

11-3-2015

# Evangelical Lutheran Good Samaritan Society v. Bd. Of Equal. Of Ada Clerk's Record Dckt. 43697

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IN THE SUPREME COURT OF THE STATE OF IDAHO

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

vs.

BOARD OF EQUALIZATION OF ADA  
COUNTY,

Respondent-Appellant.

Supreme Court Case No. 43697  
43698

CLERK'S RECORD ON APPEAL

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

HONORABLE STEVEN HIPPLER

GENE A. PETTY

ATTORNEY FOR APPELLANT

BOISE, IDAHO

PHILLIP S. OBERRECHT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

# In the Supreme Court of the State of Idaho

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

v.

BOARD OF EQUALIZATION OF ADA  
COUNTY,

Respondent-Appellant.

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

v.

BOARD OF EQUALIZATION OF ADA  
COUNTY,

Respondent-Appellant.

ORDER TO CONSOLIDATE APPEALS  
FOR ALL PURPOSES

Supreme Court Docket No. 43697-2015  
Ada County No. CV-2013-9169

Supreme Court Docket No. 43698-2015  
Ada County No. CV-2014-13941

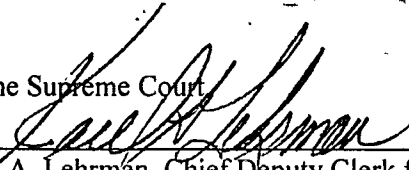
WHEREAS, it appearing that the above entitled appeals should be consolidated for all purposes;  
therefore,

IT HEREBY IS ORDERED that appeal Nos. 43697 and 43698 shall be CONSOLIDATED  
FOR ALL PURPOSES under appeal No. 43697.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare a CLERK'S RECORD,  
which shall include the documents requested in these Notices of Appeal, together with a copy of this  
Order. Furthermore, the Court Reporter(s) shall prepare the REPORTERS' TRANSCRIPTS, which  
shall include the transcripts requested in the Notice of Appeal in No. 43697 (Ada CV-2013-9169).

DATED this 17<sup>th</sup> day of November, 2015.

For the Supreme Court

  
Karel A. Lehrman, Chief Deputy Clerk for  
Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
Court Reporter  
District Judge Steve J. Hippler

Entered on JSI  
By: kg

ORDER TO CONSOLIDATE APPEALS FOR ALL PURPOSES -- Docket Nos. 43697 / 43698

000002

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
5/21/2013	NCOT	CCMARTJD	New Case Filed - All Other
	PETN	CCOSBODK	Petition For Judicial Review
	SMFI	CCOSBODK	Summons Filed
5/23/2013	AFOS	CCBOYIDR	Affidavit Of Service (5-21-13)
5/31/2013	ORDR	DCOATMAD	Order Governing Judicial Revw
6/4/2013	NOTC	CCWEEKKG	Notice of Lodging of Transcript and Agency Record
6/5/2013	NOAP	CCHOLMEE	Notice Of Appearance (Petty for Ada County)
	MOTN	CCHOLMEE	Motion to Reconsider Order Governing Judicial Review and Request for a Scheduling Conference
	MEMO	CCHOLMEE	Memorandum in Support of Motion
6/17/2013	MISC	MCBIEHKJ	Joinder in Ada Countys Motion to Reconsider Order Governing Judicial Review
6/19/2013	HRSC	DCOATMAD	Hearing Scheduled (Scheduling Conference 08/09/2013 01:30 PM)
		DCOATMAD	Notice of Scheduling Conference and Motion Practice
6/21/2013	NOTC	CCBOYIDR	Notice of Filing of Settled Agency Record
7/3/2013	STIP	CCHOLMEE	Stipulation for Scheduling and Planning
7/19/2013	CONT	DCOATMAD	Continued (Court Trial 06/16/2014 09:00 AM) 3 days
	HRSC	DCOATMAD	Hearing Scheduled (Pretrial Conference 06/06/2014 03:30 PM)
	STIP	CCNELSRF	Stipulation to Consolidate
	MOTN	TCHOLLJM	Motion To Consolidate
7/23/2013	ORDR	CCNELSRF	Order To Consolidate
		CCNELSRF	Notice of Reassignment
8/19/2013	NOTS	TCLAFFSD	Notice Of Service
8/21/2013	AMEN	CCHEATJL	Amended Notice Of Service
9/3/2013	OBJC	CCKHAMSA	Appellant's Objections To ADA County's First Set Of Interrogatories
9/6/2013	NOTS	MCBIEHKJ	Notice Of Service
9/9/2013	NOTS	CCMEYEAR	Notice Of Service
9/18/2013	NOTS	CCHEATJL	Notice Of Service Of Discovery Responses
9/20/2013	STIP	CCVIDASL	Stipulation for Protective Order
9/25/2013	STIP	DCOATMAD	Stipulated Protective Order
10/9/2013	NOTS	CCSWEECE	Notice Of Service
	NOSV	CCREIDMA	Notice Of Service Of Discovery Responses
10/11/2013	STIP	CCKHAMSA	Stipulation To Extend Trial Schedule



In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
10/16/2013	ORDR	DCOATMAD	Order Extending Trial Schedule from 3 days to 6 days Mike Wetherell
11/22/2013	CHRE	DCOATMAD	Change Assigned Judge: Reassignment Steven Hippler
12/10/2013	NOTS	TCLAFFSD	Notice Of Service Steven Hippler
12/13/2013	NOTS	CCHEATJL	Notice Of Service Of Discovery Responses Steven Hippler
1/17/2014	NOTS	TCLAFFSD	Notice Of Service Steven Hippler
1/28/2014	STIP	CCVIDASL	Stipulation to Reset Trial Dates Steven Hippler
2/11/2014	NOTD	CCHEATJL	(6) Notice Of Taking Deposition Steven Hippler
3/19/2014	NOTD	CCSWEECE	Notice Of Taking Deposition Duces Tecum of Jason McArthur Steven Hippler
	NOTD	CCSWEECE	Notice Of Taking Deposition Duces Tecum of Van Moore Steven Hippler
3/21/2014	NOTC	CCREIDMA	Notice of Taking Deposition of Leslie Folwell Steven Hippler
3/25/2014	NOTS	TCLAFFSD	Notice Of Service of Discovery Responses Steven Hippler
4/3/2014	MOTN	TCLAFFSD	Motion To Compel Steven Hippler
	AFSM	TCLAFFSD	Affidavit In Support Of Motion To Compel Document sealed Steven Hippler
	MEMO	TCLAFFSD	Memorandum In Support of Motion To Compel Steven Hippler
4/9/2014	NOHG	CCMCLAPM	Notice Of Hearing RE: Motion to Compel 5.15.14 @ 3:00PM Steven Hippler
	HRSC	CCMCLAPM	Hearing Scheduled (Motion 05/15/2014 03:00 PM) Motion to Compel Steven Hippler
4/10/2014	NOTD	CCSWEECE	Notice Of Rule 30(B)(6) Deposition Subpoena Duces Tecum of the Evangelical Lutheran Good Samiaritan Society Inc Steven Hippler
4/11/2014	NOTS	CCSCOTDL	Notice Of Service Steven Hippler
4/15/2014	MOTN	TCLAFFSD	Motion For Leave To File Oversize Brief Steven Hippler
	MOSJ	TCLAFFSD	Motion For Summary Judgment Steven Hippler
	AFSM	TCLAFFSD	Affidavit Of Gene A. Petty In Support Of Motion For Summary Judgment Steven Hippler
	AFSM	TCLAFFSD	Document sealed Affidavit Of Julie Burrows In Support Of Motion For Summary Judgment Steven Hippler
	AFSM	TCLAFFSD	Document sealed Affidavit Of Jason D. McArthur In Support Of Motion For Summary Judgment Steven Hippler
	MEMO	TCLAFFSD	Document sealed Memorandum In Support Of Motion For Summary Judgment Steven Hippler
	NOTH	TCLAFFSD	Notice Of Hearing Re: Motion For Summary Judgment (5.13.14 at 3:00 PM) Steven Hippler
	HRSC	TCLAFFSD	Hearing Scheduled (Motion for Summary Judgment 05/13/2014 03:00 PM) Steven Hippler

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User		Judge
4/15/2014	NOTS	CCVIDASL	Notice Of Service of Discovery Responses	Steven Hippler
4/16/2014	MOTN	CCTHIEKJ	The Evangelical Lutheran Food Samaritan Society's Motion for Protective Order	Steven Hippler
	MEMO	CCTHIEKJ	Memorandum in Support of The Evangelical Lutheran Food Samaritan Society's Motion for Protective Order and Response in Opposition to Ada County's Motion to Compel	Steven Hippler
	AFFD	CCTHIEKJ	Affidavit of James Krekelberg In support of The Evangelical Lutheran Food Samaritan Society's Motion for Protective Order	Steven Hippler
	AFFD	CCTHIEKJ	Affidavit of Phillip S Oberrecht in Support of The Evangelical Lutheran Food Samaritan Society's Motion for Protective Order	Steven Hippler
	NOHG	CCTHIEKJ	Notice Of Hearing (5/12/14 @ 3pm)	Steven Hippler
4/17/2014	ORDR	TCHOCA	Order Granting Leave to File Oversize Brief	Steven Hippler
	MFEX	CCMCLAPM	The Evangelical Lutheran Good Samaritan Society's Motion for Extension of Time to File Response to Motion for Summary Judgment and Vacation of the Current Trial Setting	Steven Hippler
	AFSM	CCMCLAPM	Affidavit of Phillip S. Oberrecht In Support Of Motion for Extension of Time to File Response to Motion for Summary Judgment and Vacation of the Current Trial Setting	Steven Hippler
	MEMO	CCMCLAPM	Memorandum in Support of the The Evangelical Lutheran Good Samaritan Society's Motion for Extension of Time to File Response to Motion for Summary Judgment and Vacation of the Current Trial Setting	Steven Hippler
4/21/2014	MOTN	CCTHIEKJ	Motion to Shorten Time for Hearing The Evangelical Lutheran Good Samritan Society's Motion for Extension of Time to File Response to Motion for Summary Judgment and for Vacation of the Current Trial Setting	Steven Hippler
	NOHG	CCTHIEKJ	Notice Of Hearing (4/24/14 @ 10:00am)	Steven Hippler
	HRSC	CCTHIEKJ	Hearing Scheduled (Motion for Summary Judgment 04/24/2014 10:00 AM) Motion for Extension of Time to File Response to Motion for Summary Judgment and for Vacation of the Current Trial	Steven Hippler
	NOTC	TCLAFFSD	Notice Of Non-Opposition To Motion To Shorten Time For Hearing	Steven Hippler
4/23/2014	MEMO	CCMARTJD	Memorandum in Opposition to Motion for Extension of Time to File Response to Motion for Summary Judgment	Steven Hippler

In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
4/24/2014	DCHH	CCAMESLC	Hearing result for Motion for Summary Judgment scheduled on 04/24/2014 10:00 AM: District Court Hearing Held Court Reporter: Valsich Number of Transcript Pages for this hearing estimated: 50
	CONT	CCAMESLC	Continued (Court Trial 10/27/2014 09:00 AM) 6 days
	CONT	CCAMESLC	Continued (Pretrial Conference 10/06/2014 03:00 PM)
	CONT	CCAMESLC	Continued (Motion for Summary Judgment 07/23/2014 03:00 PM)
4/30/2014	NOSV	CCHOLMEE	Notice Of Service
	NOSV	CCHOLMEE	Notice Of Service
5/8/2014	MOTN	CCMARTJD	Motion to File Overlength Memorandum in Response to Motion for Summary Judgment
5/13/2014	ORDR	CCAMESLC	Order Granting Motion to File Overlength Memorandum
	ORDR	CCAMESLC	Order
5/14/2014	REPL	TCLAFFSD	Reply Memorandum In Support of The Evangelical Lutheran Good Samaritan Society's Motion For Protective Order And Response In Opposition To Ada County's Motion To Compel
5/15/2014	DCHH	CCAMESLC	Hearing result for Motion scheduled on 05/15/2014 03:00 PM: District Court Hearing Held Court Reporter: Valsich Number of Transcript Pages for this hearing estimated: 100
5/21/2014	STIP	CCMARTJD	Stipulation for Telephonic Deposition of Joseph Herdina
5/22/2014	NOTC	CCMURPST	Notice OF Telephonic Deposition Subpoena Duces Tecum of Joseph
5/28/2014	AMEN	CCMARTJD	Amended Notice of Telephonic Deposition Subpoena Duces Tecum of Joseph Herdina
	NOTS	CCWRIGRM	Notice Of Service of Discovery Requests
6/13/2014	NOTC	CCVIDASL	Notice of Service of Discovery Responses
	NOTS	CCREIDMA	Notice Of Service
	AFFD	CCMARTJD	Affidavit of Gene Petty in Support of Motion for Summary Judgment
			Document sealed
	AMEN	CCMARTJD	Amended Memorandum in Support of Motion for Summary Judgment
6/20/2014	NOTS	CCHEATJL	Notice Of Service Of Discovery Responses
6/27/2014	NOTS	CCMARTJD	Notice Of Service

In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
6/30/2014	ORDR	CCCHILER	Order Resetting Trial Dates (CT 11/10/14 @ 9am; Steven Hippler PTC 10/20/14 @ 3pm)
	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/10/2014 09:00 AM) 6 days Steven Hippler
	HRVC	CCCHILER	Hearing result for Court Trial scheduled on 10/27/2014 09:00 AM: Hearing Vacated 6 days Steven Hippler
	HRVC	CCCHILER	Hearing result for Pretrial Conference scheduled on 10/06/2014 03:00 PM: Hearing Vacated Steven Hippler
	HRSC	CCCHILER	Hearing Scheduled (Pretrial Conference 10/20/2014 03:00 PM) Steven Hippler
7/2/2014	STMT	CCSCOTDL	The Evangelical Lutheran Good Samaritan Society's Seperate Statement of Material Facts and Material Facts in Dispute Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Rev Greg Wilcox in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Document sealed Affidavit of Rev Charles Spiedel in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Document sealed Affidavit of Brian Davidson in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Document sealed Affidavit of Joseph Herdina in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Document sealed Affidavit of Karen Noriega in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Tom Syverson in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Michael Hinson in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Sherri Ellis in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Amber Bergstrom in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Jay Wood in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Gail Prieto in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
7/2/2014	AFFD	CCSCOTDL	Affidavit of Phyllis Raney in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Leslie Folwell in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Bill Petzak in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Rev Richard Demarest in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Glenn Compton in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	AFFD	CCSCOTDL	Affidavit of Wes Underwood in Support of Opposition to Ada County's Motion for Summary Judgment Steven Hippler
	MEMO	CCSCOTDL	Memorandum in Opposition to Ada County's Motion for Summary Judgment Steven Hippler
7/14/2014	MOTN	TCMEREKV	Motion For Leave To File Oversize Reply Brief Steven Hippler
	MEMO	TCMEREKV	Reply Memorandum In Support Of Motion For Summary Judgment Steven Hippler
	AFFD	TCMEREKV	Affidavit Of Debra Ransom In Support Of Reply Memorandum In Support Of Motion For Summary Judgment Steven Hippler
	AFFD	TCMEREKV	Affidavit Of Elizabeth A Mahn In Support Of Reply Memorandum In Support Of Motion For Summary Judgment Steven Hippler
7/16/2014	ORDR	CCCHILER	Order Granting Leave to File Oversize Reply Brief Steven Hippler
7/17/2014	MOTN	CCVIDASL	Motion to Shorten Time for Hearing on Appelants Motion to Strike Untimely Affidavits Steven Hippler
	MOTN	CCVIDASL	Motion to Strike Untimely Affidavits Steven Hippler
	MEMO	CCVIDASL	Memorandum in Support of the Evangelical Lutheran Good Samaritan Societys Motion to Strike Untimely Affidavits Steven Hippler
7/18/2014	AFFD	CCRADTER	Affidavit of Gene A Petty Opposing Evangelical Lutheran Good Samaritan Society's Motion to Strike Untimely Affidavits Steven Hippler
	MEMO	CCRADTER	Ada County's Memorandum in Opposition to Evangelical Lutheran Good Samaritan Society's Motion to Strike Untimely Affidavits Steven Hippler
7/21/2014	RPLY	CCVIDASL	Reply Memorandum in Support of the Evangelical Lutheran Good Samaritan Societys Motion to Strike Untimely Affidavits Steven Hippler
7/22/2014	ORDR	CCCHILER	Order Granting Motion to Shorten Time Steven Hippler

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
7/23/2014	DCHH	CCCHILER	Hearing result for Motion for Summary Judgment scheduled on 07/23/2014 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 100
8/4/2014	ORDR	CCCHILER	Order Regarding Motion to Compel and Motion for Protective Order (Granted and Denied in part)
8/6/2014	MISC	TCMEREKV	Document Production Pursuant To Order Regarding Motion To Compel And Motion For Protective Order
8/8/2014	NOTS	TCMEREKV	Notice Of Service
9/4/2014	NOTS	CCREIDMA	Notice Of Service
9/18/2014	MOTN	TCMEREKV	Motion In Limine To Exclude Evidence
	MEMO	TCMEREKV	Memorandum In Support Of Motion In Limine To Exclude Evidence
	AFFD	TCMEREKV	Affidavit Of Elizabeth A. Mahn In Support Of Motion In Limine To Exclude Evidence Document sealed
9/19/2014	NOTH	TCMEREKV	Notice Of Hearing RE: Motion In Limine To Exclude Evidence 10.20.14 @ 3:00 PM
9/26/2014	NOTC	CCSCOTDL	Notice of Telephonic Deposition Subpoena Duces Tecum of Joseph Herdina
	NOTC	CCSCOTDL	Notice of Telephonic Deposition Subpoena Duces Tecum of Kimberly Kouri
	STIP	CCSCOTDL	Stipulation for Telephonic Deposition of Joseph Herdina and Kimberly Kouri
10/9/2014	NOSV	CCMURPST	Notice Of Service of Discovery Responses
10/10/2014	AFFD	TCMEREKV	Affidavit In Support Of Opposition To Ada County's Motion In Limine
	MEMO	TCMEREKV	Memorandum In Opposition To Motion In Limine To Exclude Evidence
	AFFD	TCMEREKV	Affidavit In Support Of Opposition To Ada County's Motion In Limine
10/15/2014	MEMO	CCMARTJD	Reply Memorandum in Support of Motion in Limine to Exclude Evidence
	MISC	CCVIDASL	Pretrial Proposed Findings of Facts and Conclusions of Law
	MEMO	CCVIDASL	Ada Countys Pretrial Memorandum
	NOTS	CCVIDASL	Notice Of Service
	FIND	TCMEREKV	Proposed Findings Of Fact And Conclusions Of Law
10/20/2014	EXHI	TCMEREKV	Appellant's Exhibit List
	WITN	TCMEREKV	Appellant's List Of Trial Witnesses

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
10/20/2014	DCHH	CCCHILER	Hearing result for Pretrial Conference scheduled on 10/20/2014 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: Motion In Limine To Exclude Evidence; less than 100
	MISC	CCMURPST	Ada County Trial Witness and Exhibit list
	AMEN	TCMEREKV	Amended Ada County's Trial Witness And Exhibit List
10/24/2014	NOTS	TCMEREKV	Notice Of Service
10/27/2014	ORDR	CCCHILER	Order Regarding Motion in Limine in Exclude Evidence
10/29/2014	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/12/2014 09:00 AM)
	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/13/2014 09:00 AM)
	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/14/2014 09:00 AM) day 4
	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/17/2014 09:00 AM) day 5
	HRSC	CCCHILER	Hearing Scheduled (Court Trial 11/19/2014 09:00 AM) day 6
11/3/2014	MOTN	CCRADTER	Motion to Quash Trial Subpoena
	AFSM	CCRADTER	Affidavit of Kelly A Cameron In Support Of Motion
	MEMO	CCRADTER	Memorandum in Support of Motion
	NOTH	CCRADTER	Notice Of Hearing on Motion 11.17.14 @ 4 PM
11/4/2014	HRSC	CCRADTER	Hearing Scheduled (Motion 11/17/2014 04:00 PM) Motion to Quash Trial Subpoena
11/5/2014	MEMO	CCMCLAPM	The Evangelical Luthern Good Samaritan Societys Trial Memorandum
11/6/2014	NOTC	CCMURPST	Notice of Service of Discovery Responses
11/10/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/10/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: day 1: less than 500
	AMEN	CCWEEKKG	Appellant's First Amended Exhibit List
11/12/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/12/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 500
	AFFD	CCTHIEKJ	Affidavit of Phillip S Oberrecht in Support of Good Samaritan Society's Response to Motion to Quash Trial Subpoena

In The Matter Of The Evangelical Lutheran Good Samaritan Society

In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
11/12/2014	MEMO	CCTHIEKJ	The Evangelical Lutheran Good Samaritan Society's Memorandum in Response to Motion to Quash Trial Subpoena Steven Hippler
11/13/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/13/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: less than 500; day 3 Steven Hippler
11/14/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/14/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: day 4; less than 500 Steven Hippler
11/17/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/17/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: day 5; less than 200 Steven Hippler
	HRVC	CCCHILER	Hearing result for Motion scheduled on 11/17/2014 04:00 PM: Hearing Vacated Motion to Quash Trial Subpoena Steven Hippler
11/19/2014	DCHH	CCCHILER	Hearing result for Court Trial scheduled on 11/19/2014 09:00 AM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: day 6; less than 300 Steven Hippler
12/4/2014	TRAN	CCCHILER	Transcript Filed Steven Hippler
12/31/2014	MISC	CCTHIEKJ	The Evangelical Lutheran Good Samaritan Society's Updated Findings of Fact and Conclusions of Law Steven Hippler
	MISC	CCTHIEKJ	The Evangelical Lutheran Good Samaritan Society's Closing Argument Steven Hippler
	MISC	CCGARCOS	Miscellaneous: Ada County's Post-Trial Proposed Findings of Facts and Conclusions of Law Steven Hippler
	MISC	CCGARCOS	Miscellaneous: Ada County's Closing Argument Steven Hippler
1/21/2015	MISC	CCRADTER	The Evangelical Lutheran Good Samaritan Society's Response to Ada County's Post-Trial Filings Steven Hippler
	RESP	CCRADTER	Ada County's Response to Society's Closing Argument and Updated Findings of Fact and Conclusions of Law Steven Hippler
5/5/2015	FFCL	CCCHILER	Findings Of Fact And Conclusions Of Law Steven Hippler
	CDIS	CCCHILER	Civil Disposition entered for: Board of Equalization of Ada County, Other Party; The Evangelical Lutheran Good Samaritan Society, Subject. Filing date: 5/5/2015 Steven Hippler
	STAT	CCCHILER	STATUS CHANGED: Closed Steven Hippler



## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
5/8/2015	MEMO	CCMURPST	Ada County's Memorandum Opposing the Evangelical Lutheran Good Samaritan Society's Motion for Protective Order and Reply Memorandum in Support of Ada County's Motion to Compel
5/13/2015	OBJT	CCGARCOS	Objection to Proposed Judgment
5/28/2015	MOTN	CCSNELNJ	The Evangelical Lutheran Good Samaritan Society's Motion for Refund of Taxes Not Lawfully Due
	MEMO	CCSNELNJ	The Evangelical Lutheran Good Samaritan Society's Memorandum in Support of Motion for Refund of Taxes Not Lawfully Due
	MISC	CCSNELNJ	The Evangelical Lutheran Good Samaritan Society's Response to Ada County's Objection to Proposed Judgment
6/5/2015	RSPS	CCMYERHK	Response To Motion For Refund Of taxes Not Lawfully Due
6/12/2015	REPL	CCMYERHK	Reply Memorandum In Suppor of the Evangelical Lutheran Good Samaritan Society's Motion FOR Refund Of Taxes Not Lawfully Due
	AFFD	CCMYERHK	Supplemental Affidavit Of Phillip S Oberrecht In Support Of Motion For Refund Of Taxes Not Lawfully Due
	MEMO	CCMYERHK	The Evangelical Lutheran Good Samaritan Society's Reply Memorandum In Support Of Motion For Refund Of Taxes Not Lawfully Due
6/19/2015	MEMO	TCMEREKV	The Evangelical Lutheran Good Samaritan Society's Verified Memorandum Of Costs
	AFFD	TCMEREKV	Affidavit Of Phillip S. Oberrecht In Support Of The Evangelical Lutheran Good Samaritan Society's Verified Memorandum Of Costs
	MOTN	TCMEREKV	The Evangelical Lutheran Good Samaritan Society's Motion For Rule 37(c) Costs And Fees
	MEMO	TCMEREKV	The Evangelical Lutheran Good Samaritan Society's Verified Memorandum In Support Of Motion For Rule 37(c) Costs And Fees
	AFFD	TCMEREKV	Affidavit Of Phillip S. Oberrecht In Support Of The Evangelical Lutheran Good Samaritan Society's Motion For Rule 37(c) Costs And Fees
	AFFD	TCMEREKV	Affidavit Of James Krekelberg In Support Of The Evangelical Lutheran Good Samaritan Society's Rule 37(c) Costs And Fees
7/1/2015	NOTH	CCSNELNJ	Notice Of Hearing (8/21/15 @ 3 p.m)
	HRSC	CCSNELNJ	Hearing Scheduled (Hearing Scheduled 08/21/2015 03:00 PM) Motion for Rule 37 (c)
	STAT	CCSNELNJ	STATUS CHANGED: Closed pending clerk action

In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User	Judge
7/14/2015	RESP	CCVIDASL	Response To Societys Verified Memorandum of Costs Steven Hippler
7/23/2015	MEMO	CCMYERHK	Memorandum In Reply To Ada County's Response To Society's Verified Memorandum Of Costs Steven Hippler
8/14/2015	RESP	CCGRANTR	Response To Motion for Rule 37(c) Costs and Fees Steven Hippler
8/19/2015	REPL	CCMYERHK	The Evangelical Lutheran Good Samaritan Society's Reply Memorandum In Support of Motion For Fule 37(c) Costs And Fees Steven Hippler
8/21/2015	DCHH	CCCHILER	Hearing result for Hearing Scheduled scheduled on 08/21/2015 03:00 PM: District Court Hearing Held Court Reporter: Christie Valcich Number of Transcript Pages for this hearing estimated: Motion for Rule 37 (c); less than 200 Steven Hippler
9/17/2015	MEMO	CCCHILER	Memorandum Decision and Order on Good Samaritan Society's Motion for Costs and Fees Steven Hippler
	MEMO	CCCHILER	Memorandum Decision and Order on the Society's Motions to Lift Stay and for Refund of Taxes, and Ada County's Objection to the Society's Proposed Judgment Steven Hippler
	MEMO	CCCHILER	Memorandum Decision and Order on the Society's Motion for Refund of Taxes and Ada County's Objection to the Society's Proposed Judgment Steven Hippler
10/13/2015	JDMT	CCCHILER	Judgment (\$428,128.06 and costs \$8,247.52) Steven Hippler
	STAT	CCCHILER	STATUS CHANGED: closed Steven Hippler
11/3/2015	NOTA	CCBARRSA	NOTICE OF APPEAL Steven Hippler
	APSC	CCBARRSA	Appealed To The Supreme Court Steven Hippler
	MOTN	CCBARRSA	Motion to Stay Judgment Pending Appeal Steven Hippler
	AFFD	CCBARRSA	Affidavit of Gene. A. Petty in Support of Motion to Stay Judgment Pending Appeal Steven Hippler
12/30/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43697 Steven Hippler

Phillip S. Oberrecht (ISB No. 1904)  
Jason R. Mau (ISB No. 8440)  
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[jmau@greenerlaw.com](mailto:jmau@greenerlaw.com)

NO. 1153 FILED  
A.M. 11:53 P.M.

MAY 21 2013

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

Attorneys for Petitioner, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

from the Board of Equalization of Ada  
County for tax year 2012.

Case No. **CV OT 1309169**

**PETITION FOR JUDICIAL REVIEW**

The Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (hereinafter “Good Samaritan Society” or “Petitioner”), by and through its counsel of record, Greener Burke Shoemaker Oberrecht, P.A., petitions this Court for judicial review pursuant to I.C. § 63-3812 and I.R.C.P. 84.

1. The Good Samaritan Society is a North Dakota non-profit, tax-exempt corporation authorized and licensed in the State of Idaho to operate a skilled nursing facility.

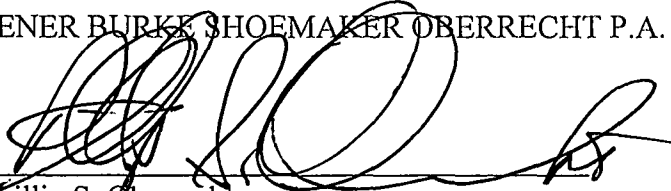
2. The Good Samaritan Society's skilled nursing building is located in Ada County Idaho, on the property located at 3115 N. Sycamore Drive in Boise, also known as tax parcel number S0629347040.
3. In 2012, The Good Samaritan Society sought continued tax exempt status for its skilled nursing facility on charitable and religious grounds, pursuant to I.C. §§ 63-602B and 63-602C.
4. On June 18, 2012, The Ada County Commissioners, sitting as the Board of Equalization, denied The Good Samaritan Society's application for tax exemption status.
5. The Good Samaritan Society appealed the decision of the Board of Equalization to the Idaho Board of Tax Appeals. A hearing was held on November 1, 2012 before a Hearing Officer and a Final Decision and Order was released on April 24, 2013, affirming the Ada County Board of Equalization's denial of The Good Samaritan Society's application for property tax exemption.
6. The Good Samaritan Society is entitled to judicial review of the Final Decision and Order of the Idaho Board of Tax Appeals per Idaho Code § 63-3812.
7. The Petitioner petitions this Court for a trial de novo on the issues pursuant to I.C. § 63-3812(c).
8. The Petitioner intends to assert on judicial review the following issues and reserves the right to name additional issues for judicial review:
  - a. Whether The Good Samaritan Society's property is entitled to a tax exemption as property belonging to any religious corporation for religious, educational, or recreational purposes pursuant to I.C. § 63-602B.

- b. Whether The Good Samaritan Society's property is entitled to a tax exemption as property belonging to a benevolent or charitable corporation for benevolent and charitable purposes pursuant to I.C. § 63-602C.
9. Petitioner requests that a transcript be prepared of the November 1, 2012 Hearing before the Idaho Board of Tax Appeals, and further requests that the Official Record pursuant to IDAPA 36.01.01.151 be included in the record for judicial review.
10. The undersigned certifies that service of this petition has been made upon the Idaho Board of Tax Appeals and Ada County, Idaho; and that the proper parties have been paid the estimated fees for the preparation of the transcript and record.

DATED THIS 21<sup>ST</sup> day of May, 2013.

GREENER BURKE SHOEMAKER OBERRECHT P.A.

By

  
Phillip S. Oberrecht  
Jason R. Mau  
Attorneys for Petitioner

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 21<sup>st</sup> day of May, 2013, a true and correct copy of the within and foregoing instrument was served upon:

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☐ U.S. Mail  
☒ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

State of Idaho Board of Tax Appeals  
3380 Americana Terrace, Suite 110  
Boise, ID 83706

- ☐ U.S. Mail  
☒ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

  
\_\_\_\_\_  
Phillip S. Oberrecht  
Jason R. Mau

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:25

SEP 20 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAOK  
DEPUTY

Phillip S. Oberrecht (ISB No. 1904)  
Jason R. Mau (ISB No. 8440)  
GREENER BURKE SHOEMAKER OBERRECHT P.A.  
950 West Bannock Street, Suite 950  
Boise, ID 83702  
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Facsimile: (208) 319-2601  
Email: [poberrecht@greenerlaw.com](mailto:poberrecht@greenerlaw.com)  
[jmau@greenerlaw.com](mailto:jmau@greenerlaw.com)

Attorneys for Appellant, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**STIPULATION FOR PROTECTIVE  
ORDER**

COME NOW Appellant, The Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (“Good Samaritan Society”), and Respondent, Board of Ada County Commissioners, the parties to this action, by and through their respective counsel, and hereby enter into the following Stipulation for Protective Order.

The parties claim that certain documents and information which have been requested in discovery are protected and/or proprietary in nature. They further claim that a protective order is necessary to protect against the unauthorized use or disclosure of such information.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

1. Scope of Protected Material. Pursuant to this Stipulation for Protective Order, the documents identified in Exhibit A, attached hereto, and incorporated herein by this reference, shall be subject to the protections provided in this stipulation.

2. Designation of Protected Material. When either party produces information or documents described in Exhibit A, it shall identify such information as "Protected Material." In designating information as "Protected Material," the parties shall make such a designation only as to material which, in good faith, it believes constitutes such materials. Failure to designate a document or other information as "Protected Material" shall in no case be deemed a waiver of confidentiality. Either party may challenge a designation of information or documents as "Protected Material" as provided in paragraph 11 of this Stipulation.

3. Permitted Use. Protected Material shall be used by the parties for the sole purpose of conducting this litigation and not for any other purpose whatsoever. To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, responses to requests for production, or any other papers filed or to be filed with the Court reveal or tend to reveal the contents of any document or information claimed to be confidential, these papers or any portion thereof shall be filed under seal by the filing party with the Court in an envelope marked "SEALED" with a copy of the Protective Order attached thereto.



4. Permitted Disclosures. Information designed as "Protected Material" shall be used solely for the purpose of conducting this litigation and for that purpose, may be disclosed only to the following persons:

- a) the attorneys within the law firm or office of each attorney of record herein and their paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel;
- b) any person retained as a consultant or expert by a party to assist in the litigation of this action;
- c) any deponent to whom there is legitimate need to disclose particular materials;
- d) the parties to the action; and
- e) any court having jurisdiction over this action and any trier of fact, judge, jury, or court reporter involved in this action, during trial or in connection with any motion or other proceeding. In the event one party intends to offer into evidence materials designated as Protected by the other party, counsel for the offering party shall inform the other party's counsel in time to allow counsel to request that such evidence be submitted in a session of court closed to the public.

5. Acknowledgment. All persons identified in Paragraph 4 ("Permitted Disclosures"), subparagraphs a), b), c), and d) above, who are given access to Protected Material by Appellant or Respondent shall sign an "Acknowledgment" agreeing to the terms of this Stipulation.

6. Jurisdiction. Each individual who receives any Protected Material hereby agrees to subject himself/herself to the jurisdiction of the Court for the purposes of any proceedings related to enforcement of this Protective Order.

7. Storage. The recipient of any Protected Material shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information as is exercised by the recipient with respect to its own information.

8. Protection of Confidentiality. The recipient of any Protected Material shall take all reasonable steps to protect the Protected Material from disclosure to a person other than those to whom disclosure is expressly permitted herein, or under any subsequent court order.

9. Clerk's Duties. The parties request that the Clerk of the Court maintain under seal all documents and all transcripts of deposition testimony filed with this court in this litigation by any party which are in whole or in part designated as Protected Material, including all pleadings, deposition transcripts, exhibits, and discovery responses or memoranda purporting to produce or paraphrase such information. The person filing such material shall do so in accordance with paragraph 2 above, thereby designating to the clerk that all or a designated portion of such material is subject to this Order and is to be kept under seal, except that upon the default of the filing party to so designate, either party may do so.

10. Subpoena of Protected Material. In the event any party receives a subpoena or other legal or governmental demand for protection of any Protected Material, the party receiving said demand shall notify the requesting party of the party's obligations defined by this Stipulation in order to allow the requesting party to take appropriate steps in obtaining a court order, ordering the production of the requested Protected Material.

11. Challenge to Designation of Protected Material. A party shall be obligated to challenge the designation of Protected Material at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event the challenging party disagrees at any stage of these proceedings with a designation of information and/or documents as Protected Material, the challenging party shall provide to opposing counsel written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the challenging party may request appropriate relief from the court by demonstrating that the designation is inappropriate and that the challenging party has a good faith reason, consistent with the purposes of this Order, for desiring to disclose or to use the material in a way not permitted by this Order if said designation were to stand.

12. Return of Protected Material. Within 120 days of the termination of this litigation between the parties (including all appeals), all Protected Material and all copies thereof, including imaged or electronic versions thereof, and all summaries and abstracts thereof, shall be returned to the other party upon written demand for the same.

13. Survival. Except as specifically provided herein, the terms, conditions, and limitations of this Protective Order shall survive the termination of this action.

14. Relief from Order. This Protective Order is without prejudice to the right of either party to seek relief from the Court for good cause shown from any of the provisions hereof.

//

//

//

DATED this 19<sup>th</sup> day of September, 2013.

GREENER BURKE SHOEMAKER  
OBERRECHT, P.A.

By: 

Phillip S. Oberrecht – Of the Firm

Jason R. Mau – Of the Firm

Attorneys for Appellant, The Evangelical  
Lutheran Good Samaritan Society

DATED this 20<sup>th</sup> day of September, 2013.

ADA COUNTY PROSECUTING ATTORNEYS

By: 

Greg H. Bower – Of the Firm

Gene A. Petty – Of the Firm

Attorneys for Respondent, Ada County Board of  
Commissioners

### ACKNOWLEDGMENT

The undersigned hereby acknowledges:

1. I have read the Stipulated Protective Order entered \_\_\_\_\_, 2013, in *The Matter of The Appeals of The Evangelical Lutheran Good Samaritan Society from the Board of Equalization of Ada County for tax years 2012 and 2013*, before the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, Case No. CV OT 1309169, consolidated with Case No. CV OT 1312345, and I am one of the persons contemplated by paragraph 4 thereof as authorized to receive disclosure of information designated "Protected Material."
2. I fully understand and agree to abide by the obligations of the Stipulated Protective Order.
3. I agree to keep confidential all Protected Material which is revealed to me. I will not disclose, discuss, distribute, disseminate or otherwise give anyone access to any Protected Material which I am shown or given other than authorized persons listed in paragraph 4 if the document is designated as "Protected Material." I will not use or rely on the confidential Protected Material that I learn as a result of this litigation for any purpose, except as reasonably required by the litigation.
4. Upon the conclusion of this litigation, I agree to comply with paragraph 12 of the Stipulated Protective Order concerning return and/or disposal of the Protected Material supplied to me.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

## **EXHIBIT A**

The documents subject to the Stipulation for Protective Order and Protective Order are:

1. All documents and records relating to The Evangelical Lutheran Good Samaritan Society's operating statements, financial statements and budget information; company policies, procedures and manuals; and any other proprietary business records.
2. All documents and records disclosed or created by, or in the possession of, Ada County, its employees, agents and witnesses relating to any individual, business entity, or governmental entity not a party to this litigation.

RECEIVED

SEP 20 2013

Ada County Clerk



NO. \_\_\_\_\_ FILED \_\_\_\_\_  
AM. \_\_\_\_\_ P.M. 2:10

SEP 25 2013

CHRISTOPHER D. RICH, Clerk  
By DIANE OATMAN  
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**STIPULATED PROTECTIVE  
ORDER**

THIS MATTER having come before the Court upon the parties' Stipulation for Protective Order, and good cause appearing therefore,

**IT IS HEREBY ORDER, AND THIS DOES ORDER, as follows:**

1. Scope of Protected Material. Pursuant to this Protective Order, the documents identified in Exhibit A, attached hereto, and incorporated herein by this reference, shall be subject to the protections provided herein.

2. Designation of Protected Material. When either party produces information or documents described in Exhibit A, it shall identify such information as "Protected Material." In designating information as "Protected Material," the party shall make such a designation only as to material which, in good faith, it believes constitutes such materials. Failure to designate a document or other information as "Protected Material" shall in no case be deemed a waiver of confidentiality. Either party may challenge the designation of information or documents as "Protected Material" as provided in paragraph 11 of this Order.

3. Permitted Use. Protected Material shall be used by the parties for the sole purpose of conducting this litigation and not for any other purpose whatsoever. To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, responses to requests for production, or any other papers filed or to be filed with the Court reveal or tend to reveal the contents of any document or information claimed to be confidential, these papers or any portion thereof shall be filed under seal by the filing party with the Court in an envelope marked "SEALED" with a copy of the Protective Order attached thereto.

4. Permitted Disclosures. Information designed as "Protected Material" shall be used solely for the purpose of conducting this litigation and for that purpose, may be disclosed only to the following persons:

- a) the attorneys within the law firm or office of each attorney of record herein and their paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel;
- b) any person retained as a consultant or expert by a party to assist in the litigation of this action;
- c) any deponent to whom there is legitimate need to disclose particular materials;
- d) the parties to the action; and
- e) any court having jurisdiction over this action and any trier of fact, judge, jury, or court reporter involved in this action, during trial or in connection with any motion or other proceeding. In the event a party intends to offer into evidence materials designated as Protected by the other party, counsel



for the offering party shall inform the other party's counsel in time to allow counsel to request that such evidence be submitted in a session of court closed to the public.

5. Acknowledgment. All persons identified in Paragraph 4 ("Permitted Disclosures"), subparagraphs a), b), c), and d) above, who are given access to Protected Material by Appellant or Respondent shall sign an "Acknowledgment" agreeing to the terms of this Order.

6. Jurisdiction. Each individual who receives any Protected Material hereby agrees to subject himself/herself to the jurisdiction of the Court for the purposes of any proceedings related to enforcement of this Protective Order.

7. Storage. The recipient of any Protected Material shall maintain such information in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such information as is exercised by the recipient with respect to its own information.

8. Protection of Confidentiality. The recipient of any Protected Material shall take all reasonable steps to protect the Protected Material from disclosure to a person other than those to whom disclosure is expressly permitted herein, or under any subsequent order of the Court.

9. Clerk's Duties. The parties request that the Clerk of the Court maintain under seal all documents and all transcripts of deposition testimony filed with this Court in this litigation by any party which are in whole or in part designated as Protected Material, including all pleadings, deposition transcripts, exhibits, and discovery responses or memoranda purporting to produce or paraphrase such information. The person filing such material shall do so in accordance with paragraph 2 above, thereby designating to the clerk that all or a designated

portion of such material is subject to this Order and is to be kept under seal, except that upon the default of the filing party to so designate, either party may do so.

10. Subpoena of Protected Material. In the event any party receives a subpoena or other legal or governmental demand for protection of any Protected Material, the party receiving said demand shall notify the requesting party of the party's obligations defined by this Stipulation in order to allow the requesting party to take appropriate steps in obtaining a court order ordering the production of the requested Protected Material.

11. Challenge to Designation of Protected Material. A party shall be obligated to challenge the designation of Protected Material at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event challenging party disagrees at any stage of these proceedings with the designation of information and/or documents as Protected Material, the challenging party shall provide to opposing counsel a written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the challenging party may request appropriate relief from the Court by demonstrating that the designation is inappropriate and that the challenging party has a good faith reason, consistent with the purposes of this Order, for desiring to disclose or to use the material in a way not permitted by this Order if said designation were to stand.

12. Return of Protected Material. Within 120 days of the termination of this litigation between the parties (including all appeals), all Protected Material and all copies thereof, including imaged or electronic versions thereof, and all summaries and abstracts thereof, shall be returned to the other party upon written demand for the same.

13. Survival. Except as specifically provided herein, the terms, conditions, and limitations of this Protective Order shall survive the termination of this action.

14. Relief from Order. This Protective Order is without prejudice to the right of either party to seek relief from the Court for good cause shown from any of the provisions hereof.

IT IS SO ORDERED this 24<sup>th</sup> day of September, 2013.

By [Signature]  
S. Judge for Judge Helms

**EXHIBIT A**

The documents subject to the Stipulation for Protective Order and Protective Order are:

1. All documents and records relating to The Evangelical Lutheran Good Samaritan Society's operating statements, financial statements and budget information; company policies, procedures and manuals; and any other proprietary business records.
2. All documents and records disclosed or created by, or in the possession of, Ada County, its employees, agents and witnesses relating to any individual, business entity, or governmental entity not a party to this litigation.

## CERTIFICATE OF SERVICE

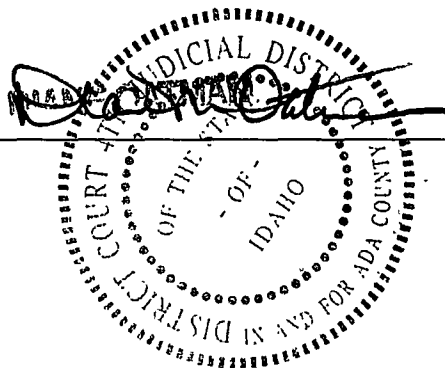
I HEREBY CERTIFY that on this 20 day of September, 2013, I served a true and correct copy of the foregoing STIPULATED PROTECTIVE ORDER to the following person(s) by the following method:

Phillip Oberrecht  
Attorney at Law  
950 West Bannock Street, Ste 950  
Boise, Idaho 83702

☒ Hand Delivery  
☐ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

Gene A. Petty  
Deputy Prosecuting Attorney  
200 W. Front Street, Rm 3191  
Boise, Idaho 83702

☐ Hand Delivery  
☒ U.S. Mail  
☐ Certified Mail  
☐ Facsimile



DEC 31 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

Phillip S. Oberrecht (ISB No. 1904)  
Jason R. Mau (ISB No. 8440)  
GREENER BURKE SHOEMAKER OBERRECHT P.A.  
950 West Bannock Street, Suite 950  
Boise, ID 83702  
Telephone: (208) 319-2600  
Facsimile: (208) 319-2601  
Email: [poberrecht@greenerlaw.com](mailto:poberrecht@greenerlaw.com)  
[jmau@greenerlaw.com](mailto:jmau@greenerlaw.com)

Attorneys for Appellant, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY'S  
UPDATED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

COMES NOW Appellant, The Evangelical Lutheran Good Samaritan Society ("Good Samaritan Society"), by and through its counsel of record, Greener Burke Shoemaker Oberrecht, P.A., and submits its Updated Findings of Fact and Conclusions of Law for trial in this matter.

Plaintiffs' Updated Findings of Fact and Conclusions of Law are as follows:

**I. FINDINGS OF FACTS**

1. The Evangelical Lutheran Good Samaritan Society is a religious, charitable, nonprofit corporation incorporated under the laws of North Dakota, recognized as a tax exempt

organization under Section 501(c)(3) of the Internal Revenue Code and a public charity pursuant to Section 509(a)(2), and has authority to conduct business in Idaho. (Trial Exs. 4, 18, 40.)

2. The Good Samaritan Society “is organized solely for nonprofit purposes and is not organized nor shall it operate for pecuniary gain or profit and does not contemplate the distribution of gains, profits or dividends to the members thereof.” (Trial Ex. 4; Trial Tr. 53:10-20.)

3. Its Restated Articles of Incorporation (“Articles”) specifically state its three purposes:

- A. To share God’s love in word and deed, believing that in Christ’s love, everyone is someone.
- B. To provide shelter and supportive services to older persons and others in need.
- C. To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

(Trial Ex. 4.)

4. The property, assets, and net income of the Good Samaritan Society “are irrevocably dedicated to charitable and religious purposes and no part of the profits or net income of the Society shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private shareholder or individual.” (*Id.*)

5. Upon dissolution, the assets must be distributed to nonprofit social ministry organizations as designated by the Evangelical Lutheran Church in America (“ELCA”) and The Lutheran Church – Missouri Synod (“Missouri Synod”). (Trial Ex. 4; Trial Tr. 54:11-55:1.)

6. The Good Samaritan Society started from humble beginnings and has grown into one of the largest not-for-profit providers of senior care and services. Those who started the work of the Good Samaritan Society envisioned a home shared by residents and staff members, sharing God’s love in word and deed, and living with deep compassion and optimism. (Trial Tr. 43:18-47:21; Trial Ex. 47.)

7. The Good Samaritan Society believes its history shows how God can do extraordinary things through ordinary people asking simply “Lord, what would you have me do today?” (Trial Ex. 47.)

8. The Good Samaritan Society is driven to fulfill the physical, emotional, and spiritual needs of its residents. (*Id.*)

9. To the Good Samaritan Society, it is about showing its residents, clients, families, and communities that “In Christ’s Love, Everyone Is Someone,” and to them, that is very meaningful, taken to heart, and is more than a slogan. It is a shorthand way to show its intention of sharing God’s love by pointing to Jesus, and suggesting there is hope and help for today and beyond. (Trial Exs. 5, 47; Trial Tr. 48:1-16, 68:22-69:3, 69:7-10, 133:4-10, 339:10-17.)

10. Each of its residents is cherished, and is provided with everything he or she needs to live the whole of life. Potential residents that contact local Good Samaritan Society communities are given a service not found in most organizations—a “chance to experience the love Jesus Christ has brought into our lives.” (Trial Ex. 47.)

11. The Good Samaritan Society was incorporated under the laws of North Dakota on September 29, 1922. It was founded in part by Reverend August “Dad” Hoeger, a Lutheran parish pastor in North Dakota, who believed that “the whole Good Samaritan Society started in the heart of God; that it was His good will that His old people should have Christian care, and so He put into the hearts of men that they should go and do His good pleasure.” (Trial Tr. 43:18-19, 82:11-15; Trial Ex. 1.)

12. The organization was started with money remaining from a newsletter plea to help a young North Dakotan boy named Christian crippled by polio. After the boy received treatment in Kansas City, Missouri, Rev. Hoeger looked to use the remaining money to care for other individuals with disabilities. They soon realized the need for a home to care for these individuals and organized the Good Samaritan Society to do this work. (Trial Tr. 43:18-44:11, Trial Ex. 1.)

13. From the beginning, Rev. Hoeger insisted that the ministry’s central focus would be Jesus and that the Good Samaritan Society must be first and foremost a Christian organization. (Trial Ex. 1; Trial Tr. 67:8-17.)

14. Rev. Hoeger was later quoted to say that the Good Samaritan Society was to “take care of the whole person, body and soul. The body is important and we should take the best care of it as possible, but if that is all we do, we fall short of our God-given duty.” (Trial Ex. 1.)

15. The name chosen for the organization was a direct reference to the well-known biblical parable of the Good Samaritan as depicted in the Gospel of Luke (*Luke* 10:25-37.). The name is a reminder throughout the organization of Jesus’ challenge to love your neighbor as yourself and to go and do as the Samaritan did in the parable – to remember the “critical importance” to stop for people who have been wounded along life’s road, regardless of their cultural, religious, or ethnic background. (Trial Tr. 55:12-57:24.)

16. To begin this ministry, the Good Samaritan Society first sent two women from Rev. Hoeger’s congregation to train for three months at an Augustana Synod-operated Christian home for disable children in Axtell, Nebraska. (Trial Ex. 1.)

17. Soon after, with these two women as its original employees, the Good Samaritan Society rented its first home, with six rooms, in Arthur, North Dakota. The Good Samaritan Society’s first residents were crippled children, mentally disabled young adults, and adults with disabilities. The residents and employees lived together in the home. (Trial Ex. 1; Trial Tr. 44:14-24.)

18. In response to obvious need, the Good Samaritan Society soon expanded its scope of services to the elderly. An event that first illustrated this need to the Good Samaritan Society occurred when an elderly man on crutches arrived by train in Arthur and asked Rev. Hoeger if he would take in a crippled man. Soon after, the Good Samaritan Society realized that this man



could walk on his own and had feigned the disability in order to find a home. This event opened Rev. Hoeger's eyes to needs of the lonely aged, and set the Good Samaritan Society in a new direction that would eventually lead to the organization's expansion and many of the services provided by the Society today. This expansion was set in motion by the generous donations of supporters. (Trial Ex. 1; Trial Tr. 45:5-16.)

19. The expansion of the Good Samaritan Society began in Arthur, purchasing 40 acres to expand its mission; and in 1929, it began its expansion out of Arthur into Fargo and Barnes, North Dakota. By 1930, the growing organization required Rev. Hoeger to begin working full-time for the ministry, and he moved the Good Samaritan Society headquarters to Fargo. The Good Samaritan Society survived the Great Depression and World War II, and by 1952, it was sharing its ministry through 32 facilities in 7 states. By 1962, the Good Samaritan Society operated 71 facilities in 13 states; in 1972, 160 facilities in 20 states; and currently it has approximately 240 facilities in 24 states, including 4 in Idaho. (Trial Tr. 46:11-47:21, 48:8-9; Trial Ex. 1.)

20. The Good Samaritan Society's founding principles and purposes have remained unchanged after 92 years. The Good Samaritan Society believes its continued successful ministry can be attributed to the example Rev. Hoeger set years ago allowing the Lord to guide and direct, and to never fail in giving complete credit to the Lord. Today, the ministry is carried out daily by what is characterized by the Good Samaritan Society as its "Hallmark Values," being an approach that is Christ-centered, resident-centered, staff-centered, and community-centered. (Trial Exs. 1, 19 [GSS002729]; Trial Tr. 60:1-61:1, 110:11-14, 448:20-449:11.)

21. The Good Samaritan Society's religious and charitable mission has remained the same since its foundation in 1922, while the methods of payment for those unable to pay have changed significantly over the period it has existed. Major governmental and regulatory changes to a system for the reimbursement of services related to skilled nursing care have altered the profession and the way the Good Samaritan Society supports the professional care and treatment it provides to all in need. (Trial Tr. 47:12-14, 112:24-113:17, 449:12-450:15, Trial Ex. 19 [GSS002729].)

22. The Good Samaritan Society is affiliated with the two largest denominations of the Lutheran Church, the ELCA and Missouri Synod. The ELCA has formally recognized that the mission of the ELCA and the mission of the Good Samaritan Society "are fully integral to the achievement of God's mission." Similarly, the Missouri Synod has recognized the Good Samaritan Society as a Recognized Service Organization. The Missouri Synod's recognition means the Good Samaritan Society is a ministry "through which the mission of the church becomes the people of God responding in the name of Christ to those 'who thirst, are naked, were sick, lonely, and in need of comfort.'" Each body sees the Good Samaritan Society as a significant partner and social arm of the church providing care and services for seniors and others in need. The affiliations keep the Good Samaritan Society grounded in a particular religious tradition and provide resources to help the Good Samaritan Society think through the appropriate responses for faith-based living and work in a very diverse society. (Trial Tr. 34:25-35:2, 83:16-22, 89:4-96:17; Trial Exs. 16, 17.)

23. Four of the Good Samaritan Society's Board positions are designated for approval by the ELCA. (Trial Exs. 15, 103 [GSS002593].)

24. All members of the Good Samaritan Society are required to be active members of a Christian church. Board members are also required to be active members of a Christian Church and nonemployee Board members are required to be active members of a Lutheran Church. The President and Executive Vice President, as well as certain members of the Executive Leadership for Workforce Systems, Mission Effectiveness, and Operations Systems are also required to be active members of a Lutheran Church. (*Id.*)

25. Each of the Good Samaritan Society's local skilled nursing facilities is led by an Administrator, who is expected to be the administrative and spiritual head of that community. This is a unique charge to have the business leaders be the spiritual leaders of the community as well, even if the location has a chaplain. This reflects an embodiment of the Good Samaritan Society's history of its first leader, a Lutheran pastor, and the fact that many of its first administrators were pastors. Pastoral care has always been practiced in the midst of the leadership of the Good Samaritan Society. The Administrator is expected to be a strong Christian model in the midst of his or her work life. The Administrator is also expected to be an active member in a local Christian church, not necessarily a Lutheran church. (Trial Tr. 74:1-75:25, 78:20-25, 80:11-81:25.)

26. An Administrator is charged with making sure that the variety of programmatic pieces and spiritual ministry policies are all carried out. The spiritual leadership position requires making spiritual care of the residents an essential part of all activities and ensuring that the staff is encouraged to meet the spiritual needs of the residents. The Good Samaritan Society believes that it is important that the Administrator is supported in his or her spiritual life, and has a supportive community to worship, express his or her faith, and grow in his or her faith. Each Administrator advances the Good Samaritan Society's values by drawing on the spiritual programs, including the Good Samaritan Society WAY, the STAR ministry, daily devotions, grace at meals, singing from hymnals, bible studies, worship services, writing for and reading spiritual publications, prayer before all meetings, and local clergy involvement. (Trial Tr. 80:11-81:25, 131:19-151:9; Trial Exs. 9, 10.)

27. Chaplains also serve at some of the local locations and are asked to provide individual pastoral care to all residents and residents' family members. The Chaplain assures that opportunities for appropriate worship and Bible study are available for each resident and helps with all Good Samaritan Society spiritual programs. Chaplains are also available for pastoral care of staff members and are expected to be an integral part of the care plan for each resident. The Good Samaritan Society also provides spiritual training, workshops, and retreats for all of its employees to help weave the mission into the day-to-day life of each campus. (Trial Tr. 38:9-22, 70:21-24; Trial Ex. 59.)

28. Christian Communities of Care, The Good Samaritan Society Way ("The GSS Way"), and STAR Ministry are the Good Samaritan Society's main spiritual resources currently used for staff and residents to encourage them to provide compassionate ministry to each other. All three were developed by Rev. Greg Wilcox. Christian Communities of Care and The Good Samaritan Society Way were designed as spiritual training manuals for its staff and the STAR

Ministry is a program designed to encourage Christian staff members to “lift up the unique love of God in Jesus Christ.” (Trial Tr. 59:12-73:18; Trial Exs. 6, 7, 8.)

29. The Christian Communities of Care program was the Good Samaritan Society’s response to the Pioneer Movement within the long-term care community to make nursing homes homier. The Good Samaritan Society wished to reflect the best practices within that movement but do it with a Christian emphasis. It sought insight from its administrators and staff to make environments that were more welcoming, where everyone could experience a sense of God’s love for them each day. The Christian Communities of Care applied to everything from staffing patterns to hospitality. This program has been replaced by The GSS Way. (Trial Tr. 59:17-61:5.)

30. The GSS Way training materials were designed to teach and encourage the Good Samaritan Society’s approach to life to each Good Samaritan Society staff member. The training program is the current iteration of the Good Samaritan Society’s core values. The goal of The GSS Way is to ensure that each Good Samaritan Society community will be a place where God’s love is part of every daily encounter. During the training, each staff member is encouraged to visualize his/her work through what it calls the “three Os,” Obligation, Opportunity, and Outcome. “Our Obligation is to share God’s love in word and deed.” “[W]e are obligated to give that love away.” “Our Opportunity is to touch people’s lives by offering a profound concept of wellbeing that embraces mind, body and soul.” “[W]e have an opportunity every day to impact people’s sense of well-being.” “What do we hope to achieve as the Outcome of our collective work here at the Good Samaritan Society? That everyone feels loved, valued and peaceful.” (Trial Tr. 61:3-66:24; Trial Exs. 7, 8.)

31. The GSS Way also focuses on eight traits of Jesus Christ: Compassion, Joy, Acceptance, Love, Honesty, Perseverance, Humility and Courage. The Good Samaritan Society sees these eight values as universal values, and recognizes that there are many people who are not Christian within their network, but encourage every staff member to weave them into their work each day, regardless of department. The Boise facility has embraced the GSS Way, and even does check-ins with each department to reflect on the training and how they see the traits of Jesus displayed daily. (Trial Tr. 61:18-62:4, 543:3-544:6, 403:6-404:15; Trial Exs. 7, 8.)

32. STAR is an acronym which stands for Stop Along the Road, which refers to Jesus’ parable of the Good Samaritan (*Luke* 10:25-37), who stopped along the road for a wounded traveler. It also refers to Jesus’ interaction with the blind beggar named Bartimaeus, and reinforces the Good Samaritan Society’s teaching of stopping, listening, healing, and affirming (*Mark* 10). The STAR Ministry is meant to emphasize the critical importance of making sure to stop for the people met along life’s journey. The three primary goals of the STAR Ministry are (1) encouraging all staff members and residents to understand their work and their life within the Good Samaritan Society community in terms of the whole of life’s journey, including physical, mental, emotional, social, vocational and spiritual; (2) providing guidelines for appropriate and compassionate ministry between Good Samaritan Society community members, including but not limited to the sharing of the Christian faith with others; and (3) offering practical training, encouragement, affirmation, and models for Good Samaritan Society community members in the sharing of God’s love. (Trial Tr. 67:12-72:16; Trial Ex. 6.)

33. The Good Samaritan Society also ensures that the spiritual needs of its residents are being met through fundamental spiritual activities and has developed policies and procedures to reflect these values. A primary activity provided to residents is the opportunity to participate in worship services. The Good Samaritan Society has outlined a specific procedure for worship services to provide residents times to worship in a Christian setting. The Good Samaritan Society encourages congregational participation and regular observation of the Lord's Supper for each resident. Residents are encouraged to attend a weekly service and are offered help to attend if needed. These activities have been implemented at the Boise facility. (Trial Tr. 40:16, 77:1-78:14, 86:13-16; Trial Exs. 11, 12, 13, 14.)

34. The Good Samaritan Society does not require each resident to attend a Lutheran service, but encourages each to maintain ties with his or her own church. (Trial Exs. 60, 64.)

35. The Good Samaritan Society also provides daily devotions to help guarantee each resident is provided with the opportunity for daily reflection and prayer. These devotions are presented at every location by appropriate staff members and include scripture, a Christ- or cross-centered theme, prayer, and a song if time permits. The Good Samaritan Society provides each facility monthly resources to assist with these devotions and to give a framework for the kind of devotions that they would like to have at each location. It also provides them with resources for bible studies which are geared towards different levels of cognitive abilities of its residents. The Good Samaritan Society also provides large-print spiritual publications for its residents that have difficulty reading regular print. (Trial Tr. 38:3-5, 39:3-10, 39:14-40:6, 40:9-16, 85:5-10, 141:1-10, 546:19-547:3; Trial Ex. 11.)

36. The Good Samaritan Society frequently practices the basic spiritual activity of prayer. Prayers are offered at the beginning of each meal and before all meetings with staff, family, and residents. The prayers typically ask for God and his presence to be there with the participants. The Good Samaritan Society has resources available for prayers, including table prayer sheets for the dining rooms and other selected prayers. (Trial Tr. 85:11-25, 138:3-5, 141:16-142:2; Trial Exs. 12, 13.)

37. Under Project Outreach, a ministry begun in 1966, the Good Samaritan Society provides its residents and staff an opportunity to help share God's love in Christ with people in other parts of the world. (Trial Tr. 108:4-109:13; Trial Ex. 23.)

38. Currently, residents and staff can contribute financially or take part in mission trips to the senior home and soup-kitchen in Columbia serving that country's poor and displaced people, the LAMB Hospital in Bangladesh emphasizing care to women and children, and the Karanda Hospital in Zimbabwe serving a range of needs in that country's northern region. (Trial Tr. 108:12-109:13, 555:19-22; Trial Ex. 23.)

39. In 2012, the Good Samaritan Society was able to provide grants and assistance to the LAMB Hospital to use for medicine for poor patients and to support the work of the Hospital Chaplains; to the Karanda Hospital for medical supplies; to Columbia for educational scholarships for primary, secondary, and college age children from underprivileged families. (Trial Ex. 23.)

40. The Good Samaritan Society's spiritual ministry is supported nationally by its Vice President for Spiritual Ministries and Vice President for Mission Effectiveness and Senior Pastor Rev. Greg Wilcox and his staff. Rev. Wilcox is the grandson of the founder Rev. Hoeger. Rev. Wilcox belongs to the Lutheran Services in America as a senior mission leader. Rev. Wilcox has designed the ministry training and spiritual program materials currently used by the Good Samaritan Society. The same daily spiritual programs performed at the local facilities are recognized at the national campus, including prayer at meetings, devotions each day at 10:00 a.m., bible studies, worship services, and sacerdotal functions. He also performs weddings, baptisms, and funerals for staff members and also provides counseling. Special worship services are held at the national campus for Founder's Day and for recognition of volunteers. (Trial Tr. 32:13-15, 35:17-36:3, 37:2-16, 41:11-16, 82:19-83:6.)

41. The Good Samaritan Society incorporates Society-wide functions to measure mission effectiveness to ensure they are effective in sharing God's love in the midst of the work they do. It wishes to provide a Christian community where everyone that comes into contact with the Good Samaritan Society, whether staff, resident, visitor, volunteer, or vendor, experiences at least a glimpse of the power of God's love at work through Jesus. (Trial Tr. 37:18-25, 60:6-13.)

42. Starting with Rev. Hoeger, the central focus of the Good Samaritan Society has always been lifting up the person of Jesus, and the sense of God's love it finds alive in Jesus. That spiritual focus has remained intact, as the Good Samaritan Society remains to this day a religious organization, making God's love a priority in its day-to-day interactions between staff, residents, family, and visitors. (Trial Tr. 67:8-17, 82:7-84:1.)

43. The religious foundation and values of the Good Samaritan Society have inspired the organization to provide supportive services to older persons and others in need. The Good Samaritan Society believes it maintains Christian communities of care which are doing God's work and that God is working through its residents and staff in such a way that each experiences a sense of meaning and self-worth. (Trial Ex. 5.)

44. Its programs and policies have influenced compassionate, accepting, and loving care given at its locations, and have provided peace and inspiration throughout its network. This has been recognized nationally through satisfaction surveys, suggesting the spiritual programs and policies have had a real impact. The expectation is that the Good Samaritan Society's services reflect a deep sense of love, and that in the midst of that love Jesus is reflected in everything done at each location, whether it be lifting and transferring of residents, toileting and feeding, or any of the other things done for daily care. (Trial Tr. 66:14-24, 72:17-73:18, 84:2-22.)

45. One of the many local campuses operated as part of its charitable and religious ministry for the Good Samaritan Society is the facility in Boise. Just like the organization as a whole, the Boise facility strives through all of its services to show its residents, residents' families, and the community that "in Christ's love, everyone is someone." (Trial Ex. 46 [GSS003191].)

46. In 1912, Dr. George Collister built a large residence on property that is now occupied by the Boise facility. Dr. Collister was known to never turn away a patient for lack of money to pay for medical services. This legacy was continued after Dr. Collister's death when the Idaho Elks acquired the residence in 1947 and started a Convalescent Home for Children. The Elks then used the property for a rehabilitation center until they required larger facilities in 1957 to continue their service. (Trial Ex. 46 [GSS003193-94].)

47. Lutheran congregations in the Boise area responding to the need for care of the elderly and handicapped then acquired the home. The building was remodeled for care of 16 elderly residents and operated as the Boise Lutheran Sunset Home Association. Problems arose in the operation of the facility and The Evangelical Lutheran Good Samaritan Society was asked to assist with its operation. In 1958, the Good Samaritan Society assumed ownership and provided care for 29 residents. From the beginning of the Good Samaritan Society's operation of the Boise facility (called Boise Valley Sunset Home at the time), a significant emphasis was placed on caring for the spiritual, social, and emotional needs of each resident. The Boise Valley Sunset Home advertised that it was a home concerned with the total care of each resident, aimed to ensure each resident could maintain or regain his or her individual dignity. (Trial Ex. 46 [GSS003194-98]; Trial Tr. 164:13-166:10.)

48. In the early 1960s, a Main Annex was built expanding the capacity to 60 residents. Then in the mid-1960s, the Good Samaritan Society removed the old Collister residence to build a new addition. In 1972, the administration agreed to set aside room in a new addition for a group of young handicapped adults who wanted to live together instead of among residents in traditional senior homes. This community became known as the Hoeger House. The Good Samaritan Society celebrated its 25<sup>th</sup> anniversary in Boise in 1983 and changed its name to Boise Samaritan Care Center to better reflect its mission and service. The facility and campus continued to expand its services, later changing its name to Good Samaritan Society – Boise Village, to the point that the skilled nursing facility now houses five distinct "neighborhoods" of caring that have their own distinct personality: the Hoeger House, a special care unit that provides care for residents with major birth-related long-term issues; Eagle House, a special long-term care unit for young adults with acquired brain injuries; Harbor Care, a special long-term care unit which treats residents that require a high level of care for symptoms associated with dementia; Syringa I, a short-term sub-acute transitional care and therapy unit; and Syringa II, the traditional long-term unit at the Boise facility, caring for those unable to return to living a more independent life. (Trial Tr. 167:9-178:9, 333:19-336:15; Trial Exs. 45A, 46 [GSS003191-92, 3194-97].)

49. Rev. Dad Hoeger himself assisted with the transfer of operations to the Good Samaritan Society in 1957. His vision for the entire Good Samaritan Society became the vision for the facility in Boise, and has remained the vision to this day. (Trial Ex. 46 [GSS003191,3194].)

50. At the Boise facility, the mission of the Good Samaritan Society is carried out daily in everything that it does. Many of the staff sees it as more than just a skilled nursing job, and as more of a vocation or a ministry, identifying residents as family members to love and take care of. They attempt to share God's love in word and deed by engaging with the residents, making time for them, hearing them, showing compassion, and making sure their needs are being

met. Living out the statement that in Christ's love, everyone is someone, the Boise staff tries to be genuine, living out the traits of Christ, and having the courage to take on the heavy tasks each day and being accountable to learn from mistakes and do better as a team going forward. (Trial Tr. 147:17-148:1, 390:5-6, 402:4-20.)

51. The Boise facility takes in, and is equipped for, residents that have a higher level of acuity than average residents at facilities in Idaho, and higher than the average residents within Boise. (Trial Tr. 831:7-833:19; Trial Ex. 96.)

52. The spiritual head of the Boise facility is Brian Davidson, its Administrator. Mr. Davidson tries every day to carry out the Good Samaritan Society's charge of being the facility's spiritual leader. He takes this charge to maintain and enrich the spiritual growth of his staff and residents very seriously, giving God all the glory and credit for an environment at the Boise facility where people are loved, valued, and at peace. Mr. Davidson is an active member of a local Christian church. He assures that appropriate Christian symbols and the Good Samaritan Society's mission statement are displayed throughout the campus. He also assures that daily devotions, grace at meals, prayer before meetings, bible studies, and worship services are performed at the facility. (Trial Tr. 131:19-144:12; Trial Exs. 9, 10.)

53. Of these, Mr. Davidson often leads daily prayer and devotions, and on occasion bedside memorials. Bedside memorials allow staff and family to say goodbye to a resident that has passed away; they meet in the resident's room and say a prayer and read scriptures. (Trial Tr. 141:16-144:8, 401:18-402:20, 538:11-22.)

54. In addition, Mr. Davidson assures that the staff is trained in the spiritual programs of the Good Samaritan Society. Also, he tries to ensure that the facility continues to be a Christian facility treating the needy, by keeping in constant communication with the staff and praying for them. Mr. Davidson also believes that the Good Samaritan Society's mission is fully implemented and very much intact at the Boise facility and that with God's help it will be sustained. (Trial Tr. 142:16-143:13, 144:9-12, 148:2-151:9.)

55. The Good Samaritan Society supports Mr. Davidson in his position as spiritual head of the facility. As an Administrator, the Good Samaritan Society provides him with ongoing training, including spiritual guidance. (Trial Tr. 132:7-24.)

56. The Boise facility also has the privilege of a full-time Chaplain to help meet the residents' and staff's spiritual needs. (Trial Tr. 137:23-25, 191:16-17, 210:20-211:1.)

