

6-9-2010

Fazzio v. Mason Clerk's Record v. 1 Dckt. 36068

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an Idaho limited
liability company,

PLAINTIFFS-RESPONDENTS,

SEE AUGMENTATION RECORD vs.

EDWARD J. MASON, an individual,

DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

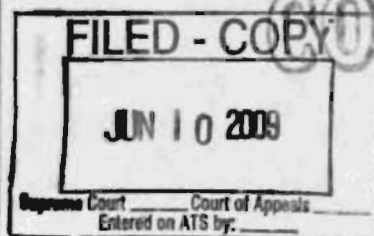
Hon KATHRYN A. STICKLEN, District Judge

MERLYN W. CLARK

Attorney for Appellant

DEREK A. PICA

Attorney for Respondent



36068

IN THE SUPREME COURT OF THE STATE OF IDAHO

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an Idaho
limited liability company,

Plaintiffs-Respondents,

vs.

EDWARD J. MASON, an individual,

Defendant-Appellant.

Supreme Court Case No. 36068

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE KATHRYN A. STICKLEN

MERLYN W. CLARK

ATTORNEY FOR APPELLANT

BOISE, IDAHO

DEREK A. PICA

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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Date: 2/26/2009

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 03:23 PM

ROA Report

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Case: CV-OC-2008-01215 Current Judge: Richard D. Greenwood

Frank J Fazzio Jr, etal. vs. Edward J Mason

Frank J Fazzio Jr, Cindy Ann Fazzio, Idaho Livestock Company Llc vs. Edward J Mason

Date	Code	User		Judge
1/22/2008	NCOC	CCAMESLC	New Case Filed - Other Claims	Kathryn A. Sticklen
	COMP	CCAMESLC	Application for Entry of Arbitration Award or in the Alternative Complaint for Breach of Contract	Kathryn A. Sticklen
	SMFI	CCAMESLC	Summons Filed	Kathryn A. Sticklen
1/28/2008	ACCP	MCBIEHKJ	Acceptance Of Service 1/23/08	Kathryn A. Sticklen
2/12/2008	ANSW	CCEARLJD	Answer (Clark for Edward Mason)	Kathryn A. Sticklen
2/14/2008	HRSC	CKKENNJA	Hearing Scheduled (Status by Phone 03/20/2008 03:30 PM) w/stipulation	Kathryn A. Sticklen
2/19/2008	NOTS	CCCHILER	Notice Of Service	Kathryn A. Sticklen
3/20/2008	HRHD	CKKENNJA	Hearing result for Status by Phone held on 03/20/2008 03:30 PM: Hearing Held w/stipulation	Kathryn A. Sticklen
	STIP	CCTOONAL	Stipulation for Scheduling and Planning	Kathryn A. Sticklen
3/24/2008	NOTC	CCCHILER	Notice of Compliance	Kathryn A. Sticklen
4/1/2008	STIP	CCTOWNRD	Stipulation for Scheduling and Planning	Kathryn A. Sticklen
4/4/2008	ORDR	CKKENNJA	Order Governing Proceedings and Setting Trial	Kathryn A. Sticklen
	HRSC	CKKENNJA	Hearing Scheduled (Pretrial Conference 02/02/2009 04:30 PM) Phone	Kathryn A. Sticklen
	HRSC	CKKENNJA	Hearing Scheduled (Court Trial 02/17/2009 09:00 AM) 4 Days	Kathryn A. Sticklen
	STIP	MCBIEHKJ	Stipulation Amending Stipulation for Scheduling and Planning	Kathryn A. Sticklen
4/7/2008	MOTN	CCTEELAL	Motion to Compel	Kathryn A. Sticklen
	AFSM	CCTEELAL	Affidavit In Support Of Motion to Compel	Kathryn A. Sticklen
4/9/2008	HRSC	CCAMESLC	Notice of Hearing (Motion to Compel 05/21/2008 02:30 PM)	Kathryn A. Sticklen
4/14/2008	MOTN	CCTOONAL	Motion to Disqualify Alternate Judge	Kathryn A. Sticklen
5/1/2008	MOTN	CCTEELAL	Motion for Protective Order	Kathryn A. Sticklen
	AFFD	CCTEELAL	Affidavit of Merlyn W Clark in Support of Motion for Protective Order	Kathryn A. Sticklen
	MEMO	CCTEELAL	Memorandum in Support of Motion for Protective Order	Kathryn A. Sticklen
5/2/2008	NOHG	CCEARLJD	Notice Of Hearing re Motion for Protective Order (05.21.08@2:30pm)	Kathryn A. Sticklen
5/13/2008	AFFD	CCTOWNRD	Supplemental Affidavit of Merlyn Clark in Opposition to Motion to Compel	Kathryn A. Sticklen
	MEMO	CCTOWNRD	Memorandum in Opposition to Motion to Compel	Kathryn A. Sticklen
5/15/2008	OBJT	CCTEELAL	Objection to Motion for Protective Order	Kathryn A. Sticklen
5/19/2008	REPL	CCTOONAL	Reply in Support of Motion for Protective Order	Kathryn A. Sticklen

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Date: 2/26/2009

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 03:23 PM

ROA Report

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Case: CV-OC-2008-01215 Current Judge: Richard D. Greenwood

Frank J Fazzio Jr, etal. vs. Edward J Mason

Frank J Fazzio Jr, Cindy Ann Fazzio, Idaho Livestock Company Llc vs. Edward J Mason

Date	Code	User	Judge
5/21/2008	DCHH	CKENNJA	Hearing result for Motion to Compel held on 05/21/2008 02:30 PM: District Court Hearing Held Court Reporter: L. Anderson Number of Transcript Pages for this hearing estimated: Less than 100 and Motion for Protective Order Kathryn A. Sticklen
6/6/2008	ORDR	CKENNJA	ORder on Motion to Compel & motion for protective order Kathryn A. Sticklen
6/11/2008	NOHG	CCBURGBL	Notice Of Hearing Re: Motion for Protective Order (7/15/08@3:00pm) Kathryn A. Sticklen
	HRSC	CCBURGBL	Hearing Scheduled (Motion For Protective Order 07/15/2008 03:00 PM) Kathryn A. Sticklen
	MOTN	CCAMESLC	Motion for Entry of Protective Order Kathryn A. Sticklen
	AFSM	CCAMESLC	Affidavit In Support Of Motion for Protective Order Kathryn A. Sticklen
6/16/2008	STIP	CCDWONCP	Stipulation for Entry of Order Granting Motion for Protective Order Kathryn A. Sticklen
6/18/2008	ORDR	DCLYKEMA	Order Granting Motion for Protective Order Kathryn A. Sticklen
	HRVC	CKENNJA	Hearing result for Motion For Protective Order held on 07/15/2008 03:00 PM: Hearing Vacated Kathryn A. Sticklen
6/24/2008	NOTC	CCTEELAL	Notice of Compliance Kathryn A. Sticklen
8/4/2008	MOSJ	CCMAXWSL	Motion For Summary Judgment Kathryn A. Sticklen
	MEMO	CCMAXWSL	Memorandum in Support on Motion for Summary Judgment Kathryn A. Sticklen
	AFFD	CCMAXWSL	Affidavit of Frank J Fazzio, Jr. Kathryn A. Sticklen
	NOTC	CCMAXWSL	Notice of Hearing (Oct. 21, 2008 @ 3:00pm) Kathryn A. Sticklen
	HRSC	CCMAXWSL	Hearing Scheduled (Motion for Summary Judgment 10/21/2008 03:00 PM) Kathryn A. Sticklen
10/7/2008	NOTC	CCMCLILI	Notice of Compliance Kathryn A. Sticklen
	AFFD	CCMCLILI	Affidavit of Edward J. Mason in Opposition to Plaintiff's Motion for Summary Judgment Document sealed Kathryn A. Sticklen
	MEMO	CCMCLILI	Memorandum in Opposition to Plaintiff's Motino for Summary Judgment Document sealed Kathryn A. Sticklen
10/14/2008	AFFD	CCGARDAL	Affidavit of Derek A Pica Document sealed Kathryn A. Sticklen
	MEMO	CCGARDAL	Memorandum in Response to Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment Document sealed Kathryn A. Sticklen
10/15/2008	AFFD	CCAMESLC	Second Affidavit of Derek A Pica Document sealed Kathryn A. Sticklen
10/17/2008	AFFD	MCBIEHKJ	Supplemental Affidavit of Edward J Mason in Opposition to MSJ Document sealed Kathryn A. Sticklen

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Date: 2/26/2009

North Judicial District Court - Ada County

User: CCTHIEBJ

Time: 03:23 PM

ROA Report

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Case: CV-OC-2008-01215 Current Judge: Richard D. Greenwood

Frank J Fazzio Jr, etal. vs. Edward J Mason

Frank J Fazzio Jr, Cindy Ann Fazzio, Idaho Livestock Company Llc vs. Edward J Mason

Date	Code	User	Judge
10/21/2008	DCHH	CKKENNJA	Hearing result for Motion for Summary Judgment held on 10/21/2008 03:00 PM: District Court Hearing Held Court Reporter: Leslie Anderson Number of Transcript Pages for this hearing estimated: Less than 100 pages
11/3/2008	MOTN	CCLYKEAL	Motion to Extend Dates to Amend Complaint and Disclose Expert Witnesses
	MOTN	CCLYKEAL	Motion for Leave to Amend Complaint
	AFFD	CCLYKEAL	Affidavit of Derek A Pica
11/4/2008	BREF	CCAMESLC	Supplimental Briefing in Opposition to Motion for Summary Judgment
	MISC	CCNELSRF	Supplemental Memorandum in Support of Motion for Summary Judgment and in Support of Motion to Amend Complaint
11/6/2008	AFFD	CCTOWNRD	2nd Affidavit of Frank Fazzio in Response to Assertion in Supplemental Brief that Plaintiff Must Prove Compliance
11/12/2008	NOHG	CCCHILER	Notice Of Hearing
	HRSC	CCCHILER	Hearing Scheduled (Motion 01/21/2009 04:00 PM)
12/30/2008	DEOP	CKKENNJA	Memorandum Decision & Order
	CDIS	CKKENNJA	Civil Disposition entered for: Mason, Edward J, Defendant; Fazzio, Cindy Ann, Plaintiff; Fazzio, Frank J Jr, Plaintiff; Idaho Livestock Company Llc, Plaintiff. Filing date: 12/30/2008
	STAT	CKKENNJA	STATUS CHANGED: Closed
1/8/2009	CHRT	CKKENNJA	Changed Assigned Judge: Retired (batch process)
1/13/2009	MEMC	CCCHILER	Memorandum Of Costs
	AFFD	CCCHILER	Affidavit of Attorney Fees
1/20/2009	APSC	CCTHIEBJ	Appealed To The Supreme Court
1/21/2009	HRVC	CKKENNJA	Hearing result for Court Trial held on 02/17/2009 09:00 AM: Hearing Vacated 4 Days
	HRVC	CKKENNJA	Hearing result for Pretrial Conference held on 02/02/2009 04:30 PM: Hearing Vacated Phone
	HRVC	CKKENNJA	Hearing result for Motion held on 01/21/2009 04:00 PM: Hearing Vacated
1/22/2009	MOTN	CCFERCJD	Motion to Dismiss Appeal Filed January 20, 2008
	REQU	CCFERCJD	Plaintiffs' / Respondants' Request for Additional Documents in The Record
1/26/2009	OBJT	CCNELSRF	Defendants Objection and Motion to Disallow Plaintiffs Memorandum of Costs and Fees
1/28/2009	OBJC	CCNELSRF	Objection to Motion to Dismiss Appeal

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DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE NO.: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Plaintiffs

NO
FILED PM 1-
JAN 22 2008
J. DAVID NAVARRO, Clerk
By L. AMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)
FAZZIO, husband and wife, and IDAHO)
LIVESTOCK COMPANY, LLC, an)
Idaho Limited Liability Company,)

Plaintiffs,)

vs.)

EDWARD J. MASON, an individual,)

Defendant.)
_____)

CV 00 0801215

Case No. _____

**APPLICATION FOR ENTRY OF
ARBITRATION AWARD, OR IN
THE ALTERNATIVE, COMPLAINT
FOR BREACH OF CONTRACT**

Plaintiffs allege:

COUNT ONE

ARBITRATION AWARD

I.

That Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, are residents of the county of Ada, state of Idaho.

II.

That Plaintiff, Idaho Livestock Company, LLC is an Idaho Limited Liability Company in good standing.

III.

That Defendant, Edward J. Mason, is a resident of the county of Ada, state of Idaho.

IV.

That on April 12, 2006, Defendant, Edward J. Mason, entered into a Real Estate Purchase and Sale Agreement to purchase from Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, a parcel of real property located in the county of Ada, state of Idaho, consisting of approximately 3.08 acres of land with a residence thereon for the purchase price of \$1,530,000.00, with a closing date of February 26, 2007.

V.

That on April 12, 2006, Defendant, Edward J. Mason, entered into a Real Estate Purchase and Sale Agreement to purchase from Plaintiff, Idaho Livestock Company, LLC, two (2) parcels of real property located in the county of Ada, state of Idaho, consisting of approximately 2.9 acres and 28.85 acres, respectively, for the purchase price of \$2,000,000.00, with a closing date of February 26, 2007.

VI.

That Defendant, Edward J. Mason, failed to close on the purchase of the real property pursuant to his agreements with Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, and Idaho Livestock Company, LLC on February 26, 2007.

VII.

That pursuant to the terms of the Real Estate Purchase and Sale Agreements Defendant, Edward J. Mason entered into with Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, and Idaho Livestock Company, LLC, hereinafter collectively, "Plaintiffs," Plaintiffs submitted a claim against defendant, Edward J. Mason, with the American Arbitration Association seeking to enforce the respective Real Estate Purchase and Sale Agreements entered into by Defendant, Edward J. Mason, with Plaintiffs through specific performance and also made claims for attorney fees, arbitration costs and interest.

VIII.

That on September 12, 2007, Plaintiff, Idaho Livestock Company, LLC and Defendant, Edward J. Mason, entered into an Agreement to Resolve Dispute Arising Out of Real Estate Purchase and Sale Agreement Dated April 12, 2006 So As to Avoid Arbitration, hereinafter "Idaho Livestock / Mason Arbitration Agreement," a true and correct copy of which is attached hereto as Exhibit "A."

IX.

That on September 12, 2007, Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, entered into an Agreement to Resolve Dispute Arising Out of Real Estate Purchase and Sale Agreement Dated April 12, 2006 So As to Avoid Arbitration, hereinafter "Fazzio / Mason Arbitration Agreement," a true and correct copy of which is attached hereto as Exhibit "B."

X.

That pursuant to the Idaho Livestock / Mason Arbitration Agreement, a true and correct copy of which is attached hereto as Exhibit "A," Plaintiff, Idaho Livestock Company, LLC and Defendant, Edward J. Mason, agreed that the Idaho Livestock / Mason Arbitration Agreement would be treated as an arbitration award pursuant to Idaho Code § 7-908 and either party could apply to the District Court in and for the County of Ada for a judgment pursuant to the Uniform Arbitration Act, Idaho Code § 7-901 et seq. to enforce the terms of the Idaho Livestock / Mason Arbitration Agreement.

XI.

That pursuant to the Fazzio / Mason Arbitration Agreement, a true and correct copy of which is attached hereto as Exhibit "B," Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, and Defendant, Edward J. Mason, agreed that the Fazzio / Mason Arbitration Agreement would be treated as an arbitration award pursuant to Idaho Code § 7-908 and either party could apply to the District Court in and for the County of

Ada for a judgment pursuant to the Uniform Arbitration Act, Idaho Code § 7-901 et seq. to enforce the terms of the Fazzio / Mason Arbitration Agreement.

XII.

That Defendant, Edward J. Mason, breached the terms of both the Idaho Livestock / Mason Arbitration Agreement and the Fazzio / Mason Arbitration Agreement, hereinafter collectively "Agreement," by failing to close on his purchase of the real property parcels that were the subject matter of both Agreements on or before December 21, 2007.

XIII.

That as a result of Defendant, Edward J. Mason's breach of both Agreements, Plaintiffs, Idaho Livestock Company, LLC and Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, make application to the District Court in and for the County of Ada, for entry of a judgment of specific performance against Defendant, Edward J. Mason, pursuant to the Uniform Arbitration Act, Idaho Code § 7-901 et seq. specifically enforcing the terms of the Agreements.

XIV.

That pursuant to the terms of the Agreements, Plaintiffs, Idaho Livestock Company, LLC and Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, are entitled to attorney fees they have incurred in bringing their Application for Entry of Judgment.

IN THE ALTERNATIVE, should the Court determine that the Agreements are not arbitration awards as defined in the Uniform Arbitration Act, Idaho Code § 7-901 et seq.:

COUNT TWO

BREACH OF CONTRACT

I.

Plaintiffs reallege and incorporate all of the allegations set forth in Count One as if specifically set forth herein.

II.

That Defendant, Edward J. Mason, breached the terms of the Agreements entered into with each Plaintiff, respectively, on September 12, 2007, true and correct copies of which are attached hereto as Exhibits "A" and "B" by failing to close on or before December 21, 2007.

III.

That pursuant to the terms of the Agreements entered into by Plaintiffs and Defendant, Edward J. Mason, Plaintiffs are entitled to the remedy of specific performance enforcing the terms of the Agreements as a result of Defendant, Edward J. Mason, breaching the Agreements by failing to close his purchase of the real property that is the subject matter of the Agreements.

IV.

That as a result of Defendant, Edward J. Mason's breach of the Agreements, Plaintiffs have been required to bring this action to enforce the terms of the Agreements and are entitled to attorney fees pursuant to the terms of the Agreements and Idaho Code § 12-120(3) in the amount of \$50,000.00 should Defendant, Edward J. Mason default, or such another amount as the Court deems to be just and reasonable at a trial of this action.

