7-26-2016

Bedard and Musser v. City of Boise City Clerk's Record Dckt. 44171

IN THE SUPREME COURT OF THE STATE OF IDAHO

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant-Respondent.	Supreme Court Case No. 44171

CLERK'S RECORD ON APPEAL

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

HONORABLE JONATHAN MEDEMA

TERRY C. COPPLE
MICHAEL E. BAND
ATTORNEY FOR APPELLANT
BOISE, IDAHO

SCOTT B. MUIR
ABIGAIL R. GERMAINE
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

Bedard And Musser, Boise Hollow Land Holdings RLLP vs. City Of Boise City

Date	Code	User		Judge
6/17/2015	NCOC	CCVIDASL	New Case Filed - Other Claims	Jonathan Medema
	COMP	CCVIDASL	Complaint Filed	Jonathan Medema
	SMFI	CCVIDASL	Summons Filed	Jonathan Medema
6/22/2015	AFOS	CCMYERHK	Affidavit Of Service 6.18.15	Jonathan Medema
7/8/2015	ANSW	CCBARRSA	Answer to Complaint (Muir for City of Boise City)	Jonathan Medema
8/4/2015	HRSC	DCELLISJ	Hearing Scheduled (Scheduling Conference 08/28/2015 11:15 AM)	Jonathan Medema
	NOTC	DCELLISJ	Notice Of Status Conference 08/28/15 @ 11:15 a.m.	Jonathan Medema
8/6/2015	REQU	CCMYERHK	Request For Trial Setting	Jonathan Medema
	NOTS	CCMYERHK	Notice Of Service	Jonathan Medema
8/13/2015	NOTS	CCMARTJD	Notice Of Service	Jonathan Medema
8/14/2015	RSPN	CCHOLDKJ	Response to Plaintiff's Request for Trial Setting	Jonathan Medema
8/28/2015	HRVC	CCNELSRF	Hearing result for Scheduling Conference scheduled on 08/28/2015 11:15 AM: Hearing Vacated	Jonathan Medema
	HRSC	CCNELSRF	Hearing Scheduled (Status Conference 10/02/2015 04:00 PM)	Jonathan Medema
		CCNELSRF	Notice of Status Conference 10/02 @ 4 pm	Jonathan Medema
9/23/2015	STSC	CCHEATJL	Stipulation For Scheduling And Planning	Jonathan Medema
9/24/2015	HRVC	DCELLISJ	Hearing result for Status Conference scheduled on 10/02/2015 04:00 PM: Hearing Vacated	Jonathan Medema
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 06/29/2016 09:00 AM) 5 day jury trial	Jonathan Medema
	HRSC	DCELLISJ	Hearing Scheduled (Status Conference 06/03/2016 09:00 AM)	Jonathan Medema
	HRSC	DCELLISJ	Hearing Scheduled (Pretrial Conference 06/15/2016 03:00 PM)	Jonathan Medema
	ORDR	DCELLISJ	Order Governing Proceedings and Setting Trial	Jonathan Medema
9/29/2015	NOTS	CCHOLDKJ	Notice Of Service	Jonathan Medema
10/28/2015	NOTC	CCSNELNJ	Notice of Tking Deposition Todd Critser	Jonathan Medema
	NOTC	CCSNELNJ	Notice of Taking Deposition Hal Simmons	Jonathan Medema
	NOTC	CCSNELNJ	Notice of Taking Deposition of H. Wayne Gibbs	Jonathan Medema
11/10/2015	NOTC	CCSNELNJ	Notice Vacating Depositin (H. Wayne Gibbs)	Jonathan Medema
	NOTC	CCSNELNJ	Notice Vacating Deposition (Terry A. Simmons)	Jonathan Medema
11/13/2015	MOTN	CCLOWEAD	Motion to Join Party as Plaintiff	Jonathan Medema
	AFFD	CCLOWEAD	Affidavit of Michael E. Band in Support of Motion to Join Party as Plaintiff	Jonathan Medema
	NOTH	CCLOWEAD	Notice Of Hearing	Jonathan Medema

Bedard And Musser, Boise Hollow Land Holdings RLLP vs. City Of Boise City

Date	Code	User		Judge
11/13/2015	HRSC	CCLOWEAD	Hearing Scheduled (Motion 12/04/2015 09:00 AM) Plaintiff Bedard and Musser's Motion to Join Party as Plaintiff	Jonathan Medema
11/19/2015	STIP	CCLOWEAD	Stipulation to Amend Complaint	Jonathan Medema
	STIP	CCLOWEAD	Stipulation to Join Boise Hollow Land Holdings, RLLP as Plaintiff	Jonathan Medema
12/2/2015	HRVC	DCELLISJ	Hearing result for Motion scheduled on 12/04/2015 09:00 AM: Hearing Vacated Plaintiff Bedard and Musser's Motion to Join Party as Plaintiff	Jonathan Medema
	ORDR	DCELLISJ	Order Joining Boise Hollow Land Holdings as Plaintiff	Jonathan Medema
	ORDR	DCELLISJ	Order Granting Leave to File Amended complaint	Jonathan Medema
	COMP	CCHYSEKB	First Amended Complaint Filed	Jonathan Medema
12/3/2015	MOSJ	CCGARCOS	Plaintiff's Motion For Summary Judgment	Jonathan Medema
	AFFD	CCGARCOS	Affidavit of Kevin McCarthy, P.E.	Jonathan Medema
	AFFD	CCGARCOS	Affidavit of Rebecca W. Arnold	Jonathan Medema
	AFFD	CCGARCOS	Affidavit of Dean W. Briggs, P.E.	Jonathan Medema
	MEMO	CCGARCOS	Memorandum in Support of Plaintiff's Motion for Summary Judgment	Jonathan Medema
12/14/2015	ANSW	CCHEATJL	Answer To First amended Conplaint (Scott B Muir For City Of Boise City)	Jonathan Medema
12/15/2015	NOTH	CCSNELNJ	Notice Of Hearing (01/29/16 @ 1:30 p.m)	Jonathan Medema
	HRSC	CCSNELNJ	Hearing Scheduled (Motion for Summary Judgment 01/29/2016 01:30 PM)	Jonathan Medema
12/29/2015	NOSV	CCBARRSA	Notice Of Service	Jonathan Medema
12/31/2015	MOTN	CCTAYLSA	Defendant's Cross Motion For Summary Judgment	Jonathan Medema
	MEMO	CCTAYLSA	Memorandum In Support Of Defendant's Cross-Motion For Summary Judgment	Jonathan Medema
	DECL	CCTAYLSA	Declaration Of Counsel Abigail R. Germaine	Jonathan Medema
	DECL	CCTAYLSA	Declaration Of Tommy T. Sanderson	Jonathan Medema
1/7/2016	NOTH	CCTAYLSA	Notice Of Hearing on Defendants Cross-Motion for Summary Judgment	Jonathan Medema
	HRSC	CCTAYLSA	Hearing Scheduled (Motion for Summary Judgment 01/29/2016 01:30 PM)	Jonathan Medema
1/12/2016	HRSC	DCELLISJ	Hearing Scheduled (Hearing Scheduled 01/19/2016 03:30 PM) Rule 54 Motion	Jonathan Medema
	MOTN	CCBARRSA	Motion for Rule 56(f) Relief	Jonathan Medema
	AFFD	CCBARRSA	Affidavit of Michael E. Band in Support of Motion for Rule 56 (f) Relief	Jonathan Medema
	NOHG	CCBARRSA	Notice Of Hearing (01/19/16 @ 03:30 pm)	Jonathan Medema
	MOTN	CCBARRSA	Motion to Shorten Time	Jonathan Medema

Bedard And Musser, Boise Hollow Land Holdings RLLP vs. City Of Boise City

Date	Code	User		Judge
1/15/2016	OBJT	CCLOWEAD	Objection to Motion for Rule 56(f) Relief	Jonathan Medema
	MOTN	CCLOWEAD	Defendant's Motion to Strike the Affidavit of Rebecca W. Arnold	Jonathan Medema
	RSPN	CCLOWEAD	Defendant's Response in Opposition to Plaintiffs' Motion for Summary Judgment	Jonathan Medema
	DECL	CCLOWEAD	Declaration of Counsel Scott B. Muir	Jonathan Medema
	DECL	CCLOWEAD	Second Declaration of Counsel Abigail R. Germaine	Jonathan Medema
1/19/2016	HRVC	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 01/19/2016 03:30 PM: Hearing Vacated Rule 54 Motion Motion for Rule 56 (f) Relief	Jonathan Medema
	AFFD	CCKINGAJ	Second Affidavit of Michael E. Band in Support of Motion for Rule 56(f) Relief	Jonathan Medema
	NOTH	CCTAYLSA	Amended Notice Of Hearing	Jonathan Medema
	HRSC	CCTAYLSA	Hearing Scheduled (Hearing Scheduled 02/16/2016 02:00 PM)	Jonathan Medema
1/20/2016	HRVC	DCELLISJ	Hearing result for Motion for Summary Judgment scheduled on 01/29/2016 01:30 PM: Hearing Vacated	Jonathan Medema
	NOTH	CCTAYLSA	Amended Notice Of Hearing on Defendants Cross-Motion for Summary Judgment and Motion to Strike Affidavit of Rebecca Arnold	Jonathan Medema
1/29/2016	WITN	CCHEATJL	Disclosure Of Expert Witnesses (Terry Copple)	Jonathan Medema
2/2/2016	REPL	CCBUTTAR	Reply In Support Of Plaintiffs' Motion For Summary Judgment	Jonathan Medema
	MISC	CCBUTTAR	Plaintiffs' Opposition To Motion To Strike Affidavit Of Rebecca W. Arnold	Jonathan Medema
	DECL	CCBUTTAR	Second Declaration Of Tommy T. Sanderson	Jonathan Medema
	AFFD	CCBUTTAR	Affidavit Of Colin Connell	Jonathan Medema
	MISC	CCBUTTAR	Plaintiffs' Memorandum In Opposition To Defendant's Cross-Motion For Summary Judgment	Jonathan Medema
	MOTN	CCBUTTAR	Motion To Strike The Declaration Of Abigail R. Germaine	Jonathan Medema
	AFFD	CCBUTTAR	Affidavit Of Counsel Michael E. Band	Jonathan Medema
	NOTH	CCBUTTAR	Notice Of Hearing	Jonathan Medema
	HRSC	CCBUTTAR	Hearing Scheduled (Motion 02/16/2016 02:00 PM) Motion To Strike The Declaration Of Abigail R. Germaine	Jonathan Medema
2/9/2016	REPL	CCMYERHK	Reply in Support of Defendant's Cross-Motion for Summary Judgment	Jonathan Medema
	DECL	CCMYERHK	Third Declaration of Counsel Abigail R Germaine	Jonathan Medema

Bedard And Musser, Boise Hollow Land Holdings RLLP vs. City Of Boise City

Date	Code	User		Judge
2/9/2016	MOTN	CCMYERHK	Defendant's Motion to Strike The Affidavit of Colin Connell	Jonathan Medema
	MOTN	CCMYERHK	Motion to Shorten Time	Jonathan Medema
2/16/2016	DCHH	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 02/16/2016 02:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 300 pages	Jonathan Medema
	OBJT	CCGARCOS	Plaintiff's Objection to Filling of Third Declaration of Counsel Abigail R. Germaine	Jonathan Medema
	OPPO	CCGARCOS	Plaintiff's Opposition to Motion to Strike Affidavit of Colin Connell	Jonathan Medema
2/17/2016	BREF	CCMARTJD	Reply Brief Regarding Motion to Strike the Affidavit of Rebecca Arnold	Jonathan Medema
	MISC	CCHYSEKB	Post Summary Judgment Hearing Brief RE: Enforceability of Easement Convenant	Jonathan Medema
2/22/2016	OBJE	CCBUTTAR	Objection To Plaintiffs' Filing Of Post Summary Judgment Hearing Brief	Jonathan Medema
4/1/2016	MEMO	DCELLISJ	Memorandum & Decision RE: Motions to Strike	Jonathan Medema
	MEMO	DCELLISJ	Memorandum & Decision re: Cross Motions for Summary Judgment	Jonathan Medema
4/18/2016	CDIS	DCELLISJ	Civil Disposition entered for: City Of Boise City, Defendant; Bedard And Musser, Plaintiff. Filing date: 4/18/2016 JUDGMENT	Jonathan Medema
	STAT	DCELLISJ	STATUS CHANGED: Closed pending clerk action	Jonathan Medema
	HRVC	DCELLISJ	Hearing result for Jury Trial scheduled on 06/29/2016 09:00 AM: Hearing Vacated 5 day jury trial	Jonathan Medema
	HRVC	DCELLISJ	Hearing result for Pretrial Conference scheduled on 06/15/2016 03:00 PM: Hearing Vacated	Jonathan Medema
	HRVC	DCELLISJ	Hearing result for Status Conference scheduled on 06/03/2016 09:00 AM: Hearing Vacated	Jonathan Medema
	STAT	DCELLISJ	STATUS CHANGED: closed	Jonathan Medema
5/2/2016	MOTN	CCWEEKKG	Motion to AMend Judgment	Jonathan Medema
5/9/2016	RSPS	CCATKIFT	Response to Plaintiffs' Motion to Amend Judgment	Jonathan Medema
5/10/2016	NOTA	CCBUTTAR	NOTICE OF APPEAL	Jonathan Medema
	APSC	CCBUTTAR	Appealed To The Supreme Court	Jonathan Medema
5/11/2016	NOTH	CCTAYLSA	Notice Of Hearing	Jonathan Medema
	HRSC	CCTAYLSA	Hearing Scheduled (Motion 06/07/2016 03:00 PM) Motion To Amend Judgment And Defendants Response To Plaintiffs Motion To Amend Judgment	Jonathan Medema

Bedard And Musser, Boise Hollow Land Holdings RLLP vs. City Of Boise City

Date	Code	User		Judge
5/11/2016	STAT	CCTAYLSA	STATUS CHANGED: Closed pending clerk action	Jonathan Medema
5/19/2016	RQST	CCWRIGRM	Request for Additional Record on Appeal (Scott Muir for City of Boise)	Jonathan Medema
6/6/2016	DECL	CCBUTTAR	Declaration of Counsel Michael E. Band	Jonathan Medema
6/7/2016	DCHH	DCELLISJ	Hearing result for Motion scheduled on 06/07/2016 03:00 PM: District Court Hearing Hel Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Motion To Amend Judgment And Defendants Response To Plaintiffs Motion To Amend Judgment LESS THAN 100 pages	Jonathan Medema
	AMJD	DCELLISJ	Amended Judgment	Jonathan Medema
6/8/2016	NOTA	CCJOHNLE	Amended NOTICE OF APPEAL	Jonathan Medema
7/26/2016	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 44171	Jonathan Medema

NO. _____ FILED
A.M. _____ P.M. 4:55

JUN 17 2015

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
DEPUTY

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiff
Bedard and Musser

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV OC- OC 1510297 COMPLAINT FOR QUIET TITLE Filing Category: A Filing Fee: $221.00

COMES NOW Plaintiff Bedard and Musser, an Idaho partnership (hereinafter "Plaintiff"), and for a cause of action against the Defendant, City of Boise City, a body politic corporate of the State of Idaho ("Defendant") hereby complains and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is an unincorporated partnership organized under the laws of Idaho. Plaintiff is located in Boise, Idaho and Plaintiff's principal place of business is Ada County, Idaho.

000007

ORIGINAL

Plaintiff consists of two (2) individual partners, which are Kipp A. Bedard and Bill Musser.

2. At all relevant times herein, Defendant was and is a body politic corporate of the State of Idaho. Defendant was incorporated under a special charter on January 11, 1866, and is organized under the General Laws of the State of Idaho. Defendant is registered with the Idaho Secretary of State as File Number C117940.

3. This Court has jurisdiction over the parties and the subject matter of the dispute pursuant to IDAHO CODE (I.C.) § 1-705, § 5-514, Rule 82(c)(2) of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.) and the CONSTITUTION OF THE STATE OF IDAHO because the parties and entities are located in Idaho, and the events giving rise to the dispute occurred in Idaho.

4. Venue is proper in Ada County pursuant to I.C. §§ 5-401 and -404 because Defendant is located in and conducts substantial business in Ada County, and the real property which is the subject of this action is located in Ada County.

5. Plaintiff has complied with the notice provisions of I.C. § 50-219 and § 6-906 by providing a notice of the claims set forth herein. On March 12, 2015, the Plaintiff gave written notice of these claims to the Defendant. A true and accurate copy of such written notice is attached hereto as EXHIBIT "A" and incorporated herein by this reference.

GENERAL ALLEGATIONS

6. Plaintiff is the owner of the following real property:

> Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

The foregoing parcel consists of approximately 63.76 acres of bare ground and is located at off of North 36th Street, Boise, Idaho 83702, and known as Parcel # R6060421400 (the "Bedard/Musser Property").

7. Defendant is the owner of the following real property and its improvements, which are located immediately adjacent to the Bedard/Musser Property:

> Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 – 5791, Instrument No. 9205592.

The foregoing premises are commonly known as the Quail Hollow Golf Course and are located at the street address 4520 36th Street, Boise, Idaho 83703 (the "Golf Course Property").

8. Plaintiff's predecessor-in-interest with respect to the Bedard/Musser Property was Vancroft Corporation, an Idaho corporation ("Vancroft").

9. Defendant's predecessor-in-interest with respect to the Golf Course Property was Tee, Ltd., an Idaho corporation, and Tommy T. Sanderson and Roxanne Sanderson (collectively, "Tee-Sanderson").

10. On or about September 14, 1991, Tee-Sanderson and Vancroft executed a PERMANENT EASEMENT AGREEMENT (the "Easement Agreement") whereby Tee-Sanderson granted, conveyed, and remised to Vancroft and its heirs, assigns, and transferees, a permanent and perpetual easement under, over, and across the southwest quarter of the Golf Course Property for the purpose of providing utilities and vehicular access (*i.e.*, ingress and egress) to the Bedard/Musser Property. A true and accurate copy of the foregoing Easement Agreement, which was recorded on November 3, 1993 as Ada County Instrument No. 9392442, is attached hereto as EXHIBIT "B" and is incorporated herein by this reference as if set forth in full.

11. The permanent easement created and granted pursuant to the foregoing Easement Agreement is hereinafter referred to as the "Easement."

12. On or about October 27, 1993, Vancroft and Plaintiff executed an ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT ("Assignment") whereby Vancroft

fully assigned and conveyed to Plaintiff and its heirs, assigns, and transferees, all of Vancroft's rights, benefits, and interests in the Easement and the Easement Agreement. A true and accurate copy of the foregoing Assignment, which was recorded on November 4, 1993, as Ada County Instrument No. 9392667, is attached hereto as EXHIBIT "C" and is incorporated herein by this reference as if set forth in full.

13. The Easement Agreement between the parties' respective predecessors-in-interest (EXHIBIT "B") described the parties' intent regarding the nature and purpose of the Easement. As set forth in numbered paragraphs "1" and 6" of the Easement Agreement, the parties' purpose and intention for the Easement was for the Grantee's use for vehicular ingress and egress. The Grantee was given the right, at the Grantee's sole discretion, to expand this easement area by dedicating the Easement as a road to the Ada County Highway District (ACHD) and thereupon to bring such road into compliance with all "ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc." existing at the time of such dedication. *See* Paragraph "6" of Easement Agreement.

14. Plaintiff, as successor-in-interest to Vancroft, and present owner of the Easement, now wishes to exercise its right to dedicate the Easement as a road to ACHD and thereupon bring the road into compliance with all ACHD ordinances and requirements, including, but not limited to, the dimensions and scope of the roadway with associated embankments as depicted on the preliminary construction plans and drawings attached hereto as EXHIBIT "D."

15. ACHD may require that such a road be one hundred (100) feet wide, or in excess thereof. Accordingly, by the express terms of the Easement Agreement, the easement area must be recognized and declared to be sufficiently wide to meet ACHD ordinances and requirements as intended by the parties to the Easement Agreement.

16. Defendant may claim that the easement area is limited to forty (40) feet in width, despite the express intention of the parties to the Easement Agreement that the easement area be sufficient to satisfy ACHD ordinances and requirements.

17. Plaintiff alleges that it has all estate, right, title, and interest whatever in the Easement, and that the scope and dimensions of the easement area of such Easement are that which may be necessary to satisfy ACHD ordinances and requirements at the time that Plaintiff may elect to dedicate the Easement to ACHD. Plaintiff therefore also alleges that the Defendant has not any right whatsoever to prevent Plaintiff from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication.

18. That Plaintiff has no adequate relief except in a court of equity.

ATTORNEYS' FEES

19. Plaintiff has been compelled to and has retained counsel to render services in this action for its interest in said premises herein sought to be quiet titled. Plaintiff is entitled to an award of reasonable attorney fees and costs it has incurred under Idaho statutes. The sum of $3,000.00 is a reasonable sum to be awarded Plaintiff's attorneys for instituting this action if uncontested; otherwise Plaintiff seeks such amount of reasonable attorney fees and costs as the Court deems necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered as follows:

1. Defendant be required to set forth the nature of its claim, and that all adverse claims of the Defendant be determined by decree of this Court, and that by said decree it be declared and adjudged that Plaintiff is the owner of the Easement described herein and entitled to the possession

thereof;

2. That the scope of the easement area be declared and adjudged to be of such dimensions and scope as may be sufficiently to meet ACHD ordinances and requirements, including, but not limited to, the dimensions and scope of the roadway with associated embankments as depicted on the construction plans attached hereto as EXHIBIT "D;"

3. That Defendant has no right whatsoever to prevent Plaintiff from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication;

4. That Defendant be forever debarred and permanently enjoined from asserting any claim whatever in and to said land and premises adverse to Plaintiff and from interfering with Plaintiff's enjoyment of the Easement as set forth herein;

5. For an award of Plaintiff's reasonable attorney fees and costs incurred in bringing this suit; and

6. For such other and further relief as to the Court may deem just and reasonable.

DATED this 17th day of June, 2015.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiff

VERIFICATION

STATE OF IDAHO)
: ss.
County of ADA)

KIPP A. BEDARD, being duly sworn, deposes and says: That I am the a general partner of the Plaintiff in the above-entitled matter. That I have read the foregoing Complaint for Quiet Title and know the contents thereof to be true and correct to the best of my knowledge.

KIPP A. BEDARD

SUBSCRIBED AND SWORN TO before me this 17th day of June, 2015.

MICHELLE J. SILVA NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Meridian, Id.
My commission expires: 11-17-2016

COMPLAINT FOR QUIET TITLE

EXHIBIT "A"

Davison, Copple, Copple & Copple, LLP
Attorneys at Law

Direct Contact:

Terry C. Copple
Direct: (208) 342-3658

E-Mail: tc@davisoncopple.com
http://www.davisoncopple.com

199 North Capitol Boulevard, #600
Post Office Box 1583
Boise, Idaho 83701

Telephone: (208) 342-3658
Facsimile: (208) 386-9428

March 12, 2015

SENT BY CERTIFIED U.S. MAIL

Boise City Clerk
150 N. Capitol Blvd.
Boise, Idaho 83702

Joshua Leonard
Boise City Attorney's Office
150 N. Capitol Blvd., 4th Floor, Building 2
Boise, Idaho 83702

RE: **NOTICE OF CLAIM UNDER IDAHO TORT CLAIMS ACT (IDAHO CODE (I.C.) § 6-901, et seq.)**

Greetings:

Please be advised that this office represents Bedard & Musser, an Idaho Partnership and that a claim is hereby made against the City of Boise ("the City"), pursuant to the Idaho Tort Claims Act, I.C. § 6-901, *et seq.* by Bedard & Musser; and that pursuant to law, you and each of you are hereby advised and notified as follows:

Bedard & Musser is the owner of the following real property:

> Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

The foregoing parcel consists of approximately 63.76 acres of bare ground and is located at off of North 36th Street, Boise, Idaho 83702, and known as Parcel # R6060421400 (the "Bedard/Musser Property").

The City is the owner of the following real property and its improvements, which are located immediately adjacent to the Bedard/Musser Property:

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 – 5791, Instrument No. 9205592.

The foregoing premises are commonly known as the Quail Hollow Golf Course and are located at the street address 4520 36th Street, Boise, Idaho 83703 (the "Golf Course Property").

Bedard & Musser's predecessor-in-interest with respect to the Bedard/Musser Property was Vancroft Corporation, an Idaho corporation ("Vancroft").

The City's predecessor-in-interest with respect to the Golf Course Property was Tee, Ltd., an Idaho corporation, and Tommy T. Sanderson and Roxanne Sanderson (collectively, "Tee-Sanderson").

On or about September 14, 1991, Tee-Sanderson and Vancroft executed a PERMANENT EASEMENT AGREEMENT (the "Easement Agreement") whereby Tee-Sanderson granted, conveyed, and remised to Vancroft and its heirs, assigns, and transferees, a permanent and perpetual easement (the "Easement") under, over, and across the southwest quarter of the Golf Course Property for the purpose of providing utilities and vehicular access (*i.e.*, ingress and egress) to the Bedard/Musser Property.[1]

On or about October 27, 1993, Vancroft and Bedard & Musser executed an ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT ("Assignment") whereby Vancroft fully assigned and conveyed to Bedard & Musser and its heirs, assigns, and transferees, all of Vancroft's rights, benefits, and interests in the Easement and the Easement Agreement.[2]

The Easement Agreement described the parties' intent regarding the nature and purpose of the Easement. As set forth in numbered paragraphs "1" and 6" of the Easement Agreement, the parties' purpose and intention for the Easement was for the Grantee's use for vehicular ingress and egress. The Grantee was given the right, at the Grantee's sole discretion, to expand this easement area by dedicating the Easement as a road to the Ada County Highway District (ACHD) and thereupon to bring such road into compliance with all "ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc." existing at the time of such dedication. *See* Paragraph "6" of Easement Agreement.

Bedard & Musser, as successor-in-interest to Vancroft, and present owner of the Easement, now wishes to exercise its right to dedicate the Easement as a road to ACHD and thereupon bring the road into compliance with all ACHD ordinances and requirements, including, but not limited to, the dimensions and scope of the roadway with associated embankments as depicted on the plans attached to the draft Complaint as EXHIBIT "C." Accordingly, by the express terms of the Easement Agreement, the easement area must be recognized and declared to be sufficiently wide to meet ACHD ordinances and requirements as intended by the parties to the Easement Agreement.

---

[1] As explained below, a draft of the Complaint Bedard and Musser is prepared to file to resolve this claim is enclosed herewith. A true and accurate copy of the Easement Agreement, which was recorded on November 3, 1993 as Ada County Instrument No. 9392442, is attached to the Complaint as EXHIBIT "A."

[2] A true and accurate copy of the foregoing Assignment, which was recorded on November 4, 1993, as Ada County Instrument No. 9392667, is attached to the Complaint as EXHIBIT "B."

Bedard & Musser understand that the City may claim that the easement area is limited to forty (40) feet in width, despite the express intention of the parties to the Easement Agreement that the easement area be sufficient to satisfy ACHD ordinances and requirements. Bedard & Musser contends that it has all estate, right, title, and interest whatever in the Easement, and that the scope and dimensions of the easement area of such Easement are that which may be necessary to satisfy ACHD ordinances and requirements at the time that Bedard & Musser may elect to dedicate the Easement to ACHD. Bedard & Musser therefore also alleges that the The City has not any right whatsoever to prevent Bedard & Musser from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication.

Accordingly, please be advised that absent a prior resolution of the above-described claim, 90 days from the service of this notice, we will file a complaint with the District Court of the Fourth Judicial District to quiet title in the easement and establish Bedard & Musser's right to expand the easement area by dedicating the Easement as a road to ACHD and thereupon bring the road into compliance with all ordinances and requirements existing at the time of such dedication. A copy of the Complaint to be filed, with its exhibits which have been referenced herein, is attached hereto.

It is our opinion that this notice fully complies with the notice provisions of Idaho Code § 50-219 and § 6-906. In the absence of any objection to this notice, we will proceed on the assumption that all statutory notice requirements have been met.

Very truly yours,

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Michael E. Band, of the firm

TC/mjs
Enclosures

COMPLAINT FOR QUIET TITLE

EXHIBIT "B"

ST-9304912G (A)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A draving of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therevith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 7/1/95

LAWRENCE P. LEE NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence R. Kahle

Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 8/1/95

LAWRENCE R. KAHLE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Maura J. Kenney

Notary Public for Massachusetts
Residing at Littleton Ma
My Commission Expires: May 12 1995

MAURA J. KENNEY NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 6th 1994

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

1628001349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5789)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°56'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 36th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-06

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

R-95%

BK 59 Pages 5187

1628001350

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
●	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
○	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar

Boundary Line

Section Line

1/4 Section Line

1/16 Section Line

Easement Line

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City Street lights over the ten (10) foot adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8830182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of safe roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 38" E	200.23
2	N 68° 11' 41" E	388.58
3	N 66° 13' 01" E	388.83
4	N 67° 32' 38" E	378.17
5	N 21° 27' 09" E	409.18
6	N 22° 46' 35" E	418.97
7	N 45° 03' 29" E	285.53

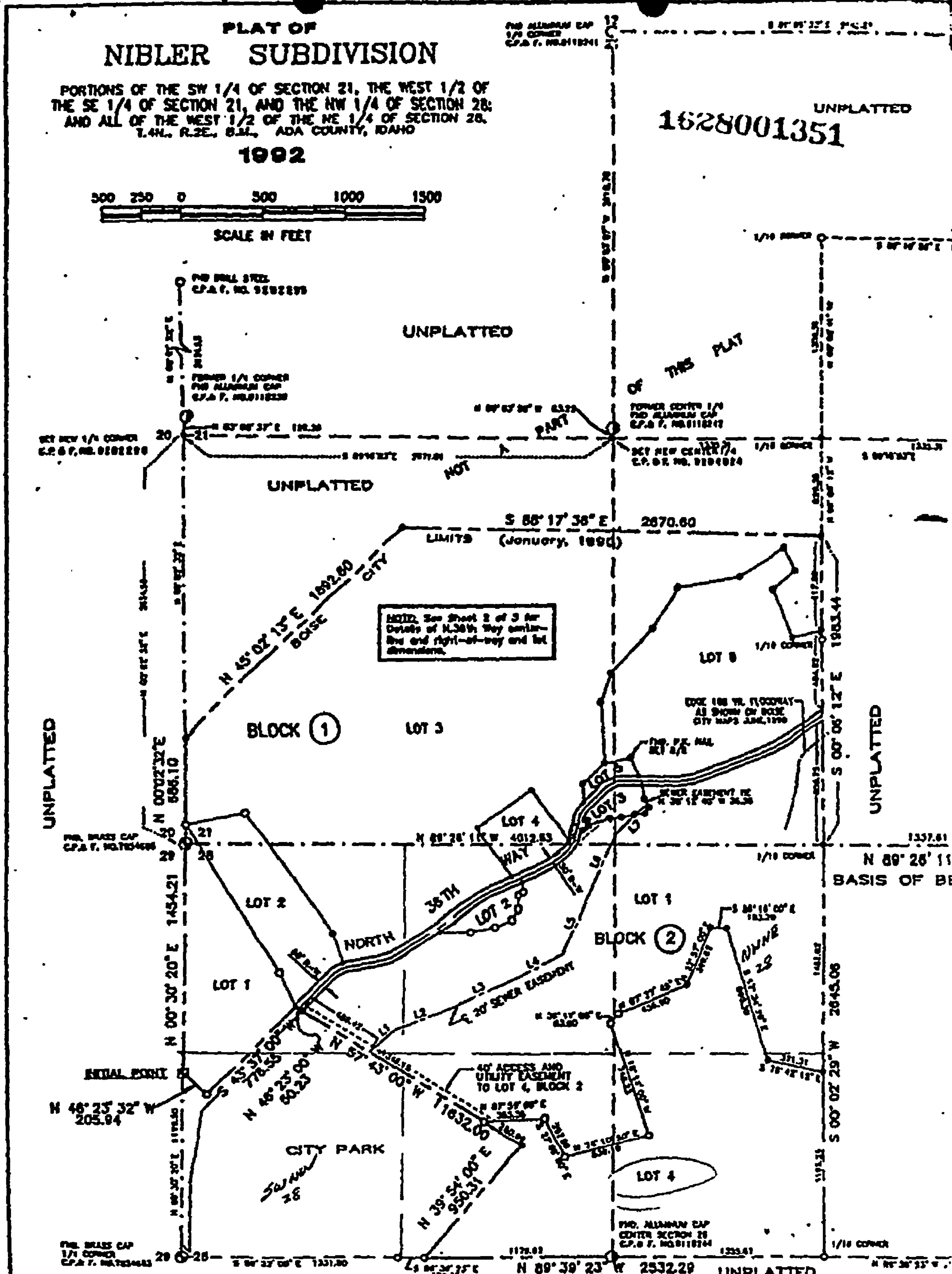
VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

12

Exhibit C



PLAT OF
NIBLER SUBDIVISION
PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO
1992
300 250 0 500 1000 1500
SCALE IN FEET
1628001351
UNPLATTED
UNPLATTED
NOT A PART OF THIS PLAT
UNPLATTED
S 88° 17' 38" E 2670.60
LIMITS (January, 1990)
N 45° 02' 15" E 1892.60
BOISE CITY
NOTE: See Sheet 2 of 3 for Details of N.36th Way centerline and right-of-way and lot dimensions.
BLOCK 1
LOT 3
LOT 5
LOT 4
LOT 2
LOT 1
UNPLATTED
N 00°02'32"E 586.10
N 89° 26' 11" W 4012.83
N 89° 26' 11
BASIS OF BE
NORTH 36TH WAY
LOT 1
BLOCK 2
20' SEWER EASEMENT
L1
L2
L3
L4
L5
N 00° 30' 20" E 1454.21
1983.44
S 00° 06' 12" E
UNPLATTED
2645.08
S 00° 02' 29" W
INITIAL POINT
N 46° 23' 32" W 205.94
S 45° 37' 00" W 776.55
N 46° 23' 00" W 60.23
N 57° 43' 00" W 1632.00
40' ACCESS AND UTILITY EASEMENT TO LOT 4, BLOCK 2
N 39° 54' 00" E 950.31
CITY PARK
LOT 4
1337.61
N 89° 39' 23" W 2532.29
UNPLATTED

COMPLAINT FOR QUIET TITLE

EXHIBIT "C"

0939267

ST-93044126 JH

PART OF ORIGINAL
TOO POOR TO COPY

1628001631

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

STEWART TITLE

'93 NOV 4 AM 10 40

FEE [illegible] DEP [illegible]
RECORDED AT THE REQUEST OF

ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT

This Assignment and Assumption of Permanent Easement Agreement is made and entered in to this 27th day of October, 1993 by and between VANCROFT CORPORATION, an Idaho corporation, ("Assignor") whose address is 600 West 76th Avenue, #101, Anchorage, Alaska 99518-2565, and BEDARD & MUSSER, a partnership, ("Assignee") whose address is 2101 Ridgecrest Dr., Boise Idaho, 83712.

Concurrently herewith, Assignor is selling to Assignee that certain real property located in Ada County, Idaho and legally described as: Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592 (the "Property"). In connection with such sale, Assignor desires to assign, and Assignee desires to accept the assignment of, the rights, benefits and obligations of Assignor under the terms and conditions of that certain Permanent Easement Agreement (the "Easement Agreement") made and entered into by and between TEE, LTD., Tommy T. Sanderson and Roxanne Sanderson, as grantor, and Assignor, dated September 14, 1991, and recorded on ~~October~~ November 3, 1993 as Instrument Number 9392442, which Easement Agreement grants a permanent 40' access and utility easement for the benefit of the Property and which Easement Agreement contains certain conditions and obligations which are clearly enumerated therein. A copy of the Easement Agreement is attached as Exhibit A and incorporated herein.

NOW THEREFORE, In consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. ASSIGNMENT. Assignor hereby assigns, transfers, conveys, sells, endorses and delivers to Assignee all of Assignor's right, title and interest under the Easement Agreement.

2. ASSUMPTION. Assignee hereby accepts such assignment and hereby assumes all of the obligations of Assignor under the Easement Agreement and agrees to be bound by all terms and conditions of the Easement Agreement. Assignee hereby covenants and agrees to indemnify, defend and hold harmless Assignor from and against any claims, liabilities, costs, expenses (including reasonable attorneys' fees) and damages asserted against or incurred by Assignor and arising in connection with the Easement Agreement subsequent to the date of this Assignment and Assumption.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By _____

By _____

1628001633

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By William L. Musser

By _____

STATE OF ALASKA)
) ss.
~~COUNTY OF~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Shumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 2nd day of November, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Lisa A. Bedard, known or identified to me to be the partner of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

Notary Public for Boise
Residing at Boise, Idaho
My commission expires: May 8, 1996

1628001635

STATE OF ALASKA)
) ss.
~~CORRECTED~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Shumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF ~~IDAHO~~ NEW YORK)
) ss.
COUNTY OF ~~ADA~~ NEW YORK)

On this 2ND day of NOVEMBER 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM L. MUSSER JR. known or identified to me to be the A PARTNER of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

April Medina
Notary Public for _____
Residing at _____
My commission expires: _____

APRIL MEDINA
Notary Public, State of New York
No. 01-4680635
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Sept. 30, 1994

ST-9304912G (2)

16280013 41

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at [illegible] Idaho
My Commission Expires 2/10/95

LAWRENCE LEE NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence E. Lee
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 6/1/95

LAWRENCE E. LEE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 22 1998

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Laura J Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 26, 1995

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

PERMANENT EASEMENT AGREEMENT - 7

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

COMPLAINT FOR QUIET TITLE

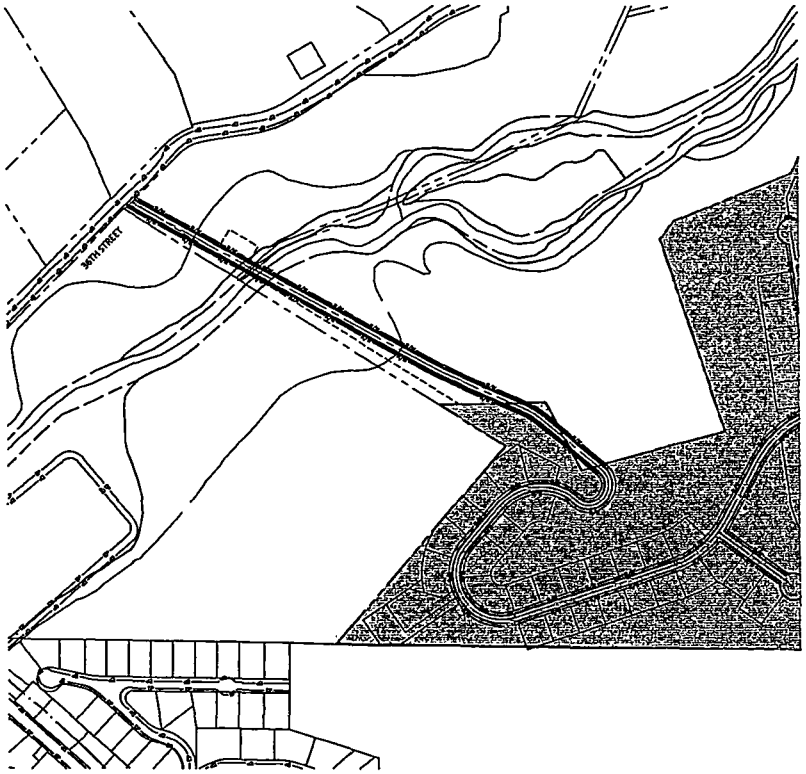
EXHIBIT "D"

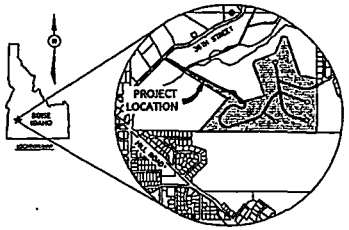
LOT 4, BLOCK 2, NIBBLER SUBDIVSION

EAGLE, ID

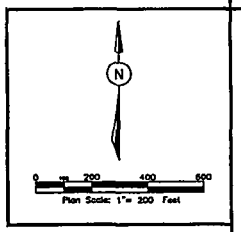
CONSTRUCTION PLANS

DECEMBER 2014





VICINITY MAP
NO SCALE



DRAFT

DRAFT

INDEX OF DRAWINGS

SHT	SHEET TITLE	SHEET DESCRIPTION
C1.0	COVER	
C1.1	NOTES AND DETAILS	
C2.0	ROADWAY IMPROVEMENT PLANS	
C2.1	ROADWAY IMPROVEMENT PLANS	
C2.2	ROADWAY IMPROVEMENT PLANS	

LEGEND

- BOUNDARY LINE
- OFFSITE BOUNDARY LINE
- SETBACKS
- ROAD CENTERLINE
- LOT LINE LINE
- RIGHT-OF-WAY LINE
- FOUND 1/2 INCH REBAR
- FOUND 5/8 INCH REBAR
- SPIKE

PROPOSED IMPROVEMENTS

- SEWER LINE
- WATER LINE
- STORMDRAIN LINE
- SEWER MANHOLE
- FIRE HYDRANT
- DOUBLE WATER SERVICE
- DRAINAGE ARROWS
- PROPOSED GRADE CONTOUR

EXISTING IMPROVEMENTS

- SANITARY SEWER LINE
- WATER LINE
- GAS LINE
- OVERHEAD POWER LINE
- GRAVITY IRRIGATION LINE
- SEWER MANHOLE
- WATER VALVE
- WATER METER
- FIRE HYDRANT
- POWER POLE
- POWER BOX
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- TREE DECIDUOUS
- EXISTING GRADE CONTOUR

BASIS OF BEARINGS

CONTACT KM ENGINEERING (430-8639) FOR BASIS OF BEARINGS AND CONTROL POINTS

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NW1/4 OF THE NW1/4 OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 1 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO, 2014

CONTACT INFORMATION

ENGINEERING CONSULTANT
KM ENGINEERING, LLP
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE: (208) 639-6939
FAX: (208) 639-6930
CONTACT: KEVIN P. MCKENNY, P.E.
EMAIL: kevin@kmengllp.com

GEOTECHNICAL ENGINEER
STRATA
5853 W. HICKMORE DRIVE
BOISE, IDAHO 83709
PHONE: (208) 376-4300
FAX: (208) 376-4301
CONTACT: MICHAEL WOODWORTH, P.E.

APPLICANT / DEVELOPER / OWNER
CORNELL DEVELOPMENT
2291 AMY AVENUE
BOISE, IDAHO 83704
PHONE: (208) 866-5275
CONTACT: COLIN CORNELL

ACHD COMPLIANCE

THE ENGINEER OF RECORD CERTIFIES THAT THE PLANS ARE PREPARED IN SUBSTANTIAL CONFORMANCE WITH THE ACHD POLICY AND STANDARDS IN EFFECT AT THE TIME OF PREPARATION. THE ENGINEER ACKNOWLEDGES THAT ACHD ASSUMES NO LIABILITY FOR ERRORS OR DEFICIENCIES IN THE DESIGN. ALL VARIANCES FROM ACHD POLICY SHALL BE APPROVED IN WRITING. THE FOLLOWING VARIANCES, LISTED BY DATE AND SHORT DESCRIPTION, WERE APPROVED FOR THE PROJECT:

- NONE

km ENGINEERING

000047

PROJECT GENERAL NOTES

1. THE CONTOURS AND BENCHMARK ELEVATION ARE BASED ON THE NAVD 88 VERTICAL DATUM.
2. PROJECT BENCHMARKS SHALL BE ESTABLISHED THROUGHOUT THE SITE BY THE ENGINEER AND WILL BE PROVIDED TO THE CONTRACTOR PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL PROTECT ALL SURVEY MONUMENTS AND BENCHMARKS FROM DISTURBANCE THROUGHOUT CONSTRUCTION. DAMAGED BENCHMARKS WILL BE REPLACED BY THE PROJECT SURVEYOR AT THE CONTRACTOR'S EXPENSE.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE SAFETY REQUIREMENTS OF ANY JURISDICTIONAL BODY. THE CONTRACTOR WILL BE RESPONSIBLE FOR ALL BARRICADES, SAFETY DEVICES AND TRAFFIC CONTROL WITHIN AND AROUND THE CONSTRUCTION AREA.
5. ALL WORK SHALL BE DONE IN COMPLIANCE WITH THE APPROVED PLANS, SPECIFICATIONS, SOILS REPORT AND APPLICABLE CHAPTER 33 OF THE UNIFORM BUILDING CODE.
6. WHERE NOTED, EXISTING TEST PITS/MONITORING WELLS SHALL BE RETAINED AND PROTECTED DURING CONSTRUCTION.
7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND/OR REQUIREMENTS OF THE CITY OF BOISE, ADA COUNTY HIGHWAY DISTRICT, AND THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY.
8. A PRE CONSTRUCTION CONFERENCE SHALL BE HELD A MINIMUM OF THREE (3) WORKING DAYS PRIOR TO START OF WORK. ALL CONTRACTORS, SUBCONTRACTORS AND/OR UTILITY CONTRACTORS SHALL BE PRESENT.
9. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING DRAINAGE FACILITIES WITHIN THE CONSTRUCTION AREA UNTIL THE PROPOSED DRAINAGE IMPROVEMENTS ARE IN PLACE AND FUNCTIONING. THE CONTRACTOR SHALL COMPLY WITH ALL REQUIREMENTS OF THE STORM WATER POLLUTION PREVENTION PLAN AND THE ROUGH GRADING PLAN.
10. ALL CONTRACTORS WORKING WITHIN THE PROJECT BOUNDARIES ARE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE SAFETY LAWS OF ANY JURISDICTIONAL BODY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL BARRICADES, SAFETY DEVICES AND CONTROL OF TRAFFIC WITHIN AND AROUND THE CONSTRUCTION AREA.
11. WORK SUBJECT TO APPROVAL BY ANY POLICE, SUBDIVISION OR AGENCY MUST BE APPROVED PRIOR TO (X) BACKFILLING TRENCHES FOR PIPE (B) PLACING OF AGGREGATE BASE (C) PLACING OF CONCRETE OR (D) PLACING OF ASPHALT PAVING. WORK DONE WITHOUT SUCH APPROVAL SHALL NOT RELIEVE THE CONTRACTOR FROM THE RESPONSIBILITY OF PERFORMING THE WORK IN AN ACCEPTABLE MANNER.
12. ALL CONTRACTORS WORKING WITHIN EXISTING PUBLIC ROAD RIGHT-OF-WAY ARE REQUIRED TO SECURE A RIGHT-OF-WAY CONSTRUCTION PERMIT FROM ADA COUNTY HIGHWAY DISTRICT AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO ANY CONSTRUCTION.
13. THE CONTRACTOR SHALL CONSTRUCT ALL IMPROVEMENTS IN ACCORDANCE WITH THE PLANS STAMPED "APPROVED FOR CONSTRUCTION" BY THE VARIOUS GOVERNING AGENCIES. THESE PLANS WILL BE PROVIDED TO THE CONTRACTOR BY THE ENGINEER PRIOR TO INSTRUCTION. WORK SHALL NOT BE DONE WITHOUT THE CURRENT SET OF APPROVED PLANS.
14. ALL LOT LINE AND EASEMENT INFORMATION SHALL BE TAKEN FROM CYRE SUBDIVISION PHASE II FINAL PLAT.
15. THE CONTRACTOR SHALL LIMIT CONSTRUCTION ACCESS TO THE OWNER APPROVED ACCESS POINTS.
16. IF THE CONTRACTOR HAS ANY QUESTIONS CONCERNING THE PROJECT SPECIFICATIONS, HE/SHE SHALL CONTACT THE ENGINEER FOR DIRECTION. WHEN DISCREPANCIES OCCUR BETWEEN THE PLANS AND SPECIFICATIONS THE CONTRACTOR SHALL UNKNOWINGLY NOTIFY THE ENGINEER. UNNOTIFIED MODIFICATIONS MAY RESULT IN ANY CONTRACTORS CLAIM FOR ADDITIONAL COMPENSATION.
17. ALL COSTS INCURRED IN CORRECTING DEFICIENT WORK SHALL BE CHARGED TO THE CONTRACTOR. FAILURE TO CORRECT SUCH WORK SHALL BE CAUSE FOR A STOP WORK ORDER AND POSSIBLE TERMINATION.
18. ABANDONED BUILDINGS, TEST PITS OR WATERWAYS LOCATED WITHIN CURBSIDE OR FUTURE RIGHT-OF-WAY SHALL BE RE-EXCAVATED TO WHERE SOIL AND BACKFILLED WITH STRUCTURAL FILL PER ISPWC SPECIFICATIONS. PROVIDE SOILS DATA TO VERIFY MATERIAL MEETS THE REQUIREMENTS FOR ENGINEERED FILL PER ISPWC SPECIFICATIONS AND COPY OF THE COMPACTION TESTS.
19. SUBGRADE SHALL BE INSPECTED BY THE GEOTECHNICAL CONSULTANT RESPONSIBLE FOR THE GEOTECHNICAL ASPECTS OF THE PROJECT.
20. FINAL GRADING SHALL BE INSPECTED BY THE PROJECT ENGINEER.
21. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE MOST CURRENT EDITION OF THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC) AND THE PROJECT STANDARDS AND SPECIFICATIONS. NO EXCEPTIONS WILL BE ALLOWED UNLESS SPECIFICALLY AND PREVIOUSLY APPROVED IN WRITING BY ALL APPROPRIATE ENTITIES.
22. ONLY PLAN SETS STAMPED "APPROVED FOR CONSTRUCTION" AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTROLLING JURISDICTION, AGENCY SHALL BE USED BY THE INSTALLING CONTRACTOR(S).
23. THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES SHOWN HEREON ARE ONLY APPROXIMATE. THE CONTRACTOR SHALL COMPLY WITH IDAHO CODE REQUIRING UNDERGROUND FACILITIES DAMAGE PREVENTION. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. THE CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED AS A RESULT OF FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UTILITIES. THE CONTRACTOR SHALL CONTACT DIGLINE (342-1585) FOR UTILITY LOCATIONS A MINIMUM OF 48 HOURS PRIOR TO DIGGING.
24. ALL NATURAL SLOPES SHALL BE A MINIMUM OF 2:1, UNLESS OTHERWISE STATED ON THIS PLAN. ASPHALT MINIMUM GRADE IS 1%. CONCRETE MINIMUM GRADE IS 0.4%. FINISH GRADE SHALL SLOPE AWAY FROM ALL BUILDINGS.
25. REMOVE AND DISPOSE OFF-SITE AT AN APPROVED LOCATION ANY AND ALL EXCESS MATERIALS.

ACHD NOTES

1. ALL CONSTRUCTION WITHIN THE ADA COUNTY HIGHWAY DISTRICTS (ACHD.) RIGHT-OF-WAY SHALL CONFORM TO THE CURRENT EDITION OF THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (I.S.P.W.C.) AND THE ACHD. SUPPLEMENTAL SPECIFICATIONS. NO EXCEPTIONS TO DISTRICT POLICY, STANDARDS, AND THE I.S.P.W.C. WILL BE ALLOWED UNLESS SPECIFICALLY AND PREVIOUSLY APPROVED IN WRITING BY THE DISTRICT.
2. ALL WATER VALVES, BLOW-OFFS, AND MANHOLES SHALL BE GRADED AND PLACED SO AS NOT TO CONFLICT WITH ANY CONCRETE CURB, GUTTERS, SIDEWALK OR OTHER STREET IMPROVEMENTS.
3. CONSTRUCT ALL PAVEMENT MATCHES (INCLUDING DRIVEWAY APPROACHES AND UTILITY CUT STREET REPAIRS) WITHIN THE DISTRICTS RIGHT-OF-WAY TO MATCH THE EXISTING STREET SECTION OR TO USE THE FOLLOWING: 3.5-INCHES OF ASPHALT, 4-INCHES OF 3/4-INCH UNIFORMLY GRADED AGGREGATE, AND 14-INCHES OF 6-INCH MINUS PIT RUN. USE THICKNESS PAVEMENT SECTION IS GREATER.
4. TRAFFIC PLANS AND SIMCUITS ASSOCIATED WITH THE CONSTRUCTION OF ANY UTILITY WILL BE COORDINATED AND APPROVED THROUGH CONSTRUCTION SERVICES OF ACHD, 208-387-6280, PRIOR TO INVENTING ANY CONSTRUCTION.
5. ACHD WILL INSPECT ALL IMPROVEMENTS WHICH FALL WITHIN THE ACHD RIGHT-OF-WAY OR EASEMENT INCLUDING BUT NOT LIMITED TO STORM DRAIN CONSTRUCTION, TRENCH BACKFILL PROCEDURES, ACHD WAY CONSTRUCTION AND CONCRETE WORK. ANY WORKING TO BE DONE OUTSIDE OF THE WAY CONTAINED BLOWING OF THE PROJECT WILL REQUIRE A SEPARATE PERMIT THROUGH ACHD CONSTRUCTION SERVICES DIVISION. THE CONTRACTOR WILL SCHEDULE AND INSPECTIONS REQUESTED THROUGH ACHD INSPECTION SERVICES, 208-387-6280, A MINIMUM OF 24 HRS. PRIOR TO CONSTRUCTION STARTING.
6. ALL UTILITY IMPROVEMENTS ARE TO BE CONSTRUCTED TO ACCOMMODATE THE COLLAR REQUIREMENT PER ISPWC SD-418 AND BE IN ACCORDANCE WITH SECTION 703 OF THE ISPWC.
7. UTILITY STREET CUTS IN PAVEMENT LESS THAN FIVE YEARS OLD ARE NOT ALLOWED UNLESS APPROVED IN WRITING BY THE DISTRICTS ASSISTANT DIRECTOR OF UTILITY COORDINATOR AT 208-387-6258 (WITH FILE NUMBERS) FOR DETAILS.
8. ACHD INSPECTION STAFF WILL BE MORE CLOSELY MONITORING PEDESTRIAN FACILITIES FOR COMPLIANCE WITH ADA STANDARDS, AS A REMINDER, SIDEWALK CROSS SLOPE SHALL MAY EXCEED 2.0%, THERE ARE NO "TOLERANCES" ALLOWED.
9. ACTUAL FIELD CONDITIONS DURING TRENCHING MAY REQUIRE ADDITIONAL PAVEMENT REPAIR BEYOND THE LIMITS SHOWN ON THE PLAN. THE FOLLOWING CONDITIONS ARE LISTED IN SECTION 8000 HIGHWAY CUTS OF THE ACHD POLICY MANUAL.
   1). ALL ASPHALT MATCH LINES FOR PAVEMENT REPAIR SHALL BE PARALLEL TO THE CENTERLINE OF THE STREET AND INCLUDE ANY AREA DAMAGED BY EQUIPMENT DURING TRENCHING OPERATIONS.
   2). IF THE CUMULATIVE DAMAGED PAVEMENT AREA EXCEEDS SIZE OF THE TOTAL ROAD SURFACE, CONTRACTOR SHALL REPLACE THE ENTIRE ROADWAY SURFACE.
   3). CONTRACTOR SHALL REPLACE THE PAVEMENT SURFACE TO ENSURE MATCH LINE DOES NOT FALL WITHIN THE WHEEL PATH OF A LANE. MATCH LINE SHALL ONLY FALL IN THE CENTER OR EDGE OF A TRAVEL LANE.
   4). FLOWABLE FILL OR IMPORTED MATERIAL MAY BE REQUIRED IF THE NATIVE TRENCH MATERIAL IS DEEMED UNSUITABLE BY ACHD INSPECTOR, DOES NOT MEET COMPACTION STANDARDS OR TIME IS A CRITICAL FACTOR.
   5). ANY EXCEPTIONS TO THESE RULES SHALL BE PRE-APPROVED IN WRITING BY DISTRICT STAFF BEFORE CONSTRUCTION BEGINS.
10. TRUNCATED DOMES SHALL BE CONSTRUCTED ON ALL PEDESTRIAN RAMPS WITHIN ACHD RIGHT-OF-WAY. DOMES SHALL BE CONSTRUCTED PER ISPWC SD-712. DOMES SHALL BE CAST INTO THE CONCRETE (STAMPED CONCRETE AND ADHESIVE MATS NOT ALLOWED) AND SHALL BE COLORED "TRAFFIC YELLOW.

TRAFFIC CONTROL NOTES

1. ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" FOR STREETS AND HIGHWAYS.
2. ALL WARNING FLAGS AND FLASHERS SHALL BE CONSIDERED AS INCIDENTAL TO THE TRAFFIC CONTROL BID ITEMS.
3. THE FLAGGERS SHALL BE EQUIPPED WITH TWO WAY RADIOS CAPABLE OF TRANSMITTING A DISTANCE OF 2 MILES AND BATTERIES TO LAST THROUGH EACH DAY OF OPERATION.
4. SIGNS AND SIGN STANDS NOT IN USE SHALL BE REMOVED OR LAID DOWN AT LEAST 15 FEET FROM THE EDGE OF THE TRAVEL WAY.
5. ONE LANE OF TRAFFIC SHALL BE OPEN TO LOCAL TRAFFIC AT ALL TIMES.
6. CONTRACTOR SHALL PROVIDE ALL SIGNAGE NECESSARY TO ALERT THE SURROUNDING PUBLIC OF THE CONSTRUCTION TAKING PLACE. THE CONTRACTOR ASSUMES RESPONSIBILITY FOR THE SIGNS NEEDED FOR PUBLIC SAFETY.
7. ALL CONTRACTORS WORKING WITHIN THE PUBLIC ROAD RIGHT-OF-WAY ARE REQUIRED TO SECURE A RIGHT-OF-WAY CONSTRUCTION PERMIT FROM ACHD AND/OR ITD AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO ANY CONSTRUCTION.

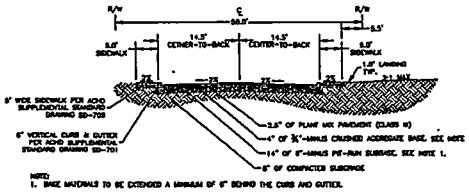
GRADING NOTES

1. ALL EARTHWORK INCLUDING CLEARING, GRUBBING, EXCAVATION, EMBANKMENT, BACKFILL, DEWATERING, AND EROSION CONTROL SHALL MEET THE SPECIFICATIONS OF SECTION 200 OF THE ISPWC AS WELL AS THE SPECIFICATIONS AND RECOMMENDATIONS OF THE GEOTECHNICAL ENGINEERING REPORT.
2. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING DRAINAGE FACILITIES WITH THE CONSTRUCTION AREA UNTIL TEMPORARY AND/OR PERMANENT DRAINAGE IMPROVEMENTS ARE IN PLACE AND FUNCTIONING.
3. IF REQUIRED, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING A SHORT TERM ACTIVITY EXEMPTION PERMIT FROM THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ). CONTACT CRAIG SHEPPARD AT THE SOUTHWEST REGIONAL DEQ OFFICE (373-0557). THE CONTRACTOR SHALL SUBMIT TO DEQ A DEWATERING PLAN WHICH OUTLINES THE LOCATION OF PROPOSED SUMPS AND THE SEQUENCING OF THE DEWATERING ACTIVITIES. ALL CONSTRUCTION WATER GENERATED FROM EXCAVATION SHALL BE FREE OF SEDIMENT AND DEBRIS BEFORE IT LEAVES THE SITE.
4. PRIOR TO PLACEMENT OF FILL MATERIAL THE CONTRACTOR SHALL CLEAR THE SITE OF ALL WASTE MATERIALS AND VEGETATION AND PREPARE THE SUBGRADE AS RECOMMENDED IN THE GEOTECHNICAL REPORT. ALL WASTE MATERIAL SHALL BE REMOVED FROM THE SITE AND DISPOSED OF IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS. THE SITE SHALL BE PROOF-ROLLED PRIOR TO PLACEMENT OF FILL MATERIAL TO ENSURE STABILITY OF SUBGRADE. A REPRESENTATIVE OF THE GEOTECHNICAL CONSULTANT SHALL REMAIN ON SITE TO ENSURE PROPER PLACEMENT AND COMPACTION OF STRUCTURAL FILL.
5. NO WORK SHALL BE DONE WITHIN JURISDICTIONAL WETLAND AREAS UNTIL A 404 PERMIT HAS BEEN ISSUED BY THE US ARMY CORPS OF ENGINEERS. ALL WORK WITHIN WETLAND AREAS SHALL ADHERE TO THE REQUIREMENTS OF THE 404 PERMIT.
6. STRIP AND STOCKPILE TOPSOIL AS RECOMMENDED IN THE GEOTECHNICAL REPORT AND DISPOSE OF BORING OFF-SITE. THE DEPTH OF STRIPPED TOPSOIL MAY BE IN THE FIELD DEPENDING ON THE DEPTH OF THE ROOT ZONE, SOIL COMPOSITION INCLUDING SOIL TYPE, MOISTURE CONTENT AND STABILITY AND THE WEATHER CONDITIONS DURING CONSTRUCTION. STRIPPING DEPTHS SHALL BE DIRECTED BY THE CIVIL GEOTECHNICAL CONSULTANT. LOCATION OF STOCKPILED MATERIAL SHALL BE COORDINATED WITH THE OWNER AND ENGINEER PRIOR TO PLACEMENT.
7. TESTING SHALL BE PERFORMED PER THE RECOMMENDATIONS OF THE GEOTECHNICAL REPORT. FILL MATERIAL WITHIN THE LOT AREAS SHALL BE COMPACTED TO 95% MODIFIED PROCTOR PER THE REQUIREMENTS OF ASTM D 1557. TESTING FREQUENCY SHALL ALLOW FOR A MINIMUM OF ONE COMPACTION TEST PER LIFT PER LOT. THE COMPACTION TESTS ON THE FINAL LIFT FOR EACH LOT SHALL BE SUPPLIED TO THE PROJECT OWNER/OR AT THE COMPLETION OF THE PROJECT.
8. THE SUBGRADE WITHIN THE ROAD RIGHT-OF-WAYS SHALL BE STRIPPED, COMPACTED, INSPECTED AND PROOF ROLLED WITH A HEAVY RUBBER-TIRED FULL LOADED TANDEM AXLE OR EQUIVALENT PRIOR TO PLACEMENT OF FILL. FILL WITHIN THE ROADWAY AREAS SHALL BE COMPACTED TO NOT LESS THAN 95% OF THE MAXIMUM DRY DENSITY OF THE SOIL AS INDICATED BY ASTM D698 IN FLEXIBLE PAVEMENT AREAS.
9. STRUCTURAL FILL IS DEFINED BY THE GEOTECHNICAL CONSULTANT. SEE GEOTECHNICAL REPORT FOR ADDITIONAL INFORMATION.
10. THE CONTRACTOR SHALL COORDINATE WITH THE OWNER TO DETERMINE WHICH TREES WITHIN THE PROJECT LIMITS ARE TO REMAIN AND WHICH ARE TO BE REMOVED.
11. TOPSOIL AND OTHER STOCKPILE AREAS TO BE DETERMINED BETWEEN CONTRACTOR AND OWNER BEFORE THE START OF CONSTRUCTION.
12. NO GRADING WORK SHALL OCCUR UNTIL THE OWNER HAS FILED A NOTICE OF INTENT FOR CONSTRUCTION ACTIVITY WITH THE EPA.
13. ALL MATERIAL FURNISHED ON OR FOR THE PROJECT MUST MEET THE MINIMUM REQUIREMENTS OF THE APPROVING AGENCIES OR AS SET FORTH HEREIN, WHICHEVER IS MORE RESTRICTIVE. CONTRACTORS MUST FURNISH PROOF THAT ALL MATERIALS INSTALLED ON THIS PROJECT MEET THE REQUIREMENTS AT THE REQUEST OF THE AGENCY AND/OR THE ENGINEER.

UTILITY NOTES

1. THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BY CALLING DIGLINE AT PHONE # (800) 342-1585 BEFORE COMMENCING WORK. THE CONTRACTOR IS FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES TO EXISTING UNDERGROUND UTILITIES.
2. ALL WELL ABANDONMENT SHALL BE COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR) AND IDAHO CODE. THE CONTRACTOR SHALL RETAIN A LICENSED WELL DRILLER FOR ABANDONMENT. COORDINATE WITH BOB WARTHEY AT IDWR WESTERN REGION (334-2190).
3. EXISTING OVERHEAD POWERLINES SHALL BE RETAINED AND PROTECTED AS NEEDED TO MAINTAIN SERVICE TO ADJACENT PROPERTIES. THE CONTRACTOR SHALL COORDINATE WITH IDAHO POWER CO. TO ABANDON OR RELOCATE ALL OTHER OVERHEAD POWER LINES AND POLES AS REQUIRED.
4. EXISTING SEPTIC SYSTEMS ASSOCIATED WITH ANY ABANDONED BUILDINGS ON THE SITE SHALL BE ABANDONED ACCORDING TO THE REQUIREMENTS OF THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY TECHNICAL GUIDANCE MANUAL. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE SEPTIC TANK, DRAINFIELD AND ALL APPURTENANCES. ALL INLET AND OUTLET PIPING SHALL BE DISCONNECTED FROM THE SEPTIC TANK. ALL BURIED PIPING SHALL BE ENCAPSULATED AND TRACED FROM THE SEPTIC TANK TO THE DRAIN FIELD TO THE FULL EXTENTS. THE CONTRACTOR SHALL VERIFY THE EXISTENCE OF A DRAINFIELD AND SHALL EXCAVATE THE DRAINFIELD SOILS TO AT LEAST THE MINIMUM ENGINEERED LEVEL OR AS DIRECTED BY THE GEOTECHNICAL ENGINEER AFTER FIELD SITE INSPECTION OF THE DRAINFIELD AREA. THE DRAINFIELD SOILS SHALL BE DISPOSED OF OFF SITE OR MIXED WITH THE NATURAL STRUCTURE IF AUTHORIZED BY THE ENGINEER. AFTER INSPECTION OF EXCAVATED SOILS, THE CONTRACTOR SHALL BACKFILL THE DRAINFIELD AREA WITH STRUCTURAL FILL.
5. ACTUAL FIELD CONDITIONS DURING TRENCHING MAY REQUIRE ADDITIONAL PAVEMENT REPAIR BEYOND THE LIMITS SHOWN ON THE PLAN. THE FOLLOWING CONDITIONS ARE LISTED IN SECTION 8000 OF THE ACHD POLICY MANUAL.

   1. ALL ASPHALT MATCH LINES FOR PAVEMENT REPAIR SHALL BE PARALLEL TO THE CENTERLINE OF THE STREET AND INCLUDE ANY AREA DAMAGED BY EQUIPMENT DURING TRENCHING OPERATIONS.
   2. IF THE CUMULATIVE DAMAGED PAVEMENT AREA EXCEEDS SIZE OF THE TOTAL ROAD SURFACE, CONTRACTOR SHALL REPLACE THE ENTIRE ROADWAY SURFACE.
   3. CONTRACTOR SHALL REPLACE THE PAVEMENT SURFACE TO ENSURE MATCH LINE DOES NOT FALL WITHIN THE WHEEL PATH OF A LANE. MATCH LINE SHALL ONLY FALL IN THE CENTER OR EDGE OF A TRAVEL LANE.
   4. FLOWABLE FILL OR IMPORTED MATERIAL MAY BE REQUIRED IF THE NATIVE TRENCH MATERIAL IS DEEMED UNSUITABLE BY ACHD INSPECTOR, DOES NOT MEET COMPACTION STANDARDS OR TIME IS A CRITICAL FACTOR.
   5. ANY EXCEPTIONS TO THESE RULES SHALL BE PRE-APPROVED IN WRITING BY DISTRICT STAFF BEFORE CONSTRUCTION BEGINS.



NOTE:
1. BASE MATERIALS TO BE EXTENDED A MINIMUM OF 6" BEHIND THE CURB AND GUTTER.

TYPICAL ROAD SECTION
NTS

STORM DRAIN NOTES

1. ALL DRAINAGE STRUCTURES SHALL BE PER ISPWC STANDARDS AND THE ACHD SUPPLEMENTS TO THE ISPWC. STORM DRAIN STRUCTURES SHALL HAVE HS-25 TRAFFIC RATED LIDS UNLESS OTHERWISE SPECIFIED.
2. THE CONTRACTOR SHALL COMPLY WITH ALL THE REQUIREMENTS FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY. THIS INCLUDES IMPLEMENTING THE BMP'S RECOMMENDED IN THE SWPPP PLAN PREPARED FOR THIS SITE, REGULAR SITE INSPECTIONS, DOCUMENTATION OF MODIFICATIONS TO THE SWPPP AND OTHER REQUIREMENTS AS SET FORTH IN THE NPDES GENERAL PERMIT.
3. ALL CHANGES REQUIRE APPROVAL BY THE DESIGN ENGINEER AND ACHD.
4. ALL STORM SEWER LINES SHALL MEET THE MATERIALS REQUIREMENTS OF THE ADA COUNTY HIGHWAY DISTRICT.
5. MATERIAL QUANTITIES NOTED ON THESE PLANS OR PROVIDED IN A SEPARATE ESTIMATED QUANTITY TAKE-OFF ARE THE ENGINEERS OPINION OF PROBABLE MATERIAL QUANTITIES AND IS AN ESTIMATE ONLY. THE CONTRACTOR TAKE THE SOLE RESPONSIBILITY OR PREPARING HIS OWN QUANTITY TAKE-OFF AND BID PRICE ON HIS UNDERSTANDING OF THE QUANTITIES, SOIL CHARACTERISTICS, AND CURRENT CONSTRUCTION PRACTICES.
6. THE CONTRACTOR SHALL PROVIDE AND INSTALL STORM DRAIN MONUMENTS TO IDENTIFY ALL STORM DRAIN MANHOLES, SEDIMENT BOXES, DROP INLETS, AND OTHER PIPE JUNCTIONS OR TERMINATIONS IN ACCORDANCE WITH SECTION 8018 OF THE ACHD DEVELOPMENT POLICY MANUAL AND ISPWC SD-823.

STORM DRAIN MANHOLES & PIPE MATERIALS

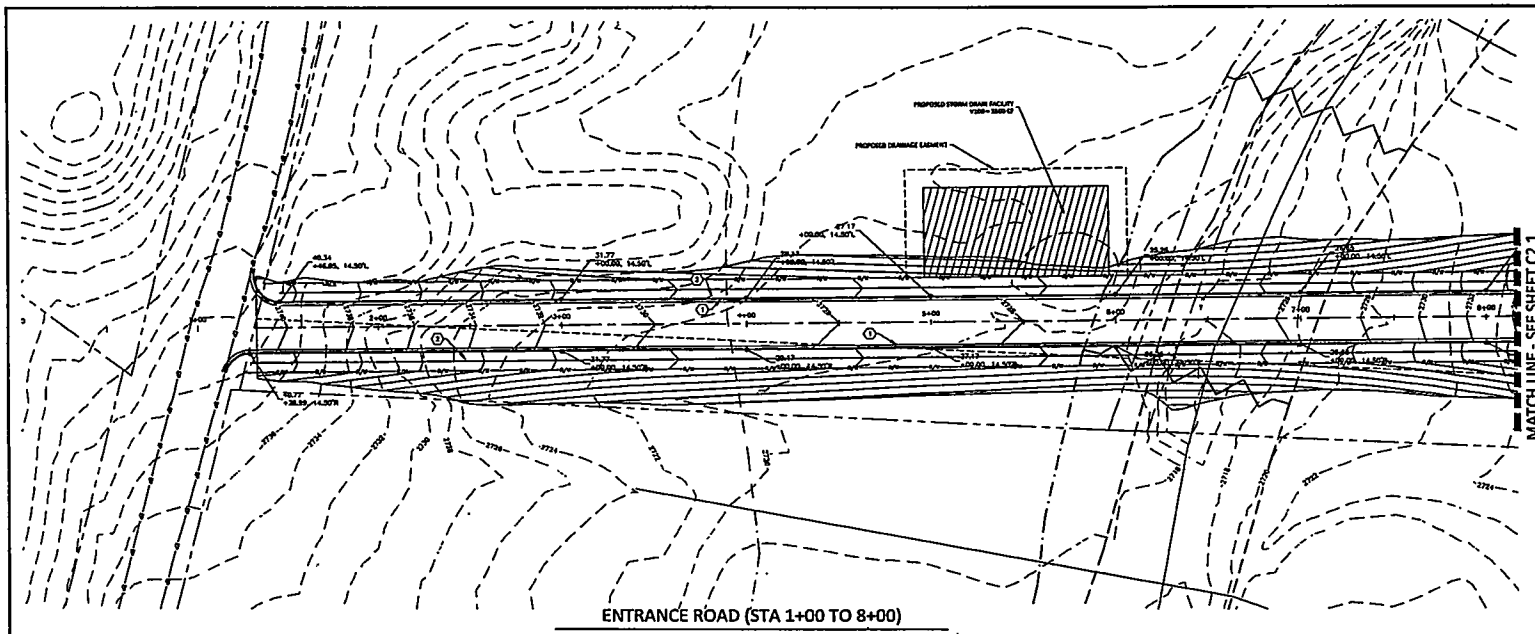
1. ALL STORM DRAIN MANHOLES SHALL CONFORM TO THE FOLLOWING:
   - MANHOLES 48" IN DIAMETER SHALL CONFORM TO THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC) STANDARD DRAWING (SD) 811 WITH A 24" DEEP SUMP.
   - MANHOLES 54" TO 72" IN DIAMETER SHALL CONFORM TO ISPWC SD 813A WITH A 24" DEEP SUMP.
   - SHALLOW MANHOLES SHALL CONFORM TO ISPWC SD 815A WITH A 24" DEEP SUMP.
2. ALL STORM LINES SHALL CONFORM TO EITHER THE FOLLOWING (NOTE) PLANS AND PROFILES REFER TO STORM DRAIN PIPE AS "PVC", FOR CLARIFICATION, STORM DRAIN PIPES MAY BE PVC MEETING THE REQUIREMENTS BELOW:
   - REINFORCED CONCRETE PIPE SHALL BE CLASS II OR GREATER CONFORMING TO ASTM C76. GASKETS SHALL BE WATERTIGHT AND CONFORM TO THE REQUIREMENTS OF ASTM C443.
   - SOLID WALL PVC PIPE 12" TO 15" IN DIAMETER SHALL CONFORM TO ASTM D3034 WITH A WALL THICKNESS CONFORMING TO SDR 26 OR APPROVED EQUIVALENT.
   - SOLID WALL PVC 18" TO 36" IN DIAMETER SHALL CONFORM TO ASTM F 679 WITH T-1 WALL THICKNESS OR APPROVED EQUIVALENT.
   - PVC WATER CLASS PIPE (WHEN SPECIFIED ON CONSTRUCTION PLANS) 4" TO 12" IN DIAMETER SIZE SHALL CONFORM TO ANSI/NSF61 & C900 SPECIFICATIONS OR APPROVED EQUIVALENT.
   - WATER CLASS PIPE 14" TO 36" IN DIAMETER SHALL CONFORM TO ANSI/NSF61 & C905 SPECIFICATIONS OR APPROVED EQUIVALENT.

NOTE: "APPROVED EQUIVALENT" IS DEFINED AS AN APPROVED SUBSTITUTION AGREED UPON BY BOTH THE ENGINEER AND THE ADA COUNTY HIGHWAY DISTRICT (ACHD). THE CONTRACTOR SHALL SUBMIT TO THE ENGINEER PRIOR TO SUBSTITUTING MATERIALS SPECIFIED ABOVE, A SUBSTITUTION REQUEST LETTER FOR APPROVAL OF ANY ALTERNATE MATERIALS.