57. The Rev. Charles Spiedel has been the Chaplain at the Boise facility for 12 years. Rev. Spiedel is an ordained minister, currently under call from the Eastern Washington-Idaho Synod of the ELCA. He received his Master of Divinity degree from the Lutheran Theological Seminary (now Luther Seminary) in St. Paul, Minnesota and has been an ordained minister for over 37 years. Rev. Spiedel was called to exercise the office of Chaplain as an ordained minister of Word and Sacrament. This means that the Boise facility is a place where Word and Sacrament ministry are taking place—the proclamation of the Gospel of Jesus Christ and the administration of Holy Communion and Baptism. Rev. Spiedel's "Call" means that he is to

serve with "steadfast commitment" in Christ's name as a faithful witness of the Gospel. (Trial Tr. 526:7-528:25; Trial Exs. 57, 58.)

58. Rev. Spiedel served in parish ministry prior to being called to serve at the Boise facility, serving as pastor in Lutheran churches in North Dakota and South Dakota, as well as pastor for Immanuel Lutheran Church in Boise. (Trial Tr. 529:8-25; Trial Ex. 60.)

59. As Chaplain, Rev. Spiedel is responsible for the spiritual care of the Boise facility residents, as well as the staff and the residents' families. (Trial Tr. 210:20-211:1, 541:8-16; Trial Ex. 59.)

60. Chaplain Spiedel's duties include conducting worship services, funerals, weddings, baptisms, daily devotions, Bible studies, music ministry and one-on-one visitations. He has also written spiritual pieces for Good Samaritan Society publications. These responsibilities are basically the same as his responsibilities he had as a pastor in a parish. (Trial Tr. 532:22-535:15, 538:23-539:5; 544:22-546:18, 547:4-548:8; Trial Exs. 60, 62.)

61. As the Boise facility's Chaplain, Rev. Spiedel ministers each day to the residents and staff, and he remains on-call and available to the facility at all other hours for emergencies. Each morning at five minutes to 9:00 a.m., he reads Scripture over the facility-wide intercom system and starts the day with a prayer. He also prays before breakfast for each of the three dining units. In addition, Rev. Spiedel presents a daily devotional at each of the dining units, which includes the reading of Scripture, sharing a gospel message and story, and prayer. Rev. Spiedel also prays at each of the interdisciplinary team meetings to develop a care plan for individual residents. On Monday afternoons, Rev. Spiedel has a music ministry where he plays recordings of various hymns for the residents. Rev. Spiedel presides over the weekly worship services open to all denominations in the Chapel where Holy Communion is offered once a month. He also presides over weekly worship services in the brain injury unit and the Alzheimer's unit, as these residents live in secure neighborhoods and are more comfortable in their personal settings. Special services for religious holidays, like Easter, Christmas, and Ash Wednesday are also offered. In addition, Rev. Spiedel provides hospice or palliative care, and administering spiritually during the last days of a resident's life. Chaplain Spiedel also lends his spiritual insight to the care of each resident, participating as a member in the care conferences and in the facility's quality improvement committee. (Trial Tr. 191:16-24, 392:22-393:22, 532:22-535:15, 538:23-539:5; 544:22-546:18, Trial Exs. 60, 64.)

62. Although Rev. Spiedel does not have a specific congregation or church body to oversee, he still performs the same duties as a Chaplain. In fact, his ministry as a Chaplain is more focused than when he was a pastor in a parish, not having to focus on administration duties. Now as the Chaplain at the Boise facility, once he walks in the door, he is doing ministry. He has done more spiritual things and praying as the Chaplain than at any of his previous congregations. (Trial Tr. 535:16-536:19.)

63. Just being there also means that Rev. Spiedel can participate in meaningful one-on-one sessions with residents. These visitations are available to anyone who desires a visit. Visitations are also made to new residents, persons with medical crises, and to residents in local



hospitals. Rev. Spiedel will even visit staff at the hospital. (Trial Tr. 536:20-538:2, 539:25-540:7; Trial Ex. 60.)

64. Rev. Spiedel is also there to support the ministry of local churches and ministers, and to encourage the spiritual life of each resident, regardless of religious affiliation. He also conducts worship services for Lutheran churches in the area when pastors are on vacation. He treats his work and his spiritual involvement with all the residents like he is each resident's pastor. (Trial Tr. 537:3-538:2, 540:8-541:4; Trial Ex. 60.)

65. Within the first few days of a resident arriving at Boise's facility, the Chaplain visits them, prays with them, and determines his or her religious background and experience. He collects information that will eventually be added to a resident's electronic record to disclose the spiritual needs and preferences to the caregivers. If a new resident belongs to a local congregation, the Chaplain will contact the local pastor to disclose the resident's new residence and will follow up if the resident requests contact from his or her church. Currently, there are approximately 17 denominations represented at the Boise facility. The Chaplain uses the initial visit to deliver a schedule of the available spiritual activities and to get an idea of the resident's spiritual needs. The Chaplain will administer to the spiritual needs of all residents even if they do not consider themselves religious. (Trial Tr. 573:23-574:15, 536:20-538:2; Trial Ex. 63.)

66. In addition to the services the Chaplain personally provides at the Good Samaritan Society Boise facility, he arranges for residents of all denominations to participate in worship services in the Chapel administered by local churches and clergy. Several different denominations use the Chapel for worship services and communion service. (Trial Tr. 541:17-542:12, 545:10-546:18; Trial Ex. 64.)

67. The Catholic Church has a service every Sunday, the Latter-Day Saints have services every first and third Sundays of the month, and various protestant denominations take turns holding services each Sunday afternoon. Also, the Catholic Church holds a communion service on Fridays, and the Episcopal Church holds a service every fourth Thursday of the month. Currently, there are on average about 12 residents that attend Catholic mass at the Chapel, and family members will occasionally attend mass with the residents. The Episcopal service is a similar, abbreviated version of the service held at St. Michael's Episcopal Cathedral, following the same Liturgical calendar. The Collister Ward of the Church of Jesus Christ of Latter Day Saints oversees the LDS Sacrament Service that is held every two weeks. The First Baptist Church had previously offered one of the Protestant monthly services at Boise Village for decades, but now serves the facility with a Compassion Team. These local churches appreciate the opportunity to hold worship services in the Boise Village Chapel, and also recognize the spiritual benefit for their congregants who are residents at the facility. Additionally, they recognize similarly to Rev. Spiedel, the ELCA, and the Missouri Synod that a valid Christian ministry is provided at the Boise facility. (Trial Tr. 142:6-14, 511:22-512:15, 521:23-523:8, 546:21-547:3, 568:15-571:1, 541:17-542:12.)

68. Deacon Bill Petzak of St. Mary's Catholic Church loves doing these services at the Good Samaritan Society as it gives him an opportunity to visit with the parishioners and bring them joy. Deacon Petzak visits other nursing facilities, but has noticed a considerable difference when he walks into Boise Village, where he observes a focus on meeting the needs of

the residents that he does not see at the other facilities. Another major difference is the opportunity to hold mass in the Chapel; in other facilities the limited services must use common areas. (Trial Tr. 511:19-517:21.)

69. The Rev. Richard Demarest, Dean of the St. Michael's Episcopal Cathedral campus has presided over services at Good Samaritan Society's Boise facility for approximately 15 years and has noticed the obvious Christian mission of the Good Samaritan Society consistently throughout that time. To him, the mission at the Good Samaritan Society is as Christocentric as one could get, and that is because of the religious pictures, mission statement, the unique use of a full-time chaplain, and the way they facilitate church services for the residents. The Good Samaritan Society looks and feels very much like a church institution. He has also recognized that the Boise facility provides excellent care for the residents and attributes this directly to the Christian mission. Dean Demarest attributes the "incredible compassion" and care received at the Good Samaritan Society Boise facility to the very clear Christian mission. (Trial Tr. 566:22-576:1.)

70. Glen Compton, the Director of Pastoral Care at First Baptist Church, and a member of the Compassion Team that visits former church members in nursing facilities, also notices a difference at the Boise facility. To him the differences are the practices and values of the staff and people at the Good Samaritan Society. This, along with the prominent presence of Rev. Spiedel, illustrates to him the religious nature of the facility. He has never experienced other organizations with Chaplains on staff that use their Chaplain to the extent that Rev. Spiedel is utilized at the Boise facility. Mr. Compton recommends the Good Samaritan Society to members of his church looking for a religious focus in their long-term care needs. (Trial Tr. 521:10-525:3.)

71. The Chaplain, Rev. Spiedel, recognizes that a valid ministry takes place at the Boise facility – a ministry that is as valid as any he has been called to serve in – and feels fulfilled in where God has put him. (Trial Tr. 532:14-17.)

72. Daily care decisions at the Good Samaritan Society's Boise facility are not driven by the bottom line, but by the vision to love each resident for who they are, looking to optimize a resident's quality of life. Where a need arises, they look first to see how it can be met, not how much it will cost to meet a need. (Trial Tr. 391:17-393:22.)

73. The Good Samaritan Society operates within a system that includes changing federal, state, and local policies that allow for reimbursement for care given to many of the poor residents of their jurisdictions, mainly through the programs the government has introduced through the years, like Medicaid. The modern health care structure requires the Good Samaritan Society to wisely manage its resources. (Trial Tr. 47:12-16, 112:24-114:8, 718:11-719:14; 449:12-450:15, 843:1-845:4.)

74. The Boise facility has high average Medicaid reimbursement rates, but it also has a high resident acuity. Even with the high average rate, Boise Village is within the direct costs statewide limit that caps reimbursement, showing that its high acuity, and not high costs, is driving the average Medicaid rate. (Trial Tr. 616:21-617:9, 640:13-641:5, 775:23-777:14, 831:7-833:19; Trial Ex. 96.)

75. The Boise facility will work with everybody that needs its services and seeks to find resources to cover its costs, and where applicable, provide a charitable allowance. For any individuals not able to pay out of no fault of their own, and who are not covered by insurance or governmental programs, the Good Samaritan Society provides a Private Charitable Allowance. The need for a charitable allowance may arise for a variety of reasons, either before or subsequent to admission. Regularly, a formal collections process must be followed in order to determine that a resident's costs cannot be covered before a charitable allowance is provided. For-profit organizations running skilled nursing facilities do not have policies for charitable allowances. (Trial Tr. 192:6-197:8, 291:8-15, 692:3-20; Trial Exs. 50, 51)

76. Aid to residents may come at the pre-admission point, but generally aid comes after admission. So, if an admission is completed and the Medicaid eligibility process begins, it may not come to light that there is a charity situation at the Boise facility until after admission. Charitable allowances are provided for periods not covered by Medicaid while the application process is pursued, and for private pay residents that run out of resources during the period they attempt to qualify for Medicaid. For example, in 2012 and 2013 charitable allowances were given where a resident's family took money that was supposed to be applied to a resident's account and where a resident's Social Security amount was reported in error but Medicaid did not adjust its private pay portion and the resident did not have resources to cover the additional charges. Also, there are instances when the resident will pay privately for a period of time and will later run out of resources to pay all or a portion of the amount due. The Boise facility offers charity for all or a portion of the amount owed for the remaining time the resident requires those services. (Trial Tr. 192:6-197:8; Trial Exs. 50, 51.)

77. The Boise facility has not refused admission to a qualified applicant solely on the basis that the applicant had no payor source through no fault of his own. The Boise facility will not seek to remove a resident for failure to pay and has not removed any resident for failing to pay for services. (Trial Tr. 193:5-18, 299:2-300:25, 637:25-638:7.)

78. The Boise facility will spend its own resources or use an unrestricted gift to cover additional care costs for its residents. It has used these resources to purchase dentures, eyeglasses, clothing, and wheelchairs where a resident was unable to pay for these extra needs. The facility has also covered the additional, unreimbursed costs for eye and dental appointments, repairs for wheelchairs, and specialty mattresses. It has also utilized funds to purchase Christmas gifts to give to residents without families. The facility also provides complimentary transportation for its residents. (Trial Tr. 197:12-199:8, 201:7-203:17, 211:17-212:4, 289:21-290:6; Trial Exs. 52, 54.)

79. The Good Samaritan Society also spends its resources to provide assistance to staff in need, whether it be for rent or utility assistance or general benevolence. It allows facilities to reach out to employees in need and to provide assistance to them. (Trial Tr. 241:15-242:8; Trial Ex. 28 [GSS002814].)

80. The love and care given to all residents is noticeably different in the Boise facility than that given in other facilities, as it is affected by the religious training, which is in action daily. The staff often goes above and beyond to serve the residents and will even donate their

own funds to the residents. Employees give directly to collections for residents' needs or through payroll deductions to a fund to help pay for resident programs. (Trial Tr. 403:14-405:8.)

81. One major service for the residents consists of the activities that are provided to help ensure the residents have pleasure, peace, and purpose in their lives. When a new resident arrives, the Activity Director, Sherri Ellis, or her staff, meets with them to get to know them, determine their past interests, and what they are currently able to do physically and mentally. Ms. Ellis makes these determinations so that the Boise facility is able to care and provide for the whole person, making sure that they are addressing who the resident really is when providing meaningful activities. The goal is to know each resident to the point that they do not some day read an obituary that informs them more than getting to know them personally. The Boise facility provides a well-rounded activity program that goes beyond regulations to help ensure all residents' needs are being met. (Trial Tr. 321:19-25, 322:23-25, 326:6-327:14; Trial Ex. 45A.)

82. Ms. Ellis is a certified activity director and volunteers her time to the Idaho Healthcare Association as part of the education committee, and trains new activity directors to get them certified. (Trial Tr. 323:3-325:19.)

83. Activities take place in the Main Dining Room, the Activity Room, the Lounge/Sitting Room, the Library/TV Room, and the Activity Areas in the Harbor Care and Eagle House neighborhoods. These areas are also utilized for religious and spiritual activities. (Trial Tr. 181:4-187:12, 188:24-191:7, 184:5-7, 331:20-336:15; Trial Ex. 45A.)

84. The Activity Department provides numerous activities for the residents ranging from big activities designed to get residents together and enjoy fellowship, and intergenerational programs, to one-on-one activities, including, but not limited to: newspaper socials, crossword puzzles, jigsaw puzzles, art and craft projects like beading necklaces, playing cards, games (Yahtzee, Clue, hangman, and trivia), spelling bees, computer training, Mardi Gras party including decorating floats for an on-site Mardi Gras parade, Bingo, dinner and a movie, a petting zoo, aquarium, trips to the county fair, Festival of Trees, and the Shakespeare Festival, a community country fair held in the green space, swimming at the YMCA, Valentine's Day social dance for the residents, fall social dance for the residents, sing-a-longs, healing music, resident melodramas, Mother's Day program, Father's Day program, Veterans Day program, special family dinners, Santa's boutique, fireworks on the 4<sup>th</sup> of July, Easter egg coloring and hunts, fishing, numerous holiday and Christmas activities and gatherings, bowling, volleyball, chair ballet, attending BSU football games, performances of school choirs, church choirs, Basque dancers, Irish dancers, piano recitals, school dance groups, a "Let's Make Lunch" program for resident baking and cooking, and other lifelong skills for those that want to feel productive like folding laundry, dusting, and sweeping floors. (Trial Tr. 181:4-187:12, 188:24-191:7, 327:15-336:15, 385:16-25, 367:10-368:10, 497:20-498:4, 504:14-505:25; Trial Ex. 49 (p. 003).)

85. The Good Samaritan Society receives cash gifts from supporters nationwide. Those donations and endowments are sometimes dedicated to specific types of equipment, property, or programs for the Good Samaritan Society, or simply provided in general for the use of the Good Samaritan Society as it deems most appropriate to fulfilling its mission ("Resource Development Revenue"). The Good Samaritan Society received \$21,515,000 in total Resource

Development Revenue in 2013, and \$19,091,000 in 2012. (Trial Tr. 107:8-18, 426:20-427:20; Trial Ex. 31 [GSS002907].)

86. The donations made to the Good Samaritan Society over the years have been used for operations and capital improvements/maintenance, or invested. The investments are reflected in Note 3 of the Consolidated Financial Statements. In particular, the total accumulated investments were \$577,248,000 for 2013 (Trial Ex. 31 [GSS002886]) and \$546,728,000 for 2012 (Trial Ex. 30 [GSS002532]).

87. The Good Samaritan Society also receives donations of property and annuities. In 2013, those gifts amounted to \$1,087,000 and in 2012, \$191,000. (Trial Ex. 31 [GSS002907].)

88. The Boise facility itself receives monetary donations and gifts from the community to help sustain its mission. Restricted donations and endowments are invested to provide ongoing benefit to the Good Samaritan Society facilities. The Boise facility is also able, when needed, to utilize interest from these accounts to supplement and help with its operational costs. For example, in 2013, the Boise facility received gifts of cash and funds released from previously restricted gifts of \$16,950, and in 2012, \$18,811, as reflected in Accounts 39100, 39105, 39110, 39120, and 39150. (Trial Tr. 101:8-18, 226:15-234:10, 239:10-247:10; Trial Ex. 28 [GSS002817].)

89. With previous gifts, including one of the gifts the Boise facility received in 2013 in the amount of \$25,000, it was able to fund Harbor Care Spa Room Remodel for a total of \$91,873.45. (Trial Tr. 819:8-822:25; Trial Exs. 137, 138, 139.)

90. The Boise facility has also had donations that were restricted as to their use for certain equipment, facilities, or programs. Such donations in 2012 amounted to \$196,591, and in 2013, \$47,485, as shown in accounts 10241-0000, 10242-0000, 10244-0000, and 10245-0000. (Trial Tr. 226:15-234:10; Trial Ex. 28 [GSS002812].)

91. The Boise facility also had \$72,209 in accumulated unrestricted gifts in 2012 and \$39,206 in 2013 as indicated in account 10261-0000. (Trial Tr. 101:8-18, 226:15-234:10; Trial Ex. 28 [GSS002812].)

92. The Boise facility also had \$191,847.28 in a center designated general endowment in 2012 and this amount was transferred to the national campus for investment on behalf of the Boise facility, as reflected in account 16081-0000. (Trial Ex. 28 [GSS002813].)

93. Without the donations to the Good Samaritan Society the Society would have suffered an operating loss in 2012 of <\$3,500,000>. In 2013, without the donations, the Society would have suffered an operating loss of <\$14> to <\$15> million. As it was, the Society had operating income in 2012 of \$3,579,000 and an operating loss of <8,969,000>. (Trial Tr. 428:6-430:1; Trial Ex. 31 [GSS002873].)

94. For 2013, the Boise facility had \$9,836,951 in total operating revenue and \$9,769,537 in 2012. Total operational costs in 2013 were \$9,339,148 and \$8,626,191 in 2012. The net operating revenue in 2013 was \$497,802 and \$1,143,346 in 2012. If the resource development revenue and expenses from those years are removed, the adjusted net operating

revenues are \$504,764 in 2013, \$1,141,917 in 2012. (Trial Tr. 222:18-223:8, 457:22-465:20; Trial Exs. 28 [GSS002818, 2832], 28A, 28B, 31, 140.)

95. In addition to the support received by donations, the Good Samaritan Society receives valuable support through the efforts of volunteers dedicating their time and effort to helping the Society's residents and the communities served by the Society, as well as helping the Good Samaritan Society fulfill its mission to share God's love. The volunteer work is an expression of love and an offering of dignity and compassion for others. The active volunteer program contributes services that enhance the quality of life for the residents. (Trial Ex. 69.)

96. Ms. Ellis is also the Volunteer Coordinator and oversees the formal Volunteer Program. She is part of the Southwest Idaho Directors of Volunteer Services ("SWIDOV") which encourages volunteerism in Idaho and provides support to volunteer coordinators in the area. Most of the volunteers come in just on word-of-mouth, but Ms. Ellis also works with local associations and schools to recruit volunteers. (Trial Tr. 321:19-25, 323:3-326:3.)

97. Before someone is allowed to volunteer at the Boise facility, he or she must go through orientation and provide references before being assigned a specific volunteer task. Volunteer orientation includes training on HIPAA requirements, expectations of volunteers, and ends with a pledge. The volunteers also receive a copy of the mission statement through the orientation process and are informed about the charitable and religious purpose of the Good Samaritan Society and how the Boise facility is dedicated to God's work. In addition, the volunteers sign a confidentiality agreement. Volunteers are then provided a task that is rewarding to them and beneficial to the facility. (Trial Tr. 336:21-345:17, 371:15-372:5, 500:1-501:22, 503:24-504:13, 508:5-19; Trial Ex. 69.)

98. The Good Samaritan Society's Boise facility also gives the developmentally disabled an opportunity to volunteer and receive job training working in the facility. Two of these volunteers have recently been able to acquire employment with the assistance of this volunteer and training experience. (Trial Tr. 349:10-351:4.)

99. Currently there are between 350 and 450 volunteers that serve the Boise facility in some capacity every day of the year. Volunteer services include, but are not limited to: assisting with activities; meeting one-on-one with residents with special needs; helping with office work, laundry, kitchen work, and with cleaning; refilling the property's bird feeders; accompanying residents to doctor appointments and activities; shopping for residents; reading a resident a book; assisting with event planning, decorations, and set-up; providing pet therapy; maintaining facility property; accompanying residents on walks and to special events; helping organize medical supplies; playing games with residents; and performing music or songs for residents. (Trial Tr. 211:2-10, 345:20-351:24, 497:1-499:25, 504:14-505:25.)

100. Volunteers also assist with the spiritual ministry by helping residents get to the Chapel services and back to their rooms afterwards. (Trial Tr. 347:7-18.)

101. Volunteers have also donated their money in addition to their time to help meet residents' needs or provide additional activities for the residents. The volunteers have helped pay for residents' hair to be done at the beauty parlor, have purchased clothing for residents,

have purchased gifts, have framed resident artwork, and have helped cover additional costs for BSU football tickets for residents to attend football games. (Trial Tr. 202:10-23, 351:5-22, 498:14-499:2; Trial Ex. 54.)

102. Nationally, over 180,000 hours of service were donated to the various Good Samaritan Society facilities. The Boise facility roughly estimates from sign-ins and activity calendars that over 12,000 hours were provided in 2012. According to the values placed on volunteer hours by the Independent Sector, these hours translate to donations of time worth \$3,985,200 (\$22.14/hr) nationally, and \$193,560 (\$16.13/hr) locally. (Trial Tr. 351:25-361:10, 383:22-386:24; Trial Exs. 70, 71, 73, 103 [GSS002614].)

103. In addition to providing necessary health care to the poor, aged, and infirm, the Good Samaritan Society at its Boise facility provides substantial public benefits.

104. The Boise facility provides opportunities and encouragement for people to volunteer and feel part of the community. (Trial Tr. 211:2-10, 336:21-339:13, 341:1-342:16.)

105. The Boise facility also provides events and services for the community. Free coffee and tea is always available throughout the facility and free meals are offered for families that need a meal. Meals are also provided to residents' families for special events like Thanksgiving, to volunteers when they assist with activities, and to community members that participate in the mneme therapy offered at the Boise facility. Recent events sponsored by Boise Village include a Mother's Day Flower Project for the community, the neighborhood country fair, projects for the Idaho Humane Society and the Idaho Food Bank. (Trial Tr. 184:18-185:1, 205:18-206:14, 294:4-8, 367:10-371:14, 506:1-9.)

106. The employees of the Boise facility are also encouraged to volunteer time to community projects. Staff members have assisted with the Field of Honor at Merrill Park for Memorial Day, for which the facility has purchased flags to assist with the event. (Trial Tr. 370:14-371:1.)

107. Sherri Ellis has helped create a partnership with Boise State for Service Learning, a real world experience to enhance classes for which students receive credit. The Good Samaritan Society has partnered with the Service Learning program, helping the students receive credit towards their majors. Sherri Ellis also helped create a program at Boise State for a minor in volunteer management. The Boise facility has also partnered with Anser Charter School and the Boise High School Future Civic and Community Leaders of America club, who come in to plan special events at the facility. (Trial Tr. 361:13-365:18.)

108. Residents are allowed to volunteer in the community as well, and the facility will provide them assistance if necessary. With the aid of volunteers and staff, one resident made dog biscuits and sold them to staff, family members, and visitors to raise money for the Humane Society. Residents have also assisted with a community project called Baby Steps, putting together packages of baby quilts and clothes for new parents that have been knitted and sewn by staff members. During holidays, residents have participated in Christmas adopt-a-family programs and a Boise Rescue Mission program at Thanksgiving to provide food and gifts for needy families. (Trial Tr. 368:16-370:13, 371:2-14.)

109. In 2013, the Boise facility also started providing a free program to the community through Arts Without Boundaries for mneme therapy. Residents are also allowed to participate in the mneme therapy. The mneme therapy uses art to help develop and stimulate the brain, achieving whole brain synchronization and sustained attentive focus. The therapy is provided in the Library/TV Room and in the Activity Room for the Harbor Care neighborhood. The program was started with a grant received from the national campus. (Trial Tr. 184:16-186:17, 205:10-206:14; Trial Ex. 56.)

110. The Boise skilled nursing facility provides additional service to the community by allowing community groups to use its facilities for meetings or special events free of charge. The Girl Scouts, SWIDOV, Idaho Health Care Association ("IHCA"), Ben's Bells, local clergy groups, physical therapists, schools for training, and music teachers holding recitals for their students have utilized the facility for meetings. A pet therapy program utilizes the facility for pet registration and certification purposes. An organization has used the facilities for CPR training and the Idaho Department of Health and Welfare has also utilized the facility to help train new state surveyors. (Trial Tr. 325:22-25, 365:19-367:9, 540:8-15, 606:8-11.)

111. Each of the local facilities, including the Boise facility, participates in numerous free activities to benefit the community, including educational programs, articles to the public on disease and aging, training of students, contributing to other community needs, offering the facilities for meetings and gatherings of non-profit organizations, and efforts to participate in community health improvement. The Boise facility has allowed nursing, dietitian, and therapy clinical students to do on-site rotations and school training. It also allows its facility to be used for CPR training for the community. (Trial Tr. 102:19-112:23, 212:5-213:10.)

112. The Good Samaritan Society also provides monetary grants to the local facilities for special community involvement projects. In the years 2010 through 2013, the Good Samaritan Society awarded grants to 123 community programs, and through the first quarter of 2014, it has already awarded an additional 20 grants for a wide variety of programs meeting local needs: health care and services for the homeless; clothes for local shelters; food for the hungry; transport for children; programs for free mneme therapy; school supplies for children; equipment for partnering organizations and schools; clinics for health screenings; crafts for children; programs for the lonely; forums for specialized education; projects to confront bullying; ministry to young mothers; and support for mission training, local recreation opportunities, mentoring programs, kid camps, programs for orphans, and aid to victims of fire. (Trial Tr. 103:4-8, 105:3-107:25; Trial Ex. 22.)

113. The Good Samaritan Society also provides opportunities for its caregivers to pursue their educational goals while continuing to carry out the Good Samaritan Society mission in their daily work. A continuum of education to promote the most innovative care available is provided, and often scholarships are provided for nursing students to obtain advanced degrees, to further the caregivers' knowledge and experience, and to help develop higher qualified caregivers to the communities. Over the last two years, the Boise facility has offered almost \$15,000 in tuition reimbursement for employees in nursing school programs. (Trial Tr. 204:3-205:7, 242:18-243:4, 388:15-389:12; Trial Ex. 55.)



114. The Good Samaritan Society's Boise facility employs specialized caregivers that can manage the specialized and heavy long-term care issues. They are also trained to meet the spiritual needs of the residents. The Good Samaritan Society will take in residents from other facilities because those residents require a higher level of care than that offered at the other facilities. The Boise facility also employs specialized staff leading the way in the industry and teaching and training through the IHCA. Sherri Ellis is part of the education team for the IHCA and often presents on volunteer and activity matters for the IHCA and for Boise State University. (Trial Tr. 143:5-10, 402:4-20.)

115. Each neighborhood at the Good Samaritan Society's Boise facility is fully certified for Medicare and Medicaid and provides 24 hours-a-day, 7 days-a-week skilled nursing care, and requires a physician's referral to be admitted. The units are referred to as neighborhoods because they are viewed as a community and residential setting. Each of the neighborhoods employs dedicated staff members that provide for the personal needs of each resident and place an importance on the relationships they build with each resident. (Trial Tr. 151:25-152:8, 169:15-178:9, 345:19-21; Trial Ex. 45A.)

116. Eagle House is a special long-term care unit providing care for ten residents with traumatic brain injuries. Most of the residents in the Eagle House neighborhood are young adults with acquired brain injuries and will spend a long period in the unit. These residents require additional care for the many physical and behavioral issues associated with the brain injuries. The Eagle House is isolated from the other neighborhoods and allows an abundance of space and minimal stimulation for each resident to control and minimize behavior outbursts in a peaceful setting. The neighborhood has its own dining and activity areas, where Rev. Spiedel holds separate devotions and chapel service for the Eagle House residents. The controlled environment requires caregivers for Eagle House to be specially trained to provide the specialized care for the traumatic brain injuries. This also requires them to be universal workers who provide all the care needed by the residents, helping to clothe, feed, bathe, move, cook, and provide activities for them. The residents in the Eagle House are unable to do anything for themselves. This individual and consistent care is necessary to keep the residents from being agitated and uncomfortable. The Eagle House is a unique care unit for the Boise area, as no other facility in the area can give the separate environment, attention, and heightened level of care for similar residents with brain injuries. (Trial Tr. 172:5-175:17, 335:25-336:15, 393:23-396:19, 399:17-23, 400:9-401:24, 603:21-604:18; Trial Ex. 45A.)

117. The Harbor Care neighborhood is another special care unit which treats up to 22 residents that require a high level of care for symptoms associated with dementia. This neighborhood has its own dining and activities areas and is a secured neighborhood that prevents residents from wandering off and getting lost. The unit is equipped with technology which locks the doors when residents approach. The neighborhood also utilizes its own spa room, uses music therapies, and is mindful of lighting and color schemes to provide an environment that is conducive to helping the residents to thrive and experience the best quality of life. These dementia residents with high care needs also require full-time assistance with activities of daily living (ADL) and constant supervision relative to lack of safety awareness issues. For instance, these patients forget they have poor balance and will simply try to walk when they cannot. Special interventions are designed for each resident, specialized for each resident's care needs. Many of the same activities provided at the facility are provided in the Harbor Care Activity

Room, and alternative activities are also provided for some dementia residents like baby dolls with bassinets for some residents to nurture. The Chaplain also holds separate devotions, prayers, and worship services in the Harbor Care neighborhood. (Trial Tr. 175:19-176:11, 334:1-335:23, 396:20-399:11; Trial Ex. 45A.)

118. The Hoeger House is the unit providing care for residents with chronic long-term issues, handicaps, and disabilities, housing many with major birth-related problems such as spina bifida, cerebral palsy, quadriplegia, polio, multiple sclerosis, and similar progressive disabilities. This neighborhood is sometimes referred to as the young people's long-term care unit, where the preferences are more towards cartoons than westerns or dramas. The name represents the founding of the Good Samaritan Society by Rev. Hoeger who provided a loving home environment for children and young adults with conditions most families and facilities are not equipped to handle. These residents enjoy more active activities like bowling leagues. (Trial Tr. 176:12-177:4, 333:19-25; Trial Ex. 45A.)

119. The Syringa I neighborhood is the short-term post-acute transitional care and therapy unit at the Boise facility. Syringa I provides a private room for 16 residents who are typically there for skilled nursing care to complete their recovery from a hospital stay before they can return to a lesser level of care. These residents also receive care by skilled therapists for physical therapy, occupational therapy and speech therapy. They also receive restorative therapy and assistance with ADLs. (Trial Tr. 169:15-171:9; Trial Ex. 45A.)

120. The Syringa II neighborhood is the traditional long-term care unit at the Boise facility, which houses 23 residents, caring for those unable to return to living a more independent life. If a post-acute resident requires an indefinite stay with Boise Village, Syringa II will house them to continue the therapies and restorative care they were receiving in Syringa I. (Trial Tr. 177:21-178:9; Trial Ex. 45A.)

121. The Boise facility also offers a well-rounded and robust therapy program, which includes music therapy, occupational therapy, and speech therapy, all designed to provide recovery in body, mind, and spirit, for all needed treatments from strength training to stimulation for residents with mild to severe brain injury. The therapies take place in the therapy department and in residents' living areas. To support the therapy, a restorative nursing program works with the therapists to help the residents maintain their levels of functionality. The Boise facility offers therapy to all residents, including residents with Medicaid as a payor source, which does not reimburse all costs for therapy. Its musical therapy is provided for free as complimentary care. (Trial Tr. 178:14-179:15, 187:16-188:15, 224:5-8, 288:25-289:1, 316:13-317:18; Trial Exs. 45A, 53.)

122. The Good Samaritan Society also strives to be innovative in the area of aged care, making a concerted effort to expand its scope of services to include greater emphasis on alternatives to traditional long-term care facilities, including home health, senior housing and assisted living, sub-acute care, specialty units for persons with Alzheimer's disease and therapy services. These projects are being developed in part to reduce health care costs and meet consumers' needs to stay in their own homes longer. The Good Samaritan Society has invested in these programs, with staff and research, for the benefit of the health care community. (Trial Tr. 110:23-111:8; Trial Ex. 19 [GSS002730-31].)

123. The Good Samaritan Society has engaged experts and research universities to help it meet the needs of its residents as senior care has progressed, investing in developing ways to be at the head of the curve using technology, as it has recognized its increasing role in senior care. (Trial Tr. 111:19-11:23, Trial Ex. 19 [GSS002730-31].)

124. The Good Samaritan Society is currently focused on LivingWell@Home. The LivingWell@Home program is a service it helped develop that utilizes technology for remote patient monitoring. The various technologies are installed in an individual's home environment to monitor movement and provide ongoing data. (Trial Tr. 112:1-23; Trial Ex. 19 [GSS002731].)

125. The Good Samaritan Society does not hide the fact that it is a religious organization. A visitor to its Boise facility is not left to wonder whether it is a religious organization as the facility is filled with symbols of faith and religious pictures, depicting Jesus, scripture references, and symbols of the Christian tradition. When you first walk in, there is a rock and fountain, with a scripture and a staff, depicting Moses when he struck the rock with his staff and water springs came out. This fountain sculpture is to show people entering the facility that the Good Samaritan Society is a Christian organization and that they believe that Christ's love flows out of the staff there as the water flowed out of the rock during the time of Moses to refresh the people. The Good Samaritan Society's logo depicts a person embracing another with a Christian cross in the background, symbolizing the Good Samaritan helping the wounded traveler along the road. (Trial Tr. 506:22-507:10, 554:12-560:10; Trial Exs. 66, 67.)

126. Residents are often drawn to the Good Samaritan Society's Boise facility because it is religious. Employees are allowed to be open about religion in the workplace, have religious discussions with residents, and pray with residents. Even many of the volunteers are drawn to help at the skilled nursing facility because of its ministry and they want to be an extension of the ministry. They also are encouraged to have spiritual discussions with residents and pray with them. (Trial Tr. 338:22-339:13, 340:1-6, 371:15-372:5, 402:4-20, 503:14-21, 507:11-21.)

127. Administration and caregivers also see a difference at the facility not found elsewhere. Administration and caregivers that have worked previously in for-profit skilled nursing facilities notice that there was no staff devotions or prayer, less of a familial feel, and no talk of a religious mission at those facilities. The whole focus at Good Samaritan Society is people, and ensuring God's love for them. The residents often become like family to the staff, who take it hard when one passes away. The love and care shared with the residents naturally extends to the way staff is treated as well. This same love is shown to volunteers, who also recognize a difference related to the emphasis on its spiritual ministry, and the way faith is embodied in the way the Good Samaritan Society treats everyone with dignity, respect, and kindness. The residents and residents' families also recognize this discernible difference. (Trial Tr. 148:5-149:22, 401:9-402:17, 500:15-501:22.)

128. Surveys conducted by an outside company to assess the residents, residents' families, and staff, satisfaction of the Christian message at the Boise facility are used to reflect the effectiveness of the mission of the Good Samaritan Society. If the survey were to reflect an area in which the facility was not meeting spiritual needs in a particular area, the Boise facility would look to adjust and improve its service. The Boise facility has not needed to make any

adjustments in 2012 and 2013 to meet the residents' spiritual needs. (Trial Tr. 549:13-550:2, 552:17-553:22; Trial Exs. 65.)

129. The Good Samaritan Society uses its property for a purpose that is consistent with the purposes for which it was organized, and also derives revenue from this use. The Good Samaritan Society derives revenue from its skilled nursing function, providing shelter and supportive services to the aged, poor, and infirm. The shelter and supportive services are a combination of the facility's residential neighborhoods and meeting and activity rooms where the residents live. Each of the five neighborhoods consists of at least 10-22 rooms dedicated for resident living quarters. Each resident is provided a bed in either a private or semi-private room. The Boise facility is licensed for 127 beds, but only uses 97 beds to allow for more private rooms. (Trial Tr. 127:21-128:4, 257:15-259:8; Trial Ex. 45A.)

130. The Boise facility receives less than its usual and customary charges from all contractual payor sources, including Medicaid, Medicare, and Veterans Administration, which set the agreed upon amount. The Good Samaritan Society has administrative policies to protect it and allow it to collect payment from those residents with resources to pay to remain viable. (Trial Tr. 304:1-7, 315:18-316:5, 678:16-24, 717:25-719:14, 795:25-797:14, 833:21-849:18; Trial Exs. 32, 33, 89, 105, 106, 339.)

131. Operating revenue totals include amounts received from the provider tax reimbursement for Medicaid or upper payment limit tax and funds (UPL)—\$1,967,690 in 2013 and \$1,864,041 in 2012. Without the provider tax and UPL, Boise facility would realize a loss of \$14.55 per Medicaid resident, per day. With the provider tax and UPL, the Medicaid rate for the Boise facility, accounting for all approved costs nets a \$49.84 gain per day, per Medicaid resident. This reimbursement has enticed many for-profit facilities to accept more Medicaid residents. However, the Good Samaritan Society has always accepted Medicaid residents from well before the provider tax and UPL system made reimbursements more lucrative. (Trial Tr. 774:19-775:5, 782:16-784:16, 833:21-849:18; Trial Exs. 24A, 32, 33.)

132. Whenever the Good Samaritan Society does have net revenue it is not distributed to members, shareholders, directors, or officers. Such revenues and investments stay with the facility and are used to sustain and further the Good Samaritan Society's ministry—to keep the doors open, for equipment maintenance and purchases, for updates to the facility to have a viable product that meets all code and safety concerns, for savings towards a new facility, to meet all expenses, and for all items directed to benefit the residents' quality of life at the facility. (Trial Tr. 257:15-259:8, 475:9-15, Trial Ex. 140.)

133. Since 1958, the Good Samaritan Society has invested approximately \$11.9 million while realizing approximately \$9.6 million for a net investment of about \$3.3 million to sustain its mission in Boise. (Trial Tr. 446:20-448:10; Trial Ex. 28 [GSS002812, 2814].)

134. The residents of the Boise facility are living their daily lives at the facility; sleeping, eating, worshipping, recreating, and receiving therapy at the property. (Trial Tr. 170:17-171:4.)

135. The Good Samaritan Society has sought charitable and religious exemptions for Parcel No. S0629347040. Parcel No. S0629347040 was consolidated by Ada County in 2012 from three parcels, S0629347000, S0629346950, and S0629347010, which were declared tax exempt from property taxes by Ada County previous to the 2012 and 2013 denials. The use of the property did not change between 2011 and 2012 (the year the exemptions were first denied)—the Good Samaritan Society continues to operate a skilled nursing facility on the property. The only change on the property was the construction of a gazebo for the use and enjoyment of the residents. (Trial Tr. 250:16-269:25; Trial Exs. 44, 80, 82, 84, 85, 133, 134.)

136. The skilled nursing facility at each of the Good Samaritan Society's remaining Idaho locations in Moscow, Idaho Falls, and Silverton have also consistently received property tax exemptions. (Trial Tr. 207:19-209:12.)

137. The denial of the Good Samaritan Society's 2012 tax exemption status was announced in response to the Good Samaritan Society's submittal of its questionnaires for the 2012 Property Tax Application Exemptions. The questionnaires asked, *inter alia*, if the facility produced a profit and if the property was used for business or commercial purposes. Both of these questions were answered "yes" by the Business Office Manager. The Business Office Manager meant that the revenues exceeded the expenses; i.e., there was not a "loss." In response to question number seven, which asks "Is any portion of the property for which you seek an exemption used for business or commercial purposes?," the answer "Yes – all of it," was provided. The answer was not provided with the statutory language of I.C. § 63-602B(2) in mind, but rather the Business Office Manager's understanding that the skilled nursing facility was a nonprofit business which needed to be self-sustaining and administered in a way that protected the assets. The Business Office Manager did not say it was a commercial enterprise, but a nonprofit business. (Trial Tr. 250:16-267:8; Trial Exs. 80, 84, 134.)

138. The questionnaires for the 2013 application were answered in context of the statutory language, stating that no profit was produced and the property was used for the religious and charitable purposes for which the Good Samaritan Society was organized. However, the 2013 application for tax exemption status was also denied. In each of the applications, the Good Samaritan Society only reported unrestricted cash donations and did not include all restricted donations and interest off of the donations, or donations from the foundation. The Good Samaritan Society has paid the tax assessment bills for 2013 and 2012 under protest. (Trial Tr. 255:12-257:6, 267:9-269:25; Trial Exs. 81, 82, 83, 85, 133, 134.)

139. Fifty-two percent (52%) of the Boise facility is used for residence halls or dormitories, being that portion of the facility where its residents live their day-to-day lives in the neighborhoods (34,163 sq. ft. of 65,810 sq. ft.). Eleven percent (11%) is used for meeting rooms or halls, auditoriums, club rooms, or recreational facilities, being that portion of the facility where its residents congregate to participate in any of the many activities and recreational opportunities made available by the Good Samaritan Society (7,043 sq. ft.). The remaining 24,604 square feet is utilized for chapel, chaplain's office, administration, therapy rooms, kitchen, laundry, and maintenance. The property also includes a green space to the west of the building that is utilized by the residents and their families to enjoy nature. No evidence shows that the Ada County Assessor has determined per I.C. §§ 63-602B and 63-602C, the value of any part of the facility as a part used for business purposes. All areas are used for the purposes for which the

Good Samaritan Society was organized: to share God's love in word and deed, to provide shelter and supportive services to older persons and others in need, and to engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community. (Trial Tr. 170:17-171:4, 179:16-187:12; Trial Exs. 45A, 80, 82.)

140. No part of the property in question is used for a purpose other than the religious and charitable purposes for which the Good Samaritan Society was formed.

## **II. CONCLUSIONS OF LAW**

### **A. Whether the Good Samaritan Society is a religious corporation within the intentment of I.C. § 63-602B.**

1. Property belonging to any religious corporation "used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities" of such religious corporation is exempt from taxation. I.C. § 63-602B; *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 433, 849 P.2d 98, 106 (1993).

2. Tax exemption statutes are to be construed according to the "strict but reasonable" rule of statutory construction. *Ada Cnty. Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 429, 849 P.2d 98, 102 (1993).

3. "The rationale and intent of these tax exemptions are based upon legal principles and policy reasons which urge the legislature to encourage and promote sobriety, morality and virtue in the people of this state." *Evangelical Lutheran Good Samaritan Society v. Bd. of Equalization of Latah Cnty.*, 119 Idaho 126, 130, 804 P.2d 299, 303 (1990); *see also* ID CONST. art. III, § 24. ("The legislature should further all wise and well directed efforts for the promotion of temperance and morality.").

We must, as in all other judicial determinations, place in juxtaposition the two extremes of judicial interpretation. On the one hand is the policy of strict construction which frowns upon tax exemptions. On the other hand, innocent collateral activities essential to the furtherance of the true purposes of the corporation should not blind the court to the genuineness of those purposes nor to the sincerity of their actual accomplishment.

The present depression calls, on the one hand, for a more strict limitation of tax exemptions in the contemplation of the present excessive burdens of the taxpayers. On the other hand, we must strive to maintain intact those religious, charitable, educational and fraternal institutions which have been essential and integral parts not only of the foundation but in the maintenance of the form of government and type of society in which we live.

*Latah County*, 119 Idaho at 130, 804 P.2d at 303 (1990) (quoting *North Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai Cnty.*, 94 Idaho 644, 648, 496 P.2d 105, 109 (1972)).

4. To qualify for a tax exemption, two basic requirements must be met: (1) that the property belongs to a religious corporation; and (2) that the property be used exclusively for the purposes for which the corporation was organized. See *Boise Central Trades & Labor Council, Inc. v. Bd. of Ada Cnty. Comm'rs*, 122 Idaho 67, 72, 831 P.2d 535, 540 (1992).

5. Exemptions are to be determined annually on a case-by-case basis, considering the particular circumstances of an individual organization; they are not to be determined by hard and fast rules. *Student Loan Fund of Idaho, Inc. v. Payette Cnty.*, 138 Idaho 684, 688, 69 P.3d 104, 108 (2003).

6. The Idaho Legislature has not defined "religious" for purposes of I.C. § 63-602B.

7. The Idaho Supreme Court has used considerations or guidelines to analyze charitable exemptions under § 63-602C on a case-by-case basis (*Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984)), but, it has not created guidelines to analyze religious exemptions under § 63-602B. See e.g., *Roman Catholic Diocese of Boise*, 123 Idaho 425, 849 P.2d 98; *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada Cnty.*, 123 Idaho 410, 849 P.2d 83 (1993). Idaho courts have looked to other jurisdictions to define terms not defined in tax exemption statutes. See *Boise Central*, 122 Idaho at 70, 831 P.2d at 538 (looking to 1926 D.C. Circuit case for adoption of term "fraternal" in tax statute).

8. Other jurisdictions have developed various methods or tests to determine whether an entity has been organized and conducted exclusively for religious purposes for property tax exemption purposes. See *Church of Pan, Inc. v. Norberg*, 507 A.2d 1359, 1362-63 (R.I. 1986); *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of City of New York*, 435 N.E.2d 662, 663 (N.Y. Ct. App. 1982); *Roberts v. Ravenwood Church of Wicca*, 292 S.E.2d 657, 661 (Ga. 1982); *Religious Soc. of Families v. Assessor of Town of Carroll, Chautauqua Cnty.*, 73 Misc. 2d 923, 924-26, 343 N.Y.S.2d 159, 161-63 (N.Y. Sup. Ct. 1973); see also John Witte, Jr., *Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional Practice?*, 64 S. CAL. L. REV. 363, 402-07 (1991) (identifying four approaches, "commonsense," "deference," "minimalist theism," and "multifactual analysis.").

9. These diverse tests provide a range of options to help Idaho courts consider the correct balance between policy and establishment/entanglement issues. In *Holy Spirit*, the New York Court of Appeals took a deferential approach, stating that "the courts may not inquire into or classify the content of the doctrine, dogmas, and teachings held by that body to be integral to its religion but must accept that body's characterization of its own beliefs and activities and those of its adherents, so long as that characterization is made in good faith and is not sham." 435 N.E.2d at 663. Using this principle, it concluded that the Unification Church's purpose was primarily religious, classifying its doctrine, dogmas, teachings, and a significant portion of its activities as religious in contrast to the Tax Commission's previous classification of the Church's activities as political or economic. *Id.* Alternatively, in *Roberts*, the Georgia Supreme Court expressed a minimal requirement for its legal definition of religion to determine that a building run by the Wiccan church qualified for a property tax exemption. 292 S.E.2d at 661. The Court's finding was based on its definition of religious as "a sincere and meaningful belief in God occupying in the life of its possessors . . . and . . . a dedication to the practice of that belief."

*Id. Accord Religious Soc. of Families*, 73 Misc. 2d at 924-26, 343 N.Y.S.2d at 161-63 (analyzing several similar definitions of religion). Finally, in *Church of Pan*, the Rhode Island Supreme Court applied a multiple-factual-analysis test to determine the church's religious purpose was merely incidental to its primarily secular purpose. 507 A.2d at 1363. The Court required an analysis of all of the facts and circumstances of each particular case and looked to a list of relevant factors used in the Supreme Court of Minnesota's decision, *Ideal Life Church of Lake Elmo v. County of Washington*, 304 N.W.2d 308 (Minn.1981), including: (1) the primary motive in organization and operation; (2) whether the doctrine and belief was binding on members; (3) the members practice of religion; (4) whether the group had formally trained or ordained ministry; (5) whether the group had sacraments, rituals, education courses, or literature of its own; (6) whether liturgy or meetings consisted of social gatherings or worship; (7) whether the group sought to advance its religion; and, (8) whether its members were required to believe in a supreme being. 507 A.2d at 1362-63.

10. Regardless of whether a deferential approach or a multiple-factual-analysis is used for the determination, the Good Samaritan Society is a religious corporation under I.C. § 63-602B.

11. One of the Good Samaritan Society's main purposes is to share God's love in word and deed. Since 1922 nationally, and 1958 locally, it believes that God has continued to do extraordinary things through ordinary people, meeting not only the physical and emotional needs of its residents, but the spiritual needs as well and attributing its continued successful ministry to God's guidance and direction.

12. Under a minimal legal definition of religion, the Good Samaritan Society has displayed a sincere and meaningful belief in the Christian God in its members throughout its history and has demonstrated a continued dedication to these beliefs. Its founder was a Lutheran pastor. It continues to be affiliated with the two largest Lutheran denominations, the ELCA and the Missouri Synod, with both providing recognition that the Good Samaritan Society continues to fulfill the mission of the church. The organization's name is based on a popular parable of Jesus Christ concerning Jesus' command to "love thy neighbor." Its teachings and spiritual focus are based on the teachings of Jesus Christ, and the leaders of the organization still draw purpose and encouragement from the traits of Jesus Christ. Each local skilled nursing facility is led by an administrator who is specifically charged with being the facility's spiritual leader. The Good Samaritan Society provides daily fundamental spiritual activities for its residents, including prayer, bible study, worship, and observance of sacraments. Other churches in the area are also encouraged to take part in the residents' spiritual lives. These churches' leaders recognize a religious ministry at the Boise facility. In addition to supporting the spiritual growth of its members, employees, volunteers, residents, and resident's families, the Good Samaritan Society supports Christian ministry here and missionaries in other parts of the world.

13. Under a multiple-factual-analysis test similar to that applied in *Church of Pan*, the Good Samaritan Society reflects a primary religious nature that permeates the purpose of the Good Samaritan Society.

(a) The primary goal in its origins, organization, and operation has been to share God's love in the midst of the work that it does daily. The Good



Samaritan Society's founder believed that the ministry was started in the heart of God, that it was God's will to provide Christian care, and that the person of Jesus should be the central focus of the Good Samaritan Society. When change has come to the skilled nursing care world, the Good Samaritan Society has sought to meet challenges by focusing on how it could still provide care while continuing to show the power of God's love. This is seen in its response to the Pioneer Movement within long-term care, and in its ongoing integration of biblical concepts to keep its religious focus.

(b) Its basic Christian doctrine and belief are binding on its members, requiring all board members to be active members of Christian churches. It further specifically requires some of its executive leaders and board members to be active members of a Lutheran Church. Each of its employees attends training through its GSS Way spiritual resources for application to the residents it treats.

(c) Its members are required to be active members of Christian churches, including each of its local administrators. Brian Davidson, the Administrator of the Boise facility is a practicing member of a local Christian denomination.

(d) Part of the key leadership of the Good Samaritan Society includes the position of Vice President, Mission Effectiveness and Senior Pastor, held by Rev. Greg Wilcox, an ordained Lutheran minister and grandson of founder Rev. Hoeger. In addition to being the pastor of the national campus, Rev. Wilcox has a staff which includes two other ordained ministers; the staff's main goal is to ensure the effectiveness of the Good Samaritan Society's mission at each location. In addition, many local communities, including the Boise facility employ a Chaplain like Rev. Charles Spiedel, who is an ordained Lutheran minister and provides full-time spiritual services.

(e) The Good Samaritan Society continues to develop and use its own spiritual education resources, including spiritual training materials for its staff like the GSS Way and STAR Ministry, and spiritual resources for each location like monthly materials for daily devotions and prayers. The Good Samaritan Society also has policies to encourage daily devotions, prayer before meetings and meals, and worship services. These policies are followed at national campus and in the Boise facility.

(f) Several opportunities are available throughout the week at the Good Samaritan Society's Boise facility for worship. These opportunities are available at the Chapel and in two of the neighborhoods for residents who require specialized care. In addition, all meetings begin with prayer. The national campus also begins all meetings with prayer and holds worship services for special occasions and holidays.

(g) The Good Samaritan Society seeks to share God's love in the midst of all the services it provides and tracks its mission effectiveness to see if a sense of love is reflected at each of its locations. To encourage its vision of sharing God's love with everyone that comes in touch with its ministry, it continues to develop spiritual resources that use biblical teachings and the traits of Jesus Christ to illustrate the care and love it strives to provide. Its

mission effectiveness team also puts on workshops and retreats to encourage each staff member to weave the Good Samaritan Society's mission into the work they do each day. The Good Samaritan Society has also developed its STAR resource to encourage Christian staff members to live out their faith in their work and share their faith with others. In addition, through its Project Outreach, the Good Samaritan Society seeks to share its mission with other parts of the world.

(h) The requirements listed above regarding active membership in a Christian Church intrinsically require the belief in the Christian God of the Bible.

14. Considering the substantial evidence of the religious nature and focus of the Good Samaritan Society, the Court finds the Good Samaritan Society to be a religious corporation.

**B. Whether the Good Samaritan Society is a charitable corporation within the intentment of I.C. § 63-602C.**

15. Idaho Code section 63-602C exempts from taxation "property belonging to any . . . charitable . . . corporation . . . of this state, used exclusively for the purposes for which such . . . corporation . . . is organized; provided, that if any . . . such . . . corporation . . . uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same should be assessed and taxed as any other property . . . ."

16. The determination of whether a corporation is charitable focuses on the public nature of the benefits and services an organization provides to analyze whether it provides a general public benefit. *Coeur d'Alene Public Golf Club, Inc. v. Kootenai Bd. of Equalization*, 106 Idaho 104, 105, 675 P.2d 819, 820 (1984).

17. . . . An organization will be classified as charitable for "a number of services" of benefit to the public; providing monetary aid to the needy, or almsgiving to the poor, is not specifically required. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). "The word 'charitable,' in a legal sense, includes every gift for general public use, whether it be for educational, religious, physical or social benefit." *Id.*

[I]n *Sunny Ridge*, the court held that '[d]etermination of an institution's charitable status is necessarily an individual matter, to be decided on a case-by-case basis.' In *Sunny Ridge*, this court determined that charitable meant more than providing financial relief for the poor, and that charitable encompasses 'a wide variety of services – social, recreational, cultural, psychological, religious and others . . . ' including the needs of the elderly which are more complex than simply providing financial aid.

*Latah County*, 119 Idaho at 131, 804 P.2d at 131 (citation omitted).

18. Considerations of efforts as a nonprofit corporation are not alone determinative of charitable status under I.C. § 63-602C. *Id.*

19. Although the Idaho Legislature has not defined “charitable” for purposes of property tax exemptions under I.C. § 63-602C, I.C. § 41-120 defines a “charitable organization” as an entity described by sections 501(c)(3) or 170(c) of the Internal Revenue Code.

20. Idaho courts have analyzed the factors listed in *Sunny Ridge* to aid in the determination of whether an organization is a charitable corporation for property tax exemption purposes:

(1) the stated purposes of its undertaking, (2) whether its functions are charitable . . . , (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the ‘charity’ provided is based on need.

*Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815.

21. “This is not an exclusive list of factors, and some of the factors may not apply in every case.” *Housing Southwest, Inc. v. Washington County*, 128 Idaho 335, 338, 913 P.2d 68, 71 (1996). “There may be factors . . . which have no application to particular cases, and factors not listed which would need to be considered.” *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815.

22. The factors “do not constitute a formal checklist” for determining if an organization is charitable, they serve as a guideline for application of the definition of “charitable” as to a particular organization. *Coeur d’Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820.

#### **i. The Stated Purpose of the Good Samaritan Society’s Undertaking**

23. For the first *Sunny Ridge* factor, courts simply look at the stated purposes listed in an organization’s Articles of Incorporation. See, e.g., *Community Action Agency, Inc. v. Bd. of Equalization of Nez Perce Cnty.*, 138 Idaho 82, 85, 57 P.3d 793, 796 (2002); *Boise Central*, 122 Idaho at 70-71, 831 P.2d at 538-39; *Coeur d’Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820.

24. Even before the *Sunny Ridge* factors, Idaho courts had looked to the specifically stated purposes of an organization. See *Sunset Mem’l Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 208-09, 327 P.2d 766, 767 (1958). No Idaho court has looked to the stated powers of an organization.

25. The Good Samaritan Society’s Restated Articles of Incorporation (“Articles”) specifically state its charitable purposes as:

- A. To share God’s love in word and deed, believing that in Christ’s love, everyone is someone.
- B. To provide shelter and supportive services to older persons and others in need.

- C. To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

26. The stated purposes of the Good Samaritan Society are charitable.

**ii. Whether the Good Samaritan Society's Functions are Charitable**

27. The second *Sunny Ridge* factor looks to whether an organization's functions are charitable. A corporation "must not only be judged by its declared objects, but also by what use is actually made of" the property to ascertain whether it is charitable. *Sunny Ridge*, 106 Idaho at 101, 675 P.2d at 816. For this factor, the Court has looked to the actual beneficial activities offered by the entity, whether it be traditionally charitable, social, or recreational. See *Coeur d'Alene Public Golf Club*, 106 Idaho at 106, 675 P.2d at 821 (finding provision of a recreational golf course a benefit to the community "in the form of social and recreational facilities"); *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho 962, 965, 855 P.2d 47, 50 (1993) ("While promoting the recreational use of motorcycles probably does not comport with traditional notions of "charitable activities," under the broader definitions we have previously adopted, it is possible to find some benefit to the community."); *Boise Central*, 122 Idaho at 71, 831 P.2d at 539 (finding use of property consistent with stated purposes); *Community Action Agency*, 138 Idaho at 86, 57 P.3d at 797 (finding provision of "service to those in need").

28. "To the extent that a charitable corporation performs a function otherwise required of the government, the public benefit is clear and direct." *Coeur d'Alene Public Golf Club*, 106 Idaho at 106, 675 P.2d at 821. Health care for the poor and infirm has been recognized by the people of Idaho as a governmental responsibility since territorial days. As stated by Justice Bistline in his concurring opinion in *Idaho Falls Consolidated Hospitals, Inc. v. Bingham County Board of Commissioners*:

What is learned from the review is that it has always been the sense of the people of Idaho, speaking first through their territorial legislatures, then through their Constitutional delegates, and since 1889 through their state legislatures, that medical care and necessities of life will not be denied to those unfortunate few who would suffer and sometimes perish if the same were not provided by the largess of the people acting through their government, which taxes for that very purposes.

102 Idaho 838, 845, 642 P.2d 553, 560 (1982) (Bistline, J., concurring); see also *State ex rel. Nielson v. Kindstrom*, 68 Idaho 226, 232, 191 P.2d 1009, 1012 ("The granting of aid to its needy aged is a well recognized obligation of the state and is a governmental function tending to promote the public welfare.").

29. The Good Samaritan Society operates skilled nursing facilities and uses them to provide shelter and supportive services for the aged, poor, and infirm, requiring, by doctor's order, 24-hours-a-day-7-days-a-week. It does not operate its skilled nursing facilities for pecuniary gain or profit, and it does not distribute any profits or gains to members or owners. The numerous functions, activities and services at the Boise facility fulfill the residents' needs

for recreation, society, culture, security, and religion. The Good Samaritan Society attempts to share God's love in the midst of all the work it does, whether it be in showing that "in Christ's love, everyone is someone" through the care they provide; through its activity programs and services to provide pleasure, peace, and purpose for each of the resident's lives to fulfill recreational, societal, cultural, spiritual, and security needs; training its staff to stop along the road to help others; encouraging others to volunteer to partner with their ministry or their aid to the community; or opening its doors to the community. All of these ministries and activities qualify as charitable functions.

### iii. Whether the Good Samaritan Society is Supported by Donations

30. The third *Sunny Ridge* factor addresses whether the Good Samaritan Society's mission is supported by donations. Donations can be for time and equipment in addition to monetary. *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72; *Owyhee Motorcycle Club*, 123 Idaho at 965, 855 P.2d at 50.

31. Donations of time and resources by volunteers provide numerous benefits to residents of a care center, being without question an important part in a center's operation. *Bethesda Found. v. Bd. of Review of Madison Cnty.*, 453 N.W.2d 224, 227 (Iowa Ct. App. 1990) ("The fact that volunteers similarly assist for-profit nursing homes does not diminish the effect these services have in determining . . . charitable status.")

32. The Idaho appellate courts have provided little guidance as to the extent of donations required under I.C. § 63-602C. To require the Good Samaritan Society to maintain a modern skilled nursing facility with significant private monetary donations would be an overwhelming requirement.

Given the health system's goal of providing a place for the care of all persons in need of nursing home care, regardless of means, there was a clear eleemosynary motive and a charitable gift in founding the home. Moreover, it is not indispensable that the institution be maintained by charity. As we noted [in a previous decision] '[o]ne would have to be removed from modern-day realities to believe that such costs are easily subsidized [by charitable donations], even in part.'

*St. Margaret Seneca Place v. Board of Property Assessment, Appeals and Review, County of Allegheny*, 640 A.2d 380, 385-86 (Pa. 1994).

33. The Good Samaritan Society receives donations from supporters nationwide, either by cash donations, property donations, and donations of time of service to the Good Samaritan Society. The Good Samaritan Society received \$4,986,000 in unrestricted donations in 2012, and \$4,785,000 in 2013. It also recognized income in 2012 from gifts released from restrictions in the amount of \$5,793,000 and \$5,108,000 in 2013. Restricted donations and endowments are invested to provide ongoing benefit to the Good Samaritan Society facilities. Without including resource development revenue and costs, which is unique to many non-profit corporations, the Good Samaritan Society would not be able to sustain its mission, as in 2012 it would have had an operational loss of <\$3,396,000>, and in 2013, a loss of <\$14,889,000>.

34. On a national level, the Good Samaritan Society reported over 180,000 hours of volunteer service in 2012. Boise also received at least 12,000 of volunteer service in 2012 from approximately 350 to 450 volunteers. Using the Independent Sector's Idaho Value of Volunteer Time, the volunteers provide a monetary benefit of approximately \$210,000 to Boise's facility each year. According to the values placed on volunteer hours by the Independent Sector, these hours translate to donations of time in 2012 worth \$3,985,200 (\$22.14/hr) nationally, and \$193,560 (\$16.13/hr) locally.

35. The Boise facility also receives donations from its volunteers and its employees. Volunteers have donated to the on-site beauty parlor so that residents can have their hair done. They have purchased clothes and gifts for residents, and have donated Boise State football tickets for residents to attend games. Employees have given directly to resident programs through payroll contributions. The employees have also provided financial assistance to meeting the spiritual needs of people in other countries and directly support the Project Outreach missions partnering with the Good Samaritan Society.

36. Considering the various ways in which people of the community support the work of the Good Samaritan Society, the monetary and volunteer work donated to the Good Samaritan Society, and the fact that the Good Samaritan Society would not be able to sustain its mission without donations, the Court finds the Good Samaritan Society is significantly supported by donations.

**iv. Whether the Recipients of the Good Samaritan Society's Services are Required to Pay for the Assistance They Receive**

37. The fourth *Sunny Ridge* factor is whether the recipients of a charitable organization's services are required to pay for the assistance they receive.

38. Many jurisdictions have recognized the modern realities an organization running a skilled nursing facility faces in the context of being operated for charitable purposes. For example, in *Evangelical Lutheran Good Samaritan Society v. Gage County*, the Nebraska Supreme Court stated that:

Formerly all institutions furnishing services of this nature, including both hospitals and nursing homes, were providing care for many patients without compensation and extended charity in the sense of alms-giving or free services to the poor. With the advent of present day social security and welfare programs, this type of charity is not often found because assistance is available to the poor under these programs. Yet, . . . the courts have defined 'charity' to be something more than mere alms-giving or the relief of poverty and distress, and have given it a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits.

151 N.W.2d 446, 449 (Neb. 1967) (internal quotations and citations omitted). "Hospitals operated as nonprofit institutions are universally classed as charitable institutions . . . [and] nursing homes for the aged and infirm are analogous to hospitals in that they perform largely the same services available in hospitals although the services available do not cover such a wide area

and are more limited as to the types of cases and persons served. They are, however, recognized as charitable institutions when not operated for private gain." *Id.* at 449-50 (citations omitted).

39. The Colorado Supreme Court has stated that skilled nursing homes being operated without a profit motive are charitable enterprises, even when some rates are being covered by "public welfare agencies." *Stanbro v. Baptist Home Association of Colorado for the Aged*, 475 P.2d 23, 25 (Colo. 1970).

40. The D.C. Circuit has recognized similar realities. See *E. Kentucky Welfare Rights Org. v. Simon*, 506 F.2d 1278, 1288-89 (D.C.Cir.1974), *vacated on other grounds*, *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976). Although the discussion focused specifically on hospitals in the 501(c)(3) context, as the Nebraska Supreme Court found above, nursing homes are analogous to hospitals for this discussion.

In the field of health care, the changes have been dramatic. Hospitals in the early part of this nation's history were almshouses supported by philanthropy and serving almost exclusively the sick poor. Today, hospitals are the primary community health facility for both rich and poor. Philanthropy accounts for only a minute percentage of the hospital's total operating costs. Those costs have soared in recent years as constant modernization of equipment and facilities is necessitated by the advances in medical science and technology. The institution of Medicare and Medicaid in the last decade combined with the rapid growth of medical and hospital insurance has greatly reduced the number of poor people requiring free or below cost hospital services. Much of that decrease has been realized since the promulgation of Revenue Ruling 56-185. Moreover, increasingly counties and other political subdivisions are providing nonemergency hospitalization and medical care for those unable to pay. Thus, it appears that the rationale upon which the limited definition of 'charitable' was predicated has largely disappeared. To continue to base the 'charitable' status of a hospital strictly on the relief it provides for the poor fails to account for these major changes in the area of health care.

*E. Kentucky*, 506 F.2d at 1288-89. (footnotes omitted).

41. The charging of fees for services performed does not detract from an organization's charitable status or intent. See *Gage Cnty.*, 151 N.W.2d at 450 ("The fact that patients who are able to pay are required to do so does not deprive a corporation of its eleemosynary character."); *Twilight Acres, Inc. v. Board of Review*, 346 N.W.2d 40 (1984, Iowa App); *West Allegheny Hospital v. Board of Property Assessment*, 455 A.2d 1170 (Pa. 1982); *Harvard Community Health Plan, Inc. v. Board of Assessors*, 427 N.E.2d 1159, 1163 n.10 (Mass. 1981); *Mayo Foundation v. Commissioner*, 236 N.W.2d 767, 773 (Minn. 1975); *Santa Rosa Infirmary v. City of San Antonio*, 259 S.W. 926, 932 (Tex. Comm'n App. 1924) ("[T]he mere fact that pay patients largely predominated over the charity patients, or that the institution did not go out into the highways and byways seeking out those to whom its charitable offices might be extended, could not, under the great weight of authority, be said to so detract from its charities as to disqualify it as an institution of purely public charity."). As stated in *St. Margaret Seneca*:

[T]he absence of indigent residents who receive no government support is not surprising, and is certainly not, standing alone, enough to disqualify a nursing home from an exemption as a purely public charity. In modern America it is hard to find any person in need of nursing home care who is uninsured, unable to pay, and wholly ineligible for government support in the form of Medicare or Medicaid coverage. Our prior decisions do not equate the acceptance of Medicaid payments as the equivalent of conducting a business for profit. The decision to accept Medicaid payments to help defray the cost of care for residents is perfectly consistent with a finding that the nursing home advances a charitable purpose.

640 A.2d at 382-83; *see also Stanbro*, 475 P.2d at 25 (finding rates covered by public welfare agencies similar to those being taken up by benevolent groups in determination of charitable purposes of a skilled nursing facility).

42. The Good Samaritan Society seeks payment for its services from those with the ability to pay for those services. The modern realities of managed skilled nursing care make it hard to identify any without an *ability* to pay. When circumstances arise at the Boise facility where a resident is unable to pay for care or a service, the Good Samaritan Society will work within its admissions and collections process, with the availability of charitable allowances and donated funds to find every way to help a resident. Recipients are required to pay for the services if they are able to, but this alone does not erase the charitable nature of the Good Samaritan Society.

**v. Whether there is General Public Benefit**

43. The fifth *Sunny Ridge* factor examines whether there is a general public benefit. Tax exemptions are justified because a charitable organization provides an offsetting benefit to the general community. *Sunny Ridge*, 106 Idaho at 102, 675 P.2d at 817. As stated in *Housing Southwest*:

For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit. If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the 'general public benefit' factor is whether the corporation fulfills a need which the government might otherwise be required to fill. While the requirement that a corporation lessen the burden of government is but one factor to be considered in determining tax exempt status, it is nevertheless an important one.

128 Idaho at 339, 913 P.2d at 72. Further, an organization can meet the general public factor even if it benefits only a limited group of people where that small group possesses a need the government would otherwise be obligated to fill. *Id.* A charitable organization is not required to function primarily as an organization providing monetary aid, but can provide a number of services for the public's benefit. *Community Action*, 138 Idaho at 86, 57 P.3d at 797. Ultimately, in *Sunny Ridge*, the Idaho Supreme Court found Sunny Ridge did not satisfy the "general public benefit" factor because it "did not provide a general benefit to the community as a whole and only served a limited group of people who did not require government assistance." *See Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72. Additionally, in *Coeur d'Alene Public*



*Golf Club*, the court found that a public golf course provided a public benefit. 106 Idaho at 106, 675 P.2d at 821.

44. Residents at the facility are unable to care for themselves and require skilled nursing services. On average, the residents require a higher level of care than most skilled nursing residents in Idaho. The facility is equipped to care for these patients with higher acuity in its five specialized neighborhoods. It provides care for the poor, elderly, and infirm who would otherwise be an obligation of government.

45. The Good Samaritan Society also provides numerous benefits to the community at large. It has strived to be innovative in the area of aged care, partnering with experts and research universities to invest in development of technologies to combat senior care issues. Through the Good Samaritan Society projects like LivingWell@Home, it looks to develop ways to monitor patients remotely in their own homes and provide alternatives to traditional long-term care facilities.

46. The Good Samaritan Society also provides monetary grants to its local facilities to assist with community involvement projects. Each of these community involvement projects are designed by the local facilities to meet local community needs, ranging from health care, clothes, and food for the homeless to school supplies for children and mentoring for young mothers.