WHEREFORE, Plaintiffs pray for entry of a Judgment pursuant to Count One as follows:

1. Granting Plaintiffs, Idaho Livestock Company, LLC and Frank J. Fazzio and Cindy Ann Fazzio, husband and Wife, Application for Entry of Judgment pursuant to the Uniform Arbitration Act, Idaho Code § 7-908 et seq. and entering a Judgment as follows:

a. Requiring Defendant, Edward J. Mason, to specifically perform the terms of the Idaho Livestock / Mason Arbitration Agreement by immediately paying to Plaintiff, Idaho Livestock, LLC the sum of \$2,000,000.00 plus interest thereon at the rate of 12% per annum until paid in full from February 27, 2007, with said \$2,000,000.00 plus accrued interest thereon at the rate of 12% per annum to be collected through all legal means available including attachment of property, garnishment, etc.

b. Requiring Defendant, Edward J. Mason, to specifically perform the terms of the Fazzio / Mason Arbitration Agreement by immediately paying to Plaintiffs,

Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, the sum of \$1,530,000.00 plus interest thereon at the rate of 12% per annum from February 27, 2007 with said \$1,530,000.00 plus accrued interest thereon at the rate of 12% per annum to be collected through all legal means available including attachment of property, garnishment, etc.

2. Awarding Plaintiff attorney fees and costs incurred in bringing this Application pursuant to the terms of the Agreements.

3. For such other and further relief as the Court deems just and reasonable.

IN THE ALTERNATIVE, Plaintiffs pray for entry of a Judgment pursuant to Count Two as follows:

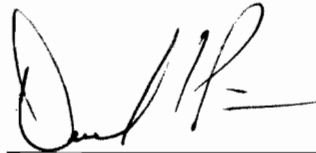
1. Requiring Defendant, Edward J. Mason, to specifically perform the terms of the Idaho Livestock / Mason Arbitration Agreement by immediately paying to Plaintiff, Idaho Livestock, LLC the sum of \$2,000,000.00 plus interest thereon at the rate of 12% per annum until paid in full from February 27, 2007, with said \$2,000,000.00 plus accrued interest thereon at the rate of 12% per annum to be collected through all legal means available including attachment of property, garnishment, etc.

2. Requiring Defendant, Edward J. Mason, to specifically perform the terms of the Fazzio / Mason Arbitration Agreement by immediately paying to Plaintiffs, Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, the sum of \$1,530,000.00 plus interest thereon at the rate of 12% per annum from February 27, 2007 with said \$1,530,000.00 plus accrued interest thereon at the rate of 12% per annum to be collected through all legal means available including attachment of property, garnishment, etc.

3. Awarding Plaintiffs attorney fees incurred in bringing this action pursuant to the terms of the Agreements and Idaho Code § 12-120(3); and

4. For costs and such other and further relief as the Court deems just and reasonable.

DATED this 22nd day of January, 2008.

A handwritten signature in black ink, appearing to read 'Derek A. Pica', written over a horizontal line.

Derek A. Pica
Attorney for Plaintiffs

ORIGINAL

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF
REAL ESTATE PURCHASE AND SALE AGREEMENT
DATED April 12, 2006 SO AS TO AVOID ARBITRATION**

This Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration (hereinafter "Settlement Agreement") is entered into this 12th day of ~~August~~ ^{SEPTEMBER}, 2007 by and between **Idaho Livestock Company, LLC**, an Idaho Limited Liability Company, whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Idaho Livestock") and Edward J. Mason, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Mason").

RECITALS

WHEREAS, Idaho Livestock and Mason entered into a Real Estate Purchase and Sale Agreement on April 12, 2006 (hereinafter "Real Estate Agreement") with an effective date of April 26, 2006, a true and correct copy of which is attached hereto as Exhibit "A" whereby Mason agreed to purchase from Idaho Livestock two (2) parcels of real property consisting of approximately two and nine-tenths (2.9) and twenty eight and eighty-five one-hundredths (28.85) acres of land located on W. Walker Lane in Kuna, Idaho, Ada County Assessor Parcel Numbers S131423316 and R3785270040, hereinafter "Subject Property," for the purchase price of two million dollars (\$2,000,000.00);

WHEREAS, all contingencies and conditions set forth in the Real Estate Agreement were met;

WHEREAS, pursuant to the terms of the Real Estate Agreement, Idaho Livestock and Mason were to close on Mason's purchase of the real property that was the subject of the Real Estate Agreement on February 26, 2007;

WHEREAS, Idaho Livestock completed its portion of the closing;

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION – Page 1**

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EXHIBIT

"A"

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WHEREAS, Mason failed to complete his portion of the closing so as to complete his purchase of the real property subject to the Real Estate Agreement;

WHEREAS, pursuant to paragraphs 19 and 20 of the Real Estate Agreement, on March 15, 2007, Idaho Livestock submitted a claim with the American Arbitration Association seeking to enforce the Real Estate Agreement through specific performance and also made claims for attorney fees, costs including arbitration costs and interest; and

WHEREAS, Frank Fazzio Jr., the Manager of Idaho Livestock and Mason met, along with their attorneys, at the Law Offices of Hawley, Troxell, Ennis & Hawley, LLP on June 8, 2007 and reached this Settlement Agreement resolving all issues so as to avoid an arbitration proceeding.

WITNESSETH:

Based upon the above recitals, Idaho Livestock and Mason hereby covenant and agree as follows:

1. **CONTRACTUAL REVISION:** That Idaho Livestock and Mason enter into a Revised Real Estate Purchase and Sale Agreement, a true and correct copy of which is attached hereto as Exhibit "B." The Revised Real Estate Purchase and Sale Agreement shall supercede the Real Estate Purchase and Sale Agreement dated April 12, 2006. The Revised Real Estate Purchase and Sale Agreement shall be subordinate to this Settlement Agreement in so far as there are any inconsistencies.

2. **CLOSING:** Mason shall close on his purchase of the Subject Property on or before December 21, 2007 for the purchase price of two million dollars (\$2,000,000.00) cash in U.S. funds. Closing may be extended if the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007 until March 21, 2008. In no event shall closing occur later than March 21, 2008. If the city of Kuna fails

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION – Page 2**

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07/29/2007 2:00 PAGE 33/34 FAX: (208)342-3829

to approve Mason's application for plat approval by March 21, 2008 or if the city of Kuna denies Mason's application, such action or non-action by the city of Kuna shall have no effect on Mason's obligation to close on or before March 21, 2008.

3. INTEREST: At the time of closing, Mason shall pay to Idaho Livestock interest on the two million dollars (\$2,000,000.00) at the interest rate of twelve percent (12%) per annum commencing February 27, 2007 through the date of closing.

4. LOCAL IMPROVEMENT DISTRICT: Mason shall be responsible for and pay any assessments that become due and owing to the city of Kuna prior to closing as a result of Mason causing the Subject Property to be subject to the local improvement district, hereinafter "L.I.D." in May of 2006.

5. IRRIGATION EQUIPMENT AND PUMPS: Idaho Livestock shall have the right to remove and sell all irrigation equipment and surface pumps located on the Subject Property at any time during a ninety (90) day period commencing on the date of closing, except that should Mason notify Idaho Livestock in writing that the irrigation equipment and surface pumps need to be removed from their current location prior to the end of this ninety (90) day period as a result of work being done to develop the property, Idaho Livestock shall have a reasonable amount of time from the date of written notification by Mason to either move the irrigation equipment and/or surface pumps or notify Mason that Idaho Livestock is abandoning the irrigation equipment and/or surface pumps to Mason in which case Mason may dispose of the irrigation equipment and/or surface pumps as he so chooses.

6. PERSONAL PROPERTY AND CHATTELS: Idaho Livestock shall continue to own all personal property and chattels located on the Subject Property and said items are not part of the transaction. Any reference to such items in the Real Estate Agreement are hereby removed and are not part of the Real Estate Agreement.

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION - Page 3**

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7. **GRAZING OF HORSES:** Idaho Livestock shall have the right to graze horses on the Subject Property as long as Frank J. Fazzio, Jr., manager of Idaho Livestock, and Cindy Ann Fazzio continue to lease the adjacent parcel of land. Should fences need to be removed on the Subject Property as a result of Mason's development of the property, Idaho Livestock shall be notified in writing thirty (30) days prior to the removal of the fences so that Idaho Livestock can move the horses to another fenced area on the Subject Property or if necessary to the corral associated with the barn being leased by Frank Fazzio, Jr. on the adjacent property.

8. **ATTORNEY FEES AND ARBITRATION COSTS:** Idaho Livestock and Mason shall each pay their own attorney fees and arbitration costs incurred through the date of this Settlement Agreement. Idaho Livestock shall be entitled to any refund it may receive as a result of this Settlement Agreement from the American Arbitration Association for arbitration filing fees it paid to initiate arbitration.

9. **ARBITRATION LANGUAGE NULL AND VOID:** The arbitration language contained in paragraph 20 of the Real Estate Purchase and Sale Agreement dated April 12, 2006 is hereby null and void as this Settlement Agreement shall be deemed to have been reached as a result of arbitration proceedings. Should either Idaho Livestock or Mason breach and/or violate this Settlement Agreement, the non-offending party may file an action in the district court of the county of Ada, state of Idaho, to have this Settlement Agreement specifically enforced.

10. **SPECIFIC PERFORMANCE:** Should either party breach or violate this Settlement Agreement, the non-offending party shall have a remedy of specific performance and may apply to the district court of the county of Ada, state of Idaho to have this Settlement Agreement enforced by a judgment for specific performance.

11. **ENTRY OF JUDGMENT:** This Settlement Agreement shall be treated as an arbitration award pursuant to Idaho Code § 7-908 from which either party may apply

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
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ARBITRATION – Page 4**

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to the district court in the county of Ada, state of Idaho for entry of judgment pursuant to the Uniform Arbitration Act, Idaho Code § 7-901 et seq. to have this Settlement Agreement enforced.

12. COVENANT NOT TO SEEK ENTRY OF JUDGMENT: Idaho Livestock shall not seek to have a judgment based on this Settlement Agreement entered in the district court in and for the county of Ada, state of Idaho prior to December 21, 2007. Should Mason fail to close on December 21, 2007, Idaho Livestock may immediately apply to the district court for entry of judgment except as follows:

If the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007, Mason shall have until March 21, 2008 to close on his purchase of the subject property.

If the city of Kuna fails to approve Mason's application for plat approval by March 21, 2008 or if the city of Kuna denies Mason's application, such action or non-action by the city of Kuna shall have no effect on Mason's obligation to close on or before March 21, 2008 and should Mason fail to close on or before March 21, 2008, Idaho Livestock may immediately apply to the District Court for entry of judgment.

13. TRANSFER OF WARRANTY DEED: Idaho Livestock shall have no obligation to transfer a warranty deed to Mason for the Subject Property until Mason completes the closing of the adjacent parcel of real property held in the name of Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife.

14. ATTORNEY FEES AND COSTS TO ENFORCE THIS SETTLEMENT AGREEMENT: Should either party be required to bring an action or apply to the district court to obtain a judgment to enforce this Settlement Agreement, that party shall be entitled to reasonable attorney fees and costs associated with that action or application.

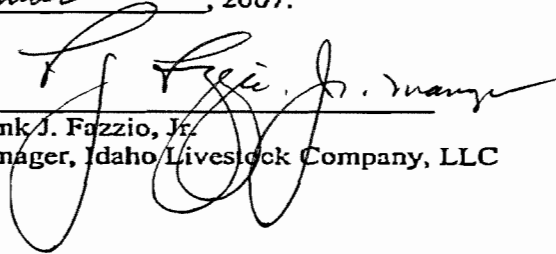
**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
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15. REAL ESTATE PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006: The Real Estate Purchase and Sale Agreement dated April 12, 2006, a true and correct copy of which is attached hereto as Exhibit "A" is superceded by the Revised Real Estate Purchase and Sale Agreement, a true and correct copy of which is attached hereto as Exhibit "B." Any terms of the Revised Real Estate Purchase and Sale Agreement executed on even date herewith that are inconsistent with the terms of this Settlement Agreement are null and void. All provisions of the Revised Real Estate Purchase and Sale Agreement that are not inconsistent with the terms of this Settlement Agreement shall remain in full force and effect and are incorporated herein.

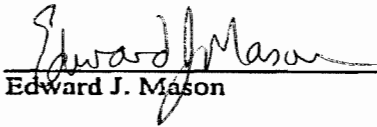
DATED this 12th day of September, 2007.


Frank J. Fazzio, Jr.
Manager, Idaho Livestock Company, LLC

APPROVED: 

Derek A. Pica
Attorney for Idaho Livestock

DATED this 4th day of September, 2007.


Edward J. Mason

APPROVED: 

Merlyn Clark
Attorney for Mason

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
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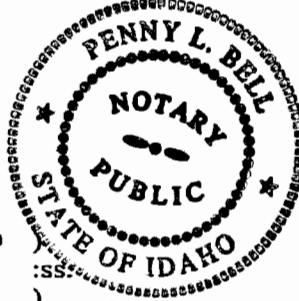
STATE OF IDAHO)

:SS.

County of Ada)

On this 15th day of September, 2007, before me the undersigned, personally appeared FRANK J. FAZZIO, JR., identified to me as the Manager of Idaho Livestock Company, LLC and as the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Penny L. Bell
NOTARY PUBLIC FOR IDAHOResiding at: Boise, IDMy Commission Expires: 9/30/2010

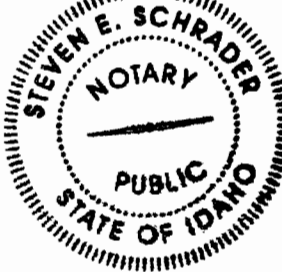
STATE OF IDAHO)

:SS.

County of Ada)

On this 4th day of September, 2007, before me the undersigned, personally appeared EDWARD J. MASON, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Steven E. Schrader
NOTARY PUBLIC FOR IDAHOResiding at: Ada CountyMy Commission Expires: 1/26/2012

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
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REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE AND SALE AGREEMENT (hereinafter "Agreement") is entered into this 12th day of April, 2006, by and between Idaho Livestock Company, LLC, an Idaho limited liability company whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Seller") and Edward J. Mason and/or assigns, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Buyer"). The Effective Date of this Agreement shall be the date on which the last of the parties to this Agreement have executed this Agreement.

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants, conditions and promises hereinafter set forth and the payments to be made as hereinafter specified, the parties hereto do hereby covenant and agree as follows:

1. **PROPERTY TO BE PURCHASED:** Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and accept from the Seller, upon the terms hereinafter provided, all of Seller's right, title and interest in and to two parcels of real property consisting of approximately two and 9/10 (2.9) and twenty eight and 85/100 (28.85) acres of land, located on W. Walker Lane in Kuna, Idaho, Ada County Assessor Parcel Nos. S131423316 and R3785270040, respectively, as more particularly described in "Exhibit A" attached hereto, which said "Exhibit A" is by this reference incorporated herein and made a part hereof, together with all appurtenances, water rights, water shares, ditches and ditch rights, licenses or permits appurtenant thereto, fixtures, chattels and ~~all personal property~~ located thereon (hereinafter "Premises").

2. **PURCHASE PRICE:** The total purchase price for the Premises shall be ~~Two Million Three Hundred Eighty One Thousand Five Hundred Dollars (\$2,381,500.00)~~. Buyer shall pay said purchase price to Seller in the following manner and upon the following terms and conditions:

a. Within three (3) business days after the Effective Date, Buyer shall deposit earnest money in the amount of \$48,000.00 in escrow with Transnation Title & Escrow, Inc. If Buyer does not terminate this Agreement within the Due Diligence Period set forth in Paragraph 6, below, the earnest money deposit will be released to Seller and, except in the case of default by Seller, shall be nonrefundable. The earnest money shall be credited towards the purchase of the Premises.

b. At closing the Buyer shall pay the Seller the balance of the purchase price of the Premises less the \$48,000.00 earnest money as described in Paragraph 2.a, above, which shall be credited toward the purchase. *PAYMENT SHALL BE BY CASHIER'S CHECK*

3. **DEED:** Seller agrees to make, execute and deliver to buyer at closing a standard form Warranty Deed conveying the Premises to Buyer, subject only to current

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EXHIBIT "A"

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taxes and assessments, easements, restrictions and encumbrances of record, at closing and those exceptions not objected to as set forth in Paragraph 5, below.

4. TITLE INSURANCE: At closing, or as soon thereafter as practical, Seller shall, at their expense, provide Buyer with a standard form of owner's policy of title insurance with coverage in the amount of the purchase price, issued by Transnation Title & Escrow, Inc., showing marketable and insurable title to the Premises is vested in Seller subject only to the standard exceptions contained in such form of title insurance normally issued by the said title company and those exceptions not objected to as set forth in Paragraph 5, below. Buyer may elect to have extended coverage, in which case Buyer shall be responsible for the additional premium thereby required over and above the standard coverage premium.

5. TITLE REPORT: Within ten (10) days after the Effective Date, Seller shall furnish to Buyer a commitment of a title insurance policy showing the condition of the title to the Premises. Buyer shall have twenty (20) days from receipt of the commitment within which to object to the condition of the title as set forth in the report. Seller shall thereafter have twenty (20) days to correct any defects in the title or demonstrate to Buyer's satisfaction that such defects can be corrected prior to closing or in event Seller elects not to correct the defects in title, Buyer may elect to close the transaction and accept the defects or may elect to terminate the Agreement and be refunded the earnest money deposit identified in Paragraph 2.a. Such election by Buyer must be made written ten (10) days of receipt of notice from Seller that Seller will not correct the unacceptable defects.

6. DUE DILIGENCE, ENVIRONMENTAL, PHYSICAL AND TITLE INVESTIGATION: Buyer shall have a period of sixty (60) days after the Effective Date to conduct an investigation into the suitability of the Premises for the Buyer's intended use and such physical inspections, testing, surveys, title and environmental investigations and other examinations of the Premises as Buyer shall, in his discretion, deem appropriate (the "Due Diligence Period"). This Agreement shall terminate and all earnest money deposited hereunder shall be refunded to Buyer in the event Buyer gives written notice within said sixty (60) day period of his dissatisfaction with any aspect of the Premises or the condition of title, which said dissatisfaction shall be determined at the sole discretion of the Buyer. Buyer and his agents, employees, and contractors shall have access to the Premises as is reasonably necessary for Buyer to conduct any such physical inspections, testing, surveys, title and environmental investigations. Buyer shall keep the Premises free and clear of liens, indemnify and hold Seller harmless from any liability, claims, demands, damages and costs, and repair any damages arising from any such inspections, surveys and investigations.

