters known to Taylor Engineering that BRN was entitled to know because of the relation of trust and confidence between them;
- b. matters known to Taylor Engineering that it knew to be necessary to prevent its partial or ambiguous statements from being misleading;
- c. subsequently acquired information that Taylor Engineering knew would make untrue or misleading a previous representation;
- d. the falsity or incompleteness of representations made with the expectation that the representation would be acted upon, when Taylor Engineering subsequently discovered BRN was about to act in reliance upon the representations; and

e. facts basic to the transaction, when Taylor Engineering knew that BRN was about to act under a mistake as to those facts.

33. Taylor Engineering breached these duties by failing to disclose that its advice and representations were based on Spokane County ordinances, not the applicable Kootenai County ordinances and that Taylor had not investigated or researched the applicable Kootenai County ordinances in order to accurately advise requiring their provisions and requirements.

34. Taylor Engineering breached its duties by failing to disclose that it was unfamiliar with and/or ignorant of the applicable Kootenai County ordinances.

35. Taylor Engineering knew that the proper and necessary disclosures would justifiably induce BRN to act or refrain from acting with respect to the ongoing business transaction between the parties.

36. As a direct and proximate result, BRN suffered damages in amount to be proven at the time of trial.

ATTORNEYS' FEES

To prosecute this cross claim, BRN Development retained the services of Layman, Layman & Robinson, PLLP. BRN Development is entitled to an award of attorneys' fees and costs pursuant to Idaho Code §§ 12-120 and 12-121, and Rule 54 of the Idaho Rules of Civil Procedure.

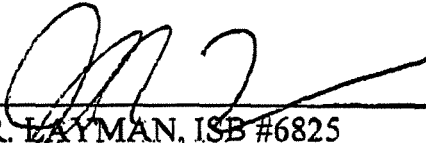
PRAYER FOR RELIEF

WHEREFORE, BRN Development prays for judgment as follows:

1. For judgment against Taylor Engineering in an amount to be determined at trial.
2. For recovery of BRN Development's attorneys' fees and costs incurred herein.
3. For such other and further relief as the court deems to be just and equitable.

DATED this 18 day of MAY 2009.

LAYMAN, LAYMAN & ROBINSON, PLLP



JOHN R. LAYMAN, ISB #6825
Attorney for BRN Development, Inc., BRN
Investments, LLC, Lake View AG, BRN-Lake
View Joint Venture, the Roland M. Casati
Family Trust, dated June 5, 2008, and the Ryker
Young Revocable Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of May, 2010, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

| | |
|---|---|
| Barry Davidson Davidson Beckman Medeiros 601 W. Riverside #1550 Spokane, WA 99201 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |
| Charles Lempeis Attorney at Law 201 W. Seventh Ave. Post Falls, ID 83854 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |
| Edward Anson Witherspoon, Kelley, Davenport & Toole, P.S. 601 Northwest Blvd. #300 Coeur d'Alene, ID 83814 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |
| Richard Campbell Campbell, Bissell & Kirby, PLLC 7 South Howard St. #416 Spokane, WA 99201 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |
| Timothy Lawlor Witherspoon, Kelley, Davenport & Toole 422 W. Riverside, Ste. 1100 Spokane, WA 99201 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |
| Randall A. Peterman & C. Clayton Gill Moffatt, Thomas, Barrett, Rock & Fields 101 South Capital Blvd., 10 th Floor P.O. Box 829 Boise, Idaho 83701 | <input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic Mail |

| | | |
|---|-------------------------------------|-----------------|
| Nancy L. Isserlis & Elizabeth A. Tellensen Winston & Cashatt 601 W. Riverside Ave. #1900 Spokane, WA 99201 | <input type="checkbox"/> | Hand-delivered |
| | <input checked="" type="checkbox"/> | Regular mail |
| | <input type="checkbox"/> | Certified mail |
| | <input type="checkbox"/> | Overnight mail |
| | <input type="checkbox"/> | Facsimile |
| | <input type="checkbox"/> | Electronic Mail |
| Maggie Lyons 2961 Ponderosa Drive Hayden Lake, ID 83835 Requested Receiver | <input type="checkbox"/> | Hand-delivered |
| | <input checked="" type="checkbox"/> | Regular mail |
| | <input type="checkbox"/> | Certified mail |
| | <input type="checkbox"/> | Overnight mail |
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Wendy Ahonen
WENDY AHONEN

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

Sherry H. Hume
DEPUTY

Steven C. Wetzel, ISB # 2988
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Attorneys for Defendant ACI NORTHWEST, INC.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
-THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho

Case No. CV09-2619

ACI NORTHWEST, INC.'S ANSWER
TO TAYLOR ENGINEERING, INC.'S
THIRD PARTY COMPLAINT, AND
DEFENDANT ACI NORTHWEST
INC.'S CROSS-CLAIM AND
DEMAND FOR JURY TRIAL

Fee Category I1: \$58.00
Fee Category K4: \$14.00

ACI NORTHWEST, INC.'S ANSWER TO TAYLOR ENGINEERING, INC.'S THIRD
PARTY COMPLAINT, AND DEFENDANT ACI NORTHWEST INC.'S CROSS-CLAIM
AND DEMAND FOR JURY TRIAL - 1

corporation, TAYLOR ENGINEERING, INC., a Washington corporation, PRECISION IRRIGATION, INC., an Arizona corporation and,

Defendant.

And

TAYLOR ENGINEERING, INC., a Washington corporation,

Third-Party Plaintiff,

v.

ACI NORTHWEST, INC., an Idaho corporation; STRATA, INC., an Idaho corporation; and SUNDANCE INVESTMENTS, LLP, an Idaho limited liability limited partnership,

Third-Party Defendants.

And

ACI NORTHWEST, INC., an Idaho corporation,

Crossclaimant,

v.

AMERICAN BANK, a Montana banking corporation, BRN DEVELOPMENT, INC., an Idaho corporation, BRN INVESTMENTS, LLC, an Idaho limited liability company, LAKE VIEW AG, a Liechtenstein company, BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST,

ACI NORTHWEST, INC.'S ANSWER TO TAYLOR ENGINEERING, INC.'S THIRD PARTY COMPLAINT, AND DEFENDANT ACI NORTHWEST INC.'S CROSS-CLAIM AND DEMAND FOR JURY TRIAL - 2

MARSHALL CHESROWN, a single man,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY,
an Oregon corporation, THE TURF
CORPORATION, an Idaho corporation,
WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a
Delaware corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation and,

Crossclaim Defendants.

COMES NOW Defendant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, Wetzel, Wetzel & Holt, PLLC, and in answer to TAYLOR ENGINEERING, INC.'s ("TAYLOR ENGINEERING") Third Party Complaint, admits, denies, and alleges as follows:

ANSWER

All allegations contained in TAYLOR ENGINEERING's Counterclaim and Cross-Claim which are not specifically admitted or denied herein are hereby categorically denied in their entirety.

1. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 2.1, and 2.2 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

2. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.3 of TAYLOR ENGINEERING's Counterclaim and

ACI NORTHWEST, INC.'S ANSWER TO TAYLOR ENGINEERING, INC.'S THIRD PARTY COMPLAINT, AND DEFENDANT ACI NORTHWEST INC.'S CROSS-CLAIM AND DEMAND FOR JURY TRIAL - 3

Cross-Claim and therefore denies the same, but admits that the Black Rock North Project is located in Kootenai County, Idaho.

3. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 2.4 and 2.5 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

4. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.6 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same, but admits that a true and correct copy of said Notice of Claim of Lien is attached as Exhibit 3.

5. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.7 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same, but admits that a true and correct copy of said Amended Notice of Claim of Lien is attached as Exhibit 4.

6. ACI denies the allegations contained in Paragraph 2.7 [sic] of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

7. As to paragraph 3.1 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim, ACI reasserts all admissions and denials previously provided to the paragraphs enumerated therein.

8. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 3.2 and 3.3 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

9. As to paragraph 4.1 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim, ACI reasserts all admissions and denials previously provided to the paragraphs enumerated therein.

10. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4.2 and 4.3 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

11. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.4 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same, but admits Taylor recorded its Claim of Lien against the BRN property on or about January 26, 2009, and recorded the Amended Notice of claim of Lien against the BRN Property on or about April 10, 2009.

12. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4.5 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

13. ACI is without knowledge or information sufficient to form a belief as to the truth as to the truth of the allegations contained in Paragraph 4.6 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim, and therefore denies the same, but admits that the Court should determine the priority and denies that TAYLOR ENGINEERING's priority is superior to ACI.

14. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4.7 and 4.8 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

15. As to paragraph 5.1 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim, ACI reasserts all admissions and denials previously provided to the paragraphs enumerated therein.

16. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 5.2, 5.3, and 5.4 of TAYLOR ENGINEERING's Counterclaim and Cross-Claim and therefore denies the same.

17. As to paragraph 1.1 of TAYLOR ENGINEERING's Third Party Complaint, ACI reasserts all admissions and denials previously provided to the paragraphs enumerated therein.

18. ACI admits the allegations contained in Paragraph 1.2 of TAYLOR ENGINEERING's Third Party Complaint.

19. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1.3 and 1.4 of TAYLOR ENGINEERING's Third Party Complaint and therefore denies the same.

20. As to paragraph 2.1 of TAYLOR ENGINEERING's Third Party Complaint, ACI reasserts all admissions and denials previously provided to the paragraphs enumerated therein.

21. ACI is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.2 of TAYLOR ENGINEERING's Third Party Complaint and therefore denies the same.

CROSS-CLAIM

COMES NOW Defendant ACI NORTHWEST, INC. ("ACI"), by and through its attorneys of record, Wetzel, Wetzel & Holt, PLLC, and cross-complains and alleges as follows:

PARTIES

1. Plaintiff ACI is and has at all times relevant herein been an Idaho corporation, in good standing, doing business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815.

2. Defendant BRN is and at all times relevant herein been an Idaho corporation, transacting business in Kootenai County, Idaho, with a mailing address of P.O. Box 3070, Coeur d'Alene, Idaho 83816.

3. Defendants BRN INVESTMENTS, LLC, an Idaho limited liability company (hereinafter referred to as "BRN"), LAKE VIEW AG, a Liechtenstein company, AMERICAN BANK, a Montana banking corporation (hereinafter referred to as "AMERICAN BANK"), ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, THORCO, INC., an Idaho corporation, CONSOLIDATED SUPPLY COMPANY, an Oregon corporation, THE TURF CORPORATION, an Idaho corporation, WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation (hereinafter referred to as "WADSWORTH GOLF"), POLIN & YOUNG CONSTRUCTION, INC., an Idaho corporation, TAYLOR ENGINEERING, INC., a Washington corporation, and PRECISION IRRIGATION, INC., an Arizona corporation, all claim an interest in the Improved Property. ACI, upon information and belief, alleges that all Cross-Claim defendants have submitted to the jurisdiction of the Court or have transacted business in Kootenai County, Idaho.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the parties and the subject matter pursuant to Idaho Code §§ 1-705, 5-514(a), 5-514 (c), 45-516, 45-1302 and other state law. Venue is proper pursuant to Idaho Code §§ 5-401 and 5-404.

COUNT 1
BREACH OF EXPRESS OR IMPLIED CONTRACT BY BRN

5. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

6. ACI and BRN entered into expressed and implied contracts from 2006-2009 (hereinafter collectively referred to as the "Contracts"), all related to Black Rock North Golf Community. Pursuant to the Contracts, ACI performed labor, supplied equipment and furnished materials for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the real property described in **Exhibit "A"** attached hereto (the "Improved Property").

7. The Contracts constitute valid and legally enforceable contracts under Idaho law.

8. BRN has breached the Contracts by not paying ACI for the work ACI performed pursuant to the Contracts. The amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The amount of interest currently due and owing pursuant to the terms of the Contracts is \$197,104.80 as of June 1, 2010.

9. As a direct and proximate result of BRN's breach of contracts, ACI has obviously been damaged at least in the amount of \$1,501,590.50, plus interest as of June 1, 2010 in the amount of \$197,104.80. The total amount of damages, including but not limited to the total interest due on said amount at the highest rate allowed by the Contracts and Idaho law, shall be proven at trial.

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COUNT 2
UNJUST ENRICHMENT

10. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

11. Even if there were no express or implied contracts between ACI and BRN as is alleged in COUNT I above, ACI has provided a benefit to BRN in the form of ACI's various construction work, which BRN has accepted.

12. Under the circumstances, it would be unjust for BRN to retain such benefit without compensating ACI for its value, which is in excess of \$10,000.00, with the precise amount to be proven at trial.

COUNT 3
FORECLOSURE OF MECHANIC'S/MATERIALMAN'S LIEN

13. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

14. ACI performed labor, supplied equipment and furnished materials for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping on the Improved Property. Such work commenced on October 1, 2006, which has continued in various degrees of performance to the present and was performed at the express and implied request of BRN and AMERICAN BANK and with the full knowledge of BRN and AMERICAN BANK.

15. As of June 15, 2009, the amount due and owing to ACI from BRN for labor performed, equipment supplied and materials furnished was \$1,499,827.63, excluding interest owed pursuant to the terms of the Contracts. As a result, on that same date, ACI recorded a

Claim of Lien against the Improved Property for the principal amount due and owing, interest thereon and costs and attorney's fees pursuant to Idaho Code 45-513.

16. BRN later made a partial payment on account on December 9, 2009, for which ACI recorded an Endorsement to Claim of Lien for Payment on Account.

17. Pursuant to the Contracts, the amount currently due and owing to ACI, excluding interest, is \$1,501,590.50. The amount of interest currently due and owing pursuant to the terms of the Contracts is \$197,104.80 as of June 1, 2010.

18. ACI recorded a claim of lien on the Improved Property described on **Exhibit "A"** attached hereto and incorporated by this reference. The claim of lien is attached hereto and incorporated herein as **Exhibit "B."** The claim of lien was extended by an "Endorsement to Claim of Lien for Payment on Account," a copy of which is attached hereto and incorporated herein as **Exhibit "C."** ACI's lien is entitled to foreclosure, priority and/or a determination of the title, estate or interest of all parties hereto pursuant to Idaho Code Sections 45-506, 45-507, 45-510, 45-512 and 45-1302.

COUNT 4
BREACH OF EXPRESS OR IMPLIED CONTRACT BY WADSWORTH GOLF

19. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

20. ACI and WADSWORTH GOLF entered into expressed and implied contracts in the same period of 2006-2009 (hereinafter collectively referred to as the "Wadsworth Contracts"). Pursuant to the Wadsworth Contracts, ACI performed labor, supplied equipment and furnished materials for various construction work, including but not limited to the construction of golf course related improvements to the Improved Property.

21. The Wadsworth Contracts constitute valid and legally enforceable contracts under Idaho law.

22. WADSWORTH GOLF has breached the Contracts by not paying ACI for the work ACI performed pursuant to the Contracts. The amount currently due and owing to ACI, including interest, is in excess of \$10,000.00.

23. As a direct and proximate result of WADSWORTH GOLF's breach of contracts, ACI has been damaged in an amount in excess of \$10,000.00, with the precise amount to be proven at trial.

COUNT 5
BREACH OF EXPRESS OR IMPLIED CONTRACT BY POLIN & YOUNG

24. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

25. ACI and POLIN & YOUNG entered into expressed and implied contracts in the same period of 2006-2009 (hereinafter collectively referred to as the "Polin Contracts"). Pursuant to the Polin Contracts, ACI performed labor, supplied equipment and furnished materials for various construction work, including but not limited to the construction of golf course related improvements to the Improved Property.

26. The Polin Contracts constitute valid and legally enforceable contracts under Idaho law.

27. POLIN & YOUNG has breached the Contracts by not paying ACI for the work ACI performed pursuant to the Contracts. The amount currently due and owing to ACI, including interest, is \$6,084.15, plus interest.

28. As a direct and proximate result of POLIN & YOUNG's breach of contracts, ACI has been damaged in an amount in excess of \$6,084.15, with the precise amount to be proven at trial.

COUNT 6
INTERFERENCE IN CONTRACT AND/OR INTERFERENCE WITH PROSPECTIVE
BUSINESS ADVANTAGE AND/OR
MISREPRESENTATION OF AMERICAN BANK

29. ACI re-alleges and incorporates the foregoing allegations as though fully set forth herein.

30. On or about 2005 and 2006, BRN commenced a plan to develop real property located in Kootenai County, Idaho, the Improved Property.