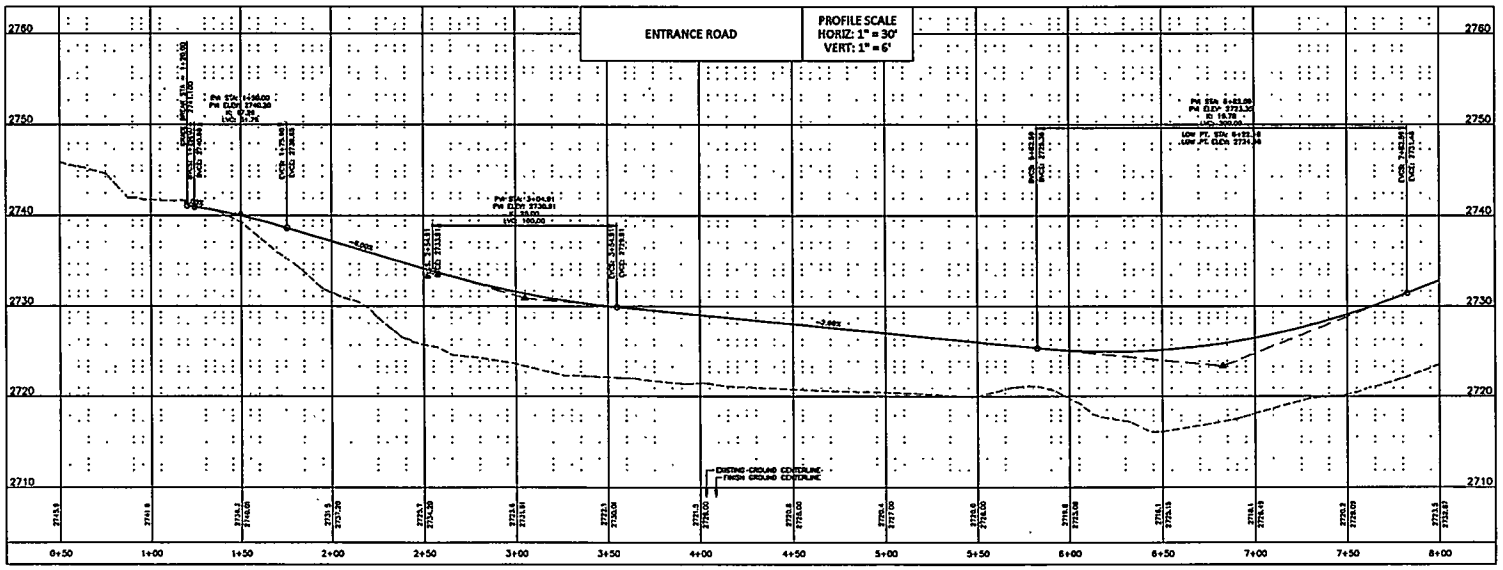
DRAFT

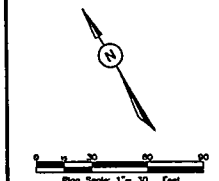
km ENGINEERING

000048



ENTRANCE ROAD (STA 1+00 TO 8+00)





GRADING LEGEND

ELE. & DESCRIPTION FINISHED GROUND ELEVATION
STA., OFFSET BBC
1.50% FINISHED GRADE SLOPE
GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS

STA:	= ROADWAY STATION FROM CENTERLINE
CL:	= ROADWAY CENTERLINE
PC:	= POINT OF CURVATURE
PT:	= POINT OF TANGENCY
EL:	= ELEVATION
LO:	= STATION OFFSET LEFT
RO:	= STATION OFFSET RIGHT
TBC:	= TOP BACK OF CURB
ROS:	= RIM OF STRUCTURE
LIP:	= LIP OF GUTTER
MBC:	= MATCH EXISTING
SW:	= SIDEWALK
EP:	= EDGE OF PAVEMENT
FL:	= FLOW LINE
TOC:	= TOP OF CONCRETE
HP:	= HIGH POINT

SHEET NOTES

1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%, NO TOLERANCES WILL BE ALLOWED.
4. SEE SHEET C1.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

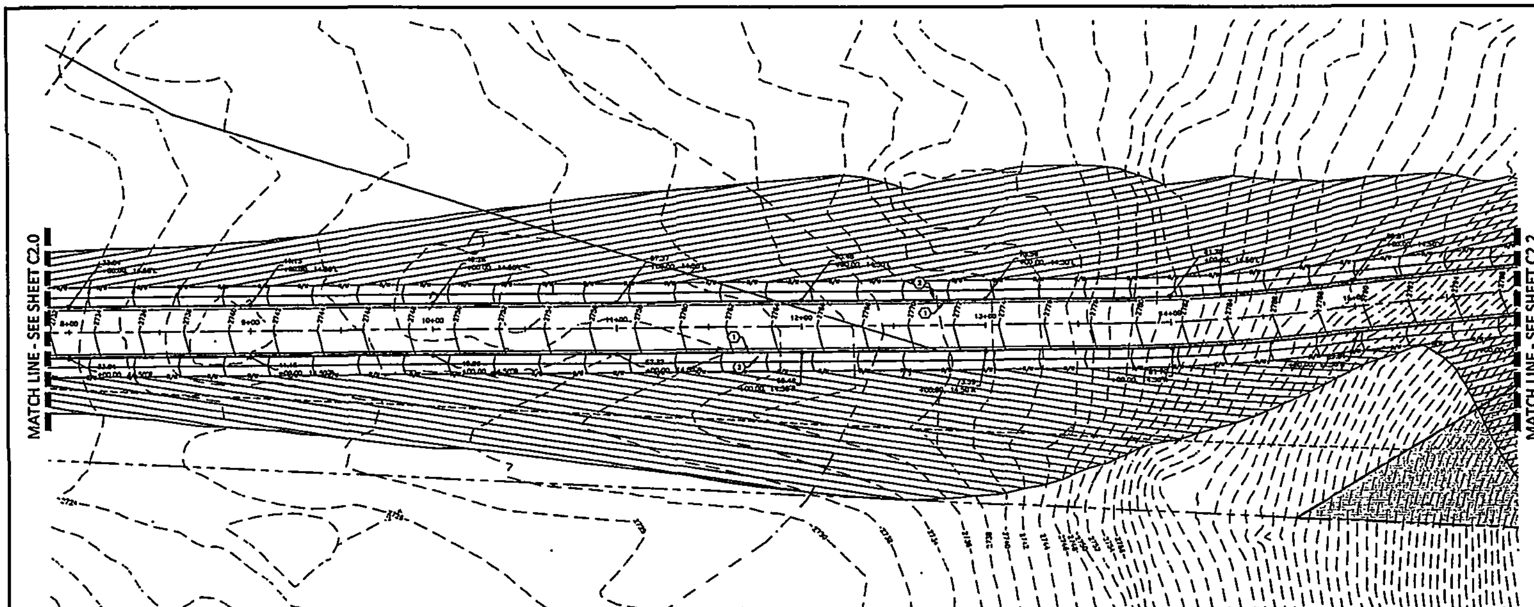
KEYNOTES (#)

1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-705.
3. SAWCUT 20' MINIMUM INTO EXISTING PAVEMENT AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-804, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH SIGN PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-111226. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE II TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-111226. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

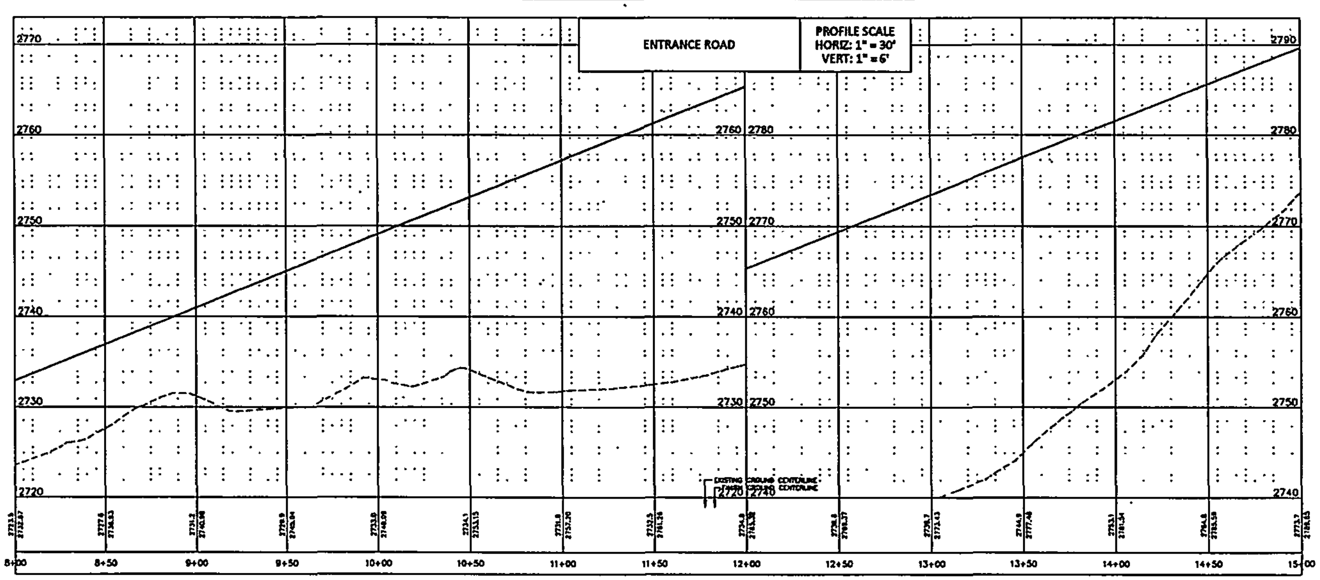
DRAFT

km ENGINEERING

000049



ENTRANCE ROAD (STA 8+00 TO 15+00)



Plan Scale: 1" = 30 Feet

GRADING LEGEND

- ELE. & DESCRIPTION, STA., OFFSET SIDE — FINISHED GROUND ELEVATION
- 1.56% — FINISHED GRADE SLOPE
- GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS:

STA	= ROADWAY STATION FROM CENTERLINE
CL	= ROADWAY CENTERLINE
PC	= POINT OF CURVATURE
PT	= POINT OF TANGENCY
ELEV	= ELEVATION
L	= STATION OFFSET LEFT
R	= STATION OFFSET RIGHT
TBC	= TOP BACK OF CURB
RIM	= RIM OF STRUCTURE
LIP	= LIP OF GUTTER
MA	= MATCH EXISTING
SW	= SIDEWALK
EP	= EDGE OF PAVEMENT
FL	= FLOW LINE
TOC	= TOP OF CONCRETE
HP	= HIGH POINT

SHEET NOTES

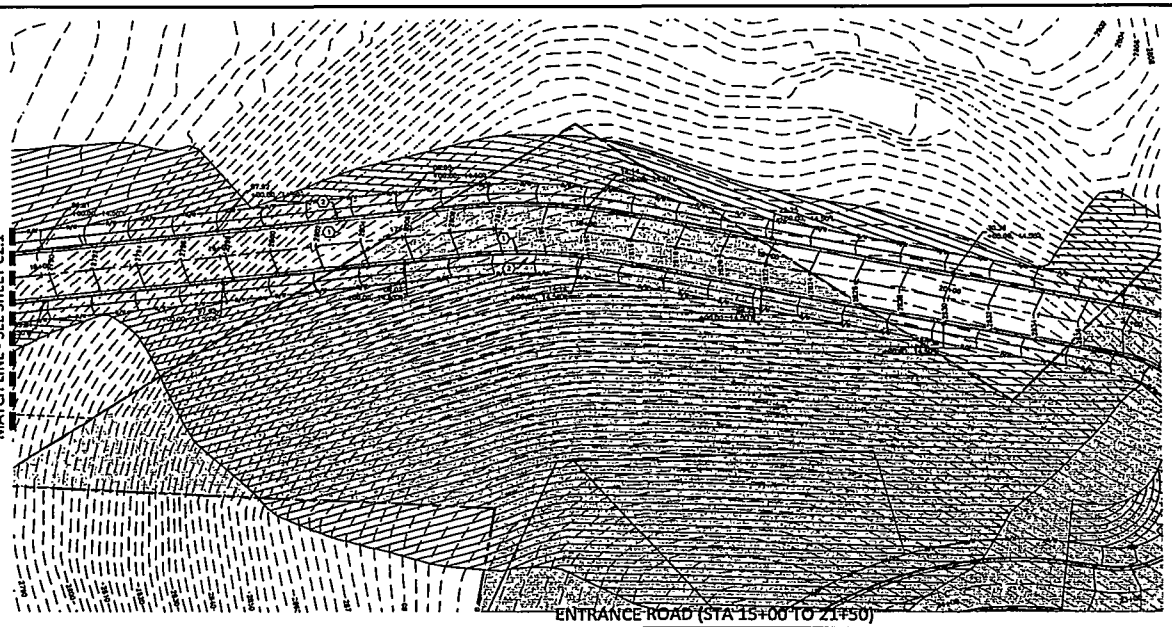
1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%. NO TOLERANCES WILL BE ALLOWED.
4. SEE SHEET C3.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

KEYNOTES (#)

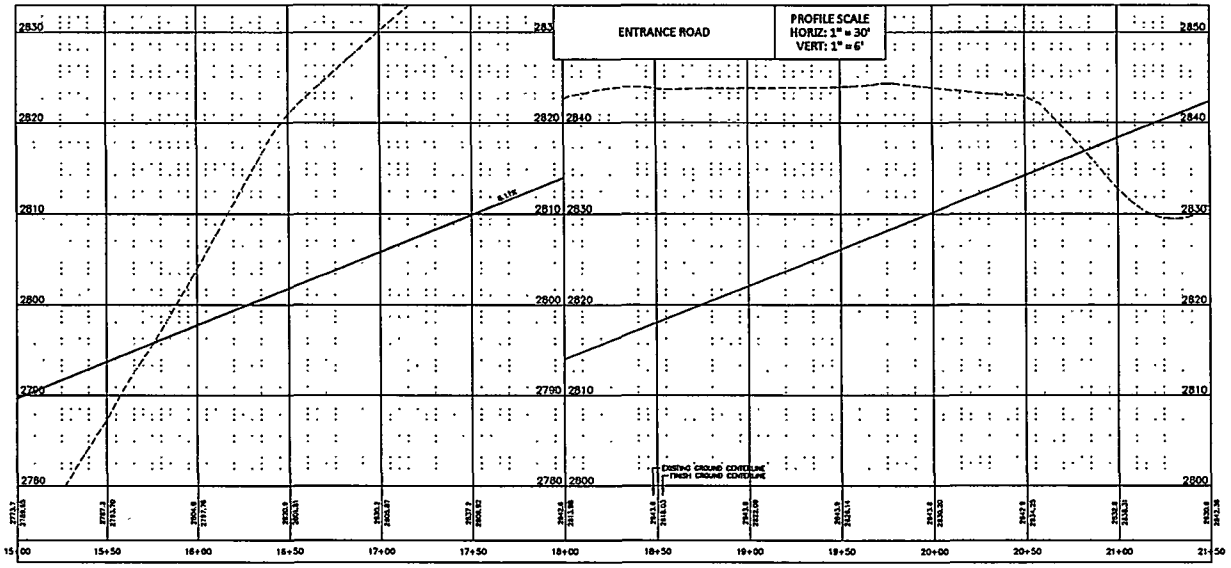
1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-709.
3. SAWCUT (2' MINIMUM INTO EXISTING PAVEMENT) AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-804, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH KICK PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132A. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE III TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132B. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

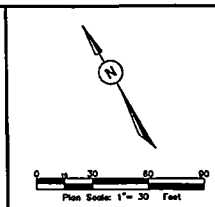
DRAFT

km ENGINEERING



ENTRANCE ROAD (STA 15+00 TO 21+50)





GRADING LEGEND

D.Z. & DESCRIPTION STA., OFFSET SIDE — FINISHED GROUND ELEVATION

1.50% — FINISHED GRADE SLOPE

99 — GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS:

BTM	= ROADWAY STATION ITEM CENTERLINE
BC	= ROADWAY CENTERLINE
PC	= POINT OF CURVATURE
PT	= POINT OF TANGENCY
ELEV	= ELEVATION
O	= STATION OFFSET LEFT
O	= STATION OFFSET RIGHT
TBC	= TOP BACK OF CURB
EP	= EDGE OF PAVEMENT
FS	= FACE OF STRUCTURE
FG	= FLOW OF GUTTER
MH	= MANHOLE CENTERLINE
SW	= SIDEWALK
EP	= EDGE OF PAVEMENT
FL	= FLOW LINE
TOC	= TOP OF CONCRETE
HP	= HIGH POINT

SHEET NOTES

1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%. NO TOLERANCES WILL BE ALLOWED.
4. SEE SHEET C3.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

KEYNOTES

1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-705.
3. SAWCUT 24" MINIMUM INTO EXISTING PAVEMENT AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-606, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH KICK PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-11328. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE III TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-11329. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

DRAFT

km ENGINEERING

000051

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231

Attorneys for Defendant

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

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, Plaintiff, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **ANSWER TO COMPLAINT** Filing Category: Exempt

COMES NOW, Defendant, by and through counsel of record, Scott B. Muir, and in answer to Plaintiff's Complaint, admits, denies, and alleges as follows:

FIRST DEFENSE

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

SECOND DEFENSE

Defendant denies each and every allegation of Plaintiff's Complaint not herein specifically and expressly admitted. Defendant reserves the right to amend this and any other answer or denial stated herein, once it has had an opportunity to complete discovery regarding the allegations contained in Plaintiff's Complaint.

THIRD DEFENSE

I.

Paragraph 11 of Plaintiff's Complaint appears to be a narrative. To the extent a response is required, Defendant denies the allegations contained therein.

II.

Answering paragraph 3 of Plaintiff's Complaint, Defendant admits jurisdiction is proper.

III.

Answering paragraph 4 of Plaintiff's Complaint, Defendant admits that venue is proper in Ada County. Defendant denies the remaining allegations in paragraph 4.

IV.

Answering paragraph 2 of Plaintiff's Complaint, Defendant admits that the City of Boise City is a municipal corporation, organized under the laws of the State of Idaho, with the capacity to sue and be sued. Defendant denies the remaining allegations in paragraph 2.

V.

Answering paragraph 5 of Plaintiff's Complaint, Defendant admits Plaintiff provided written notice as depicted in Plaintiff's EXHIBIT "A". Defendant denies the remaining allegations in paragraph 5.

VI.

Answering paragraph 7 of Plaintiff's Complaint, Defendant admits it is the owner of Quail Hollow Golf Course, which is addressed as 4520 North 36th Street, Boise, Idaho. Defendant denies the remaining allegations in paragraph 7.

VII.

Answering paragraph 13 of Plaintiff's Complaint, Defendant denies the allegations therein, and specifically denies that the Grantee of the Easement Agreement was given the right at the Grantee's sole discretion to expand the easement area.

VIII.

Answering paragraph 10 of Plaintiff's Complaint, Defendant denies that the term "vehicular access" was used in the Easement Agreement, but rather, the term "access" was used. Defendant admits the remaining allegations in paragraph 10.

IX.

Answering paragraph 12 of Plaintiff's Complaint, Defendant admits the same.

X.

Answering paragraphs 9, 15, and 17-19 of Plaintiff's Complaint, Defendant denies the same.

XI.

Answering paragraphs 1, 6, 8, and 14 of Plaintiff's Complaint, Defendant has insufficient information to admit or deny, and therefore denies the same.

XII.

Answering paragraph 16 of Plaintiff's Complaint, Defendant admits that the easement area is limited to forty (40) feet in width. Defendant denies the remaining allegations in paragraph 16.

XIII.

Plaintiff's Prayer for Relief does not require a response, but to the extent it may, Defendant denies Plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

1. Defendant has not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in the Plaintiff's Complaint, and therefore Defendant requests the Court to permit Defendant to amend the Answer and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

2. That some or all of the Plaintiff's claims are barred by laches.

3. That some or all of the Plaintiff's claims are barred by waiver.

4. That the Plaintiff is estopped to assert the claims and damages alleged in its Complaint by reason of its knowledge of the facts and circumstances regarding the transactions and events at issue and its conduct throughout the transactions and events, which conduct has been relied upon by the Defendant to Defendant's detriment.

ATTORNEY FEES

Defendant has been required to retain attorneys in order to defend this action and is entitled to recover reasonable attorney fees pursuant to state law and applicable Rules of Civil Procedure.

WHEREFORE, Defendant prays for judgment against the Plaintiff as follows:

1. That the Complaint be dismissed with prejudice and that the Plaintiff take nothing under it.
2. That the Defendant be awarded costs, including reasonable attorney fees pursuant to the applicable laws and Rules of Civil Procedure.
3. That judgment be entered in favor of Defendant on all claims for relief.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 8th day of ~~June~~ July, 2015.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of ~~June~~ July, 2015, served the foregoing document on all parties of counsel by U.S. Mail:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE, & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise, ID 83701

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiff
Bedard and Musser

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 ORDER JOINING BOISE HOLLOW LAND HOLDINGS, RLLP AS PLAINTIFF

THIS MATTER having come regularly before the Court upon the MOTION TO JOIN PARTY AS PLAINTIFF filed on November 13, 2015, by Plaintiff Bedard and Musser, and upon the STIPULATION TO JOIN BOISE HOLLOW LAND HOLDINGS, RLLP AS PLAINTIFF entered into by Plaintiff Bedard and Musser and Defendant City of Boise and filed with this Court, and the Court having considered the same, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT the MOTION TO JOIN PARTY AS PLAINTIFF be and is

hereby GRANTED. It is further ordered that Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership, be as an additional party as a plaintiff in this matter and that the case caption in this matter be amended forthwith to reflect the same.

DATED this 2nd day of December, 2015.

Jonathan Medema
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Terry C. Copple Michael E. Band Davison Copple, Copple & Copple, LLP P.O. Box 1583 Boise, Idaho 83701	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile: (208) 386-9428 Email
Scott B. Muir Abigail R. Germaine Deputy City Attorneys Boise City Attorney's Office P.O. Box 500 Boise, Idaho 83701-0500 *Attorney for Defendants*	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile: (208) 384-4454 Email

Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT IN AND FOR ADA COUNTY - OF THE STATE OF IDAHO -

Melaina Jarrett 12/3/15 1cm

NO. _____ FILED 2:42
A.M. _____ P.M.

DEC 0 2 2015

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 FIRST AMENDED COMPLAINT

* * *

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser"), and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") and for a cause of action against the Defendant, City of Boise City, a body politic corporate of the State of Idaho ("Defendant") hereby complain and allege as follows:

ORIGINAL

PARTIES, JURISDICTION, AND VENUE

1. Bedard and Musser is an unincorporated partnership organized under the laws of Idaho. Bedard and Musser is located in Boise, Idaho and its principal place of business is Ada County, Idaho. Bedard and Musser consists of two (2) individual partners, which are Kipp A. Bedard and Bill Musser.

2. Boise Hollow is a limited liability partnership organized under the laws of Idaho. Boise Hollow is located in Boise, Idaho and its principal place of business is Ada County, Idaho. Boise Hollow is registered with the Idaho Secretary of State as File Number J2370.

3. At all relevant times herein, Defendant was and is a body politic corporate of the State of Idaho. Defendant was incorporated under a special charter on January 11, 1866, and is organized under the General Laws of the State of Idaho. Defendant is registered with the Idaho Secretary of State as File Number C117940.

4. This Court has jurisdiction over the parties and the subject matter of the dispute pursuant to IDAHO CODE (I.C.) § 1-705, § 5-514, Rule 82(c)(2) of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.) and the CONSTITUTION OF THE STATE OF IDAHO because the parties and entities are located in Idaho, and the events giving rise to the dispute occurred in Idaho.

5. Venue is proper in Ada County pursuant to I.C. §§ 5-401 and -404 because Defendant is located in and conducts substantial business in Ada County, and the real property which is the subject of this action is located in Ada County.

6. Plaintiffs have complied with the notice provisions of I.C. § 50-219 and § 6-906 by providing a notice of the claims set forth herein. On March 12, 2015, the Plaintiffs gave written notice of these claims to the Defendant. A true and accurate copy of such written notice (internal exhibits not included) is attached hereto as EXHIBIT "A" and incorporated herein by this reference.

GENERAL ALLEGATIONS

7. Bedard and Musser obtained certain real property on or about October 19, 1993, which real property is more particularly described as follows:

> Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

The foregoing parcel consists of approximately 63.76 acres of bare ground and is located at off of North 36th Street, Boise, Idaho 83702, and known as Parcel # R6060421400 (the "Bedard/Musser Property").

8. For administrative and management purposes, Bedard and Musser elected in 2014 to reorganize as a limited liability partnership and thus formed Boise Hollow in March 2014. Boise Hollow is substantially comprised of the same principals and conducts substantially the same business as Bedard and Musser.

9. Bedard and Musser owned the Bedard/Musser Property and all rights and privileges associated therewith from the date set forth in Paragraph 7 herein until June 26, 2015, at which time Bedard and Musser conveyed the Bedard/Musser Property and all rights and privileges associated therewith to Boise Hollow pursuant to that certain QUITCLAIM DEED dated June 26, 2015, and duly recorded in the records of Ada County on July 13, 2015, as Instrument No. 2015-062696. A true and accurate copy of the foregoing instrument is attached hereto as EXHIBIT "B" and is incorporated herein by this reference as if set forth in full.

10. Defendant is the owner of the following real property and its improvements, which are located immediately adjacent to the Bedard/Musser Property:

> Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 – 5791, Instrument No. 9205592.

The foregoing premises are commonly known as the Quail Hollow Golf Course and are located at the street address 4520 36th Street, Boise, Idaho 83703 (the "Golf Course Property").

11. Plaintiffs' predecessor-in-interest with respect to the Bedard/Musser Property was Vancroft Corporation, an Idaho corporation ("Vancroft").

12. A predecessor-in-interest with respect to the Defendant's interest in the Golf Course Property was Tee, Ltd., an Idaho corporation, and Tommy T. Sanderson and Roxanne Sanderson (collectively, "Tee-Sanderson").

13. On or about September 14, 1991, Tee-Sanderson and Vancroft executed a PERMANENT EASEMENT AGREEMENT (the "Easement Agreement") whereby Tee-Sanderson granted, conveyed, and remised to Vancroft and its heirs, assigns, and transferees, a permanent and perpetual easement under, over, and across the southwest quarter of the Golf Course Property for the purpose of providing utilities and vehicular access (*i.e.*, ingress and egress) to the Bedard/Musser Property. A true and accurate copy of the foregoing Easement Agreement, which was recorded on November 3, 1993 as Ada County Instrument No. 9392442, is attached hereto as EXHIBIT "C" and is incorporated herein by this reference as if set forth in full.

14. The permanent easement created and granted pursuant to the foregoing Easement Agreement is hereinafter referred to as the "Easement."

15. On or about October 27, 1993, Vancroft and Bedard and Musser executed an ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT ("1993 Assignment") whereby Vancroft fully assigned and conveyed to Bedard and Musser and its heirs, assigns, and transferees, all of Vancroft's rights, benefits, and interests in the Easement and the Easement Agreement. A true and accurate copy of the foregoing Assignment, which was recorded on November 4, 1993, as Ada County Instrument No. 9392667, is attached hereto as EXHIBIT "D" and

is incorporated herein by this reference as if set forth in full.

16. In conjunction with Bedard and Musser's assignment of the Bedard/Musser Property to Boise Hollow, Bedard and Musser executed an ASSIGNMENT OF RIGHTS ("2015 Assignment") whereby all of Bedard and Musser's rights and interests in the 1993 Assignment, the the Easement Agreement, the Easement, and all "development rights" with respect to the Bedard/Musser Property were assigned to Boise Hollow, to the extent that such was not previously accomplished pursuant to the June 26, 2015, QUITCLAIM DEED (EXHIBIT "B") . A true and accurate copy of the 2015 Assignment is attached hereto as EXHIBIT "E" and is incorporated herein by this reference as if set forth in full.

17. The Easement Agreement between the parties' respective predecessors-in-interest (EXHIBIT "C") described the parties' intent regarding the nature and purpose of the Easement. As set forth in numbered paragraphs "1" and 6" of the Easement Agreement, the parties' purpose and intention for the Easement was for the Grantee's use for vehicular ingress and egress. The Grantee was given the right, at the Grantee's sole discretion, to expand this easement area by dedicating the Easement as a road to the Ada County Highway District (ACHD) and thereupon to bring such road into compliance with all "ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc." existing at the time of such dedication. *See* Paragraph "6" of Easement Agreement.

18. Boise Hollow, as successor-in-interest to Vancroft, and present owner of the Easement, now wishes to exercise its right to dedicate the Easement as a public road to ACHD and thereupon bring the road into compliance with all ACHD ordinances and requirements, including, but not limited to, the dimensions and scope of the roadway with associated embankments.

19. ACHD may require that such a road be one hundred (100) feet wide, or in excess

thereof. Accordingly, by the express terms of the Easement Agreement, the easement area must be recognized and declared to be sufficiently wide to meet all ACHD ordinances and requirements as intended by the parties to the Easement Agreement.

20. Defendant may claim that the easement area is limited to forty (40) feet in width, despite the express intention of the parties to the Easement Agreement that the easement area be sufficient to satisfy ACHD ordinances and requirements.

21. Boise Hollow has all estate, right, title, and interest whatever in the Easement. The scope and dimensions of the easement area of such Easement are that which may be necessary to satisfy ACHD ordinances and requirements at the time that Boise Hollow may elect to dedicate the Easement to ACHD as a public road.

22. Defendant has not any right whatsoever to prevent Boise Hollow from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication.

23. Plaintiffs have no adequate relief except in a court of equity.

ATTORNEYS' FEES

24. Plaintiffs have been compelled to and haves retained counsel to render services in this action to enforce their rights and interests. Plaintiffs are entitled to an award of reasonable attorney fees and costs it has incurred under Idaho statutes. The sum of $3,000.00 is a reasonable sum to be awarded Plaintiffs' attorneys for instituting this action if uncontested; otherwise Plaintiffs seek such amount of reasonable attorney fees and costs as the Court deems necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that judgment be entered as follows:

1. Defendant be required to set forth the nature of its claim, and that all adverse claims of the Defendant be determined by decree of this Court, and that by said decree it be declared and adjudged that Boise Hollow is the owner of the Easement described herein and entitled to the possession thereof in its entirety without interference by Defendant;

2. That the scope of the easement area be declared and adjudged to be of such dimensions and scope as may be sufficiently to meet current ACHD ordinances and requirements;

3. That Defendant has no right whatsoever to prevent Boise Hollow from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication;

4. That Defendant be forever debarred and permanently enjoined from asserting any claim whatever in and to said land and premises adverse to Boise Hollow and from interfering with Boise Hollow's enjoyment of the Easement as set forth herein;

5. For an award of Plaintiffs' reasonable attorney fees and costs incurred in bringing this suit; and

6. For such other and further relief as to the Court may deem just and reasonable.

DATED this 19th day of November, 2015.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiffs

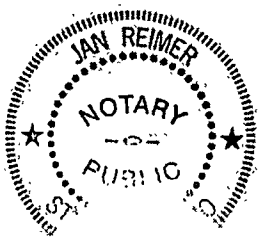
VERIFICATION

STATE OF IDAHO)
: ss.
County of ADA)

KIPP A. BEDARD, being duly sworn, deposes and says: That I am a general partner of the Plaintiff Bedard and Musser in the above-entitled matter and a member of the Plaintiff Boise Hollow Land Holdings, RLLP. That I have read the foregoing FIRST AMENDED COMPLAINT and know the contents thereof to be true and correct to the best of my knowledge.

KIPP A. BEDARD

SUBSCRIBED AND SWORN TO before me this 5th day of November, 2015.



Notary Public for Idaho
Residing at: Boise Idaho
My commission expires: 10/17/2019

EXHIBIT "A"

TO
FIRST AMENDED COMPLAINT

Davison, Copple, Copple & Copple, LLP
Attorneys at Law

Direct Contact:

Terry C. Copple
Direct: (208) 342-3658

E-Mail: tc@davisoncopple.com
http://www.davisoncopple.com

199 North Capitol Boulevard, #600
Post Office Box 1583
Boise, Idaho 83701

Telephone: (208) 342-3658
Facsimile: (208) 386-9428

March 12, 2015

SENT BY CERTIFIED U.S. MAIL

Boise City Clerk
150 N. Capitol Blvd.
Boise, Idaho 83702

Joshua Leonard
Boise City Attorney's Office
150 N. Capitol Blvd., 4th Floor, Building 2
Boise, Idaho 83702

RE: **NOTICE OF CLAIM UNDER IDAHO TORT CLAIMS ACT (IDAHO CODE (I.C.) § 6-901, et seq.)**

Greetings:

Please be advised that this office represents Bedard & Musser, an Idaho Partnership and that a claim is hereby made against the City of Boise ("the City"), pursuant to the Idaho Tort Claims Act, I.C. § 6-901, *et seq.* by Bedard & Musser; and that pursuant to law, you and each of you are hereby advised and notified as follows:

Bedard & Musser is the owner of the following real property:

> Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

The foregoing parcel consists of approximately 63.76 acres of bare ground and is located at off of North 36th Street, Boise, Idaho 83702, and known as Parcel # R6060421400 (the "Bedard/Musser Property").

The City is the owner of the following real property and its improvements, which are located immediately adjacent to the Bedard/Musser Property:

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 – 5791, Instrument No. 9205592.

The foregoing premises are commonly known as the Quail Hollow Golf Course and are located at the street address 4520 36th Street, Boise, Idaho 83703 (the "Golf Course Property").

Bedard & Musser's predecessor-in-interest with respect to the Bedard/Musser Property was Vancroft Corporation, an Idaho corporation ("Vancroft").

The City's predecessor-in-interest with respect to the Golf Course Property was Tee, Ltd., an Idaho corporation, and Tommy T. Sanderson and Roxanne Sanderson (collectively, "Tee-Sanderson").

On or about September 14, 1991, Tee-Sanderson and Vancroft executed a PERMANENT EASEMENT AGREEMENT (the "Easement Agreement") whereby Tee-Sanderson granted, conveyed, and remised to Vancroft and its heirs, assigns, and transferees, a permanent and perpetual easement (the "Easement") under, over, and across the southwest quarter of the Golf Course Property for the purpose of providing utilities and vehicular access (*i.e.*, ingress and egress) to the Bedard/Musser Property.[1]

On or about October 27, 1993, Vancroft and Bedard & Musser executed an ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT ("Assignment") whereby Vancroft fully assigned and conveyed to Bedard & Musser and its heirs, assigns, and transferees, all of Vancroft's rights, benefits, and interests in the Easement and the Easement Agreement.[2]

The Easement Agreement described the parties' intent regarding the nature and purpose of the Easement. As set forth in numbered paragraphs "1" and 6" of the Easement Agreement, the parties' purpose and intention for the Easement was for the Grantee's use for vehicular ingress and egress. The Grantee was given the right, at the Grantee's sole discretion, to expand this easement area by dedicating the Easement as a road to the Ada County Highway District (ACHD) and thereupon to bring such road into compliance with all "ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc." existing at the time of such dedication. *See* Paragraph "6" of Easement Agreement.

Bedard & Musser, as successor-in-interest to Vancroft, and present owner of the Easement, now wishes to exercise its right to dedicate the Easement as a road to ACHD and thereupon bring the road into compliance with all ACHD ordinances and requirements, including, but not limited to, the dimensions and scope of the roadway with associated embankments as depicted on the plans attached to the draft Complaint as EXHIBIT "C." Accordingly, by the express terms of the Easement Agreement, the easement area must be recognized and declared to be sufficiently wide to meet ACHD ordinances and requirements as intended by the parties to the Easement Agreement.

---

[1] As explained below, a draft of the Complaint Bedard and Musser is prepared to file to resolve this claim is enclosed herewith. A true and accurate copy of the Easement Agreement, which was recorded on November 3, 1993 as Ada County Instrument No. 9392442, is attached to the Complaint as EXHIBIT "A."

[2] A true and accurate copy of the foregoing Assignment, which was recorded on November 4, 1993, as Ada County Instrument No. 9392667, is attached to the Complaint as EXHIBIT "B."

Bedard & Musser understand that the City may claim that the easement area is limited to forty (40) feet in width, despite the express intention of the parties to the Easement Agreement that the easement area be sufficient to satisfy ACHD ordinances and requirements. Bedard & Musser contends that it has all estate, right, title, and interest whatever in the Easement, and that the scope and dimensions of the easement area of such Easement are that which may be necessary to satisfy ACHD ordinances and requirements at the time that Bedard & Musser may elect to dedicate the Easement to ACHD. Bedard & Musser therefore also alleges that the The City has not any right whatsoever to prevent Bedard & Musser from expanding the easement area by dedicating the Easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication.

Accordingly, please be advised that absent a prior resolution of the above-described claim, 90 days from the service of this notice, we will file a complaint with the District Court of the Fourth Judicial District to quiet title in the easement and establish Bedard & Musser's right to expand the easement area by dedicating the Easement as a road to ACHD and thereupon bring the road into compliance with all ordinances and requirements existing at the time of such dedication. A copy of the Complaint to be filed, with its exhibits which have been referenced herein, is attached hereto.

It is our opinion that this notice fully complies with the notice provisions of Idaho Code § 50-219 and § 6-906. In the absence of any objection to this notice, we will proceed on the assumption that all statutory notice requirements have been met.

Very truly yours,

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Michael E. Band, of the firm

TC/mjs
Enclosures

EXHIBIT "B"

TO
FIRST AMENDED COMPLAINT

ADA COUNTY RECORDER Christ D. Rich
BOISE IDAHO Pgs=2 CHE FOWLER
SUSAN L MIMURA & ASSOC
2015-062695
07/13/2015 03:17 PM
AMOUNT:$13.00
00120866201500626950020022

QUITCLAIM DEED

FOR THE CONSIDERATION OF VALUE RECEIVED, and other good and valuable consideration, the receipt of which is hereby acknowledged,

Kipp A. Bedard, William Musser, and Bedard & Musser ("GRANTORS"), hereby grants, conveys, and hereby releases and forever quitclaims unto Boise Hollow Land Holdings, RLLP ("GRANTEE"), as its sole and separate property, whose current mailing address is 1961 Silvercreek Lane, Boise, ID 83706, and its heirs, successors and assigns forever, all right, title and interest which GRANTORS now have or may hereafter acquire in the following real property situated in Boise, Ada County, State of Idaho, and more particularly described as follows:

> Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592

TO HAVE AND TO HOLD, all and singular the said real property, together with all appurtenances, tenements, hereditaments, reversions, remainders, rents, issues, profits, rights-of-way, and water rights in anywise appertaining to the real property herein described, as well in law as in equity, unto GRANTEE, and to its successors and assigns forever.

WITNESS the hand of said GRANTOR this 26 day of June, 2015.

BEDARD & MUSSER, a Partnership

By: Kipp A. Bedard (General Partner)

BEDARD & MUSSER, a Partnership

William Musser (General Partner)

Kipp A. Bedard, Individual

State of Idaho)
:ss.
County of Ada)

On this 6 day of July, 2015, before me, Kaneecia M Johnson, a notary public in and for the state of Idaho, personally appeared Kipp A. Bedard, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

KANEECIA M JOHNSON NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at ADA COUNTY, Idaho
My Commission Expires: 06·23·2021

William Musser, Individual

State of ~~Idaho~~ Montana)
:ss.
County of ~~Ada~~ Lewis & Clark)

On this 26th day of June, 2015, before me, ~~William Musser~~ Kerry Bouchard fka William Musser, a notary public in and for the state of ~~Idaho~~ Montana, personally appeared William Musser, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

SEAL
KERRY L BOUCHARD
NOTARY PUBLIC for the
State of Montana
Residing at Augusta, MT
My Commission Expires
September 25, 2015

Notary Public
Residing at Augusta, ~~Idaho~~ Montana
My Commission Expires: 9-25-2015

EXHIBIT "C"

TO
FIRST AMENDED COMPLAINT

ST-9304912C (2)

16280013 41

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

3

1628001343

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at [illegible], Idaho
My Commission Expires: 2/1/95

NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence P. Gale
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 6/1/95

LAWRENCE P. GALE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Laura J. Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 12 1995

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Laura J Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 6th 1994

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

16280013 48

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

1628001349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5789)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°58'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 38th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-06

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

BK 59 Pages 5 1 2 7

1628001350

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
●	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
○	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar

Boundary Line
Section Line
1/4 Section Line
1/16 Section Line
Easement Line

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southeasterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8650182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of safe roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 38" E	200.23
2	N 66° 11' 44" E	398.56
3	N 66° 13' 01" E	398.83
4	N 83° 22' 38" E	378.17
5	N 24° 27' 09" E	409.16
6	N 22° 46' 35" E	418.97
7	N 45° 83' 29" E	285.33

REGISTERED LAND SURVEYOR 4995 STATE OF IDAHO MICHAEL E. BARNS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

000000

Exhibit C

12

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

500 250 0 500 1000 1500

SCALE IN FEET

1628001351

UNPLATTED

UNPLATTED

UNPLATTED

PART OF THIS PLAT

NOT

S 88° 17' 38" E 2670.60

LIMITS (January, 1992)

CITY OF BOISE

N 45° 02' 13" E 1892.60

NOTE: See Sheet 2 of 3 for Details of N.36th Way centerline and right-of-way and lot dimensions.

BLOCK (1)

LOT 3

LOT 4

LOT 2

LOT 1

LOT 5

LOT 6

BLOCK (2)

LOT 1

LOT 4

36TH WAY

NORTH

N 00° 00' 32" E 886.10

N 00° 30' 20" E 1454.21

S 00° 06' 12" E 1985.44

S 00° 02' 29" W 2645.06

N 89° 26' 11

BASIS OF BE

20' SEWER EASEMENT

40' ACCESS AND UTILITY EASEMENT TO LOT 4, BLOCK 2

INITIAL POINT

N 48° 23' 32" W 205.94

S 45° 37' 00" E 778.53

N 48° 23' 00" W 60.23

S 45° 00' W 1632.00

N 39° 54' 00" E 950.31

CITY PARK

N 89° 39' 23" W 2532.29

UNPLATTED

UNPLATTED

000087

EXHIBIT "D"

TO
FIRST AMENDED COMPLAINT

0939266

ST-93044126 JH

PART OF ORIGINAL
TOO POOR TO COPY

1628001631

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

STEWART TITLE

'93 NOV 4 AM 10 40

FEE [illegible] DEP [illegible]
RECORDED AT THE REQUEST OF

ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT

This Assignment and Assumption of Permanent Easement Agreement is made and entered in to this 27th day of October, 1993 by and between VANCROFT CORPORATION, an Idaho corporation, ("Assignor") whose address is 600 West 76th Avenue, #101, Anchorage, Alaska 99518-2565, and BEDARD & MUSSER, a partnership, ("Assignee") whose address is 2101 Ridgecrest Dr., Boise Idaho, 83712.

Concurrently herewith, Assignor is selling to Assignee that certain real property located in Ada County, Idaho and legally described as: Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592 (the "Property"). In connection with such sale, Assignor desires to assign, and Assignee desires to accept the assignment of, the rights, benefits and obligations of Assignor under the terms and conditions of that certain Permanent Easement Agreement (the "Easement Agreement") made and entered into by and between TEE, LTD., Tommy T. Sanderson and Roxanne Sanderson, as grantor, and Assignor, dated September 14, 1991, and recorded on October 3, 1993 as Instrument Number 9392442, which Easement Agreement grants a permanent 40' access and utility easement for the benefit of the Property and which Easement Agreement contains certain conditions and obligations which are clearly enumerated therein. A copy of the Easement Agreement is attached as Exhibit A and incorporated herein.

NOW THEREFORE, In consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. ASSIGNMENT. Assignor hereby assigns, transfers, conveys, sells, endorses and delivers to Assignee all of Assignor's right, title and interest under the Easement Agreement.

2. ASSUMPTION. Assignee hereby accepts such assignment and hereby assumes all of the obligations of Assignor under the Easement Agreement and agrees to be bound by all terms and conditions of the Easement Agreement. Assignee hereby covenants and agrees to indemnify, defend and hold harmless Assignor from and against any claims, liabilities, costs, expenses (including reasonable attorneys' fees) and damages asserted against or incurred by Assignor and arising in connection with the Easement Agreement subsequent to the date of this Assignment and Assumption.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By _____

By _____

1628001633

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By William L. Musser

By _____

STATE OF ALASKA)
) ss.
~~COUNTY OF~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Shumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 2nd day of November, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Kipp A. Bedard, known or identified to me to be the partner of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

Notary Public for Boise
Residing at Boise, Idaho
My commission expires: May 8, 1996

1628001635

STATE OF ALASKA)
) ss.
~~CENSUS AREA~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Schumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF ~~IDAHO~~ NEW YORK)
) ss.
COUNTY OF ~~ADA~~ NEW YORK)

On this 2nd day of NOVEMBER 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM L. MUSSER JR. known or identified to me to be the A PARTNER of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

April Medina
Notary Public for _____
Residing at _____
My commission expires: _____

APRIL MEDINA
Notary Public, State of New York
No. 01-4680535
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Sept. 30, 1994

ST-93044126 (2)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

3

16280001343

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lobb
Notary Public [illegible]
Residing at [illegible]
My Commission Expires: 10/95

NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence R. Sale
Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 6/10/95

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Ma
My Commission Expires: May 5th 1995

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Mara J. Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 8th 1996

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

ASSIGNMENT OF RIGHTS

BETWEEN

BEDARD & MUSSER
an Idaho partnership,
as Assignor

AND

BOISE HOLLOW LAND HOLDINGS, RLLP,
an Idaho limited liability partnership,
as Assignee

EFFECTIVE: June 26, 2015

EXHIBIT "E"

TO
FIRST AMENDED COMPLAINT

ASSIGNMENT OF RIGHTS

GENERAL ASSIGNMENT

THIS Assignment of Permits, Licenses, Agreements, And Appurtenant Rights (hereinafter referred to as "Assignment") is made between BEDARD & MUSSER ("Assignor"), and BOISE HOLLOW LAND HOLDINGS, RLLP ("Assignee"). Assignor and Assignee may be referred to herein as a "Party" or "Parties", as the case may be.

RECITALS

WHEREAS, on October 19, 1993, Assignor became the owner of the following real property (the "Subject Property") situated in Boise, Ada County, State of Idaho, and more particularly described as follows:

> Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592.

WHEREAS, for administrative and management purposes, elected to reorganize itself as a limited liability partnership under IDAHO CODE § 53-3-1001, et seq. Accordingly, Assignor conveyed to Assignee the Subject Property pursuant to that certain QUITCLAIM DEED executed by Assignor in favor of Assignee on June 26, 2015, and recorded with the Ada County Recorder on July 13, 2015, as Instrument No. 2015-062695 (a true and accurate copy of which is attached hereto as EXHIBIT "A").

WHEREAS, in connection with said conveyance, Assignee and Assignor intend that all of Assignor's right, title and interest in and to any and all plans, specifications, maps, licenses, permits, guarantees, warranties, certificates, contracts, agreements, appurtenant rights, subdivision preliminary plat approvals, any final plat approvals and other applications before Ada County, Idaho and any other governmental agency, and all other rights pertaining in any way to the Subject Property, including all lawsuits and causes of action (collectively, the "Development Rights") shall be conveyed to Assignee as of June 26, 2015 (the "Effective Date").

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor grants, conveys, assigns and transfers to Assignee, its successors and assigns, free and clear of any and all of Assignor's right, title, and interest in the Development Rights, together with any and all rights and appurtenances thereto in any way belonging to Assignor, its successors or assigns, including but not limited to the following:

a. All rights and interest in any and all claims, lawsuits, and causes of action, including, but not limited to, that certain lawsuit presently pending in the Fourth Judicial District of the State of Idaho, in and for the County of Ada, known as *Bedard & Musser v. City of Boise*, Ada County Civil Case No. CV-OC-2015-10297.

b. All maps, plans, specifications, and related documents prepared in connection with the Subject Property.

c. Any zoning, subdivision approvals (preliminary and final), use, occupancy, sign permits, and operating permits of any nature, and all other permits, licenses, approvals, and certificates obtained in connection with the Subject Property, to the extent permissible by law.

d. All contracts, agreements, guaranties, warranties, and certificates of any kind pertaining to Subject Property, and any rights therein.

e. All intangible property, whether enumerated in this Assignment or not, in which Assignor has an interest, now or hereafter used in connection with the development, operation or maintenance of the Subject Property, including but not limited to warranties; guaranties; unexpired claims; security deposits; service contracts for the benefit of the Subject Property; conditional use permits; subdivision approvals and permits (preliminary and final plats); governmental approvals or similar documents; plans; drawings; specifications; surveys; site plans; engineering and environmental reports; soils reports; access agreements; drainage studies and surveys; and all other contracts or agreements in connection with the Subject Property, but under no circumstances shall the acquisition of such intangible property be deemed to be an assumption of any liability, debt, or obligation relating thereto accruing prior to the Closing.

f. All right, title, and interest of Assignor to any right-of-way, street, road, avenue, highway, open or proposed, to the use of all easements benefitting the Subject Property, including but not limited to Assignor's rights and interest in that certain PERMANENT EASEMENT AGREEMENT dated September 14, 1991, and recorded on November 3, 1993, as Ada County Instrument No. 9392442 (a true and accurate copy of which is attached hereto as EXHIBIT "B") as well as that certain ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT dated October 27, 1993, and recorded on November 4, 1993, as Ada County Instrument No. 9392667 (a true and accurate copy of which is attached hereto as EXHIBIT "C"), whether of record or not, appurtenant or pertaining to the Subject Property and to the use of all strips and right-of-ways, if any, abutting, adjacent, contiguous, or adjoining the Subject Property, which rights are hereinafter collectively referred to as "Appurtenant Rights."

2. Acceptance and Assumption. Effective as of the Effective Date, Assignee accepts the foregoing assignments and agrees to assume and keep, perform and fulfill all of the terms, covenants, conditions, duties and obligations which are required to be kept, performed and fulfilled by the Assignor under the Plans, Permits, and Contracts.

3. Indemnification by Assignor. Assignor shall indemnify and hold Assignee harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or otherwise, judgments, awards and expenses of very kind and nature whatsoever, including without limitation, attorneys' fees, arising out of or relating to, directly or indirectly, in whole or in part, the Development Rights occurring prior to the Effective Date.

4. Facsimile Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Assignment via facsimile transmission shall be as effective as delivery of an original signed copy.

5. Construction. The language of this Assignment will be construed simply, according to its fair meaning, and not strictly for or against any Party.

6. Additional Acts. Assignors and Assignee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment.

IN WITNESS WHEREOF, the Parties hereto have caused this Assignment to be signed effective the 13th day of July, 2015.

ASSIGNOR:

BEDARD & MUSSER, an Idaho partnership

By: _____
Kipp A. Bedard (General Partner)

ASSIGNEE:

BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership

By: _____
Kipp A. Bedard (Member)

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser") and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") (collectively, "Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby move this Court to enter summary judgment in favor of Plaintiffs pursuant to Rule 56 of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.).

This motion is made on the grounds and for the reason that there is no genuine issue as to any material fact and Plaintiffs are entitled to a judgment as a matter of law.

This motion is made and based on the records and files herein, the verified pleadings on file in this matter, and the following documents filed concurrently herewith:

(1) MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT;

(2) AFFIDAVIT OF REBECCA W. ARNOLD;

(3) AFFIDAVIT OF KEVIN MCCARTHY, P.E.; and

(4) AFFIDAVIT OF DEAN BRIGGS, P.E.

Oral argument is requested on this Motion.

DATED this 3rd day of December, 2015.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

_____
Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 AFFIDAVIT OF KEVIN McCARTHY, P.E.

STATE OF IDAHO)
) ss.
County of Ada)

KEVIN McCARTHY, P.E., being first duly sworn upon oath, deposes and says:

I am a licensed professional civil engineer in Idaho and other western states. I am a Principal Engineer at KM Engineering, LLP. KM Engineering is a consulting engineering firm providing civil engineering, land surveying, and landscape architecture services to public agencies and private developers. Our office is located in Boise, Idaho.

KM Engineering has been retained by the Plaintiff in the above-entitled matter to provide our services with respect to the expansion and development of the easement road at issue in this litigation which runs from 36th Street in Boise, Idaho, to Plaintiff's property known as Lot 4, Block 2, Nibler Subdivision, Boise, Ada County, Idaho. Accordingly, I have participated in the creation and drafting of a PRELIMINARY PUBLIC ROAD PLAN AND PROFILE which is intended to bring the easement road into compliance with the specifications and requirements of the Ada County Highway District (ACHD).

KM Engineering has submitted its PRELIMINARY PUBLIC ROAD PLAN AND PROFILE to ACHD for review and comment. A true and accurate copy of the PRELIMINARY PUBLIC ROAD PLAN AND PROFILE submitted by KM Engineering to ACHD is attached hereto as EXHIBIT "A" and is incorporated herein by this reference. At this time, the preliminary plans call for a 210-foot-wide easement which would provide a sufficient corridor to place the required improvements, including, but not limited to, right-of-way, utility easements and slope easements which we believe will meet ACHD's specifications and requirements. ACHD will provide comment and confirmation of their specifications and requirements for development of the easement road in the coming weeks. It is possible that ACHD will determine that a different width is required for the easement road; our plans will be revised per ACHD's requirements.

DATED this 17 day of November, 2015.

Kevin McCarthy, P.E.

SUBSCRIBED AND SWORN to before me this 17 day of ~~October~~ November, 2015.

Notary Public for Idaho
Residing at: Star, ID
My Commission Expires: 2-20-18

KIRSTI ALLPHIN NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

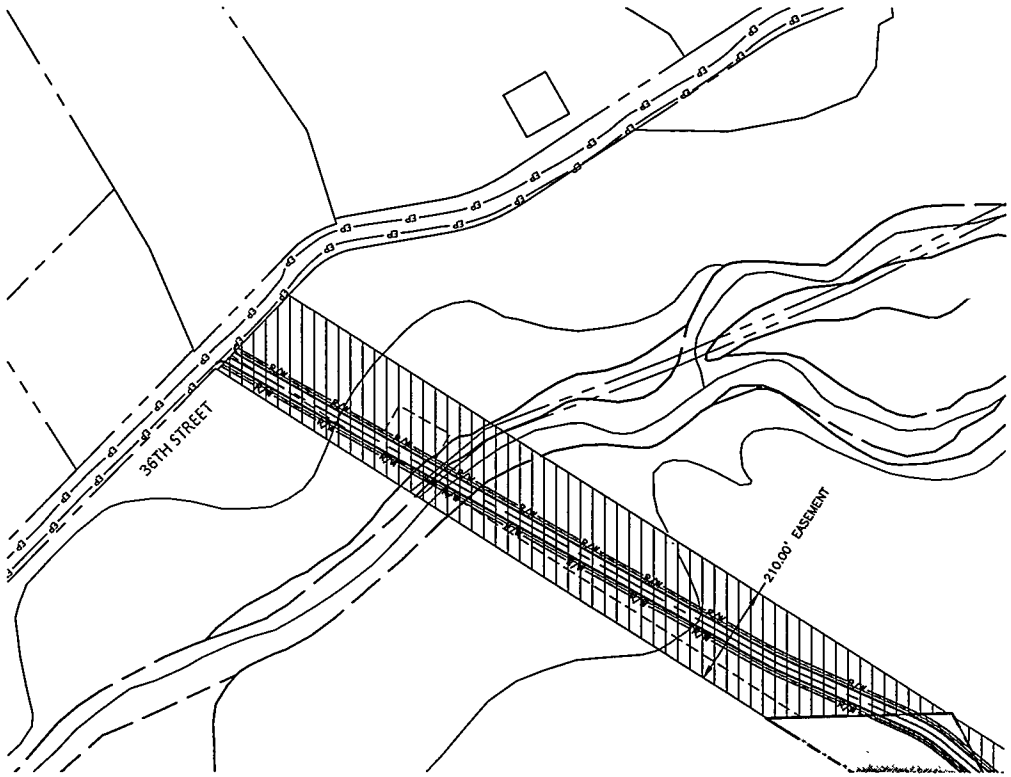
☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile (208) 384-4454
☐ Email

Michelle J. Silva

EXHIBIT "A"

TO
AFFIDAVIT OF KEVIN McCARTHY, P.E.

LOT 4, BLOCK 2, NI
BOISE,
PRELIMINARY PUBLIC RO



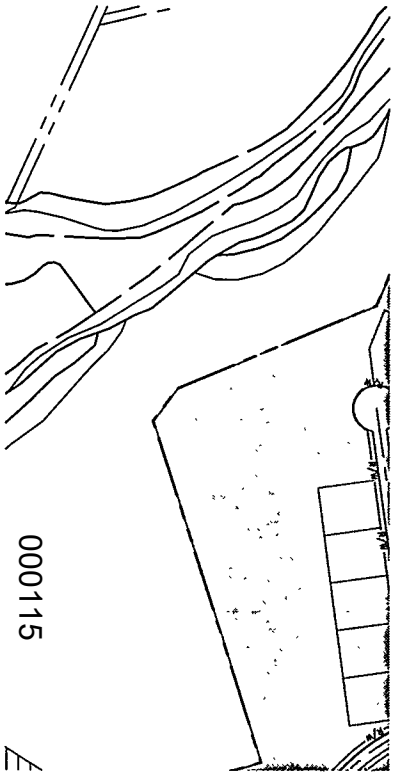
000114

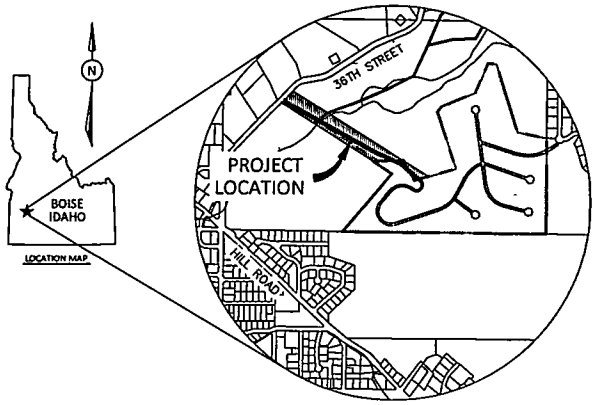
1

BLER SUBDIVSION

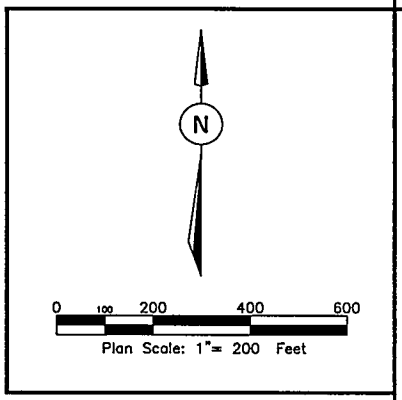
, ID

AD PLAN AND PROFILE





VICINITY MAP
NO SCALE



INDEX OF DRAWINGS

SHT	SHEET TITLE
C1.0	COVER
C1.1	NOTES AND DETAILS

REVISIONS

NO.	ITEM	DATE

UBDIVSION

AN AND PROFILE

000115

2 E

LEGEND

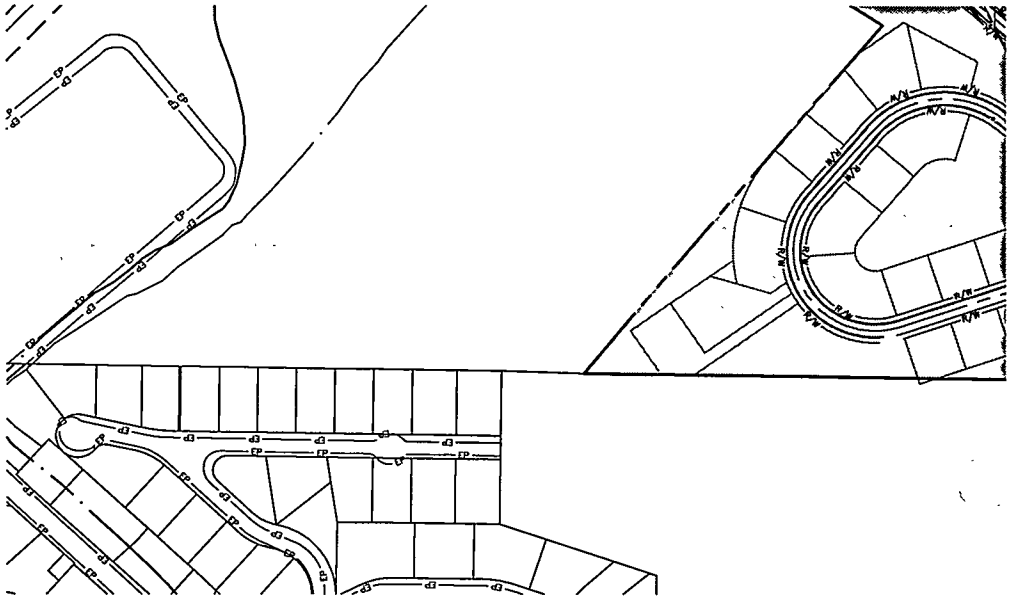
- BOUNDARY LINE
- OFFSITE BOUNDARY LINE
- SETBACKS
- ROAD CENTERLINE
- LOT LINE LINE
- RIGHT-OF-WAY LINE
- FOUND 1/2 INCH REBAR
- FOUND 5/8 INCH REBAR
- SPIKE

PROPOSED IMPROVEMENTS

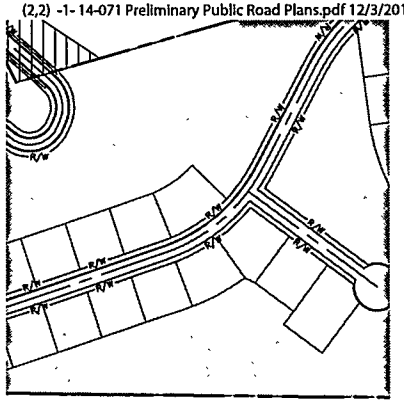
- SEWER LINE
- WATER LINE
- STORMDRAIN LINE
- SEWER MANHOLE
- FIRE HYDRANT
- DOUBLE WATER SERVICE
- DRAINAGE ARROWS
- PROPOSED GRADE CONTOUR (2800)

EXISTING IMPROVEMENTS

- SANITARY SEWER LINE
- WATER LINE
- GAS LINE
- OVERHEAD POWER LINE
- GRAVITY IRRIGATION LINE
- SEWER MANHOLE
- WATER VALVE
- WATER METER
- FIRE HYDRANT
- POWER POLE
- POWER BOX
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- TREE DECIDUOUS
- EXISTING GRADE CONTOUR (2800)



P:\14-071\CAD\EXHIBITS\14-071 PRELIMINARY PUBLIC ROAD PLANS.DWG, MATT DEER, 12/2/2015, DWG TO PDF.PC3, 24X36 (1 UPG)



BASIS OF BEARINGS

CONTACT KM ENGINEERING (639-6939)
FOR BASIS OF BEARINGS AND CONTROL POINTS

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE NW1/4 OF THE NW1/4 OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 1 EAST, BOISE MERIDIAN, ADA COUNTY, IDAHO.
2015

CONTACT INFORMATION

ENGINEERING CONSULTANT

KM ENGINEERING, LLP
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE: (208) 639-6939
FAX: (208) 639-6930
CONTACT: KEVIN P. MCCARTHY, P.E.
EMAIL: kevin@kmengllp.com

GEOTECHNICAL ENGINEER

STRATA
8653 W. HACKAMORE DRIVE
BOISE, IDAHO 83709
PHONE: (208) 376-8200
FAX: (208) 376-8201
CONTACT: MICHAEL WOODWORTH, P.E.

APPLICANT / DEVELOPER / OWNER

CONNELL DEVELOPMENT
2291 AMY AVENUE
BOISE, IDAHO 83706
PHONE: (208) 866-5275
CONTACT: COLIN CONNELL

ACHD COMPLIANCE

THE ENGINEER OF RECORD CERTIFIES THAT THE PLANS ARE PREPARED IN SUBSTANTIAL CONFORMANCE WITH THE ACHD POLICY AND STANDARDS IN EFFECT AT THE TIME OF PREPARATION. THE ENGINEER ACKNOWLEDGES THAT ACHD ASSUMES NO LIABILITY FOR ERRORS OR DEFICIENCIES IN THE DESIGN. ALL VARIANCES FROM ACHD POLICY SHALL BE APPROVED IN WRITING. THE FOLLOWING VARIANCES, LISTED BY DATE AND SHORT DESCRIPTION, WERE APPROVED FOR THE PROJECT:

- NONE

LOT 4, BLOCK 2, NIBBLER SI
BOISE, ID

PRELIMINARY PUBLIC ROAD PLA
COVER SHEET

DRAWING STATUS:

PRELIMINARY NOT FOR CONSTRUCTION

km ENGINEERING
ENGINEERS . SURVEYORS . PLANNERS
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE (208) 639-6939
FAX (208) 639-6930

DESIGN BY:	MSD
DRAWN BY:	MSD
CHECKED BY:	KPM
DATE	10/20/15
PROJECT:	14-071

SHEET NO.

C1.0

000117

PROJECT GENERAL NOTES

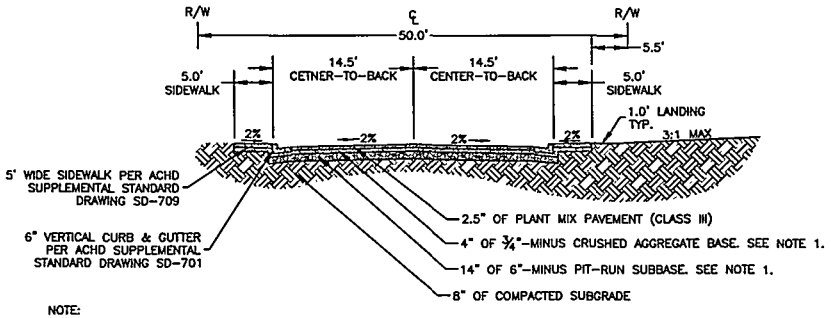
1. THE CONTOURS AND BENCHMARK ELEVATION ARE BASED ON THE NAVD 88 VERTICAL DATUM.
2. PROJECT BENCHMARKS SHALL BE ESTABLISHED THROUGHOUT THE SITE BY THE ENGINEER AND WILL BE PROVIDED TO THE CONTRACTOR PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL PROTECT ALL SURVEY MONUMENTS AND BENCHMARKS FROM DISTURBANCE THROUGHOUT CONSTRUCTION. DAMAGED BENCHMARKS WILL BE REPLACED BY THE PROJECT SURVEYOR AT THE CONTRACTOR'S EXPENSE.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE SAFETY REQUIREMENTS OF ANY JURISDICTIONAL BODY. THE CONTRACTOR WILL BE RESPONSIBLE FOR ALL BARRICADES, SAFETY DEVICES AND TRAFFIC CONTROL WITHIN AND AROUND THE CONSTRUCTION AREA.
5. ALL WORK SHALL BE DONE IN COMPLIANCE WITH THE APPROVED PLANS, SPECIFICATIONS, SOILS REPORT AND APPENDIX CHAPTER 33 OF THE UNIFORM BUILDING CODE.
6. WHERE NOTED, EXISTING TEST PITS/MONITORING WELLS SHALL BE RETAINED AND PROTECTED DURING CONSTRUCTION.
7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND/OR REQUIREMENTS OF THE CITY OF BOISE, ADA COUNTY HIGHWAY DISTRICT, AND THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY.
8. A PRE CONSTRUCTION CONFERENCE SHALL BE HELD A MINIMUM OF THREE (3) WORKING DAYS PRIOR TO START OF WORK. ALL CONTRACTORS, SUBCONTRACTORS AND/OR UTILITY CONTRACTORS SHALL BE PRESENT.
9. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING DRAINAGE FACILITIES WITHIN THE CONSTRUCTION AREA UNTIL THE PROPOSED DRAINAGE IMPROVEMENTS ARE IN PLACE AND FUNCTIONING. THE CONTRACTOR SHALL COMPLY WITH ALL REQUIREMENTS OF THE STORM WATER POLLUTION PREVENTION PLAN AND THE ROUGH GRADING PLAN.
10. ALL CONTRACTORS WORKING WITHIN THE PROJECT BOUNDARIES ARE RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE SAFETY LAWS OF ANY JURISDICTIONAL BODY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL BARRICADES, SAFETY DEVICES AND CONTROL OF TRAFFIC WITHIN AND AROUND THE CONSTRUCTION AREA.
11. WORK SUBJECT TO APPROVAL BY ANY POLITICAL SUBDIVISION OR AGENCY MUST BE APPROVED PRIOR TO (A) BACKFILLING TRENCHES FOR PIPE (B) PLACING OF AGGREGATE BASE (C) PLACING OF CONCRETE; (D) PLACING OF ASPHALT PAVING. WORK DONE WITHOUT SUCH APPROVAL SHALL NOT RELIEVE THE CONTRACTOR FROM THE RESPONSIBILITY OF PERFORMING THE WORK IN AN ACCEPTABLE MANNER.
12. ALL CONTRACTORS WORKING WITHIN EXISTING PUBLIC ROAD RIGHT-OF-WAY ARE REQUIRED TO SECURE A RIGHT-OF-WAY CONSTRUCTION PERMIT FROM ADA COUNTY HIGHWAY DISTRICT AT LEAST TWENTY-FOUR (24) HOURS PRIOR TO ANY CONSTRUCTION.
13. THE CONTRACTOR SHALL CONSTRUCT ALL IMPROVEMENTS IN ACCORDANCE WITH THE PLANS STAMPED "APPROVED FOR CONSTRUCTION" BY THE VARIOUS GOVERNING AGENCIES. THESE PLANS WILL BE PROVIDED TO THE CONTRACTOR BY THE ENGINEER PRIOR TO CONSTRUCTION. WORK SHALL NOT BE DONE WITHOUT THE CURRENT SET OF APPROVED PLANS.
14. ALL LOT LINE AND EASEMENT INFORMATION SHALL BE TAKEN FROM EYRIE SUBDIVISION PHASE 8 FINAL PLAT.
15. THE CONTRACTOR SHALL LIMIT CONSTRUCTION ACCESS TO THE OWNER APPROVED ACCESS POINTS.
16. IF THE CONTRACTOR HAS ANY QUESTIONS CONCERNING THE PROJECT SPECIFICATIONS, HE/SHE SHALL CONTACT THE ENGINEER FOR DIRECTION. WHEN DISCREPANCIES OCCUR BETWEEN THE PLANS AND SPECIFICATIONS THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER. UNTIMELY NOTIFICATIONS MAY NEGATE ANY CONTRACTORS CLAIM FOR ADDITIONAL COMPENSATION.
17. ALL COSTS INCURRED IN CORRECTING DEFICIENT WORK SHALL BE CHARGED TO THE CONTRACTOR. FAILURE TO CORRECT SUCH WORK WILL BE CAUSE FOR A STOP WORK ORDER AND POSSIBLE TERMINATION.
18. ABANDONED BUILDINGS, TEST PITS OR WATERWAYS LOCATED WITHIN CURRENT OR FUTURE RIGHT-OF-WAY SHALL BE RE-EXCAVATED TO NATIVE SOIL AND BACKFILLED WITH STRUCTURAL FILL PER ISPWC SPECIFICATIONS. PROVIDE SOILS DATA TO VERIFY MATERIAL MEETS THE REQUIREMENTS FOR ENGINEERED FILL PER ISPWC SPECIFICATIONS AND COPY OF THE COMPACTION TESTS.
19. SUBGRADE SHALL BE INSPECTED BY THE GEOTECHNICAL CONSULTANT RESPONSIBLE FOR THE GEOTECHNICAL ASPECTS OF THE PROJECT.
20. FINAL GRADING SHALL BE INSPECTED BY THE PROJECT ENGINEER.
21. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE MOST CURRENT EDITION OF THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC) AND THE PROJECT STANDARDS AND SPECIFICATIONS. NO EXCEPTIONS WILL BE ALLOWED UNLESS SPECIFICALLY AND PREVIOUSLY APPROVED IN WRITING BY ALL APPROPRIATE ENTITIES.
22. ONLY PLAN SETS STAMPED "APPROVED FOR CONSTRUCTION" AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CONTROLLING GOVERNMENTAL AGENCY SHALL BE USED BY THE PROJECT CONTRACTOR(S).
23. THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES SHOWN HEREON ARE ONLY APPROXIMATE. THE CONTRACTOR SHALL COMPLY WITH IDAHO CODE REGARDING UNDERGROUND FACILITIES DAMAGE PREVENTION. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. THE CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED AS A RESULT OF FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UTILITIES. THE CONTRACTOR SHALL CONTACT DIGLINE (342-1585) FOR UTILITY LOCATIONS A MINIMUM OF 48 HOURS PRIOR TO DIGGING.
24. ALL NATURAL SLOPES SHALL BE A MAXIMUM OF 2:1, UNLESS OTHERWISE STATED ON THIS PLAN. ASPHALT MINIMUM GRADE IS 1% CONCRETE MINIMUM GRADE IS 0.4% FINISH GRADE SHALL SLOPE AWAY FROM ALL

TRAFFIC CONTROL NOTES

1. ALL WORK SHALL CONFORM TO THE LATEST EDITION OF THE "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES" FOR STREETS AND HIGHWAYS.
2. ALL WARNING FLAGS AND FLASHERS SHALL BE CONSIDERED AS INCIDENTAL TO THE TRAFFIC CONTROL BI ITEMS.
3. THE FLAGGERS SHALL BE EQUIPPED WITH TWO WAY RADIOS CAPABLE OF TRANSMITTING A DISTANCE OF 2 MILES AND BATTERIES TO LAST THROUGH EACH DAY OF OPERATION.
4. SIGNS AND SIGN STANDS NOT IN USE SHALL BE REMOVED OR LAID DOWN AT LEAST 15 FEET FROM THE EDGE OF THE TRAVEL WAY.
5. ONE LANE OF TRAFFIC SHALL BE OPEN TO LOCAL TRAFFIC AT ALL TIMES.
6. CONTRACTOR SHALL PROVIDE ALL SIGNAGE NECESSARY TO ALERT THE SURROUNDING PUBLIC OF THE CONSTRUCTION TAKING PLACE. THE CONTRACTOR ASSUMES RESPONSIBILITY FOR THE SIGNS NEEDED FOR PUBLIC SAFETY.
7. ALL CONTRACTORS WORKING WITHIN THE PUBLIC ROAD RIGHT-OF-WAY ARE REQUIRED TO SECURE A RIGHT-OF-WAY CONSTRUCTION PERMIT FROM ACHD AND/OR ITD AT LEAST TWENTY-FOUR (24) HOURS PI TO ANY CONSTRUCTION.

GRADING NOTES

1. ALL EARTHWORK INCLUDING CLEARING, GRUBBING, EXCAVATION, EMBANKMENT, BACKFILL, DEWATERING, AND EROSION CONTROL SHALL MEET THE SPECIFICATIONS OF SECTION 200 OF THE ISPWC AS WELL AS THE SPECIFICATIONS AND RECOMMENDATIONS OF THE GEOTECHNICAL ENGINEERING REPORT.
2. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING DRAINAGE FACILITIES WITH THE CONSTRUCTION AREA UNT TEMPORARY AND/OR PERMANENT DRAINAGE IMPROVEMENTS ARE IN PLACE AND FUNCTIONING.
3. IF REQUIRED, THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING A SHORT TERM ACTIVITY EXEMPTI PERMIT FROM THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ). CONTACT CRAIG SHEP[illegible] A THE SOUTHWEST REGIONAL DEQ OFFICE (373-0557). THE CONTRACTOR SHALL SUBMIT TO DEQ DEWATERING PLAN WHICH OUTLINES THE LOCATION OF PROPOSED BMPS AND THE SEQUENCING O DEWATERING ACTIVITIES. ALL CONSTRUCTION WATER GENERATED FROM EXCAVATION SHALL BE I[illegible] SEDIMENT AND DEBRIS BEFORE IT LEAVES THE SITE.
4. PRIOR TO PLACEMENT OF FILL MATERIAL, THE CONTRACTOR SHALL CLEAR THE SITE OF ALL WASTE MATERIALS AND VEGETATION AND PREPARE THE SUBGRADE AS RECOMMENDED IN THE GEOTECHNICAL REPO ALL WASTE MATERIAL SHALL BE REMOVED FROM THE SITE AND DISPOSED OF IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS. THE SITE SHALL BE PROOF-ROLLED PRIOR TO PLACEMENT OF FILL MATERIAL ENSURE STABILITY OF SUBGRADE. A REPRESENTATIVE OF THE GEOTECHNICAL CONSULTANT SHALL REMAIN ON SITE TO ENSURE PROPER PLACEMENT AND COMPACTION OF STRUCTURAL FILL.
5. NO WORK SHALL BE DONE WITHIN JURISDICTIONAL WETLAND AREAS UNTIL A 404 PERMIT HAS BEEN ISSUI BY THE US ARMY CORPS OF ENGINEERS. ALL WORK WITHIN WETLAND AREAS SHALL ADHERE TO THE REQUIREMENTS OF THE 404 PERMIT.
6. STRIP AND STOCKPILE TOPSOIL AS RECOMMENDED IN THE GEOTECHNICAL REPORT AND DISPOSE OF DEBR OFF-SITE. THE DEPTH OF STRIPPING COULD VARY IN THE FIELD DEPENDING ON THE DEPTH OF THE RO ZONE, SOIL COMPOSITION INCLUDING SOIL TYPE, MOISTURE CONTENT AND STABILITY AND THE WEATHER CONDITIONS DURING CONSTRUCTION. STRIPPING DEPTHS SHALL BE DIRECTED BY THE ONSITE GEOTECHNI CONSULTANT. LOCATION OF STOCKPILED MATERIAL SHALL BE COORDINATED WITH THE OWNER AND ENGIN PRIOR TO PLACEMENT.
7. TESTING SHALL BE PERFORMED PER THE RECOMMENDATIONS OF THE GEOTECHNICAL REPORT. FILL MATE WITHIN THE LOT AREAS SHALL BE COMPACTED TO 95% MODIFIED PROCTOR PER THE REQUIREMENTS OF ASTM D 1557. TESTING FREQUENCY SHALL ALLOW FOR A MINIMUM OF ONE COMPACTION TEST PER LIFT PER LOT. THE COMPACTION TESTS ON THE FINAL LIFT FOR EACH LOT SHALL BE SUPPLIED TO THE PROJECT ENGINEER AT THE COMPLETION OF THE PROJECT.
8. THE SUBGRADE WITHIN THE ROAD RIGHT-OF-WAYS SHALL BE STRIPPED, COMPACTED, INSPECTED AND PR ROLLED WITH A HEAVY RUBBER-TIRED FULL LOADED TANDEM AXLE OR EQUIVALENT PRIOR TO PLACEMENT OF FILL. FILL WITHIN THE ROADWAY AREAS SHALL BE COMPACTED TO NOT LESS THAN 95% OF THE MAXIMUM DRY DENSITY OF THE SOIL AS INDICATED BY ASTM D698 IN FLEXIBLE PAVEMENT AREAS.
9. STRUCTURAL FILL IS DEFINED BY THE GEOTECHNICAL CONSULTANT. SEE GEOTECHNICAL REPORT FOR ADDITIONAL INFORMATION.
10. THE CONTRACTOR SHALL COORDINATE WITH THE OWNER TO DETERMINE WHICH TREES WITHIN THE PROJEC LIMITS ARE TO REMAIN AND WHICH ARE TO BE REMOVED.
11. TOPSOIL AND OTHER STOCKPILE AREAS TO BE COORDINATED BETWEEN CONTRACTOR AND OWNER BEFORE THE START OF CONSTRUCTION.
12. NO GRADING WORK SHALL OCCUR UNTIL THE OWNER HAS FILED A NOTICE OF INTENT FOR CONSTRUCTION



NOTE:
1. BASE MATERIALS TO BE EXTENDED A MINIMUM OF 6" BEHIND THE CURB AND GUTTER.

TYPICAL ROAD SECTION

NTS

STORM DRAIN NOTES

1. ALL DRAINAGE STRUCTURES SHALL BE PER ISPWC STANDARDS AND THE ACHD SUPPLEMENTS TO THE ISPWC. STORM DRAIN STRUCTURES SHALL HAVE HS-25 TRAFFIC RATED LIDS UNLESS OTHERWISE SPECIFIED.

2. THE CONTRACTOR SHALL COMPLY WITH ALL THE REQUIREMENTS FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY. THIS INCLUDES IMPLEMENTING THE BMP'S RECOMMENDED IN THE SWPP PLAN PREPARED FOR THIS SITE. REGULAR

REVISIONS

NO.	ITEM	DATE

UBDIVSION

N AND PROFILE

BUILDINGS.

25. REMOVE AND DISPOSE OFF-SITE AT AN APPROVED LOCATION ANY AND ALL EXCESS MATERIALS.

ACHD NOTES

1. ALL CONSTRUCTION WITHIN THE ADA COUNTY HIGHWAY DISTRICT'S (A.C.H.D.) RIGHT-OF-WAY SHALL CONFORM TO THE CURRENT EDITION OF THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (I.S.P.W.C.) AND THE A.C.H.D. SUPPLEMENTAL SPECIFICATIONS. NO EXCEPTIONS TO DISTRICT POLICY, STANDARDS, AND THE I.S.P.W.C. WILL BE ALLOWED UNLESS SPECIFICALLY AND PREVIOUSLY APPROVED IN WRITING BY THE DISTRICT.
2. ALL WATER VALVES, BLOW-OFFS, AND MANHOLES SHALL BE GRADED AND PLACED SO AS NOT TO CONFLICT WITH ANY CONCRETE CURB, GUTTERS, SIDEWALK OR OTHER STREET IMPROVEMENTS.
3. CONSTRUCT ALL PAVEMENT MATCHES (INCLUDING DRIVEWAY APPROACHES AND UTILITY CUT STREET REPAIRS) WITHIN THE DISTRICT'S RIGHT-OF-WAY TO MATCH THE EXISTING STREET PAVEMENT SECTION OR TO USE THE FOLLOWING: 2.5-INCHES OF ASPHALT, 4-INCHES OF ¾-INCH MINUS CRUSHED AGGREGATE, AND 14-INCHES OF 6-INCH MINUS PIT RUN. USE WHICHEVER PAVEMENT SECTION IS GREATER.
4. TRAFFIC PLANS AND SAWCUTS ASSOCIATED WITH THE CONSTRUCTION OF ANY UTILITY WILL BE COORDINATED AND APPROVED THROUGH CONSTRUCTION SERVICES OF ACHD, 208-387-6280, PRIOR TO INITIATING ANY CONSTRUCTION.
5. ACHD WILL INSPECT ALL IMPROVEMENTS WHICH FALL WITHIN THE ACHD RIGHT-OF-WAY OR EASEMENT INCLUDING BUT NOT LIMITED TO STORM DRAIN CONSTRUCTION, TRENCH BACKFILL PROCEDURES, ROAD WAY CONSTRUCTION AND CONCRETE WORK. ANY WORK TO BE DONE OUTSIDE OF THE 300' EXTENDED BOUNDARY OF THE PROJECT WILL REQUIRE A SEPARATE PERMIT THROUGH ACHD CONSTRUCTION SERVICES DIVISION. THE CONTRACTOR WILL SCHEDULE AND INSPECTION, REQUESTED THROUGH ACHD INSPECTION SERVICES, 208-387-6284, A MINIMUM OF 24 HRS. PRIOR TO CONSTRUCTION STARTING.
6. ALL UTILITY IMPROVEMENTS ARE TO BE CONSTRUCTED TO ACCOMMODATE THE COLLAR REQUIREMENT PER ISPWC SD-616 AND BE IN ACCORDANCE WITH SECTION 703 OF THE ISPWC.
7. UTILITY STREET CUTS IN PAVEMENT LESS THAN FIVE YEARS OLD ARE NOT ALLOWED UNLESS APPROVED IN WRITING BY THE DISTRICT. CONTACT THE DISTRICT'S UTILITY COORDINATOR AT 208-387-6258 (WITH FILE NUMBERS) FOR DETAILS.
8. ACHD INSPECTION STAFF WILL BE MORE CLOSELY MONITORING PEDESTRIAN FACILITIES FOR COMPLIANCE WITH ADA STANDARDS. AS A REMINDER, SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%; THERE ARE NO "TOLERANCES" ALLOWED.
9. ACTUAL FIELD CONDITIONS DURING TRENCHING MAY REQUIRE ADDITIONAL PAVEMENT REPAIR BEYOND THE LIMITS SHOWN ON THE PLAN. THE FOLLOWING CONDITIONS ARE LISTED IN SECTION 6000 HIGHWAY CUTS OF THE ACHD POLICY MANUAL.
   1). ALL ASPHALT MATCH LINES FOR PAVEMENT REPAIR SHALL BE PARALLEL TO THE CENTERLINE OF THE STREET AND INCLUDE ANY AREA DAMAGED BY EQUIPMENT DURING TRENCHING OPERATIONS.
   2). IF THE CUMULATIVE DAMAGED PAVEMENT AREA EXCEEDS 50% OF THE TOTAL ROAD SURFACE, CONTRACTOR SHALL REPLACE THE ENTIRE ROADWAY SURFACE.
   3). CONTRACTOR SHALL REPLACE THE PAVEMENT SURFACE TO ENSURE MATCH LINE DOES NOT FALL WITHIN THE WHEEL PATH OF A LANE. MATCH LINE SHALL ONLY FALL IN THE CENTER OR EDGE OF A TRAVEL LANE.
   4). FLOWABLE FILL OR IMPORTED MATERIAL MAY BE REQUIRED IF THE NATIVE TRENCH MATERIAL IS DEEMED UNSUITABLE BY ACHD INSPECTOR, DOES NOT MEET COMPACTION STANDARDS OR TIME IS A CRITICAL FACTOR.
   5). ANY EXCEPTIONS TO THESE RULES SHALL BE PRE-APPROVED IN WRITING BY DISTRICT STAFF BEFORE CONSTRUCTION BEGINS.
10. TRUNCATED DOMES SHALL BE CONSTRUCTED ON ALL PEDESTRIAN RAMPS WITHIN ACHD RIGHT-OF-WAY. DOMES SHALL BE CONSTRUCTED PER ISPWC SD-712. DOMES SHALL BE CAST INTO THE CONCRETE (STAMPED CONCRETE AND ADHESIVE MATS NOT ALLOWED) AND SHALL BE COLORED "TRAFFIC YELLOW.