7. OTHER CONTINGENCIES AND CONDITIONS: Buyer's obligation to close the purchase of the Premises is expressly made contingent upon the Buyer successfully closing, on or before the closing date set forth in Paragraph 11, below, the purchase of the Property listed below, on terms and conditions acceptable to Buyer in Buyer's sole discretion:

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and Seller's *[Signature]*

[Signature]

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That certain property located at 2802 Ten Mile Rd., Kuna, Idaho, owned by Frank J. Fazzio, Jr. and Cindy Ann Fazzio,, Ada County Parcel No. S1314223410.

8. SELLER COOPERATION: Seller acknowledges that Buyer intends to develop the Premises and other adjacent or neighboring properties as a residential or mixed use subdivision. Prior to closing, Seller shall cooperate with Buyer in making such applications as may be required in order to obtain development approvals from such governmental agencies as may have jurisdiction thereof, which said cooperation shall include but not be limited to the timely execution of any applications and other instruments, as may be necessary to effect the contemplated subdivision development. In addition, Seller shall not, either before or after closing, in any manner, directly or indirectly, oppose Buyer's efforts to obtain governmental approvals for its contemplated subdivision development, nor shall Seller lend any support or assistance to any other persons or entities that may oppose or seek to oppose Buyer's contemplated subdivision development.

9. PRESERVATION OF PREMISES: Following the Effective Date, Seller shall continue to operate, manage and maintain the Premises in accordance with the same practices and procedures implemented by Seller for operating, maintaining and managing the Premises prior to the Effective Date. Seller shall maintain the Premises in substantially the same condition as existed upon the Effective Date. Prior to Closing, without the prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion), Seller shall not: (i) enter into any contract or agreement which will be binding on Buyer or the Premises after the Closing; or (ii) enter into any lease or sublease for the Premises; or (iii) enter into any agreement or contract to sell, transfer, convey, dispose or exchange the Premises or any portion thereof or interest therein.

10. POSSESSION: Buyer shall be entitled to possession of the Premises from and after the date of closing.

11. CLOSING: Closing shall be on or before that date which is ten (10) months after the Effective Date. The parties agree that the closing agency for this transaction shall be Transnation Title & Escrow, Inc.

12. ESCROW HOLDER: Transnation Title & Escrow, Inc. is hereby designated as escrow holder and shall act according to the terms of this Agreement and the escrow instructions, unless the parties hereto mutually direct the escrow holder in writing to the contrary.

13. ESCROW FEES: Buyer and Seller shall share all escrow and closing costs equally.

14. PRORATIONS: All taxes, assessments, insurance, rents, and utility expenses which pertain to the Premises shall be prorated between the parties as of closing.

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15. REPRESENTATION AND WARRANTIES OF SELLER: In order to induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Seller to the best of their knowledge represents and warrants to Buyer as of the date hereof and, except as otherwise set forth herein, as of the closing date, as follows:

a. Seller has authority to execute, deliver, and perform this Agreement.

b. Except as set forth herein, Seller holds marketable fee title to the Premises.

c. There are no other agreements or understandings affecting the Premises, which will survive the closing.

d. To the best of Seller's knowledge, there is not pending nor threatened any condemnation or public improvement, in, about, or outside the Premises which have resulted in, or might result in the imposition of any assessment, lien, or charge against Seller, the Premises, or any owner of the Premises, nor is there pending or threatened to the best of Seller's knowledge, any legal action of any kind or nature, affecting Seller or the Premises, which would enjoin or restrict the right of Seller to consummate the transactions contemplated hereby.

e. The Premises is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the closing date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Premises, and to the best of Seller's knowledge, there is no proceeding pending or any increases of the assessed valuation of the Premises or any portion thereof.

f. All persons and corporations supplying labor, materials, and equipment to the Premises have been paid, and there are no claims or liens of materialmen, laborers, or suppliers affecting the Premises.

g. The Premises is free from any leasehold interest, which is not terminable upon thirty (30) days written notice.

h. Seller is not aware of the presence of any hazardous waste material on the Premises. Seller will do no act or otherwise cause any hazardous waste materials of any kind to be deposited on or in the Premises during the Agreement term as extended.

In the event of any material breach of the representations and warranties set forth in this Section, if Seller has not cured said breach prior to closing, all sums paid hereunder shall be refunded to Buyer and this Agreement shall terminate.

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16. PURCHASE AS IS: Buyer agrees that it is purchasing the Premises "as is" without any warranty except as set forth in this Agreement. Buyer shall make such investigations and inspections of the Premises as Buyer deems appropriate without reliance upon Seller or Seller's agents.

17. RISK OF LOSS: From the Effective Date until closing, risk of loss due to damage to or destruction of the Premises shall remain with Seller. Buyer is responsible for themselves and any of their agents when on the Premises.

18. TIME WAIVER: Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence of this Agreement. Any departure from the conditions and terms of this Agreement or any delay in the enforcement of the same by either party hereto shall not operate to waive or be a waiver of the rights of either party hereto to stand upon the strict letter or construction of this Agreement or to require performance in accordance with the express terms set forth herein.

19. DEFAULT: In the event any party fails to strictly comply with the terms and conditions of this Agreement, that party shall be in default of this Agreement. The nondefaulting party may send a notice of default with a ten (10) business-day period to cure. If the default is not cured within such period, then the defaulting party shall have the remedies set forth below:

a. Seller's Remedies. If Buyer defaults and fails to cure, Seller may terminate this Agreement and retain the earnest money deposit as liquidated damages, and not as a penalty, in full satisfaction of Seller's claim. The parties acknowledge and agree that since it would be extremely difficult to determine the actual amount of Seller's damages arising out of a breach by Buyer, the amount of the liquidated damages herein provided constitutes a fair estimate of those damages, which the parties have agreed upon in a good-faith effort to make damages certain. Except for any damages that may be incurred arising out of any investigations, tests, and studies with respect to the Premises that Buyer may elect to undertake, the liquidated damages provided herein for the breach of this Agreement shall be Seller's sole remedy, *EXCEPT THAT THE RIGHTS IN PARAGRAPH 19.B. THIS PARAGRAPH SHALL ALSO BE AVAILABLE TO THE SELLER.*

b. Buyer's Remedies. If Seller defaults and fails to cure, Buyer may terminate this Agreement and receive back the earnest money deposit or may pursue any remedies available to him, in law or equity, including the enforcement of this Agreement through specific performance.

20. DISPUTE RESOLUTION: All Disputes (as defined herein below) arising between the Buyer and the Seller shall be finally determined by arbitration pursuant to the applicable rules of the American Arbitration Association. Arbitration may be commenced by either party by filing a demand for arbitration with the American Arbitration Association. Judgment upon the award rendered by the arbitrator in any arbitration in which the Buyer and Seller are among the parties, shall be final and binding

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and may be entered in any court having jurisdiction thereof. As used herein, the term "Disputes" shall include any controversy between the Buyer and the Seller (whether or not the controversy includes third parties) arising in any way out of the agreement or its interpretation. The exclusive venue for all proceedings conducted under this section shall be Ada County, Idaho.

21. ATTORNEY FEES: In the event the parties hereto become involved in arbitration or litigation (including any proceedings in bankruptcy), the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses from the other party.

22. NOTICES: Any notice authorized to be given from Seller to Buyer or from Buyer to Seller shall be sufficiently served or given for all purposes if delivered personally or sent by United States Certified Mail, return receipt requested, addressed to the party in question at the addresses hereinafter set forth:

Seller: Idaho Livestock Company, LLC
2802 Ten Mile Road
Kuna, Idaho 83634

Buyer: Edward J. Mason
1883 N. Wildwood St.
Boise, Idaho 83713

All notices required or desired to be given under this Agreement shall be deemed given upon hand delivery or upon deposit in the United States Mail, postage prepaid. Either party shall be entitled to change the address for service of notice hereunder by serving upon the other party; in the manner described above, a notice specifying the new address.

23. COMMISSIONS: The Seller is not represented by a real estate agent and there are no real estate commissions for the purchase and sale of the Premises. Seller is solely responsible for any claim of any kind from any third person purporting to have been employed by Seller claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction. The Buyer is not represented by a real estate agent in an agency capacity for the purchase and sale of the Premises, and therefore is not responsible for any real estate commissions to any agent. Buyer is solely responsible for any claim of any kind from any third person purporting to have been employed by Buyer claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction.

24. GOVERNING LAW: This Agreement shall be construed, interpreted and applied, and the right and obligations hereunder determined in accordance with the laws of the state of Idaho.

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25. AMENDMENTS: This Agreement may not be amended, modified or changed in any way, except by written document signed by each of the parties hereto.

26. FURTHER ASSURANCES: Each of the parties hereto agrees to execute any other documents necessary or appropriate to affect the intent of the parties as expressed in this Agreement.

27. SURVIVAL OF COVENANTS: To the extent any covenants and warranties contained herein remain unfulfilled or operative hereafter, said covenants and warranties shall survive the transfer of title and possession and shall not be deemed merged in any other document executed pursuant to the terms of this Agreement.

28. SUCCESSORS IN INTEREST: This Agreement shall be binding upon the successors, heirs and assigns, personal representatives, administrators, executors, legatees and devisees of the parties hereto.

29. HEADINGS: The paragraph headings contained in this Agreement are employed solely as a matter of convenience, and the same shall not be construed as limiting or expanding the contents hereof in any way whatsoever.

30. ENTIRE AGREEMENT: This agreement supersedes all prior agreements between the parties hereto, whether in writing or otherwise; and any such prior agreement shall have no force or effect upon and after the date of execution of this Agreement. This Agreement contains the entire agreement of the parties, and no representation, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force or effect.

31. EXCHANGE OPTION: Either or both of Buyer and Seller may at their option effect the purchase and sale of the Premises through an exchange pursuant to Section 1031 of the Internal Revenue Code, in which event the other party shall cooperate to that end and execute such documents as necessary therefore, providing that the closing date is not delayed, that the other party incurs no additional expense or liability, and that the provisions hereof survive any exchange, and in which event the exchanging party indemnifies the other party against all claims arising out of or in any way connected with the other property or its transfer, and against all costs incurred by the other party in the course of defending against the same.

SELLER:

Idaho Livestock Company, LLC

By: Frank J. Fazio, Jr., Manager

Date 4-12-06

BUYER:

Edward J Mason

Date 4/12/06

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EXHIBIT A
LEGAL DESCRIPTION OF PREMISES
[to be attached]

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EXHIBIT A

PARCEL 1:

Lot 2, Block 1, HUBBARD ESTATES SUBDIVISION, according to the official plat thereof filed in Book 70 of Plats at page 7150, records of Ada County, Idaho.

PARCEL 2:

A parcel of land being a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at a brass cap marking the northwest corner of the said Section 14; thence

Along the westerly boundary of the said NW $\frac{1}{4}$ of Section 14, which is also the centerline of Ten Mile Road, South 00°00'17" West, 1331.81 feet to an iron pin marking the northwest corner of the said S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 14, the POINT OF BEGINNING; thence

Along the northerly boundary of the said S $\frac{1}{2}$ NW $\frac{1}{4}$, South 89°56'56" East, 45.00 feet; thence

Continuing South 89°56'56" East 1687.59 feet to an iron pin; thence

Leaving the said northerly boundary South 01°04'25" West, 75.01 feet to an iron pin; thence

Along a line 75.00 feet southerly of and parallel with the said northerly boundary of the S $\frac{1}{2}$ NW $\frac{1}{4}$, North 89°56'56" West, 1686.19 feet to a point on the westerly boundary of the said S $\frac{1}{2}$ NW $\frac{1}{4}$; thence

Along the said westerly boundary North 00°00'17" East, 75.00 feet to the POINT OF BEGINNING.

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REVISED REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REVISED REAL ESTATE PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is entered into this _____ day of August, 2007, retroactive to April 12, 2006, by and between Idaho Livestock Company, LLC, and Idaho limited liability company whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Seller") and Edward J. Mason and/or assigns, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Buyer"). The Effective Date of this Agreement is April 26, 2006.

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants, conditions and promises hereinafter set forth and the payments to be made as hereinafter specified, the parties hereto do hereby covenant and agree as follows:

1. **PROPERTY TO BE PURCHASED:** Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and accept from the Seller, upon the terms hereinafter provided, all of Seller's right, title and interest in and to two parcels of real property consisting of approximately two and 9/10 (2.9) and twenty eight and 85/100 (28.85) acres of land, located on W. Walker Lane in Kuna, Idaho, Ada County Assessor Parcel Nos. S131423316 and R3785270040, respectfully, as more particularly described in "Exhibit A" attached hereto, which said "Exhibit A" is by this reference incorporated herein and made a part hereof, together with all appurtenances, water rights, water shares, ditches and ditch rights, licenses or permits appurtenant thereto and fixtures located thereon (hereinafter "Premises").

2. **PURCHASE PRICE:** The total purchase price for the Premises shall be Two Million Dollars (\$2,000,000.00). Buyer shall pay said purchase price to Seller in the following manner and upon the following terms and conditions:

a. Within three (3) business days after the Effective Date, Buyer shall deposit earnest money in the amount of \$48,000.00 in escrow with Transnation Title and Escrow, Inc. If Buyer does not terminate this Agreement within the Due Diligence Period set forth in Paragraph 6, below, the earnest money deposit will be released to Seller and, except in the case of default by Seller, shall be nonrefundable. The earnest money shall be credited towards the purchase of the Premises.

b. At closing the Buyer shall pay the Seller the balance of the purchase price of the Premises less the \$48,000.00 earnest money as described in Paragraph 2.a, above, which shall be credited toward the purchase. Payment shall be by cashier's check.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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EXHIBIT "B"

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3. INTEREST: At closing, Buyer shall pay Seller interest on the Two Million Dollars (\$2,000,000.00) at the rate of twelve percent (12%) per annum commencing February 27, 2007 through the date of closing.

4. DEED. Seller agrees to make, execute and deliver to buyer at closing a standard form Warranty Deed conveying the Premises to Buyer, subject only to current tax and assessments, easements, restrictions and encumbrances of record, at closing and those exceptions not objected to as set forth in Paragraph 5, below.

5. TITLE INSURANCE: At closing, or as soon thereafter as practical, Seller shall, at their expense, provide Buyer with a standard form of owner's policy of title insurance with coverage in the amount of the purchase price, issued by Transnation Title & Escrow, Inc. showing marketable and insurable title to the Premises is vested in Seller subject only to the standard exceptions contained in such form of title insurance normally issued by the said title company and those exceptions not objected to as set forth in Paragraph 5, below. Buyer may elect to have extended coverage, in which case Buyer shall be responsible for the additional premium thereby required over and above the standard coverage premium.

6. TITLE REPORT: Within ten (10) days after the Effective Date, Seller shall furnish to Buyer a commitment of a title insurance policy showing the condition of the title to the Premises. Buyer shall have twenty (20) days from receipt of the commitment within which to object to the condition of the title as set forth in the report. Seller shall thereafter have twenty (20) days to correct any defects in the title or demonstrate to Buyer's satisfaction that such defects can be corrected prior to closing or in event Seller elects not to correct the defects in title, Buyer may elect to close the transaction and accept the defects or may elect to terminate the Agreement and be refunded the earnest money deposit identified in Paragraph 2.a. Such election by Buyer must be made written ten (10) days of receipt of notice from Seller that Seller will not correct the unacceptable defects.

7. DUE DILIGENCE, ENVIRONMENTAL, PHYSICAL AND TITLE INVESTIGATION: Buyer shall have a period of sixty (60) days after the Effective Date to conduct an investigation into the suitability of the Premises for the Buyer's intended use and such physical inspections, testing, surveys, title and environmental investigations and other examinations of the Premises as Buyer shall, in his discretion, deem appropriate (the "Due Diligence Period"). This Agreement shall terminate and all earnest money deposited hereunder shall be refunded to Buyer in the event Buyer gives written notice within said sixty (60) day period of his dissatisfaction with any aspect of the Premises or the condition of title, which said dissatisfaction shall be determined at the sole discretion of the Buyer. Buyer and his agents, employees, and contractors shall have access to the Premises as is reasonably necessary for Buyer to conduct any such physical inspections, testing, surveys, title and environmental investigations. Buyer shall keep the Premises free and clear of liens, indemnify and hold Seller harmless from any liability,

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claims, demands, damages and costs, and repair any damages arising from any such inspections, surveys and investigations.

8. SELLER COOPERATION: Seller acknowledges that Buyer intends to develop the Premises and other adjacent or neighboring properties as a residential or mixed use subdivision. Prior to closing, Seller shall cooperate with Buyer in making such applications as may be required in order to obtain development approvals from such governmental agencies as may have jurisdiction thereof, which said cooperation shall include but not be limited to the timely execution of any applications and other instruments, as may be necessary to effect the contemplated subdivision development. In addition, Seller shall not, either before or after closing, in any manner, directly or indirectly, oppose Buyer's efforts to obtain governmental approvals for its contemplated subdivision development, nor shall Seller lend any support or assistance to any other persons or entities that may oppose or seek to oppose Buyer's contemplated subdivision development.

9. PRESERVATION OF PREMISES: Following the Effective Date, Seller shall continue to operate, manage and maintain the Premises in accordance with the same practices and procedures implemented by Seller for operating, maintaining and managing the Premises prior to the Effective Date. Seller shall maintain the Premises in substantially the same condition as existed upon the Effective Date. Prior to Closing, without the prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion), Seller shall not: (i) enter into any contract or agreement which will be binding on Buyer or the Premises after the Closing; or (ii) enter into any lease or sublease for the Premises that would extend beyond closing; or (iii) enter into any agreement or contract to sell, transfer, convey, dispose or exchange the Premises or any portion thereof or interest therein.