31. BRN entered into negotiations with ACI for substantial contracting related to a golf course community patterned after the successful Black Rock Golf Community, the first private residential golf community overlooking Lake Coeur d'Alene.

32. Under the terms of the prospective construction agreement, BRN was to pay to ACI millions of dollars for substantial improvement to create a new golf course community, "Black Rock North Golf Community," on the Improved Property. This amounted to a valid economic expectancy on the part of ACI. AMERICAN BANK agreed to finance the construction of the project. AMERICAN BANK knew that ACI was working on the project and had valid existing contracts to construct Black Rock North Golf Community, and knew of ACI's valid economic expectancy. The loan promised was enough to complete the construction and assure that ACI was paid in full ("Representation").

33. AMERICAN BANK's representation was false and was made for the purpose of inducing ACI to construct the Black Rock North Golf Community. AMERICAN BANK either

knew or should have known the representation was false. The representation was a material fact and AMERICAN BANK intended that ACI rely on the representation in commencing and continuing construction. ACI did not know the representation was false and rightfully relied on that representation.

34. The representation operated as a material inducement to ACI to enter into the construction agreement, and ACI would not have commenced construction but for the representation that AMERICAN BANK would finance the construction. AMERICAN BANK intentionally halted the distribution of construction loan proceeds causing BRN to breach its contracts with ACI, which act was an intentional interference inducing the termination of the economic expectancy of ACI. The interference of AMERICAN BANK was not incidental, but was for the improper purpose of obtaining possession of the real estate without having to pay for the improvements made by ACI, and the improper means of withholding pledged loan proceeds.

35. As a direct and proximate result of the false representation of AMERICAN BANK, or in the alternative AMERICAN BANK's interference in the contracts, and/or interference in prospective economic advantage, ACI has suffered substantial damages in excess of \$10,000.00.

36. As a result of AMERICAN BANK's interference and/or misrepresentation and/or omission, AMERICAN BANK has inequitably claimed a senior priority over ACI and has forced ACI to retain legal counsel to prosecute this action. ACI is therefore entitled to reimbursement of any loss by ACI and/or the equitable subordination of any claimed priority by AMERICAN BANK superior to ACI and reasonable attorney's fees and costs pursuant to Idaho Code.

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WHEREFORE, ACI prays for judgment as follows:

As to Count 1 of ACI's Cross-claim:

1. For entry of money judgment in favor of ACI and against BRN in an amount to be proven at trial, anticipated to be \$1,501,590.50, plus interest in the amount of \$197,104.80 as of June 1, 2010, along with total interest until paid at the highest rate allowed by Idaho law.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves and Idaho law including but not limited to Idaho Code Sections 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
3. For any other relief that the Court deems just and proper.

As to Count 2 of ACI's Cross-claim:

1. For the entry of judgment in favor of ACI and against BRN in excess of \$10,000.00, the precise amount to be proven at trial.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves and Idaho law, including but not limited to Idaho Code Sections 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
3. For any other relief that the Court deems just and proper.

As to Count 3 of ACI's Cross-claim:

1. For the entry of judgment in favor of ACI and against all Defendants as follows:
2. Declaring that ACI is entitled to the principal sum of \$1,501,59.50, together with interest accrued thereon, plus the following additional items and amounts:

- 2.1 The sum of \$1,500.00 for the preparation of the Claim of Lien pursuant to Idaho Code § 450513;
- 2.2 The sum of \$57 for recording of the Claim of Lien and Endorsement;
- 2.3 The reasonable cost of the Litigation Guarantee/Title Report;
- 2.4 The reasonable attorney fees and costs incurred by ACI in relation to the foreclosure of said Claim of Lien in the sum of \$7,00.00 if a default judgment is entered and such other and further sums if this matter is contested pursuant to Idaho Code § 45-513 and any other applicable statutes;
- 3 Foreclosing the Claim of Lien held by ACI;
- 4 Requiring the Defendants, and each of them, to set forth in proper pleading the nature of their claims and/or interests in and to the Improved Property or any part thereof;
- 5 Declaring the rank of each lien or class of liens in accordance with Idaho Code § 45-512;
- 6 Declaring that all Defendants and all persons claiming or to claim an interest in the Improved Property, or any part thereof, that is determined by the Court to be invalid and unenforceable, or junior and/or subordinate to ACI's interest in the Improved Property by virtue of its Claim of Lien, be barred and foreclosed of all right, title, interest, claim or equity of redemption in and to the Improved Property;
- 7 The usual decree of foreclosure be made for the sale of the real property described in the Claim of Lien of which ACI is the holder, according to the law and practice of this Court, and that the real property be sold in one parcel by the Sheriff of Kootenai County, State of Idaho;

- 8 The proceeds of the sale of the property be allocated among the lien holders in accordance with Idaho Code § 45-512;
- 9 Any party to this action may become a purchaser at said sale, and the Sheriff shall execute a deed to said purchaser or purchasers and said purchaser or purchasers shall be let into possession of the premises upon production of said Sheriff's Deed, Certificate of Sale or Bill of Sale therefor; and
- 10 For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves, Idaho Code Sections 45-513, 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
- 11 For any other relief that the Court deems just and proper.

As to Count 4 of ACI's Cross-Claim:

1. For entry of money judgment in favor of ACI and against WADSWORTH GOLF in an amount to be proven at trial, in excess of \$10,000.00.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves, Idaho Code Sections 45-513, 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
3. For any other relief that the Court deems just and proper.

As to Count 5 of ACI's Cross-Claim:

4. For entry of money judgment in favor of ACI and against POLIN & YOUNG in an amount to be proven at trial, in excess of \$6,084.15, plus interest.

5. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves, Idaho Code Sections 45-513, 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
6. For any other relief that the Court deems just and proper.

As to Count 6 of ACI's Cross-Claim:

1. For the entry of judgment in favor of ACI and against AMERICAN BANK equitably subordinating any AMERICAN BANK lien priority to ACI's lien, or in the alternative, judgment against AMERICAN BANK in excess of \$10,000.00 as damages for misrepresentation.
2. For reasonable costs and attorney's fees pursuant to the terms of the Contracts themselves, Idaho Code Sections 45-513, 12-120(3), 12-120(5), and 12-121, along with Idaho Rules of Civil Procedure 54(d)(1) and 54(e). In the event of default, the amount of attorney's fees shall equal \$7,000.00.
3. For any other relief that the Court deems just and proper.

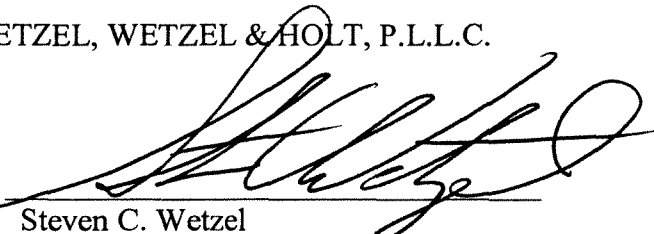
DEMAND FOR JURY TRIAL

Demand is hereby made for a jury trial of not less than twelve jurors.

DATED this 7th day of June, 2010.

WETZEL, WETZEL & HOLT, P.L.L.C.

By


Steven C. Wetzel

Attorney for Defendant ACI Northwest, Inc.

CERTIFICATE OF MAILING AND/OR DELIVERY

I hereby certify that on the 7th day of June, 2010, I served the foregoing document upon:

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*Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
BRN-Lake View Joint Venture, The
Roland M. Casati Family Trust, Dated
June 5, 2008, and the Ryker Young
Revocable Trust*

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*Attorneys for Consolidated Supply
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Deborah Hylton

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EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING



EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E" OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE

NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

EXHIBIT "A"
LEGAL DESCRIPTION

NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;

2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

EXHIBIT "A"
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFFS BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE, 65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFFS BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE PLAT OF MCLEAN MEADOWS RECORDED IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SC 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.



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CLAIM OF LIEN

1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63. *see attached* Exhibit "B".
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached* Exhibit "B".
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

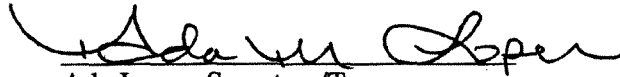


STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien. I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

ACI Northwest, Inc.


Ada Loper, Secretary/Treasurer

STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

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



Notary for the State of Idaho
Commission Expires: 7/21/09



EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE FOLLOWING 4 TRACTS LABELLED A-D IN GOVERNMENT LOTS 7 AND 8 IN SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO:

TRACT A:

A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37'03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17'44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47'39" EAST ALONG SAID RIGHT OF WAY, 115.37 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37'03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54'39" EAST, 955.4 FEET TO THE INTERSECTION WITH THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34'10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 161.47 FEET WITH A RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24'29";

THENCE SOUTH 55 DEGREES 58'39" WEST ALONG SAID RIGHT OF WAY, 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT, 341.96 FEET WITH A RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13'42";

THENCE NORTH 62 DEGREES 47'39" WEST ALONG SAID RIGHT OF WAY, 100.0 FEET TO THE TRUE POINT OF BEGINNING.

TRACT B:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST OF THE BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL BEING

EXHIBIT "A"
LEGAL DESCRIPTION

A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4 AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST A DISTANCE OF 1,759.89 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST ALONG THE NORTH BOUNDARY LINE, SAID GOVERNMENT LOT 7, A DISTANCE OF 1329.84 FEET TO THE NORTHEAST CORNER OF LOT 7;

THENCE 3 DEGREES 37' 03" WEST ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 7, A DISTANCE OF 766.02 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 3 DEGREES 37' 03" WEST CONTINUING ALONG SAID LINE A DISTANCE OF 345.08 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF LOFF'S BAY ROAD, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 290.00 FEET, THROUGH A CENTRAL ANGLE OF 50 DEGREES 52' 50" A DISTANCE ALONG THE ARC OF 257.53 FEET, THE CHORD BEARING OF SAID CURVE BEING SOUTH 80 DEGREES 44' 47" WEST;

THENCE SOUTH 55 DEGREES 18' 20" WEST CONTINUING ALONG SAID RIGHT OF WAY, A DISTANCE OF 297.82 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1980.00 FEET, THROUGH A CENTRAL ANGLE OF 7 DEGREES 02' 34", A DISTANCE ALONG THE ARC OF 243.38 FEET;

THENCE SOUTH 48 DEGREES 15' 46" WEST CONTINUING ALONG SAID RIGHT OF WAY A DISTANCE OF 243.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 670.00 FEET, THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 00" A DISTANCE ALONG THE ARC OF 128.63 FEET;

THENCE NORTH 3 DEGREES 51' 04" EAST LEAVING SAID RIGHT OF WAY, A DISTANCE OF 279.05 FEET;

THENCE NORTH 16 DEGREES 00' 00" EAST A DISTANCE OF 831.46 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 84.09 FEET;

THENCE SOUTH 41 DEGREES 42' 23" EAST A DISTANCE OF 133.87 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST A DISTANCE OF 568.90 FEET TO THE TRUE POINT OF BEGINNING.

TRACT C:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, SAID PARCEL

EXHIBIT "A"
LEGAL DESCRIPTION

BEING A PORTION OF GOVERNMENT LOT 7, SAID SECTION 8, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER, LOT 20, AS SHOWN ON THE RECORD OF SURVEY BY EUGENE H. WELBORN, R.L.S. #1020, FILED IN BOOK 4, AT PAGE 249, KOOTENAI COUNTY RECORDS, FROM WHICH THE CENTER OF SAID SECTION 8 BEARS SOUTH 3 DEGREES 28' 34" WEST, A DISTANCE OF 1759.89 FEET;

THENCE SOUTH 3 DEGREES 28' 34" WEST, ALONG THE EASTERLY BOUNDARY LINE OF LOT 20, AS SHOWN ON SAID RECORD OF SURVEY, A DISTANCE OF 671.01 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE SOUTH 86 DEGREES 54' 39" EAST, A DISTANCE OF 580.00 FEET; THENCE SOUTH 16 DEGREES 00' 00" WEST, A DISTANCE OF 831.46 FEET;

THENCE SOUTH 3 DEGREES 51' 04" WEST, A DISTANCE OF 279.05 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF LOFF'S BAY ROAD;

THENCE NORTH 86 DEGREES 49' 26" WEST, LEAVING SAID RIGHT OF WAY, A DISTANCE OF 397.86 FEET TO THE SOUTHEAST CORNER OF LOT 21, AS SHOWN ON THE SAID RECORD OF SURVEY;

THENCE NORTH 3 DEGREES 28' 34" EAST, ALONG THE EASTERLY BOUNDARY LINE, SAID LOT 21, A DISTANCE OF 1088.88 FEET TO THE TRUE POINT OF BEGINNING.

TRACT D THE FOLLOWING 3 PARCELS:

TRACT 1:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69 FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE POINT OF BEGINNING.

TRACT 2:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

TRACT 3:

THAT PORTION OF GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, LYING NORTH OF LOFF'S BAY ROAD.

LESS AND EXCEPT A TRACT OF LAND LOCATED IN GOVERNMENT LOT 8, SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 3 DEGREES 37' 03" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT, A DISTANCE OF 1111.1 FEET TO THE NORTH RIGHT OF WAY OF EXISTING LOFF'S BAY ROAD;

THENCE 55.69 SOUTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 290.0 FEET ON A CHORD BEARING SOUTH 68 DEGREES 17' 44" EAST, 55.60 FEET;

THENCE SOUTH 62 DEGREES 47' 39" EAST ALONG SAID RIGHT OF WAY 115.37 FEET

EXHIBIT "A"
LEGAL DESCRIPTION

TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 3 DEGREES 37' 03" EAST, 588.0 FEET;

THENCE SOUTH 86 DEGREES 54' 39" EAST, 955.4 FEET TO THE INTERSECTION WITH
THE NORTH RIGHT OF WAY OF EXISTING COUNTY ROAD;

THENCE SOUTH 42 DEGREES 34' 10" WEST ALONG SAID RIGHT OF WAY 538.6 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 161.47 FEET WITH A
RADIUS OF 690.0 FEET AND A CENTRAL ANGLE OF 13 DEGREES 24' 29";

THENCE SOUTH 55 DEGREES 58' 39" WEST ALONG SAID RIGHT WAY 107.27 FEET;

THENCE ALONG SAID RIGHT OF WAY ON A CURVE TO THE RIGHT 341.96 FEET WITH A
RADIUS OF 320.0 FEET AND A CENTRAL ANGLE OF 61 DEGREES 13' 42";

THENCE NORTH 62 DEGREES 47' 39" WEST ALONG SAID RIGHT OF WAY 100.0 FEET TO
THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF 225.00
FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 587.97 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 69.31 FEET;

THENCE SOUTH 03 DEGREES 28' 34" WEST, 588.00 FEET TO THE NORTH MARGIN OF
SAID LOFF'S BAY ROAD;

THENCE NORTH 62 DEGREES 47' 39" WEST, ALONG SAID NORTH MARGIN 115.37 FEET
TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 290 FEET
THROUGH A CENTRAL ANGLE OF 11 DEGREES 00' 10", AN ARC DISTANCE OF 55.69
FEET;

THENCE NORTH 03 DEGREES 37' 03" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 8, 1111.10 FEET TO THE NORTH LINE THEREOF, AND THE TRUE
POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 8, SECTION 8,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO,
LYING NORTH OF LOFF'S BAY COUNTY ROAD DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 8;

THENCE SOUTH 86 DEGREES 54' 39" EAST, ALONG THE NORTH LINE THEREOF, 225.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 86 DEGREES 54' 39" EAST, ALONG SAID NORTH LINE 757.32 FEET;

THENCE SOUTH 23 DEGREES 49' 53" WEST, 628.71 FEET;

THENCE NORTH 86 DEGREES 54' 39" WEST, 538.63 FEET;

THENCE NORTH 03 DEGREES 28' 34" EAST, 587.97 FEET TO SAID NORTH LINE AND THE TRUE POINT OF BEGINNING.

PARCEL 2:

THE NORTH HALF OF THE SOUTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, AND GOVERNMENT LOTS 1 AND 2, SECTION 8, ALL IN TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 4:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

PARCEL 5:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO,

AND

LOT 2, BLOCK 1, SCHORZMAN-ATKINS SHORT PLAT, ACCORDING TO THE PLAT RECORDED IN BOOK "T" OF PLATS AT PAGES 253 AND 253A, RECORDS OF KOOTENAI COUNTY, IDAHO.

PARCEL 6:

EXHIBIT "A"
LEGAL DESCRIPTION

LOTS 1, 2 AND 3, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN.