47. The Boise facility is a recipient of these grants, currently providing free mneme therapy to the community and its residents through Arts Without Boundaries, which uses art to help develop and stimulate the brain. The Boise facility also sponsors other events for the community, including a Mother's Day Flower Project, a neighborhood county fair, and service to the Idaho Food Bank and Idaho Humane Society. The residents are also encouraged to engage in the community and are provided with assistance to serve. Residents have helped put together packages for new parents, and have provided food and gifts for needy families during the holidays. One resident also utilized the aid of staff and volunteers to make dog biscuits to sell and raise money for the Humane Society. The facility is also available to assist the community, as the Girl Scouts, SWIDOV, IHCA, and local clergy groups have used it for meetings and special events. Schools, a pet therapy program, and health organizations have used the facility for training and music teachers have utilized it for recitals for their students.

48. The Good Samaritan Society also provides opportunities for its caregivers, promoting the most innovative care available. Often, scholarships are provided to allow nursing students obtain advanced degrees to further the knowledge and experience for the benefit of the communities served. In 2012 and 2013, the facility in Boise offered almost \$15,000 in tuition reimbursement for employees in nursing school programs.

49. The dominant purpose of the Good Samaritan Society's work is for the benefit of the public; the care given to its residents and its focus of the needs of the aged and others in need is the religious and charitable means adopted by the Good Samaritan Society followed to this day for this purpose.

50. The Good Samaritan Society provides a significant public benefit. In line with the conclusion above that the Good Samaritan Society's functions are charitable; these functions

also provide a public benefit. The Good Samaritan Society has been providing skilled nursing care to those in need in Boise for over fifty years, a need that Idaho has long recognized as an obligation of the government. Idaho views this obligation as an important part of upholding the public welfare. Although changes in social welfare have made it profitable under certain circumstances to provide skilled nursing care for Medicaid patients in Idaho, the Good Samaritan Society has strived to consistently provide care to all requiring care regardless of payor source throughout its existence. Instead of focusing on increasing its census of Medicaid residents, the Good Samaritan Society continues to look for ways to share Gold's love and touch the whole lives of everyone who comes in contact with its health ministry.

**vi. Whether the Income Received Produces a Profit**

51. The sixth *Sunny Ridge* factor is whether the income received produces a profit. The Idaho Supreme Court noted that a nonprofit corporation is not required to operate at a deficit, but revenue exceeding costs and expenses will be considered by a trial court as to "whether the institution is operating similar to a for profit commercial corporation." *Latah County*, 119 Idaho at 132, 804 P.2d at 306, n.2.

52. Scope of operations alone cannot change non-profit status. *See Spencer v. World Vision, Inc.*, 633 F.3d 723, 735 (9<sup>th</sup> Cir. 2010) (O'Scannlain, J., concurring) (explaining away plaintiff's characterization of World Vision, Inc., as a "billion-dollar-per-year" business).

The fact that an operation is not organized as a profit-making commercial enterprise makes colorable a claim that it is not purely secular in orientation. In contrast to a for-profit corporation, a nonprofit organization must utilize its earnings to finance the continued provision of the goods or services it furnishes, and may not distribute any surplus to the owners. This makes plausible a [religious organization's] contention that an entity is not operated simply in order to generate revenues for the [religious organization], but that the activities themselves are infused with a religious purpose. Furthermore, unlike for-profit corporations, nonprofits historically have been organized specifically to provide certain community services, not simply to engage in commerce. [Religious organizations] often regard the provision of such services as a means of fulfilling religious duty and of providing an example of the way of life a [religious organization] seeks to foster.

*Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 344 (1987) (Brennan, J., concurring) (citations omitted); *see also Evangelical Lutheran Good Samaritan Soc. v. Board of Review of City of Des Moines*:

In order to support a claim of tax exemption it should not be required of the claimant to profess and demonstrate a Franciscan indifference toward the property of the charitable operation. Neither should fiscal ignorance or irresponsibility be a necessary element. Efficiency in a charitable operation and the accumulation of the funds and properties have only to do with how successfully the enterprise is conducted. Success in the operation will make it possible to extend the services to more persons. This fosters the purpose and

justification for all charitable exemptions which is to make it possible for charities to provide services which otherwise would have to be provided by the government at public expense.

200 N.W.2d 509, 512-13 (Iowa 1972) (Harris, J., dissenting).

53. Other jurisdictions have recognized the need for administrative services to ensure costs are covered in the nonprofit health care environment. *See West Allegheny*, 455 A.2d at 1172 (finding charitable despite acknowledgment the “high percentage of payment is attributable both to health care insurance . . . and the efforts of a debt-collection agency”); *Mayo Foundation*, 236 N.W.2d at 770 (acknowledging use of credit counselors prior to services); *see also City of McAllen v Evangelical Lutheran Good Samaritan Society*, 530 S.W.2d 806, 811 (Tex. 1975) (finding obtaining signature of “responsible party” at time of admissions for payment and notification purposes comported with proper administrative procedures); *St. Margaret Senaca*, 640 A.2d at 382-83 (“In modern America it is hard to find any person in need of nursing home care who is uninsured, unable to pay, and wholly ineligible for government support in the form of Medicare or Medicaid coverage.”); *Gage County*, 151 N.W.2d at 449 (“With the advent of present day social security and welfare programs, this type of charity is not often found because assistance is available to the poor under these programs.”).

54. In some years, the Good Samaritan Society earns operating income while in others it sustains a loss. In 2012, the Society earned operating income of \$3,579,000, while in 2013 it suffered an operating loss of (\$8,969,000).

55. In 2012 and 2013, the Boise facility itself had income that exceeded its expenses and costs. While governmental programs like Medicaid, Medicare, or the Veterans Administration, provide reimbursements for care of qualified individuals, these reimbursements vary, and do not cover all of the care provided by the Boise facility each year. The Boise facility receives less than its usual and customary charges from all contractual payor sources, including Medicaid, Medicare, and Veterans Administration, which set the agreed upon amount. Additionally, without the provider tax and UPL, Boise facility would realize a loss of \$14.55 per Medicaid resident, per day, but with it, the Boise facility, accounting for all approved costs nets a \$49.84 gain per day, per Medicaid resident. The provider tax and UPL has enticed many for-profit facilities to accept more Medicaid residents, but the Good Samaritan Society has always accepted Medicaid residents regardless of the reimbursement system.

56. Where any net revenue is realized, it is not distributed to members, shareholders, directors, or officers of the Good Samaritan Society, but put directly back into its ministry to ensure a sustained mission in Boise. Since 1958, it has invested approximately \$11.9 million in its Boise facility, while realizing approximately \$9.6 million, for a net investment of about \$3.3 million to sustain its mission in Boise. Further, all revenue derived is directly related to the stated purposes for which the Good Samaritan Society exists.

#### **vii. To Whom the Assets Would Go Upon Dissolution of the Corporation**

57. *Sunny Ridge*’s seventh factor asks to whom the assets would go upon dissolution of the corporation.

58. According to the Good Samaritan Society's Articles, upon dissolution, all assets will be distributed to other nonprofit social ministry organizations designated by the ELCA and the Missouri Synod.

**viii. Whether the "Charity" Provided is Based on Need**

59. The final *Sunny Ridge* factor determines whether the 'charity' provided is based on need. The word charity or charitable in the legal sense has come to include "every gift for general public use, whether it be for educational, religious, physical or social benefit." *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. The definition of charity in a legal sense is much broader than the very narrow definition adopted by the American Institute of Certified Public Accountants.

[T]he term 'charitable,' as it developed in English common law, was a definable legal concept, clearly less inclusive than lay terms such as 'public benefit,' 'philanthropic,' or 'beneficial'. Lord Macnaghten, in *Pemsel's Case*, authored the first comprehensive judicial definition of charity:

'Charity' in its legal sense comprises four principal divisions: Trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.... The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly.

*Commissioners for Special Purposes of Income v. Pemsel*, A.C. 531, 583 (1891). Those four divisions were in essence adopted in the Restatement of Trusts and are generally recognized as charitable in American law today.

American colonists carried with them the English tradition of active private philanthropy. Public and private actions often were intertwined:

[The colonists] did not debate the question of public versus private responsibility ... public and private philanthropy were so completely intertwined as to become almost indistinguishable. The law itself reflected a pragmatic approach to the solving of social problems through philanthropy. Colonial assemblies went out of their way to remove obstacles in the way of charities. The courts valuing social betterment above legal technicalities, asserted a permissive charity doctrine that supported donors' benevolent intentions, even when the formulation of their plans was clearly imperfect.

H. Miller, *The Legal Foundations of American Philanthropy 1776–1844*, at xi (1961) (quoted in, James J. Fishman, *The Development of Nonprofit Corporation Law and an Agenda for Reform*, 34 Emory L.J. 617, 622 (1985)). Philanthropic approaches in Colonial America were not uniform. See Note, *The Enforcement of Charitable Trusts in America: A History of Evolving Social Attitudes*, 54 Va. L.Rev. 436, 440–41 (1968) (discussing Colonial statutes); Wyllie, *The Search for an American Law of Charity, 1776–1844*, 46 Miss. Valley Hist. Rev. 203, 204 (1959). From the beginning, the concepts of public and private charity coexisted. For example, in Boston and other Massachusetts towns, public spending for poverty relief combined with private contributions and legacies. The typical vehicle for private philanthropic efforts was the English charitable use, which enjoyed universal approval.

In the immediate post-Revolutionary period, the favorable attitude toward charity continued, but the law applicable to charities reflected the general uncertainty and transition characteristic of American law in the post-Revolutionary period. Most state constitutions were silent about charities. See *id.* Massachusetts, Pennsylvania, Vermont, and New Hampshire, however, gave constitutional protection to charities. Other states passed statutes facilitating and reaffirming the benefits of charities to the community. The retention of English statutes and practices resulted from the general continuation of English law and precedent. See E. Brown, *British Statutes in American Law 1776–1836*, at 24–26 (1964).

From the beginning, most states actively encouraged the incorporation of private associations that performed vital services. Several state legislatures passed statutes permitting incorporation of charitable organizations such as churches, schools, and literary societies. See J. Blandi, *Maryland Business Corporations 1783–1852*, at 11 (1934); see also 1802 Md. Laws 111; 1798 Md. Laws 24; 1779 Md. Laws 9. These early enactments evolved into our current statutory scheme, which includes the granting of privileges to charitable organizations, e.g., tax exemptions.

*State Department of Assessments & Taxation v. North Baltimore Center, Inc.*, 743 A.2d 759, 764-66 (Md. Ct. Spec. App. 2000) (subsequent citations to cited works in quotation omitted).

60. Whether bad debt can be counted as charity remains undecided in Idaho courts. But see *Wilson Area Sch. Dist. v. Easton Hosp.*, A.2d 877, 878-79 (Pa. 2000) (including bad debt expenses with charity care and free services as donated services to individuals and community).

61. The Good Samaritan Society was organized to provide charity based on need and to this day provides charity based on need. In a modern world where the care of the aged and others in need of around-the-clock nursing is highly managed and regulated through the introduction of government programs like Medicaid that are always changing and adapting, the Good Samaritan Society has continued to keep its doors open to all residents with, often higher, long-term care needs regardless of payor source and will make charitable allowances when the resident is unable to pay through no fault of the resident. The Good Samaritan Society also

provides community grants based on need, scholarships to employees based on need, support to world missionaries based on need, and staff assistance funds based on need.

62. In review of the *Sunny Ridge* factors as a whole, and in consideration of all particular circumstances of this case, the Good Samaritan Society is a charitable organization under I.C. § 63-602C.

**C. Whether the Good Samaritan Society's Boise facility is used exclusively for the religious and charitable purposes for which it was organized.**

63. The tax exempt status is based on the ownership and use of property. *Corp. of the Presiding Bishop*, 123 Idaho at 423, 849 P.2d at 96. For an organization to receive tax exempt status pursuant to I.C. § 63-602C for its property, the organization must be charitable and it must use the property exclusively for the charitable purposes for which it was designed (or charitable purposes in combination with another statutorily recognized exempt use). *Id.* Idaho Code § 63-602B does not require that property owned and used by a religious organization be solely used for public worship; it considers other uses if they are "coupled with use for public worship." *Immaculate Heart of Mary High School Inc. v. Anderson*, 96 Idaho 226, 229, 526 P.2d 831, 834 (1974); *see also North Idaho*, 94 Idaho at 649-50, 496 P.2d at 110-11 ("[T]he exemption of property used exclusively for religious or charitable purposes should be held to include any property of the religious or charitable entity which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of religious or charitable purposes.").

64. An exemption will be granted for property that is used exclusively for a combination of purposes which are each statutorily exempt. I.C. § 63-602(2).

The use of the words "exclusive" or "exclusively" in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602OO, Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

*Id.*; *see also Corp. of Presiding Bishop*, 123 Idaho at 423, 849 P.2d at 96 ("An organization seeking to exempt its property from taxation under [I.C. § 63-602C], must be charitable and must use its property exclusively for the charitable purposes for which it was designed *or for those purposes combined with some other statutorily exempted use.*") (Emphasis added).

65. Subsection (2) of I.C. § 63-602B provides for assessment when part of the property is being leased or used for a business or commercial purpose. Where the part leased or used for commercial purposes is less than 3% of the value of the whole property, the entire property is deemed to still be exempt. I.C. § 63-602B(2). Where it is greater than 3%, that percentage of the entire property is to be assessed. *Id.* However, for this proportional assessment, if that part being used or leased is "for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums, or club rooms" for the purposes for

which the religious organization is organized, that use “shall not be deemed a business or commercial purpose, even if there are fees or charges imposed and revenue is derived from that use.” I.C. § 63-602B(2). *See also Boise Central*, 122 Idaho at 72, 831 P.2d at 540.

66. Similarly, the latter part of Idaho Code § 63-602C creates a partial exemption when the property “is leased in part or used in part for both commercial and non-commercial purposes” and creates an exception to the general requirement that the portion of the property used for revenue-generating activities be taxed, “by defining certain revenue-generating . . . activities as non-commercial.” *Idaho Youth Ranch, Inc. v. Ada Cnty. Bd. of Equalization*, 41256, 2014 WL 4656519, at \* 5 (Idaho Sept. 19, 2014).

67. Even if any portion of the skilled nursing of the property, for which fees or charges are imposed and which generates revenue for the Good Samaritan Society, were to be classified as used for a business or commercial purpose not related to the religious and charitable purposes for which the Good Samaritan Society was organized, the exceptions contained in I.C. §§ 63-602B and 63-602C provide that at a bare minimum, 63% of the property would not be deemed a business or commercial purpose, and, therefore, cannot be taxed. 52% of the facility is used for residence halls or dormitories, and 11% is used for meeting rooms, halls, or recreational facilities, all of which are used in connection with the exempt purposes for which the Good Samaritan Society was organized: to share God’s love in word and deed, to provide shelter and supportive services to older persons and others in need, and to engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community. Therefore, regardless of the revenue generated by the residence halls or dormitories, or meeting rooms, or auditoriums at the Boise facility, I.C. §§ 63-602B and 63-602C specifically exempts these uses from property taxes.

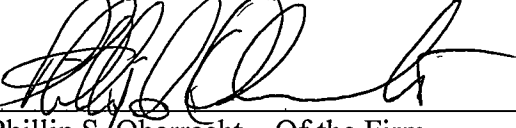
68. The Good Samaritan Society is a religious and charitable organization which uses the property comprising the skilled nursing facility exclusively for the religious and charitable purposes for which it was organized. The property is dedicated for a combination of religious and charitable purposes and the support it receives by donations and volunteers helps illustrate the community’s recognition of the Good Samaritan Society’s status and willingness to provide services to those in need. The Good Samaritan Society was organized as a non-profit organization that wishes to share God’s love in word and deed, and provide shelter and supportive services for those in need, focusing on the physical, emotional, and spiritual needs of all who require skilled care. These services are not provided for pecuniary gain, or to satisfy regulatory requirements; they are provided to fulfill its mission. The daily operations are not driven solely by pecuniary concerns but by its calling to fulfill the physical, emotional, and spiritual needs of every resident, regardless of the resident’s payor source.

69. The Good Samaritan Society’s combination of charitable and religious purposes is virtually inseparable as its religious foundation and beliefs drive and inform its charitable nature. The religious purpose of the Good Samaritan Society is presented each day at its national headquarters and at the Boise facility in prayer and devotion or worship. Depending on the specific day, additional spiritual services are available to each resident at the Boise facility regardless of their religious affiliation or preference. The Chapel is utilized by the Chaplain and outside religious denominations and leaders to provide worship and sacrament services. The Good Samaritan Society’s specific religious practices are deliberate functions designed to enrich

the spiritual lives of the residents and encourage the goal of ministering to the complete person, body and soul. The Good Samaritan Society has designed spiritual teachings to help foster a sense of community in each local facility run by the organization. At the Boise facility, this sense of community drives the caregivers to provide the best care available, and the activity staff and volunteers to provide pleasure, peace, and purpose to each resident. Some of the specialized care provided by the Good Samaritan Society in its Harbor Care, Eagle House, and Hoeger House neighborhoods is not typically available in most for-profit facilities. Accordingly, as the Good Samaritan Society is a charitable and religious corporation, and the property is used exclusively for those purposes, the Good Samaritan Society's Boise Village property qualifies for exemptions under I.C. §§ 63-602B and 63-602C. Accordingly, the County's denials of the Good Samaritan Society's 2012 and 2013 applications for property tax exemptions are overturned.

DATED this 31<sup>ST</sup> day of December, 2014.

GREENER BURKE SHOEMAKER OBERRECHT, P.A.

By:   
Phillip S. Oberrecht – Of the Firm  
Jason R. Mau – Of the Firm  
Attorneys for Appellant, The Evangelical Lutheran  
Good Samaritan Society

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31<sup>ST</sup> day of December, 2014, a true and correct copy of the within and foregoing instrument was served upon:

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☐ U.S. Mail
- ☐ Facsimile
- ☒ Hand Delivery
- ☐ Overnight Delivery

  
Phillip S. Oberrecht  
Jason R. Mau



DEC 31 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

Phillip S. Oberrecht (ISB No. 1904)  
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Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY'S  
CLOSING ARGUMENT**

**I. The Good Samaritan Society's Religious and Charitable Purposes and Its Uses of its  
Property in Boise Have Not Changed Since 1958.**

The Evangelical Lutheran Good Samaritan Society ("Good Samaritan Society" or "Society") has owned and operated the property in question as a skilled nursing facility since 1958. The Ada County Commissioners, sitting as the Ada County Board of Equalization ("Ada County") granted the Good Samaritan Society religious and charitable property tax exemptions for the Boise facility until 2012 when it denied those exemptions without a stated reason. The ownership had not changed, the operation had not changed, and the religious and charitable mission of the Good Samaritan Society had not changed. The only thing that had changed over

the years is that the United States Government and the Idaho state government had begun reimbursing skilled nursing facilities for accepting the poor, aged, and infirm through the Medicaid, Medicare, and VA systems. In addition, reimbursement under the Medicaid system increased substantially when Idaho adopted its provider tax and upper payment limit ("UPL") system. In the few years since those increased reimbursements began, many skilled nursing facilities have dramatically increased their acceptance of Medicaid patients. These changes in the reimbursement system have not affected the Good Samaritan Society, however. The Boise facility has always accepted the poor, aged, and infirm. Since the inception of the Medicaid program, the Boise facility has readily accepted Medicaid patients. And, since the inception of the provider tax and UPL system in Idaho, the Boise facility's admission of Medicaid patients has remained stable. Exhibit 24A shows that the Boise facility's Medicaid occupancy was at its highest in 2008, before the provider tax and UPL system was implemented in Idaho. Even so, it has remained at a high percentage. As can be seen from that Exhibit, many of the other facilities increased their Medicaid occupancy dramatically when reimbursements increased. Although such facilities have obviously managed their resident populations to take advantage of the high reimbursement rates, the Boise facility has remained consistent in its mission from the beginning.

Ada County has argued up to the time of trial that the affordable housing case, *Evangelical Lutheran Good Samaritan Society v. Board of Equalization of Latah County*, 119 Idaho 126, 804 P.2d 299 (1990), controls this case. As the Court knows, in that action, the Supreme Court indicated that although the case was very close on the facts, it could not find clear error on the part of the district court and affirmed the district court's decision denying a charitable tax exemption to the Good Samaritan Society's affordable housing facility in Moscow,

Idaho. But, it is important to note that the Latah County Board of Equalization granted a tax exemption for the Good Samaritan Society's skilled nursing facility in Moscow, and has done so every year since. In addition, the other two skilled nursing facilities owned by the Good Samaritan Society in Idaho have also consistently and continually received religious and charitable tax exemptions. Ada County is the only county in the state to attack the religious and charitable exemption status of a skilled nursing facility owned and operated by the Good Samaritan Society in Idaho.

The case tried to this court is quite different from the case that was on appeal to the Idaho Supreme Court in 1990. That case did not involve a skilled nursing facility, but instead involved independent living areas in an affordable housing facility. It did not involve the religious property exemption statute. Further, the evidence of the religious and charitable nature of the Good Samaritan Society was not presented in 1990 in the comprehensive fashion it was presented in this case.

## **II. The Idaho Statutory Scheme for Property Tax Exemptions Supports a Finding that the Good Samaritan Society Qualifies for an Exemption.**

A plain reading of the religious and charitable property tax exemption statutes in question in this case shows that the Good Samaritan Society qualifies for a property tax exemption. The applicable portions of the statutes read as follows:

The following property is exempt from taxation: property belonging to any religious . . . corporation . . . of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious . . . corporation.

I.C. § 63-602B(1).

The following property is exempt from taxation: property belonging to any . . . charitable . . . corporation . . . of this state, used exclusively for the purposes for which such . . . corporation . . . is organized; provided, that if any . . . such . . . corporation . . . uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to

the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property . . . .

I.C. § 63-602C. The property tax exemption statutes also allow exemptions where the property is used exclusively for a combination of purposes which are each statutorily exempt. I.C. § 63-602(2).

The use of the words “exclusive” or “exclusively” in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602OO, Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

*Id.*

The Good Samaritan Society was organized for purely religious and charitable purposes and was not organized, nor is it operated, for commercial purposes. It does not undertake its mission at its skilled nursing facility in Boise for pecuniary gain and does not contemplate the distribution of any gains or dividends to its members or directors. It does not use the property for any commercial purposes unrelated to its purposes, nor does it generate any incidental or unrelated business income. Its purposes, as stated in its articles of incorporation, are to share God’s love in word and deed, believing that in Christ’s love, everyone is someone; to provide shelter and supportive services to older persons and others in need; and to engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community. (Tr. Ex. 4.)

The purposes of the founder, Rev. August “Dad” Hoeger, have been preserved and continue to direct the ministry of the Good Samaritan Society to this day, even with changes since 1922 related to the growing demand for long-term skilled nursing, the development of government programs covering the medical care of those in need, and the fact that the modern

health care field has become one of the most regulated industries in the nation. The Good Samaritan Society continues to be guided by biblical principles, strives to share God's love in the midst of the work each of its employees performs daily, and continues to view its work as a Christian mission to the aged, poor, and infirm.

All revenue derived from the Boise skilled nursing facility is directly related to the Good Samaritan Society's purposes of sharing God's love with its skilled nursing residents, providing shelter and supportive services to older persons and others in need at its skilled nursing facilities, and engaging in all related charitable and religious work promoting the general health of the community. Accordingly, I.C. §§ 63-602B and 63-602C require finding a full exemption for the exclusive use of the Boise facility for a combination of religious and charitable purposes.

### **III. The Good Samaritan Society Meets the Guidelines Developed Under Property Tax Exemption Case Law to Qualify for an Exemption.**

The Idaho Supreme Court has issued decisions related to the property tax exemptions for religious and charitable corporations. Most of these decisions relate to the charitable tax exemption statute and the guidelines adopted in the *Sunny Ridge* case to analyze the determination of a corporation's charitable status. The religious tax exemption cases that the Court has decided have related mainly to the parsonage issue and have not related to a determination of a corporation's religious status. Each party has provided guidance to this Court for such a determination, and the Good Samaritan Society argues that even under the strictest of factors it qualifies for a property tax exemption as a religious corporation. The Good Samaritan Society also contends that it qualifies for a property tax exemption as a charitable corporation under the *Sunny Ridge* guidelines.

#### **A. The Good Samaritan Society qualifies for a religious property tax exemption pursuant to I.C. § 63-602B.**

The Idaho Supreme Court has not adopted any guidelines related to I.C. § 63-602B for a

determination of the religious nature of a corporation applying for an exemption. Other jurisdictions have developed such guidelines or factors of varying degree. The Good Samaritan Society has previously presented examples of these guidelines, from the more deferential of tests to tests with multi-factors. Ada County has suggested in its pretrial memorandum that this Court should adopt a test from jurisdictions that focus on whether the corporation is advancing religion or whether its operation is more businesslike than a facility used primarily for religious purposes. *See, e.g., Franciscan Communities, Inc. v. Hamer*, 975 N.E.2d 733, 745-46 (Ill. App. Ct.). Regardless of the approach this Court takes for a determination of the Good Samaritan Society's religious status, the Good Samaritan Society believes its religious purpose is evident under even the strictest of tests.

The Good Samaritan Society is aware that according to the Supreme Court, the Idaho Constitution and the property tax exemption statutes encourage the promotion of sobriety, morality, and virtue in the people of the State of Idaho by allowing exemptions for those types of organizations engaged in religious, charitable, or educational activities. ID CONST. art. III, § 24; *N. Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai Cnty*, 94 Idaho 644, 649-50, 496 P.2d 105, 110-11 (1972) *distinguished on separate grounds by Corp. of the Presiding Bishop*, 123 Idaho 410, 849 P.2d 83. However, in this case Ada County has focused solely on revenue and administrative activities utilized by the Good Samaritan Society that are utilized similarly by for-profit skilled nursing facilities and apparently ignored the prominent religious focus and purposes of the Good Samaritan Society. Nonetheless, the statute clearly exempts those organizations that use their property for religious purposes and activities beyond public worship. *Immaculate Heart of Mary High School Inc. v. Anderson*, 96 Idaho 226, 229, 526 P.2d 831, 834 (1974). The purposes and activities encouraged, implemented, and supported by the

Good Samaritan Society at its facilities, including the Boise facility, are the types of endeavors that the people of Idaho have encouraged since territorial days.

The extensive testimonial and documentary evidence has shown that the Good Samaritan Society was started in 1922 with the remaining donated funds collected for the care of a young boy with polio. It recognized a need for the Christian care of those that could not care for themselves, and was structured on a model of caregivers residing daily with those receiving care. The organization was named after Jesus' popular parable of the Good Samaritan instructing others how to love their neighbor, which has become the symbol of the organization. Its first leader, Rev. August "Dad" Hoeger, left his calling as a Lutheran pastor to focus his pastoral care on those who society had neglected. As the Good Samaritan Society's footprint expanded, many of original leaders of the individual locations were also pastors. To this day, it charges the administrators of its local facilities with providing similar pastoral care.

The Good Samaritan Society's founder wished to share God's love, which he believed was alive in Jesus. This has led to a central focus of the Good Samaritan Society to lift up the person of Jesus in all the Society does and this focus is captured in its motto: "In Christ's love, everyone is someone." This central focus is not taken for granted; it is reinforced in the midst of the services the Good Samaritan Society provides each day. It has developed system-wide religious policies to ensure that in every facility daily devotions, prayer, bible studies, opportunities for worship and religious sacraments are being offered to each resident regardless of his/her physical or mental abilities. The Good Samaritan Society has a mission effectiveness team lead by the Good Samaritan Society's Senior Pastor (and grandson of its founder) Rev. Greg Wilcox. This team develops materials for prayer, devotions, and bible studies in the local facilities. It also monitors the effectiveness of its mission in each facility, attempting to ensure

the residents, residents' family members, and staff members are experiencing God's love through the services the Good Samaritan Society provides. The mission effectiveness team, and local administrators and chaplains use surveys performed by an outside firm to track the ministry and to improve in any areas where its effectiveness is found to be lacking.

To continue the religious focus, Rev. Wilcox's mission effectiveness team has developed, and continues to update, training materials for its employees based on the teachings and traits of Jesus Christ. Three of the most recent programs are Christian Communities of Care, The GSS Way, and the STAR ministry. In the development of each of these programs, the Good Samaritan Society has sought to ensure that all who come into contact with the Good Samaritan Society "somehow [catch] a glimpse of the power of God's love at work through Jesus." (Trial Tr. 60:11-13.) The programs are designed to challenge each employee's day-to-day work life with universal and Christ-like values such as the eight traits of Jesus highlighted in The GSS Way: love, compassion, acceptance, joy, honesty, humility, courage, and perseverance. The STAR ministry was developed with similar goals in mind, but is directed more for employees who are Christians, to encourage and inspire them to "Stop Along the Road" and lift up those they encounter with the love of God in Jesus Christ. This program first incorporated teachings from the Good Samaritan parable, and focuses on the story of Jesus stopping to minister to the blind beggar Bartimaeus. The end result of these training programs intended by the Good Samaritan Society is to influence the bedside care provided to each resident daily to be compassionate, accepting, and loving, and the Good Samaritan Society's Senior Pastor believes that the feedback he has received illustrates that implementation of these programs has had such an impact.



This religious focus is exemplified at the Boise facility. Its administrator Brian Davidson is the spiritual leader of the facility and is a member of a local Christian church. He has met the charge to ensure that daily devotions, prayer before meetings, grace at meals, bible studies, worship, opportunities for sacrament, and the Christian training materials are present at the facility. The facility also employs the service of a full-time Chaplain, Rev. Charles Spiedel. Chaplain Spiedel is part of the care team; provides pastoral care to all residents; leads worship and sacrament services in the Chapel, Eagle House activity area, and Harbor Care activity area; leads daily devotions over the intercom system; prays at meals at all dining areas; leads the music ministry; provides hospice care; leads bedside memorials; and organizes a full schedule of local churches' use of the Chapel for additional worship services. He encourages local churches to visit the residents and continue their relationships with parishioners after they enter the facility. Many churches use the Chapel for worship and sacrament services, including St. Michael's Episcopal Church and St. Mary's Catholic Church. Local clergy are also encouraged to be part of the ministry at the Good Samaritan Society Boise facility and they recognize a vibrant Christian ministry being offered there, pointing to the loving care, the numerous Christian pictures and sculptures, and the unique use of a full-time Chaplain as noticeable evidence of that ministry. The Good Samaritan Society is also recognized on a national level as providing an important social ministry by the two largest Lutheran churches in America, the Evangelical Lutheran Church in America and the Lutheran Church Missouri Synod, which have affiliated with the Good Samaritan Society to help provide a Lutheran foundation and additional religious resources.

The ministry of the Good Samaritan Society focuses on the long-term care of the aged, poor, and infirm, which requires it to operate its skilled nursing facilities wisely to ensure the

continuation of its ministry. As stated by Ada County's expert witness, Mr. Van Moore, a not-for-profit skilled nursing facility needs to be run in a businesslike manner to survive; without a margin there can be no mission. (Trial Tr. 717:25-719:14.) Mr. Moore also opined about the religious nature of the Good Samaritan Society stating: "I have no question in my mind that it's a religious organization." (Trial Tr. 733:8-12.)

These facts illustrate the Good Samaritan Society's clear religious purpose and operation, characterized during trial as being "about as Christocentric as one can get" by one Boise clergyman recognizing that "it's all about the Christian mission at [the Boise] facility." (Trial Tr. 572:7-16.) The Good Samaritan Society qualifies for a religious property tax exemption under I.C. § 63-602B for its skilled nursing facility property in Boise.

**B. The Good Samaritan Society qualifies for a charitable property tax exemption pursuant to I.C. § 63-602C.**

In Idaho, an organization will be classified as charitable under I.C. § 63-602C if it can demonstrate that it provides a general public benefit or if it fills some public need. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). "To the extent that a charitable corporation performs a function otherwise required of the government, the public benefit is clear and direct." *Coeur d'Alene Public Golf Club, Inc. v. Kootenai Board of Equalization*, 106 Idaho 104, 106, 675 P.2d 819, 821 (1984). The Idaho Supreme Court has adopted guidelines for the determination of whether a corporation is charitable. The use of the "word 'charitable,' in a legal sense, includes every gift for general public use, whether it be for educational, religious, physical or social benefit," and charity has been held to encompass all needs beyond the traditional notion of financial relief to those in need. *Sunny Ridge*, 106 Idaho at 100-01, 675 P.2d at 815-16. The *Sunny Ridge* case listed eight non-exclusive factors to guide in the case-by-case determination. The Supreme Court has stated that the list does not constitute

a formal checklist and that other factors may be more or less determinative in other cases. *See Coeur d'Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820.

### **1. The Good Samaritan Society's Stated Purposes are Charitable**

The first *Sunny Ridge* factor looks to whether the stated purposes of the organization are charitable. *See, e.g., Community Action Agency, Inc. v. Bd. of Equalization of Nez Perce Cnty.*, 138 Idaho 82, 85, 57 P.3d 793, 796 (2002); *Boise Central*, 122 Idaho at 70-71, 831 P.2d at 538-39; *Coeur d'Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820. The Articles of The Evangelical Lutheran Good Samaritan Society state that its purposes are:

- A. To share God's love in word and deed, believing that in Christ's love, everyone is someone.
- B. To provide shelter and supportive services to older persons and others in need.
- C. To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

(Trial Ex. 4.) The Good Samaritan Society's purposes clearly state its charitable purposes.

### **2. The Good Samaritan Society's Functions are Charitable**

The second factor of *Sunny Ridge* considers whether an organization's functions are charitable. A corporation "must not only be judged by its declared objects, but also by what use is actually made of" the property to ascertain whether it is charitable. *Sunny Ridge*, 106 Idaho at 101, 675 P.2d at 816. For this factor, the Court has looked to the actual beneficial activities offered by the entity at the property, whether they are traditionally charitable, social, or recreational. *See Coeur d'Alene Public Golf Club*, 106 Idaho at 106, 675 P.2d at 821 (finding provision of a public golf course that charges greens fees to be a benefit to the community "in the form of social and recreational facilities"); *Boise Central*, 122 Idaho at 71, 831 P.2d at 539 (finding use of property consistent with stated purposes); *Community Action Agency*, 138 Idaho at 86, 57 P.3d at 797 (finding provision of "service to those in need").

The Good Samaritan Society is a charitable corporation providing health care consistent with its stated purposes, for the poor, elderly, and infirm who, by doctor's order, require twenty-four-hour skilled-nursing care. Health care for the poor and infirm has been recognized by the people of Idaho as a governmental responsibility since territorial days. As stated by Justice Bistline in his concurring opinion in *Idaho Falls Consolidated Hospitals, Inc. v. Bingham County Board of Commissioners*,

... it has always been the sense of the people of Idaho, speaking first through their territorial legislatures, then through their Constitutional delegates, and since 1889 through their state legislatures, that medical care and necessities of life will not be denied to those unfortunate few who would suffer and sometimes perish if the same were not provided by the largess of the people acting through their government, which taxes for that very purpose.

102 Idaho 838, 845, 642 P.2d 553, 560 (1982) (Bistline, J., concurring). Similarly, other jurisdictions have recognized further that under the modern realities of healthcare, an organization running a skilled nursing facility without a profit motive is providing a charitable function which the government would otherwise have to provide. See *Evangelical Lutheran Good Samaritan Society v. Gage County*, 151 N.W.2d 446, 449-50 (Neb. 1967) (“[Nursing homes for the aged and infirm are] recognized as charitable institutions when not operated for private gain.”); *Stanbro v. Baptist Home Association of Colorado for the Aged*, 475 P.2d 23, 25 (Colo. 1970) (finding that skilled nursing homes operated without a profit motive are charitable enterprises, even when some rates are being covered by “public welfare agencies”). Hence, the health care provided by the Good Samaritan Society relieves the government of its burden of caring for these people, and is thus, a clear and direct charitable function.

### **3. The Good Samaritan Society is Supported by Donations**

Factor three in the *Sunny Ridge* list asks whether the Good Samaritan Society's mission is supported by donations. The Idaho appellate courts have not provided any guidance as to the

extent of donations required under I.C. § 63-602C, nor have they adopted a percentage of financials which must come from donations. Other jurisdictions have found that donations of time and resources by volunteers provide numerous benefits to residents of a care center, being without question an important part in a center's operation. *Bethesda Found. v. Bd. of Review of Madison Cnty.*, 453 N.W.2d 224, 227 (Iowa Ct. App. 1990) (“[Volunteers’] generous donations of time and resources provide numerous benefits . . . . The fact that volunteers similarly assist for-profit nursing homes does not diminish the effect these services have in determining . . . charitable status.”).

The Good Samaritan Society receives significant financial and volunteer support. In 2012, the Good Samaritan Society received \$19,091,000 in cash donations, while in 2013 it received \$21,515,000. The Society also received donations of property and annuities of \$191,000 in 2012 and \$1,087,000 in 2013. Over the years, the donations have been used for promoting and maintaining the Society's mission and have also been invested. The total accumulated investments of the Society were \$546,728,000 in 2012 and \$577,248,000 in 2013.

Mr. Herdina performed calculations relative to the effect of donations on operating income. He showed that if the donations were removed from operating income in 2012, the Society would have sustained a loss of (\$3,500,000), while in 2013 the loss of (\$8,969,000) would have increased to (\$14) to (\$15 million). In essence, without donations, the mission could not be sustained. The Boise facility could still sustain itself without donations in 2012 and 2013, but such may not always be the case. Moreover, the Boise facility is not an independent entity. It is a part of the Society as a whole. The property in question is owned by the Society. The Boise facility is its operational arm in Boise.

The court should also note that the donations referred to above do not include any calculations related to the value of volunteer time donated to the Good Samaritan Society. Estimations of the financial benefit of the volunteers assisting with the ministry nationwide, and at the Boise facility, as calculated using the Independent Sector's Value of Volunteer Time, would add an additional benefit of at least \$3,985,200 (\$22.14/hr for 180,000 hours) nationally, and \$193,560 (\$16.13/hr for 12,000 hours) of donations to the local Boise facility in 2012 alone.

The Good Samaritan Society is supported by donations, and all the donations of time, money, and property it receives are used exclusively for its charitable purposes.

**4. The Good Samaritan Society is Entitled to Anticipate Payment from Recipients of its Services that are Able to Pay**

The next factor in the *Sunny Ridge* analysis is whether the recipients of a charitable organization's services are required to pay for the assistance they receive. Cost-free assistance is not required by an organization to be considered charitable; the focus of this factor is on the remunerative character of fees and whether the fees are sufficient to cover operating expenses. *Owyhee Motorcycle Club*, 123 Idaho at 965, 855 P.2d at 50. An organization can still qualify for an exemption if residents pay fees to cover operating expenses. *Sunny Ridge*, 106 Idaho at 101, 675 P.2d at 816. Other jurisdictions have recognized the modern realities of an organization running a skilled nursing facility and have found that the charging of fees for services performed does not detract from an organization's charitable status or intent. See *Evangelical Lutheran Good Samaritan Society v. Gage County*, 151 N.W.2d 446, 449 (Neb. 1967) ("The fact that patients who are able to pay are required to do so does not deprive a corporation of its eleemosynary character."). The Good Samaritan Society requires payment from residents that are able to pay for the assistance they receive. Even Ada County's expert, Mr. Van Moore, recognized that a not-for-profit organization could not maintain its mission without a margin.

(Trial Tr. 719:7-14.) The residents who are able to pay are required to do so. Those who qualify, get government assistance. And, as stated by Mr. Moore:

Q: In particular, the successful way to run a skilled nursing facility, whether it is for-profit or not-for-profit, is that the income must exceed the outgo to be successful?

A: That is correct.

Q: You mentioned something about black ink. Is it your opinion that without black ink, neither a for-profit or a not-for-profit skilled nurse facility will survive?

A: You have to have money from someplace. You have to show a black ledger. Red ink doesn't work.

Q: Is it also your opinion that a not-for-profit skilled nursing facility, in order to maintain its viability from an operational standpoint, should operate in a workmanlike manner?

A: I do.

Q: Is it also your opinion that a skilled nursing facility, in order to maintain its viability from an operational standpoint, should look after its receivables?

A: Absolutely.

Q: And, look after its admissions?

A: Absolutely.

Q: And provide excellent care?

A: Absolutely.

Q: And it should be run like a business?

A: Yes.

Q: And would you agree that from the policies and procedures of the Evangelical Lutheran Good Samaritan Society Boise Village, that all of those things apply to the Boise Village?

A: And from what I've read and the policies, yes.

Trial Tr. 717:25-719:6.

### **5. The Good Samaritan Society Provides A Significant Public Benefit**

The fifth *Sunny Ridge* factor looks at whether a general public benefit is provided. Tax exemptions are justified because a charitable organization provides an offsetting benefit to the general community. *Sunny Ridge*, 106 Idaho at 102, 675 P.2d at 817; *Housing Southwest, Inc. v. Washington Cnty.*, 128 Idaho 335, 339, 913 P.2d 68, 72 (1996) ("For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit. If the

general public does not receive a direct benefit from a corporation's donations, then the question presented by the 'general public benefit' factor is whether the corporation fulfills a need which the government might otherwise be required to fill."'). A charitable organization is not required to function primarily as an organization providing monetary aid, but can provide a number of services for the public's benefit. *Community Action*, 138 Idaho at 86, 57 P.3d at 797.

As presented above, in the response to the second factor, the health care provided to the poor, elderly, and infirm is indeed an activity which directly benefits the public because it relieves the government of its responsibility of providing such health care. See *State ex rel. Nielson v. Kindstrom*, 68 Idaho 226, 232, 191 P.2d 1009, 1012 ("The granting of aid to its needy aged is a well recognized obligation of the state and is a governmental function tending to promote the public welfare."); *St. Margaret Seneca Place v. Bd. of Property Assessment, Appeals and Review, County of Allegheny*, 640 A.2d 380, 382-83 (Pa. 1994) ("Our prior decisions do not equate the acceptance of Medicaid payments as the equivalent of conducting a business for profit. The decision to accept Medicaid payments to help defray the cost of care for residents is perfectly consistent with a finding that the nursing home advances a charitable purpose."). The fact that the government reimburses the Good Samaritan Society for providing this care does not negate the fact that the necessary health care is being provided. After all, if the government had its own facilities, it would have to provide the health care and pay for it too. Now, it simply pays the Good Samaritan Society to provide the healthcare.

The Good Samaritan Society provides other public benefits than the services it provides to the aged, poor, and infirm. On a national level, the Good Samaritan Society provides educational programs; articles to the public on disease and aging; grants to local facilities for special community involvement projects, including a grant used for mneme therapy at the Boise



facility, and other projects nationwide for health care and services for the homeless, clothes for local shelters, food for the hungry, transport for children, school supplies for children, equipment for partnering organizations and schools; clinics for health screenings, crafts for children, programs for the lonely, forums for specialized education; projects to confront bullying, ministry to young mothers, and support for mission training, local recreation opportunities, mentoring programs, kid camps, orphans, and fire victims. (Trial Ex. 55.) The Good Samaritan Society offers nursing scholarships to its caregivers and strives to be innovative in the area of aged care, partnering with experts and research universities to develop programs like Living Well@Home, which uses technology to monitor the health of individuals in their own homes.

Locally, the Good Samaritan Society's Boise facility provides benefits to the community by caring for residents unable to care for themselves, who on average have a higher acuity than the average nursing home resident in Idaho. By contracting with the government to provide skilled nursing care to many of its residents, especially in the case of Medicaid residents, the Good Samaritan Society provides care and incurs expenses, which are reimbursed at a reduced rate. Not only is the Good Samaritan Society only able to recoup expenses at a contractual rate less than its usual and customary rate, its Medicaid reimbursements are all reduced by 2.7%, and can be further reduced based on its census. This is a benefit to the community taxpayers.

Additional community benefits include providing opportunities to volunteer and assist in the Society's ministry; providing events for the community; opening its doors for free meetings to organizations like the Girl Scouts, SWIDOV, IHCA, and local clergy groups; allowing its facility to be used free of charge by schools for training, music teachers to hold recitals, a pet therapy program for pet registration and certification, organizations for CPR training, and the Idaho Department of Health and Welfare for training new state surveyors. Accordingly, the

Good Samaritan Society provides charitable functions that are a significant public benefit. The dedicated service to its residents, its community, and the health care industry as a whole, as well as the compassionate care provided for the overlooked, are exactly the kinds of exemplary services that the State of Idaho and Ada County should want to encourage.

#### **6. The Good Samaritan Society Does Not Have a Profit Motive**

The sixth *Sunny Ridge* factor analyzes whether the income received produces a profit. The Idaho Supreme Court has noted that a nonprofit corporation is not required to operate at a deficit, but revenue exceeding costs and expenses will be considered by a trial court as to “whether the institution is operating similar to a for profit commercial corporation.” *Latah County*, 119 Idaho at 132, 804 P.2d at 306, n.2; *see also Evangelical Lutheran Good Samaritan Soc. v. Board of Review of City of Des Moines*, 200 N.W.2d 509, 512-13 (Iowa 1972) (Harris, J., dissenting) (“In order to support a claim of tax exemption it should not be required of the claimant to profess and demonstrate a Franciscan indifference toward the property of the charitable operation. Neither should fiscal ignorance or irresponsibility be a necessary element. Efficiency in a charitable operation and the accumulation of the funds and properties have only to do with how successfully the enterprise is conducted.”).

The Good Samaritan Society has no profit motive and is recognized by the I.R.S. as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and a public charity pursuant to Section 509(a)(2). Additionally, its Restated Articles clearly state its nonprofit status: “The Society is organized solely for nonprofit purposes and is not organized nor shall it operate for pecuniary gain or profit and does not contemplate the distribution of gains, profits or dividends to the members thereof.” (Trial Ex. 4.) Also, its property, assets, and net income “are irrevocably dedicated to charitable and religious purposes and no part of the profits or net

income of the Society shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private shareholder or individual.” (*Id.*)

Without deducting donations, the Good Samaritan Society realized net revenue over expenses in 2012, and realized an operational loss in 2013. However, any net revenue the Good Samaritan Society does realize over expenses is reinvested into its mission. Fortunately, the Good Samaritan Society has been able to reinvest net revenue generated from its Boise facility back into that facility to ensure its ministry is continued in Boise. None of the revenue generated from its operation in Boise, or nationally, has been distributed to owners, members, or shareholders. The Good Samaritan Society does not operate on a profit motive, but uses any net revenue to maintain its mission. It is and operates like a charitable non-profit corporation. The Good Samaritan Society should be distinguished from a for-profit skilled nursing facility, which typically operates very differently. In particular, as stated by Ada County’s expert, Mr. Moore:

Q: Do any of the for-profits that you have been familiar with distribute their profits to shareholders or members?

A: Absolutely.

Q: That’s part of their purpose, isn’t it?

A: Uh-huh.

Q: Please say, ‘yes’ or ‘no’, for the record.

A: Yes.

Q: Thank you. And, in fact, the for-profits’ purpose is to provide good quality of care, to maintain their mission in order to generate profits for the owners?

A: That is correct.

Q: And a further purpose is to generate profits to give bonuses to management?

A: That is correct.

Q: And a further purpose of a for-profit skilled nursing facility would be, at times, to take a facility that is not doing very well financially, build it up into a good facility that is worth quite a bit more money, and then sell it for a profit?

A: That is correct. It happens all the time.

Q: It happens all the time. And it has happened in your experience, hasn’t it?

A: It has.

- Q: And you have done that very thing with facilities that you and your company have gotten involved in, purchased, managed and then sold?
- A: I have.
- Q: And you've made a profit on it?
- A: I have.
- Q: And when that profit was made, the profit was not given to another charitable organization, was it?
- A: No.
- Q: It was always given to the owners, wasn't it?
- A: That is correct.
- Q: Because that was its purpose?
- A: That's correct.

Trial Tr. 728:2-729:14.

### **7. The Good Samaritan Society's Assets Would Go to Other Charitable Organizations Upon Dissolution**

*Sunny Ridge's* seventh factor asks to whom the assets would go upon dissolution of the corporation. Upon dissolution, the Good Samaritan Society's assets will be distributed to nonprofit social ministry organizations as designated by the ELCA and the Missouri Synod. Therefore, the assets are designated to go only to other charitable organizations upon dissolution.

This requirement should also be compared with what happens in the for-profit world. As Mr. Moore testified:

- Q: At the end of the existence of a for-profit nursing home, if there are any profits remaining, they are always distributed to the owners; correct?
- A: Yeah, unless there's liens or something. But the net, if there's any net after everything is settled, yes, it would be distributed to the owners.
- Q: So if there are funds left over after paying all of the bills, and the facility is going out of business, those funds don't have to go to other charitable organizations, do they?
- A: That is correct.

Trial Tr. 729:15-25.

### **8. The Good Samaritan Society Provides Charity For Those in Need**

The final *Sunny Ridge* factor determines whether the 'charity' provided is based on need. The word charity or charitable in the legal sense has come to include "every gift for general

public use, whether it be for educational, religious, physical or social benefit.” *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. The Good Samaritan Society provides charitable allowances and did so in Boise in the amounts of \$35,029 in 2012 and \$26,241 in 2013. (Trial Ex. 28 [GSS002817]). The Boise facility also attempts to provide its residents with all necessary equipment and care regardless of cost and reimbursements. It has used its own resources or used an unrestricted gift to purchase dentures, eyeglasses, clothing, and wheelchairs where a resident was unable to pay for these extra needs. The facility has also covered the additional, unreimbursed costs for eye and dental appointments, repairs for wheelchairs, and specialty mattresses. It has utilized funds to purchase Christmas gifts to give to residents without families. The facility provides complimentary transportation for its residents. (Trial Tr. 197:12-199:8, 201:7-203:17, 211:17-212:4, 289:21-290:6; Trial Exs. 52, 54.) It takes collections for employees needing financial assistance, and its employees help support the Project Outreach ministries. The charity provided by the Good Samaritan Society and its employees in all forms is based on need and is given with thought to the opportunity to extend God’s love to those in need.

In total, the *Sunny Ridge* factors show that the Good Samaritan Society is a charitable corporation that uses its property for charitable purposes and is entitled to a charitable property tax exemption.

**C. At a Minimum, 63% of the Property is Exempt.**

If the Court finds that the Boise facility is not used exclusively for the religious and charitable purposes for which the Good Samaritan Society was organized, and that portions are used for a business or commercial purpose, the statutes direct that certain uses “will not be deemed a business or commercial purpose.” I.C. §§ 63-602B(2), 63-602C. The provision is nearly identical in each statute, stating:

... provided however, that the [use of any property] by any such [charitable or religious] corporation ... for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums [] or club rooms [within/for and in connection with] the purposes for which such [charitable or religious] corporation ... is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.”

*Id.* The Good Samaritan Society has presented testimony and exhibits showing that at the very least, 63% of the skilled nursing facility is used for residence halls or dormitories, meeting rooms, halls, or recreational facilities. This includes 52% of the facility that makes up the separate neighborhoods’ residential rooms where the residents reside, eat, and sleep. Also, an additional 11% of the facility is made up of the main dining area, library, activity room, and sitting rooms which are used for resident and community meetings and resident recreational activities. These portions of the facility are used in connection with the exempt purposes for which the Good Samaritan Society was organized. Therefore, at the very least, the Good Samaritan Society qualifies for a proportionate property tax exemption.

#### **IV. Conclusion.**

The Good Samaritan Society believes it has presented substantial evidence to the court to demonstrate that it is a religious and charitable organization which uses its Boise facility exclusively for religious and charitable purposes. Although times have changed in the health care field so that many of the poor, aged, and infirm have their skilled nursing care paid for by the government, that care is not provided by the government, but by facilities such as the Good Samaritan Society, Boise facility. Medicaid reimbursement, though substantial, does not pay for the reasonable and customary charges of the Medicaid residents. Even so, Ada County would have the court find that because the reimbursement is significant, the Good Samaritan Society should not realize a property tax exemption. However, the County’s argument overlooks all of the evidence that proves the religious and charitable nature of the Society and the exclusive

religious and charitable uses to which it puts its Boise facility. If the County's argument prevails, it simply results in a transfer of a portion of the money paid by the state and federal government for the facilities and care received by government-subsidized residents to the County for property tax purposes. Such result simply twists the exemption statutes into government cost-shifting mechanisms. Surely the Idaho legislature had more depth of purpose in enacting the religious and charitable tax exemptions.

The Good Samaritan Society and its Boise facility provide a unique Christian public benefit to the Boise valley. The residents of its skilled nursing facility receive extraordinary Christian focused skilled nursing care on a 24-hour 7-days-a-week basis. There is no other facility in the Boise valley that provides a similar combination of Christian principled, loving, compassionate care than the Boise facility. In this age of tight budgets and expensive health care, the taxes sitting in the County coffers, paid under protest by the Good Samaritan Society, would be far better used to continue in Boise the important mission of the Good Samaritan Society, which is now in its 56<sup>th</sup> year.

The Good Samaritan Society respectfully requests that the court overturn the decision of Ada County and reinstate its religious and charitable property tax exemptions for 2012 and 2013.

DATED this 31<sup>st</sup> day of December, 2014.

GREENER BURKE SHOEMAKER  
OBERRECHT, P.A.

By: 

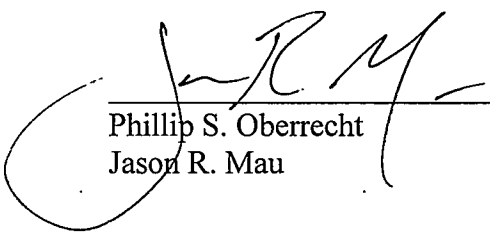
Phillip S. Oberrecht – Of the Firm  
Jason R. Mau – Of the Firm  
Attorneys for Appellant, The Evangelical  
Lutheran Good Samaritan Society

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31<sup>st</sup> day of December, 2014, a true and correct copy of the within and foregoing instrument was served upon:

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☐ U.S. Mail
- ☐ Facsimile
- ☒ Hand Delivery
- ☐ Overnight Delivery

  
\_\_\_\_\_  
Phillip S. Oberrecht  
Jason R. Mau



**DEC 31 2014**

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY

**CHRISTOPHER D. RICH, Clerk**  
By **SANTIAGO BARRIOS**  
DEPUTY

**GENE A. PETTY**  
**ELIZABETH A. MAHN**  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702  
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(208) 287-7719 (facsimile)  
Idaho State Bar No. 6831  
Idaho State Bar No. 7613

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

IN THE MATTER OF THE APPEALS OF	)	<b>Case No. CV OT 1309169</b>
THE EVANGELICAL LUTHERAN GOOD	)	
SMARITAN SOCIETY	)	<b>Consolidated with</b>
	)	<b>Case No. CV OT 1312345</b>
from the Board of Equalization of Ada County for	)	
tax year 2012 and 2013.	)	<b>ADA COUNTY'S POST-TRIAL</b>
	)	<b>PROPOSED FINDINGS OF FACTS</b>
	)	<b>AND CONCLUSIONS OF LAW</b>
	)	

**COMES NOW**, Ada County Board of Equalization ("Ada County"), by and through its counsel of record, the Ada County Prosecuting Attorney's Office, Civil Division and submits its Post-Trial Proposed Findings of Facts and Conclusions of Law.

**I. ISSUES PRESENTED**

The Evangelical Lutheran Good Samaritan Society, Inc. ("Society") seeks charitable and religious property tax exemptions under §§ 63-602B and 63-602C.

## **II. PROCEDURAL BACKGROUND**

In 2012, Society applied for charitable and religious property tax exemptions for a skilled nursing home in Boise, Idaho named Good Samaritan Society—Boise Village (“Boise Village”). Ada County denied the application and Society appealed to the Idaho Board of Tax Appeals. The Idaho Board of Tax Appeals held a hearing and issued a decision holding that Society did not qualify for a charitable or religious property tax exemption. Society then appealed to the district court. Subsequently, Society applied for charitable and religious tax exemptions for 2013 that were again denied by Ada County. Society appealed that denial directly to the district court and the two cases were consolidated. Trial was held in this case on November 10, 12, 13, 14, 17 and 19, 2014.

## **III. STANDARD OF REVIEW**

This case was heard at a *de novo* bench trial pursuant to Idaho Code § 63-3812(c). Society has the burden of proving that it qualifies for property tax exemption based upon a preponderance of the evidence. Idaho Code §§ 63-511(4) and 63-3812(c). This court is required to issue its decision in writing, including a concise statement of facts found by the court and conclusions of law reached. *Id.* Whether a property is exempt from taxation is determined as of the first of January of that year. Idaho Code § 63-205(1).

## **IV. FINDINGS OF FACT**

### **1. Boise Village.**

Boise Village is a 96-bed skilled nursing facility owned by the Evangelical Lutheran Good Samaritan Society, Inc. (Society).<sup>1</sup> Tr.p.307,LL.4-9; Ex.319, AC2222; p.127,LL.12-25. Boise Village administers skilled nursing care twenty-four hours a day, seven days a week, under

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<sup>1</sup> Society provided no evidence that Boise Village was donated to it. *See* Tr.p.166,LL.14-21.

a doctor's order. Tr.p.152,LL.4-6. It employs registered nurses, licensed practical nurses, and certified nursing assistants to provide such care. Tr.p.307,LL.7-12, p.151,LL.14-21.

According to Society, the principal use of Boise Village is skilled nursing, and Boise Village is expected to operate on a self-sufficient basis.<sup>2</sup> Tr.p.127,LL.12-25, p.307,LL.4-9, p.483,LL.23-25; Ex.319, AC2222; Ex.103, GSS2599. In fact, Society's 2012 property tax exemption states that all of Boise Village was used for this business or commercial purpose 365 days. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92. According to its staff, Boise Village is a "business open to the public" and "a self-sustaining business entity." Tr.p.656,LL.2-21.

In 2012 and 2013, Boise Village expected everyone admitted to pay for its services. Ex.301,p.37;Tr.p.637,LL.4-12. Boise Village charges rates similar to other nursing facilities in Ada County, and its income produces a profit.<sup>3</sup> *Id.*; Ex.320, AC3088; Tr.p.311,LL.11-17

## **2. Skilled Nursing Care at Boise Village.**

Boise Village is one of 79 skilled nursing facilities in Idaho, and one of ten in Boise. Tr.p.589,L.24-p.590,L.20. There is no shortage of skilled nursing care or beds in Boise. *Id.*

To be admitted to a skilled nursing facility, a person must need nursing care and assistance with daily living, such as getting dressed, grooming, toileting, mobility, and moving around. Tr.p.592,L.19-p.593,L.16. Boise Village provides such care in its various units.

In its Syringa 1 unit, Boise Village provides post-acute care to residents who have been released from a hospital and need therapy services and skilled nursing services to get their strength back. Tr.p.170,LL.8-24. It also offers outpatient therapy. *Id.* The residents in Syringa 1 are covered by Medicare, managed care, private pay, and Veteran's Administration.

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<sup>2</sup> Society certified on its property tax exemption application that Boise Village does not include a residence. Tr.p.307,L.19-p.308,L.4; Ex.319, p.2222.

<sup>3</sup> Boise Village operates like a for-profit skilled nursing business. Tr.p.711,LL.16-23, p.736,LL.11-14, p.795,LL.8-16.

Tr.p.292,LL.10-17. Seventy-eight skilled nursing facilities in Idaho provide rehabilitation care. Tr.p.595,LL.3-5.

In its Hoeger House unit, it provides care to residents with long-term disabilities. Tr.p.176,LL.12-19. Boise Village also provides long-term care to residents in its Syringa 2 unit. Tr.p.177,L.21-p.178,L.1. These residents are also mostly covered by Medicaid. Tr.p.292,L.23-p.293,L.2. Sixty-nine skilled nursing facilities in Idaho provide long-term care, including eight in Boise. Tr.p.597,L.22-p.598,L.4.

In its Eagle unit, Boise Village cares for residents with brain injuries.<sup>4</sup> Tr.p.172,LL.5-17. These residents are all covered by Medicaid. Tr.p.292,LL.18-22. Boise Village provides care to residents with Alzheimer's, dementia, cognitive disabilities, and memory issues in its Harbor Care unit. Tr.p.175,L.19-p.176,L.1. These residents are mostly covered by Medicaid. Tr.p.293,LL.3-8.

The licensing process is the same for all skilled nursing facilities in Idaho. Tr.p.595,LL.8-p.597,L.10. Also, Idaho does not have additional requirements for a dementia unit or traumatic brain injury unit. Tr.p.595,L.8-p.597,L.10; Tr.p.604,L.23-p.606,L.5. Other skilled nursing facilities in Idaho accept individuals with traumatic brain injuries<sup>5</sup>, Alzheimer's and dementia, and handicaps. *Id.*

Boise Village also provides therapies, such as occupational therapy, physical therapy, speech therapy, and restorative therapy. Tr.p.151,LL.20-21, p.178,L.18-p.179,L.13, p.188,LL.9-

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<sup>4</sup> Brian Davidson, the administrator of Boise Village, testified that he was not aware of any other skilled nursing facilities in the area that have dedicated brain injury units. Tr.p.174,L.1-p.175,L.9. Society did not prove that there are not any other dedicated brain injury units in the Boise area.

<sup>5</sup> In fact, two other skilled nursing homes in Idaho have specific units for traumatic brain injury patients. Tr.p.604,LL.3-16. Even if a skilled nursing facility does not have a designated unit for brain injury residents, it can admit those residents. Tr.p.607,L.3-9.

12; Ex.53. These therapies are not offered free of charge. Tr.p.288,L.11-289,L.4. Boise Village subcontracts with hospice service providers for hospice care at Boise Village. Tr.p.191,L.25-p.192,L.5. In addition to such care, Boise Village provides residents with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area, where meals are served three times a day. Tr.p.152,LL.4-6, p.179,L.20-p.180,L.6, p.181,LL.2-7; Ex.45A.

### **3. Boise Village Financials.**

Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F. Overall, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, respectively, including Medicaid, Medicare, managed care, and Veterans' Administration. Tr.p.766,L.15-p.767,L.17; Ex.349F. Medicaid was overwhelmingly Boise Village's largest source of revenue during 2011-2013. Tr.p.766,L.12-18; Ex.349F.

Boise Village's income produces a profit.<sup>6</sup> Ex.320, AC3088; Tr.p.311,LL.11-17. Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively.<sup>7</sup> Tr.p.773,L.5-p.774,L.8. These profits totaled \$3,134,812 during those years.<sup>8</sup> *Id.*

In order to generate a profit, non-profit and for-profit skilled nursing facilities generally operate in the same way. Tr.p.678,LL.16-24.

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<sup>6</sup> Society claims that it has invested approximately \$11,900,000 into its Boise facility since it began operations. Tr.p.446,L.20-p.447,L.12. At its Boise facility, it has earned a profit of around \$9,600,000 during that time, and owns the Boise Village property worth \$9,267,500 in 2013. Tr.p.447,L.23-p.448,L.10; Ex.82.

<sup>7</sup> These profits include information from Boise Village's Medicare cost report, which is more reliable than Boise Village's internal financial statement because it reclassifies costs to ensure they are allocated appropriately, it is certified as correct, submitted to Medicare and Medicaid regulatory agencies, and it is audited. Tr.p.767,L.18-p.768,L.23.

<sup>8</sup> This profit may be higher if the non-allowable and non-operating revenue/expense for Society's entire Boise campus were not attributed to the skilled nursing facility. Tr.p.771,L.20-p.774,L.15; Ex.349G.

#### **4. Residents Are Required to Pay.**

Boise Village charges all of its residents for skilled nursing care, and its residents are required to pay.<sup>9</sup> Tr.p.277,L.23-p.278,L.1, p.311,LL.18-25; Ex.320, AC3088. According to Brian Davidson, Boise Village's administrator, "we like to get payment for all of our residents that reside at the facility." *Id.* He also testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. If a resident does not personally pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7.

At times, residents are admitted to Boise Village who have too much money to qualify for Medicaid; this is called being "over-resourced." Tr.p.305,LL.3-20. Boise Village charges those residents the private pay amount until they run out of money (less than \$2,000 in assets) and they qualify for Medicaid. *Id.* At that point, Medicaid will pay for their care for the rest of their stay at Boise Village. *Id.*

#### **5. State and Federal Government Payments.**

Boise Village has agreements with Medicaid, Medicare and the Veteran's Administration to provide care to residents and be paid for that care. Tr.p.304,LL.1-7. These programs pay based upon the level of care that Boise Village residents need. Tr.p.640,L.13-p.641,L.5. Private pay residents also pay based upon acuity.<sup>10</sup> *Id.*

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<sup>9</sup> Boise Village provides a packet of information to prospective and new residents that describes the services it provides. Ex.49; Tr.p.289,LL.15-19. This document does not say that Boise Village offers free skilled nursing care, encourage people without money to come for care, or that it has a sliding fee scale. Tr.p.290,L.7-p.291,L.4.

<sup>10</sup> As of November 11, 2014, Boise Village had 91 residents and only approximately 9 of those were private pay. Tr.p.293,LL.9-14.

Idaho Medicaid is a government insurance program that reimburses skilled nursing facilities for their allowable costs, including nursing, room and board, administrative staff, janitorial staff, insurance, cotton balls, etc. Tr.p.612,L.10-p.614,L.18. Medicaid pays a daily rate based upon the facility's costs and is adjusted for acuity.<sup>11</sup> Tr.p.616,L.10-p.617,L.9. The daily rate Medicaid paid Boise Village is the highest of the 14 skilled nursing facilities in a 25 mile radius.<sup>12</sup> Tr.p.789,LL.5-20; Ex.349L.

In addition to the daily rate, Medicaid also pays a special rate when a person has an extraordinary need, such as a specialized wheelchair or ventilator. Tr.p.617,LL.11-20. Boise Village requested and was paid \$6,876 in special rates in 2012 and 2013 for its residents' specialized wheelchairs.<sup>13</sup> Ex.316A; Tr.p.619,L.3-p.321,L.21.

On average, Medicaid paid Boise Village \$290.77 and \$295.23 per resident per day in 2012 and 2013, respectively.<sup>14</sup> Tr.p.787,L.7-p.788,L.13; Ex.349K. This is more than the rate Boise Village charged its private pay residents. *Id.* These Medicaid payments totaled \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively. Medicare payments to Boise Village were even higher than the Medicaid payments, totaling \$149,474.80

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<sup>11</sup> In addition to the daily rate payments, Medicaid also makes an additional payment to Idaho skilled nursing facilities based upon how many Medicaid residents it has, called the Upper Payment Limit. Tr.p.782,L.16-784,L.16; Ex.349I. These payments are permitted under current state and federal law and Boise Village received these payments in 2012 and 2013. Tr.p.851,L.18-p.852,L.22. Society asserts that without this additional payment, it would "not be making money and serving Medicaid." Tr.p.842,LL.6-25; Ex.33.

<sup>12</sup> Boise Village's higher rate is due, at least in part, to its higher costs. *See* Tr.p.853,L.6-p.854,L.17; Ex.96. Other facilities in the Boise area have a lower Medicaid rate but higher acuity, including three facilities in 2012 and six facilities in 2013. *Id.*

<sup>13</sup> These special rates were paid at \$12.18 and \$10.74 per day for ten months, totaling \$6,876. Ex.316A; Tr.p.619,L.3-p.321,L.21.

<sup>14</sup> This includes both the Medicaid daily rate and net upper payment limit payment. Tr.p.768,LL.15-18.

and \$144,737.10 per resident per year in 2012 and 2013, respectively. Tr.p.785,LL.11-25; Ex.349J.

Idaho Medicaid pays skilled nursing facilities more than a facility's costs, which results in a profit from Medicaid residents. Tr.p.838,LL.7-22. Of the 14 skilled nursing facilities in a 25 mile radius, Boise Village had second highest percentage of Medicaid residents in 2011 and 2013, and third highest 2012. Ex.24A; Tr.p.790,L.11-p.791,L.15, p.849,L.24-850,L.7; Ex.349M. Its Medicaid residents were 73.4%, 72.1%, and 76.1% of its total residents in 2011-2013, respectively. Ex.24A. In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6.

#### **6. Medicaid Property Tax Reimbursement.**

Idaho Medicaid reimburses skilled nursing facilities for property taxes. Tr.p.621,L.24-p.622,L.15, p.778,L.5-p.780,L.2. It would reimburse Boise Village for a large portion of the property taxes at issue in this case. Tr.p.781,L.23-p.782,L.11. Boise Village paid \$176,808 and \$173,424 in property taxes during 2012 and 2013, respectively. *Id.* Medicaid would reimburse Boise Village \$108,077 and \$115,430 for those property taxes. *Id.*

#### **7. Boise Village Donations.**

Boise Village is only minimally supported by cash donations and those donations do not reduce the costs it charges its residents for services. Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5. Over 99% of Boise Village's revenue came from charging people for services. Tr.p.793,LL.20-24.



According to Society, Boise Village cash donations were \$18,785 in 2011, \$19,526 in 2012 and \$50,896.43 in 2013.<sup>15</sup> Exhibit 84,p.4. These donations were approximately Boise Village's donations were approximately 0.5% of Boise Village's total revenue in 2011-2013, respectively.<sup>16</sup> Tr.p.311,LL.6-10, p.793,LL.11-15; Ex.349N; Ex.320,AC3088; Ex.319, AC2226; Ex.301,p.39.

For-profit skilled nursing facilities commonly receive in-kind donations. Tr.p.708,L.20-p.710,L.6. Examples of these donations include a resident's family relandscaping the yard, a Rotary club barbecuing salmon, a Lions club building a gazebo, and American Legion constructing a flag pole for a facility's veterans. *Id.* Donations to for-profits also have included wheelchairs, clothing, and televisions. *Id.*

#### **8. Boise Village Admissions Process.**

Boise Village's admissions policies and procedures are similar to for-profit skilled nursing facilities. Tr.p.682,L.11-p.685,L.23. Boise Village staff asks potential residents how they are going to pay the bill, and it considers a person's ability to pay in its decision to admit

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<sup>15</sup> Boise Village also received the following donations: unrestricted gifts of cash of \$715 in 2012 and \$2,948 in 2013. Tr.p.243,L.8-p.244,L.15; unrestricted cash bequests of \$0 in 2012 and \$873 in 2013. Tr.p.245,LL.3-9. Ex.28, GSS2817; miscellaneous fundraiser revenue of \$1,343 in 2012 and \$49 in 2013. Tr.p.245,LL.10-18; restricted operating cash gifts expended of \$15,168 in 2012 and \$9,916 in 2013. Tr.p.246,LL.2-23; unrestricted gifts of cash from foundation of \$2,300 in 2012 and \$3,164 in 2013. Tr.p.246,L.24-p.247,L.10. According to Society, Boise Village received the following donations in 2013: \$4,320 for donor restricted property gifts of cash. Tr.p.239,L.18-p.240,L.7; donor restricted property donations of \$27,000. Tr.p.240,LL.13-20; donor restricted operating donations \$2,200. Tr.p.240,L.21-p.241,L.3; donor restricted endowment for staff donations of \$200. Tr.p.241,LL.15-p.242,L.6; Ex.28,GSS2814; and interest on scholarship donations of \$226.43. Tr.p.242,LL.9-17; Ex.28, GSS2814. Society presented evidence in its balance sheet of Boise Village's donor restricted gifts, the balances of those accounts as of December 31, 2012, and the increase in those balances during 2013. Ex.28, GSS2814; Tr.p.239,L.8-p.242,L.21. No evidence was presented that the account balances as of December 31, 2012 were donations received in 2011 or 2012.