ACTIVITY WITH THE EPA.

13. ALL MATERIAL FURNISHED ON OR FOR THE PROJECT MUST MEET THE MINIMUM REQUIREMENTS OF THE APPROVING AGENCIES OR AS SET FORTH HEREIN, WHICHEVER IS MORE RESTRICTIVE. CONTRACTORS MUS FURNISH PROOF THAT ALL MATERIALS INSTALLED ON THIS PROJECT MEET THE REQUIREMENTS AT THE REQUEST OF THE AGENCY AND/OR THE ENGINEER.

UTILITY NOTES

1. THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BY CALLING DIGLINE AT PHONE # (800) 342-1585 BEFORE COMMENCING WORK. THE CONTRACTOR IS FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES TO EXISTING UNDERGROUND UTILITIES.
2. ALL WELL ABANDONMENT SHALL BE COMPLETED IN ACCORDANCE WITH THE REQUIREMENTS OF THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR) AND IDAHO CODE. THE CONTRACTOR SHALL RETAIN A LICENS WELL DRILLER FOR ABANDONMENT. COORDINATE WITH ROB WHITNEY AT IDWR WESTERN REGION (334-21
3. EXISTING OVERHEAD POWERLINES SHALL BE RETAINED AND PROTECTED AS NEEDED TO MAINTAIN SERVICE ADJACENT PROPERTIES. THE CONTRACTOR SHALL COORDINATE WITH IDAHO POWER CO. TO ABANDON OR RELOCATE ALL OTHER OVERHEAD POWER LINES AND POLES AS REQUIRED.
4. EXISTING SEPTIC SYSTEMS ASSOCIATED WITH ANY ABANDONED BUILDINGS ON THE SITE SHALL BE ABANDOI ACCORDING TO THE REQUIREMENTS OF THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY TECHNICAL GUIDANCE MANUAL. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE SEPTIC TANK, DRAINFIELD AN ALL APPURTENANCES. ALL INLET AND OUTLET PIPING SHALL BE DISCONNECTED FROM THE SEPTIC TANK. ALL BURIED PIPING SHALL BE EXCAVATED AND TRACED FROM THE SEPTIC TANK TO THE DRAIN FIELD TO THE FULL EXTENTS. THE CONTRACTOR SHALL VERIFY THE EXISTENCE OF A DRAINFIELD AND SHALL EXCAVATE THE DRAINFIELD SOILS TO AT LEAST THE MINIMUM GROUNDWATER LEVEL OR AS DIRECTED T GEOTECHNICAL ENGINEER AFTER FIELD SITE INSPECTION OF THE DRAINFIELD AREA. THE DRAINFIE SHALL BE DISPOSED OF OFF SITE OR MIXED WITH THE WETLAND STRIPPINGS IF AUTHORIZED BY ENGINEER. AFTER INSPECTION OF EXCAVATED SOILS, THE CONTRACTOR SHALL BACKFILL THE DRAIN AREA WITH STRUCTURAL FILL.
5. ACTUAL FIELD CONDITIONS DURING TRENCHING MAY REQUIRE ADDITIONAL PAVEMENT REPAIR BEYOND THE LIMITS SHOWN ON THE PLAN. THE FOLLOWING CONDITIONS ARE LISTED IN SECTION 6000 OF THE ACHD POLICY MANUAL.
   1. ALL ASPHALT MATCH LINES FOR PAVEMENT REPAIR SHALL BE PARALLEL TO THE CENTERLINE OF TH STREET AND INCLUDE ANY AREA DAMAGED BY EQUIPMENT DURING TRENCHING OPERATIONS.
   2. IF THE CUMULATIVE DAMAGED PAVEMENT AREA EXCEEDS 50% OF THE TOTAL ROAD SURFACE, CONTRACTOR SHALL REPLACE THE ENTIRE ROADWAY SURFACE.
   3. CONTRACTOR SHALL REPLACE THE PAVEMENT SURFACE TO ENSURE MATCH LINE DOES NOT FALL WITHIN THE WHEEL PATH OF A LANE.MATCH LINE SHALL ONLY FALL IN THE CENTER OR EDGE OF A TRAVEL LANE.
   4. FLOWABLE FILL OR IMPORTED MATERIAL MAY BE REQUIRED IF THE NATIVE TRENCH MATERIAL IS DEEMED UNSUITABLE BY ACHD INSPECTOR, DOES NOT MEET COMPACTION STANDARDS OR TIME IS A CRITICAL FACTOR.
   5. ANY EXCEPTIONS TO THESE RULES SHALL BE PRE-APPROVED IN WRITING BY DISTRICT STAFF BEFC CONSTRUCTION BEGINS.

P:\14-071\CAD\DESIGN\14-071 PRELIMINARY PUBLIC ROAD PLANS.DWG, MATT DEBS, 10/29/2015, DWG TO PDF.PC3, 11X17 LANDSCAPE

SITE INSPECTIONS, DOCUMENTATION OF MODIFICATIONS TO THE SWPPP AND OTHER REQUIREMENTS AS SET FORTH IN THE NPDES GENERAL PERMIT.

3. ALL CHANGES REQUIRE APPROVAL BY THE DESIGN ENGINEER AND ACHD.

4. ALL STORM SEWER LINES SHALL MEET THE MATERIALS REQUIREMENTS OF THE ADA COUNTY HIGHWAY DISTRICT.

5. MATERIAL QUANTITIES NOTED ON THESE PLANS OR PROVIDED IN A SEPARATE ITEMIZED QUANTITY TAKE-OFF ARE THE ENGINEERS OPINION OF PROBABLE MATERIAL QUANTITIES AND IS AN ESTIMATE ONLY. THE CONTRACTOR HAS THE SOLE RESPONSIBILITY OR PREPARING HIS OWN QUANTITY TAKE-OFF AND BID PRICE ON HIS UNDERSTANDING OF THE QUANTITIES, SOIL, CHARACTERISTICS, AND CURRENT CONSTRUCTION PRACTICES.

6. THE CONTRACTOR SHALL PROVIDE AND INSTALL STORM DRAIN MONUMENTS TO IDENTIFY ALL STORM DRAIN MANHOLES, SEDIMENT BOXES, DROP INLETS, AND OTHER PIPE JUNCTIONS OR TERMINUSES IN ACCORDANCE WITH SECTION 8018 OF THE ACHD DEVELOPMENT POLICY MANUAL AND ISPWC SD-623.

STORM DRAIN MANHOLES & PIPE MATERIALS

1. ALL STORM DRAIN MANHOLES SHALL CONFORM TO THE FOLLOWING:

   - MANHOLES 48" IN DIAMETER SHALL CONFORM TO THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC) STANDARD DRAWING (SD) 611 WITH A 24" DEEP SUMP.
   - MANHOLES 54" TO 72" IN DIAMETER SHALL CONFORM TO ISPWC SD 613A WITH A 24" DEEP SUMP.
   - SHALLOW MANHOLES SHALL CONFORM TO ISPWC SD 615A WITH A 24" DEEP SUMP.

2. ALL STORM LINES SHALL CONFORM TO EITHER THE FOLLOWING: (NOTE: PLANS AND PROFILES REFER TO STORM DRAIN PIPE AS "PVC". FOR CLARIFICATION, STORM DRAIN PIPES MAY BE PVC MEETING THE REQUIREMENTS BELOW)

   - REINFORCED CONCRETE PIPE SHALL BE CLASS III OR GREATER CONFORMING TO ASTM C76. GASKETS SHALL BE WATERTIGHT AND CONFORM TO THE REQUIREMENTS OF ASTM C443.
   - SOLID WALL PVC PIPE 12" TO 15" IN DIAMETER SHALL CONFORM TO ASTM D3034 WITH A WALL THICKNESS CONFORMING TO SDR 35 OR APPROVED EQUIVALENT.
   - SOLID WALL PVC 18" TO 36" IN DIAMETER SHALL CONFORM TO ASTM F 679 WITH T-1 WALL THICKNESS OR APPROVED EQUIVALENT.
   - PVC METER CLASS PIPE (WHEN SPECIFIED ON CONSTRUCTION PLANS) 4" TO 12" IN DIAMETER SIZE SHALL CONFORM TO ANSI/AWWA C 900 SPECIFICATIONS OR APPROVED EQUIVALENT.
   - WATER CLASS PIPE 14" TO 36" IN DIAMETER SHALL CONFORM TO ANSI/AWWA C 905 SPECIFICATIONS OR APPROVED EQUIVALENT.

   NOTE: "APPROVED EQUIVALENT" IS DEFINED AS AN APPROVED SUBSTITUTION AGREED UPON BY BOTH THE ENGINEER AND THE ADA COUNTY HIGHWAY DISTRICT (ACHD). THE CONTRACTOR SHALL SUBMIT TO THE ENGINEER PRIOR TO SUBSTITUTING MATERIALS SPECIFIED ABOVE. A SUBSTITUTION REQUEST LETTER FOR APPROVAL OF ANY ALTERNATE MATERIALS.

LOT 4, BLOCK 2, NIBBLER SI
BOISE, ID

PRELIMINARY PUBLIC ROAD PLA

DRAWING STATUS:

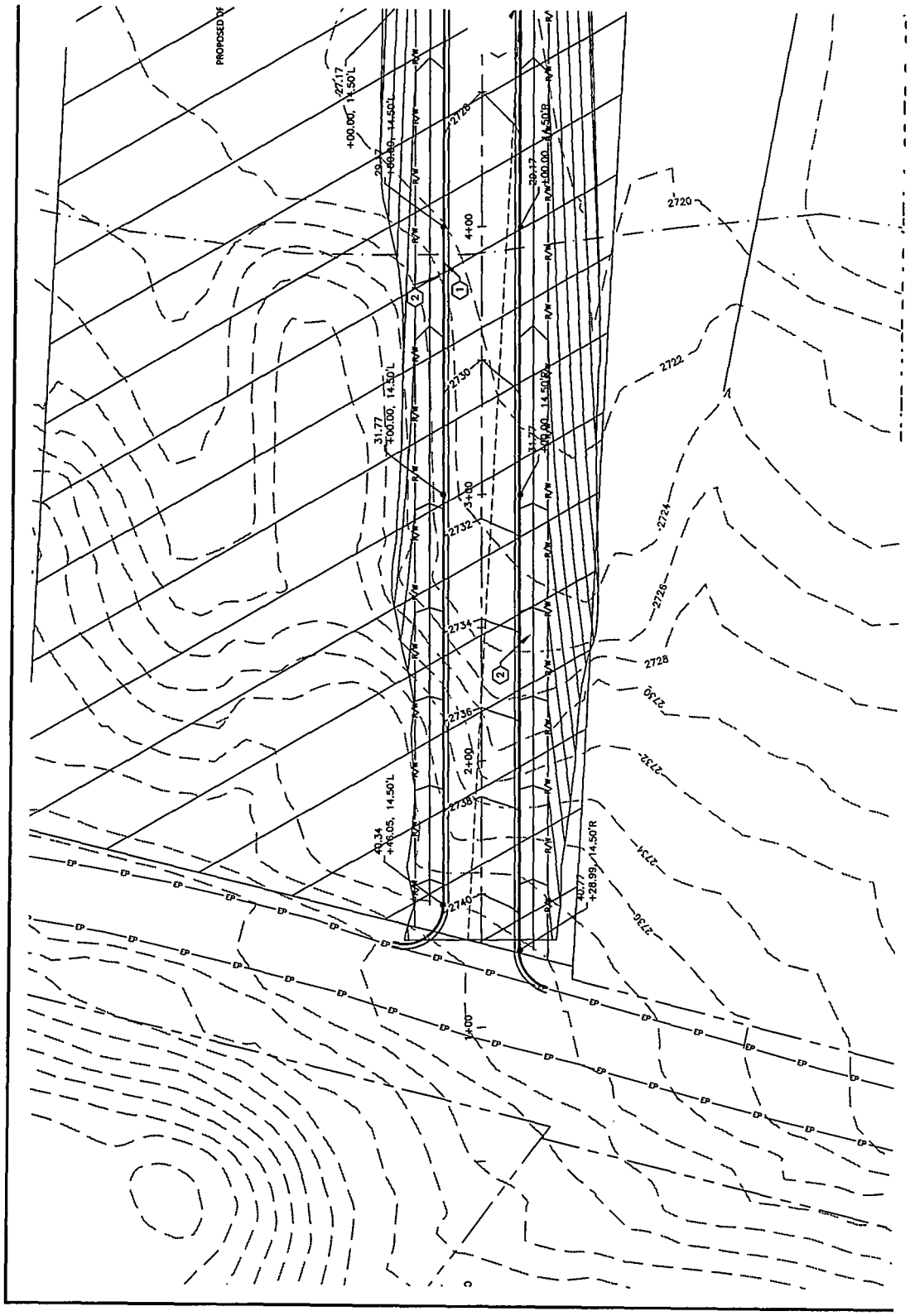
PRELIMINARY NOT FOR CONSTRUCTION

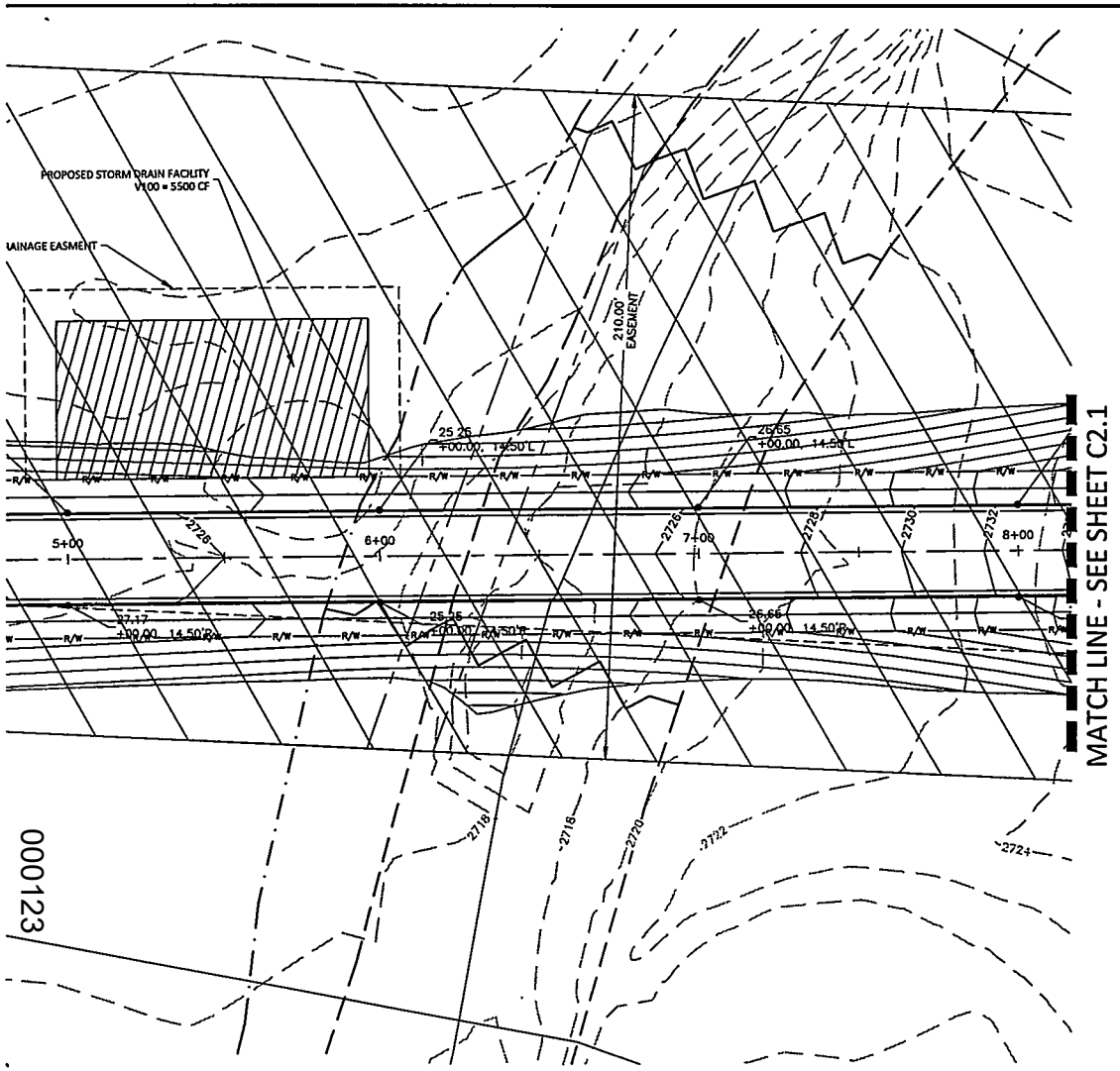
km ENGINEERING
ENGINEERS . SURVEYORS . PLANNERS
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE (208) 639-6939
FAX (208) 639-6930

DESIGN BY:	MSD
DRAWN BY:	MSD
CHECKED BY:	KPM
DATE:	10/20/15
PROJECT:	14-071

SHEET NO.

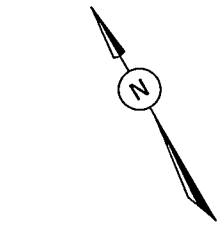
C1.1





MATCH LINE - SEE SHEET C2.1

000123



0 15 30 60 90

Plan Scale: 1"= 30 Feet

GRADING LEGEND

ELE. & DESCRIPTION / STA., OFFSET SIDE	FINISHED GROUND ELEVATION
1.50%	FINISHED GRADE SLOPE
GB	GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS:

STA:	– ROADWAY STATION FROM CENTERLINE
CL	– ROADWAY CENTERLINE
PC	– POINT OF CURVATURE
PT	– POINT OF TANGENCY
ELEV	– ELEVATION
L	– STATION OFFSET LEFT
R	– STATION OFFSET RIGHT
TBC	– TOP BACK OF CURB
RIM	– RIM OF STRUCTURE
LIP	– LIP OF GUTTER
MA	– MATCH EXISTING
SW	– SIDEWALK
EP	– EDGE OF PAVEMENT
FL	– FLOW LINE
TOC	– TOP OF CONCRETE
HP	– HIGH POINT

SHEET NOTES

1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%. NO TOLERANCES WILL BE ALLOWED.

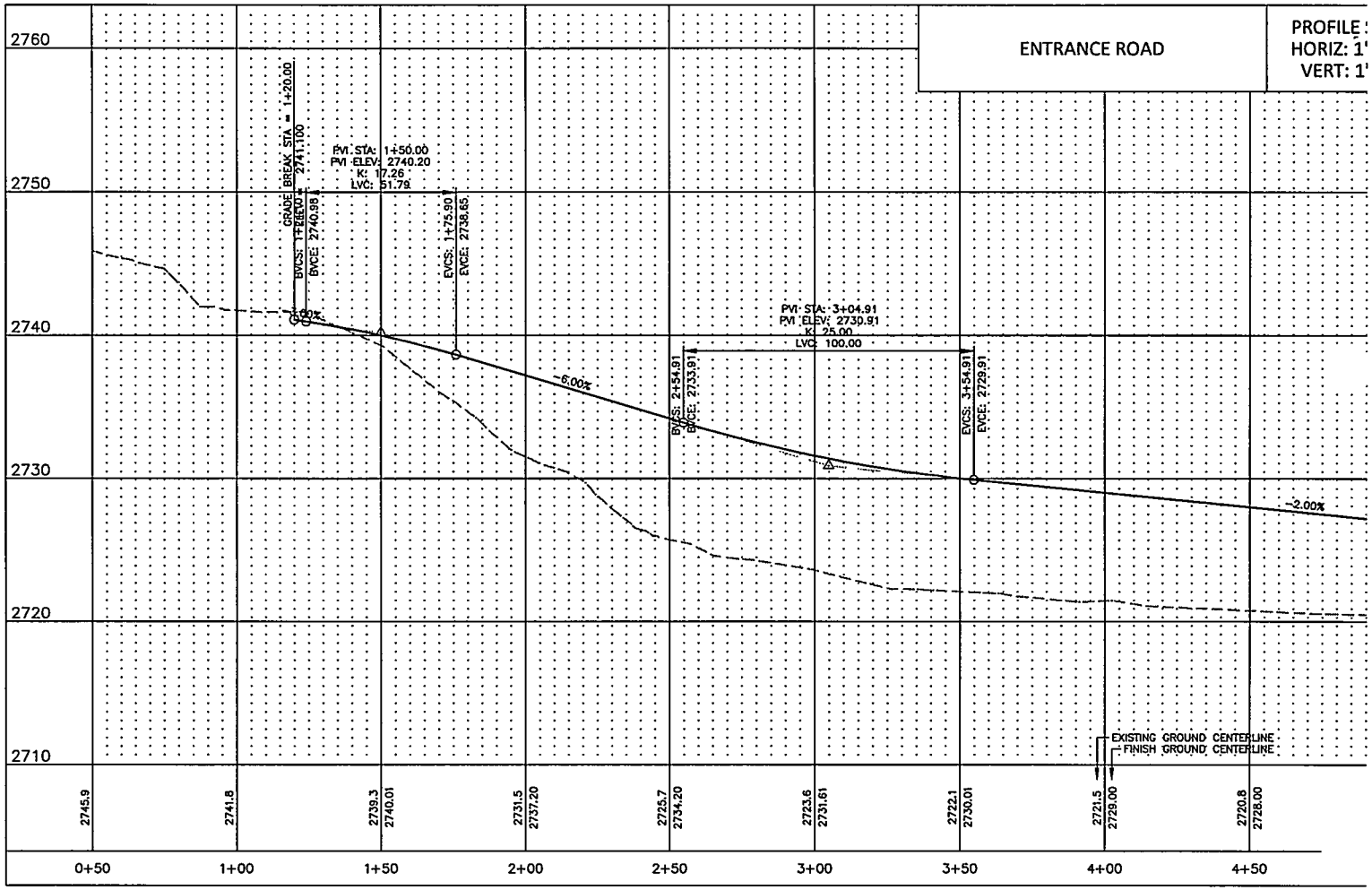
REVISIONS

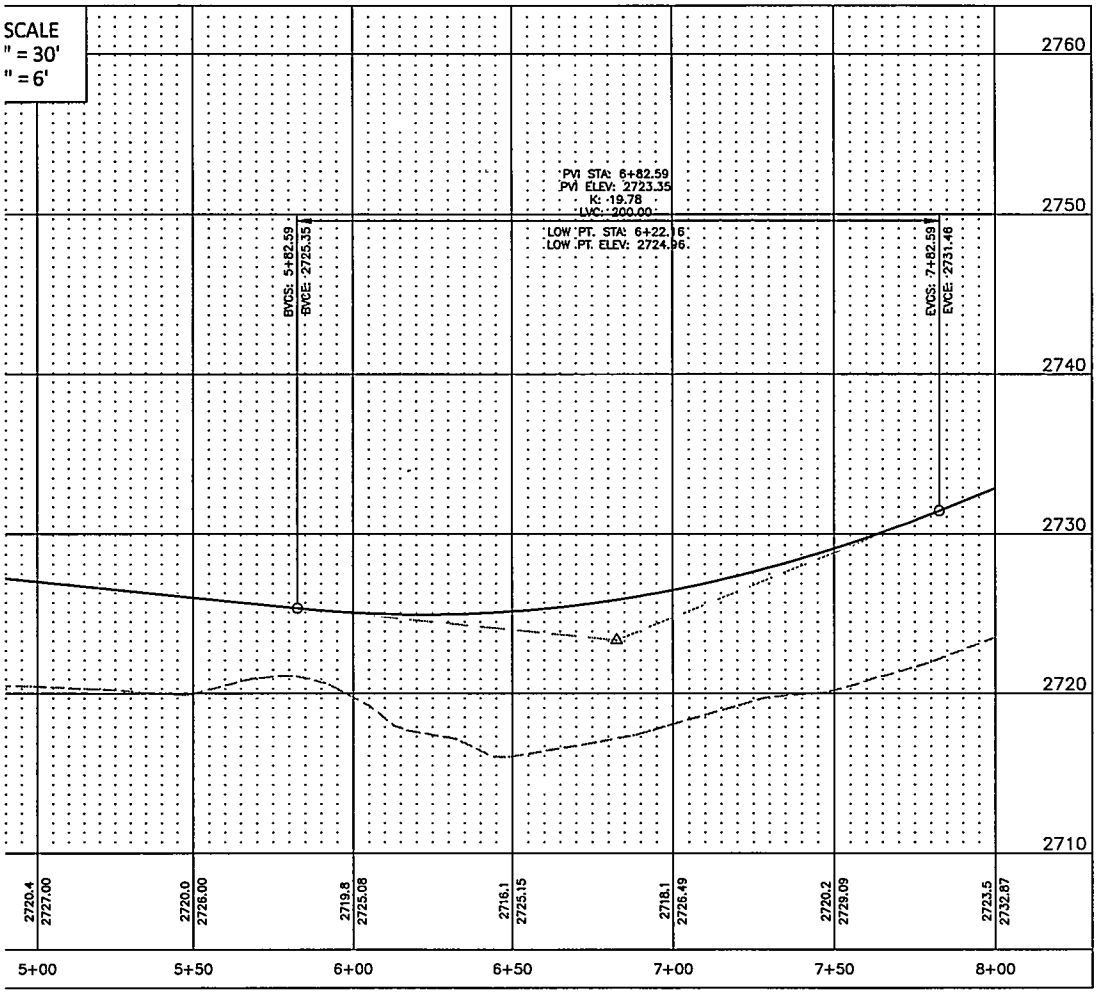
NO.	ITEM	DATE

UBDIVSION

AN AND PROFILE

ENTRANCE ROAD (STA 1+00 TO 8+00





4. SEE SHEET C3.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

KEYNOTES

1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-709.
3. SAWCUT (2' MINIMUM INTO EXISTING PAVEMENT) AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-806, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH KICK PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132A. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE III TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132B. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

LOT 4, BLOCK 2, NIBBLER SI
BOISE, ID

PRELIMINARY PUBLIC ROAD PLA

DRAWING STATUS:

PRELIMINARY NOT FOR CONSTRUCTION

km ENGINEERING
ENGINEERS . SURVEYORS . PLANNERS
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE (208) 639-6939
FAX (208) 639-6930

DESIGN BY:	MSD
DRAWN BY:	MSD
CHECKED BY:	KPM
DATE:	10/20/15
PROJECT:	14-071

SHEET NO.
C2.0

GRADING LEGEND

ELE. & DESCRIPTION STA., OFFSET SIDE	FINISHED GROUND ELEVATION
1.50%	FINISHED GRADE SLOPE
GB	GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS:

STA:	- ROADWAY STATION FROM CENTERLINE
CL	- ROADWAY CENTERLINE
PC	- POINT OF CURVATURE
PT	- POINT OF TANGENCY
ELEV	- ELEVATION
L	- STATION OFFSET LEFT
R	- STATION OFFSET RIGHT
TBC	- TOP BACK OF CURB
RIM	- RIM OF STRUCTURE
LIP	- LIP OF GUTTER
MA	- MATCH EXISTING
SW	- SIDEWALK
EP	- EDGE OF PAVEMENT
FL	- FLOW LINE
TOC	- TOP OF CONCRETE
HP	- HIGH POINT

SHEET NOTES

1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%. NO TOLERANCES WILL BE ALLOWED.

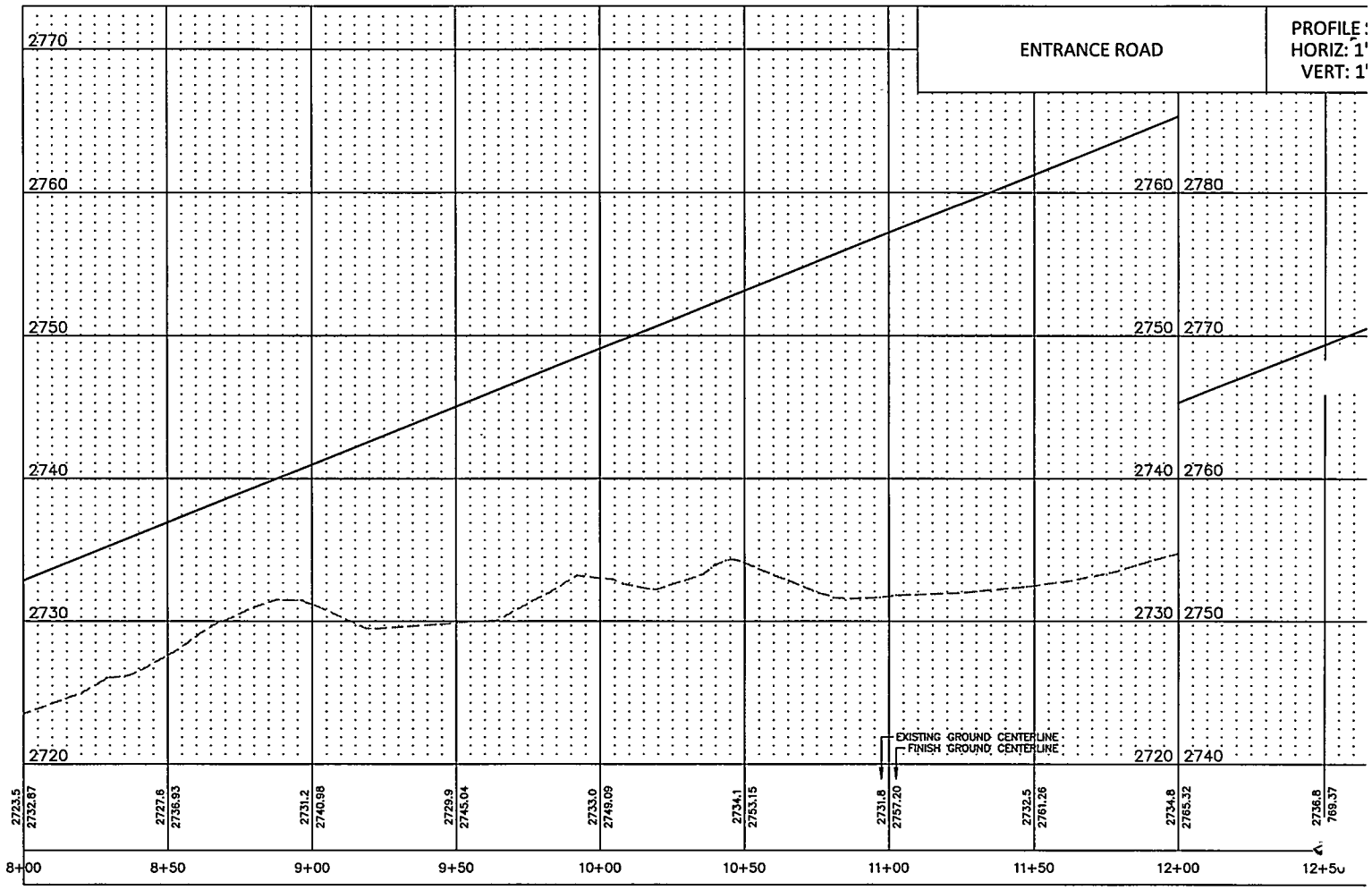
REVISIONS

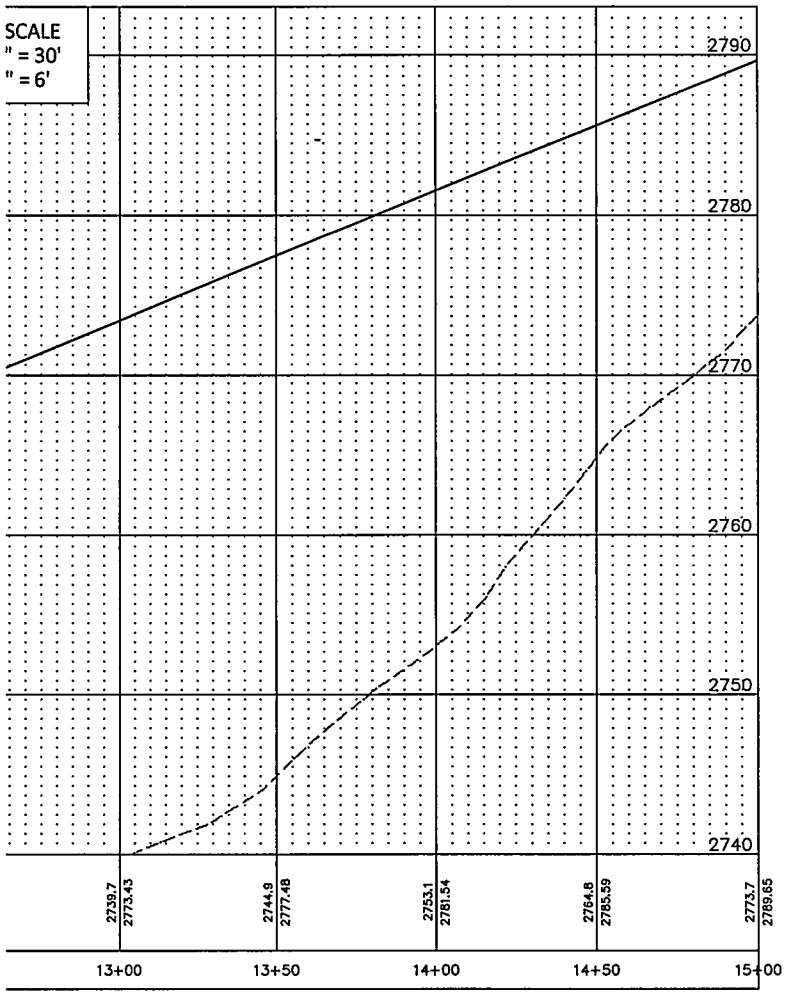
NO.	ITEM	DATE

UBDIVSION

AN AND PROFILE

ENTRANCE ROAD (STA 8+00 TO 15+0C





4. SEE SHEET C3.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

KEYNOTES

1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-709.
3. SAWCUT (2' MINIMUM INTO EXISTING PAVEMENT) AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-806, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH KICK PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132A. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE III TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132B. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

LOT 4, BLOCK 2, NIBBLER SI
BOISE, ID

PRELIMINARY PUBLIC ROAD PLA

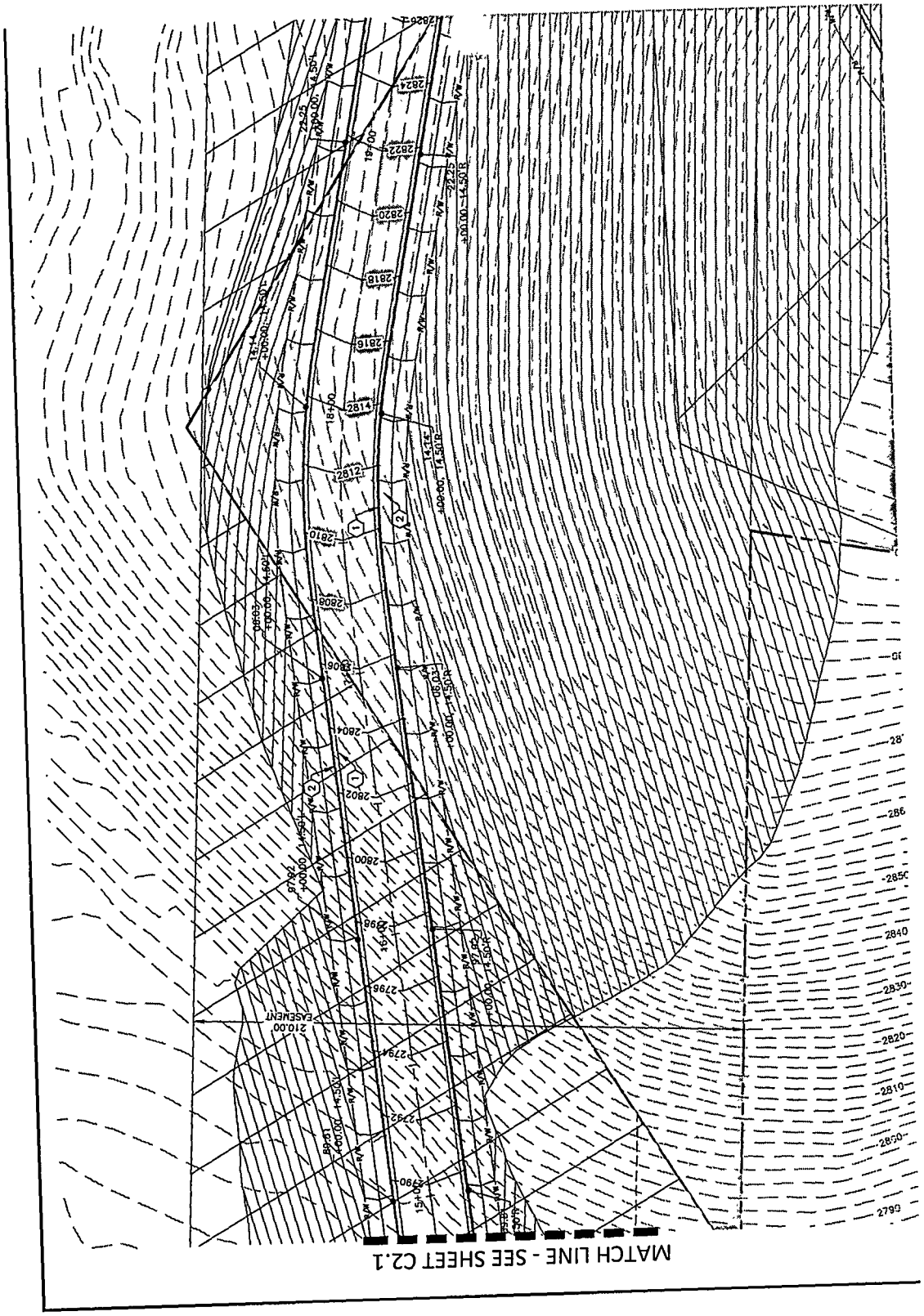
DRAWING STATUS:

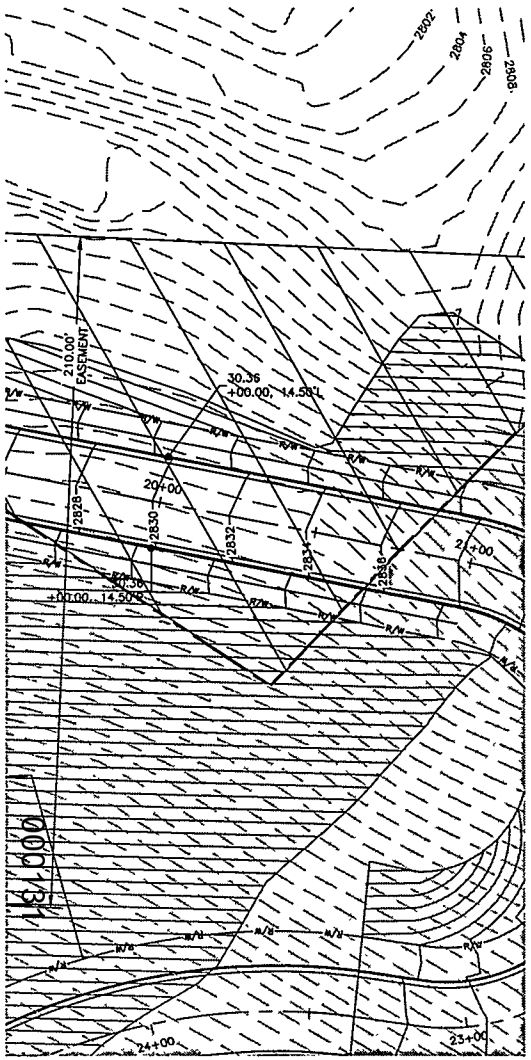
PRELIMINARY NOT FOR CONSTRUCTION

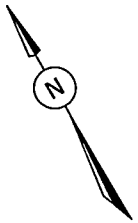
km ENGINEERING
ENGINEERS . SURVEYORS . PLANNERS
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE (208) 639-6939
FAX (208) 639-6930

DESIGN BY:	MSD
DRAWN BY:	MSD
CHECKED BY:	KPM
DATE:	10/20/15
PROJECT:	14-071

SHEET NO.
C2.1







0 15 30 60 90

Plan Scale: 1"= 30 Feet

GRADING LEGEND

ELE. & DESCRIPTION STA., OFFSET SIDE	FINISHED GROUND ELEVATION
1.50%	FINISHED GRADE SLOPE
GB	GRADE BREAK

CIVIL ACRONYMS

ALL GRADES ARE TO TOP BACK OF CURB UNLESS NOTED AS FOLLOWS:

STA:	– ROADWAY STATION FROM CENTERLINE
CL	– ROADWAY CENTERLINE
PC	– POINT OF CURVATURE
PT	– POINT OF TANGENCY
ELEV	– ELEVATION
L	– STATION OFFSET LEFT
R	– STATION OFFSET RIGHT
TBC	– TOP BACK OF CURB
RIM	– RIM OF STRUCTURE
LIP	– LIP OF GUTTER
MA	– MATCH EXISTING
SW	– SIDEWALK
EP	– EDGE OF PAVEMENT
FL	– FLOW LINE
TOC	– TOP OF CONCRETE
HP	– HIGH POINT

SHEET NOTES

1. SEE SHEET C1.1 FOR GENERAL AND ROADWAY NOTES.
2. SEE SHEET C1.1 FOR TYPICAL ROAD SECTION.
3. SIDEWALK CROSS SLOPE SHALL NOT EXCEED 2.0%. NO TOLERANCES WILL BE ALLOWED.

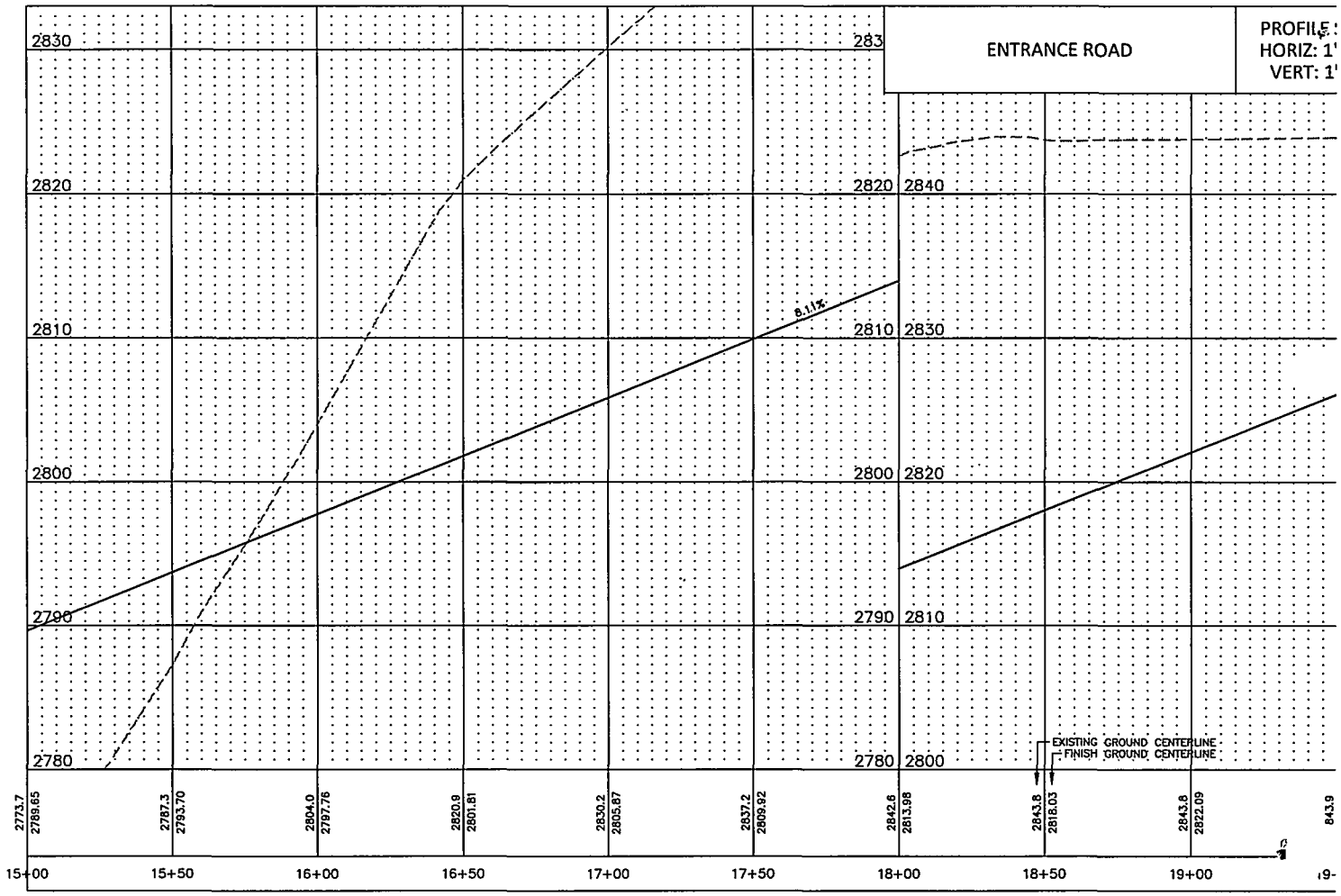
REVISIONS

NO.	ITEM	DATE

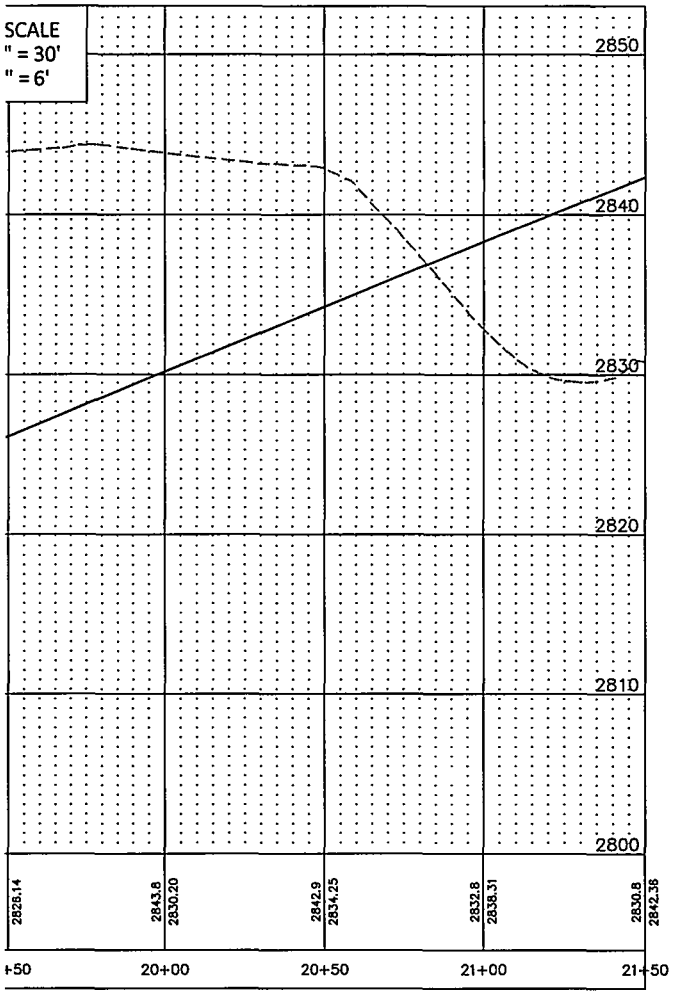
UBDIVSION

AN AND PROFILE

ENTRANCE ROAD (STA 15+00 TO 21+5



0)



4. SEE SHEET C3.0 FOR ADDITIONAL STORM WATER DRAINAGE INFORMATION.

KEYNOTES

1. INSTALL 6" VERTICAL CURB AND GUTTER PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-701.
2. INSTALL CONCRETE SIDEWALK PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-709.
3. SAWCUT (2' MINIMUM INTO EXISTING PAVEMENT) AND PAVEMENT PATCH PER ISPWC SD-301, SD-303, SD-806, AND ACHD REQUIREMENTS.
4. INSTALL TYPE II TERMINUS BARRICADE WITH KICK PLATE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132A. BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.
5. INSTALL TYPE III TERMINUS BARRICADE PER ACHD SUPPLEMENTAL STANDARD DRAWING SD-1132B. INCLUDE A SIGN THAT STATES "THIS ROADWAY TO BE EXTENDED IN THE FUTURE". BARRICADE SHALL HAVE THICKENED EDGE ALUMINUM WITH 6" WIDE REFLECTIVE RED/WHITE DIAGONAL DECALS.

LOT 4, BLOCK 2, NIBBLER SI
BOISE, ID

PRELIMINARY PUBLIC ROAD PLA

DRAWING STATUS:

PRELIMINARY NOT FOR CONSTRUCTION

km ENGINEERING
ENGINEERS . SURVEYORS . PLANNERS
9233 WEST STATE STREET
BOISE, IDAHO 83714
PHONE (208) 639-6939
FAX (208) 639-6930

DESIGN BY:	MSD
DRAWN BY:	MSD
CHECKED BY:	KPM
DATE.	10/20/15
PROJECT:	14-071

SHEET NO.

C2.2

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 AFFIDAVIT OF REBECCA W. ARNOLD

STATE OF IDAHO)
) ss.
County of Ada)

REBECCA W. ARNOLD, being first duly sworn upon oath, deposes and says:

I am an attorney licensed to practice law in the State of Idaho since March 31, 1988, with Idaho State Bar Membership Number 3783. During my career as an attorney I have worked in private practice and I have been elected to the Ada County Highway Commission in 2004, 2008

and 2012 as well.

In 1991, I was employed at the law firm of Givens Pursley LLP in Boise, Idaho. One of my clients whom I worked with on a regular basis was Vancroft Corporation ("Vancroft"). During my representation of Vancroft, I worked with Mari Montgomery Jordan as well as Joseph Patrick Cange with regard to their real estate ventures.

One of the real estate projects being developed by Vancroft in 1991 was a parcel of land located off 36th Street in Boise, Idaho and known as Lot 4, Block 2 of Nibler Subdivision ("Development Parcel"). This property was owned by Vancroft for the purpose of developing it into a multi-lot residential subdivision. See depiction of parcel adjacent to golf course attached hereto as EXHIBIT "A" and incorporated herein by reference.

When I was working on the Development Parcel project in 1991, the requirement was in existence, just as it is today, that residential subdivisions have two public accesses for public safety purposes. Accordingly, in order to satisfy that requirement, Vancroft sought to obtain an access easement over the adjacent golf course property from Tee, Ltd. and Tommy and Roxanne Sanderson (the "Grantors").

In my role as Vancroft's attorney, I personally negotiated and drafted the terms of the PERMANENT EASEMENT AGREEMENT which is now involved in this litigation, a true and accurate copy of which is attached hereto as EXHIBIT "B" and incorporated herein by reference. This easement was signed by the parties in September 1991 and my name is actually reflected on Exhibit "C" to the PERMANENT EASEMENT AGREEMENT.

At the time that we drafted the PERMANENT EASEMENT AGREEMENT, the Grantors were in the process of filing the subdivision plat for the Nibler Subdivision which included the Quail Hollow Golf Course. My client, Vancroft, needed access to its Development Parcel as part of the

overall development process then being undertaken by the Grantors. Accordingly, the primary purpose of the negotiations between Vancroft and Tee, Ltd./Sanderson was to secure a perpetual easement for ingress and egress across the golf course property for the benefit of the Development Parcel; this was the primary purpose of the PERMANENT EASEMENT AGREEMENT.

As is stated on the first page of the PERMANENT EASEMENT AGREEMENT, the easement was being granted to Vancroft for the purpose of providing access and utilities to the Development Parcel. At the time that we drafted the PERMANENT EASEMENT AGREEMENT, the parties agreed that forty (40') feet for the access and utility easement for the Development Parcel would be sufficient as a private road. However, because Vancroft intended to develop the parcel into a multi-lot residential subdivision, it was contemplated and agreed that the roadway would eventually be dedicated to the Ada County Highway District (ACHD) as a public road and the easement area would have to be expanded to comply with whatever ACHD's requirements for a public road would be at the time of dedication.

At the time that the PERMANENT EASEMENT AGREEMENT was drafted, we did not know when the actual dedication of the roadway would take place because the actual roadway still needed to be designed, approved and installed as well as dedicated to ACHD in accordance with its then-existing requirements. The anticipated dedication is expressly acknowledged in Paragraph 2 of the PERMANENT EASEMENT AGREEMENT wherein the following is stated:

> 2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

Because Vancroft would be pursuing its own development of the Development Parcel and would be improving the road in the future, the Grantors reserved the right to approve the plans for the roadway because of the future expansion and construction. Paragraph 4 of the PERMANENT EASEMENT AGREEMENT states in this regard the following:

> 4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees not to unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

At that time, we also knew that ACHD would have specific provisions relating to the size and other engineering requirements for the public roadway in order to be dedicated to ACHD for such a large residential subdivision. We specifically contemplated that, at the time of dedication, the roadway could and would be expanded in order to meet the requirements of ACHD. We therefore included in the PERMANENT EASEMENT AGREEMENT Paragraph 6 which reads as follows:

> 6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

I can therefore verify and confirm as one of the drafters of the PERMANENT EASEMENT AGREEMENT that it was the agreement and the intention of the parties to that instrument that the access roadway described in the PERMANENT EASEMENT AGREEMENT would be altered and expanded in order to meet the requirements of ACHD at the time of its eventual dedication to ACHD.

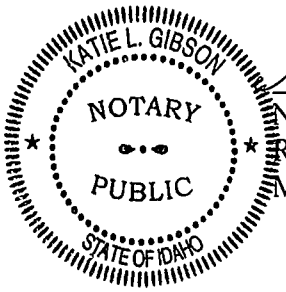
Additionally, at the time that the plat for the Nibler Subdivision was drafted and recorded, the Notes to it make specific reference to the fact that the accesses to the public roads would all have to meet the then-existing ACHD roadway requirements thereby further confirming that it was the intention of the parties to the PERMANENT EASEMENT AGREEMENT that the easement area be able to expand or be modified to meet the requirements of ACHD. A copy of the plat of the Nibler Subdivision as well as the notes, enlarged for convenient reading, are attached hereto as EXHIBIT "C" which is incorporated herein by reference.

As a result of my extensive experience of serving as a commissioner with the Ada County Highway Commission as well as my own experience of being a private attorney representing numerous real estate development companies before Boise City as well as ACHD, I am aware that the requirements of these public bodies for access to the public roads vary and are updated and amended from time to time and it is for this reason that we built language into the PERMANENT EASEMENT AGREEMENT ensuring that the Grantees would have the right and ability to expand and alter the access roadway in a reasonable manner to comply with the requirements of ACHD.

DATED this 30th day of September, 2015.

Rebecca W. Arnold

SUBSCRIBED AND SWORN to before me this 30th day of September, 2015.



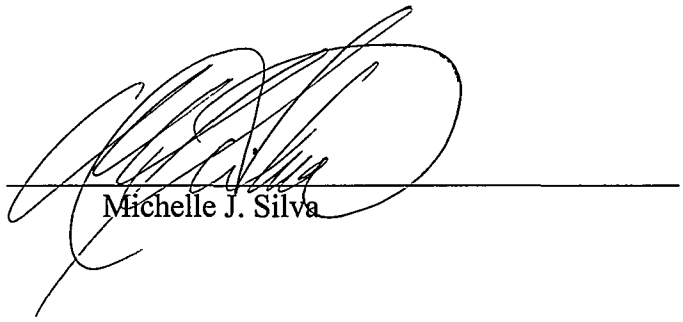
Katie L Gibson
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 01-13-2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

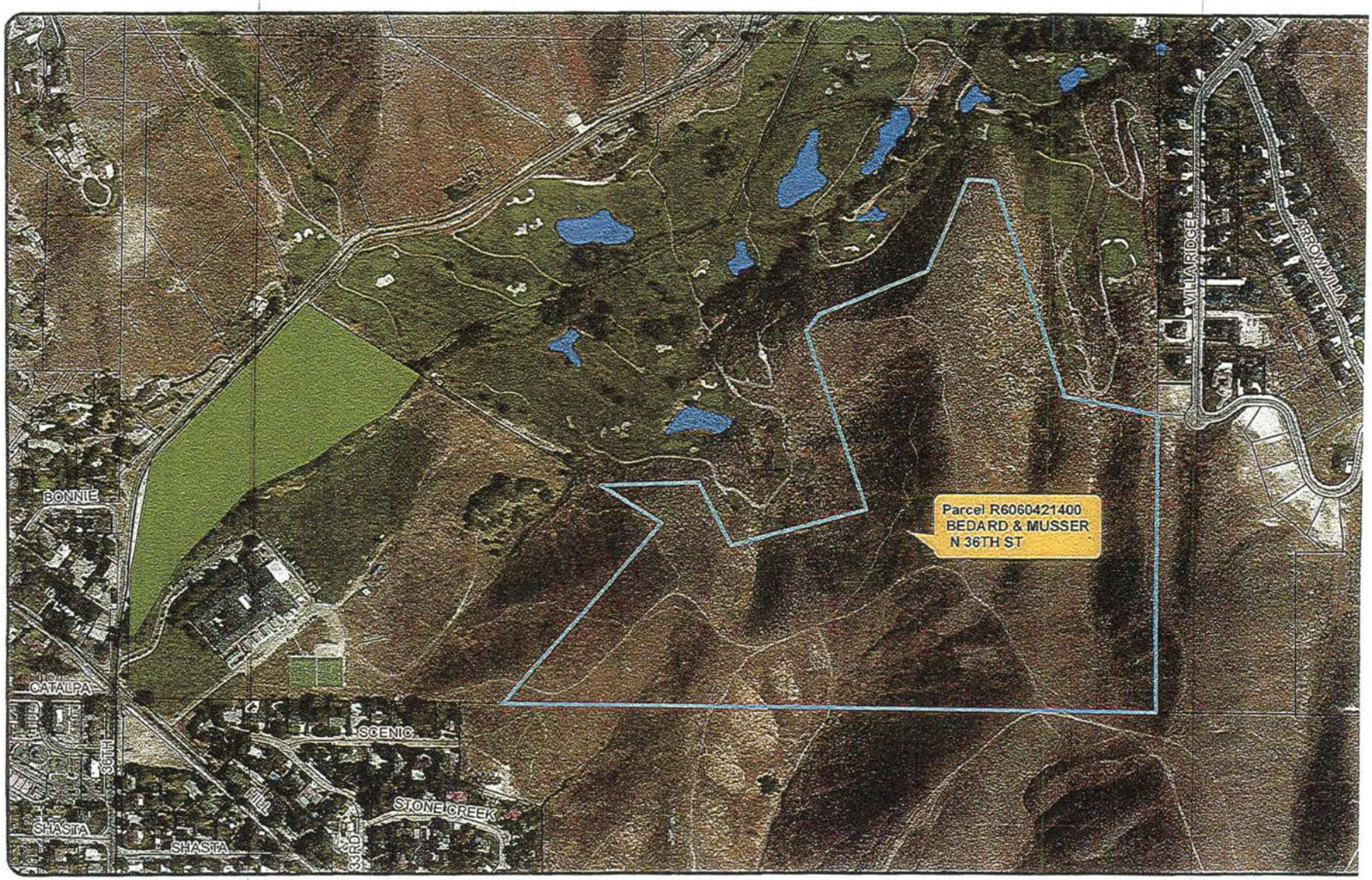
☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile (208) 384-4454
☐ Email



Michelle J. Silva

AFFIDAVIT OF REBECCA W. ARNOLD

EXHIBIT "A"



This Map and data displayed is a graphic representation derived from the Ada County Geographic Information System (GIS) data. It was designed and intended for staff use only; it is not guaranteed survey accuracy. This map is based on information available and was compiled from numerous sources which may not be accurate. Users are to field verify this information. Ada County and Single Point Solutions, llc are not liable for errors or omissions resulting from the use of this product for any purpose.

SPS Single Point Solutions
www.spsgis.com

000142

AFFIDAVIT OF REBECCA W. ARNOLD

EXHIBIT "B"

ST-9304912G (A)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Lebrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

3

1628001343

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

PERNANENT EASEMENT AGREEMENT - 3

1628001344

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TES, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at [illegible], Idaho
My Commission Expires: 2-1-95

LAWRENCE P. LOBB NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at Nampa, Idaho
My Commission Expires: 6/1/95

LAWRENCE P. LOBB NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Laura J. Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 8th 1998

NOTARY PUBLIC

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Mara O Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 6 1994

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 3.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

1628001349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5789)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°56'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 36th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-05

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

R-95%

BK 59 Pages 5177

1628001350

- Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

FD. ALUM. CAP 1/4 CORNER C.P.&F. INST.#8118240

FD. ALUM. CAP C.P.&F. INST.#8118240

FD. ALUM. CAP C.P.&F. INST.#8118240

11° W BEARING

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 49° 30' 38" E	300.23
2	N 66° 11' 45" E	369.56
3	N 86° 13' 01" E	369.83
4	N 84° 22' 38" E	378.17
5	N 35° 37' 09" E	409.18
6	N 22° 46' 35" E	418.97
7	N 45° 13' 29" E	283.33

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City Canal rights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8650182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

REGISTERED LAND SURVEYOR 4995 STATE OF IDAHO MICHAEL E. HARRIS 11/19/98

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

11-13-98

000154

Exhibit C

PLAT OF NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28, AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

1628001351

500 250 0 500 1000 1500

SCALE IN FEET

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

PART OF THIS PLAT

NOT

S 88° 17' 38" E 2670.60

LIMITS (January, 1992)

N 45° 02' 12" E 1892.60 CITY

BOISE

BLOCK (1)

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 1

LOT 2

BLOCK (2)

LOT 1

LOT 2

LOT 4

36TH

HAY

NORTH

NIMNE

28

CITY PARK

SUMMER

INITIAL POINT

N 48° 25' 32" W 205.94

N 45° 25' 00" E 60.25

S 89° 43' 00" W 1832.00

N 39° 54' 00" E 950.31

20' SEWER EASEMENT

40' ACCESS AND UTILITY EASEMENT TO LOT 4, BLOCK 2

N 00° 22' 32" E 686.10

N 00° 30' 20" E 1454.21

S 00° 06' 12" E 1983.44

S 00° 02' 29" W 2645.06

N 89° 26' 11"

BASIS OF BE

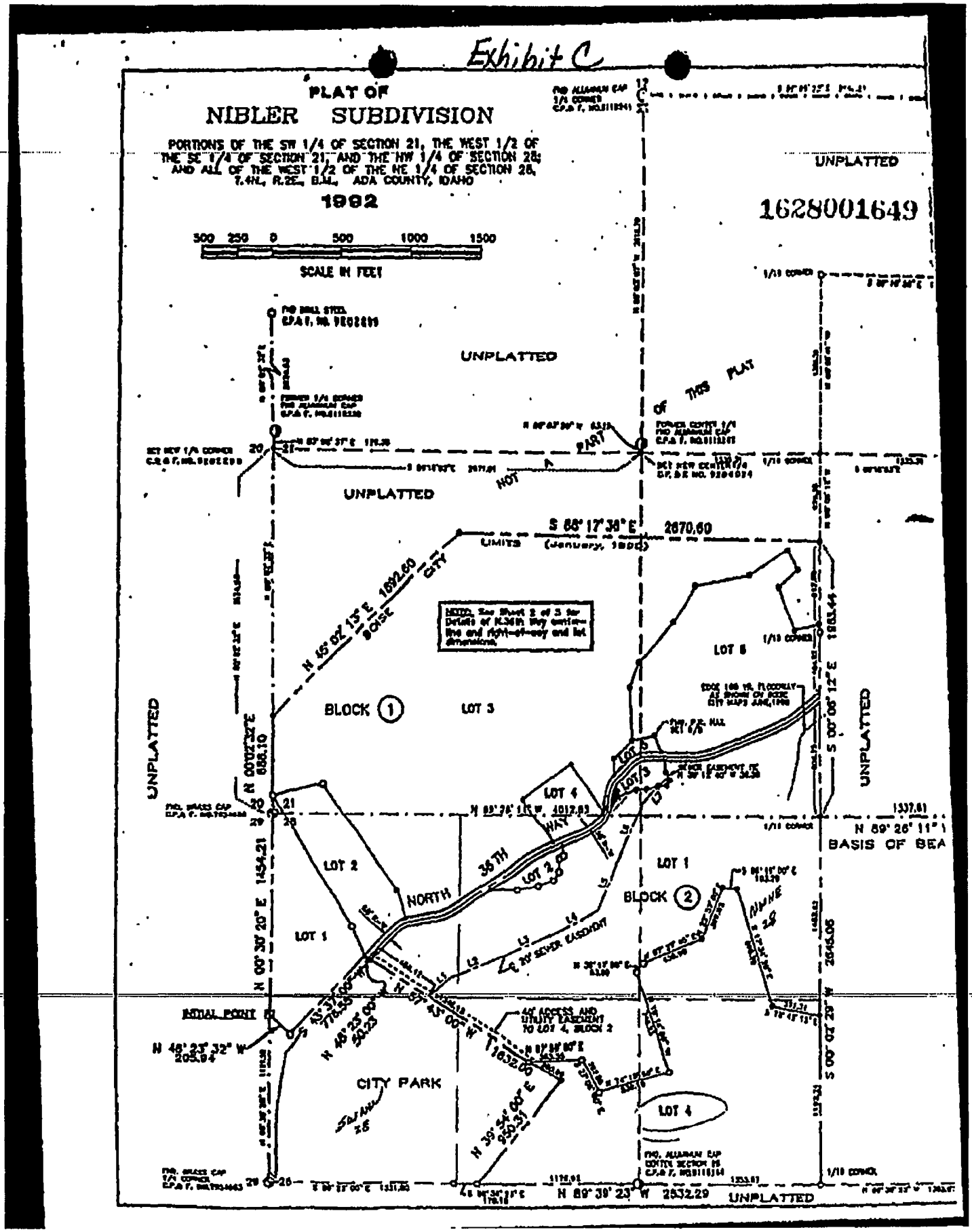
N 89° 39' 23" W 2532.29

UNPLATTED

AFFIDAVIT OF REBECCA W. ARNOLD

EXHIBIT "C"

Exhibit C


PLAT OF
NIBLER SUBDIVISION
PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO
1992
300 250 0 500 1000 1500
SCALE IN FEET
UNPLATTED
1628001649
UNPLATTED
UNPLATTED
PART OF THIS PLAT
NOT A
S 88° 17' 38" E 2670.60
CITY LIMITS (January, 1992)
N 45° 02' 13" E 1692.60 TO BOISE
BLOCK (1)
LOT 3
LOT 4
LOT 5
LOT 6
LOT 2
LOT 1
38TH NORTH WAY
BLOCK (2)
LOT 1
LOT 2
LOT 4
CITY PARK
INITIAL POINT
N 48° 23' 32" W 205.94
N 89° 39' 23" W 2532.29
UNPLATTED
UNPLATTED
UNPLATTED
BASIS OF BEA

Book 59 Page 5789

16280016 45

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
•	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
○	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar

Boundary Line
Section Line
1/4 Section Line
1/16 Section Line
Easement Line

21 22 FND. ALUMINUM CAP 1/4 CORNER C.P.&F. NO.8111824

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, same in effect at the time of issuance of a building permit.
3. Any construction of this platted area, except the easements, shall comply with the applicable Zoning Regulations in effect at the time of the recordation.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 36" E	200.23
2	N 66° 41' 41" E	399.58
3	N 66° 13' 01" E	399.83
4	N 82° 32' 36" E	378.17
5	N 24° 27' 09" E	409.18
6	N 21° 46' 35" E	418.87
7	N 45° 05' 28" E	285.93

37.61 21 22
6° 11" W 28 27
BEARING FD. ALUM. CAP C.P.&F. NO.8111824

FND. ALUMINUM CAP 1/4 CORNER C.P.&F. NO.8111824
28 27

REGISTERED LAND SURVEYOR 4998 STATE OF IDAHO MICHAEL E. HARRIS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

8-13-81

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of safe roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

INE SEWER
ENT DATA

ARING	DISTANCE
)° 38" E	200.23
° 44" E	399.58
)° 01" E	399.63
)° 38" E	376.17
)° 09" E	409.16
)° 35" E	418.97
)° 29" E	285.53

ST-9304126 (2)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

4

1628001344

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at [illegible], Idaho
My Commission Expires: 2/10/95

NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence R. Lobb
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 6/1/95

LAWRENCE R. LOBB NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 22nd 1998

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 5th 1995

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

PERMANENT EASEMENT AGREEMENT - 6

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

PERMANENT EASEMENT AGREEMENT - 7

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

1628001349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5786)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°56'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 36th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-06

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

R=95%

TOTAL P.01

11-04-93 04:09PM FROM #18

BK 59 Pages 5157

1628001350

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊕	Found Brass Cap
⊙	Found Aluminum Cap
•	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
o	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar
—— — — ——	Boundary Line
—— · —— · ——	Section Line
— — — —	1/4 Section Line
— — — — — —	1/16 Section Line
.....	Easement Line

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street rights over the ten (10) foot adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of safe roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 49° 30' 38" E	200.23
2	N 66° 11' 41" E	389.58
3	N 88° 13' 01" E	389.83
4	N 89° 32' 38" E	378.17
5	N 25° 27' 09" E	409.18
6	N 25° 46' 35" E	416.97
7	N 45° 52' 29" E	285.53

11° W BEARING

FND. ALUM. CAP C.P.& F. 8850182

FND. ALUMINUM CAP 1/4 CORNER C.P.& F. 8850182

REGISTERED LAND SURVEYOR 4998 STATE OF IDAHO MICHAEL E. BARNS

VICTOR L. NIBLER
Owner
Boise, Idaho

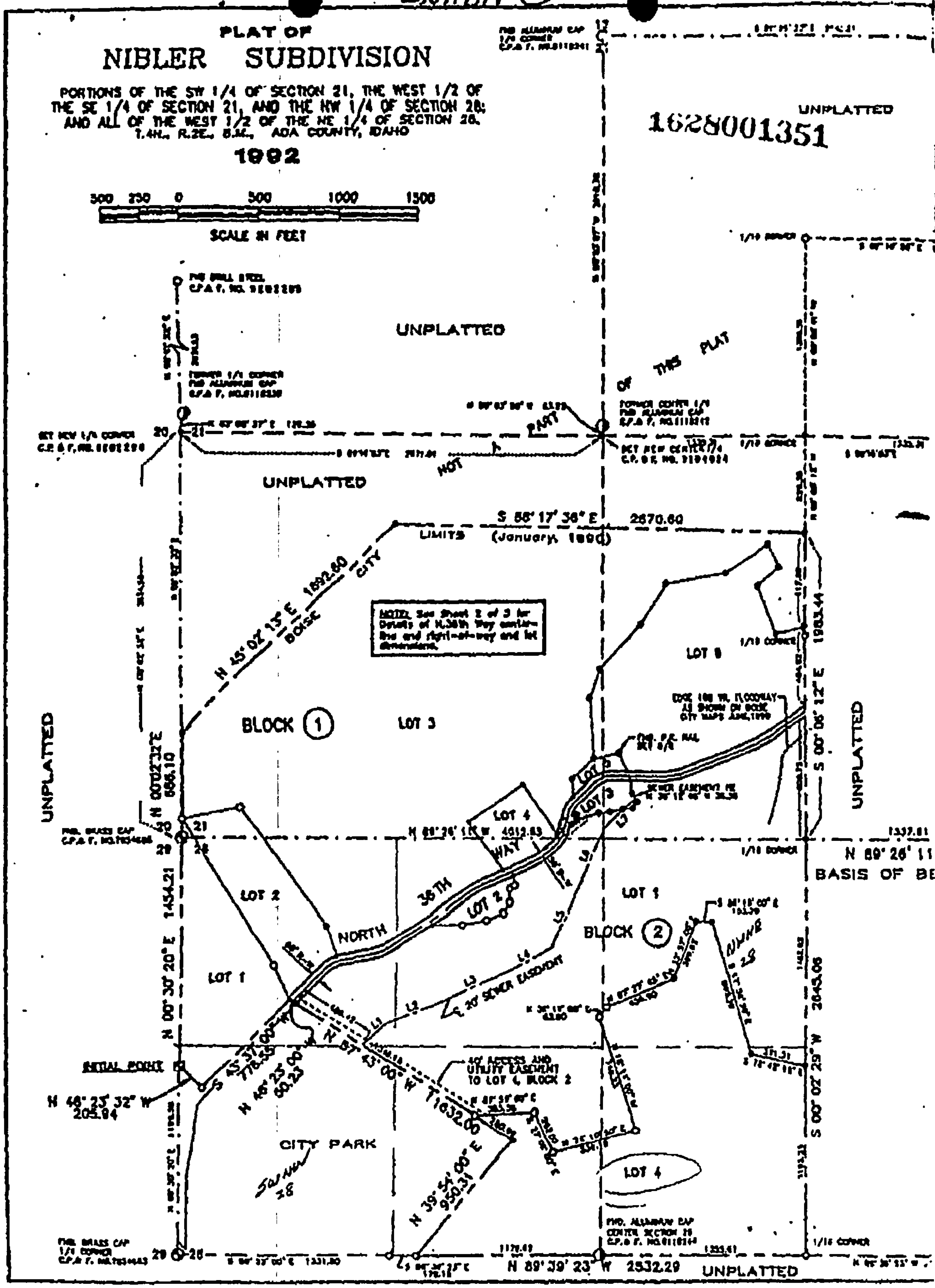
BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

01-13-82

12

Exhibit C


PLAT OF
NIBLER SUBDIVISION
PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28.
T.4N., R.2E., B.M., ADA COUNTY, IDAHO
1992
300 250 0 500 1000 1500
SCALE IN FEET
1628001351
UNPLATTED
NOT A PART OF THIS PLAT
S 88° 17' 36" E 2670.60
LIMITS (January, 1990)
N 45° 02' 13" E 1892.60
BOISE CITY
BLOCK 1
LOT 3
LOT 8
LOT 4
LOT 5
LOT 2
LOT 1
BLOCK 2
LOT 4
NORTH 36TH WAY
20' SEWER EASEMENT
N 00°02'32" E 566.10
N 00° 30' 20" E 1454.21
S 00° 06' 12" E 1983.44
S 00° 02' 29" W 2645.06
N 89° 26' 11
BASIS OF BE
INITIAL POINT
N 46° 23' 32" W 205.94
S 45° 37' 00" W 776.58
N 46° 23' 00" W 60.23
N 87° 43' 00" W 1632.00
N 39° 54' 00" E 950.31
40' ACCESS AND UTILITY EASEMENT TO LOT 4, BLOCK 2
CITY PARK
N 89° 39' 23" W 2532.29
UNPLATTED
1/16 CORNER

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiff
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 AFFIDAVIT OF DEAN W. BRIGGS, P.E.

STATE OF IDAHO)
) ss.
County of Ada)

DEAN W. BRIGGS, P.E., being first duly sworn upon oath, deposes and says:

I am a licensed professional engineer, structural engineer, and land Surveyor in Idaho. I have worked in the civil engineering consulting field since 1978. I am the President of Briggs Engineering, Inc ("BEI"). BEI is a consulting engineering firm providing civil engineering, structural engineering, land-use planning, and land surveying in Boise, Idaho.

During the late 1980's through early 1990's BEI was retained by Victor and Ruth Nibler to provide engineering, land-use planning, and land surveying services with respect to the platting and development of the Nibler Subdivision, located in Boise, Idaho. I supervised the drafting of the preliminary and final Nibler Subdivision plats and worked closely with the City of Boise and the Ada County Highway District (ACHD) during the plat review, revision, and approval process.

During the plat review and approval process, the City of Boise required that we make certain revisions to our preliminary plat before the City would approve it to become the final plat. The City was aware that the Nibler Subdivision, and its parcels and surrounding properties, might one day be developed into multi-residential subdivision(s) which would require vehicular access to the adjacent public roadways. Specifically, the City was aware that the road easement which runs from Lot 4, Block 2 of the Nibler Subdivision[1], across the Quail Hollow Golf Course to North 36th Street[2] would be developed and expanded in the future to provide adequate vehicular access to the Development Parcel and its adjacent parcels within and beyond the Nibler Subdivision. The City required that, at such time, the easement road would be brought into compliance with ACHD's requirements and specifications. Accordingly, the City specifically required that we include a notation on the plat to clarify that ACHD has jurisdiction and authority over any roads or applications to construct roads which would give the Nibler Subdivision direct vehicular access to North 36th Street, which is the main public road adjacent to the Nibler Subdivision and the Quail Hollow Golf Course.

The City's requirement that access to 36th Street be subject to ACHD's jurisdiction and approval was communicated to the Niblers and BEI by way of a letter from the City of Boise dated June 22, 1990. A true and accurate copy of this letter is attached hereto as EXHIBIT "A." At

[1] Defined as the "Development Parcel" in the MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, filed concurrently herewith.
[2] Then called North 36th *Way*.

Paragraph 15, the letter sets forth the City's requirement that access to 36th Street be subject to ACHD's jurisdiction and approval:

> "No direct lot access shall be allowed to North 36th Way... **unless otherwise approved by Ada County Highway District.**"

Id. at ¶ 15 (emphasis added).

Per the City's instructions, BEI revised the preliminary plat so that the final plat does reflect the City's requirement that access to 36th Street be subject to ACHD's jurisdiction, control, and approval. The final Nibler Subdivision plat was executed and recorded on January 29, 1991, as Instrument No. 9205592. A true and accurate copy of the plat, which I personally supervised, is attached hereto as EXHIBIT "B" and is incorporated herein by this reference. Note "5" of the Plat contains the City's required notation:

> 5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, **unless said primary access is specifically approved by the Ada County Highway District.**

Id. at 1 (emphasis added).

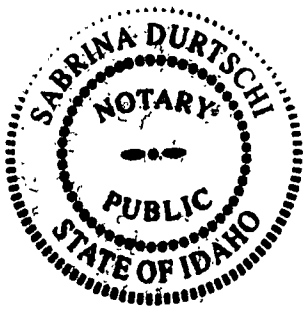
Later, in 1993, the Niblers and Vancroft, Inc. ("Vancroft") negotiated a PERMANENT EASEMENT AGREEMENT whereby Vancroft would secure a vehicular access easement across the Quail Hollow Golf Course to North 36th Street. A true and accurate copy of the PERMANENT EASEMENT AGREEMENT is attached hereto as EXHIBIT "C." Though BEI did not participate in those negotiations, both parties requested certain information from BEI in order to draft their agreement. Specifically, the Niblers and Vancroft requested that BEI provide the then-existing road width requirements for both private and public roads. It was communicated to BEI that the parties intended that the easement road would initially be of a limited width sufficient to satisfy the then-existing requirements of a private road, and that the road would be expanded to meet ACHD's requirements if it was later converted to public road and dedicated to ACHD.

Accordingly, BEI advised Nibler and Vancroft that an easement width of 40' would satisfy the then-existing requirements for a private road; BEI advised that ACHD would require a width in excess of that amount when the road was converted to a public road.

DATED this 4th day of November, 2015.

Dean W. Briggs, P.E.

SUBSCRIBED AND SWORN to before me this 4th day of November, 2015.



Notary Public for Idaho
Residing at: Boise Idaho
My Commission Expires: 4-19-18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile (208) 384-4454
☐ Email

Michelle J. Silva

EXHIBIT "A"

TO
AFFIDAVIT OF DEAN W. BRIGGS, P.E.