AND

GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THAT PROPERTY REFERRED TO IN EXHIBIT "E" OF QUIET TITLE JUDGEMENT RECORDED UNDER INSTRUMENT NO. 1906262 IN SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 4, SECTION 4;
THENCE

NORTH 00 DEGREES 45' 39" EAST ALONG THE EAST LINE OF SAID LOT 4 A
DISTANCE OF 135.30 FEET TO THE POINT OF BEGINNING; THENCE

SOUTH 87 DEGREES 21' 30" WEST 48.71 FEET; THENCE

NORTH 02 DEGREES 51' 12" WEST 32.07 FEET; THENCE

NORTH 03 DEGREES 13' 21" WEST 10.60 FEET; THENCE

NORTH 02 DEGREES 51' 19" WEST 23.11 FEET; THENCE

NORTH 03 DEGREES 43' 08" WEST 37.65 FEET; THENCE

NORTH 03 DEGREES 46' 01" WEST 51.50 FEET; THENCE

NORTH 03 DEGREES 11' 51" WEST 16.13 FEET; THENCE

NORTH 07 DEGREES 58' 23" WEST 24.73 FEET; THENCE

NORTH 05 DEGREES 22' 53" WEST 23.29 FEET; THENCE

NORTH 06 DEGREES 14' 48" WEST 58.80 FEET; THENCE

NORTH 05 DEGREES 01' 03" WEST 87.73 FEET; THENCE

NORTH 00 DEGREES 16' 11" WEST 39.22 FEET; THENCE

NORTH 18 DEGREES 20' 54" WEST 5.57 FEET; THENCE

NORTH 00 DEGREES 28' 20" WEST 116.01 FEET; THENCE

NORTH 04 DEGREES 23' 45" EAST 125.91 FEET; THENCE

EXHIBIT "A"
LEGAL DESCRIPTION

NORTH 03 DEGREES 34' 02" EAST 185.71 FEET; THENCE

NORTH 02 DEGREES 44' 00" EAST 41.99 FEET; THENCE

SOUTH 80 DEGREES 57' 24" EAST 34.12 FEET; THENCE

SOUTH 73 DEGREES 27' 34" EAST 37.42 FEET TO A POINT ON THE EAST LINE OF SAID GOVERNMENT LOT 4; THENCE

SOUTH 00 DEGREES 45' 39" WEST A DISTANCE OF 880.68 FEET TO THE POINT OF BEGINNING.

AND EXCEPTING THEREFROM ALL OF THAT PORTION OF SAID GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, FURTHER DESCRIBED AS FOLLOWS:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;

2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

PARCEL 7, THE FOLLOWING TRACTS:

TRACT A:

A PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, AND GOVERNMENT LOT 2, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,

EXHIBIT "A"
LEGAL DESCRIPTION

KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE
NORTHEAST QUARTER (CN 1/16 CORNER);

THENCE NORTH 1 DEGREES 08' 28" EAST, 159.98 FEET ALONG THE WEST BOUNDARY
OF SAID LOT 2 TO A POINT ON THE CENTERLINE OF LOFFS BAY ROAD;

THENCE TRAVERSING SAID CENTERLINE AS FOLLOWS:

SOUTH 58 DEGREES 36' 55" EAST, 49.07 FEET;

THENCE 332.38 FEET ALONG THE ARC OF A 335.58 FOOT RADIUS CURVE RIGHT, SAID
CURVE HAVING A CHORD BEARING SOUTH 30 DEGREES 14' 24" EAST, 318.96 FEET;

THENCE SOUTH 1 DEGREES 51' 53" EAST, 328.02 FEET;

THENCE SOUTH 2 DEGREES 28' 04" WEST, 104.42 FEET;

THENCE SOUTH 12 DEGREES 40' 51" WEST, 42.73 FEET;

THENCE SOUTH 21 DEGREES 56' 11" WEST, 51.81 FEET;

THENCE SOUTH 31 DEGREES 00' 18" WEST, 99.74 FEET;

THENCE SOUTH 32 DEGREES 35' 22" WEST, 104.42 FEET;

THENCE SOUTH 36 DEGREES 33' 02" WEST, 100.94 FEET;

THENCE SOUTH 42 DEGREES 15' 53" WEST, 51.24 FEET;

THENCE NORTH 1 DEGREES 08' 28" EAST, AND LEAVING SAID CENTERLINE 955.75
FEET ALONG THE WEST BOUNDARY OF SAID SOUTHWEST QUARTER OF THE NORTHEAST
QUARTER TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING IN LOFF'S BAY ROAD.

TRACT B:

A PARCEL OF LAND IN GOVERNMENT LOT 3, SECTION 4, TOWNSHIP 48 NORTH, RANGE
4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND FURTHER DESCRIBED AS
FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3, SECTION 4;

THENCE NORTH 00 DEGREES 46' 05" EAST, ALONG THE WEST LINE OF SAID
GOVERNMENT LOT 3, A DISTANCE OF 135.57 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION

THENCE NORTH 89 DEGREES 12' 07" EAST, A DISTANCE OF 312.12 FEET;

THENCE NORTH 89 DEGREES 47' 56" EAST, A DISTANCE OF 321.36 FEET;

THENCE NORTH 89 DEGREES 06' 35" EAST, A DISTANCE OF 325.48 FEET;

THENCE NORTH 82 DEGREES 25' 36" EAST, A DISTANCE OF 170.38 FEET;

THENCE SOUTH 84 DEGREES 22' 44" EAST, A DISTANCE OF 128.59 FEET;

THENCE NORTH 87 DEGREES 27' 56" EAST, A DISTANCE OF 78.74 FEET TO THE
INTERSECTION WITH THE WEST LINE OF SAID GOVERNMENT LOT 2;

THENCE SOUTH 01 DEGREES 08' 46" WEST, A DISTANCE OF 260.57 FEET TO THE
NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN;

THENCE NORTH 85 DEGREES 39' 49" WEST, 1334.86 FEET TO THE POINT OF
BEGINNING.

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48
NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, DESCRIBED AS
FOLLOWS:

COMMENCING AT THE NORTH ONE QUARTER CORNER OF SAID SECTION 4;

THENCE SOUTH 01 DEGREES 57' 14" WEST, ALONG THE EAST LINE OF THE
NORTHWEST QUARTER OF SAID SECTION 4, 980.93 FEET TO THE POINT OF
BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUE SOUTH 01 DEGREES 57' 14" WEST, ALONG SAID EAST LINE,
65.86 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LOFFS BAY ROAD;

THENCE NORTH 57 DEGREES 48' 19" WEST, ALONG SAID NORTHERLY RIGHT OF WAY
LINE 125.33 FEET;

THENCE SOUTH 83 DEGREES 34' 01" EAST, 29.69 FEET;

THENCE NORTH 88 DEGREES 16' 39" EAST, 78.83 FEET TO THE POINT OF
BEGINNING.

ALL LYING SOUTH OF THE SOUTH LINE OF THE PLAT OF MCLEAN MEADOWS RECORDED
IN BOOK "G" OF PLATS PAGE 493, KOOTENAI COUNTY, IDAHO.

TRACT C:

THE NORTH HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE
SOUTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND

EXHIBIT "A"
LEGAL DESCRIPTION

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, ALL IN SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPTING THEREFROM A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, SAID POINT BEING A 1 INCH IRON PIPE AS SHOWN BY INSTRUMENT NO. 1341198, RECORDS OF KOOTENAI COUNTY, IDAHO;

THENCE NORTH 76 DEGREES 58'58" WEST ALONG THE SOUTH LINE OF SECTION 4, A DISTANCE OF 1106.63 FEET;

THENCE NORTH 29 DEGREES 07'51" EAST, A DISTANCE OF 370.78 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP, STAMPED P.L.S. 4346;

THENCE NORTH 71 DEGREES 05'20" EAST, A DISTANCE OF 402.07 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 28 DEGREES 40'09" EAST, A DISTANCE OF 325.54 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 14 DEGREES 25'38" EAST, A DISTANCE OF 225.75 FEET TO A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE NORTH 65 DEGREES 00'05" EAST, A DISTANCE OF 297.30 FEET BEING ON THE EAST-WEST 1/16TH LINE BETWEEN THE SC 1/16TH CORNER ON THE SOUTH 1/16TH CORNER OF SAID SECTION 4, SAID POINT ALSO BEING A 5/8 INCH REBAR WITH A ORANGE PLASTIC CAP STAMPED P.L.S. 4346;

THENCE SOUTH 78 DEGREES 57'20" EAST ALONG SAID EAST-WEST 1/16TH LINE A DISTANCE OF 46.31 FEET TO THE SOUTH 1/16TH CORNER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 25'56" WEST ALONG THE EAST LINE OF SAID SECTION 4 A DISTANCE OF 1324.52 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 4 AND THE POINT OF BEGINNING.

AND

THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO BABBITT LOGGING, INC. BY WARRANTY DEED RECORDED JULY 1, 1997 AS INSTRUMENT NO. 1495927, DESCRIBED AS FOLLOWS:

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO, LYING EAST OF LOFF'S BAY COUNTY ROAD.

PARCEL 8:

ALL OF THAT PORTION OF GOVERNMENT LOT 4, SECTION 4, LYING NORTHEASTERLY OF THE EXISTING ROADWAY, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2 INCH IRON ROD AND PLS 3451 CAP MARKING THE NORTHEAST CORNER OF GOVERNMENT LOT 4, SECTION 4, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO;

THENCE ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, SECTION 4, SOUTH 00 DEGREES 46'41" WEST, A DISTANCE OF 137.94 FEET TO A SET IRON ROD AND PLS 4194 CAP ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD NO. 115 BELLGROVE-STINSON ROAD;

THENCE ALONG THE NORTHEASTERLY RIGHT OF WAY OF SAID ROAD THE FOLLOWING 2 COURSES, ALL MARKED BY IRON RODS AND PLS 4194 CAPS:

- 1) NORTH 50 DEGREES 44'36" WEST, A DISTANCE OF 73.10 FEET;
- 2) THENCE NORTH 60 DEGREES 31'30" WEST, A DISTANCE OF 210.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFOREMENTIONED GOVERNMENT LOT 4, SECTION 4;

THENCE ALONG SAID NORTH LINE OF GOVERNMENT LOT 4, SECTION 4, SOUTH 87 DEGREES 13'28" EAST, A DISTANCE OF 241.66 FEET TO THE POINT OF BEGINNING.

ACI NORTHWEST, INC.
SCHEDULE OF CURRENT AMOUNTS DUE FROM BLACK ROCK ENTITIES

| <u>Due Date</u> | <u>Contract</u> | <u>Invoice</u> | <u>Amount</u> | <u>Interest at 12% Accrued to 05/31</u> | |
|-------------------------------------|-----------------|----------------|---------------|---|--------------------------------|
| 9/10/2008 | 8104 | 6169 | 52,155.00 | 4,509.62 | Blackrock Offsite Sewer |
| 10/10/2008 | 8101 | 6322 | 206,016.63 | 15,781.44 | Panhandle Modifications |
| 10/10/2008 | 8970 | 6312 | 7,135.36 | 546.59 | Cart Path Work-Hole 5&6 |
| 10/10/2008 | 8187 | 6367 | 6,573.65 | 503.56 | New Clubhouse Site 06-5040 |
| 10/10/2008 | 8186 | 6366 | 4,270.89 | 327.16 | BRN Erosion Control 06-5035 |
| 11/10/2008 | 8101 | 6446 | 20,961.75 | 1,392.09 | Panhandle Modifications |
| 11/10/2008 | 8027 | 6452 | 19,570.00 | 1,299.66 | BRN Winter Work |
| 11/10/2008 | 8974 | 6448 | 1,462.73 | 97.14 | Kootenal Camp 06-5038 |
| 11/10/2008 | 8187 | 6451 | 13,922.92 | 924.63 | New Clubhouse Site 06-5040 |
| 11/10/2008 | 8964 | 6487 | 1,036.93 | 68.86 | BRN Golf Course 06-5040 |
| 11/10/2008 | 8186 | 6450 | 14,568.30 | 967.49 | BRN Erosion Control 06-5035 |
| 11/10/2008 | 8097 | 6435 | 837.99 | 55.65 | BR Comfort Station-Retention |
| 11/10/2008 | 8058 | 6436 | 2,312.00 | 153.54 | BR House Demo-Retention |
| 12/10/2008 | 8101 | 6608 | 18,355.69 | 1,037.98 | Panhandle Modifications |
| 12/10/2008 | 8101 | 6677 | 49,544.78 | 2,801.66 | Panhandle Retention |
| 12/10/2008 | 8964 | 6628 | 3,045.90 | 172.24 | BRN Golf Course 06-5040 |
| 12/10/2008 | 8186 | 6652 | 3,742.46 | 211.63 | BRN Erosion Control 06-5035 |
| 12/10/2008 | 8503 | 6646 | 4,240.00 | 239.76 | BRN Conduit @ New Entrance |
| 12/10/2008 | 8097 | 6661 | 1,178.95 | 66.67 | BRN Comfort Stations |
| 12/10/2008 | 8027 | 6675 | 16,110.64 | 911.02 | BRN Winter work plus retention |
| 12/10/2008 | 8104 | 6678 | 7,032.49 | 397.67 | BRN Offsite sewer retention |
| | | | <hr/> | | |
| | | | 454,075.06 | 32,466.08 | |
| Bonus Per Contract for Cost Savings | | | <hr/> | | |
| | | | 1,045,752.57 | - | |
| | | | <hr/> | | |
| | | | 1,499,827.63 | 32,466.08 | |
| | | | <hr/> | | |
| | | | <hr/> | | |
| Per Diem Interest | | | | <hr/> | |
| | | | | 493.09 | |



965

**ENDORSEMENT TO CLAIM OF LIEN
FOR PAYMENT ON ACCOUNT**

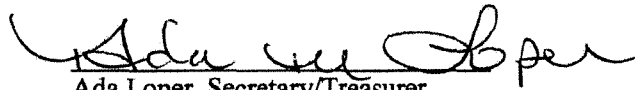
1. The name of the claimant is ACI Northwest, Inc., having its principal place of business at 6600 N. Government Way, Coeur d'Alene, Idaho 83815 (hereinafter "Claimant").
2. The name of the owner of the real property and improvements thereon against which the lien referred to herein is claimed (hereinafter "Property") is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant previously recorded a Claim of Lien as Instrument No. 2216696000, Records of Kootenai County, Idaho, against the Property. A copy of said Claim of Lien is attached hereto as Exhibit "A".
4. The Claimant received a payment on account from Owner on December 9, 2009. Therefore, pursuant to Idaho Code Section 45-510, the binding effect of the Claim of Lien shall run for six (6) months after that date.
5. This Endorsement and the underlying payment on account shall not affect Owner's rights to challenge the validity of the Claim of Lien referred to herein.

STATE OF IDAHO)
) :ss
County of Kootenai)

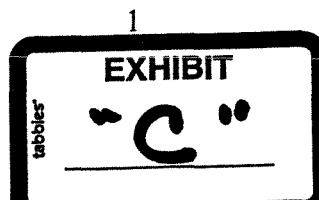
Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the Claim of Lien referenced above. I am competent to testify as to all matters contained in this Endorsement to Claim of Lien for Payment on Account. I have read the foregoing Endorsement to Claim of Lien for Payment on Account, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.

ACI Northwest, Inc.