10. POSSESSION: Buyer shall be entitled to possession of the Premises from and after the date of closing. Seller shall have the right to graze horses on the Premises so long as Seller's manager, Frank J. Fazzio, Jr. is leasing the adjacent parcel and home thereon.

11. REMOVAL OF IRRIGATION EQUIPMENT AND/OR SURFACE PUMPS. Seller shall have the right to remove and sell the irrigation equipment and/or surface pumps located on the Premises for a period of ninety (90) days commencing December 21, 2007. Should Seller fail to remove the irrigation equipment and/or surface pumps within the ninety (90) day period, Seller shall be deemed to have abandoned them.

12. CLOSING: Closing shall be on or before December 21, 2007 unless the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007, in which case, Mason shall have until March 21, 2008 to close on the subject property. In no event shall closing occur later than March 21, 2008. The parties agree that the closing agency for this transaction shall be Transnation Title & Escrow, Inc.

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13. ESCROW HOLDER: Transnation Title & Escrow, Inc. is hereby designated as escrow holder and shall act according to the terms of this Agreement and the escrow instructions, unless the parties hereto mutually direct the escrow holder in writing to the contrary.

14. ESCROW FEES: Buyer and Seller shall share all escrow and closing costs equally.

15. PRORATIONS: All taxes, assessments, insurance, rents, and utility expenses which pertain to the Premises shall be prorated between the parties as of closing.

16. REPRESENTATION AND WARRANTIES OF SELLER: In order to induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Seller to the best of their knowledge represents and warrants to Buyer as of the date hereof and, except as otherwise set forth herein, as of the closing date, as follows:

a. Seller has authority to execute, deliver, and perform this Agreement.

b. Except as set forth herein, Seller holds marketable fee title to the Premises.

c. There are no other agreements or understandings affecting the Premises, which will survive the closing other than obligations incurred by Buyer since April 12, 2006 relating to Buyer subjecting the Premises to the city of Kuna's Local Improvement District (L.I.D.).

d. To the best of Seller's knowledge, there is not pending nor threatened any condemnation or public improvement, in, about, or outside the Premises which have resulted in, or might result in the imposition of any assessment, lien, or charge against Seller, the Premises, or any owner of the Premises, or is there pending or threatened to the best of Seller's knowledge, any legal action of any kind or nature, affecting Seller or the Premises, which would enjoin or restrict the right of Seller to consummate the transactions contemplated hereby, except as set forth in paragraph 16c. above.

e. The Premises is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the closing date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Premises, and to the best of Seller's knowledge, there is no proceeding pending or any increases of the assessed valuation of the Premises or any portion thereof, except as set forth in paragraph 16c. above. Buyer will pay any L.I.D.

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assessments which are assessed on the Premises either before or after closing and shall indemnify and hold Seller harmless from said L.I.D. assessments.

f. All persons and corporations supplying labor, materials, and equipment to the Premises have been paid, and there are no claims or liens of materialmen, laborers, or suppliers affecting the Premises.

g. The Premises is free from any leasehold interest, which is not terminable upon thirty (30) days written notice.

h. Seller is not aware of the presence of any hazardous waste material on the Premises. Seller will do no act or otherwise cause any hazardous waste materials of any kind to be deposited on or in the Premises during the Agreement term as extended.

In the event of any material breach of the representations and warranties set forth in this Section, if Seller has not cured said breach prior to closing, all sums paid hereunder shall be refunded to Buyer and this Agreement shall terminate.

17. PURCHASE AS IS: Buyer agrees that it is purchasing the Premises "as is" without any warranty except as set forth in this Agreement. Buyer shall make such investigations and inspections of the Premises as Buyer deems appropriate without reliance upon Seller or Seller's agents.

18. RISK OF LOSS: From the Effective Date until closing, risk of loss due to damage to or destruction of the Premises shall remain with Seller. Buyer is responsible for themselves and any of their agents when on the Premises.

19. TIME WAIVER: Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence of this Agreement. Any departure from the conditions and terms of this Agreement or any delay in the enforcement of the same by either party hereto shall not operate to waive or be a waiver of the rights of either party hereto to stand upon the strict letter or construction of this Agreement or to require performance in accordance with the express terms set forth herein.

20. DEFAULT: In the event any party fails to strictly comply with the terms and conditions of this Agreement, that party shall be in default of this Agreement. Should either party default, the non-offending party shall have the remedies set forth in the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid arbitration executed on even date herewith and incorporated herein by this reference.

21. ATTORNEY FEES: In the event the parties hereto become involved in arbitration or litigation (including any proceedings in bankruptcy), the prevailing party

REAL ESTATE PURCHASE AND SALE AGREEMENT

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shall be entitled to recover its reasonable attorney fees, costs and expenses from the other party.

22. **NOTICES:** Any notice authorized to be given from Seller to Buyer or from Buyer to Seller shall be sufficiently served or given for all purposes if delivered personally or sent by United States Certified Mail, return receipt requested, addressed to the party in question at the addresses hereinafter set forth:

Seller: Idaho Livestock Company, LLC
2802 Ten Mile Road
Kuna, Idaho 83634

Buyer: Edward J. Mason
1883 N. Wildwood St.
Boise, Idaho 83713

All notices required or desired to be given under this Agreement shall be deemed given upon hand delivery or upon deposit in the United States Mail, postage prepaid. Either party shall be entitled to change the address for service of notice hereunder by serving upon the other party; in the manner described above, a notice specifying the new address.

23. **COMMISSIONS:** The Seller is not represented by a real estate agent and there are no real estate commissions for the purchase and sale of the Premises. Seller is solely responsible for any claim of any kind from any third person purporting to have been employed by Seller claiming to be entitled to receive any commission or other compensation for services rendered in connection with the transaction. The Buyer is not represented by a real estate agent in an agency capacity for the purchase and sale of the Premises, and therefore is not responsible for any real estate commissions to any agent. Buyer is solely responsible for any claim of any kind from any third person purporting to have been employed by Buyer claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction.

24. **GOVERNING LAW:** This Agreement shall be construed, interpreted and applied, and the right and obligations hereunder determined in accordance with the laws of the state of Idaho.

25. **AMENDMENTS:** This Agreement may not be amended, modified or changed in any way, except by written document signed by each of the parties hereto.

26. **FURTHER ASSURANCES:** Each of the parties hereto agrees to execute any other documents necessary or appropriate to affect the intent of the parties as expressed in this Agreement including the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration executed on even date herewith.

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27. SURVIVAL OF COVENANTS: To the extent any covenants and warranties contained herein remain unfulfilled or operative hereafter, said covenants and warranties shall survive the transfer of title and possession and shall not be deemed merged in any other document executed pursuant to the terms of this Agreement.

28. SUCCESSORS IN INTEREST: This Agreement shall be binding upon the successor, heirs and assigns, personal representatives, administrators, executors, legatees and devisees of the parties hereto.

29. HEADINGS: The paragraph headings contained in this Agreement are employed solely as a matter of convenience, and the same shall not be construed as limiting or expending the contents hereof in any way whatsoever.

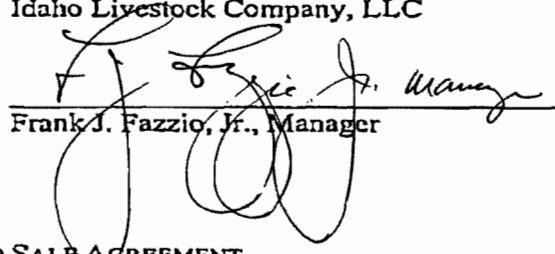
30. ENTIRE AGREEMENT: This agreement supersedes all prior agreements between the parties hereto, whether in writing or otherwise; and any such prior agreement shall have no force or effect upon and after the date of execution of this Agreement. This Agreement contains the entire agreement of the parties, and no representation, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force of effect, except as set forth in the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration executed on even date herewith, which said Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 shall control should there be any inconsistencies.

31. EXCHANGE OPTION: Either or both of Buyer and Seller may at their option effect the purchase and sale of the Premises through an exchange pursuant to Section 1031 of the Internal Revenue Code, in which event the other party shall cooperate to that end and execute such documents as necessary therefore, providing that the closing date is not delayed, that the other party incurs no additional expense or liability, and that the provisions hereof survive any exchange, and in which event the exchanging party indemnifies the other party against all claims arising out of or in any way connected with the other property or its transfer, and against all costs incurred by the other party in the course of defending against the same.

DATED this 12th day of September, 2007.

Idaho Livestock Company, LLC

By:


Frank J. Fazzio, Jr., Manager

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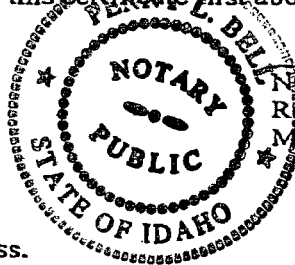
DATED this 4th day of September, 2007.

Edward J. Mason
Edward J. Mason

STATE OF IDAHO)
:SS.
County of Ada)

On this 12th day of September, 2007, before me the undersigned, personally appeared FRANK J. FAZZIO, JR., identified to me as the Manager of Idaho Livestock Company, LLC and as the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

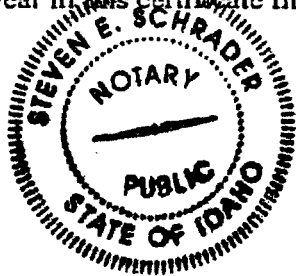


Kenneth Bell
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
My Commission Expires: 9/30/2010

STATE OF IDAHO)
:SS.
County of Ada)

On this 4th day of September, 2007, before me the undersigned, personally appeared EDWARD J. MASON, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



SES
NOTARY PUBLIC FOR IDAHO
Residing at: Ada County
My Commission Expires: 1/26/2012

REAL ESTATE PURCHASE AND SALE AGREEMENT
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EXHIBIT A

PARCEL 1:

Lot 2, Block 1, HUBBARD ESTATES SUBDIVISION, according to the official plat thereof filed in Book 70 of Plats at page 7150, records of Ada County, Idaho.

PARCEL 2:

A parcel of land being a portion of the S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at a brass cap marking the northwest corner of the said Section 14;
thence

Along the westerly boundary of the said NW $\frac{1}{4}$ of Section 14, which is also the centerline of Ten Mile Road, South 00°00'17" West, 1331.81 feet to an iron pin marking the northwest corner of the said S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 14, the POINT OF BEGINNING; thence

Along the northerly boundary of the said S $\frac{1}{2}$ NW $\frac{1}{4}$, South 89°56'56" East, 45.00 feet; thence

Continuing South 89°56'56" East 1687.59 feet to an iron pin; thence

Leaving the said northerly boundary South 01°04'25" West, 75.01 feet to an iron pin; thence

Along a line 75.00 feet southerly of and parallel with the said northerly boundary of the S $\frac{1}{2}$ NW $\frac{1}{4}$, North 89°56'56" West, 1686.19 feet to a point on the westerly boundary of the said S $\frac{1}{2}$ NW $\frac{1}{4}$; thence

Along the said westerly boundary North 00°00'17" East, 75.00 feet to the POINT OF BEGINNING.

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ORIGINAL

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF
REAL ESTATE PURCHASE AND SALE AGREEMENT
DATED April 12, 2006 SO AS TO AVOID ARBITRATION**

This Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration (hereinafter "Settlement Agreement") is entered into this 12th day of ~~August~~^{September}, 2007 by and between Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Fazzio") and Edward J. Mason, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Mason").

RECITALS

WHEREAS, Fazzio and Mason entered into a Real Estate Purchase and Sale Agreement on April 12, 2006 (hereinafter "Real Estate Agreement") with an effective date of April 26, 2006, a true and correct copy of which is attached hereto as Exhibit "A" whereby Mason agreed to purchase from Fazzio a certain parcel of real property consisting of approximately three and eight one hundredths (3.08) acres of land, including a house thereon, located at 2802 Ten Mile Road in Kuna, Idaho, Ada County Assessor Parcel Number S1314223410, hereinafter "Subject Property," for the purchase price of one million five hundred and thirty thousand dollars (\$1,530,000.00);

WHEREAS, all contingencies and conditions set forth in the Real Estate Agreement were met;

WHEREAS, pursuant to the terms of the Real Estate Agreement, Fazzio and Mason were to close on Mason's purchase of the real property that was the subject of the Real Estate Agreement on February 26, 2007;

WHEREAS, Fazzio completed their portion of the closing;

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION - Page 1**

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EXHIBIT "B"

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WHEREAS, Mason failed to complete his portion of the closing so as to complete his purchase of the real property subject to the Real Estate Agreement;

WHEREAS, pursuant to paragraphs 19 and 20 of the Real Estate Agreement, on March 15, 2007, Fazzio submitted a claim with the American Arbitration Association seeking to enforce the Real Estate Agreement through specific performance and also made claims for attorney fees, costs including arbitration costs and interest; and

WHEREAS, Fazzio and Mason met, along with their attorneys, at the Law Offices of Hawley, Troxell, Ennis & Hawley, LLP on June 8, 2007 and reached this Settlement Agreement resolving all issues so as to avoid an arbitration proceeding.

WITNESSETH:

Based upon the above recitals, Fazzio and Mason hereby covenant and agree as follows:

1. **CONTRACTUAL REVISION:** That Fazzio and Mason enter into a Revised Real Estate Purchase and Sale Agreement, a true and correct copy of which is attached hereto as Exhibit "B." The Revised Real Estate Purchase and Sale Agreement shall supercede the Real Estate Purchase and Sale Agreement dated April 12, 2006. The Revised Real Estate Purchase and Sale Agreement shall be subordinate to this Settlement Agreement in so far as there are any inconsistencies.

2. **CLOSING:** Mason shall close on his purchase of the Subject Property on or before December 21, 2007 for the purchase price of one million five hundred and thirty thousand dollars (\$1,530,000.00) cash in U.S. funds. Closing may be extended if the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007 until March 21, 2008. In no event shall closing occur later than March 21, 2008. If the city of Kuna fails to approve Mason's application for plat approval by March 21,

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
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2008 or if the city of Kuna denies Mason's application, such action or non-action by the city of Kuna shall have no effect on Mason's obligation to close on or before March 21, 2008.

3. INTEREST: At the time of closing, Mason shall pay to Fazzio interest on the one million five hundred and thirty thousand dollars (\$1,530,000.00) at the interest rate of twelve percent (12%) per annum commencing February 27, 2007 through the date of closing.

4. LOCAL IMPROVEMENT DISTRICT: Mason shall be responsible for and pay any assessments that become due and owing to the city of Kuna prior to closing as a result of Mason causing the Subject Property to be subject to the local improvement district, hereinafter "L.I.D." in May of 2006.

5. LEASE OF SUBJECT PROPERTY: From the date of closing, Fazzio shall have the right to lease the Subject Property including the house, shop, barn, associated corrals, driveways and parking areas on a month to month basis for a period of eighteen (18) months or until July 21, 2009, whichever is longer, at a lease rate of twenty five hundred dollars (\$2,500.00) per month, with said twenty five hundred dollars (\$2,500.00) due and payable on the first day of each month commencing on the first day of the first full month following closing. (The rent from closing through the end of the month shall be pro-rated and deducted from the interest owed by Mason to Fazzio on the date of closing).

6. PERSONAL PROPERTY AND CHATTELS: Fazzio shall continue to own all personal property and chattels located on the Subject Property and said items are not part of the transaction. Any reference to such items in the Real Estate Agreement are hereby removed and are not part of the Real Estate Agreement.

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
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7. ATTORNEY FEES AND ARBITRATION COSTS: Fazzio and Mason shall each pay their own attorney fees and arbitration costs incurred through the date of this Settlement Agreement. Fazzio shall be entitled to any refund he may receive as a result of this Settlement Agreement from the American Arbitration Association for arbitration filing fees he paid to initiate arbitration.

8. ARBITRATION LANGUAGE NULL AND VOID: The arbitration language contained in paragraph 20 of the Real Estate Purchase and Sale Agreement dated April 12, 2006 is hereby null and void as this Settlement Agreement shall be deemed to have been reached as a result of arbitration proceedings. Should either Fazzio or Mason breach and/or violate this Settlement Agreement, the non-offending party may file an action in the district court of the county of Ada, state of Idaho, to have this Settlement Agreement specifically enforced.

9. SPECIFIC PERFORMANCE: Should either party breach or violate this Settlement Agreement, the non-offending party shall have a remedy of specific performance and may apply to the district court of the county of Ada, state of Idaho to have this Settlement Agreement enforced by a judgment for specific performance.

10. ENTRY OF JUDGMENT: This Settlement Agreement shall be treated as an arbitration award pursuant to Idaho Code § 7-908 from which either party may apply to the district court in the county of Ada, state of Idaho for entry of judgment pursuant to the Uniform Arbitration Act, Idaho Code § 7-901 et seq. to have this Settlement Agreement enforced.

11. COVENANT NOT TO SEEK ENTRY OF JUDGMENT: Fazzio shall not seek to have a judgment based on this Settlement Agreement entered in the district court in and for the county of Ada, state of Idaho prior to December 21, 2007 so as to give Mason time to obtain approvals of his plat to develop the Subject Property and obtain

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
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finances. Should Mason fail to close on December 21, 2007, Fazzio may immediately apply to the district court for entry of judgment except as follows:

If the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007, Mason shall have until March 21, 2008 to close on his purchase of the subject property.

If the city of Kuna fails to approve Mason's application for plat approval by March 21, 2008 or if the city of Kuna denies Mason's application, such action or non-action by the city of Kuna shall have no effect on Mason's obligation to close on or before March 21, 2008 and should Mason fail to close on or before March 21, 2008, Fazzio may immediately apply to the District Court for entry of judgment.

12. TRANSFER OF WARRANTY DEED: Fazzio shall have no obligation to transfer a warranty deed to Mason for the Subject Property until Mason completes the closing of the adjacent parcels of real property held in the name of Idaho Livestock Company, LLC.

13. ATTORNEY FEES AND COSTS TO ENFORCE THIS SETTLEMENT AGREEMENT: Should either party be required to bring an action or apply to the district court to obtain a judgment to enforce this Settlement Agreement, that party shall be entitled to reasonable attorney fees and costs associated with that action or application.