<sup>16</sup> Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F.

that person. Tr.p.636,LL.2-7. Before people can be admitted to Boise Village, a payment source must be identified and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. Boise Village staff must collect payment for self-pay residents and the private portion owed by Medicaid-pending residents. *Id.*

The Boise Village administrator is responsible for a screening process to ensure that payment sources are established prior to admission and that staff explain the payment expectations. Tr.p.276,LL.12-21; Ex.339, AC1157 and 1160. The administrator is also responsible for ensuring that staff escort a new resident to the business office for collection of payment and to obtain additional financial information. Ex.339, AC1160; Tr.p.277,LL.15-22.

When people seeking admission to Boise Village do not have a way to personally pay the bill, Boise Village staff ask questions to determine whether they qualified for Medicaid. Tr.p.291,LL.8-15, p.636,L.8-p.637,L.3. To be admitted, they must answer these questions to Boise Village's satisfaction and Boise Village admits the person if it thinks they qualify for Medicaid. *Id.* Boise Village is usually successful in getting those residents approved by Medicaid.<sup>17</sup> *Id.* It assists residents with the Medicaid process, including helping them complete Medicaid applications. *Id.*; Tr.p.633,LL.13-15.

For-profit skilled nursing facilities also identify a payor source prior to admission, ask residents questions to determine whether they will qualify for Medicaid, and assist with Medicaid applications. Tr.p.682,L.11-p.685,L.23, p.696,L.17-p.698,L.5.

#### **9. Boise Village Admissions Agreement.**

Boise Village residents must sign an admission agreement that is similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. This

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<sup>17</sup> For-profit skilled nursing facilities also admit people they believe will qualify for Medicaid and are usually successful in getting those residents approved. Tr.p.698,L.18-p.700,L.12.

is an agreement that the resident will promptly pay for care. Tr.p.629,LL.15-20, p.632,LL.1-3; Ex.105, GSS6. In exchange for payment, Boise Village agrees to provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law. Tr.p.630,L.9-p.631,L.17. Ex.105, GSS5.

In this agreement, a person whose payor source is Medicaid agrees to apply for Medicaid and timely provide all requested information to the Medicaid case worker. Ex.105, GSS7; Tr.p.632,L.8-p.633,L.19. Boise Village would seek to remove residents if they qualify for a resource to pay for their care, such as Medicaid, and refused to cooperate in seeking that resource. Ex.301,p.38. If Medicaid is denied, the entire self-pay amount is due immediately. Tr.p.633,LL.18-20; Ex.105, GSS7.

In its admission agreement, Boise Village also imposes late payment charges of 10% per year when accounts are not paid timely. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. Residents will be liable for collections costs on past due accounts, including attorneys fees and court costs. *Id.* Boise Village also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10.

For-profit skilled nursing facilities likewise require residents to sign agreements that obligate them to pay, give the facility a right to collect, explain what services will be provided in exchange for the fees charged, allow interest to be charged on overdue accounts, and give the facility a right to discharge residents for non-payment. Tr.p.679,L.24-682,L.10.

#### **10. Boise Village Operations.**

All skilled nursing homes in Idaho are required to provide activities for its residents, including for-profit facilities.<sup>18</sup> Tr.p.372,L.22-p.373,L.15. They will be cited if they fail to do so. Tr.p.601,L.13-p.603,L.3. The activities program at Boise Village is its way of providing those required activities. Tr.p.372,L.25-p.373,L.3.

Boise Village provides activities for its residents in the activity room, main dining room, and in the Eagle House and Harbor Care units. Tr.p.181,L.10-p.182,L.10. Activities at Boise Village include Bingo, a newspaper social, trivia, cooking, board games, entertainment, music therapy, birthday parties, Super Bowl party, Mardi Gras parade, July 4<sup>th</sup> BBQ and fireworks, trick or treat with preschool children, and other events. Ex.49,p.3; Tr.p.190,L.21-p.191,L.1. Boise Village has a TV room and library where residents watch TV, check out books, do puzzles, and access the internet. Tr.p.182,LL.16-23. Outside groups perform for residents in the main dining area and in Eagle House and Harbor Care units. Tr.p.181,LL.2-7, p.185,LL.8-18.

All skilled nursing facilities are also required under State and federal law to develop a care plan for each resident. Tr.p.593,L.24-p.594,L.15, p.326,LL.19-24. All skilled nursing facilities must make an individual assessment of each person's interests and what he or she likes to do. Tr.p.598,L.25-p.600,L.12. They are required to provide activities that are meaningful to each resident, including religious activities. *Id.* If they do not provide these required activities, they will be issued a citation and determined to be regulatory noncompliant. *Id.* At Boise Village, care plans are created by an interdisciplinary team, including nurses, social workers, a chaplain, dieticians, therapists, and activity directors. *Id.*; Tr.p.534,L.6-16.

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<sup>18</sup> All skilled nursing facilities are also required to have a certified activities director. Tr.p.373,LL.16-18.

The Boise Village administrator, who is not an ordained minister and has not attended seminary, is considered the spiritual leader of the facility.<sup>19</sup> Tr.p.273,LL.1-7; Ex.9, GSS3171. The administrator is responsible for ensuring that the facility has daily devotions, grace at meals, hymn sings, Bible studies, weekly worship services, large print spiritual publications, prayers before all meetings, and local clergy involvement.<sup>20</sup> Ex.10, GSS3174. These programs are implemented at Boise Village. Tr.p.78,LL.12-14. The Boise Village chaplain assists with the spiritual care of the residents.<sup>21</sup> Tr.p.534,LL.6-16. Some Boise Village residents choose to participate in chapel services and Bible studies, and others choose not to do so. Tr.p.537,LL.21-24. Only 30% to 40% of Boise Village's residents participate in religious services. Tr.p.562,L.17-p.563,L.2. Local clergy from different Christian denominations also come into Boise Village and provide religious services. Tr.p.142,LL.3-15; Ex.49, p.10. Boise Village also has religious symbols, many of which can also be found at for-profit skilled nursing facilities. Tr.p.554,L.24-p.55,L.1, p.731,LL.7-19, p.734,L.11-p.735,L.22.

For-profit skilled nursing facilities likewise meet residents' religious needs. Tr.p.701,L.10-p.703,L.8. They do this by having local pastors offer prayers and provide services, including religious meetings on Wednesdays, Catholic mass on Fridays, Seventh Day Adventists services on Saturdays, and Protestant services on Sundays. *Id.*; Tr.p.734,LL.8-10. A

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<sup>19</sup> Boise Village has approximately 160 employees. Tr.p.285,L.25-p.286,L.13. Other than its chaplain and the administrator, none of the employees are required to be Christian or any other faith. *Id.* Its employees are paid fair market rates for their services. Tr.p.286,LL.14-22.

<sup>20</sup> The Evangelical Lutheran Church in America (ELCA) recognizes Boise Village as a specialized ministry. Tr.p.563,L.3-p.564,L.8. The ELCA also recognizes the military and public universities as specialized ministries, including the University of Idaho, Washington State University, and Eastern Washington University. *Id.* Boise Village employs a full-time ordained Lutheran chaplain and his salary is an operating expense.<sup>20</sup> Tr.p.526,LL.13-15, p.538,LL.3-5, p.560,L.21-p.561,L.3.

<sup>21</sup> Boise Village has a chapel and chaplain's office, which are 1.3% of its total square footage. Ex.45A. The chapel and chaplain's office are 861 square feet of the 65,810 square foot facility. Ex.45A.

lot of pastors from various churches meet individually with residents in for-profit nursing homes when they are lonely or near death. Tr.p.701,L.10-p.703,L.8. Some for-profits also provide daily devotional for their residents. Tr.p.730,LL.8-13, p.733,LL.21-23. In the Boise area, local religious leaders go into other skilled nursing facilities, including for-profit skilled nursing facilities. Tr.p.295,LL.6-9, p.518,L.3-p.519,L.5, p.628,LL.7-13. For-profit skilled nursing facilities in Boise also make space available for these religious leaders to conduct religious services. Tr.p.513,L.13-p.514,L.11.

#### **11. Volunteers.**

To carry out these activities and other functions, Boise Village has volunteers who contribute a significant number of hours. Tr.p.345,L.18-p.348,L.24; Ex.70. Volunteers do not reduce staffing or the costs charged to residents at Boise Village. Tr.p.480,LL.2-7. They do not provide nursing care, hand out medications, or change bandages. Tr.p.374,LL.4-10. Instead, the majority of volunteers assist with activities. Tr.p.374,LL.11-13.

Volunteers include students of all ages, including elementary students, junior high students, and high school students. Tr.p.375,L.24-p.376,L.7. Boy Scout and Girl Scout troops are counted as volunteers. Tr.p.374,L.14-p.375,L.8, p.376,LL.21-23. Each member of a Boy Scout or Girl Scout troop and each member of a choir is counted as a separate volunteer. *Id.*; Tr.p.375,LL.16-23. Some volunteers are students who are required to do a service learning project. Tr.p.361,L.17-p.364,L.22. When a pastor or church group goes to Boise Village they are counted as volunteers. Tr.p.375,LL.9-15. Despite the vulnerable population at Boise Village, it does not run a criminal background check on its volunteers and some of its volunteers come from the Drug Court program. Tr.p.343,LL.20-24, p.377,LL.12-17. Society attempts to assign a financial value to the volunteer hours, ranging from minimum wage of \$7.25 per hour,

to \$16.13 per hour, to \$22.14 per hour. Tr.p.308,LL.7-18, p.360,L.13-p.361,L.2; Ex.319, AC2226.

For-profit skilled nursing facilities also have people who volunteer because they care about the residents. Tr.p.601,L.25-p.602,L.11, p.703,L.9-p.705,L.25. These volunteers assist with a variety of activities, including helping with art and music, gardening with the residents, assisting with Bingo, wheeling people to and from functions, and spending time with residents. *Id.* Volunteers come from a many organizations, including churches, colleges, Boy Scout troops, schools, and civic groups, such as Rotary, Kiwanis, Lions, American Legion, and veterans organizations. *Id.*

## **12. Other Uses of Boise Village.**

Boise Village has been used as an observation site for pet therapy dogs<sup>22</sup>, a training site for Idaho Health and Welfare surveyors<sup>23</sup>, and offers space to non-profit organizations, at no charge. Tr.p.365,LL.19-p.367,L.9. Society did not establish the frequency of these activities or that they occurred in 2012 or 2013. *Id.* Boise Village also hosts a county fair and Thanksgiving dinner that is open to the public, but it did not establish that the public participated in those events during 2012 or 2013. Tr.p.367,L.10-p.368,L.15. Boise Village has assisted area non-profit organizations with events and activities. Tr.p.368,L.16-p.371,L.14. Again, Boise Village failed to show how frequently this occurs or that it took place in 2012 or 2013. *Id.*

In the past, Boise Village has been used for weddings, memorial services, and board meetings for the ministry to the aged at no expense, but it did not show how frequently this

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<sup>22</sup> Various other facilities in Idaho provide pet therapy so their residents can engage with animals. Tr.p.598,LL.10-23.

<sup>23</sup> Idaho Health and Welfare has also trained surveyors at other skilled nursing facilities, including for-profit nursing facilities in the Boise area. Tr.p.607,L.23-p.608,L.3; Ex.349L.

occurs.<sup>24</sup> Tr.p.212,L.23-p.213,L.10. Boise Village has also been a clinical site for nursing students, dieticians, and occupational therapy.<sup>25</sup> Tr.p.212,LL.5-18. It has also provided CPR training. Tr.p.212,LL.19-22. Society provided no evidence that it served as a clinical site or provided CPR training during 2012 and 2013.

### **13. Boise Village Collections Process.**

According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. This takes a concerted team effort. *Id.* There is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,LL.5-16. Society has collections teams at both its national office and at Boise Village which collaborate monthly on overdue accounts. Tr.p.641,L.9-p.644,L.16.

Society's national office collection team sends collection letters to residents when accounts are 10, 30, and 60 days overdue. *Id.* When an account is 40 days overdue, the administrator gets involved and will call the resident or responsible party.<sup>26</sup> *Id.* Overdue accounts are also sent to a collection agency. Tr.p.644,L.25-p.645,L.7. According to Society's policy, when an account is 60 days past due, it will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11.

Society also hires attorneys to write demand letters stating that if the account is not paid litigation may be filed against the resident. Tr.p.644,LL.17-24. Society's policy also says that it

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<sup>24</sup> Boise Village has had resident and staff meetings and special holiday gatherings in the main dining area but did not establish how often this occurs. Tr.p.181,LL.2-7, p.183,L.18-p.184,L.9.

<sup>25</sup> It is fairly typical that for-profit skilled nursing facilities have nursing students. Tr.p.706,L.1-p.707,L.14.

<sup>26</sup> The administrator is responsible for overseeing the accounts receivable and collections activities at Boise Village. Tr.p.273,LL.13-21. He is personally involved in the collections process. *Id.* He is responsible for ensuring successful follow through on every accounts receivable. Tr.p.275,LL.14-17; Ex.339, AC1153.



may initiate legal action when other steps in the collection process have been followed and properly documented. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's administrator and office manager filed a small claims case in Ada County to enforce an admission agreement and collect on a \$2,990.99 bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Society also makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,L.14-25. If a person can only afford to pay \$10 per month on their bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,L.5-20. Boise Village has, in fact, had accounts where people could only afford to pay \$10 per month and they were required to pay that amount. *Id.*

The collections process at Boise Village is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. To collect on overdue accounts, for-profit skilled nursing facilities also send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases. *Id.*

#### **14. Charitable Allowances and Other Expenses.**

Boise Village provided information on four "charitable allowances" during 2012 and 2013 totaling \$38,286.63.<sup>27</sup> Ex.51, GSS2095-2098; Tr.p.194,L.18-p.197,L.8. These "charitable allowances" were only given after a resident was admitted, after the bill was incurred, and after Society determined the person could not pay the bill.<sup>28</sup> Tr.p.295,L.17-p.299,L.1. Society

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<sup>27</sup> The largest of these "charitable allowances" was \$25,331.87. Ex.51, GSS2095. Society was unsuccessful in its attempts to collect this debt and initially determined that it was bad debt. Ex.328A, GSS1271; Tr.p.653,L.5-p.655,L.4. This was subsequently changed to a "charitable allowance". Ex.51, GSS2095; Ex.328A, GSS1271.

<sup>28</sup> The American Institute of Certified Public Accountants Guide defines charity as services provided with no expectation of payment. Tr.p.762,L.22-p.763,L.10.

provided no evidence that Boise Village provided a “charitable allowance” at the time of admission.

According to Society’s policies, a “charitable allowance” can only be approved after admission if all of the collection policies have been followed, which may include sending letters, making phone calls, sending the account to a collection agency or attorney, and assisting with appeals of government medical assistance denials. Tr.p.303,LL.8-25; Ex.50, GSS1025. For-profit skilled nursing homes write these accounts off as bad debt because the facility was not been able to collect. Tr.p.695,LL.7-14. Boise Village’s charitable allowances were less than 0.5% of its operating revenue in 2011-2013. Tr.p.793,L.25-p.795,L.7; Ex.349O.

Boise Village spent money on items it claims to be charitable. It purchased specialty mattresses that help prevent pressure sores and skin issues for some of its residents, totaling \$2,370 in 2012 and \$9,530 in 2013. Tr.p.197,L.9-p.199,L.8. Medicare and Medicaid did not reimburse Boise Village for these costs, but Society provided no evidence that Medicaid or Medicare residents used these mattresses. *Id.* In 2012 and 2013, Boise Village spent \$2,803.06 to provide Christmas presents, some dental care and glasses, and art framing for some of its residents.<sup>29</sup> Ex.54, GSS2755. Boise Village provided scholarships to six of its employees to help them continue their nursing education in the amounts of \$11,140 and \$3,000 in 2012 and 2013, respectively. Ex.55,GSS2759; Tr.p.204,LL.8-18. As part of the scholarship application, the employee has to explain how the course of study will benefit the Society. Ex.55, GSS2761; Tr.p.288,LL.3-10.

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<sup>29</sup> Exhibit 54 shows a total of \$3,402.95 but this includes expenses and an employee assist for spouse’s medical emergency incurred in 2014. The 2014 expenses are not relevant to the 2012 and 2013 tax years at issue in this case.

Boise Village claimed that in 2013 it spent \$7,000 to purchase a wheelchair for one of its long-term Medicaid residents. Tr.p.211,L.14-p.212,L.4. All of its wheelchairs, including this \$7,000 purchase, are part of the special add-on rates paid by Idaho Medicaid. Tr.p.237,L.19-p.238,L.9.

**15. Money From Boise Village to Society.**

Prior to 2013, Society took funds from its campuses to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. During that time, Society transferred \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013. Tr.p.468,LL.10-12, p.469,LL.15-24. According to Society's Vice President of Finance, the "[n]ational campus is, essentially, a bank." Tr.p.469,LL.21-24. Some of Boise Village's expenses are paid out of this account. Tr.p.493,L.4-p.495,L.2.

Boise Village's profit goes into the Society's business account and Society uses the funds in this account to invest in new locations and help Society's other centers that are struggling financially. Tr.p.470,L.23-p.471,L.15, p.495,LL.12-22. In addition, in 2013, \$185,275.63 from Boise Village's accounts with accumulated interest earned on donations and unrestricted gifts were swept into a national account held by Society.<sup>30</sup> Ex.28, GSS2812. Other funds from Boise Village have been transferred to that national organization. This includes \$2,068,781.21 from its

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<sup>30</sup> This includes \$49,487.92 from an account with interest earned on donor restricted property donations. Tr.p.227,LL.22-25, p.228,LL.8-17, p.434,L.16-p.435,L.5. Likewise, Boise Village's account with \$15,924.10 from interest on donor restricted operations was swept into a national account. Tr.p.229,L.19-p.230,L.5. Also, \$86,860.62 from interest earned on Boise Village's general endowment were consolidated with the national account. Tr.p.232,L.11-p.233,L.4. In addition, \$33,002.99 of unrestricted gifts were transferred to the national account. Tr.p.233,L.15-p.234,L.6.

Helping Hands depreciation account and \$226,988.57 from its general Helping Hands account. Tr.p.436,L.17-p.437,L.9, p.437,LL.10-25; Ex.28, GSS2812.

#### **16. Society's Corporate Structure.**

Society is a North Dakota non-profit corporation that operates approximately 240 facilities, including skilled nursing facilities, home care facilities, independent housing, and assisted living. Tr.p.115,LL.9-20; Ex.31, GSS2876. It is the ninth largest nursing home company in the United States. Tr.p.746,LL.9-15. Each campus is operated as an unincorporated operating unit. Tr.p.309,LL.1-8; Ex.319, AC2227. It has approximately 29 separate corporations through which it provides low-income housing. Tr.p.476,L.21-p.477,L.10; Ex.31, GSS2876. It operates skilled nursing facilities in twenty-four states, including four in Idaho. Tr.p.47,L.25-p.48,L.2, p.48,LL.3-9. Society also owns an insurance company incorporated in the Cayman Islands, called Good Samaritan Society Insurance Limited, Inc. Ex.19, GSS2740; Ex.31, GSS2876. It also has a controlled foundation that is a Minnesota non-profit corporation. Ex. 31, GSS2876.<sup>31</sup>

#### **17. Society's Financials.**

Society's operating revenue was \$949,461,000, \$954,007,000, and \$972,643,000 in 2011-2013, respectively. Tr.p.752,LL.9-19; Ex.349A. Its excess of revenue over expenses<sup>32</sup> was \$21,321,00, \$23,320,000, and \$710,000 in 2011-2013, respectively.<sup>33</sup> *Id.* In 2012, Society's total assets increased by \$100,261,000 to \$1,656,209,000. Ex.308, GSS2517. In 2013, its total

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<sup>31</sup> Society's national consolidated financial statements include the Society, its captive insurance company, its controlled foundation, affordable housing entities, and residential facilities. Ex.31, GSS2876.

<sup>32</sup> The excess revenue over expenses gives a full picture of the Society for each year. Tr.p.753,LL.11-14.

<sup>33</sup> According to the national consolidated financial statements, excess revenue over expenses is a performance indicator for Society. Tr.p.752,L.20-p.753,L.4.

assets increased by \$84,274,000 to \$1,740,483,000. Ex.31, GSS2871; Tr.p.473,LL.3-12. Society's unrestricted net assets increased by \$21,590,000 in 2011, \$32,619,000 in 2012, and \$7,714,000 in 2013. Ex.308, GSS2519; Ex.31, GSS2873; Tr.p.473,LL.13-23.

Approximately 96% of Society's operating revenue during 2011-2013 came from charging for services, what Society calls its housing and services revenues. Tr.p.754,L.20-p.756,L.24; Ex.349B; Tr.p.758,LL.4-20. During 2011-2013, approximately 61% of Society's housing and services operating revenue came from government programs. Tr.p.758,LL.4-20; Ex.349D. Approximately 69% of the residents in Society's skilled nursing facilities are covered by federal and state programs, providing approximately 69% of Society's total skilled nursing revenues. Tr.p.486,LL.3-11; Ex.103, GSS2608. Residents pay from private sources or the cost of their care is reimbursed by state and federal government programs. Tr.p.484,LL.1-8; Ex.103, GSS2600.

Society's unrestricted donations and donations released from restrictions were approximately 1% of its operating revenues during 2011-2013. Tr.p.754,L.20-p.756,L.24; Ex.349B. Its total restricted and unrestricted donations were approximately 2% of its operating revenue during 2011-13. Tr.p.759,L.2-p.761,L.12; Ex.349E.

Society also has substantial investments. The fair value of Society's investment portfolios as of December 31, 2013 was \$577,248,000 and \$546,728,000 as of December 31, 2012. Ex.31, GSS2886-87; Tr.p.480,LL.12-19.

Since 2011, Society has been expanding and remodeling its existing facilities in hope that in future years those investments will increase revenue at those locations. Tr.p.474,L.20-p.475,L.21. Society spent cash on property additions including replacement of facilities,

expanding facilities, and remodeling in the amount of \$107,544,000 in 2011, \$77,617,000 in 2012, and \$101,132,000 in 2013. Tr.p.474,LL.3-14; Ex.31, GSS2875; Ex.328, GSS2521.

These investments include dozens of remodels and expansions for post-acute rehabilitation facilities in order to increase Medicare and managed care utilization. Tr.p.474,L.20-p.475,L.8, p.484,LL.13-17; Ex.103, GSS2605. The operating margins are better with Medicare and profitability has increased because Society has more Medicare residents. Tr.p.485,LL.9-14; Ex.103, GSS2606. Society's 2011 net operating income was one of the best operating results it has ever achieved and a significant contribution to those financial results was growth in Medicare revenue by approximately \$19,000,000. Tr.p.484,L.22-p.485,L.3; Ex.103, GSS2605.

#### **18. Society's Operations.**

Society has approximately 21,000 employees. Tr. p.47, LL.22-24. Approximately 300 employees are required to be an active member of a Christian church, including Society's board of directors, corporate officers, assistant officers, directors of operations, members of executive leadership, and administrators. Ex.15, GSS1343-44; Tr.p.122,L.22-p.123,L.5. Society has "lots of people that aren't Christian." Tr.p.62,LL.1-3. The staff of Society includes a variety of faith traditions including Muslim, Hindu, Buddhist, and agnostic. Tr.p.62, LL.22-25. The staff is not required to be Lutheran. Tr.p.81,LL.5-8. Society's chaplains are required to members of a Christian church, but not all of Society's 240 facilities have a chaplain. Tr.p.70,LL.21-23, p.122,LL.16-21.

Society has a senior pastor who is an ordained Lutheran minister. Tr. p. 32, LL.13-18. Society's employees write devotionals which are carried on at local skilled nursing facilities. Tr. p. 38, L.3, p. 40, LL.9-10. Society also has a training curriculum that teaches its employees love,

compassion, acceptance, joy, honesty, humility, courage, and perseverance. Tr. p. 61, LL.18-21. This curriculum teaches employees of an obligation to share God's love, the opportunity to impact people's well-being, and to measure the outcome to determine if everybody feels love and peace. Tr. p. 61, LL. 7-17. Society calls this the Good Samaritan Society Way. Tr. p. 61, LL.3-5. Society also has a strictly voluntary program called STAR Ministry available for its Christian staff. Tr. p. 68,LL. 1-5, p. 70, LL.21-22. The goals of this program are to encourage its staff and residents "to understand their work and life in Good Samaritan in terms of mission within the whole of life's journey," "[t]o provide guidelines for appropriate compassionate ministry," and to offer training in "sharing of God's love." Tr.p.71,L.13-p.72,L.10.

Society has an affiliation agreement with the Evangelical Lutheran Church in America (ELCA). Ex.16, GSS1339. Under this agreement, "the ELCA neither desires nor intends to exert any type of corporate or other control over Society functions, policies, procedures, assets, or operations." *Id.* This agreement is a "recognition by the ELCA that the mission of the Society and the mission of the church are fully integral to the achievement of God's mission." *Id.* There is "no financial commitment, contract, or obligation by either ELCA or the Society to the other." *Id.* Under this agreement, Society has "sole discretion and control over its administration and all judgments, decisions, and operations." Ex.16, GSS1340. It is also "shall be fully responsible for management and fiscal affairs and fully responsible for any debts and liabilities it may incur." Ex.16, GSS1341.

Society also is recognized by the Lutheran Church—Missouri Synod as a social ministry organization. Ex.17. This recognition "signifies that [Society] is integral to the mission and ministry of the church." *Id.* at GSS1332. It also requires Society to include in its governing documents "[a] statement that the [Society] shall be fully responsible for the management and

fiscal affairs of the [Society] and fully responsible for any debts or liabilities it may incur.” *Id.* at GSS1336. Society’s governing documents must also contain “a statement that church recognized status shall not cause the LCMS to incur or be subject to liabilities or debts of the [Society].” *Id.*

Society claims that it provides benefits to the community. It claims this includes providing payroll in small rural areas. Tr.p.102,L.19-103,L.14. Some facilities offer clinics related to parish nursing. *Id.* Facilities also offer space to religious and non-profit organizations at no charge. *Id.* Society sends out free newsletters on topics of interest to seniors. Tr.p.103,L.17-p.104,L.4. It also encourages its facilities to be active in the community. Tr.p.104,LL.5-7. Society stated that it has invested in technology that monitors residents’ daily living behaviors and activities, called Living Well at Home. Ex.21, GSS2730-31; Tr.p.111,L.19-p.112,L.23.

Society provided total annual grants of \$100,000 to its facilities to meet a need in the local communities between 2010 and 2013. Tr.p.105,LL.3-9. During this time, Society made only one grant to one of its four facilities in Idaho. Ex.22, GSS3181; Tr.p.121,L.17-p.122,L.4. That grant was for \$2,000 to Boise Village in 2013 for mneme therapy.<sup>34</sup> Ex.22, GSS3181; Tr.p.107,LL.14-16. Part of the mneme therapy provided at Boise Village is a free art class to residents and members of the community. Tr.p.205,L.8-p.206,L.14. Society provided no information on how many people from the community took part in these programs during 2012 or 2013. Tr.p.293,L.25-p.294,L.22.

Society also asserts that it assists during natural disasters by making the Salvation Army and Red Cross telephone numbers available and by facilitating people’s donations to those

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<sup>34</sup> Mneme therapy is art or music that stimulates the senses. Tr.p.186,LL.7-17.



organizations. Tr.p.109,L.14-p.110,L.2. Society provided no evidence that this occurred between 2011 and 2013.

Society collects donations from its residents and staff and forwards those donations to a hospital in Bangladesh and Zimbabwe, and a senior center and soup kitchen in Colombia. Tr.p.108,LL.1-17; Ex.23. It calls this Project Outreach. *Id.* Society provided no evidence that any of these donations were from the Society itself.

## V. CONCLUSIONS OF LAW

### 1. Society Does Not Qualify for a Charitable Property Tax Exemption.

Society seeks a charitable property tax exemption under Idaho Code § 63-602C, which provides, in pertinent part:

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized; provided, that if any building or property belonging to any such limited liability company, corporation or society is leased by such owner or if such limited liability company, corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purpose of which such charitable organization exists, then the same shall be assessed and taxed as any other property . . . .

This statute has two initial requirements. “[F]irst, the property must belong to a charitable organization and second, that the property be used exclusively for the purpose for which the corporation was organized.” *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 688, 69 P.3d 104, 108 (2003).

The Idaho Supreme Court in *In re Appeal of Sunny Ridge Manor*, 106 at 98, 675 at 815 identified eight (8) criteria for determining whether an organization is charitable. The Court stated:

A number of factors must be considered: (1) the stated purposes of its undertaking, (2) whether its functions are charitable (in the sense just discussed), (3) whether it is

supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the “charity” provided is based on need.

*Id.* at 100, 815.

The Idaho Supreme Court applied these factors in *Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Equalization of Latah County*, 119 Idaho 126, 131, 804 P.2d 299, 304 (1990), and concluded that Society was not entitled a charitable property tax exemption. That Court stated that the fees charged by an organization “is a factor is of great importance and should be weighted accordingly,” and that “there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” *Id.* at 132, 804 P.2d at 305 (citation omitted). The Court further noted that “Society had never provided housing at a reduced cost to any resident and the revenue collected by the Society from its residents has substantially exceeded costs and expenses for the past several years.” *Id.* at 132, 305.

Following the Idaho Supreme Court’s reasoning, analysis, and holding in *Evangelical Lutheran Good Samaritan Society*, this Court concludes that Society is not a charitable organization and does not use Boise Village exclusively for charitable purposes. Society’s request for a charitable property tax exemption therefore must be denied.

**A. Society Is Not a Charitable Organization.**

Society fails to meet almost all of the elements of the *Sunny Ridge Manor* analysis outlined by the Idaho Supreme Court.

**1. The Stated Purposes of Society’s Undertaking.**

Society’s stated purposes are likely charitable for purposes of Idaho Code § 63-602C.

However, whether an organization's stated purposes are charitable is not the only consideration, and the court must determine whether the other charitable factors are present. *See Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho 962, 965, 855 P.2d 47, 48 (1993).

2. Whether Society's Functions Are Charitable.

Society does not function as a charitable organization. It is the ninth largest home company in the United States, and it owns an insurance company incorporated in the Cayman Islands. Tr.p.746,LL.9-15; Ex.19, GSS2740; Ex.31, GSS2876. Society and its related corporations operate approximately 240 facilities, including four skilled nursing facilities in Idaho. Tr.p.115,LL.9-20; Ex.31, GSS2876. Tr.p.47,L.25-p.48,L.2, p.48,LL.3-9. Its investment portfolios are substantial, valued at \$546,728,000 and \$577,248,000 as of December 31, 2012 and 2013, respectively. Ex.31, GSS2886-87; Tr.p.480,LL.12-19. During those years, Society spent millions of dollars in property additions including replacement of facilities, expanding facilities, and remodeling. Tr.p.474,LL.3-14; Ex.31, GSS2875; Ex.308, GSS2521. These investments include dozens of remodels and expansions for post-acute rehabilitation facilities in order to increase Medicare and managed care utilization, thereby increasing Society's operating margins and profitability. Tr.p.474,L.20-p.475,L.8, p.484,LL.13-17, p.485,LL.9-14; Ex.103, GSS2605; Ex.103, GSS2606.

At Boise Village, Society expects all residents to pay for the services received. Ex.301,p.37;Tr.p.637,LL.4-12. Prior to admission, Boise Village screens people to determine their ability to pay for services and to identify a payment source. Tr.p.636,LL.2-7, p.276,LL.12-21, p.624,L.11-p.628,L.6; Ex.89, GSS21-23; Ex.339, AC1157 and 1160. If a resident is "over-resourced" with too much money to qualify for Medicaid, Boise Village will charge that resident

the private pay rate until that person runs out of money (less than \$2,000 in assets) and qualifies for Medicaid, when then pays the bill. *Id.* Tr.p.305,LL.3-20.

Boise Village requires residents to sign an admission agreement similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. Under the agreement, Boise Village will provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law; in exchange for such services, the resident shall promptly pay. Tr.p.629,LL.15-20, p.630,L.9-p.631,L.17, p.632,LL.1-3,Ex.105, GSS5-6. The admission agreement further provides for a late charge of 10% per year when accounts are not paid timely, states that residents will be liable for collections costs on past due accounts, and reserves the right for Boise Village to transfer or discharge a resident for failure to pay. Tr.p.633,L.22-p.635,L.17; Ex.105, GSS9-10.

Boise Village claims that certain purchases that it made for residents make it charitable. This includes specialty mattresses totaling \$2,370 in 2012 and \$9,530 in 2013 that were not reimbursed by Medicare and Medicaid. Tr.p.197,L.9-p.199,L.8. But there is no evidence that Medicaid or Medicare residents used these mattresses. In 2013, Boise Village spent \$7,000 to purchase a wheelchair for a long-term Medicaid resident. Tr.p.211,L.14-p.212,L.4. However, it appears from the evidence that Idaho Medicaid reimbursed Boise Village for this \$7,000 purchase as part of its special add-on rates. Tr.p.237,L.19-p.238,L.9; Ex.316A.

Boise Village also purchased for its residents Christmas presents, some dental care and glasses, and art framing totaling \$2,803.06 in 2012 and 2013. Ex.54, GSS2755. It also provided educational scholarships to certain employees totaling \$11,140 and \$3,000 in 2012 and 2013, respectively. Ex.55, GSS2759; Tr.p.204,LL.8-18. These amounts are nominal compared to Boise Village's profits.

Society's collection efforts and policies and procedures further establish that Society does not function as a charitable organization. According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. Society's collection teams at its national office and at Boise Village collaborate monthly on overdue accounts. Tr.p.641,L.9-p.644,L.16. The national collection team sends collection letters to residents when accounts are 10, 30, and 60 days overdue. Tr.p.641,L.9-p.644,L.16. When an account is 40 days overdue, the local administrator calls the resident or responsible party. *Id.* Overdue accounts are also sent to a collection agency. Tr.p.644,L.25-p.645,L.7.

Society hires attorneys to write demand letters stating that if the account is not paid litigation may be filed against the resident. Tr.p.644,LL.17-24. Society's policy states that it may initiate legal action to collect on accounts. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's administrator and office manager filed a small claims case in Ada County to enforce an admission agreement and collect on a \$2,990.99 bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Furthermore, there is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,LL.5-16. Society makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,LL.14-25. If a person can only afford to pay \$10 per month on their bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has had residents who could only afford to pay \$10 per month and required them to pay that amount. *Id.*

Society's collection procedures are similar to for-profit skilled nursing facilities, which also send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases to collect on overdue accounts. Tr.p.685,L.24-p.690,L.19.

For these reasons, Society's functions are not charitable, and Society fails this element of the *Sunny Ridge* analysis.

### 3. Whether Society Is Supported by Donations.

"[T]he requirement of donations is an important factor, because charitable donations reduce the cost of the service provided, either to the public generally as direct beneficiaries of the service or to taxpayers who would otherwise bear the burden." *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 71 (citing *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho at 965, 855 P.2d at 50.)

Boise Village is only minimally supported by cash donations. Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5. Of its total revenue during 2011-2013, approximately 0.5% was from cash donations, whereas 99% came from charging people for services. Ex.84, p.4; Ex.349N; Ex.320,AC3088; Tr.p.311,LL.6-10, p.793,LL.11-15, p.793,LL.20-24; Ex.319, AC2226; Ex.301,p.39. At the national level, Society's unrestricted donations and donations released from restrictions were approximately 1% of the operating revenues during 2011-2013. Tr.p.754,L.20-p.756,L.24; Ex.349B. Society's total restricted and unrestricted donations were approximately 2% of operating revenue during those years. Tr.p.759,L.2-p.761,L.12; Ex.349E.

Boise Village claims that it receives donations in the form of volunteer time. Volunteers at Boise Village include students of all ages, including elementary students, junior high students, and high school students. Tr.p.375,L.24-p.376,L.7. Some volunteers are university students

participating in a service learning project. Tr.p.361,L.17-p.364,L.22. Individual members of Boy Scout, Girl Scout troops and church groups are counted as volunteers. Tr.p.374,L.14-p.375,L.8, p.375,LL.9-15, p.376,LL.21-23. For-profit skilled nursing facilities similarly have volunteers from churches, colleges, Boy Scout troops, schools, and civic groups, such as Rotary, Kiwanis, Lions, American Legion, and veterans organizations. Tr.p.601,L.25-p.602,L.11, p.703,L.9-p.705,L.25. Those volunteers assist with a variety of activities, including helping with art and music, gardening with the residents, assisting with Bingo, wheeling people to and from functions, and spending time with residents. *Id.*

The volunteers at Boise Village contribute a significant number of hours, and the majority of volunteers assist with activities. Tr.p.345,L.18-p.348,L.24, p.374,LL.11-13; Ex.70. They do not provide nursing care, hand out medications, or change bandages. Tr.p.374,LL.4-10. Importantly, the volunteers at Boise Village do not reduce staffing or the costs charged to residents. Tr.p.480,LL.2-7. As such, Society's does not meet this element. *See Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho at 965, 855 P.2d at 50.

4. Whether the Recipients of Society's Services Are Required to Pay for the Assistance They Received.

Boise Village charges all of its residents for skilled nursing care, and its residents are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25; Ex.320, AC3088. According to Brian Davidson, Boise Village's administrator, "we like to get payment for all of our residents that reside at the facility." *Id.* He also testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. If a resident does not personally pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7. As explained above, Society employs a screening process to identify a payment source at the time of admission; assists residents with applying for Medicaid; and has

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collection teams which to pursue payment on overdue accounts. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7.

The evidence established that the residents at Boise Village are required to pay for the services provided, and Society fails this element.

5. Whether There Is a General Public Benefit.

“For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit.” *Housing Southwest*, 128 Idaho 33, 339, 913 P.2d 68, 72 (1996) (citation omitted). “If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the ‘general public benefit’ factor is whether the corporation fulfills a need which the government might otherwise be required to fill.” *Id.* The Court in *Housing Southwest* concluded that when an organization is supported by government funds, such organization does not perform a function which might otherwise be the obligation of the government; thus, there is no general public benefit. *Id.*

Boise Village charges all of its residents for skilled nursing care, and its residents are required to pay. Tr.p.277,L.23-p.278,L.1; Ex.320, AC3088; Tr.p.311,LL.18-25. It charges rates similar to other nursing facilities in Ada County, and its income produces a profit. Ex.301,p.37; Ex.320, AC3088; Tr.p.311,LL.11-17, p.637,LL.4-12. As explained above, it has collections teams which follow Society’s collections process to obtain payment on overdue accounts. Tr.p.641,L.9-p.644,L.16.

Moreover, Society is supported by government funds and does not provide a general public benefit. During 2011-2013, approximately 96% of Society’s operating revenue was from housing and services revenue. Tr.p.754,L.20-p.756,L.24,p.758,LL.4-20;Ex.349B. Of that revenue, approximately 61% came from government programs. Tr.p.758,LL.4-20; Ex.349D. In



addition, approximately 69% of residents in Society's skilled nursing facilities are covered by federal and state programs. Tr.p.486,LL.3-11; Ex.103, GSS2608.

At Boise Village, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, respectively, including Medicaid, Medicare, managed care, and Veterans' Administration. Tr.p.766,L.15-p.767,L.17; Ex.349F. Medicaid was overwhelmingly Boise Village's largest source of revenue during 2011-2013. Tr.p.766,L.12-18; Ex.349F. All of Boise Village's residents in its traumatic brain injury unit were covered by Medicaid, and most of the residents its long-term care and dementia units were covered by Medicaid. Tr.p.292,LL.18-22.

Boise Village's Medicaid residents were 73.4%, 72.1%, and 76.1% of its total residents in 2011-2013, respectively. Ex.24A. Of the 14 skilled nursing facilities in a 25 mile radius, Boise Village had the second highest percentage of Medicaid residents in 2011 and 2013, and the third highest 2012. Ex.24A; Tr.p.790,L.11-p.791,L.15, p.849,L.24-p.850,L.7; Ex.349M.

Idaho Medicaid pays a skilled nursing facility a daily rate for each Medicaid resident. The daily rate paid to Boise Village is the highest of the 14 skilled nursing facilities in a 25 mile radius. Tr.p.789,LL.5-20; Ex.349L. Boise Village's higher rate is due, at least in part, to its higher costs. See Tr.p.853,L.6-p.854,L.17; Ex.96. On average, Medicaid paid Boise Village \$290.77 and \$295.23 per resident per day in 2012 and 2013, respectively. Tr.p.787,L.7-p.788,L.13; Ex.349K. These Medicaid payments to Boise Village totaled \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively.

Idaho Medicaid reimburses skilled nursing facilities more than their costs, which results in a profit from Medicaid residents. Tr.p.838,LL.7-22. In 2012, Boise Village earned a profit of

\$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6.

Idaho Medicaid also reimburses skilled nursing facilities for property taxes. Tr.p.621,L.24-p.622,L.15, p.778,L.5-p.780,L.2. Boise Village paid \$176,808 and \$173,424 in property taxes for 2012 and 2013, respectively. *Id.* Medicaid would reimburse Boise Village \$108,077 and \$115,430 of those amounts. *Id.* Tr.p.781,L.23-p.782,L.11.

Society further claims that it benefits the community by providing payroll in small rural areas; offering clinics related to parish nursing; and providing space at facilities to religious and non-profit organizations at no charge. Tr.p.102,L.19-p.103,L.14. Society also sends out free newsletters on topics of interest to seniors; encourages its facilities to be active in the community; and invested in Living Well at Home, a technology that monitors residents' daily living behaviors and activities. Tr.p.103,L.17-p.104,L.4, p.104,LL.5-7, p.111,L.19-p.112,L.23; Ex.21, GSS2730-31. Society also states that it assists during natural disasters by making the Salvation Army and Red Cross telephone numbers available and by facilitating people's donations to those organizations, but provided no evidence that this occurred between 2011 and 2013. Tr.p.109,L.14-p.110,L.2.

Between 2010 and 2013, Society provided total annual grants of \$100,000 to its facilities to meet a need in the local communities, including \$2,000 to Boise Village in 2013 for an art class. Tr.p.105,LL.3-9; Ex.22, GSS3181. Society provided no information on how many people from the community took part in these programs during 2012 or 2013. Tr.p.293,L.25-p.294,L.22. Society also collects donations from its residents and staff to support its Project Outreach in foreign countries, but provided no evidence that such donations were from the Society itself. Tr.p.108,LL.1-17; Ex.23.

Because Society is supported by government funds, it does not fulfill a need which the government might otherwise be required to fill. *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72. Society also charges all of its residents at rates similar to those charged in other nursing facilities in Ada County and has procedures to collect payment on residents' accounts. As such, Society fails the element of providing a general public benefit.

6. Whether the Income Received Produced a Profit.

Society earns a profit both nationally and at Boise Village. In 2011-2013, Society's excess of revenue over expenses was \$21,321,00, \$23,320,000, and \$710,000, respectively. *Id.* Tr.p.752,LL.9-19; Ex.349A. During those same years, Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010 in 2011-2013, respectively. Ex.320, AC3088; Tr.p.311,LL.11-17, p.773,L.5-p.774,L.8. Boise Village's profits totaled \$3,134,812 from 2011-13. *Id.*

Society does not meet this element of the analysis.

7. To Whom the Assets of the Organization Go Upon Dissolution.

Society is a non-profit organization and upon dissolution its assets would be distributed to a non-profit organization. Ex. 4, p. AC 7-8. Society appears to meet this element of the *Sunny Ridge* analysis.

8. Whether the Charity Provided Is Based on Need.

Society does not provide any charity based upon need. As explained above, approximately 96% of Society's operating revenue, and over 99% of Boise Village's revenue, came from charging people for services. Boise Village charges rates similar to other nursing facilities in Ada County. In addition, Boise Village does not have a sliding fee scale. Rather,

Boise Village expects all residents to pay, and its source of funds is primarily from the government.

Boise Village provided information on four “charitable allowances” during 2012 and 2013 totaling \$38,286.63, or less than 0.5% of its operating revenue in those years. Tr.p.194,L.18-p.197,L.8, p.793,L.25-p.795,L.7; Ex.349O; Ex.51, GSS2095-2098. These “charitable allowances” were only given after a resident was admitted, the bill was incurred, and Society had followed all of its collection policies. Tr.p.295,L.17-p.299,L.1, p.303,LL.8-25; Ex.50, GSS1025. There was no evidence that Boise Village provided a “charitable allowance” at the time of admission. For-profit skilled nursing homes write these accounts off as bad debt because the facility was not been able to collect. Tr.p.695,L.7-14. The “charitable allowances” approved by Boise Village are similarly bad debt.

Society fails this element of the *Sunny Ridge* analysis. Because Society is not a charitable organization, it is not entitled to a charitable tax exemption.

**B. Boise Village Is Not Used Exclusively for Charitable Purposes.**

Even if Society could show that it is a charitable organization, it does not qualify for a property tax exemption because it does not use Boise Village for qualifying purposes. To qualify for a charitable tax exemption, property must be used exclusively for charitable purposes. *See* Idaho Code § 63-602C. In this case, Society uses Boise Village to provide skilled nursing services. It charges market rates for its services, expects residents to pay, seeks collection of unpaid accounts, and is supported by government funds. As such, Boise Village is not used exclusively for charitable purposes but, as explained below, it is used for business purposes.

**2. Boise Village Is Not Used Exclusively for Religious Purposes, and Society Does Not Qualify for a Religious Property Tax Exemption.**

Society also seeks a property tax exemption under Idaho Code § 63-602B, which

provides, in pertinent part:

1) The following property is exempt from taxation: property belonging to any religious limited liability company, corporation or society of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious limited liability company, corporation or society, including any and all residences used for or in furtherance of such purposes.

2) If the entirety of any property belonging to any such religious limited liability company, corporation or society is leased by such owner, or if such religious limited liability company, corporation or society uses the entirety of such property for business or commercial purposes from which a revenue is derived, then the same shall be assessed and taxed as any other property...

Idaho Code § 63-602B requires Society to prove that it uses Boise Village exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities. The Idaho Supreme Court has held that "the property owned by a religious organization must be used appropriately to qualify for exemption." *Corp. of Presiding Bishop*, 123 Idaho at 419, 849 P.2d at 92. If Boise Village is used for a business or commercial purposes from which a revenue is derived, then it does not qualify for a religious property tax exemption. Idaho Code § 63-602B.

To determine whether property is used for religious purposes in the context of tax exemptions, courts look at whether the property is used primarily for advancing religion, or whether it operates more like a business. *Franciscan Cmty., Inc. v. Hamer*, 975 N.E.2d 733, 745-46 (Ill. App. Ct. 2012). The Illinois Court of Appeals in that case explained:

"In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion." "Exemption would be the rule, and taxation the exception." For purposes of taxation, courts look at whether advancing religion is identified as the subject property's dominant purpose. Courts also look at whether the operation is more businesslike and characteristic of a commercial enterprise than a facility used primarily for religious purposes.

*Id.* (internal citations omitted).

Courts in other states have held that using property to care for the elderly or infirm is not using that property for religious purposes. This includes nursing homes operated by religious organizations. See *Evangelical Lutheran Good Samaritan Soc. v. County of Gage*, 184 Neb. 831, 151 N.W.2d 446 (1967) (Supreme Court of Nebraska held that two nursing homes operated by Society did not qualify for a religious property tax exemption held that “the primary or dominant use is not one for religious purposes and the property cannot be exempt from taxation on that ground.”); *Evangelical Lutheran Good Samaritan Soc. v. Buffalo Cnty. Bd. of Equalization*, 243 Neb. 351, 500 N.W.2d 520 (1993) *superseded by statute on other grounds as recognized by Alois v. Lincoln County Bd. of Equalization*, 2008 WL 5413385 (Neb. Ct. App. Dec. 23, 2008) (Nebraska Supreme Court held that independent living units owned by Society were not used exclusively for religious purposes.); *Yakima First Baptist Homes v. Gray*, 82 Wn.2d 295, 510 P.2d 243 (1973) (Supreme Court of Washington stated, “[a]lthough the practice of charity, of kindness to other persons and in particular to the aged, and the practice of all of the virtues are acts encouraged by religious organizations generally, it cannot be said this is a religious purpose within the commonly accepted definitions of the word “religious.”); *Christian Ret. Homes, Inc. v. Bd. of Equalization*, 186 Neb. 11, 180 N.W.2d 136 (1970) (Supreme Court of Nebraska held that a retirement home, except the chapel, was not used primarily for religious use. “The religious use of the property, other than the chapel, is an incidental rather than a primary or dominant use.” The Court held that “the primary or dominant use of the property, other than the chapel and medicenter, is providing housing for elderly persons.”); *Christian Home for Aged, Inc. v. Tennessee Assessment Appeals Com.*, 790 S.W.2d 288, 289 (Tenn. Ct. App. 1990) (Tennessee Court of Appeals determined that a nursing home, retirement home, and independent living apartments owned by

religious organization were not used exclusively for religious purposes and, therefore, not entitled to a religious property tax exemption.); *Fairview Haven v. Dep't of Revenue*, 506 N.E.2d 341 (Ill. App. 4<sup>th</sup> 1987) (Illinois Appellate Court held that a nursing home and independent-living units owned and operated by a non-profit corporation that was organized and supported by four Apostolic Christian Church of America congregations was not exclusively used for religious purposes.); *Presbyterian Homes of Synod v. Div. of Tax Appeals*, 55 N.J. 275, 261 A.2d 143 (1970) (Supreme Court of New Jersey found that a retirement community, including nursing home, owned and operated by a religious organization was not used for religious purposes and not entitled to a property tax exemption.); *Franciscan Cmty., Inc. v. Hamer*, 975 N.E.2d 733 (2012) (Appellate Court of Illinois held that nursing home and retirement center owned by religious organization closely associated with the Roman Catholic Church was not used primarily for religious purposes.)

Here, Boise Village is not used exclusively for religious, educational, or recreational purposes. Rather, the primary use of Boise Village is the operation a 96-bed skilled nursing facility.. Tr.p.127,LL.12-25, p.307,LL.4-9; Ex.319, AC2222. Boise Village employs registered nurses, licensed practical nurses, and certified nursing assistants to administer skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. Tr.p.151,LL.14-21, p.152,LL.4-6, p.307,LL.7-12. Boise Village provides residents with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area, where meals are served three times a day. Tr.p.152,LL.4-6, p.179,L.20-p.180,L.6, p.181,LL.2-7; Ex.45A. In exchange for such services, Boise Village expects payment and has collection policies and procedures to ensure payment on overdue accounts. Society itself states that the principal use of Boise Village is skilled nursing, and that Boise Village is expected to operate on a self-sufficient

basis. Tr.p.127,LL.12-25, p.307,LL.4-9, p.483,LL.23-25; Ex.103, GSS2599; Ex.319, AC2222. Such use is not exclusively for religious, educational, or recreational purposes; rather, it is for business or commercial purposes.

Furthermore, Boise Village is used for other non-religious activities. Such activities include Bingo, a newspaper social, trivia, cooking, board games, entertainment, music therapy, birthday parties, Super Bowl party, Mardi Gras parade, July 4<sup>th</sup> BBQ and fireworks, trick or treat with preschool children, and other events. Ex.49,p.3; Tr.p.190,L.21-p.191,L.1. Boise Village has a TV room and library where residents watch TV, check out books, do puzzles, and access the internet. Tr.p.182,LL.16-23. However, all skilled nursing homes in Idaho, including for-profit facilities, are required to provide activities for its residents and to have a certified activities director. Tr.p.372,L.22-p.373,L.15, p.373,LL.16-18. The activities program at Boise Village is its way of providing those required activities. Tr.p.372,L.25-p.373,L.3.

Skilled nursing facilities are also required under State and federal law to develop a care plan for each resident. Tr.p.326,LL.19-24, p.593,L.24-p.594,L.15;. They are required to provide activities that are meaningful to each resident, including religious activities. *Id.* At Boise Village, care plans are created by an interdisciplinary team, including nurses, social workers, a chaplain, dieticians, therapists, and activity directors. *Id.*; Tr.p.534,L.6-16.

The Boise Village administrator is considered the spiritual leader of the facility. Tr.p.273,LL.1-7; Ex.9, GSS3171. He is responsible for ensuring that Boise Village has daily devotions, grace at meals, hymn sings, Bible studies, weekly worship services, large print spiritual publications, prayers before all meetings, and local clergy involvement. Ex.10, GSS3174; Tr.p.78,LL.12-14. Boise Village has been used to train employees on the Good Samaritan Way. Tr. p. 61, LL.3-21. Society's voluntary STAR Ministry program is also



available for its Christian staff. Tr. p.68,L.1-5,p.70, LL.21-22,p.71,L.13-p.72,L.10. The Boise Village chaplain assists with the spiritual care of the residents. Tr.p.534,L.6-16. Local clergy from different Christian denominations also come into Boise Village and provide religious services. Tr.p.142,LL.3-15; Ex.49,p.10. Only 30% to 40% of Boise Village's residents participate in religious services. Tr.p.562,L.17-p.563,L.2. While Boise Village has religious symbols, many of those symbols can also be found at for-profit skilled nursing facilities. Tr.p.554,L.24-p.55,L.1,p.731,LL.7-19,p.734,L.11-p.735,L.22.

For-profit skilled nursing facilities also meet residents' religious needs by having local pastors offer prayers and provide services, including religious meetings on Wednesdays, Catholic mass on Fridays, Seventh Day Adventists services on Saturdays, and Protestant services on Sundays. Tr.p.701,L.10-p.703,L.8,p.734,LL.8-10. A lot of pastors from various churches meet individually with residents in for-profit nursing homes when they are lonely or near death. *Id.* Some for-profits also provide daily devotional for their residents. Tr.p.730,LL.8-13; p.733,LL.21-23. In the Boise area, local religious leaders go into other skilled nursing facilities, including for-profit skilled nursing facilities. Tr.p.295,LL.6-9, p.518,L.3-p.519,L.5,p.628,LL.7-13. Other skilled nursing facilities in Boise also make space available for these religious leaders to conduct religious services. Tr.p.513,L.13-p.514,L.11.

The religious activities at Boise Village are incidental to the primary use of the property as a skilled nursing facility. Using Boise Village to provide care for the elderly and others who are unable to care for themselves is not a religious purpose to qualify for a property tax exemption. *See, e.g., Evangelical Lutheran Good Samaritan Soc. v. County of Gage*, 184 Neb. 831, 151 N.W.2d 446.

In addition, and explained below, Society uses the Boise Village for a business purpose

from which a revenue is derived. Therefore, Boise Village is not used exclusively for religious, educational, or recreational purposes or activities, and Society does not qualify for a religious tax exemption under Idaho Code § 63-602B. Having found that Boise Village is not used exclusively for religious, education, or recreational purposes, this Court need not address whether Society is a religious corporation.

**3. Boise Village Is Used for Business Purposes From Which a Revenue Is Derived.**

Property used for business purposes from which a revenue is derived is not eligible for a tax exemption and shall be taxed as any other property. *See* Idaho Code §§ 63-602C; *see also* Idaho Code §63-602B. Because Society uses Boise Village for business purposes from which it derives a revenue, Society does not qualify for a property tax exemption under Idaho Code §§ 63-602B or C.

Boise Village is a “business open to the public” and “a self-sustaining business entity.” Tr.p.656,LL.2-21. According to Society’s 2012 property tax exemption, all of Boise Village was used for this business or commercial purpose 365 days. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92. In 2012 and 2013, Boise Village expected everyone admitted to pay for its services. Ex.301,p.37;Tr.p.637,LL.4-12. Boise Village charges rates similar to other nursing facilities in Ada County, and its income produces a profit. *Id.*; Ex.320, AC3088; Tr.p.311,LL.11-17. In exchange for payment, Boise Village agrees to provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law. Tr.p.630,L.9-p.631,L.17. Ex.105, GSS5. Boise Village operates like a for-profit skilled nursing business. Tr.p.711,LL.16-23, p.736,LL.11-14, p.795,LL.8-16.

Society’s admissions practices show that Boise Village is used for business purposes. Boise Village staff asks potential residents how they are going to pay the bill, and it considers a

person's ability to pay in the decision to admit that person. Tr.p.636,LL.2-7. Before people can be admitted to Boise Village, a payment source must be identified and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. The administrator is responsible for ensuring that staff escort a new resident to the business office for collection of payment and to obtain additional financial information. Ex.339, AC1160; Tr.p.277,LL.15-22. When people seeking admission to Boise Village do not have a way to personally pay the bill, Boise Village staff asks questions to determine whether they qualify for Medicaid. Tr.p.291,LL.8-15, p.636,L.8-p.637,L.3. Boise Village admits the person if it thinks they qualify for Medicaid. *Id.* Boise Village has also assisted residents with the Medicaid process, including helping complete Medicaid applications, and is usually successful in getting those residents approved by Medicaid. *Id.*; Tr.p.633,LL.13-15. For-profit skilled nursing facilities similarly identify a payor source prior to admission, ask residents questions to determine whether they will qualify for Medicaid, and assist with Medicaid applications. Tr.p.682,L.11-p.685,L.23, p.696,L.17-p.698,L.5.

Boise Village requires its residents to sign an admission agreement similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. This is an agreement that the resident will promptly pay for care. Tr.p.629,LL.15-20, p.632,LL.1-3; Ex.105, GSS6. Under the agreement, Boise Village imposes late payment charges of 10% per year when accounts are not paid timely, and residents will be liable for collections costs on past due accounts, including attorney fees and court costs. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. Boise Village also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10.

Boise Village's admissions policies and procedures are similar to for-profit skilled nursing facilities, which also require residents to sign agreements that obligate them to pay, give the facility a right to collect, explain what services will be provided in exchange for the fees charged, allow interest to be charged on overdue accounts, and give the facility a right to discharge residents for non-payment. Tr.p.679,L.24-682,L.10, p.682,L.11-p.685,L.23.

Society's collection practices further support the conclusion that Boise Village is used for business purposes. According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. The collections teams at both the national office and at Boise Village collaborate monthly on overdue accounts. *Id.*; Tr.p.641,L.9-p.644,L.16.

There is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,L.5-16. Society's national office collection team sends collection letters to residents when accounts are 10, 30, and 60 days overdue. Tr.p.641,L.9-p.644,L.16. When an account is 40 days overdue, the administrator gets involved and will call the resident or responsible party. *Id.* Overdue accounts are also sent to a collection agency. Tr.p.644,L.25-p.645,L.7. According to Society's policy, when an account is 60 days past due, it will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11. Society also hires attorneys to write demand letters stating that if the account is not paid litigation may be filed against the resident. Tr.p.644,LL.17-24. Its policy also says that it may initiate legal action when other steps in the collection process have been followed and properly documented. Ex.339, AC1167; Tr.p.281,LL.20-25.

At Boise Village, the administrator is responsible for overseeing the accounts receivable and collections activities. Tr.p.273,LL.13-21. He is personally involved in the collections

process, and is responsible for ensuring successful follow through on every accounts receivable. *Id.*; Tr.p.275,LL.14-17; Ex.339, AC1153. In 2012, he and Boise Village's office manager filed a small claims case in Ada County to enforce an admission agreement and to collect on a \$2,990.99 bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Society also makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,LL.14-25. If a person can only afford to pay \$10 per month on their bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has, in fact, had accounts where people could only afford to pay \$10 per month and they were required to pay that amount. *Id.*

This collections process at Boise Village is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. To collect on overdue accounts, for-profit skilled nursing facilities also send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases. Tr.p.685,L.24-p.690,L.19.

According to Society's Vice President of Finance, the "[n]ational campus is, essentially, a bank." Tr.p.469,LL.21-24. During 2011-2013, Society took funds from its campuses to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. Prior to 2013, Society transferred \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013. Tr.p.468,LL.10-12, p.469,LL.15-24. Some of Boise Village's expenses are paid out of this account. Tr.p.493,L.4-p.495,L.2.

Society derives a revenue from using Boise Village as a skilled nursing business. Over 99% of Boise Village's revenue came from charging people for services. Tr.p.793,LL.20-24.

Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,LL.8-14; Ex.349F. Boise Village's income also produces a profit. Ex.320, AC3088; Tr.p.311,LL.11-17. Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively. Tr.p.773,L.5-p.774,L.8. These profits totaled \$3,134,812 during those years. *Id.* In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6.

The evidence presented at trial established that Society uses Boise Village for a business purpose from which it derives a revenue. Society did not meet its burden of showing that it uses Boise Village exclusively for qualifying purposes. Therefore, Society's request that it be granted a property tax exemption under Idaho Code §§ 63-602B and C must be denied.

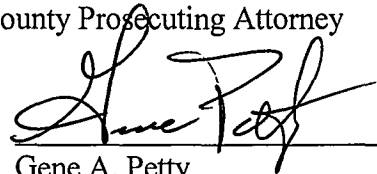
## VI. CONCLUSION

For the reasons stated above, Society is not entitled to a charitable or religious property tax exemption. The decisions of the Idaho Board of Tax Appeals and the Ada County Board of Equalization are affirmed.

**DATED** this 31<sup>st</sup> day of December, 2014.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:



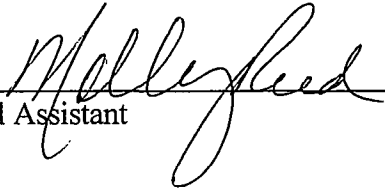
Gene A. Petty  
Deputy Prosecuting Attorney

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of December, 2014 I served a true and correct copy of the foregoing POST-TRIAL PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW to the following person(s) by the following method:

Phillip S. Oberrecht  
Attorney at Law  
950 West Bannock St. Ste 950  
Boise, Idaho 83701

☒ Hand Delivery  
☐ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

  
\_\_\_\_\_  
Legal Assistant

**DEC 31 2014**

**CHRISTOPHER D. RICH, Clerk**  
**By SANTIAGO BARRIOS**  
**DEPUTY**

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY

**GENE A. PETTY**  
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Idaho State Bar Nos. 6831 & 7613

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

IN THE MATTER OF THE APPEALS OF	)	<b>Case No. CV OT 13 09169</b>
THE EVANGELICAL LUTHERAN GOOD	)	
SMARITAN SOCIETY	)	<b>Consolidated with</b>
	)	<b>Case No. CV OT 13 12345</b>
from the Board of Equalization of Ada County for	)	
tax year 2012 and 2013.	)	<b>ADA COUNTY'S CLOSING</b>
	)	<b>ARGUMENT</b>
	)	

**COMES NOW**, Ada County Board of Equalization, by and through its counsel, the Ada County Prosecuting Attorney's Office, Civil Division, and submits this Closing Argument.

**I.**

**ARGUMENT**

The Idaho Supreme Court has stated on several occasions that property "tax exemptions are strictly construed against the taxpayer." *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 206, 108 P.3d 349, 353 (2005). "A taxpayer must show a clear entitlement to an exemption, as an exemption will never be presumed." *Id.* The taxpayer has a considerable burden to overcome in order to establish an entitlement to an exemption. The Idaho Supreme



Court has held that:

Tax exemptions are disfavored generally, perhaps because they seem to conflict with principles of fairness – equality and uniformity – in bearing the burdens of government. They are said to be justified, in cases of a charitable or benevolent organization for example, by an offsetting benefit to the community (monetary or otherwise) (citations omitted).

*Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 102, 675 P.2d 813, 817 (1984).

“When an ambiguity arises in construing tax exemption statutes, the court must choose the narrowest possible reasonable construction.” *Corp. of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 416, 849 P.2d 83, 86 (1993).

“Tax exemptions exist as a matter of legislative grace, epitomizing the antithesis of traditional democratic notions of fairness, equality, and uniformity.” *Id.* “Therefore, they are to be construed according to the ‘strict but reasonable’ rule of statutory construction.” *Id.* at 429. “A statute granting tax exemption cannot be extended by judicial construction so as to create an exemption not specifically authorized.” *Sunset Memorial Gardens, Inc. v. Idaho State Tax Comm’n*, 80 Idaho 206, 219, 327 P.2d 766, 774 (1958). “Exemptions are never presumed.” *Id.* “It must be in terms so specific and certain as to leave no room for doubt.” *Id.*

Boise Village is a business. It provides a service and expects payment in return. It charges market rates and requires its residents to sign a contract promising to pay. When they do not pay, Boise Village utilizes its collections process to obtain payment. Boise Village also generates substantial profits. These are business and commercial activities; they are not charitable or religious.

**1. Boise Village Does Not Qualify for A Charitable Property Tax Exemption.**

Society seeks a charitable property tax exemption under Idaho Code § 63-602C. This statute has two initial requirements. “[F]irst, the property must belong to a charitable organization

and second, that the property be used exclusively for the purpose for which the corporation was organized.” *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 688, 69 P.3d 104, 108 (2003). The Idaho Supreme Court in *Sunny Ridge Manor* identified eight (8) criteria for determining whether an organization is charitable, and Society does not qualify. 106 Idaho at 98, 675 P.2d at 815. It also does not use Boise Village exclusively for charitable purposes.

**A. The Idaho Supreme Court Previously Held that Society is Not Entitled to a Charitable Property Tax Exemption.**

The Idaho Supreme Court applied these factors in *Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Equalization of Latah County*, 119 Idaho 126, 804 P.2d 299 (1990) and concluded that Society does not qualify for a charitable property tax exemption. This Court should follow the Idaho Supreme Court’s reasoning, analysis, and holding in *Evangelical Lutheran Good Samaritan*.

In the *Evangelical Lutheran Good Samaritan* case, the Idaho Supreme Court stated that the fees charged by an organization is “a factor...of great importance and should be weighted accordingly.” *Id.* at 132, 804 P.2d at 305 (citation omitted). The Court held that “there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” *Id.* If the only elderly persons at the facility are those that can afford the fees that are comparable to for-profit facilities in the same community, then it is not entitled to a charitable property tax exemption. *Id.* The Court further stated that “[o]ne of the factors most frequently looked at by courts in determining if a retirement center is a charitable corporation is the amount of fees required of the residents.” *Id.* at 132, 804 P.2d at 305. The trial court found that the cost of housing on the properties was similar to those costs charged by commercial retirement centers. *Id.* The Court stated that “the Society provides housing for the elderly, however, there is nothing charitable in providing housing at the same or

comparable rates as housing available from the private sector or commercial retirement centers. In order for the Society to be allowed the tax exemption, the exclusive use of the property must provide some gift or service of public benefit.” *Id.*

The Court noted that “Society had never provided housing at a reduced cost to any resident and the revenue collected by the Society from its residents has substantially exceeded costs and expenses for the past several years.” *Id.* at 132, 804 P.2d at 305. The fact that the Society received more than a million dollars in donations for those properties did not necessarily make it a charitable organization or prove that it qualified for a tax exemption. The Court stated that “[e]xcept for the donation of the land where the multi-level complex was built, the record does not clearly reveal how the donated funds have been used to provide a public benefit.” *Id.* at 133, 804 P.2d at 306.

Society still does not qualify for a charitable property tax exemption.

**C. Society is Not a Charitable Organization.**

Society fails to meet almost all of the elements of the *Sunny Ridge Manor* analysis.

1. **The Stated Purpose of Its Undertaking.** (Society appears to meet this element.)
2. **Whether Its Functions Are Charitable.**

Society does not function like a charitable organization. It operates approximately 240 facilities in twenty-four states and is the ninth largest nursing home company in the United States.<sup>1</sup> Tr.p.47,L.25-p.48,L.2, p.48,LL.3-9; p.115,LL.9-20; p.746,LL.9-15; Ex.31, GSS2876. Charges for services made up approximately 96% of its operating revenue of \$949,461,000,

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<sup>1</sup> Society also owns 29 low-income housing corporations, a controlled foundation, and a Cayman Islands insurance company. Tr.p.476,L.21-p.477,L.10; Ex.31, GSS2876; Ex.19, GSS2740.

\$954,007,000, and \$972,643,000 during 2011-2013, respectively.<sup>2</sup> Tr.p.752,LL.9-19, p.754,L.20-p.756,L.24, p.758,LL.4-20; Ex.349A & B.

In recent years, Society has sought to increase its profitability. Since 2011, Society has been expanding and remodeling its existing facilities in hope that in future years those investments will increase revenue at those locations. Tr.p.474,L.20-p.475,L.21. Society spent cash on property additions including replacement of facilities, expanding facilities, and remodeling, totaling \$107,544,000 in 2011, \$77,617,000 in 2012, and \$101,132,000 in 2013. Tr.p.474,LL.3-14; Ex.31, GSS2875; Ex.308, GSS2521. These investments include dozens of remodels and expansions for post-acute rehabilitation facilities in order to increase Medicare and managed care utilization. Tr.p.474,L.20-p.475,L.8, p.484,LL.13-17; Ex.103, GSS2605. According to Society, the operating margins are better with Medicare, and profitability has increased because Society has obtained more Medicare residents. Tr.p.485,LL.9-14; Ex.103, GSS2606. Society's 2011 net operating income was one of the best operating results it has ever achieved, and a significant contribution to those financial results was growth in Medicare revenue by approximately \$19,000,000. Tr.p.484,L.22-p.485,L.3; Ex.103, GSS2605.

Boise Village is not operated in a charitable manner.<sup>3</sup> Boise Village charges rates similar to other nursing facilities in Ada County, and it earns a substantial profit. Ex.301,p.37; Ex.320, AC3088; Tr.p.311,LL.11-17, p.637,LL.4-12. In 2012 and 2013, it expected everyone admitted to pay for its services. Ex.301,p.37; Tr.p.637,LL.4-12. Boise Village screens its residents to ensure that they can pay for care. Before people can be admitted, a payment source must be identified and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-

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<sup>2</sup> Society also has very large investment portfolios which were \$577,248,000 as of December 31, 2013 and \$546,728,000 as of December 31, 2012. Ex.31, GSS2886-87; Tr.p.480,LL.12-19.