Ada Loper, Secretary/Treasurer

ENDORSEMENT TO
CLAIM OF LIEN FOR
PAYMENT ON ACCOUNT

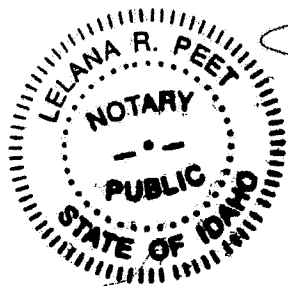


966

STATE OF IDAHO)
):ss
County of Kootenai)

On this 10th day of December, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

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



Lelana R. Peet
Notary for the State of Idaho
Commission Expires: 4/5/10

COPY

DANIEL J. ENGLISH 15P I 2216696000
KOOTENAI CO. RECORDER Page 1 of 18
BBB Date 08/15/2009 Time 11:51:54
REC-REQ OF ACI NORTHWEST INC
RECORDING FEE: 45.00
2216696000 XN

CLAIM OF LIEN

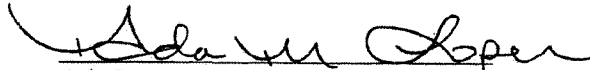
1. The name of the Claimant is ACI Northwest, Inc., an Idaho corporation, having its principal place of business at 6600 North Government Way, Coeur d'Alene, Idaho 83815.
2. The name of the owner of real property against which said lien is claimed is BRN Development, Inc., an Idaho corporation (hereinafter "Owner").
3. The Claimant hereby claims a lien against all properties described in the attached Exhibit "A".
4. This lien is claimed for monies due and owing to Claimant for various construction work, including but not limited to the construction of streets, golf cart paths, culverts, ditches, swales, wet and dry utilities, along with demolition, excavation, and piping.
5. The related labor and materials were performed and furnished at the request of BRN Development, Inc.
6. Performance of the related labor and furnishing of the related materials commenced on October 1, 2006 and ended on March 17, 2009.
7. The amount claimed due and owing to the Claimant for the labor and materials is \$1,499,827.63. *see attached* Exhibit "B".
8. A lien is also claimed for interest due and owing at twelve percent (12%) per annum pursuant to Idaho Code Section 28-22-104(1), in the amount of \$32,466.08 as of May 31, 2009, plus \$493.09 per day every day thereafter, until paid. *see attached* Exhibit "B".
9. In the event of litigation, a lien is also claimed for any costs and attorneys' fees awarded pursuant to Idaho Code Section 45-513.
10. All amounts claimed under this lien are fair, just and equitable for the materials that were supplied and/or the labor that was performed.

STATE OF IDAHO)
) :ss
County of Kootenai)

Ada Loper, being first duly sworn deposes and says:

I am the Secretary/Treasurer of ACI Northwest, Inc., the Claimant in the above-entitled Claim of Lien. I am competent to testify as to all matters contained in this Claim of Lien. I have read the foregoing Claim of Lien, I know the contents thereof, and I testify that the facts stated therein are true, correct and just based upon my personal knowledge.


ACI Northwest, Inc.

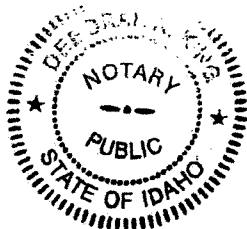

Ada Loper, Secretary/Treasurer

STATE OF IDAHO)
) :ss
County of Kootenai)

On this 15th day of June, 2009 before me the undersigned, a Notary Public in and for the State of Idaho, personally appeared Ada Loper, known to me to be the Secretary/Treasurer of ACI Northwest, Inc., who acknowledged to me that she executed the within instrument and acknowledged to me that she executed the same for and on behalf of ACI Northwest, Inc.

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


Notary for the State of Idaho
Commission Expires: 7/21/09



STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2010 JUN 11 PM 6:23

CLERK DISTRICT COURT

Shirley Huffman
DEPUTY

1 Timothy M. Lawlor, ISB No. 8160
2 M. Gregory Embrey, ISB No. 6045
3 Witherspoon, Kelley, Davenport & Toole, P.S.
4 The Spokesman Review Building
5 608 Northwest Blvd., Suite 300
6 Coeur d'Alene, Idaho 83814
7 Telephone: (208) 662-4000
8 Facsimile: (208) 667-8470
9 Email: tml@witherspoonkelley.com
10 Email: mge@witherspoonkelley.com
11 *Attorneys for Taylor Engineering, Inc.*

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho corporation, BRN INVESTMENTS, LLC, an Idaho limited liability company, LAKE VIEW AG, a Liechtenstein company, BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership, ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008, RYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST, MARSHALL CHESROWN, a single man, IDAHO ROOFING SPECIALIST, LLC, an Idaho limited liability company, THORCO, INC., an Idaho corporation, CONSOLIDATED SUPPLY COMPANY, an Oregon corporation, INTERSTATE CONCRETE & ASPHALT COMPANY, an Idaho corporation, CONCRETE FINISHING, INC., an Arizona corporation, THE TURF CORPORATION, an Idaho corporation, WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation, POLIN & YOUNG

No. CV09-2619

TAYLOR ENGINEERING, INC.'S REPLY TO CROSS-CLAIM OF BRN DEVELOPMENT, INC.

970

1 CONSTRUCTION, INC., an Idaho corporation,
2 TAYLOR ENGINEERING, INC., a Washington
3 corporation, PRECISION IRRIGATION, INC.,
4 an Arizona corporation, and SPOKANE
5 WILBERT VAULT CO., a Washington
6 corporation, d/b/a WILBERT PRECAST,

7 Defendants,

8 And

9 TAYLOR ENGINEERING, INC., a Washington
10 corporation,

11 Third-Party Plaintiff,

12 v.

13 ACI NORTHWEST, INC., an Idaho corporation;
14 STRATA, INC., an Idaho corporation; and
15 SUNDANCE INVESTMENTS, LLP, an Idaho
16 limited liability limited partnership,

17 Third-Party Defendants.

18 COMES NOW Taylor Engineering, Inc. ("Taylor"), by and through its attorneys of record, M.
19 Gregory Embrey of the firm Witherspoon, Kelley, Davenport & Toole, P.S., and for its reply to BRN
20 Development, Inc.'s ("BRN") Cross-Claim, admits, denies, alleges, and answers as follows:

21 1. Taylor denies each, every, and all allegations and representations set forth in BRN's
22 Cross-Claim and prayer for relief unless specifically admitted herein.

23 **CROSS-CLAIM**

- 24 2. Taylor realleges Paragraph 1 above.
- 25 3. Taylor admits the allegations contained in Paragraph 1 of BRN's Cross-Claim.
- 26 4. Taylor admits the allegations contained in Paragraph 2 of BRN's Cross-Claim.
- 27 5. Taylor admits the allegations contained in Paragraph 3 of BRN's Cross-Claim.
- 28

1 6. In response to the allegations contained in Paragraph 4 of BRN's Cross-Claim, Taylor
2 admits only that American Bank is a Montana banking corporation that claims an interest in a portion
3 of the real property which is the subject of this action. Taylor denies the balance of the allegations
4 contained in the first and second sentences of Paragraph 4 of BRN's Cross-Claim. In response to the
5 allegations contained in the third sentence of Paragraph 4, Taylor admits the allegations contained in
6 the third sentence of Paragraph 4.
7

8 7. Taylor admits the allegations contained in Paragraph 5 of BRN's Cross-Claim.

9 8. In response to the allegations contained in Paragraph 6 of BRN's Cross-Claim, Taylor
10 admits only that the Services included engineering, design, surveying and construction staking work
11 relating to the application for approval of a planned unit development, commonly known as Black
12 Rock North. In response to the balance of the allegations contained in Paragraph 6 of BRN's Cross-
13 Claim, Taylor is without sufficient information to admit or deny the allegations contained in the
14 balance of Paragraph 6 and Taylor therefore denies the balance of the allegations contained in
15 Paragraph 6.
16

17 9. In response to the allegations contained in Paragraph 7 of BRN's Cross-Claim, Taylor
18 admits the allegations contained in the first and second sentences of Paragraph 7. In response to the
19 allegations contained in the third sentence of Paragraph 7, no Exhibit A is attached to BRN's Cross-
20 Claim and Taylor is therefore without sufficient information to admit or deny the allegations contained
21 in the third sentence of Paragraph 7 and Taylor therefore denies the allegations contained in the third
22 sentence of Paragraph 7.
23

24 10. In response to the allegations contained in Paragraph 8 of BRN's Cross-Claim, no
25 Exhibit A is attached to BRN's Cross-Claim and Taylor is therefore without sufficient information to
26 admit or deny the allegations contained in Paragraph 8 and Taylor therefore denies the allegations
27 contained in Paragraph 8.
28

1 11. In response to the allegations contained in the first sentence of Paragraph 9 of BRN's
2 Cross-Claim, no Exhibit A is attached to BRN's Cross-Claim and Taylor is therefore without sufficient
3 information to admit or deny the allegations contained in the first sentence of Paragraph 9 and Taylor
4 therefore denies the allegations contained in the first sentence of Paragraph 9. In response to the
5 allegations contained in the second and third sentence of Paragraph 9, Taylor is without sufficient
6 information to admit or deny the allegations contained in the second and third sentences of Paragraph 9
7 and Taylor therefore denies the allegations contained in the second and third sentences of Paragraph 9.

9 12. In response to the allegations contained in Paragraph 10 of BRN's Cross-Claim, no
10 Exhibit A is attached to BRN's Cross-Claim and Taylor is therefore without sufficient information to
11 admit or deny the allegations contained in Paragraph 10 and Taylor therefore denies the allegations
12 contained in Paragraph 10.

14 13. In response to the allegations contained in the first sentence of Paragraph 11 of BRN's
15 Cross-Claim, no Exhibit A is attached to BRN's Cross-Claim and Taylor is therefore without sufficient
16 information to admit or deny the allegations contained in the first sentence of Paragraph 11 and Taylor
17 therefore denies the allegations contained in first sentence of Paragraph 11. In response to the
18 allegations contained in the second sentence of Paragraph 11 of BRN's Cross-Claim, Taylor is without
19 sufficient information to admit or deny the allegations set forth in the second sentence of Paragraph 11
20 and Taylor therefore denies the allegations contained in the second sentence of Paragraph 11.

22 14. In response to the allegations contained in Paragraph 12 of BRN's Cross-Claim, Taylor
23 is without sufficient information to admit or deny the allegations contained in Paragraph 12 of BRN's
24 Cross-Claim and therefore denies the allegations contained in Paragraph 12.

25 15. In response to the allegations contained in Paragraph 13 of BRN's Cross-Claim, Taylor
26 is without sufficient information to admit or deny the allegations contained in Paragraph 13 of BRN's
27 Cross-Claim and therefore denies the allegations contained in Paragraph 13.
28

1 16. In response to the allegations contained in Paragraph 14 of BRN's Cross-Claim, no
2 Exhibit A is attached to BRN's Cross-Claim and Taylor is therefore without sufficient information to
3 admit or deny the allegations contained in Paragraph 14 and Taylor therefore denies the allegations
4 contained in Paragraph 14.
5

6 17. Taylor denies the allegations contained in Paragraph 15 of BRN's Cross-Claim.

7 18. Taylor denies the allegations contained in Paragraph 16 of BRN's Cross-Claim.

8 19. In response to the allegations contained in Paragraph 17 of BRN's Cross-Claim, the
9 allegations contained in Paragraph 17 of BRN's Cross-Claim call for a legal conclusion to which no
10 response is required. To the extent a response is required, Taylor denies the allegations contained in
11 Paragraph 17 of BRN's Cross-Claim.
12

13 20. Taylor denies the allegations contained in Paragraph 18 of BRN's Cross-Claim.

14 21. In response to the allegations contained in Paragraph 19 of BRN's Cross-Claim, the
15 allegations contained in Paragraph 19 of BRN's Cross-Claim call for a legal conclusion to which no
16 response is required. To the extent a response is required, Taylor denies the allegations contained in
17 Paragraph 19 of BRN's Cross-Claim.
18

19 22. Taylor denies the allegations contained in Paragraph 20 of BRN's Cross-Claim.

20 23. In response to the allegations contained in Paragraph 21 of BRN's Cross-Claim, the
21 allegations contained in Paragraph 21 of BRN's Cross-Claim call for a legal conclusion to which no
22 response is required. To the extent a response is required, Taylor denies the allegations contained in
23 Paragraph 21 of BRN's Cross-Claim.
24

25 24. Taylor denies the allegations contained in Paragraph 22 of BRN's Cross-Claim.

26 25. In response to the allegations contained in Paragraph 23 of BRN's Cross-Claim, the
27 allegations contained in Paragraph 23 of BRN's Cross-Claim call for a legal conclusion to which no
28

1 response is required. To the extent a response is required, Taylor denies the allegations contained in
2 Paragraph 23 of BRN's Cross-Claim.

3 26. Taylor denies the allegations contained in Paragraph 24 of BRN's Cross-Claim.

4 27. In response to the allegations contained in Paragraph 25 of BRN's Cross-Claim, Taylor
5 incorporates its responses to Paragraphs 1 through 24 of BRN's Cross-Claim with the same force and
6 affect as if stated in full herein in response to the allegations contained in Paragraph 25.
7

8 28. Taylor denies the allegations contained in Paragraph 26 of BRN's Cross-Claim.

9 29. Taylor denies the allegations contained in Paragraph 27 of BRN's Cross-Claim.

10 30. In response to the allegations contained in Paragraph 28 of BRN's Cross-Claim, Taylor
11 incorporates its responses to Paragraphs 1 through 27 of BRN's Cross-Claim with the same force and
12 affect as if stated in full herein in response to the allegations contained in Paragraph 28.
13

14 31. In response to the allegations contained in Paragraph 29 of BRN's Cross-Claim, the
15 allegations contained in Paragraph 29 of BRN's Cross-Claim call for a legal conclusion to which no
16 response is required. To the extent a response is required, Taylor denies the allegations contained in
17 Paragraph 29 of BRN's Cross-Claim.

18 32. Taylor denies the allegations contained in Paragraph 30 of BRN's Cross-Claim.

19 33. In response to the allegations contained in Paragraph 31 of BRN's Cross-Claim, Taylor
20 incorporates its responses to Paragraphs 1 through 30 of BRN's Cross-Claim with the same force and
21 affect as if stated in full herein in response to the allegations contained in Paragraph 31.
22

23 34. In response to the allegations contained in Paragraph 32 of BRN's Cross-Claim, the
24 allegations contained in Paragraph 23 of BRN's Cross-Claim call for a legal conclusion to which no
25 response is required. To the extent a response is required, Taylor denies the allegations contained in
26 Paragraph 32 of BRN's Cross-Claim.

27 35. Taylor denies the allegations contained in Paragraph 33 of BRN's Cross-Claim.
28

1 36. Taylor denies the allegations contained in Paragraph 34 of BRN's Cross-Claim.

2 37. Taylor denies the allegations contained in Paragraph 35 of BRN's Cross-Claim.

3 38. Taylor denies the allegations contained in Paragraph 36 of BRN's Cross-Claim.

4 **AFFIRMATIVE DEFENSES**

5
6 1. BRN's Cross-Claim and each and every purported cause of action alleged therein fails to
7 state a claim upon which relief can be granted.

8 2. BRN's claims for relief are barred based upon the individual and collective legal
9 principles of laches, estoppel and/or waiver.

10 3. BRN's Cross-Claim is barred by the doctrine of unclean hands.

11 4. BRN's Cross-Claim is barred in whole or in part because it failed to mitigate its
12 damages, if any.

13 5. Taylor has, at all times, acted in good faith with a reasonable basis for its actions.

14 6. BRN's damage claims are too speculative to be recoverable under Idaho law.

15 7. BRN's Cross-Claim are barred in whole or in part by the statute of limitations,
16 specifically including, but not necessarily limited to, Idaho Code § 5-219, *et seq.*

17 8. BRN's Cross-Claim is barred in whole or in part by the doctrines of contributory and/or
18 comparative negligence.
19
20

21 **RULE 12 STATEMENT**

22 Taylor has considered and believes that it may have additional defenses, but does not have
23 enough information at this time to assert additional defenses under Rule 12 of the Idaho Rules of Civil
24 Procedure. Taylor does not intend to waive any such defenses and specifically asserts its intention to
25 amend this Answer if, pending research and after discovery, facts come to light giving rise to such
26 additional defenses.
27
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ATTORNEY FEES AND COSTS


Taylor has been required to retain the services of Witherspoon, Kelley, Davenport & Toole, P.S. to defend BRN's Cross-Claim and is entitled to recovery of reasonable attorney fees and costs pursuant to Idaho Code §§ 12-120 and 12-121 and Rule 54 of the Idaho Rules of Civil Procedure, and any other applicable laws allowing for recovery of attorney fees in this action.

WHEREFORE, Taylor prays for a judgment against BRN as follows:

- A. That BRN's Cross-Claim be dismissed with prejudice and that BRN take nothing thereby;
- B. For an award of attorney fees and costs; and
- C. For such other relief as the Court deems just and proper.

DATED this 11th day of June, 2010.

WITHERSPOON, KELLEY, DAVENPORT
& TOOLE, P.S.