14. REAL ESTATE PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006: The Real Estate Purchase and Sale Agreement dated April 12, 2006, a true and correct copy of which is attached hereto as Exhibit "A" is superceded by the Revised Real Estate Purchase and Sale Agreement, a true and correct copy of which is attached hereto as Exhibit "B." Any terms of the Revised Real Estate Purchase and Sale Agreement executed on even date herewith that are inconsistent with the terms of this Settlement Agreement are null and void. All provisions of the Revised Real Estate

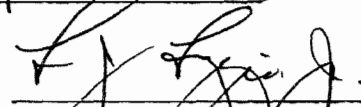
**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION - Page 5**

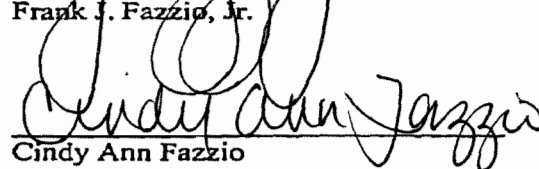
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Purchase and Sale Agreement that are not inconsistent with the terms of this Settlement Agreement shall remain in full force and effect and are incorporated herein.

DATED this 12 day of September, 2007.

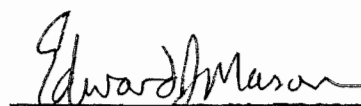

Frank J. Fazio, Jr.


Cindy Ann Fazio

APPROVED: 

Derek A. Pica
Attorney for Fazio

DATED this 4th day of September, 2007.


Edward J. Mason

APPROVED: 

Marilyn Clark
Attorney for Mason

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
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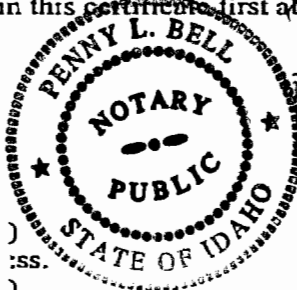
STATE OF IDAHO)

:SS.

County of Ada)

On this 12th day of September, 2007, before me the undersigned, personally appeared FRANK J. FAZZIO, JR., identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



NOTARY PUBLIC FOR IDAHO

Residing at: Boise, IDMy Commission Expires: 9/30/2010

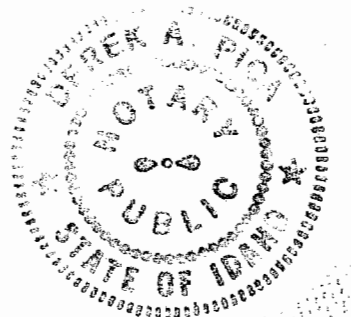
STATE OF IDAHO)

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County of Ada)

On this 12th day of September, 2007, before me the undersigned, personally appeared CINDY ANN FAZZIO, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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



NOTARY PUBLIC FOR IDAHO

Residing at: BoiseMy Commission Expires: 2011

AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
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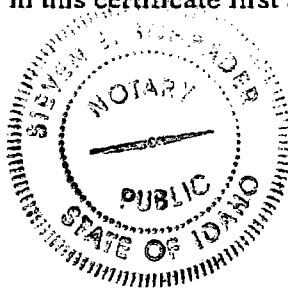
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STATE OF IDAHO)
 :SS.
County of Ada)

On this 4th day of September, 2007, before me the undersigned, personally appeared EDWARD J. MASON, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



[Signature]
NOTARY PUBLIC FOR IDAHO

Residing at: Ada County

My Commission Expires: 1/26/2012

**AGREEMENT TO RESOLVE DISPUTE ARISING OUT OF REAL ESTATE
PURCHASE AND SALE AGREEMENT DATED APRIL 12, 2006 SO AS TO AVOID
ARBITRATION – Page 8**

Received Time Aug.29. 2:42PM

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REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE AND SALE AGREEMENT (hereinafter "Agreement") is entered into this 12th day of April, 2006, by and between Frank J Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Seller") and Edward J. Mason and/or assigns, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Buyer"). The Effective Date of this Agreement shall be the date on which the last of the parties to this Agreement have executed this Agreement.

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants, conditions and promises hereinafter set forth and the payments to be made as hereinafter specified, the parties hereto do hereby covenant and agree as follows:

1. PROPERTY TO BE PURCHASED: Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and accept from the Seller, upon the terms hereinafter provided, all of Seller's right, title and interest in and to the real property consisting of approximately three and 8/100 (3.08) acres of land, including house thereon, located at 2802 Ten Mile Road in Kuna, Idaho, Ada County Assessor Parcel number S1314223410, as more particularly described in "Exhibit A" attached hereto, which said "Exhibit A" is by this reference incorporated herein and made a part hereof, together with all appurtenances, water rights, water shares, ditches and ditch rights, licenses or permits appurtenant thereto, fixtures, chattels and ~~all personal property~~ located thereon (hereinafter "Premises").

2. PURCHASE PRICE: The total purchase price for the Premises shall be determined as follows: The Buyer and Seller shall, within 20 days after the Effective Date, each obtain, at their own expense, an appraisal of the Premises made by an ~~MAI~~ appraiser of their choice. If the lower of the two said appraisals is at least ninety-five percent (95%) of the higher, the purchase price for the Premises shall be established by averaging the two values. If the lower of the two said appraisals is less than ninety-five percent (95%) of the higher value, then a third appraisal shall be made by an ~~MAI~~ appraiser selected by the two appraisers, the cost of which shall be shared equally between the Buyer and the Seller, and the purchase price shall be established by the agreement of two of the three said appraisers. If the two appraisers cannot timely agree upon a third appraiser or if after a third appraiser has been selected, two of the three appraisers cannot timely agree upon a value, then this Agreement shall terminate and the Buyer's earnest money shall be refunded to him. The purchase price so established shall be set forth in an addendum to this Agreement executed by Buyer and Seller within forty (40) days after the Effective Date. ~~SELLER RETAINS THE RIGHT TO TERMINATE THE AGREEMENT IF THE PURCHASE PRICE DETERMINED ABOVE IS UNACCEPTABLE.~~

Buyer shall pay said purchase price to Seller in the following manner and upon the following terms and conditions:

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EXHIBIT

"A"

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a. Within three (3) business days after the Effective Date, Buyer shall deposit earnest money in the amount of \$20,000.00 in escrow with Transnation Title & Escrow, Inc. If Buyer does not terminate this Agreement within the Due Diligence Period set forth in Paragraph 6, below, the earnest money deposit will be released to Seller and, except in the case of default by Seller, shall be nonrefundable. The earnest money shall be credited towards the purchase of the Premises.

b. At closing the Buyer shall pay the Seller the balance of the purchase price of the Premises less the \$20,000.00 earnest money as described in Paragraph 2.a, above, which shall be credited toward the purchase. *PAYMENT SHALL BE BY CASHIER'S CHECK*

3. DEED: Seller agrees to make, execute and deliver to buyer at closing a standard form Warranty Deed conveying the Premises to Buyer, subject only to current taxes and assessments, easements, restrictions and encumbrances of record, at closing and those exceptions not objected to as set forth in Paragraph 5, below.

4. TITLE INSURANCE: At closing, or as soon thereafter as practical, Seller shall, at their expense, provide Buyer with a standard form of owner's policy of title insurance with coverage in the amount of the purchase price, issued by Transnation Title & Escrow, Inc. showing marketable and insurable title to the Premises is vested in Seller subject only to the standard exceptions contained in such form of title insurance normally issued by the said title company and those exceptions not objected to as set forth in Paragraph 5, below. Buyer may elect to have extended coverage, in which case Buyer shall be responsible for the additional premium thereby required over and above the standard coverage premium.

5. TITLE REPORT: Within ten (10) days after the Effective Date, Seller shall furnish to Buyer a commitment of a title insurance policy showing the condition of the title to the Premises. Buyer shall have twenty (20) days from receipt of the commitment within which to object to the condition of the title as set forth in the report. Seller shall thereafter have twenty (20) days to correct any defects in the title or demonstrate to Buyer's satisfaction that such defects can be corrected prior to closing or in event Seller elects not to correct the defects in title, Buyer may elect to close the transaction and accept the defects or may elect to terminate the Agreement and be refunded the earnest money deposit identified in Paragraph 2.a. Such election by Buyer must be made written ten (10) days of receipt of notice from Seller that Seller will not correct the unacceptable defects.

6. DUE DILIGENCE, ENVIRONMENTAL, PHYSICAL AND TITLE INVESTIGATION: Buyer shall have a period of sixty (60) days after the Effective Date to conduct an investigation into the suitability of the Premises for the Buyer's intended use and such physical inspections, testing, surveys, title and environmental investigations and other examinations of the Premises as Buyer shall, in his discretion, deem appropriate (the "Due Diligence Period"). This Agreement shall terminate and all earnest money deposited hereunder shall be refunded to Buyer in the event Buyer gives written notice within said sixty (60) day period of his dissatisfaction with any aspect of

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the Premises or the condition of title, which said dissatisfaction shall be determined at the sole discretion of the Buyer. Buyer and his agents, employees, and contractors shall have access to the Premises as is reasonably necessary for Buyer to conduct any such physical inspections, testing, surveys, title and environmental investigations. Buyer shall keep the Premises free and clear of liens, indemnify and hold Seller harmless from any liability, claims, demands, damages and costs, and repair any damages arising from any such inspections, surveys and investigations.

and Seller's *9/2*
7. OTHER CONTINGENCIES AND CONDITIONS: Buyer's obligation to close the purchase of the Premises is expressly made contingent upon the Buyer successfully closing, on or before the closing date set forth in Paragraph 11, below, the purchase of both Properties listed below, on terms and conditions acceptable to Buyer in Buyer's sole discretion: *gm*

- 1) That certain property located on W. Walker Lane in Kuna, Idaho, owned by Idaho Livestock Company, LLC, Ada County Parcel No. R3785270040; and
- 2) That certain property located at 2604 Ten Mile Rd., Kuna, Idaho, owned by Idaho Livestock Company, LLC, Ada County Parcel No. S1314233616.

8. SELLER COOPERATION: Seller acknowledges that Buyer intends to develop the Premises and other adjacent or neighboring properties as a residential or mixed use subdivision. Prior to closing, Seller shall cooperate with Buyer in making such applications as may be required in order to obtain development approvals from such governmental agencies as may have jurisdiction thereof, which said cooperation shall include but not be limited to the timely execution of any applications and other instruments, as may be necessary to effect the contemplated subdivision development. In addition, Seller shall not, either before or after closing, in any manner, directly or indirectly, oppose Buyer's efforts to obtain governmental approvals for its contemplated subdivision development, nor shall Seller lend any support or assistance to any other persons or entities that may oppose or seek to oppose Buyer's contemplated subdivision development.

9. PRESERVATION OF PREMISES: Following the Effective Date, Seller shall continue to operate, manage and maintain the Premises in accordance with the same practices and procedures implemented by Seller for operating, maintaining and managing the Premises prior to the Effective Date. Seller shall maintain the Premises in substantially the same condition as existed upon the Effective Date. Prior to Closing, without the prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion), Seller shall not: (i) enter into any contract or agreement which will be binding on Buyer or the Premises after the Closing; or (ii) enter into any lease or sublease for the Premises; or (iii) enter into any agreement or contract to sell, transfer, convey, dispose or exchange the Premises or any portion thereof or interest therein.

10. POSSESSION: Buyer shall be entitled to possession of the Premises from and after the date of closing.

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11. CLOSING: Closing shall be on or before that date which is ten (10) months after the Effective Date. The parties agree that the closing agency for this transaction shall be Transnation Title & Escrow, Inc.

12. ESCROW HOLDER: Transnation Title & Escrow, Inc. is hereby designated as escrow holder and shall act according to the terms of this Agreement and the escrow instructions, unless the parties hereto mutually direct the escrow holder in writing to the contrary.

13. ESCROW FEES: Buyer and Seller shall share all escrow and closing costs equally.

14. PRORATIONS: All taxes, assessments, insurance, rents, and utility expenses which pertain to the Premises shall be prorated between the parties as of closing.

15. REPRESENTATION AND WARRANTIES OF SELLER: In order to induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Seller to the best of their knowledge represents and warrants to Buyer as of the date hereof and, except as otherwise set forth herein, as of the closing date, as follows:

a. Seller has authority to execute, deliver, and perform this Agreement.

b. Except as set forth herein, Seller holds marketable fee title to the Premises.

c. There are no other agreements or understandings affecting the Premises, which will survive the closing.

d. To the best of Seller's knowledge, there is not pending nor threatened any condemnation or public improvement, in, about, or outside the Premises which have resulted in, or might result in the imposition of any assessment, lien, or charge against Seller, the Premises, or any owner of the Premises, nor is there pending or threatened to the best of Seller's knowledge, any legal action of any kind or nature, affecting Seller or the Premises, which would enjoin or restrict the right of Seller to consummate the transactions contemplated hereby.

e. The Premises is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the closing date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Premises, and to the best of Seller's knowledge, there is no proceeding pending or any increases of the assessed valuation of the Premises or any portion thereof.

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f. All persons and corporations supplying labor, materials, and equipment to the Premises have been paid, and there are no claims or liens of materialmen, laborers, or suppliers affecting the Premises.

g. The Premises is free from any leasehold interest, which is not terminable upon thirty (30) days written notice.

h. Seller is not aware of the presence of any hazardous waste material on the Premises. Seller will do no act or otherwise cause any hazardous waste materials of any kind to be deposited on or in the Premises during the Agreement term as extended.

In the event of any material breach of the representations and warranties set forth in this Section, if Seller has not cured said breach prior to closing, all sums paid hereunder shall be refunded to Buyer and this Agreement shall terminate.

16. PURCHASE AS IS: Buyer agrees that it is purchasing the Premises "as is" without any warranty except as set forth in this Agreement. Buyer shall make such investigations and inspections of the Premises as Buyer deems appropriate without reliance upon Seller or Seller's agents.

17. RISK OF LOSS: From the Effective Date until closing, risk of loss due to damage to or destruction of the Premises shall remain with Seller. Buyer is responsible for themselves and any of their agents when on the Premises.

18. TIME WAIVER: Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence of this Agreement. Any departure from the conditions and terms of this Agreement or any delay in the enforcement of the same by either party hereto shall not operate to waive or be a waiver of the rights of either party hereto to stand upon the strict letter or construction of this Agreement or to require performance in accordance with the express terms set forth herein.

19. DEFAULT: In the event any party fails to strictly comply with the terms and conditions of this Agreement, that party shall be in default of this Agreement. The nondefaulting party may send a notice of default with a ten (10) business-day period to cure. If the default is not cured within such period, then the defaulting party shall have the remedies set forth below:

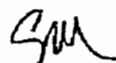
a. Seller's Remedies. If Buyer defaults and fails to cure, Seller may terminate this Agreement and retain the earnest money deposit as liquidated damages, and not as a penalty, in full satisfaction of Seller's claim. The parties acknowledge and agree that since it would be extremely difficult to determine the actual amount of Seller's damages arising out of a breach by Buyer, the amount of the liquidated damages herein provided constitutes a fair estimate of those damages, which the parties have agreed upon in a good-faith effort to make damages certain. Except for any damages that may be incurred arising out of any

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investigations, tests, and studies with respect to the Premises that Buyer may elect to undertake, the liquidated damages provided herein for the breach of this Agreement shall be Seller's sole remedy, ~~EXCEPT THAT THE RIGHTS IN~~

~~PARAGRAPH 19.5 THAT FUND SHALL ALSO BE AVAILABLE TO THE SELLER~~
b. Buyer's Remedies. If Seller defaults and fails to cure, Buyer may terminate this Agreement and receive back the earnest money deposit or may pursue any remedies available to him, in law or equity, including the enforcement of this Agreement through specific performance, ~~EXCEPT THAT THE RIGHTS~~

20. DISPUTE RESOLUTION: All Disputes (as defined herein below) arising between the Buyer and the Seller shall be finally determined by arbitration pursuant to the applicable rules of the American Arbitration Association. Arbitration may be commenced by either party by filing a demand for arbitration with the American Arbitration Association. Judgment upon the award rendered by the arbitrator in any arbitration in which the Buyer and Seller are among the parties, shall be final and binding and may be entered in any court having jurisdiction thereof. As used herein, the term "Disputes" shall include any controversy between the Buyer and the Seller (whether or not the controversy includes third parties) arising in any way out of the agreement or its interpretation. The exclusive venue for all proceedings conducted under this section shall be Ada County, Idaho.

21. ATTORNEY FEES: In the event the parties hereto become involved in arbitration or litigation (including any proceedings in bankruptcy), the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses from the other party.

22. NOTICES: Any notice authorized to be given from Seller to Buyer or from Buyer to Seller shall be sufficiently served or given for all purposes if delivered personally or sent by United States Certified Mail, return receipt requested, addressed to the party in question at the addresses hereinafter set forth:

Seller: Frank J. Fazzio, Jr. and Cindy Ann Fazzio
2802 Ten Mile Road
Kuna, Idaho 83634

Buyer: Edward J. Mason
1883 Wildwood St.
Boise, Idaho 83713

All notices required or desired to be given under this Agreement shall be deemed given upon hand delivery or upon deposit in the United States Mail, postage prepaid. Either party shall be entitled to change the address for service of notice hereunder by serving upon the other party; in the manner described above, a notice specifying the new address.

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23. COMMISSIONS: The Seller is not represented by a real estate agent and there are no real estate commissions for the purchase and sale of the Premises. Seller is solely responsible for any claim of any kind from any third person purporting to have been employed by Seller claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction. The Buyer is not represented by a real estate agent in an agency capacity for the purchase and sale of the Premises, and therefore is not responsible for any real estate commissions to any agent. Buyer is solely responsible for any claim of any kind from any third person purporting to have been employed by Buyer claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction.

24. GOVERNING LAW: This Agreement shall be construed, interpreted and applied, and the right and obligations hereunder determined in accordance with the laws of the state of Idaho.