PUBLIC WORKS DEPARTMENT
CITY HALL
4TH FLOOR

BOISE
CITY OF TREES

June 22, 1990

Victor L. Nibler
4705 North 36th Street
Boise, ID 83703

RE: Nibler Subdivision BCS 4-90
Preliminary and Final Plat

Dear Mr. Nibler:

This letter is to inform you of the action taken by the Boise City Council on the preliminary and final plat of Nibler Subdivision.

The Council, at their meeting of June 19, 1990, approved the preliminary and final plat subject to compliance with the following conditions:

1. Developer and/or owner shall comply with all requirements of Ada County Highway District including approval of the drainage plan, requirements for installing curb, gutter, sidewalks and paving throughout the subdivision or as specified by the Ada County Highway District. Signature by the Ada County Highway District on the plat is required prior to signing of the final plat by the Boise City Engineer (I.C. Title 50, Chapter 13).

2. Correct street names as approved by the Ada County Street Name Committee shall be placed on the plat prior to signing of said plat by the Boise City Engineer (B.C.C. 9-20-6).

3. A letter of acceptance for water service from the utility providing same is required prior to signing of the final plat by the Boise City Engineer (B.C.C. 9-20-8.3).

4. Approval of sewer and water facilities by the Regional Health and Welfare Environmental Services Office is required and signature by the Ada County Central District Health Department is required prior to signing of the final plat by the Boise City Engineer (I.C. Title 50, Chapter 13).

5. Minimum building setback lines shall be in accordance with the zoning ordinance at the time of issuance of the building permit or as specifically approved.

All lot, parcel and tract sizes shall meet dimensional standards established in the zoning ordinance or as specifically approved (B.C.C. 9-20-7.3.1).

6. Prior to submitting the final plat for recording, the following endorsements or certifications must be executed: Signatures of owners or dedicators, Certificate of the Surveyor, Certificate of the County Engineer, Certificate of Central District Health Department, Certificate of the City Engineer and City Clerk and signatures of the Commissioners of the Ada County Highway District and the Ada County Treasurer (I.C. Title 50, Chapter 13).

7. Developer shall comply with Chapters 5 and 6 of Title 11, Boise City Code, pertaining to floodplain and river protection regulations prior to submitting the final plat for signature by the City Engineer.

8. A letter from the Boise City Fire Department is required stating "the developer and/or owner has made arrangements to comply with all requirements of the Fire Department," prior to signing of the final plat by the Boise City Engineer (B.C.C. 9-20-8.3.2).

9. A note on the face of the final plat is required stating: "No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise."

10. The roadway which will be placed on the plat is currently subject to litigation and possible interpretation under F.E.M.A. regulations which may change the location of the roadway as shown on the plat.

11. A note on the face of the final plat is required which states: "All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code."

12. Wet line sewers are required and the developer shall furnish the Department of Public Works with a letter from the sewer entity serving the property, accepting the project for service prior to signin of the final plat by the City Engineer (B.C.C. 9-20-8.4).

13. Developer and/or owner shall provide utility easements as required by the public utility providing service prior to signing of the final plat by the Boise City Engineer (B.C.C. 9-20-7.6).

14. A note on the face of the final plat is required stating: "Any new development, separate principle structures, will require improvement to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat."

15. A note on the face of the final plat is required stating: "No direct lot access shall be allowed to North 36th Way, except for existing uses on Lots 3 and 4, Block 1 and Lots 2 and 3, Block 2, unless otherwise approved by Ada County Highway District."

OK PWE 12/18/91 Plans Approved by HDHD 9/11/91 Copy of Plans to PWE CSF File

16. The preliminary design for North 36th Way showing the extent of grading from the westerly boundary of Lot 2, Block 2 to the easterly boundary of Lot 3, Block 2 shall be submitted, reviewed and approved by Ada County Highway District and the City Engineer prior to signing of the final plat by the City Engineer.

A. Should easements be required for grading outside the public right-of-way, said easements shall be delineated on the face of the final plat prior to certification by the City Engineer.

OK PWE 12/18/91 17. Developer and/or owner shall delineate on the face of the final plat a Boise City street light easement, acceptable to the Department of Public Works, for the purpose of installing and maintaining city-owned street light fixtures, conduit and wiring lying outside the dedicated public right-of-way, prior to signing of the final plat by the Boise City Engineer (B.C.C. 9-20-7.6).

INFO ONLY 18. The City waives no existing conditional use requirements and issues relating to conditional uses will be dealt with at a later point in the planning process.

If you have any questions, please call me at 384-4292.

Sincerely,

Terry A. Simmons
Subdivision Review Analyst

TAS/mm

cc: Boise City Building Department
Nancy Bowser - Central District Health
Tom Evans - HUD
A.C.H.D.
Boise City Fire Department
Briggs Engineering, Inc., 1111 S. Orchard St., Suite 600, Boise, ID 83705

SF - BCS 4-90
CF

SWP/NIBLER.ACT
TAS/mm

EXHIBIT "B"

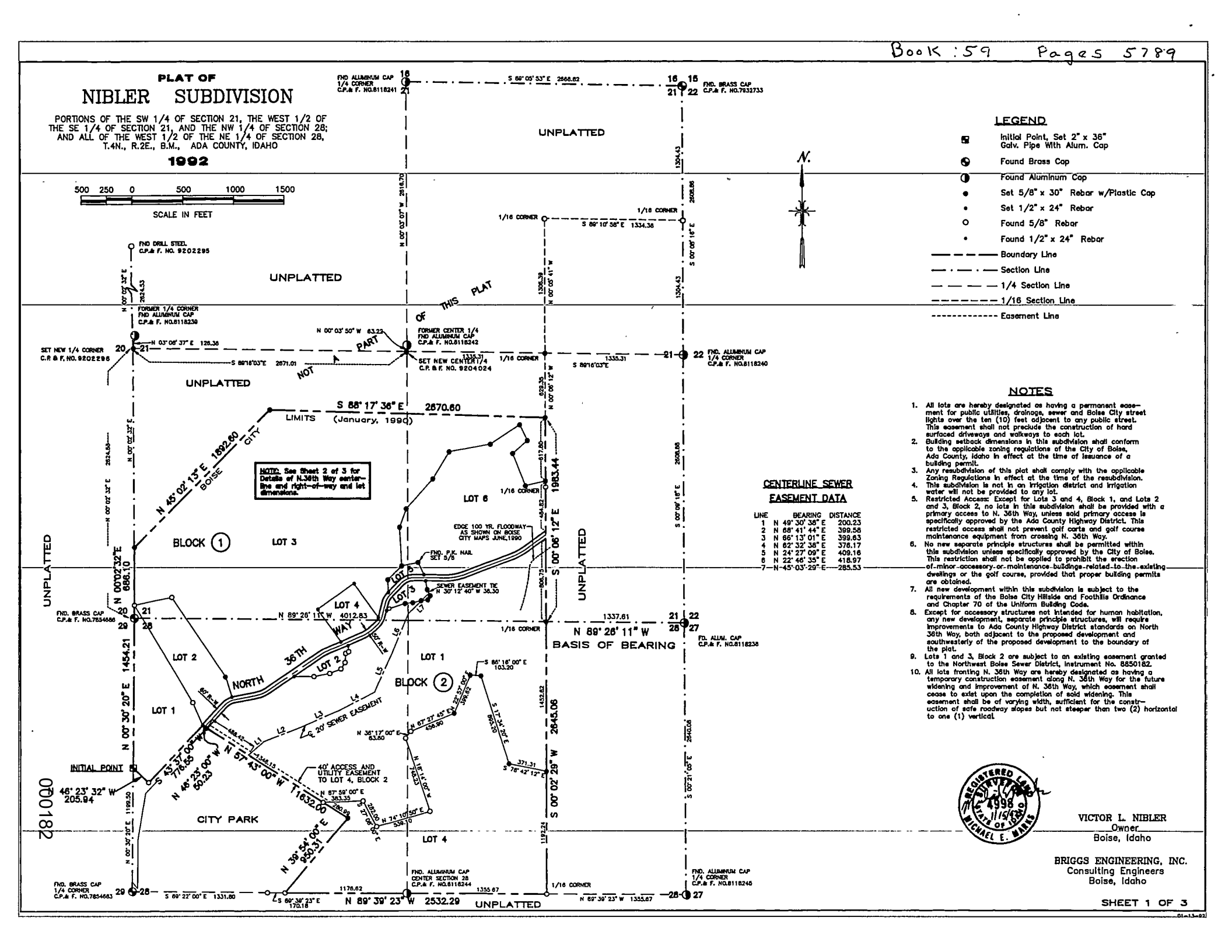
TO
AFFIDAVIT OF DEAN W. BRIGGS, P.E.

Book : 59 Pages 5789

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992



LEGEND

- Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 49°30'38" E	200.23
2	N 68°41'44" E	399.58
3	N 66°13'01" E	399.63
4	N 82°32'38" E	376.17
5	N 24°27'09" E	409.16
6	N 22°46'35" E	418.97
7	N 45°03'29" E	285.53

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of safe roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

REGISTERED LAND SURVEYOR 4998 STATE OF IDAHO MICHAEL E. MANNS 11/15/92

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

00182

Book : 59 Pages 5790

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

200 100 0 200 400 600

SCALE IN FEET

LIMITS (January, 1990)

CITY BOISE

S 88° 17' 36" E 2670.60

N 45° 02' 15" E 1892.60

CURVE DATA

CURVE	DELTA	RADIUS	ARC	CHORD	TANGENT	CHORD BRG
1	36° 29' 00"	200.00	127.35	125.21	65.82	S 81° 28' 30" W
2	23° 45' 00"	375.00	155.22	154.12	78.74	N 67° 51' 30" E
3	10° 30' 00"	400.00	73.30	73.20	36.75	S 81° 15' 00" W
4	18° 30' 00"	360.00	125.93	125.36	63.52	N 57° 15' 00" E
5	34° 00' 00"	180.00	106.81	105.25	55.03	N 31° 00' 00" E
6	30° 36' 00"	180.00	96.13	94.99	49.24	S 29° 15' 00" W
7	46° 24' 00"	180.00	145.77	141.82	77.15	S 67° 45' 00" W
8	21° 48' 00"	525.00	199.73	198.55	101.10	N 80° 09' 00" E
9	15° 12' 00"	750.00	198.97	198.38	100.07	N 81° 36' 00" E
10	36° 29' 00"	170.00	108.25	106.43	56.03	S 81° 28' 30" W
11	29° 13' 30"	230.00	117.31	116.04	59.96	S 87° 50' 45" W
12	7° 15' 30"	230.00	29.15	29.13	14.59	S 76° 05' 15" W
13	23° 45' 00"	343.00	142.21	141.19	72.04	N 67° 51' 30" E
14	23° 45' 00"	405.00	167.84	166.65	85.04	N 67° 51' 30" E
15	10° 30' 00"	370.00	67.81	67.71	34.00	S 81° 15' 00" W
16	10° 30' 00"	430.00	78.80	78.69	39.51	S 81° 15' 00" W
17	18° 30' 00"	360.00	116.24	115.74	58.63	N 57° 15' 00" E
18	18° 30' 00"	420.00	135.61	135.02	68.40	N 57° 15' 00" E
19	34° 00' 00"	210.00	124.62	122.80	64.20	N 31° 00' 00" E
20	28° 01' 44"	150.00	88.14	87.56	34.87	N 34° 56' 08" E
21	7° 58' 16"	150.00	20.87	20.85	10.45	N 17° 56' 00" E
22	30° 36' 00"	210.00	112.16	110.83	57.45	S 29° 15' 00" W
23	30° 36' 00"	150.00	80.11	78.16	41.04	S 29° 15' 00" W
24	40° 54' 00"	150.00	121.47	118.18	64.29	S 67° 45' 00" W
25	46° 24' 00"	210.00	170.06	165.48	90.01	S 67° 45' 00" W
26	21° 48' 00"	495.00	188.34	187.20	95.32	N 80° 09' 00" E
27	21° 48' 00"	555.00	211.17	209.90	106.88	N 80° 09' 00" E
28	15° 12' 00"	780.00	206.92	206.32	104.07	N 81° 36' 00" E
29	15° 12' 00"	720.00	191.01	190.45	96.07	N 81° 36' 00" E

LEGEND

- Initial Point, Found 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

1" = 100'

NO SCALE

BLOCK 1 BLOCK 2

LOT 1 LOT 2 LOT 3 LOT 4 LOT 5 LOT 6

UNPLATTED

FND. BRASS CAP C.P.& F. NO. 7854686

1/16 CORNER

(BASIS OF BEARING) N 89° 26' 11" W 4012.83

N 89° 26' 11" W 1337.81

N 00° 02' 32" E 686.10

N 00° 30' 20" E

S 00° 06' 12" E 1983.44

S 00° 02' 29" W

NORTH 36 TH WAY

EDGE 100 YR. FLOODWAY AS SHOWN ON BOISE CITY MAPS JUNE,1990

Access and Utility Easement See Sheet 1 of 3

SEE SHEET 1 FOR LOT 4 DATA

RECORDED LAND SURVEYOR 4998 STATE OF IDAHO MICHAEL E. MARKS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 2 OF 3

1/14/92

881129

000183

NIBLER SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS:
THAT VICTOR L. NIBLER AND RUTH E. NIBLER, HUSBAND AND WIFE; TOMMY T. SANDERSON AND ROXANNE M. SANDERSON, HUSBAND AND WIFE; AND VANCROFT CORPORATION, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF IDAHO AND DULY QUALIFIED TO DO BUSINESS WITHIN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THEY ARE THE OWNERS OF THE REAL PROPERTY AS DESCRIBED BELOW AND IT IS THEIR INTENTION TO INCLUDE SAID REAL PROPERTY IN THIS SUBDIVISION PLAT. THE OWNERS ALSO HEREBY CERTIFY THAT ALL LOTS IN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER SERVICE FROM BOISE WATER CORPORATION WHO HAS AGREED IN WRITING TO SERVE THE SUBDIVISION.

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4, OF SECTION 21, AND THE NW 1/4, OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE BOISE MERIDIAN, ADA COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MARKING THE SOUTHWEST CORNER OF THE NORTH 1/2 OF SECTION 28, T.4N., R.2E., B.M., THENCE N 0°30'20" E 1199.50 FEET TO AN ALUMINUM CAP WHICH IS THE INITIAL POINT OF THIS DESCRIPTION:

THENCE CONTINUING N 0°30'20"E 1454.21 FEET TO A BRASS CAP MARKING THE SECTION CORNER COMMON TO SECTIONS 20, 21, 28 AND 29, T.4N., R.2E.;

THENCE N 0°02'32"E 686.10 FEET TO AN IRON PIN MARKING A POINT ON THE NORTH LINE OF THE BOISE CITY LIMITS BOUNDARY;

THENCE N 45°02'13"E 1892.60 FEET TO AN IRON PIN;

THENCE S 88°17'36"E 2670.60 FEET TO AN IRON PIN;

THENCE S 0°06'12"E 1983.44 FEET TO AN IRON PIN MARKING THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 21;

THENCE S 0°02'29"W 2645.06 FEET TO AN IRON PIN MARKING THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 28;

THENCE N 89°39'23"W 2532.29 FEET TO AN IRON PIN MARKING A POINT ON THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 28;

THENCE N 39°54'00"E 950.31 FEET TO AN IRON PIN;

THENCE N 57°43'00"W 1832.00 FEET TO AN IRON PIN;

THENCE N 48°23'00"W 50.23 FEET TO AN IRON PIN;

THENCE S 43°37'00"W 776.55 FEET TO AN IRON PIN;

THENCE N 46°23'32"W 205.94 FEET TO THE INITIAL POINT OF THIS DESCRIPTION, COMPRISING 356.43 ACRES MORE OR LESS.

THE STREETS SHOWN ON THIS PLAT OF NIBLER SUBDIVISION ARE HEREBY DEDICATED TO THE PUBLIC, AND THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND FOR ANY OTHER USES AS DESIGNATED HEREON, AND NO PERMANENT STRUCTURES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS THIS 25th DAY OF July 19 91

VICTOR L. AND RUTH E. NIBLER, HUSBAND AND WIFE

Victor L. Nibler
VICTOR L. NIBLER

Ruth E. Nibler
RUTH E. NIBLER

TOMMY T. AND ROXANNE M. SANDERSON, HUSBAND AND WIFE

Tommy T. Sanderson
TOMMY T. SANDERSON

Roxanne M. Sanderson
ROXANNE M. SANDERSON

VANCROFT CORPORATION

Mari Montgomery Jordan
MARI MONTGOMERY JORDAN, PRESIDENT

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 25th DAY OF July 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED MARI MONTGOMERY JORDAN, KNOWN OR IDENTIFIED TO ME TO BE PRESIDENT OF VANCROFT CORP., THAT EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 10th DAY OF August 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED VICTOR L. NIBLER AND RUTH E. NIBLER, HUSBAND AND WIFE, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 17th DAY OF October 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED TOMMY T. SANDERSON, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

APPROVAL OF CITY ENGINEER

I, CHARLES R. MICKELSON, P.E., CITY ENGINEER IN AND FOR BOISE CITY, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT OF NIBLER SUBDIVISION.

REGISTERED PROFESSIONAL ENGINEER CHARLES R MICKELSON 7148 IDAHO

CHARLES R. MICKELSON, P.E., CITY ENGINEER

CERTIFICATE OF COUNTY ENGINEER

I, JOHN E. PRIESTER, P.E., REGISTERED PROFESSIONAL ENGINEER/LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT OF NIBLER SUBDIVISION, AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

REGISTERED ENGINEER 3030 12-23-93 STATE OF IDAHO JOHN E. PRIESTER

JOHN E. PRIESTER, P.E., COUNTY ENGINEER

CERTIFICATE OF SURVEY

I, MICHAEL E. MARKS, L.S., DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT OF NIBLER SUBDIVISION AS DESCRIBED IN THE CERTIFICATE OF OWNERS AND THE ATTACHED PLAT, WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON; AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODES RELATING TO PLATS, SURVEYS AND THE CORNER PERPETUATION AND FILING ACT, IDAHO CODE 55-1601 THROUGH 55-1612.

REGISTERED LAND SURVEYOR 8998 STATE OF IDAHO MICHAEL E. MARKS

MICHAEL E. MARKS, L.S.

STATE OF MASSACHUSETTS } SS
COUNTY OF MIDDLESEX }

ON THIS 22 DAY OF OCTOBER 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF MASSACHUSETTS, PERSONALLY APPEARED ROXANNE SANDERSON, KNOWN OR IDENTIFIED TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR OF THIS CERTIFICATE FIRST ABOVE WRITTEN.

KENNETH L. ROBERTS

Kenneth L. Roberts
NOTARY PUBLIC FOR MASSACHUSETTS
RESIDING AT 423 King St. Littleton, MA.
MY COMMISSION EXPIRES: 8-15-1997

MY COMMISSION EXPIRES AUG. 15 1997

APPROVAL OF CENTRAL DISTRICT HEALTH DEPARTMENT

SANITARY RESTRICTIONS OF THIS PLAT ARE HEREBY REMOVED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPRO

BY Thomas E. Schwartz 11/13/91
CENTRAL DISTRICT HEALTH DEPARTMENT

ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ACCEPTANCE

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE 4th DAY OF December 1991.

ADA COUNTY HIGHWAY DISTRICT

CHAIRMAN
ADA COUNTY HIGHWAY DISTRICT

APPROVAL OF CITY COUNCIL

I, Annette P. Mooney CITY CLERK IN AND FOR BOISE CITY, ADA COUNTY, IDAHO DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 19 DAY OF June 1992 THIS PLAT OF NIBLER SUBDIVISION WAS DULY ACCEPTED AND APPROVED.

Annette P. Mooney CITY CLERK
BOISE, December 18, 1991

CERTIFICATE OF COUNTY TREASURER

I, _____ COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-1308, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS PROPOSED SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

Barbara Bauer Jan 14, 1992
COUNTY TREASURER DATE
By Karin Witt, Deputy Clerk

COUNTY RECORDERS CERTIFICATE

INSTRUMENT NO. 9205592

STATE OF IDAHO } SS
COUNTY OF ADA }

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF REGGS ENGINEERING AT 42 MINUTES PAST 2 O'CLOCK P.M., THIS 29TH DAY OF JANUARY, 19 92, IN MY OFFICE AND WAS DULY RECORDED IN BOOK 59 OF PLATS AT PAGES 5789 AND 5791

DEPUTY

EX-OFFICIO RECORDER

16[illegible]

000184

SHEET 3 OF 3

\OHPLTBK
01-13-92

EXHIBIT "C"

TO
AFFIDAVIT OF DEAN W. BRIGGS, P.E.

ST-9304126 (2)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lee
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 2/1/95

LAWRENCE P. LEE NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence R. Kuhle
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 8/1/95

LAWRENCE R. KUHLE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Ma
My Commission Expires: May 8th 1998

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 6th 1994

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

1628001348

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

1628001349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5789)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°56'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 36th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-06

Post-it™ brand fax transmittal memo 7671	# of pages ▸
To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

R-95%

BK 59 PAGES 5187

1628001350

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
●	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
○	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar
—— — — ——	Boundary Line
—— · —— · ——	Section Line
— — — —	1/4 Section Line
— — — — — —	1/16 Section Line
----------	Easement Line

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City Street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 38" E	200.23
2	N 66° 11' 41" E	389.58
3	N 66° 13' 01" E	389.83
4	N 82° 32' 38" E	376.17
5	N 21° 27' 09" E	409.18
6	N 22° 46' 33" E	418.97
7	N 45° 03' 29" E	285.33

REGISTERED LAND SURVEYOR 4995 STATE OF IDAHO MICHAEL E. HARRIS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

0001988

12

Exhibit C

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

1628001351

UNPLATTED

500 250 0 500 1000 1500

SCALE IN FEET

UNPLATTED

UNPLATTED

PART OF THIS PLAT NOT

S 88° 17' 36" E 2670.60

LIMITS (January, 1992)

CITY OF BOISE

N 45° 02' 13" E 1892.60

NOTE: See Sheet 2 of 3 for Details of N.36th Way centerline and right-of-way and lot dimensions.

BLOCK (1)

LOT 3

LOT 4

LOT 5

LOT 6

LOT 1

LOT 2

LOT 1

BLOCK (2)

LOT 4

36TH WAY

NORTH

BOISE 100 YR. FLOODWAY AS SHOWN ON BOISE CITY MAPS JUNE, 1990

20' SEWER EASEMENT

40' ACCESS AND UTILITY EASEMENT TO LOT 4, BLOCK 2

INITIAL POINT

N 46° 25' 32" W 205.94

S 43° 37' 00" E 776.53

N 46° 25' 00" E 60.25

S 43° 00' W 1632.00

N 39° 54' 00" E 950.31

CITY PARK

SW NW 28

UNPLATTED

UNPLATTED

UNPLATTED

N 00° 02' 32" E 686.10

N 00° 30' 20" E 1454.21

S 00° 00' 12" E 1903.44

S 00° 02' 29" W 2645.06

N 89° 26' 11" E

BASIS OF BE

N 89° 39' 23" W 2532.29

000197

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser") and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") (collectively, "Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby submit this brief in support of PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ("Motion," filed concurrently herewith).

I. INTRODUCTION

Boise Hollow owns an access easement road which runs across land owned by the Defendant City of Boise (the "City") and connects a 63-acre parcel owned by Boise Hollow (the "Development Parcel")[1] to the public right-of-way (North 36th Street). The 1991 agreement which created the easement (the "Easement Agreement") provides that the easement owner may expand the easement in size to meet the requirements of the Ada County Highway District (ACHD) and then dedicate the easement road to ACHD as a public road. Boise Hollow now wishes to do so. The City, however, has denied Plaintiffs' requests to expand the easement road per the Easement Agreement. Accordingly, Plaintiffs have instituted this action seeking a declaration from this Court that, under the Easement Agreement, the easement road may be expanded in order to meet ACHD's requirements.

II. STATEMENT OF MATERIAL FACTS

The expansion of the easement road was always contemplated by the parties to the Easement Agreement.

A. The Quail Hollow Golf Course

In the 1970's, Victor and Ruth Nibler constructed a golf course on a portion of certain real property they owned off of 36th Street in unincorporated Ada County, adjacent to Boise's northwest city limits. This golf course eventually came to be known as the Quail Hollow Golf Course.

On July 15, 1980, the Niblers, as lessors, entered into a lease agreement with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, whereby the latter leased the golf course for a term of 99 years.

[1] Lot 4, Block 2, Nibler Subdivision, Boise, Ada County, Idaho.

In 1982, the Quail Hollow Golf Course was annexed to and incorporated in the territorial limits of the City of Boise.

In 1986, Tee, Ltd., owned by Tommy and Roxanne Sanderson (collectively, "Tee-Sanderson"), succeeded in interest at the lessee of the golf course.

In 1987, the Niblers deeded to Tommy and Roxanne Sanderson, individually, a portion of the golf course property.

In 1990, the Niblers deeded to Vancroft adjacent land which included the Development Parcel at issue in this case and Vancroft also succeeded to the Niblers' interest as lessor of the golf course.

B. Nibler Subdivision

When the Niblers deeded a portion of the golf course property to the Sandersons, they inadvertently violated the City's then-existing subdivision ordinances by illegally dividing the land. When this was brought to their attention, the Niblers, in conjunction with Tee-Sanderson and Vancroft (collectively, the "Developers"), endeavored to properly plat the parcels in order to properly subdivide the several segregations of land, comply with the City's subdivision ordinances, and legally prepare the land adjacent to the golf course for future development. The Developers therefore began the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which included the Development Parcel at issue in this litigation. This process, of course, necessarily involved a lengthy series of preliminary applications and discussions between the Developers, the City of Boise, and ACHD.

Briggs Engineering, Inc. ("BEI") was retained by the Developers to provide engineering, land-use planning, and land surveying services with respect to the platting and development of the Nibler Subdivision. BEI drafted the preliminary and final Nibler Subdivision plats and worked

closely with the City of Boise and ACHD during the plat review, revision, and approval process. *See* AFFIDAVIT OF DEAN W. BRIGGS, P.E., ("Briggs Aff.," filed concurrently herewith).[2]

During the plat review and approval process, the City of Boise required that BEI and the Developers make certain revisions to our preliminary plat before the City would approve it to become the final plat. The City was aware that the Nibler Subdivision, and its parcels, might one day be developed into multi-residential subdivision(s) which would require vehicular access to the adjacent public roadways. Specifically, the City was aware that the easement road would be developed and expanded in the future to provide adequate vehicular access to the Development Parcel and its adjacent parcels within the Nibler Subdivision. The City required that, at such time, the easement road would be brought into compliance with ACHD's requirements and specifications. Accordingly, the City specifically required that the Developers include a notation on the plat to clarify that ACHD has jurisdiction and authority over any roads or applications to construct roads which would give the Nibler Subdivision direct vehicular access to North 36th Street, which is the main public road adjacent to the Nibler Subdivision and the Quail Hollow Golf Course. Briggs Aff.

The City's requirement that access to 36th Street be subject to ACHD's jurisdiction and approval was communicated to the Developers by way of a letter from the City of Boise dated June 22, 1990. *See* Briggs Aff., EXHIBIT "A." At Paragraph 15, the letter sets forth the City's requirement that access to 36th Street be subject to ACHD's jurisdiction and approval:

> "No direct lot access shall be allowed to North 36th Way... **unless otherwise approved by Ada County Highway District.**"

Id. at ¶ 15 (emphasis added).

Per the City's instructions, BEI and the Developers revised the preliminary plat so that the

[2] Mr. Briggs is the President of BEI, and worked with the Developers and the City on the Nibler Subdivision project.

final plat does reflect the City's requirement that access to 36th Street be subject to ACHD's jurisdiction, control, and approval. The final Nibler Subdivision plat was executed and recorded on January 29, 1991, as Instrument No. 9205592. *See* Briggs Aff., EXHIBIT "B." Note "5" of the final plat contains the City's required notation:

> 5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, **unless said primary access is specifically approved by the Ada County Highway District.**

Id. at 1 (emphasis added). This required note on the final plat confirms not only that the City was aware that the easement road might be expanded to meet ACHD's specifications, but that the City expressly required that the authority to approve or deny the landowner's application to do so be vested in ACHD.

C. <u>Easement Agreement</u>

At the time that the Developers were engaged in the plat approval process with the City, Vancroft owned the portion of the proposed Nibler Subdivision designated as Lot 4, Block 2 (hereinbefore defined as the "Development Parcel").[3] Vancroft and Tee-Sanderson desired to ensure that the Development Parcel would have sufficient access to North 36th Street to accommodate the eventual development of a multi-residential subdivision on the Development Parcel. Accordingly, on September 14, 1991, Vancroft and Tee, Ltd. entered into a PERMANENT EASEMENT AGREEMENT (hereinbefore defined as the "Easement Agreement"), which was recorded on November 3, 1993, as Ada County Instrument No. 9392442. A true and accurate copy of the Easement Agreement (internal exhibits omitted) is attached hereto as EXHIBIT "A" for the Court's reference; it is authenticated by and attached in whole to the AFFIDAVIT OF REBECCA

[3] The Quail Hollow Golf Course is comprised of Lots 2, 5, and 6, Block 1, and Lots 1 and 3 in Block 2, of the Nibler Subdivision.

W. ARNOLD ("Arnold Aff.," filed concurrently herewith). Pursuant to this Easement Agreement, Vancroft became the owner of an access easement which runs across the Quail Hollow Golf Course, connecting the Development Parcel to 36th Street.

The Easement Agreement describes the initial width of the easement as being 40 feet wide. *See* EXHIBIT "A" (Easement Agreement) at 1, numbered-paragraph "1" (emphasis added). However, the Easement Agreement, being in harmony with City's requirements for the Nibler Subdivision plat (Briggs Aff., EXHIBIT "B"), later provides that the size of the easement road may be expanded to meet ACHD requirements for a public road:

> 6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. **Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc.** Upon such dedication, Grantee shall have no further obligations hereunder, except for the obligation of this Agreement not assumed by governmental agency.

Easement Agreement (EXHIBIT "A" hereto) at 3, numbered-paragraph "6" (emphasis added).

Local attorney Rebecca W. Arnold represented Vancroft at the time that the Easement Agreement was executed by Tee-Sanderson and Vancroft. In her role as the drafting attorney, she personally drafted the terms of the Easement Agreement. In her affidavit which is filed concurrently herewith, Ms. Arnold confirms the following critical and uncontradicted facts:

- The primary purpose of the Easement Agreement was to secure for Vancroft a perpetual easement for ingress and egress across the Quail Hollow Golf Course for the benefit of the Development Parcel. Arnold Aff. at 3.
- At the time that the Easement Agreement was drafted, it was agreed that the easement road would be 40 feet in width, which would be temporarily sufficient as a private road until Vancroft (or its successor-in-interest) was ready to develop the

Development Parcel into a multi-lot residential subdivision. *Id.*

- When the parties executed the Easement Agreement, Tee-Sanderson understood that Vancroft intended to develop the Development Parcel into a multi-lot residential subdivision. Therefore it was contemplated and agreed by Vancroft and Tee-Sanderson that the easement road would eventually be dedicated to ACHD as a public road, and the easement area would be expanded to comply with whatever ACHD's requirements for a public road would be at the time of the dedication. The purpose of numbered-paragraph "6" of the Easement Agreement was to ensure that the owner of the Development Parcel would have the right to expand the easement road accordingly. *Id.* at 3-4.

- The anticipated dedication is expressly acknowledged in numbered-paragraph "2" of the Easement Agreement:

> 2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.[4]

Id. at 3.

This is also confirmed in Dean Briggs' affidavit. Later, when Vancroft and Tee-Sanderson engaged in negotiations to secure vehicular access for the Development Parcel to North 36th Street, both parties requested certain information from BEI in order to draft their agreement. Specifically, the Developers requested that BEI provide the then-existing road width requirements for both private and public roads. It was communicated to BEI that the parties

[4] *See* EXHIBIT "A" (Easement Agreement) at 2, numbered-paragraph "2" (emphasis added). The Easement Agreement is also attached to the Arnold Affidavit as EXHIBIT "B."

intended that the easement road would initially be of a limited width sufficient to satisfy the then-existing requirements of a private road, and that the road would be expanded to meet ACHD's requirements if it was later converted to public road and dedicated to ACHD. Accordingly, BEI advised Nibler and Vancroft that an easement width of 40' would satisfy the then-existing requirements for a private road; BEI advised that ACHD would require a width in excess of that amount when the road was converted to a public road. Briggs Aff. at 3-4.

D. Assignment of Easement Agreement

On October 27, 1993, Vancroft and Plaintiff Bedard and Musser, entered into an agreement entitled ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT (the "Assignment Agreement"), whereby Vancroft assigned its interest as grantee under the Easement Agreement to the Plaintiff Bedard & Musser. The Assignment Agreement was recorded on November 4, 1993, as Ada County Instrument No. 9392667. A true and accurate copy of the Assignment Agreement is attached as EXHIBIT "D" to FIRST AMENDED COMPLAINT.

Subsequently, Bedard and Musser deeded the Development Parcel to Plaintiff Boise Hollow Land Holdings, RLLP, and assigned all rights with respect to the Development Parcel and its development, including all rights with respect to the easement and the Easement Agreement. *See* EXHIBIT(s) "B" and "E" to FIRST AMENDED COMPLAINT.

E. Boise City Becomes Owner of Quail Hollow Golf Course

On November 1, 2013, the City succeeded to Tee-Sanderson's interest as grantor of the Easement Agreement when it became the owner of the Quail Hollow Golf Course pursuant to a DEED OF GIFT[5] made by Quail Hollow, LLC (who had acquired the golf course in 2007-08).

[5] Recorded on December 4, 2013, as Ada County Instrument No. 113130306.

F. ACHD's Requirements for Expansion of Easement Road

Boise Hollow is now in the planning stages for the development of a multi-residential subdivision on the Development Parcel. This development will necessitate the easement road be dedicated to ACHD as a public road, and also expanded to meet ACHD's requirements for such a road. Boise Hollow has retained KM Engineering of Boise, Idaho to assist with the planning and preparation of the proposed subdivision and road expansion. KM Engineering has created a Preliminary Public Road Plan and Profile which sets forth Boise Hollow's plans to bring the easement road into compliance with the specifications and requirements of ACHD. KM Engineering's plans call for a corridor width of 210 feet, which is intended to meet ACHD's requirements. The plans have been submitted to ACHD for comment and confirmation of ACHD's specifications for the road. *See* AFFIDAVIT OF KEVIN MCCARTHY, P.E. ("McCarthy Aff.," filed concurrently herewith).

III. SUMMARY OF ARGUMENT

Boise Hollow, now the owner of the Development Parcel, wishes to develop it into the multi-lot residential subdivision originally intended by Vancroft. This necessitates expanding the easement road to meet ACHD's requirements and then dedicating the easement road to ACHD as a public road. However, the City, now the owner of the Quail Hollow Golf Course, contends that Boise Hollow does not have the right to do so, despite the express language of the Easement Agreement and the Nibler Subdivision plat. Because the City continues to reject all requests by the Plaintiffs to expand the easement road to meet ACHD's requirements, Plaintiffs filed the instant action seeking a declaration from this Court that Boise Hollow has the right to do so under the Easement Agreement. Boise Hollow's right to expand the easement road per ACHD's requirements and dedicate to ACHD is supported by the following arguments:

A. Pursuant to the plain language of the Easement Agreement, Boise Hollow has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

B. If the Easement Agreement is ambiguous, the Court must consider parol evidence in order to determine the intent of the parties to the Agreement. The uncontradicted evidence confirms that the parties to the Easement Agreement intended that the owner of the Development Parcel would have the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements at the time of such dedication.

IV. STANDARD OF REVIEW

The purpose of a Summary Judgment proceeding is to "eliminate the necessity of trial where the facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is certain." *Berg v. Fairman*, 107 Idaho 441, 444, 690 P.2d 896, 899 (1983). Summary Judgment shall be granted if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.).

A nonmoving party's failure to make a showing sufficient to establish the existence of an element essential to that party's case, on which the party bears the burden of proof at trial, requires the entry of Summary Judgment in favor of the moving party. *Jarman v. Hale*, 122 Idaho 952, 955-56, 842 P.2d 288, 291-92 (Ct. App. 1992).

V. ANALYSIS

A. Pursuant to the plain language of the Easement Agreement, Boise Hollow has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

The most common-sense interpretation of the Easement Agreement is that Vancroft and

Tee, the parties to the agreement, intended for Vancroft to own a 40 foot-wide private road easement until such time as Vancroft chose to develop it, at which point it would be expanded to meet ACHD's requirements.

The dispute between Plaintiffs and the City with regard to the meaning of the Easement Agreement comes down to a difference in interpretation. "The interpretation of a contract begins with the language of the contract itself." *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (quoting *Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006)). "If a contract's language is unambiguous, 'then its meaning and legal effect must be determined from its words.'" *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 108, 294 P.3d 1111, 1120 (2013) (quoting *Cristo Viene*, 144 304 at 308, 160 P.3d at 747). "The Court's 'primary objective when interpreting a contract is to discover the mutual intent of the parties at the time the contract is made. If possible, the intent of the parties should be ascertained from the language of the agreement as the best indication of their intent.'" *Guzman v. Piercy*, 155 Idaho 928, 936, 318 P.3d 918, 926 (2014) (quoting *Straub v. Smith,* 145 Idaho 65, 69, 175 P.3d 754, 758 (2007)).

Two clauses of a contract related to the same thing must be "read together and harmonized" unless they are "so repugnant that they cannot stand together." *See Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 518, 201 P.2d 976, 983 (1948). Furthermore, "an interpretation should be avoided that would render meaningless any particular provision in the contract." *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 233, 939 P.2d 542, 552 (1997). "Apparently conflicting provisions must be reconciled so as to give meaning to both, rather than nullifying any contractual provision, if reconciliation can be effected by any reasonable interpretation of the entire instrument." *Madrid v. Roth*, 134 Idaho 802, 806, 10 P.3d 751, 755 (Ct. App. 2000)

(quoting 17A C.J.S. *Contracts* § 324 (1999)). In other words, "[t]erms of a written instrument should be construed *in pari materia* and a construction adopted that gives effect to all terms used. Inconsistent parts in a contract are to be reconciled, if susceptible of reconciliation...." *Advance Tank & Const. Co. v. Gulf Coast Asphalt Co.*, 968 So. 2d 520, 526 (Ala. 2006).

The dispute in this case is a result of Easement Agreement containing two separate descriptions of the easement area: numbered-paragraph 1 of the Easement Agreement states that the width of the easement road is 40 feet, while numbered-paragraph 6 explains that in the event the owner dedicates the road to ACHD, the width of the easement road shall meet ACHD's requirements for a public road. As described above, these provisions can be read together and a common-sense reading of these provisions does not reveal a conflict. Thus, there are few similar controversies which have reached the appellate level in any jurisdiction. Nevertheless, the case law that is reasonably on point confirms the judicial policy of harmonizing supposedly "conflicting" provisions wherever possible.

For example, in *Thornton v. Hamilton*, 32 Idaho 304, 181 P. 700 (1919), a contract for the leasing of horses provided that "If any of said horses shall die or be injured, so that it becomes necessary to kill the same, while in the possession of said lessee, the lessee will pay to the lessor the full value thereof as specified above." *Id.* A separate provision required the lessee, at the expiration or termination of the lease, to "restore the said personal property to the said lessor in like good condition in which it now is, wear and diminution resulting from reasonable use thereof excepted." *Id.* The lessor contended that these provisions were inconsistent, which contention was rejected outright by the Idaho Supreme Court: "The provisions of the contract are not inconsistent, and the intention of the parties that appellants should be insurers of the horses while in their possession is entirely clear from the language employed." *Id.*

The 2002 Fifth Circuit case of *Pers. Sec. & Safety Sys. Inc. v. Motorola Inc.*, 297 F.3d 388 (5th Cir. 2002) is perhaps more instructive. In that case, the court was called upon to determine whether a forum-selection clause in a stock-purchase agreement conflicted with an arbitration agreement contained in a licensing agreement that was executed alongside the stock-purchase agreement. The forum-selection clause stated: "Governing law. This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Any suit or proceeding brought hereunder shall be subject to the exclusive jurisdiction of the courts located in Texas." 297 F.3d at 395 (some capitalization omitted). The plaintiff in that case, PSSI, argued that the forum-selection clause required that any dispute arising out of the stock-purchase agreement be litigated in Texas courts, thus expressly excluding arbitration. The court held:

> We do not find PSSI's interpretation of the forum selection clause persuasive. Standing alone, one could plausibly read the forum selection clause to mean that Texas courts have the exclusive power to resolve all disputes arising under the Stock Purchase Agreement. But the forum selection clause does not stand alone. To the contrary, we must interpret the forum selection clause in the context of the entire contractual arrangement and we must give effect to all of the terms of that arrangement. Given our conclusion that the arbitration provision in the Product Development Agreement applies to all claims related to the overall transaction, we must therefore interpret the forum selection provision in the Stock Purchase Agreement in a manner that is consistent with the arbitration provision.
>
> Reading the two provisions together, it becomes clear that the forum selection clause does not require the parties to litigate all claims in Texas courts, nor does it expressly forbid arbitration of claims arising under the Stock Purchase Agreement. Instead, we interpret the forum selection clause to mean that the parties must litigate in Texas courts only those disputes that are not subject to arbitration—for example, a suit to challenge the validity or application of the arbitration clause or an action to enforce an arbitration award. Rather than covering all "disputes" or all "claims" like the arbitration provision in the Product Development Agreement, the forum selection clause confers "exclusive jurisdiction" on Texas courts only with respect to "any suit or proceeding." This limitation suggests that the parties intended the clause to apply only in the event of a non-arbitrable dispute that must be litigated in court.

Personal Security, 297 F.3d at 395–96 (footnotes and internal citations and quotations omitted)

With regard to the instant dispute, and the Easement Agreement at issue, it is implausible (if not impossible) to contend that numbered-paragraphs "1" and "6" are patently inconsistent. However, even should the Court deem these provisions mildly inconsistent, they are easily reconciled to give effect to each provision: as explained by the drafter Rebecca Arnold in her affidavit, Vancroft and Tee-Sanderson carefully crafted an agreement whereby Vancroft took possession of an easement road which would be 40 feet wide until such time as Vancroft chose to dedicate it to ACHD, at which point it would be expanded to meet ACHD's requirements at the time. In this way, the parties purposely drafted flexible language that allowed their contract to fluidly incorporate ACHD's unknown future specifications while also providing an ascertainable width (*i.e.*, 40 feet) for use in the interim. In short, these provisions worked together, as the parties intended, to provide the parties with an easement appropriate and useful for both the *then* and the *now*.

This interpretation derives meaning and legal effect from the plain language of the parties' agreement and gives effect to the parties' clear intent. Accordingly, Plaintiffs requests that the Court grant Plaintiffs' Motion and enter its judgment that Boise Hollow has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

B. If the Easement Agreement is ambiguous, the Court must consider parol evidence in order to determine the intent of the parties to the Agreement. The uncontradicted evidence confirms that the parties to the Easement Agreement intended that the owner of the Development Parcel would have the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements at the time of such dedication.

As illustrated above, the provisions of the Easement Agreement do not conflict and there is no ambiguity at work. However, should the Court deem otherwise it will find that the extrinsic evidence confirms the contracting intent of Vancroft and Tee-Sanderson that the easement road should be 40 feet wide until Vancroft chose to dedicate it to ACHD, at which point the easement

road would be naturally expanded to meet ACHD's requirements.

A court may deem a contract ambiguous where it determines that the contract contains conflicting or inconsistent provisions. *Madrid v. Roth*, 134 Idaho 802, 806, 10 P.3d 751, 755 (Ct. App. 2000). The standard for identifying ambiguity is a high one: "For a contract term to be ambiguous, there must be at least two different reasonable interpretations of the term, or it must be nonsensical." *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 266, 297 P.3d 222, 229 (2012). "A deed is ambiguous when its language is reasonably subject to conflicting interpretations. A deed is not ambiguous merely because the parties present differing interpretations to the court." *Camp Easton*, 156 Idaho at 900, 332 P.3d at 812. "[W]here contractual provisions are conflicting, the interpretation of the written contract and of the intent of the parties is a matter for the trial judge's discretion." *Haener v. Ada Cnty. Highway Dist.*, 108 Idaho 170, 173, 697 P.2d 1184, 1187 (1985).

Typically, "[t]he parol evidence rule bars the use of extrinsic evidence when a court interprets a written contract." *AED, Inc. v. KDC Investments, LLC*, 155 Idaho 159, 165, 307 P.3d 176, 182 (2013). "Only when a document is ambiguous is parol evidence admissible to discover the drafter's intent." *Buku Properties, LLC v. Clark*, 153 Idaho 828, 834, 291 P.3d 1027, 1033 (2012). When considering extrinsic evidence in aid of interpreting the meaning of a contract, the Court's primary goal must be to seek and **give effect to the real intention of the parties at the time of the conveyance**. *See Marek v. Lawrence*, 153 Idaho 50, 53, 278 P.3d 920, 923 (2012) (emphasis added) ("the court's primary goal [when considering parol evidence] is to seek and give effect to the real intention of the parties, which is determined according to the language of the instrument and the circumstances surrounding the transaction."). *See also, e.g., Porter v. Bassett*, 146 Idaho 399, 404–05, 195 P.3d 1212, 1217–18 (2008); *Commercial Ventures, Inc. v.*

Rex M. & Lynn Lea Family Trust, 145 Idaho 208, 213, 177 P.3d 955, 960 (2008) ("The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered."); *Farnsworth v. Dairymen's Creamery Ass'n*, 125 Idaho 866, 870, 876 P.2d 148, 152 (Ct. App. 1994); *Straub v. Smith*, 145 Idaho 65, 69, 175 P.3d 754, 758 (2007).

It is also significant that in Idaho we have determined that uncontradicted testimony of a credible witness must be accepted by the trier of fact unless the testimony is inherently improbable or impeached in some way. *Casey v. Sevy*, 129 Idaho 13, 19, 921 P.2d 190, 196 (Ct.App.1996). A party opposing summary judgment "may not rest on the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or otherwise pleaded in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e); *see also Smith v Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). "[T]he trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring that evidence to the court's attention." *Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008).

In this case, the most compelling evidence with respect to the intent of the contracting parties (Tee-Sanderson and Vancroft) at the time the contract was entered is the sworn statement of the actual drafter of the Easement Agreement, Rebecca Arnold. In her affidavit, Ms. Arnold unequivocally confirms that Tee-Sanderson and Vancroft always intended that whoever owned the dominant parcel (*i.e.*, the Development Parcel) would have the right to expand the easement road to meet ACHD's requirements and then dedicate the road to ACHD. *See* Arnold Aff. It is for this reason that the Easement Agreement was drafted to allow for that very expansion in the future.

The foregoing is corroborated by Dean Briggs' affidavit, which confirms that the parties

advised BEI that they intended that the 40' width be temporary and only effective until such time as the owner of the Development Parcel decided to develop it. *See* Briggs aff.

In addition, it is also uncontradicted that the City required the Developers to include language in the Nibler Subdivision final plat which confirmed that access to the various parcels of the Nibler Subdivision (including the Development Parcel) to 36th Street would be at the discretion and to the standards of ACHD; not the City. Not only was the City aware that access might be granted to 36th street, it expressly ceded authority over that issue to ACHD. *See* Briggs Aff.

The testimony of Ms. Arnold and Mr. Briggs is uncontradicted, and unless the City is able to put forth specific facts to contradict Ms. Arnold, her statements should be accepted as true by the Court.

Because the best extrinsic evidence available to the Court reveals that Tee-Sanderson and Vancroft so intended, Plaintiff requests that the Court grant Plaintiff's Motion and enter its judgment that Plaintiff has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

VI. CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that the Court enter its judgment declaring that the area of the Easement owned by Boise Hollow may be expanded to such dimensions as may be required to meet and satisfy ACHD ordinances and requirements (*see* McCarthy Aff.) as intended by the parties to the Easement Agreement.

DATED this this 3rd day of December, 2015.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By:_____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 3rd day of December, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

Michelle J. Silva

ST-9304912C (A)

16280013 41

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

EXHIBIT
tabbies
A
000216

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

3

1628001343

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 7/1/95

LAWRENCE P. LOBB NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence R. Lee
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 8/1/95

LAWRENCE R. LEE NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Diana J. Kenney
Notary Public for Massachusetts
Residing at Littleton Ma
My Commission Expires: May 5th 1995

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Laura J. Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 22, 1998

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

Sent: mediation 10/4/15

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, Plaintiff, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 ORIGINAL **ANSWER TO FIRST AMENDED COMPLAINT** Filing Category: Exempt

COMES NOW, Defendant, by and through counsel of record, Scott B. Muir, and in answer to Plaintiff's First Amended Complaint, admits, denies, and alleges as follows:

FIRST DEFENSE

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

SECOND DEFENSE

Defendant denies each and every allegation of Plaintiff's First Amended Complaint not herein specifically and expressly admitted. Defendant reserves the right to amend this and any other answer or denial stated herein, once it has had an opportunity to complete discovery regarding the allegations contained in Plaintiff's First Amended Complaint.

THIRD DEFENSE

I.

Paragraph 14 of Plaintiff's First Amended Complaint appears to be a narrative. To the extent a response is required, Defendant denies the allegations contained therein.

II.

Answering paragraph 4 of Plaintiff's First Amended Complaint, Defendant admits jurisdiction is proper.

III.

Answering paragraph 5 of Plaintiff's First Amended Complaint, Defendant admits that venue is proper in Ada County.

IV.

Answering paragraph 3 of Plaintiff's First Amended Complaint, Defendant admits that the City of Boise City is a municipal corporation, organized under the laws of the State of Idaho, with the capacity to sue and be sued. Defendant denies the remaining allegations in paragraph 3.

V.

Answering paragraph 6 of Plaintiff's First Amended Complaint, Defendant admits Plaintiff provided written notice as depicted in Plaintiff's EXHIBIT "A". Defendant denies the remaining allegations in paragraph 6.

VI.

Answering paragraph 17 of Plaintiff's First Amended Complaint, Defendant denies the allegations therein, and specifically denies that the Grantee of the Easement Agreement was given the right at the Grantee's sole discretion to expand the easement area.

VII.

Answering paragraph 13 of Plaintiff's First Amended Complaint, Defendant denies that the term "vehicular access" was used in the Easement Agreement, but rather, the term "access" was used. Defendant admits the remaining allegations in paragraph 13.

VIII.

Answering paragraphs 10-12 and 15 of Plaintiff's First Amended Complaint, Defendant admits the same.

IX.

Answering paragraphs 19, and 21-24 of Plaintiff's First Amended Complaint, Defendant denies the same.

X.

Answering paragraphs 1, 2, 7-8, and 18 of Plaintiff's First Amended Complaint, Defendant has insufficient information to admit or deny, and therefore denies the same.

XI.

Answering paragraph 9 of Plaintiff's First Amended Complaint, Defendant admits that EXHIBIT "B" is a true and accurate copy of a QUITCLAIM DEED dated June 26, 2015, and duly recorded in the records of Ada County on July 13, 2015. Defendant has insufficient information to admit or deny the remainder of paragraph 9, and therefore denies the same.

XII.

Answering paragraph 16 of Plaintiff's First Amended Complaint, Defendant admits that EXHIBIT "E" is a true and accurate copy of the 2015 Assignment. Defendant has insufficient information to admit or deny the remainder of paragraph 16, and therefore denies the same.

XIII.

Answering paragraph 20 of Plaintiff's First Amended Complaint, Defendant admits that the easement area is limited to forty (40) feet in width. Defendant denies the remaining allegations in paragraph 20.

XIV.

Plaintiff's Prayer for Relief does not require a response, but to the extent it may, Defendant denies Plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

1. Defendant has not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in the Plaintiff's First Amended Complaint, and therefore Defendant requests the Court to permit Defendant to amend the Answer and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

2. That some or all of the Plaintiff's claims are barred by laches.

3. That some or all of the Plaintiff's claims are barred by waiver.

4. That the Plaintiff is estopped to assert the claims and damages alleged in its First Amended Complaint by reason of its knowledge of the facts and circumstances regarding the transactions and events at issue and its conduct throughout the transactions and events, which conduct has been relied upon by the Defendant to Defendant's detriment.

ATTORNEY FEES

Defendant has been required to retain attorneys in order to defend this action and is entitled to recover reasonable attorney fees pursuant to state law and applicable Rules of Civil Procedure.

WHEREFORE, Defendant prays for judgment against the Plaintiff as follows:

1. That the First Amended Complaint be dismissed with prejudice and that the Plaintiff take nothing under it.

2. That the Defendant be awarded costs, including reasonable attorney fees pursuant to the applicable laws and Rules of Civil Procedure.

3. That judgment be entered in favor of Defendant on all claims for relief.

4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 14th day of December 2015.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of December 2015, served the foregoing document on all parties of counsel as follows:

Terry C. Copple Michael E. Band DAVISON, COPPLE, COPPLE & COPPLE, LLP Attorneys at Law PO Box 1583 Boise ID 83701	☐ ☐ ☐ ☑ ☐	U.S. Mail Personal Delivery Facsimile Electronic Means w/ Consent Other: _____

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Defendant, City of Boise City, by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, hereby files this Cross-Motion for Summary Judgment pursuant to Rule 56 of the Idaho Rules of Civil Procedure. This motion is supported by Declarations of Tommy T. Sanderson and Abigail R. Germaine, the Permanent Easement Agreement dated on or about

September 14, 1991, and recorded on or about November 3, 1993, in the official records of Ada County, Idaho as Instrument number 09392442, and the Memorandum in Support of Defendant's Cross-Motion for Summary Judgment filed contemporaneously herewith.

Based upon the record before the Court, there is no question of material fact and Defendant, City of Boise, is entitled to judgment as a matter of law.

DATED this 31 day of December 2015.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31 day of December 2015, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

MEMORANDUM IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant City of Boise City, Idaho ("**Boise City**"), by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and respectfully submits this Memorandum in Support of Defendant's Cross-Motion for Summary Judgment as follows:

I. INTRODUCTION

Boise City is the current owner in fee title of those parcels of real property located in Boise City, Ada County, Idaho, that are commonly known as the Quail Hollow Golf Course ("**Golf Course**").[1] Plaintiffs, Bedard and Musser or Boise Hollow Land Holdings, RLLP, (all together "**Boise Hollow**"), currently own a parcel of land adjoining and abutting the Golf Course to its south and west ("the **Bedard Property**").[2]

Boise Hollow is claiming an interest in an expandable easement over Boise City's Golf Course. Any easement that may exist, however, is limited to a maximum width of forty feet (40') and is not expandable. This is supported by the plain language of the easement agreement and the circumstances that existed at the time the easement was purportedly created. Also, a valid easement could not have been created as the original grantor of the easement only held a leasehold interest in the servient estate and had no rights to grant an easement on the land.

In 1991, the Vancroft Corporation ("**Vancroft**"), a predecessor in interest of Boise Hollow, owned both the Bedard Property and the Golf Course property in fee title. At that time, Tee, Ltd. ("**Tee**") held a ninety-nine (99) year leasehold interest on the Golf Course property, which it operated as a golf course. (Sanderson Decl.[3], p. 2, ¶ 3.)

In 1991, Vancroft's attorney approached Tommy T. Sanderson, then President of the Golf Course lessee, Tee ("**Sanderson**"), to obtain an easement for her client across the southern forty feet (40') of the Golf Course to provide legal access and utilities to the Bedard Property. (Arnold Aff., p. 2, ¶ 3.) On or about September 14, 1992, Sanderson, as Tee's President,

---

[1] The lots comprising the Golf Course property are commonly referred to throughout pertinent documents as "Lot 2 and Lot 6, Block 1, Nibler Subdivision" (those portions of the Golf Course located north of 36th Street) and "Lot 1, Block 2, Nibler Subdivision" (the portion of the Golf Course located south of 36th Street).

[2] The lot comprising the Bedard Property is commonly referred to throughout pertinent documents as "Lot 1, Block 4, Nibler Subdivision."

[3] Unsworn declarations, instead of sworn declarations or affidavits, are cited to throughout this Memorandum. Pursuant to Idaho Rule of Civil Procedure ("I.R.C.P.") 28(e)(4), an unsworn declaration "has the same effect as a sworn declaration." I.R.C.P. 28(e)(4)(a).

executed a Permanent Easement Agreement ("**Easement Agreement**") granting Vancroft a forty foot (40') easement ("**40' Easement**") benefitting the Bedard Property. (Sanderson Decl., Ex. A, p. 1, ¶ 1.)

The parcels of property comprising the Golf Course, the Bedard Property, and the 40' Easement are depicted on the 1992 Plat of Nibler Subdivision. (Sanderson Decl., Ex. A.) Additionally, for illustrative purposes only, an aerial depiction showing the approximate locations of the Golf Course, the Bedard Property, and the 40' Easement are attached as "Exhibit A" to the Declaration of Abigail R. Germaine filed contemporaneously herewith.

II. STATEMENT OF UNDISPUTED FACTS

A. Property Ownership and Leaseholds - Timeline

In 1943, Victor and Ruth Nibler (the "**Niblers**") acquired an approximate six hundred (600) acre parcel of grazing land in Sections 21 and 28, Township 4 North, Range 2 East, Boise Meridian (the "**Nibler Property**") (Germaine Decl., Ex. B.) The Nibler Property included the Golf Course properties and the Bedard Property, and several other miscellaneous parcels and lots in the area that are unrelated to this case.

In July of 1980, the Niblers, as lessors, executed a Memorandum of Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelson, as lessees ("**Labrum, Labrum, Thomsen, and Samuelson**"), by which Labrum, Labrum, Thomsen, and Samuelson leased the Golf Course properties for a term of ninety-nine (99) years. (Germaine Decl., Ex. C.) In 1982, Shamanah Golf Course opened on the Golf Course property. The 1980 Memorandum of Lease did not include any authority for the lessee, or the lessee's successors in interest, to validly encumber the Golf Course property with an easement.

At some point in the 1980s, Labrum, Labrum, Thomsen, and Samuelson (as lessees) assigned the lease to L.T.S., Inc.[4] In April of 1986, L.T.S.'s lease was foreclosed on, and L.T.S.'s leasehold interest was sold at sheriff's sale to A - J Corporation, with A - J Corporation assuming the lease (as lessee). (Germaine Decl., Ex. D.) At that time, the Niblers still owned the Golf Course property in fee simple, and the lease was still in place, just with a new lessee. In 1986, the Niblers and A - J Corporation amended the original 1980 lease. (Germaine Decl., Ex. E.) Contemporaneously, A - J Corporation assigned its leasehold interest to Tee. (Germaine Decl., Ex. F.)

On or about July 21, 1987, the Niblers sold their fee title interest in an approximately four (4) acre portion of property (the "**Clubhouse Parcel**")[5] adjacent to the Golf Course to Sanderson, on which Sanderson later would construct a clubhouse to serve the Golf Course. In selling this portion of the Nibler Property to Sanderson, however, the Niblers illegally divided their property, which was an inadvertent violation of Boise City's then-existing subdivision ordinance. This error subsequently was resolved by the proper platting of the Nibler Subdivision. In the process of the Niblers preparing, filing, and obtaining all approvals necessary for a subdivision plat, a notation was required on the face of the plat that stated (in pertinent part):

> 5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District.

[4] Pursuant to the Articles of Incorporation filed with the Idaho Secretary of State on or about September 5, 1980, Labrum, Labrum, Thomsen, and Samuelson were the four (4) incorporators and shareholders of L.T.S., Inc.
[5] The lot comprising the Clubhouse Parcel is referred to throughout pertinent documents as "Lot 3, Block 2, Nibler Subdivision.

(Germaine Decl., Ex. T.) The lots excepted from the approval requirement did not include the Bedard Property (which was Lot 4, Block 2, Nibler Subdivision), meaning that the Bedard Property was not granted direct access to 36th Street on the face of the Nibler plat.

On or about June 8, 1990, the Niblers sold a significant portion of the Nibler Property to Vancroft, including the Golf Course properties and the Bedard Property. (Germaine Decl., Ex. G.) Subsequently, the Niblers quitclaimed whatever residual interest they possessed in several properties (including those properties already conveyed by Warranty Deed to Vancroft in June of 1990 – the Golf Course Properties and the Bedard Property) to Vancroft. (Germaine Decl., Ex. H.)

On or about June 30, 1993, Sanderson assigned Tee's leasehold interest in the Golf Course properties to David E. Hendrickson ("**Hendrickson**"). (Germaine Decl., Ex. I.) Contemporaneously, Sanderson and his then-wife, Roxanne M. Sanderson, also conveyed the two (2) parcels they individually owned in fee simple (including the Clubhouse Parcel), both of which they obtained from the Niblers in 1987, to Hendrickson. (Germaine Decl., Ex. J.) Later that year, in October of 1993, Vancroft also quitclaimed whatever remainder interest it held in the Clubhouse Parcel to Hendrickson. (Germaine Decl., Ex. K.)

On or about October 27, 1993, Vancroft conveyed the Bedard Property (Lot 4, Block 2, Nibler Subdivision) to Plaintiffs Bedard and Musser. (Germaine Decl., Ex. L.)

On or about March 29, 1999, Vancroft conveyed the parcels of property comprising the Golf Course (Lot 2 and Lot 6 in Block 1, and Lot 1 in Block 2, Nibler Subdivision) to Bluegrass, LLC (hereinafter, "**Bluegrass**"). (Germaine Decl., Ex. M.)

On or about October 4, 2007, Bluegrass (having succeeded to the Niblers' position as lessors of the Golf Course properties) and Hendrickson (having succeeded to the lessee position

agreed to terminate the lease. (Germaine Decl., Ex. N.) At that same time, Bluegrass conveyed fee title ownership of the Golf Course parcels (Lot 2 and Lot 6 in Block 1, and Lot 1 in Block 2, Nibler Subdivision) to Quail Hollow, LLC[6] ("**Quail Hollow**"). (Germaine Decl., Ex.P.) At that point in time, all of the Golf Course properties were owned in fee simple by Quail Hollow, and the leasehold had been terminated.

On or about November 1, 2013, Quail Hollow conveyed its fee title ownership of all parcels comprising the Golf Course (Lot 2 and Lot 6, Block 1, and Lot 1, Block 2, Nibler Subdivision), including the Clubhouse Parcel (Lot 3, Block 2, Nibler Subdivision) and the small parcel across 36th Street from the Clubhouse Parcel (Lot 5, Block 1, Nibler Subdivision), to Boise City. (Germaine Decl., Ex. Q.)

On or about June 26, 2015, Plaintiff, Bedard and Musser, conveyed the Bedard property to Plaintiff Boise Hollow Land Holdings, RLLP. (Germaine Decl., Ex. R.)

B. Easement Agreement

On or about September 14, 1991, Sanderson executed the Easement Agreement by which Tee, as lessee, purportedly granted Vancroft the 40' Easement at issue in this case. The Easement Agreement was not recorded until over two (2) years later, on November 3, 1993. (Sanderson Decl., Ex. B.) At the time Tee purportedly granted the 40' Easement, Vancroft owned fee title to the Golf Course properties, whereas Tee only possessed a leasehold interest.

The physical location of the 40' Easement was along the southwestern property line of the Golf Course, running along the sixteenth (16th) hole of the Golf Course. (Sanderson Decl., Ex. A.)

[6] Pursuant to its Articles of Incorporation filed with the Idaho Secretary of State on or about September 18, 2007, David Hendrickson ("Hendrickson," from above) was the manager and sole member of Quail Hollow at the time the Golf Course was conveyed from Bluegrass to Quail Hollow, which is attached as "Exhibit O" to the Declaration of Abigail R. Germaine.

As previously mentioned, Sanderson subsequently assigned Tee's leasehold interest in the Golf Course properties to David E. Hendrickson ("**Hendrickson**"). (Germaine Decl., Ex. I.) The assignment document did not mention the 40' Easement, and the Easement Agreement had not yet been recorded, so Hendrickson may not have had notice of the 40' Easement when he obtained Tee's leasehold interest in the Golf Course, making the 40' (purported) Easement unenforceable as against Hendrickson.

On or about October 27, 1993, when Vancroft conveyed the Bedard Property (Lot 4, Block 2, Nibler Subdivision) to Plaintiffs Bedard and Musser, Vancroft assigned its rights under the Easement Agreement to Bedard. (Germaine Decl., Ex. S.)

The first paragraph of the Easement Agreement clearly and unequivocally establishes the location, size, and purposes of the 40' Easement:

> Tee, Ltd. does hereby grant, convey, and remise to the Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e. ingress and egress) to Lot 4, Block 2, Nibler Subdivision.

(Sanderson Decl., Ex. A, pp. 1-2, ¶ 1, in pertinent part.) Based on the unambiguous language of the Easement Agreement, the 40' Easement was established:

- with an express width of forty feet (40');
- in the southwest quarter of Lot 1, Block 2, Nibler Subdivision (one (1) of the properties comprising the Golf Course);
- for the limited purposes of providing utilities and access to Lot 4, Block 2, Nibler Subdivision (the Bedard Property); and
- in the area more particularly described in the legal description attached to and incorporated into the Easement Agreement.

The legal description, which was attached to and incorporated into the Easement Agreement, offers perhaps the most compelling evidence of the dimensions, size, and location of the 40' Easement:

> The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument 9205592.

(Sanderson Decl., Ex. A, p. 9.) As in Paragraph 1 of the Easement Agreement, the legal description of the 40' Easement clearly specifies a width of forty feet (40').

The Easement Agreement also included depictions showing the size of the 40' Easement as being exactly forty feet (40') (see Sanderson Decl., Ex. A, p. 12), and also references the depiction of the 40' Easement included on the 1992 Plat of the Nibler Subdivision, which also depicts the width as being exactly forty feet (40') (see Sanderson Decl., Ex. A, ¶ 1, pp. 1-2.)

III. ARGUMENT SUMMARY

Boise Hollow is asking this Court to widen and expand the 40' Easement, which was intended only to be used for utilities and access, to two hundred ten feet (210'), or more than five times (5x) its size.

The plain language of the Easement Agreement, the meticulously precise words of the legal description that was attached to (and incorporated into) the Easement Agreement as its "Exhibit B," the 1992 Plat of Nibler Subdivision, and the drawing of the easement area that was attached to (and incorporated into) the Easement Agreement as its "Exhibit C" all clearly and unambiguously identify the width of the 40' Easement as being exactly forty feet (40').

Vancroft sought and obtained the 40' Easement from its ninety-nine (99) year lessee, Tee/Sanderson. The Easement Agreement, which was drafted by Vancroft's attorney, met Vancroft's needs at that time. Twenty-four (24) years later, however, Vancroft's current

successor-in-interest, Boise Hollow, now asserts that it needs significantly more width than the 40' Easement obtained in 1991. Boise Hollow now hopes this Court will reach back in time to insert the word "expandable" into the Easement Agreement, contrary to the plain and unambiguous language of the Easement Agreement

In the alternative, Boise City contends that the Easement Agreement was invalid *ab initio*, because it was executed by Tee, which only possessed a leasehold interest to the subject property, and could not grant an enforceable easement. Should the Court determine that lessee Tee, by executing the Easement Agreement, validly encumbered its leasehold, that encumbrance terminated with the termination of the leasehold in 2007.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is proper if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). When applying this standard, the court construes disputed facts "in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party." *Curlee v. Kootenai County Fire and Rescue,* 148 Idaho 391, 394, 224 P.3d 458, 461 (2008). Where "the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review." *Lockheed Martin Corp. v. Idaho State Tax Comm'n,* 142 Idaho 790, 793, 134 P.3d 641, 644 (2006) (citing *Infanger v. City of Salmon,* 137 Idaho 45, 44 P.3d 1100 (2002)). "Material facts are those which may affect the outcome of the case." *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). To survive summary judgment, "an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule,

must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(c). Therefore, "the nonmoving party must submit more than just conclusory assertions that an issue of material fact exists." *Jenkins v. Boise Cascade Corp.,* 141 Idaho 233, 238, 108 P.3d 380, 385 (2005) (citing *Northwest Bec–Corp. v. Home Living Serv.,* 136 Idaho 835, 839, 41 P.3d 263, 267 (2002)). "A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment." *Id.*

Although generally facts must be viewed in favor of the non-moving party, that is true "only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 1776 (2007). When an action, as is the case here, will be heard before the court without a jury, the court as the trier of fact is entitled to reach the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment even though there may be a possibility of conflicting inferences. *Id.*, citing *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001).

"The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and does not in and of itself establish that there is no genuine issue of material fact. This Court must evaluate each party's motion on its own merits." *Lawrence v. Hutchinson*, 146 Idaho 892, 896, 204 P.3d 532, 536 (Ct. App. 2009). *Intermountain Eye & Laser Ctrs., P.L.L.C. v. Miller*, 142 Idaho 218, 222, 127 P.3d 121, 125 (2005).

V. ANALYSIS AND ARGUMENT

A. THE EASEMENT AGREEMENT IS UNAMBIGUOUS.

No ambiguity or inconsistency exists in the Easement Agreement. "For a contract term to be ambiguous, there must be at least two different reasonable interpretations of the term, or it must be nonsensical." *Swanson v. Beco Const. Co.*, 145 Idaho 59, 62, 175 P.3d 748, 751 (2005).

A contract is ambiguous if it is subject to possible conflicting interpretations. *Bakker v. Thunder Spring-Wareham, LLC*, 141 Idaho 185, 190, 108 P.3d 332, 337 (2005).

The plain language of a contract is controlling when the language is unambiguous. *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 266, 297 P.3d 222, 229 (2012). When the language of a contract is unambiguous, its meaning must be determined from its words. *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (citing *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004)). The words used by the parties in drafting the contract offer the best evidence of the parties' mutual intent. *USA Fertilizer v. Idaho First Nat. Bank*, 120 Idaho 271, 815 P.2d 469 (Ct.App.1991).

1. The Easement Agreement Specifies a Maximum Width of Forty Feet (40').

If this Court finds that a valid, enforceable easement was created by Tee and Vancroft, the plain language of the Easement Agreement clearly specifies a width of precisely forty feet (40'), with no right of expansion.

In reviewing the language of an easement agreement, a strong emphasis is placed on the written expression of the parties' intent. Restatement (Third) of Prop.: Servitudes § 4.1(d) (2000). In 1991, Vancroft's attorney used precise language in drafting the Easement Agreement, even adding a technical legal description of the exact easement dimensions and location and providing references to two (2) depictions of the easement area, all of which emphasize that the width of the 40' Easement was exactly forty feet (40').

An easement is not required to be so precise in specifying the exact real property included within an easement area. Tee/Sanderson could have granted Vancroft a non-exclusive general easement over the entire Golf Course without specifying the width of the easement or limiting its authorized uses. *McFadden v. Sein*, 139 Idaho 921, 924, 88 P.3d 740, 743 (2004). In

McFadden, the parties created a general grant of easement over an entire parcel which read in pertinent part, "a permanent and perpetual non-exclusive easement and right-of-way for the purpose of constructing and utilizing a roadway for access to Parcel No. 4." *Id.* at 742. Unlike the 40' Easement at issue between Boise Hollow and Boise City, the easement agreement in *McFadden* did not specify the maximum dimensions of the easement area. Rather, the *McFadden* easement simply identified the dominant estate and the servient estate with legal descriptions. The court held that "this non-exclusive language creates a general grant of easement." *Id.* at 742. A general grant of easement is defined as an "easement granted or reserved in general terms, without any limitations as to its use." *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991).

When the parties to an easement describe with specificity the location, utility or width of the easement, such specification is "ordinarily construed to place an outside limit on the dimensions." Restatement (Third) of Prop.: Servitudes § 4.1(d) (2000) at § 4.8(d). Likewise, if the dimensions establish the maximum size of the easement, "the dimensions cannot be enlarged by the servitude owner unilaterally, even though they turn out to be inadequate for the purpose intended." *Id.* Boise Hollow is seeking to enlarge the 40' Easement to two hundred ten feet (210') because the 40' Easement now may be insufficient.

Although a general grant of easement not specifying a maximum width was possible, the Easement Agreement between Vancroft and Tee/Sanderson contained an unambiguous maximum easement width of forty feet (40') and specified the location and dimensions of the 40' Easement by using a precise legal description. The Easement Agreement does not authorize any expansion or enlargement of the width of the 40' Easement. Further, the Easement Agreement does not include any statement that the specified width is temporary and may be enlarged.

2. Easement Agreement Contains No Right of Expansion.

Boise Hollow contends that Paragraph 6 of the Easement Agreement authorizes it to unilaterally expand the width of the 40' Easement. It does not.

a. No Expansion Language.

In drafting the Easement Agreement, Vancroft's attorney omitted any language authorizing or allowing expansion or enlargement of the 40' Easement. To authorize expansion of the 40' Easement, the Easement Agreement must contain clear and unambiguous language to that effect. Paragraph 6 of the Easement Agreement contains no language authorizing expansion of the 40' Easement. The words "expand," "enlarge," or "widen" (or any of their synonyms) simply were not included anywhere in the Easement Agreement. Paragraph 6 does not address easement size, it simply authorizes Boise Hollow to dedicate any potential future road constructed within the 40' Easement to the Ada County Highway District ("**ACHD**"), if such road meets ACHD's then-current construction specification.

b. Forty Feet Was Not Just the "Initial" Width.

Boise Hollow may contend that the width of forty feet (40') was included in the Easement Agreement simply to provide an initial size for the easement, subject to future enlargement at grantee's discretion. That argument is directly contradicted by the Easement Agreement's utter lack of descriptive terms that Vancroft's attorney could have included to evidence that only the "initial" width of the easement was to be forty feet (40'). For example: "Initial width," "preliminary width," "temporary width," or "starting width." Just as the Easement Agreement lacks any synonym of "expand" or "expansion," it also lacks any language that might support the argument that the easement was intended only to be forty feet (40') in

width at its creation, subject to unilateral, unfettered, future enlargement at the sole discretion of the grantee.

c. Paragraph 1 and Paragraph 6 Are Not in Conflict.

Paragraph 6 can be read in harmony with Paragraph 1, primarily because they address different elements of the 40' Easement: Paragraph 1 specifies the size and use of the 40' Easement, whereas Paragraph 6 authorizes dedication of any road constructed within the 40' Easement. Paragraph 6 does not modify the unambiguous dimensional language of Paragraph 1. In fact, Paragraph 6 does not reference Paragraph 1 at all. Paragraph 6 merely authorizes dedication of a road that, when completed, meets ACHD's road construction specifications.

If Paragraph 6 were to be interpreted to allow the Grantee of the Easement to expand the width of the Easement, Paragraph 6 would directly contradict Paragraph 1. "In construing a contract, an interpretation should be avoided that would render meaningless any particular provision in the contract." *Star Phoenix Min. Co v. Hecla Min. Co.*, 130 Idaho 223, 233, 939 P.2d 542, 552 (1997) (quoting *Top of the Track Assoc. v. Lewiston Raceways, Inc.*, 654 A.2d 1293, 1296 (Me. 1995)). Discussing conflicting provisions of a contract, the Supreme Court stated:

> While provisions of a contract are to be read together and harmonized whenever possible, yet if two clauses relating to the same thing are so repugnant that they cannot stand together, the first will be received and the later one rejected, especially when the latter is inconsistent with the general purpose and intent of the instrument and would nullify it.

Morgan v. Firestone Tire & Rubber Co., 68 Idaho 506, 518, 201 P.2d 976, 983 (1948). Applying the principles set forth by the Idaho Supreme Court in *Morgan*, if Paragraph 6 is given the interpretation the Plaintiff is seeking, it would be in contradiction with Paragraph 1 and the

earlier (Paragraph 1) would be considered and the later (Paragraph 6) would be rejected, as it would be inconsistent with the general purpose and intent of Paragraph 1.

"A court must look to the contract as a whole and give effect to every part thereof." *USA Fertilizer v. Idaho First Nat. Bank*, 120 Idaho 271, 815 P.2d 469 (Ct.App.1991). If the Easement Agreement is read to allow the Grantee the unilateral right to expand the easement, no effect would be given to the many references in the Easement Agreement creating an easement that is exactly forty feet (40') in width. If the Court inserts an unfettered expansion right into the Easement Agreement, all of the dimensional words in Paragraph 1 of the Easement Agreement, the legal description contained in Exhibit B to the Easement Agreement, and the depictions evidencing the 40' Easement all would be stripped of their meaning.

3. Expansion would be Unlimited and Unreasonable.

If Paragraph 6 was read to give an unbridled right to expand the width of the 40' Easement, the Easement could be allowed to consume the entire servient parcel, thereby destroying the Golf Course. Enlargement of the 40' Easement, especially to Boise Hollow's desired width of two hundred ten feet (210') would destroy the 16th hole of the Golf Course. (Sanderson Decl., p. 4, ¶ g.)

Such an easement would not meet the requirements of contract law, nor would it serve the public purpose for recording such easements and burdens on the land. No future purchaser of the burdened property would have notice of the unlimited potential for expansion of such an easement.

Any increase in the use of the easement must be reasonable and not unduly burdensome or unreasonably damage the servient estate. *McFadden v. Sein*, 139 Idaho 921, 924, 88 P.3d 740, 743 (2004). Restatement (Third) of Prop.: Servitudes § 4.10(g) (2000). "[T]he servitude owner is

not entitled to cause any greater damage than that contemplated by the parties, or reasonably necessary to accomplish the purpose of the servitude. Unless clearly contemplated by the parties, it is not assumed that the servient owner intended to permit the easement owner to remove existing structures or terminate existing uses of the servient estate....aesthetics and character of the property are important concerns." Restatement, § 4.10(g).

4. The Easement's Limited Purposes Included Only Utilities and Basic Access.

As stated previously, the Easement Agreement is not required to specify or limit the purposes of the 40' Easement (see *McFadden*, 139 Idaho at 924, 88 P.3d at 743), but this Easement Agreement does specify just two (2) purposes: utilities and access. The parties to the easement could have created an easement without limiting its use. *Abbott*, 119 Idaho at 548, 808 P.2d at 1293. In this case however, Tee/Sanderson and Vancroft created an express easement and stated the width and purposes with specificity. Nowhere in the Easement Agreement is there any language suggesting the purposes of the easement included public vehicular access to a multi-residential subdivision. Further, contrary to Boise Hollow's assertion, at the time Sanderson executed the Easement Agreement on behalf of Tee, he had no knowledge or information that a multi-residential subdivision was planned for the Bedard Property. (Sanderson Decl., p. 3, ¶ 4(f).) If either Vancroft or Tee/Sanderson had desired to allow the 40' Easement to be expanded to accommodate any conceivable use of the Bedard Property, language to that effect should have been included in the Easement Agreement.

B. THE PERMANENT EASEMENT AGREEMENT IS INVALID.

The Court should also consider whether a valid easement agreement was created by the parties drafting the agreement. An easement is a contract granting certain property rights. Being that an easement is a contract, the laws governing the drafting and intent of the contract must be

followed. Here, in this case, the parties attempted to create an express easement. An express easement is created by a written document which makes clear the parties' intention to establish such servitude on the land. *Capstar Radio Operating Company v. P. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007). In order to have a valid contract there must be a meeting of the minds as the essential terms of the contract. Likewise, a contract is only valid as to the precise terms used within the document. Here, there was no meeting of the minds as to the essential terms of the contract created in the Easement Agreement. Additionally, the Grantor, Tee/Sanderson, only held a leasehold interest in the property which terminated in 2007.

1. No Meeting of the Minds, No Valid Easement.

An easement must "identify the land subject to the easement and express the intent of the parties." *Hodgins v. Sales*, 139 Idaho 225, 223, 76 P.3d 969, 977 (2003). In order to form a valid contract there must be a meeting of the minds shown by an expression of mutual intent to contract. *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). Likewise, in order for the contract to be valid "there must be a meeting of the minds on the essential terms of the agreement." *Id.* The most essential terms of an easement agreement are the location and the scope of the easement. "In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties." *Inland Title Co. v. Comstock,* 116 Idaho 701, 702, 779 P.2d 15, 16 (1989). Boise Hollow has failed to prove a distinct and common understanding between Sanderson (the Grantor) and Vancroft (the Grantee) as to the essential terms of the Easement Agreement of width and right to enlarge the 40' Easement.