<sup>3</sup> Each facility owned by Society is operated as an unincorporated operating unit. Tr.p.309,LL.1-8; Ex.319, AC2227.

p.628,L.6; Ex.89, GSS21-23. Boise Village staff asks potential residents how they are going to pay the bill, and it considers a person's ability to pay in its admission decision.<sup>4</sup> Tr.p.636,LL.2-7. Boise Village's admissions policies and procedures are similar to for-profit skilled nursing facilities. Tr.p.682,L.11-p.685,L.23.

Boise Village residents must sign a contract that is similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. In this contract, residents agree to promptly pay for care.<sup>5</sup> Tr.p.629,LL.15-20, p.632,LL.1-3; Ex.105, GSS6. In this agreement, Boise Village imposes late payment charges of 10% per year when accounts are not paid timely, and residents are liable for collections costs on past due accounts, including attorneys' fees and court costs. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. Boise Village also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10.

Boise Village collects against residents who do not pay their bills on time.<sup>6</sup> According to Society, the proper and timely collection of all accounts receivable is an important business function.<sup>7</sup> Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. Society has collections teams at both its national office and at Boise Village that regularly collaborate on overdue accounts. Tr.p.641,L.9-

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<sup>4</sup> The staff is expected to explain the payment expectations to residents and escort new residents to the business office for collection of payment. Tr.p.276,LL.12-21, p.277,LL.15-22; Ex.339, AC1157 & 1160; Ex.339, AC1160.

<sup>5</sup> In this agreement, a person whose payor source is Medicaid agrees to apply for Medicaid and timely provide all requested information to the Medicaid case worker. Ex.105, GSS7; Tr.p.632,L.8-p.633,L.19. Boise Village would seek to remove residents if they qualify for a resource to pay for their care, such as Medicaid, and refused to cooperate in seeking that resource. Ex.301,p.38. If Medicaid is denied, the entire self-pay amount is due immediately. Tr.p.633,LL.18-20; Ex.105, GSS7.

<sup>6</sup> The collections process is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. To collect on overdue accounts, for-profit skilled nursing facilities send letters, make phone calls, hire collection agencies and attorneys, and file small claims cases. *Id.*

<sup>7</sup> There is no minimum amount that must be owed before an account will go through Society's collections process. Tr.p.646,L.5-16.

p.644,L.16. Society's national office collections team sends collection letters. *Id.* When an account is 40 days overdue, the administrator calls the resident or responsible party. *Id.* Overdue accounts are also sent to a collection agency. Tr.p.644,L.25-p.645,L.7. According to Society's policy, when an account is 60 days past due, Society will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11.

Society also hires attorneys to write letters demanding payment and threatening litigation. Tr.p.644,LL.17-24. It may initiate legal action when other steps in the collection process have been followed. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's staff filed a small claims case in Ada County to enforce a contract and collect on a \$2,990.99 skilled nursing bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B.

Society makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,LL.14-25. If a person can only afford to pay \$10 per month on an overdue bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has, in fact, had overdue accounts where people could only afford to pay \$10 per month, and they were required to pay that amount. *Id.*

Boise Village has charged people until they run out of money and are forced to turn to the government for assistance. At times, residents are admitted to Boise Village who have too much money to qualify for Medicaid. Tr.p.305,LL.3-20. Boise Village charges those residents until they run out of money and qualify for Medicaid. *Id.* From then on, Medicaid will pay for their care for the rest of their stay at Boise Village. *Id.*

In the last few years, Boise Village has purchased a few items that it claims are

charitable.<sup>8</sup> These expenses pale in comparison to the \$3,134,812 profit Boise Village made from 2011-2013. Tr.p.773,L.5-p.774,L.8.

Boise Village provided scholarships to six employees to help them continue their nursing education, totaling \$11,140 and \$3,000 in 2012 and 2013, respectively. Ex.55, GSS2759; Tr.p.204,LL.8-18. To obtain these scholarships, employees must complete a scholarship application. Ex.55, GSS2761; Tr.p.288,LL.3-10. As part of the scholarship application, the employees had to justify how the course of study would benefit the Society. *Id.* These scholarships benefit Society and do not benefit the general public. Society has failed to show that these scholarships differ from what many for-profit employers provide to their employees.

Society points to other activities and claims they are charitable, but failed to show these activities are a significant part of its overall operations. It claims it provides payroll in small rural areas, offers clinics, sends out a newsletter, and provides space for non-profit organizations. Tr.p.102,L.19-103,L.14; Tr.p.103,L.17-p.104,L.4. It also asserts it has invested in technology that monitors residents' daily living behaviors and activities, called Living Well at Home. Ex.21, GSS2730-31; Tr.p.111,L.19-p.112,L.23. Society provided total annual grants of \$100,000 to its facilities between 2010 and 2013. Tr.p.105,LL.3-9. During this time, Society made only one grant to one of its four facilities in Idaho, a \$2,000 grant to Boise Village in 2013 for an art class

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<sup>8</sup> It purchased specialty mattresses that help prevent pressure sores and skin issues for some of its residents, totaling \$2,370 in 2012 and \$9,530 in 2013. Tr.p.197,L.9-p.199,L.8. Society claimed that Medicare and Medicaid did not reimburse Boise Village for these costs, but it failed to provide evidence that Medicaid or Medicare residents used these mattresses. *Id.* If Medicaid residents used these mattresses, then these expenses only slightly reduce the \$49.84 per day profit made on each Medicaid resident. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6. In 2012 and 2013, Boise Village spent \$2,803.06 to provide Christmas presents, some dental care and glasses, and art framing for some of its residents. Ex.54, GSS2755. Exhibit 54 shows a total of \$3,402.95, but this includes expenses incurred in 2014 that are not relevant. Boise Village claimed that in 2013 it spent \$7,000 to purchase a wheelchair for one of its long-term Medicaid residents. Tr.p.211,L.14-p.212,L.4. All of its wheelchairs, including this \$7,000 purchase, are part of the special add-on rates paid by Idaho Medicaid. Tr.p.237,L.19-p.238,L.9.

that was open to the public. Ex.22, GSS3181; Tr.p.107,LL.14-16, p.121,L.17-p.122,L.4, p.205,L.8-p.206,L.14. Society failed to show how many people from the community took part in this art class during 2012 or 2013. Tr.p.293,L.25-p.294,L.22.

Society also claims that during natural disasters it makes the Salvation Army and Red Cross telephone numbers available and facilitates people's donations to those organizations. Tr.p.109,L.14-p.110,L.2. Society provided no evidence that it did so during 2012 and 2013. Society collects donations from its residents and staff and sends those donations to hospitals in Bangladesh and Zimbabwe, and a senior center and soup kitchen in Colombia. Tr.p.108,LL.1-17; Ex.23. Society provided no evidence that any of these donations were from the Society itself.

Society's functions are not charitable. It expects payment from all of its residents at Boise Village, screens its residents to ensure they can pay, and collects against them when they do not pay. Boise Village charges rates similar to other nursing facilities in Ada County. Almost all of Society's revenue comes from charging people for services.

### **3. Whether It Is Supported by Donations.**

The Idaho Supreme Court has stated that it "considers outside donations to be an important charitable factor because it reduces the cost to the general public." *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho 962, 965, 855 P.2d 47, 50 (1993). The Idaho Supreme Court in *Evangelical Lutheran Good Samaritan Society*, 119 Idaho at 131, 804 P.2d at 304, likewise examined whether donations were used to support charitable activities. In *Housing Southwest*, the Idaho Supreme Court focused on the factors of donations and general public benefit from the *Sunny Ridge* analysis and stressed their importance. 128 Idaho at 339, 913 P.2d at 72. The Court stated that:

the requirement of donations is an important factor, because charitable donations reduce the cost of the service provided, either to the public generally as direct



beneficiaries of the service or to taxpayers who would otherwise bear the burden. (citation omitted) The question of whether a corporation provides a general public benefit is closely connected to the question of whether a corporation is supported by donations.

*Id.*

Society does receive some donations, but it failed prove that these donations reduce the costs charged to its residents. Society's unrestricted donations and donations released from restrictions were approximately 1% of its operating revenues during 2011-2013. Tr.p.754,L.20-p.756,L.24; Ex.349B. Its total restricted and unrestricted donations were approximately 2% of its operating revenue during 2011-13. Tr.p.759,L.2-p.761,L.12; Ex.349E.

Over 99% of Boise Village's revenue came from charging people for services. Tr.p.793,LL.20-24. Boise Village is only minimally supported by cash donations and those donations do not reduce the fees it charges its residents.<sup>9</sup> Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5. Instead, it charges rates similar to other nursing facilities in Ada County. Ex.301. According to Society, Boise Village cash donations were \$18,785 in 2011, \$19,526 in 2012, and \$50,896.43 in 2013.<sup>10</sup> These donations were approximately 0.5% of Boise Village's total revenue each year from 2011-2013.<sup>11</sup> Tr.p.311,LL.6-10, p.793,LL.11-15;

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<sup>9</sup> It is important to note that even for-profit skilled nursing facilities commonly receive in-kind donations. Tr.p.708,L.20-p.710,L.6.

<sup>10</sup> According to Society, Boise Village received the following donations in 2013: \$4,320 for donor restricted property gifts of cash. Tr.p.239,L.18-p.240,L.7; donor restricted property donations of \$27,000. Tr.p.240,LL.13-20; donor restricted operating donations \$2,200. Tr.p.240,L.21-p.241,L.3; donor restricted endowment for staff donations of \$200. Tr.p.241,LL.15-p.242,L.6; Ex.28,GSS2814; and interest on scholarship donations of \$226.43. Tr.p.242,LL.9-17; Ex.28, GSS2814. Society presented evidence in its balance sheet of Boise Village's donor restricted gifts, the balances of those accounts as of December 31, 2012, and the increase in those balances during 2013. Ex.28, GSS2814; Tr.p.239,L.8-p.242,L.21. No evidence was presented that the account balances as of December 31, 2012 were donations received in 2011 or 2012.

<sup>11</sup> Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F.

Ex.349N; Ex.320,AC3088; Ex.319, AC2226; Ex.301,p.39.

Boise Village has volunteers, but those volunteers do not reduce staffing or the fees charged to residents at Boise Village.<sup>12</sup> Tr.p.345,L.18-p.348,L.24, p.480,LL.2-7; Ex.70. Volunteers do not provide nursing care, hand out medications, or change bandages. Tr.p.374,LL.4-10. Instead, the majority of volunteers assist with activities. Tr.p.374,LL. 11-13. Society's claimed financial value of these volunteers is greatly overstated.<sup>13</sup> Volunteers include elementary students, junior high students, high school students, choirs, and Boy Scout and Girl Scout troops. Tr.p.361,L.17-p.364,L.22, p.374,L.14-p.376,L.23.

The donations received by Society and Boise Village are a very small part of overall revenue and they are not used to reduce the cost of care.

#### **4. Whether the Recipients of Its Services Are Required to Pay.**

Boise Village charges all of its residents for care and they are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25; Ex.320, AC3088. According to Brian Davidson, the Boise Village Administrator, "we like to get payment for all of our residents that reside at the facility." *Id.* He also testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. If a resident does not personally pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7.

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<sup>12</sup> For-profit skilled nursing facilities also have people who volunteer because they care about the residents. Tr.p.601,L.25-p.602,L.11, p.703,L.9-p.705,L.25. Volunteers at for-profit nursing homes assist with a variety of activities, including helping with art and music, gardening with the residents, assisting with Bingo, wheeling people to and from functions, and spending time with residents. *Id.* Those volunteers come from a many organizations, including churches, colleges, Boy Scout troops, schools, and civic groups, such as Rotary, Kiwanis, Lions, American Legion, and veterans organizations. *Id.*

<sup>13</sup> Society attempts to assign a financial value to its volunteer hours. The claimed value of these volunteers has changed throughout this case from minimum wage of \$7.25 per hour, to \$16.13 per hour, to \$22.14 per hour. Tr.p.308,LL.7-18, p.360,L.13-p.361,L.2; Ex.319, AC2226.

## 5. Whether There Is a General Public Benefit.

“For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit.” *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72 (citation omitted). “If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the ‘general public benefit’ factor is whether the corporation fulfills a need which the government might otherwise be required to fill.” *Id.* This is an important factor. *Id.* When the government pays an organization to provide a service, that organization does not relieve the government of an obligation and does not provide a general public benefit. *Id.*

Society does not fulfill a need that the government might otherwise be required to fill.<sup>14</sup> Approximately 96% of Society's operating revenue during 2011-2013 came from charging for services. Tr.p.754,L.20-p.756,L.24, p.758,LL.4-20; Ex.349B. During 2011-2013, approximately 61% of Society's housing and services operating revenue came from government programs. Tr.p.758,LL.4-20; Ex.349D. Approximately 69% of the residents in Society's skilled nursing facilities are covered by federal and state programs, providing approximately 69% of Society's total skilled nursing revenues. Tr.p.486,LL.3-11; Ex.103, GSS2608. Residents either pay from private sources or the cost of their care is reimbursed by state and federal government programs. Tr.p.484,LL.1-8; Ex.103, GSS2600.

The government is providing skilled nursing care at Boise Village through its

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<sup>14</sup> The Idaho Supreme Court held in *Evangelical Lutheran Good Samaritan Society*, that “[i]f the only elderly persons residing in the facility are those who can afford to pay the [fees]...that are comparable to profit oriented commercial retirement housing in the same community the organization is not entitled to tax exempt status.” 119 Idaho at 132, 804 P.2d at 305.

contractor.<sup>15</sup> Overall, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, including Medicaid, Medicare, managed care, and Veterans' Administration. Tr.p.304,LL.1-7, p.766,L.15-p.767,L.17; Ex.349F. The government pays for most of the care for residents who need post-acute/rehabilitation services and long-term care, and for those residents who have dementia, Alzheimer's, and cognitive disabilities. Tr.p.170,LL.8-24, p.172,LL.5-17, p.175,L.19-p.176,L.19, p.177,L.21-p.178,L.1, p.292,L.10-p.293,L.8. Medicaid pays for the care for all of Boise Village's brain injury residents. *Id.* Other residents pay privately or through insurance.

Idaho Medicaid was overwhelmingly Boise Village's largest source of revenue during 2011-2013. Tr.p.766,L.12-18; Ex.349F. The daily rate Medicaid paid Boise Village was the highest of the 14 skilled nursing facilities in a 25-mile radius, including for-profit skilled nursing homes.<sup>16</sup> Tr.p.789,LL.5-20; Ex.349L. Boise Village's higher rate is due, at least in part, to its higher costs.<sup>17</sup> *See* Tr.p.853,L.6-p.854,L.17; Ex.96. The amount Medicaid paid Boise Village in 2012 and 2013 was more than Boise Village charged its private pay residents. Tr.p.787,L.7-p.788,L.13; Ex.349K. These Medicaid payments totaled \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively. *Id.* Medicare payments to Boise Village were even higher, totaling \$149,474.80 and \$144,737.10 per resident per year in 2012 and 2013, respectively. Tr.p.785,LL.11-25; Ex.349J.

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<sup>15</sup> As shown above, Boise Village charges rates that are similar to other skilled nursing homes in Ada County. In addition, there is not a shortage of skilled nursing facilities or beds. Boise Village is one of 79 skilled nursing facilities in Idaho, and one of ten in Boise. Tr.p.589,L.24-p.590,L.20. There is no shortage of skilled nursing care or beds in Boise. *Id.* Other skilled nursing facilities in Idaho accept individuals with traumatic brain injuries, Alzheimer's and dementia, and handicaps. Tr.p.595,LL.8-p.597,L.10, p.604,L.23-p.606,L.5.

<sup>16</sup> In addition to the daily rate, Medicaid also pays a special rate when a person has an extraordinary need, such as a specialized wheelchair or ventilator. Tr.p.617,LL.11-20.

<sup>17</sup> Other facilities in the Boise area have a lower Medicaid rate but higher acuity, including three facilities in 2012 and six facilities in 2013. *Id.*

Boise Village made a profit from its Medicaid residents because Idaho Medicaid pays skilled nursing facilities more than a facility's costs. Tr.p.838,LL.7-22. In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6. Of the 14 skilled nursing facilities in a 25-mile radius, Boise Village had the second highest percentage of Medicaid residents in 2011 and 2013, and the third highest in 2012. Tr. p.790,L.11-p.791,L.15, p.849,L.24-850,L.7; Ex.24A & 349M. Its Medicaid residents were 73.4%, 72.1%, and 76.1% of its total residents in 2011-2013, respectively. Ex.24A.

Idaho Medicaid reimburses skilled nursing facilities for property taxes. Tr.p.621,L.24-p.622,L.15, p.778,L.5-p.780,L.2, p.781,L.23-p.782,L.11. Since Boise Village has so many Medicaid residents, approximately \$108,077 and \$115,430 of the property taxes at issue in this case would be reimbursed by Idaho Medicaid.<sup>18</sup> *Id.*

In *Housing Southwest*, the Idaho Supreme Court found that when the government pays an organization to provide a service, the organization receiving those funds is not providing a general public benefit. 128 Idaho at 339, 913 P.2d at 72. Boise Village does not provide a general public benefit.

## **6. Whether the Income Received Produces a Profit.**

Society generates profits<sup>19</sup> nationally and also from its operation of Boise Village. Society's excess of revenue over expenses<sup>20</sup> was \$21,321,000, \$23,320,000, and \$710,000 in 2011-2013, respectively. Tr.p.752,LL.9-19; Ex.349A. Society's unrestricted net assets increased by

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<sup>18</sup> Boise Village paid \$176,808 and \$173,424 in property taxes during 2012 and 2013, respectively. *Id.*

<sup>19</sup> The term "profit" is defined as "[t]he excess of revenues over expenditures in a business transaction." *Black's Law Dictionary* (7<sup>th</sup> Ed.).

<sup>20</sup> The excess revenue over expenses gives a full picture of the Society for each year. Tr.p.753,LL.11-14.

\$21,590,000 in 2011, \$32,619,000 in 2012, and \$7,714,000 in 2013. Ex.308, GSS2519; Ex.31, GSS2873; Tr.p.473,LL.13-23.

Boise Village also produces a profit. Ex.320, AC3088; Tr.p.311,LL.11-17. Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively. Tr.p.773,L.5-p.774,L.8. These profits totaled \$3,134,812 during those years. *Id.*

**7. To Whom the Assets of the Organization Go Upon Dissolution.** (Society appears to meet this element of the *Sunny Ridge* analysis.)

**8. Whether the Charity Provided Is Based on Need.**

Boise Village does not provide charity based upon need. Boise Village charges all of its residents for care and its residents are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25 Ex.320, AC3088. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7.

When people seeking admission to Boise Village do not have a way to personally pay the bill, Boise Village staff asks questions to determine whether they qualify for Medicaid. Tr.p.291,LL.8-15, p.636,L.8-p.637,L.3. To be admitted, those people must answer these questions to Boise Village's satisfaction. *Id.* They will only be admitted if Boise Village thinks they qualify for Medicaid. *Id.* Boise Village is usually successful in getting those residents approved by Medicaid. *Id.* It even assists them with the Medicaid process, including helping residents complete Medicaid applications. *Id.*; Tr.p.633,LL.13-15.

Boise Village's bad debt is not charity. Boise Village provided information about four "charitable allowances" during 2012 and 2013 totaling \$38,286.63. Ex.51, GSS2095-2098; Tr.p.194,L.18-p.197,L.8. These "charitable allowances" were only given after a resident was admitted, after the bill was incurred, and after Society determined the person could not pay the

bill.<sup>21</sup> Tr.p.295,L.17-p.299,L.1. This is bad debt. Society provided no evidence that Boise Village provided a “charitable allowance” at the time of admission. Even if Boise Village’s “charitable allowances” were truly charity, they would be *de minimus* because they total less than 0.5% of its operating revenue in 2011-2013. Tr.p.793,L.25-p.795,L.7; Ex.349O.

Society is not a charitable organization because it fails the *Sunny Ridge* analysis.

**C. Boise Village Is Not Used Exclusively for Charitable Purposes.**

Even if Society could show that it is a charitable organization, it does not qualify for a property tax exemption because it does not use the property exclusively for charitable purposes.<sup>22</sup> Boise Village is well paid for the services it provides to its residents, just like for-profit nursing homes. As shown above, Society generates a profit from Boise Village, it charges people market rates for the services provided, it is paid for those services, and it collects against those who fall behind on their bills. Boise Village is not used exclusively for charitable purposes.

**2. Boise Village is Not Entitled to a Religious Property Tax Exemption.**

“Churches and other religious institutions, fraternal, benevolent or charitable corporations or societies enjoy no inherent right to exemption from taxation; and their property is taxable except insofar as it is specifically exempt by constitutional provision or statutory enactment.” *Ada County Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 849 P.2d 98 (1993). “The property

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<sup>21</sup> According to Society’s policies, a “charitable allowance” can only be approved after admission if all of the collection policies have been followed, which may include sending letters, making phone calls, sending the account to a collection agency or attorney, and assisting with appeals of government medical assistance denials. Tr.p.303,LL.8-25; Ex.50, GSS1025. For-profit skilled nursing homes write these accounts off as bad debt because the facility was not able to collect. Tr.p.695,L.7-14.

<sup>22</sup> In *Evangelical Lutheran Good Samaritan Society*, the Idaho Supreme Court stated that “[t]he fact that the Village is producing a substantial net positive revenue and that this excess revenue is used for investment purposes by the Society supports the trial court's finding that the Village property is not being used exclusively for charitable purposes.” 119 Idaho at 132, 804 P.2d at 305.

owned by a religious organization must be used appropriately to qualify for exemption.” *Id.*; *See also Corp. of Presiding Bishop*, 123 Idaho at 419, 849 P.2d at 92. “An exemption from taxation exists only where the exempt body owns the property for which the exemption is sought and the property is also used exclusively for exempt purposes, that is, ownership as well as use.” *Malad Second Ward v. State Tax Comm'n*, 75 Idaho 162, 166, 269 P.2d 1077, 1079 (1954).

In order for Society to qualify for a religious property tax exemption under Idaho Code § 63-602B, it must prove that it is a religious organization and that Boise Village is used exclusively for religious, educational, or recreational purposes. The evidence shows that Boise Village is not used exclusively for religious, educational, or recreational purposes or activities. Since Boise Village is not used exclusively for qualifying purposes, this Court does not need to address whether Society is a religious corporation.

The Illinois Court of Appeals correctly stated the proper framework for determining whether property is used for religious purposes. The Court stated:

"In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion." "Exemption would be the rule, and taxation the exception." For purposes of taxation, courts look at whether advancing religion is identified as the subject property's dominant purpose. Courts also look at whether the operation is more businesslike and characteristic of a commercial enterprise than a facility used primarily for religious purposes.

*Franciscan Cmty's., Inc. v. Hamer*, 975 N.E.2d 733, 745-46 (Ill. App. Ct. 2012) (internal citations omitted).

#### **A. The Principal Use of the Property Is Skilled Nursing.**

The principal use of Boise Village is skilled nursing, which is not a religious, educational, or recreational use of the property. Boise Village is a 96-bed skilled nursing facility and it administers skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. Ex.319, AC2222; Tr.p.127,LL.12-25, p.152,LL.4-6, p.307,LL.4-9. It employs



registered nurses, licensed practical nurses, and certified nursing assistants to provide this care. Tr.p.151,LL.14-21, p.307,LL.7-12. Boise Village also provides therapies, such as occupational therapy, physical therapy, speech therapy, and restorative therapy. Tr.p.151,LL.20-21; p.178,L.18-p.179,L.13; p.188,LL.9-12; Ex.53. In addition, it provides residents with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area, where meals are served three times a day. Tr.p.152,LL.4-6; p.179,L.20-p.180,L.6; p.181,LL.2-7; Ex.45A. Society has admitted that the principal use of Boise Village is skilled nursing. Tr.p.127,LL.12-25; p.307,LL.4-9, p.483,LL.23-25; Ex.103, GSS2599; Ex.319, AC2222.

Society uses Boise Village for many other non-qualifying purposes. Activities at Boise Village include Bingo, a newspaper, socials, trivia games, cooking, board games, entertainment, music therapy, birthday parties, Super Bowl party, Mardi Gras parade, July 4<sup>th</sup> BBQ and fireworks, trick or treat with preschool children, and other events. Ex.49,p.3; Tr.p.190,L.21-p.191,L.1. Boise Village has a TV room and library where residents watch TV, check out books, do puzzles, and access the internet. Tr.p.182,LL.16-23. Outside groups perform for residents in the dining area and in Eagle House and Harbor Care units. Tr.p.181,LL.2-7, p.185,LL.8-18.

The manner in which Society operates this skilled nursing facility also shows it is not used exclusively for religious, educational, and recreational purposes. Boise Village charges all of its residents for care and its residents are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25; Ex.320, AC3088. Brian Davidson, the Boise Village administrator, testified he is not aware of Boise Village ever admitting a resident knowing he or she was never going to pay. Tr.p.299,LL.17-25. As shown above, it also charges market rates and collects against residents who do not pay.

All skilled nursing facilities are required under state and federal law to develop a care plan for each resident. Tr.p.326,LL.19-24, p.593,L.24-p.594,L.15. All skilled nursing facilities must make an individual assessment of each person's interests and what he or she likes to do. Tr.p.372,L.22-p.373,L.15, p.598,L.25-p.600,L.12. They are required to provide activities that are meaningful to each resident, including religious activities. *Id.* If they do not provide these required activities, they will be issued a citation and determined to be regulatory noncompliant. *Id.*; Tr.p.601,L.13-p.603,L.3. At Boise Village, care plans are created by an interdisciplinary team, including nurses, social workers, a chaplain, dieticians, therapists, and activity directors.<sup>23</sup> *Id.*; Tr.p.534,L.6-16. The activities program at Boise Village is its way of providing those required activities. Tr.p.372,L.25-p.373,L.3. Boise Village provides activities for its residents in the activity room, main dining room, and in the Eagle House and Harbor Care units. Tr.p.181,L.10-p.182,L.10.

Boise Village seeks to meet the religious needs of its skilled nursing residents by offering devotionals, prayer, large print spiritual publications, and religious services by its full-time chaplain and local religious leaders.<sup>24</sup> Ex.9, GSS3171 & Ex.10, GSS3174; Ex.49, p.10; Tr.p.78,LL.12-14, p.142,LL.3-15, p.273,LL.1-7, p.534,L.6-16. Some Boise Village residents choose to participate in chapel services and Bible studies, and others choose not to do so.<sup>25</sup>

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<sup>23</sup> Society has used a training curriculum, called the Good Samaritan Society Way, to teach its employees love, compassion, acceptance, joy, honesty, humility, courage, and perseverance. Tr.p.61,LL.3-21. It has also used a strictly voluntary program called STAR Ministry for its Christian staff. Tr.p.68,L.1-5, p.70,LL.21-22, p.71,L.13-p.72,L.10. While this training may have occurred at Boise Village, it is not exclusively used for this training or any religious purpose.

<sup>24</sup> Boise Village has approximately 160 employees. Tr.p.285,L.25-p.286,L.13. Other than its chaplain and the administrator, none of the employees are required to be Christian or any other faith. *Id.* Its employees are paid fair market rates for their services. Tr.p.286,LL.14-22.

<sup>25</sup> Boise Village employs a full-time ordained Lutheran chaplain and his salary is an operating expense. Tr.p.526,LL.13-15, p.538,LL.3-5, p.560,L.21-p.561,L.3. Boise Village has a chapel and chaplain's office, which are 1.3% of its total square footage. Ex.45A. The chapel and

Tr.p.537,LL.21-24. Only 30% to 40% of Boise Village's residents participate in religious services. Tr.p.562,L.17-p.563,L.2. Boise Village also has religious symbols, many of which can also be found at for-profit skilled nursing facilities. Tr.p.554,L.24-p.55,L.1, p.731,LL.7-19, p.734,L.11-p.735,L.22.

For-profit skilled nursing facilities likewise meet residents' religious needs. Tr.p.701,L.10-p.703,L.8. They do this by having local pastors offer prayers and provide services, including religious meetings on Wednesdays, Catholic mass on Fridays, Seventh Day Adventists services on Saturdays, and Protestant services on Sundays. *Id.*; Tr.p.734,LL.8-10. A lot of pastors from various churches meet individually with residents in for-profit nursing homes when they are lonely or near death. *Id.* Some for-profits also provide daily devotionals for their residents. Tr.p.730,LL.8-13, p.733,LL.21-23. In the Boise area, local religious leaders go into other skilled nursing facilities, including for-profit skilled nursing facilities. Tr.p.295,LL.6-9, p.518,L.3-p.519,L.5, p.628,LL.7-13. Other skilled nursing facilities in Boise also make space available for these religious leaders to conduct religious services. Tr.p.513,L.13-p.514,L.11.

Boise Village is a skilled nursing facility and the principal use of this property is skilled nursing. While some religious activities may occur at Boise Village, it is not used exclusively for religious, educational, or recreational purposes or activities.

**B. A Skilled Nursing Home Is Not a Religious Use of Property.**

Appellate courts in other states have held that when a religious organization uses property to care for the elderly or infirm it is not using that property for religious purposes. This includes

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chaplain's office are 861 square feet of the 65,810 square foot facility. Ex.45A. The Evangelical Lutheran Church in America (ELCA) recognizes Boise Village as a specialized ministry. Tr.p.563,L.3-p.564,L.8. The ELCA also recognizes the military and public universities as specialized ministries, including the University of Idaho, Washington State University, and Eastern Washington University. *Id.*

nursing homes operated by such religious organizations.<sup>26</sup> In *Yakima First Baptist Homes v. Gray*, 82 Wn.2d 295, 302, 510 P.2d 243, 247 (1973), the Supreme Court of Washington stated, “[a]lthough the practice of charity, of kindness to other persons and in particular to the aged, and the practice of all of the virtues are acts encouraged by religious organizations generally, it cannot be said this is a religious purpose within the commonly accepted definitions of the word ‘religious.’”

Boise Village is not exclusively used for qualifying purposes. Society primarily uses this property to operate a skilled nursing home and the other activities that occur on the property are incidental to this principal use. It does not qualify for a religious property tax exemption.

### **3. Boise Village Is Used for Business and Commercial Purposes.**

Boise Village is used for a business and commercial purpose and, therefore, Society is

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<sup>26</sup> See *Evangelical Lutheran Good Samaritan Soc. v. County of Gage*, 184 Neb. 831, 151 N.W.2d 446 (1967) (Supreme Court of Nebraska held that two nursing homes operated by Society did not qualify for a religious property tax exemption and held that “the primary or dominant use is not one for religious purposes and the property cannot be exempt from taxation on that ground.”); *Evangelical Lutheran Good Samaritan Soc. v. Buffalo Cnty. Bd. of Equalization*, 243 Neb. 351, 500 N.W.2d 520 (1993) *superseded by statute on other grounds as recognized by Alois v. Lincoln County Bd. of Equalization*, 2008 WL 5413385 (Neb. Ct. App. Dec. 23, 2008) (Nebraska Supreme Court held that independent living units owned by Society were not used exclusively for religious purposes.); *Christian Ret. Homes, Inc. v. Bd. of Equalization*, 186 Neb. 11, 180 N.W.2d 136 (1970) (Supreme Court of Nebraska held that a retirement home, except the chapel, was not used primarily for religious use. “The religious use of the property, other than the chapel, is an incidental rather than a primary or dominant use.” The Court held that “the primary or dominant use of the property, other than the chapel and medicenter, is providing housing for elderly persons.”); *Christian Home for Aged, Inc. v. Tennessee Assessment Appeals Com.*, 790 S.W.2d 288, 289 (Tenn. Ct. App. 1990) (Tennessee Court of Appeals determined that only the chapel at a retirement community owned by a religious organization was entitled to a religious property tax exemption.); *Fairview Haven v. Dep’t of Revenue*, 506 N.E.2d 341 (Ill. App. 4<sup>th</sup> 1987) (Illinois Appellate Court held that a nursing home and independent-living units owned and operated by a non-profit corporation that was organized and supported by four Apostolic Christian Church of America congregations was not exclusively used for religious purposes.); *Presbyterian Homes of Synod v. Div. of Tax Appeals*, 55 N.J. 275, 261 A.2d 143 (1970) (Supreme Court of New Jersey found that a retirement community, including nursing home, owned and operated by a religious organization was not used for religious purposes and not entitled to a property tax exemption.); *Franciscan Cmty., Inc. v. Hamer*, 975 N.E.2d 733 (2012) (Appellate Court of Illinois held that nursing home and retirement center owned by religious organization closely associated with the Roman Catholic Church was not used primarily for religious purposes.)

not entitled to a charitable or religious tax exemption. Idaho Code §§ 63-602B and 63-602C. Boise Village provides a service, but it expects payment in return.

Over 99% of Boise Village's revenue came from charging people for services. Tr.p.793,LL.20-24. All Boise Village residents are charged rates similar to other nursing homes, and its residents are required to pay.<sup>27</sup> Ex.301; Ex.320, AC3088; Tr.p.277,L.23-p.278,L.1, p.311,L.18-25, p.637,LL.4-12. It does not admit people knowing they are not going to pay. *Id.*; Tr.p.299,LL.17-25, p.637,LL.4-12; Ex.301,p.37.

Boise Village was paid large sums to provide care to its residents. Medicaid was overwhelmingly Boise Village's largest source of revenue and it paid \$106,131.05 and \$107,758.95 per resident per year in 2012 and 2013, respectively.<sup>28</sup> Ex.349K & 349F; Tr.p.766,L.12-18, p.787,L.7-p.788,L.13. Medicare payments to Boise Village were even higher, totaling \$149,474.80 and \$144,737.10 per resident per year in 2012 and 2013, respectively. Tr.p.785,LL.11-25; Ex.349J.

Boise Village's admissions policies and procedures are similar to for-profit skilled nursing facilities. Tr.p.682,L.11-p.685,L.23, p.696,L.17-p.698,L.5. It screens its residents to ensure they are going to pay the bill, and it considers people's ability to pay in its admission decisions. Tr.p.276,LL.12-21, p.636,LL.2-7; Ex.339, AC1157 and 1160. Before people can be admitted to Boise Village, a payment source must be identified and staff must verify that the services will be covered by the payor. Tr.p.624,L.11-p.628,L.6; Ex.89, GSS21-23. New residents

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<sup>27</sup> Boise Village provides a packet of information to prospective and new residents that describes the services it provides. Ex.49; Tr.p.289,LL.15-19. This document does not say that Boise Village offers free skilled nursing care, encourage people without money to come for care, or that it has a sliding fee scale. Tr.p.290,L.7-p.291,L.4.

<sup>28</sup> In 2012, Boise Village earned a profit of \$49.84 per Medicaid resident per day, totaling \$18,191.60 annually. Ex.32, GSS3281; Tr.p.837,L.17-p.838,L.6.

are escorted to the business office to collect payment. Ex.339, AC1160; Tr.p.277,LL.15-22.

At times, residents are admitted to Boise Village who have too much money to qualify for Medicaid; this is called being “over-resourced.” Tr.p.305,LL.3-20. Boise Village charges those residents the private pay amount until they run out of money (less than \$2,000 in assets) and qualify for Medicaid. *Id.* At that point, Medicaid will pay for their care for the rest of their stay at Boise Village. *Id.*

In order to ensure that residents have a contractual obligation to pay for the services they receive, Society requires them to sign a contract. Tr.p.629,LL.15-20, p.632,LL.1-3; Ex.105, GSS6. In exchange for payment, Boise Village agrees to provide room and board, nursing care, food, an activities program, housekeeping, laundry services, social services, and other services required by law. Tr.p.630,L.9-p.631,L.17; Ex.105, GSS5. Under this agreement, Boise Village imposes late payment charges on overdue accounts and residents are liable for collections costs. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. It also reserves the right to transfer or discharge a resident for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10. This is similar to agreements used in for-profit nursing homes. Ex.105; Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10. Society enforces this agreement at the Boise Village and uses it to collect payment.

According to Society, the proper and timely collection of all accounts receivable is an important business function.<sup>29</sup> Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. This takes a concerted team effort. *Id.* Society has collections teams at both its national office and at Boise Village that regularly collaborate on overdue accounts. Tr.p.641,L.9-p.644,L.16. These collections teams send collection letters, call the resident or responsible party, and send overdue accounts to a collection agency. *Id.*; Tr.p.644,L.25-p.645,L.7. According to Society’s policy, when an account

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<sup>29</sup> There is no minimum amount that must be owed before an account will go through Society’s collections process. Tr.p.646,L.5-16.

is 60 days past due, Society will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11. Society also hires attorneys to write demand letters stating that if the account is not paid litigation may be filed. Tr.p.644,LL.17-24. Its policy says that it may initiate legal action when other steps in the collection process have been followed. Ex.339, AC1167; Tr.p.281,LL.20-25. In 2012, Boise Village's staff filed a small claims case in Ada County to enforce a resident's contract and collect on a skilled nursing bill. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63; Ex.347B. The collections process at Boise Village is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19.

Society also makes payment arrangements and has people sign promissory notes agreeing to pay overdue bills. Tr.p.645,LL.14-25. If a person can only afford to pay \$10 per month on their overdue bill, Society will create a payment plan and require that person to pay \$10 per month. Tr.p.655,LL.5-20. Boise Village has, in fact, had overdue accounts where people could only afford to pay \$10 per month, and they were required to pay that amount. *Id.*

Boise Village generates substantial profits and revenues from charging its residents for care. Ex.320, AC3088; Tr.p.311,LL.11-17. Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010 during 2011-2013, respectively. Tr.p.773,L.5-p.774,L.8. These profits totaled \$3,134,812 during those years. *Id.* Boise Village's operating revenue was \$8,682,596, \$9,736,870, \$9,836,951 in 2011-2013. Tr.p.766,L.8-14; Ex.349F.

During 2011-2013, Society took money from Boise Village to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations. Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. Prior to 2013, Society took \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as

of December 31, 2013. Tr.p.468,LL.10-12; Tr.p.469,LL.15-24. Boise Village's profit goes into the Society's business account and Society uses the funds in this account to invest in new locations and help Society's other centers that are struggling financially.<sup>30</sup> Tr. p.470,L.23-p.471,L.15, p.495,LL.12-22.

Finally, Society has admitted that Boise Village is used for a business and commercial purpose. In its tax exemption application, it stated that Boise Village is used for a business or commercial purpose and that it is used for that purpose 365 days a year. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92. At trial, its staff admitted that Boise Village is a "business open to the public" and "a self-sustaining business entity." Tr.p.656,LL.2-21.

Boise Village is used for a business and commercial purpose and, therefore, it does not qualify for either a charitable or religious property tax exemption.

## II.

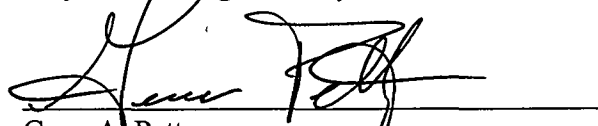
### CONCLUSION

For the above-stated reasons, this Court should deny the property tax exemptions.

DATED this 31<sup>st</sup> day of December, 2014.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:

  
Gene A. Petty  
Deputy Prosecuting Attorney

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<sup>30</sup> Some of Boise Village's expenses are paid out of this account. Tr.p.493,L.4-p.495,L.2. In addition, in 2013, \$185,275.63 from Boise Village's accounts with accumulated interest earned on donations and unrestricted gifts were swept into a national account held by Society. Ex.28, GSS2812. Other funds from Boise Village have been transferred to that national organization. This includes \$2,068,781.21 from its Helping Hands depreciation account and \$226,988.57 from its general Helping Hands account. Ex.28, GSS2812; Tr.p.436,L.17-p.437,L.9, p.437,LL.10-25.

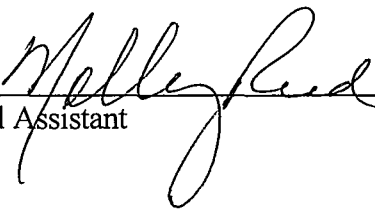


## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of December, 2014, I served a true and correct copy of the foregoing ADA COUNTY'S CLOSING ARGUMENT to the following person(s) by the following method(s):

Phillip S. Oberrecht  
Attorney at Law  
950 West Bannock St. Ste 950  
Boise, Idaho 83701

☒ Hand Delivery  
☐ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

  
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JAN 21 2015

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

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Attorneys for Appellant, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY'S  
RESPONSE TO ADA COUNTY'S POST-  
TRIAL FILINGS**

COMES NOW Appellant, The Evangelical Lutheran Good Samaritan Society ("Good Samaritan Society" or "Society"), by and through its counsel of record, Greener Burke Shoemaker Oberrecht P.A., and submits this memorandum in response and opposition to the Closing Argument and Post-Trial Proposed Findings of Facts and Conclusions of Law filed by the Ada County Commissioners, sitting as the Ada County Board of Equalization ("Ada County").

**I. The Good Samaritan Society Uses its Boise Skilled Nursing Facility for Religious and Charitable Purposes.**

The Good Samaritan Society was organized because local Lutheran churches in North

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Dakota saw a need in the early 1920s to provide Christ-like care to infirm children who were unable to care for themselves. Soon thereafter, the Good Samaritan Society realized the need was greater and expanded its care to the elderly. That need has not disappeared; there are still poor, elderly, and infirm individuals unable to care for themselves who require long-term skilled care. Pastoral guidance and Christ-like care are still exceptional ways to meet the needs of the poor, elderly, and infirm, but significant resources are necessary to provide skilled nursing care throughout the areas served by the Good Samaritan Society. Reimbursement provided by the government also comes with national, state and local regulations. (See Trial Tr., 712:12-16 (“most regulated industry”).) Health care for the poor has come a long way from the days of poor farms and poor houses to the present-day Medicaid and Medicare programs. It is within this expanding health care environment that the Good Samaritan Society has evolved. Although the Society has evolved, it has not wandered from its religious and charitable mission to share God’s love daily and to provide shelter and supportive services to those in need of help.

The Good Samaritan Society has presented substantial evidence at trial to show that it qualifies for a property tax exemption under the applicable exemption statutes. Idaho Code sections 63-602B and 63-602C allow for property tax exemptions where a religious and charitable organization uses the property for the religious and charitable purposes for which it was organized.

The following property is exempt from taxation: property belonging to any religious . . . corporation . . . of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious . . . corporation.

I.C. § 63-602B(1).

The following property is exempt from taxation: property belonging to any . . . charitable . . . corporation . . . of this state, used exclusively for the purposes for which such . . . corporation . . . is organized; provided, that if any . . . such . . .

corporation . . . uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property . . . .

I.C. § 63-602C.

The property tax exemption statutes also allow exemptions where the property is used exclusively for a combination of purposes which are each statutorily exempt. I.C. § 63-602(2).

The use of the words “exclusive” or “exclusively” in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602OO, Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

*Id.* Thus, although both I.C. § 63-602B and § 63-602C require exclusive use, under I.C. § 63-602(2), an organization can still qualify for an exemption if it is exclusively used for charitable and religious purposes. Visibly absent from Ada County’s application of the law in its post-trial materials is any recognition that a combination of exempt purposes will qualify an organization for an exemption.<sup>1</sup> The Good Samaritan Society qualifies under both provisions because it uses its property for a combination of religious and charitable purposes.

**A. The Good Samaritan Society Qualifies for a Religious Property Tax Exemption under I.C. § 63-602B.**

At trial, the Good Samaritan Society presented overwhelming evidence of its religious purpose and how this religious purpose guides all aspects of the operation of its property in Boise. Previously, Ada County declared that the Good Samaritan Society was not a religious organization, but now in its post-trial filings concedes the point and instead focuses solely on

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<sup>1</sup> Also missing from Ada County’s post-trial filings is any discussion regarding the last clauses in I.C. §§ 63-602B and 63-602C, which directs that certain uses, like recreational facilities, residence halls, and meeting rooms will not be deemed a business purpose under any circumstance. However, Ada County does attempt to argue that the Good Samaritan Society “certified on its property tax exemption” that the Boise facility does not include a residence (Trial Ex. 319, ADA COUNTY 02222), but the question clearly refers to a parsonage under I.C. § 63-602B.

whether the property is used for religious purposes. Following trial, this is not surprising, as one of its experts stated that he had “no question in [his] mind that [the Good Samaritan Society] is a religious organization.” (Trial Tr., 733:8-12.)

Ada County argues simply that the Good Samaritan Society cannot be using its property for religious purposes if it operates a skilled nursing facility and charges residents who are able to pay for the skilled nursing care they receive. Under I.C. § 63-602B(1), the Society must use the property “exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious . . . corporation.” The evidence clearly shows the Good Samaritan Society’s use is solely for its religious purpose.

**1. The Good Samaritan Society operates its Boise facility for a religious purpose.**

Although all uses of the Boise facility are directly connected to its religious purpose, Ada County argues that all uses are for a business purpose. Ada County refers to the policies and procedures of the Good Samaritan Society to argue that the operation is not for a religious purpose but for the generation of profit.

The Good Samaritan Society believes that today’s poor, elderly, and infirm that cannot care for themselves deserve that same love that Jesus exhibited to those in need while He was on this earth. With those goals in mind, the Good Samaritan Society has developed a system of skilled nursing facilities to meet these needs. It operates these skilled nursing facilities, including the Boise facility, with strong Christian principles. Through its STAR ministry and the GSS Way, it trains its staff and applies the eight traits of Jesus in all of the care and treatment given to the residents of its skilled nursing facilities. Sure, the Society gives high quality nursing care to its residents and complies with the government laws and regulations that carefully regulate the nursing home industry. But it goes much further to ensure that its residents receive

care and treatment that reflects the compassion, joy, acceptance, love, honesty, perseverance, humility, and courage of Jesus Christ. This Christian approach to nursing care permeates the Good Samaritan Society and all it does.

Ada County's argument continually shows only that the Boise facility is well run, in a businesslike fashion. As it goes about its Christian-focused care and treatment of its residents, the Society attempts to ensure the continued existence of its mission. Ada County's own expert recognized that a non-profit skilled nursing facility must have income that exceeds costs, operates in a workmanlike manner, looks after its receivables, looks after its admissions, and provides excellent care, in order to maintain its viability and continue its mission. As Mr. Moore succinctly stated, if it has no margin, it will soon have no mission. (Trial Tr. 717:20-719:14.)

**2. The Good Samaritan Society does not operate its Boise facility the same way a for-profit skilled nursing facility operates.**

Ada County points to similarities with for-profit skilled nursing facilities, such as charges, admissions policies, admission contracts, and accounts receivable, but ignores the glaring differences between for-profit facilities and the non-profit facility operated by the Good Samaritan Society in Boise.

a. The Boise facility is not operated with a profit motive.

First, for-profit skilled nursing facilities are operated to generate profits for its owners and managers; the Good Samaritan Society is only operated to bring its Christian mission to the poor, elderly, and infirm. It does not undertake its mission for pecuniary gain and does not contemplate the distribution of any gains or dividends to its members or directors. It does not use the property for any commercial purposes unrelated to its purposes, nor does it generate any incidental or unrelated business income.

Ada County continues to use one answer from the 2012 exemption application worksheet to state in different ways in its post-trial filings that the Good Samaritan Society operates with a profit motive. This is despite the explanations of the Good Samaritan Society that its office manager's answer of "yes" in response to the worksheet question asking if the income received produced a profit was limited to an understanding of having collected excess revenue over expenses for the previous year. (*Compare* Trial Ex. 320, ADA COUNTY 03088 *with* Trial Ex. 85, ADA COUNTY 02226.)<sup>2</sup> This is not an unreasonable understanding, especially for a non-profit organization, as even one of Ada County's experts explained that profit is "basically excess revenue over expense." (Trial Tr., 804:21-24.) The Good Samaritan Society does not seek to use the excess revenue, or its policies and procedures in any other way except to sustain its mission. The question posed should have asked what was done with such excess revenues. Ada County failed to ask if such revenues were used to sustain the mission, to continue the religious and charitable work performed or to distribute to shareholders, members, officers or directors. It should have asked if such excess revenues were paid out to its owners and officers in bonuses. Those questions were not asked because Ada County wants the Court only to consider that the Good Samaritan Society simply makes money some years, ignoring what it does with that money and further ignoring that in other years, like 2013, it loses money.

b. The Boise facility applies its policies differently than for-profit facilities.

Second, although the Good Samaritan Society has contracts and policies in place to protect its interests should a resident who is able to pay refuse to pay, it does not use those tools as a for-profit organization would. (*See* Trial Tr., 725:19-726:8 (describing for-profit notices to

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<sup>2</sup> This is also despite the clear import of the entire application explaining clearly the fact that the Boise facility is operated as a non-profit skilled nursing facility caring for the elderly and disabled. (Trial Ex. 320, ADA COUNTY 03086, 3089, 3090.)

quit the premises for failure to pay).) Ada County draws the Court's attention to the language of its business office policies which refer to certain rights the Good Samaritan Society has, but ignores the application of these rights by the Good Samaritan Society at the Boise facility. For example, Ada County cites the contractual right the Society has to discharge its residents should they refuse to cooperate or pay, but the Society presented evidence that it has never removed a resident for failure to pay. (Trial Tr., 637:25-638:7.) Also, Ada County highlights the fact that residents agree to late payment charges of 10%, but does not share that the Society often waives these charges. (Trial Tr., 637:18-24.)

c. The Boise facility attempts to care for each individual.

Third, Ada County attempts to discount the additional efforts made by the Good Samaritan Society to love and care for the whole person and points to ways in which it believes for-profit organizations operate similarly to the Society. However, Ada County's examples tend to illustrate in comparison the significantly different approach the Good Samaritan Society has to the Christian care and treatment it gives its residents. Ada County discounts the Society's activities program at the Boise facility by citing to state and federal regulation requiring provision of activities.<sup>3</sup> The Good Samaritan Society does not provide activities because it is required to—it provides these activities for quality of life purposes, to ensure each resident is provided with pleasure, peace, and purpose. (Trial Tr., 326:13-18.) Further, state and federal regulations are not what drive the Good Samaritan Society's activities director to volunteer to train new activity directors to get them certified, she does it as an additional service to the community. In addition, Ada County points to the fact that some volunteers help in for-profit

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<sup>3</sup> Ada County lists many of these activities in support of its contention that the Boise facility is used for non-religious activities. (County's Proposed Findings, p. 40.) This statement ignores additional language in I.C. § 63-602B, which in addition to religious activities, exempts property used for recreational activities. Even if it were found that these activities are not part of the religious purpose for which the property is used, each of the activities listed are clearly recreational.



facilities, but none of these for-profit facilities enjoy the tremendous volunteer support the Good Samaritan Society has in Boise. Ada County also discounts the strong volunteer support by stating they have no impact on staffing or medical care, but this ignores the public benefit recognized by Ada County's expert, Van Moore, that a rich volunteer program provides for programs that would be impossible otherwise, which makes for a richer quality of life for the residents. (Trial Tr., 726:9-13.) Further, the Boise facility's volunteer director provides unique benefits in the creation of a partnership with Boise State University to help students enhance their learning through work at the Boise facility, and establishing a new degree minor in volunteer management.

d. The Boise facility provides meaningful spiritual resources and encouragement.

Finally, for-profit skilled nursing facilities do not have procedures for daily devotionals, prayers before meetings of staff, grace before meals; purposes or missions to share God's love; or have charitable allowance policies. (Trial Tr., 724:10-25, 726:21-728:1, 730:1-23.) Yet, Ada County suggests that for-profit skilled nursing facilities meet residents' spiritual needs similarly to the Good Samaritan Society. But, the evidence shows that some for-profit facilities make a small corner or end of a hall available for religious activities, or display one or two religious pictures. Such approach to fulfilling the spiritual needs of residents is vastly different from what the Good Samaritan Society provides each day at the Boise facility. The Good Samaritan Society presented overwhelming evidence of its religious nature, and its continuous application of Christian principles to the care and treatment it provides its residents. The Boise facility is filled with religious symbols and pictures. The facility is run by people who are continually trained in the biblical teachings of Christ to apply those teachings to the daily activity of caring for the residents in the facility. Boise's Chaplain works tirelessly to meet the spiritual needs of

the residents and to facilitate the Christian approach to the work of the Boise facility.

These differences illustrate that the Good Samaritan Society operates its skilled nursing facilities for a purpose other than to earn profits. They also demonstrate that the purpose that permeates the Good Samaritan Society is a religious purpose and that all use of the property is in connection with this religious purpose. As shared in the Good Samaritan Society's post-trial filings, this religious purpose has been recognized by others as being "about as Christocentric as one can get" and that "it's all about the Christian mission at [the Boise] facility." (Trial Tr. 572:7-16.) The Good Samaritan Society qualifies for a religious property tax exemption under the plain meaning of the statute.

### **3. A skilled nursing facility can be operated for a religious purpose.**

Ada County directs the Court's attention to foreign jurisdictions suggesting that courts have created a general rule that "using property to care for the elderly or infirm is not using that property for religious purposes." (County's Proposed Findings, p. 38.) However, none of those cases hold that the operation of a skilled nursing facility for the care of the poor, elderly, and infirm cannot be the use of the property for a religious purpose.

The Good Samaritan Society previously provided the Court with a closer examination of many of these cases prior to trial, and believes the analysis is still relevant to the points Ada County is again attempting to make. The Good Samaritan Society stated the following in its Trial Memorandum (filed Nov. 5, 2014, pp. 6-9):

In *Evangelical Lutheran Good Samaritan Society v. County of Gage*, the court affirmed a judgment finding a tax exemption, holding that the two nursing homes at question were owned and used for a charitable purpose. 181 Neb. 831, 151 N.W.2d 446 (1967). The Nebraska statute allows for a charitable or religious exemption for a property owned and used for a charitable or religious purpose when not used for financial gain or profit; in addition, the statute is unlike the Idaho tax exemption statutes and contains no provisions for partial exemptions, nor provisions for exemptions for a combination of purposes. Neb. Rev. Stat. §

77-202(d)). Thus, the court upheld the lower court's judgment that the primary and dominant use of the property was for a charitable use, thus entitling the applicant to a property tax exemption. 181 Neb. 831, 151 N.W.2d 446. Therefore, analysis of any additional or incidental uses was unnecessary since the court had upheld a finding of the primary use for this property. Also, in *Christian Retirement Homes, Inc. v. Board of Equalization of the County of Lancaster*, the Nebraska court found that the primary purpose of the property was not for a religious purpose. 186 Neb. 11, 180 N.W.2d 136 (1970). However, the case, and the property's use, were related to elderly retirement housing, not skilled nursing care. *Id.* at 13-14, 180 N.W.2d at 138. Therefore, neither of the Nebraska cases cited is applicable to the operation of a skilled nursing facility for the poor, elderly, and infirm for religious purposes under the Idaho statute.<sup>[4]</sup>

In the Washington case cited by Ada County, *Yakima First Baptist Homes v. Gray*, the religious tax exemption statute in question was again dissimilar to the Idaho statutes. 82 Wn.2d 295, 510 P.2d 243 (1973). Also, the property at issue in *Yakima First Baptist* was simply a twelve story building of rental housing for the elderly and not a skilled nursing facility. *Id.* at 296, 510 P.2d at 244. In fact, the facility did not admit a person "unless he [could] move about with no more assistance than a cane, and a person who ceases to meet that test is required to leave." *Id.* at 297, 510 P.2d at 244. Thus, this case also provides no insight on a skilled nursing facility which provides care to the poor, elderly, and infirm operated for a religious purpose.

*Christian Home for Aged, Inc. v. Tennessee Assessment Appeals Commission* is clearly distinguishable from this case as well. 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). The property in question in *Christian Home* was a facility which included high-rise apartments, townhouses, cottages, and efficiency apartments, as well as a nursing facility and a chapel. 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Strangely, Ada County states that this court determined that the nursing home was not used for religious purposes, while [failing to note in its post-trial filings that the chapel was qualified for a religious exemption]. The case actually states that the property tax exemption was denied except for the chapel and the nursing facility. *Id.* at 289, 292-93 ("[T]he chancellor was correct in finding that the decision . . . denying the exemption of the plaintiff's property, except for the chapel and nursing facility, was supported by substantial and material evidence in the record." (emphasis added)). Similarly, it is questioned

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<sup>4</sup> Ada County also cites again to *Evangelical Lutheran Good Samaritan Society v. Buffalo County Board of Equalization*, 243 Neb. 351, 500 N.W.2d 520 (1993). This Nebraska case also can be distinguished on the basis that it is an affordable housing case, and therefore has no application to the skilled nursing facility in this matter. The issue in this Nebraska case dealt with 32 apartments and independent living units at the Good Samaritan Society's Kearney facility, which housed elderly individuals capable of caring for themselves. *Id.* at 353, 500 N.W.2d at 522. The present case deals with individuals at the Boise facility unable to care for themselves. Also of note, is the fact that the only evidence presented in support of the Good Samaritan Society's religious purpose was the fact that the Good Samaritan Society had recently formalized its affiliation with the ELCA, establishing the use of the property in direct furtherance of the ELCA's religious mission. *Id.* at 356, 500 N.W.2d 523. The Good Samaritan Society has presented far more evidence illustrating its religious purpose in this case.

why Ada County cites to *Presbyterian Homes of Synod v. Division of Tax Appeals*. 55 N.J. 275, 261 A.2d 143 (1970). In *Presbyterian Homes*, the property in question was a group of residential facilities which were purchased by financially independent elderly persons in a “quid pro quo” arrangement. *Id.* at 287-88, 261 A.2d at 149-50 (“If petitioner’s position is sound, then persons of advanced age could simply avoid property taxes by pooling assets in corporate form for their mutual benefit.”). Further, instead of support for Ada County’s position that skilled nursing care for the poor, elderly, and infirm cannot be found to be an exempt purpose, the court specifically stated otherwise. *Id.* at 288, 261 A.2d at 150 (“Prior cases in our State have acknowledged that care for the needy aged is a proper concern of government, and property used for that purpose has been held to be exempt from taxation.”). Finally, *Franciscan Communities, Inc. v. Hamer*, can similarly be distinguished as not supporting the proposition of a general rule that operating a skilled nursing facility and caring for the poor, elderly, and infirm are not religious purposes, as the final holding in *Franciscan* was that the denial of a religious and charitable property tax exemption for a continuing care retirement community was proper because the primary use of the property (except for the chapel) “was for upscale senior housing and care with an enhanced lifestyle.” 975 N.E.2d 733, 748 (Ill App. 2d 2012). That type of care, or type of residence, is hardly that which is at issue in this case.

Ada County cites to an additional case in its post-trial filings, *Fairview Haven v. Department of Revenue*, which can be distinguished similarly to the cases above. 506 N.E.2d 341 (Ill. App. 4<sup>th</sup> 1987). *Fairview Haven* was a case under a previous religious exemption statute in Illinois that, like the Nebraska statute analyzed above, had no provision for an exemption where a combination of religious and charitable purposes were present. Under chapter 120, par. 500.2 of the Illinois Revised Statute (1981), a property was only allowed an exemption for exclusive religious purposes or for school and religious purposes. Thus, in *Fairview Haven*, the nursing facility portion of the property qualified for a charitable exemption, but not a religious property tax exemption. 506 N.E.2d at 347-48. The court found that only part of the use was for religious purposes, and thus did not qualify under the previous statute. *Id.* at 348. The religious purposes listed in *Fairview Haven* were also different than the present case, being only an opportunity for members of the Apostolic Christian faith to carry out service work, care for others, and engage in evangelization. *Id.* at 349. Here, one of the Good Samaritan Society’s

religious purposes is more specific to the skilled nursing provided—to provide shelter and supportive services to older persons and others in need. (Trial Ex. 4.) Thus, like the cases above, *Fairview Haven* is not directly relevant to the current matter under I.C. § 63-602B, and does not stand for the proposition that operation of a skilled nursing facility cannot, as a general rule, be a religious purpose.

**B. The Good Samaritan Society Qualifies for a Charitable Property Tax Exemption under I.C. § 63-602C.**

Ada County argues similarly that the Good Samaritan Society does not qualify for a charitable tax exemption simply because revenue is derived from the operation of its skilled nursing facility. However, all revenue derived from its skilled nursing operation is “directly related to the charitable purposes for which [the Good Samaritan Society] exists” and thus still qualifies the property for a charitable tax exemption under I.C. § 63-602C.

**1. The legal definition of charity does not require providing services for free.**

Ada County promotes a property tax exemption system which requires provision of substantial financial aid in order to be recognized as a charitable organization. That approach was discarded long ago, and is not supported by Idaho law. In *Canyon County v. Sunny Ridge Manor, Inc.*, the Idaho Supreme Court stated that “a number of services” would show public benefit for the purposes of qualifying for a charitable property tax exemption. 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). Specifically, the provision of monetary aid to the needy or the traditional almsgiving to the poor is not required for a party to qualify for a charitable property tax exemption. *Id.*

Although recognition as a charitable organization does not require provision of monetary aid or free health care, Ada County’s post-trial filings declare that the Boise facility is not

operated like a charitable organization or in a charitable manner. (*See, e.g.*, County's Argument, pp. 4, 5.) In addition to the matters addressed above, Ada County cites as support of an uncharitable-like nature the expansion and remodeling of facilities and an increase of Medicare residents. Similar to the explanation above, each of these projects are undertaken to improve and sustain the Good Samaritan Society's mission. Further, Ada County does not explain how any of these methods convert a charitable purpose into a business one.

Similar to its arguments against a religious property tax exemption, Ada County also relies heavily on business office policies of the Good Samaritan Society to support its denial of the Society's charitable exemption.<sup>5</sup> However, a review of the policies, and the testimony provided during trial regarding those policies, shows no evidence that the Boise facility has used anything but reasonable approaches to having private pay residents pay their bills. Should a private pay resident refuse to pay, the Good Samaritan Society has an agreement in place to allow their costs for care to be recovered. To suggest that such policies are somehow harsh or unseemly is not supported by the record. In fact, one such incident cited by Ada County actually shows a lenient charitable approach instead of the uncharitable approach Ada County appears to portray. (Trial Tr., 655:5-20 (requiring a resident unable to pay entire bill to pay only that amount (\$10/month) patient able to pay).)

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<sup>5</sup> Ada County also cites to the size of the Good Samaritan Society, although this has no bearing on the determination before this Court. It also states that the Good Samaritan Society has a "Cayman Islands insurance company" to support its argument. (County's Argument, p. 4.) This misstates the trial record, which clearly explains that the company is a captive corporation for self-insurance only. (Trial Tr., 419:5-420:25.) Finally, Ada County suggests that the Good Samaritan Society's internal cash consolidation shows a business purpose (County's Argument, pp. 24-25), but all facilities are owned by the Good Samaritan Society and all share in the revenue and expenses, with each individual facility, including Boise's, being accounted for separately and any net revenue being credited for the benefit of the individual facility. The cash consolidation was adopted to help ensure all funds were being used appropriately as part of its fiduciary responsibilities to be a good steward of the resources God has provided. (Trial Tr., 436:2-16.)

Regardless, Ada County uses the admission policies to make reproachful claims, such as citing to provisions in these documents to claim the Good Samaritan Society continuously hires attorneys to demand payment and threaten litigation. (County's Argument, p. 7.) If this actually happens as frequently as Ada County claims, it might have evidence to point to, but no evidence was presented at trial to support this finding. Even more outlandish is Ada County's claim that the Boise facility operates to force residents to turn to the government for assistance by charging "people until they run out of money." (*Id.*) This statement is an egregious misrepresentation of the trial record.

**2. *Evangelical Lutheran Good Samaritan Society v. Board of Equalization of Latah County* does not control this case.**

Ada County has continued to argue that the affordable housing case, *Evangelical Lutheran Good Samaritan Society v. Board of Equalization of Latah County*, 119 Idaho 126, 804 P.2d 299 (1990), controls the charitable organization determination in this case. In *Latah County*, the Supreme Court affirmed the district court's decision denying a charitable tax exemption to the Good Samaritan Society's affordable housing facility in Moscow, Idaho. As the Good Samaritan Society has continuously pointed out, this case only applies to the independent living areas in the affordable housing facility, not a skilled nursing facility. In fact, the case specifically states that the Latah County Board of Equalization granted a tax exemption for the Good Samaritan Society's skilled nursing facility in Moscow. Further, Latah County has done so every year since. Regardless, Ada County quotes extensively from this case attempting to extend the holding to the Good Samaritan Society's skilled nursing facility.<sup>6</sup> If, as Ada

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<sup>6</sup> Each exemption case is to be determined on a case-by-case basis, considering the particular circumstances of an individual organization annually. *Student Loan Fund of Idaho, Inc. v. Payette Cnty.*, 138 Idaho 684, 688, 69 P.3d 104, 108 (2003). Even in *Sunny Ridge*, the Court stated that under different circumstances, the corporation in that case might be entitled to a future property tax exemption. 106 Idaho at 103, 675 P.2d at 818.

County contends, the *Latah County* case requires that the Good Samaritan Society be found unqualified for a charitable property tax exemption for its skilled nursing facilities, why has Latah County not used such a holding to deny the Good Samaritan Society's property tax exemption for its skilled nursing facility in Moscow? Or for that matter, why have the other Idaho counties (besides Ada County) not denied the Good Samaritan Society's other skilled nursing facilities in Idaho a property tax exemption? The answer to these questions no doubt hinges on the language of I.C. § 63-602C exempting property for uses directly related to the charitable purposes for which an organization is formed. The charitable purpose of the Good Samaritan Society is to run these skilled nursing facilities for the poor, elderly, and infirm in need of long-term care, and also for the general benefit of the community.

**3. The Good Samaritan Society qualifies for a charitable property tax exemption under the *Sunny Ridge* guidelines.**

Ada County also argues that the Good Samaritan Society has failed to meet most of the guidelines listed in *Sunny Ridge*. Although the Society continues to point out that the eight elements in *Sunny Ridge* are not the only factors that may be relevant in this case, even under these guidelines the Society has presented ample evidence to qualify for a property tax exemption under I.C. § 63-62C. *See Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815 ("There may be factors listed above which have no application to particular cases, and factors not listed which would need to be considered.")

**a. The Good Samaritan Society's stated purposes are charitable.**

After trial, Ada County finally has conceded that the stated purposes of the Good Samaritan Society are charitable, after arguing throughout the case that a corporation's powers are applicable to this analysis.



b. The Good Samaritan Society's functions are charitable.

As addressed above, Ada County argues that the Good Samaritan Society does not function like a charitable organization or operate in a manner that is charitable. However, where an organization demonstrates that it provides a general public benefit or fills some public need, it will be classified as charitable under I.C. § 63-602C. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). “To the extent that a charitable corporation performs a function otherwise required of the government, the public benefit is clear and direct.” *Coeur d’Alene Public Golf Club, Inc. v. Kootenai Board of Equalization*, 106 Idaho 104, 106, 675 P.2d 819, 821 (1984) (declaring operation of a public golf course a public benefit). The Good Samaritan Society has already shown that providing health care for the poor and infirm is recognized by the people of Idaho as a governmental responsibility. *See Idaho Falls Consolidated Hospitals, Inc. v. Bingham County Board of Commissioners*, 102 Idaho 838, 845, 642 P.2d 553, 560 (1982) (Bistline, J., concurring) (“[I]t has always been the sense of the people of Idaho . . . that medical care and necessities of life will not be denied to those unfortunate few who would suffer and sometimes perish if the same were not provided by the largess of the people acting through their government, which taxes for that very purpose.”); *see also Sunny Ridge* 106 Idaho at 102, 675 P.2d at 817 (indicating that “a facility for physically handicapped persons” provides “a general benefit to the community by relieving a potential obligation of government”). Thus, there can be no question that the Good Samaritan Society relieves the government of its burden of caring for these people, and therefore provides a clear and direct charitable function.

c. The Good Samaritan Society is supported by donations.

Ada County argues that the donations received by the Good Samaritan Society are a very small part of overall revenue, yet it only refers to the direct cash donations that the Boise facility reported on its exemption application. (See County's Argument, pp. 10-11.) The Good Samaritan Society presented evidence at trial of the significant donations it receives and invests to sustain its mission to provide supportive services and shelter to those in need. Without these donations, in 2012, the Society would have sustained a loss of (\$3,500,000), while in 2013 the loss of (\$8,969,000) would have increased to over (\$14,000,000). These donations were \$19,091,000 in cash donations in 2012, and \$21,515,000 in 2013. These numbers do not include the monetary value of the generous volunteer time that has been donated to the Society in 2012 and 2013. The Good Samaritan Society is supported by donations, which are used exclusively for its charitable purposes.

d. The Good Samaritan Society is entitled to anticipate payment from recipients of its services that are able to pay.

Ada County continues to argue under this factor that charging residents for the care they receive is a primary reason the Good Samaritan Society does not qualify for a charitable property tax exemption. However, as argued above, this does not in itself disqualify the Society. See, e.g., *Evangelical Lutheran Good Samaritan Society v. Gage County*, 151 N.W.2d 446, 449 (Neb. 1967) ("The fact that patients who are able to pay are required to do so does not deprive a corporation of its eleemosynary character."). The Good Samaritan Society has maintained that the residents who are able to pay are required to do so, and even Ada County's expert, Mr. Van Moore, recognizes that a not-for-profit organization cannot maintain its mission without a margin. (Trial Tr. 719:7-14.) Further, Ada County attempts to place great weight on the fact

that the Society testified that it did not admit a resident knowing he or she was never going to pay in 2012 or 2013. (*See, e.g., County's Argument*, p. 11.) It must be pointed out, however, that Ada County did not elicit testimony that the Good Samaritan Society ever refused to admit an individual needing care because he was unable to pay. The absence of some available payor source is not uncommon under the current welfare system. *See St. Margaret Seneca Place v. Board of Property Assessment, Appeals and Review, County of Allegheny*, 640 A.2d 380, 385-86 (Pa. 1994) (“[T]he absence of indigent residents who receive no government support is not surprising, and is certainly not, standing alone, enough to disqualify a nursing home from an exemption as a purely public charity. In modern America it is hard to find any person in need of nursing home care who is uninsured, unable to pay, and wholly ineligible for government support in the form of Medicare or Medicaid coverage.”). Accordingly, receiving payment for the services it provides does not disqualify the Good Samaritan Society for a charitable exemption.

e. The Good Samaritan Society provides a significant public benefit.

As stated in the second *Sunny Ridge* factor above, the Good Samaritan Society fulfills a need the government might otherwise be required to fill. This is a clear public benefit. In addition to this fundamental and clear public benefit, the Court should consider the many public benefits provided by the Good Samaritan Society, such as: the many community grants given by the Society, the articles on public health published by the Society, the research on elder health issues performed by the Society, the educational benefits provided to its employees to improve the health care they provide to their communities, the community volunteer efforts provided by the employees, volunteers and residents of the Boise facility, the work with Boise State University and the College of Western Idaho by Sherri Ellis to provide work opportunities at the

Boise facility for students, the offering of the Boise facility to many groups for meeting purposes, etc.<sup>7</sup> Ada County overlooks all of the public benefits the Good Samaritan Society provides and instead argues that it is paid by the government for the services it renders. These payments do not negate the public benefits the Society provides.

f. The Good Samaritan Society does not have a profit motive.