25. AMENDMENTS: This Agreement may not be amended, modified or changed in any way, except by written document signed by each of the parties hereto.

26. FURTHER ASSURANCES: Each of the parties hereto agrees to execute any other documents necessary or appropriate to affect the intent of the parties as expressed in this Agreement.

27. SURVIVAL OF COVENANTS: To the extent any covenants and warranties contained herein remain unfulfilled or operative hereafter, said covenants and warranties shall survive the transfer of title and possession and shall not be deemed merged in any other document executed pursuant to the terms of this Agreement.

28. SUCCESSORS IN INTEREST: This Agreement shall be binding upon the successors, heirs and assigns, personal representatives, administrators, executors, legatees and devisees of the parties hereto.

29. HEADINGS: The paragraph headings contained in this Agreement are employed solely as a matter of convenience, and the same shall not be construed as limiting or expanding the contents hereof in any way whatsoever.

30. ENTIRE AGREEMENT: This agreement supersedes all prior agreements between the parties hereto, whether in writing or otherwise; and any such prior agreement shall have no force or effect upon and after the date of execution of this Agreement. This Agreement contains the entire agreement of the parties, and no representation, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force of effect.

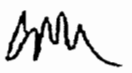
31. EXCHANGE OPTION: Either or both of Buyer and Seller may at their option effect the purchase and sale of the Premises through an exchange pursuant to Section 1031 of the Internal Revenue Code, in which event the other party shall cooperate to that end and execute such documents as necessary therefore, providing that

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the closing date is not delayed, that the other party incurs no additional expense or liability, and that the provisions hereof survive any exchange, and in which event the exchanging party indemnifies the other party against all claims arising out of or in any way connected with the other property or its transfer, and against all costs incurred by the other party in the course of defending against the same.

32. BUYER AGREES TO GRANT SELLER THE RIGHT TO LEASE THE HOME + SHIP + HORSE BARN AFTER CLOSING FOR 2500⁰⁰/MO FOR UP TO ~~THIRTY~~ ^{THIRTY} MONTHS. *FT*

SELLER:

Frank J. Fazio, Jr.
Frank J. Fazio, Jr.

Date 4-26-06

Cindy Ann Fazio
Cindy Ann Fazio

Date 4-26-06

BUYER:

Edward J Mason
Edward J Mason

Date 4/12/06

33. LEASE REFERRED TO IN 32 ABOVE WILL BE MONTH TO MONTH. SELLERS WILL VACATE PREMISES PRIORLY UPON MOVING TO A NEW RESIDENCE AND LEASE WILL TERMINATE AT THE END OF THE MONTH IN WHICH SELLERS HAVE VACATED THE PREMISES AND REMOVED THEIR PERSONAL PROPERTY

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EXHIBIT "A"

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, as shown on Record of Survey No. 2581, filed as Instrument No. 9367500, in the Office of the Ada County Recorder, more particularly described as follows:

Commencing at the Northwest corner of said Section 14, a point marked by a brass cap; thence along the West line of said Section 14, South $0^{\circ}00'17''$ West 1331.81 feet to a point marking the Southwest corner of said Northwest Quarter of the Northwest Quarter, marked by a $5/8''$ iron pin; thence leaving the West line of said Section 14 and along the South line of said Northwest Quarter of the Northwest Quarter, South $89^{\circ}56'56''$ East 698.00 feet to the POINT OF BEGINNING; marked by a $5/8''$ iron pin; thence continuing South $89^{\circ}56'56''$ East 507.00 feet to a point, marked by a $5/8''$ iron pin; thence leaving said South line of the Northwest Quarter of the Northwest Quarter and along a line parallel to the West line of said Section 14, North $0^{\circ}00'17''$ East 265.00 feet to a point, marked by a $5/8''$ iron pin; thence leaving said parallel line and along a line parallel to the South line of said Northwest Quarter of the Northwest Quarter, North $89^{\circ}56'56''$ West 507.00 feet to a point, marked by a $5/8''$ iron pin; thence leaving said parallel line and along a line parallel to the West line of said Section 14, South $0^{\circ}00'17''$ West 265.00 feet to the POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress over and across the following described property:

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, as shown on Record of Survey No. 2581, filed as Instrument No. 9367500, in the Office of the Ada County Recorder, more particularly described as follows:

Commencing at the Northwest corner of said Section 14, a point marked by a brass cap; thence along the West line of said Section 14,

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LEGAL CONTINUED

South 0°00'17" West 1331.81 feet to a point marking the Southwest corner of said Northwest Quarter of the Northwest Quarter marked by a 5/8" iron pin; thence leaving the West line of said Section 14 and along the South line of said Northwest Quarter of the Northwest Quarter;
South 89°56'56" East 25.00 feet to the POINT OF BEGINNING; marked by a 5/8" iron pin; thence continuing
South 89°56'56" East 717.96 feet to a point of curve; thence Northwesterly 212.09 feet along the arc of a curve to the left having a radius of 45.00 feet, a central angle of 270°02'47" and a long chord which bears North 44°58'19" West 63.61 feet to a point; thence along a line parallel to the West line of said Section 14,
South 0°00'17" West 14.96 feet to a point marked by a 5/8" iron pin; thence leaving said parallel line and along a line 30.00 feet North of and parallel to the South line of said Northwest Quarter of the Northwest Quarter,
North 89°56'56" West 673.00 feet to a point marked by a 5/8" iron pin; thence leaving said parallel line and along a line 25.00 feet East of and parallel to the West line of said Section 14,
South 0°00'17" West 30.00 feet to the POINT OF BEGINNING.

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REVISED REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REVISED REAL ESTATE PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is entered into this 12th day of ~~August~~^{September}, 2007, retroactive to April 12, 2006, by and between Frank J. Fazzio, Jr. and Cindy Ann Fazzio, husband and wife, whose address is 2802 Ten Mile Rd., Kuna, Idaho 83634 (hereinafter "Seller") and Edward J. Mason and/or assigns, whose address is 1883 N. Wildwood St., Boise, Idaho 83713 (hereinafter "Buyer"). The Effective Date of this Agreement shall be April 26, 2006.

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants, conditions and promises hereinafter set forth and the payment to be made as hereinafter specified, the parties hereto do hereby covenant and agree as follows:

1. **PROPERTY TO BE PURCHASED:** Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and accept from the Seller, upon the terms hereinafter provided, all of Seller's right, title and interest in and to the real property consisting of approximately 3 and 8/100 (3.08) acres of land, including house thereon, located at 2802 Ten Mile Road in Kuna, Idaho, Ada County Assessor Parcel number S1314223410, as more particularly described in "Exhibit A" attached hereto, which said "Exhibit A" is by this reference incorporated herein and made a part hereof, together with all appurtenances, water rights, water shares, ditches and ditch rights, licenses or permits appurtenant thereto and fixtures located thereon (hereinafter "Premises").

2. **PURCHASE PRICE.** The total purchase price for the Premises shall be One Million Five Hundred and Thirty Thousand Dollars (\$1,530,000.00). Buyer shall pay said purchase price to Seller in the following manner and upon the following terms and conditions:

a. Within three (3) business days after the Effective Date, Buyer shall deposit earnest money in the amount of \$20,000.00 in escrow with Transnation Title & Escrow, Inc. If Buyer does not terminate this Agreement within the Due Diligence Period set forth in Paragraph 6, below, the earnest money deposit will be released to Seller and, except in the case of default by Seller, shall be nonrefundable. The earnest money shall be credited towards the purchase of the Premises.

b. At closing the Buyer shall pay the Seller the balance of the purchase prices of the Premises less the \$20,000.00 earnest money as described in Paragraph 2.a, above, which shall be credited toward the purchase. Payment shall be by cashier's check.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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EXHIBIT "B"

3. INTEREST: At closing, Buyer shall pay Seller interest on the One Million Five Hundred and Thirty Thousand Dollars (\$1,530,000.00) at the rate of twelve percent (12%) per annum commencing February 27, 2007 through the date of closing.

4. DEED. Seller agrees to make, execute and deliver to buyer at closing a standard form Warranty Deed conveying the Premises to Buyer, subject only to current taxes and assessments, easements, restrictions and encumbrances of record, at closing and those exceptions not objected to as set forth in Paragraph 5, below.

5. TITLE INSURANCE: At closing, or as soon thereafter as practical, Seller shall, at their expense, provide Buyer with a standard form of owner's policy of title insurance with coverage in the amount of the purchase price, issued by Transnation Title & Escrow, Inc. showing marketable and insurable title to the Premises is vested in Seller subject only to the standard exceptions contained in such form of title insurance normally issued by the said title company and those exceptions not objected to as set forth in Paragraph 5, below. Buyer may elect to have extended coverage, in which case Buyer shall be responsible for the additional premium thereby required over and above the standard coverage premium.

6. TITLE REPORT: Within ten (10) days after the Effective Date, Seller shall furnish to Buyer a commitment of a title insurance policy showing the condition of the title to the Premises. Buyer shall have twenty (20) days from receipt of the commitment within which to object to the condition of the title as set forth in the report. Seller shall thereafter have twenty (20) days to correct any defects in the title or demonstrate to Buyer's satisfaction that such defects can be corrected prior to closing or in event Seller elects not to correct the defects in title, Buyer may elect to close the transaction and accept the defects or may elect to terminate the Agreement and be refunded the earnest money deposit identified in Paragraph 2.a. Such election by Buyer must be made written ten (10) days of receipt of notice from Seller that Seller will not correct the unacceptable defects.

7. DUE DILIGENCE, ENVIRONMENTAL, PHYSICAL AND TITLE INVESTIGATION: Buyer shall have a period of sixty (60) days after the Effective Date to conduct an investigation into the suitability of the Premises for the Buyer's intended use and such physical inspections, testing, surveys, title and environmental investigations and other examinations of the Premises as Buyer shall, in his discretion, deem appropriate (the "Due Diligence Period"). This Agreement shall terminate and all earnest money deposited hereunder shall be refunded to Buyer in the event Buyer gives written notice within said sixty (60) day period of his dissatisfaction with any aspect of the Premises or the condition of title, which said dissatisfaction shall be determined at the sole discretion of the Buyer. Buyer and his agents, employees, and contractors shall have access to the Premises as is reasonably necessary for Buyer to conduct any such physical inspections, testing, surveys, title and environmental investigations. Buyer shall keep the Premises free and clear of liens, indemnify and hold Seller harmless from any liability,

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claims, demands, damages and costs, and repair any damages arising from any such inspections, surveys and investigations.

8. **SELLER COOPERATION:** Seller acknowledges that Buyer intends to develop the Premises and other adjacent or neighboring properties as a residential or mixed use subdivision. Prior to closing, Seller shall cooperate with Buyer in making such applications as may be required in order to obtain development approvals from such governmental agencies as may have jurisdiction thereof, which said cooperation shall include but not be limited to the timely execution of any applications and other instruments, as may be necessary to effect the contemplated subdivision development. In addition, Seller shall not, either before or after closing, in any manner, directly or indirectly, oppose Buyer's efforts to obtain governmental approvals for its contemplated subdivision development, nor shall Seller lend any support or assistance to any other persons or entities that may oppose or seek to oppose buyer's contemplated subdivision development.

9. **PRESERVATION OF PREMISES:** Following the Effective Date, Seller shall continue to operate, manage and maintain the Premises in accordance with the same practices and procedures implemented by Seller for operating, maintaining and managing the Premises prior to the Effective Date. Seller shall maintain the Premises in substantially the same condition as existed upon the Effective Date. Prior to Closing, without the prior written consent of Buyer (which may be granted or withheld in Buyer's sole discretion), Seller shall not: (i) enter into any contract or agreement which will be binding on Buyer or the Premises after the Closing; or (ii) enter into any lease or sublease for the Premises; or (iii) enter into any agreement or contract to sell, transfer, convey, dispose or exchange the Premises or any portion thereof or interest therein.

10. **POSSESSION:** Buyer shall be entitled to possession of the Premises from and after the date of closing subject to paragraph 12 below.

11. **CLOSING.** Closing shall be on or before December 21, 2007 unless the city of Kuna fails to approve Mason's application for plat approval by December 21, 2007, in which case, Mason shall have until March 21, 2008 to close on the subject property. In no event shall closing occur later than March 21, 2008. The parties agree that the closing agency for this transaction shall be Transnation Title & Escrow, Inc.

12. **SELLER'S LEASE OF PREMISES:** Buyer agrees to grant Seller the right to lease the Premises, including the driveways, parking areas, shop, barn and corrals for a period of eighteen (18) months from the date of closing or until July 21, 2009, whichever is longer, for the lease rate of Two Thousand Five Hundred Dollars (\$2,500.00) per month. The lease shall be month to month and shall terminate at the end of the month in which the Sellers vacate the Premises and remove their personal property. Seller acknowledges access to the residence and around the residence shall be moved from the west boundary to the north boundary of the residence and the north and west boundary lines.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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13. ESCROW HOLDER: Transnation Title & Escrow, Inc. is hereby designated as escrow holder and shall act according to the terms of this Agreement and the escrow instructions, unless the parties hereto mutually direct the escrow holder in writing to the contrary.

14. ESCROW FEES: Buyer and Seller shall share all escrow and closing costs equally.

15. PRORATIONS: All taxes, assessments, insurance, rents, and utility expenses which pertain to the Premises shall be prorated between the parties as of closing.

16. REPRESENTATION AND WARRANTIES OF SELLER: In order to induce Buyer to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, Seller to the best of their knowledge represents and warrants to Buyer as of the date hereof and, except as otherwise set forth herein, as of the closing date, as follows:

a. Seller has authority to execute, deliver, and perform this Agreement.

b. Except as set forth herein, Seller holds marketable fee title to the Premises.

c. There are no other agreements or understandings affecting the Premises, which will survive the closing other than obligations incurred by Buyer since April 12, 2006 relating to Buyer subjecting the Premises to the city of Kuna's Local Improvement District (L.I.D.).

d. To the best of Seller's knowledge, there is not pending nor threatened any condemnation or public improvement, in, about, or outside the Premises which have resulted in, or might result in the imposition of any assessment, lien, or charge against Seller, the Premises, or any owner of the Premises, nor is there pending or threatened to the best of Seller's knowledge, any legal action of any kind or nature, affecting Seller or the Premises, which would enjoin or restrict the right of Seller to consummate the transactions contemplated hereby except as set forth in paragraph 16c. above.

e. The Premises is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the closing date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Premises, and to the best of Seller's knowledge, there is no proceeding pending or any increases of the assessed valuation of the Premises or any portion thereof, except as set forth in paragraph 16c. above. Buyer will pay any L.I.D.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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assessments which are assessed on the Premises either before or after closing and shall indemnify and hold Seller harmless from said L.I.D. assessments.

f. All persons and corporations supplying labor, materials, and equipment to the Premises have been paid, and there are no claims or liens of materialmen, laborers, or suppliers affecting the Premises.

g. The Premises is free from any leasehold interest, which is not terminable upon thirty (30) days written notice, except as set forth herein.

h. Seller is not aware of the presence of any hazardous waste material on the Premises. Seller will do no act or otherwise cause any hazardous waste materials of any kind to be deposited on or in the Premises during the Agreement term as extended.

In the event of any material breach of the representations and warranties set forth in this Section, if Seller has not cured said breach prior to closing, all sums paid hereunder shall be refunded to Buyer and this Agreement shall terminate.

17. PURCHASE AS IS: Buyer agrees that it is purchasing the Premises "as is" without any warranty except as set forth in this Agreement. Buyer shall make such investigations and inspections of the Premises as Buyer deems appropriate without reliance upon Seller or Seller's agents.

18. RISK OF LOSS: From the Effective Date until closing, risk of loss due to damage to or destruction of the Premises shall remain with Seller. Buyer is responsible for themselves and any of their agents when on the Premises.

19. TIME WAIVER: Time and the prompt performance of each and every obligation of the parties hereto are agreed to be of the essence of this Agreement. Any departure from the conditions and terms of this Agreement or any delay in the enforcement of the same by either party hereto shall not operate to waive or be a waiver of the rights of either party hereto to stand upon the strict letter or construction of this Agreement or to require performance in accordance with the express terms set forth herein.

20. DEFAULT: In the event any party fails to strictly comply with the terms and conditions of this Agreement, that party shall be in default of this Agreement. Should either party default, the non-offending party shall have the remedies set forth in the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration executed on even date herewith and incorporated herein by this reference.

21. ATTORNEY FEES: In the event the parties hereto become involved in litigation (including any proceedings in bankruptcy), the prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses from the other party.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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22. **NOTICES:** Any notice authorized to be given from Seller to Buyer or from Buyer to Seller shall be sufficiently served or given for all purposes if delivered personally or sent by United States Certified Mail, return receipt requested, addressed to the party in question at the addresses hereinafter set forth:

Seller: Frank J. Fazzio, Jr. and Cindy Ann Fazzio
2802 Ten Mile Road
Kuna, Idaho 83634

Buyer: Edward J. Mason
1883 Wildwood St.
Boise, Idaho 83713

All notices required or desired to be given under this Agreement shall be deemed given upon hand delivery or upon deposit in the United States Mail, postage prepaid. Either party shall be entitled to change the address for service of notice hereunder by serving upon the other party; in the manner described above, a notice specifying the new address.

23. **COMMISSIONS:** The Seller is not represented by a real estate agent and there are no real estate commissions for the purchase and sale of the Premises. Seller is solely responsible for any claim of any kind from any third person purporting to have been employed by Seller claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction. The Buyer is not represented by a real estate agent in an agency capacity for the purchase and sale of the Premises, and therefore is not responsible for any real estate commissions to any agent. Buyer is solely responsible for any claim of any kind from any third person purporting to have been employed by Buyer claiming to be entitled to receive any commission or other compensation for services rendered in connection with this transaction.

24. **GOVERNING LAW:** This Agreement shall be construed, interpreted and applied, and the right and obligations hereunder determined in accordance with the laws of the state of Idaho.

25. **AMENDMENTS:** This Agreement may not be amended, modified or changed in any way, except by written document signed by each of the parties hereto.