Sanderson agreed to grant the 40' Easement for utility purposes and ingress and egress only. (Sanderson Decl., p. 2 ¶ 4(a), (d).) Sanderson never agreed that the width of the 40'

Easement be expanded at any time, present or future. (Sanderson Decl., p. 2, ¶ 4(c).) At the time the 40' Easement was created, Sanderson was unaware of any plans to develop the Bedard Property into a multi-residential subdivision. (Sanderson Decl., p. 3, ¶ 4(f).) Likewise, Sanderson had no knowledge that the purpose of creating the 40' Easement was to provide public access to a multi-residential subdivision development. *Id.* The Easement Agreement was presented to Sanderson as a 40' foot easement, the purpose of which was providing utilities and access. (Sanderson Decl., p. 2, ¶ 4(a); Ex. A, pp. 1-2, ¶ 1.) Sanderson states in his declaration that expansion of the width of the easement was never contemplated and had he been asked to agree to such an expansion he would have refused to sign the agreement. (Sanderson Decl., p. 2 ¶ 4(c), (d), (e), (h).) At the time Sanderson signed the Easement Agreement, the 16th hole of the Quail Hollow Golf Course was operational. Sanderson states in his declaration that any easement wider than 40' would have compromised the 16th hole and he would not have agreed to such an easement. (Sanderson Decl., p. 3 ¶ 4(g), (h).)

Sanderson goes on in his declaration to explain his understanding of the provision of Paragraph 6 of the Easement Agreement. Sanderson states his understanding of this provision was to grant the right to dedicate the 40' Easement to ACHD. (Sanderson Decl., p. 2, ¶ 4(e).) Sanderson in no way viewed this provision as a way to expand the width of the easement to now existing ACHD requirements. *Id.* Sanderson's understanding was that if at some point the grantee of the 40' Easement desired to dedicate any such road to ACHD there was nothing prohibiting them from doing so, however any such road would have to be under 40' in width. *Id.* If that provision's purpose was to allow the ability to widen the easement Sanderson would not have agreed to execute the Easement Agreement. (Sanderson Decl., p. 3, ¶ (4)(h).)

Rebecca Arnold, (hereinafter "Arnold"), counsel for Vancroft at the time of the drafting of the Easement Agreement, states in her affidavit that it was always her clients' (Vancroft's) purpose in drafting the Easement Agreement to expand the width of the easement beyond forty feet (40'). (Arnold Aff., p. 3-4.) This demonstrates there was never a meeting of the minds as to the terms of the contract regarding width or right of expansion. Similarly, Arnold states that the easement was created for the purpose of providing access to a multi-residential subdivision and would be expanded to comply with "whatever ACHD's requirements for a public road would be." (Arnold Aff., p. 3 ¶ 1.) Sanderson, as the easement grantor, disagrees, however, stating that his purpose was only to grant utility access as well as basic ingress and egress. (Sanderson Decl., p. 2 ¶ 4.)

The terms in the easement agreement regarding the width of the 40' Easement and the right to dedicate the easement to ACHD are essential terms to the contract. Sanderson believed the width of the easement to ever and only be a maximum width of 40'. Sanderson believed that any right granted to the easement holder to dedicate the 40' Easement to ACHD was merely a conveyance of the ability to dedicate the 40' Easement or any road to ACHD and never a grant to enlarge the width of the easement. Arnold states this was not the purpose of her parties, the Vancrofts in entering into the Easement Agreement. Their goal was to draft the easement in such a way as to allow its expansion to a width beyond 40'. All of Sanderson's claims are additionally supported by the plain language of the easement granting a 40' foot utility easement. Because there was never a meeting of the minds between Sanderson as Grantor, and the Vancrofts as Grantee, as to the essential terms or width and right of expansion, a valid contract was never created. The easement is invalid and may not be enforced by Boise Hollow.

2. Any Easement Created by Tee/Sanderson Terminated at the Expiration of the Leasehold Interest.

Even if the Court finds that an easement contract was validly created by the parties, any such easement would have expired when Tee's/Sanderson's rights as lessee expired. Tee was the Grantor to the Easement Agreement and at the time he entered into the agreement he only possessed a leasehold right in the Golf Course (servient estate) property. Tee's rights relating to the Golf Course property ended with the Termination of Lease agreement in 2007, between himself and the then lessor, Hendrickson. (Germaine Decl., Ex. N.)

Tee was merely the lessee of the Golf Course property in 1991 at the time the Easement Agreement was executed. Tee was not the fee title owner to the Golf Course property. The property interest Tee possessed in the Golf Course only included the rights of a lessee. Therefore, Tee/Sanderson could not have granted a "permanent" easement that ran with and burdened the land. Any easement right Tee may have granted would only run for the existence of the lease and would have terminated in 2007 when the lease expired. An easement as created in the Easement Agreement is not valid and would have terminated in 2007.

CONCLUSION

Based on the foregoing, the Defendants respectfully ask this Court to deny the Plaintiffs' Motion for Summary Judgment and grant Defendant's Cross-Motion for Summary Judgment. In doing so the Defendant respectfully requests that this Court enter such judgment declaring that Plaintiffs have no easement right across the Golf Course. In the alternative, in the event that the

Court finds a valid easement was created, the Defendant respectfully asks this Court to enter such judgment declaring the width of the easement as 40' and not expandable beyond 40'.

DATED this 31 day of December 2015.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31 day of December 2015, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

ORIGINAL

DECLARATION OF COUNSEL ABIGAIL R. GERMAINE

I, ABIGAIL R. GERMAINE, certify and declare under penalty of perjury pursuant to the laws of the State of Idaho, that the following is true and correct:

1. I am an attorney employed by the City of Boise and represent the Defendant in this case. I make this declaration of my own personal knowledge.

2. For illustrative purposes only, attached as Exhibit A is a rendering of the Quail Hollow Golf Course, the purported Easement, and the Bedard Property.

3. A true and correct copy of an Indenture between The Western Loan & Investment Company and Victor L. Nibler, dated May 7, 1943, and recorded in the records of Ada County, Idaho under instrument number 221685 is attached here as Exhibit B.

4. A true and correct copy of the Memorandum of Lease between Victor and Ruth Nibler and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen dated July 15, 1980 and recorded in the records of Ada County, Idaho under instrument number 8228729 is attached hereto as Exhibit C.

5. A true and correct copy of the Certificate of Sale for the leasehold interest of L.T.S., Inc. by the Sheriff of Ada County to A-J Corporation, dated April 25, 1986, and recorded in the records of Ada County, Idaho under instrument number 8621601 is attached hereto as Exhibit D.

6. A true and correct copy of the Amendment to Lease between Victor and Ruth Nibler and A-J Corporation, dated July 28, 1986, and recorded in the records of Ada County, Idaho under instrument number 8643154 is attached hereto as Exhibit E.

7. A true and correct copy of the Memorandum of Assignment of Leasehold Interest between A-J Corporation and Tee Ltd., dated July 28, 1986, and recorded in the records of Ada County, Idaho under instrument number 8643155 is attached hereto as Exhibit F.

8. A true and correct copy of a Warranty Deed between Victor and Ruth Nibler and Vancroft Corporation, dated June 8, 1990, and recorded in the records of Ada County, Idaho under instrument number 9030574 is attached hereto as Exhibit G.

9. A true and correct copy of a Quitclaim Deed between Victor and Ruth Nibler and Vancroft Corporation, dated August 23, 1994, and recorded in the records of Ada County, Idaho under instrument number 94078184 is attached hereto as Exhibit H.

10. A true and correct copy of the Assignment and Assumption of Golf Course Lease between Tee, Ltd., and David E. Hendrickson, dated June 30, 1993, and recorded in the records of Ada County, Idaho under instrument number 9351843 is attached hereto as Exhibit I.

11. A true and correct copy of a Warranty Deed between Tommy T. and Roxanne M. Sanderson and David E. Hendrickson, dated June 30, 1993, and recorded in the records of Ada County, Idaho under instrument number 9351841 is attached hereto as Exhibit J.

12. A true and correct copy of a Quitclaim Deed between Vancroft Corporation and David E. Hendrickson, dated October 27, 1993, and recorded in the records of Ada County, Idaho under instrument number 939201 is attached hereto as Exhibit K.

13. A true and correct copy of a Corporate Warranty Deed between Vancroft Corporation and Bedard & Musser, dated October 19, 1993, and recorded in the records of Ada County, Idaho under instrument number 9392443 is attached hereto as Exhibit L.

14. A true and correct copy of a Corporate Warranty Deed between Vancroft Corporation and Bluegrass, LLC, dated March 29, 1999, and recorded in the records of Ada County, Idaho under instrument number 99030645 is attached hereto as Exhibit M.

15. A true and correct copy of the Termination of Lease between David E. Hendrickson and Victor and Ruth Nibler, dated October 4, 2007, and recorded in the records of Ada County, Idaho under instrument number 107138040 is attached hereto as Exhibit N.

16. A true and correct copy of the Articles of Organization of Limited Liability Company for Quail Hollow LLC dated September 18, 2007, and recorded with the Idaho Secretary of State is attached hereto as Exhibit O.

17. A true and correct copy of a Warranty Deed between Blue Grass, LLC, and Quail Hollow, LLC, dated October 4, 2007, and recorded in the records of Ada County, Idaho under instrument number 107130039 is attached hereto as Exhibit P.

18. A true and correct copy of the Deed of Gift between Quail Hollow, LLC, and the City of Boise City, dated November 1, 2013, and recorded in the records of Ada County, Idaho under instrument number 113130306 is attached hereto as Exhibit Q.

19. A true and correct copy of a Quitclaim Deed between Kipp A. Bedard, William Musser, as Bedard & Musser and Boise Hollow Land Holdings, RLLP, dated June 26, 2015, and recorded in the records of Ada County, Idaho under instrument number 2015-062695 is attached hereto as Exhibit R.

20. A true and correct copy of the Assignment and Assumption of Permanent Easement Agreement dated October 27, 1993, and recorded in the records of Ada County, Idaho under instrument number 09392667 is attached hereto as Exhibit S.

21. A true and correct copy of the 1992 Plat of Nibler Subdivision is attached hereto as Exhibit T.

DATED this 31 day of December 2015.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31 day of December 2015, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

EXHIBIT "A"

To

Declaration of Abigail Germaine

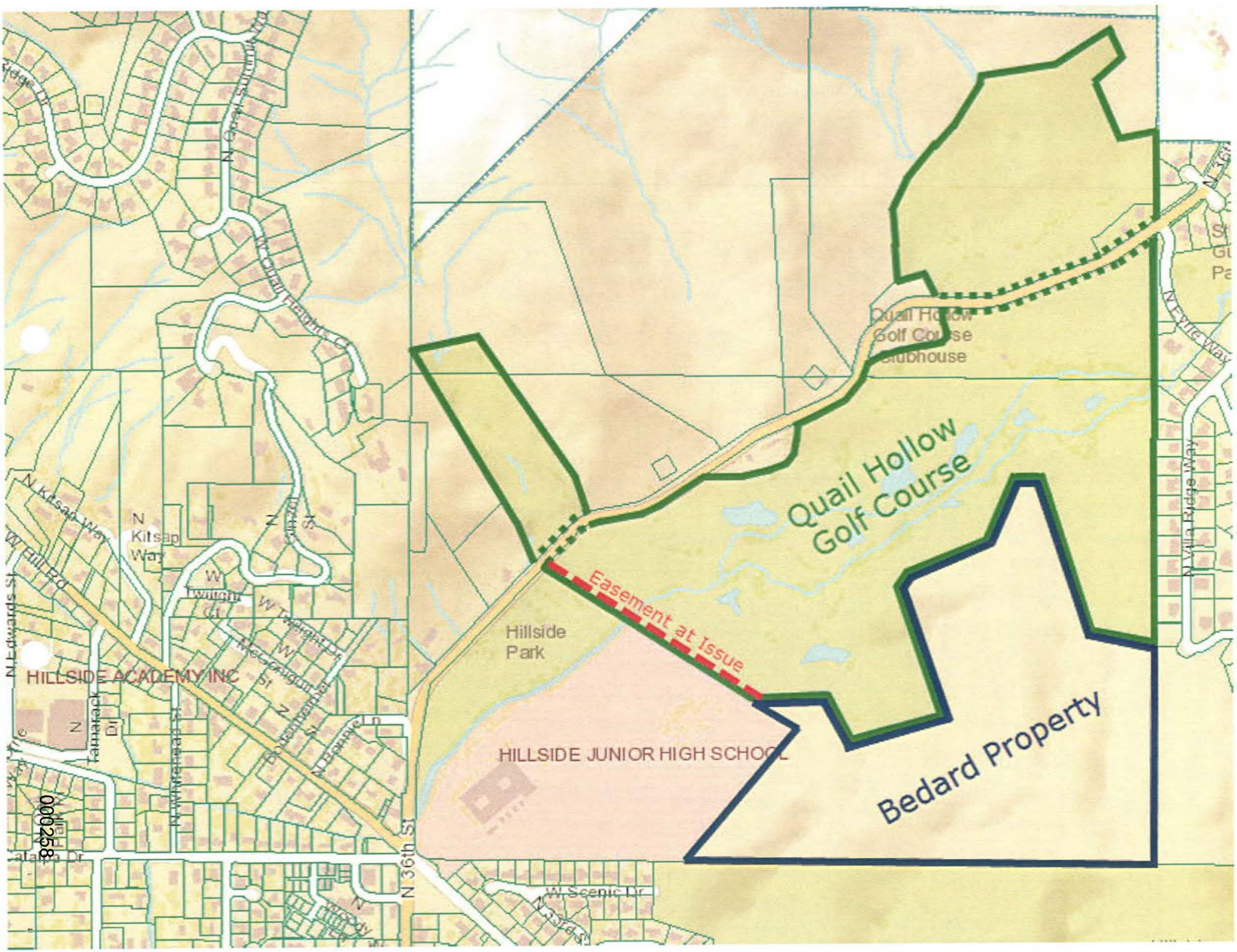

Quail Hollow Golf Course
Easement at Issue
Bedard Property
Hillside Park
HILLSIDE JUNIOR HIGH SCHOOL
HILLSIDE ACADEMY INC
N 36th St
N Kitsap Way
W Hill Rd
W Scenic Dr
Quail Hollow Golf Course Clubhouse
000258

EXHIBIT "B"

To Declaration of Abigail Germaine

ADA COUNTY, IDAHO

117 1189

The Western Loan & Investment Co. Instrument No. 221685

to

Victor L. Nibler,

Dated May 7, 1943.

THIS INDENTURE, Made this 7th day of May, in the year of our Lord one thousand nine hundred and forty-three, between The Western Loan & Investment Company a corporation duly organized and existing under the laws of the State of Idaho and having its principal office in Idaho at Boise in the County of Ada, party of the first part, and Victor L. Nibler, a single man of Boise, County of Ada, State of Idaho party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Fifteen Thousand & 00/100 Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate situated in _ County of Ada, State of Idaho, to-wit:

Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$) and the Southwest Quarter ($SW\frac{1}{4}$) and the West Half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$) of Section Twenty One (21)

and the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-eight (28), all in Twp. 4 North, Range 2, E.B.M.,

Subject to taxes for the year 1943.

Also subject to lease to present tenant.

(U.S.I.R. Stamps $16.50 Cancelled)(W.L.&I.Co. 9-17-43)

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its Corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

Signed, Sealed and Delivered in Presence of - - - -

The Western Loan & Investment Company

By J. W. Cunningham, Its President.

Attest J. R. Cornell, Its Secretary

(CORP SEAL)

STATE OF IDAHO,
) ss
COUNTY OF ADA,

On this 7th day of May in the year 1943, before me the undersigned a Notary Public in and for said State, personally appeared J. W. Cunningham known to me to be the President of the corporation that executed the instrument or the person who executed

the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

(SEAL)

Wm. B. Davidson
Notary Public for the State
of Idaho,
Residing at Meridian, Idaho
My commission expires: 12/1/43.

Recorded at the request of Boise Trust Company at 45 minutes past 3 o'clock P.M., this 20 day of Sept. A. D. 1943.

Fees: $1.20

Recorder

EXHIBIT "C"

To Declaration of Abigail Germaine

8228729

609 132

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, Made and entered into this 15 day of July, 1980, by and between VICTOR NIBLER and RUTH NIBLER, husband and wife, hereinafter referred to collectively as "Lessors," and DENNIS LABRUM, NEIL LABRUM, CLYDE THOMSEN and DAVID SAMUELSEN, hereinafter referred to as "Lessees."

W I T N E S S E T H:

That for and in consideration of the rent reserved and the terms, conditions and covenants contained in that certain Lease agreement dated the 15 day of July, 1980, and executed by the parties hereto, Lessors have leased to Lessees the following described real property located in the County of Ada, State of Idaho, set forth in Exhibit "A" hereby made a part hereof as if set forth in full.

To have and to hold unto the said Lessees, its successors and assigns, subject to its faithful performance of the terms and conditions of said Lease agreement for an initial term of ninety nine (99) years, commencing June 30, 1980.

The grant reserved unto the Lessors is the sum of Nine Hundred ($900.00) per month, and the Lessees, in addition, is to pay all real estate taxes and assessments and all expenses of every kind incident to said leased real property, more specifically set out in said Lease.

In addition Lessor's hereby grant Lessees the right to assign said lease to L. T. S. Inc. an Idaho Corporation however do not in any way waive any rights they may have against Lessees.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum the day and year first above written.

GRANTORS:

Victor Nibler

Victor Nibler

Ruth E Nibler

Ruth Nibler

609 133

STATE OF IDAHO)
) ss.
County of Ada)

On this 7th day of July, 1980, before me a Notary Public in and for the State of Idaho, personally appeared VICTOR NIBLER and RUTH NIBLER, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residence: Boise, Idaho

A parcel of land located in Sections 21 and 28, T.4N., R.2E., B.M., Ada County, Idaho, more particularly described as follows:

Beginning at a brass cap marking the West 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N. 25° 03' 16" E., a distance of 1811.18 feet to THE REAL POINT OF BEGINNING;

Thence S. 58° 59' 18" E., a distance of 1472.40 feet to a point;

Thence N. 79° 25' 00" E., a distance of 300.00 feet to a point;

Thence S. 71° 42' 30" E., a distance of 237.69 feet to a point;

Thence N. 85° 50' 00" E., a distance of 100.00 feet to a point;

Thence N. 18° 33' 05" E., a distance of 196.16 feet to a point;

Thence N. 34° 08' 41" W., a distance of 384.66 feet to a point;

Thence N. 83° 15' 53" E., a distance of 174.01 feet to a point;

Exhibit "A"

Thence N. 30° 44' 30" E., a distance of 360.81 feet to a point;

Thence N. 63° 48' 21" E., a distance of 715.09 feet to a point;

Thence S. 12° 20' 00" E., a distance of 770.00 feet to a point;

Thence S. 89° 03' 08" E., a distance of 92.02 feet to a point;

Thence N. 23° 49' 46" E., a distance of 382.10 feet to a point;

Thence N. 64° 00' 00" E., a distance of 144.21 feet to a point;

Thence N. 00° 03' 07" W., a distance of 2561.55 feet to a point;

Thence N. 84° 10' 00" W., a distance of 922.06 feet to a point;

Thence S. 59° 02' 06" W., a distance of 489.40 feet to a point;

Thence S. 13° 41' 37" W., a distance of 559.24 feet to a point;

Thence S. 02° 37' 32" E., a distance of 738.99 feet to a point;

Thence S. 54° 30' 00" W., a distance of 575.00 feet to a point;

Thence N. 28° 15' 33" W., a distance of 1279.25 feet to a point;

Thence N. 59° 25' 00" W., a distance of 240.00 feet to a point;

Thence S. 69° 35' 00" W., a distance of 78.00 feet to a point;

Thence S. 18° 20' 00" W., a distance of 142.00 feet to a point;

Thence S. 23° 15' 00" E., a distance of 1425.00 feet to a point;

Thence S. 55° 51' 54" W., a distance of 588.78 feet to a point;

Thence S. 83° 45' 00" W., a distance of 312.00 feet to a point;

Ada County, Idaho, ss.
Request of Warranty
TIME 12:50 P M.
DATE 7-7-82
JOHN BASTIDA
RECORDER
By [illegible] Deputy
1000

Thence N. 30° 18' 48" W., a distance of 813.69 feet to a point;

Thence N. 56° 37' 51" W., a distance of 347.99 feet to a point;

Thence S. 46° 45' 00" W., a distance of 130.00 feet to a point;

Thence S. 14° 02' 09" E., a distance of 181.53 feet to a point;

Thence S. 34° 35' 14" E., a distance of 267.53 feet to a point;

Thence S. 25° 00' 00" E., a distance of 738.00 feet to a point;

Thence N. 77° 17' 00" E., a distance of 93.34 feet to THE REAL POINT OF BEGINNING.

Said parcel containing 150.53 acres more or less

EXHIBIT "D"

To

Declaration of

Abigail Germaine

8621601 8690[illegible]0951

John F. Kurtz, Jr.
HAWLEY TROXELL ENNIS & HAWLEY
P.O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Plaintiff

Ada County, Idaho, ss
Request of
Hawley, Troxell, Ennis & Hawley
TIME 10:58 A M.
DATE 4-28-86
JOHN BASTIDA
RECORDER
By [signature] Deputy
16.00

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

A - J CORPORATION, an Idaho corporation, Plaintiff, vs. L.T.S. INC., an Idaho corporation; DENNIS E. LABRUM and LIZABETH LABRUM; NEIL G. LABRUM and ZOLA C. LABRUM; DAVID R. SAMUELSEN and ANN SAMUELSEN; SHAMANAH, INC., an Idaho corporation; VICTOR L. NIBLER and RUTH E. NIBLER, UNITED PIPE AND SUPPLY CO., INC., a corporation; KESSLER INTERNATIONAL CORPORATION, a corporation; CLYDE THOMSEN and FLORENCE THOMSEN, husband and wife; RANDALL N. CARNE; PROFESSIONAL ADJUSTMENT CO.; ASPHALT PAVING & CONSTRUCTION, INC., a corporation; FARMERS AND MERCHANTS STATE BANK; FIRST SECURITY BANK OF IDAHO; STATE OF IDAHO, DEPARTMENT OF EMPLOYMENT; CAPITOL LITHOGRAPH & PRINTING, INC., an Idaho corporation; STATE OF IDAHO, STATE TAX COMMISSION; N.C.D.D., INC., an Idaho corporation; O.M.	Case No. 80828 CERTIFICATE OF SALE

8690000955

SCOTT & SONS COMPANY, an Ohio corporation (DOE I); and DOES II through V,

Defendants.

UNDER AND BY VIRTUE of Judgment and Decree of Foreclosure and Order of Sale filed in the above-entitled Court on March 15, 1986, and the Writ of Execution (Order of Sale) which was issued by the above-entitled Court on March 19, 1986, all of which were directed and delivered to me as Sheriff of the County of Ada, State of Idaho, whereby I was commanded to sell the Defendant L.T.S. Inc.'s Leasehold Interest in that certain real property hereinafter described, which Leasehold Interest is evidenced by that certain Lease for a term of 99 years between Victor Nibler and Ruth Nibler, husband and wife, as lessors, and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982, as Instrument No. 8228729, records of Ada County, Idaho, which Lease was later assigned by said lessees to Defendant L.T.S., Inc., (hereinafter the "Leasehold Interest"), described and referred to in said Judgment and Decree of Foreclosure and Order of Sale situated in Ada County, Idaho, and also described more particularly on EXHIBIT "1" attached hereto and made a part hereof, and to apply the proceeds of sale in satisfaction of the Judgment in said action in the amount of $927,806.83 plus interest and costs as specified in said Judgment and Decree of Foreclosure and Order of Sale.

8690000956

I, Vaughn Killeen, Sheriff of Ada County, State of Idaho, by my undersignd deputy, do hereby certify that I duly sold said Defendant L.T.S., Inc.'s Leasehold Interest in the real property on the 25th day of April, 1986, at 10:00 a.m. of said day at public auction according to law, after due and legal notice given, at the front door of the Ada County Courthouse, Boise, Idaho, to A - J CORPORATION, AN IDAHO CORPORATION. said party being the highest bidder and said sum being the highest bid made at said sale.

That the Defendant L.T.S., Inc.'s Leasehold Interest in the real property was by Order of the Court sold in a single parcel; that the highest price bid therefor was $800,000.00 which sum was the whole price paid for the same, and that said Defendant L.T.S., Inc.'s Leasehold Interest in the real property described on attached EXHIBIT "1" is subject to a right of redemption to and including April 25, 1987.

WITNESS MY hand this 25th day of April, 1986.

VAUGHN KILLEEN, SHERIFF
OF ADA COUNTY, STATE OF IDAHO

By _____
Deputy Sheriff

8690000957

STATE OF IDAHO)
) ss.
County of Ada)

On this 25 day of April, 1986, before me, the undersigned, a notary public in and for said state, personally appeared Jim Butt known or identified to me to be the person whose name is subscribed to the foregoing instrument as Deputy Sheriff of Ada County, State of Idaho, and acknowledged to me that he executed the same.

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

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires on 9-27, 1989

A parcel of land lying in portions of the S 1/2 of Section 21, the NW 1/4 and the W 1/2 of the NE 1/4 of Section 28, all in T.4N., R.2E., B.M., Boise, Ada County, Idaho, and more particularly described as follows:

Beginning at the brass cap marking the Southwest corner of the said NW 1/4 of Section 28;

thence South 89°39'23" East 4,034.27 feet along the Southerly boundaries of the said NW 1/4 and the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the said W 1/2 of the NE 1/4 of Section 28;

thence North 0°01'58" East 1,192.28 feet along the Easterly boundary of the said W 1/2 of the NE 1/4 of Section 28 to an iron pin, also said point being the REAL POINT OF BEGINNING;

thence continuing North 0°01'58" East 1,452.53 feet along the said Easterly boundary of the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the W 1/2 of the SE 1/4 of the said Section 21;

thence North 0°06'01" West 1,365.82 feet along the Easterly boundary of the said W 1/2 of the SE 1/4 of Section 21 to an iron pin;

thence South 76°41'00" West 200.00 feet, more or less, to an iron pin;

thence North 21°35'00" West 339.15 feet to an iron pin;

thence North 40°59'00" East 190.72 feet to an iron pin;

thence North 25°45'00" West 171.20 feet to an iron pin;

thence South 56°21'30" West 344.30 feet to an iron pin;

thence South 79°42'00" West 404.30 feet to an iron pin;

thence South 30°44'00" West 309.60 feet to an iron pin;

EXHIBIT 1

thence South 41°43'00" West 386.50 feet to an iron pin;

thence South 20°11'00" West 189.20 feet to an iron pin;

thence South 2°59'00" East 378.20 feet to an iron pin;

thence North 77°41'00" East 162.90 feet to an iron pin;

thence South 24°14'00" East 163.90 feet to an iron pin;

thence South 9°44'00" East 116.70 feet to an iron pin;

thence South 25°51'00" East 66.40 feet to an iron pin;

thence South 32°30'00" West 45.10 feet to an iron pin;

thence South 82°13'00" West 64.70 feet to an iron pin;

thence South 76°23'00" West 83.60 feet to an iron pin;

thence South 84°38'00" West 74.61 feet to an iron pin;

thence South 72°11'00" West 161.01 feet to an iron pin;

thence South 54°30'00" West 495.81 feet to an iron pin;

thence South 4°27'00" East 130.99 feet to an iron pin;

thence South 59°51'00" West 32.50 feet to an iron pin;

thence South 3°43'00" West 88.10 feet to an iron pin;

thence South 32°56'00" West 73.70 feet to an iron pin;

thence South 67°27'00" West 116.50 feet to an iron pin;

thence South 79°04'00" West 155.80 feet to an iron pin;

thence North 89°34'00" West 174.90 feet to an iron pin;

thence South 60°34'00" West 308.30 feet to an iron pin;

thence South 80°43'00" West 286.30 feet to an iron pin;

thence North 17°40'00" West 243.00 feet to an iron pin;

thence North 34°24'20" West 937.80 feet to an iron pin;

thence South 78°30'00" West 371.34 feet to an iron pin;

thence South 31°01'20" East 1,103.30 feet to an iron pin;

thence South 23°39'00" East 244.70 feet to an iron pin;

thence South 57°43'00" East 1,398.50 feet to an iron pin;

thence North 87°59'00" East 383.35 feet to an iron pin;

thence South 27°08'00" East 202.00 feet to an iron pin;

thence North 74°10'50" East 539.10 feet to an iron pin;

thence North 18°14'00" West 748.23 feet to an iron pin;

thence North 30°17'00" East 83.80 feet to an iron pin;

thence North 67°27'45" East 456.90 feet to an iron pin;

thence North 22°57'00" East 399.62 feet to an iron pin;

thence South 86°16'00" East 103.20 feet to an iron pin;

thence South 17°34'20" East 895.20 feet to an iron pin;

thence South 78°42'10" East 371.14 feet, more or less, to the point of beginning, comprising 142.27 acres, more or less.

EXHIBIT "E"

To Declaration of Abigail Germaine

8643154

8920011060

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (the "Amendment"), made and entered into this 28th day of July, 1986, by and between VICTOR NIBLER and RUTH NIBLER, husband and wife, hereinafter referred to as the "Lessors" and A-J CORPORATION, an Idaho corporation, hereinafter referred to as the "Lessee."

WHEREAS, Lessors entered into that certain "Lease" dated July 15, 1980 for a term of 99 years between Lessors, and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982 as Instrument No. 8228729, records of Ada County, Idaho, which Lease was later assigned by said lessees to L.T.S., Inc.;

WHEREAS, L.T.S., Inc.'s leasehold interest evidenced by that Lease was acquired by the Lessee by entering a credit bid at the Sheriff's Sale held on April 25, 1986;

WHEREAS, Lessors and Lessee desire to amend the Lease.

NOW, THEREFORE, in consideration of the premises and the sum of TEN DOLLARS ($10.00) cash in hand paid, the receipt of which is hereby acknowledged by the Lessors, Lessors and Lessee hereby agree to the following amendments to the Lease:

1. Section 11: The last sentence of Section 11, which reads "It is not contemplated that the taxes on the surrounding

ground exclusive of the golf course will be increased but in the event it is the cost shall be paid by Lessees." shall be deleted and removed from the Lease.

2. Section 19: A new paragraph shall be added to Section 19. Such paragraph shall be inserted after the end of the first paragraph which ends "disprove the same." and before the beginning of the second paragraph, which begins "In the event . . ." Such paragraph shall read as follows:

> In the event the current Lessee, A-J Corporation, assigns its interest in this Lease to a third party, A-J Corporation shall continue to receive any said notice of default which is sent to a lessee pursuant to the preceding paragraph.

3. Section 23: The second sentence of the first paragraph of Section 23 shall be amended to take out the phrase "with the consent of Lessors" such that the second sentence will read as follows:

> At the end of the 99 year term hereof lessees shall be able to extend this lease upon the following terms and conditions.

4. Section 28: A new Section 28 shall be added to the Lease and shall read as follows:

> 28. Assignment and Mortgage: The current Lessee, A-J Corporation, may assign its interest in the Lease to another entity, and A-J Corporation may take back a mortgage interest in the Lease as security for A-J Corporation's assignment of the Lease.

8920001662

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease in Boise this 28th day of July, 1986.

Victor Nibler

Victor Nibler

Ruth Nibler

Ruth Nibler

A-J CORPORATION

By

Its President

STATE OF IDAHO)
) ss.
County of Ada)

On this [illegible] day of July, 1986, before me, [illegible], a Notary Public in and for said state, personally appeared VICTOR NIBLER and RUTH NIBLER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

[illegible]
Notary Public for Idaho
Residing at [illegible], Idaho
My commission expires on [illegible], 19[illegible]

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, Ruth Trinkaus, a Notary Public in and for said State, personally appeared VICTOR A. ACLMON, known or identified to me to be the president of A-J CORPORATION, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Ruth Trinkaus
Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires on 12/10, 1991

Ada County, Idaho, ss
Request of
PIONEER TITLE CO.
TIME 2:55 P M
DATE 7-29-86
JOHN BASTIDA
RECORDER
By [illegible] Deputy
8.00

EXHIBIT "F"

To Declaration of Abigail Germaine

8643155

8920011664

MEMORANDUM OF
ASSIGNMENT OF LEASEHOLD INTEREST

This Assignment is made and entered into this 28th day of July, 1986, by and among A-J CORPORATION (the "Assignor"), an Idaho corporation, whose place of business is 3521 28th Street, Lewiston, Idaho, and TEE LTD., an Idaho corporation, (the "Assignee"), whose place of business is 4520 North 36th Street, Boise, Idaho.

WHEREAS, Assignor operates a golf course commonly known as Shamanah located at 4520 North 36th Street, Boise, Ada County, Idaho.

WHEREAS, Assignor acquired a leasehold interest in Shamanah by entering a credit bid at the Sheriff's Sale held on April 25, 1986 (the "Leasehold Interest"). The Assignor's Leasehold Interest is in that certain real property described in Exhibit "A" attached hereto, and by this reference made a part hereof, which Leasehold Interest is evidenced by that certain lease for a term of 99 years between Victor Nibler and Ruth Nibler, husband and wife, as lessors, ("Lessors") and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982 as Instrument No. 8228729, records of Ada County, Idaho, (the "Lease"), which Lease was later assigned by said lessees to L.T.S., Inc. A Certificate of Sale was issued to Seller and recorded on April 28, 1986 as Instrument No. 8621601, records of Ada County, Idaho. Seller's interest is

subject to such redemption rights as exist following the Sheriff's Sale.

WHEREAS, the parties have entered into a Leasehold Purchase Agreement dated July 28, 1986 for the purchase of the Leasehold Interest and setting forth in detail the rights and obligations of the parties, which Leasehold Purchase Agreement is hereby incorporated by reference.

NOW, THEREFORE, in consideration of value received, the parties agree as follows:

Section 1.

Assignor does hereby sell, assign, set over and transfer to Assignee its Leasehold Interest in that certain real property described in Exhibit "A," subject to the interest reserved in Section 2 below.

Section 2.

2.1 Assignor purchased its Leasehold Interest at a Sheriff's Sale, and such Leasehold Interest is subject to redemption rights, to and including April 25, 1987, as indicated in the Certificate of Sale, recorded as Instrument No. 8621601, records of Ada County, Idaho.

2.2 Assignor has expressly reserved, and has not assigned or sold to Assignee the right to receive any monies if

the property is redeemed, and Assignee agrees that all monies paid by a redemptioner shall be paid to the Assignor.

2.3 Assignee contemplates constructing paved golf cart paths on Shamanah together with other improvements. The existence of the paved golf cart paths and other improvements may give rise to a claim to additional amounts which must be paid by the redemptioner. Assignee assigns all of its right and interest in any sums attributable to the paved golf cart paths to Assignor, and Assignor may enforce such rights and collect such amounts from the redemptioner with no obligation to pay any portion of these amounts to Assignee. Assignee shall have the right to pursue and collect from the redemptioner such amounts as may be attributable to any other improvements constructed by Assignee.

Section 3.

3.1 Assignees covenants that it will comply with, assume and faithfully discharge all the terms of the Lease and any amendments thereof.

3.2 Assignee covenants that if it assigns, sells or otherwise transfers its Leasehold Interest without the written consent of Assignor, which shall not be unreasonably withheld, that the remaining balance owed pursuant to the Leasehold Purchase Agreement and the Promissory Note shall immediately become due and payable to Assignee.

8920001667

A-J CORPORATION

By _____
Its President

TEE LTD.

By _____
Tommy T. Sanderson
Its President

ATTEST:

_____
Roxanne M. Sanderson
Its Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, RUTH TRINKAUS a Notary Public in and for said State, personally appeared VICTOR A. ALLMON, known or identified to me to be the President of A-J CORPORATION, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

_____
Notary Public for Idaho
Residing at Idaho, Idaho
My commission expires on 12/10, 1991

8920071668

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, RUTH TRINKAUS, a Notary Public in and for said State, personally appeared TOMMY T. SANDERSON and ROXANNE M. SANDERSON, known or identified to me to be the President and Secretary, respectively, of TEE, LTD., the corporation that executed the within instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Ruth Trinkaus

Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires on 12/10, ~~STA~~ 1986

Ada County, Idaho, ss
Request of
PIONEER TITLE CO.
TIME 3:55 PM
DATE 7-29-86
JOHN BASTIDA
~~RECORDER~~
By Deputy

1800

A parcel of land lying in portions of the S 1/2 of Section 21, the NW 1/4 and the W 1/2 of the NE 1/4 of Section 28, all in T.4N, R.2E., B.M., Boise, Ada County, Idaho, and more particularly described as follows:

Beginning at the brass cap marking the Southwest corner of the said NW 1/4 of Section 28;

thence South 89°39'23" East 4,034.27 feet along the Southerly boundaries of the said NW 1/4 and the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the said W 1/2 of the NE 1/4 of Section 28;

thence North 0°01'58" East 1,192.28 feet along the Easterly boundary of the said W 1/2 of the NE 1/4 of Section 28 to an iron pin, also said point being the REAL POINT OF BEGINNING;

thence continuing North 0°01'58" East 1,452.53 feet along the said Easterly boundary of the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the W 1/2 of the SE 1/4 of the said Section 21;

thence North 0°06'01" West 1,365.82 feet along the Easterly boundary of the said W 1/2 of the SE 1/4 of Section 21 to an iron pin;

thence South 76°41'00" West 200.00 feet, more or less, to an iron pin;

thence North 21°35'00" West 339.15 feet to an iron pin;

thence North 48°59'00" East 190.72 feet to an iron pin;

thence North 25°45'00" West 171.20 feet to an iron pin;

thence South 56°21'30" West 344.30 feet to an iron pin;

thence South 79°42'00" West 404.30 feet to an iron pin;

thence South 30°44'00" West 309.60 feet to an iron pin;

thence South 41°43'00" West 386.50 feet to an iron pin;

thence South 20°11'00" West 189.20 feet to an iron pin;

thence South 2°59'00" East 378.20 feet to an iron pin;

thence North 77°41'00" East 162.90 feet to an iron pin;

thence South 24°14'00" East 163.90 feet to an iron pin;

thence South 9°44'00" East 116.70 feet to an iron pin;

thence South 25°51'00" East 66.40 feet to an iron pin;

thence South 32°30'00" West 45.10 feet to an iron pin;

thence South 82°13'00" West 64.70 feet to an iron pin;

thence South 76°23'00" West 83.60 feet to an iron pin;

thence South 84°38'00" West 74.61 feet to an iron pin;

thence South 72°11'00" West 161.01 feet to an iron pin;

thence South 54°30'00" West 495.81 feet to an iron pin;

thence South 4°27'00" East 130.99 feet to an iron pin;

thence South 59°51'00" West 32.50 feet to an iron pin;

thence South 3°43'00" West 88.10 feet to an iron pin;

thence South 32°56'00" West 73.70 feet to an iron pin;

thence South 67°27'00" West 116.50 feet to an iron pin;

thence South 79°04'00" West 155.80 feet to an iron pin;

thence North 89°34'00" West 174.90 feet to an iron pin;

thence South 60°34'00" West 388.30 feet to an iron pin;

thence South 80°43'00" West 286.30 feet to an iron pin;

thence North 17°40'00" West 243.00 feet to an iron pin;

thence North 34°24'20" West 937.80 feet to an iron pin;

thence South 78°30'00" West 371.34 feet to an iron pin;

thence South 31°01'20" East 1,103.30 feet to an iron pin;

thence South 23°39'00" East 244.70 feet to an iron pin;

thence South 57°43'00" East 1,398.50 feet to an iron pin;

thence North 87°59'00" East 383.35 feet to an iron pin;

thence South 27°08'00" East 282.00 feet to an iron pin;

thence North 74°10'50" East 539.10 feet to an iron pin;

thence North 18°14'00" West 748.23 feet to an iron pin;

thence North 36°17'00" East 83.80 feet to an iron pin;

thence North 67°27'45" East 456.90 feet to an iron pin;

thence North 22°57'00" East 399.62 feet to an iron pin;

thence South 86°16'00" East 103.20 feet to an iron pin;

thence South 17°34'20" East 895.20 feet to an iron pin;

thence South 78°42'10" East 371.14 feet, more or less, to the point of beginning, comprising 142.27 acres, more or less.

9030576 1218000374

ASSIGNMENT OF LEASES

THIS ASSIGNMENT is made effective as of the 8th day of June, 1990, by VICTOR L. NIBLER and RUTH E. NIBLER, husband and wife (collectively the "Assignor"), to VANCROFT CORPORATION, an Idaho corporation ("Assignee");

WITNESSETH:

WHEREAS, Assignor is the Landlord/Lessor under the leases listed on Exhibit "A" attached hereto and incorporated herein and related documents ("Leases"), which Leases cover portions of that certain real property located in the Ada County, Idaho, described on Exhibit "B" attached hereto and incorporated herein (the "Property");

WHEREAS, concurrently herewith, Assignor has conveyed the Property to Assignee and in conjunction therewith Assignor desires to assign the Leases and all of its right, title and interest thereunder to Assignee;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the parties hereby agree as follows:

1. Assignment.

(a) Assignor hereby assigns and conveys to Assignee all of its right, title and interest in and to the Leases, and agrees to indemnify and hold Assignee harmless from any and all claims, demands, liability, damage or expense (including, without limitation, reasonable attorneys' fees) arising out of or in any way related to said Leases prior to the date hereof. The Leases are assigned to Assignee subject to all of the terms of the respective Leases. Assignor shall provide a written notice of this Assignment to each of the lessees under the Leases.

2. Acknowledgment of Receipt of Leases. Assignee hereby acknowledges receipt of copies of the Leases.

3. Assignor's Representations. Assignor hereby represents and warrants to Assignee that: (a) all leases affecting the Property are listed on Exhibit "A" and that Assignor has delivered true and correct copies of all such leases and documents related thereto to Assignee; (b) each Lease is in full force and effect and that Assignor is not in default of the terms and conditions of the Leases; and (c) Assignor has not assigned any interest in such leases to any person or entity other than the Assignee hereof.

4. Benefit. This Assignment shall be binding upon and inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

EXHIBIT "G"

To Declaration of Abigail Germaine

1262000732

9030574

WARRANTY DEED

FOR VALUE RECEIVED, VICTOR L. NIBLER and RUTH NIBLER, husband and wife (the "Grantor"), does hereby grant, bargain, sell and convey unto VANCROFT CORPORATION, an Idaho corporation whose address is 3222 South Pass Court, Boise, Idaho 83705 (the "Grantee"), the real property located in Ada County, Idaho, and described on Exhibit A hereto and incorporated herein, together with its appurtenances, including any and all water rights, (hereinafter the "Premises").

The Grantor does hereby covenant to and with the Grantee, that Grantor is the owner in fee simple of the Premises; that the Premises are free and clear from all encumbrances except as set forth on Exhibit B attached hereto and incorporated herein (the "Permitted Exceptions") and that Grantor will warrant and defend the same from all other claims whatsoever.

TO HAVE AND TO HOLD the Premises unto the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed effective this 8 day of June, 1990.

Ada County, Idaho ss
Request of
SECURITY TITLE
TIME 10:45 A.M.
DATE 6-11-90
JOHN GAETDA
RECORDER
By J Stord Deputy
21.00

"Grantor"

Victor L Nibler
Victor L. Nibler

Ruth E Nibler
Ruth E. Nibler

STATE OF IDAHO)
) ss.
County of Ada)

On this 8 day of June, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Victor L. Nibler and Ruth E. Nibler, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

THOMAS KEEP NOTARY PUBLIC STATE OF IDAHO

Thomas Keep
Notary Public for Idaho
Residing at ~~Boise~~, Nampa Idaho
My commission expires: 11/29/95

This document being re-recorded for purpose of correcting legal description.

EXHIBIT A

DESCRIPTION OF PROPERTY

The NW 1/4, and the W 1/2 NE 1/4, Section 28, and the SW 1/4 and the W 1/2 SE 1/4, and the W 1/2 NE 1/4, and the NE 1/4 NE 1/4, Section 21, Township 4N, Range 2E, Boise Meridian, Boise, Ada County, Idaho excepting therefrom the following:

Commencing at the Quarter corner common to Section 28 and 29, T. 4N, R. 2E, B.M.; thence
South 89°53' East 50 feet to the REAL PLACE OF BEGINNING; Thence
North 497.3 feet; thence
North 8°58'40" East 464.16 feet; thence
North 43°06' East 870.8 feet; thence
South 58°14; East 1632.0 feet; thence
South 39°23' West 951.72 feet; thence
North 89°53' West 1451.2 feet to the REAL PLACE OF BEGINNING. A parcel of land containing 50.58 acres, more or less. (SEE WARRANTY DEED, Instrument No. 404319, December 6, 1956.)

And further excepting therefrom the following:

Commencing at the Quarter corner common to Section 28 and 29, T. 4N, R. 2E, B.M.; thence
North along the Section line 898.2 feet to an iron pin, the REAL PLACE OF BEGINNING; thence
North 301.3 feet to an iron pin; thence
South 46°54' East 205.9 feet to an iron pin; thence
South 43°06' West 220.0 feet to the PLACE OF BEGINNING. A parcel of land containing 0.52 acres, more or less. (SEE WARRANTY DEED, Instrument No. 506934, July 10, 1961.)

And further excepting therefrom the following:

Commencing at the Southwest corner of the Northwest 1/4 of Section 28, T. 4N, R. 2E, B.M.; thence
North 00°30'30" East along the West Section Line of said Section 28, a distance of 87.38 feet to a point, also said point being the REAL POINT OF BEGINNING; thence
South 53°30'30" East, a distance of 9.28 feet to a point; thence
South 40°45'40 East, a distance of 64.43 feet to a point; thence
North 0°30'30" East, a distance of 463.69 feet to a point; thence
North 09°30'12: East, a distance of 464.17 feet to a point; thence
North 43°37'00" East, a distance of 870.80 feet to a point; thence
North 46°23'00" West, a distance of 50.23 feet to a point; thence
South 43°37'00" West, a distance of 996.51 feet to a point; thence
South 00°30'30" West, a distance of 810.82 feet to the REAL POINT OF BEGINNING.

A parcel of land containing 2.4039 acres, more or less. (SEE QUITCLAIM DEED, Instrument No. 8710730.)
And further excepting any portion thereof lying in Hill Road.

And further excepting therefrom the following:

Commencing at the Brass Cap marking the Southwest corner of the North 1/2 of Section 28, T. 4N, R. 2E, B.M.; thence
South 89°39'23" East 4034.27 feet along the Southerly boundary of the said North 1/2 of Section 28 to an iron pin marking the Southeast corner of the West 1/2 of the Northeast 1/4 of the said Section 28; thence
North 00°01'58" East 2644.81 feet along the Easterly boundary of the said West 1/2 of the Northeast 1/4 of Section 28 to an iron pin, marking the Southeast corner of the West 1/2 of the Southeast 1/4 of the said Seciton 21; thence
North 68°49'12" West 1498. 94 feet to a point, also said point being the REAL POINT OF BEGINNING; thence
North 77°41' East 162.90 feet to a point; thence
South 24°14' East 163.90 feet to a point; thence
South 09°44' East 116.70 feet to a point; thence
South 25°51' East 66.40 feet to a point; thence
South 32°30' West 45.10 feet to a point; thence
South 82°13' West 64.70 feet to a point; thence
South 76°23' West 83.60 feet to a point; thence
South 84°38' West 74.61 feet to a point; thence
South 72°11' West 161.01 feet to a point; thence
North 02°37'32" West 280.03 feet to a point; thence
North 45°31' east 189.06 feet to the POINT OF BEGINNING. A parcel of land containing 2.4039 acres, more or less. (SEE WARRANTY DEED, Instrument No. 8742940.)

And further excepting therefrom the following:

NIELER'S 4 ACRE HOMESITE

Commencing at the Section corner common to Sections 20, 21, 28 and 29, T. 4N, R. 2E, B.M.; Thence
S 89°26'15" E. 1875.64 feet along the line common to Sections 21 and 28 to a point on the Southwesterly property line of this parcel, said point being the REAL POINT OF BEGINNING; Thence
N. 35°30'51" W. 116.81 feet to a point; Thence
N. 54°29'09" E. 427.89 feet to a point; Thence
S. 35°30'51" E. 398.67 feet to a point; Thence
along a curve to the right 51.76 feet, having a central angle of 19°07'56", a radius of 155.00 feet, tangents of 26.12 feet, and a chord of 51.52 feet which bears S. 38°26'59" W. to a point; Thence
S. 48°00'57" W. 62.81 feet to a point; Thence
along a curve to the right 111.04 feet, having a central angle of 16°57'56", a radius of 375.00 feet, tangents of 55.93 feet, and a chord of 110.63 feet which bears S. 56°29'55" W. to a point; Thence
S. 64°58'53" W. 208.90 feet to a point; Thence
N. 35°30'51" W. 261.23 feet to the REAL POINT OF BEGINNING.

REM

EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 1990 and subsequent years.

2. Reservations in U.S. Patent recorded in Book 1 of Patents at Page 60, Book 4 of Patents at Page 5, Book 6 of Patents at Page 78, Book 6 of Patents at Page 104, Book 6 of Patents at Page 112, as follows: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with local customs, laws and decisions of Courts, and also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law ... and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States."

3. Power line easement as granted by Frank Dobson and Lulu B. Dobson, his wife to Idaho Power Company, a corporation, by instrument recorded September 19, 1930, in Book 12 of Miscellaneous at Page 437, as Instrument No. 141535, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

4 Power line easement as granted by Frank Dobson and Lulu B. Dobson, his wife to Idaho Power Company, a corporation, by instrument recorded February 27, 1931, in Book 12 of Miscellaneous at Page 547 as Instrument No. 143612, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

5. Power line easement as granted by Western Loan & Investment Co. to Idaho Power Company, a corporation, by instrument recorded March 18, 1939, in Book 16 of Miscellaneous at Page 223, as Instrument No. 188931, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

6. Easement as granted by Victor L. Nibler and Ruth E. Nibler to The Mountain States Telephone and Telegraph Company by instrument recorded March 2, 1967, as Instrument No. 659097, of Official Records; for operation, maintenance and repair of its lines. The exact location and extent of said easement is not disclosed of record.

7. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: sewer and water lines and other utility facilities, whether above ground or underground and a road and related improvements providing public ingress to and egress from

Recorded: August 23, 1978

Instrument No.: 7845243 of Official Records
The exact location and extent of said easement is not disclosed of record.

8. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: access and utilities

Recorded: July 24, 1987

Instrument No.: 8742940 of Official Records
The exact location and extent of said easement is not disclosed of record.

9. Power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation, by instrument recorded October 1, 1987, as Instrument No. 8755532, of Official Records ... including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system.

10. Power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation, by instrument recorded November 18, 1983, as Instrument No. 8362310, of Official Records ... including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system.

11. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: locating, establishing, constructing,

maintaining, repairing, and operating underground sanitary sewer lines

Recorded: January 14, 1988

Instrument No.: 8802157 of Official Records

Said instrument was corrected and recorded October 12, 1988 as Instrument No. 8850182.

12. Underground power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation by instrument recorded May 2, 1988 as Instrument No. 8820687 of Official Records.

9066445

Rerecord

ADA CO. IDAHO

FOR SECURITY TITLE

'90 DEC 5 PM 1 09

JOHN [illegible] RECORDER

BY [illegible]

18.00

EXHIBIT "H"

To Declaration of Abigail Germaine

P1 32'787.3L4

1774000798

QUITCLAIM DEED

FOR VALUE RECEIVED, VICTOR L. NIBLER and RUTH E. NIBLER, husband and wife, (collectively referred to herein as the "Grantor") does hereby grant, convey, release, remise and forever quitclaim unto VANCROFT CORPORATION, an Idaho corporation, (the "Grantee") whose address is 600 West 76th, No. 101, Anchorage, Alaska 99518, Attention: Mari Montgomery, President, all of Grantor's right, title and interest, if any, in the real property described as Lots 1, 2, 3, 5 and 6 of Block 1 and Lots 1 and 2 of Block 2, Nibler Subdivision, according to the official plat thereof filed in the official records of Ada County, Idaho on January 31, 1992 in Book 59 at pages 5789-5791, instrument number 9205592 (the "Property"); EXCEPTING HOWEVER that this instrument is not intended to, and does not, release any security interest of Grantor in the Property under that certain Mortgage dated June 11, 1990 and recorded on June 11, 1990 as Instrument No. 9030575 in the real property records of Ada County, Idaho (the "Mortgage") and the lien and terms of the Mortgage shall remain in full force and effect to the extent said Mortgage affects the Property.

IN WITNESS WHEREOF, the undersigned have caused the execution of this instrument as of the 23 day of August, 1994.

94078184

[illegible] GARBER
J. D[illegible]ARO
BOISE ID

PIONEER TITLE

'94 AUG 25 11[illegible]0

FEE 6.00
RECORDED

ST OF

Victor L. Nibler
Victor L. Nibler

Ruth E. Nibler
Ruth E. Nibler

STATE OF Wash.)
) ss.
County of King)

On this 23rd day of August, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared VICTOR L. NIBLER, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

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

JAN M. HOVER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-23-95

Jan M. Hover
Notary Public for State of Wash.
Residing at Kirkland, Wa.
My commission expires: 10-23-95

STATE OF Wash.)
) ss.
County of King)

On this 23rd day of August, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared RUTH E. NIBLER, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that she executed the same.

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

JAN M. HOVER NOTARY PUBLIC STATE OF WASHINGTON

Jan M Hover
Notary Public for State of Wash.
Residing at Kirkland
My commission expires: 10-23-95

EXHIBIT "I"

To

Declaration of

Abigail Germaine

9351843

ST-93041044 (4)

STEWART TITLE

1568000988

ADA COUNTY, IDAHO
J. DAVID NAVARRO
RECORDER BY [signature]
18

ASSIGNMENT AND ASSUMPTION OF GOLF COURSE LEASE
93 JUN 30 PM 1 13

Assignor: Tee, Ltd.
an Idaho Corporation

Assignee: David E. Hendrickson,
a Single Man

This Assignment of Lease is made effective as of the 30th day of June, 1993, by Tee, Ltd., an Idaho corporation of Boise, Idaho, hereinafter referred to as Assignor, and David E. Hendrickson, a single man, of Boise, Idaho hereinafter referred to as Assignee.

W I T N E S S E T H:

On July 15, 1980, Victor L. Nibbler and Ruth E. Nibbler, husband and wife, as Lessors and Dennis Labrum, Neil Labrum, Clyde Thomson and David Samuelson, as Lessees, entered into a Lease Agreement under the terms of which the Lessees leased for a period of ninety-nine years, the following real property, more particularly described as follows:

> Lots 2 and 6, Block 1, and Lots 1 and 2, Block 2, of Nibbler subdivision according to the records and files of the Ada County Recorder, State of Idaho.

The Lease is a triple net lease, meaning that the Lessee bears all expenses, including taxes, maintenance repairs, upkeep, insurance premiums and all other related expenses. The Lease expires on June 29, 2079.

On April 25, 1986, AJ Corporation, an Idaho corporation, acquired the Lessees' leasehold interest in the identified Lease by purchasing the same at a Sheriff's sale. On July 28, 1986, Victor L. Nibbler and Ruth E. Nibbler, entered into an Amendment

to the Lease Agreement, which Amendment was recorded as Ada County Instrument No. 8643154. On that same date, July 28, 1986, Tee, Ltd. purchased all of AJ Corporation's Lessees' interest in the leasehold estate and has been in possession of the same since that time.

On June 8, 1990, Victor L. Nibbler and Ruth E. Nibbler, husband and wife, assigned all of their landlord/Lessors' interest in and to the July 15, 1980 Lease to Vancroft Corporation, an Idaho corporation, a copy of which Assignment was recorded on June 11, 1990, as Ada County Instrument No. 9030576. The present amount of the monthly rent required to be paid is $1,263.99 and the amount thereof will increase pursuant to the terms of the July 15, 1980 Lease.

Concurrently herewith, Tee, Ltd. is conveying all of its right, title and interest in and to the real and personal property known commonly as the Quail Hollow Golf Course, and in conjunction therewith, Assignor desires to assign the Lease and all of its right, title and interest thereunder to Assignee, and Assignee desires to assume the terms of the Lease and perform the same according to its terms.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the parties agree as follows:

1. ASSIGNMENT:

Assignor hereby assigns, transfers and conveys to Assignee, David E. Hendrickson, all of its right, title and interest in and

to the July 15, 1980 Lease. Assignor has provided a written notice of the Assignment to Vancroft Corporation, the present Lessor of the July 15, 1980 Lease and has obtained from Vancroft, a certificate certifying that as of June 30, 1993, Assignor is in compliance with the terms of the Lease and that all payments required to be made to Vancroft have in fact been made through June 30, 1993. A copy of said Certificate is attached hereto as Exhibit "A" and incorporated herein by reference.

2. ACKNOWLEDGEMENT OF RECEIPT OF LESSEE:

Assignee hereby acknowledges receipt of copies of the Lease, its Amendment, and the Estoppel Certificate and acknowledges that the Lease and Amendment are assigned to Assignee subject to all of the terms thereof.

3. ASSUMPTION OF LEASE:

Assignee agrees to assume the July 15, 1980 Lease and its Amendment according to the terms thereof and pay all amounts required thereunder as they become due, the same as though he had originally executed the Lease and Amendment. Assignee agrees to indemnify and hold Assignor harmless from any liability, and any and all claims, demands, liability, damage or expense of any kind whatsoever, arising out of or in any way related to said Lease and Amendment subsequent to the date hereof and Assignee's Assumption of the Lease.

4. **BENEFIT:**

This Assignment shall be binding upon and inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the day and year first above written.

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

_____
David E. Hendrickson

STATE OF IDAHO)
)ss.
County of Ada)

On this 30th day of June, 1993, before me, Tommy T. Sanderson personally appeared, known or identified to me to be the President of the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

JOYCE H. JOHNSON NOTARY PUBLIC STATE OF IDAHO

Joyce H. Johnson
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 1/25/99

STATE OF IDAHO)
)ss.
County of Ada)

On this 30 day of June, 1993, before me, the undersigned notary public in and for said county and state, personally appeared David E. Hendrickson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My Commission Expires: 10/5/98

1568000993

ACKNOWLEDGMENT OF NOTICE
AND ESTOPPEL CERTIFICATE

The undersigned, Vancroft Corporation, acknowledges receipt of the Notice of Assignment of the above-identified Lease from Tee, Ltd. to David E. Hendrickson. Vancroft Corporation further acknowledges that the company is completely satisfied with Tee, Ltd.'s performance under the Lease of said property and has no claims or demands against Tee, Ltd., and there are no disputes existing in connection with the Lease of said property. Vancroft Corporation further understands that David E. Hendrickson would not purchase the interest in said Lease in the event there were any disputes or dissatisfactions in connection with the Lease of the property.

DATED this 24th day of June, 1993.

VANCROFT CORPORATION

By Mari E. Montgomery
Its President

EXHIBIT "J"

To Declaration of Abigail Germaine

ST-93041044 (3)

THIS FORM FURNISHED COURTESY OF:

STEWART TITLE OF IDAHO, INC.

1568000976

READ & APPROVED BY GRANTEE(S): DH _____

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 93041044 JH

WARRANTY DEED

FOR VALUE RECEIVED TOMMY T. SANDERSON and ROXANNE M. SANDERSON, husband and wife

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto DAVID E. HENDRICKSON, a single man

GRANTEE(S), whose current address is:

the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 5 in Block 1 and Lot 3 in Block 2 of NIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s) and Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s), and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: June 30, 1993

Tommy T. Sanderson

Roxanne M. Sanderson

By _____ Attorney-in-fact

93518411

STEWART TITLE

ADA COUNTY, IDAHO

J. DAVID NAVARRO

RECORDER BY _____

'93 JUN 30 PM 4 42

1568000977

STATE OF IDAHO, County of Ada, ss.

On this 30th day of June in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Tommy T. Sanderson known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Signature: [signature]
Name: _____
(Type or Print)
Residing At: Boise
My Commission expires: 10-5-97

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO, County of Ada, ss.

On this 30th day of June in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared E. Dan Copple known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as the attorney in fact of Roxanne M. Sanderson and acknowledged to me that he/she/they subscribed the name(s) of Roxanne M. Sanderson thereto as principal, and his/her own name as attorney in fact.

Signature: [signature]
Name: _____
(Type or Print)
Residing At: Boise
My Commission expires: 10-5-97

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

EXHIBIT "K"

To
Declaration of
Abigail Germaine

THIS FORM FURNISHED COURTESY OF:

STEWART TITLE

READ & APPROVED BY GRANTEE(S): _____ _____

RECORDER 93901
J. DAVID NAVARRO
BOISE ID
STEWART TITLE 1626001234

93 OCT 29 PM 5 00

FEE $ 8.00 DEP _____

ACKNOWLEDGMENT NO RECORDING DATA _____

Order No.: 8TI-93041044 JH

QUITCLAIM DEED

FOR VALUE RECEIVED VANCROFT CORPORATION, an Idaho corporation

GRANTOR(S)

do(es) hereby CONVEY, RELEASE, REMISE and FOREVER QUIT CLAIM unto DAVID E. HENDRICKSON, a single man

GRANTEE(S)

whose current mailing address is: 2 Lasuen Court Menlo Park, CA 94025 the following described property located in Ada County, State of Idaho, more particularly described as follows, to wit:

Lot 3 in Block 2 of WIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

together with their appurtenances.

Dated: October ___, 1993

VANCROFT CORPORATION, an Idaho Corporation

By: Mari E. Montgomery
Mari E. Montgomery, President

STATE OF ALASKA
~~COUNTY OF~~ THIRD JUDICIAL DISTRICT

On this 27th day of October, in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, PRESIDENT OF VANCROFT CORPORATION,

known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Signature: Notary Public

Name: Notary Public

Residing at: Anchorage, Alaska

My Commission Expires: 5/15/94

EXHIBIT "L"

To Declaration of Abigail Germaine

9392443 09392443 ST-93044126 (3)

THIS FORM FURNISHED COURTESY OF:

STEWART TITLE

READ & APPROVED BY GRANTEE(S):

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID
STEWART TITLE
1628001352

'93 NOV 3 PM 4 53

FEE 3.00 DEP

RECORDED AT THE REQUEST OF

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 93044126-PC

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, VANCROFT CORPORATION, AN IDAHO CORPORATION

, a corporation organized and existing under the laws of the State of Idaho, with its principal office at 600 W. 76th Ave. #101, Anchorage, Alaska 99518 of County of , State of Idaho, GRANTOR, hereby GRANT, BARGAIN, SELL AND CONVEY unto BEDARD & MUSSER, A PARTNERSHIP

GRANTEE(S), whose current address is: 2101 Ridgecrest Drive, Boise, Idaho 83712 the following described real property located in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 19th day of October, in the year of 1993.

(Corporate Seal)

VANCROFT CORPORATION
(Corporate Name)

By: Mari E. Montgomery
President

Attest:
Secretary

STATE OF ALASKA)
~~COUNTY OF~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY & JOSEPH R.W. SHIMEK known or identified to me to be the PRESIDENT & SECRETARY of the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

Signature: Margaret E. Shumway

Name: MARGARET E. SHUMWAY
(type or print)

Residing at: Anchorage, Alaska

My Commission Expires: 5-15-94

0003

EXHIBIT "M"

To

Declaration of

Abigail Germaine

(1)

RECORDED-REQUEST OF

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

FEE 3.00 DEPUTY M Lapelle

1999 MR 30 AM 11:21

99030645
ALLIANCE TITLE

THIS FORM FURNISHED COURTESY OF:

ALLIANCE TITLE & ESCROW CORP.

READ & APPROVED BY GRANTEE(S): L.W.

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 99081089 EBN

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, VANCROFT CORPORATION, AN IDAHO CORPORATION

, a corporation organized and existing under the laws of the State of Idaho, with its principal office at P.O. BOX 510563 SALT LAKE CITY, UT 84151 of County of ADA , State of Idaho, GRANTOR, hereby GRANT, BARGAIN, SELL AND CONVEY unto BLUEGRASS, LLC.

GRANTEE(S), whose current address is: 2748 WAGONWHEEL COURT, CARROLLTON, TX 75006 the following described real property located in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 2 and 6 in Block 1 and Lot 1 in Block 2 of NIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

Together with any and all water rights appurtenant thereto, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 29th day of March , in the year of 1999.

(Corporate Seal)

VANCROFT CORPORATION
(Corporate Name)

By: Veronica C. Montgomery
VERONICA C. MONTGOMERY, Vice President

Attest: _____
Secretary

STATE OF IDAHO)
COUNTY OF ADA)

On this 29th day of March , in the year of 1999 , before me, the undersigned, a Notary Public in and for said State, personally appeared VERONICA C. MONTGOMERY

known or identified to me to be the Vice President of the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

KERENSA MAJERUS
NOTARY PUBLIC
STATE OF IDAHO

Signature: Kerensa Majerus

Name: KERENSA MAJERUS
(type or print)

Residing at: BOISE, ID

My Commission Expires: 01/09/03

EXHIBIT "N"

To Declaration of Abigail Germaine

2 6

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT 9.00 3
BOISE IDAHO 10/04/07 04:41 PM
DEPUTY Vicki Allen
RECORDED – REQUEST OF
Transnation Title

107138040

110444667-NB

TERMINATION OF LEASE

BLUEGRASS, LLC, an Idaho limited liability company, as Lessor, and DAVID E. HENDRICKSON, individually, as Lessee, hereby agree that that certain Lease executed executed by Victor and Ruth Nibler, husband and wife, as Lessor, and Dennis LaBrum, Neil LaBrum, Clyde Thomsen and David Samuelsen as Lessee dated July 15, 1980, and commencing on June 30, 1980, all as more particularly described in Exhibit A hereto, being the List of Leases, is hereby terminated effective upon the recording of this Instrument with the Ada County Recorders Office.

Dated: Oct 4, 2007

David E. Hendrickson, individually

Dated: Oct 4, 2007

BLUEGRASS, LLC,
an Idaho limited liability company

By: Robert M. Donnelly
Robert M. Donnelly
Its: Member

219311.doc

EXHIBIT "O"

To

Declaration of

Abigail Germaine

251

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

(Instructions on back of application)

FILED EFFECTIVE
07 SEP 18 PM 3:46
SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited liability company is:

   Quail Hollow LLC

2. The street address of the initial registered office is:

   6553 W. Plantation Drive, Garden City, ID 83714

   and the name of the initial registered agent at the above address is:

   David E. Hendrickson

3. The mailing address for future correspondence is:

   6553 W. Plantation Drive, Garden City, ID 83714

4. The limited liability company will be:

   Manager-managed ☑ or Member-managed ☐ (please check the appropriate box)

5. If manager-managed, list the name(s) and address(es) of at least one initial manager. If member-managed, list the name(s) and address(es) of at least one initial member.

Name	Address
David E. Hendrickson	6553 W. Plantation Dr., Garden City, ID 83714

6. Signature of at least one person responsible for forming the limited liability company:

Signature: David E. Hendrickson
Typed Name: David E. Hendrickson
Capacity: Manager

Signature _____
Typed Name: _____
Capacity: _____

Secretary of State use only

IDAHO SECRETARY OF STATE
09/18/2007 05:00
CK: 36757 CT: 186586 BH: 1076259
1 @ 100.00 = 100.00 ORGAN LLC # 2

W66485

articlesoforganizationLLC formulatedorganization.pmd
Revised 05/2007
Web Form

EXHIBIT "P"

To Declaration of Abigail Germaine

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT 15.00 5
BOISE IDAHO 10/04/07 04:41 PM
DEPUTY Vicki Allen
RECORDED-REQUEST OF
Transnation Title
107138039

LandAmerica Transnation

Order No.: 11044667-NB

WARRANTY DEED

FOR VALUE RECEIVED

Blue Grass, LLC, an Idaho limited liability company,

GRANTOR(s), does(do) hereby GRANT, BARGAIN, SELL AND CONVEY unto:

Quail Hollow LLC, an Idaho limited liability company

GRANTEE(S), whose current address is: 6553 W. Plantation Drive, Boise Idaho 83714 the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

Lots 2 and 6 in Block 1 and Lot 1 in Block 2 of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Page(s) 5789 through 5791, records of Ada County, Idaho.

Together with Snake River Adjudication Water Rights 63-4037, 63-9758, and 63-21875

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated this 4 day of October, 2007

Blue Grass, LLC

by: Robert M. Donnelly, Member

Order No. 11044667
NB

State of Idaho

County of Ada

On this 4 day of October, 2007, before me the undersigned, a Notary Public in and for said state, personally appeared Robert M. Donnelly known or identified to me to be the person(s) whose name is/are subscribed to the within instrument as the Member of Blue Grass, LLC and acknowledged to me that Robert M. Donnelly executed the same as such Member.

Laura Page
Notary Public

Name: _____
Residing at ~~Residing in Boise, Idaho~~
My Commission Expires: ~~Commission expires 07-30-08~~

LAURA PAGE NOTARY PUBLIC STATE OF IDAHO

Exhibit "B" to Warranty Deed

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.
An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: August 15, 2000
Instrument No: 100064342, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: August 15, 2000
Instrument No.: 100064342
Re-recorded: October 19, 2000
Instrument No: 100083420, of Official Records.

Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.C. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement
Between: Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded: November 17, 2004
Instrument No: 104145945, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement
Between: David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded: April 27, 1994
Instrument No: 94038748, of Official Records.

Any rights, interest, or claims which may exist or arise by reason of the following shown on ALTA Survey prepared by Briggs Engineering Inc., Drawing No. 70827-ALTA, as follows:

a. Approximately 10 feet of pavement for 36th Street encroaching at the Southeast corner of Lot 2, Block 1.

b. The fence appurtenant to the subject property is off line and does not conform to the property line.
Affects the South line of Lot 6, Block 1 and the Northeast corner of Lot 1, Block 2.

c. The edge of pavement at the Northeast corner of subject property adjacent to Lot 3, Block 2.

d. A water line over the Northeast corner that serves the subject property and Lot 3, Block 2.

Water rights, claims or title to water.

Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.

EXHIBIT "Q"

To

Declaration of

Abigail Germaine

ADA COUNTY RECORDER Christopher D. Rich AMOUNT 31.00 8
BOISE IDAHO 12/04/2013 11:30 AM
DEPUTY Bonnie Oberbillig
Simplifile Electronic Recording
RECORDED-REQUEST OF
FIDELITY NATIONAL TITLE - BOIS
113130306

Recording requested by and
When recorded return to Boise City
Department of Parks & Recreation,
P.O. Box 500,
Boise, Idaho 83701

DEED OF GIFT

THIS INDENTURE made this 1st day of November, 2013, between Quail Hollow LLC, an Idaho limited liability company, the "Grantor", and the City of Boise City, an Idaho municipal corporation, the "Grantee";

WITNESSETH:

Section 1.

AS A GIFT TO THE GRANTEE, the Grantor does hereby grant and convey to the Grantee all of the real property situated in the County of Ada, State of Idaho, described on **Exhibit 1** attached hereto and by this reference made a part thereof, which will be referred to herein as "the Property".

SUBJECT to:

1. All taxes and assessments levied and assessed upon the Property on and after December 1, 2013, and each year thereafter.

TO HAVE AND TO HOLD the Property unto the Grantee so long as the Grantee shall comply with the following conditions:

(a) The Grantee shall hold, own and operate the Property as a golf course in perpetuity, open to the public at all times, provided, however, that the Grantee may alter or change the use of all or any portion of the property to a public use other than a golf course. This public use restriction shall not limit or prohibit the sale of food and beverages (including alcoholic beverages), renting golf carts or other golfing-related products and charging for use of the golf course or any related facility provided such use is reasonable and fair and designed only to return to the City the cost of operating a public golf course. The Grantee shall utilize any reserves it earns from the operation of the golf course for capital and other improvements and maintenance and operation expenses associated with the Property. The Grantee may also impose reasonable charges and limits as to time and place and number of people entering and utilizing the Property for golf or other purposes in a manner consistent with standard

operating procedures for golf courses. In that regard, the Grantee may restrict and/or prohibit the use of the general public to enter upon all or portions of the golf course in a manner consistent with the safe and reasonable operation of a public golf course and in compliance with the ordinance of the City of Boise City.

(b) If the Grantee determines that it is in the public interest to use all or a portion of the Property for a use other than a golf course the Grantee may so change that use, provided the use remains public and open to the public, provided however, that as with operation as a golf course the Grantee shall be at liberty to impose reasonable restrictions as to time and use and access to all or any portion of the Property and to charge reasonable fees to defray the cost of providing public services which may include, but not limited to, athletic events, concerts, sports fields and such improvements as are necessarily reasonable for such public uses.

At no time and under no circumstances shall the Property be utilized for any residential, commercial, industrial or other use that is not consistent with this public use requirement.

(c) Neither the Property nor any part thereof shall ever be transferred or conveyed by the Grantee. The Grantee shall allow the creation of no lien or encumbrance to attach to the Property, or any part thereof, excepting therefrom easements for utilities serving the Property and *ad valorem* taxes, if any, levied and assessed against the Property. Notwithstanding the foregoing, Grantee, upon payment of just compensation, may transfer additional right-of-way to the Ada County Highway District, any successor highway district or road department as the case may be, as is reasonable and necessary and in the public interest .

Section 2.

To insure that the Property herein conveyed will be developed, used, operated and identified in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift, it shall be a condition of this conveyance that at any time in the future should the Property or any part hereof cease to be used in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift or that the Grantee shall fail, refuse or neglect in any respect to comply with the conditions set forth in subsection (a), (b), and (c) of Section 1 of this Deed of Gift, the Grantee shall be divested of the title to the Property and the title to the Property shall pass to an exempt organization having its principal place of business in Boise, Idaho, excepting therefrom any other governmental entity, and qualifying as such under the provisions of Internal Revenue Code Section 501(c)(3) or Internal Revenue Code Section 170(c)(1) or a comparable provision of the United States Internal Revenue Code then in force and effect created for charitable or public purposes and best able to operate or provide for the operation of that Property for the benefit of the public generally in

compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift. The determination of a successor exempt organization pursuant to this Section 2 shall rest with the then-Administrative District Judge of the Fourth Judicial District (or the successor judge having duties most like that judge if the position of Administrative District Judge no longer exists).

The provisions of this section may be enforced by either Grantor, if it is then in existence, or an exempt organization under the provisions of Internal Revenue Code Section 501(c)(3) or the comparable provision of the United States Internal Revenue Code, designated by the then Administrative District Judge, for the Fourth Judicial District (or the successor judge having duties most like that judge).

The fact that the Grantee has ceased to operate, maintain and use of the Property herein conveyed in compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift may be established of record by either (i) a certified copy of a resolution by the Mayor and Council of the Grantee of that fact, or (ii) a determination thereof through judgment of a court of competent jurisdiction of the State of Idaho.

Section 3:

By the recordation of this Deed of Gift, the Grantee shall be deemed to have accepted and agreed to comply with the restrictions and conditions set forth in Section 1 and Section 2 of this Deed of Gift and to hold the Property subject to full performance by it of those provisions of this Deed of Gift.

Section 4:

The current address of the Grantee is City of Boise, 150 N. Capitol Blvd., Boise, Idaho 83701.

IN WITNESS WHEREOF, this Deed of Gift has been duly executed by the Grantor the day and year herein first above written.

Quail Hollow LLC, an
Idaho limited liability company

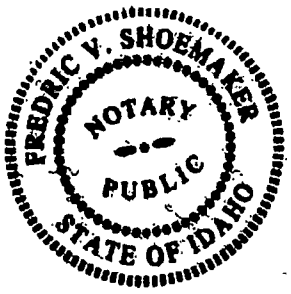
David E. Hendrickson

By: David E. Hendrickson
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of November, 2013, before me, a Notary Public, personally appeared David Hendrickson, known or identified to me to be the Manager of Quail Hollow LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such corporation executed the same.

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



NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 11/26/2016

EXHIBIT 1
(Legal Description for Quail Hollow Golf Course)

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

EXHIBIT "R"

To Declaration of Abigail Germaine

ADA COUNTY RECORDER Chri r D Rich
BOISE IDAHO Pgs=2 CHE FO...R
SUSAN L MIMURA & ASSOC

2015-062695
07/13/2015 03:17 PM
AMOUNT:$13 00

00120865201500626950020022

QUITCLAIM DEED

FOR THE CONSIDERATION OF VALUE RECEIVED, and other good and valuable consideration, the receipt of which is hereby acknowledged,

Kipp A. Bedard, William Musser, and Bedard & Musser ("GRANTORS"), hereby grants, conveys, and hereby releases and forever quitclaims unto Boise Hollow Land Holdings, RLLP ("GRANTEE"), as its sole and separate property, whose current mailing address is 1961 Silvercreek Lane, Boise, ID 83706, and its heirs, successors and assigns forever, all right, title and interest which GRANTORS now have or may hereafter acquire in the following real property situated in Boise, Ada County, State of Idaho, and more particularly described as follows:

> Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592

TO HAVE AND TO HOLD, all and singular the said real property, together with all appurtenances, tenements, hereditaments, reversions, remainders, rents, issues, profits, rights-of-way, and water rights in anywise appertaining to the real property herein described, as well in law as in equity, unto GRANTEE, and to its successors and assigns forever.

WITNESS the hand of said GRANTOR this 26 day of June, 2015.

BEDARD & MUSSER, a Partnership

By: Kipp A. Bedard (General Partner)

BEDARD & MUSSER, a Partnership

William Musser (General Partner)

Kipp A. Bedard, Individual

State of Idaho)
:ss.
County of Ada)

On this 16 day of July, 2015, before me, Kaneecia M Johnson, a notary public in and for the state of Idaho, personally appeared Kipp A. Bedard, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

KANEECIA M JOHNSON NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at ADA COUNTY, Idaho
My Commission Expires: 06·23·2021

William Musser, Individual

State of ~~Idaho~~ Montana)
:ss.
County of ~~Ada~~ Lewis & Clark)

On this 26th day of June, 2015, before me, ~~William Musser~~ Kerry Bouchard, a notary public in and for the state of ~~Idaho~~ Montana, personally appeared William Musser, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

SEAL
KERRY L BOUCHARD
NOTARY PUBLIC for the
State of Montana
Residing at Augusta, MT
My Commission Expires
September 25, 2015

Notary Public
Residing at Augusta, ~~Idaho~~ Montana
My Commission Expires: 9-25-2015

EXHIBIT "S"

To Declaration of Abigail Germaine

0939266?

ST-9304126 JH

PART OF ORIGINAL
TOO POOR TO COPY

1628001631

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

STEWART TITLE

'93 NOV 4 AM 10 40

FEE [illegible] DEP [illegible]
RECORDED AT THE REQUEST OF

ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT

This Assignment and Assumption of Permanent Easement Agreement is made and entered in to this 27th day of October, 1993 by and between VANCROFT CORPORATION, an Idaho corporation, ("Assignor") whose address is 600 West 76th Avenue, #101, Anchorage, Alaska 99518-2565, and BEDARD & MUSSER, a partnership, ("Assignee") whose address is 2101 Ridgecrest Dr., Boise Idaho, 83712.

Concurrently herewith, Assignor is selling to Assignee that certain real property located in Ada County, Idaho and legally described as: Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592 (the "Property"). In connection with such sale, Assignor desires to assign, and Assignee desires to accept the assignment of, the rights, benefits and obligations of Assignor under the terms and conditions of that certain Permanent Easement Agreement (the "Easement Agreement") made and entered into by and between TEE, LTD., Tommy T. Sanderson and Roxanne Sanderson, as grantor, and Assignor, dated September 14, 1991, and recorded on November 3, 1993 as Instrument Number 9392442, which Easement Agreement grants a permanent 40' access and utility easement for the benefit of the Property and which Easement Agreement contains certain conditions and obligations which are clearly enumerated therein. A copy of the Easement Agreement is attached as Exhibit A and incorporated herein.

NOW THEREFORE, In consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. ASSIGNMENT. Assignor hereby assigns, transfers, conveys, sells, endorses and delivers to Assignee all of Assignor's right, title and interest under the Easement Agreement.