Regardless of the overwhelming evidence that the Good Samaritan Society does not have a profit motive or distribute any of its revenue to shareholders or members, Ada County argues that its operations generate profits. However, Ada County makes these arguments based on for-profit accounting methods, using revenue numbers from the Good Samaritan Society which include investments and donations. The trial record did show that the Society realized net revenue over expenses in 2012, but sustained an operational loss in 2013. Further, these results were derived using the donations made to the Society. If those donations, or resource development dollars, are eliminated from the calculations, the Good Samaritan Society realized significant operational losses in 2012 and 2013. Regardless of the calculations, wherever net revenue has been realized, it has always been reinvested by the Society in its mission. They have never been distributed to owners, members, directors, or officers. These are not the actions of a profit-driven enterprise. These are the actions of a non-profit charitable organization.

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<sup>7</sup> Ada County also attempts in its post-trial filings to downplay additional public benefits the Good Samaritan Society provides. For example, it states that the scholarships provided for nurses do not benefit the general public (County's Argument, p. 8), but this discounts the knowledge and skill obtained through these scholarships by health care providers who will continue to treat the citizens of Idaho. Also, Ada County mistakenly states that the Good Samaritan Society provided no evidence that the Good Samaritan Society provided any of the donations to its ministry partners in Bangladesh, Zimbabwe, and Columbia (*id.* at 9), but the 990 Form in the record clearly shows otherwise. (Trial Ex. 19, GSS002708, 2712.) In addition, Ada County suggests that some of the extra items provided by the Boise facility are reimbursed by Medicaid, but even where Medicaid reimbursements may be available, they do not cover the whole cost of those additional items. (*See* Trial Tr., 238:1-17.)

- g. The Good Samaritan Society's assets would go to other charitable organizations upon dissolution.

Ada County concedes this factor, as upon dissolution, the Good Samaritan Society's assets will be distributed to nonprofit social ministry organizations designated by the ELCA and the Missouri Synod.

- h. The Good Samaritan Society provides charity for those in need.

Again Ada County cites to the fact that the Good Samaritan Society requires payment from residents able to pay for the care they receive to argue the Good Samaritan Society does not provide charity. Ada County also re-characterizes charitable allowances the Boise facility has provided as bad debt, and even suggests that charitable allowances must be provided at admission to be considered "charity." There are no requirements under I.C. § 63-602C or other authority that require such findings. Further, Ada County states that the charitable allowances the Boise facility did provide are *de minimus*, but again there is no required percentage of financial "charity" the Good Samaritan Society must provide by that method. Charity under I.C. § 63-602C includes "every gift for general public use, whether it be for educational, religious, physical or social benefit." *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. The Good Samaritan Society has presented substantial evidence showing charity—charity that it has lovingly shared with its residents financially, religiously, physically, and socially; charity given to its residents and employees; and charity it has extended to the community. This charity is based on needs for care, needs for a helping hand, and needs for involvement.

**4. The case presented to the court is unlike previous property tax exemption cases.**

Even many of the cases analyzed under the *Sunny Ridge* factors illustrate the fact that the Good Samaritan Society has presented sufficient evidence to qualify for an exemption. This case

is unlike other property tax exemption cases analyzed by the Supreme Court.<sup>8</sup> A brief review of two Supreme Court cases utilizing the *Sunny Ridge* guidelines helps show that sufficient evidence was presented in this case to entitle the Good Samaritan Society for a charitable exemption.

Starting with *Sunny Ridge*, the case presented the Supreme Court with a “narrow” determination that in the view of one Justice could have “gone either way.” 106 Idaho at 103, 675 P.2d at 818, 819 (Bistline, J., concurring). The Court denied the property tax exemption based on the fact that it had not yet acted in accord with its stated purposes and that there was nothing in the record that suggested that the benefit it provided was actually directed toward those requiring help, or that those that needed the help would actually meet the entrance qualifications. 106 Idaho at 103, 675 P.2d at 818. Of further note, *Sunny Ridge* was also an affordable housing case and not a skilled nursing facility case; the residents in *Sunny Ridge* were required to be able to care for themselves. *Id.* at 102, 675 P.2d at 817. However, here the Good Samaritan Society’s Boise facility’s operation is directly related to its stated charitable purposes and it is specifically operated and open to those in need of the skilled nursing care they provide without discrimination based on payor source.

Also, in *Coeur d’Alene Public Golf Club*, it was found that the charitable purpose qualifying for an exemption was providing a recreational golf course. 106 Idaho 104, 675 P.2d 819. The Court stated that:

The corporation was not organized for profit; the board of directors are not compensated; no dividends are distributed. Any net income is put back into the golf course in the form of improvements. There is no corporate stock issued, and the articles of incorporation provide that upon dissolution the corporation’s property would be donated to charitable uses.

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<sup>8</sup> For one thing, no other case includes the overwhelming evidence presented by the Good Samaritan Society to support its application for a religious property tax exemption.

While it may not be said that a golf course fulfills a public need in the same sense that a hospital or other more traditional charitable institution does, a public golf course nevertheless provides a community service.

*Id.* at 106, 675 P.2d at 821. Here, like the organization running the public golf course, the Good Samaritan Society was not organized for profit, does not compensate its board or directors, does not distribute dividends, puts all income back into the mission, does not issue stock, and upon dissolution all property will be turned over to other charitable non-profit organizations. Also, the Society runs a skilled nursing facility on its property, which relieves an even greater responsibility of the government—providing for the care of the poor, elderly, and infirm, who are unable to care for themselves. Accordingly, the Good Samaritan Society has presented compelling facts that show that it qualifies for a charitable property tax exemption for its Boise facility.

## **II. Conclusion.**

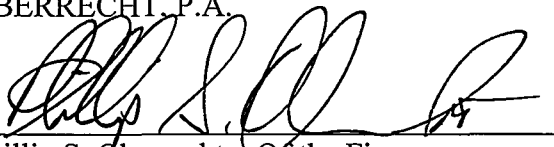
The Good Samaritan Society provides a unique Christian public benefit to the Boise area with its Boise skilled nursing facility. The residents receive extraordinary Christian-focused skilled nursing care 24-hours-a-day, 7-days-a-week. The Good Samaritan Society has been granted property tax exemptions for its skilled nursing facility from the time it took over operations in 1958 until the denial in 2012. Its operations and mission have not changed over that time. The only thing that has changed over the years is that the United States Government and the Idaho state government have begun reimbursing skilled nursing facilities for accepting the poor, aged, and infirm through the Medicaid, Medicare, and VA programs, and recently Idaho adopted its provider tax and upper payment limit (“UPL”) system, which has increased reimbursements. These changes did not affect the operations of the Good Samaritan Society; it has continued to care for the poor, aged, and infirm.

The Good Samaritan Society has presented substantial evidence to the Court to demonstrate that it qualifies for a religious and a charitable property tax exemption because it continues to use its Boise facility exclusively for religious and charitable purposes. Therefore, the Good Samaritan Society respectfully requests that the court overturn the decision of Ada County and reinstate its religious and charitable property tax exemptions for 2012 and 2013.

DATED this 21<sup>st</sup> day of January, 2015.

GREENER BURKE SHOEMAKER  
OBERRECHT, P.A.

By:




Phillip S. Oberrecht – Of the Firm  
Jason R. Mau – Of the Firm  
Attorneys for Appellant, The Evangelical  
Lutheran Good Samaritan Society

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 21<sup>st</sup> day of January, 2015, a true and correct copy of the within and foregoing instrument was served upon:

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☐ U.S. Mail
- ☐ Facsimile
- ☒ Hand Delivery
- ☐ Overnight Delivery

  
Phillip S. Oberrecht  
Jason R. Mau



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Emily  
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1/23/15  
EU

**JAN 21 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **SANTIAGO BARRIOS**  
DEPUTY

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY

**GENE A. PETTY**  
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Idaho State Bar Nos. 6831 & 7613

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

IN THE MATTER OF THE APPEALS OF	) <b>Case No. CV OT 13 09169</b>
THE EVANGELICAL LUTHERAN GOOD	)
SAMARITAN SOCIETY	) <b>Consolidated with</b>
	) <b>Case No. CV OT 13 12345</b>
from the Board of Equalization of Ada County for	)
tax year 2012 and 2013.	) <b>ADA COUNTY'S RESPONSE TO</b>
	) <b>SOCIETY'S CLOSING</b>
	) <b>ARGUMENT AND UPDATED</b>
	) <b>FINDINGS OF FACT AND</b>
	) <b>CONCLUSIONS OF LAW</b>

**COMES NOW**, Ada County Board of Equalization, by and through its counsel, the Ada County Prosecuting Attorney's Office, Civil Division, and submits this Response to Society's Closing Argument and Updated Findings of Fact and Conclusions of Law.

**I.**  
**ARGUMENT**

The burden is on the Evangelical Lutheran Good Samaritan Society, Inc. ("Society") "to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. *Student Loan Fund of Idaho, Inc. v. Payette Cnty.*, 138

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Idaho 684, 690, 69 P.3d 104, 110 (2003). It failed to do so. Boise Village expects payment for its services, charges market rates, and implements its collections process to extract payment from its patients. These are business and commercial activities and, therefore, Boise Village is not entitled to an exemption.

**1. Boise Village Does Not Qualify for A Charitable Property Tax Exemption.**

To qualify for a charitable property tax exemption, an organization must “first prove that it is a charitable organization, and, secondly, that the claimed exempt property is used *exclusively for charitable purposes.*” *Evangelical Lutheran Good Samaritan Society v. Bd. of Equalization of Latah County*, 119 Idaho 126, 130, 804 P.2d 299, 303 (1990) (emphasis in original). The Idaho Supreme Court in *Sunny Ridge Manor* identified eight (8) criteria for determining whether an organization is charitable, and Society does not qualify. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984). The Idaho Supreme Court applied these factors in *Evangelical Lutheran Good Samaritan Soc’y* and concluded that Society should not be granted a charitable property tax exemption. 119 Idaho at 131, 804 P.2d at 304 (1990). Society also does not use Boise Village exclusively for charitable purposes.

**A. The Idaho Supreme Court Previously Held that Society is Not Entitled to a Charitable Property Tax Exemption.**

Society argues that the Idaho Supreme Court decision in *Evangelical Lutheran Good Samaritan Soc’y* is not controlling. Society Closing Argument at 2-3. Society has not altered its practices, and it fails to qualify for an exemption in the present case for many of the same reasons.

In the *Evangelical Lutheran Good Samaritan* case, the Idaho Supreme Court stated that “[o]ne of the factors most frequently looked at by courts in determining if a retirement center is a charitable corporation is the amount of fees required of the residents.” *Id.* at 132, 804 P.2d at

305. The Court stated that “the Society provides housing for the elderly, however, there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” *Id.* The Court noted that “Society had never provided housing at a reduced cost to any resident and the revenue collected by the Society from its residents has substantially exceeded costs and expenses for the past several years.” *Id.*

Society continues to operate the same way at Boise Village. In 2012 and 2013, Boise Village expected everyone admitted to pay for its services. Ex.301,p.37; Tr.p.637,LL.4-12. Boise Village charged rates similar to other nursing facilities in Ada County, and the revenues collected from its patients has substantially exceeded the costs and expenses for the past several years. Ex.301,p.37; Ex.320, AC3088; Tr.p.311,LL.11-17, p.637,LL.4-12.

Ada County also presented other compelling reasons why Society is not entitled to a charitable organization tax exemption. Boise Village collects against patients who do not pay their bills on time.<sup>1</sup> According to Society’s internal policies and contracts with its patients, Society may discharge a patient for not paying timely. Ex.105, GSS10; Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11; p.634,L.22-p.635,L.17. Society has even sought to increase its profitability by increasing its number of Medicare patients. Tr.p.474,L.20-p.475,L.8, p.484,L.13-p.485,L.14; Ex.103, GSS2605-6.

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<sup>1</sup> The collections process is similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. It has collections teams at both its national office and at Boise Village that regularly collaborate on overdue accounts. Tr.p.641,L.9-p.644,L.16. To collect on overdue accounts, for-profit skilled nursing facilities send letters, make phone calls, hire collection agencies and attorneys, and file litigation. *Id.*

**B. Society Failed to Satisfy Almost All of the *Sunny Ridge* Factors.**

- i. *Society Does Not Function Like a Charitable Organization; It is Only Minimally Supported by Donations; and It Does Not Provide a General Public Benefit*

Society asserts that by providing health care to the poor, elderly and infirm, it relieves the government of its burden of caring for those people; therefore, Society claims its functions are charitable and that it provides a general public benefit. Society further claims that by contracting with the government, especially to care for Medicaid patients, it is reimbursed at a reduced rate. In addition, Society states that Idaho appellate courts have not provided any guidance on the extent of donations, or percentage of financials which must come from donations, to qualify under Idaho Code § 63-602C. Such arguments may be disposed of by *Hous. Southwest v. Wash. County*, 128 Idaho 335, 339, 913 P.2d 68, 71 (1996), where the Idaho Supreme Court made clear the importance of donations and the connection between donations and general public benefit as part of the *Sunny Ridge* analysis.

In *Housing Southwest*, the Court held that a non-profit corporation that provided low-income housing to seniors and disabled persons based on need did not provide a general public benefit since it was supported by federal tax dollars without private donations. *Id.* at 339, 72. The Court explained that the factors of general public benefit and donations are “closely connected,” and that donations are an “important factor, because [they] reduce the cost of the service provided, either to the public generally as direct beneficiaries of the service or to taxpayers who would otherwise bear the burden.” *Id.* at 338, 71 (citation omitted). Furthermore, “[i]f the general public does not receive a direct benefit from a corporation’s donations, then the question presented by the ‘general public benefit’ factor is whether the corporation fulfills a need which the government might otherwise be required to fill.” *Id.* at 339, 72.

The Court in *Housing Southwest* rejected the argument that providing housing to low-income seniors and disabled persons meets a need that might otherwise have to be met by the government. It declared such argument to be “circular in that the need Housing Southwest meets *is in fact being met by government through tax-supported FHA subsidies.*” *Id.* (emphasis added). In holding that a corporation supported by federal tax dollars does not provide a general public benefit, the Court concluded that “the burden is merely shifted from one group of taxpayers to another, and government is not relieved of an obligation it would otherwise have.” *Id.* As such, the corporation was not eligible for a charitable property tax exemption.

Following *Housing Southwest*, the Idaho Supreme Court in *Community Action* again held that a low-income housing facility was not entitled to a charitable property tax exemption where “the operation of [the] housing project survives primarily on government subsidies.” 138 Idaho 82, 86, 57 P.3d 793, 797 (2002). Although the corporation in *Community Action* received some private donations, the Court found that such donations “lessen the burden on the government only nominally.” *Id.* at 87 and 798. Balancing all the relevant factors, the Court concluded that the 501(c)(3) organization was not entitled a charitable property tax exemption. *Id.*

In the present case, Society’s argument that by providing health care it relieves the government of its obligation to care for those people is circular and unpersuasive. Any need for skilled nursing care that Society might meet is being met by the government through the Idaho Medicaid Program and Medicare. The evidence established that approximately 69% of Society’s skilled nursing facilities are covered by federal or state programs, providing approximately 69% of Society’s total skilled nursing revenues. Tr.p.486,LL.3-11; Ex.103, GSS2608. At Boise Village, 87%, 90% and 94% of its revenue came from state and federal government programs during 2011-2013, respectively. Tr.p.766,L.15-p.767,L.17; Ex.349F. In fact, the “reduced rate”

that Society claims to receive from Medicaid is higher than the private rate it charges patients.<sup>2</sup> Tr.p.787,L.7-p.788,L.13; Ex.349K.

Society therefore is like the corporations in *Housing Southwest* and *Community Action*. By relying on government funds, Society is not relieving the government of an obligation it might otherwise be required to fill. As such, Society provides no general public benefit.

Society points to *Evangelical Lutheran Good Samaritan Society v. Gage County*, 151 N.W.2d 446, 449-50 (Neb. 1967) and *Stanbro v. Baptist Home Ass'n of Colorado for the Aged*, 475 P.2d 23, 25 (Colo. 1970) for the proposition that an organization operating a skilled nursing facility without a profit motive is providing a function which the government would otherwise have to provide. *Evangelical Lutheran Good Samaritan Society v. Gage County* held that under Nebraska law, a nursing home was eligible for a charitable property tax exemption when not operated for private gain. 151 N.W.2d at 449-50. *Stanbro v. Baptist Home Ass'n of Colorado for the Aged* held that under Colorado law, a nursing home with patients who could not pay the set rate which, therefore, was "being taken up by public welfare agencies, benevolent groups, or by members of the residents' family" was eligible for a charitable property tax exemption. 475 P.2d at 25. It is a stretch for Society to claim that these cases recognize operating a skilled nursing facility without a profit motive is a charitable function which the government would otherwise have to provide. Moreover, as discussed *supra*, it is well-established under Idaho law that an organization which relies on government funds does not relieve the government of an obligation it might otherwise be required to fulfill and, therefore, does not provide a general public benefit. See *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72; *Community Action*, 138 Idaho at 86, 57 P.3d at 797.

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<sup>2</sup> It is higher when you consider all of the money Boise Village receives from Idaho Medicaid, including the funds from the Upper Payment Limit. Tr.p.786,LL.15-18.

In *Community Action*, the Idaho Supreme Court denied a charitable property tax exemption when donations only nominally lessened the burden on the government. Society's donations do not even nominally lessen the burden on the government. During 2011-2013, cash donations to Boise Village were only 0.5% of Boise Village's total revenue. Tr.p.311,LL.6-10, p.793,LL.11-15; Ex.349N; Ex.320,AC3088; Ex.319, AC2226; Ex.301,p.39. In that same time, Society's unrestricted donations and donations released from restrictions were 1% of Society's operating revenue; Society's total restricted and unrestricted donations were only 2% of Society's operating revenue. Tr.p.754,L.20-p.756,L.24; Ex.349B; Tr.p.759,L.2-p.761,L.12; Ex.349E. Such donations are miniscule compared to the state and federal government funds that Society receives. Society also notes the volunteer time and efforts donated to Society. Those donations do not reduce the costs it charges its patients for services. Ex.320, AC3088; Tr.p.291,L.24-p.292,L.2, p.310,L.24-p.311,L.5; Tr.p.480,LL.2-7.

Finally, Society claims it provides certain benefits to its patients and the community, including scholarships to some employees, payroll in rural areas, health clinics, newsletters on aging, and offering meeting space in its facilities. As the Idaho Supreme Court explained in *Evangelical Lutheran Good Samaritan Society v. Bd. of Equalization of Latah County*, Society's "good intentions" are not enough to satisfy the requirements of a charitable property tax exemption. 119 Idaho at 132, 804 P.2d at 305. Moreover, "an incidental benefit bestowed upon a community does not constitute a public benefit for tax exemption purposes." *Id.* (citation omitted). Based on the above, Society's functions are not charitable, Society is only nominally supported by donations, and Society does not provide a general public benefit. Society fails these factors.

ii. *Society's Income Received Produces a Profit*

Society also fails the *Sunny Ridge* factor of whether the income received by the organization produces a profit. Society's excess revenue over expenses was \$21,321,000, \$23,320,000, and \$710,000 in years 2011-2013, respectively. Tr.p.752,LL.9-19; Ex.349A. Boise Village's profits during those years were \$537,513, \$1,651,289, and \$946,010. Ex.320, AC3088; Tr.p.311,LL.11-17, p.773,L.5-p.774,L.8. The evidence established unequivocally that Society's income produces a profit.

Society distorts this element by claiming it does not have a profit motive. It supports such argument by attempting to distinguish Society from a for-profit nursing home, and points to the testimony of Ada County's expert, Van Moore, that for-profit nursing homes distribute profits to shareholders, members or owners (and not to another charitable organization), or might sell a facility for a profit. Society further notes that according to its Restated Articles, "no part of the profits or net income of the Society shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private shareholder or individual."

The correct *Sunny Ridge* factor is "whether the income produces a profit." *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. Moreover, Society's assertion that its profits are not distributed to shareholders is irrelevant and overlooks the fact that Society's income indeed produces a profit. In addition, Society is similar to the corporation in *Housing Southwest* in which "[n]o directors or officers may receive any part of the earnings of the corporation." See *Housing Southwest*, 128 Idaho at 336, 913 P.2d at 69. Notwithstanding that corporation's non-profit status, the corporation in *Housing Southwest* was not charitable for purposes of a property tax exemption. In addition, Mr. Moore's testimony further established that for-profit nursing



homes do not always distribute profits to shareholders, but may retain the profits within the corporation to invest in the future. Tr.p.736,L.7-10.

Finally, Society points out that it is a 501(c)(3) corporation for federal income tax purposes. The corporations in both *Housing Southwest* and *Community Action* were also 501(c)(3) corporations, and they did not qualify for a charitable property tax exemption. See *Housing Southwest*, 128 Idaho at 336, 913 P.2d at 69; and *Community Action*, 138 Idaho at 84, 57 P.3d at 795. For all of the above-stated reasons, Society fails this element.

iii. *Recipients of Society's Services are Required to Pay for the Assistance They Receive, and These Services Are Not Based on Need*

Society requires payment for its services, and these services are not based on need. Boise Village charges all of its patients for skilled nursing care, and its patients are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25; Ex.320, AC3088. In addition, the rates charged at Boise Village are similar to other nursing facilities in Ada County. Ex.301,p.37; Ex.320, AC3088;Tr.p.637,LL.4-12;Tr.p.311,LL.11-17. As the Idaho Supreme Court explained, “there is nothing charitable in providing [a service] at the same or comparable rates as ...available from the private sector or commercial retirement centers.” *Evangelical Lutheran Good Samaritan Society v. Bd. of Equalization of Latah*, 119 Idaho at 131, 804 P.2d at 304.

In claiming that it is entitled to anticipate payment for its services, Society points to Mr. Moore’s testimony that in order for a non-profit facility to maintain viability, it must operate in a workmanlike manner, including looking after its receivables, admissions, and care. Mr. Moore further testified: “You have to have money from someplace.” Tr.p.717, L.9.

In this case, that money comes from charging for services. As explained above, Society is only nominally supported by donations. During 2011-2013, approximately 96% of Society’s operating revenue came from Society’s housing and services revenue. Tr.p.754,L.20-p.756,L.24;

Ex.349B; Tr.p.758,LL.4-20. If a patient does not personally pay, Boise Village seeks payment from either the government or family. Tr.p.278,LL.2-7.

Not only does Society require its patients to pay for the assistance they receive, its services are not based on need. Boise Village does not have a sliding fee scale. Tr.p.291,LL.5-7. In addition, Brian Davidson, Boise Village's administrator, testified he is not aware of Boise Village ever admitting a patient knowing he or she was never going to pay. Tr.p.299,LL.17-25. The four "charitable allowances" given at Boise Village during 2012 and 2013 were granted only after the patient was admitted, services were provided, a bill was incurred, and Society had followed all of its collection policies. Tr.p.295,L.17-p.299,L.1, p.303,LL.8-25; Ex.50, GSS1025. There was no evidence that Boise Village provided any "charitable allowance" at the time of admission. Because Society requires patients to pay and its services are not based on need, Society also fails these two elements.

#### iv. *Remaining Elements*

The remaining *Sunny Ridge* elements are the stated purposes of the organization's undertaking and to whom the assets would go upon dissolution of the corporation. Society's stated purposes are likely charitable for purposes of Idaho Code § 63-602C, although it does not function like a charitable organization.

Society's Restated Articles of Incorporation provide that upon dissolution, Society's assets would be distributed to a non-profit organization. Ex. 4, p. AC 7-8. Society contrasts this with a for-profit corporation. It further points to Mr. Moore's testimony that when a for-profit nursing home dissolves, its remaining funds are distributed to the owners, not another charitable organization.

The fact that Society's assets would be distributed to a non-profit organization is not dispositive of the *Sunny Ridge* analysis. In *Housing Southwest*, the corporation's articles of incorporation similarly provided that upon dissolution, any surplus assets must be distributed to "like non-profit corporations." 128 Idaho at 35; 913 P.2d at 68. Nonetheless, the Court in *Housing Southwest* concluded that the corporation was not a charitable organization for purposes of a property tax exemption.

In conclusion, Society has not satisfied almost all of the *Sunny Ridge* factors. It did not establish evidence "so specific and certain as to leave no room for doubt" that it is a charitable organization. *Evangelical Lutheran Good Samaritan Soc'y v. Bd. of Equalization of Latah County*, 119 Idaho at 129, 804 P.2d at 302. Because Society is not a charitable organization, it is not entitled to a charitable tax exemption.

**C. Boise Village Is Not Used Exclusively for Qualifying Purposes; Rather, Boise Village is Used for Commercial and Business Purposes**

Even if Society could prove that it is a charitable or religious organization, it does not qualify for a property tax exemption. Property must be used *exclusively* for religious, educational, or recreational purposes or activities to qualify for a religious tax exemption. See Idaho Code §63-602B. To qualify for a charitable tax exemption, property must be used *exclusively* for charitable purposes. See Idaho Code § 63-602C. Property used for business purposes is not eligible for a tax exemption and shall be taxed as any other property. See Idaho Code §§ 63-602B and 63-602C. Here, Boise Village is not used exclusively for qualifying purposes; rather, it is used for business and commercial purposes. As such, Boise Village it is not eligible for a tax exemption.

**i. Boise Village is Not Used Exclusively for Charitable, Religious, Educational, or Recreational Purposes.**

Boise Village is used principally for skilled nursing and not exclusively for charitable, religious, educational, or recreational purposes or activities. Tr.p.127,LL.12-25; p.307,LL.4-9, ADA COUNTY'S RESPONSE TO SOCIETY'S CLOSING ARGUMENT AND UPDATED FINDINGS OF FACT AND CONCLUSIONS OF LAW – PAGE 11

p.483,LL.23-25; Ex.103, GSS2599; Ex.319, AC2222. Boise Village is a skilled nursing facility that administers skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. Ex.319, AC2222; Tr.p.127,LL.12-25, p.152,LL.4-6, p.307,LL.4-9. It employs nurses and provides therapies. Tr.p.151,LL.14-21; p.178,L.18-p.179,L.13; p.188,LL.9-12; p.307,LL.7-12; Ex.53. Boise Village also provides patients with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area, where meals are served three times a day. Tr.p.152,LL.4-6; p.179,L.20-p.180,L.6; p.181,LL.2-7; Ex.45A. It also uses the property for many other uses that are not charitable, religious, educational, or recreational.<sup>3</sup> "Although the practice of charity, of kindness to other persons and in particular to the aged, and the practice of all of the virtues are acts encouraged by religious organizations generally, it cannot be said this is a religious purpose within the commonly accepted definitions of the word 'religious.'" *Yakima First Baptist Homes v. Gray*, 82 Wn.2d 295, 302, 510 P.2d 243, 247 (1973).

The manner in which Boise Village operates also shows that its use is not exclusively charitable, religious, educational, or recreational. Boise Village charges all of its patients for care and its patients are required to pay. Tr.p.277,L.23-p.278,L.1, p.311,L.18-25; Ex.320, AC3088. Brian Davidson, the Boise Village administrator, testified he is not aware of Boise Village ever admitting a patient knowing he or she was never going to pay. Tr.p.299,LL.17-25. It also charges market rates and collects against patients who do not pay.

Boise Village is a skilled nursing facility and the principal use of this property is skilled

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<sup>3</sup> These non-qualifying uses include Bingo, newspaper socials, trivia games, cooking, board games, entertainment, music therapy, birthday parties, Super Bowl party, Mardi Gras parade, July 4<sup>th</sup> BBQ and fireworks, trick or treat with preschool children, and other events. Ex.49,p.3; Tr.p.190,L.21-p.191,L.1. Boise Village has a TV room and library where patients watch TV, check out books, do puzzles, and access the internet. Tr.p.182,LL.16-23. Outside groups perform for patients in the dining area and in Eagle House and Harbor Care units. Tr.p.181,LL.2-7, p.185,LL.8-18.

nursing. Boise Village is not used exclusively for charitable, religious, educational, or recreational purposes or activities. While some religious activities<sup>4</sup> may take place, Boise Village is not used exclusively for those purposes. Boise Village, therefore, does not qualify for a charitable or religious property tax exemption.

ii. *Boise Village is Used for Business and Commercial Purposes.*

Society is not entitled to a charitable or religious tax exemption because Boise Village is used for a business and commercial purpose. Idaho Code §§ 63-602B and 63-602C. Society asserts that it was not organized for commercial purposes, and that it does not operate for pecuniary gain nor contemplate distribution of gains or dividends to its members or directors. Notwithstanding such facts, the evidence established that Boise Village is used for business purposes.

According to its staff, Boise Village is a “business open to the public” and “a self-sustaining business entity.” Tr.p.656,LL.2-21. Boise Village charges all of its patients for skilled nursing care, and its patients are required to pay. Tr.p.277,L.23-p.278,L.1, p.637,LL.4-12, p.311,LL.18-25; Ex.301,p.37; Ex.320, AC3088. It screens its patients to ensure they are going to pay the bill, and it considers people’s ability to pay in its admission decisions. Tr.p.276,LL.12-21, p.636,LL.2-7; Ex.339, AC1157 and 1160. In fact, over 99% of Boise Village’s revenue came from charging people for services. Tr.p.793,LL.20-24. Boise Village charges rates similar to other nursing facilities in Ada County. *Id.*; Ex.320, AC3088; Tr.p.311,LL.11-17. Its patients are charged rates similar to other nursing homes. Ex.301; Ex.320, AC3088; Tr.p.277,L.23-p.278,L.1, p.311,L.18-25, p.637,LL.4-12. It does not admit people

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<sup>4</sup> All skilled nursing facilities in Idaho provide religious activities for their patients. Tr.p.372,L.22-p.373,L.15, p.598,L.25-p.600,L.12. Tr.p.601,L.13-p.603,L.3. In fact, if they fail to do so they will be cited and determined to not be compliant. Tr.p.601,L.13-p.603,L.3.

knowing they are not going to pay. *Id.*; Tr.p.299,LL.17-25, p.637,LL.4-12; Ex.301,p.37. Boise Village charged patients more than \$100,000 per year in 2012 and 2013. Tr.p.766,L.12-18, Tr.p.785,LL.11-25; p.787,L.7-p.788,L.13; Ex.349F, 349JK, & 349K. In 2011-2013, Boise Village earned a profit of \$537,513, \$1,651,289, and \$946,010, respectively. Tr.p.773,L.5-p.774,L.8.

Like for-profit skilled nursing facilities, Boise Village requires its patients to sign a contract requiring prompt payment for care. Ex.105;Tr.p.628,L.14-p.629,L.11, p.679,L.24-682,L.10; Tr.p.629,LL.15-20, p.632,LL.1-3. Under the agreement, Boise Village imposes late payment charges of 10% per year when accounts are not paid timely, and patients will be liable for collections costs on past due accounts, including attorney fees and court costs. Tr.p.633,L.22-p.634,L.21; Ex.105, GSS9. Boise Village also reserves the right to transfer or discharge a patient for failure to pay. Tr.p.634,L.22-p.635,L.17; Ex.105, GSS10.

Boise Village's collections process is also similar to for-profit skilled nursing facilities. Tr.p.685,L.24-p.690,L.19. According to Society, the proper and timely collection of all accounts receivable is an important business function. Ex.339, AC1153; Tr.p.275,L.23-p.276,L.4. Society sends collection letters to patients when accounts are 10, 30, and 60 days overdue. Tr.p.641,L.9-p.644,L.16. When an account is 60 days past due, Society's policy states it will send a certified letter with a notice of transfer or discharge. Ex.339, AC1166; Tr.p.280,L.19-p.281,L.11. Society also hires attorneys to write demand letters stating that if the account is not paid, litigation may be filed against the patient. Tr.p.644,LL.17-24. Society's collections policy further provides for legal action to collect on overdue accounts. Ex.339, AC1167; Tr.p.281,LL.20-25. Boise Village has, in fact, filed litigation in Ada County to enforce an admission agreement and to collect payment. Tr.p.649,L.13-p.651,L.9; Ex.328A, GSS1262-63;

Ex.347B. Society will even create a payment plan with patients in order to collect as little as \$10 per month on overdue accounts from people who cannot afford to pay more. Tr.p.645,LL.14-25; Tr.p.655,LL.5-20. This evidence of Boise Village's admission practices and collections procedures, along with the fact that Boise Village charges market rate for its services, relies on government funds, and derives a profit, establishes that Boise Village is used for business purposes.

Furthermore, Society's Vice President of Finance even testified that the "[n]ational campus is, essentially, a bank." Tr.p.469,LL.21-24. During 2011-2013, Society took money from Boise Village to assist its facilities that were having financial problems, to develop new locations, and to replace buildings at other locations.<sup>5</sup> Tr.p.467,L.7-p.469,L.14; Ex.28, GSS2814. In its 2012 property tax exemption application, Society even stated that all of Boise Village was used for a business or commercial purpose 365 days a year. Tr.p.312,L.3-p.313,L.13; Ex. 320, AC3091-92.

In support of its claim to a tax exemption, Society states that its use of the Boise Village has not changed since 1958. Society further notes that it was granted a property tax exemption on Boise Village until 2012 when the exemption was denied.

A property tax exemption under Idaho Code § 63-602B and § 63-602C is determined on an annual basis. See Idaho Code § 63-602(3) (stating that "[a]ll exemptions from property taxation claimed shall be approved *annually* by the board of county commissioners[.]") (emphasis added).

As such, a county is not bound by its prior determinations. The Idaho Supreme Court explained:

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<sup>5</sup> Prior to 2013, Society took \$1,386,530.80 from Boise Village for these purposes. *Id.* In 2013, Society consolidated the cash from all of its facilities into the Society's business account; Boise Village had \$5,537,145.46 in that account as of December 31, 2013. Tr.p.468,LL.10-12; Tr.p.469,LL.15-24. Boise Village's profit goes into the Society's business account and Society uses the funds in this account to invest in new locations and help Society's other centers that are struggling financially. Tr. p.470,L.23-p.471,L.15, p.495,LL.12-22.

“[T]he Board [of Equalization] must determine, on a yearly basis, whether an organization is exempt from property tax.” *Community Action*, 138 Idaho at 85, 57 P.3d at 796. Therefore, the county board of equalization in that case was justified in re-examining the properties that were previously granted a property tax exemption and revoking the exemption. *Id.* Likewise, in this case Ada County must determine on an annual basis whether Society is eligible for a tax exemption for Boise Village, and it is not bound by its prior determinations. The evidence in this case shows that Ada County was correct in denying the tax exemptions.

Boise Village is used for business and commercial purposes and, therefore, it does not qualify for a charitable or religious property tax exemption.

iii. *A Skilled Nursing Facility is Not a Residence Hall, Dormitory, or Meeting Room or Hall.*

Society claims that even if Boise Village is used for a business or commercial purpose, it qualifies for a partial property tax exemption. It asserts the rooms used by its patients, the dining area, library, activity room, and sitting rooms should be exempt as a residence hall, dormitory, recreational facility, and/or meeting room or hall. Society Closing Argument at 22. The testimony and exhibits show those portions of Boise Village are part of a skilled nursing home and not a residence hall, dormitory, recreational facility, meeting room or hall.

It is important to first define what the terms “residence hall,” “dormitory,” “meeting room or halls,” and “recreational facilities” mean in these statutes. “When an ambiguity arises in construing tax exemption statutes, the court must choose the narrowest possible reasonable construction.” *Corp. of the Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 416, 849 P.2d 83, 86 (1993). “Tax exemptions exist as a matter of legislative grace, epitomizing the antithesis of traditional democratic notions of fairness, equality, and uniformity.” *Id.* “Therefore, they are to be construed according to the ‘strict but reasonable’



rule of statutory construction.” *Id.* at 429. “Constrained by the doctrine of strict constructionism,” this court should “choose the most narrow, yet reasonable, definition of the disputed terms.” *Roman Catholic Diocese of Boise*, 123 Idaho at 429, 849 P.2d at 102 (1993). “[T]ax exemptions are strictly construed against the taxpayer” and “are narrowly construed, following the ‘strict but reasonable’ rule of statutory construction.” *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 206, 108 P.3d 349, 353 (2005).

The terms “dormitory”<sup>6</sup> and “residence hall”<sup>7</sup> are most commonly used to refer to college and university housing provided to students.<sup>8</sup> A “meeting room”<sup>9</sup> is a room used for meetings. A “hall”<sup>10</sup> is a large room or building that is used for meetings, entertainment, or similar activities. Using those definitions, it must then be determined whether Boise Village meets these definitions.

Society uses Boise Village for many purposes that do not typically occur in dormitories, residence halls, recreational facilities, or meeting rooms or halls. Boise Village employs

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<sup>6</sup> “Dormitory” is defined as: a. “a building on a school campus that has rooms where students can live”; b. “a large room with many beds where people can sleep”; c. “a room for sleeping; *especially*: a large room containing numerous beds”; d. “residence hall providing rooms for individuals or for groups usually without private baths”; e. “a residential community inhabited chiefly by commuters.” Merriam-Webster, <http://www.merriam-webster.com/dictionary/dormitory> (last visited January 14, 2015).

<sup>7</sup> “Residence hall” does not appear to be separately defined. However, under the definition of “dormitory” it is clear that a residence hall is a particular kind of dormitory providing rooms for individuals or for groups usually without private baths.

<sup>8</sup> “Student dormitory or residence hall” is defined in Idaho Code § 18-3309.

<sup>9</sup> “Meeting room” is not specifically defined in the dictionary. However, “room” has several definitions and when used as “meeting room” it clear that this means “a part of the inside of a building that is divided from other areas by walls and a door and that has its own floor and ceiling” and that is used for meetings. Merriam-Webster, <http://www.merriam-webster.com/dictionary/room> (last visited January 14, 2015).

<sup>10</sup> “Hall” has several definitions but the most likely definitions intended by the Idaho legislature are “a large room or building for meetings, entertainment, etc.” or “a building used by a college or university for some special purpose”. Merriam-Webster, <http://www.merriam-webster.com/dictionary/hall> (last visited July 10, 2014).

registered nurses, licensed practical nurses, and certified nursing assistants to administer skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. Tr.p.151,LL.14-21, p.152,LL.4-6, p.307,LL.7-12. Boise Village also provides therapies, including occupational therapy, physical therapy, speech therapy, and restorative therapy. Tr.p.151,LL.20-21, p.178,L.18-p.179,L.13, p.188,LL.9-12; Ex.53. In addition, Boise Village provides patients with housekeeping, laundry services, and environmental services, and has a kitchen and main dining area, where meals are served three times a day. Tr.p.152,LL.4-6, p.179,L.20-p.180,L.6, p.181,LL.2-7; Ex.45A.

Boise Village is not a dormitory or residence hall providing housing to students. It is a skilled nursing facility. Society charges its patients at Boise Village for much more than renting a room. During 2012 and 2013, Boise Village charged its patients hundreds of dollars per day for the care provided.<sup>11</sup> These patients were charged more than \$100,000 per year during 2012 and 2013. If Boise Village was only used for housing patients, like a residence hall or dormitory, it would not be able to charge such enormous fees.

Society claims the TV room, library, main dining hall, and dining rooms in some units are "meeting rooms or halls, auditoriums, club rooms, or recreational facilities." Society's Updated Findings of Fact at 24-25. The TV room and library where patients have internet access, can check out library books, read books, do puzzles, and sit and watch TV are not meeting rooms or halls, auditoriums, club rooms, or recreational facilities. Tr.p.182,LL.16-23. The main dining

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<sup>11</sup> Medicaid paid Boise Village \$290.77 and \$295.23 per patient per day in 2012 and 2013, respectively. Tr.p.787,L.7-p.788,L.13; Ex.349K. This includes both the Medicaid daily rate and net upper payment limit payment. Tr.p.768,LL.15-18. This is more than the rate Boise Village charged its private pay patients. *Id.* These Medicaid payments totaled \$106,131.05 and \$107,758.95 per patient per year in 2012 and 2013, respectively. Medicare payments to Boise Village were even higher than the Medicaid payments, totaling \$149,474.80 and \$144,737.10 per patient per year in 2012 and 2013, respectively. Tr.p.785,LL.11-25; Ex.349J.

hall is used to serve meals “three times a day, breakfast, lunch, and supper.” Tr.p.181,LL.2-9. The dining rooms located in the Eagle and Harbor Care units are, of course, used for dining. Tr.p.173,LL. 13-14,p.185,LL.5-16. While some activities may occur in the main dining hall and other dining rooms, they are used to serve meals to the patients and are not meeting rooms or halls, auditoriums, club rooms, or recreational facilities.

Finally, it is important to note that residence halls, dormitories, and meeting rooms were qualifying uses in 1990 when the Idaho Supreme Court held that Society’s use of its facility in Moscow did not qualify for a property tax exemption. *Evangelical Lutheran Good Samaritan Society*. 119 Idaho at 130, 804 P.2d at 303. In that case, the Idaho Supreme Court found that Society’s use of its Moscow retirement home did not qualify for a tax exemption.

Boise Village is not used for qualifying purposes and, therefore, Society is not entitled to a charitable or religious tax exemption.

## II.

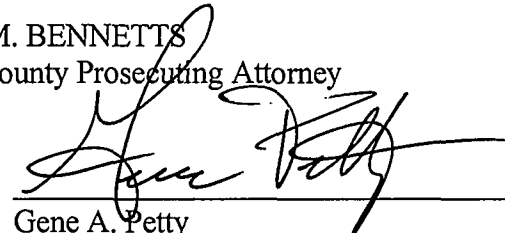
### CONCLUSION

In conclusion, Society is not a charitable organization under the *Sunny Ridge* analysis. Society did not meet its burden of showing that it uses Boise Village exclusively for qualifying purposes such that it is exempt from paying property taxes. Instead, Boise Village is used for business and commercial purposes. “The basis of tax exemptions is the accomplishment of a public purpose and not the favoring of particular persons or corporations at the expense of tax payers generally.” *Housing Southwest*, 128 Idaho at 339, 913 P.2d at 71. For the reasons stated above, the decisions of the Idaho Board of Tax Appeals and the Ada County Board of Equalization denying a charitable or religious property tax exemption should be affirmed.

DATED this 21<sup>st</sup> day of January, 2015.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:

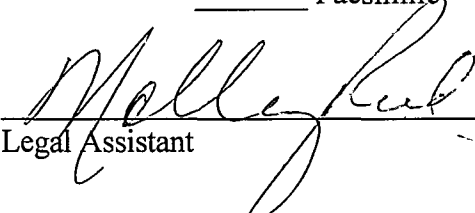
  
Gene A. Petty  
Deputy Prosecuting Attorney

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of January, 2015, I served a true and correct copy of the foregoing ADA COUNTY'S RESPONSE TO SOCIETY'S CLOSING ARGUMENT AND UPDATED FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following person(s) by the following method(s):

Phillip S. Oberrecht  
Attorney at Law  
950 West Bannock St. Ste 950  
Boise, Idaho 83701

☒ Hand Delivery  
☐ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

  
Legal Assistant

MAY 05 2015

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with

Case No. CV OT 1312345

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**INTRODUCTION**

The Evangelical Lutheran Good Samaritan Society, Inc. ("Good Samaritan Society") is a federally tax exempt 501(c)(3) corporation. It has provided skilled nursing care to the infirm, aged, ill and physically and developmentally disabled for decades in Ada County at its facility in Boise, Idaho ("Boise Village"). Currently before this Court is an appeal from the Idaho Board of Tax Appeals which affirmed Ada County's denial of Boise Village's application for a state property tax exemption under I.C. §§ 63-602B and 63-602C in 2012 and 2013. Prior to 2012, Boise Village enjoyed property tax exemptions since its inception in 1958.<sup>1</sup> Although it is undisputed that Good

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<sup>1</sup> In 2004, Ada County denied Boise Village's application for a property tax exemption. However, its denial was reversed by the Idaho Board of Tax Appeals, concluding Boise Village was entitled to an exemption under I.C. § 63-602C. *In re: Evangelical Lutheran Good Samaritan Society from the Decisions of the Board of Equalization of Ada County for Tax Year 2004, 2005* WL 1240634 (Apr. 14, 2005).

Samaritan Society has operated Boise Village in the same manner and for the same purposes since 1958, the Idaho Board of Tax Appeals concluded that Boise Village is no longer entitled to the exemptions for the years in question.

Following a trial de novo, based on the applicable law, considering all the evidence, and after weighing the credibility of the numerous witnesses presented, this Court concludes that Good Samaritan Society is a charitable organization that utilizes Boise Village exclusively for charitable purposes, i.e., the care and treatment of the disabled, infirm and those needing skilled nursing care because of advanced age. The revenue generating business conducted on the property is directly related to the Good Samaritan Society's charitable purposes and, as such, Boise Village is entitled to a charitable exemption under I.C. § 63-602C. This Court also concludes Good Samaritan Society is a religious organization and entitled to a partial religious exemption under I.C. § 63-602B for portions of Boise Village.

### **PROCEDURAL BACKGROUND**

In 2012, Good Samaritan Society applied for charitable and religious property tax exemptions for Boise Village, Parcel No. S0629347040. Ada County denied the application and Good Samaritan Society appealed to the Idaho Board of Tax Appeals. The Idaho Board of Tax Appeals held a hearing and issued a decision holding Boise Village did not qualify for a charitable or religious property tax exemption. Good Samaritan Society then appealed to the district court. Subsequently, Good Samaritan Society applied for charitable and religious tax exemptions for Boise Village for 2013 that were also denied by Ada County. Good Samaritan Society appealed that denial to the district court and the two cases were consolidated. A bench trial was held in this case on November 10, 12, 13, 14, 17 and 19 of 2014. Following extensive post-trial briefing, the Court took the matter under advisement on January 22, 2015.

## **STANDARD OF REVIEW**

This case was heard at a *de novo* bench trial pursuant to I.C. § 63-3812(c). As such, this Court makes its own findings based on the evidence presented during trial as if it were an original proceeding in this Court and without regard to the findings reached by the Idaho Board of Tax Appeals. *Idaho Youth Ranch, Inc. v. Ada Cnty. Bd. of Equalization*, 157 Idaho 180, 335 P.3d 25, 27 (2014). Good Samaritan Society has the burden of proving that it qualifies for a property tax exemption based upon a preponderance of the evidence. I.C. §§ 63-511(4) and 63-3812(c). This Court is required to issue its decision in writing, including a concise statement of facts found by the court and conclusions of law reached. *Id.*

## **FINDINGS OF FACTS**

1. Prior to 2012, Parcel No. S0629347040, which was consolidated by Ada County in 2012 from three parcels, S0629347000, S0629346950, and S0629347010, was declared exempted from property taxes by Ada County on both charitable and religious grounds. After Ada County denied the exemptions for the parcel in 2012 and 2013, Boise Village paid the tax for both years under protest.
2. Good Samaritan Society, which operates Boise Village, was organized as a religious and charitable nonprofit corporation. It is incorporated under the laws of North Dakota. In 2012 and 2013, it was recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and as a public charity pursuant to Section 509(a)(2). It has authority to conduct business in Idaho.
3. Good Samaritan Society's Restated Articles of Incorporation ("Articles") specifically state its three purposes:
  - To share God's love in word and deed, believing that in Christ's love, everyone is someone.

- To provide shelter and supportive services to older persons and others in need.
- To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

These stated purposes within the Articles are also incorporated into Good Samaritan Society's mission statement and vision statement.

4. Good Samaritan Society is organized solely for nonprofit purposes and does not operate for pecuniary gain. Its property, assets, and net income are dedicated to charitable and religious purposes and no part its net income is distributed to or inures to the benefit of any private shareholder, member or individual. Good Samaritan Society's net operating revenue is reinvested into its mission, in particular, its numerous facilities across the nation.
5. The Articles specify that, upon dissolution, Good Samaritan Society assets must be distributed to nonprofit social ministry organizations as designated by the Evangelical Lutheran Church in America ("ELCA") and The Lutheran Church – Missouri Synod ("Missouri Synod").
6. Good Samaritan Society was incorporated on September 29, 1922 as a Christian institution to care for disabled children. It was founded in part by Reverend August "Dad" Hoeger, a Lutheran parish pastor in North Dakota, who later professed that "the whole Good Samaritan Society started in the heart of God; that it was His good will that His old people should have Christian care, and so He put into the hearts of men that they should go and do His good pleasure."
7. Good Samaritan Society was started with money remaining from a plea in a newsletter to help a young North Dakotan boy with polio. After the boy received treatment in Missouri, Dad Hoeger, with input from parishioners and Lutheran pastors, realized the need for a home



to care for disabled children. He used the remaining funds to start the Good Samaritan Society to do this work, opening the first home in 1923 in Arthur, North Dakota. The first residents of the Arthur home included not only “crippled” children, but also mentally and physically disabled adults.

8. The name chosen for the organization was a direct reference to the well-known biblical parable of the Good Samaritan as depicted in the Gospel of Luke, 10:25-37. This parable, which exalts the importance of stopping and assisting people who have been wounded along life’s road and ignored by society, is a central symbol of Good Samaritan Society. Good Samaritan Society’s defining purpose, ministry and mission is to implement the example set by the Good Samaritan; an objective which continues uninterrupted today and is evident in the operation of Boise Village.
9. Soon after opening its first home in Arthur, North Dakota, Good Samaritan Society began receiving requests from communities throughout the Midwest to begin similar homes for the disabled. In 1929, Good Samaritan Society began its expansion out of Arthur and today has approximately 240 facilities in 24 states.
10. Good Samaritan Society is affiliated with the two largest denominations of the Lutheran Church, the ELCA and Missouri Synod. The ELCA has formally recognized that its own mission and the mission of the Good Samaritan Society “are fully integral to the achievement of God’s mission.” Similarly, the Missouri Synod has recognized the Good Samaritan Society as a Recognized Service Organization. The Missouri Synod’s recognition means Good Samaritan Society is a ministry “through which the mission of the church becomes the people of God responding in the name of Christ to those ‘who thirst, are naked, were sick, lonely, and in need of comfort.’”

11. From its beginning, Good Samaritan Society has been a healthcare ministry dedicated to providing care to the disabled, sick, needy and elderly. Good Samaritan Society exists to “take care of the whole person, body and soul.” According to Rev. Hoeger, “[t]he body is important and we should take the best care of it as possible, but if that is all we do, we fall short of our God-given duty.” Good Samaritan Society’s founding principles and purposes have remained the same since its foundation in 1922. Today, the ministry is carried out daily in Good Samaritan facilities such as Boise Village. Good Samaritan Society has as its “Hallmark Values” an approach in caring for its residents that is “Christ-centered, resident-centered, staff-centered, and community-centered.”
12. The mission of Good Samaritan Society strives to demonstrate its belief to its residents, clients, families, and communities that “In Christ’s Love, Everyone Is Someone.” This principle is taken to heart and is more than just a slogan to Good Samaritan Society.
13. Affiliation with a Christian church is required of Good Samaritan Society leadership. Manager board members, Corporate Officers, Directors of Operations, Administrators/Executive Directors/Executive Managers, Executive Leadership managers, and all other voting members are required to be active members of a Christian Church. Nonemployee Board members are required to be active members of a Lutheran Church, as well as the President, Executive Vice President, and certain members of the Executive Leadership for Workforce Systems, Mission Effectiveness, and Operations Systems. Four of the Board positions are designated for approval by the ELCA.
14. The Administrator of each facility, including Boise Village, is required to be an active member of a Christian church and expected to serve as the spiritual leader of the facility. This spiritual leadership position requires making spiritual care of the residents an essential

part of all activities and encouraging staff to meet the spiritual needs of the residents. Each Administrator is required to advance the four Hallmark Values of Good Samaritan Society by drawing on various spiritual programs and practices. These programs and practices include Good Samaritan Society Way, the STAR ministry, daily devotions, grace at meals, singing from hymnals, bible studies, worship services, writing for and reading spiritual publications, prayer before all meetings, and local clergy involvement.

15. Good Samaritan Society Way ("The GSS Way"), and STAR Ministry are Good Samaritan Society's main spiritual resources used for staff and residents. These programs are designed as follows:

- a. The GSS Way is a training program designed to teach and encourage the Good Samaritan Society's core values to each Good Samaritan Society staff member. The goal of The GSS Way is to enhance the quality of resident care by ensuring that each Good Samaritan Society community is a place where God's love is part of every daily encounter. During the training, each staff member is encouraged to visualize his/her work through what it calls the "three Os," Obligation, Opportunity, and Outcome. "Our Obligation is to share God's love in word and deed." "Our Opportunity is to touch people's lives by offering a profound concept of wellbeing that embraces mind, body and soul." "What do we hope to achieve as the Outcome of our collective work here at the Good Samaritan Society? That everyone feels loved, valued and peaceful." The GSS Way also focuses on what it asserts are the eight traits of Jesus Christ: Compassion, Joy, Acceptance, Love, Honesty, Perseverance, Humility and Courage.
- b. The STAR Ministry is a Christian teaching program to encourage the staff and residents to provide compassionate ministry to each other. STAR is an acronym which stands for Stop Along the Road, which refers to Jesus' parable of the Good Samaritan as well as the story of Jesus stopping for Bartimaeus, a blind beggar, in the Gospel of Mark. The STAR ministry suggests four actions that can be taken each day to bring hope and help to all people in need: Stopping, Listening, Healing, and Affirming. The three primary goals of the STAR Ministry purport to be: (1) encouraging all staff members and residents to understand their work and their life within the Good Samaritan Society community in terms of the whole of life's journey, including physical, mental, emotional, social, vocational and spiritual; (2)

providing guidelines for appropriate and compassionate ministry between Good Samaritan Society community members, including but not limited to the sharing of the Christian faith with others; and (3) offering practical training, encouragement, affirmation, and models for Good Samaritan Society community members in the sharing of God's love.

16. Good Samaritan Society also addresses the spiritual needs of its residents through its spiritual ministries policies and procedures implemented at each of its facilities. These include:

- a. Providing residents with the opportunity and encouragement to attend a weekly worship service "in a Christian setting." Good Samaritan Society does not require each resident to attend a Lutheran service, or any other service for that matter, but encourages each to maintain ties with his or her own church.
- b. Providing daily devotions to help guarantee each resident is provided with the opportunity for daily reflection and prayer. These devotions are presented by trained staff members and include scripture, a Christ- or cross-centered theme, prayer, and a song if time permits. Good Samaritan Society provides each facility monthly resources to assist with these devotions.
- c. Offering prayers at all meals and before all meetings with staff, family, and residents. Good Samaritan Society has resources available for prayers, including table prayer sheets for the dining rooms and other selected prayers.

17. Good Samaritan Society's spiritual ministry is supported nationally by its Vice President for Spiritual Ministries and Vice President for Mission Effectiveness and Senior Pastor, Rev. Greg Wilcox, and his staff. Rev. Wilcox is the grandson of the founder Rev. Hoeger. He belongs to the Lutheran Services in America as a senior mission leader. Rev. Wilcox designed the ministry training and spiritual program materials currently used by the Good Samaritan Society. The Mission Effectiveness team, of which Rev. Wilcox is Vice President, includes two other ordained ministers. The team

incorporates Society-wide functions to measure mission effectiveness to ensure the Society is effective in “sharing God’s love” in the midst of the work it does in its facilities. The team also puts on workshops and retreats to encourage staff members to weave Good Samaritan Society’s mission into the work they do each day. The Society seeks to “reflect profoundly a sense of Christian community in which everyone experiences, every day, a sense of God’s love for them, residents, staff, members, visitors, volunteers, vendors, anybody coming in the door.”

18. Good Samaritan Society also advances its mission through Project Outreach, which is a collective name given to three mission partnerships. One partner is a senior home and soup-kitchen for poor and displaced people in Colombia. Another is a hospital in Bangladesh which emphasizes care for women and children. The third is a hospital in Zimbabwe which provides a wide variety of surgical and medical treatments, health programs, home-based care, and a nursing school. Good Samaritan Society provides prayer and very sustainable financial support for these facilities which comes from donations from the Society’s residents and staff. Also, residents and staff take part in mission trips to these facilities.

19. Good Samaritan Society strives to contribute to innovation in the area of aged and disabled care, making a concerted effort to expand its scope of services to include greater emphasis on alternatives to traditional long-term care facilities, including home health, senior housing and assisted living, sub-acute care, specialty units for persons with Alzheimer’s disease and therapy services. These projects are being developed to reduce health care costs and to meet the desire and need of the elderly, ill and disabled to stay in their own homes longer. Good Samaritan Society has invested in these programs,

through staff and research, for the benefit of the health care community and, ultimately, all people needing such service.

20. Recognizing the increasing role of technology in senior care, Good Samaritan Society has engaged experts and research universities and has invested in developing technology to help it meet the needs of its residents.
21. One of Good Samaritan Society's projects is the LivingWell@Home program, a service it helped develop that utilizes technology for remote patient monitoring. The various technologies are installed in an individual's home environment to monitor movement and provide ongoing data and remote care, thereby allowing the individuals more independence at a reduced cost from institutional care.
22. Boise Village is one of the many local campuses for Good Samaritan Society. Like the organization as a whole, Boise Village strives through its services to convey to its residents, residents' families, volunteers and the community its belief that "in Christ's love, everyone is someone."
23. Boise Village's skilled nursing facility is licensed for 127 beds and consists of five "neighborhoods" where the residents live, as well the meeting and activity rooms. Each of the five neighborhoods consists of at least 10 to 22 rooms dedicated for resident living quarters. Each resident is provided a bed in either a private or semi-private room. At the time of trial, the facility had approximately 97 residents and 160 staff members. All of the residents of Boise Village are unable to care for themselves and require 24 hour care, including skilled nursing care.
24. Boise Village's five "neighborhoods" consist of the Hoeger House, a special care unit that provides care for residents with major birth-related disabilities and similar long-

term care needs; Eagle House, a special long-term care unit for young adults with acquired brain injuries; Harbor Care, a special long-term care unit which treats residents who require a high level of care for symptoms associated with dementia; Syringa I, a short-term, sub-acute, post-hospitalization transitional care and therapy unit; and Syringa II, the traditional long-term unit at Boise Village, caring for those unable to return to living an independent life and needing on-going, long-term skilled nursing and other care.

25. The Eagle unit is unique to the Treasure Valley in that it is purposefully housed in a unit detached from the main campus to avoid overstimulation of its brain injured residents and ensure the best environment for their care. It has its own central activity area and dining area. Likewise, Harbor Care, the dementia care unit, has separate dedicated dining and activity rooms for these same reasons.

26. The property for which an exemption is sought is 65,801 sq. ft. The five neighborhoods comprise approximately fifty-two percent (52%) of the property. Approximately eleven percent (11%) is used for resident participation in activities and recreational opportunities. These rooms are also frequently made available free of charge for use by the community. The remaining 24,604 square feet are utilized for the chapel, chaplain's office, administration, therapy rooms, kitchen, laundry, and maintenance. The chapel and chaplain's office together are 861 sq. ft., which is approximately 1.3% of the property. The property also includes a green space to the west of the building that is utilized by the residents and their families to enjoy nature.

27. Boise Village's Administrator, Brian Davidson, is charged with, among other duties, overseeing the spiritual affairs of the facility. As required by Good Samaritan Society, Mr. Davidson is an active member of a local Christian church. Mr. Davidson

came to Boise Village looking to be able to serve in a skilled nursing facility that was committed to quality of care and focused on ministry. Mr. Davidson's duties include ensuring all of Good Samaritan Society's spiritual ministries policies and procedures are implemented at Boise Village. Mr. Davidson either begins all meetings in prayer or ensures a prayer or devotion is shared at each meeting<sup>2</sup>, and also oversees the noontime devotions and prayer. Additional duties include overseeing the GSS Way program at Boise Village and occasionally leading bedside memorial services. Good Samaritan Society provides Mr. Davidson with ongoing training and spiritual guidance.

28. Boise Village has a full time chaplain, Charles Spiedel, on staff, as well as a chapel on the premises. Reverend Spiedel, who has been with Boise Village since 2003, is an ordained minister, currently "under call" from the Eastern Washington-Idaho Synod of the ELCA. Rev. Spiedel was called to exercise the office of Chaplain as an ordained minister of "Word and Sacrament." According to Lutheran teachings and belief, this means that the Boise Village is a place where Word and Sacrament ministry are taking place—the proclamation of the Gospel and the administration of Holy Communion and Baptism.

29. Much like a pastor of a congregation, Rev. Spiedel is responsible for ministering to the spiritual care of Boise Village residents and staff, and is "on call" for this purpose seven days a week, twenty-four hours per day. His primary duties are to provide individual pastoral care for all residents and residents' family members and assuring appropriate worship and bible study opportunities are available for all residents, regardless of religious background.<sup>3</sup>

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<sup>2</sup> All meetings at Boise Village begin with a prayer.

<sup>3</sup> Boise Village is unique among local skilled nursing facilities in that it employs a full-time minister.



30. Rev. Spiedel's typical daily activities begin with offering mealtime prayers in each of the three dining units, followed by reading the daily devotional over the facility-wide intercom. He attends a mid-morning interdisciplinary meeting with administrative and nursing staff where he leads another devotional and offers a prayer. He then prepares for his sermons and bible studies for the week. He conducts three sermons every week for the residents, one in the chapel and two within the facility's brain injury unit and Alzheimer's unit. He also conducts bible study once a week for the residents. Rev. Spiedel conducts a music ministry once a week at the facility where he plays recordings of various hymns for the residents. He attends interdisciplinary care conferences for each of the individual residents to ensure the spiritual component of the care plan is being met. These conferences are commenced with a prayer.
31. Rev. Spiedel also conducts one-on-one spiritual work with Boise Village residents. When a new resident is admitted to Boise Village, Rev. Spiedel meets with the individual to determine his or her spiritual background, interests, needs and concerns and compiles a "spiritual profile" on the resident. The spiritual profile then becomes part of the resident's chart to disclose the spiritual needs and preferences to the caregivers. Rev. Spiedel typically prays with the residents at these meetings. If the resident is a member of a religious congregation, Rev. Spiedel contacts the pastor of that congregation to inform the pastor of the resident's new residence. After the initial meeting, he conducts follow-up meetings with the residents. Rev. Spiedel also attends to and provides hospice services to dying residents, shares scripture and prays with them.
32. Rev. Spiedel conducts "bedside memorials" for residents who have passed, involving not only the resident's family, but Boise Village staff as well. He performs

funeral services, baptisms, weddings and renewals of vows for residents and staff. Additionally, Rev. Spiedel has written a spiritual piece for Good Samaritan Society publications on public health.

33. Rev. Speidel is also responsible for coordinating with local religious denominations to ensure there are religious services regularly conducted in Boise Village's chapel for residents of all denominations, including Catholic, LDS, Protestant and Episcopal. Currently, there are approximately 17 denominations represented at Boise Village.
34. Boise Village uses a satisfaction survey as a tool to evaluate whether the residents' spiritual needs are being met. The surveys are presented to Rev. Spiedel for review and, depending on the responses, he makes adjustments in his attempts to fulfill the responding residents' spiritual needs.
35. The atmosphere and aesthetic of Boise Village speak clearly to its religious ministry. Symbols of the Christian faith appear throughout the facility. There are several pictures within the facility hallways depicting Christ and other Christian symbols as well as printed psalms and scriptures. At the entrance of the facility, there is a rock and fountain, with a scripture and a staff, depicting Moses when he struck the rock with his staff and water emerged. This fountain sculpture is designed to demonstrate to all entering the facility that Good Samaritan Society is a Christian organization and to convey the Society's belief that Christ's love flows out of the staff there as the water flowed out of the rock during the time of Moses to refresh his people. Good Samaritan Society's logo depicts a person embracing another with a Christian cross in the

background, symbolizing the Good Samaritan helping the wounded traveler along the road.

36. Boise Village's "Christocentric" approach in meeting its residents' healthcare, personal and spiritual needs differentiates it from other skilled nursing facilities. Likewise, unlike other skilled nursing facilities, the pervasiveness of prayer, the encouragement and practice of religious discussion among residents and staff, and the presence of religious artifacts throughout the facility lend Boise Village a unique religious atmosphere. This is recognized not only by residents and staff, but also by the members of clergy from varying denominations who routinely visit and minister to residents. Good Samaritan Society's strong Christian mission is carried forth not only through the care of residents, but through interactions among staff and volunteers, many of whom seek positions at Boise Village due to its emphasis on Christian care.

37. Boise Village provides a robust recreation and activities calendar for its residents. Volunteer and Activity Director, Sherri Ellis, and her staff meet with residents and their families to get to know them, determine their past interests, and what they are currently able to do physically and mentally. Ms. Ellis and her team then assess what activities will best benefit the resident. Among the activities provided are current events socials, bowling, swimming, attending football games, attending the Shakespeare festival, participating in melodrama, chair ballet and volleyball, dances, various games, art projects, Mardi Gras parties including decorating floats for an on-site Mardi Gras parade, cooking classes, fishing outings, Easter egg coloring, sing-alongs, piano recitals, beading, computer training, performances by Basque and Irish dancers, and numerous other activities.

38. Good Samaritan Society receives cash gifts from supporters nationwide. These donations are sometimes dedicated to specific types of equipment, property, or programs for Good Samaritan Society or simply provided in general for the use of Good Samaritan Society as it deems most appropriate to fulfill its mission (“Resource Development Revenue”). In 2012 and 2013, Good Samaritan Society received \$19,091,000 and \$21,515,000, respectively, in Resource Development Revenue.
39. Good Samaritan Society also receives donations of property and annuities. In 2012 and 2013, those gifts amounted to \$191,000 and \$1,087,000, respectively.
40. The donations made to Good Samaritan Society are used for operations and capital improvements/maintenance, or invested. The income made off of the investments is used exclusively for the ongoing mission of Good Samaritan Society. In 2012, Good Samaritan Society had a net operating income of \$3,579,000. Without donations, Good Samaritan Society would have suffered an operating loss in 2012 of \$3,500,000. In 2013, it had an operating loss of \$8,969,000.<sup>4</sup> Without donations, its loss for 2013 would have been between \$14 and \$15 million.
41. Whenever Good Samaritan Society does have net revenue, it is not distributed to members, shareholders, directors, or officers. Such revenues and investments stay with the facilities and are used to sustain and further Good Samaritan Society’s ministry—to keep the doors open, for equipment maintenance and purchases, for updates to the facilities to ensure they meet all code and safety concerns, for savings towards replacement facilities, to meet other expenses, and for items directed to benefit the residents’ quality of life at the facilities.

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<sup>4</sup> The operating losses for 2012 and 2013 were calculated by subtracting net total gifts from net income for the respective years.

42. Between 1958 and 2013, Good Samaritan Society invested approximately \$11.9 million in Boise Village while realizing approximately \$9.6 million from the facility for a net investment of about \$2.3 million to sustain its mission in Boise.
43. Boise Village receives monetary donations and gifts from the community to help sustain its mission. Restricted donations and endowments are invested to provide ongoing benefit to Good Samaritan Society facilities. Boise Village is also able, when needed, to utilize interest from these accounts to supplement and help with its operational costs. For example, in 2013, it received gifts of cash and funds released from previously restricted gifts of \$16,950, and in 2012, \$18,811.
44. Boise Village has also had donations that were restricted as to their use for certain equipment, facilities, or programs. Such donations in 2012 amounted to \$196,591, and in 2013, \$47,485.
45. Boise Village had \$72,209 in accumulated unrestricted gifts in 2012 and \$39,206 in 2013.
46. For 2012 and 2013, Boise Village had a total operating revenue of \$9,769,537 and \$9,836,951, respectively. Total operational costs in 2012 were \$8,626,191 and \$9,339,148 in 2013. Thus, Boise Village's net operating revenue in 2012 and 2013 was \$1,143,346 and \$497,802, respectively.
47. Boise Village's net operating revenue is placed into an account held by Good Samaritan Society which is earmarked for Boise Village's use to further its mission. These funds are used by Boise Village for such things as new equipment, facility maintenance and repairs, and other things which enhance the quality of life for its

residents. None of this income inures to the benefit of any individual, including any director, officer or member.

48. While Good Samaritan Society's mission has remained unchanged since its founding, the way its mission is funded has, by necessity, adapted. Prior to the advent of Medicare, Medicaid and other governmental healthcare reimbursement programs, payment for services provided at Good Samaritan Society facilities was "personal" and came in a variety of forms. Often, it was supported by donations. However, major governmental and regulatory changes related to skilled nursing care offered a standard form of payment and altered the way Good Samaritan Society received reimbursement.

49. Despite the change in the way it is reimbursed by the government, the policy of Good Samaritan Society and Boise Village remains that no person will be denied admission because of inability to pay. Today, with these government sources of payment, it is rare for anyone to lack the ability to fund the services rendered at Boise Village.

50. Boise Village provides care to people whom the government would otherwise be required to provide care for if Boise Village did not. That care would likely be more expensive if provided directly by the government rather than through reimbursements to Boise Village through government payments.

51. Boise Village does not have a sliding fee schedule. However, its policy is to not deny admission to anyone because of an inability to pay, and it has not, at least since 2003, evicted a resident because of inability to pay.

52. Boise Village's daily rates, which are based on each resident's acuity, are either paid privately, or by state and federal governmental programs such as Medicare, Medicaid, managed care and Veterans' Administration. In 2011 and 2012, 90% and 94%,

respectively, of Boise Village's revenue came from these state and federal government programs.

53. In Idaho, Medicaid pays a daily rate based upon the facilities' costs and is adjusted for acuity. In addition to the daily rate, Medicaid also makes an additional payment to Idaho skilled nursing facilities based upon how many Medicaid residents are cared for at the facility. This payment is called the Upper Payment Limit, or UPL. Medicaid also pays a special rate when a resident has an extraordinary need, such as a ventilator, tracheostomy tube or specialized wheelchair. In addition to Medicaid's daily rate, Boise Village received UPL and special payments in 2012 and 2013.
54. Medicaid was the largest source of Boise Village's operating revenue in 2012 and 2013. On average, Medicaid paid Boise Village \$290.77 and \$295.23 per Medicaid resident per day in 2012 and 2013, respectively. These amounts include the Medicaid daily rate and UPL. For its private pay residents, Boise Village received an average of \$275.08 and \$277.00 per resident per day in 2012 and 2013, respectively. Thus, Boise Village received more revenue on average for its Medicaid residents than its private pay residents.
55. The Medicaid daily rate paid to Boise Village was the highest among local comparable skilled nursing facilities in 2012 and 2013. However, the acuity rate of its residents for those years was above the average acuity rate of those facilities, and well above the state-wide acuity average among skilled nursing facilities. Further, Boise Village was within the direct costs statewide limit that caps reimbursement, indicating that its high acuity, rather than costs, is primarily driving the average Medicaid rate.