M. Gregory Embrey
Attorneys for Taylor Engineering

CERTIFICATE OF SERVICE

On the 11th day of June, 2010, I, the undersigned, caused to be served a true and correct copy of the within document described as TAYLOR ENGINEERING, INC.'S REPLY TO CROSS-CLAIM OF BRN DEVELOPMENT, INC. to be served on all interested parties to this action as follows:

| | |
|--|---|
| <p>AMERICAN BANK, a Montana Banking Corporation:</p> <p>Nancy L. Isserlis (ISB #7331) Elizabeth A. Tellessen (ISB #7393) Winston & Cashatt 601 W. Riverside, Suite 1900 Spokane, WA 99201 Facsimile: (509) 838-1416</p> <p>And</p> <p>Randall A. Peterman (ISB #1944) C. Clayton Gill Moffatt, Thomas, Barrett, Rock & Fields, Chtd. 101 South Capitol Blvd., 10th Floor PO Box 829 Boise, ID 83701-0829 Facsimile: (208) 385-5384</p> | <p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Transmission</p> <p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Transmission</p> |
| <p>THORCO, INC.:</p> <p>Charles B. Lempesis (ISB# 2550) Attorney at Law 201 West Seventh Avenue Post Falls, ID 83854 Facsimile: (208) 773-1044</p> | <p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Transmission</p> |
| <p>POLIN & YOUNG CONSTRUCTION:</p> <p>Richard D. Campbell Campbell, Bissell & Kirby, PLLC 416 Symons, Building 7 South Howard Street Spokane, WA 99201-3816 Facsimile: (509) 455-7111</p> | <p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Transmission</p> |

| | |
|---|---|
| <p>1 WADSWORTH GOLF</p> <p>2 CONSTRUCTION COMPANY OF THE</p> <p>3 SOUTHWEST:</p> <p>4 THE TURF CORPORATION:</p> <p>5 PRECISION IRRIGATION, INC.:</p> <p>6 Edward J. Anson (ISB #2074)</p> <p>7 Witherspoon, Kelley, Davenport & Toole</p> <p>8 608 Northwest Blvd., Suite #300</p> <p>9 Coeur d'Alene, ID 83814-2146</p> <p>10 Facsimile: (208) 667-8470</p> | <p>U.S. Mail</p> <p><input checked="" type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Overnight Mail</p> <p><input type="checkbox"/> Facsimile Transmission</p> |
| <p>9 BRN DEVELOPMENT, INC., BRN</p> <p>10 INVESTMENTS, LLC, LAKE VIEW</p> <p>11 AG, BRN-LAKE VIEW JOINT</p> <p>12 VENTURE, MARSHAL CHESROWN,</p> <p>13 ROBERT LEVIN, TRUSTEE FOR THE</p> <p>14 ROLAND M. CASATI FAMILY</p> <p>15 TRUST, DATED JUNE 5, 20008, AND</p> <p>16 RYKER YOUNG, TRUSTEE OF THE</p> <p>17 RYKER YOUNG REVOCABLE</p> <p>18 TRUST:</p> <p>19 Associated Counsel:</p> <p>20 Barry W. Davidson</p> <p>21 Davidson Backman Mederios, PLLC</p> <p>22 1550 Bank of America Financial Center</p> <p>23 601 W. Riverside Avenue</p> <p>24 Spokane, WA 99201</p> <p>25 Facsimile: (509) 623-1660</p> | <p>U.S. Mail</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Overnight Mail</p> <p><input checked="" type="checkbox"/> Facsimile Transmission</p> |
| <p>21 ACI NORTHWEST, INC.:</p> <p>22 Steven C. Wetzel</p> <p>23 Wetzel, Wetzel & Holt</p> <p>24 1322 West Kathleen Ave., Suite 2</p> <p>25 Coeur d'Alene, ID 83815</p> <p>26 Facsimile: (208) 664-6741</p> | <p>U.S. Mail</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Overnight Mail</p> <p><input checked="" type="checkbox"/> Facsimile Transmission</p> |

1 **BRN DEVELOPMENT, INC., BRN**
2 **INVESTMENTS, LLC, LAKE VIEW**
3 **AG, BRN-LAKE VIEW JOINT**
4 **VENTURE, MARSHAL CHESROWN,**
5 **ROBERT LEVIN, TRUSTEE FOR THE**
6 **ROLAND M. CASATI FAMILY**
7 **TRUST, DATED JUNE 5, 2008, AND**
8 **RYKER YOUNG, TRUSTEE OF THE**
9 **RYKER YOUNG REVOCABLE**
10 **TRUST:**

11 John R. Layman, (ISB #6825)
12 Layman, Layman & Robinson, PLLP
13 5431 N. Government Way, Suite 101A
14 Coeur d'Alene, ID 83815
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11 **RECEIVER:**

12 Maggie Lyons
13 2961 Ponderosa Drive
14 Hayden Lake, ID 83835

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16 Tina Marie Bell

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STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
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2010 JUN 14 AM 10:44

CLERK DISTRICT COURT
Shawn Reed
 DEPUTY *Ans*

Attorneys for Defendant Polin & Young Construction, Inc.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking)
 corporation,) NO. CV 09-2619
)
 Plaintiff,)

v.)

BRN DEVELOPMENT, INC., an Idaho) **POLIN & YOUNG'S ANSWER AND**
 corporation; BRN INVESTMENTS,) **AFFIRMATIVE DEFENSES TO**
 LLC, an Idaho limited liability company;) **ACI'S CROSS-CLAIM**
 LAKE VIEW AG, a Liechtenstein)
 company; BRN-LAKE VIEW JOINT)
 VENTURE, an Idaho general)
 partnership; ROBERT LEVIN, Trustee)
 for the ROLAND M. CASATI FAMILY)
 TRUST, dated June 5, 2008; TYKER)
 YOUNG, Trustee for the RYKER)
 YOUNG REVOCABLE TRUST;)
 MARSHALL CHESROWN, a single)
 man; IDAHO ROOFING SPECIALIST,)
 LLC, an Idaho limited liability company;)
 THORCO, INC., an Idaho corporation;)
 CONSOLIDATED SUPPLY)
 COMPANY, an Oregon corporation;)
 INTERSTATE CONCRETE &)
 ASPHALT COMPANY, an Idaho)
 corporation; CONCRETE FINISHING,)
 INC., an Arizona corporation; THE)
 TURF CORPORATION, an Idaho)
 corporation; WADSWORTH GOLF)
 CONSTRUCTION COMPANY OF THE)
 SOUTHWEST, a Delaware corporation;)

POLIN & YOUNG'S ANSWER AND AFFIRMATIVE
 DEFENSES TO ACI'S CROSS-CLAIM - 1

POLIN & YOUNG CONSTRUCTION,)
 INC., an Idaho corporation; TAYLOR)
 ENGINEERING, INC., a Washington)
 corporation; PRECISION IRRIGATION,)
 INC., an Arizona corporation; and)
 SPOKANE WILBERT VAULT CO., a)
 Washington corporation, d/b/a)
 WILBERT PRECAST,)
)
 Defendants.)

ANSWER TO CROSS CLAIM

24. Polin & Young admits paragraph 3 as it pertains to it and admits paragraph 4. All remaining allegations in the cross claim are not directed at Polin & Young nor do they bear on the cross-claim and as such to not require an answer. To the extent they do require an answer, they are denied.

25. Polin & Young admits it entered into an express written contract with ACI on May 14, 2007 for work on the Kootenai Cabin & Pool House at Black Rock North. All remaining allegations are denied.

26. Polin & Young admits the May 14, 2007 written contract is valid and legally enforceable. All remaining allegations are denied.

27. Denied.

28. Denied.

AFFIRMATIVE DEFENSES

1. ACI's cross-claim fails to state a claim upon which relief can be granted.

2. ACI failed to bring the cross-claim within the contractual limitations period and thus the claim is barred.

3. Polin & Young owes no implied duties to ACI because implied obligations are excluded under the terms of the written contract.

4. Polin & Young owes no money to ACI by operation of the pay if paid clause in the written contract.

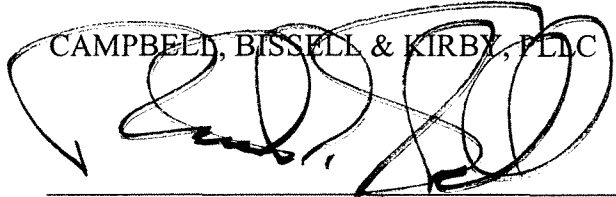
PRAYER FOR RELIEF

WHEREFORE, Polin & Young Construction, Inc. prays for the following relief:

1. For dismissal of ACI's cross-claim and that it take nothing by way of it;
2. For an award of fees and costs incurred in defending this action pursuant to the contract and the laws of the state of Idaho; and
3. For such other and further relief as this court deems just and equitable.

DATED this 11th day of June, 2010.

CAMPBELL, BISSELL & KIRBY, PLLC



RICHARD D. CAMPBELL
Attorneys for Polin & Young Construction,
Inc.

Data\1046\ 1392\ACI answer.061110.doc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of June, 2010, I caused to be served a true and correct copy of the foregoing document to the following:

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BRN Investments, BRN-Lake View Joint
Venture, Marshal Chesrown, Lake View AG,
Robert Levin, Trustee For The Roland M.
Casati Family Trust, Dated June 5, 2008 and
Ryker Young Revocable Trust*

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Attorney for the Plaintiff

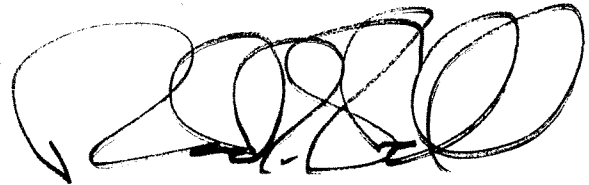
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STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
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2010 JUN 28 AM 11:28

CLERK DISTRICT COURT
Cathy Victoria
 DEPUTY

Attorneys for Defendant Polin & Young Construction, Inc.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking)
 corporation,)
)
 Plaintiff,)

NO. CV 09-2619

v.)

BRN DEVELOPMENT, INC., an Idaho)
 corporation; BRN INVESTMENTS,)
 LLC, an Idaho limited liability company;)
 LAKE VIEW AG, a Liechtenstein)
 company; BRN-LAKE VIEW JOINT)
 VENTURE, an Idaho general)
 partnership; ROBERT LEVIN, Trustee)
 for the ROLAND M. CASATI FAMILY)
 TRUST, dated June 5, 2008; TYKER)
 YOUNG, Trustee for the RYKER)
 YOUNG REVOCABLE TRUST;)
 MARSHALL CHESROWN, a single)
 man; IDAHO ROOFING SPECIALIST,)
 LLC, an Idaho limited liability company;)
 THORCO, INC., an Idaho corporation;)
 CONSOLIDATED SUPPLY)
 COMPANY, an Oregon corporation;)
 INTERSTATE CONCRETE &)
 ASPHALT COMPANY, an Idaho)
 corporation; CONCRETE FINISHING,)
 INC., an Arizona corporation; THE)
 TURF CORPORATION, an Idaho)
 corporation; WADSWORTH GOLF)
 CONSTRUCTION COMPANY OF THE)
 SOUTHWEST, a Delaware corporation;)

**POLIN & YOUNG
 CONSTRUCTION, INC.'S ANSWER
 TO THE TURF CORPORATION'S
 CROSS-CLAIM**

POLIN & YOUNG CONSTRUCTION, INC.'S ANSWER TO TURF
 CORPORATION'S CROSS-CLAIM - 1

POLIN & YOUNG CONSTRUCTION,)
 INC., an Idaho corporation; TAYLOR)
 ENGINEERING, INC., a Washington)
 corporation; PRECISION IRRIGATION,)
 INC., an Arizona corporation; and)
 SPOKANE WILBERT VAULT CO., a)
 Washington corporation, d/b/a)
 WILBERT PRECAST,)
)
 Defendants.)

Defendant Polin & Young Construction, Inc., (“PYCI”) by and through its attorneys of record Richard D. Campbell and Campbell, Bissell & Kirby PLLC, Answers as follows:

- 1-18. Admitted.
- 19. PYCI is without sufficient information to admit the correctness of the legal description and therefore denies the same.
- 20-21. Admitted
- 20-21. Admitted and denies as set forth above.
- 22. Denied for lack of knowledge.
- 23-28. Admitted and denied as set forth above.
- 29. Denied for lack of knowledge.
- 30-33. Admitted and denied as set forth above.
- 34. Denied for lack of knowledge.
- 35-37 Admitted and denied as set forth above.
- 38. Denied for lack of knowledge.
- 39-43. Admitted and denied as set forth above.
- 44. Denied for lack of knowledge.
- 45-47. Admitted and Denied as set forth above.
- 48. Denied for lack of knowledge.

49-54. Admitted and denied as set forth above.

55. Denied for lack of knowledge.

56-59. Admitted and denied as set forth above.

60. Denied for lack of knowledge.

61-63. Admitted and denied as set forth above.

64. Denied for lack of knowledge

65-69. Admitted and denied as set forth above.

71-73 Denied for lack of knowledge.

74 Admitted and denied as set forth above.

75-79. Denied for lack of knowledge.

80. PYCI agrees the Turf Co. is entitled to foreclosure on its claim of lien.

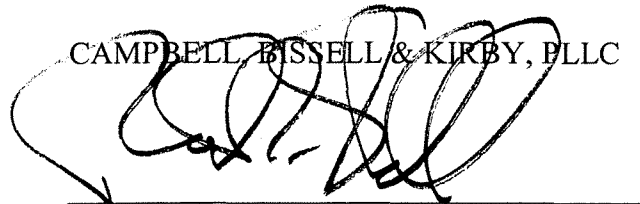
81. Denied for lack of knowledge.

Wherefore PYCI prays for the following relief:

1. For an order setting the priority of the liens and other security;
2. For an order causing the property to be sold at sheriff's sale under the proceeds thereof to be used in satisfaction of debts of the creditors in such priority as the Court determines; and
3. For such other and further relief as this court deems just and equitable.

DATED this 25th day of June, 2010.

CAMPBELL, BISSELL & KIRBY, PLLC



RICHARD D. CAMPBELL
Attorneys for
Polin & Young, Construction, Inc.

Data\1046\1392\answer.Turf.061510

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of June, 2010, I caused to be served a true and correct copy of the foregoing document to the following:

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Robert Levin, Trustee For The Roland M.
Casati Family Trust, Dated June 5, 2008 and
Ryker Young Revocable Trust*

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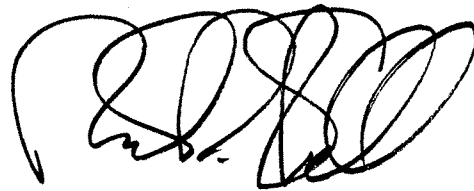
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STATE OF IDAHO
 COUNTY OF KOOTENAI
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2010 JUN 28 AM 11:28

CLERK DISTRICT COURT

Cathy Victoria
 DEPUTY

Attorneys for Defendant Polin & Young Construction, Inc.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking corporation,
 Plaintiff,

v.

BRN DEVELOPMENT, INC., an Idaho corporation; BRN INVESTMENTS, LLC, an Idaho limited liability company; LAKE VIEW AG, a Liechtenstein company; BRN-LAKE VIEW JOINT VENTURE, an Idaho general partnership; ROBERT LEVIN, Trustee for the ROLAND M. CASATI FAMILY TRUST, dated June 5, 2008; TYKER YOUNG, Trustee for the RYKER YOUNG REVOCABLE TRUST; MARSHALL CHESROWN, a single man; IDAHO ROOFING SPECIALIST, LLC, an Idaho limited liability company; THORCO, INC., an Idaho corporation; CONSOLIDATED SUPPLY COMPANY, an Oregon corporation; INTERSTATE CONCRETE & ASPHALT COMPANY, an Idaho corporation; CONCRETE FINISHING, INC., an Arizona corporation; THE TURF CORPORATION, an Idaho corporation; WADSWORTH GOLF CONSTRUCTION COMPANY OF THE SOUTHWEST, a Delaware corporation;

NO. CV 09-2619

**POLIN & YOUNG
 CONSTRUCTION, INC.'S ANSWER
 TO WADSWORTH GOLF
 CONSTRUCTION COMPANY OF
 THE SOUTHWEST'S CROSS-
 CLAIM**

POLIN & YOUNG CONSTRUCTION,)
 INC., an Idaho corporation; TAYLOR)
 ENGINEERING, INC., a Washington)
 corporation; PRECISION IRRIGATION,)
 INC., an Arizona corporation; and)
 SPOKANE WILBERT VAULT CO., a)
 Washington corporation, d/b/a)
 WILBERT PRECAST,)
)
 Defendants.)

Defendant Polin & Young Construction, Inc., (“PYCI”) by and through its attorneys of record Richard D. Campbell and Campbell, Bissell & Kirby PLLC, Answers as follows:

XVII. – XIX.

Admitted.

XX.