2. ASSUMPTION. Assignee hereby accepts such assignment and hereby assumes all of the obligations of Assignor under the Easement Agreement and agrees to be bound by all terms and conditions of the Easement Agreement. Assignee hereby covenants and agrees to indemnify, defend and hold harmless Assignor from and against any claims, liabilities, costs, expenses (including reasonable attorneys' fees) and damages asserted against or incurred by Assignor and arising in connection with the Easement Agreement subsequent to the date of this Assignment and Assumption.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By _____

By _____

1628001633

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By William L. Musser

By _____

1628001634

STATE OF ALASKA)
) ss.
~~COUNTY OF~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Shumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 2nd day of November, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Kipp A. Bedard, known or identified to me to be the partner of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

Notary Public for Boise
Residing at Boise, Idaho
My commission expires: May 8, 1998

1628001635

STATE OF ALASKA)
) ss.
~~CORRECTED~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Montgomery
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF ~~IDAHO~~ NEW YORK)
) ss.
COUNTY OF ~~ADA~~ NEW YORK)

On this 22nd day of NOVEMBER 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM L. MUSSER JR. known or identified to me to be the A PARTNER of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

Notary Public for _____
Residing at _____
My commission expires: _____

APRIL MEDINA
Notary Public, State of New York
No. 01-4680838
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Sept. 30, 19__

ST-9304912G (B)

16280001341

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Hibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Hiblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Hiblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Hiblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Hibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Hibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Hibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Hibler Subdivision, the legal description of which is attached hereto as

EXHIBIT "T"

To Declaration of Abigail Germaine

Book 59 Pages 5789

000349

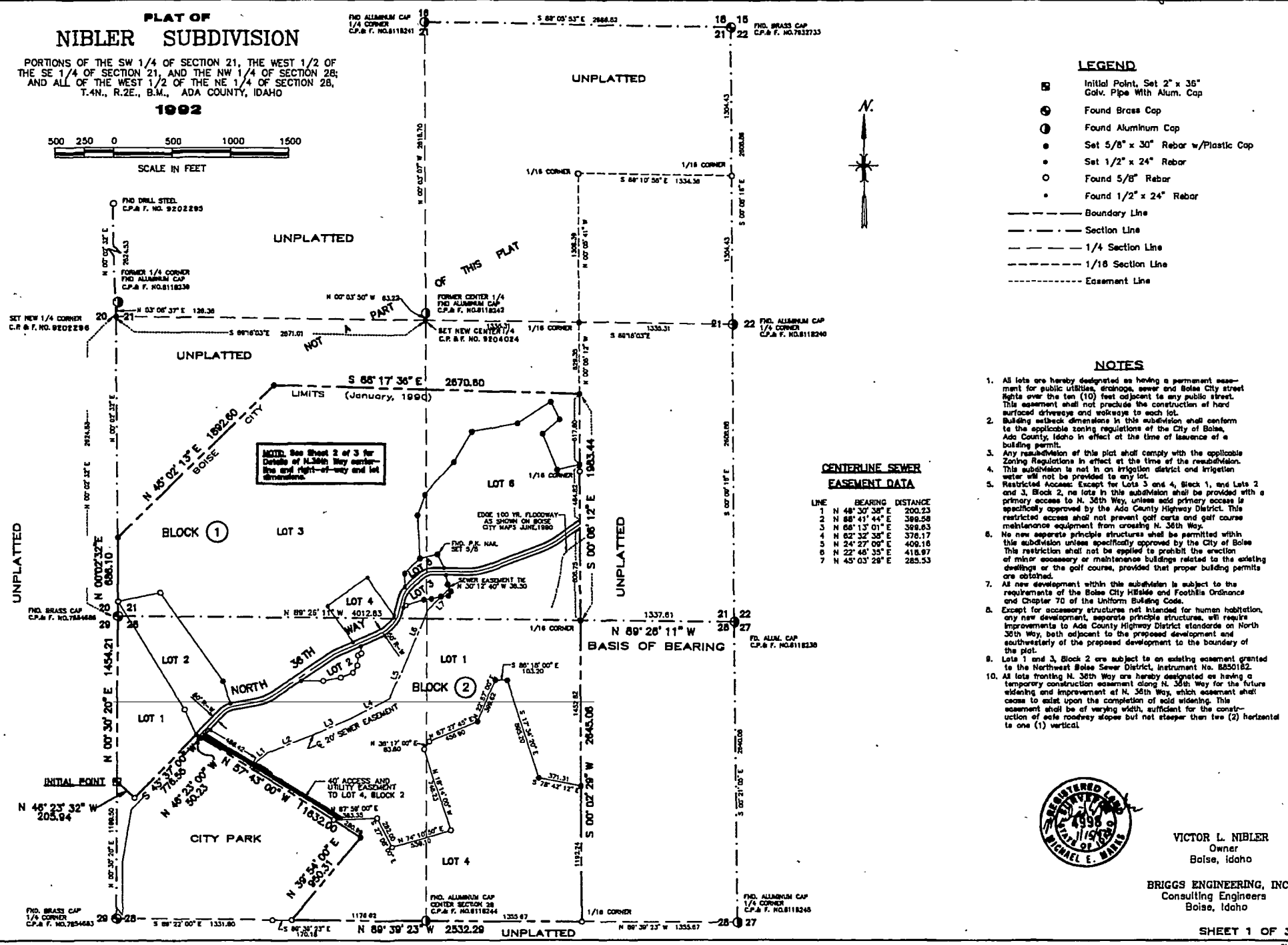
PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

500 250 0 500 1000 1500

SCALE IN FEET



LEGEND

- Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 38" E	200.23
2	N 88° 41' 44" E	388.58
3	N 66° 13' 01" E	398.83
4	N 62° 32' 38" E	376.17
5	N 24° 27' 09" E	409.16
6	N 22° 46' 35" E	418.97
7	N 45° 03' 28" E	285.53

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

REGISTERED LAND SURVEYOR 4996 STATE OF IDAHO MICHAEL E. WATTS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

01-13-92

Book : 59 Pages 5790

000350

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

200 100 0 200 400 600

SCALE IN FEET

CITY LIMITS (January, 1990)

BOISE

N 45° 02' 15" E 1892.60

S 86° 17' 36" E 2670.60

CURVE DATA

CURVE	DELTA	RADIUS	ARC	CHORD	TANGENT	CHORD BRG
1	36° 58' 00"	200.00	137.36	135.01	71.02	S 61° 36' 30" W
2	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
3	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
4	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
5	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
6	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
7	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
8	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
9	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
10	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
11	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
12	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
13	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
14	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
15	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
16	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
17	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
18	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
19	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
20	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
21	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
22	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
23	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
24	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
25	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
26	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
27	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W
28	19° 34' 00"	378.00	129.12	128.49	65.23	S 61° 36' 30" W

LEGEND

- Initial Point, Found 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

UNPLATTED

N 00° 02' 32" E 666.10

N 00° 30' 20" E

S 00° 02' 29" W

S 00° 06' 12" E 1963.44

LOT 1 BLOCK 1

LOT 2 BLOCK 1

LOT 3 BLOCK 1

LOT 4 BLOCK 1

LOT 5 BLOCK 1

LOT 6 BLOCK 1

LOT 1 BLOCK 2

LOT 2 BLOCK 2

LOT 3 BLOCK 2

LOT 4 BLOCK 2

LOT 5 BLOCK 2

LOT 6 BLOCK 2

20 21 28 29

21 22 27 28

FND. BRASS CAP C.P.& F. NO. 7854686

1/16 CORNER

(BASIS OF BEARING) N 89° 28' 11" W 4012.63

N 89° 28' 11" W 1337.21

WAY

NORTH

36TH

EDGE 100 YR. FLOODWAY AS SHOWN ON BOISE CITY MAPS JUNE, 1986

Access and Utility Easement See Sheet 1 of 3

NO SCALE

SEE SHEET 1 FOR LOT 4 DATA

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 2 OF 3

1/14/92

NIBLER SUBDIVISION

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS:
THAT VICTOR L. NIBLER AND RUTH E. NIBLER, HUSBAND AND WIFE; TOMMY T. SANDERSON AND ROXANNE M. SANDERSON, HUSBAND AND WIFE; AND VANCROFT CORPORATION, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF IDAHO AND DULY QUALIFIED TO DO BUSINESS WITHIN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THEY ARE THE OWNERS OF THE REAL PROPERTY AS DESCRIBED BELOW AND IT IS THEIR INTENTION TO INCLUDE SAID REAL PROPERTY IN THIS SUBDIVISION PLAT. THE OWNERS ALSO HEREBY CERTIFY THAT ALL LOTS IN THIS PLAT WILL BE ELIGIBLE TO RECEIVE WATER SERVICE FROM BOISE WATER CORPORATION WHO HAS AGREED IN WRITING TO SERVE THE SUBDIVISION.

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4, OF SECTION 21, AND THE NW 1/4, OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 2 EAST OF THE BOISE MERIDIAN, ADA COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP MARKING THE SOUTHWEST CORNER OF THE NORTH 1/2 OF SECTION 28, T.4N., R.2E., B.M., THENCE N 0°30'20" E 1199.50 FEET TO AN ALUMINUM CAP WHICH IS THE INITIAL POINT OF THIS DESCRIPTION:

THENCE CONTINUING N 0°30'20"E 1454.21 FEET TO A BRASS CAP MARKING THE SECTION CORNER COMMON TO SECTIONS 20, 21, 28 AND 29, T.4N., R.2E.;

THENCE N 0°02'32"E 686.10 FEET TO AN IRON PIN MARKING A POINT ON THE NORTH LINE OF THE BOISE CITY LIMITS BOUNDARY;

THENCE N 45°02'13"E 1892.60 FEET TO AN IRON PIN;

THENCE S 88°17'36"E 2870.60 FEET TO AN IRON PIN;

THENCE S 0°06'12"E 1983.44 FEET TO AN IRON PIN MARKING THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 21;

THENCE S 0°02'29"W 2645.06 FEET TO AN IRON PIN MARKING THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 28;

THENCE N 89°39'23"W 2532.29 FEET TO AN IRON PIN MARKING A POINT ON THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 28;

THENCE N 39°54'00"E 650.31 FEET TO AN IRON PIN;

THENCE N 57°43'00"W 1832.00 FEET TO AN IRON PIN;

THENCE N 46°23'00"W 50.23 FEET TO AN IRON PIN;

THENCE S 43°37'00"W 776.55 FEET TO AN IRON PIN;

THENCE N 46°23'32"W 205.94 FEET TO THE INITIAL POINT OF THIS DESCRIPTION, COMPRISING 356.43 ACRES MORE OR LESS.

THE STREETS SHOWN ON THIS PLAT OF NIBLER SUBDIVISION ARE HEREBY DEDICATED TO THE PUBLIC, AND THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY RESERVED FOR PUBLIC UTILITIES AND FOR ANY OTHER USES AS DESIGNATED HEREON, AND NO PERMANENT STRUCTURES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS THIS 25th DAY OF July 19 91

VICTOR L. AND RUTH E. NIBLER, HUSBAND AND WIFE

Victor L. Nibler
VICTOR L. NIBLER

Ruth E. Nibler
RUTH E. NIBLER

TOMMY T. AND ROXANNE M. SANDERSON, HUSBAND AND WIFE

Tommy T. Sanderson
TOMMY T. SANDERSON

Roxanne M. Sanderson
ROXANNE M. SANDERSON

VANCROFT CORPORATION

Mari Montgomery Jordan
MARI MONTGOMERY JORDAN, PRESIDENT

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 25th DAY OF July 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED MARI MONTGOMERY JORDAN, KNOWN OR IDENTIFIED TO ME TO BE PRESIDENT OF VANCROFT CORP., THAT EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 10th DAY OF August 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED VICTOR L. NIBLER AND RUTH E. NIBLER, HUSBAND AND WIFE, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

STATE OF IDAHO } SS
COUNTY OF ADA }

ON THIS 17th DAY OF October 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED TOMMY T. SANDERSON, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

LAWRENCE R. SALE NOTARY PUBLIC STATE OF IDAHO

Lawrence R. Sale
NOTARY PUBLIC FOR IDAHO
RESIDING AT BOISE, IDAHO
MY COMMISSION EXPIRES: 6/1/95

APPROVAL OF CITY ENGINEER

I, CHARLES R. MICKELSON, P.E., CITY ENGINEER IN AND FOR BOISE CITY, ADA COUNTY, IDAHO, HEREBY APPROVE THIS PLAT OF NIBLER SUBDIVISION.

REGISTERED PROFESSIONAL ENGINEER CHARLES R MICKELSON

CHARLES R. MICKELSON, P.E., CITY ENGINEER

CERTIFICATE OF COUNTY ENGINEER

I, JOHN E. PRIESTER, P.E., REGISTERED PROFESSIONAL ENGINEER/LAND SURVEYOR FOR ADA COUNTY, IDAHO, HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT OF NIBLER SUBDIVISION, AND FIND THAT IT COMPLIES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

REGISTERED PROFESSIONAL ENGINEER 3030 STATE OF IDAHO JOHN E. PRIESTER

JOHN E. PRIESTER, P.E., COUNTY ENGINEER

CERTIFICATE OF SURVEY

I, MICHAEL E. MARKS, L.S., DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, LICENSED BY THE STATE OF IDAHO, AND THAT THIS PLAT OF NIBLER SUBDIVISION AS DESCRIBED IN THE CERTIFICATE OF OWNERS AND THE ATTACHED PLAT, WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON; AND IS IN CONFORMITY WITH THE STATE OF IDAHO CODES RELATING TO PLATS, SURVEYS AND THE CORNER PERPETUATION AND FILING ACT, IDAHO CODE 55-1601 THROUGH 55-1612.

REGISTERED LAND SURVEYOR 7119 STATE OF IDAHO MICHAEL E. MARKS

MICHAEL E. MARKS, L.S.

STATE OF MASSACHUSETTS } SS
COUNTY OF MIDDLESEX }

ON THIS 22 DAY OF OCTOBER 1991 BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF MASSACHUSETTS, PERSONALLY APPEARED ROXANNE SANDERSON KNOWN OR IDENTIFIED TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR OF THIS CERTIFICATE FIRST ABOVE WRITTEN.

KENNETH L. ROBERTS

Kenneth L Roberts
NOTARY PUBLIC FOR MASSACHUSETTS
RESIDING AT 423 King St Littleton, MA.
MY COMMISSION EXPIRES: 8-15-1997

MY COMMISSION EXPIRES AUG. 15, 1997

APPROVAL OF CENTRAL DISTRICT HEALTH DEPARTMENT

SANITARY RESTRICTIONS OF THIS PLAT ARE HEREBY REMOVED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER OR HIS AGENT LISTING THE CONDITIONS OF APPROVAL.

BY Thom E. Schwartz 11/13/91
CENTRAL DISTRICT HEALTH DEPARTMENT

ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ACCEPTANCE

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF ADA COUNTY HIGHWAY DISTRICT COMMISSIONERS ON THE ___ DAY OF ___ 1991.

CHAIRMAN, ADA COUNTY HIGHWAY DISTRICT

APPROVAL OF CITY COUNCIL

I, Annette P. Mooney CITY CLERK IN AND FOR BOISE CITY, ADA COUNTY, IDAHO DO HEREBY CERTIFY THAT AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 19 DAY OF June 1990 THIS PLAT OF NIBLER SUBDIVISION WAS DULY ACCEPTED AND APPROVED.

CITY CLERK
BOISE, October 18, 1991

CERTIFICATE OF COUNTY TREASURER

I, ___ COUNTY TREASURER IN AND FOR THE COUNTY OF ADA, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-1308, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS PROPOSED SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

Barbara Bauer
COUNTY TREASURER
By Karen Witt, Deputy Clerk

Jan 14, 1992
DATE

COUNTY RECORDERS CERTIFICATE

INSTRUMENT NO. 9205592

STATE OF IDAHO } SS
COUNTY OF ADA }

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED AT THE REQUEST OF Briggs Engineering AT 42 MINUTES PAST 2 O'CLOCK P.M., THIS 29TH DAY OF January, 19 92, IN MY OFFICE AND WAS DULY RECORDED IN BOOK 59 OF PLATS AT PAGES 5789 AND 5791

DEPUTY

EX-OFFICIO RECORDER

1600

SHEET 3 OF 3

COMPLTBK
01-15-92

motion granted DEB 1-4-16

NO. FILED 4:47
A.M. P.M.

DEC 31 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar Nos. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

DECLARATION OF TOMMY T. SANDERSON

I, TOMMY T. SANDERSON, certify and declare under penalty of perjury pursuant to the laws of the state of Idaho, that the following is true and correct:

1. I make this declaration of my own personal knowledge.

2. I am the Grantor of that permanent easement agreement dated September 14, 1991, a true and correct copy of which is attached hereto as Exhibit A (hereinafter, the "**Permanent Easement Agreement**"). I executed said Permanent Easement Agreement individually and as President of Tee, Ltd. My wife at the time, Roxanne Sanderson, also executed said Permanent Easement Agreement individually and as Secretary of Tee, Ltd.

3. At the time I executed the Permanent Easement Agreement, Tee, Ltd. was leasing the property comprising the Quail Hollow Golf Course (hereinafter, the "**Golf Course Property**") for a term of ninety-nine (99) years from the then-owner of the Golf Course Property, Vancroft Corporation. The clubhouse structure and the parcel upon which it was built were owned by me and my former wife, Roxanne Sanderson, in fee, and were separate from the Golf Course Property.

4. At the time I executed the Permanent Easement Agreement:

   a. I intended to grant a forty foot (40′) access and utility easement (hereinafter, the "**40′ Easement**") under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision[1], precisely as set forth in paragraph 1 of the Permanent Easement Agreement, which 40′ Easement would benefit Lot 4, Block 2, Nibler Subdivision[2];

[1] "Lot 1, Block 2, Nibler Subdivision" identifies one of the parcels of real property comprising the Golf Course Property, as depicted on the 1992 Plat of the Nibler Subdivision.

[2] "Lot 4, Block 2, Nibler Subdivision" identifies the parcel of real property owned, at the time the Permanent Easement Agreement was executed, by Vancroft Corporation, since owned by the Bedard/Musser partnership, and presently owned by Boise Hollow Land Holdings, RLLP.

b. The exact legal description of the precise forty feet (40′) I intended to include within the area burdened by the 40′ Easement was set forth in "Exhibit B" of the Permanent Easement Agreement;

c. I did not intend that the 40′ Easement be expanded at any time or for any reason beyond the forty feet (40′) expressly stated in the Permanent Easement Agreement and specifically described in the legal description of the 40′ Easement, which was attached to the Permanent Easement Agreement as its "Exhibit B;"

d. It was my understanding that the express language of the Permanent Easement Agreement did not authorize or allow expansion of the 40′ Easement, at any time or for any purpose, beyond the forty feet (40′) that was expressly stated in the Permanent Easement Agreement and as precisely set forth in a metes and bounds legal description in "Exhibit B" of the Permanent Easement Agreement;

e. It was not my intent that the permissive future dedication of a road to ACHD could result in the expansion of the 40′ Easement beyond the forty feet (40′) that was expressly stated in the Permanent Easement Agreement and precisely set forth in a metes and bounds legal description in "Exhibit B" of the Permanent Easement Agreement;

f. I had no knowledge or understanding of a multi-lot residential subdivision being planned or proposed for Lot 4, Block 2, Nibler Subdivision[3];

[3] As previously indicated in Footnote 2, above, "Lot 4, Block 2, Nibler Subdivision" identifies the parcel of real property owned, at the time the Permanent Easement Agreement was executed, by Vancroft Corporation, since owned by the Bedard/Musser partnership, and presently owned by Boise Hollow Land Holdings, RLLP.

g. I was aware that an easement exceeding forty feet (40') would result in a significant negative impact that would unduly impair the Quail Hollow Golf Course by destroying its 16th hole; and

h. If I had possessed any knowledge that the grantee would attempt to expand the 40' Easement at a future date, I would not have executed the Permanent Easement Agreement or agreed to grant the 40' Easement, as any expansion of the 40' Easement beyond forty feet (40') would render the 16th hole of the Quail Hollow Golf Course unplayable.

5. Neither I nor my then-wife, Roxanne Sanderson, drafted the Permanent Easement Agreement, and neither I nor my then-wife, Roxanne Sanderson, was involved in its drafting.

DATED this 29th day of December, 2015.

TOMMY T. SANDERSON

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31 day of December 2015, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy Boise City Attorney

EXHIBIT A
to the
Declaration of Tommy T. Sanderson

PERMANENT EASEMENT AGREEMENT
dated September 14, 1991

[*please see attached*]

ST-9304912C (A)

16280013 41

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By
Joseph P. Cange,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at [illegible]
My Commission Expires 7/10/95

LAWRENCE P. LOBB NOTARY PUBLIC STATE OF IDAHO

5

1628001345

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence Z. Gale
Notary Public for Idaho
Residing at Lewiston, Idaho
My Commission Expires: 6/1/95

NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Sara J. Kenney
Notary Public for Massachusetts
Residing at Littleton Ma
My Commission Expires: May 12, 1995

PERMANENT EASEMENT AGREEMENT - 5

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Mara J. Kenney
Notary Public for Massachusetts
Residing at Littleton Mass
My Commission Expires: May 6th 1994

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

PERMANENT EASEMENT AGREEMENT - 6

16280001340

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

09392442
STEWART TITLE
ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

'93 NOV 3 PM 4 53
FEE 36.00 DEP
RECORDED AT THE REQUEST OF

8.

1628001347

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

9

16280013 48

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

10

16280013349

40' ACCESS AND UTILITY EASEMENT

TO LOT 4, BLOCK 2, NIBLER SUBDIVISION

(See Nibler Subdivision, Book 59 of Plats at Page 5789)

An easement located in Lot 1, Block 2 of Nibler Subdivision in the NW 1/4 of Section 28, Township 4 North Range 2 East of the Boise Meridian, Boise, Ada County, Idaho, being more particularly described as follows:

Commencing at the west 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N 24°58'25" E 1,745.10 feet to the westerly most corner of Lot 1, Block 2 of Nibler Subdivision, the **REAL POINT OF BEGINNING** of this description;

Thence S 57°43'00" E 1,346.15 feet to the southwest corner of said Lot 1;

Thence N 87°59'00" E 70.98 feet along the southerly boundary of said Lot 1;

Thence N 57°43'00" W 1,397.04 feet to a point on the southerly right of way of N 36th Street.

Thence S 43°14'00" W 40.74 feet to the **REAL POINT OF BEGINNING** of this description.

Michael E. Marks, No. 4998

RECEIVED

NOV 0 3 1993

Givens, Pursley & Huntley

931002-05

Post-it™ brand fax transmittal memo 7671	
To Rebecca Arnold	From M. Marks
Co.	Co. Briggs
Dept.	Phone #
Fax # 343-9492	Fax #

BK '59 Pages 3187

1628001350

THIS MAP IS FURNISHED AS AN ACCOMMODATION, STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE EXACT AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREON.

LEGEND

- Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
- Found Brass Cap
- Found Aluminum Cap
- Set 5/8" x 30" Rebar w/Plastic Cap
- Set 1/2" x 24" Rebar
- Found 5/8" Rebar
- Found 1/2" x 24" Rebar
- Boundary Line
- Section Line
- 1/4 Section Line
- 1/16 Section Line
- Easement Line

POOR COPY

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Minute and Footnote Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, all require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and northwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8630182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 48° 30' 30" E	200.33
2	N 66° 11' 41" E	200.58
3	N 84° 13' 00" E	200.63
4	N 82° 32' 30" E	270.17
5	N 25° 27' 00" E	409.18
6	N 22° 45' 30" E	416.97
7	N 45° 03' 29" E	203.33

11° W BEARING

REGISTERED LAND SURVEYOR STATE OF IDAHO 11/19/98 MICHAEL E. HARRIS

VICTOR L. NIBLER
Owner
Boise, Idaho

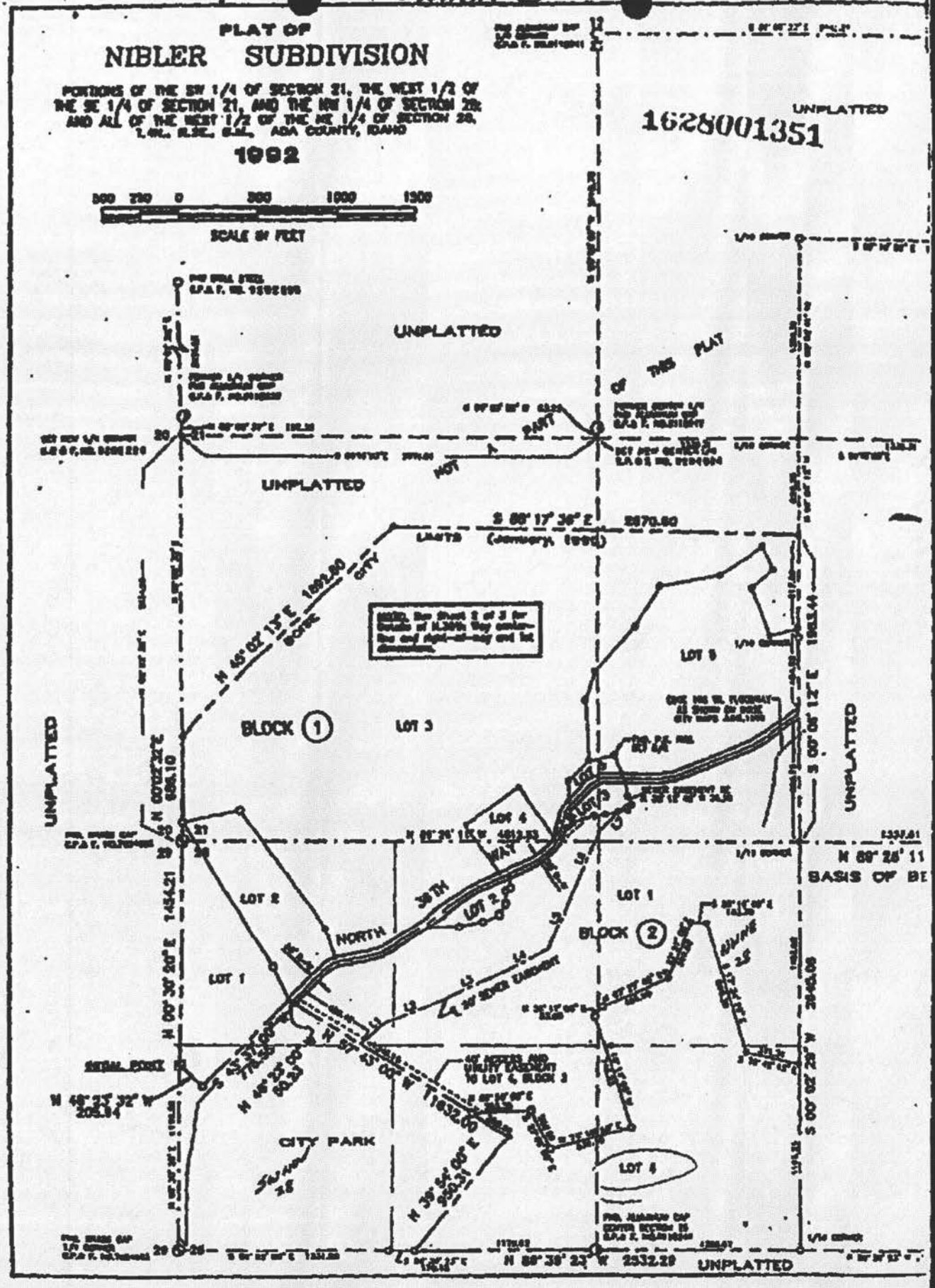
BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

000368

12

Exhibit C


PLAT OF
NIBLER SUBDIVISION
PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.3E., B.M., ADA COUNTY, IDAHO
1992
SCALE IN FEET
UNPLATTED
1628001351
UNPLATTED
UNPLATTED
UNPLATTED
UNPLATTED
BLOCK 1
LOT 3
LOT 4
LOT 5
LOT 2
LOT 1
LOT 1
BLOCK 2
LOT 6
CITY PARK
NORTH
30TH
BASIS OF BE
UNPLATTED

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic and corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA W. ARNOLD**

COMES NOW Defendant, City of Boise City, by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and pursuant to Rules 7(b)(1) and 56(e) of the Idaho Rules of Civil Procedure and Rules 801 – 806, and 901(a) of the Idaho Rules of Evidence, hereby respectfully move this Court for an Order striking the Affidavit of Rebecca W. Arnold as

A

requested below. The Affidavit of Rebecca W. Arnold is rife with inadmissible hearsay and speculation on the part of Ms. Arnold. Plaintiffs filed the Affidavit of Rebecca W. Arnold in support of Plaintiffs' Motion for Summary Judgment.

REQUIREMENTS FOR ADMISSIBILITY

It is well established that only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment. Rule 56(e) of the Idaho Rules of Civil Procedure states that, "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein." I.R.C.P. 56(e). The requirements of this rule are not met with affidavits that are conclusory, based on hearsay, and not made on personal knowledge. *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005).

DISCUSSION

Affiant Rebecca W. Arnold ("Arnold") attempts to speak, not only for her former clients, Vancroft Corporation, Mari Montgomery Jordan, and Joseph Patrick Cange, but also Tommy Sanderson, with whom she has no relationship. Further, the Declaration of Tommy Sanderson filed in this matter, directly contradicts what Arnold attests was Mr. Sanderson's intent as the grantor of the Permanent Easement Agreement. The following statements from Arnold's Affidavit are hearsay with no exception and/or speculation on the part of Arnold:

1) "This property was owned by Vancroft for the purpose of developing it into a multi-lot residential subdivision." – Speculation and hearsay.

2) "Accordingly, in order to satisfy that requirement, Vancroft sought to obtain an access easement over the adjacent golf course property from Tee, Ltd. and Tommy and Roxanne Sanderson (the "Grantors")." – Speculation and hearsay.

3) "Accordingly, the primary purpose of the negotiations between Vancroft and Tee, Ltd./Sanderson was to secure a perpetual easement for ingress and egress across the golf course property for the benefit of the Development Parcel; this was the primary purpose of the PERMANENT EASEMENT AGREEMENT." – The Permanent Easement Agreement itself is clear and unambiguous, and Arnold's speculation of the primary purpose is inadmissible parol evidence and hearsay.

4) "As is stated on the first page of the PERMANENT EASEMENT AGREEMENT, the easement was being granted to Vancroft for the purpose of providing access and utilities to the Development Parcel. At the time that we drafted the PERMANENT EASEMENT AGREEMENT, the parties agreed that forty (40') feet for the access and utility easement for the Development Parcel would be sufficient as a private road. However, because Vancroft intended to develop the parcel into a multi-lot residential subdivision, it was contemplated and agreed that the roadway would eventually be dedicated to the Ada County Highway District (ACHD) as a public road and the easement area would have to be expanded to comply with whatever ACHD's requirements for a public road would be at the time of dedication." - Hearsay and completely untrue, as it is directly contradicted by admissible non-hearsay contained in the Declaration of Tommy Sanderson, who was actually the grantor of the Permanent Easement Agreement.

5) "At the time that the PERMANENT EASEMENT AGREEMENT was drafted, we did not know when the actual dedication of the roadway would take place because the actual roadway still needed to be designed, approved and installed as well as dedicated to ACHD in accordance with its then-existing requirements." - This is an inadmissible mischaracterization of the Permanent Easement Agreement.

6) "Because Vancroft would be pursuing its own development of the Development Parcel and would be improving the road in the future, the Grantors reserved the right to approve the plans for the roadway because of the future expansion and construction." – Speculation and hearsay.

7) At that time, we also knew that ACHD would have specific provisions relating to the size and other engineering requirements for the public road way in order to be dedicated to ACHD for such a large residential subdivision. We specifically contemplated that, at the time of dedication, the roadway could and would be expanded in order to meet the requirements of ACHD." – Speculation and hearsay.

8) "I can therefore verify and confirm as one of the drafters of the PERMANENT EASEMENT AGREEMENT that it was the agreement and the intention of the parties to that instrument that the access roadway described in the PERMANENT EASEMENT AGREEMENT would be altered and expanded in order to meet the requirements of ACHD at the time of its eventual dedication to ACHD." – Speculation and hearsay.

CONCLUSION

The above identified portions of the Affidavit of Rebecca W. Arnold are not admissible evidence that can be considered by this Court on a motion for summary judgment. The Court would want to hear from the actual parties to the Permanent Easement Agreement, rather than the second-hand speculation of Arnold as to the intent of these individuals. Significant portions of the Affidavit of Rebecca W. Arnold, including those identified above, are not made on personal knowledge, do not set forth assertions that are admissible in evidence, and are based solely on hearsay. As such, Defendant asks that the Affidavit of Rebecca W. Arnold be stricken from the record to the extent requested above.

DATED this 15th day of January 2016.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 15th day of January 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE &
COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☒ Personal Delivery
- ☐ Facsimile
- ☐ Electronic Means w/ Consent
- ☐ Other: _____

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic and corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant, the city of Boise City, Idaho ("**Boise City**"), by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and respectfully submits this Defendant's Response in Opposition to Plaintiffs' Motion for Summary Judgment, as follows:

I. INTRODUCTION

Plaintiffs, Bedard and Musser, and Boise Hollow Land Holdings, RLLP, (all together "**Boise Hollow**"), filed Plaintiffs' Motion for Summary Judgment, asking this Court to find as a matter of law, that Boise Hollow has the right to an expandable easement that runs across the Quail Hollow Golf Course, ("**Golf Course**").[1] Boise City subsequently filed its own Cross-Motion for Summary Judgment, asking this Court to find, that no easement exists, or alternatively, that the plain language of the 1991 Permanent Easement Agreement (the "**Easement Agreement**") clearly and unambiguously defines the easement's width as being any easement that was created, is limited to a maximum width as forty feet (40′).

Boise City now responds directly to those claims of Boise Hollow's alleged in their Motion for Summary Judgment by arguing that: (**1**) no valid easement was ever created by Tee, Ltd/Tommy T. Sanderson ("**Sanderson**") as grantor of the alleged easement, as Sanderson only ever held a ninety nine (99) year leasehold interest on the Golf Course property (the servient estate identified in the Easement Agreement) and therefore could not have granted a permanent or perpetual easement; (**2**) if such an easement had been created, by the lessee, holding a leasehold interest, that easement would terminate at the expiration or termination of the underlying lease in 2007; (**3**) if this Court finds the 1991 Easement Agreement, executed by Sanderson (lessee/grantor) and the Vancroft Corporation ("**Vancroft**") (owner/grantee), actually created a permanent easement, the plain language of the forty foot (40′) easement ("**40′ Easement**") grants, at a maximum, a forty foot (40′) wide easement for utility purposes only; (**4**) if this Court finds that the Easement Agreement is ambiguous, the intent of the original parties

[1] The lots comprising the Golf Course property are commonly referred to throughout pertinent documents as "Lot 2 and Lot 6, Block 1, Nibler Subdivision" (those portions of the Golf Course located north of 36th Street) and "Lot 1, Block 2, Nibler Subdivision" (the portion of the Golf Course located south of 36th Street).

and the circumstances present at the time of the creation of the 40′ Easement make clear that a forty foot (40′) wide utility easement with no right of expansion was created.

II. STATEMENT OF UNDISPUTED FACTS

In the interest of brevity, Boise City limits its recitation of the facts to those specifically pertinent to this Response in Opposition. The court should refer to the Statement of Undisputed Facts contained in Defendant's Cross-Motion for Summary Judgment (incorporated herein as if set forth in full), for a full narrative of the chain of title and history of the properties and of the lease and easement at issue in this case.

In 1982, the Shamanah Golf Course opened on the Golf Course property. At that time, Victor and Ruth Nibler (the "**Niblers**") owned close to six hundred (600) acres of property including the Golf Course and the Bedard Property, in addition to other real property. The Niblers were lessors of the Golf Course property, having granted a ninety nine (99) year lease to Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelson, as lessees ("**Labrum, Labrum, Thomsen, and Samuelson**") (Germaine Decl., Ex. C.) In 1986, Tee, Ltd. ("**Tee**"), whose President was Tommy Sanderson ("**Sanderson**"), obtained the Golf Course lease (and only the lease, not the underlying fee title), as lessee.

Sanderson acquired a four (4) acre lot consisting of the ("**Clubhouse Parcel**")[2] located adjacent to the Golf Course property in 1987, but beyond that, Sanderson held no right of title to the Golf Course property - he was only a leaseholder in the Golf Course property. In 1990, Vancroft acquired a significant portion of the Nibler Property, including the Golf Course property and the Bedard Property. (Decl. of Counsel Abigail R. Germaine ., Ex. G.) In 1991, Sanderson was approached by Vancroft and its attorney at the time, Rebecca Arnold ("**Arnold**"),

[2] The lot comprising the Clubhouse Parcel is referred to throughout pertinent documents as "Lot 3, Block 2, Nibler Subdivision."

seeking a forty foot (40′) easement across the Golf Course property to provide utilities and basic access to the Bedard Property. The Easement Agreement, although signed by Sanderson and Vancroft in 1991, was not recorded until 1993 (Decl. of Tommy T. Sanderson, Ex. B.), after Vancroft had sold the Bedard Property to Plaintiffs Bedard and Musser. (Decl. of Counsel Abigail R. Germaine, Ex. L.)

At the time that Sanderson began contemplating construction of the Golf Course Clubhouse, it became apparent that Niblers, Vancroft, and Sanderson had inadvertently failed to plat the Golf Course parcel and surrounding areas, as required by Boise City's ordinances when they had divided and conveyed various lots. Upon completing the subdivision process, the final Nibler Subdivision plat was recorded on January 29, 1991. (Decl. of Counsel Abigail R. Germaine, Ex. T.) As platted, the Bedard Property is only one (1) single lot consisting of Block 2, Lot 4, and not, in and of itself, a multi-lot residential subdivision.

It was not until 2013, that any more than a vague notion of future development attached to the Bedard Property. In October of 2015, the Plaintiffs submitted a Preliminary Public Road Plan and Profile (the "**Plan and Profile**") to the Ada County Highway District ("**ACHD**") for comment and requirements, calling for a two hundred ten foot (210′) easement, rather than the alleged forty foot (40′) wide easement specifically described in the Easement Agreement.[3] To date, no preliminary plat or subdivision application has been submitted to the city of Boise City (in its capacity as the municipal entity and approval body with jurisdiction over such applications) with regard to the Bedard Property. (Decl. of Counsel Abigail R. Germaine, Ex. A.) Likewise, upon information and belief, no response has been received from ACHD containing

[3] Attached as Exhibit A to Plaintiffs' Affidavit of Kevin McCarthy in Support of Plaintiff's Motion for Summary Judgment.

comments, requirements, or specifications related to the Plan and Profile or the easement area, and no such ACHD response has been disclosed to Boise City.

III. ARGUMENT SUMMARY

Boise City now owns and operates the Golf Course. In June 2015, Boise Hollow filed its Complaint in this case, asking this Court to surgically modify the 1991 Easement Agreement by inserting a provision authorizing the unilateral enlargement of the 40′ Easement allegedly granted by lessee Sanderson to more than five (5) times its width. Boise Hollow alleges "the express language of the Easement Agreement and the Nibler Subdivision plat" authorize Boise Hollow to unilaterally expand the width of the 40′ Easement. (Mem. In Supp. of Pls.['] Mot. For Summ. J., pg. 9, ¶ 2.) In Plaintiffs' Motion for Summary Judgment, the words "expand", "expansion", or "expanded" appear twenty six (26) times. In Arnold's Affidavit these same words appear six (6) times. Importantly however, these words ("expand", "expansion", or "expanded") appear zero (0) times in the Easement Agreement and the Nibler Subdivision Plat.

Defendant Boise City asks the court to decline Plaintiffs' unreasonable and unfounded enlargement request, and to find that the Easement Agreement unambiguously and unequivocally defines the maximum width of the easement area as being forty feet (40′). Alternatively, Boise City asks the Court to find that no valid perpetual easement was created between Sanderson and Vancroft in 1991, or that any easement lessee Sanderson granted to Vancroft terminated with Sanderson's lease in 2007. A review of the relevant properties' chains of title and the types of property interests attached to the various parcels of land involved in this case makes it readily apparent that no valid perpetual easement was created by Sanderson in 1991, and that any rights conveyed in 1991 simply terminated in 2007.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is proper if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). Where "the evidence reveals no disputed issues of material fact, then only a question of law remains, over which this Court exercises free review." *Lockheed Martin Corp. v. Idaho State Tax Comm'n,* 142 Idaho 790, 793, 134 P.3d 641, 644 (2006) (citing *Infanger v. City of Salmon,* 137 Idaho 45, 44 P.3d 1100 (2002)). "Material facts are those which may affect the outcome of the case." *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). To survive summary judgment, "an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(c). "A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment." *Jenkins v. Boise Cascade Corp.,* 141 Idaho 233, 238, 108 P.3d 380, 385 (2005) (citing *Northwest Bec–Corp. v. Home Living Serv.,* 136 Idaho 835, 839, 41 P.3d 263, 267 (2002)).

When an action, as is the case here, will be heard before the court without a jury, the court as the trier of fact is entitled to reach the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment even though there may be a possibility of conflicting inferences. *Id.*, citing *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001).

There is an additional basis for summary judgment in cases involving the interpretation of a document conveying an interest in real property. The Idaho Supreme Court, in *Latham v. Garner*, stated:

> Our cases are clear that the legal effect of an unambiguous written document must be decided by the trial court as a question of law. If, however, the instrument of conveyance is ambiguous, interpretation of the instrument is a matter of fact for the trier of fact.

Latham v. Garner, 105 Idaho 854, 857, 673 P.2d 1048, 1051 (1983). "The initial determination whether an instrument is ambiguous or not is a question of law... ." *Phillips Industries, Inc. v. Firkins*, 121 Idaho 693, 697, 827 P.2d 706, 710 (1992), citing *DeLancey v. DeLancey*, 110 Idaho 63, 65, 714 P.2d 32, 34 (1986). Once this Court determines the Easement Agreement is clear and unambiguous, "[i]nterpreting intent from an unambiguous deed is a matter of law... ." *Phillips Industries, Inc. v. Firkins*, 121 Idaho 693, 697, 827 P.2d 706, 710 (1992), *citing Latham v. Garner*, 105 Idaho 854, 857, 673 P.2d 1048, 1051 (1983).

"The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and does not in and of itself establish that there is no genuine issue of material fact. This Court must evaluate each party's motion on its own merits." *Lawrence v. Hutchinson*, 146 Idaho 892, 896, 204 P.3d 532, 536 (Ct. App. 2009). *Intermountain Eye & Laser Ctrs., P.L.L.C. v. Miller*, 142 Idaho 218, 222, 127 P.3d 121, 125 (2005).

V. ANALYSIS AND ARGUMENT

A. No Valid Easement Exists.

Boise Hollow in its Motion for Summary Judgment failed to demonstrate how Sanderson, as a mere leaseholder, was able to encumber the underlying fee title of the Golf Course property (the servient estate), with a perpetual easement. Furthermore, any interest Sanderson may have

conveyed to the grantee (Vancroft) in the Easement Agreement relating to his leasehold interest would have ended at the termination of that interest in 2007 with the Termination of Lease document.[4] In addition, even if Sanderson had the ability or authority to encumber the fee title of the underlying Golf Course property to a perpetual easement, the parties to the contract, Sanderson and Vancroft, failed to reach a meeting of the minds as to the essential terms of the easement. Therefore no valid contract was created.

1. Sanderson Only Held a Leasehold Interest.

An easement is commonly known as the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner. *Akers v. D.L. White Constr., Inc.* 142 Idaho 293, 301, 127 P.3d 196, 204 (2005). An express easement, such as the one allegedly created here, is an interest in real property. *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 714, 152 P.3d 581, 585 (2007). Because an easement is defined as the right in the land of another, one cannot have or grant an easement in his own land. *Capstar Radio Operating Co. v. Lawrence*, 153 Idaho 411, 420, 283 P.3d 728, 737 (2012), *see also* 25 AM. JUR. 2D *Easements and Licenses* § 2 (2015). No easement can exist as long as there is unity of ownership between the properties involved. 25 Am. Jur. 2d *Easements and Licenses* § 2 (2015). "The dominant and servient tenement must belong to different persons." *Id.*

At the time of the execution of the Easement Agreement, Vancroft owned both the servient and dominant estates. Vancroft had obtained fee title to the Golf Course property (the servient estate) via warranty deed in June of 1990. (Decl. of Counsel Abigail R. Germaine, Ex. G.) Vancroft also obtained fee title to the Bedard Property (the dominant estate) via warranty deed in June of 1990. (Decl. of Counsel Abigail R. Germaine, Ex. G) At the time the Easement

[4] *See* Germaine Decl., Ex. N.

Agreement was executed in 1991 Vancroft held title to both the dominant and servient estates and could not legally have granted itself an easement over its own property.

Therefore, Vancroft approached Sanderson in an attempt to create an easement for the benefit of the Bedard Property. However, Sanderson only ever held a leasehold interest in the Golf Course property. Other than the area commonly known as the Clubhouse Parcel[5], Sanderson did not own fee title to the underlying Golf Course property. "An easement can be created only by a person who has title to or an estate in the servient tenement, and **an easement may not create a right that the grantor did not possess.**" 25 Am Jur. 2d *Easements and Licenses* § 12 (2015), *emphasis added.* Only the fee simple owner of the land may grant a *permanent* easement. The Law of Easements & Licenses in *Servient and dominant estates – Servient and dominant estates less than fee simple,* § 2:9 (2015), *emphasis added.* Sanderson had no ability to create a perpetual or permanent easement that ran with the land beyond his leasehold interest in the Golf Course property. The Easement Agreement states that Sanderson was attempting to grant a, "forty (40′) foot perpetual easement...." (Decl. of Tommy T. Sanderson, Ex. A.) Sanderson could not grant, to another, rights he himself did not have. He could not burden the land perpetually, when he had a limited "term of years" estate in the land and Vancroft, as grantee in the Easement Agreement, had no ability to simultaneously act as the grantor in creating an easement over its own land.

2. Any Rights Conveyed by Sanderson Terminated in 2007 with the Termination of the Leasehold.

Although it appears Idaho courts have not specifically addressed this issue, other Western states have specified who may grant an easement. California, Montana, and North Dakota, for example, have all held that a servitude or easement may only be created by one who has a vested

[5] The lot comprising the Clubhouse Parcel is referred to throughout pertinent documents as "Lot 3, Block 2, Nibler Subdivision."

estate in the servient tenement. Cal. Civ. Code § 804 (2011); ND Cent. Code § 47-05-05 (2009); Mont. Code Ann. § 70-17-104 (2009). "Any person with a possessory interest in land may create an easement burdening that person's interest." The Law of Easements & Licenses in Land, *Persons who may create easement,* § 3:4 (2015). One rule among the states appears to be consistent however, and that is an easement may not last beyond the interest that the grantor holds in the servient tenement. *Id.* "An easement burdening or benefiting an estate less than a fee simple ends when the estate expires." *Id.* at *Inherent limitations on duration – Expiration of servient or dominant estate less than fee simple,* § 10:15. Therefore, "an easement that burdens a leasehold is extinguished upon the expiration of the lease." *Id.*

If Sanderson did have the ability to grant an easement burdening the servient estate (the Golf Course property) the easement only exists during the term of the lease. Such an easement would not have been perpetual and would not have run with the title of the servient estate. Sanderson would not have been able to grant more than his interest in the land. This conveyance was only valid for the duration of Sanderson's interest in the Golf Course property. Sanderson conveyed his interest in the land in 1993 to Hendrickson. (Decl. of Counsel Abigail R. Germaine, Ex. I.) Ultimately, the leasehold interest was terminated in 2007 as between Bluegrass (then lessor) and Hendrickson (then lessee) in the Termination of Lease agreement. (Decl. of Counsel Abigail R. Germaine, Ex. N) Any easement right Sanderson may have conveyed in 1991 only related to his interest in the land and this interest was the leasehold estate. Such rights granted in the leasehold estate terminated with the expiration of the leasehold in 2007.

3. No Meeting of the Minds as to Essential Terms.

In order to form a valid contract there must be a meeting of the minds shown by an expression of mutual intent to contract. *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). Likewise, in order for the contract to be valid "there must be a meeting of the minds on the essential terms of the agreement." *Id.* The most essential terms of an easement agreement are the location and the scope of the easement. "In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties." *Inland Title Co. v. Comstock,* 116 Idaho 701, 702, 779 P.2d 15, 16 (1989). Boise Hollow has failed to prove a distinct and common understanding between Sanderson (the Grantor) and Vancroft (the Grantee) as to the essential terms of the Easement Agreement of width and right to enlarge the 40′ Easement.

B. Plain Language of the Easement Controls.

Boise City urges this Court to find that no valid easement was created, but in the event this Court finds that Sanderson was able to create a perpetual easement the plain language of the Easement Agreement, the meticulously precise words of the legal description that was attached to (and incorporated into) the Easement Agreement as its "Exhibit B," the 1992 Plat of Nibler Subdivision, and the drawing of the easement area that was attached to (and incorporated into) the Easement Agreement as its "Exhibit C", all clearly and unambiguously identify the width of the 40′ Easement as being exactly forty feet (40′).

1. Parol Evidence Not Permitted.

No ambiguity or inconsistency exists in the Easement Agreement. "For a contract term to be ambiguous, there must be at least two (2) different reasonable interpretations of the term, or it must be nonsensical." *Swanson v. Beco Const. Co.*, 145 Idaho 59, 62, 175 P.3d 748, 751 (2005).

The parol evidence rule bars the admission of extrinsic evidence when a court is interpreting a written contract, if the contract is complete and unambiguous on its face. *AED, Inc. v. DDC Investments, LLC*, 155 Idaho 159 165, 307 P.3d 176, 182 (2013). Likewise, "if the language of the contract is plain and unambiguous, the intention of the parties must be determined by the contract itself. *Rowan v. Riley*, 139 Idaho 49, 54, 72 P.3d 889, 894 (2003).

The plain language of a contract is controlling when the language is unambiguous. *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 266, 297 P.3d 222, 229 (2012). When the language of a contract is unambiguous, its meaning must be determined from its words. *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (citing *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004)).

Because the plain language of the Easement Agreement is unambiguous and complete on its face, the Court must disregard the Plaintiffs' references to extrinsic evidence of the intent of the parties in drafting the Easement Agreement. The words used by the parties in drafting the contract offer the best evidence of the parties' mutual intent. *USA Fertilizer v. Idaho First Nat. Bank*, 120 Idaho 271, 815 P.2d 469 (Ct.App.1991). Throughout the Plaintiffs' Memorandum in Support of Motion for Summary Judgment, Boise Hollow references the intent of the parties in drafting the Easement Agreement. Specifically, and most frequently, Boise Hollow refers to the Affidavit of Rebecca Arnold, which in addition to containing primarily inadmissible hearsay, also attempts to explain to the court the intent of the *actual* parties to the Easement Agreement. None of Arnold's recollections of the intent of each respective party is admissible, as they are inadmissible hearsay and they are parol evidence, which is not to be considered in interpreting a plain and unambiguous document.

2. Easement Agreement Unambiguously Specifies a 40′ Easement.

When the parties to an easement describe with specificity the location, utility or width of the easement, such specification is "ordinarily construed to place an outside limit on the dimensions." Restatement (Third) of Prop.: Servitudes § 4.1(d) (2000) at § 4.8(d). Likewise, if the dimensions establish the maximum size of the easement, "the dimensions cannot be enlarged by the servitude owner unilaterally, even though they turn out to be inadequate for the purpose intended." *Id.* Boise Hollow is seeking to enlarge the 40′ Easement to two hundred ten feet (210′) because the 40′ Easement now may be insufficient.

In 1991, Vancroft's attorney used precise language in drafting the Easement Agreement, even adding a technical legal description of the exact easement dimensions and location and providing references to two (2) depictions of the easement area, all of which emphasize that the width of the 40′ Easement was exactly forty feet (40′). Boise Hollow may contend that the width of forty feet (40′) was included in the Easement Agreement simply to provide an initial size for the easement, subject to future enlargement at grantee's discretion. However, in drafting the Easement Agreement, Vancroft's attorney omitted any language authorizing or allowing expansion or enlargement of the 40′ Easement. Boise Hollow states in their Motion for Summary Judgment, that "the parties [Rebecca Arnold] purposely drafted flexible language," that would allow for expansion. (See Pls['] Mot. for Summ. J., pg. 14, ¶ 1.) Yet, no such language is present.

To authorize expansion of the 40′ Easement, the Easement Agreement must contain clear and unambiguous language to that effect. Paragraph six (6) of the Easement Agreement contains no language authorizing expansion of the 40′ Easement. The words "expand," "enlarge," or "widen" (or any of their synonyms) simply were not included anywhere in the Easement

Agreement. Paragraph six (6) does not address easement size whatsoever, it simply authorizes Boise Hollow to dedicate any potential future road constructed within the 40′ Easement to the ACHD, if such road meets ACHD's then-current construction specification, stating those standards related to bonding, curbs and sidewalks, etc., never mentioning road width or size.

3. Purpose of the Easement Plainly Stated.

The drafters to an easement can created an easement not limited to a specific use. A general grant of easement is defined as an "easement granted or reserved in general terms, without any limitations as to its use." *Abbott v. Nampa School Dist. No. 131*, 119, Idaho 544, 548, 808 P.2d 1289, 1293 (1991). In this case, however, the Easement Agreement does specify the purpose of the 40′ Easement: utilities and access. Sanderson and Vancroft created an express easement and stated the width and purposes with specificity. Nowhere in the Easement Agreement is there any language suggesting the purposes of the easement included public vehicular access to a multi-residential subdivision. If either Vancroft or Sanderson had desired to allow the 40′ Easement to be expanded to accommodate multi-residential subdivision vehicular access to the Bedard Property, language illustrating that purpose should have been included in the Easement Agreement

C. Even if Ambiguous, Extrinsic ("Parol") Evidence Proves Forty Feet (40′).

As stated above, the plain language of the Easement Agreement conveys a forty foot (40′) easement and there is no ambiguity as to its width. However, should the court find that any ambiguity does exist, the court must turn to principles of contract law and look to the intent of the parties and the circumstances surrounding the easements creation to resolve the ambiguity. *Thomas v. Campbell*, 107 Idaho 398, 404, 690 P.2d 333, 339 (1984); *Dr. James Cool, D.D.S. v. Mountainview Landowners Co-op. Ass'n, Inc.*, 139 Idaho 770, 773, 86 P.3d 484, 487 (2004).

When interpreting a contract, the primary aim is to determine the mutual intent of the parties at the time the contract was formed. *Rutter v. McLaughlin*, 101 Idaho 292, 612 P.2d 135 (1980). "Where the parties' mutual intent cannot be understood from the language used, intent becomes a question for the trier of fact, to be ascertained in light of the extrinsic evidence." *Farnsworth v. Dairyman's Creamery Ass'n*, 125 Idaho 866, 871, 876 P.2d 148, 153 (Ct. App. 1994). A contract is ambiguous if it is subject to possible conflicting interpretations. *Bakker v. Thunder Spring-Wareham, LLC*, 141 Idaho 185, 190, 108 P.3d 332, 337 (2005).

In looking at a term of an easement, "[a]n ambiguous restriction requires only a reasonable construction which is most favorable to the servient estate." *Thomas,* 107 Idaho at 404, 690 P.2d at 339, *quoting Allow v. Moyer*, 275 Or. 397, 400, 550 P.2d 1379, 1381 (1976).

1. Grantor's Intent.

When possible the intent of the parties to the easement should be construed from the language of the contract itself. Restatement (Third) of Prop.: § 4.1(d) (2000). When this is not possible the court must than look to extrinsic evidence as to the intent of the parties.

Boise City has submitted, attached to the Defendant's Cross-Motion for Summary Judgment, the Declaration of Tommy Sanderson, signed by him on December 29, 2015. In his Declaration, Sanderson explicitly and unequivocally states that he only intended to grant a forty foot (40′) easement. (Decl. Sanderson, pg. 2, ¶ 4(a).) Sanderson goes on to expressly state that at no time in drafting the Easement Agreement did he ever intend the 40′ Easement to be expandable. *Id.* at ¶ 4(c). Sanderson testifies that his understanding of the plain language of the easement was that no expansion was allowed beyond forty feet (40′). *Id.*

Boise Hollow attached to its Plaintiffs' Motion for Summary Judgment, the Affidavit of Rebecca W. Arnold ("**Arnold**"), Vancroft's attorney at the time the Easement Agreement was

drafted. Boise Hollow submitted Arnold's affidavit in an attempt to illustrate the intent of the parties in drafting the contract. Boise City has moved to strike a majority of Arnold's affidavit, as it is hearsay and, moreover, speculative. Arnold was not the grantee of the 40′ Easement and can only offer first-person testimony and evidence relating to what she was told was the grantee's intent. She cannot speak to the intent of the actual parties themselves.

Boise Hollow has submitted no evidence other than the affidavit of Arnold, the greater part of which consists of parol evidence (which cannot be considered by this Court at the summary judgment stage) and inadmissible hearsay, and the affidavits of two (2) engineers who only averred as to what they were told about the easement - neither affidavit included admissible first-person evidence or testimony that was not also parol evidence. Because Boise City submitted a declaration of Sanderson, the actual grantor of the easement at question in this case, and because Sanderson's declaration specifically addresses his intent as the grantor of the 40′ Easement (which is clearly and unambiguously defined in the Easement Agreement signed by Sanderson himself to have a width of 40′), the court must find this evidence uncontroverted in determining that the grantor's intent was to create a 40′ Easement for utility purposes with no right of expansion.

2. Circumstances at the Time the 40′ Easement was Granted.

At the time the Easement Agreement was executed, the grantor, Sanderson, was operating the Golf Course. (Decl. of Tommy T. Sanderson, pg. ¶ 3.) Almost immediately adjacent to the 40′ Easement is the 16th hole of the Golf Course. An easement any broader in width would have impeded the operation and existence of the 16th hole. Sanderson would not have agreed to an easement larger than forty feet that would have impeded or destroyed the operation of the 16th hole of his golf course.(Decl. of Tommy T. Sanderson, pg. 3, ¶ 4(g).)

Likewise, Sanderson states that he would have never agreed to Paragraph six (6) of the Easement Agreement if he had been aware of any inclination that the Plaintiffs would attempt to use that clause to expand the easement to the determinant of that 16th hole. *Id.* at ¶ 4(h). The 16th hole is still in operation today. Any extension of the easement would impede and/or destroy at a minimum, the 16th hole, if not other holes as well.

It is unreasonable to suggest that the intent of the parties at the time this easement was created was to allow expansion of this easement to two hundred and ten feet (210') to the detriment of the existing Golf Course. An easement larger than forty feet (40') would destroy the 16th hole, and therefore, the Easement was limited to forty feet (40') by agreement of the parties.

Likewise, at the time the Easement Agreement was executed in 1991, there were no current plans to develop the Bedard Property into a multi-residential subdivision. (Decl. of Tommy T. Sanderson, pg. 3, ¶ 4(f).) Boise Hollow asserts that the intent at the time the Easement Agreement was executed was to develop the Bedard Property into a multi-residential subdivision. (Pls['] Memo. in Supp. of Mot. for Summ. J., pg. 7, ¶ 1.) This is incorrect. At the time the Easement Agreement was executed Vancroft had filed and begun the process for the Nibler Subdivision plat. However, as confirmed by Sanderson in his declaration and by the layout of the plat itself, the Bedard Property was a single lot, undeveloped.

The required notation on the face of the Nibler Plat further supports Defendant's assertion that no plans existed to develop the Bedard Property into a multi-residential subdivision. The notation appears as Note 5 on the Plat and reads in pertinent part:

> Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District.

(Decl. of Counsel Abigail R. Germaine, Ex. T.) The lots excepted from the approval requirement did not include the Bedard Property (which was Lot 4, Block 2, Nibler Subdivision), meaning that the Bedard Property was not granted direct access to 36th Street on the face of the Nibler Plat. At the time the Easement Agreement was executed, Sanderson never intended to create an easement wider than forty feet (40') to accommodate a multi-residential subdivision.

3. Construed Against Drafter

Idaho follows the well-known contract principle that an ambiguous writing is interpreted against its drafter. *USA Fertilizer, Inc. v. Idaho First Nat. Bank.,* 120 Idaho 271, 274, 815 P.2d 469, 472 (Ct. App. 1991). In resolving an ambiguous term "ambiguity should be resolved against the party who used the ambiguity in drafting the contract." *Farnsworth*, 125 Idaho at 871, 876 P.2d at 153. In *Farnsworth*, an employee of DCA brought suit seeking severance pay according to the company policy. DCA refused to issue severance pay stating such reimbursement was only issued where the termination of the employee was "without cause." The employee handbook stated that severance pay was not available to a terminated employee when the termination was "for causes as defined by the employee handbook." *Id.* Both parties disputed what "for cause" meant and the Court heard the matter on appeal. The court held that when considering the issue of contract interpretation, "after applying the ordinary processes of interpretation and considering the relevant extrinsic evidence, there remains doubt as to the actual, mutual intent of the parties, the ambiguity should be resolved against the party who used the ambiguity in drafting the contract." *Id.* In conclusion, the Court of Appeals held, as the magistrate court had before it:

> [that] resolution of such ambiguity presents a question of fact to be determined by resorting to extrinsic evidence of the parties' mutual intent. We note that while DCA submitted lengthy testimony concerning the company's intended policy on severance pay, it offered no evidence to show that it had communicated this intent to Farnsworth, except through issuance of the ambiguously-drafted

> Handbook. Aside from the language of the Handbook itself, neither party presented any evidence to dispute the alleged understanding of the other. Consequently, the sole question for the magistrate to determine was which of the two conflicting inferences should be drawn from the Handbook's language. Noting the summary judgment standard in *Riverside*, which permits the judge in a case that would be tried to the court to resolve conflicting inferences from the undisputed evidentiary facts, the magistrate applied the rule of contract interpretation that ambiguity should be resolved against its drafter, in this case, against DCA.

Id.

No ambiguity exists as to the meaning of Paragraph six (6) of the Easement Agreement, but in applying the principles from *Farnsworth* to the facts of our case, any ambiguity this Court finds in Paragraph six (6) must be resolved against the drafter, Arnold and her client's predecessor in interest, Vancroft. As stated by Arnold herself in her Affidavit, she, in her role as Vancroft's attorney, personally drafted the Easement Agreement. (Aff. of Rebecca W. Arnold, p. 2, ¶ 4.) As noted by Sanderson, he had no part in drafting the Easement Agreement. (Decl. of Tommy T. Sanderson, p. 3, ¶ 5.) As in *Farnsworth*, Vancroft's intent (now claimed in Arnold's Affidavit to have included a right to expand the easement at some unknown future time), was never conveyed to Sanderson, grantor of the 40′ Easement.

Any ambiguity in the Easement Agreement is attributable to its drafter, which was Vancroft's attorney, Arnold. Any intent grantee Vancroft may have had to obtain a right to future unilateral expansion of the 40′ Easement was never conveyed to grantor Tee/Sanderson. The court must resolve any ambiguity it finds in the Easement Agreement against the Plaintiff, whose predecessor in interest (Vancroft) directed its attorney (Arnold) to draft the Easement Agreement. As a result of these uncontroverted facts, if the Court somehow determines that Paragraph six (6) of the Easement Agreement is ambiguous, it must construe that ambiguity

against Boise Hollow and find that Paragraph six (6) only authorizes Boise Hollow to dedicate whatever road eventually constructed within the 40′ Easement to ACHD, but does not grant the right to expand or enlarge the easement beyond the clearly stated forty feet (40′).

D. Expansion Beyond 40′ would be Unduly Burdensome

Any increase in the use of the easement must be reasonable and not unduly burdensome or unreasonably damage the servient estate. *McFadden v. Sein*, 139 Idaho 921, 924, 88 P.3d 740, 743 (2004). Furthermore,:

> the servitude owner is not entitled to cause any greater damage than that contemplated by the parties, or reasonably necessary to accomplish the purpose of the servitude. Unless clearly contemplated by the parties, it is not assumed that the servient owner intended to permit the easement owner to remove existing structures or terminate existing uses of the servient estate....aesthetics and character of the property are important concerns.

Restatement (Third) of Prop.: Servitudes § 4.10(g) (2000). Idaho courts have also held that the rights of the dominant estate may not be enlarged beyond what is necessary to fulfill the purpose for which the easement was granted. *Abbott v. Nampa School Dist. No.* 131, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991). An easement does not carry with it a right to enlarge the use to the injury of the servient land. *Merrill v. Penrod*, 109 Idaho 46, 704 P.2d 950 (Ct.App. 1985). Any enlargement of the 40′ Easement would unduly burden Boise City's Golf course, to which Sanderson, as grantor of the 40′ Easement, never would have agreed. (Decl. of Tommy T. Sanderson, pg. 4, ¶ 4(h).)

1. Expansion Would Greatly Harm or Destroy the Golf Course.

As illustrated by the Restatement of Property and the Court in *McFadden*, expanding the 40' Easement beyond forty feet (40′) would unduly burden the servient estate, the Golf Course property, and would ruin the Golf Course. As stated in the Restatement, it should be assumed

that the parties did not intend to harm the current existing structures or terminate the existing uses of the servient estate, the Golf Course. The court should consider the reasonable intent of the parties with regard to the aesthetics, use, and character of the servient estate, the Golf Course property, when Sanderson and the Vancrofts executed the Easement Agreement. Any enlargement of the 40′ Easement would significantly impair the 16th hole of the Golf Course. An expansion to two hundred ten feet (210′) would ruin the 16th hole.

2. Expansion Cannot Happen Without Approval from Boise City.

Paragraph four (4) of the Easement Agreement states that the grantor, Sanderson or his successor's in interest (now Boise City), has the right to "approve all design, engineering, surveying and construction plans for the installations of utilities and the road in the easement area...." Easement Agreement, pg. 2, ¶ 4. The Easement Agreement does, however, require that the Grantor not unreasonably withhold such consent.

Boise City has refused to consent to any expansion of the 40′ Easement, especially to two hundred ten feet (210′). Boise City's refusal is not unreasonable being that such an expansion was never contemplated by the Easement Agreement's plain language, legal description, and depictions clearly establishing the width of forty feet (40′). In addition any expansion of the easement would impede and damage the golf course, specifically the 16th hole. Refusing to consent to such a change to the easement width is not unreasonable considering the damages that would be suffered by Boise City.

3. Allowing Unilateral Expansion Creates a Limitless Easement.

Boise Hollow would like this Court to find that Paragraph six (6) of the 40′ Easement creates an unrestricted right of expansion. This claim is illogical for two (2) main reasons: 1) such a finding would make all references and legal descriptions of a forty foot (40′) easement in

the Easement Agreement null and void, and 2) Boise Hollow would be permitted to encumber an infinite amount of the Golf Course property.

VI. CONCLUSION

Defendant hereby responds to Plaintiffs' Motion for Summary Judgment and respectfully asks this Court to deny the Plaintiffs' Motion for Summary Judgment and grant Defendant's Cross-Motion for Summary Judgment. In doing so, Defendant respectfully requests that this Court enter judgment declaring Plaintiffs have no easement right across Defendant's Golf Course property. In the alternative, in the event that the Court finds a valid easement was created in 1991, Defendant respectfully asks this Court to enter judgment declaring the width of the easement to be fixed in the Easement Agreement at a maximum of forty feet (40'), and not expandable.

DATED this 15th day of January 2016.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of January 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☒ U.S. Mail
- ☒ Personal Delivery
- ☐ Facsimile
- ☐ Electronic Means w/ Consent
- ☐ Other: _____

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

redeemed
Janet
ST-1/19/16

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **SECOND DECLARATION OF COUNSEL ABIGAIL R. GERMAINE**

I, ABIGAIL R. GERMAINE, certify and declare under penalty of perjury pursuant to the laws of the State of Idaho, that the following is true and correct:

1. I am an attorney employed by the City of Boise and represent the Defendant in this Case. I make this declaration of my own personal knowledge.

A

ORIGINAL

2. A true and correct copy of pages 1, 9-10 (containing Defendant's Interrogatory No. 10 and Plaintiff's Answer to Interrogatory No. 10, and the final page signed by Michael E. Band as Attorney for Plaintiff), to Plaintiff's Responses to Defendant's First Interrogatories and Requests for Production of Documents, is attached here as Exhibit A.

DATED this 15th day of January 2016.

Abigail Germaine

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 15th day of January 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☑ U.S. Mail
- ☒ Personal Delivery
- ☐ Facsimile
- ☐ Electronic Means w/ Consent
- ☐ Other: _____

Abigail Germaine

ABIGAIL R. GERMAINE
Deputy City Attorney

EXHIBIT "A"

TO

DECLARATION OF COUNSEL

ABIGAIL R. GERMAINE

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiff
Bedard and Musser

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

* * *

COMES NOW Plaintiff Bedard and Musser, an Idaho partnership, by and through its attorneys of record Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple of Boise, Idaho, and hereby responds to DEFENDANT'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS dated August 12, 2015, as follows:

INTERROGATORY NO. 8: Please detail with specificity the statute, rule, policy or other authority which you contend allows or requires an access road of 100 feet or more in width, as stated in paragraph 15 of the Complaint.

ANSWER TO INTERROGATORY NO. 8: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion and seeks information protected by attorney work product doctrine. Plaintiff further objects to this interrogatory in that it seeks information within the Defendant's possession and more easily accessed by the Defendant. Without waiving the foregoing objection, Plaintiff answers that the requirement is set forth in Section 7200 of the ACHD Policy Manual.

INTERROGATORY NO. 9: Please identify any preliminary or final recommendation from ACHD that leads, or may lead, Plaintiff to believe that an access road of one hundred feet (100') or more in width is, or would be, required by ACHD.

ANSWER TO INTERROGATORY NO. 9: See documents produced herewith. In addition, Kevin McCarthy of KM Engineering may have additional information or documentation responsive to this request in addition to those documents produced herewith. Mr. McCarthy is unavailable at the time of this writing; discovery is ongoing and this answer will be timely supplemented as required by the IDAHO RULES OF CIVIL PROCEDURE.

INTERROGATORY NO. 10: Has Plaintiff submitted any application to the City of Boise City for, or pertaining to, development of the Bedard/Musser Property? For purposes of this Interrogatory No. 10, "any application" shall mean any document submitted to the City of Boise City for any land use, zoning classification change, zoning code amendment, zoning certificate, land use designation, development, or property-related purpose, including, but not limited to: Annexation, rezone, building, Foothills or hillside, conditional use, erosion and sediment control,

grading, planned unit development ("PUD"), record of survey, sewer, variance, certificate of appropriateness, subdivision, or any other application submitted to the City of Boise City related to any action or planned action on or to Lot 4, Block 2 of the Bedard/Musser property.

ANSWER TO INTERROGATORY NO. 10: No applications can be submitted until the dispute giving rise to this litigation is resolved.

INTERROGATORY NO. 11: If your answer to Interrogatory No. 10 is in the affirmative, please provide the date the applications were filed, and application, project, or permit numbers that were assigned to each application.

ANSWER TO INTERROGATORY NO. 11: None.

INTERROGATORY NO. 12: Has Plaintiff submitted any application to ACHD for, or pertaining to, development of the Bedard/Musser Property?

ANSWER TO INTERROGATORY NO. 12: See documents produced herewith. In addition, Kevin McCarthy of KM Engineering may have additional information or documentation responsive to this request in addition to those documents produced herewith. Mr. McCarthy is unavailable at the time of this writing; discovery is ongoing and this answer will be timely supplemented as required by the IDAHO RULES OF CIVIL PROCEDURE.

INTERROGATORY NO. 13: If your answer to Interrogatory No. 12 is in the affirmative, please provide the date the application(s) were filed, and the application, project, or permit numbers that were assigned to each application.

ANSWER TO INTERROGATORY NO. 13: See Answer to Interrogatory No. 12.

INTERROGATORY NO. 14: The Permanent Easement recorded with the Ada County Recorder's Office as Instrument No. 9392442 specifies the location and dimensions of the 40-foot wide easement (*see* legal description on page 1628001349 of that Instrument). Does the planned

produced herewith. Mr. McCarthy is unavailable at the time of this writing; discovery is ongoing and this answer will be timely supplemented as required by the IDAHO RULES OF CIVIL PROCEDURE.

REQUEST FOR PRODUCTION NO. 11: Please provide any documents, including (without limitation) agreements, correspondence, meeting notes, etc., evidencing, tending to evidence, or related to the type of agreement set out in Interrogatory No. 16, above.

RESPONSE TO REQUEST NO. 11: None.

DATED this 1st day of October, 2015.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2015, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
150 N Capitol Blvd
Boise, Idaho 83702

☐ U.S. Mail, postage prepaid
☒ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

_____
Michelle Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW the above-named Plaintiffs, by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby submit this brief in further support of PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ("Motion," filed December 3, 2015), and in reply to DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ("City's Opposition," filed January 15, 2016, by Defendant City of Boise (the "City")).

I. INTRODUCTION

Plaintiffs filed their Motion on December 3, 2015, seeking summary judgment declaring that the area of the Easement owned by Boise Hollow may be expanded to such dimensions as may be required to meet and satisfy ACHD ordinances and requirements. This brief is submitted in reply to the City's Opposition.

The City's primary arguments are without merit because: **(1)** a leaseholder may indeed grant an easement over realty in its possession; **(2)** where the fee title owner of the servient tenement consents to such encumbrance, the easement may be perpetual and does not expire with the lease; **(3)** such easement is not terminated by the doctrine of merger where there is no unity in both title and *possession*; **(4)** the plain language of the Permanent Easement Agreement provides that the easement may be expanded to meet ACHD's requirements; and**(5)** the evidence reveals that the parties intended for the easement to be expanded to meet ACHD's requirements.

For these reasons, which are expanded upon herein, Plaintiffs respectfully renews its request that the Court grant Plaintiffs' Motion.[1]

II. STATEMENT OF MATERIAL FACTS

The salient facts have been briefed to the Court. However, it bears emphasis that at the time that Tee, Ltd. ("Tee") and Vancroft Corporation ("Vancroft") entered into the Permanent Easement Agreement on September 19, 1991, Vancroft was the fee title owner of Lot 1, Block 2 of the Nibler Subdivision (*i.e.*, the servient estate).

In addition, the AFFIDAVIT OF COLIN CONNELL ("Connell Aff.," filed concurrently herewith) and SECOND DECLARATION OF TOMMY T. SANDERSON ("Second Sanderson Declaration," filed concurrently herewith) establish the following additional undisputed facts:

[1] The arguments set forth herein are also largely applicable to the City's CROSS-MOTION FOR SUMMARY JUDGMENT (filed December 31, 2015). For the same reasons that the Court should grant Plaintiffs' Motion, it should deny the City's.

1. On September 19, 1991, there was already a dirt road in place in the easement area, connecting Lot 4, Block 2 of the Nibler Subdivision (*i.e.*, the dominant parcel, also known as the "Development Parcel" in this litigation) which ran across the servient parcel. Connell Aff.

2. Both Tee and Vancroft intended the easement created by the Permanent Easement Agreement to be permanent and perpetual, lasting beyond the termination of Tee's leasehold interest in the Golf Course. Second Sanderson Declaration.

III. SUMMARY OF ARGUMENT

The City's Opposition attacks the Permanent Easement Agreement on two fronts: on one hand, the City argues that no easement exists because the Permanent Easement Agreement is not effective; on the other hand, the City contends that if the Permanent Easement Agreement is valid, the easement is limited to 40'. Neither argument has any basis in Idaho law. The Permanent Easement Agreement, and the easement created thereby, is valid and effective because a lessee may create any easement authorized by the lessor. Furthermore, the language of the agreement and underlying facts make clear that the parties intended for easement road to be expanded to meet ACHD's requirements in order to allow reasonable development of the dominant parcel.

A. The Permanent Easement Agreement is Valid and Effective

The City's first argument is comprised of four primary subparts. Summaries thereof and Plaintiffs' respective rebuttals are as follows:

(1) *The City contends that Tee, as a mere lessee of the servient parcel, could not grant an easement.* This is an incorrect statement of law. A lessee, having a possessory interest in a leased parcel, may grant an easement over the same.

(2) *The City contends that the easement could not be created because Vancroft owned both the servient and dominant parcels.* This argument refers to the doctrine of merger, which requires unity in both title and possession of the servient and dominant parcels. It is uncontradicted that such unity has never occurred with respect to these parcels.

(3) *The City contends that any easement created terminated with the leasehold in 2007.* This argument is based in the notion that a lessee cannot burden the fee without the

consent of the owner. However, in this case Vancroft was the owner of the servient parcel, and obviously consented to its encumbrance with a permanent easement for the benefit of the dominant parcel. The Second Sanderson Declaration establishes also that both parties intended the easement to be permanent. Therefore the easement survived, as the parties intended, beyond termination of the leasehold.

(4) *The City contends that the Permanent Easement Agreement is invalid because Tee and Vancroft failed to reach a meeting of the minds.* However, the City misapplies this rule, which is not a substitute for contractual interpretation. The Permanent Easement Agreement, on its face and construed as a whole, as well as the parties' knowledge and actions, reveal an objective meeting of the minds which formed a valid contract.

B. The Easement May be Expanded to Meet ACHD's Requirements

The City's second argument, that the easement is restricted to 40' in width, is comprised of three primary subparts. Summaries thereof and Plaintiffs' respective rebuttals are as follows:

(1) *The City contends that the Permanent Easement Agreement unambiguously restricts the easement area to 40' in width.* However, the City's interpretation is strained and self-contradicting. The two provisions of the Permanent Easement Agreement at issue, when construed together, provide for an expandable access road in order to allow reasonable development of the dominant parcel.

(2) *The City contends that the evidence proves the easement is restricted to 40' in width.* However, the testimony of Rebecca Arnold, Dean Briggs, and Colin Connell, as well as the parties' prior relinquishment of access authority to ACHD, confirms the intent of Vancroft and Tee that the easement would be expanded to meet ACHD's requirements.

(3) *The City contends that expansion beyond 40' would be unduly burdensome to the City.* However, expansion of the easement area would be neither unlimited nor unreasonable. An easement may be enlarged consistent with the normal development of land, and a contract may define quantity by reference to an external standard (*i.e.*, ACHD's requirements). Moreover, the burden to the Golf Course is accounted for within the agreement itself because the easement owner is responsible for paying for all changes and damage to the Golf Course due to construction of the easement road.

IV. ANALYSIS

A. The Permanent Easement Agreement is Valid and Effective

1. A lessee may grant an easement over the leased tenement.

The City argues that Tee, being merely a lessee, was unable to encumber the Golf Course with an easement. Specifically, the City contends that "[a]n easement can be created only by a person who has title to or **an estate** in the servient tenement, and an easement may not create a

right that the grantor did not possess." City's Opposition at 9 (quoting 25 Am. Jur. 2d Easements and Licenses § 12) (emphasis added). However, "a leasehold *is* an estate in real property." *Coppedge v. Leiser*, 71 Idaho 248, 251, 229 P.2d 977, 979 (1951) (emphasis added). Specifically, a leasehold interest is an "estate for years," as opposed to a "freehold estate." *See Tobias v. State Tax Comm'n*, 85 Idaho 250, 256, 378 P.2d 628, 631 (1963). The holder of such estate has a possessory right in land and may create an easement. *See Russet Potato Co. v. Bd. of Equalization of Bingham Cty.*, 93 Idaho 501, 506, 465 P.2d 625, 630 (1970) ("It is recognized that in the instant case the appellant under the terms **of the lease** has practically **all of the rights in and to the warehouse normally considered as incident to ownership of the property**-use of the property, **right to encumber it**, the right to transfer it (subject to approval), the right to improve, alter and change it;...) (emphasis added); *see also* Restatement of Property § 124 (1942); *see also e.g.*, *Isely v. City of Wichita*, 38 Kan. App. 2d 1022, 1024, 174 P.3d 919, 921 (2008); *Martin v. Sun Pipe Line Co.*, 542 Pa. 281, 285–287, 666 A.2d 637, 639–640 (1995).[2]

2. The easement was neither prevented nor extinguished by operation of the doctrine of merger because there has never been unity of both possession and title between the dominant and servient parcels.

The City argues that because Vancroft was the fee title owner of both the servient and dominant parcels with respect to the Permanent Easement Agreement, no easement could be created. This is incorrect. The City's argument is based in the doctrine of merger, the operation of which requires unity of both ownership *and possession.* Since Vancroft never had possession of the servient parcel, the doctrine of merger does not apply.

"For an easement to be extinguished under the doctrine of merger, there must

[2] The Court need look no further that the City's Opposition which expressly cites authority confirming that a lessee may burden the leased property with an easement. *See* City's Opposition at 10 (quoting The Law of Easements & Licenses in Land, Persons who may create easement, § 3:4 (2015) ("Any person with a possessory interest in land may create an easement burdening that person's interest.")

be unity of title, and, according to some authorities, **of possession** and enjoyment of the dominant and servient estates." Corpus Juris Secundum Easements § 143. *Unity of title* (emphasis added). In Idaho, the essential "common law unities" consist of "interest, title, time and **possession**." *Ogilvie v. Idaho Bank & Trust Co.*, 99 Idaho 361, 366, 582 P.2d 215, 220 (1978) (emphasis added); *see also Matter of Estate of Ashe*, 114 Idaho 70, 75, 753 P.2d 281, 286 (Ct. App. 1988) *aff'd,* 117 Idaho 266, 787 P.2d 252 (1990) (reciting common law unities, including title and possession); *see also Guy v. State*, 438 A.2d 1250, 1253 (Del. Super. Ct. 1981) ("The doctrine of merger does not operate where the fee in the servient estate is subject to an outstanding estate in possession."). Of course, unity of possession would destroy an easement. *See Wilton v. Smith*, 40 Idaho 81, 231 P. 704, 705 (1924) (quoting *Quinlan v. Noble*, 75 Cal. 250, 17 P. 69 (1888) ("No easement exists so long as the unity of possession remains...")).