26. **FURTHER ASSURANCES:** Each of the parties hereto agrees to execute any other documents necessary or appropriate to affect the intent of the parties as expressed in this Agreement including the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration executed on even date herewith.

REAL ESTATE PURCHASE AND SALE AGREEMENT

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27. SURVIVAL OF COVENANTS: To the extent any covenants and warranties contained herein remain unfulfilled or operative hereafter, said covenants and warranties shall survive the transfer of title and possession and shall not be deemed merged in any other document executed pursuant to the terms of this Agreement.

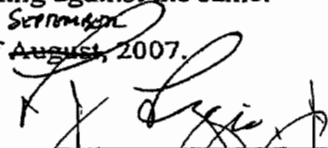
28. SUCCESSORS IN INTEREST: This Agreement shall be binding upon the successors, heirs and assigns, personal representatives, administrators, executors, legatees and devisees of the parties hereto.

29. HEADINGS: The paragraph headings contained in this Agreement are employed solely as a matter of convenience, and the same shall not be construed as limiting or expanding the contents hereof in any way whatsoever.

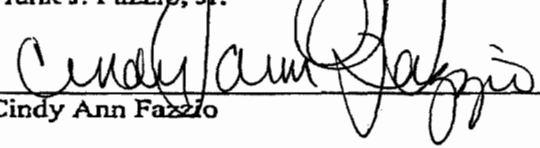
30. ENTIRE AGREEMENT: This agreement supersedes all prior agreements between the parties hereto, whether in writing or otherwise; and any such prior agreement shall have no force or effect upon and after the date of execution of this Agreement. This Agreement contains the entire agreement of the parties, and no representation, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force of effect, except as set forth in the Agreement To Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 So As To Avoid Arbitration executed on even date herewith. Said Agreement to Resolve Dispute Arising Out Of Real Estate Purchase And Sale Agreement Dated April 12, 2006 shall control should there be any inconsistencies.

31. EXCHANGE OPTION: Either or both of Buyer and Seller may at their option effect the purchase and sale of the Premises through an exchange pursuant to Section 1031 of the Internal Revenue Code, in which event the other party shall cooperate to that end and execute such documents as necessary, therefore, providing that the closing date is not delayed, that the other party incurs no additional expense or liability, and that the provisions hereof survive any exchange, and in which event the exchanging party indemnifies the other party against all claims arising out of or in any way connected with the other property or its transfer, and against all costs incurred by the other party in the course of defending against the same.

DATED this 12th day of ~~August~~^{SEPTEMBER}, 2007.



Frank J. Fazio, Jr.



Cindy Ann Fazio

REAL ESTATE PURCHASE AND SALE AGREEMENT

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August 12, 2007

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~~SEPTEMBER~~

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DATED this 4th day of ~~August~~^{Sept.}, 2007

Edward J. Mason
Edward J. Mason

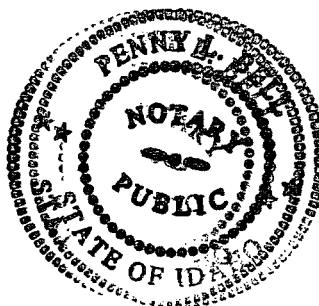
STATE OF IDAHO)

:ss.

County of Ada)

On this 14th day of September, 2007, before me the undersigned, personally appeared FRANK J. FAZZIO, JR., identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Penny L. Bell
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
My Commission Expires: 9/30/2010

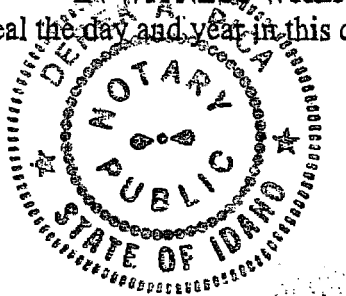
STATE OF IDAHO)

:ss.

County of Ada)

On this 12 day of September, 2007, before me the undersigned, personally appeared CINDY ANN FAZZIO, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 2011

REAL ESTATE PURCHASE AND SALE AGREEMENT

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~~August~~ 12, 2007

~~September~~

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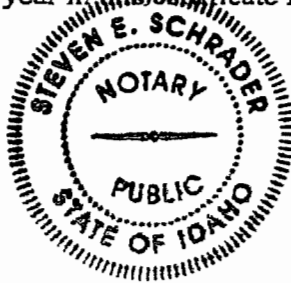
STATE OF IDAHO)

:ss.

County of Ada)

On this 4th day of September, 2007, before me the undersigned, personally appeared EDWARD J. MASON, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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


NOTARY PUBLIC FOR IDAHOResiding at: Ada CountyMy Commission Expires: 1/26/2012

REAL ESTATE PURCHASE AND SALE AGREEMENT

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EXHIBIT "A"

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, as shown on Record of Survey No. 2581, filed as Instrument No. 9367500, in the Office of the Ada County Recorder, more particularly described as follows:

Commencing at the Northwest corner of said Section 14, a point marked by a brass cap; thence along the West line of said Section 14,
South 0°00'17" West 1331.81 feet to a point marking the Southwest corner of said Northwest Quarter of the Northwest Quarter, marked by a 5/8" iron pin; thence leaving the West line of said Section 14 and along the South line of said Northwest Quarter of the Northwest Quarter,
South 89°55'56" East 698.00 feet to the POINT OF BEGINNING; marked by a 5/8" iron pin; thence continuing
South 89°55'56" East 507.00 feet to a point, marked by a 5/8" iron pin; thence leaving said South line of the Northwest Quarter of the Northwest Quarter and along a line parallel to the West line of said Section 14,
North 0°00'17" East 265.00 feet to a point, marked by a 5/8" iron pin; thence leaving said parallel line and along a line parallel to the South line of said Northwest Quarter of the Northwest Quarter;
North 89°55'56" West 507.00 feet to a point, marked by a 5/8" iron pin; thence leaving said parallel line and along a line parallel to the West line of said Section 14,
South 0°00'17" West 265.00 feet to the POINT OF BEGINNING.

TOGETHER WITH an easement for ingress and egress over and across the following described property:

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 14, Township 2 North, Range 1 West, Boise Meridian, Ada County, Idaho, as shown on Record of Survey No. 2581, filed as Instrument No. 9367500, in the Office of the Ada County Recorder, more particularly described as follows:

Commencing at the Northwest corner of said Section 14, a point marked by a brass cap; thence along the West line of said Section 14,

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LEGAL CONTINUED

South 0°00'17" West 1331.81 feet to a point marking the Southwest corner of said Northwest Quarter of the Northwest Quarter marked by a 5/8" iron pin; thence leaving the West line of said Section 14 and along the South line of said Northwest Quarter of the Northwest Quarter;
South 89°56'56" East 25.00 feet to the POINT OF BEGINNING; marked by a 5/8 iron pin; thence continuing
South 89°56'56" East 717.96 feet to a point of curve; thence Northwesterly 212.09 feet along the arc of a curve to the left having a radius of 45.00 feet, a central angle of 270°02'47" and a long chord which bears North 44°58'19" West 63.61 feet to a point; thence along a line parallel to the West line of said Section 14,
South 0°00'17" West 14.06 feet to a point marked by a 5/8" iron pin; thence leaving said parallel line and along a line 30.00 feet North of and parallel to the South line of said Northwest Quarter of the Northwest Quarter,
North 89°56'56" West 673.00 feet to a point marked by a 5/8" iron pin; thence leaving said parallel line and along a line 25.00 feet East of and parallel to the West line of said Section 14,
South 0°00'17" West 30.00 feet to the POINT OF BEGINNING.

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FEB 12 2008

J. DAVID NAVARRO, Clerk
By J. EARLE
DEPUTY

Merlyn W. Clark ISB No. 1026
D. John Ashby ISB No. 7228
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: mwc@hteh.com
jash@hteh.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)	
FAZZIO, husband and wife, and IDAHO)	Case No. CV OC 0801215
LIVESTOCK COMPANY, LLC, an Idaho)	
Limited Liability Company,)	ANSWER
)	
Plaintiff,)	Fee Category: A.1.
)	Amount: \$88.00
vs.)	
)	
EDWARD J. MASON, an individual,)	
)	
Defendant.)	
)	
)	

Defendant Edward J. Mason, by and through his counsel of record, Hawley Troxell Ennis & Hawley LLP, and in answer to the Application For Entry Of Arbitration Award, Or In The Alternative, Complaint For Breach Of Contract ("Complaint), admits, denies and alleges as follows:

I.

GENERAL DENIAL

Defendant denies all allegations of the Complaint not specifically admitted herein.

II.

SPECIFIC ADMISSIONS AND DENIALS

**COUNT ONE
(Arbitration Award)**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph I of the Complaint, and consequently denies the same.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph II of the Complaint, and consequently denies the same.
3. Defendant admits the allegations in paragraph III of the Complaint.
4. In answering paragraph IV of the Complaint, Defendant admits that he signed a Real Estate Purchase Agreement involving the 3.08 acres of land, but denies that the Real Estate Purchase Agreement ever became an enforceable contract.
5. In answering paragraph V of the Complaint, Defendant admits that he signed a Real Estate Purchase Agreement involving the 2.9 and 28.85 acres of land, but denies that the Real Estate Purchase Agreement ever became an enforceable contract.
6. In answering paragraph VI of the Complaint, Defendant admits that he did not close on the purchase of any property on February 26, 2007. Defendant denies all other allegations in paragraph VI of the Complaint.
7. In answering paragraph VII of the Complaint, Defendant admits that Plaintiffs submitted a claim against Defendant with the American Arbitration Association seeking to

enforce the respective Real Estate Purchase and Sale Agreements. Defendant denies all other allegations in paragraph VII of the Complaint.

8. Defendant admits that on or around September 12, 2007, he entered into the Agreement to Resolve Dispute Arising Out of Real Estate Purchase and Sale Agreement Dated April 12, 2006 So As to Avoid Arbitration (hereinafter "Idaho Livestock Agreement").

9. Defendant admits that on or around September 12, 2007, he entered into the Agreement to Resolve Dispute Arising Out of Real Estate Purchase and Sale Agreement Dated April 12, 2006 So As to Avoid Arbitration (hereinafter "Fazzio Agreement").

10. Defendant denies the allegations in paragraph X of the complaint on the grounds that the Idaho Livestock Agreement is the best evidence of its contents and speaks for itself.

11. Defendant denies the allegations in paragraph XI of the complaint on the grounds that the Idaho Livestock Agreement is the best evidence of its contents and speaks for itself.

12. Defendant admits that he did not close on the purchase of the real property on or before December 21, 2007. Defendant denies all other allegations in paragraph XII of the Complaint.

13. Paragraph XIII of the Complaint does not state any allegations as against Defendant to which a response is required. To the extent a response is required, Defendant denies the allegations in paragraph XIII of the Complaint.

14. Defendant denies the allegations in paragraph XIV of the Complaint on the grounds that the Idaho Livestock Agreement is the best evidence of its contents and speaks for itself.

**COUNT TWO
(Breach of Contract)**

15. Defendant realleges and incorporates his responses to the allegations in the preceding paragraphs as if specifically set forth herein.

16. Defendant admits that he did not close on or before December 21, 2007. Defendant denies all other allegations in paragraph II of the Complaint.

17. Defendant denies the allegations in paragraph III of the complaint on the grounds that the agreements are the best evidence of their contents and speaks for themselves.

18. Defendant denies the allegations in paragraph IV of the Complaint.

RESPONSE TO PRAYER FOR RELIEF

19. Defendant denies that Plaintiffs are entitled to any of the relief they request in Plaintiffs' prayer for relief.

AFFIRMATIVE DEFENSES

The following defenses are not stated separately as to each claim for relief or allegation of Plaintiff. Nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. In addition, Defendant, in asserting the following defenses, does not admit that the burden of proving the allegations or denials contained in the defenses is upon Defendant but, to the contrary, assert that by reason of denials and/or by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and/or the burden of proving the inverse of the allegations contained in many of the defenses is upon Plaintiffs. Moreover, Defendant does not admit, in asserting in any defense, any responsibility or liability of Defendant but, to the contrary, specifically denies any and all allegations of responsibility and liability alleged in the Complaint.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

The Plaintiffs' Complaint fails to state a claim against the Defendant upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

**SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

Plaintiffs are barred from maintaining a breach of oral contract claim and a breach of the implied covenant claim against Defendant by the applicable statute of frauds.

**THIRD AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

Plaintiffs are barred from maintaining this action against Defendant because Plaintiff, by failing to act reasonably, has failed to mitigate the damages to which Plaintiff may be entitled.

**FOURTH AFFIRMATIVE DEFENSE
(Impossibility of Performance)**

Plaintiffs are barred from maintaining this action because Defendant's breach of his contract with Plaintiff, if any, is excused by impossibility of performance.

**FIFTH AFFIRMATIVE DEFENSE
(Specific Performance Unavailable)**

Plaintiffs are barred from obtaining an order of specific performance because it would be impossible for Defendant to perform as requested by Plaintiffs and because an order of specific enforcement would be futile.

**RESERVATION OF RIGHT TO ASSERT
ADDITIONAL AFFIRMATIVE DEFENSES**

Defendant reserves the right to assert additional affirmative defenses based upon information obtained during the discovery process.

CLAIM FOR ATTORNEYS' FEES AND COSTS

Defendant is entitled to recover his costs and expenses incurred in defending this action pursuant to Idaho Code §§ 12-120(3) and/or 12-121, I.R.C.P. Rules 11 and 54, and any other applicable rule or statute.

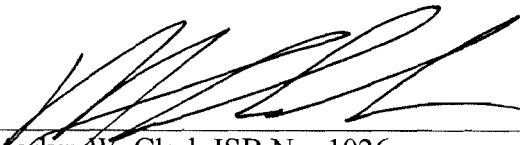
WHEREFORE, Defendant Edward J. Mason prays for judgment as follows:

1. That Plaintiffs' Complaint be dismissed and Plaintiffs take nothing thereunder.
2. That Defendant be awarded his reasonable attorneys' fees and costs necessarily incurred in defending this action.
3. For such other and further relief as the Court deems just and proper.

DATED THIS 11th day of February, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By


Marilyn W. Clark ISB No. 1026
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2008, I caused to be served a true copy of the foregoing ANSWER by the method indicated below, and addressed to each of the following:

Derek A. Pica, PLLC
ATTORNEY AT LAW
199 N. Capitol Blvd., Ste. 302
Boise, ID 83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 336-4980

[Attorney for Plaintiffs]



Merlyn W. Clark

NO. _____ FILED _____
A.M. _____ P.M. 2:55

AUG 04 2008

J. DAVID NAVARRO, Clerk
By KATHY J. BIEHL
DEPUTY

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE No.: (208) 336-4980
IDAHO STATE BAR No. 3559

ATTORNEY FOR Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)
FAZZIO, husband and wife, and IDAHO)
LIVESTOCK COMPANY, LLC, an)
Idaho Limited Liability Company,)
Plaintiffs,)

vs.)

EDWARD J. MASON, an individual,)
Defendant.)

Case No. CV OC 0801215

MOTION FOR
SUMMARY JUDGMENT

COMES NOW, the above-named Plaintiffs, by and through their attorney of record, Derek A. Pica, and moves the above-entitled Court for its Order granting to said Plaintiffs Summary Judgment against Defendant, Edward J. Mason on all claims made by Plaintiffs.

This Motion is made pursuant to Rule 56(a), et. seq. of the Idaho Rules of Civil Procedure, and is based upon the files and records of the above-entitled Court, the

DEC 30 2008
J. DAVID NAVARRO, Clerk
By J. KENNEDY
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an
Idaho Limited Liability Company,

Plaintiffs,

vs.

EDWARD J. MASON, an individual,

Defendant.

Case No. CV-OC-08-01215

MEMORANDUM DECISION
AND ORDER

This case is before the Court on the Plaintiffs' motion for summary judgment. For the reasons that follow, the Plaintiffs' motion will be granted.

FACTS AND PROCEDURAL BACKGROUND

This case arises from agreements for the purchase of real property. The Defendant Edward J. Mason (Mason) entered into purchase and sale agreements to purchase certain residential property and farmland from the Plaintiffs Frank J. Fazzio, Jr., Cindy Ann Fazzio, and Idaho Livestock Company, LLC (collectively, the Fazzios). While the agreements were pending, Mason had the property annexed into the City of Kuna. The original agreements set forth a closing date of February 26, 2007. Mason failed to close on either of the agreements. To avoid arbitration under the agreements, the parties entered into a settlement agreement on June 8, 2007. That agreement stated that the parties would close either on December 21, 2007 or March 21, 2008, and that

1 Mason would pay twelve percent interest on the purchase price from February 27, 2007 through
2 the closing date. The parties also agreed to a remedy of specific performance upon either party's
3 breach and that the agreement would be treated as an arbitration award under Idaho Code § 7-908.
4 Neither the original agreement nor the settlement agreement was contingent upon Mason obtaining
5 financing for the purchase.

6 The Fazzios filed an application for entry of an arbitration award, or alternatively, a
7 complaint on January 22, 2008. Mason filed an answer on February 12, 2008. The Fazzios filed
8 the present motion for summary judgment on August 4, 2008. Oral argument on the motion was
9 heard after which the Court asked for additional briefing on the issue of impossibility of
10 performance. The case is scheduled for a court trial.
11

12 LEGAL STANDARD

13 Summary judgment is appropriate only if the affidavits, depositions, admissions, and other
14 evidence in the record demonstrate that there are no genuine issues of material fact and that the
15 moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c), *Hines v. Hines*, 129 Idaho
16 847, 934 P.2d 20 (1997). When considering a motion for summary judgment, the court "liberally
17 construes the record in a light most favorable to the party opposing the motion and draws all
18 reasonable inferences and conclusions in that party's favor." *Brooks v. Logan*, 130 Idaho 574,
19 576, 944 P.2d 709, 711 (1997). Where the evidentiary facts are undisputed and the court rather
20 than a jury will be the trier of fact, "summary judgment is appropriate, despite the possibility of
21 conflicting inferences, because the court alone will be responsible for resolving the conflict
22 between those inferences." *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d
23 657, 661 (1982).
24
25
26

ANALYSIS

The Fazzios ask the Court to either confirm their settlement as an arbitration award or to grant them summary judgment. Specifically, they have asked the Court to find that they are entitled to specific performance of each of the sales.