56. In 2012, the daily Medicaid payment per Medicaid resident resulted in an additional \$49.84 over Boise Village's average cost of care for the resident. However, this surplus was due to the Medicaid provider tax surcharge and the UPL, which may not be available year after year.<sup>5</sup> If these two unpredictable and protean forms of reimbursement were removed, Boise Village would have sustained a \$14.55 loss, on average, per Medicaid resident per day in 2012.

57. In 2012, Boise Village's Medicaid residents constituted 72.1% of its total occupancy and Boise Village received 68% of its operating revenue from Medicaid. Boise Village had the third highest Medicaid occupancy rate among thirteen comparable nursing homes in the Treasure Valley area in 2012. In 2013, Boise Village's Medicaid occupancy rate was 76.1% and 66% of its operating revenue was received from Medicaid. That year, it had the highest Medicaid occupancy rate among the same comparable nursing homes.

58. Although the advent of the UPL payment allowance in 2010 made it desirable for skilled nursing facilities to increase their Medicaid population, Boise Village maintained a high Medicaid population from well before the UPL system made Medicaid reimbursements attractive, which is consistent with its ongoing and long standing charitable mission to provide care to those in society who have the least and are most vulnerable.

59. Although Boise Village realized, on average, excess revenue over costs per Medicaid resident per day in 2012 and 2013, Boise Village sustained significant losses on

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<sup>5</sup> The provider tax and upper payment limit payments have been effective in Idaho only since fiscal year 2010. Trans. 838:23-25; 848:18-25.



its Medicare residents in 2012, and on its Medicare, Veterans Administration and managed care residents in 2013.

60. Boise Village expects payment for the services provided and, in 2012 and 2013, did not have the opportunity to admit a resident knowing the provided services would never be compensated. Good Samaritan Society's policy, which is followed at Boise Village, is to identify a likely payment source prior to a resident's admission. Typically, the payment source is either private pay or payment by a government reimbursement program with a small "private portion" supplement to be made by the resident. If a payment source cannot be identified at the time of admission, Boise Village will inquire about the potential resident's eligibility for Medicaid. If the resident appears eligible, which is almost always the case, Boise Village will assist with the application process and frequently admit the resident "Medicaid pending." In such cases, Boise Village takes the financial risk that the resident will ultimately qualify for Medicaid. Though it is uncommon that a payment source, like Medicaid, cannot be ultimately secured, Boise Village nevertheless places itself at risk financially.

61. Each resident or resident's representative is required to sign an Admissions Agreement with Boise Village under which Boise Village promises to provide care to the resident and the responsible party promises to pay for that care, either privately or through a payor source. Late charges accrue in the amount of 10% per annum when an account is ten days overdue, although Boise Village routinely waives the late charge.

62. For overdue accounts, the collections teams for Boise Village and Good Samaritan Society coordinate a collections effort. Initially, letters are sent and phone calls are made to responsible parties at certain intervals to remind them of the bill and make

payment arrangements. Sometimes, Boise Village will require the responsible party to sign a promissory note agreeing to pay the account. However, the repayment obligations under the note depend on the responsible party's resources. If, for example, the responsible party can only afford a payment of \$10 per month, Boise Village will create a payment plan for that amount. Rarely, Boise Village will pursue litigation to collect on overdue accounts or send the account to collections. In 2012, Boise Village filed only one lawsuit to collect on an overdue account. None were filed in 2013.

63. If a resident of Boise Village, through no fault of his own, is unable to pay the usual and customary private rate or their private pay portion, Boise Village will not seek to remove the resident for failure to pay. Boise Village has not, at least since 2003, removed any resident for failing to pay for services. Under such circumstances, Boise Village offers a charitable allowance for all or a portion of the amount owed pursuant to the Good Samaritan Society's "Private Charitable Allowance" policy. The need for a charitable allowance may arise for a variety of reasons and typically arises after admission. Prior to granting the charitable allowance, however, Boise Village will typically instigate a formal collections process to ensure the resident has a demonstrated inability to pay. In other words, the collections process is used as an information gathering tool to verify need. If the collections process reveals the resident indeed lacks resources and that lack of resources is not attributable to the fault of the resident, a charitable allowance will be granted. If, however, the collections process reveals the resident is at fault for the lack of funds,<sup>6</sup> a charitable allowance will be denied and the past-due accounts will be written off as bad debt. Unlike Boise Village, typical for-profit

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<sup>6</sup> Such "fault" might be the purposeful conveying of assets by the resident to relatives to avoid payment.

facilities will seek to remove a resident for failure to pay for services, even if the failure to pay is due to no fault of the resident.

64. In 2012 and 2013, Boise Village granted \$31,281.88 and \$7004.75, respectively, in charitable allowances to cover past due accounts.

65. Boise Village will also use its own resources to cover additional care costs for its residents which are not reimbursed by insurance or other payors. In 2012 and 2013, Boise Village spent \$2370.00 and \$9530.00, respectively, on specialty mattresses for residents. Boise Village has used its resources to purchase eyeglasses, toiletries and dental exams for residents. Also in 2013, Boise Village used approximately \$7000 from its capital depreciation account to purchase a new power chair for a resident who could not afford it.

66. Boise Village has a full time licensed music therapist on its staff and provides music therapy for its residents free of charge. Additionally, Boise Village provides hospice services with Rev. Spiedel and mneme therapy, both free of charge.

67. Boise Village has an active volunteer program and relies heavily on volunteers to help provide activities and recreation for its residents, as well as to assist residents with activities of daily living and transport them to and from various activities. In 2012 and 2013, Boise Village recorded 12,707.25 and 10,053.15 volunteer hours, respectively. Its volunteers do not provide direct nursing care to the residents, but they do assist with nearly every other aspect of Boise Village's operations from grounds-keeping to taking residents to appointments. The volunteers free up clinical staff to focus on providing nursing care and, in this respect, the volunteers increase the amount and level of care provided to Boise Village residents. In 2012 and 2013, Boise Village had between 350

and 450 volunteers on average. Many volunteers come to Boise Village precisely because of its Christ-centered mission, which is openly discussed. The reasonable monetary value of the donated time at Boise Village is approximately \$204,963 in 2012 and \$162,157 in 2013.

68. In 2012 and 2013, Boise Village volunteers also donated their own money in addition to their time to help meet residents' needs or provide additional activities for the residents. The volunteers helped pay for residents' hair to be done at the beauty parlor, purchased clothing and gifts for residents, paid for framed resident artwork, and helped cover costs for tickets for residents to attend BSU football games.
69. On a national level, Good Samaritan Society reported over 180,000 hours of volunteer service in 2012. The reasonable monetary value of this donated time is approximately \$3,985,200.
70. Good Samaritan Society provides opportunities for its caregivers to pursue their educational goals while continuing to carry out the Good Samaritan Society mission in their daily work. A continuum of education to promote the most innovative care available is provided, and often scholarships are provided for nursing students to obtain advanced degrees, to further the caregivers' knowledge and experience, and to help develop higher qualified caregivers to the communities. In 2012 and 2013, Boise Village provided \$15,000 in tuition reimbursement for its employees in nursing school programs.
71. Through its Social Accountability Task Force, Good Samaritan Society provides monetary grants to its facilities for special community involvement projects. In the years 2010 through 2013, Good Samaritan Society awarded grants to 123 community programs designed to meet local needs: health care and services for the homeless; clothes for local

shelters; food for the hungry; transport for children; programs for free mneme therapy; school supplies for children; equipment for partnering organizations and schools; clinics for health screenings; crafts for children; programs for the lonely; forums for specialized education; projects to confront bullying; ministry to young mothers; and support for mission training, local recreation opportunities, mentoring programs, kid camps, programs for orphans, and aid to victims of fire.

72. In 2013, Boise Village received a grant from the Social Accountability Task Force to help provide free mneme therapy to the community and its residents through Arts Without Boundaries, which uses art to help develop and stimulate the brain and which is beneficial to individuals with cognitive difficulties. Boise Village continues to provide this program to the local community and its residents free of charge.

73. Boise Village opens up its meeting rooms to the community for various events, such as weddings, memorial services, CPR training, Girl Scout meetings and piano recitals, and does not charge for the public's use of its rooms. Boise Village hosts entertainment free events for the community, such a country fair, Mardis Gras parade, and Thanksgiving dinner for those in the community who cannot pay.

74. Other opportunities Boise Village offers to the community include allowing the facility to be used as an observation site for Pet Therapy Dogs and for training Department of Health and Welfare licensing surveyors, partnering with local schools and colleges to allow students to come to the facility to get real world experience in their field of interest, and partnering with various advocacy groups to allow developmentally disabled individuals to do volunteer work. In addition, Boise Village donates time and services to community programs, such as the Boise Rescue Mission, the Idaho Food

Bank, the Idaho Humane Society, the Rotary club, Meals-On-Wheels, Baby Steps, Christmas Adopt a Family, and Field of Honor.

75. The sole purpose for which Good Samaritan Society operates Boise Village is to fulfill its long existing and ongoing charitable mission and religious ministry to provide skilled care, compassion and comfort to the disabled, the infirm and the elderly.

76. The use of the Boise Village property did not change between 2011, when it was exempted from state property tax on charitable and religious grounds, and 2012, the year the exemptions were first denied. The only change to the property was the construction of a gazebo for the use and enjoyment of the residents.

77. The skilled nursing facilities at each of Good Samaritan Society's other Idaho locations in Moscow, Idaho Falls, and Silverton have consistently received property tax exemptions.

### **CONCLUSIONS OF LAW**

"A claim of exemption from tax must be justified, if at all, by the terms of the statute." *Roeder Holdings, L.L.C. v. Board of Equalization*, 136 Idaho 809, 813, 41 P.3d 237, 241 (2001). Statutes granting exemptions are to be construed according to the "strict but reasonable" rule of statutory construction. *Ada Cnty. Assessor v. Roman Catholic Diocese of Boise*, 123 Idaho 425, 429, 849 P.2d 98, 102 (1993). The burden is on the claimant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. *Evangelical Lutheran Good Samaritan Society v. Bd. of Equalization of Latah Cnty.*, 119 Idaho 126, 130, 804 P.2d 299, 303 (1990) ("*Latah County*"), citation omitted. An exemption cannot be sustained unless it is within the spirit as well as the letter of the law. *Id.* The courts are

bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized. *Id.*

Although the general rules of construction require this Court to construe a tax exempt statute strictly and against the taxpayer, this Court must also bear in mind that the “rationale and intent of these tax exemptions are based upon legal principles and policy reasons which urge the legislature to encourage and promote sobriety, morality and virtue in the people of this state. *Id.*; see also ID CONST. art. III, § 24. The Idaho Supreme Court has observed that courts “must strive to maintain intact those religious, charitable, educational, and fraternal institutions which have been essential and integral parts not only of the foundation but in the maintenance of the form of government and type of society in which we live.” *Id.*, quoting *N. Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai Cnty.*, 94 Idaho 644, 648, 496 P.2d 105, 109 (1972). Exemptions are to be determined annually on a case-by-case basis, considering the particular circumstances of an individual organization; they are not to be determined by hard and fast rules. *Student Loan Fund of Idaho, Inc. v. Payette Cnty.*, 138 Idaho 684, 688, 69 P.3d 104, 108 (2003). Whether a property is exempt from taxation is determined as of the first of January of that year. I.C. § 63-205(1).

Good Samaritan Society seeks a charitable exemption under I.C. § 63-602C and/or a religious exemption under I.C. § 63-602B for Boise Village for 2012 and 2013. The charitable exemption statute exempts in relevant part:

...property belonging to any . . . charitable . . . corporation . . . of this state, used exclusively for the purposes for which such . . . corporation . . . is organized; provided, that if any . . . such . . . corporation . . . uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same should be assessed and taxed as any other property . . . .

I.C. § 63-602C

The religious exemption statute provides in relevant part:

...property belonging to any religious corporation or society ... used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious corporation or society....[I]f such religious corporation or society uses the entirety of such property for business or commercial purposes from which a revenue is derived, then the same shall be assessed and taxed as any other property.

I.C. § 63-602B<sup>7</sup>

The term “exclusively” as used in I.C. §§ 63-602B and 63-602C is defined as “exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder....” § 63-602(2). Thus, a religious or charitable corporation may use its property for and in connection with any combination of religious, educational, recreational, charitable or benevolent purposes and still be presumptively entitled to an exemption. *See, e.g., Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada Cnty.*, 123 Idaho 410, 423, 849 P.2d 83, 96 (1993).

#### **I. CHARITABLE EXEMPTION – I.C. § 63-602C**

A property will be presumed tax exempt under I.C. § 63-602C if the organization proves first that it is a charitable organization, and, secondly, that the property is used exclusively for charitable purposes. *Idaho Youth Ranch*, 157 Idaho at \_\_\_ 335 P.3d at 30 (“The effect of this first clause [of § 63-602C] is to provide that property belonging to a fraternal, benevolent or charitable entity is presumptively exempt from taxation.”).

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<sup>7</sup> Both statutes allow for the proration of property tax when there is a partial non-exempt business or commercial use. Further, both statutes list specific uses of the property which are not to be considered business or commercial, so long as such uses are connected to the entity’s religious, educational, recreational, charitable and/or benevolent purposes. These uses include athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, and auditoriums or club rooms.



**A. Whether Good Samaritan Society is a Charitable Organization**

The Idaho Legislature has not defined “charitable” for purposes of I.C. § 63-602C. In *Canyon County v. Sunny Ridge Manor, Inc.*, the Idaho Supreme Court noted that whether an organization is “charitable” or not within the meaning of I.C. § 63-602C must be decided upon its own particular facts or circumstances. 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). To aid in this determination, the Court set forth a list of non-exclusive factors to wit:

the stated purposes of its undertaking, (2) whether its functions are charitable . . . , (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the ‘charity’ provided is based on need.

*Id.*

The factors “do not constitute a formal checklist” for determining if an organization is charitable; rather, they serve as a guideline for application of the definition of “charitable” as to a particular organization. *Coeur d’Alene Public Golf Club*, 106 Idaho 104, 105, 675 P.2d 819, 820 (1984).

**i. *Stated Purposes***

For the first *Sunny Ridge* factor, courts simply look to the stated purposes listed in an organization’s Articles of Incorporation. *See, e.g., Community Action Agency, Inc. v. Bd. of Equalization of Nez Perce Cnty.*, 138 Idaho 82, 85, 57 P.3d 793, 796 (2002); *Boise Cent. Trades & Labor Council, Inc. v. Bd. of Ada Cnty. Comm’rs*, 122 Idaho 67, 70-71, 831 P.2d 535, 538-39 (1992); *Coeur d’Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820. Good Samaritan Society’s stated purposes are:

- To share God’s love in word and deed, believing that in Christ’s love, everyone is someone.
- To provide shelter and supportive services to older persons and others in need.
- To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

This Court finds these purposes to be charitable.

*ii. Whether Functions are Charitable*

The second *Sunny Ridge* factor looks to whether an organization's functions are charitable. In *Sunny Ridge*, the Court recognized that the term "charitable":

is not restricted to the traditional notion of financial relief for the poor, but which would encompass a wide variety of services—social, recreational, cultural, psychological, religious and others—and which would recognize that the needs of the elderly are more complex than simple financial aid can address....To be classed as charitable, an organization need not provide monetary aid to the needy; it may provide any of a number of services of public benefit. The word 'charitable,' in a legal sense, includes every gift for general public use, whether it be for educational, religious, physical or social benefit.

106 Idaho at 100, 675 P.2d at 815.

In applying this factor, the Idaho Supreme Court has looked to the actual beneficial activities offered by the entity, whether it be traditionally charitable, social, or recreational. For example, the *Sunny Ridge* Court found that a non-profit retirement home which offered residential units, cooking areas and dining room, recreational facilities, craft and shop areas, a library, a convenience store, a barber and beauty shop, and an intermediate health care facility was "designed to fulfill its residents' needs for recreation, society, culture, security, etc. [and], if other factors are present, [is] 'charitable' within the scope of I.C. § 63-105C." *Id.* at 101, 675 P.2d at 816. *See also, Coeur d'Alene Public Golf Club*, 106 Idaho at 106, 675 P.2d at 821 (finding provision of a recreational golf course a benefit to the community "in the form of social and recreational facilities"); *Owyhee Motorcycle Club, Inc. v. Ada Cnty.*, 123 Idaho 962, 965, 855 P.2d 47, 50 (1993) (finding that the promotion of the recreational use of motorcycles could be a charitable activity under the "broader definition we have previously adopted").

Since its founding, Good Samaritan Society has been dedicated to providing shelter and supportive services for the aged, disabled, and infirm through its ministry. At Boise Village, the “shelter” consists of five “neighborhoods”, one of which is unique to the Treasure Valley, which house some of the most gravely disabled members of the community. None of its residents are capable of living independently and all require and receive 24 hour care, including skilled nursing care. Boise Village also provides an array of activity programs and services designed to fulfill recreational, societal, cultural, spiritual, and security needs of its residents. In addition, it fulfills various needs of its staff and the community at large.

Under the standard articulated in *Sunny Ridge*, this Court concludes Good Samaritan Society’s functions at Boise Village are clearly charitable if other factors are met.

### ***iii. Support Through Donations***

The third *Sunny Ridge* factor addresses whether the Good Samaritan Society’s mission is supported by donations. Charitable donations are considered by the Court to be “an important charitable factor” because they “reduce the cost of the service provided, either to the public generally as direct beneficiaries of the service or to taxpayers who would otherwise bear the burden.” *Housing Southwest, Inc. v. Washington Cnty.*, 128 Idaho 335, 339, 913 P.2d 68, 72 (1996). Donations can come in the form of time and equipment in addition to monetary donations. *Owyhee Motorcycle Club*, 123 Idaho at 965, 855 P.2d at 50; *see also Bethesda Found. v. Bd. of Review of Madison Cnty.*, 453 N.W.2d 224, 227 (Iowa Ct. App. 1990)(finding donations in the form of volunteer time to be a non-profit nursing home is important to consideration of charitable status).

The fact that an organization receives donations does not, in and of itself, make it a charitable organization; rather, the organization must demonstrate, by substantial competent

evidence that the donations were used to provide a public benefit. *Latah County*, 119 Idaho at 133, 804 P.2d at 306. For example, in *Sunny Ridge*, the Court found against the retirement center on the donation factor after determining that none of the center's donations, which were in the form of donated timber lands and residents' relinquishment of refundable entrance fees, were applied to the assistance fund as described in the center's articles of incorporation. 106 Idaho at 101, 675 P.2d at 816. In *Latah County*, the Court found that the Society's donations totaling over \$1 million dollars were not proven to have been used to support the operation of the independent living units. *Latah County*, 119 Idaho at 133, 804 P.2d at 306. Conversely, in *Coeur d'Alene Public Golf Course*, where there was evidence that "substantial donations" reduced rates to the golf course users, thereby bestowing upon the community the "significant benefit" of relatively inexpensive recreation, the factor was found to be met. 106 Idaho at 107, 675 P.2d at 822.

The evidence at trial demonstrated that, as a facility, Boise Village enjoyed significant donations in 2012 and 2013, and those donations were invested back into operations to provide an ongoing benefit to its infirm residents who would otherwise be the responsibility of the public. In addition, Boise Village received very substantial "donations" in the form of an impressive number of volunteer hours which had a significant monetary value. Not only did the volunteers donate their time, they donated financially to the residents of Boise Village by purchasing or providing clothes, toiletries, football tickets and similar gifts.

Further, in considering donations, it is important to remember that Boise Village is not an independent operation. Because it is owned by Good Samaritan Society, this Court also considers the impact of donations on Good Samaritan Society as a whole. Good Samaritan Society received significant donations in 2012 and 2013 from supporters nationwide, either by cash donations, property donations, and donations of time of service. These donations were used

by Good Samaritan Society for operations and capital improvements/maintenance, or invested. The income made off of the investments was used exclusively for the mission of Good Samaritan Society. Additionally, in 2012, Good Samaritan Society reported over 180,000 hours of volunteer service. The evidence at trial showed that, without these direct financial donations, Good Samaritan Society would have suffered millions of dollars in operational losses and would have had significant difficulty sustaining its mission, either at Boise Village or elsewhere. In addition, Good Samaritan Society received a significant amount of donations from its staff and residents in 2012 and 2013 to further its mission through Project Outreach.

While the donations do not reduce the direct cost of skilled nursing and related services at Boise Village, due to the of the nature of a skilled nursing facility and the modern day method of governmental reimbursement for services provided, it would be rare that donations would affect the cost of services in this way because daily rates are generally paid at rates set by the government. Likewise, volunteer time does not reduce the direct cost of services provided because volunteers are prohibited from providing nursing care under health care regulations. In the context of this case, however, the primary concern should neither be the amount of donations nor whether they directly reduce the cost of services. Rather, the relevant inquiry is whether the use of such donations is for a public benefit. Here, the donations received by Good Samaritan Society and Boise Village are invested back into operations and this Court finds the very operation of Boise Village provides our community with a significant benefit. Further, while not providing direct care to the residents, the volunteers free up the clinical staff to focus on direct care duties, thereby indirectly extending resident care. Further, the volunteers help provide enjoyment in the residents' experiences. In this sense, the volunteers indirectly enhance the direct care provided and directly enrich the residents' daily lives and the community at large. The

level of care and treatment enjoyed by the residents could not be provided at the same cost without the donations and impressive volunteer hours.

Finally, it is important to note that while Boise Village could have sustained its operations without monetary donations in 2012 and 2013, Good Samaritan Society would have had difficulty doing so. Without the Good Samaritan Society, there would be no Boise Village.

For these reasons, this Court finds the third *Sunny Ridge* factor weighs in Good Samaritan Society's favor.

**iv. *Whether the Recipients of Good Samaritan Society's  
Services are Required to Pay for the Assistance They Receive***

The fourth *Sunny Ridge* factor is whether the recipients of a charitable organization's services are required to pay for the assistance they receive. The Idaho Supreme Court has deemed the fourth *Sunny Ridge* fact as one "of great importance and should be weighed accordingly." *Sunny Ridge*, 106 Idaho at 101-02, 675 P.2d at 816-17. Fees which are remunerative in character may indicate that the activity is not charitable, although cost-free assistance is not required to meet this factor. *Id.* It is important, though, that "the charges be nominal, or at least not commensurate with the benefits provided." *Id.* Where the fees charged are sufficient to cover much of the current operating expenses, the Court has stated that "it is difficult to view" the arrangement as charitable. *Id.*; *Owyhee Motorcycle Club*, 123 Idaho at 965, 855 P.2d at 50. Further, whether the organization charges the same or comparable rates for its services as those available from the private sector may be an indication of whether it is charitable. *Latah County*, 119 Idaho at 132, 804 P.2d at 305.

This Court recognizes that Boise Village does not utilize a sliding fee scale, charges rates similar to comparable local skilled nursing facilities, typically receives payment, either by way of private pay or through the government, for services rendered, and realized modest revenue in

2012 and 2013 for its Medicaid residents. Viewing these facts under the lens of Idaho law as it pertains to the fourth *Sunny Ridge* factor, the factor could appear to weigh against Good Samaritan Society. However, Idaho has not yet analyzed *Sunny Ridge* in the context of a skilled nursing facility or similar health care facility operating under current government reimbursement programs. Many jurisdictions recognize that such facilities' receipt of government reimbursement does not destroy their otherwise charitable operation. For example, in *Evangelical Lutheran Good Samaritan Society v. Gage County*, the Nebraska Supreme Court stated that:

Formerly all institutions furnishing services of this nature, including both hospitals and nursing homes, were providing care for many patients without compensation and extended charity in the sense of alms-giving or free services to the poor. With the advent of present day social security and welfare programs, this type of charity is not often found because assistance is available to the poor under these programs. Yet, . . . the courts have defined 'charity' to be something more than mere alms-giving or the relief of poverty and distress, and have given it a significance broad enough to include practical enterprises for the good of humanity operated at a moderate cost to those who receive the benefits.

151 N.W.2d 446, 449 (Neb. 1967) (internal quotations and citations omitted).

The D.C. Circuit has recognized similar realities. Evaluating whether a hospital met the definition of charitable under 501(c)(3), the Court stated:

While it is true that in the past Congress and the federal courts have conditioned a hospital's charitable status on the level of free or below cost care that it provided for indigents, there is no authority for the conclusion that the determination of 'charitable' status was always to be so limited. Such an inflexible construction fails to recognize the changing economic, social and technological precepts and values of contemporary society.... The institution of Medicare and Medicaid in the last decade combined with the rapid growth of medical and hospital insurance has greatly reduced the number of poor people requiring free or below cost hospital services.... Thus, it appears that the rationale upon which the limited definition of 'charitable' was predicated has largely disappeared. To continue to base the 'charitable' status of a hospital strictly on the relief it provides for the poor fails to account for these major changes in the area of health care.

*E. Kentucky Welfare Rights Org. v. Simon*, 506 F.2d 1278, 1288-89 (D.C.Cir.1974), *vacated on other grounds*, *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976); *see also*, *Harvard Community Health Plan, Inc. v. Board of Assessors*, 427 N.E.2d 1159, 1163 n.10 (Mass. 1981)(recognizing that with the “major changes” in the area of health care financing, “the promotion of health, whether through the provision of health care or through medical education and research, is today generally seen as a charitable purpose....Such a purpose is separate and distinct from the relief of poverty, and no health organization need engage in “almsgiving” in order to qualify for exemption.”).

Even more instructive is the decision rendered by the Minnesota Supreme Court in *Mayo Foundation v. Commissioner*, 236 N.W.2d 767, 773 (Minn. 1975). There, the Court evaluated several factors similar to those in *Sunny Ridge* to determine whether the Mayo Clinic and Mayo Foundation were entitled to a charitable exemption from sales and use tax. The factors included:

(1) whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward; (2) whether the entity involved is supported by donations and gifts in whole or in part; (3) whether the recipients of the ‘charity’ are required to pay for the assistance received in whole or in part; (4) whether the income received from gifts and donations and charges to users produces a profit to the charitable institution; (5) whether the beneficiaries of the ‘charity’ are restricted or unrestricted and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; (6) whether dividends, in form or substance, or assets upon dissolution are available to private interests.” *Id.* at 772.

As to the third factor, the Minnesota Supreme Court noted that while patients at the Mayo Clinic were charged “standard fees for medical services”, it was the policy of the Mayo institutions to offer medical care regardless of the financial circumstances of the patient. *Id.* at 773. In other words, a patient’s ability to pay did not affect the nature of care rendered. What was more important to the Court was that the Mayo institutions took efforts to ensure that the costs were not “an unreasonable burden on any individual.” Further, although the Mayo



Foundation enjoyed an increase in net worth during the tax years in question, the Court found “no indication that medical charges were established with a view toward generating a profit for the Foundation.” *Id.* at 773-74. Ultimately, the Court found the Mayo institutions exempt. *Id.* at 774.

In evaluating the fourth factor of *Sunny Ridge*, this Court bears in mind that these factors are to serve as guidelines rather than be rigidly and blindly applied and, above all, their analysis depends on the particular facts and circumstances of this case. *Coeur d’Alene Public Golf Club*, 106 Idaho at 105, 675 P.2d at 820. Good Samaritan Society’s operations of its skilled nursing facilities prior to the advent of Medicare and Medicaid certainly would have clearly satisfied the fourth factor of *Sunny Ridge*. Good Samaritan Society’s mission has been, since its inception, caring for the disabled, elderly and infirm. Payment for services provided at its facilities was “personal” and came in a variety of forms and was often supported by donations. While its mission has not changed, the way its mission is funded has changed due to major governmental and regulatory changes in reimbursement. With these government sources of payment, nearly everyone now has the ability to pay for services rendered at Boise Village. Thus, the fourth *Sunny Ridge* factor must be analyzed flexibly, looking not at whether the residents are required to pay for services rendered, but rather by looking at Boise Village’s policies with respect to residents who do not have the ability to pay, how rates are established, and other factors driving Boise Village’s reimbursement.

As in *Mayo Foundation*, the Boise Village takes steps to ensure its charges do not impose an unreasonable burden upon its residents and provide care even if a resident is unable to pay. While Boise Village expects its residents with the ability to pay to pay for services rendered, even Ada County’s expert, Van Moore, recognized that a non-profit organization cannot

maintain its mission without a margin. Yet, when circumstances arise at Boise Village where a resident is unable to pay for care or a service due to no fault of the resident, Boise Village will use, and did use in 2012 and 2013, charitable allowances and donated funds to find every way to help a resident. Boise Village also used its own resources during the years in question to cover additional care costs for its residents which were not reimbursed by insurance, such as specialty mattresses and a power chair. Further, through its full time licensed music therapist, Boise Village provided, and still provides, music therapy for its residents free of charge as well as hospice services with Rev. Spiedel. Most importantly, at least since 2003, no resident has ever been removed from Boise Village due to an inability to pay.

Further, residents are not denied admission to Boise Village due to inability to pay. If a payment source cannot be identified at the time of admission, Boise Village will inquire about the potential resident's eligibility for Medicaid. Boise Village will assist with the application process and frequently admit the resident "Medicaid pending." Boise Village takes the financial risk in such cases that the resident will ultimately qualify for Medicaid. Though it is uncommon that a payment source, like Medicaid, cannot be ultimately secured, Boise Village nevertheless places itself at risk financially.

While Boise Village received an excess of revenue over costs for its Medicaid population in 2012 and 2013, there is no indication that Boise Village's rates are established with a view toward generating a profit. The rate paid by Medicaid is set by Medicaid, not by Boise Village. It is based upon Boise Village's costs of care and is adjusted for acuity. Although Boise Village had the highest Medicaid daily rate among comparable local skilled nursing facilities, the acuity rate of its residents for those years was above the average acuity rate of those facilities, and well above the state-wide acuity average among skilled nursing facilities. Further, Boise Village was

within the direct costs statewide limit that caps reimbursement, meaning that its high acuity, rather than costs, is primarily driving the average Medicaid rate it receives.

Finally, the excess revenue over cost Boise Village received in 2012 and 2013 on its Medicaid residents was due to the Medicaid provider tax surcharge and the UPL, which are legislatively enacted payments, the ongoing availability of which is uncertain. Without the provider tax surcharge and UPL payments, the Medicaid daily rate would not cover the average cost of care for its Medicaid residents. The advent of the provider tax surcharge and UPL payments does not detract from Boise Village's charitable nature. The record showed that Boise Village has had a history of accepting a large percentage of Medicaid residents, even when the cost of caring for them was not being fully reimbursed. Further, the excess revenue derived from Medicaid in 2012 and 2013 must be considered together with the losses sustained by Boise Village on its residents insured by Medicare during those years and, with the exception of 2012, on its Veterans' Administration and managed care residents.

For these reasons, the Court concludes that Good Samaritan Society satisfies the flexibly defined fourth *Sunny Ridge* factor.

**v.      *Whether there is General Public Benefit***

The fifth *Sunny Ridge* factor examines whether there is a general public benefit. Tax exemptions are justified because a charitable organization provides an offsetting benefit to the general community. *Sunny Ridge*, 106 Idaho at 102, 675 P.2d at 817. As stated in *Housing Southwest*:

For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit. If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the 'general public benefit' factor is whether the corporation fulfills a need which the government might otherwise be required to fill. While the requirement that a

corporation lessen the burden of government is but one factor to be considered in determining tax exempt status, it is nevertheless an important one.

128 Idaho at 339, 913 P.2d at 72.

Further, an organization can meet the general public factor even if it benefits only a limited group of people where that small group possesses a need the government would otherwise be obligated to fill. *Id.* “To the extent that a charitable corporation performs a function otherwise required of the government, the public benefit is clear and direct.” *Id.* Health care for the elderly, poor and infirm has been recognized by the people of Idaho as a governmental responsibility since territorial days. As stated by Justice Bistline in his concurring opinion in *Idaho Falls Consolidated Hospitals, Inc. v. Bingham County Board of Commissioners*:

What is learned from the review is that it has always been the sense of the people of Idaho, speaking first through their territorial legislatures, then through their Constitutional delegates, and since 1889 through their state legislatures, that medical care and necessities of life will not be denied to those unfortunate few who would suffer and sometimes perish if the same were not provided by the largess of the people acting through their government, which taxes for that very purposes.

102 Idaho 838, 845, 642 P.2d 553, 560 (1982) (Bistline, J., concurring).<sup>8</sup>

Indeed, it would not be an overstatement to suggest that in our modern welfare state, there is no greater obligation than to ensure that the most vulnerable and fragile, including the disabled, infirm and those who, because of advanced age, can no longer care for themselves, receive human and compassionate care in a respectful environment conducive to maximizing the enjoyment of life. As one treatise has aptly noted in describing charitable trusts:

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<sup>8</sup> See also *State ex rel. Nielson v. Kindstrom*, 68 Idaho 226, 232, 191 P.2d 1009, 1012 (1948) (“The granting of aid to its needy aged is a well-recognized obligation of the state and is a governmental function tending to promote the public welfare.”)

In order that a trust to relieve sickness, prevent disease, and promote the public health be regarded as charitable it is not necessary that it be limited to assistance to the poor. It is to the advantage of the state to have as many agencies as possible operating to bring about health for the entire community. Society is interested in having all its members, rich and poor, in good physical condition, capable of being productive, caring for themselves and enjoying life.

Bogert's Trusts And Trustees § 374 Westlaw (2014).

In *Sunny Ridge*, the Court found the retirement center did not satisfy the “general public benefit” factor because it did not provide a general benefit to the community as a whole; finding it served only a limited group of people who did not require government assistance. *Sunny Ridge*, 106 Idaho at 103, 675 P.2d at 818. In reaching this conclusion, the Court noted: “[s]ince the residents at Sunny Ridge must be able to pay completely for the benefits they receive, and since they must be physically able to care for themselves, they are not a group of persons for whom any government assistance would be needed.”

In contrast to the retirement center in *Sunny Ridge*, Boise Village provides a significant public benefit by providing skilled nursing care to those most in need, a need that Idaho has long recognized as an obligation of the government. The residents of Boise Village are not able to physically care for themselves and are not all required to pay completely for the benefits received. As discussed, Boise Village residents are the most vulnerable – the poor, elderly, disabled and infirm - who would otherwise be an obligation of government. They have a significantly greater acuity rate among comparable local skilled nursing facilities and well above the state-wide acuity average among skilled nursing facilities. Thus, the residents require a higher level of care than most skilled nursing residents in Idaho. Boise Village is well equipped to care for these residents in its five specialized neighborhoods. This Court has little doubt that the government could not provide an equivalent level of care to these same residents at a lower cost in a facility of its own.

Further, Good Samaritan Society gives back to the community. Its Social Accountability Task Force awarded an impressive number of grants to its facilities for special community involvement projects in 2012 and 2013. These grants support a wide variety of programs which support community needs from care for the homeless to school supplies for children. *Id.* Boise Village is a recipient of these grants, currently providing free mneme therapy to the community and its residents through Arts Without Boundaries. Good Samaritan Society additionally provides numerous benefits to the community at large through its investments in the development of technologies to develop ways to monitor patients remotely in their own homes and provide alternatives to traditional long-term care facilities. Further, Good Samaritan Society provides educational scholarships to its caregivers to improve the health care they provide to the community. Good Samaritan Society is also active on a global level, providing significant support to facilities in poverty-stricken areas which cater to the needy.

Boise Village likewise enriches the Boise community. It sponsors numerous events for the community and encourages its residents and staff to engage in the community. It opens its facility free of charge to many groups for meeting purposes, partners with local colleges and universities to provide work opportunities to students, and works with advocacy groups to allow developmentally disabled individuals to do volunteer work.

This Court finds the dominant purpose of Good Samaritan Society's work, internationally, nationally and locally through Boise Village, is for the benefit of the public. Not only is it fulfilling a government obligation through the care provided to its residents, it enriches the public as a whole. For this, the Court concludes the fifth *Sunny Ridge* factor weighs in favor of Good Samaritan Society.

**vi.      *Whether the Income Received Produces a Profit***

The sixth *Sunny Ridge* factor is whether the income received produces a profit. Whether an organization is making a profit is “some indicia” that it is operating similar to a for-profit corporation. *Owyhee Motorcycle Club*, 123 Idaho at 966, 855 P.2d at 51. Analyzing this *Sunny Ridge* factor, the Court generally takes note of whether the organization is a non-profit corporation, whether any profits are distributed to stockholders, whether the Board of Directors is paid, and whether the organization operates at a profit or deficit. *Community Action Agency*, 138 Idaho at 87, 57 P.3d at 798. The fact that an organization retains a “marginal profit” is not determinative of whether it is a charitable corporation. *Owyhee Motorcycle Club*, 123 Idaho at 966, 855 P.2d at 51. The Court does not require an organization to operate at a deficit to meet this factor. However, “the accrual of *substantial* positive net revenue year after year, excluding donations, is suspect...” *Latah County*, 119 Idaho at 132, fn. 2 (emphasis in original).

As with the “donations” factor of *Sunny Ridge*, the Court appears to be not so concerned with the amount of profit, but how it is used by the facility. Other courts too recognize that the charitable character of an organization is not destroyed when that organization earns a profit while devoting its property entirely to charitable uses. *Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Cnty. Comm’rs, Ramsey Cnty.*, 219 N.W.2d 900, 907 (N.D. 1974)(finding facility was not run with a “view to profit” where revenue was entirely related to charitable use and reinvested in facility and no profit inured to an individual); *Milwaukee Protestant Home for the Aged v. City of Milwaukee*, 41 Wis. 2d 284, 296, 164 N.W.2d 289, 294 (1969)(“A benevolent association is not required to use only red ink in keeping its books and ledgers”).

The evidence at trial showed that in 2012, Good Samaritan Society earned operating income of \$3,579,000, while in 2013 it suffered an operating loss of \$8,969,000.<sup>9</sup> In 2012, Boise Village's net operating revenue was \$1,143,346 and, in 2013, it was \$497,802. The excess revenue earned by Boise Village is kept in an account held by Good Samaritan Society and earmarked for Boise Village's use.

While the modest excess revenue enjoyed by Boise Village in 2012 and 2013 and by Good Samaritan Society in 2012 demonstrates they are efficiently run, more important to this Court's analysis is the use of excess revenue. Notably, none of the excess revenue is distributed to members, shareholders, directors, or officers of Good Samaritan Society. Rather, the revenue is reinvested directly back into Good Samaritan Society's ministry and the enhancement of the quality of life for the residents of Boise Village. Boise Village is not being operated in order to make a profit. Since 1958, Good Samaritan Society has invested approximately \$11.9 million into Boise Village while realizing approximately \$9.6 million, for a net investment of about \$2.3 million to sustain its mission in Boise.

In sum, because neither Good Samaritan Society nor Boise Village are operated with a view to profit, and the modest excess revenue generated by Boise Village in 2012 and 2013 was reinvested into sustaining Good Samaritan Society's mission, the Court finds the sixth *Sunny Ridge* factors weighs in favor of Good Samaritan Society.

**vii. To Whom the Assets Would Go Upon Dissolution of the Corporation**

*Sunny Ridge's* seventh factor asks to whom the assets would go upon dissolution of the corporation. *Sunny Ridge*, 106 Idaho at 103, 675 P.2d at 818. If the corporation's assets are distributed to other non-profit corporations or charities, this factor will be met. *Id.*; *Coeur*

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<sup>9</sup> As noted previously, Good Samaritan Society would have sustained a loss in 2012 and a far more substantial loss in 2013 if donations were removed from operating income.



*d'Alene Public Golf Club*, 106 Idaho at 106, 675 P.2d at 821. According to Good Samaritan Society's Articles, upon dissolution, all assets will be distributed to other nonprofit social ministry organizations designated by the ELCA and the Missouri Synod. In light of this, Ada County admits Good Samaritan Society meets the seventh factor of *Sunny Ridge* and this Court agrees.

**viii. Whether the "Charity" Provided is Based on Need**

The final *Sunny Ridge* factor determines whether the 'charity' provided is based on need. "Charity" is not limited to financial relief, but includes "every gift for general public use, whether it be for educational, religious, physical or social benefit." *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815.

Case law discussing this final factor suggests that a corporation should have a method by which it can identify and provide to those most in need of its services. For example, in *Sunny Ridge*, the Court found the retirement center in question did not satisfy this factor, noting "there is no means provided by which individuals having particular needs for the types of services Sunny Ridge can provide are singled out for admission, or for assistance." *Id.* at 103, 675 P.2d at 818. Likewise, in *Latah County*, the Court found this factor lacking, stating:

If the independent living units do not meet the needs of the elderly residents, or if the cost of living in the independent living units is not affordable for those elderly who need the services, then there is no public gift or benefit as contemplated by the statutes. If the only elderly persons residing in the facility are those who can afford to pay the founder's fee or the monthly maintenance fees that are comparable to profit oriented commercial retirement housing in the same community the organization is not entitled to tax exempt status.

119 Idaho at 132, 804 P.2d at 305.

With regard to catering to its residents' financial needs, there is no question that Good Samaritan Society would have satisfied this factor prior to the advent of Medicare and Medicaid.

It was organized to provide care to the poor, elderly and infirm. While the Good Samaritan Society continues to care for the poor, elderly and infirm, current government reimbursement programs make the care it provides affordable for everyone. Although Good Samaritan Society does not have a sliding scale in the operation of Boise Village, a sliding scale is not necessarily practical for the vast majority of its residents due to the fact that nearly everyone can qualify for Medicaid. Thus, Good Samaritan Society has developed alternative ways to identify its financially needy population and assist them. First, Boise Village has a policy that no person will be denied admission because of inability to pay. Through the admissions and collections process, Boise Village can identify whether a resident is financially needy. Boise Village will admit residents "Medicaid pending", thus bearing the financial risk of non-payment if Medicaid is denied. If a Boise Village resident is unable to pay for care or a service due to no fault of the resident, Boise Village will use charitable allowances and donated funds to help the resident. It sets payment schedules for past-due amount based on ability to pay. Boise Village also uses its own resources to cover additional care costs for its residents which are not reimbursed by insurance. It will not remove a resident from Boise Village due to an inability to pay.

For its brain injured residents who are sensitive to overstimulation, Boise Village has created separate units to ensure the best environment for their care. Housing in these units is based on care needs, not a resident's wealth or ability to pay a higher commercial rate for the increased level of care.

In addition, Good Samaritan Society provides community grants based on need, scholarships to employees based on need, support to world missionaries based on need, and staff assistance funds based on need.

When viewed against the backdrop of current governmental reimbursement programs, this Court believes the final *Sunny Ridge* factor must be evaluated expansively, looking not just at whether financial need is identified and satisfied, but how the organization satisfies needs as a whole. Viewed in this light, this Court finds this final factor weighs in favor of Good Samaritan Society.

In review of the *Sunny Ridge* factors as a whole, and in consideration of all particular circumstances of this case, this Court concludes Good Samaritan Society is a charitable organization under I.C. § 63-602C.

**B. Whether Boise Village is Used for the Exempt Purposes for Which Good Samaritan Society is Organized**

Having determined that Good Samaritan Society is a charitable corporation, the second inquiry is whether Boise Village is used exclusively for and in connection with any combination of statutorily exempt purposes - religious, educational, recreational, charitable or benevolent purposes for which Good Samaritan Society is organized. I.C. §§ 63-602B, 63-602C, 63-602(2). To determine whether an entity is used “exclusively” for the various exempt purposes, this Court is to look at “[t]he integrated activities as a whole[.]” *North Idaho Juris. Of Episcopal Churches*, 94 Idaho at 645, 496 P.2d at 106, quoting *Serra Retreat v. Los Angeles County*, 221 P.2d 59, 61 (Cal. 1950).

Looking at Boise Village’s integrated activities as a whole, this Court concludes it was, in 2012 and 2013, operated exclusively for the charitable purposes for which Good Samaritan Society was organized. As discussed in the *Sunny Ridge* analysis above, Good Samaritan Society was specifically organized to provide shelter and supportive services – physical, emotional and spiritual - for the aged, poor, and infirm. These are universally recognized as charitable purposes.

It is further dedicating to enriching the local, national and global community. The entire operation of Boise Village embodies these charitable purposes.

The fact that some aspects of Good Samaritan Society's operation of Boise Village resemble for-profit skilled nursing facilities does not alter this Court's conclusion that Boise Village is used exclusively for the charitable purposes for which it was organized. Indeed, as was repeated at trial, "no margin means no mission." Good Samaritan Society's primary aim in operating Boise Village is not to generate revenue, but rather to carry out and continue its charitable purposes. As other courts have recognized in cases discussed herein, Good Samaritan Society cannot be expected to operate Boise Village at a deficit.

Indeed, the charitable exemption statute contemplates that a charitable organization may still generate revenue while maintaining exclusive use of the property for exempt purposes. It specifically provides that if the "corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property..." I.C. § 63-602C.

The term "business purposes" is not statutorily defined and, thus, it is incumbent on this Court to ascertain its meaning. Statutory interpretation begins with "the literal words of the statute, and this language should be given its plain, obvious, and rational meaning." *Idaho Youth Ranch*, 157 Idaho at \_\_\_ 335 P.3d at 29-30, internal quotes and cites omitted. "If the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction." *Id.* Applying these principles, it is evident that it is the generation of revenue which defines whether a use has business purpose. This interpretation appears consistent with the Idaho Supreme

Court's recent decision in *Idaho Youth Ranch* where it undertook to analyze the language of I.C. §63-602C. At various points throughout its decision, the Court used the terms "business purpose" interchangeably with "revenue-generating purposes." *Id.* at \_\_\_, 335 P.3d at 30 (e.g., "[t]he statute then creates an exception to the general requirement that the portion of the property used for revenue-generating activities be taxed.")

Thus, under the plain language of I.C. § 63-602C, the operation of Boise Village can generate revenue (i.e., have a business purpose), but the property will remain entitled to an exemption if the generation of revenue is directly related to the charitable purposes for which Good Samaritan Society exists. Revenue at Boise Village is derived primarily through the provision of comprehensive supportive services for the aged, disabled and infirm, which is precisely the purpose for which Good Samaritan Society exists. Considering all of the excess revenue is reinvested directly back into Good Samaritan Society's ministry and the enhancement of the quality of life for the residents of Boise Village, this Court concludes that the business purpose for which Boise Village is used is directly related to its charitable purposes.

In sum, this Court concludes that Good Samaritan Society is a charitable corporation pursuant to the *Sunny Ridge* analysis and it operates Boise Village exclusively for the charitable purposes for which Good Samaritan Society is organized. Although the operation of Boise Village generates revenue, the revenue-generating activities are directly related to the purposes for which Good Samaritan Society exists. Therefore, this Court concludes Boise Village is entitled to a property tax exemption under I.C. § 63-602C for 2012 and 2013.

## II. RELIGIOUS EXEMPTION – I.C. § 63-602B

Much like its charitable counterpart, the religious exemption requires an initial two-step analysis: (1) the property must belong to a religious corporation or society, and (2) the property must be used exclusively for any combination of exempt purposes. §§ 63-602B, 63-602(s).

### A. Whether Good Samaritan Society is a Religious Corporation

The Idaho Legislature has not defined “religious” for purposes of I.C. § 63-602B. Unlike for its charitable counterpart, Idaho appellate courts have not set forth a *Sunny Ridge* or similar inquiry to determine religiosity. This may be because the appropriateness of a state attempting to define what is religious is constitutionally perilous. See, Michael K. Ryan, *A Requiem for Religiously Based Property Tax Exemptions*, 89 Geo. L.J. 2139, 2163 (2001). The First Amendment of the United States Constitution (U.S. Const., amend. I) and article I of the Idaho Constitution (Id. Const., art. I, § 4), provide that governmental entities may not inhibit the free exercise of religion or act in such a way as to foster any particular belief. Therefore, “governmental bodies are precluded from resolving disputes on the basis of religious doctrine and must respect the internal autonomy of religious organizations.” *Fairview Haven v. Dep’t of Revenue*, 506 N.E.2d 341, 348 (Ill. App. 1987). In the tax context, some courts hold that the First Amendment requires the court to accept the entity’s characterization of its activities and beliefs as religious as long as the characterization is in good faith. *Holy Spirit Association for the Unification of World Christianity v. Tax Commission*, 450 N.Y.S.2d 292, 293, 435 N.E.2d 662, 663 (1982). In *Holy Spirit*, the New York Court of Appeals stated:

When, as here, particular purposes and activities of a religious organization are claimed to be other than religious, the civil authorities may engage in but two inquiries: Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide? Neither the courts nor the administrative agencies ... may go behind the declared content of the religious beliefs any more than they may examine into their validity.”

*Id.* at 295, 435 N.E.2d at 665.

Similarly, in *Fairview Haven*, the Appellate Court of Illinois stated that, in resolving whether a religious organization was tax exempt, it “must accept the organization's characterization of the purpose of its activities” and then determine whether the property is in fact exclusively used for the religious purposes. 506 N.E.2d at 348. “Inquiry into the primary use to which property is in fact put under the facts presented in this case does not necessarily violate a party's first amendment rights as it neither assesses the inherent validity of the belief structure, nor determines whether the particular conduct conforms to the standards or purposes of a religious group.” *Id.*

The Idaho Supreme Court has recognized this friction in the context of Idaho's religious exemption statute, ultimately holding the application of the statute did not run afoul of constitutional mandates. *Corp. of Presiding Bishop*, 123 Idaho at 420, 849 P.2d at 93. It observed:

[I]t is important to recognize that the exemption statute itself strikes the shores of the First Amendment because, by its own terms, the only entities entitled to the exemption are religious organizations. However, the exemption, neutral on its face, skirts the treacherous shoals secreted beneath the shifting tides of the First Amendment, aboard *Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970). Finding the New York statutory property tax exemption for “houses of religious worship” to be constitutional, the *Walz* court recognized that the legislative purpose of a property tax exemption is neither sponsorship of nor hostility toward religion. *Walz*, 397 U.S. at 672, 90 S.Ct. at 1413. The Court was not troubled by the fact that New York tax assessors would have the continuing burden of ascertaining which properties qualified as “houses of religious worship,” thereby rejecting *Walz*' excessive entanglement argument. *Id.* at 676, 90 S.Ct. at 1415.

*Id.*

In light of the conclusion in *Corp. of Presiding Bishop* that the religious exemption statute passes the constitutional muster, this Court may inquire into whether the Good Samaritan Society is a “religious corporation” under I.C. § 63-602B. However, it must be careful in its examination so as to avoid disturbing the eggshell-thin veneer separating church and state.

Prior to trial, Ada County disputed whether the Good Samaritan Society was a “religious corporation” under the statute; however, it appears to have conceded the point in its post-trial filings.<sup>10</sup> Regardless, the evidence presented at trial leads this Court to find that Good Samaritan Society qualifies as such. Good Samaritan Society is an entity affiliated with the two largest Lutheran denominations. It fulfills the mission of the Lutheran church in its religious ministry of sharing God’s love in word and deed through caring for the least, the last and the lost by carrying forth its ministry through the example of the Good Samaritan. Since 1922 nationally, and 1958 locally, it has been dedicated to meeting not only the physical and emotional needs of its residents, but the spiritual needs as well. Christianity is the foundation of Good Samaritan Society’s mission and permeates every aspect of its activities - nationally, internationally, and at Boise Village.

Considering the substantial evidence of the religious nature and focus of Good Samaritan Society, the Court finds it to be a religious corporation or society.

**B. Whether Boise Village is Used Exclusively for Statutorily Exempt Purposes.**

In its analysis of I.C. § 63-602C, this Court found that the purpose for which Boise Village is used is charitable in nature. This Court’s findings regarding Good Samaritan Society’s religious nature leads it to the inescapable conclusion that its purpose in operating Boise Village is equally religious as it is charitable. Good Samaritan Society’s ministry in the care of the sick, disabled, aged and infirm at Boise Village by living the example of the Good Samaritan is, for all intents and purposes, according to its beliefs, its own form of worshipping God. Boise Village is not merely a skilled nursing facility providing healthcare to residents; it is a healthcare ministry

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<sup>10</sup> Notably, Ada County’s expert, Van Moore, testified there was “no question in [his] mind [the Good Samaritan Society] is a religious organization.” Further, Ada County’s Closing Argument and Post-Trial Proposed Findings of Fact and Conclusions of Law, both filed after trial, challenge only whether Boise Village is used for religious purposes, not whether the Good Samaritan Society is a religious organization.



designed to enrich the spiritual lives of the residents and staff and encourage the goal of ministering to the complete person, body and soul. In this sense, Good Samaritan Society's religious foundation and beliefs drive and inform its charitable nature and vice-versa. Thus, this Court finds Boise Village is used not only for charitable purposes, but religious purposes as well, both of which are presumptively exempt uses under I.C. § 63-602B.

The charitable exemption statute allows for the generation of revenue from such uses so long as they are "directly related" to the purposes for which the entity was organized. The religious exemption statute, however, contains no such safe harbor. Rather, if the religious entity "uses the entirety of such property for business or commercial purposes from which a revenue is derived", then the property is not exempt. I.C. § 63-602B(2).<sup>11</sup> That is, if the religious use is also a revenue generating use, it is not exempt, even if the revenue generating use is directly related to the religious purposes for which the entity was formed.<sup>12</sup> Simply put, the statute does not exempt retail religion. However, the statute does create an exception to this general requirement by defining certain revenue-generating activities as non-commercial:

provided however, that the lease or use of any property by any such limited liability company, corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such limited liability company, corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

I.C. § 63-602B(2).

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<sup>11</sup> For properties used for both business and non-business purposes, the statute directs the assessor to determine the value of the entire exempt property and the value of the part used for business purposes. If the value of the part used for business purposes is 3% or less than the value of the entirety, the entire property is exempt. If the value of the part used for commercial purposes is more than 3%, only that portion of property dedicated to non-business purposes will be exempt.

<sup>12</sup> Good Samaritan Society has not challenged the constitutionality of excluding from tax exemption those religious uses that derive revenue while not excluding those religious uses that are non-revenue generating in nature.

Here, Good Samaritan Society's religious and charitable purposes in operating Boise Village coexist with a revenue generating commercial enterprise. The only portions of the property which this Court finds does not generate revenue is the on-site chapel and chaplain's office, which comprise 1.3% of the total square footage of the property. Thus, Boise Village is entitled to an exemption for this use of property under I.C. § 63-602B for 2012 and 2013 as it is non-commercial.

Having determined that 98.7% of Boise Village generates revenue, the next question is whether any portion of the property is nevertheless entitled to an exemption under the statute's exceptions. Approximately 52% of Boise Village is dedicated to resident rooms within its five neighborhoods. This Court does not, however, find that the residence portion of a skilled nursing facility reasonably fits within the definition of a residence hall or dormitory. "Constrained by the doctrine of strict constructionism," this Court must "choose the most narrow, yet reasonable, definition of the disputed terms." *Roman Catholic Diocese of Boise*, 123 Idaho at 429, 849 P.2d at 102. Residence halls and dormitories are typically associated with a temporary stay, such as at a summer camp or at a university. The purpose of the individual's stay in the camp bunkhouse or university dormitory it is secondary or ancillary to the purpose for which the individual is there. They are not destinations. Conversely, Boise Village's "neighborhoods" are where individuals go specifically to live and receive skilled nursing care twenty-four hours a day, seven days a week, under a doctor's order. The act of residing indefinitely while also receiving necessary ongoing skilled nursing care is the primary purpose for which individuals enter Boise Village. Thus, the portion of Boise Village dedicated to resident housing would be taxable under I.C. § 63-602B.

Approximately 11% of Boise Village is dedicated to areas where residents congregate for participation in activities and recreation. These rooms are also routinely opened up to the community for use, without charge, for various activities. The Court finds this portion of Boise Village reasonably qualifies as meeting rooms or halls, auditoriums, club rooms or recreational facilities as those terms are used within I.C. § 63-602B. Further, Boise Village's use of these areas is directly within the purposes for which Good Samaritan Society was organized, i.e., providing supportive services for those in need. Thus, in addition to the 1.3% exemption for the chapel and chaplain's office, Boise Village is entitled to an 11% exemption for these meeting rooms.


In sum, this Court finds that Good Samaritan Society is a religious corporation and operates Boise Village exclusively for charitable and religious purposes. However, approximately 87.7% of Boise Village is also operated for business or commercial purposes which generate revenue, rendering this portion of the property non-exempt under I.C. § 63-602B. Thus, this Court concludes Good Samaritan Society is entitled to an exemption of 12.3% of Boise Village under I.C. 63-602B.

## ORDER

Having concluded that Boise Village qualified in 2012 and 2013 for a total tax exemption under I.C. § 63-602C, Ada County's denials of Good Samaritan Society's 2012 and 2013 applications for property tax exemptions are overturned and the Orders of the Idaho Board of Tax Appeals reversed. The Petitioner is to submit a form of judgment consistent with this opinion and in compliance with IRCP 54(a).

**IT IS SO ORDERED.**

Dated this 5<sup>th</sup> day of May, 2015

  
\_\_\_\_\_  
Steven Hippler  
District Judge

## CERTIFICATE OF MAILING

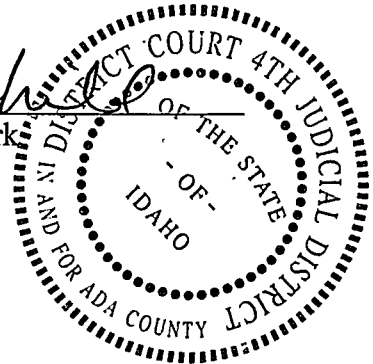
I hereby certify that on this 5 day of May, 2015, I mailed (served) a true and correct copy of the within instrument to:

PHILLIP S OBERRECHT  
ATTORNEY AT LAW  
950 W BANNOCK STREET, STE 950  
BOISE ID 83702

GENE PETTY  
ADA COUNTY PROSECUTOR  
CIVIL DIVISION  
INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH  
Clerk of the District Court

By: E. Chappell  
Deputy Court Clerk



SEP 17 2015

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

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with

Case No. CV OT 1312345

**MEMORANDUM DECISION AND  
ORDER ON GOOD SAMARITAN  
SOCIETY'S MOTION FOR COSTS AND  
FEES**

**I. INTRODUCTION**

Following a six day bench trial, this Court released its Findings of Fact and Conclusions of Law on May 5, 2015 finding the Evangelical Lutheran Good Samaritan Society ("the Society") to be both a religious and charitable organization and further finding Boise Village entitled to a full tax exemption under I.C. § 63-602C on charitable grounds and 12.3% tax exemption under I.C. § 63-602B on religious grounds for 2012 and 2013. The Society now seeks to recover its costs as a matter of right under IRCP 54(d)(1)(C) and either discretionary costs under IRCP 54(d)(1)(D) or, alternatively, reasonable fees and costs pursuant to IRCP 37(c) for Ada County's refusal to admit certain discovery requests. Oral argument on the Society's motions was held on August 21, 2015 at which time the matter was taken under advisement.

EC

## **II. ANALYSIS**

### **A. Ada County Waived its Objections to Rule 54(d)(1) Costs.**

The Society filed its Verified Memorandum of Costs as required by IRCP 54(d)(5) on June 19, 2015. To the extent it objected to any of the Society's claimed costs, the County was required under IRCP 54(d)(6) to file a motion to disallow part or all of such costs within fourteen days. The County, however, filed response objecting to the Society's memorandum on July 14, 2015, twenty-five days after the filing of the memorandum. Pursuant to IRCP 54(d)(6), "[f]ailure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed." Consequently, Ada County waived its objections. That said, this Court is still empowered to consider whether the Society is the prevailing party and the extent to which it may recover discretionary costs. IRCP 54(d)(1)(B), (C), (D).

### **B. The Society is the Prevailing Party.**

Before this Court can award costs under IRCP 54(d)(1), it must first determine whether the Society is a prevailing party. To this end, the rule instructs:

[T]he trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

IRCP 54(d)(1)(B).

In considering all of the claims involved in the action, a court examines the prevailing party question "from an overall view, not a claim-by-claim analysis." *Shore v. Peterson*, 146 Idaho 903, 915, 204 P.3d 1114, 1126 (2009). Here, the relief sought by the Society was a property tax exemption for 2012 and 2013 on the property occupied by Boise Village. It pursued such relief through two separate statutory grounds – charitable and religious. Although this Court ultimately found Boise Village entitled to a full exemption on charitable grounds and only a partial exemption on religious grounds, the Society still obtained the full relief it initially sought. Consequently, this Court finds the Society to be the prevailing party.

### **C. The Society is Entitled to Costs as a Matter of Right.**

As the prevailing party, the Society shall recover certain enumerated costs as a matter of right. Although this Court has the discretion to disallow such costs under certain circumstances,

any such disallowance first requires a “proper objection.” IRCP 54(d)(1)(C). Because the County has waived its objections<sup>1</sup>, this Court find the Society entitled to its costs as a matter of right, to wit:

Filing Fees	\$413.00
Service Fees	\$50.00
Witness Fees	\$25.00
Certified Copies	\$14.00
Trial/Hearing Exhibits	\$500.00
Deposition Costs	\$4340.52
Expert Fees	\$2905.00
<b>TOTAL</b>	<b>\$8247.52</b>

**D. The Society is Not Allowed Discretionary Costs.**

IRCP 54(d)(1)(D) permits this Court to award to the Society “[a]dditional items of cost not enumerated in, or in an amount in excess of that [allowed as a matter of right].” Such costs are permissible “upon a showing that [they] were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed upon the adverse party.” *Id.* In evaluating claimed discretionary costs, this Court’s role depends on whether objections to the costs have been made. IRCP 54(d)(1)(D) states in relevant part:

The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and shall make express findings supporting such disallowance.

Therefore, in light of the County’s waiver of objections, the Society is presumed to be entitled to discretionary costs unless the Court specifically disallows. In this undertaking, the Court must correctly perceive the issue as discretionary, act within the boundaries of its discretion and consistent with the applicable legal standards and reach its determination through an exercise of reason. *Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co.*, 153 Idaho

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<sup>1</sup> Besides challenging whether the Society was the prevailing party, the County did not cite any objections to costs claimed as a matter of right.



716, 728-30, 291 P.3d 399, 411-13 (2012). The Society requests the following discretionary costs:

Trial/Hearing Exhibits <sup>2</sup>	\$840.41
Westlaw Research <sup>3</sup>	\$1896.90
Long Distance	\$119.25
Copies	\$1760.20
Deposition Travel Costs	\$2140.53
Filing/Service by Fax	\$165.00
Express Courier	\$106.54
Hearing and Trial Transcripts	\$4648.75
<b>TOTAL</b>	<b>\$11,677.58</b>

The Society contends such costs meet the “necessary and exceptional” standard due to the large magnitude and breadth of the action. Namely, in seeking relief, the Society points out it has presented its case in three different forums<sup>4</sup>, each of which has required extensive discovery and motion practice and the production of voluminous materials. Additionally, the Society points out that it expended significant resources to establish that it was a religious corporation – a point Society claims the County unreasonably challenged at the district court level.

This Court must first begin with the presumption that “it is in the interest of justice for each party to pay their own costs unless the overall conduct of the lawsuit indicates otherwise.” *Hoagland v. Ada Cnty.*, 154 Idaho 900, 916, 303 P.3d 587, 603 (2013). In evaluating whether a cost is “necessary and exceptional,” this Court must “assess the context and nature of a case as a whole along with multiple circumstances.” *Id.* at 913-14, 303 P.3d at 600-01. Particular standards a court should consider include, but are not limited to, whether there was unnecessary

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<sup>2</sup> This request is for amounts above those recoverable as a matter of right under IRCP 54(d)(1)(C)(6).

<sup>3</sup> Pursuant to IRCP 54(e)(3), costs for computerized legal research are to be considered as attorney fees.

<sup>4</sup> The Society initiated the action before the Ada County Commissions, sitting as the Board of Equalization, by filing an application for continued tax exempt status for Boise Village on charitable and religious grounds under I.C. §§ 63-602B and 63-602C for the tax year 2012. After the Society’s application was denied the Society appealed to the Idaho Board of Tax Appeals, which affirmed the denial. The Society then petitioned this Court for judicial review by a trial de novo under I.C. § 63-3812(c). Subsequently, the appeal to Ada County’s denial of the Society’s 2013 tax exemption application was consolidated with the 2012 appeal.

duplication of work, whether there was an unnecessary waste of time, the frivolity of issues presented, and creation of unnecessary costs that could have been easily avoided. *Id.* Numerous pleadings, depositions, and expert testimony do not, standing alone, render a case exceptional. *Id.*

Not only do discretionary costs have to be “necessary and exceptional,” the court must find it is also “in the interests of justice” to assess such costs against the non-prevailing party. In this endeavor, the Court has set forth factors to consider:

[The factors] include, but are not limited to, the merits of the lawsuit and whether or not it was pursued frivolously, *see* I.R.C.P. 11; the relationship of the costs incurred to the final disposition of the proceeding, and the value added to the proceeding by the costs incurred; the necessity of the proceedings to the final resolution of the lawsuit; and the behavior of the parties, and whether they needlessly ran up costs and fees.

*Id.* at 915-16, 303 P.3d at 602-03.

The issues to be resolved in this case were, at their core, straight-forward. Their resolution required an examination of not only whether the Society qualified as a charitable and religious organization, but also how Boise Village was operated during the years in question. The Society had the burden to present evidence surrounding its founding and how its mission has been carried out over the past several decades through its operations, particularly at Boise Village. While this endeavor necessitated appearances before three forums and the production and presentation of voluminous documents and testimony, this alone does not make the costs claimed by the Society “necessary and exceptional.” Rather, the discretionary costs sought – exhibits, long-distance calls, deposition travel, fax costs, courier fees and transcripts - are typical for any litigation.<sup>5</sup> Further, while the County challenged in this forum whether the Society was a religious corporation, this Court does not find that the County took this position unreasonably or to intentionally increase the costs of suit. Additionally, even if the Court found the County’s position to be unreasonable, the Society has not established the extent to which its claimed costs are linked to establishing its religiosity. For these reasons, the Court denies the Society’s request for discretionary costs.

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<sup>5</sup> Westlaw research is not awardable as a discretionary costs, but rather as an element of fees under IRCP 54(e)(3)(K). *Pocatello Hosp., LLC v. Quail Ridge Med. Investor, LLC*, 157 Idaho 732, 743, 339 P.3d 1136, 1147 (2014).

### **E. The Society is Not Entitled to Rule 37(c) Fees and Costs**

As an alternative to an award of discretionary costs under IRCP 54(d)(1), the Society requests an award of reasonable fees and these costs pursuant to IRCP 37(c), plus additional travel costs for trial testimony by two witnesses and reasonable attorney fees.<sup>6</sup> Specifically, the Society identifies 26 requests for admission which it contends the County unreasonably refused to admit. The County responds that its denials of the Society's requested admissions fall within one of the exceptions in IRCP 37(c), rendering an award of fees and costs improper.

Rule 37(c), IRCP, has been described by the Idaho Supreme Court as a "sanction" used to compensate parties for the expense of unnecessarily proving requested admissions. *Hennefer v. Blaine Cnty. Sch. Dist.*, 158 Idaho 242, 346 P.3d 259, 278 (2015); *Tomich v. City of Pocatello*, 127 Idaho 394, 400, 901 P.2d 501, 507 (1995). It provides in relevant part:

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a)<sup>7</sup>, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter<sup>8</sup>, or (4) there was other good reason for the failure to admit.

IRCP 37(c).

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<sup>6</sup> Specifically, the Society seeks \$245,892.50 in attorney and paralegal fees which were incurred between October of 2013, when the County responded to the discovery requests at issue, through May of 2015. Aff. Oberrecht, ¶¶ 11-12, 15-17, Exhs. F, G. Additionally, the witnesses for whom the Society seeks travel expenses are Rev. Greg Wilcox and Joseph Herdina. Aff. Krekelberg, Exhs. A, B.

<sup>7</sup> Notably, under IRCP 36(a), requests for admission are not limited to questions of fact. Rather, requests involving opinions, conclusions and mixed questions of law and fact are proper. *Ruge v. Posey*, 114 Idaho 890, fn. 1, 761 P.2d 1242 (1988). Thus, while a request to admit liability is permissible, if a response to a mixed question of fact and law would turn primarily on a legal issue to be resolved by the court, an objection to the request may be proper. *Id.*

<sup>8</sup> By way of example, in *Rubley v. Contreras*, the Court found Rubley's refusal to admit to duty and breach was unjustified where the police report referred to her actions as a "contributing cause" of the accident and she was issued a citation for speeding. Thus, her belief that she might have prevailed on the issue at trial was not reasonable. Rather, she should have admitted "some level of negligence." 142 Idaho 573, 577-78, 130 P.3d 1111, 1115-16 (2006). Conversely, in *Hennefer v. Blaine County School District*, the Court found the defendant's belief that he could have prevailed on the issue of negligence reasonable where he was not issued any citation, charged with a crime, nor was it alleged that he violated a statute. Thus, his refusal to admit his negligence in requests for admission was justified. 158 Idaho 242, 346 P.3d 259, 278 (2015).

Although the rule instructs that the court “shall” make the order, the decision to award such fees and costs under the rule is discretionary. *Hennefer, supra*. The determination of whether an exception applies is also within the discretion of the trial court. *Id.* Notably, if a refusal to admit is found to have been improper, “the judge may not refuse to make an award solely because the expenses of proving the matter contained in the requests for admission might also have been incurred with respect to another issue.” *Ruge v. Posey*, 114 Idaho at 892, 761 P.2d at 1244.

The specific requests for admission at issue here fall into one of four general categories:

**1. Society as a Charitable and Religious Organization**

The Society advanced several requests for admission specific to its status as a charitable and/or religious organization, to wit:

**REQUEST FOR ADMISSION NO. 1:** Please admit that The Evangelical Lutheran Good Samaritan Society is a religious organization as defined in Idaho Code section 63-602B.

**RESPONSE:** The Evangelical Lutheran Good Samaritan Society does not appear to be a “religious limited liability company, corporation or society of this state” under Idaho Code § 63-602B and, therefore, this request is denied.

**REQUEST FOR ADMISSION NO. 2:** Please admit that The Evangelical Lutheran Good Samaritan Society is a charitable organization as defined in Idaho Code section 63-602C.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 20:** Please admit that The Evangelical Lutheran Good Samaritan Society is recognized as a Religious Corporation by the Idaho Secretary of State.

**RESPONSE:** Denied. It is unclear what Society means by “recognized” in this request. Furthermore, the Ada County Board of Equalization is unaware of any decision made by the Idaho Secretary of State that recognizes Society as a religious organization.