PYCI is without sufficient information to admit the correctness of the legal description, the date Wadsworth commenced work on the project, and what was known to Wadsworth at that time, and therefore denies the same.

XXI. – XXIV.

Denied for lack of knowledge.

XXV. – XXXIX.

Admitted.

XL.

PYCI admits the Court must declare the priority of the mortgages and each claim of lien. Wadsworth’s proposed rank and priority misapplies I.C. 45-512.

XLI.

PYCI admits Wadsworth is entitled to foreclose its lien but that the priority must be consistent with the proper application of I.C. 45-512 as both PYCI and Wadsworth are

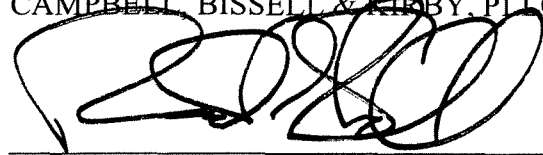
in the class of original contractors as defined by Idaho Law.

WHEREFORE, PYCI prays for the following relief:

1. For an order setting the priority of the liens and other security;
2. For an order causing the property to be sold at Sheriff's sale and the proceeds thereof to be used in satisfaction of debts of the creditors in such priority as the Court determines; and
3. For such other and further relief as this court deems just and equitable.

DATED this 25th day of June, 2010.

CAMPBELL BISSELL & KIRBY, PLLC



RICHARD D. CAMPBELL
Attorneys for
Polin & Young Construction, Inc.

Data\1046\1392\answer.Wadsworth.061510

CERTIFICATE OF SERVICE

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a true and correct copy of the foregoing document to the following:

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- Facsimile



RICHARD D. CAMPBELL

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

AMERICAN BANK, a Montana banking
corporation,

Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC,
an Idaho limited liability company, LAKE
VIEW AG, a Liechtenstein company,
BRN-LAKE VIEW JOINT VENTURE, an
Idaho general partnership, ROBERT
LEVIN, Trustee for the ROLAND M.
CASATI FAMILY TRUST, dated June 5,
2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN, a single man,
IDAHO ROOFING SPECIALIST, LLC, an
Idaho limited liability company,
THORCO, INC., an Idaho corporation,
CONSOLIDATED SUPPLY COMPANY, an
Oregon corporation, INTERSTATE
CONCRETE & ASPHALT COMPANY, an
Idaho corporation, CONCRETE
FINISHING, INC., an Arizona
corporation, THE TURF CORPORATION,
an Idaho corporation, WADSWORTH
GOLF CONSTRUCTION COMPANY OF
THE SOUTHWEST, a Delaware
corporation, POLIN & YOUNG
CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING,
INC., a Washington corporation,
PRECISION IRRIGATION, INC., an
Arizona corporation, and SPOKANE
WILBERT VAULT CO., a Washington
corporation, d/b/a WILBERT PRECAST,

Defendants.

Case No. CV09-2619

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 10/23/10 10:23
AT 10:23 O'CLOCK
CLERK, DISTRICT COURT
DEPUTY

STIPULATED ORDER
APPROVING
MEMORANDUM OF
UNDERSTANDING AND
FIRST AMENDMENT TO
MEMORANDUM OF
UNDERSTANDING

THIS MATTER having come on regularly for hearing upon the Joint Motion for Entry of Stipulated Order Approving Memorandum of Understanding and First Amendment to Memorandum of Understanding (the "Motion"), filed by Marshall R. Chesrown, BRN Development, Inc., BRN Investments, LLC, Lake View AG, BRN-Lake View Joint Venture, the Roland M. Casati Family Trust, dated June 5, 2008, the Ryker Young Revocable Trust, American Bank, and Maggie Y. Lyons (the "Receiver"), by and through their respective counsel; NOW THEREFORE,

IT IS HEREBY ORDERED that the Memorandum of Understanding for Funding and Performance of Receivership and the First Amendment to Memorandum of Understanding for Funding and Performance of Receivership entered into between the Receiver, American Bank, BRN Development, Inc., Black Rock Utilities, Inc., The Club at Black Rock, LLC, and Fidelity National Timber Resources, Inc. are approved, and the Receiver is authorized to fund and administer the Receivership estate as set forth therein.

IT IS HEREBY ORDERED that neither the Receiver, nor any third party, shall acquire any right, title, or interest in assets acquired by The Club at Black Rock, LLC or Black Rock Utilities, Inc. through the use of funds expended by the Receiver.


DATED this 16th day of June 2010.



THE HONORABLE JOHN P. LUSTER

Presented by:

LAYMAN, LAYMAN & ROBINSON, PLLP



JOHN R. LAYMAN, ISB #6825
PATTI JO FOSTER, ISB #7665
Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
BRN-Lake View Joint Venture, the Roland M.
Casati Family Trust, dated June 5, 2008,
and the Ryker Young Revocable Trust

DAVIDSON BACKMAN MEDEIROS PLLC

BARRY W. DAVIDSON, WSBA #7908
Pro Hac Vice
Attorney for Marshall R. Chesrown

WINSTON & CASHATT

NANCY L. ISSERLIS, ISB #7331
ELIZABETH A. TELLESSEN, ISB #7393
Attorneys for American Bank

RAMSDEN & LYONS, LLP

TERRANCE R. HARRIS, ISB #5484
Attorney for the Receiver

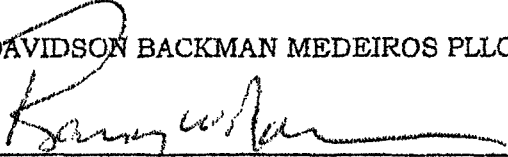
THE HONORABLE JOHN P. LUSTER

Presented by:

LAYMAN, LAYMAN & ROBINSON, PLLP

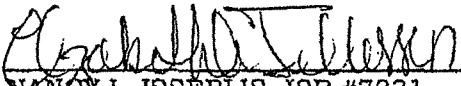
JOHN R. LAYMAN, ISB #6825
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Attorneys for BRN Development, Inc.,
BRN Investments, LLC, Lake View AG,
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RAMSDEN & LYONS, LLP



TERRANCE R. HARRIS, ISB #5484
Attorney for the Receiver

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30 day of 2010, I caused to be served a true and correct copy of the foregoing document upon the parties listed below in the manners indicated:

AMERICAN BANK, a Montana Banking Corporation:

Nancy L. Isserlis
Elizabeth A. Tellessen
Winston & Cashatt
250 Northwest Boulevard, Suite 107A
Coeur d'Alene, Idaho 83814
Facsimile: (509) 838-1416

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HAND DELIVERED
FACSIMILE
ELECTRONIC MEANS

and

Randall A. Peterman
C. Clayton Gill
Moffatt, Thomas, Barrett, Rock & Fields,
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COMPANY OF THE SOUTHWEST:**

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THE TURF CORPORATION:

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BRN DEVELOPMENT, INC., BRN INVESTMENTS, LLC, LAKE VIEW AG, BRN-LAKE VIEW JOINT VENTURE, the ROLAND M. CASATI FAMILY TRUST, DATED JUNE 5, 2008, and the RYKER YOUNG REVOCABLE TRUST:

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ACI NORTHWEST, INC.:

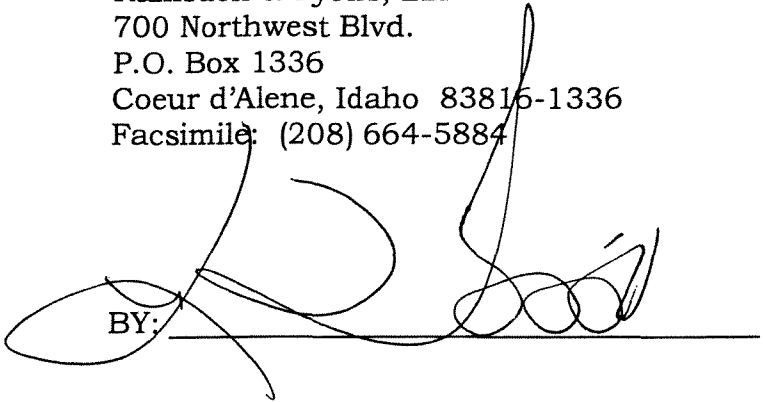
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ELECTRONIC MEANS

BY: 

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: #88

2010 JUN 30 PM 3:48

CLERK DISTRICT COURT

Timothy G. Shaver
DEPUTY

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18 rap@moffatt.com & ccg@moffatt.com

19 Attorneys for Plaintiff

20 **IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE**
21 **OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

22 AMERICAN BANK, a Montana banking
23 corporation,

24 Plaintiff,

25 vs.

Case No. CV 09-2619

PLAINTIFF AMERICAN BANK'S ANSWER
TO ACI NORTHWEST INC.'S CROSS-
CLAIM

26 BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, RYKER YOUNG, Trustee for the
RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho

PLAINTIFF AMERICAN BANK'S ANSWER TO ACI
NORTHWEST INC.'S CROSS-CLAIM - 1

1004

1 limited liability company, THORCO, INC., an
 2 Idaho corporation, CONSOLIDATED SUPPLY
 3 COMPANY, an Oregon corporation,
 4 INTERSTATE CONCRETE & ASPHALT
 5 COMPANY, an Idaho corporation, CONCRETE
 6 FINISHING, INC., an Arizona corporation, THE
 7 TURF CORPORATION, an Idaho corporation,
 8 WADSWORTH GOLF CONSTRUCTION
 9 COMPANY OF THE SOUTHWEST, a Delaware
 10 corporation, POLIN & YOUNG
 11 CONSTRUCTION, INC., an Idaho corporation,
 12 TAYLOR ENGINEERING, INC., a
 13 Washington corporation, PRECISION
 14 IRRIGATION, INC., an Arizona corporation and
 15 SPOKANE WILBERT VAULT CO., a
 16 Washington corporation, d/b/a WILBERT
 17 PRECAST,

Defendants.

And

18 TAYLOR ENGINEERING, INC., a Washington
 19 corporation,

Third-Party Plaintiff,

v.

20 ACI NORTHWEST, INC., an Idaho corporation;
 21 STRATA, INC., an Idaho corporation; and
 22 SUNDANCE INVESTMENTS, LLP, a limited
 23 liability partnership,

Third-Party Defendants.

And

24 ACI NORTHWEST, INC., an Idaho
 25 corporation,

Cross-Claimant,

v.

26 PLAINTIFF AMERICAN BANK'S ANSWER TO ACI
 NORTHWEST INC.'S CROSS-CLAIM - 2

1005

1 AMERICAN BANK, a Montana banking
2 corporation, BRN DEVELOPMENT, INC., an
3 Idaho corporation, BRN INVESTMENTS, LLC,
4 an Idaho limited liability company, LAKE VIEW
5 AG, a Liechtenstein company, BRN-LAKE
6 VIEW JOINT VENTURE, an Idaho general
7 partnership, ROBERT LEVIN, Trustee for the
8 ROLAND M. CASATI FAMILY TRUST, dated
9 June 5, 2008, RYKER YOUNG, Trustee for the
10 RYKER YOUNG REVOCABLE TRUST,
11 MARSHALL CHESROWN a single man,
12 THORCO, INC., an Idaho corporation,
13 CONSOLIDATED SUPPLY COMPANY, an
14 Oregon corporation, THE TURF
15 CORPORATION, an Idaho corporation,
16 WADSWORTH GOLF CONSTRUCTION
17 COMPANY OF THE SOUTHWEST, a Delaware
18 corporation, POLIN & YOUNG
19 CONSTRUCTION, INC., an Idaho corporation,
20 TAYLOR ENGINEERING, INC., a
21 Washington corporation and PRECISION
22 IRRIGATION, INC., an Arizona corporation,

23
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Cross Claim Defendants.

16 Plaintiff, American Bank, a Montana banking corporation, through its attorneys of record,
17 submits this answer to ACI Northwest, Inc., Answer to Taylor Engineering, Inc.'s Third Party
18 Complaint and Defendant ACI Northwest Inc.'s Cross-claim and Demand for Jury Trial, and admits and
19 denies as follows:

20
21 1. American Bank lacks sufficient information to form a belief as to the truth of the
22 averments of paragraph 1 of the Cross-claim, and therefore, denies the same.

23
24 2. American Bank admits that BRN Development, Inc. is an Idaho corporation transacting
25 business in Kootenai County Idaho, but lacks sufficient information to form a belief as to the truth of the
26 remaining averment in paragraph 2 of the Cross-claim, and therefore, denies the same.

PLAINTIFF AMERICAN BANK'S ANSWER TO ACI
NORTHWEST INC.'S CROSS-CLAIM - 3

1006

Count 3-Foreclosure of Mechanic's/Materialman's Lien

13. American Bank incorporates the foregoing answers as if fully set forth herein.

14. American Bank lacks sufficient information to form a belief as to the truth of the averments of paragraph 14 of the Cross-claim, and therefore, denies the same, and further, specifically denies that it expressly or impliedly requested ACI take any action, and denies that it had knowledge of ACI performing labor, supplying equipment or furnishing materials.

15. American Bank denies the amount due and owing to ACI is \$1,499,827.63, admits that ACI has filed a Claim of Lien pursuant to Idaho Code 45-513.

16. American Bank denies the averments of paragraph 16 of the Cross-claim.

17. American Bank denies the averments of paragraph 17 of the Cross-claim.

18. American Bank admits Exhibits A, B, and C are attached to ACI's answer and Cross-claim, but American Bank denies the claim of lien was extended by an "Endorsement to Claim of Lien for Payment on Account", and denies ACI is entitled to foreclosure of its claim of lien or any determination pursuant to Idaho Code sections 45-506, 45-507, 45-510, 45-512 and 45-1302 as it failed to comply with Idaho Code § 45-510, and denies ACI has a priority claim of lien as it voluntarily and knowingly, and in writing waived, released and subordinated its lien rights through at least September 2008.

Count 4-Breach of Express or Implied Contract by Wadsworth Golf

19. American Bank incorporates the foregoing answers as if fully set forth herein.

20. American Bank lacks sufficient information to form a belief as to the truth of the allegations of paragraph 20 of the Cross-claim, and therefore, denies the same, and further specifically

1 denies ACI performed labor, supplied equipment, and furnished materials for the entirety of the property
2 described in Exhibit A, attached thereto.

3 21. American Bank lacks sufficient information to form a belief as to the truth of the
4 averments of paragraph 21 of the Cross-claim, and therefore, denies the same.

5 22. American Bank lacks sufficient information to form a belief as to the truth of the
6 averments of paragraph 22 of the Cross-claim, and therefore, denies the same.

7 23. American Bank lacks sufficient information to form a belief as to the truth of the
8 averments of paragraph 23 of the Cross-claim, and therefore, denies the same.

9
10 **Count 5-Breach of Express or Implied Contract by Polin & Young**

11 24. American Bank incorporates the foregoing answers as if fully set forth herein.

12 25. American Bank denies ACI performed labor, supplied equipment, and furnished
13 materials for the entirety of the property described in Exhibit A, attached thereto, and lacks sufficient
14 information to form a belief as to the truth of the allegations of paragraph 25 of the Cross-claim, and
15 therefore, denies the same.

16 26. American Bank lacks sufficient information to form a belief as to the truth of the
17 averments of paragraph 26 of the Cross-claim, and therefore, denies the same.

18 27. American Bank lacks sufficient information to form a belief as to the truth of the
19 averments of paragraph 27 of the Cross-claim, and therefore, denies the same.

20 28. American Bank lacks sufficient information to form a belief as to the truth of the
21 averments of paragraph 28 of the Cross-claim, and therefore, denies the same.

1 **Count 6-Interference in Contract and/or Interference with Prospective Business Advantage and/or**
2 **Misrepresentation of American Bank**

3 29. American Bank incorporates the foregoing answers as if fully set forth herein.

4 30. American Bank lacks sufficient information to form a belief as to the truth of the
5 averments of paragraph 30 of the Cross-claim, and therefore, denies the same.

6 31. American Bank lacks sufficient information to form a belief as to the truth of the
7 averments of paragraph 31 of the Cross-claim, and therefore, denies the same.

8 32. American Bank lacks sufficient information to form a belief as to the truth of the
9 averments of the first sentence of paragraph 32 of the cross claim, and therefore, denies the same.

10 American Bank denies the averments of the second and third sentences of paragraph 32, and further
11 answers that the Loan Documents, by which American Bank made a loan to BRN Development, are
12 unambiguous and speak for themselves. American Bank denies the averments set forth in the fourth and
13 fifth sentences of paragraph 32, and further denies having made any representation to ACI, and denies
14 making any representation to make a loan other than that set forth in the Loan Documents.