In this case, Vancroft never held simultaneous title and possession of both Lot 4, Block 2 of the Nibler subdivision (*i.e.*, the dominant parcel) and Lot 1, Block 2 (*i.e.*, the servient parcel). In fact, at no time did Vancroft *ever* have possession of the servient parcel. As of the date of the Permanent Easement Agreement, Vancroft owned both the dominant and servient parcels, but Tee held possession of the servient parcel. Vancroft assigned the dominant parcel to Plaintiff Bedard & Musser in 1993,[3] while Tee maintained possession of the servient parcel. Tee assigned its *leasehold* interest in the servient parcel to David Hendrickson in 1993.[4] Vancroft assigned its *ownership* of the servient parcel to Bluegrass, LLC in 1999.[5] Bluegrass, LLC and Hendrickson agreed to the termination of the leasehold interest in 2007.[6] The servient parcel was conveyed to

[3] Pursuant to that certain CORPORATE WARRANTY DEED dated October 19, 1993, executed by Vancroft Corporation, and recorded on November 3, 1993, as Ada County Instrument No. 9392443.
[4] Pursuant to that certain ASSIGNMENT AND ASSUMPTION OF GOLF COURSE LEASE dated June 30, 1993, executed by Tee, Ltd., and recorded on June 30, 1993, as Ada County Instrument No. 9351843.
[5] Pursuant to that certain CORPORATE WARRANTY DEED dated March 29, 1999, executed by Vancroft Corporation, and recorded on March 30, 1999, as Ada County Instrument No. 99030645.
[6] Pursuant to that certain TERMINATION OF LEASE dated October 4, 2007, executed by Bluegrass, LLC, and David

Quail Hollow, LLC, in 2007,[7] and subsequently to the City in 2013.[8] Plaintiff Bedard & Musser maintained ownership of the dominant parcel until assigning it to Plaintiff Boise Hollow Land Holdings, RLLP in 2015.[9]

Throughout all the foregoing transfers, the dominant and servient parcels have never been owned and possessed by the same party at the same time. Accordingly, the creation of the easement was not prevented by concurrence in the common law unities, nor has the easement subsequently been extinguished by the doctrine of merger.

3. The easement was not extinguished when the leasehold estate terminated in 2007 because Vancroft, as fee title owner of the servient parcel, consented to its being subject to a permanent easement.

The City further argues that an easement created be a lessee would necessarily expire at the end of the lease. While a lessee cannot grant a right in the servient parcel that it doesn't possess, it certainly can grant a right which it does possess. Because Vancroft as the fee title owner and lessor of the servient parcel consented to the creation of a permanent easement, Tee as lessee had the right and authority to create the intended permanent easement. *See* Second Sanderson Declaration.

In the case where the holder of a leasehold interest grants an easement to a third party without the owner's consent, the easement would expire with the grantor's interest in the servient property as the City contends. This is because the leaseholder generally has no power to burden the reversion. Restatement (Third) of Property (Servitudes) § 2.5 (2000). The policy underlying this rule is, of course, to protect the owner of the servient estate from being bound by an

---

Hendrickson, and recorded on October 4, 2007, as Ada County Instrument No. 107138040.

[7] Pursuant to that certain WARRANTY DEED dated October 4, 2007, executed by Bluegrass, LLC in favor of Quail Hollow, LLC, and recorded on October 4, 2007, as Ada County Instrument No. 107138039.

[8] Pursuant to that certain DEED OF GIFT dated November 1, 2013, executed by Quail Hollow, LLC in favor of the City of Boise, and recorded on December 4, 2013, as Ada County Instrument No. 113130306.

[9] Pursuant to that certain QUITCLAIM DEED dated June 26, 2015, executed by Bedard & Musser in favor of Boise Hollow Land Holdings, RLLP, and recorded on July 13, 2015, as Ada County Instrument No. 2015-062695.

encumbrance granted unilaterally by his tenant without the owner's approval. That is not a concern, however, where the party benefited by the easement, and indeed who seeks the easement, is also the owner of the servient parcel. In such case, the holder of the reversion has granted the leaseholder the power to burden the freehold estate. Therefore, it follows that where, as here, the easement is granted not to a third party, but to the fee title owner, the easement may be permanent as all the interested parties intended. *See, e.g., Leichtfuss v. Dabney*, 329 Mont. 129, 141-145, 122 P.3d 1220, 1229-1232 (Montana 2005) (opining "that rigid application of a rule that prevents the benefit of an easement from running to a remainderman or reversioner is unsound" and determining that easement benefited reversion, consistent with parties' expectations).

In *Leichtfuss*, the issue was whether an easement could persist where it was the dominant estate, rather than the servient, which was held in less than fee simple at the time of the encumbrance. The *Leichtfuss* court's discussion of the issue is particularly instructive, as it discusses the issues in play where the owner of the fee is benefited rather than burdened by the encumbrance:

> ... a number of courts have held that an easement burdening or benefitting *an estate less than a fee simple* ends when that estate expires. *See* Jon W. Bruce & James W. Ely, Jr., The Law of Easements and Licenses in Land, § 10:15, at 10–28 (2001), and cases cited therein. As such, it may be more precise to say that an easement runs with the *estate* in land to which it is appurtenant, or that it follows ownership of the estate *for as long as that estate exists.*
>
> The foundation for this principle is easily understood where the *servient* tenement is held in less than fee simple: a person can convey no more or greater title than he holds. *See* Rest.3d § 4.3 cmt. e, at 526 ("The duration of a servitude is normally limited to the duration of the estate of the creator of the servitude because the creator cannot *burden* a greater estate than he or she has.") (emphasis added). In other words, a life tenant or a lessee generally cannot impose upon his land a burden that passes to the remainderman or the reversioner.
>
> Where the *dominant* tenement is held in less than fee simple, however, the basis for the foregoing rule—which prevents the *benefit* of an easement from running to the remainderman or reversioner—is less obvious. A number of courts have ruled that an easement granted to a life tenant or lessee terminates as a matter of course with

the life estate or lease. Yet, there is nothing inherent in a future estate that would preclude its benefitting from a servitude. To the contrary, a servitude may be created to burden or benefit *any* estate in land, including present possessory estates and future estates. *See* Rest.3d § 2.5 & cmt. a, at 99. In a factual scenario analogous to the case at hand, the Restatement posits the following illustration:

> O, the owner of a fee simple in Blackacre, granted an easement to A, the owner of a 10–year lease term in Whiteacre, to use the driveway across Blackacre for access to Whiteacre. The deed states that the easement is intended to benefit the term and the reversion in Whiteacre. The servitude burdens the fee-simple estate in Blackacre and benefits both the leasehold estate *and the reversion* in Whiteacre.

Rest.3d § 2.5 illus. 3, at 100 (emphasis added). As this illustration demonstrates, the termination of a dominant estate held in less than fee simple does not *automatically* extinguish an easement appurtenant thereto. Rather, it is the intent or expectations of the parties to the servitude which determine the duration thereof.

Indeed, a careful reading of the opinions of each of the aforementioned courts which held that an easement granted to a life tenant or a lessee terminates with the life estate or lease reveals that the results in those cases were grounded, to some extent, on a presumption that the grantor of the easement was aware of the terminable nature of the grantee's estate and intended the easement to exist only for that limited duration, or that the life tenant or lessee did not intend to permanently burden the servient estate. The Third Restatement has succinctly described this approach in the following terms: **"A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, *or the circumstances surrounding creation of the servitude,* and to carry out the purpose for which it was created."** Rest.3d § 4.1(1), at 496–97 (emphasis added).

Having considered the foregoing authorities in the context of the facts of the case at hand, we conclude that rigid application of a rule that prevents the *benefit* of an easement from running to a remainderman or reversioner is unsound.

329 Mont. at 142-44, 122 P.3d at 1229-31 (bold emphasis added, italic emphasis in original).

The same concerns are at stake in the instant case as were considered by the *Leichtfuss* court and the Restatement that the *Leichtfuss* court relied upon bears repeating:

> A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created."

Id. at 144, 122 P.3d at 1231.

Nowhere in the City's evidence is it suggested that Vancroft intended the easement to be temporary. Vancroft, as the owner of both parcels, clearly intended to create a permanent easement for the benefit of the dominant parcel. Tee intended likewise. *See* Second Sanderson Declaration. Thus, Vancroft drafted the Permanent Easement Agreement so as to create an easement appurtenant which would "[become] fixed as an appurtenance to the real property" and "[serve] the owner of the dominant estate in a way that cannot be separated from his rights in the land." *Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003). As an easement appurtenant follows the land which it benefits, it cannot be unilaterally terminated by an act of the owner of the servient estate. *See* 80 A.L.R.2d 743; Restatement (Third) of Property (Servitudes) § 4.8 (2000); *Beckstead v. Price*, 146 Idaho 57, 190 P.3d 876 (2008); *Slauson v. Marozzo Plumbing & Heating, LLC*, 353 Mont. 75, 82, 219 P.3d 509, 515 (Montana 2009) (termination of lease did not terminate easement appurtenant); *McReynolds v. Harrigfeld*, 26 Idaho 26, 140 P. 1096, 1097 (1914); *Checketts v. Thompson*, 65 Idaho 715, 152 P.2d 585, 585 (1944).

Where one accepts a deed of real property, one assumes and becomes bound to the known obligations and duties appurtenant thereto. *See Lane v. Pac. & I.N. Ry. Co.*, 8 Idaho 230, 67 P. 656, 658 (1902). When the City took ownership of the Golf Course, it expressly accepted the easement and assumed all rights and obligations under the Permanent Easement Agreement. *See* PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT ("Plaintiffs' Opposition to Cross-Motion," filed concurrently herewith) at 13.

In light of the foregoing, the City's argument that the easement terminated upon the termination of the Golf Course lease in 2007 is without merit and should be rejected.

4. A valid contract (*i.e.*, the Permanent Easement Agreement) was formed because Tee and Vancroft reached a meeting of the minds.

The City asserts that the Permanent Easement Agreement is invalid for failure of Tee and

Vancroft to reach a meeting of the minds. This is the same argument asserted by the City in its MEMORANDUM IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT ("City's Cross-Motion Brief"). Plaintiffs' response to that argument is the same there as here: the Permanent Easement Agreement itself, and its mutual execution by Tee and Vancroft, demonstrates a meeting of the minds.

In light of constraints imposed by the rules governing page limits in briefing, Plaintiffs direct the Court and the City to the arguments set forth in Plaintiffs' Opposition to Cross-Motion at 8-10, which by this reference are incorporated herein as if set forth in full. For the reasons set forth therein, the City's argument that the Permanent Easement Agreement is invalid for the failure of Vancroft and Tee to reach a meeting of the minds is without merit and should be rejected.

B. <u>The Easement May be Expanded to Meet ACHD's Requirements</u>

1. The Permanent Easement Agreement unambiguously provides that the easement area may be expanded to meet ACHD's requirements.

The City asserts that the Permanent Easement Agreement unambiguously restricts the width of the easement to 40'. The City's argument is the same as that which it asserts in the City's Cross-Motion Brief. Plaintiffs' response to that argument is the same there as here: the City's interpretation is strained and self-contradicting. It should be rejected because it requires the Court to simply ignore the plain language of the Permanent Easement Agreement

In light of constraints imposed by the rules governing page limits in briefing, Plaintiffs direct the Court and the City to the arguments set forth in Plaintiffs' Opposition to Cross-Motion at 3-6, which by this reference are incorporated herein as if set forth in full. As argued therein, the most reasonable, logical, and plain interpretation of Paragraphs 1 and 6 of the Permanent Easement Agreement is that Vancroft and Tee intended for Vancroft to own a 40' private road easement (being large enough to encompass the dirt road then existing) until such time as Vancroft

chose to develop it, at which point it would be expanded to meet ACHD's requirements.

2. The purpose of the Permanent Easement Agreement is not expressly limited.

The City contends that because the Permanent Easement Agreement recites its purpose as being for "access and utilities," the notion that it could be used for vehicular access for a multi-lot residential subdivision is foreclosed. This argument is not credible and the City cites no authority in support thereof. The phrase "access and utilities," or some variant thereof, has been employed in countless easements which provide for vehicular access to the dominant parcel to whatever extent is required by the dominant parcel. "An easement... without any limitations as to its use is one of unlimited reasonable use." *Conley v. Whittlesey*, 133 Idaho 265, 985 P.2d 1127 (1999).

3. The evidence confirms that Vancroft and Tee intended that the owner of the Development Parcel would have the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements at the time of such dedication.

The weight of the evidence in this case confirms that Tee and Vancroft intended for the easement to be expandable to meet ACDH's requirements in order to allow normal development of the Development Parcel. The most compelling evidence with respect to the parties' mutual intent is the sworn statement of the actual drafter of the Permanent Easement Agreement, Rebecca Arnold. In her affidavit, Ms. Arnold unequivocally confirms that Tee and Vancroft always intended that Vancroft and its successors-in-interest would have the right to expand the easement road to meet ACHD's requirements and then dedicate the road to ACHD. *See* AFFIDAVIT OF REBECCA W. ARNOLD ("Arnold Aff.," filed December 3, 2015). It is for this reason that the Permanent Easement Agreement was drafted to allow for that very expansion in the future.

The foregoing is corroborated by the AFFIDAVIT OF DEAN W.BRIGGS, P.E. ("Briggs Aff.," filed December 3, 2015), which likewise confirms that the parties mutually intended that 40' easement width to be temporary and only effective until such time as the owner of the

Development Parcel decided to develop it. *See* Briggs Aff.

In addition, it is also uncontradicted that the City required the Developers to include language in the Nibler Subdivision final plat which confirmed that access to the various parcels of the Nibler Subdivision (including the Development Parcel) to 36th Street would be at the discretion and to the standards of ACHD; not the City. Not only was the City aware that access might be granted to 36th street, it expressly ceded authority over that issue to ACHD. *See* Briggs Aff.

Finally, Colin Connell's affidavit reveals that the DECLARATION OF TOMMY T. SANDERSON ("First Sanderson Declaration") filed by the City does not contain credible testimony. See Connell Aff. Mr. Connell, an experienced Boise real estate developer who has owned property adjacent to the Development Parcel for decades, confirms three significant points: *first*, that at the time of the Permanent Easement agreement, a dirt road already existed over the easement area; *second*, that any neighboring land-holder such as Tee would have known and understood that the only purpose for ownership of the Development Parcel (by Vancroft or any successor) would be to develop the land into a residential subdivision; *third*, that the land is substantially valueless unless it has two access points as required for such development; and *fourth* after the platting of the Nibler subdivision it was well known among the interested parties that access roads had to be constructed to the requirements of ACHD.

With respect to Mr. Connell's first point: the pre-existence of a road over the easement area. This fact gives context to the portions of the Permanent Easement Agreement which allocate the cost of damage and changes caused by construction of the easement road to Vancroft. Because a road already existed, these provisions would be substantially meaningless unless the parties intended for the road to be substantially altered and expanded at some point in the future – when it was constructed to ACHD's standards and then dedicated to ACHD.

The balance of Mr. Connell's testimony illustrates that the testimony offered by Mr. Sanderson in his First Declaration is not credible and is entitled to little weight by the trier of fact.

Because the best extrinsic evidence available to the Court reveals that Tee and Vancroft so intended, Plaintiff requests that the Court grant Plaintiff's Motion and enter its judgment that Plaintiff has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

4. Expansion of the easement road would not unduly harm or be unduly burdensome to the Golf Course, nor may the City unreasonably withhold consent to expansion of the easement road.

The City argues that expansion of the easement road would be unduly burdensome as it would cause damage to the Golf Course. However, this concern is specifically addressed by the language of the Permanent Easement Agreement. *See, e.g.*, Paragraph 3:

> 3. The Grantee shall be solely and exclusively responsible for all costs and expenses over whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing Golf Course caused by the installation of the utilities and/or any road in the easement area.

In addition, Paragraph 4 requires that changes to the Golf Course be made during the off-season ("Any changes to the golf course by Grantee shall be done during the period of October 15 through May 15"). Accordingly, Tee and Vancroft contracted so as to account for damage and burden to the Golf Course. A court will not revise a contract to make a better agreement for the parties than they saw fit to make for themselves. *Galaxy Outdoor Advert., Inc. v. Idaho Transp. Dep't*, 109 Idaho 692, 695, 710 P.2d 602, 605 (1985).

Furthermore, it is well known that the "use of a general easement may be enlarged beyond the purposes originally required at the time the easement was created, so long as that use is reasonable and necessary and is consistent with the normal development of the land." *McFadden v. Sein*, 139 Idaho 921, 924, 88 P.3d 740, 743 (2004). Where an easement does not include

language setting forth limitations on the use of the dominant parcel, none shall be inferred. *See id.* Moreover, the subdividing and development of land is "normal development" within the meaning of the rule providing for the enlargement of easements. *See id.*

With respect to the City's approval rights: it is clear that Plaintiffs have the right to construct a road which meets ACHD's standards and requirements and dedicate such road to ACHD. It would be patently unreasonable for the City to withhold approval for construction of a road which meets ACHD's bare requirements. Moreover, to do so would be a breach of the covenant of good faith and fair dealing, which applies to all agreements. *See, e.g., Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 288, 824 P.2d 841, 863 (1991) ("Any action by either party which violates, nullifies or significantly impairs any benefit of the [contract] is a violation of the implied-in-law covenant.").

V. CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that the Court enter its judgment declaring that the area of the Easement owned by Boise Hollow may be expanded to such dimensions as may be required to meet and satisfy ACHD ordinances and requirements as intended by the parties to the Permanent Easement Agreement.

DATED this this 2nd day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiffs

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☐ U.S. Mail, postage prepaid
☒ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF REBECCA W. ARNOLD

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser") and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") (collectively, "Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby submit this brief in response and opposition to DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA W. ARNOLD ("Motion to Strike") submitted by Defendant City of Boise (the "City") on

January 15, 2016.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs filed the AFFIDAVIT OF REBECCA W. ARNOLD ("Arnold Affidavit") on December 3, 2015, in support of its concurrently-filed MOTION FOR SUMMARY JUDGMENT. Rebecca W. Arnold was the attorney for Plaintiffs' predecessor-in-interest, Vancroft Corporation ("Vancroft") during the negotiation and drafting of the Easement Agreement at issue in this litigation. The City now seeks to strike the Arnold Affidavit.

The City incorrectly contends that her testimony with respect to that process constitutes inadmissible hearsay and speculation. On the contrary, Ms. Arnold's testimony establishes her own personal knowledge and intent as she drafted the Easement Agreement. Accordingly, Defendant's Motion to Strike is without merit and the Arnold Affidavit should not be excluded from these proceedings.

II. STANDARD OF REVIEW

A reviewing court applies an abuse of discretion standard when determining whether testimony offered in connection with a motion for summary judgment is admissible. A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. *Shea v. Kevic Corp.*, 156 Idaho 540, 544, 328 P.3d 520, 524 (2014) (internal citations omitted).

III. ANALYSIS

A. The Arnold Affidavit does not contain hearsay.

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c) of

the IDAHO RULES OF EVIDENCE (I.R.E.) (emphasis added). The portions of the Arnold Affidavit which relay extrajudicial utterances by Vancroft or Tee, Ltd. ("Tee") are not hearsay because those portions do not seek to prove the truth of the matter asserted thereby.

Ms. Arnold's testimony is offered to show (1) what Ms. Arnold did (*i.e.*, personally draft the Easement Agreement) and, (2) her purpose and goals in doing so (*i.e.*, what she meant to accomplish with the Easement Agreement and each term thereof). To that end, Ms. Arnold recites the knowledge that she had and obtained which caused her to draft the Easement Agreement as she did. Background facts such as the following are therefore presented only to show the meaning and purpose of Ms. Arnold's own actions:

1. *Vancroft had the purpose of developing the Development Parcel into a multi-lot residential subdivision at some point in the future.*
2. *A multi-lot residential subdivision requires two ingress/egress accesses, which necessitated procuring access to the Development Parcel across the Golf Course.*

Statement #1 is not offered to prove that Vancroft intended to develop the parcel into a residential subdivision. Statement #2 is not offered to prove that residential subdivisions require two access points. These statements are offered to show that Ms. Arnold drafted and structured the Easement Agreement very carefully to accomplish the specific purpose of accommodating the access requirements of a multi-lot residential subdivision.

3. *Such access would have to be dedicated to ACHD, and therefore meet ACHD's requirements.*
4. *Ms. Arnold (and the parties) did not know what ACHD's requirements would be for the road at the time of its construction.*

Statement #3 is not offered to prove that access would have to be dedicated to ACHD.

Statement #4 is not offered to prove that future ACHD's requirements were unknown to the parties at the time. These statements are offered to show that Ms. Arnold had the need to draft the Easement Agreement in such a way as to incorporate ACHD's future requirements without actually yet knowing what they were.

5. *At the time she drafted the Easement Agreement, Tee and Vancroft agreed that 40' would be sufficient for use as a private road until it was later dedicated to ACHD.*
6. *It was the intention of Tee and Vancroft to create an agreement providing for a road way which could be altered and expanded to meet the requirements of ACHD.*

Statement #5 is not offered to prove that the parties agreed that the easement would remain 40' until expansion was called for. Statement #6 is not offered to prove the intention of the parties. These statements are offered to show that she drafted the Easement Agreement in such a way as to accommodate both the situation at the time of the drafting as well as future needs that might arise at the time the road was dedicated to ACHD.

In summary, the Arnold Affidavit is offered as an explanation of the Easement Agreement and its very particular structure by the person who drafted it. That Ms. Arnold's testimony may incidentally suggest the intent of other parties to the Easement Agreement does not render it inadmissible hearsay.

Because the statements with which the City takes issue are not hearsay (having not been offered to prove the truth of the matters asserted), the City's Motion to Strike should be denied.

B. <u>To the extent Ms. Arnold's testimony reveals the intent of Vancroft or Tee, it is admissible under I.R.E. 803(3) as evidence of then-existing state of mind.</u>

I.R.E. 803(3) allows for the admission of otherwise inadmissible hearsay where the statement is probative of the declarant's intent, rather than of the fact asserted in the statement:

The following are not excluded by the hearsay rule, even though the declarant is

available as a witness.

...

> **(3) Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as *intent*, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

I.R.E. 803(3).

The City objects to several passages of the Arnold Affidavit which are offered not for the truth of the matter stated, but are probative of Vancroft's intent during the negotiation of the Permanent Easement Agreement. For example, the City takes issue with the following sentence from the Arnold Affidavit:

> "This property was owned by Vancroft for the purpose of developing it into a multi-lot residential subdivision."

City's Motion to Strike at 2, (quoting Arnold Affidavit at 2). This statement is, of course, not offered to prove that Vancroft had the purpose of developing the property into a multi-lot residential subdivision; it is therefore admissible as evidence of Vancroft's intention to procure an easement that would provide adequate access for future development of the land. This is true of each statement reciting or alluding to the intent of the parties to the Easement Agreement. Such statements are not offered for the truth of the matter stated, but rather to show the parties' overall purpose with respect to the Easement Agreement.

C. <u>Statements by Vancroft and Tee are admissible non-hearsay.</u>

Because Vancroft and Tee are the predecessors-in-interest to the respective parties to this litigation, statements reciting their out-of-court utterances are admissible as prior admissions of a party-opponent. I.R.E. 801(d)(2) provides:

> A statement is not hearsay if—

> **(2) Admission by Party-Opponent.** The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by a party to make a statement concerning the subject, or (D) a statement by a party's agent or servant concerning a matter within the scope of the agency or employment of the servant or agent, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

I.R.E. 801(d)(2) (emphasis added).

"It is a well recognized rule that admissions by a predecessor in interest are admissible in an action against a successor in interest when there is privity between the two." *Jolley v. Clay*, 103 Idaho 171, 176, 646 P.2d 413, 418 (1982); *see also Daly v. Josslyn*, 7 Idaho 657, 65 P. 442 (1901) (The declarations of a person in possession of realty as to his title are admissible evidence against him and all persons subsequently holding under him). Vertical privity exists between two parties where one is the successor-in-interest to a contract which purports to bind the original party's successors and assigns. *See, e.g., In re Foster*, 435 B.R. 650, 660 n.11 (B.A.P. 9th Cir. 2010); *Green v. A.B. Hagglund & Soner*, 634 F. Supp. 790, 795 n.1 (D. Idaho 1986); *see also* 118 A.L.R. 982 (Originally published in 1939). Such is the case with respect to the parties to this litigation and the Easement Agreement.

In *Jolley v. Clay*, the court determined that there was privity between a decedent and the personal representative of the decedent's estate, and therefore admitted the statement of the decedent as a statement of a party-opponent under I.R.E. 801(d)(2). 103 Idaho 176, 646 P.2d 418. The *Jolley* court relied upon *Matusik v. Large*, 85 Nev. 202, 452 P.2d 457 (1969), which involved a creditor who sued the debtor and attached an oil rig, which the court released back to the debtor and which the debtor sold to a third party. 85 Nev. 202, 204, 452 P.2d 457, 458. The creditor then sued the third-party purchaser of the rig. *Id.* The court admitted the transcript of the debtor's testimony given during his judgment debtor examination, offered by the creditor, holding

"whenever a party claims under, or in, the interest or right of another, the declarations of such other person pertaining to the subject of the claim are admissible against him". *Matsuk v. Large*, 85 Nev. 202, 206, 452 P.2d 457, 459.

Both of the foregoing cases are discussed in the recent Idaho District Court case of *Alpha Holdings, LLC v. Chaney*, 2013 WL 1686745 (First Judicial District, Kootenai County). *Alpha Holdings* involved a lien which was recorded by a home owner's association (Association) against property owned by one Chaney. Subsequent to the recording, the Association assigned its interest to PITA Group, LLC (PITA) who later assigned the same interest to Alpha Holdings, LLC (Alpha). Chaney filed an affidavit containing statements having been made to her by the Association, and Alpha moved to strike. In denying Alpha's motion, Judge John T. Mitchell held as follows:

> In this case, there seems to be no dispute the Association assigned its interest in the collection of these dues to PITA and PITA assigned that same interest to Alpha. Presumably, these statements to Chaney were made by agents of the Association, who was the predecessor in interest of the collection of these dues. Under the general rule set forth in *Jolley,* such statements are admissions by a party-opponent as against Alpha and those statements are admitted. The motion to strike is denied as to this point.

Id. For the convenience of the Court and Defendant, a true and accurate copy of Judge Mitchell's MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND ON MOTIONS TO STRIKE, is attached as EXHIBIT "C" to the AFFIDAVIT OF MICHAEL E. BAND filed concurrently herewith.

In this case, Tee is the predecessor-in-interest to the City and Vancroft is the predecessor-in-interest to the Plaintiffs. Any statements attributable to Tee or Vancroft in the Arnold Affidavit are therefore admissible under I.R.E. 802(d)(2) as statements of the parties themselves.

Accordingly, the City's Motion to Strike should be denied.

D. <u>The City's objections to certain portions of the Arnold Affidavit are without any basis under the Rules of Evidence.</u>

In addition to the City's objections to portions of the Arnold Affidavit on grounds of hearsay or speculation, the City has also asserted a number of groundless reasons to strike the Arnold Affidavit. For example, the City objects to the following sentence because it is a "mischaracterization of the Permanent Easement Agreement."

> At the time that the PERMANENT EASEMENT AGREEMENT was drafted, we did not know when the actual dedication of the roadway would take place because the actual roadway still needed to be designed, approved and installed as well as dedicated to ACHD in accordance with its then-existing requirements.

City's Motion to Strike at 3 (quoting Arnold Affidavit at 3). Clearly the foregoing passage contains no hearsay -- Ms. Arnold earlier establishes that she drafted the Permanent Easement Agreement and she is merely describing her knowledge of pertinent facts that the time in this sentence. Whether or not this is a "mischaracterization of the Permanent Easement Agreement" is not a legal issue governed by the Rules of Evidence; it is a factual issue that must be determined by the trier of fact.

Likewise, the City objects to the following passage because it is "untrue" and "contradicted by the Declaration of Tommy Sanderson":

> As is stated on the first page of the PERMANENT EASEMENT AGREEMENT, the easement was being granted to Vancroft for the purpose of providing access and utilities to the Development Parcel. At the time that we drafted the PERMANENT EASEMENT AGREEMENT, the parties agreed that forty (40') feet for the access and utility easement for the Development Parcel would be sufficient as a private road. However, because Vancroft intended to develop the parcel into a large multi-lot residential subdivision with many lots for future homes, it was contemplated and agreed that the roadway would eventually have to be dedicated to the Ada County Highway District (ACHD) as a public road and the easement area would have to be expanded to comply with whatever ACHD's requirements for a public road would be at the time of dedication.

City's Motion to Strike at 3 (quoting Arnold Affidavit at 3). Again, whether or not this information is true or not is a matter for the trier of fact. The City's contention that the statement is "untrue" is irrelevant within the context of a motion to strike under the Rules of Evidence.

IV. CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that the Court deny Defendant's Motion to Strike.

DATED this this 2nd day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivered
- ☐ Facsimile – 208-384-4454
- ☐ Email

_____
Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 SECOND DECLARATION OF TOMMY T. SANDERSON

I, TOMMY T. SANDERSON, certify and declare under penalty of perjury pursuant to the laws of the state of Idaho, that the following is true and correct:

1. I make this declaration of my own personal knowledge, and to supplement and clarify the statements I asserted in the DECLARATION OF TOMMY T. SANDERSON ("First Declaration") which I signed on December 29, 2015, and which I am informed was filed with this

Court on or about December 31, 2015.

2. When I executed the Easement Agreement on September 14, 1991, (a true and accurate copy of which is attached hereto as EXHIBIT "A"), I intended the easement created thereby to be permanent and perpetual, binding the fee title of servient parcel (Lot 1, Block 2 of the Nibler Subdivision) in perpetuity. I did not intend for the easement to expire upon the termination of the leasehold interest by which Tee, Ltd. possessed the Golf Course.

DATED this 1st day of February, 2016.

TOMMY T. SANDERSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivered
- ☐ Facsimile: (208) 384-4454
- ☐ Email

Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 AFFIDAVIT OF COLIN CONNELL

STATE OF IDAHO)
) ss.
County of Ada)

COLIN CONNELL, being first duly sworn upon oath, deposes and says:

1. I have been a real estate developer in the metropolitan area of Boise, Idaho for 36 years. I founded Connell Development Co. in 1982. I am the president and sole shareholder. Connell Development Co. is in the business of real estate development, land clearing, and

residential home construction.

2. During the mid-1980s, Connell Development Co. began obtaining certain real properties located adjacent to the Quail Hollow Golf Course, north of 36th Street in the area known as Stewart Gulch, which was then unincorporated Ada County. It has since been annexed into Boise City. These properties total approximately 200 acres which have been developed into what are now known as the Medicine Creek Subdivision, Arrowhead Canyon Subdivision, and Eyrie Canyon Subdivisions 1-9. The adjacent parcels, including the Golf Course, were subdivided in 1991 and are now known as the Nibler Subdivision. Since that time I have been personally and continuously been involved with efforts to develop the land north of 36th Street.

3. I personally knew and was familiar with Victor and Ruth Nibler, Tommy and Roxanne Sanderson and their company, Tee, Ltd. (collectively, "Tee-Sanderson"), and Mary Montgomery and Joseph Cange and their company, Vancroft Corporation (collectively, "Vancroft"). Their combined efforts to properly plat and subdivide the Golf Course and adjacent parcels, which began in the late 1980s and was finalized in 1991, was a result of my complaints with respect to the illegal division of land caused when the Niblers deeded a portion of the golf course property to the Sandersons.

4. As a neighboring landowner and developer, I became familiar with the platting and subdividing process of the Nibler Subdivision. Due to my familiarity with the land in the area as an owner and developer, as well as my observation of the platting and subdividing process of the Nibler Subdivision. I know that the Niblers, Tee-Sanderson, and Vancroft were advised of and were aware of the City of Boise's requirement that vehicular access between the parcels comprising the Nibler Subdivision and 36th Street be under the authority and per the requirements of the Ada County Highway District (ACHD).

5. As an experienced Boise real estate developer with over 36 years' experience, it is my opinion that the land owned by Vancroft within the Nibler Subdivision (including Lot 4, Block 2 of the Nibler Subdivision, known in this litigation as the "Development Parcel") is substantially valueless unless it can be developed into a multi-lot residential subdivision. It was well known and understood at the time by the sophisticated land-holders in the area, including Tee-Sanderson, that the only reason to own such land was for the purpose of developing it into a multi-lot residential subdivision. Accordingly it is my opinion that the testimony of Tommy Sanderson stating that he was unaware of Vancroft's intent to develop its land, including the Development Parcel, into a multi-lot residential subdivision is not credible.

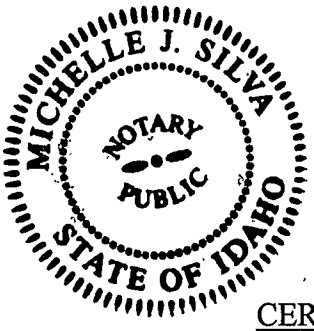
6. In order to develop such land into a multi-lot residential subdivision, adequate vehicular access to 36th Street must be created and approved by ACHD. The Development Parcel is substantially valueless unless the Plaintiffs are able to obtain vehicular access across the Golf Course to 36th Street such as will meet ACHD's requirements.

7. Due to my long-standing familiarity with the Golf Course and the Development Parcel, I can confirm that as of the date of the Permanent Easement Agreement at issue in this litigation, September 14, 1991, a road already existed within the easement area. I understand that the Permanent Easement Agreement requires the easement owner to pay for damage or changes to the Golf Course caused by construction of the road. Because the road already existed at the time of the agreement, no damage or changes to the Golf Course would occur unless the road were substantially expanded upon construction.

DATED this 2nd day of February, 2016.

Colin Connell

SUBSCRIBED AND SWORN to before me this 2nd day of February, 2016.



Notary Public for Idaho
Residing at: Meridian, Id.
My Commission Expires: 11-17-2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivered
- ☐ Facsimile (208) 384-4454
- ☐ Email

Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser") and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") (collectively, "Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby submit this brief in opposition to DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT (filed December 31, 2015).

I. INTRODUCTION

Plaintiffs filed their MOTION FOR SUMMARY JUDGMENT and supporting papers on December 4, 2015. Defendant City of Boise (the "City") filed its DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT ("Defendant's Motion") and supporting papers on December 31, 2015. Defendant's Motion asserts several legal arguments and is based on the DECLARATION OF TOMMY SANDERSON ("First Sanderson Affidavit") and the DECLARATION OF COUNSEL ABIGAIL R. GERMAINE ("Germaine Declaration").

Plaintiffs have moved under Rule 56(e) of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.) to strike the Germaine Declaration on the basis that she lacks the personal knowledge required to authenticate the exhibits thereto.

With respect to the Sanderson Declaration: filed concurrently herewith is the SECOND DECLARATION OF TOMMY SANDERSON ("Second Sanderson Declaration") and AFFIDAVIT OF COLIN CONNELL ("Connell Aff.") which compromise the value of the First Sanderson Declaration as well as the City's arguments based thereupon.

For the reasons set forth hereinafter, the City's arguments are without merit and the Court should deny Defendant's Motion.

II. ARGUMENT

Whether within the four corners of the Permanent Easement Agreement, or by review of the extrinsic evidence, the Court's purpose in this case is to identify and implement the intent of the parties to the agreement.

The parties' intent that the easement road be expandable to meet ACHD's requirements is demonstrated by:

- The plain language of the Permanent Easement Agreement which can only be reasonably interpreted to provide for an easement area sufficient to meet ACHD's

requirements;

- The sworn testimony of the drafting attorney, Rebecca Arnold, confirming the purpose of the Permanent Easement Agreement and the intent of Vancroft to develop its land;
- The sworn testimony of the engineer who worked in the project, Dean Briggs, confirming the purpose of the Permanent Easement Agreement and the intent of Vancroft to develop its land;
- The Nibler Subdivision Plat which requires that access to the Nibler Subdivision be under the complete authority of ACHD;
- The Permanent Easement Agreement contains terms requiring the easement owner to pay for damage and changes to the Golf Course caused by construction of the easement road, and yet a road already existed at the time of the agreement, which suggests that the parties were fully aware that the road would be expanded in the future.

With particular respect to Defendant's Motion, the arguments advanced by the City are without merit for the following reasons:

A. The Permanent Easement Agreement is unambiguous: Boise Hollow has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

B. The Permanent Easement Agreement, on its face and construed as a whole, as well as the parties' knowledge and actions, reveal an objective meeting of the minds which formed a valid contract. Furthermore, the rule requiring contracting parties to reach a meeting of the minds is not a substitute for contractual interpretation.

C. Whether there was a meeting of the minds is a question of fact which cannot be resolved on summary judgment.

D. The Easement did not terminate at the expiration of the leasehold interest.

E. Expansion of the easement area would be neither unlimited nor unreasonable. An easement may be enlarged consistent with the normal development of land.

III. ANALYSIS

A. The Permanent Easement Agreement is unambiguous: Boise Hollow has the right to dedicate the easement road to ACHD and expand the road to meet ACHD's requirements.

Both parties contend that the Permanent Easement Agreement is unambiguous. Unsurprisingly, each party has its own interpretation. However, the City's interpretation is

strained and self-contradicting. It should be rejected because it requires the Court to simply ignore the plain language of the Permanent Easement Agreement

"The interpretation of a contract begins with the language of the contract itself." *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (quoting *Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006)). "If a contract's language is unambiguous, 'then its meaning and legal effect must be determined from its words.'" *Boise Mode, LLC v. Donahoe Pace & Partners Ltd.*, 154 Idaho 99, 108, 294 P.3d 1111, 1120 (2013) (quoting *Cristo Viene*, 144 304 at 308, 160 P.3d at 747). Two clauses of a contract related to the same thing must be "read together and harmonized" unless they are "so repugnant that they cannot stand together." *See Morgan v. Firestone Tire & Rubber Co.*, 68 Idaho 506, 518, 201 P.2d 976, 983 (1948).

"Apparently conflicting provisions must be reconciled so as to give meaning to both, rather than nullifying any contractual provision, if reconciliation can be effected by any reasonable interpretation of the entire instrument." *Madrid v. Roth*, 134 Idaho 802, 806, 10 P.3d 751, 755 (Ct. App. 2000) (quoting 17A C.J.S. *Contracts* § 324 (1999)). In other words, "[t]erms of a written instrument should be construed *in pari materia* and a construction adopted that gives effect to all terms used. Inconsistent parts in a contract are to be reconciled, if susceptible of reconciliation...." *Advance Tank & Const. Co. v. Gulf Coast Asphalt Co.*, 968 So. 2d 520, 526 (Ala. 2006).

The two provisions at issue here (Paragraphs 1 and 6 of the Permanent Easement Agreement) are plainly-written and easily-reconciled. They do not conflict when construed *in pari materia*. For reference, the provisions read as follows:

Paragraph 1

> 1. Tee, Ltd. does hereby grant, convey, and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as EXHIBIT B and incorporated herein by this reference, for the purpose of providing utilities and access (*i.e.*, ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on EXHIBIT C which is attached hereto and incorporated herewith by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

Permanent Easement Agreement at 1, numbered-paragraph "1".

Paragraph 6

> 6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. **Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc.** Upon such dedication, Grantee shall have no further obligations hereunder, except for the obligation of this Agreement not assumed by governmental agency.

Permanent Easement Agreement at 3, numbered-paragraph "6" (emphasis added).

The City bases its argument on the absence of certain words which *could* have been included in the Permanent Easement Agreement. Specifically, the City argues that because Paragraph 1 does not use the word "initial" and because Paragraph 6 does not include a word such as "expand," they cannot be interpreted so as to call for subsequent expansion of the easement area. Therefore, the City contends that Paragraph 6 "simply authorizes Boise Hollow to dedicate any potential future road... **if** such road meets ACHD's then-current construction specification." MEMORANDUM IN SUPPORT OF [Defendant's Motion] ("City's Brief") at 13 (emphasis added).

However, the City's argument fails by its very own logic: Paragraph 1 does not contain words which express any prohibition on future enlargement. More importantly, Paragraph 6 does *not* contain the word "if" or any other language suggesting a contingency which must be met before the road can be constructed and dedicated to ACHD. Paragraph 6 simply states that the

"road" once constructed "**shall** meet all **then-existing** ordinances." (Emphasis added). If the parties to the Permanent Easement Agreement had desired to restrict the size of the roadway, regardless of ACHD requirements at the time of its construction and dedication, the parties could easily have drafted a provision which stated that the roadway "shall not exceed 40' regardless of ACHD requirements for a roadway." That is not what the parties did. The plain language of Paragraphs 1 and Paragraph 6 do not employ any language whatsoever which would render the Grantees' right to construct and dedicate the road contingent upon ACHD accepting the 40' limitation.[1] Accordingly, no such meaning may be inferred.

Furthermore, the use and placement of the word "shall" is significant. The word "shall" denotes a mandate. *See, e.g., State v. Lopez*, 100 Idaho 99, 102, 593 P.2d 1003, 1006 (1979) ("This Court on several occasions has construed the word 'shall' as being mandatory and not discretionary.") The structure of the sentence is such that the subject ("Such road") must perform the verb ("shall meet") necessary to conform to the object ("all then existing ordinances and requirements..."). Therefore, the state (*i.e.*, the size) of the subject ("Such road") must necessarily be malleable in order to perform its directive.

The most reasonable, logical, and plain interpretation of Paragraphs 1 and 6 of the Permanent Easement Agreement is Plaintiffs': Vancroft Corporation ("Vancroft") and Tee, Ltd. ("Tee"), the parties to the agreement, intended for Vancroft to own a 40 foot-wide private road easement (being large enough to encompass the dirt road then existing) until such time as Vancroft chose to develop it, at which point it would be expanded to meet ACHD's requirements.

---

[1] A plain way to express such a condition would have been something to the effect of: *"If the dimensions of the roadway described herein are sufficient to meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc., then upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho."*

Plaintiffs' interpretation of the Permanent Easement Agreement makes perfect sense in light of the history underlying the agreement. Months prior, the City had required the parties to relinquish authority over access to 36th Street to ACHD as a condition of approval of the subdivision plat. *See* AFFIDAVIT OF DEAN W. BRIGGS ("Briggs Aff.," filed December 3, 2015). The final Nibler Subdivision plat was executed and recorded on January 29, 1991, as Instrument No. 9205592. *See id.*, EXHIBIT "B." Note "5" of the final plat contains the City's required notation:

> 5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, **unless said primary access is specifically approved by the Ada County Highway District.**

Briggs Aff., EXHIBIT "B" at 1 (emphasis added). This required note on the final plat confirms the parties' awareness that the easement road might be expanded to meet ACHD's specifications. It follows, then, that the parties accounted for this when they subsequently drafted the Permanent Easement Agreement.

The parties carefully and purposely drafted the plain language of the Permanent Easement Agreement to provide unambiguously for an expandable easement subject to ACHD's requirements. Accordingly, the Court should decline to grant summary judgment in favor of the City on this issue.

B. <u>The Permanent Easement Agreement, on its face and construed as a whole, as well as the parties' knowledge and actions, reveal an objective meeting of the minds which formed a valid contract. Furthermore, the rule requiring contracting parties to reach a meeting of the minds is not a substitute for contractual interpretation.</u>

The Permanent Easement Agreement itself, and its mutual execution by Tee and Vancroft, demonstrates a meeting of the minds.

Whether the parties had a "meeting of the minds" is an inquiry into the formation of a

contract – whether there was mutual intend to contract, and whether there was offer and acceptance. *Inland Title Co. v. Comstock*, 116 Idaho 701, 703, 779 P.2d 15, 17 (1989). **It is not an alternative to the rules for interpretation of the contract.** Only where "[a]n agreement that is so vague, indefinite and uncertain that the intent of the parties cannot be ascertained is unenforceable, and courts are left with no choice but to leave the parties as they found them." *Griffith v. Clear Lakes Trout Co.*, 143 Idaho 733, 737, 152 P.3d 604, 608 (2007). Otherwise, Courts must turn to the principles of interpretation, requiring the trier of fact to determine the intent of the parties. *Id.* (citing Indep. Lead Mines Co. v. Hecla Mining Co., 143 Idaho 22, 26, 137 P.3d 409, 413 (2006); *Elec. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 822–23, 41 P.3d 242, 250–51 (2001). "The law does not favor, but leans against, the destruction of contracts because of uncertainty...." *Griffith*, 143 Idaho at 737 (quoting *Barnes v. Huck*, 97 Idaho 173, 178, 540 P.2d 1352, 1357 (1975)). "Mere disagreement between the parties as to the meaning of a term is not enough to invalidate a contract entirely; the applicable standard is reasonable certainty as to the material terms of a contract, not absolute certainty relative to every detail." *Id.* (citing *Barnes*).

Whether there was a meeting of the minds as required to form a contract, is an objective inquiry that does not focus on the subjective beliefs or intentions of the parties. *Fed. Nat. Mortgage Ass'n v. Hafer*, 158 Idaho 694, 351 P.3d 622 (2015). "An offer is judged by its objective manifestations, not by any uncommunicated beliefs, mental reservations, or subjective interpretations or intentions of the offeror." *Id.* (quoting 17A Am.Jur.2d *Contracts* § 49). "A meeting of the minds is evidenced by a mutual intent to contract." *Safaris Unlimited*, 158 Idaho at 851, 353 P.3d at 1085 (quoting *Bettwieser v. N.Y. Irrigation Dist.*, 154 Idaho 317, 323, 297 P.3d 1134, 1140 (2013)).

In *Griffith*, the parties to a contract disagreed over the meaning of "market size" in relation to fish. *See Griffith*, 143 Idaho 733. Clear Lakes Trout Co., Inc. contended that the term "market size" might have two different reasonable meanings and, therefore, that the parties had no meeting of the minds. However, the *Griffith* Court found that the context of the whole agreement, as well as the facts underlying the agreement, negated the contention that there was no meeting of the minds. *See Griffith*, 143 Idaho at 738. The parties had acted as if they possessed a consistent understanding of the disputed term, and the remaining terms of the agreement were inconsistent with Clear Lakes' proffered interpretation. *Id.* at 738-39.

In this case, the Permanent Easement Agreement, construed as a whole, as well as the parties' knowledge and actions, reveal an objective meeting of the minds which formed a valid contract. Any sophisticated party, such as Tee, would surely have known that Vancroft purposed to develop its land and inferred that Vancroft would not have otherwise owned it. *See* Connell Aff. The parties also knew that the City had required that all authority over access from the Nibler Subdivision to 36th Street be given to ACHD. *See* Connell Aff; Briggs Aff. The parties also knew that ACHD's road requirements would likely evolve over time. *See id.* Therefore, objectively, it cannot reasonably be argued that there was no objectively congruent understanding with respect to the likely meaning of Paragraph 6.

The remaining terms of the Permanent Easement Agreement are also objectively consistent with Plaintiffs' interpretation. The provisions relating to the allocation of costs for changes to the Golf Course are particularly telling. The physical road across the Golf Course to the Development Parcel already existed at the time of the Permanent Easement Agreement. *See* Connell Aff. Nevertheless, the Permanent Easement Agreement contains the following provision which would be useless if not for the potential that the road might undergo substantial changes in

the future:

> Paragraph 3
>
> 3. The Grantee shall be solely and exclusively responsible for all costs and expenses over whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

Permanent Easement Agreement at 2, numbered-paragraph "3." In addition, Paragraph 4 requires that changes to the golf course be made during the off-season ("Any changes to the golf course by Grantee shall be done during the period of October 15 through May 15"). Such terms are inconsistent with a subjective belief that the road would never be modified to meet ACHD's standards.

In any event, the terms of the Permanent Easement Agreement are in no way so "vague, indefinite, or uncertain" as to invalidate the agreement. *See Griffith*, 143 Idaho at 737. There is no dispute that Tee and Vancroft intended to, and did, enter into an agreement based on the terms memorialized in the Permanent Easement Agreement. If the parties possessed subjectively different beliefs about the meaning of those terms, it is irrelevant. It is the province of the trier of fact to construct a reasonable interpretation of the Agreement. *See id.* Accordingly, the Court should decline to grant summary judgment that the Permanent Easement Agreement is unenforceable for failure of the parties to reach a meeting of the minds.

C. Whether there was a meeting of the minds is a question of fact which cannot be resolved on summary judgment.

If the Court elects to forego interpretation of the contract and instead determine of the contract should be set aside for failure of the parties to reach a meeting of the minds, the Court must nevertheless deny Defendant's Motion. Whether there was a meeting of the minds is a question of fact which cannot be resolved on summary judgment.

"Formation of a valid contract requires that there be a meeting of the minds as evidenced by a manifestation of mutual intent to contract. Whether a contract has been formed **is generally a question of fact for the trier of fact to resolve.**" *Safaris Unlimited, LLC v. Von Jones*, 158 Idaho 846, 851, 353 P.3d 1080, 1085 (2015) (emphasis added). Summary judgment is only appropriate if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c) (emphasis added).

The City's argument that there was no meeting of the minds is based on the First Sanderson Declaration. The First Sanderson Declaration is directly contradicted by the AFFIDAVIT OF REBECCA W. ARNOLD ("Arnold Aff."), the AFFIDAVIT OF DEAN W. BRIGGS, P.E. ("Briggs Aff."), and the AFFIDAVIT OF COLIN CONNELL ("Connell Aff.," filed concurrently herewith).

The contradictions between the First Sanderson Declaration, on the one hand, and the Arnold Aff., Briggs Aff., and Connell Aff., on the other hand, yield several genuine disputes of material fact which precludes the entry summary judgment on the issue of whether or not Tee and Vancroft had a meeting of the minds. Accordingly, the Court should decline to grant summary judgment that the Permanent Easement Agreement is unenforceable for failure of the parties to reach a meeting of the minds.

D. <u>The Easement did not terminate at the expiration of the leasehold interest.</u>

The City argues that the "permanent" and "perpetual"[2] easement created by the Permanent Easement Agreement terminated upon the leasehold interest of the Grantor terminated in 2007. The City asserts this argument last in its briefing, and devotes to it less than a single page, because

[2] The full title of the Permanent Easement Agreement is "*PERMANENT* EASEMENT AGREEMENT." Numbered paragraph 1 of the Permanent Easement Agreement describes the easement granted thereby as being "perpetual."

the argument is wholly without merit. As stated by the Permanent Easement Agreement, the easement created by the Permanent Easement Agreement was a permanent and perpetual easement running with the land. Moreover, the Second Sanderson Declaration reveals that Tee intended the easement to be permanent and bind the fee title even if the Golf Course lease was terminated.

When Tee granted the Permanent Easement Agreement to Vancroft, Vancroft was lessor and fee title owner of the servient estate – this fact is recited in the Permanent Easement Agreement.[3] Accordingly, both the lessee and the fee title owner intended for a permanent and perpetual to encumber Lot 1, Block 2 (*i.e.*, the servient parcel under the Permanent Easement Agreement) for the benefit of Lot 4, Block 2 (*i.e.*, the dominant parcel, also known as the "Development Parcel" in this litigation). Plaintiffs' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (filed concurrently herewith) at 4-10 sets for the authority confirming that a lessee may create an easement burdening a leased tenement to whatever extent is authorized by the lessor. Plaintiffs incorporate that argument by this reference as if set forth here in full.

Moreover, it is significant that the easement created by the Permanent Easement Agreement was an easement appurtenant; not an easement in gross. "There are two general types of easements: easements appurtenant and easements in gross." *Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003). "Essentially, an easement appurtenant serves the owner of the dominant estate in a way that cannot be separated from his rights in the land." *Id.* When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property. *Id.*

[3] In 1986, Tee acquired the leasehold interest in the golf course pursuant to that certain Memorandum of Assignment of Leasehold Interest dated July 28, 1986, executed by A-J Corporation, and recorded on July 29, 1986, as Ada County Instrument No. 8643155. The land possessed by Tee pursuant to that lease included what would later be designated as Lot 1, Block 2, of the Nibler Subdivision (*i.e.*, the servient parcel under the Permanent Easement Agreement). Vancroft became the fee title owner of Lot 1, Block 2 in 1990, pursuant to that certain WARRANTY DEED dated June 8, 1990, executed by Victor and Ruth Nibler, and recorded on December 5, 1990, as Ada County Instrument No. 9066445.

(citing *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 550, 808 P.2d 1289, 1295 (1991) and *Marshall v. Blair*, 130 Idaho 675, 680, 946 P.2d 975, 980 (1997)). "In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land. Thus, easements in gross do not attach to property." *Id.* (citing *King v. Lang,* 136 Idaho 905, 909, 42 P.3d 698, 702 (2002)). *Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003). "In cases of doubt, Idaho courts presume the easement is appurtenant." *Id.* (citing Nelson v. Johnson, 106 Idaho 385, 387–388, 679 P.2d 662, 664–665 (1984)).

An easement which provides access to the dominant parcel is not personal, but is an easement appurtenant that serves the owner of the dominant parcel in a way that cannot be separated from his rights in the land. *Beckstead v. Price*, 146 Idaho 57, 65, 190 P.3d 876, 884 (2008). As an easement appurtenant follows the land which it benefits, it cannot be unilaterally terminated by an act of the owner of the servient estate. 80 A.L.R.2d 743; Restatement (Third) of Property (Servitudes) § 4.8 (2000); *Beckstead v. Price*, 146 Idaho 57, 190 P.3d 876 (2008) (When an easement appurtenant is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest); *Slauson v. Marozzo Plumbing & Heating, LLC*, 353 Mont. 75, 82, 219 P.3d 509, 515 (Montana 2009) (termination of lease did not terminate easement appurtenant); *see also McReynolds v. Harrigfeld*, 26 Idaho 26, 140 P. 1096, 1097 (1914); *Checketts v. Thompson*, 65 Idaho 715, 152 P.2d 585, 585 (1944).

In this case, Vancroft never held simultaneous title and possession of both Lot 4, Block 2 of the Nibler subdivision (*i.e.*, the dominant parcel) and Lot 1, Block 2 (*i.e.*, the servient parcel). In fact, at no time did Vancroft *ever* have possession of the servient parcel. As of the date of the Permanent Easement Agreement, Vancroft owned both the dominant and servient parcels, but Tee

held possession of the servient parcel. Vancroft assigned the dominant parcel to Plaintiff Bedard & Musser in 1993,[4] while Tee maintained possession of the servient parcel. Tee assigned its *leasehold* interest in the servient parcel to David Hendrickson in 1993.[5] Vancroft assigned its *ownership* of the servient parcel to Bluegrass, LLC in 1999.[6] Bluegrass, LLC and Hendrickson agreed to the termination of the leasehold interest in 2007.[7] The servient parcel was conveyed to Quail Hollow, LLC, in 2007,[8] and subsequently to the City in 2013.[9] Plaintiff Bedard & Musser maintained ownership of the dominant parcel until assigning it to Plaintiff Boise Hollow Land Holdings, RLLP in 2015.[10]

Accordingly, at no time subsequent to the creation of the easement has there been unity of title and possession between the dominant and servient parcels so as to eliminate the easement. *See* Corpus Juris Secundum Easements § 143. Unity of title ("For an easement to be extinguished under the doctrine of merger, there must be unity of title, and, according to some authorities, of possession and enjoyment of the dominant and servient estates."); *see also*, e.g., *Ogilvie v. Idaho Bank & Trust Co.*, 99 Idaho 361, 366, 582 P.2d 215, 220 (1978) (establishing that in Idaho, unity of possession is required in order to activate the doctrine of merger).

Additionally, when the City took ownership of the Golf Course, it expressly accepted the easement and assumed all rights and obligations under the Permanent Easement Agreement. The

---

[4] Pursuant to that certain CORPORATE WARRANTY DEED dated October 19, 1993, executed by Vancroft Corporation, and recorded on November 3, 1993, as Ada County Instrument No. 9392443.
[5] Pursuant to that certain ASSIGNMENT AND ASSUMPTION OF GOLF COURSE LEASE dated June 30, 1993, executed by Tee, Ltd., and recorded on June 30, 1993, as Ada County Instrument No. 9351843.
[6] Pursuant to that certain CORPORATE WARRANTY DEED dated March 29, 1999, executed by Vancroft Corporation, and recorded on March 30, 1999, as Ada County Instrument No. 99030645.
[7] Pursuant to that certain TERMINATION OF LEASE dated October 4, 2007, executed by Bluegrass, LLC, and David Hendrickson, and recorded on October 4, 2007, as Ada County Instrument No. 107138040.
[8] Pursuant to that certain WARRANTY DEED dated October 4, 2007, executed by Bluegrass, LLC in favor of Quail Hollow, LLC, and recorded on October 4, 2007, as Ada County Instrument No. 107138039.
[9] Pursuant to that certain DEED OF GIFT dated November 1, 2013, executed by Quail Hollow, LLC in favor of the City of Boise, and recorded on December 4, 2013, as Ada County Instrument No. 113130306.
[10] Pursuant to that certain QUITCLAIM DEED dated June 26, 2015, executed by Bedard & Musser in favor of Boise Hollow Land Holdings, RLLP, and recorded on July 13, 2015, as Ada County Instrument No. 2015-062695.

City became the owner of the Golf Course pursuant to a DONATION AGREEMENT and DEED OF GIFT, each dated November 1, 2013, (the latter being incorporated into the former). True and accurate certified copies of the foregoing documents are attached as Exhibits "A" and "B," respectively, to the AFFIDAVIT OF COUNSEL MICHAEL E. BAND ("Band Aff.," filed concurrently herewith). Pursuant to the foregoing, the City took ownership of the Golf Course "subject to and including rights of Grantor in" (1) the "Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement" and (2) the "Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement." *See* Exhibit 1 to DEED OF GIFT at 2. The dictionary definition of the phrase "subject to" is "[l]iable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for." *Westrope & Associates v. Dir. of Revenue*, 57 S.W.3d 880, 883 (Mo. Ct. App. 2001) (quoting Black's Law Dictionary 1425 (6th ed.1990)).

In light of the foregoing, the City's argument that the easement was extinguished upon the termination of the Golf Course lease in 2007 is without merit. The easement created by Vancroft and Tee runs with the land and could not be terminated by any unilateral act of Tee or its successors-in-interest. Furthermore, the City expressly accepted the terms and obligations of the Permanent Easement Agreement when it took ownership of the Golf Course. Accordingly, the Court should deny the City's request for summary judgment on this issue.

E. Expansion of the easement area would be neither unlimited nor unreasonable. An easement may be enlarged consistent with the normal development of land.

It is well known that the "use of a general easement may be enlarged beyond the purposes originally required at the time the easement was created, so long as that use is reasonable and necessary and is consistent with the normal development of the land." *McFadden v. Sein*, 139

Idaho 921, 924, 88 P.3d 740, 743 (2004). Where an easement does not include language setting forth limitations on the use of the dominant parcel, none shall be inferred. *See id.* Moreover, the subdividing and development of land is "normal development" within the meaning of the rule providing for the enlargement of easements. *See id.*

Relying on Restatement (Third) of Property, the City argues that Tee did not intend to "permit the easement owner to remove existing structures or terminate existing uses of the servient estate." *See* Restatement (Third) of Prop.: Servitudes § 4.10(g) (2000). However, this argument ignores the plain language of the Permanent Easement Agreement which specifically contemplates that the construction of the easement road may cause damage or changes to the golf course. *See, e.g.*, Paragraph 3:

> 3. The Grantee shall be solely and exclusively responsible for all costs and expenses over whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

In addition, Paragraph 4 requires that changes to the golf course be made during the off-season ("Any changes to the golf course by Grantee shall be done during the period of October 15 through May 15").

The inclusion of these provisions is critical, because at the time of the Permanent Easement Agreement, the road across the Golf Course to the Development Parcel *already existed.* Only if the road were changed in the future would these provisions allocating the costs incurred for changes to the Golf Course come into play. These forward-looking provisions dovetail with Paragraph 6's adoption of ACHD requirements for later construction of the road to accommodate development of the Development Parcel.

Accordingly, it is clear that Plaintiffs' plan to develop the Development Parcel is consistent with the normal use and development of land such as justifies the enlargement of the easement

area. Moreover, the parties to the Permanent Easement Agreement specifically contemplated that the golf course might undergo changes in order to accommodate development of the Development Parcel. Accordingly, the City's argument on this point is without merit and its request for summary judgment should be denied.

IV. CONCLUSION

In light of the foregoing, and for the reasons stated herein, Plaintiffs respectfully request that the Court deny the City's Motion.

DATED this this 2nd day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiffs

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivered
- ☐ Facsimile – 208-384-4454
- ☐ Email

_____
Michelle J. Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 MOTION TO STRIKE THE DECLARATION OF ABIGAIL R. GERMAINE

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership, and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band, of the firm Davison, Copple, Copple & Copple, of Boise, Idaho, and hereby move the Court pursuant to Rule 56(e) of the IDAHO RULES OF CIVIL PROCEDURE (I.R.C.P.) to issue its Order striking the DECLARATION OF COUNSEL

ABIGAIL R. GERMAINE, as well as all of the attached exhibits thereto being Exhibits A through T.

I.R.C.P. 56(e) explicitly states that all supporting affidavits filed by a party must be from persons with "personal knowledge" and must set forth such facts as would be admissible in evidence and "shall show affirmatively that the affiant is competent to testify to the matters stated therein." The declaration filed by Abigail R. Germaine on December 31, 2015, as an attorney of the City of Boise clearly shows on its face that she has no personal knowledge whatsoever regarding the genuineness or the admissibility of the exhibits attached to her declaration. Accordingly, such declaration and the attached exhibits are not admissible in support of the Defendant City of Boise's pending CROSS-MOTION FOR SUMMARY JUDGMENT, nor are the declaration and attachments admissible in opposition to the Plaintiffs' pending MOTION FOR SUMMARY JUDGMENT. Accordingly, such declaration and attachments should be stricken from the Court's record.

This Motion is made and based on the records and files herein. Oral argument is requested on this Motion.

DATED this 2nd day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☐ U.S. Mail, postage prepaid
☒ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

Michelle Silva

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiff, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 AFFIDAVIT OF COUNSEL MICHAEL E. BAND

STATE OF IDAHO)
) ss.
County of ADA)

MICHAEL E. BAND, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record for Plaintiffs Bedard and Musser, and Boise Hollow Land Holdings, RLLP.

2. I make this Affidavit based upon my own personal knowledge and belief.

3. Attached hereto as EXHIBIT "A" is a true and accurate certified copy of document disclosed by the City of Boise pursuant to Plaintiffs' discovery requests in this matter, which purports to be a DONATION AGREEMENT dated November 1, 2013, executed by Quail Hollow, LLC in favor of the City of Boise.

4. Attached hereto as EXHIBIT "B" is a true and accurate certified copy of the DEED OF GIFT, dated November 1, 2013, executed by Quail Hollow, LLC in favor of the City of Boise, and recorded on December 4, 2013, as Ada County Instrument No. 113130306.

5. Filed concurrently herewith is PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF REBECCA W. ARNOLD. Cited therein is the Idaho District Court case of *Alpha Holdings, LLC v. Chaney*, 2013 WL 1686745 (First Judicial District, Kootenai County). For the convenience of the Court and Defendant, a true and accurate copy of Judge Mitchell's MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND ON MOTIONS TO STRIKE, is attached hereto as EXHIBIT "C"

Michael E. Band

SUBSCRIBED AND SWORN to before me this 2nd day of February, 2016.

MICHELLE J. SILVA NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Meridian, Idaho
My commission expires November 17, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Facsimile – 208-384-4454
☐ Email

Michelle J. Silva

EXHIBIT "A"

TO
AFFIDAVIT OF COUNSEL
MICHAEL E. BAND

Exhibit A

DONATION AGREEMENT

THIS AGREEMENT is entered into this 1st day of November, 2013, by and between Quail Hollow LLC, an Idaho limited liability company, ("**Donor**"), and the City of Boise City, an Idaho municipal corporation, by and through its Department of Parks and Recreation ("**City**"), collectively referred to herein as "the Parties."

WHEREAS, Donor owns approximately 141 acres of real property and improvements commonly called and known as the Quail Hollow Golf Course located in the City of Boise, more particularly described on **Exhibit "A"** attached herewith and incorporated herein by reference as (the "Golf Course Property"); and

WHEREAS, Donor has expressed its intent to donate the Golf Course Property to the City for use by the City as a public golf course, all as more particularly provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

1. Donor agrees to donate the Golf Course Property to City, pursuant to the Deed of Gift attached herewith as **Exhibit "B"** and incorporated herein by this reference, and the City agrees to accept the same on such terms and conditions.

2. Donor agrees to convey to the City, without warranty, the water rights associated with the Golf Course Property, namely water rights 63-04037, 63-09758 and 63-21875 and the equipment associated with and located on the Golf Course Property described in **Exhibit "C"** attached hereto.

3. The City, at its cost and expense, has or shall perform such environmental studies on and surveys of the Golf Course Property, and obtain such title insurance, as it deems necessary.

4. The City, at its cost and expense, has or shall apply for and obtain all permits, licenses and authorizations (including without limitation, the transfer of water rights associated with the Golf Course Property described above) as may be necessary to effect the transfer of the Golf Course Property associated water rights, personal property licenses, and the equipment described in **Exhibit "C"** hereto, to the City.

5. This Agreement constitutes the entire agreement between the Parties and no warranties, agreements or representations have been made or shall be binding upon either party unless herein set forth. Unless expressly stated otherwise herein, this Agreement is the final agreement and shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto. The Recitals are a part of this Agreement and express the intent of the parties.

6. The resolution authorizing the execution of this agreement shall also authorize the Mayor to sign Internal Revenue Code Form 8383, which shall be countersigned by an M.A.I. Certified Appraiser employed by the Donor.

6. There are no intended third party beneficiaries to this agreement.

7. This agreement shall become effective only upon authorization by resolution of the City Council of Boise City and approval by the Mayor.

IN WITNESS WHEREOF, the Parties have executed this Donation Agreement on the day and year first above written.

For the Donor:

Quail Hollow LLC, an Idaho limited liability company

David E. Hendrickson
Manager

For the City of Boise:

David H. Bieter
Mayor

ATTEST:

Jade Riley
Ex-Officio City Clerk

EXHIBIT "A"

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

EXHIBIT "B"
(Deed of Gift Attached)

Recording requested by and
When recorded return to Boise City
Department of Parks & Recreation,
P.O. Box 500,
Boise, Idaho 83701

DEED OF GIFT

THIS INDENTURE made this 1st day of November, 2013, between Quail Hollow LLC, an Idaho limited liability company, the "Grantor", and the City of Boise City, an Idaho municipal corporation, the "Grantee";

WITNESSETH:

Section 1.

AS A GIFT TO THE GRANTEE, the Grantor does hereby grant and convey to the Grantee all of the real property situated in the County of Ada, State of Idaho, described on **Exhibit 1** attached hereto and by this reference made a part thereof, which will be referred to herein as "the Property".

SUBJECT to:

1. All taxes and assessments levied and assessed upon the Property on and after December 1, 2013, and each year thereafter.

TO HAVE AND TO HOLD the Property unto the Grantee so long as the Grantee shall comply with the following conditions:

(a) The Grantee shall hold, own and operate the Property as a golf course in perpetuity, open to the public at all times, provided, however, that the Grantee may alter or change the use of all or any portion of the property to a public use other than a golf course. This public use restriction shall not limit or prohibit the sale of food and beverages (including alcoholic beverages), renting golf carts or other golfing-related products and charging for use of the golf course or any related facility provided such use is reasonable and fair and designed only to return to the City the cost of operating a public golf course. The Grantee shall utilize any reserves it earns from the operation of the golf course for capital and other improvements and maintenance and operation expenses associated with the Property. The Grantee may also impose reasonable charges and limits as to time and place and number of people entering and utilizing the Property for golf or other purposes in a manner consistent with standard

operating procedures for golf courses. In that regard, the Grantee may restrict and/or prohibit the use of the general public to enter upon all or portions of the golf course in a manner consistent with the safe and reasonable operation of a public golf course and in compliance with the ordinance of the City of Boise City.

(b) If the Grantee determines that it is in the public interest to use all or a portion of the Property for a use other than a golf course the Grantee may so change that use, provided the use remains public and open to the public, provided however, that as with operation as a golf course the Grantee shall be at liberty to impose reasonable restrictions as to time and use and access to all or any portion of the Property and to charge reasonable fees to defray the cost of providing public services which may include, but not limited to, athletic events, concerts, sports fields and such improvements as are necessarily reasonable for such public uses.

At no time and under no circumstances shall the Property be utilized for any residential, commercial, industrial or other use that is not consistent with this public use requirement.

(c) Neither the Property nor any part thereof shall ever be transferred or conveyed by the Grantee. The Grantee shall allow the creation of no lien or encumbrance to attach to the Property, or any part thereof, excepting therefrom easements for utilities serving the Property and *ad valorem* taxes, if any, levied and assessed against the Property. Notwithstanding the foregoing, Grantee, upon payment of just compensation, may transfer additional right-of-way to the Ada County Highway District, any successor highway district or road department as the case may be, as is reasonable and necessary and in the public interest.

Section 2.

To insure that the Property herein conveyed will be developed, used, operated and identified in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift, it shall be a condition of this conveyance that at any time in the future should the Property or any part hereof cease to be used in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift or that the Grantee shall fail, refuse or neglect in any respect to comply with the conditions set forth in subsection (a), (b), and (c) of Section 1 of this Deed of Gift, the Grantee shall be divested of the title to the Property and the title to the Property shall pass to an exempt organization having its principal place of business in Boise, Idaho, excepting therefrom any other governmental entity, and qualifying as such under the provisions of Internal Revenue Code Section 501(c)(3) or Internal Revenue Code Section 170(c)(1) or a comparable provision of the United States Internal Revenue Code then in force and effect created for charitable or public purposes and best able to operate or provide for the operation of that Property for the benefit of the public generally in

compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift. The determination of a successor exempt organization pursuant to this Section 2 shall rest with the then-Administrative District Judge of the Fourth Judicial District (or the successor judge having duties most like that judge if the position of Administrative District Judge no longer exists).

The provisions of this section may be enforced by either Grantor, if it is then in existence, or an exempt organization under the provisions of Internal Revenue Code Section 501(c)(3) or the comparable provision of the United States Internal Revenue Code, designated by the then Administrative District Judge, for the Fourth Judicial District (or the successor judge having duties most like that judge).

The fact that the Grantee has ceased to operate, maintain and use of the Property herein conveyed in compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift may be established of record by either (i) a certified copy of a resolution by the Mayor and Council of the Grantee of that fact, or (ii) a determination thereof through judgment of a court of competent jurisdiction of the State of Idaho.

Section 3:

By the recordation of this Deed of Gift, the Grantee shall be deemed to have accepted and agreed to comply with the restrictions and conditions set forth in Section 1 and Section 2 of this Deed of Gift and to hold the Property subject to full performance by it of those provisions of this Deed of Gift.

Section 4:

The current address of the Grantee is City of Boise, 150 N. Capitol Blvd., Boise, Idaho 83701.

IN WITNESS WHEREOF, this Deed of Gift has been duly executed by the Grantor the day and year herein first above written.

Quail Hollow LLC, an
Idaho limited liability company

By: David E. Hendrickson
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of November, 2013, before me, a Notary Public, personally appeared David Hendrickson, known or identified to me to be the Manager of Quail Hollow LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 11/26/2016

EXHIBIT 1
(Legal Description for Quail Hollow Golf Course)

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

EXHIBIT "C"
(List of Quail Hollow Equipment)

YEAR	DESCRIPTION	SERIAL NUMBER
2008	Club Car Golf Cart	PQ0826918203
2008	Club Car Golf Cart	PQ0826918205
2008	Club Car Golf Cart	PQ0826918206
2008	Club Car Golf Cart	PQ0826918208
2008	Club Car Golf Cart	PQ0826918209
2008	Club Car Golf Cart	PQ0826918210
2008	Club Car Golf Cart	PQ0826918212
2008	Club Car Golf Cart	PQ0826918213
2008	Club Car Golf Cart	PQ0826918214
2008	Club Car Golf Cart	PQ0826918215
2008	Club Car Golf Cart	PQ0826918216
2008	Club Car Golf Cart	PQ0826918216
2008	Club Car Golf Cart	PQ0826918218
2008	Club Car Golf Cart	PQ0826918219
2008	Club Car Golf Cart	PQ0826918220
2008	Club Car Golf Cart	PQ0826918222
2008	Club Car Golf Cart	PQ0826918223
2008	Club Car Golf Cart	PQ0826918224
2008	Club Car Golf Cart	PQ0826918225
2008	Club Car Golf Cart	PQ0826918226
2008	Club Car Golf Cart	PQ0826918227
2008	Club Car Golf Cart	PQ0826918228
2008	Club Car Golf Cart	PQ0826918229
2008	Club Car Golf Cart	PQ0826918230
2008	Club Car Golf Cart	PQ0826918231
2008	Club Car Golf Cart	PQ0826918232
2008	Club Car Golf Cart	PQ0826918233
2008	Club Car Golf Cart	PQ0826918234
2008	Club Car Golf Cart	PQ0826918235
2008	Club Car Golf Cart	PQ0826918236
2008	Club Car Golf Cart	PQ0826918237
2008	Club Car Golf Cart	PQ0826918238
2008	Club Car Golf Cart	PQ0826918239
2008	Club Car Golf Cart	PQ0826918240
2008	Club Car Golf Cart	PQ0826918242
2008	Club Car Golf Cart	PQ0826918243
2008	Club Car Golf Cart	PQ0826918244
2008	Club Car Golf Cart	PQ0826918245
2007	Club Car Golf Cart	PQ740822819
2007	Club Car Golf Cart	PQ740822822
2007	Club Car Golf Cart	PQ740822824
2007	Club Car Golf Cart	PQ740822825
2007	Club Car Golf Cart	PQ740822826

YEAR	DESCRIPTION	SERIAL NUMBER
2007	Club Car Golf Cart	PQ740822829
2007	Club Car Golf Cart	PQ740822830
2007	Club Car Golf Cart	PQ740822831
2007	Club Car Golf Cart	PQ740822821
2007	Club Car Golf Cart	PQ740822824
2006	Club Car Golf Cart	PQ0641691360
2006	Club Car Golf Cart	PQ0641691361
2006	Club Car Golf Cart	PQ0641691362
2006	Club Car Golf Cart	PQ0641691363
2011	Club Car Golf Cart	PH1127-203404
2011	Club Car Golf Cart	PH1127-203405
2011	Club Car Golf Cart	PH1127-203406
2011	Club Car Golf Cart	PH1127-203408
2011	Club Car Golf Cart	PH1127-203409
2011	Club Car Golf Cart	PH1127-203411
2011	Club Car Golf Cart	PH1127-203412
2011	Club Car Golf Cart	PH1127-203413
2011	Club Car Golf Cart	PH1127-203414
2011	Club Car Golf Cart	PH1127-203415
2009	Turf 11 Golf Cart	947484
2009	Turf 1 Golf Cart	947487
1986	Greensking IV	10416
2005	Dakota Turf Tender	41035805
1982	Jacobsen G-20 Tractor	701070
1986	Coremaster Aerator	302686
1993	Kawaski Mule	21119-2120
1993	Jacobsen Greensking IV Mdl # 62228	4981
1993	Smithco Superrake	4752
1993	Cushman 3 Wheel	93001873
1994	Cushman 4 Wheel Mdl # 898632A	95000807
1994	Cushman Coreharvestor	A95090037
1994	Jacobsen Greensmower PGM	3622
1994	Turfco Topdresser	498662
1995	John Deere Tractor w/Loader Mower	M0070A131598
1995	Toro Truckster w/Sprayer	7200-50218
1995	Turfco Topdresser	85420
1996	Jacobsen Greensking V	2323
1996	Jacobsen Greensking IV+	2112
1997	Diesel Cushman, Mdl 893634	98001527
1998	Jacobsen 3810, Mdl 67828	2043
1998	John Deere HandMower, Mdl 220	M00220X021498
1998	John Deer HandMower, Mdl 220	M00220X021581
2001	Toro 3500D	30821-210000344
1982	Jacobsen F-10	70346
1995	Lastec Articulator	5851093
2000	John Deere HandMower	M00220A030721
2001	Jacobsen Greensking 4+	2386

YEAR	DESCRIPTION	SERIAL NUMBER
2002	Toro 3100-D	03201-210000395
2003	Toro 4500-D	230000426
2002	Clubcar Turf II	RG0229 169952
2003	Clubcar Turf I	HG0343 342229
2000	Vertidrain 7316	22936
	Mower – Toro	270000551
	Mower – Toro	270000552
	Mower – Toro	270000568
	Trailer – Toro	270000714
	Trailer – Toro	270000715
	Trailer – Toro	270000716
2008	Toro Mower 5410	3670270001386
2008	True Turf R54811C	R9438
2007	Mower – Toro – Aerifier	250000853
2007	Mower – Toro	250000589
2007	Mower – Toro	250000594
2007	Dodge Ram Truck	VIN # 1D7HU16P47J598170

EXHIBIT "B"

TO
AFFIDAVIT OF COUNSEL
MICHAEL E. BAND
MICHAEL E. BAND

ADA COUNTY RECORDER Christopher D. Rich AMOUNT 31.00 8
BOISE IDAHO 12/04/2013 11:30 AM
DEPUTY Bonnie Oberbillig
Simplifile Electronic Recording
RECORDED-REQUEST OF
FIDELITY NATIONAL TITLE - BOIS
113130306

Recording requested by and
When recorded return to Boise City
Department of Parks & Recreation,
P.O. Box 500,
Boise, Idaho 83701

DEED OF GIFT

THIS INDENTURE made this 1st day of November, 2013, between Quail Hollow LLC, an Idaho limited liability company, the "Grantor", and the City of Boise City, an Idaho municipal corporation, the "Grantee";

WITNESSETH:

Section 1.

AS A GIFT TO THE GRANTEE, the Grantor does hereby grant and convey to the Grantee all of the real property situated in the County of Ada, State of Idaho, described on **Exhibit 1** attached hereto and by this reference made a part thereof, which will be referred to herein as "the Property".

SUBJECT to:

1. All taxes and assessments levied and assessed upon the Property on and after December 1, 2013, and each year thereafter.

TO HAVE AND TO HOLD the Property unto the Grantee so long as the Grantee shall comply with the following conditions:

(a) The Grantee shall hold, own and operate the Property as a golf course in perpetuity, open to the public at all times, provided, however, that the Grantee may alter or change the use of all or any portion of the property to a public use other than a golf course. This public use restriction shall not limit or prohibit the sale of food and beverages (including alcoholic beverages), renting golf carts or other golfing-related products and charging for use of the golf course or any related facility provided such use is reasonable and fair and designed only to return to the City the cost of operating a public golf course. The Grantee shall utilize any reserves it earns from the operation of the golf course for capital and other improvements and maintenance and operation expenses associated with the Property. The Grantee may also impose reasonable charges and limits as to time and place and number of people entering and utilizing the Property for golf or other purposes in a manner consistent with standard

operating procedures for golf courses. In that regard, the Grantee may restrict and/or prohibit the use of the general public to enter upon all or portions of the golf course in a manner consistent with the safe and reasonable operation of a public golf course and in compliance with the ordinance of the City of Boise City.

(b) If the Grantee determines that it is in the public interest to use all or a portion of the Property for a use other than a golf course the Grantee may so change that use, provided the use remains public and open to the public, provided however, that as with operation as a golf course the Grantee shall be at liberty to impose reasonable restrictions as to time and use and access to all or any portion of the Property and to charge reasonable fees to defray the cost of providing public services which may include, but not limited to, athletic events, concerts, sports fields and such improvements as are necessarily reasonable for such public uses.

At no time and under no circumstances shall the Property be utilized for any residential, commercial, industrial or other use that is not consistent with this public use requirement.