**REQUEST FOR ADMISSION NO. 32:** Please admit that The Evangelical Lutheran Good Samaritan Society is a religious organization.

**RESPONSE:** Denied. Please see response to Request for Admission No. 1. In addition, it is unclear what Society means by a “religious organization” and whether it means a religious organization under Idaho Code § 63-602B or some other standard.

**REQUEST FOR ADMISSION NO. 33:** Please admit that The Evangelical Lutheran Good Samaritan Society is a charitable organization.

**RESPONSE:** Denied. Please see response to Request for Admission No. 2. In this request, it is unclear what Society means a “charitable organization” and

whether this means a charitable organization under Idaho Code § 63-602C or some other standard.

At trial, the Society successfully established that it was both a charitable and religious organization. The issue, then, is whether the County's denials fall within one of the four exceptions of IRCP 37(c).

The County argues that its objections to Request Nos. 32 and 33 were proper due to ambiguity regarding whether the Society was referring to "charitable organization" and "religious organization" as used in the exemption statutes. The County's confusion was well placed in light of Request Nos. 1 and 2 which sought similar admissions specifically within the context of the exemption statutes. Thus, because the requests were objectionable under IRCP 36(a), the County's responses to Request Nos. 32 and 33 were proper.

Likewise, the County's objection to Request No. 2 was proper in light of the County's reasonable belief that it would prevail on the issue at trial. In *Canyon County v. Sunny Ridge Manor, Inc.*, the Idaho Supreme Court noted that whether an organization is "charitable" or not within the meaning of I.C. § 63-602C must be decided upon its own particular facts or circumstances, and set forth a list of several factors to aid in this determination. 106 Idaho 98, 100, 675 P.2d 813, 815 (1984). Indeed, two forums prior to this Court found the *Sunny Ridge* factors unmet. Thus, it was entirely reasonable for the County to deny Request No. 2 due to its belief that it might prevail.

The County's objection to Request No. 1, however, is more complex. Upon appeal to this Court, the County initially took the position in its summary judgment motion that the Society was not a religious corporation. In its pretrial memorandum and pretrial proposed findings of fact and conclusions of law, however, the County neither contested nor conceded that the Society was a religious corporation. Rather, the County's position was that the Society "must show that it is a 'religious corporation'" and that this Court would not violate the First Amendment by evaluating whether the Society met this burden. County's Pretrial Memo, pp. 5-9. During trial, the Society presented substantial evidence of its religiosity. For example, there was testimony regarding its affiliations with the two largest Lutheran denominations and regarding its dedication, since its founding, to infusing Christianity into its local, national and international activities. In fact, Van Moore, the County's expert, testified there was "no question in [his] mind [the Society] is a

religious organization.” In its post-trial briefing, the County appeared to concede that the Society was a religious corporation, as noted in this Court’s Findings of Fact and Conclusions of Law.

This Court finds the County’s reticence to admit that the Society was a religious corporation was for good reason. First, whether the Society is a religious corporation is not easily answered. The term is neither defined by statute nor are there any standards set forth in applicable case law. Merely because the Society is affiliated with two major Lutheran denominations does not, in and of itself, make it religious. As was evident in this Court’s findings, the inquiry turned on several facts specific to the Society’s founding, structure, and how its mission was and is carried out nationally, internationally, and at Boise Village. Further, given the First Amendment implications involved in undertaking to label a corporation as religious or not<sup>9</sup>, the County’s choice to remain neutral on the issue going into trial and instead have the Court make the determination was reasonable. For these reasons, this Court finds the County’s failure to admit Request No. 1 falls within the exception set forth in IRCP 37(c)(4).

## **2. Operation of Boise Village**

**REQUEST FOR ADMISSION NO. 34:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society - Boise Village as a religious organization in 2011.

**RESPONSE:** Denied. Although Society was given a property tax exemption for Boise Village in 2011, that decision appears to be an error.

**REQUEST FOR ADMISSION NO. 35:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society- Boise Village as a religious organization in 2012.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 36:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society - Boise Village as a religious organization in 2013.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 37:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society - Boise Village as a charitable organization in 2011.

**RESPONSE:** Denied. Although Society was given a property tax exemption for Boise Village in 2011, that decision appears to be an error.

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<sup>9</sup> See, e.g., *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada Cnty.*, 123 Idaho 410, 423, 849 P.2d 83, 96 (1993).

**REQUEST FOR ADMISSION NO. 38:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society - Boise Village as a charitable organization in 2012.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 39:** Please admit that The Evangelical Lutheran Good Samaritan Society operated the Good Samaritan Society - Boise Village as a charitable organization in 2013.

**RESPONSE:** Denied.

**REQUEST FOR ADMISSION NO. 22:** Please admit that The Good Samaritan Society-Boise Village has an on-site Chapel.

**RESPONSE:** The Ada County Board of Equalization admits that Society has an area in Good Samaritan Society-Boise Village that Society refers to as a “chapel”. According to the testimony of Reverend Spiedel, this “chapel” area at Boise Village is not used exclusively for religious purposes. The remainder of this request is denied.

With regard to Request Nos. 34-39, the County’s denials were reasonable. First, the exemption statutes do not require that that Society operate Boise Village as a religious and/or charitable organization. Rather, for the charitable exemption, the Society was required to show that Boise Village was “used exclusively for the purposes for which [the Society] is organized.” I.C. § 63-602C. Similarly, the religious exemption requires that the Society use Boise Village “exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of [the Society].” I.C. § 63-602B. Thus, the requests regarding whether the Society operated Boise Village as a charitable and religious organization are of no substantial importance to the issues. Additionally, considering the conclusion of the Board of Tax Appeal that the Society did not use Boise Village exclusively for exempt purposes, the County had reasonable ground to believe that it might prevail on the matter and thus reasonable grounds to deny the request.

With respect to Request No. 22 asking the County to admit that Boise Village has an on-site Chapel, the County did admit to the question as posed. Its comment that it did not believe the Chapel to be used exclusively for religious purposes was merely a gratuitous addition and cannot serve as a basis for IRCP 37(c) sanctions.

### **3. Internal Structure and Operations of the Society**

**REQUEST FOR ADMISSION NO. 6:** Please admit that members of The Evangelical Lutheran Good Samaritan Society's board are required to be active members of a Christian church.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 6 and, therefore, denies the same. Society has produced a document titled "Revised Articles of Incorporation" that contains a requirement that Society's members be active members of a Christian church. The Ada County Board of Equalization does not have personal knowledge of whether this is followed by Society or whether the Society's board members are members of a Christian church.

**REQUEST FOR ADMISSION NO. 8:** Please admit that nonemployee board members of The Evangelical Lutheran Good Samaritan Society are required to be active members of a Lutheran church.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 8 and, therefore, denies the same. Society has produced a document titled "Revised Articles of Incorporation" that contains a requirement that Society's board be active members of a Christian church. The Ada County Board of Equalization does not have personal knowledge of whether this provision is followed by Society or whether nonemployee board members of Society are active members of a Lutheran church.

**REQUEST FOR ADMISSION NO. 10:** Please admit that the President and Executive Vice Presidents of The Evangelical Lutheran Good Samaritan Society's board are required to be active members of a Lutheran church.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 10 and, therefore, denies the same. Society has produced a document titled "Revised Articles of Incorporation" that contains a requirement that Society's board be active members of a Christian church. The Ada County Board of Equalization does not have personal knowledge of whether this provision is followed by Society or whether the President and Executive Vice Presidents are members of a Lutheran church.

**REQUEST FOR ADMISSION NO. 12:** Please admit that all Administrators of The Evangelical Lutheran Good Samaritan Society are required to be active members of a Christian church.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 12 and, therefore, denies the same. Society has produced a document titled "Bylaws of The Evangelical Lutheran Good Samaritan Society" which states that administrators "shall be active members of a Christian church." The Ada County Board of Equalization does not have personal knowledge of



whether this provision is followed by Society or whether its administrators are members of a Christian church.

**REQUEST FOR ADMISSION NO. 14:** Please admit that the Administrator is the spiritual leader for each of The Evangelical Lutheran Good Samaritan Society's facilities.

**RESPONSE:** It is unclear what Society means by "spiritual leader" and, therefore, Ada County denies this request. Furthermore, the Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 14 and, therefore, denies the same. Society has produced a document titled "The Role of the Administrator, Executive Director and Executive Manager in the Spiritual Program" that does not state that the administrator is the "spiritual leader" of its facilities.

**REQUEST FOR ADMISSION NO. 15:** Please admit that you are aware of no for profit skilled nursing facility in Ada County that requires its administrator to be the facility's spiritual leader.

**RESPONSE:** It is unclear what Society means by "spiritual leader" and, therefore, Ada County denies this request.

**REQUEST FOR ADMISSION NO. 16:** Please admit that The Evangelical Lutheran Good Samaritan Society is affiliated with the Evangelical Lutheran Church of America (ELCA) and recognized by the Lutheran Church - Missouri Synod.

**RESPONSE:** It is unclear what Society means by "affiliated with the Evangelical Lutheran Church of America (ELCA)" or "recognized by the Lutheran Church-Missouri Synod" and, therefore, Ada County denies this request. Furthermore, the Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 16 and, therefore, denies the same.

**SUPPLEMENTAL RESPONSE [16]:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 16 and, therefore, denies the same. The Ada County Board of Equalization does not have personal knowledge of the relationship between ELCA and the Lutheran Church-Missouri Synod. In addition, it is unclear what Society means by "affiliated with the Evangelical Lutheran Church of America (ELCA)" or "recognized by the Lutheran Church-Missouri Synod". While Society has used these terms throughout this litigation, it is still unclear to Ada County what the relationship is between the ELCA and the Lutheran Church-Missouri Synod. Society has produced documents marked GSS001328-1338, which mentions a "Recognized Service Organization", and documents marked GSS001339-1341, entitled "Affiliation Agreement." However, the import of those documents is unclear to the Ada County Board of Equalization.

**REQUEST FOR ADMISSION NO. 17:** Please admit that Rev. August "Dad" Hoeger was the founder of The Evangelical Lutheran Good Samaritan Society.

**RESPONSE:** Society has advised Ada County that Rev. August “Dad” Hoeger started Society, however, the Ada County Board of Equalization does not have personal knowledge of these facts and, therefore, denies the same. In addition, based upon information provided by Society, it appears that Reverend Hoeger may not have been the sole founder of Society.

**REQUEST FOR ADMISSION NO. 18:** Please admit that The Evangelical Lutheran Good Samaritan Society’s mission is “to share God’s love in word and deed by providing shelter and supportive services to older persons and other in need, believing that ‘In Christ’s Love, Everyone Is Someone’”.

**RESPONSE:** Denied. Based upon Society’s operations and practices, its mission appears to be providing services, charging for those services, and collecting against people who do not pay.

**SUPPLEMENTAL RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 18 and, therefore, denies the same. Society has produced a document marked GSSOO 1319 that contains a “Mission Statement” with the following language: “to share God’s love in word and deed by providing shelter and supportive services to older persons and others in need, believing that ‘In Christ’s Love, Everyone Is Someone’”. Society provides services, charges for those services, and collects against people who do not pay. It also uses Boise Village for commercial and business purposes. Thus, the “mission” of Society is neither religious nor charitable under Idaho Code §§ 63-602B or 63-602C.

**REQUEST FOR ADMISSION NO. 19:** Please admit that The Evangelical Lutheran Good Samaritan Society’s purposes stated in its Revised Articles of Incorporation are:

- A. To share God’s love in word and deed, believing that in Christ’s love, everyone is someone.
- B. To provide shelter and supportive services to older persons and others in need.
- C. To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 19 and, therefore, denies the same. Society has produced a document titled “Revised Articles of Incorporation” that contains the language in A., B., and C. above. Society appears to have other purposes that are listed in Article IV of the “Revised Articles of Incorporation” that are not charitable or religious.

**REQUEST FOR ADMISSION NO. 30:** Please admit that The Evangelical Lutheran Good Samaritan Society has property tax exemptions for its skilled nursing facilities located in other geographical locations.

**RESPONSE:** The Ada County Board of Equalization does not have personal knowledge of the facts upon which Society requests admission in Request for Admission No. 30 and, therefore, denies the same. It is important to note that Ada County has requested information on Society's tax exemption denials in other jurisdictions and, to date, Society has failed to provide that information.

Request Nos. 6, 8, 10, 12, 14, 18 and 19 ask the County to admit to the truth of the matters stated in internal Society policies disclosed in discovery about which the County has no personal knowledge. While the Society's policies state, for example, that all Administrators of the Society are required to be active members of a Christian church, there is no reason that the County, without personal knowledge of such, should concede that this, in fact, is a policy actively in practice. Consequently, the County's responses are proper. *See, e.g., Lakehead Pipe Line Co. v. Am. Home Assur. Co.*, 177 F.R.D. 454, 457 (D. Minn. 1997)(holding that plaintiffs properly objected to defendants' efforts "to obtain, by implication, a synoptic characterization of the documents, or a gloss as to their intendment, on the specific ground that the documents speak for themselves.")

With respect to Request No. 15 asking the County to admit that it is aware of no for profit skilled nursing facility in Ada County that requires its administrator to be the facility's spiritual leader, the County denied the request on the basis that the meaning of "spiritual leader" was unclear. The County's denial was proper in light of the ambiguity of the term. Further, the County cannot be expected to have personal knowledge the policies of other nursing facilities regarding the qualifications of their administrators. In these respects, the request was objectionable. In addition, the request was of no substantial importance to the issues in this case, which focused on the use of Boise Village specifically, not the use of other nursing facilities.

In response to Request No. 17, which requested admission that Rev. August "Dad" Hoeger was the founder of The Society, the County admitted it was advised of this fact yet did not have personal knowledge of such. Further, the County questioned whether Hoeger was the sole founder. Again, the County's qualification of its response was proper. The Society established at trial that it was founded "in part" by Hoeger. Additionally, whether Hoeger was or was not a founder of the Society was ultimately of little importance to the issues in the case.

Request No. 30 requested admission that the Society had property tax exemptions for its skilled nursing facilities located in other geographical locations. The County denied for lack of personal knowledge and specifically noted it was awaiting discovery responses from the Society.

While the County's certainly had the ability to discover whether the Society's other skilled nursing facilities in Idaho were exempt and could have responded accordingly, ultimately the request was unimportant to the exemption sought in this case, which focused primarily on Boise Village's operations, not other facilities. None of the County's responses to these requests serve as a basis for IRCP 37(c) sanctions.

#### **4. General Requests**

**REQUEST FOR ADMISSION NO. 28:** Please admit that a not-for-profit skilled nursing facility should practice good financial stewardship to sustain its continued existence.

**RESPONSE:** It is unclear what Society means by "practice good financial stewardship to sustain its continued existence" and, therefore, the Ada County Board of Equalization denies this request.

**REQUEST FOR ADMISSION NO. 29:** Please admit that a not-for-profit skilled nursing facility may have excess revenue over expenses and still be considered a charitable organization.

**RESPONSE:** It is unclear in this request for admission what Society means by "still be considered a charitable organization." It is also unclear whether Society means a "charitable organization" under Idaho Code § 63-602C or some other federal or state law, such for federal tax purposes (i.e., IRS 501(c)(3) purposes). Ada County asserts in this case that the profits generated by Society is one of the reasons why Society does not qualify for a charitable property tax exemption under Idaho Code § 63-602C. For these reasons, this request is denied.

**REQUEST FOR ADMISSION NO. 31:** Please admit that a not-for-profit skilled nursing facility must account for its finances under Generally Accepted Accounting Principles.

**RESPONSE:** The Ada County Board of Equalization lacks sufficient information to form a belief as to the accuracy of the information contained in Request for Admission No. 31 and, therefore, denies this request.

As with several of the foregoing requests, neither Request No. 28 nor Request No. 31 has any substantial importance to the issues. Rather, they seek to affirm general principles which the Society was not required to prove in order to successfully establish exemption. Thus, regardless of the propriety of the County's responses to the requests, they do not warrant sanctions under IRCP 37(c). Likewise, although the issue raised by Request No. 29 was hotly debated throughout the litigation, it was ultimately a legal conclusion made by this Court in light of specific factual findings and, therefore, objectionable. In addition, the County's refusal to admit to the request was proper due because the County had reasonable grounds to believe it would prevail on the

issue, given the conclusions of the Board of Tax Appeals. In all the denial was made reasonably and in good faith.

In sum, for each of the responses cited by the Society as deserving of sanctions under IRCP 37(c), one or more of the exceptions listed by the rule apply. Consequently, the Society is not entitled to its fees and costs under the rule.

### **III. ORDER**

For the foregoing reasons, IT IS HEREBY ORDERED, AND THIS DOES ORDER that the County's objection to the Society's memorandum of costs is DENIED as waived. The Society is hereby awarded the following costs:

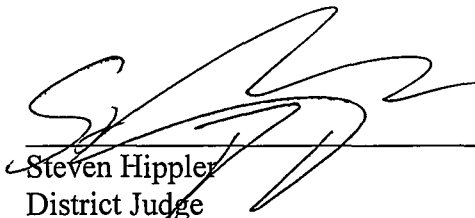
Costs as a Matter of Right: \$8247.52

Discretionary Costs: \$0

It is further ordered that the Society's Motion for Rule 37(c) Fees and Costs is DENIED.

IT IS SO ORDERED

Dated this 17<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Steven Hippler  
District Judge

## CERTIFICATE OF MAILING

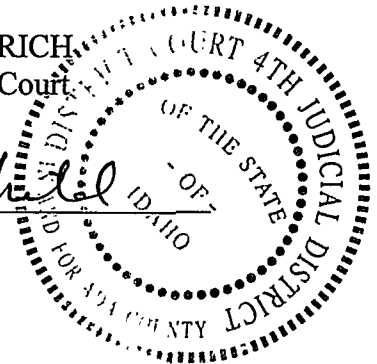
I hereby certify that on this 17 day of September, 2015, I mailed (served) a true and correct copy of the within instrument to:

Phillip S. Oberrecht  
Jason R. Mau  
GREENER BURKE SHOEMAKER OBERRECHT, P.A.  
950 W. Bannock St., Suite 950  
Boise ID 83702

Gene A Petty  
Attorney at Law  
200 W Front Street, Room 3191  
Boise ID 83702

CHRISTOPHER D. RICH  
Clerk of the District Court

By: E. Chelal  
Deputy Court Clerk



**SEP 17 2015**

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

By **CHRISTOPHER D. RICH**, Clerk  
By **EMILY CHILD**  
DEPUTY

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

Case No. CV OT 1413941

from the Board of Equalization of Ada County  
for tax year 2014.

**MEMORANDUM DECISION AND  
ORDER ON THE SOCIETY'S  
MOTIONS TO LIFT STAY AND FOR  
REFUND OF TAXES, AND ADA  
COUNTY'S OBJECTION TO THE  
SOCIETY'S PROPOSED JUDGMENT**

**I. INTRODUCTION**

Following a six day bench trial in the consolidated cases of CV-OT-1309169 and CV-OT-1312345, this Court released its Findings of Fact and Conclusions of Law on May 5, 2015 finding the Evangelical Lutheran Good Samaritan Society ("the Society") to be both a religious and charitable organization and further finding Boise Village entitled to a full tax exemption under I.C. § 63-602C on charitable grounds and 12.3% tax exemption under I.C. § 63-602B on religious grounds for 2012 and 2013. Prior to the ruling, the Society and Ada County agreed by stipulation that the Court's ruling in that case would determine the issues with respect to the approval or denial of the religious and charitable exemptions in the current case for the 2014 tax year. Accordingly, this Court entered a stay of proceedings on August 13, 2014 in this case.

Following the Court's May 5, 2015 decision, the Society moved to lift the stay so judgment could be entered in this case. The Society further submitted a proposed judgment which requests that Ada County refund its property taxes it paid under protest for 2014 in the amount of \$87,877.53, plus interest of \$4482.64 and late charges of \$1757.55. On May 13, 2015, Ada County filed an objection to the proposed judgment, contending that reimbursement of property

taxes must first be ordered by this Court, that late fees are not awardable and that the requested interest is excessive. Thereafter, the Society filed a motion for refund of taxes not lawfully due, including a request for interest and late charges as set forth in its proposed judgment. Ada County again objected to the percent of interest and late fees sought. On August 21, 2015, upon request by the parties, this Court took the matter under advisement on the briefing alone without oral argument.

## **II. ANALYSIS**

### **A. The Society is Entitled to a Refund of Property Taxes for 2014.**

Under I.C. § 63-3812(c), following an appeal to the district court, the court “may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.” *Canyon Cnty. Bd. of Equalization v. Amalgamated Sugar Co., LLC*, 143 Idaho 58, 62, 137 P.3d 445, 449 (2006)(holding that provision is not discretionary; “the district court is to order a refund if one is due as a result of its ultimate decision.”). When a refund is so ordered, I.C. § 63-1305(2) states that the refund is to include “property tax ... found by the court ... to have been ... not lawfully due, interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals.”

On December 11, 2014, the Society submitted two checks to the County, under protest, totaling \$87,877.53 for the first half of 2014 property taxes for Boise Village.<sup>1</sup> Having found the Society entitled to a full property tax exemption for 2012 and 2013 pursuant to I.C. § 63-602C, and in light of the parties’ stipulation that the ruling shall govern the outcome of this case, this Court orders a property tax refund for 2014 in the amount of \$87,877.53.

### **B. The Society is Entitled to Interest on the Refund**

Although I.C. § 63-1305(2) requires this Court to also order payment of interest due on the refund, neither the statute nor case law provide any direction regarding how the interest should be calculated. The parties disagree as to the appropriate calculations for such interest. The Society asks that the Court apply I.C. § 63-6001, which authorizes a tax collector to collect interest on a delinquent tax payment at 1% per month calculated from January 1 following the year the tax lien attached. Ada County argues I.C. § 63-6001 should not apply within the context

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<sup>1</sup> Aff. Oberrecht in Supp. Of Mtn. to Lift Stay, Exhs. 1-3.



of this case; rather, the post-judgment interest rate under I.C. § 28-22-104(2) should apply, which is currently 5.375%.

This Court is reluctant to apply I.C. § 63-6001 to calculate interest in this case, as the statute specifically applies to tax liens. Nor is this Court convinced that I.C. § 28-22-104(2) is the appropriate statute since it addresses post-judgment interest and only applies once a debt is reduced to judgment. *Roesch v. Klemann*, 155 Idaho 175, 179, 307 P.3d 192, 196 (2013). Rather, the statute the Court finds to be most applicable is the pre-judgment interest statute set forth at I.C. § 28-22-104(1)<sup>2</sup>, which allows interest at the rate of 12% per annum where there is no express contract in writing fixing a different rate of interest on “money after the same becomes due.”

Prejudgment interest awards are appropriate where the amount of liability is liquidated or capable of ascertainment by a mere mathematical calculation in order to fully compensate the injured party. *Kidd Island Bay Water Users Co-op. Ass'n, Inc. v. Miller*, 136 Idaho 571, 575, 38 P.3d 609, 613 (2001). Here, the amount of the liability – i.e., the property tax paid in the amount of \$87,877.53 – is easily calculable. This Court further finds this amount became due to the Society once paid under protest. Therefore, the Society is entitled to interest on this amount at the rate of 12% from December 11, 2014, the date of payment.

### **C. The Society is Not Entitled to Late Charges**

The Society argues that the language of I.C. § 63-1305(2) allowing “costs and other amounts” to be included in a tax refund ordered by the Court contemplates the inclusion of late charges.<sup>3</sup> It points out that I.C. § 63-1302(1) directs county commissioners to include late charges in their refunds to taxpayers and, therefore, a refund ordered by this Court should as well. However, I.C. § 63-1302(1) applies “in any case in which the county commissioners find that, due to error or otherwise by fault of the county, an excess amount of property tax was paid[.]” This is not the scenario presented by this case. Rather, being court-ordered refund, this Court is constrained to follow I.C. § 63-1305(2) in determining the refund’s components. Unlike in I.C. § 63-1302(1), the legislature did not specifically articulate that late charges be included in court-ordered refunds under I.C. § 63-1305(2). While one could potentially interpret “costs and other amounts” to imply the inclusion of late charges, the rule of interpretation referred to as

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<sup>2</sup> The Society asserted in the alternative that I.C. § 28-22-104(1) should apply.

<sup>3</sup> I.C. § 63-201(12) sets late charges at 2% of the delinquency.

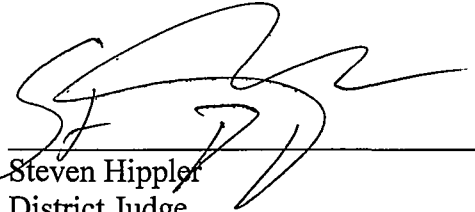
*expressio unius est exclusio alterius* suggests otherwise. Pursuant to this doctrine, where a “statute specifies certain things, the designation of such things excludes all others.” *Poison Creek Pub., Inc. v. Cent. Idaho Pub., Inc.*, 134 Idaho 426, 429, 3 P.3d 1254, 1257 (Ct. App. 2000), citing *Local 1494 of the Int’l Ass’n of Firefighters v. City of Coeur d’Alene*, 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978). Thus, the fact that the legislature included late charges as a component of a refund under I.C. § 63-1602(1) but did not expressly include it for refunds ordered under I.C. § 63-1305(2) compels this Court to conclude that it is not a recoverable component of a court-ordered refund. Thus, this Court will not order that late charges be refunded.

### **III. ORDER**

On the bases stated herein, this Court **GRANTS**, in part, and **DENIES**, in part, the Society’s Motion for Refund of Taxes Not Lawfully Due and Ada County’s Objection to the Society’s Proposed Judgment. Additionally, the Court **GRANTS** the Society’s Motion to Lift the Stay so judgment may be entered.<sup>4</sup> The Society is to submit a second proposed judgment consistent with this opinion and in compliance with IRCP 54(a) within seven (7) days of this Order.

### **IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of September, 2015

  
\_\_\_\_\_  
Steven Hippler  
District Judge

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<sup>4</sup> The County did not object to lifting the stay.

## CERTIFICATE OF MAILING

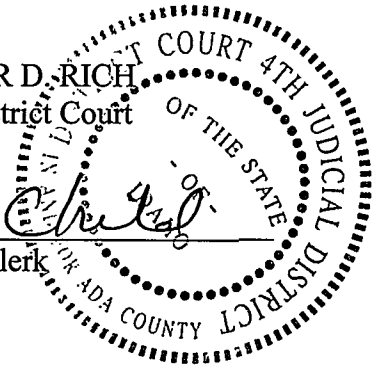
I hereby certify that on this 17 day of September, 2015, I mailed (served) a true and correct copy of the within instrument to:

Phillip S. Oberrecht  
Jason R. Mau  
GREENER BURKE SHOEMAKER OBERRECHT, P.A.  
950 W. Bannock St., Suite 950  
Boise ID 83702

Gene A Petty  
Attorney at Law  
200 W Front Street, Room 3191  
Boise ID 83702

CHRISTOPHER D. RICH  
Clerk of the District Court

By: E. Chel  
Deputy Court Clerk



**SEP 17 2015**

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

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

from the Board of Equalization of Ada County  
for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with

Case No. CV OT 1312345

**MEMORANDUM DECISION AND  
ORDER ON THE SOCIETY'S MOTION  
FOR REFUND OF TAXES AND ADA  
COUNTY'S OBJECTION TO THE  
SOCIETY'S PROPOSED JUDGMENT**

**I. INTRODUCTION**

Following a six day bench trial, this Court released its Findings of Fact and Conclusions of Law on May 5, 2015 finding the Evangelical Lutheran Good Samaritan Society ("the Society") to be both a religious and charitable organization and further finding Boise Village entitled to a full tax exemption under I.C. § 63-602C on charitable grounds and 12.3% tax exemption under I.C. § 63-602B on religious grounds for 2012 and 2013. The Society was ordered to submit a form of judgment consistent with the Court's opinion and in compliance with IRCP 54(a).

The Society submitted a proposed judgment on May 8, 2015 requesting that Ada County repay property taxes it paid under protest for 2012 and 2013 totaling \$350,240.52, plus interest of \$80,397.08 pursuant to I.C. §§ 63-1305(2) and 63-1001 and late charges of \$7004.82 pursuant to I.C. § 63-210(12). On May 13, 2015, Ada County filed an objection to the proposed judgment, contending that reimbursement of property taxes must first be ordered by this Court, that late

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fees are not awardable and that the requested interest is excessive. Thereafter, the Society filed a motion for refund of taxes not lawfully due, including a request for interest and late charges as set forth in its proposed judgment. Ada County again objected to the percent of interest and late fees sought. On August 21, 2015, upon request by the parties, this Court took the matter under advisement on the briefing alone without oral argument.

## **II. ANALYSIS**

### **A. The Society is Entitled to a Refund of Property Taxes for 2012 and 2013.**

Under I.C. § 63–3812(c), following an appeal to the district court, the court “may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.” *Canyon Cnty. Bd. of Equalization v. Amalgamated Sugar Co., LLC*, 143 Idaho 58, 62, 137 P.3d 445, 449 (2006)(holding that provision is not discretionary; “the district court is to order a refund if one is due as a result of its ultimate decision.”). When a refund is so ordered, I.C. § 63-1305(2) states that the refund is to include “property tax ... found by the court ... to have been ... not lawfully due, interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals.”

At trial, the Society presented exhibits demonstrating the amounts of property tax it paid in 2012 and 2013 under protest pursuant to I.C. §§ 63-3812 and 63-511.<sup>1</sup> For 2012, the Society submitted two payments of \$88,404 each on December 18, 2012 and May 29, 2013. For 2013, the Society submitted two payments of \$86,716.26 each on December 2, 2013 and May 28, 2014. Having found the Society entitled to a full property tax exemption for 2012 and 2013 pursuant to I.C. § 63-602C, this Court orders a total property tax refund for those years totaling \$350,240.52.

### **B. The Society is Entitled to Interest on the Refund**

Although I.C. § 63-1305(2) requires this Court to also order payment of interest due on the refund, neither the statute nor case law provide any direction regarding how the interest should be calculated. The parties disagree as to the appropriate calculations for such interest. The Society asks that the Court apply I.C. § 63-6001, which authorizes a tax collector to collect interest on a delinquent tax payment at 1% per month calculated from January 1 following the

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<sup>1</sup> Appellant’s Exhibits 80-83.

year the tax lien attached. Ada County argues I.C. § 63-6001 should not apply within the context of this case; rather, the post-judgment interest rate under I.C. § 28-22-104(2) should apply, which is currently 5.375%.

This Court is reluctant to apply I.C. § 63-6001 to calculate interest in this case, as the statute specifically applies to tax liens. Nor is this Court convinced that I.C. § 28-22-104(2) is the appropriate statute since it addresses post-judgment interest and only applies once a debt is reduced to judgment. *Roesch v. Klemann*, 155 Idaho 175, 179, 307 P.3d 192, 196 (2013). Rather, the statute the Court finds to be most applicable is the pre-judgment interest statute set forth at I.C. § 28-22-104(1)<sup>2</sup>, which allows interest at the rate of 12% per annum where there is no express contract in writing fixing a different rate of interest on “money after the same becomes due.”

Prejudgment interest awards are appropriate where the amount of liability is liquidated or capable of ascertainment by a mere mathematical calculation in order to fully compensate the injured party. *Kidd Island Bay Water Users Co-op. Ass'n, Inc. v. Miller*, 136 Idaho 571, 575, 38 P.3d 609, 613 (2001). Here, the amount of the liability – i.e., the property tax paid – is easily calculable. This Court further finds the four installments paid by the Society for taxes due in 2012 and 2013 became due once they were paid. Therefore, the Society is entitled to interest at the rate of 12% on the four payments it made between December 18, 2012 and May 28, 2014, with interest running from the date of each payment to the date of judgment.

### **C. The Society is Not Entitled to Late Charges**

The Society argues that the language of I.C. § 63-1305(2) allowing “costs and other amounts” to be included in a tax refund ordered by the Court contemplates the inclusion of late charges.<sup>3</sup> It points out that I.C. § 63-1302(1) directs county commissioners to include late charges in their refunds to taxpayers and, therefore, a refund ordered by this Court should as well. However, I.C. § 63-1302(1) applies “in any case in which the county commissioners find that, due to error or otherwise by fault of the county, an excess amount of property tax was paid[.]” This is not the scenario presented by this case. Rather, being court-ordered refund, this Court is constrained to follow I.C. § 63-1305(2) in determining the refund’s components. Unlike in I.C. § 63-1302(1), the legislature did not specifically articulate that late charges be included in

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<sup>2</sup> The Society asserted in the alternative that I.C. § 28-22-104(1) should apply.

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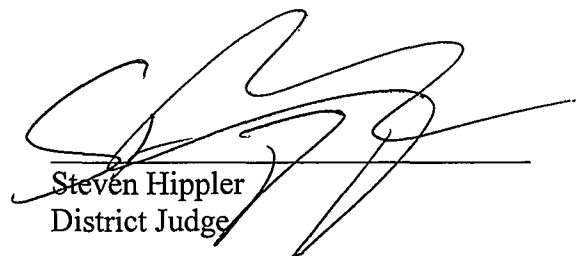
court-ordered refunds under I.C. § 63-1305(2). While one could potentially interpret “costs and other amounts” to imply the inclusion of late charges, the rule of interpretation referred to as *expressio unius est exclusio alterius* suggests otherwise. Pursuant to this doctrine, where a “statute specifies certain things, the designation of such things excludes all others.” *Poison Creek Pub., Inc. v. Cent. Idaho Pub., Inc.*, 134 Idaho 426, 429, 3 P.3d 1254, 1257 (Ct. App. 2000), citing *Local 1494 of the Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 639, 586 P.2d 1346, 1355 (1978). Thus, the fact that the legislature included late charges as a component of a refund under I.C. § 63-1602(1) but did not expressly include it for refunds ordered under I.C. § 63-1305(2) compels this Court to conclude that it is not a recoverable component of a court-ordered refund. Thus, this Court will not order that late charges be refunded.

### III. ORDER

On the bases stated herein, this Court **GRANTS**, in part, and **DENIES**, in part, the Society’s Motion for Refund of Taxes Not Lawfully Due and Ada County’s Objection to the Society’s Proposed Judgment dated May 8, 2015. The Society is to submit a second proposed judgment consistent with this opinion and in compliance with IRCP 54(a) within seven (7) days of this Order.

**IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of September, 2015

  
Steven Hippler  
District Judge

## CERTIFICATE OF MAILING

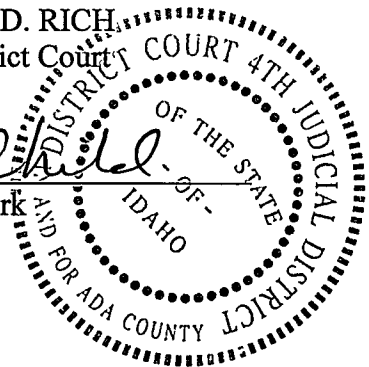
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Gene A Petty  
Attorney at Law  
200 W Front Street, Room 3191  
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CHRISTOPHER D. RICH  
Clerk of the District Court

By: E. Chidell  
Deputy Court Clerk





OCT 13 2015

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

from the Board of Equalization of Ada  
County for tax years 2012 and 2013.

Case No. CV OT 1309169

Consolidated with  
Case No. CV OT 1312345

**JUDGMENT**

JUDGMENT IS ENTERED AS FOLLOWS:

1. Appellant Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (hereinafter “Good Samaritan Society”) is entitled to a total property tax exemption under I.C. § 63-602C for 2012 and 2013.

2. Appellant Good Samaritan Society is entitled to a 12.3% property tax exemption under I.C. § 63-602B for 2012 and 2013.

3. The Board of Equalization of Ada County’s denials of Good Samaritan Society’s 2012 and 2013 applications for property tax exemptions are overturned and the Orders of the Idaho Board of Tax Appeals affirming the denials are reversed.


4. The Board of Equalization of Ada County shall refund to the Good Samaritan Society the property taxes it paid under protest for 2012 and 2013 in the amount of \$350,240.52, together with interest due on the refund of such tax under I.C. § 28-22-104(1), calculated at 12%

EL

per annum from the date payments were made until entry of this Judgment, in the amount of \$77,887.54, for a total refund of **\$428,128.06**.

5. Additionally, costs are awarded as a matter of right to the Good Samaritan Society and against the Board of Equalization of Ada County in the amount of **\$8,247.52**.

IT IS SO ORDERED this 13 day of October, 2015.

  
\_\_\_\_\_  
Hon. Steven Hippler  
District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of Oct, 2015, a true and correct copy of the within and foregoing instrument was served upon:

Jan M. Bennetts  
Ada County Prosecuting Attorney  
Gene A. Petty  
Elizabeth A. Mahn  
Deputy Prosecuting Attorneys  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

Phillip S. Oberrecht  
Jason R. Mau  
Greener Burke Shoemaker Oberrecht, P.A.  
950 W. Bannock St., Suite 950  
Boise, ID 83702

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

CLERK OF THE COURT

By E. Chubb  
Deputy



NOV 03 2015

CHRISTOPHER D. RICH, Clerk  
By SANTIAGO BARRIOS  
DEPUTY

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY

**GENE A. PETTY**  
**CLAIRE S. TARDIFF**  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
(208) 287-7700  
Idaho State Bar No. 6831& 4671  
civilpfiles@adaweb.net

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

IN THE MATTER OF THE APPEALS OF	)	<b>Case No. CV OT 13 09169</b>
THE EVANGELICAL LUTHERAN GOOD	)	
SAMARITAN SOCIETY	)	<b>Consolidated with</b>
	)	<b>Case No. CV OT 13 12345</b>
from the Board of Equalization of Ada County	)	
for tax year 2012 and 2013.	)	
	)	<b>NOTICE OF APPEAL</b>
	)	

**TO:** THE ABOVE NAMED RESPONDENT, EVANGELICAL THE LUTHERAIN GOOD SAMARITAN SOCIETY, INC., AND THE PARTY'S ATTORNEYS, PHILLIP S. OBERRECHT, GREENER BURKE SHOEMAKER OBERRECHT, PA, 950 W. BANNOCK STREET, STE 950, BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named Appellant, Board of Equalization of Ada County, appeals against Evangelical Lutheran Good Samaritan Society, the above-named Respondent, to the Idaho Supreme Court from the Judgment entered in the above-entitled action on the 13th day of October, 2015, Honorable Steven Hippler, presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1, above, is an appealable order under and pursuant to Rule 11(a)(1) of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal, provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is as follows:

- a) Whether the Court erred in granting a 100% property tax exemption under Idaho Code § 63-602C for 2012 and 2013.

4. The entire reporter's transcript from the trial in this case has previously been prepared by the court reporter.

5. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules:

Petition of Judicial Review

Stipulation for Protective Order

Stipulated Protective Order

The Evangelical Lutheran Good Samaritan Society's Updated Findings of Fact and Conclusions of Law

The Evangelical Lutheran Good Samaritan Society's Closing Argument

Ada County's Post-Trial Proposed Findings of Facts and Conclusions of Law

Ada County's Closing Argument

The Evangelical Lutheran Good Samaritan Society's Response to Ada County's Post-Trial Filings

Ada County's Response to Society's Closing Argument and Updated Findings of Fact and Conclusions of Law

Judge Hippler's Findings of Fact and Conclusions of Law

Memorandum Decision and Order on Good Samaritan Society's Motion for Costs and Fees

Memorandum Decision and Order on Society's Motions to Lift Stay and Refund of Taxes, and Ada County's Objection to the Society's Proposed Judgment

Memorandum Decision and Order on Society's Motion for Refund of Taxes and Ada County's Objection to the Society's Proposed Judgment

6. The Appellant requests all of the documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court.

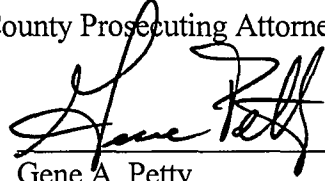
7. I certify:

- a. That a copy of this Notice of Appeal has been serviced on the reporter.
- b. That the reporter has been paid the estimated fee for preparation of the transcript.
- c. That the Appellant is exempt from paying the estimated fee for preparation of the record as Appellant is a County office.
- 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, Idaho Appellate Rules.

DATED this 3<sup>rd</sup> day of November, 2015.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:

  
Gene A. Petty  
Deputy Prosecuting Attorney

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of November, 2015, I served a true and correct copy of the foregoing NOTICE OF APPEAL to the following person(s) by the following method:

Phillip Oberrecht  
Attorney at Law  
950 West Bannock Street, Ste 950  
Boise, Idaho 83702

<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Certified Mail
<input type="checkbox"/>	Facsimile

Christie Valcich, Court Reporter  
Trial Court Administrator  
200 W. Front Street  
Boise, Idaho 83402

<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Certified Mail
<input type="checkbox"/>	Facsimile

Sanae S Peterson  
Legal Assistant

## In The Matter Of The Evangelical Lutheran Good Samaritan Society

Date	Code	User		Judge
7/17/2014	NCOT	CCTHIEKJ	New Case Filed - All Other	Steven Hippler
	PETN	CCTHIEKJ	Petition for Judicial Review	Steven Hippler
	SMFI	CCTHIEKJ	Summons Filed	Steven Hippler
7/18/2014	ACCP	TCWEGEKE	Acceptance Of Service	Steven Hippler
8/12/2014	STIP	CCMCLAPM	Stipulation for Stay of Proceedings	Steven Hippler
8/13/2014	ORDR	CCCHILER	Order on Stipulation for Stay of Proceedings	Steven Hippler
5/7/2015	MOTN	CCMYERHK	Motion To Lift Stay Of Proceedings And Enter Judgment	Steven Hippler
	AFFD	CCMYERHK	Affidavit Of Phillip S Oberrecht In Support Of Motion To Lift Stay Of Proceedings And Enter Judgment	Steven Hippler
5/13/2015	OBJT	CCGARCOS	Objection to Proposed Judgment	Steven Hippler
5/28/2015	MOTN	CCSNELNJ	The Evangelical Lutheran Good Samaritan Society's Motion for Refund of Taxes Not Lawfully Due	Steven Hippler
	MEMO	CCSNELNJ	Memorandum in Support of The Evangelical Lutheran Good Samaritan Society's Motion for Refund of Taxes Not Lawfully Due	Steven Hippler
	MISC	CCSNELNJ	The Evangelical Lutheran Good Samaritan Society's Response to Ada County's Objection to Proposed Judgment	Steven Hippler
6/5/2015	RSPS	CCMYERHK	Response To Motion For Refund Of taxes Not Lawfully Due	Steven Hippler
6/12/2015	AFFD	TCWEGEKE	Supplemental Affidavit of Phillip S. Oberrecht in Support of Motion for Refund of Taxes not Lawfully Due	Steven Hippler
	MEMO	TCWEGEKE	Reply Memorandum in Support of the Evangelical Lutheran Good Samaritan Society's Motion for Refund of Taxes not Lawfully Due	Steven Hippler
10/13/2015	JDMT	CCCHILER	Judgment (\$187,224.39)	Steven Hippler
	CDIS	CCCHILER	Civil Disposition entered for: The Evangelical Lutheran Good Samaritan Society, Subject. Filing date: 10/13/2015	Steven Hippler
	STAT	CCCHILER	STATUS CHANGED: Closed	Steven Hippler
11/3/2015	NOTA	CCBARRSA	NOTICE OF APPEAL	Steven Hippler
	APSC	CCBARRSA	Appealed To The Supreme Court	Steven Hippler
	MOTN	CCBARRSA	Motion to Stay Judgment Pending Appeal	Steven Hippler
	AFFD	CCBARRSA	Affidavit of Gene. A. Petty in Support of Motion to Stay Judgment Pending Appeal	Steven Hippler

JUL 17 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

Phillip S. Oberrecht (ISB No. 1904)  
Jason R. Mau (ISB No. 8440)  
GREENER BURKE SHOEMAKER OBERRECHT P.A.  
950 West Bannock Street, Suite 950  
Boise, ID 83702  
Telephone: (208) 319-2600  
Facsimile: (208) 319-2601  
Email: [poberrecht@greenerlaw.com](mailto:poberrecht@greenerlaw.com)  
[jmau@greenerlaw.com](mailto:jmau@greenerlaw.com)

Attorneys for Petitioner, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

from the Board of Equalization of Ada  
County for tax year 2014.

Case No.

CV 07 1413941

PETITION FOR JUDICIAL REVIEW

The Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (hereinafter “Good Samaritan Society” or “Petitioner”), by and through its counsel of record, Greener Burke Shoemaker Oberrecht, P.A., petitions this Court for judicial review pursuant to I.C. § 63-511 and I.R.C.P. 84.

1. The Good Samaritan Society is a North Dakota non-profit, tax-exempt corporation authorized and licensed in the State of Idaho to operate a skilled nursing facility.

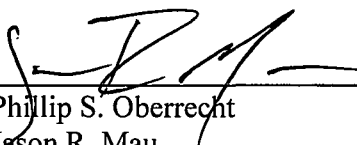


2. The Good Samaritan Society's skilled nursing building is located in Ada County Idaho, on the property located at 3115 N. Sycamore Drive in Boise, also known as tax parcel number S0629347040.
3. The Good Samaritan Society also owns a parking lot used in connection with its skilled nursing building. The parking lot is located in Ada County Idaho, on the property located at 3072 N. Sycamore Drive in Boise, also known as tax parcel number R9625000209.
4. In 2014, The Good Samaritan Society sought reinstatement of tax exempt status for its skilled nursing facility and associated parking lot on charitable and religious grounds, pursuant to I.C. §§ 63-602B and 63-602C.
5. On July 3, 2014, The Ada County Commissioners, sitting as the Board of Equalization, denied The Good Samaritan Society's application for tax exemption status.
6. The Good Samaritan Society is entitled to judicial review, by trial de novo, of the decision of the Ada County Board of Equalization per Idaho Code § 63-511(3).
7. The Petitioner intends to assert on judicial review the following issues and reserves the right to name additional issues for judicial review:
  - a. Whether The Good Samaritan Society's property is entitled to a tax exemption as property belonging to any religious corporation for religious, educational, or recreational purposes pursuant to I.C. § 63-602B.
  - b. Whether The Good Samaritan Society's property is entitled to a tax exemption as property belonging to a benevolent or charitable corporation for benevolent and charitable purposes pursuant to I.C. § 63-602C.

8. Petitioner requests that a certified copy of the minutes of the Board of Equalization proceedings and all evidence taken in connection with the matter appealed be prepared pursuant to I.C. § 63-511(2).
9. The undersigned certifies that service of this petition has been made upon the Ada County Board of Equalization and Ada County Auditor; and that it is unaware of any requirement to cover costs for copies of the minutes and evidence considered in the Board of Equalization proceedings under I.C. § 63-511(2).

DATED THIS 17<sup>th</sup> day of July, 2014.

GREENER BURKE SHOEMAKER OBERRECHT P.A.

By   
Phillip S. Oberrecht  
Jason R. Mau  
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of July, 2014, a true and correct copy of the within and foregoing instrument was served upon:

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

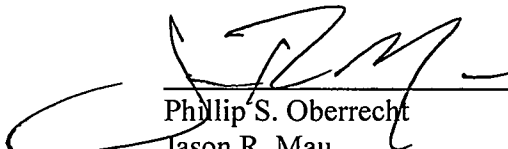
- ☐ U.S. Mail  
☐ Facsimile  
☒ Hand Delivery  
☐ Overnight Delivery

Ada County Auditor  
200 W. Front Street, Room 1196  
Boise, ID 83702

- ☐ U.S. Mail  
☐ Facsimile  
☒ Hand Delivery  
☐ Overnight Delivery

Ada County Commissioners, sitting as the  
Ada County Board of Equalization  
200 W. Front Street, 3<sup>rd</sup> Floor  
Boise, ID 83702

- ☐ U.S. Mail  
☐ Facsimile  
☒ Hand Delivery  
☐ Overnight Delivery

  
\_\_\_\_\_  
Phillip S. Oberrecht  
Jason R. Mau

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 4:30  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

Phillip S. Oberrecht (ISB No. 1904)  
Jason R. Mau (ISB No. 8440)  
GREENER BURKE SHOEMAKER OBERRECHT P.A.  
950 West Bannock Street, Suite 950  
Boise, ID 83702  
Telephone: (208) 319-2600  
Facsimile: (208) 319-2601  
Email: [poberrecht@greenerlaw.com](mailto:poberrecht@greenerlaw.com)  
[jmau@greenerlaw.com](mailto:jmau@greenerlaw.com)

**AUG 12 2014**

**CHRISTOPHER D. RICH, Clerk**  
By **PATRICK McLAUGHLIN**  
DEPUTY

Attorneys for Petitioner, The Evangelical Lutheran Good  
Samaritan Society, dba Good Samaritan Society – Boise Village

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

Case No. CV OT 1413941

from the Board of Equalization of Ada  
County for tax year 2014.

**STIPULATION FOR STAY OF  
PROCEEDINGS**

The Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (hereinafter “Good Samaritan Society” or “Petitioner”), by and through its counsel of record, Greener Burke Shoemaker Oberrecht, P.A., and Ada County Board of Equalization, by and through the Ada County Prosecuting Attorney’s Office, agree and stipulate as follows:

1. That the parties are currently engaged in appeals related to the Board of Equalization’s denials of the Good Samaritan Society’s 2012 and 2013 Property Tax Applications for religious and charitable exemptions, which have been consolidated in the Ada County District Court, at Case No. CV OT 1309169;

2. That the Good Samaritan Society has filed a Petition for Judicial Review in this matter appealing the denial of its 2014 Property Tax Applications for religious and charitable exemptions;

3. That the issues of fact and law for the appeal of the 2014 denials are common and related to the issues of fact and law for the appeal of the 2012 and 2013 denials in Case No. CV OT 1309169;

4. That in the interests of judicial economy counsel for the Good Samaritan Society and Ada County agree to stay this action pending final decision of Case No. CV OT 1309169 with respect to the approvals or denials of the religious and charitable exemptions;

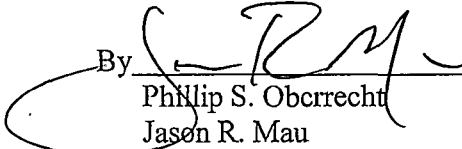
5. That the Good Samaritan Society and Ada County further agree that the final decision of Case No. CV OT 1309169 with respect to the approvals or denials of the religious and charitable exemptions will determine the issues with respect to the approval or denial of the religious and charitable exemptions in this case.

6. In light of the foregoing, counsel for the parties in the within action stipulate to the entry of an Order staying these proceedings until further notice from either party that the issues with respect to the approvals or denials of the religious and charitable exemptions in Case No. CV OT 1309169 have been finally decided by the Court.

DATED THIS 12<sup>th</sup> day of August, 2014.

GREENER BURKE SHOEMAKER OBERRECHT P.A.

By

  
Phillip S. Oberrecht

Jason R. Mau

Attorneys for Petitioner

DATED THIS 12<sup>th</sup> day of August, 2014.

GREG H. BOWER  
ADA COUNTY PROSECUTING ATTORNEY

By 

Deputy Prosecuting Attorney

Gene A. Petty

Elizabeth A. Mahn

Attorneys for Respondent

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:03

AUG 13 2014

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

from the Board of Equalization of Ada  
County for tax year 2014.

Case No. CV OT 1413941

**ORDER ON STIPULATION FOR STAY  
OF PROCEEDINGS**

THIS MATTER having come before the Court upon the parties' Stipulation for Stay of Proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED that a stay shall be entered on the proceedings in the above-captioned case until a final decision in Case No. CV OT 1309169 has been reached with respect to the approvals or denials of the religious and charitable exemptions, which final decision will apply in this action.

DATED this 13<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Judge

EV

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 13 day of August, 2014, a true and correct copy of the foregoing instrument was served upon:

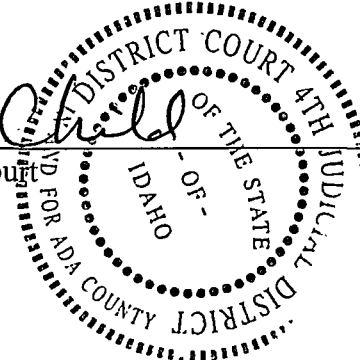
Phillip S. Oberrecht  
Jason R. Mau  
GREENER BURKE SHOEMAKER  
OBERRECHT P.A.  
950 West Bannock Street, Suite 950  
Boise, ID 83702

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

Greg H. Bower  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

- ☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

  
Clerk of the Court





OCT 13 2015

CHRISTOPHER D. RICH, Clerk  
By EMILY CHILD  
DEPUTY

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

IN THE MATTER OF THE APPEAL OF  
THE EVANGELICAL LUTHERAN  
GOOD SAMARITAN SOCIETY

from the Board of Equalization of Ada  
County for tax year 2014.

Case No. CV OT 1413941

**JUDGMENT**

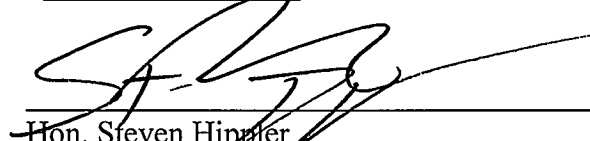
JUDGMENT IS ENTERED AS FOLLOWS:

1. The stay previously entered in the proceedings in the above-captioned case is lifted.
2. Appellant Evangelical Lutheran Good Samaritan Society, dba Good Samaritan Society – Boise Village (hereinafter “Good Samaritan Society”) is entitled to a total property tax exemption under I.C. § 63-602C for 2014 per the final decision in Case No. CV OT 1309169 and this Court’s Order on Stipulation for Stay of Proceedings.
3. Appellant Good Samaritan Society is entitled to a 12.3% property tax exemption under I.C. § 63-602B for 2014 per the final decision in Case No. CV OT 1309169 and this Court’s Order on Stipulation for Stay of Proceedings.
4. The Board of Equalization of Ada County’s denial of Good Samaritan Society’s 2014 application for property tax exemptions is overturned.

EV

5. The Board of Equalization of Ada County shall refund to the Good Samaritan Society the property taxes it paid under protest for 2014 in the amount of \$175,755.06, together with interest due on the refund of such tax under I.C. § 28-22-104(1), calculated at 12% per annum from the date payments were made until entry of this Judgment, in the amount of \$11,469.33, for a total refund of **\$187,224.39**.

IT IS SO ORDERED this 13<sup>th</sup> day of OCTOBER, 2015.

  
\_\_\_\_\_  
Hon. Steven Hippler  
District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of Oct, 2015, a true and correct copy of the within and foregoing instrument was served upon:

Jan M. Bennetts  
Ada County Prosecuting Attorney  
Gene A. Petty  
Deputy Prosecuting Attorneys  
Civil Division  
200 W. Front Street, Room 3191  
Boise, ID 83702

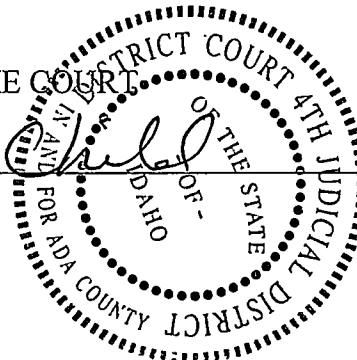
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Phillip S. Oberrecht  
Jason R. Mau  
Greener Burke Shoemaker Oberrecht, P.A.  
950 W. Bannock St., Suite 950  
Boise, ID 83702

☒ U.S. Mail  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

CLERK OF THE COURT

By E. Chel  
Deputy



NOV 03 2015

CHRISTOPHER D. RICH, Clerk  
By SANTIAGO BARRIOS  
DEPUTY

**JAN M. BENNETTS**  
ADA COUNTY PROSECUTING ATTORNEY

**GENE A. PETTY**  
**CLAIRE S. TARDIFF**  
Deputy Prosecuting Attorney  
Civil Division  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
(208) 287-7700  
Idaho State Bar No. 6831& 4671  
civilpafiles@adaweb.net

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

IN THE MATTER OF THE APPEALS OF ) **Case No. CV OT 14 13941**  
THE EVANGELICAL LUTHERAN GOOD )  
SAMARITAN SOCIETY )

from the Board of Equalization of Ada County ) **NOTICE OF APPEAL**  
for tax year 2014. )  
)  
)  
)

**TO:** THE ABOVE NAMED RESPONDENT, EVANGELICAL THE LUTHERAIN GOOD SAMARITAN SOCIETY, INC., AND THE PARTY'S ATTORNEYS, PHILLIP S. OBERRECHT, GREENER BURKE SHOEMAKER OBERRECHT, PA, 950 W. BANNOCK STREET, STE 950, BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named Appellant, Board of Equalization of Ada County , appeals against The Evangelical Lutheran Good Samaritan Society, Inc., the above-named Respondent, to the Idaho Supreme Court from the Judgment entered in the above-entitled action on the 13th day of October, 2015, Honorable Steven Hippler, presiding.

2. The Appellant has a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1, above, is an appealable order under and pursuant to Rule 11(a)(1) of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal, provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is as follows:

- a) Whether the Court erred in granting a total property tax exemption under Idaho Code § 63-602C for 2014.

4. There is no transcript to be prepared in this matter.

5. The Appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules:

Petition for Judicial Review

Stipulation for Stay of Proceedings

Order on Stipulation for Stay of Proceedings

6. There are no documents, charts, or pictures offered or admitted as exhibits in this case.

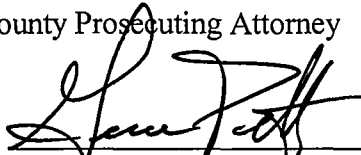
7. I certify:

- a. That a copy of this Notice of Appeal has been serviced on the reporter.
- b. That as no transcript is requested, no reporter has been paid the estimated fee for preparation of the transcript.
- c. That the Appellant is exempt from paying the estimated fee for preparation of the record as Appellant is a County office.
- 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, Idaho Appellate Rules.

DATED this 3<sup>rd</sup> day of November, 2015.

JAN M. BENNETTS  
Ada County Prosecuting Attorney

By:

  
Gene A. Petty  
Deputy Prosecuting Attorney

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of November, 2015, I served a true and correct copy of the foregoing NOTICE OF APPEAL to the following person(s) by the following method:

Phillip Oberrecht  
Attorney at Law  
950 West Bannock Street, Ste 950  
Boise, Idaho 83702

☐ Hand Delivery  
☒ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

Christie Valcich, Court Reporter  
Trial Court Administrator  
200 W. Front Street  
Boise, Idaho 83402

☐ Hand Delivery  
☒ U.S. Mail  
☐ Certified Mail  
☐ Facsimile

  
Lance S. Peterson  
Legal Assistant

IN THE SUPREME COURT OF THE STATE OF IDAHO

NO.

FILED  
P.M.

12:48

DEC 30 2015

CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

v.

BOARD OF EQUALIZATION OF  
ADA COUNTY,

Respondent-Appellant.

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

v.

BOARD OF EQUALIZATION OF  
ADA COUNTY,

Respondent-Appellant.

) Supreme Court No.43697-2015

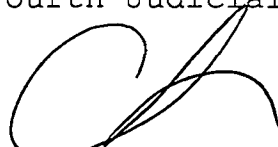
) Ada County No. CV-2013-9169

) Supreme Court No.43698-2015

) Ada County No.CV-2014-13941

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on December 17,  
2015, I lodged a transcript, 857 pages in length, for the  
above-referenced appeal with the District Court Clerk of  
Ada County in the Fourth Judicial District.



Christie Valcich, CSR-RPR  
December 17, 2015

Dates: November 10, 12, 13, 14, 17, 19, 2014.

000321

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

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

vs.

BOARD OF EQUALIZATION OF ADA  
COUNTY,

Respondent-Appellant.

Supreme Court Case No. 43697  
43698

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, 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:

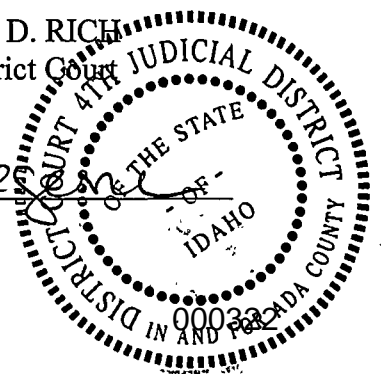
That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 30th day of December, 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By K. W. [Signature]  
Deputy Clerk

CERTIFICATE OF EXHIBITS



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

HONORABLE STEVEN HIPPLER Nov 10, 12, 13, 14, 17, 19, 2014  
CLERK: Emily Child  
CT REPTR: Christie Valcich

IN THE MATTER OF THE  
EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY

EXHIBIT LIST

Counsel for Appellant: Phillip Oberrecht and Jason Mau  
Counsel for Respondent: Gene Petty and Elizabeth Mahn

Appellant's EXHIBITS

1. Introduction History	11/10/14	Admitted
4. Restated Articles of Incorporation	11/10/14	Admitted
5. Statement of "Our Mission"	11/10/14	Admitted
6. "STAR Ministry" booklet	11/10/14	Admitted
7. "The Good Samaritan Society Way" manual	11/10/14	Admitted
8. Good Samaritan Society Way pamphlet for staff	11/10/14	Admitted
9. Job Description: Administrator, Job Summary	11/10/14	Admitted
10. Policy "Spiritual Ministries and Mission"	11/10/14	Admitted
11. "Procedure: Spiritual Ministries and Mission"	11/10/14	Admitted
12. "Procedure: Spiritual Ministries and Mission"	11/10/14	Admitted
13. "Procedure: Spiritual Ministries and Mission"	11/10/14	Admitted
14. "Procedure: Spiritual Ministries and Mission"	11/10/14	Admitted
15. Bylaws	11/10/14	Admitted
16. Affiliation Agreement	11/10/14	Admitted
17. Letter of Recognition	11/10/14	Admitted
18. IRS Letter confirming recognition 501(c)(3)	11/10/14	Admitted
19. 2012 Form 990 listing contributions for 2012	11/10/14	Admitted
22. Society's Social Accountability Grants List	11/10/14	Admitted
23. Good Samartian Society Project Outreach info	11/10/14	Admitted
24. Worksheet - Medicaid occupancy statistics	11/10/14	Admitted



24A. Analysis	11/19/14	Admitted
25. Cost Mix Index (CMI)	11/10/14	Admitted
27. 2012 Operating Statement	11/10/14	Admitted
28. 2013 Operating Statement	11/10/14	Admitted
28A. 2013 Calculations	11/13/14	Admitted
28B. 2012 Calculations	11/13/14	Admitted
29. Statement of Operations 12-31-13	11/10/14	Admitted
30. 2011 & 2012 Consolidated Financial Statements	11/10/14	Admitted
31. 2012 & 2013 Consolidated Financial Statements	11/10/14	Admitted
32. Medicaid Revenue & Expense Differentials	11/10/14	Admitted
33. Medicaid Revenue & Expense Differentials	11/19/14	Admitted
35. FY 2011 UPL Tax Calculations -Nursing	11/10/14	Admitted
36. FY 2012 UPL Tax Calculations - Nursing	11/10/14	Admitted
37. FY 2013 UPL Tax Calculations - Nursing	11/10/14	Admitted
38. SFY 2014 UPL Tax Calculations - Nursing	11/10/14	Admitted
40. Idaho Corporate filings	11/12/14	Admitted
44. Notification letters from Ada County	11/12/14	Admitted
45. Boise Village's building floor plan	11/10/14	Admitted
45a. Building floor plan (with add'l sq ft)	11/10/14	Admitted
46. Historical Information (except 3193 to 3198)	11/19/14	Admitted
47. "Our Story" brochure	11/10/14	Admitted
49. Packet given to potential residents	11/10/14	Admitted
50. Private Charitable Allowance policy	11/10/14	Admitted
51. Private Charitable Allowances	11/10/14	Admitted
52. GSS Donation Monies Spent on Beds-mattresses	11/10/14	Admitted
53. Brochure regarding therapy programs	11/10/14	Admitted
54. GSS Donation of Monies Spent on Resident Needs	11/10/14	Admitted
55. Scholarship awards	11/10/14	Admitted
56. Press Release - Free Art Classes	11/10/14	Admitted
57. Letter of Call	11/10/14	Admitted
58. Renewal Letter of Call	11/13/14	Admitted
59. Job Description: Chaplain	11/10/14	Admitted
60. Pastoral Services brochure	11/10/14	Admitted
62. Spring 2012 issue of The Disciple	11/13/14	Admitted
63. Religious Experience and Preference form	11/10/14	Admitted
64. Chapel Service Schedule	11/13/14	Admitted
65. 2013 Christian Mission Satisfaction Survey	11/14/14	Admitted
66. Religious Pictures/symbols of faith	11/14/14	Admitted
67. Floor Plan noting religious pictures symbols	11/14/14	Admitted
69. Volunteer brochure	11/10/14	Admitted
70. Volunteer sign-up - Jan 2012 thru Dec 2013	11/10/14	Admitted
71. Volunteer Hours 2012-2013	11/12/14	Admitted
73. Independent Sector's Value of Volunteer Time	11/12/14	Admitted
80. 06-25-12 Assessment Notice	11/10/14	Admitted
81. 2012 Payments under Protest	11/12/14	Admitted
82. 2013 Assessment Notice	11/10/14	Admitted
83. 2013 Payments under Protest	11/12/14	Admitted
84. 2012 Property Tax Exemption Application	11/10/14	Admitted
85. 2013 Property Tax Exemption Application	11/10/14	Admitted
86. GSS Nursing Scholarship information	11/10/14	Admitted

89. Policy & Procedure Pre-Admission & Admission	11/10/14	Admitted
90. Overdue Account Receivables	11/10/14	Admitted
92. Rev. Charles Spiedel's business card	11/10/14	Admitted
95. 2013 Balance Sheet	11/10/14	Admitted
96. Rates and CMI Correlation	11/10/14	Admitted
99. 11-29-11 Memo from Myers & Stauffer	11/10/14	Admitted
100. Idaho Medicaid Occupancy Information	11/10/14	Admitted
101. 10/07/13 Memo from Tammy Martin to Sheila	11/10/14	Admitted
102. 10/05/10 Memo from Tammy Martin to Sheila	11/10/14	Admitted
103. Information Regarding the Society	11/10/14	Admitted
104. Consolidated Balance Sheet 12/31/13	11/10/14	Admitted
105. Admission Agreement	11/10/14	Admitted
106. Collection Letter Checklist	11/10/14	Admitted
118. 06/13/14 Ada County's Answers to Interrogatories	11/14/14	Admitted
133. 06/20/12 Ada County Notification letter	11/12/14	Admitted
134. 04/30/13 Ada County Notification Letter	11/12/14	Admitted
137. Construction Project Approval	11/19/14	Admitted
138. Invoice	11/19/14	Admitted
139. Harbor Care Bathing Room	11/19/14	Admitted
140. Revenue	11/19/14	Admitted

#### RESPONDENT'S EXHIBITS

301. Appellant's Response	11/19/14	Admitted
304. Boise Village 2012 Operating Statement	11/12/14	Admitted
305. Boise Village 2013 Balance Sheet & operations	11/12/14	Admitted
308. 2011 & 2012 Financial Statements	11/12/14	Admitted
309. 2012 & 2013 Financial Statements	11/12/14	Admitted
316A. Cost Report	11/14/14	Admitted
319. 2013 Tax Exemption Application	11/12/14	Admitted
320. 2012 Tax Exemption Application	11/12/14	Admitted
326. Ada County Property Tax Bill	11/12/14	Admitted
327. Floor Plan	11/12/14	Admitted
328A. Collections Team Notes	11/14/14	Admitted
329B. Collection Document	11/12/14	Admitted
332. Educational Fund Application & Agreement	11/12/14	Admitted
333. BV March 2014 Newsletter	11/12/14	Admitted
337. Private Charitable Allowance Policy (2012)	11/12/14	Admitted
339. Accounts Receivable Policy & Procedures (2003)	11/12/14	Admitted
346. Volunteer Hours/Signin Pages	11/12/14	Admitted
347. Small Claim	11/14/14	Admitted
349A. Redacted McArthur Exhibit	11/19/14	Admitted
349B. Redacted McArthur Exhibit	11/19/14	Admitted
349D. Redacted McArthur Exhibit	11/19/14	Admitted
349E. Redacted McArthur Exhibit	11/19/14	Admitted
349F. Redacted McArthur Exhibit	11/19/14	Admitted
349G. Redacted McArthur Exhibit	11/19/14	Admitted
349H. Redacted McArthur Exhibit	11/19/14	Admitted
349I. Redacted McArthur Exhibit	11/19/14	Admitted
349J. Redacted McArthur Exhibit	11/19/14	Admitted

349K. Redacted McArthur Exhibit	11/19/14	Admitted
349L. Redacted McArthur Exhibit	11/19/14	Admitted
349M. Redacted McArthur Exhibit	11/19/14	Admitted
349N. Redacted McArthur Exhibit	11/19/14	Admitted
349O. Redacted McArthur Exhibit	11/19/14	Admitted

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

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

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BOARD OF EQUALIZATION OF ADA  
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Respondent-Appellant.

Supreme Court Case No. 43697  
43698

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, 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 AND REPORTER'S TRANSCRIPT

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

GENE A. PETTY

ATTORNEY FOR APPELLANT

BOISE, IDAHO

PHILLIP S. OBERRECHT

ATTORNEY FOR RESPONDENT

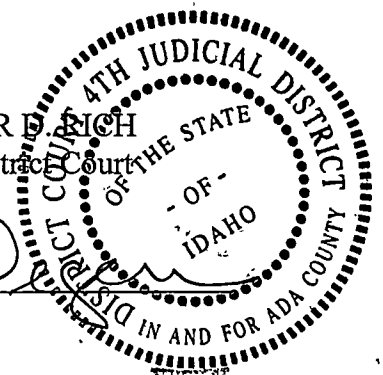
BOISE, IDAHO

Date of Service: \_\_\_\_\_

DEC 30 2015

CHRISTOPHER D. RICH  
Clerk of the District Court

By [Signature]  
Deputy Clerk



CERTIFICATE OF SERVICE

000327

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

EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY,

Petitioner-Respondent,

vs.

BOARD OF EQUALIZATION OF ADA  
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Supreme Court Case No. 43697  
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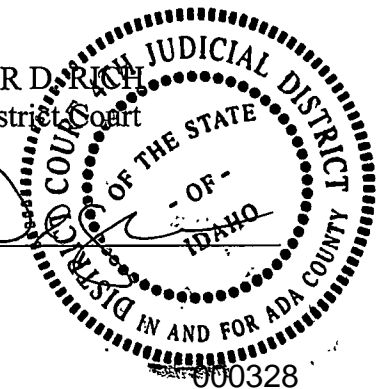
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, 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 under my direction 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 Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 3rd day of November 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By [Signature]  
Deputy Clerk



CERTIFICATE TO RECORD