15 33. American Bank denies the averments set forth in paragraph 33 of the complaint, as
16 American Bank made no representation to ACI, and the unambiguous Loan Documents speak for
17 themselves.

18 34. American Bank denies the averments set forth in the first and second sentences of
19 paragraph 34, and further, answers that it made all disbursements pursuant to the Loan Documents, and
20 at the request of the borrower, BRN Development. American Bank denies the averments of the third
21 sentence of paragraph 34.

22 35. American Bank denies the averments set forth in paragraph 35 of the Cross-claim.

1 36. American Bank denies the averments set forth in paragraph 36 of the Cross-claim.

2 **AFFIRMATIVE DEFENSES**

3 1. The Cross-claim fails to state a cause upon which relief can be granted, as ACI can prove
4 no set of facts in support of Count 6 which would entitle it to relief.

5 2. The Cross-claim is barred by accord and satisfaction.

6 3. The Cross-claim is barred by failure of consideration.

7 4. The Cross-claim is barred by payment.

8 5. The Cross-claim is barred by release or satisfaction.

9 6. The Cross-claim is barred by failure to act reasonably or otherwise mitigate damages, if
10 any.

11 7. The Cross-claim is barred by set off, recoupment or offset.

12 8. The Cross-claim is barred by express contact.

13 9. The Cross-claim is barred by implied contract, either in law or in fact.

14 10. The Cross-claim is barred by breach of contract.

15 11. The Cross-claim is barred by waiver and estoppel.

16 12. The Cross-claim is barred by failure to properly perfect a lien for labor and material.

17 13. The Cross-claim is barred by laches.

18 14. The Cross-claim is barred by the statute of frauds.

19 15. The Cross-claim is barred by failure to name and join all necessary parties and real
20 parties in interest.
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ATTORNEY'S FEES

16. American Bank has been required to retain the services of an attorney to bring defend the claims of ACI and is entitled to an award of reasonable attorney fees in bringing this suit pursuant to, *inter alia*, Idaho Code §§ 12-1201(1), 12-120(3) and 12-121, and Rule 54(e) of the Idaho Rules of Civil Procedure.

WHEREFORE, Plaintiff demands judgment under the Cross-Claim as follows:

A. For a judgment, order and decree of this Court, holding that the lien alleged as a part of the Cross-claim is subordinate to American Bank's Mortgage and the other Loan Documents, as alleged in the First Amended Complaint filed with this Court by Plaintiff on April 2, 2009;

B. For a judgment, order and decree of this Court, that the lien alleged as a part of the Cross-claim be forever foreclosed through the foreclosure of American Bank's Mortgage, as alleged in the First Amended Complaint filed with this Court by Plaintiff on April 2, 2009;

C. For judgment or order dismissing Count 6 of ACI's Cross-claim;

D. For a judgment, order and decree of this Court, awarding American Bank its costs, expenses and reasonable attorneys' fees incurred in defending the Cross-claim; and

E. For such other and further relief as to the Court seems just and equitable.

DATED this 30 day of June, 2010.



NANCY L. ISSERLIS, ISB No. 7331
ELIZABETH A. TELLESSEN, ISB No. 7393
WINSTON & CASHATT
Attorneys for Plaintiff American Bank

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STATE OF Montana)
 : ss.
County of Gallatin)

Bryan J. Klein, being first duly sworn upon oath, deposes and says:

That I am the President of American Bank, a Montana banking corporation; I am authorized to and makes this verification for and on behalf of American Bank; that I have read the above and foregoing Answer To ACI Northwest Inc.'s Cross-Claim, know the contents thereof, and believe the same to be true.

Bryan Klein
BRYAN J. KLEIN

SUBSCRIBED AND SWORN to before me this 29th day of June, 2010.

Jenny Moon
Notary Public in and for the State
of Montana, residing at Bozeman
My appointment expires 01-07-2012



CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 30th day of June, 2010, the foregoing was caused to be served on the following persons in the manner indicated:

John R. Layman
Layman, Layman & Robinson, PLLP
601 South Division Street
Spokane, WA 99202

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE 509-624-2902
VIA FEDERAL EXPRESS

Attorney for Defendants BRN Development, BRN Investments,
BRN-Lake View Joint Venture, Marshal Chesrown, Lake View
AG, and Robert Levin, Trustee For The Roland M. Casati
Family Trust, Dated June 5, 2008 and Ryker Young, Trustee of
the Ryker Young Revocable Trust

Barry Davidson
Davidson Backman Medeiros
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Co-Attorney for Defendants BRN Development, BRN
Investments, BRN-Lake View Joint Venture, Marshal
Chesrown, Lake View AG, and Robert Levin, Trustee For The
Roland M. Casati Family Trust, Dated June 5, 2008 and Ryker
Young, Trustee of the Ryker Young Revocable Trust

Charles B. Leropesis
Attorney at Law
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Attorney for Defendants Wadsworth Golf Construction
Company of the Southwest, The Turf Corporation and
Precision Irrigation Inc.

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Richard Campbell
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Attorney for Defendant Polin & Young Construction

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Coeur d'Alene, ID 83815

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Court Appointed Receiver

Terrance R. Harris
Ramsden & Lyons
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Attorney for Court Appointed Receiver

Steven C. Wetzel & Kevin P. Holt
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Attorneys for Third Party Defendant ACI


ELIZABETH A. TELLESSEN
NANCY L. ISSERLIS

195553

PLAINTIFF AMERICAN BANK'S ANSWER TO ACI
NORTHWEST INC.'S CROSS-CLAIM - 12

1015

LAW OFFICES OF
Winston & Cashatt
250 NORTHWEST BLVD., SUITE 107A
COEUR D'ALENE, IDAHO 83814
(208) 667-2103
FAX (208) 765-9121

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: #589 dcb

2010 JUL -9 PM 1:52

CLERK DISTRICT COURT
DEPUTY *[Signature]*

1 Timothy M. Lawlor, ISB No. 8160
2 M. Gregory Embrey, ISB No. 6045
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11 *Attorneys for Taylor Engineering, Inc.*

12 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
13 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

14 AMERICAN BANK, a Montana banking corporation,

15 Plaintiff,

16 vs.

17 BRN DEVELOPMENT, INC., an Idaho corporation,
18 BRN INVESTMENTS, LLC, an Idaho limited
19 liability company, LAKE VIEW AG, a Liechtenstein
20 company, BRN-LAKE VIEW JOINT VENTURE, an
21 Idaho general partnership, ROBERT LEVIN, Trustee
22 for the ROLAND M. CASATI FAMILY TRUST,
23 dated June 5, 2008, RYKER YOUNG, Trustee for the
24 RYKER YOUNG REVOCABLE TRUST,
25 MARSHALL CHESROWN a single man, IDAHO
26 ROOFING SPECIALIST, LLC, an Idaho limited
27 liability company, THORCO, INC., an Idaho
28 corporation, CONSOLIDATED SUPPLY
COMPANY, an Oregon corporation, INTERSTATE
CONCRETE & ASPHALT COMPANY, an Idaho
corporation, CONCRETE FINISHING, INC., an
Arizona corporation, WADSWORTH GOLF
CONSTRUCTION COMPANY OF THE
SOUTHWEST, a Delaware corporation, THE TURF
CORPORATION, an Idaho corporation, POLIN &
YOUNG CONSTRUCTION, INC., an Idaho
corporation, TAYLOR ENGINEERING, INC., a
Washington corporation, PRECISION IRRIGATION,

No. CV09-2619

TAYLOR ENGINEERING, INC.'S
ANSWER TO CROSS-CLAIM OF ACI
NORTHWEST, INC.

1016

1 INC., an Arizona corporation and SPOKANE
2 WILBERT VAULT CO., a Washington corporation,
3 d/b/a WILBERT PRECAST,

Defendants,

4 And

5 TAYLOR ENGINEERING, INC., a Washington
6 corporation,

Third-Party Plaintiff,

7 v.

8 ACI NORTHWEST, INC., an Idaho corporation;
9 STRATA, INC., an Idaho corporation; and
10 SUNDANCE INVESTMENTS, LLP, a limited
11 liability partnership,

Third-Party Defendants,

12 And

13 ACI NORTHWEST, INC., an Idaho corporation,

Cross-Claimant,

14 v.

15 AMERICAN BANK, a Montana banking corporation,
16 BRN DEVELOPMENT, INC., an Idaho corporation,
17 BRN INVESTMENTS, LLC, an Idaho limited
18 liability company, LAKE VIEW AG, a Liechtenstein
19 company, BRN-LAKE VIEW JOINT VENTURE, an
20 Idaho general partnership, ROBERT LEVIN, Trustee
21 for the ROLAND M. CASATI FAMILY TRUST,
22 dated June 5, 2008, RYKER YOUNG, Trustee for the
23 RYKER YOUNG REVOCABLE TRUST,
24 MARSHALL CHESROWN a single man, THORCO,
25 INC., an Idaho corporation, CONSOLIDATED
26 SUPPLY COMPANY, an Oregon corporation, THE
27 TURF CORPORATION, an Idaho corporation,
28 WADSWORTH GOLF CONSTRUCTION
COMPANY OF THE SOUTHWEST, a Delaware
corporation, POLIN & YOUNG CONSTRUCTION,
INC., an Idaho corporation, TAYLOR
ENGINEERING, INC., a Washington corporation,
and PRECISION IRRIGATION, INC., an Arizona
corporation,

Cross Claim Defendants.

1 COMES NOW Taylor Engineering, Inc. ("Taylor"), by and through its attorneys of record, M.
2 Gregory Embrey of the firm Witherspoon, Kelley, Davenport & Toole, P.S., and for its answer to ACI
3 Northwest, Inc.'s ("ACI") Cross-Claim and Demand for Jury Trial, admits, denies, alleges, and answers
4 as follows:
5

6 1. Taylor denies each, every, and all allegations and representations set forth in ACI's
7 Cross-Claim and prayer for relief unless specifically admitted herein.

8 Cross-Claim

9 2. In response to the allegations in Paragraph 1 of ACI's Cross-Claim, Taylor admits that
10 ACI is an Idaho corporation transacting business in Kootenai County, Idaho, but lacks sufficient
11 information to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of
12 ACI's Cross-Claim and therefore denies the same.

13 3. In response to the allegations in Paragraph 2 of ACI's Cross-Claim, Taylor admits that
14 BRN Development, Inc. is an Idaho corporation transacting business in Kootenai County, Idaho, but
15 lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 2
16 of ACI's Cross-Claim and therefore denies the same.

17 4. Taylor admits the allegations contained in Paragraph 3 of ACI's Cross-Claim.

18 5. Taylor admits the allegations contained in Paragraph 4 of ACI's Cross-Claim.

19 Count 1

20 Breach of Express or Implied Contract by BRN

21 6. In response to the allegations in Paragraph 5 of ACI's Cross-Claim, Taylor incorporates
22 its responses to Paragraph 1 through 4 of ACI'S Cross-Claim with the same force and affect as if stated
23 in full herein in response to the allegations contained in Paragraph 5.

24 7. Taylor lacks sufficient information to form a belief as to the truth of the allegations
25 contained in Paragraph 6 of ACI's Cross-Claim and therefore denies the same.
26
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1 16. Taylor lacks sufficient information to form a belief as to the truth of the allegations
2 contained in Paragraph 15 of ACI's Cross-Claim and therefore denies the same.

3 17. Taylor lacks sufficient information to form a belief as to the truth of the allegations
4 contained in Paragraph 16 of ACI's Cross-Claim and therefore denies the same.

5 18. Taylor lacks sufficient information to form a belief as to the truth of the allegations
6 contained in Paragraph 17 of ACI's Cross-Claim and therefore denies the same.

7 19. In response to the allegations in Paragraph 18 of ACI's Cross-Claim, Taylor admits
8 Exhibits A, B, and C are attached to ACI's Cross-Claim, but Taylor denies the claim of lien was
9 extended by an "Endorsement to Claim of Lien for Payment on Account" and denies ACI is entitled to
10 foreclosure of its claim of lien or any determination pursuant to Idaho Code sections 45-506, 45-507,
11 45-510, 45-512 and 45-1302.
12

13
14 **Count 4**
15 **Breach of Express or Implied Contract by Wadsworth Golf**

16 20. In response to the allegations in Paragraph 19 of ACI's Cross-Claim, Taylor
17 incorporates its responses to Paragraphs 1 through 18 of ACI's Cross-Claim with the same force and
18 affect as if stated in full herein in response to the allegations contained in Paragraph 19.

19 21. Taylor lacks sufficient information to form a belief as to the truth of the allegations
20 contained in Paragraph 20 of ACI's Cross-Claim and therefore denies the same.

21 22. In response to the allegations in Paragraph 21 of ACI's Cross-Claim, the allegations
22 contained in Paragraph 21 call for a legal conclusion to which no response is required. To the extent a
23 response is required, Taylor lacks sufficient information to form a belief as to the truth of the
24 Allegations of Paragraph 21 of the Cross-Claim and therefore denies the same.

25 23. Taylor lacks sufficient information to form a belief as to the truth of the allegations
26 contained in Paragraph 22 of ACI's Cross-Claim and therefore denies the same.
27
28

CERTIFICATE OF SERVICE

On the 9th day of July, 2010, I, the undersigned, caused to be served a true and correct copy of the within document described as TAYLOR ENGINEERING, INC.'S REPLY TO CROSS-CLAIM OF ACI NORTHWEST, INC. to be served on all interested parties to this action as follows:

Nancy L. Isserlis
Elizabeth A. Tellessen
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(Transnation)*

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 4 Spokane, Washington 99202
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 6 *BRN Investments, LLC, Lake View AG, Robert*
Leven, Trustee for the Roland M. Casati Family
Trust, Marshall Chestrown and Ryker Young,
Trustee of the Ryker Young Revocable Trust

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Co-Counsel with Layman

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 13 Witherspoon, Kelley, Davenport & Toole, P.S.
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 15 Coeur d'Alene, Idaho 83814
 16 *Attorneys for Defendant Wadsworth Golf*
Construction Company of the Southwest,
The Turf Corporation and Precision Irrigation,
Inc.

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Receiver

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 22 Wetzel Wetzel & Holt, P.L.L.C.
 23 616 North 4th Street, Suite 3
 24 Coeur d'Alene, Idaho 83814
Attorney for Third Party Defendant ACI

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2010 JUL 16 AM 11:51

CLERK DISTRICT COURT

Alynn French
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13 Attorneys for Plaintiff

14 **IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE**
15 **OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

16 AMERICAN BANK, a Montana banking
17 corporation,
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Plaintiff,

vs.

BRN DEVELOPMENT, INC., an Idaho
corporation, BRN INVESTMENTS, LLC, an
Idaho limited liability company, LAKE VIEW
AG, a Liechtenstein company, BRN-LAKE
VIEW JOINT VENTURE, an Idaho general
partnership, ROBERT LEVIN, Trustee for the
ROLAND M. CASATI FAMILY TRUST, dated
June 5, 2008, E. RYKER YOUNG, Trustee for
the E. RYKER YOUNG REVOCABLE TRUST,
MARSHALL CHESROWN a single man,
IDAHO ROOFING SPECIALIST, LLC, an Idaho
limited liability company, THORCO, INC., an
Idaho corporation, CONSOLIDATED SUPPLY

Case No. CV 09-2619

**AFFIDAVIT OF BRYAN J. KLEIN IN
SUPPORT OF PLAINTIFF'S
MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

ORIGINAL

1 COMPANY, an Oregon corporation,
2 INTERSTATE CONCRETE & ASPHALT
3 COMPANY, an Idaho corporation, CONCRETE
4 FINISHING , INC., an Arizona corporation, THE
5 TURF CORPORATION, an Idaho corporation,
6 WADSWORTH GOLF CONSTRUCTION
7 COMPANY OF THE SOUTHWEST, a Delaware
8 corporation, POLIN & YOUNG
9 CONSTRUCTION, INC., an Idaho corporation,
10 TAYLOR ENGINEERING, INC., a Washington
11 corporation, PRECISION IRRIGATION, INC.,
12 an Arizona corporation and SPOKANE
13 WILBERT VAULT CO., a Washington
14 corporation, d/b/a WILBERT PRECAST,
15 Defendants.

16 And

17 TAYLOR ENGINEERING, INC., a Washington
18 corporation,
19 Third-Party Plaintiff,

20 v.

21 ACI NORTHWEST, INC., an Idaho corporation;
22 STRATA, INC., an Idaho corporation; and
23 SUNDANCE INVESTMENTS, LLP, a limited
24 liability partnership,
25 Third-Party Defendants.