1. Confirmation of Settlement as an Arbitration Award.

Idaho Code provides the statutory basis for a court to confirm an arbitration award. The relevant provision states, in part: “[u]pon application of a party, the court shall confirm an award . . .” I.C. § 7-911. Awards are further required to be in writing and signed by the arbitrators joining in the award. I.C. § 7-908(a). The present settlement agreement between the parties does not satisfy the statutory requirements primarily because there was no arbitrator who could have approved and signed the award. Idaho courts have held that awards that do not comply with the statutory requirements set forth in the Uniform Arbitration Act (UAA) cannot be confirmed. In one case, *Martel v. Bulotti*, 138 Idaho 451, 65 P.3d 192 (2003), the Idaho Supreme Court reversed a district court’s decision to confirm an award because the person who decided the amount of the award was not an arbiter, but instead was an architect. The court found that the architect was not sufficiently disinterested under the statute to be considered an arbitrator under the statute. *Id.* at 453.

The case presented today seems to fall even shorter from statutory compliance than in *Martel*. In this case there never has been an arbitrator. Essentially, what exists is nothing more than a contract. It seems unlikely that a court would allow for parties to recharacterize their settlement agreements to invoke the provisions of the UAA by simple contract. Confirming the award would allow parties to waive and circumvent whatever requirements in the UAA they might find undesirable. There is no Idaho case law cited by the Fazzios that would support such

1 legislative intent. However, the Idaho Supreme Court expressed doubt about the use of arbitration
2 and settlement to obtain court confirmation of an award in *Campbell v. Kildew*, 141 Idaho 640,
3 115 P.3d 731 (2005). The Court will decline to confirm the settlement agreement as an arbitration
4 award.

5 2. Specific Performance.

6 Mason does not argue any excuse for breaching the settlement agreement, most notably
7 declining to plead impossibility as a defense. Rather, the parties focus on whether the Fazzios are
8 entitled to an award of specific performance. In Mason's memorandum in opposition, as well as in
9 his accompanying affidavit, he explains in detail the specific efforts he has undertaken to obtain
10 financing. He also provides some explanation as to why it would not be prudent for him to
11 liquidate his assets to comply with the contractual terms, as the Fazzios have suggested.
12

13 Mason argues that specific performance is not appropriate in this case. Specific
14 performance "is an extraordinary remedy that can provide relief when legal remedies are
15 inadequate." *Kessler v. Tortoise Development, Inc.*, 134 Idaho 264, 270, 1 P.3d 292, 298 (2000).
16 Further, Idaho courts reason that "[e]quity will not enter a decree for specific performance the
17 enforcement of which is not practicable or feasible." *Anderson v. Whipple*, 71 Idaho 112, 125, 227
18 P.2d 351, 359 (1951), overruled on other grounds by *David Steed and Associates, Inc. v. Young*,
19 115 Idaho 247, 766 P.2d 717 (1988). Mason argues that under the above case law, the Court
20 should decline to order Mason to close the contract because Mason is not financially able to do so
21 at this time. Mason argues that because specific performance is impossible in his current financial
22 position, the Court cannot order such performance because doing so would be futile.
23

24 Mason's ability to obtain a loan or otherwise raise the funds available for purchase does not
25 appear to be an issue under the persuasive authority cited by the Fazzios in their supplemental
26

1 brief. For instance, the Arkansas Supreme Court has addressed the present issue in *Christy v.*
2 *Pilkington*, 224 Ark. 407, 273 S.W.2d 533 (1954). When the buyers in that case attempted to
3 prove that they did not possess or could not borrow the unpaid balance of the purchase price, the
4 court noted that:

5 Proof of this kind does not establish the type of impossibility that constitutes a
6 defense. There is a familiar distinction between objective impossibility, which
7 amounts to saying, 'The thing cannot be done,' and subjective impossibility – 'I
8 cannot do it.' Rest., Contracts, § 455; Williston on Contracts, § 1932. The latter,
9 which is well illustrated by a promisor's financial inability to pay, does not
10 discharge the contractual duty and is therefore not a bar to a decree for specific
11 performance.

12 *Id.* at 407, 273 S.W.2d at 533.

13 Insofar as Idaho courts have been presented with this issue, Idaho law appears to be
14 consistent with such an approach. For instance, in *Perron v. Hale*, 108 Idaho 578, 701 P.2d 198
15 (1985), the court upheld a judgment for specific performance stating "[t]he overwhelming weight
16 of authority states that specific performance is as freely available to vendors as it is to purchasers."
17 *Id.* at 582, 701 P.2d at 202 (citations omitted). The appropriateness of specific performance is in
18 the discretion of the trial court. The court went on to note that certain deterioration that had
19 occurred during litigation that "would affect the market value and, in addition, a rental value
20 would complicate a damages formulation. The buyers had the lower level of the house altered and
21 partially finished to their particular desires, and buyers had done substantial damage to the walls
22 upstairs and down while attempting to discover building defects. The agreement was for a cash
23 sale which can be easily enforced." *Id.* at 583, 701 P.2d at 203.

24 Furthermore, the Idaho Court of Appeals recently noted that "[m]ost importantly it is the
25 task itself which must be impossible – it is not enough that the particular promisor is unable to
26 perform the task if it would be possible for a different promisor to perform." *State v. Chacon*,

1 Nos. 33394, 33613, 2008 WL 4170025 (Idaho Ct. App. Sept, 10, 2008). While this case was
2 criminal in nature, it is still persuasive Idaho dicta on the issue as it relates to the enforcement of
3 contracts.

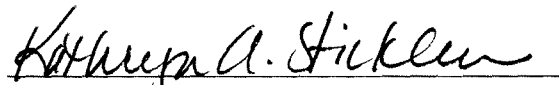
4 The Court finds that there is good reason to enforce the contract by specific performance,
5 rather than the legal remedy of contract damages ordinarily available. Not only is the real property
6 itself inherently unique, the real property was significantly and materially altered by Mason in
7 anticipation of the sale by causing it to be annexed into the City of Kuna. Furthermore, the
8 contract was for a cash sale, as in *Perron*. The Court cannot find that the present case presents a
9 situation where performance is so unlikely and impossible that it would render the order futile.
10 Rather, the Court, in its discretion, finds that the appropriate remedy is to order specific
11 performance, and if performance is not completed, judgment can be entered for the purchase price.
12

13 CONCLUSION

14 Based on the foregoing analysis, the Court grants the Fazzios' motion for summary
15 judgment. Specific performance on the contracts is to be completed within thirty days of the date
16 of this order; if not so accomplished, a judgment for the purchase price may be entered, upon
17 satisfaction of which the properties must be conveyed to Mason.
18

19 IT IS SO ORDERED.

20 Dated this 30th day of December 2008.

21
22 
23 Kathryn A. Sticklen
24 District Judge
25
26

CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d), I.R.C.P., to each of the attorneys of record in this cause in envelopes addressed as follows:

DEREK A PICA PLLC
ATTORNEY AT LAW
199 N CAPITOL BLVD SUITE 302
BOISE IDAHO 83702

MERLYN W CLARK
D JOHN ASHBY
HAWLEY TROXELL ENNIS
& HAWLEY LLP
877 MAIN STREET SUITE 1000
POST OFFICE BOX 1617
BOISE IDAHO 83701-1617

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

Date: 12/30/08

By *Jennady*
Deputy Clerk



FILED 250

JAN 20 2013

J. DAVID NAVARRO, Clerk
By A. GARDEN
SEP 11

Merlyn W. Clark, ISB No. 1026
D. John Ashby, ISB No. 7228
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: mwc@hteh.com
jash@hteh.com

Attorneys for Defendant/Appellant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)
FAZZIO, husband and wife, and IDAHO)
LIVESTOCK COMPANY, LLC, an Idaho)
Limited Liability Company,)
Plaintiffs/Respondents,)
vs.)
EDWARD J. MASON, an individual,)
Defendant/Appellant.)

Case No. CV OC 0801215
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENTS, FRANK J. FAZZIO, JR., CINDY ANN FAZZIO AND IDAHO LIVESTOCK COMPANY, LLC, AND THEIR ATTORNEY OF RECORD, DEREK A. PICA, AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Edward J. Mason, appeals against the above-named Respondents to the Idaho Supreme Court from the Memorandum Decision and Order granting the Respondents' Motion for Summary Judgment, entered in the above-entitled action on the 30th day of December, 2009, Honorable Judge Kathryn A. Sticklen presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 above is an appealable order pursuant to I.A.R. 11(a)(1).

3. Appellant presently intends to assert the following issues on appeal, although he reserves the right to amend this Notice of Appeal, as permitted under rules, to raise such other issues as may be identified hereafter:

a) Whether the District Court erred in ordering specific performance.

4. On June 17, 2008, the District Court issued an Order Granting Motion for Protective Order, permitting certain confidential information to be filed under seal. Pursuant to this Protective Order, the following documents were filed under seal:

- a) Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, filed October 7, 2008;
- b) Affidavit of Edward J. Mason in opposition to Plaintiff's Motion for Summary Judgment, filed October 7, 2008;
- c) Supplemental Affidavit of Edward J. Mason in opposition to Plaintiff's Motion for Summary Judgment, filed October 10, 2008;
- d) Memorandum in Response to Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, filed October 14, 2008;
- e) Affidavit of Derek A. Pica, filed October 14, 2008; and
- f) Second Affidavit of Derek A. Pica, filed October 15, 2008.

5. No reporter's transcript is requested.

6. Mr. Mason requests that the following documents be included in the clerk's record in addition to those automatically included under I.A.R. 28:

- a) Affidavit of Edward J. Mason in opposition to Plaintiff's Motion for Summary Judgment, filed (under seal) October 7, 2008;
- b) Supplemental Affidavit of Edward J. Mason in opposition to Plaintiff's Motion for Summary Judgment, filed (under seal) October 10, 2008;

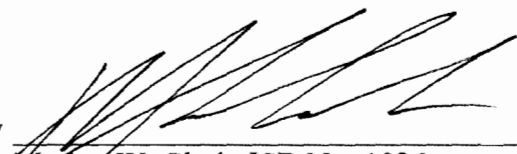
7. I certify:

- a) That a copy of this notice of appeal has not been served on any reporter because not reporter's transcript is requested.
- b) That Appellant owes no estimated fee for preparation of the reporter's transcript because no reporter's transcript is requested.
- c) That the estimated fee for preparation of the clerk's record has been paid.
- d) That the appellate filing fee has been paid.
- e) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED THIS 20th day of January, 2009.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By

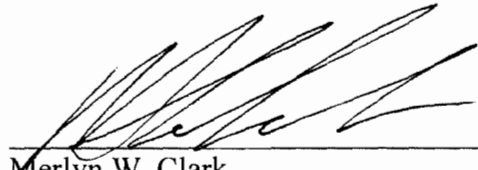

Merlyn W. Clark, ISB No. 1026
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of January, 2009, I caused to be served a true copy of the foregoing NOTICE OF APPEAL by the method indicated below, and addressed to each of the following:

Derek A. Pica, PLLC
ATTORNEY AT LAW
199 N. Capitol Blvd., Ste. 302
Boise, ID 83702
[Attorney for Plaintiffs]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy – (208) 336-4980



Merlyn W. Clark

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE NO.: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)
FAZZIO, husband and wife, and IDAHO)
LIVESTOCK COMPANY, LLC, an)
Idaho Limited Liability Company,)

Plaintiffs/Respondents,)

vs.)

EDWARD J. MASON, an individual,)

Defendant/Appellant.)

Case No. CV OC 0801215

PLAINTIFFS'/RESPONDENTS'
REQUEST FOR ADDITIONAL
DOCUMENTS IN THE
RECORD

COMES NOW, Plaintiffs/Respondents, Frank J. Fazzio, Jr. and Cindy Ann Fazzio; and Idaho Livestock Company, LLC, by and through their attorney of record, Derek A. Pica, and pursuant to Rule 28(c) of the Idaho Appellate Rules, requests that the following additional documents be added to the Clerk's Record:

- Motion for Summary Judgment filed August 4, 2008
- Memorandum in support of Motion for Summary Judgment filed August 4, 2008
- Affidavit of Frank J. Fazzio, Jr. filed August 4, 2008

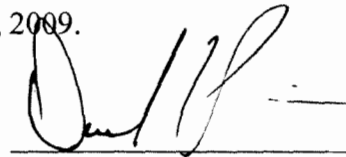
NO. _____
A.M. _____ P.M. 2:49

JAN 22 2009

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

- Memorandum in Response to Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment
- Supplemental Memorandum in Support of Motion for Summary Judgment and in Support of Motion to Amend Complaint dated November 4, 2008
- Second Affidavit of Frank J. Fazzio, Jr. in Response to Assertion in Supplemental Brief that Plaintiff Must Prove Compliance dated November 6, 2008.

DATED this 21st day of January, 2009.



Derek A. Pica
Attorney for Plaintiffs/Respondents

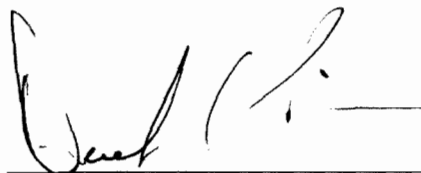
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 21st day of January, 2009, I caused a true and correct copy of the foregoing PLAINTIFFS'/RESPONDENTS' REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

Merlyn W. Clark
Hawley, Troxell, Ennis & Hawley, LLP
P.O. Box 1617
Boise, ID 83701-1617

Hand Deliver
U.S. Mail
Facsimile
Overnight Mail

☒
☐
☐
☐



Derek A. Pica

NO. 10.04 FILED
A.M. P.M.

MAR 19 2009

J. DAVID NAVARRO, Clerk
By **J. RANDALL**
DEPUTY

DEREK A. PICA, PLLC
ATTORNEY AT LAW
199 N. CAPITOL BLVD., SUITE 302
BOISE, ID 83702

TELEPHONE: (208) 336-4144
FACSIMILE NO.: (208) 336-4980
IDAHO STATE BAR NO. 3559

ATTORNEY FOR Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN)
FAZZIO, husband and wife, and IDAHO)
LIVESTOCK COMPANY, LLC, an)
Idaho Limited Liability Company,)
Plaintiffs/Respondents,)
vs.)
EDWARD J. MASON, an individual,)
Defendant/Appellant.)

Case No. CV O^C 0801215

**REQUEST FOR
ADDITION TO
CLERK'S RECORD**

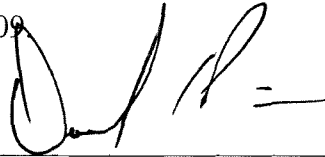
COMES NOW, Plaintiffs/Respondents, Frank J. Fazzio, Jr. and Cindy Ann Fazzio and Idaho Livestock Company, LLC, by and through their attorney of record, Derek A. Pica, and pursuant to Rule 29(a) of the Idaho Appellate Rules, requests that the following document be added to the Clerk's Record:

- Supplemental Briefing in Opposition to Plaintiff's Motion for Summary Judgment filed November 4, 2008.

This request is supported by the record on file herein.

Oral argument is hereby requested.

DATED this 17th day of March, 2009



Derek A. Pica
Attorney for Plaintiffs/Respondents

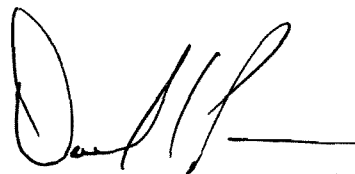
CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 17th day of March, 2009, I caused a true and correct copy of the foregoing REQUEST FOR ADDITION TO CLERK'S RECORD to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

Merlyn W. Clark
Hawley, Troxell, Ennis & Hawley, LLP
P.O. Box 1617
Boise, ID 83701-1617

Hand Deliver
U.S. Mail
Facsimile
Overnight Mail

☒
☐
☐
☐



Derek A. Pica

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an Idaho
limited liability company,

Plaintiffs-Respondents,

vs.

EDWARD J. MASON, an individual,

Defendant-Appellant.

Supreme Court Case No. 36068

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as
CONFIDENTIAL EXHIBITS to the Record:

1. (Sealed) Affidavit Of Edward J. Mason In Opposition To Plaintiff's Motion For Summary Judgment, filed October 7, 2008.
2. (Sealed) Memorandum In Response To Defendant's Memorandum In Opposition To Plaintiffs' Motion For Summary Judgment, filed October 14, 2008.
3. (Sealed) Supplemental Affidavit Of Edward J. Mason In Opposition To Plaintiff's Motion For Summary Judgment, filed October 17, 2008.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Memorandum In Support Of Motion For Summary Judgment, filed August 4, 2008.
2. Affidavit Of Frank J. Fazzio, Jr., filed August 4, 2008.
3. Supplemental Memorandum In Support Of Motion For Summary Judgment And In Support Of Motion To Amend Complaint, filed November 4, 2008.

CERTIFICATE OF EXHIBITS

00091

4. Supplemental Briefing In Opposition To Plaintiffs' Motion For Summary Judgement, filed November 4, 2008.
5. Second Affidavit Of Frank J. Fazzio, Jr. In Response To Assertion In Supplemental Brief That Plaintiff Must Prove Compliance, filed November 6, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 26th day of February, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

00092

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an Idaho
limited liability company,

Plaintiffs-Respondents,

vs.

EDWARD J. MASON, an individual,

Defendant-Appellant.

Supreme Court Case No. 36068

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

MERLYN W. CLARK

ATTORNEY FOR APPELLANT

BOISE, IDAHO

DEREK A. PICA

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: FEB 27 2009

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00093

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANK J. FAZZIO, JR. and CINDY ANN
FAZZIO, husband and wife, and IDAHO
LIVESTOCK COMPANY, LLC, an Idaho
limited liability company,

Plaintiffs-Respondents,

vs.

EDWARD J. MASON, an individual,

Defendant-Appellant.

Supreme Court Case No. 36068

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 20th day of January, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD

00091