26 And

27 ACI NORTHWEST, INC., an Idaho corporation,
28 Cross-Claimant,

29 v.

30 AMERICAN BANK, a Montana banking
31 corporation, BRN DEVELOPMENT, INC., an
32 Idaho corporation, BRN INVESTMENTS, LLC,
33 an Idaho limited liability company, LAKE VIEW
34 AG, a Liechtenstein company, BRN-LAKE

1 VIEW JOINT VENTURE, an Idaho general
2 partnership, ROBERT LEVIN, Trustee for the
3 ROLAND M. CASATI FAMILY TRUST, dated
4 June 5, 2008, E. RYKER YOUNG, Trustee for
5 the E. RYKER YOUNG REVOCABLE TRUST,
6 MARSHALL CHESROWN a single man,
7 THORCO, INC., an Idaho corporation,
8 CONSOLIDATED SUPPLY COMPANY, an
9 Oregon corporation, THE TURF
10 CORPORATION, an Idaho corporation,
11 WADSWORTH GOLF CONSTRUCTION
12 COMPANY OF THE SOUTHWEST, a Delaware
13 corporation, POLIN & YOUNG
14 CONSTRUCTION, INC., an Idaho corporation,
15 TAYLOR ENGINEERING, INC., a Washington
16 corporation and PRECISION IRRIGATION,
17 INC., an Arizona corporation,

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Cross Claim Defendants.

13 STATE OF MONTANA)
14 : ss.
15 County of Gallatin)

16 I, Bryan Klein, being first duly sworn on oath deposes and says:

17 1. I am the President of American Bank, Plaintiff in the above mentioned matter. I am over
18 the age of 18, and competent to testify to the matters set out in this affidavit.

19 2. On February 2, 2007, Mark S. Hendrickson, on behalf of American Bank, as its Chief
20 Operating Officer, executed the following documents:

- 21 • Revolving Credit Agreement (herein "Credit Agreement"), Exhibit 164 to the Deposition
- 22 of BRN Investments, LLC., taken on June 22, 2010 attached to the Affidavit of Elizabeth
- 23 A. Tellessen;
- 24 • Subordination and Standstill Agreement (herein "Subordination Agreement"), Exhibit
- 25 163 to the Deposition of BRN Investments, LLC., taken on June 22, 2010 attached to the
- 26 Affidavit of Elizabeth A. Tellessen; and
- Guaranty, Exhibit 215 to the Deposition of Marshall Chesrown, taken on June 23, 2010
attached to the Affidavit of Elizabeth A. Tellessen.

1 3. In accordance with the Credit Agreement BRN Development executed and delivered to
2 American Bank the following documents:

- 3
- 4 • Revolving Credit Note (herein "Note"), Exhibit 165 to the Deposition of BRN
5 Investments, LLC., taken on June 22, 2010 attached to the Affidavit of Elizabeth A.
6 Tellessen;
 - 7 • Mortgage, Security Agreement and Fixture Filing (herein "American Bank Mortgage"),
8 Exhibit 166 to the Deposition of BRN Investments, LLC., taken on June 22, 2010
9 attached to the Affidavit of Elizabeth A. Tellessen.

10 (Documents referenced in paragraphs 2 & 3 are collectively defined as "Loan Documents")

11 4. The American Bank Mortgage is dated February 2, 2007 and was recorded on February
12 6, 2007, with the Kootenai County Assessor under Instrument No. 2081643000.

13 5. At all times relevant to this transaction, American Bank intended to have, and was
14 granted pursuant to the Credit Agreement and other Loan Documents a direct, valid and enforceable first
15 priority lien on Black Rock North.

16 6. American Bank made all advances requested by BRN Development, pursuant to the Loan
17 Documents, totaling fifteen million dollars and no/100 (\$15,000,000.00).

18 7. American Bank agreed to modify certain terms of the Credit Agreement and Note. (See
19 Exhibits 173 and 174 attached to the Affidavit of Elizabeth A. Tellessen.) All modifications to the Loan
20 Documents are in writing and agreed to by the parties thereto. American Bank has not knowingly or
21 voluntarily waived any right under any of the Loan Documents.

22 8. On or about October 14, 2008, American Bank released its security interest in four lots,
23 purchased by Marshall Chesrown, in consideration for a payment of four hundred thousand dollars and
24 No/100 (\$400,000.00), reducing the principal amount due under the Loan Documents to \$14,600,000. A
25 true and correct copy of the release is attached hereto as **Exhibit L**. (BATES #AB004633 intentionally
26 removed from sequence.)

1 9. Beginning December 2, 2008, and continuing to date, BRN Development has failed to
2 make the payments required by the Loan Documents, constituting an Event of Default.

3 10. BRN Development allowed mechanic and materialmen liens to be recorded against Black
4 Rock North, constituting an Event of Default under the Loan Documents.

5 11. On or about January 22, 2009, I sent a letter on behalf of American Bank, to BRN
6 Development, Inc. specifically advising it of the Events of Default that had occurred under sections
7 7.1.1 and 7.1.4 of the Revolving Credit Agreement (herein "Events of Default"). A true and correct
8 copy of the letter is attached hereto as **Exhibit M**.

9 12. On or about January 22, 2009, I sent a letter on behalf of American Bank, to BRN
10 Investments specifically advising it of the Events of Default that had occurred under the Credit
11 Agreement, pursuant to section 4.1 of the Subordination Agreement. A true and correct copy of the
12 letter is attached hereto as **Exhibit N**.

13 13. I, on behalf of American Bank, sent a letter to Mr. Young advising him of the Events of
14 Default that had occurred under the Credit Agreement, pursuant to section 2 of the Young Subordination
15 Agreement. A true and correct copy of the letter is attached hereto as **Exhibit O**.

16 14. I, on behalf of American Bank, sent a letter to Mr. Levin advising him of the Events of
17 Default that had occurred under the Credit Agreement, pursuant to section 2 of the Casati Subordination
18 Agreement. A true and correct copy of the letter is attached hereto as **Exhibit P**.

19 15. I, on behalf of American Bank sent a letter to Mr. Bjorg advising him of the Events of
20 Default that had occurred under the Credit Agreement, pursuant to section 2 of the Lake View
21 Subordination Agreement. A true and correct copy of the letter is attached hereto as **Exhibit Q**.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that on 15 day of July, 2010, the foregoing was caused to be served on the following persons in the manner indicated:

John R. Layman
Layman, Layman & Robinson, PLLP
601 South Division Street
Spokane, WA 99202
VIA REGULAR MAIL [X]
VIA CERTIFIED MAIL []
HAND DELIVERED []
BY FACSIMILE 509-624-2902 []
BY ELECTRONIC MAIL []
VIA FEDERAL EXPRESS []

Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee of the E. Ryker Young Revocable Trust

Barry Davidson
Davidson Backman Medeiros
601 West Riverside #1550
Spokane, WA 99201
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VIA FEDERAL EXPRESS []

Co-Attorney for Defendants BRN Development, BRN Investments, BRN-Lake View Joint Venture, Marshall Chesrown, Lake View AG, and Robert Levin, Trustee For The Roland M. Casati Family Trust, Dated June 5, 2008 and E. Ryker Young, Trustee of the E. Ryker Young Revocable Trust

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Attorney at Law
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Attorney for Defendant Thorco

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Attorney for Defendants Wadsworth Golf Construction Company of the Southwest, The Turf Corporation and Precision Irrigation Inc.

Richard Campbell
Campbell, Bissell & Kirby, PLLC
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Attorney for Defendant Polin & Young Construction

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Timothy Lawlor
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Co-Attorney for Plaintiff

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Attorneys for Third Party Defendant ACI


ELIZABETH A. TELLESSEN

198991

PARTIAL SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

That American Bank, a Montana Banking Corporation, the owner and holder of that certain mortgage bearing date February 2, 2007, executed by BRN Development, Inc., an Idaho Corporation to secure payments of the sum of \$15,000,000.00 and interest, and recorded in the office of the Recorder of Kootenai County, State of Idaho, on February 6, 2007, as Instrument No. 2081643000 do hereby release and discharge from the lien of said mortgage the following described lands situated in the County of Kootenai, State of Idaho, to-wit:

Legal Description Attached as Exhibit A

But this release shall not impair the validity of said mortgage to the other lands therein described.

Dated this 14th day of October, 2008

American Bank, a Montana Banking Corporation

By: BLO

Its: President

STATE OF Montana

COUNTY OF Gallatin

On this 14th day of October, 2008 before me, the undersigned, a Notary Public in and for said State, personally appeared Bryan Klein, known or identified to me to be the President of the Banking Corporation that executed the instrument or the person who executed the instrument on behalf of said Banking Corporation, and acknowledged to me that said Banking Corporation executed the same.

Nicole S. Ehresmann
Notary Public for Montana
Residing at Bozeman, MT
My Commission Expires: September 1, 2012

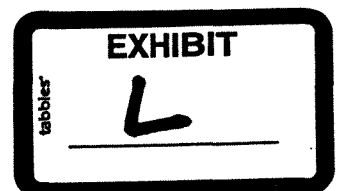
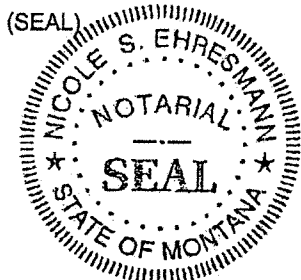


EXHIBIT A

A portion of the Southeast Quarter of Section 4, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

BEGINNING at the Southeast corner of said Section 4, Township 48 North, Range 4 West, Boise Meridian, said point being a 1 inch iron pipe as shown by Instrument No. 1341198, records of Kootenai County, Idaho;

Thence North $76^{\circ}58'58''$ West along the South line of Section 4, a distance of 1106.63 feet ;

Thence North $29^{\circ}07'51''$ East, a distance of 370.78 feet to a 5/8 inch rebar with a orange plastic cap, stamped P.L.S. 4346;

Thence North $71^{\circ}05'20''$ East, a distance of 402.07 feet to a 5/8 inch rebar with a orange plastic cap stamped P.L.S. 4346;

Thence North $28^{\circ}40'09''$ East, a distance of 325.54 feet to a 5/8 inch rebar with a orange plastic cap stamped P.L.S. 4346;

Thence North $14^{\circ}25'38''$ East, a distance of 225.75 feet to a 5/8 inch rebar with a orange plastic cap stamped P.L.S. 4346;

Thence North $65^{\circ}00'05''$ East, a distance of 297.30 feet being on the East-West 1/16th line between the SC 1/16th corner on the South 1/16th corner of said Section 4, said point also being a 5/8 inch rebar with a orange plastic cap stamped P.L.S. 4346;

Thence South $78^{\circ}57'20''$ East along said East-West 1/16th line a distance of 46.31 feet to the South 1/16th corner of said Section 4;

Thence South $00^{\circ}25'56''$ West along the East line of said Section 4 a distance of 1324.52 feet to the Southeast corner of said Section 4 and the POINT OF BEGINNING.



Bryan J. Klein
President

January 22, 2009

Mr. Marshall Chesrown, President
BRN Development, Inc.
1450 Northwest Blvd., Suite 302
Coeur d'Alene, Idaho 83814

RE: Notice of default under the terms of the Revolving Credit Agreement
dated February 2, 2007

Dear Marshall:

Thank you again for organizing our meeting on January 13th. We enjoyed meeting your team and the candid discussion relative to our business relationship.

In order to comply with policy, this letter is intended to provide formal notification of certain Events of Default under the terms of the Revolving Credit Agreement. They are as follows:

- 7.1.1 Payment default for the payments dated December 2, 2008 and January 2, 2008 in the amount of \$54,141.67 and \$51,404.17, respectively.
- 7.1.4 Filing of third party liens on the Collateral

As of the date of this letter, the Lender has not elected to impose the Default Interest Rate or to take up other remedies. However, Lender reserves the right to do so at any time in accordance with the Loan Documents. The withholding of the exercise of any right or remedy afforded under the Revolving Credit Agreement, the Loan Document or under governing law is not, and is not intended to be, a waiver of such rights or an agreement to forbear or delay in any manner the exercise of such rights or remedies at any time with respect to the Borrower, any Guarantor or any other person at any time in the future or with respect to the foregoing Events of Default or any other Event of Default.

Sincerely,

cc: Rocky Mountain Bank (Attn: Mark Hendrickson, President)
Marshall Chesrown



P.O. Box 1970 • 1612 West Main Street • Bozeman, MT 59771-1970
406.522.3538 • Fax 406.522.3577 • bklein@americanbankmontana.com

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AB002438



Bryan J. Klein
President

January 22, 2009

Mr. Marshall Chesrown, Managing Member
BRN Investments, LLC
1450 Northwest Blvd., Suite 302
Cocur d'Alene, Idaho 83814

RE: Notice of default under the terms of the BRN Development, Inc Revolving Credit Agreement dated February 2, 2007

Dear Marshall:

This letter is provided under Section [4.1] of the Subordination Agreement among American Bank, BRN Investments, LLC, and BRN Development, Inc. This letter is formal notification that Events of Default have occurred under the above referenced Revolving Credit Agreement. We are requesting that you comply with the provisions of the Subordination Agreement, including any action taken or to be taken with respect to, or any payment received from, BRN Development, Inc.

Please feel free to contact me with any questions.

Sincerely,

cc: BRN Development, Inc. (Attn: Marshall Chesrown)
Marshall Chesrown
BRN Investments, LLC (Attn: Robert Samuel)
Rocky Mountain Bank (Attn: Mark Hendrickson)



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AB002439



Bryan J. Klein
President

January 22, 2009

Mr. Ryker Young, Trustee
E. Ryker Young Revocable Trust
24481 South Manard Road
Fort Gibson, Oklahoma 74434

RE: Notice of default under the terms of the BRN Development, Inc Revolving Credit Agreement dated February 2, 2007

Dear Mr. Young:

This letter is provided under Section [2] of the Subordination Agreement among American Bank, E. Ryker Young Revocable Trust, and BRN Development, Inc.. This letter is formal notification that Events of Default have occurred under the above referenced Revolving Credit Agreement. We are requesting that you comply in full with the provisions of the Subordination Agreement, including any action taken or to be taken with respect to, or any payment received from, BRN Development, Inc.

Please feel free to contact me with any questions.

Sincerely,

cc: BRN Development, Inc. (Attn: Marshall Chesrown)
Marshall Chesrown



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406.522.3538 • Fax 406.522.3577 • bklein@americanbankmontana.com

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AB002442



Bryan J. Klein
President

January 22, 2009

Mr. Robert M. Levin, Trustee
The Roland M. Casati Family Trust dated June 5, 2008
Levin & Schreder
120 N. LaSalle Street, #3800
Chicago, Illinois 60602

RE: Notice of default under the terms of the BRN Development, Inc Revolving Credit Agreement dated February 2, 2007

Dear Mr. Levin:

This letter is provided under Section [2] of the Subordination Agreement among American Bank, The Roland M Casati Family Trust dated June 5, 2008, and BRN Development, Inc. This letter is formal notification that Events of Default have occurred under the above referenced Revolving Credit Agreement. We are requesting that you comply in full with the provisions of the Subordination Agreement, including any action taken or to be taken with respect to, or any payment received from, BRN Development, Inc.

Please feel free to contact me with any questions.

Sincerely,

cc: BRN Development, Inc. (Attn: Marshall Chesrown)
Marshall Chesrown



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406.522.3538 • Fax 406.522.3577 • bklein@americanbankmontana.com

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AB002440



Bryan J. Klein
President

January 22, 2009

Mr. Gunnar Bjorg, Authorized Officer
Lake View AG
c/o Interadvice Anstalt
Landstrasse 25
FL - 9490 Vaduz
Liechtenstein

RE: Notice of default under the terms of the BRN Development, Inc Revolving Credit Agreement dated February 2, 2007

Dear Mr. Bjorg:

This letter is provided under Section [2] of the Subordination Agreement among American Bank, Lake View AG, and BRN Development, Inc. This letter is formal notification that Events of Default have occurred under the above referenced Revolving Credit Agreement. We are requesting that you comply in full with the provisions of the Subordination Agreement, including any action taken or to be taken with respect to, or any payment received from, BRN Development, Inc.

Please feel free to contact me with any questions.

Sincerely,

cc: BRN Development, Inc. (Attn: Marshall Chesrown)
Marshall Chesrown



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406.522.3538 • Fax 406.522.3577 • bklein@americanbankmontana.com

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