(c) Neither the Property nor any part thereof shall ever be transferred or conveyed by the Grantee. The Grantee shall allow the creation of no lien or encumbrance to attach to the Property, or any part thereof, excepting therefrom easements for utilities serving the Property and *ad valorem* taxes, if any, levied and assessed against the Property. Notwithstanding the foregoing, Grantee, upon payment of just compensation, may transfer additional right-of-way to the Ada County Highway District, any successor highway district or road department as the case may be, as is reasonable and necessary and in the public interest .

Section 2.

To insure that the Property herein conveyed will be developed, used, operated and identified in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift, it shall be a condition of this conveyance that at any time in the future should the Property or any part hereof cease to be used in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift or that the Grantee shall fail, refuse or neglect in any respect to comply with the conditions set forth in subsection (a), (b), and (c) of Section 1 of this Deed of Gift, the Grantee shall be divested of the title to the Property and the title to the Property shall pass to an exempt organization having its principal place of business in Boise, Idaho, excepting therefrom any other governmental entity, and qualifying as such under the provisions of Internal Revenue Code Section 501(c)(3) or Internal Revenue Code Section 170(c)(1) or a comparable provision of the United States Internal Revenue Code then in force and effect created for charitable or public purposes and best able to operate or provide for the operation of that Property for the benefit of the public generally in

compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift. The determination of a successor exempt organization pursuant to this Section 2 shall rest with the then-Administrative District Judge of the Fourth Judicial District (or the successor judge having duties most like that judge if the position of Administrative District Judge no longer exists).

The provisions of this section may be enforced by either Grantor, if it is then in existence, or an exempt organization under the provisions of Internal Revenue Code Section 501(c)(3) or the comparable provision of the United States Internal Revenue Code, designated by the then Administrative District Judge, for the Fourth Judicial District (or the successor judge having duties most like that judge).

The fact that the Grantee has ceased to operate, maintain and use of the Property herein conveyed in compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift may be established of record by either (i) a certified copy of a resolution by the Mayor and Council of the Grantee of that fact, or (ii) a determination thereof through judgment of a court of competent jurisdiction of the State of Idaho.

Section 3:

By the recordation of this Deed of Gift, the Grantee shall be deemed to have accepted and agreed to comply with the restrictions and conditions set forth in Section 1 and Section 2 of this Deed of Gift and to hold the Property subject to full performance by it of those provisions of this Deed of Gift.

Section 4:

The current address of the Grantee is City of Boise, 150 N. Capitol Blvd., Boise, Idaho 83701.

IN WITNESS WHEREOF, this Deed of Gift has been duly executed by the Grantor the day and year herein first above written.

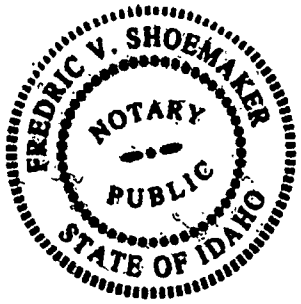
Quail Hollow LLC, an
Idaho limited liability company

By: David E. Hendrickson
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of November, 2013, before me, a Notary Public, personally appeared David Hendrickson, known or identified to me to be the Manager of Quail Hollow LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such corporation executed the same.

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



NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 11/26/2016

EXHIBIT 1
(Legal Description for Quail Hollow Golf Course)

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

STATE OF IDAHO, COUNTY OF ADA, ss.

I, Christopher D. Rich, Ada County Recorder, do hereby certify that the annexed is a full, true and correct copy of Instrument Number 113130506 as it appears in the recorded documents system of the Ada County Recorder, State of Idaho. IN WITNESS WHEREOF, I have set my hand and affixed my official Seal this 4 day of February 20 16

Christopher D. Rich, Recorder

By _____ Deputy Recorder

COUNTY RECORDER STATE OF IDAHO OF ADA COUNTY

EXHIBIT "C"

TO
AFFIDAVIT OF COUNSEL
MICHAEL E. BAND

2013 WL 1686745 (Idaho Dist.) (Trial Order)
Idaho District Court,
First Judicial District.
Kootenai County

ALPHA HOLDINGS, LLC, Plaintiff,
v.
Betty CHANEY, et al, Defendant.

No. CV 2012 7948.
April 11, 2013.

Memorandum Decision and Order Denying Defendants' Motion for Summary Judgment, And on Motions to Strike

John T. Mitchell, Judge.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on defendant Chaney's motion for summary judgment and cross motions to strike related to affidavits filed regarding that motion for summary judgment.

A. Factual Background.

On March 28, 2011, Black Bay Village Home Owners Association (Association) recorded a Notice of Homeowner's Association Lien against property owned by Nancy Chaney (Chaney) and other defendants. The property is a condominium unit subject to CC&Rs which were recorded in 2006 (hereinafter, "Declaration"). The Declaration required each condominium owner to pay monthly assessments to the Association.

Defendants Chaney, Joslin, Newman, Stanic, and Vezina are condominium owners who on October 31, 2012, were sued by plaintiff Alpha Holdings, LLC, (Alpha), assignee of the homeowners association, to foreclose on its lien it has on defendants condominiums, for non-payment of assessments. Complaint, p. 9. Black Bay Village Condominiums were advertised as a full maintenance, gated townhome community with a homeowners association. Affidavit of Melanie Baillie (Baillie Affidavit), Exhibit 2, Exhibit A, H. There are three primary documents that govern Black Bay Village Condominiums. The Articles of Incorporation, filed on August 11,

2006, created Black Bay Village Owners Association, Inc. (Association). *Id,* Exhibit 1, Exhibit B. In addition to the Articles of Incorporation, the Association is governed by association bylaws. *Id.,* Exhibit 2, Ex. E

The final document that governs Black Bay Village Condominiums is the Declaration. *Id,* Exhibit 1, Ex. B. This was submitted by the condominium project developer, Defendant Northwest Group, LLC, who is also the Declarant of the CCRs. *Id.* The CCRs were filed with the Kootenai County Recorder on August 16, 2006. *Id.* In addition to the CCRs, and referenced in paragraph A of the CCRs, plats for the units and common area of Black Bay Village were recorded with Kootenai County on August 17, 2006. *Id.* at ¶ A; Exhibit 1, Ex. A. No more recent plats have been submitted to this Court. On the plats filed for Black Bay Village Condominiums, Unit O is labeled as a "club house." *Id.,* Exhibit 1, Ex. A, p. 3. Additionally, according to the legend provided on the recorded plat, Unit O is demarcated as a common area. *Id.* The clubhouse also contains a pool. *Id.,* Exhibit 4, ¶ 6; Exhibit ¶ 6; Exhibit 6, ¶ 6.

Defendants, owners of some of the condominium units, began to have concerns with the operation of Black Bay Village Condominiums. Some unit owners communicated their concerns to the Association. *Id.,* Exhibit 2, Exhibit B; Exhibit 3, Exhibit A. Additionally, at least two individuals requested copies of the Association's financial statements. Attorney Erika Grubbs, representing several condominium owners, requested copies of operation budgets and financial statements for 2007 and 2008 from the Association. *Id.,* Exhibit 3, Exhibit A. Between September 2009 and September 2010, condominium owner Nancy Conley made five written requests for a copy of the Association's financial statements. *Id.,* Exhibit 2, Exhibit J.

Developer Northwest Group defaulted on a financial obligation, and on April 6, 2012, Idaho Trust Bank foreclosed Black Bay Village Condominiums. *Id,* Exhibit 1, Exhibit G. On that date, Northwest Group's interest in the development was transferred to the bank. *Id.* Each unit transferred included an individual condominium and an undivided interest in the common area, referring to the areas that had been identified in the CCRs as they were recorded with Kootenai County on August 17, 2006. *Id.* The CCRs refer to the plats that were filed on the same date and are described above. *Id.,* Exhibit 1, Exhibit A. On August 14, 2012, Northwest Group repurchased Units A and B of the Black Bay Village Condominiums, which included each individual unit and an interest in the common areas that were identified in the CCRs recorded on August 17, 2006. *Id.,* Exhibit 1, Exhibit H.

The Declaration required each owner in the condominium complex to pay monthly assessments to the Association. Chaney withheld her assessments in response to a lack of communication from the Board of Directors of the Association (Board). Chaney Affidavit, p. 2, ¶ 8. Instead Chaney deposited the assessments in an account in Kootenai Case Number CV-2011-7723 *Conley v. Black Bay Village Association. Id.* Presumably, Chaney deposited the assessments in that case because

she was a party to that case, keeping in mind the instant case was not filed until October 31, 2011. After Judge Simpson on April 6, 2012, granted summary judgment to Alpha in *Alpha Holdings v. Conley,* Kootenai Case Number CV-2011-9436, (a case in which Chaney was not a party), Alpha, on May 15, 2012, at 4:39 p.m., through an email by its attorney Peter J. Smith, IV to Chaney's (and others) attorney, Steven Wetzel, extended the deadline for payment by Chaney and others to Alpha, until May 17, 2012. *Id.,* Affidavit of Peter J. Smith IV, filed March 28, 2013, Exhibit A. Also in that email, Alpha dictated that if that deadline were not met, an additional $500 would be added per client of Wetzel's, for attorney fees for preparation of the foreclosure complaint. *Id.* Since that demand was made at the end of that day, the deadline imposed by Alpha's attorney was two business days away. On May 17, 2012, Steven C. Wetzel, as Chaney's attorney (and also as the attorney for Collins, Stanic, Venzona, Joslin and Newman) sent counsel for Alpha, Peter J. Smith, IV, a letter in which Chaney authorized the release of funds deposited with the court in CV 2011 7723, which included a copy of the "Order Granting Disbursal of Funds Deposited With Court", signed by Judge Lansing Haynes, on behalf of Judge Luster, which ordered release of the funds to Lukins & Annis, PS Trust Account on behalf of Alpha Holdings, LLC. *Id.,* and Affidavit of Melanie Baillie, Exhibit 13, Order Granting Disbursal of Funds Deposited With Court, p. 2. However, the check actually dispersing the funds to Lukins & Annis, PS, was available to be picked up only by Lukins & Annis, PS, from the Kootenai County Auditor's office on May 21, 2012. Affidavit of Melanie Baillie, Exhibit 16.

Essentially, this lawsuit was filed because: 1) the funds which were timely ordered released by court on behalf of Chaney ($8,814.37) and others, were not available to Alpha's attorney on the date which Alpha's attorney had demanded only two days earlier, and 2) because of that, Chaney wouldn't then pay the extra $500 demanded by Alpha's attorney. The attorney fees and costs involved by both sides in preparation of one hundred pages of briefing and over a thousand pages of affidavits and attachments, must be astonishing and must pale in light of the amounts in controversy

B. Procedural Background.

This matter is before the Court on defendant Betty Chaney's (Chaney) motion for partial summaryjudgment. On October 31, 2012, Alpha filed its "Complaint" in which it requests this Court 1) declare Alpha to have a valid and subsisting lien on the Chaney Property and 2) enter a decree of foreclosure that the Chaney Property and the interest therein be sold in accordance with Idaho law, the proceeds of the sale be returned to the court, and Alpha be paid the amounts due under the claim of lien, plus interest. On December 6, 2012, Chaney and the other defendants filed their "Answer and Counterclaim".

On March 13, 2013 Chaney (and only Chaney, it is unknown what became of the other defendants) filed her "Motion for Partial Summary Judgment", "Memorandum in Support Defendant's

Motion for Partial Summary Judgment", "Defendants' Statement of Uncontested Material Facts", "Affidavit of Deborah Hylton in Support of Defendants' Motion for Partial Summary Judgment", "Affidavit of Betty Chaney in Support of Defendants' Motion for Partial Summary Judgment" and "Affidavit of Melanie Baillie in Support of Defendants' Motion for Partial Summary Judgment." On March 15, 2013 Chaney filed her "Certificate of Law Not Contained in Idaho Reports" and "Errata to Memorandum in Support of Defendants' Motion for Partial Summary Judgment". The errata simply corrects a citation mistake in the memorandum. Errata, p. 2.

On March 28, 2013 Alpha filed its "Alpha Holdings, LLC's Objection to Defendant Chaney's Motion for Partial Summary Judgment", "Affidavit of Peter J. Smith IV", "Affidavit of Mike Rai" and "Plaintiff's Submission of Foreign Authority in Support of Objection to Defendants' Motion for Summary Judgment" as well as a "Plaintiff's Motion to Strike".

On April 2, 2013 Chaney filed her "Motion to Shorten Time" and "Errata to Affidavit of Melanie Baillie in Support of Defendants' Motion for Partial Summary Judgment". On April 3, 2013 Chaney filed her "Defendant's Memorandum in Opposition to Plaintiff's Motion to Strike" and "Motion to Strike Portions of Affidavits of Mike Rai and Peter Smith", as well as "Reply in Support of Defendant's Motion for Partial Summary Judgment" and "Reply Affidavit of Deborah Hylton in Support of Defendant's Motion for Partial Summary Judgment".

On April 3, 2013 Alpha filed its "Plaintiff's Opposition to Defendants' Motion to Strike Affidavits Filed in Support of Plaintiff's Motion for Partial Summary Judgment" and "Affidavit of Peter J. Smith IV in Support of Opposition to Defendants' Motion to Strike". On April 5, 2013 Alpha filed its "Plaintiff's Supplemental Opposition to Defendants' Motion to Strike Affidavits Filed in Support of Plaintiff's Motion for Partial Summary Judgment" and "Certificate of Law Not Contained in Idaho Reports".

Chaney seeks a partial summary judgment for the following issues:
1. Whether Chaney owes any more money to the Association or Alpha

2. Whether Alpha has the right to pursue a collection action against Chaney or foreclose on her condominium

3. Whether the actions of Alpha against Chaney are unlawful under the Fair Debt Collection Practices Act, 15 U.S.C.A. 1692.

Memorandum in Support, pp. 6-7. Oral argument was held on April 10, 2013.

C. Procedural Background of Related Cases.

There are two related Kootenai County civil cases which have had decisions made by two other First District Court District Judges, which must be noted.

The first case in which there was a decision made by a District Judge *was Alpha Holdings, LLC v. David Michael Conley and Nancy Ann Conley as Co-Trustees of the David and Nancy Conley Living Trust (Conley),* Kootenai County Case No. CV 2011 9436. In that case, on April 6, 2012, District Judge Benjamin R. Simpson filed a "Memorandum Decision and Order Granting in part and Denying in Part Plaintiff's Motion to Strike, Granting Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Continue and Denying Defendants' Motion to Consolidate". This case is the most similar to the present case, as in this case, Black Bay Village Homeowners Association recorded a Notice of Lien against the defendants property owners (the Conleys and their trust). April 6, 2012, CV 2011 9436, Memorandum Decision, pp. 1-2. Black Bay Village Homeowner's Association assigned to PITA Group, LLC on July 7, 2011, and PITA Group, LLC assigned to Alpha Holdings on November 22, 2011. *Id.,* p. 2. Judge Simpson found it was undisputed that the Conleys failed to pay the assessments levied by Black Bay Village Homeowner's Association. *Id.* Alpha Holdings sought to foreclose the $8,897.94 lien against Conleys' property. *Id.* Judge Simpson found Alpha Holdings had the right to sue Conleys for the foreclosure of the lien and/or collection of the assessments. *Id.,* pp. 7-18. This portion of Judge Simpson's decision will be discussed in detail below.

The second case in which there was a decision made by a District Judge was *Nancy Conley and David Conley, Betty Chaney, Bill Joslin, Lynda Nutt, Ray Vezina Jim Collins, and Zoran Stanic, v. Black Bay Village Owner's Association, Inc., Mike Rai, Nick Rail Tammy Morris and Northwest Group, LLC.* Kootenai County Case No. CV 2011 7723. In that case, on January 17, 2013, District Judge John P. Luster filed a "Memorandum Opinion and Order Re: Plaintiffs' Motion for Partial Summary Judgment." In that case, seven condominium owners, including Betty Chaney in the present case, sued their homeowners association, the association's board of directors and the original developer. January 17, 2013, CV 2011 7723, Memorandum Decision, p. 2. The developer, defendant Northwest Group, LLC, was also the declarant of the CCRs. *Id* Defendant Northwest Group defaulted on its financial obligation to Idaho Trust Bank, and on April 6, 2012, Idaho Trust Bank foreclosed on Black Bay Village Condominiums. *Id.,* p. 3. Idaho Trust Bank then owned all of the developer, Northwest Group, LLC's interest in the project. The group of homeowners sought summary judgment that Unit O (which contained a clubhouse and pool) was a common area with each separate condominium owner owning a 2.5 percent interest in such. *Id,* p. 4. Defendant developer Northwest Group argued that Paragraph B of the CCRs did not require the developer to designate the common area until the thirtieth unit had sold, and due to the fact that only sixteen condominium units had been sold, Northwest Group argued its obligation to designate a community center or clubhouse had not been triggered. *Id.,* pp. 6-7. Judge Luster

disagreed and granted summary judgment in favor of the homeowners, finding that once Idaho Trust Bank foreclosed on April 6, 2012, on the twenty-four unsold and unconstructed units, there were as of that date no more unsold units and thus, the foreclosure triggered the duty to designate the community center and clubhouse. *Id.,* p. 7. Judge Luster also found that the foreclosure by Idaho Trust Bank on April 6, 2012, converted all Class B memberships (those memberships or units owned by the declarant developer Northwest Group, and which held three votes per unit) to Class A memberships (those memberships or units owned by those who actually purchased their condominium units, and which only held one vote per unit). *Id.,* pp. 8-9. Again, Judge Luster held the foreclosure resulted in a sale to Idaho Trust Bank, and declarant, developer Northwest Group ceased to own anything. *Id.,* p. 9.

II. STANDARD OF REVIEW.

In considering a motion for summary judgment, the Court may properly grant a motion summary judgment only where there are no genuine issues of material fact and the moving partyis entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court construes all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in a light most favorable to the non-moving party. *Partout v. Harper,* 145 Idaho 683, 685, 183 P.3d 771, 773 (2008). The Court draws all inferences and conclusions in the non-moving party's favor and if reasonable people could reach different conclusions or draw conflicting inferences, then the motion for summary judgment must be denied. *Zimmerman v. Volkswagen of America, Inc.,* 128 Idaho 851, 854, 920 P.2d 67, 70 (1996).

However, if the evidence shows no disputed issues of material fact, then summary judgment should be granted. *Smith v. Meridian Joint School District No. 2,* 128 Idaho 714, 718, 918 P.2d 583, 587 *(1996); Loomis v. City of Hailey,* 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134 Idaho 84, 87, 996 P.2d 303, 306 (2002). The non-moving party "must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial." *Id.*

In ruling on the motion, the Court considers only material contained in the affidavits and depositions which are based on personal knowledge and which would be admissible at trial. *Samuel,* 134 Idaho 84, 88, 996 P.2d 303, 307. Summary judgment is appropriate where a non-moving party fails to make a sufficient showing to establish the existence of an element essential to its case when it bears the burden of proof *Id.*

III. MOTIONS TO STRIKE.

Chaney's and Alpha's Motions to Strike must be addressed first. The Idaho Supreme Court has made it clear that before a motion for summary judgment can be decided, the Court must address the admissibility of expert testimony. *Suhadolnik v. Pressman,* 141 Idaho 110, 114, 254 P.3d 11, 15 (2011). The applicable standard of review is an abuse of discretion standard. *McDaniel v. Inland Northwest Renal Care Group-Idaho, LLC,* 144 Idaho 219, 221-22, 159 P.3d 856, 858-59 (2007). The "liberal construction and reasonable inferences standard" does not apply in such a case. *Suhadolnik,* 141 Idaho 110, 114, 254 P.3d 11, 15. Alpha seeks to strike portions of the affidavits of Chaney and Melanie Baillie (Baillie). Plaintiffs Motion to Strike, p. 2. Chaney seeks to strike portions of the affidavits of Mike Rai (Rai) and Peter Smith (Smith). Defendants' Motion to Strike, p. 2. The Court will start with Alpha's Motion to Strike.

A. Rulings on Alpha's Motion to Strike.

With regards to Chaney's affidavit, Alpha seeks to strike particular paragraphs based on lack of foundation and hearsay. Plaintiffs Motion to Strike, p. 3. Specifically, Alpha objects to paragraph 5 of Chaney's affidavit, regarding her being told the condominium project would include a pool/ clubhouse, lawn care and snow removal, on the grounds of hearsay. *Id.* Idaho Rule of Evidence 801 deals with hearsay definitions and specifically identifies statements which are not hearsay in I.R.E. 801(d). I.R.E. 801. Idaho Rule of Evidence 801(d)(2) regarding admissions by party-opponents specifically:

> The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by a party to make a statement concerning the subject or (D) a statement by a party's agent or servant concerning a matter within the scope of the agency or employment of the servant or agent, made during the existence of the relationship ...

I.R.E. 801(d)(2). Chaney argues statements about what the condominium project entailed are not hearsay under I.R.E. 801(d)(2)(A), admission of a party-opponent. Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p.2. It is a well-recognized rule that "admissions by a predecessor in interest are admissible in an action against a successor in interest when there is a privity between the two." *Jolley v. Clay,* 103 Idaho 171, 176, 646 P.2d 413, 418 (1982). *Jolley* involved a decedent's estate in which the trial court admitted the statement of the decedent, finding there was privity between the decedent and the personal representative of the decedent's estate. *Id.* In stating the rule, the Court in *Jolley cited Matusik v. Large,* 85 Nev. 202, 452 P.2d 457 (1969). *Id. Matusik* involved a creditor who sued the debtor and attached an oil rig, which the court released back to the debtor and which the debtor sold to a third party. 85 Nev. 202, 204, 452 P.2d 457, 458.

The creditor then sued the third-party purchaser of the rig. *Id.* The court admitted the transcript of the debtor's testimony given during his judgment debtor examination, offered by the creditor, holding "whenever a party claims under, or in, the interest or right of another, the declarations of such other person pertaining to the subject of the claim are admissible against him". *Matsuk v. Large,* 85 Nev. 202, 206, 452 P.2d 457, 459.

In this case, there seems to be no dispute the Association assigned its interest in the collection of these dues to PITA and PITA assigned that same interest to Alpha. Presumably, these statements to Chaney were made by agents of the Association, who was the predecessor in interest of the collection of these dues. Under the general rule set forth in *Jolley,* such statements are admissions by a party-opponent as against Alpha and those statements are admitted. The motion to strike is denied as to this point. (Due to the extremely high number of specific motions to strike by both sides, for brevity in this opinion, from this point on if a statement/exhibit is admitted/allowed/ considered, then the motion to strike is denied; conversely, if the statement/exhibit is not admitted/ not allowed/not considered, then the motion to strike is granted.)

Alpha also objects on foundation grounds to paragraph 6 of Chaney's affidavit where it identifies the Secretary of the Association. Plaintiffs Motion to Strike, p. 3. Chaney argues her affidavit establishes she has been an owner since 2007 and so can be reasonably expected to know who the secretary was. Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 3. Alpha cites to I.R.E. 602 relating to lack of personal knowledge and I.R.E. 703 relating to expert testimony. Plaintiff's Motion to Strike, p. 3. Idaho Rule of Evidence 602 states:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not consist of the testimony of the witness. This rule is subject to the provisions of Rule 702, relating to opinion testimony by expert witnesses.

It appears reasonable to expect a condominium owner, who has resided at Black Bay Village since May 2007 (almost six years) would know who the secretary of the Association would be, particularly when Chaney's affidavit also states she contacted Nancy Nelson (Nelson) to give her a list of items to be fixed at Black Bay Village (BBV). Certainly expert testimony is not necessary, as any lay person with personal knowledge could testify as to who the secretary of the Association was. Because Chaney has established her almost six-year residence at BBV, as a member of the Association, she has set forth the foundation for her personal knowledge required under I.R.E. 602 and so Paragraph 6 of her affidavit is admitted.

Next, Alpha objects to the portions of Paragraph 7 of Chaney's affidavit regarding the weeds growing "so tall they were a fire hazard" and that the Board raised the assessments without "any

warning or justification for doing so." Plaintiffs Motion to Strike, p. 3. Chaney argues the statement about the weeds is supported by the Baillie Affidavit, Exhibit 2 (Conley Affidavit). Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p.3. Specifically, Chaney points to Exhibit I of Conley's Affidavit, p. 13, which is purportedly a picture of field weeds. *Id.* Alpha claims Chaney has failed to establish the foundational knowledge of when the height of weeds becomes a fire hazard and that such a statement is conclusory. Plaintiffs Motion to Strike, p. 3. Chaney argues her testimony, accompanied by the picture from Conley's affidavit fall under I.R.E. 701 and should not be excluded. Idaho Rule of Evidence 701 states:

> If the witness is not testifying as an expert the testimony of the witness in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

I.R.E. 701.

In this instance, while Chaney does not set forth facts in her affidavit qualifying her as an expert in fire hazard, her personal opinion regarding how tall the weeds were and how they presented a fire hazard appears to be commonplace. A person's observation of how tall weeds are is not scientific or technical and Chaney's perception that they created a fire hazard is rationally-based (based on the photograph) and assists in understanding Chaney's purported reasoning for withholding Association dues. This is proper lay-witness testimony and is admitted.

With regard to Chaney's statement related to the Board raising assessments, it appears from Alpha's motion to strike they only object to the statement that the Board raised assessments "without justification", based on foundational grounds. Plaintiffs Motion to Strike, p. 3. Chaney argues Paragraph 8 of her affidavit explains the lack of communication between the residents and the Board, which demonstrates the "without justification" testimony is a "statement of fact, not a conclusion." Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 3. However, the lack of communication set forth in Paragraph 8 does not necessarily automatically lead to the fact that the assessments were raised without justification. The wording "without justification" is conclusory and is stricken, however the remaining portion of Paragraph 7 stating the assessments were raised without warning is admitted.

Alpha also objects to portions of Paragraph 10 of Chaney's affidavit, particularly subsection (c) regarding snow removal as part of the CC&R's, on grounds of hearsay and lack of foundation, and subsection (d) regarding the complex not being "maintained as promised" and the project not being "appropriately cared for", on foundational grounds. Motion to Strike, pp. 3-4. With regard to

the statements relating to the maintenance of the complex, Chaney argues the promise to maintain the complex was an admission of a party-opponent and the failure to maintain is confirmed by the Conley Affidavit (contained in the Baillie affidavit). Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 4. Alpha argues the "implied promise" made is hearsay and Chaney failed to state who made the promise.

The Conley affidavit has attached as Exhibit A a "welcome letter" from the Association. As stated above, statements made by the Association, or its agents, are statements of a party-opponent and not hearsay. As for the foundational grounds, the welcome letter sets forth the included "maintenance" and is signed by Valerie Brady Rongey and Kim Transue, agents of the Association. It is noteworthy that Chaney could have avoided this and many other objections by setting forth her statements in greater detail.

With regard to the statement that the project was not being "appropriately cared for", Alpha claims Chaney fails to state how she reached the conclusion that the project was not being appropriately cared for and this statement is an opinion without foundation. Plaintiffs Motion to Strike, p. 4. Chaney argues the foundation is set forth in the Conley Affidavit, attached to the Baillie affidavit. Defendants' Memorandum in Opposition to Plaintiffs Motion to Strike, p. 4. However, and it should be noted above for the other Paragraph 10 objections, it is not necessary to address whether or not the statements by Chaney are hearsay or without foundation because the objected to statements are not the testimony, but details as to what Chaney asked the Board to address. Chaney Affidavit, p. 3. This Court does not have to address the question of hearsay because the relevant fact is that *Chaney asked the Board to address these issues,* not the truth or accuracy of the issues themselves.

Alpha also objects to a number of exhibits attached to the Baillie Affidavit. Plaintiffs Motion to Strike, p. 4. Specifically, Alpha objects to Exhibit 1 (Affidavit of Steven C. Wetzel in Opposition to Motion for Leave to Amend Answer, Paragraph 6 and Exhibit "D"), Exhibit 2 (Affidavit of Nancy Conley in Opposition to Motion for Leave to Amend Answer), Exhibit 3 (Affidavit of Erika B. Grubbs, Exhibit "A"), Exhibit 3 (Affidavit of Erika B. Grubbs, Exhibit "B"), Exhibit 4 (Affidavit of Bill Joslin in Opposition to Motion for Leave to Amend Answer), Exhibit 5 (Affidavit of Lynda Nutt in Opposition to Motion for Leave to Amend Answer), Exhibit 6 (Affidavit of Ray Vezina in Opposition to Motion for Leave to Amend Answer) and Exhibit 7 (Affidavit of Zoran Stanic in Opposition to Motion for Leave to Amend Answer). *Id.*

Alpha argues the stated portion of Exhibit 1 should be excluded because Exhibit "D" was not included. In response, Chaney filed an Errata to the Baillie affidavit which included a copy of Exhibit "D". Errata to Baillie Affidavit, p. 2. The Errata cures the defect, so Exhibit "D" is admitted.

Alpha objects to the entirety of Exhibit 2 (Conley Affidavit) as irrelevant and containing inadmissible hearsay. Plaintiffs Motion to Strike, p. 4. Chaney argues the hearsay objection is improperly made as Alpha failed to articulate what specific portions of the Conley affidavit are hearsay and it is not irrelevant because it "explains why assessments are not owed from owner's view and confirms the failures of the Board which claims assessments are owed". Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 5. Alpha's hearsay objection is improper because Alpha failed to articulate the particular statements it considered to be hearsay. It is Alpha's responsibility to articulate for this Court what it considers to be hearsay in the Conley Affidavit, it is not the Court's job to search a document trying to speculate what Alpha claims is hearsay. Regarding the relevance objection, that affidavit was based on litigation arising from the same event between the same parties, thus, it is relevant.

Alpha also objects to Exhibit 3 (Exhibit A of Grubbs Affidavit), letter from Grubbs to Kim Transue of the Association, on the grounds of hearsay. Plaintiff's Motion to Strike, p. 4. Chaney argues the letter is offered not for the truth of the matter asserted (the issues between the Association and the residents) but rather to demonstrate the timing of notice to the Association of the asserted problems. Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 5. Under that limited purpose only, the letter is admitted.

Alpha objects to Exhibit 3 (Exhibit B of Grubbs Affidavit), letter from Mike Rai to Grubbs acknowledging receipt of December 10, 2008, letter, as hearsay. Plaintiff's Motion to Strike, p. 4. Chaney argues the letter is a statement by a party-opponent. Defendants' Memorandum in Opposition to Plaintiff's Motion to Strike, p. 5. As stated above, statements by agents of the Association, such as Mike Rai, are admissions of party-opponents, so Exhibit B of the Grubbs Affidavit is admitted.

Alpha also objects to Exhibit 4 (Joslin Affidavit), Exhibit 5 (Nutt Affidavit), Exhibit 6 (Vezina Affidavit) and Exhibit 7 (Stanic Affidavit) in their entirety on the grounds that they contain inadmissible hearsay and are irrelevant. Plaintiff's Motion to Strike, p. 4. Chaney argues the affidavits are relevant as they show the decline in value, failure of the Board to communicate why assessments were not owed, the reason for withholding assessments and the good faith basis for his actions, all of which are alleged explanations of the breach of declaration and why Chaney was released from her obligation to pay the assessments. Defendants' Memorandum in Opposition to Plaintiffs Motion to Strike, pp. 5-6. Chaney does not address the hearsay objection but as Alpha has failed to allege which statements are hearsay, the objection is improper. As stated above with the Conley Affidavit, the statements of the Joslin, Nutt, Vezina and Stanic affidavits are relevant to Chaney's argument that she was excused from paying the assessment by the Association breaching the Declaration, and are admitted.

B. Rulings on Chaney's Motion to Strike.

Now this Court addresses Chaney's Motion to Strike portions of the Rai Affidavit and Smith Affidavit. Chaney first objects to the entirety of the Rai Affidavit, except Paragraphs 1, 2 and 13 on foundational grounds. Defendants' Motion to Strike, p. 2. Chaney argues Rai's statements in Paragraphs 2, 3, 5, 6, 7, 8, 9, and 10 that he is familiar with the issues covered in the affidavit is not the same as personal knowledge, specifically knowledge Rai gained from his attorney Defendants' Motion to Strike, pp. 3-5. Chaney also argues the statements by Rai in Paragraphs 11 and 12 are conclusory statements lacking adequate foundation. Defendants' Motion to Strike, p. 6. In addition, Chaney claims the Rai Affidavit should be excluded based on untimeliness, as it was not served until March 28, 2013, one day late. Defendants' Motion to Strike, p. 7. Chaney acknowledges her attorneys would typically not be concerned with one day's tardiness, but argues if Alpha is going to hold Chaney to strict deadlines, then Alpha should be held to similarly strict deadlines. *Id.* Alpha claims its service of the Smith Affidavit and the Objection to Defendants' Motion to Strike was timely served on March 27, 2013 and the only reason the Rai Affidavit was served one day later was Rai was traveling and was not available to sign the affidavit. Plaintiff's Opposition to Defendants' Motion to Strike, pp. 2-3. Alpha argues this is sufficiently good reason to allow the Rai Affidavit as well as the lack of harm to Chaney Plaintiff's Opposition to Defendants' Motion to Strike, p. 4. With regard to Chaney's objections to Paragraphs 2-11, Alpha generally argues Rai has personal knowledge of the facts at issue in the dispute involving Alpha, as he is Alpha's manager. Plaintiffs Supplemental Opposition to Defendants' Motion to Strike, p. 3. Alpha also generally argues a rule prohibiting a finding of personal knowledge based on information initially learned from the attorney would "detrimental to the broad discovery practices of our judicial system." *Id.* Regarding Chaney's objections to Paragraphs 11 and 12, Alpha argues the statements are not conclusory, but simply factual statements, made by someone with personal knowledge. *Id.*

As to the timeliness issue, Chaney has failed to show how one day's tardiness in the filing of an affidavit is prejudicial. In fact, Chaney herself stated in her motion to strike that her attorneys would not normally be concerned with such a small delay. Chaney wishes to take a hard line with Alpha's filing deadlines for the affidavit in retaliation for Alpha's hard line regarding the payment deadline of May 17, 2012. Such a position might hold some sway on the playground at recess, but Chaney has shown absolutely no prejudice, and admits such. Chaney's timeliness objection is denied as it is wholly without merit.

Regarding Paragraph 2 of the Rai Affidavit, Chaney states Rai could not have personal knowledge of the attorney fees and costs incurred in the Chaney matter because he did not do the legal work or keep track of the firm's billed time. Defendants' Motion to Strike, p. 3. This is a stretch to say the least, as it is reasonable (and even expected) that a client would have knowledge of the fees and costs associated with a lawsuit because they are getting billed for those amounts. Rai does

not have to personally do the legal work in order to know how much he is getting billed for it. Paragraph 2 is admitted.

Chaney argues that Paragraph 3 is inadmissible because Rai could not know Chaney and five other residents requested the lien amounts because this was a discussion between attorneys, not between himself and the residents. Defendants' Motion to Strike, p. 3. However, as manager of Alpha, it is reasonable to expect Rai would know Chaney and the others requested this information as Rai's attorney would have consulted with Rai on those amounts. Paragraph 3 is admitted.

Regarding Paragraph 5, Chaney argues Rai had no personal knowledge of when the sum necessary for release of the lien was provided, but was informed of this by his attorney, as the amounts were attorney fees. Defendants' Motion to Strike, pp. 3-4. As stated above, it is reasonable to conclude Rai, as manager of Alpha, would have personal knowledge of what was owed, even if they were attorney fees because Alpha is getting billed for those fees. Paragraph 5 is admitted.

Chaney claims Paragraph 6 should be excluded because Rai could not have personal knowledge of Chaney depositing the lien amounts with the Court, that such resulted in a delay resulting in additional interest and attorney fees. Defendants' Motion to Strike, p. 4. However, this is unpersuasive, as the manager of Alpha would certainly be aware the monies were not paid directly to Alpha and in investigating the situation would find the funds were instead deposited with the Court. Again, as stated above, the amount of attorney fees and costs incurred would be reasonably known by Rai, as manager of Alpha. Paragraph 6 is admitted.

With regard to Paragraph 7, Chaney again questions Rai's personal knowledge of the deposit to the Court and the attorney fees involved. Defendants' Motion to Strike, pp. 4-5. For the reasons stated above, Paragraph 7 is admitted.

Chaney argues Paragraph 8 should be excluded as Rai was not working in his attorney's office and so could not have personal knowledge of when payment was received. Defendants' Motion to Strike, p. 5. Again, as Alpha's manager, it is reasonable to conclude he knew when Chaney paid because Alpha did not receive the monies until five days after the set deadline. For this reason, Paragraph 8 is admitted.

Chaney claims Paragraph 9 should be stricken as Rai has no personal knowledge of the amounts owed, so cannot conclude the amount due under the lien was not satisfied. Defendants' Motion to Strike, p. 5. For the reasons already stated above, Paragraph 9 is admitted.

Regarding Paragraph 10, Chaney argues Rai had no personal knowledge that costs and fees incurred by Alpha had not been paid by the date of the Complaint filing. Defendants' Motion to Strike, p. 5. This is an unreasonable claim as it can reasonably be assumed that if the sums were

paid, the Complaint would not have been filed. For this reason and the reasons already stated above, Paragraph 10 is admitted.

Chaney argues Paragraph 11 should be stricken as Rai does not have personal knowledge of Alpha not engaging in the business of collecting debts. Defendants' Motion to Strike, p. 6. Again, this is an unreasonable claim as Rai is the manager of Alpha and certainly would have personal knowledge of what businesses Alpha is engaged in. Chaney seems to forget that while Rai may make a statement based on personal knowledge, it does not necessarily follow that this Court will believe it. Based on Rai's position as Alpha's manager, Paragraph 11 is admitted.

Chaney also claims Paragraph 12 should be stricken as Rai cannot conclude "corporate" is not limited to agents of a corporation. Defendants' Motion to Strike, p. 6. However, Rai is only testifying as to what his subjective intention was. Again, his making the statement does not necessarily mean this Court believes such statement of Rai's subjective intention. This Court can and will make its own determinations as to the weight it gives to each affidavit, and the statements therein). For this reason, Paragraph 12 is admitted.

With regard to the Smith Affidavit (filed March 28, 2013), Chaney objects to Paragraphs 3 and 4 on the grounds of hearsay regarding the accuracy of the amount of the sums owed, all but the first sentence of Paragraph 5 as conclusory statements without adequate foundation, Paragraphs 6-9 as conclusory statements without adequate foundation, Paragraph 10 as irrelevant, Paragraph 11 on grounds of hearsay and lack of foundation, Paragraph 12 as conclusory and on hearsay grounds, Paragraph 13 as conclusory without adequate foundation, Paragraph 14 on the grounds that the Declaration speaks for itself, and Paragraph 15 as conclusory without adequate foundation. Defendants' Motion to Strike, pp. 7-9. In response, Alpha simply states the Smith statements are statements of fact and not conclusory. Plaintiff's Supplemental Opposition to Defendants' Motion for Summary Judgment, pp. 3-4.

Regarding Paragraphs 3 and 4 of the Smith Affidavit, Chaney argues the May 15, 2012, letter from Smith to Alpha is hearsay, however it appears from the objection Alpha is not disputing the letter can be used to show how much Alpha claimed was owing, but disputes it being used to show the amount was accurate. Defendants' Motion to Strike, p. 8. Based on this limited objection, Paragraphs 3 and 4 are not hearsay, as they are not submitted for the truth of the matter asserted (sums are accurate and owing).

Chaney objects to all but the first sentence of Paragraph 5, arguing the statements regarding additional fees incurred are conclusory. Defendants' Motion to Strike, p. 8. As the attorney on the case, Smith would certainly have personal knowledge of what attorney fees and costs were incurred in this lawsuit. For these reasons, Paragraph 5 is admitted. Smith's statement that "Some of the additional fees were incurred in preparation of a Complaint against Chaney; however, fees

were also incurred dealing with Chaney's attorney." is so ambiguous, it is of little use. However, being of little use does not affect its admissibility.

Chaney argues Paragraphs 6-9 regarding communications between Smith and Wetzel are without foundation and conclusory. Defendants' Motion to Strike, p. 8. However, in reviewing those particular paragraphs, they appear to be nothing more than mere statements of facts, perceived by Smith as Alpha's attorney As such, Paragraphs 6-9 are admitted.

Regarding Paragraph 10, Chaney argues the statement of the intent of the letter describes Smith's state of mind, which is irrelevant and should be stricken. Defendants' Motion to Strike, p. 8. Upon reading the statement, it appears this is relevant because it goes to the reasoning of Alpha in bringing this lawsuit. Paragraph 10 is admitted.

Chaney objects to Paragraph 11 as hearsay regarding the additional attorney fees. Defendants' Motion to Strike, p. 8. However this likely is not hearsay as it is arguably not offered to prove the truth of the matter asserted, but rather offered to show the effect on the listener, to show Smith pursued a course of action based on this communication from his client. Paragraph 11 is admitted.

Chaney next objects to Paragraph 12 as hearsay and conclusory, stating the billings have not been produced. Defendants' Motion to Strike, p. 8. It appears from the objection Chaney's position is "the billing should be produced so that the Court and Mrs. Chaney can actually review what these documents say." *Id.* Chaney should be reminded however, that a Motion to Strike is not a substitute for a discovery request. Smith is the attorney on the case and as such, reasonably has personal knowledge of the fees incurred. The fact that Smith has not attached the billing statements to his affidavit are certainly potentially harmful to his credibility but certainly not lethal as to admissibility. This Court can weigh the evidence as it sees fit. For this reason, Paragraph 12 is admitted.

Regarding Paragraph 13, Chaney argues the statements regarding alleged attorney fees incurred is conclusory and lacks foundation. For the reasons stated above, Paragraph 13 is admitted.

Regarding Paragraph 14, it is not clear to this Court exactly what Chaney is objecting to, as she objects to the entire paragraph, but then goes on state she "agrees the Declaration says the Association only has a right to actual attorney fees," which is the language of Paragraph 14. Defendants' Motion to Strike, p. 8. So it appears Chaney simultaneously agrees with the statement, yet wants it excluded. All Smith is doing is regurgitating the language set forth in the Declaration. Thus, he is setting forth a fact, not a conclusion. Paragraph 14 is admitted.

Chaney lastly argues Paragraph 15 should be stricken as it is conclusory and lacks foundation, regarding the reasoning the attorney fees were passed on to Chaney. Defendants' Motion to Strike, p. 9. The paragraph is actually somewhat unintelligible. The paragraph reads:

> 15. It should be noted that the reason these fees were passed on to Chaney resulted from the actions of the Chaney failing to meeting a reasonable pay off deadline. If the payoff had been made pursuant to the deadline provide by my client, these fees would not have been passed on.

Affidavit of Peter J. Smith, IV, p. 3, ¶ 15. Again, this statement simply states a fact, the reason the fees were incurred, from Smith's perspective. However, the language that the pay-off deadline was "reasonable" is conclusory, and is stricken. It is up to this Court's discretion to determine whether the statement that the fees would not have been passed on had the payoff date been met should be allowed. It seems like it is simply a flip of the earlier statement, unnecessary maybe, but not harmful.

IV. ANALYSIS OF CHANEY'S MOTION FOR SUMMARY JUDGMENT.

A. There is a Dispute of Fact as to Whether Chaney Owes Money to the Association or Alpha and There is a Dispute of Fact as to "actual attorney fees".

Chaney's argues the alleged additional charges from Alpha are not "actual attorney's fees" as contemplated by the Idaho Condominium Property Act and the Declaration. Memo in Support, p. 8. The Idaho Condominium Property Act I.C. § 15-1518 deals with condominium assessments and states such assessments, as well as other costs, including attorney's fees "shall be and become a lien upon the condominium assessed..." I.C. § 15-1518. The Declaration defines assessments in Section 1.2 and in Section 6.1 states in part: "[a]ll assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Completed Unit against which each assessment is made .." Baillie Affidavit, Exhibit 1, Ex. A, p. 11. Section 6.10 of the Declaration, pertaining to enforcement of assessment obligations, states in part: "[t]he Board may impose reasonable monetary penalties, including actual attorneys' fees and costs .." Baillie Affidavit, Exhibit 1, Ex. A, p. 14. Chaney argues she paid the $8,920.14 assessments following a ruling by Judge Simpson in *Alpha v. Conley,* Kootenai County Case No. CV 2011 9436. Memo in Support, p. 7. Specifically, Chaney claims after the ruling in *Alpha v. Conley,* she received a letter from Alpha's attorney dated May 15, 2012, and allegedly e-mailed May 16, 2012 stating:

> If the funds are not delivered on May 17, 2012 at 4:00 p.m., an additional fee of $500 to each of your clients will be incurred for the preparation of the foreclosure complaint. As a courtesy to you and your clients, we have not passed on the cost

> of preparing the complaints to your clients, but will do so after 4:00 p.m. on May 17, 2012.

Memo in Support, p. 10.

Chaney claims on May 17, 2012 Judge Haynes, acting for Judge Luster, signed an order granting disbursal of the deposited funds, though the funds were not available until May 21, 2012. Memo in Support, p. 10. Chaney states she is not sure what fees and costs are being incurred and claims she has not been provided with proof of such. Memo in Support, p. 11. Chaney also states Alpha's refusal to verify the costs and fees is a violation of the FDCPA, an argument which will be discussed below.

Chaney also claims the alleged costs incurred are an unlawful penalty, as the order to disburse the funds was signed by Alpha's stated deadline and that the funds were not disbursed until four days later was not the fault of Chaney. Memo in Support, pp. 12-13. Chaney posits it is unreasonable to think Alpha incurred over $3,000 in new fees in four days. Memo in Support, p. 13.

Alpha in its response states it agreed to waive attorney fees related to Chaney's matter if payment was made by May 17, 2012, and when payment was not made by that deadline, the waived fees were incurred. Memo in Opposition, p. 2. This Court is forced to infer (as Alpha does not bother stating it outright in its memorandum) that the $3,000* fees contested by Chaney were not for the drafting of a future complaint but rather for previously incurred attorney fees.

In any event, there is clearly conflicting evidence regarding whether or not Chaney owes additional fees under the lien. It is noteworthy that while Smith in his affidavit states he incurred $2,850.00 in fees between April 14, 2012, and May 15, 2012, he does not bother to attach any billing statements to support that claim. This is a factor which goes to Smith's credibility, but which is not fatal to establishing there is a genuine issue of material fact here. While it may be incredible to imagine how over $3,000 in attorney fees were incurred in such a short time (48 hours), that is for a jury to decide. On this ground alone, summaryjudgment must be denied.

B. Even if the Association Materially Breached the Declaration, Such Breach Does Not Excuse Chaney's Performance.

Chaney also argues the Association materially breached the Declaration and thus she is excused from the requirement to pay assessments. Memo in Support, p. 14. This same argument was made in by Conleys (who were represented by the same attorneys as Chaney in the instant case) in *Alpha Holdings v. Conley.* After reviewing Chaney's arguments in the present case and Judge Simpson's memorandum decision in *Alpha Holdings v. Conley,* this Court finds Judge Simpson's

memorandum decision in *Alpha Holdings v. Conley* persuasive. What follows is the relevant excerpt:

Breach of the Declaration gives rise to an action in breach of contract. *Asbury Park, LLC v. Greenbriar Estate Homeowners'Ass'n, Inc.*, ___ P.3d ___.2012 WL 75322 (January 11, 2012). In Idaho, a material breach of contract an excuse the requirement of a payment due under a contract. In *JP. Stravens Planning Associates, Inc. v. City of Wallace,* 129 Idaho 542, 545, 928 P.2d 46, 49 (Ct. App. 1996), the court defined a material breach:

The more appropriate inquiry is whether Stravens' failure to perform in a workmanlike manner was a "material" breach of the contract. If a breach of contract is material, the other party's performance is excused. *Ervin Const. Co. v. Van Orden,* 125 Idaho 695, 700, 874 P.2d 506, 511 (1993); *Enterprise, Inc. v. Nampa City,* 96 Idaho 734, 740, 536 P.2d 729, 735 (1975); *Ujdur v. Thompson,* 126 Idaho 6, 878 P.2d 180 (Ct.App.1994); *Mountain Restaurant Corp. v. ParkCenter Mall Associates,* 122 Idaho 261, 265, 833 P.2d 119, 123 (Ct.App. 1992). "A substantial or material breach of contract is one which touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract." *Ervin Const. Co.,* 125 Idaho at 699, 874 P.2d at 510. *See also Enterprise, Inc.,* 96 Idaho at 740, 536 P.2d at 735; *Ujdur,* 126 Idaho at 9, 878 P.2d at 183. A breach of contract is not material if substantial performance has been rendered. *Mountain Restaurant Corp.,* 122 Idaho at 265, 833 P.2d at 123. Substantial performance is performance which, despite a deviation from contract requirements, provides the important and essential benefits of the contract to the promisee. *Id.* Whether a breach of contract is material is a question of fact. *Ervin Const. Co.,* 125 Idaho at 700, 702, 874 P.2d at 511,513.

Id. at 545, 928 P.2d at 49.

Although a material breach of contract can excuse another party's performance, this does not end the analysis. Plaintiff argues that while the excusal of performance may have been proper under the facts in *JP. Stravens,* here, the Court is dealing with a very specific type of contract, for which the general rule permitting a party to a contract to withhold performance does not apply. Thus, the issue properly before the Court is whether a condominium owner may withhold payment of assessments for an alleged breaches(es) of a Declaration by an association. There is no controlling case law in the state of Idaho which directly answers this question. Therefore, the Court is left to look for authority either in the statutes governing condominium associations, or the language of the parties' contract.

Idaho's Condominium Property Act is set forth at Title 55, Chapter 15, Idaho Code I.C. § 55-1518 states in pertinent part that

[a]n assessment upon any condominium made in accordance with the declaration, any recorded by-laws, or any duly promulgated project regulation, *shall be a debt of the owner thereof at the time*

the assessment is made. The amount of any assessment, together with those other charges thereon, such as interest, costs (including attorney's fees), and penalties, which may be provided for in the declaration, shall be and become a lien upon the condominium assessed when the management body causes to be recorded with the court recorder of the county in which such condominium is located a notice of assessment ...

...

Such lien may be enforced by sale by the management body, its attorney or other person authorized to make the sale, after failure of the owner to pay such an assessment in accordance with its terms, such sale to be conducted in the manner permitted by law for the exercise of powers of sale in deeds of trust or any other manner permitted by law. (Emphasis added). While this statute provides that an assessment becomes the debt of the owner at the time the assessment is made, the statute does not directly address the remedies, if any, available to an owner when an association breaches the Declaration. The Court agrees with Defendants that the Act does not directly address the remedies available to an owner upon breach by an Association.

Additionally, the Declaration does not explicitly permit, or prohibit, the withholding of assessments under the facts before this Court. Article 6 of the Declaration provides, in part:

6.1. *Creation of the Lien and Personal Obligation of Assessments.* The Declarant, for each Completed Unit owned within the Project, hereby covenants, and each Owner of any Completed Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein:

a. Regular Assessments;

b. Extraordinary Assessments; and

c. Special Assessments.

All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Completed Unit against which each Assessment is made, the lien to become effective upon recordation of a Notice of Assessment Lien by the Board or upon delivery of written notification to the Owner. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use

or enjoyment of any of the Common Area or any other part of the Project, or by the abandonment of his or her Unit.

6.2. *Purpose of Assessments.* The Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of all the Owners of Units in the entire Project and/or for the operation, maintenance, improvement, repair, and replacement of the Common Area for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repair, and replacement of those elements of the Common Area which must be replaced on a periodic basis ...

6.10 *Enforcement of Assessment Obligation Priorities,* Discipline. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge equal to five percent (5%) of the Assessment (but not less that $10.00) shall be added to and collected with the Assessment. Additionally, if any part of any Assessment is not paid and received by the Association or its designated agent within thirty (3) days after the due date, the total unpaid Assessment (including the late charge) shall thereafter bear interest at the rate of sixteen percent (16%) per annum until paid.

Each unpaid Assessment .. shall constitute a lien on each respective Unit ...

By this language, as with the language of I.C. 55-1518, assessments must be paid when they are assessed. The Court finds that this language does not, however, directly address the issue before the Court. Plaintiff argues that if the Act and Declaration fail to adequately address the issue, the Court should adopt the rule set forth in the Restatement (Third) of Property Servitudes Section 6.5, comment e. Comment e states:

e. Assessment obligation is independent of association duties to owners or side deals with developer. Because of the importance of maintaining the association's income stream, the owners of individual properties are not entitled to withhold assessments to set off against defaults by the association in fulfilling its duties to the property owner. Nor are members entitled to set up agreements reached with the developer as defenses to the obligation to pay assessments. In the absence of an express reservation of power in the declaration, the developer does not have the power to waive the assessment obligations imposed on property within the common-interest community.

This Court "will not adopt a Restatement provision if it is inconsistent with Idaho precedent, a different formulation resolve[s] the issue, or the issue can be resolved by current Idaho law." *Asbury Park,* _ P.3d at 6 (quoting *Estate of Skvorak v. Sec. Union title Ins. Co.,* 140 Idaho 16, 22, 89 P.3d 856, 862 (2004)). Therefore, the Court cannot adopt the Restatement if Idaho law

"provides a means by which to resolve the parties' ... dispute." *See Id.* Here, either Idaho law nor the plain language of the Declaration adequately resolve the parties' issue. Therefore, the Court may adopt the Restatement to aid in its determination.

In addition to urging the Court to adopt the Restatement, Plaintiff cites out of state authority to support the same conclusion: that owners are not permitted to withhold assessments to set off against defaults by an association, and that p7ublic policy supports this conclusion because aggrieved owners should not have the power to cut off an association's income stream to the detriment of the association and other owners.

Plaintiff first *cites Park Place Estates Homeowners Assn. v. Naber,* 29 Cal.App.4th 427, 35 Cal.Rptr.2d 51 (1994). *Park Place* was an action by a condominium homeowners association against an owner, wherein the association sought injunctive relief to make repairs to the defendant's unit after defendant refused to permit the repairs. *Id.* at 429. Injunctive relief was granted, the repairs were performed, and the owner cross-complaied, alleging negligent performance of the repairs. *Id.* The association then amended its complaint, seeking to foreclose an assessment lien and requesting damages. *Id.* The trial court granted a motion later raised by the association to exclude any evidence that the owner was entitled to withhold or set off his assessment obligations because the association had allegedly failed to maintain the common area, and the owner appealed. *Id.* at 430-31. The appellate court held:

The Legislature has enacted very specific procedural rules governing condominium assessments. (See Civ. Code, §§ 1366, 1367.) Condominium homeowners associations *must* assess fees on the individual owners in order to maintain the complexes. (Civ. Code, § 1366, subd. (a).) The assessment "shall be a debt of the owner ... at the time the assessment ... [is] levied." (Civ. Code, § 1367, subd. (a).) When an owner defaults, the association may file a lien on the owner's interest for the amount of the fees. (Civ. Code, § 1367, subd. (b).) If the default is not corrected, the association may pursue any remedy permitted by law, including judicial foreclosure or foreclosure by private power of sale. FN7 (Civ. Code, § 1367, subd. (d).)

FN7 The CC&R's contain parallel provisions as to the procedures for imposing monthly assessments and remedies for nonpayment of such assessments. These provisions state the purpose of the assessment "is to promote the recreation, health, safety, and welfare of the residents in the Project and for the improvement and maintenance of the Common Area for the common good of the project." Pursuant to the CC&R's, an assessment is a personal obligation of the owner on the date the assessment falls due.

These statutory provisions reflect the Legislature's recognition of the importance of assessments to the proper functioning of condominiums in this state. Because homeowners associations would cease to exist without regular payment of assessment fees, the Legislature has created procedures

for associations to quickly and efficiently seek relief against a nonpaying owner. Permitting an owner to broadly assert the homeowners association's conduct as a defense or "setoff" to such enforcement action would seriously undermine these rules. (See also *Baker v. Monga* (1992) 32 Mass.App. 450, fn. 8 [590 N.E.2d 1162, 1164] ['The independent nature of the covenant to pay in timely fashion common charges to the condominium unit owner's organization is implicit in the contractual agreement of the association's members that maintenance charges and other proper assessments are necessary to the sound ongoing financial management and stability of the entire complex."].)

Id. at 431-32, 35. Additionally, while not explicitly deciding the issue of other an owner is permitted to withhold assessments if an association fails to perform its obligations under a declaration, the *Park Place* court noted that:

... courts in other states have refused to permit an owner to withhold payment of lawfully assessed common area charges by asserting an offset right against those charges. These courts have emphasized the importance of assessment fees to condominium management and the absence of legislative authorization for an offset. (*Trustees of Prince Condo. Tr. v. Prosser* (1992) 412 Mass. 723 [592 N.E.2d 1301, 1302] ["A system that would tolerate a [condominium] owner's refusal to pay an assessment because the unit owner asserts a grievance ... would threaten the financial integrity of the entire condominium operation."] see *also, Rivers Edge Condominium Ass'n v. Rere, Inc.* (1990) 390 Pa.Super. 196 [568 A.2d 261,263]; *Newport west Condominium Ass'n v. Veniar* (1984) 134 Mich.App. 1 [350 N.W.2d 818, 822-823]; accord, Advising California Condominium & Homeowners Associations (Cont.Ed.Bar 1991) § 6.43, pp. 295-296.)

In *Abbey Park Homeowners Association v. Bowen,* 508 So.2d 554 (1987), the defendant failed to make her monthly assessments of the common expenses, which resulted in plaintiff filing an action to foreclose a claim of lien against her. Bowen filed an affirmative defense, asserting that she was not liable for the common area assessments because plaintiff failed to maintain the common areas as required by the CC&Rs. *Id.* at 554-55. Evidence of defendant's affirmative defense was presented at trial, and a jury found that the plaintiff breached the declaration by failing to maintain the common elements. *Id.* at 555. The trial court entered judgment denying plaintiffs claim for foreclosure. *Id.* On appeal, the court said:

In the instant case, it is not disputed that Bowen has not paid assessment fees since July 1983, and at the time of trial, she owed $1,977.60 plus interest. Bowen's duty to pay the assessment fees was conditioned solely on her acquisition of title as stated in the declaration. Her only defense asserted at trial was Abbey Park's failure to maintain the common elements. However, the affirmative defense of failure to maintain the common elements is inadequate as a matter of law. *Sandles v. Sheridan Lakes Condominium, Inc.,* 388 So.2d 1096 (Fla. 4th DCA 1980). As this defense is inadequate as a matter of law, the trial court erred in entering final judgment in favor of Bowen as

to the foreclosure suit. Therefore, we reverse and remand for entry of a final judgment for Abbey Park on its foreclosure claim.

Id. at 555.

Next, Plaintiff cites *Forest Villas Condominium Association, Inc. v. Camerio,* 422 S.E.2d 884 (1992). There, plaintiff sued defendant owners to recover condominium fees. *Id.* at 617-18, 422 S.E.2d at 885. Defendants alleged a number of affirmative defenses, as well as a counterclaim asserting that the Association failed to honor its obligations by performing maintenance and making repairs on the units owned by Defendants, that the Association had mismanaged funds paid by defendants, and that the Association had discriminated against defendants. *Id.* at 618, 422 S.E.2d at 885. In part, they sought an accounting of the monies handled by the association, reimbursement for expenses they incurred due to the Association's alleged breach, and a declaration that certain unspecified actions of the Association in contravention of Georgia law and the condominium declaration, bylaws, and rules be declared null and void. *Id.* The Association moved for summary judgment, which was denied. *Id.* at 618, 422 S.E.2d at 885-86. The trial court denied the motion because it concluded, in part, that "the word 'exempt' found in O.C.G.A. § 44-3-80(d) does not mean that the Defendants in this case could never have any justification for withholding the assessments charged to them." *Id.* at 618, 422 S.E.2d at 886. That statutory section stated that "No unit owner other than the association shall be exempted from any liability for any assessment under this Code section or under any condominium instrument for any reason whatsoever, including, without limitation, abandonment, nonuse, or waiver of the use or enjoyment of his unit or any part of the common elements." *Id.* (Citation omitted). On appeal, the Court held:

The language is plain and susceptible of only one interpretation insofar as it relates to the defenses. There is no legal justification for a condominium owner to fail to pay valid condominium assessments. This reflects a clear choice by the legislature that the owner's obligation to pay assessments be absolute and a condominium unit owner involved in a dispute with the condominium Association about its services and operations may not exert leverage in that controversy by withholding payment but must seek other remedy. The obligation to pay the assessment is independent of the Association's obligations to provide services. This is necessary because the communal business of the condominium Association for the benefit in common of all condominium owners continues unabated during the pendency of any such individual dispute. The public policy expressed in the statute assures that fulfillment of obligations and the functioning of a condominium association as a whole not be jeopardized or compromised by individual disputes, which may or may not be meritorious.

Id. at 618-19, 422 S.E.2d at 886 (internal citations omitted).

Here, Plaintiffs authority, while out of state and not binding, is very persuasive. It is directly on point with regard to condominium association assessments, and provides sound policy behind the limitation on the right to withhold assessments for perceived violations by an association. The out of state authority is also on point with the Restatement, which this Court finds prudent to adopt in the face of a lack of Idaho authority on point.

Further, even though Title 55, Chapter 15, Idaho Code and the Declaration do not specifically address the right to withhold assessments under the circumstances, I.C. § 55-1518 provides that an assessment becomes the debt of the owner at the time of assessment, and permits an association to file a lien on the owner's interest in the event of owner default. This "statutory provision [ ] reflect[s] the Legislature's recognition of the importance of assessments to the proper functioning of condominiums in this state." *See Park Place Estates,* 29 Cal. App.4th at 432. "Because homeowners associations would cease to exist without regular payment of assessment fees, the Legislature has created procedures for associations to quickly and efficiently seek relief against a nonpaying owner." *Id.* Further the Declaration contains language making assessments the debt of the owner at the time they are levied, and does nto allow withholding of assessments even in the event that an owner chooses to waive the right to use or enjoyment of any of the Common Area or abandons his or her unit. The assessments levied by the Association are expressly established to "promote the health, safety, and welfare of all the Owners of Units in the entire Project." Thus, there can be no dispute that the Declaration does not contemplate an owner's ability to withhold assessments based upon a personal belief that the Association is not acting in conformity with the Declaration, and by withholding assessments, the owner injures every other owner by depleting the capital available to the Association to perform its duties.

While Defendants are correct that Declaration is a contract, Plaintiff has convinced the Court, based upon policy considerations inherent in the Condominium Act, the language in the Declaration, the Restatement, and out of state case law, that payments of assessments under the circumstances in this case must be distinguished from other types of contracts for the purposes of determining whether a material breach may excused a party's performance. Therefore, the Court finds that Defendants acted improperly by withholding assessments, and withholding assessments because of an alleged breach of the Declaration by the Association does not hinder the Association's ability to foreclose for nonpayment of these assessments. Therefore, Plaintiff is entitled to summary judgment.

April 6, 2012, "Memorandum Decision and Order Granting in part and Denying in Part Plaintiffs Motion to Strike, Granting Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Continue and Denying Defendants' Motion to Consolidate", Kootenai County Case No. CV 2011 9436, pp. 9-18; Baillie Affidavit, Exhibit 8, pp. 9-18.

Chaney argues Judge Simpson made this ruling without knowing Judge Luster in *Conley et al. v. Black Bay Village Owners Ass'n et al.,* would later hold the Declarant no longer owns the clubhouse/swimming pool (after foreclosure), rather each condominium owner owns 2.5% of the clubhouse/swimming pool, it as an undivided interest, and this fact is sufficient for this Court to make a ruling in her favor. Memo in Support, pp. 16-17. However, Judge Simpson's reasoning above applies whether the Association wrongfully tried to sell the clubhouse/swimming pool or not. Under the analysis above, condominium assessments are made for the benefit of all the owners, and failure to pay those assessments similarly harms all owners, regardless of the alleged breach by the Association. Policy dictates the proper remedial measure is a lawsuit, rather than the withholding of assessments. Under the reasoning set forth above, the motion for summary judgment on this ground must be denied.

C. The Board did not violate the Bylaws in conducting its meetings.

The final argument from Chaney on this particular issue is she has already paid more than she owes to the Association because the increase of the assessment from $75 to $150 each month was wrongful and in violation of the Declaration. Memo in Support, p. 19. Chaney argues at the time of the assessment increase, there were no owners on the Board, in violation of the Bylaws. Again, this argument was already made to Judge Simpson in *Alpha Holdings v. Conley.* After reviewing that decision and reading Chaney's arguments in the present case, this Court finds the reasoning of Judge Simpson to be much more persuasive:
The Bylaws state, in part:

3.1 *Number and Term of Directors.* The Board shall consist of three (3) Directors, each of whom shall be an Owner of a Unit or an agent of a corporate Owner. The initial Directors shall serve until the first annual meeting of the Association.

Defendants assert that according to the current ownership of the condo units, only one possible corporate owner exists. Additionally, only one "owner of a unit" could possibly be on the board, an individual named Rosemary Mullan. Thus, given the character of the board of directors, such board was not able to act.

In support of their argument that no other "owners" were on the Board, Defendants cite *Investors Ltd. of Sun Valley v. Sun Mountain Condominiums, Phase I, Inc. Homeowners Ass'n,* 106 Idaho 855, 857, 683 P.2d 891, 893 (Ct.App. 1984). In *Investors Ltd, the* court held that "owner" was defined by reference to physically existing condominium units, rather than to physically existing units *and* all platted condominiums, whether built or unbuilt. *Id.* at 857-58, 683 P.2d at 893-94. However, the court in *Investors Ltd.* specifically limited its holding to the facts in that case, and based its decision upon the particular language of the relevant condominium documents. *Id.* at 855-856, 683 P.2d at 891-92.

Here, the term "Owner" is defined in Section 1.17 of the Declaration, and provides as follows:

Owner or Owners. The record holder or holders of title to a Unit in the Project. This shall include any person having title to any Unit, but shall exclude persons or entities having any interest merely as security for the purpose of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the title owner, shall be considered the "Owner."

A "person" is defined in Section 1.18 as "Any individual or any corporation, limited liability company, joint venture, limited partnership, partnership, firm, association, trust, or other similar entity or organization." The term "Unit" is used separately from the term "Completed Unit." *See* Section 1.23. "Completed Unit" refers "only to those Units which shall be substantially completed, or with respect to which a Certificate of Occupancy has been issued." "Unit," however, is also used in Section 1.23 to refer to, in part, unbuilt units.

Based on the foregoing, *Investors Ltd.* is distinguishable. "Owners" include "persons," which can include limited liability companies. "Units" include unbuilt units. Thus, although Northwest Group LLC's "Units" may not be "Completed Units" (Which is not entirely clear from the record), Northwest Group, LLC is nevertheless an "Owner" who owns multiple Units. Plaintiff has highlighted facts in the record showing that other members of the Board include Mike Rai, Nick Rai, and Tammy Morris, each of whom are agents of Northwest Group, LLC. Therefore, the Court finds that the Board was properly comprised pursuant to the Bylaws, and the Board therefore had authority to act when filing the lien against Defendants' Property.

April 6, 2012, "Memorandum Decision and Order Granting in part and Denying in Part Plaintiffs Motion to Strike, Granting Plaintiffs Motion for Summary Judgment, Denying Defendants' Motion to Continue and Denying Defendants' Motion to Consolidate", Kootenai County Case No. CV 2011 9436, pp. 8-9; Baillie Affidavit, Exhibit 8, pp. 8-9.

This Court agrees entirely with Judge Simpson's decision and his reasoning supporting that decision. As a result, Chaney's motion for summary judgment on this ground must be denied.

Chaney additionally argues the increase in the assessment from $75 to $150 was illegal because the increase was by more than 20% in violation of Section 6.3 of the CC&R's and also the Association failed to give 60 days' notice prior to the implementation of the increased assessments in violation of that same section. Memo in Support, p. 21. However, as explained above, an alleged material breach of a contract is not a defense to nonpayment of assessments. On that basis, this part of the motion for summary judgment should be denied.

D. The Idaho Collection Agency Act Does not Apply; Alpha Has a Right to Foreclose on Chaney's Condominium; Alpha and PITA Have a Legal Right to Foreclose on a Lien in the State of Idaho.

Chaney argues Alpha is engaging in collection activity in violation of I.C. § 26-2223. Memo in Support, p. 22. The Idaho Collection Agency Act is found at I.C. § 26-2221 et seq. Idaho Code § 26-2223 states:
No person shall without complying with the terms of this act and obtaining a license from the director:

(2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(6) Engage or offer to engage in this state, directly or indirectly, in the business of collection any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.

I.C. § 26-2223. Chaney claims Alpha falls under I.C. § 26-2223(2) because it is "engaging, either directly or indirectly, in the business of collecting or receiving payment for Black Bay Condo Association." Reply, p. 15. Chaney also claims Alpha falls under I.C. § 26-2223(6) as it acquired the indebtedness after Chaney was in default. *Id.* In response, Alpha points to *PurCo Fleet Services, Inc. v. Idaho State Dept. of Finance,* 140 Idaho 121, 90 P.3d 346 (2004).

In that case, PurCo was a company in the business of acquiring, enforcing, and settling rental car damage claims. *PurCo,* 140 Idaho 121, 123, 90 P.3d 346, 348. PurCo and Thrifty entered into a contract wherein Thrifty car rental company assigns "all claims, rights and causes of action" for damaged vehicles to PurCo in consideration for cash payments, training, and consulting services. *Id.* The Department of Finance notified PurCo to immediately cease engaging in collection activity in Idaho until it had qualified under the Idaho Collection Agency Act. *Id.* According to the assignment agreement, Thrifty assigned all claims, rights, and causes of action to PurCo. *Purco,* 140 Idaho 121, 125, 90 P.3d 346, 350. The Idaho Supreme Court held the rental vehicle damage claim, which PurCo collected against the Idaho resident, constituted a claim or other indebtedness under I.C. 26-2223(2). *Id.* The Idaho Supreme Court distinguished between a collection agency that falls within the purview of I.C. 26-2223(2). *Id.* Specifically, if PurCo was attempting to collect on the claim it owned, that is, if Thrifty's claim was assigned in its entirety without recourse, then PurCo would be collecting on its own behalf and thus would not be acting as a collection agency. *Id. PurCo* defined "assignment" as "the transfer of rights or property." *Id.* In order to determine whether an assignment is sufficient as transferring rights in their entirety, the Court looks to the contract between the assignor and the assignee. *Purco,* 140 Idaho 121, 126, 90 P.3d 346, 351.

Specifically, an assignment of the chose in action transfers to the assignee and divests the assignor of all control and right to the cause of action, and the assignee becomes the real party in interest. *Id.*

The Idaho Supreme Court held PurCo collected on Thrifty's behalf rather than PurCo's own behalf, based on a number of specific factors, particularly: 1) the agreement requires Thrifty to sue in its own name in small claims court, which demonstrates Thrifty is the real party in interest as to the claim, rather than PurCo, 2) the agreement requires PurCo to provide Thrifty with information and instruction necessary for Thrifty to prosecute actions in small claims, 3) Thrifty was not divested of control and right to the cause of action, 4) agreement allows Thrifty to access the claim and obtain copies of any correspondence and documents regarding the claim while it is in PurCo's possession and 5) the agreement provided Thrifty had the right to revoke the assignment with thirty (30) days' written notice. *Id.* Based on these factors, the Idaho Supreme Court held it was evident from the agreement that PurCo did not receive a complete assignment of the claim. *Id.*

An assignee for collection holds any proceeds of the assigned claim in trust for the assignor. *Id.* The Idaho Supreme Court held that because the agreement in *Purco* stated the monies collected would be placed in a trust account, from which PurCo disburses the appropriate sums to Thrifty after retaining a percentage of monies collect, the assignment was for the purpose of collection.

The pertinent language of the July 1, 2011, Assignment from Black Rock Village Owner's Association to PITA reads:
For good and valuable consideration, Assignor does hereby assign to Assignee the homeowner's lien ("Lien") on the real property described as

Pursuant to this Assignment, Assignee shall have full authority to enforce the Lien herein assigned and to collect and receive the debt secured by said Lien. Any recovery made on the Lien or the underlying debt shall be applied:

1. First to the costs incurred in collecting on the debt and/or enforcing the Lien,

2. Then to any outstanding balance on the Promissory Note between Assignor (maker) and Northwest Group, LL, a Idaho LLC (payee) dated April 23, 2009 and all assignments, amendments thereto;

3. Any remainder, if any, will be split equally between the Assignor and Assignee.

Complaint, Exhibit 3. Not surprisingly, the subsequent Assignment on November 22, 2011, from PITA to Alpha contains this exact language. Complaint, Exhibit 6.

Comparing the language of the two assignments to the factors highlighted by the Idaho Supreme Court in *PurCo,* it is apparent both assignments in the present case are attempts at a complete assignment. The assignment agreements in the present case do not require the Association to sue in its own name in small claims court, do not require PITA to provide the Association with information and instruction necessary for the Association to prosecute actions in small claims, do not allow the Association to access the claim and obtain copies of correspondence and documents regarding the claim, and do not have a right of revocation. The language in the assignment agreements also seeks to divest the Association of control, as it states PITA will "have full authority to enforce the Lien" and makes no mention of any further control by the Association. What gives pause is the third paragraph in each assignment agreement, the provision regarding recovery on that lien, that "Any remainder, if any, will be split equally between the Assignor and Assignee." This language is similar, though not identical to the language in *PurCo.* However, the big difference between the agreement in *PurCo* and the agreement in the present case, is that in *Purco,* the assignment agreement stated the monies collected would be placed in a trust account and "the appropriate sums" disbursed to Thrifty, after PurCo took out its percentage. No mention is made of what the "appropriate sums" were, but it seemed implied the sums referenced were sums originally owed to Thrifty. In the present case, the agreement states the monies collected will first go to the costs of debt collection and/or lien enforcement, then to the balance of the original Promissory Note and the remainder to be split between PITA and the Association. The language is not the same as that in *PurCo,* but when reading the provision in the present case as a whole, it is clear the Association is dictating where the monies go and in what priority, and not PITA. Certainly that is "control", but it is not control of where the assignee goes from the point of assignment on. It really is only control in that the assignor has controlled by the agreement, that the assignor gets half the left over proceeds. While the fact that the assignor controlled the return of half the left over proceeds when it entered into the agreement, the Court finds that is not a factor that would weigh in favor of this being an assignment for collections (and falling under the Act). Looking at this issue from simply an ownership (not "control") standpoint, both assignments are still a 50/50 distribution of remaining proceeds between the Association and PITA (and then PITA and Alpha). Even if this Court were to just look at the division of proceeds, they assignor and assignee would at best be co-owners. But it is not just ownership, it is "the transfer of rights or property" as stated by the Idaho Supreme Court. 140 Idaho 121, 125, 90 P.3d 346, 350. Specifically, an assignment of the chose in action transfers to the assignee and divests the assignor of all control and right to the cause of action, and the assignee becomes the real party in interest. *Id.* While the assignor in each of these assignments gets half the left over proceeds, there appears to be absolutely no "control" remaining with the assignor, all "control" is given to the assignee in each assignment.

However, it is not necessary for this Court to reach this issue *because Alpha is not seeking to collect on the debt owed but rather to enforce and foreclose on the lien.* Idaho has no case law regarding whether a person or entity seeking to foreclose on a security interest is a "debt collector" under I.C. § 26-2223. As discussed below, foreign case law for FRCPA is instructive on this issue

and is persuasive that a foreclosure on a security interest in not a debt collector. As such, the Idaho Collection Agency Act does not apply and the motion for summary judgment is denied on this issue.

E. Alpha Has a Valid Assignment From PITA.

Chaney's next argument is the assignment from PITA to Alpha was not valid because 1) PITA is not authorized to do business in Idaho and 2) was certified by the Secretary of the State of Delaware to no longer be in existence as of June 1, 2011 for failure to pay annual taxes, and the assignment to PITA allegedly occurred on July 1, 2011. Memo in Support, p. 23. The Delaware Limited Liability Act includes provisions pertaining to the cancellation of certificate of formation for failure to pay taxes and the revival of the same. 6 Delaware Code § 18-1108; 6 Delaware Code § 18-1109. The Delaware Limited Liability Act states a domestic limited liability company whose certificate of formation has been canceled (as is the case here), may be revived if the necessary paperwork is filed. 6 Delaware Code § 18-1109(a). That Act also states:

> (c)... All real and personal property, and all rights and interests, which belonged to the limited liability company at the time its certificate of formation was canceled... or which were *acquired by the limited liability company following the cancellation of its certification of formation* ... which were not disposed of prior to the time of its revival, shall be vested in the limited liability company after its revivals as fully as they were held by the limited liability company at, or after, as the case may be, the time its certificate of formation was canceled ...

6 Delaware Code § 18-1109(c) (emphasis added).

The plain language of the Act anticipates a limited liability company can receive property interests after its certification of formation has been cancelled and also can dispose of those interests prior to the certificate being revived. Thus, the fact PITA's certificate of formation was cancelled at the time it received the assignment from the Association and at the time it assigned the interest to Alpha is not dispositive here and Chaney's motion for summary judgment on this issue must be denied.

F. The Declaration Allows Alpha the Right to Sue Chaney to Foreclose its Lien or to Collect the Assessments.

Chaney next argues Alpha has no right to enforce the lien against Chaney because Section 16.1 of the Declaration specifically sets for who can enforce the lien and there no mention of assignees having such a right, therefore Alpha as the assignee does not have that right. Memo in Support,

pp. 22-23. Again, this issue was addressed in *Alpha Holdings v. Conley* and Judge Simpson's reasoning in that case is persuasive:
The Declaration provides, in part:

16.1 *Enforcement. The Association* (acting through the Board), *any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project* shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, *liens, and charges now or hereafter imposed by this Declaration,* and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Association shall be taken on behalf of two (2) or more Unit Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Area or more than one Unit. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

(Emphasis added). Because Plaintiff is not the Association, an owner, or a governmental or quasi-governmental agency or municipality, Defendants argue that Plaintiff is precluded from enforcing the lien; Defendants refer to Section 16.1 as a "restriction which prohibits the assignment of any enforcement right." *Memorandum in Opposition to Motion for Summary Judgment,* at 6.

Simply put, the language of 16.1 does not preclude *assignment* of the right to enforce the Declaration, even assuming (without deciding) that Section 16.1 prohibits enforcement by any person or entity not explicitly named therein. The right to enforce the lien currently before the Court is granted to the Association pursuant to the Declaration, and Idaho statutory law. *See* I.C. § 55-1518. The undisputed facts show that the Association then assigned the right to enforce Defendants' obligations to PITA Group, LLC, which then assigned the enforcement right to Plaintiff. No language in the Declaration prevents this. Therefore, Defendants' argument fails to withstand Plaintiff's motion.

April 6, 2012, "Memorandum Decision and Order Granting in part and Denying in Part Plaintiffs Motion to Strike, Granting Plaintiff's Motion for Summary Judgment, Denying Defendants' Motion to Continue and Denying Defendants' Motion to Consolidate", Kootenai County Case No. CV 2011 9436, pp. 7-8; Baillie Affidavit, Exhibit 8, pp. 7-8. (emphasis in original).

Chaney acknowledges Judge Simpson's earlier decision but urges this Court to separately rule on this issue in favor of her position that only those individuals specifically stated in Section 16.1 of the Declaration are allowed to enforce the lien. Memo in Support, p. 24. Chaney's argument is unpersuasive as Judge Simpson's ruling on the issue is well reasoned. Chaney's argument is unpersuasive as Chaney incorrectly argues this is a restrictive covenant which should not be extended by implication. This is *not* a restrictive covenant against the use of private property. This

provision is simply a provision for enforcement of assessments. Chaney's argument on this point being wholly unpersuasive, the motion for summary judgment on that issue must be denied.

G. The Directors Who Allegedly Assigned the Right to Collect the Chaney Assessment and the Right to Foreclose HAD the Authority to Act for the Association.

The issue of whether the directors fell within the requirements of the Bylaws has already been addressed above, and under that reasoning, the motion for summary judgment on this issue must be denied.

Chaney also argues there was not a quorum of directors present at the meetings, because not all of the directors required for a quorum attended "in person." Memo in Support, p. 25. Section 3.8 of the Bylaws defines quorum as "the presence in person of a majority of the Directors at any meeting of the Board... The vote of a majority of the quorum actually present at any meeting shall constitute the vote of the Board..." *Id.* Idaho Code § 30-3-74(3) states:

> Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Chaney argues the Bylaws are very specific, the Board members must attend in person, which she interprets to mean literally in the flesh. However, the Bylaws mirror the language of I.C. 30-3-74(3) regarding being "present in person." It is reasonable to assume the phrase "presence in person" in the Bylaws carries with it the same meaning as I.C. § 30-3-74(3) allowing participation via means such as teleconference. As such, the quorum was met and this issue of the motion for summary judgment must be denied.

H. Alpha has not violated the Fair Debt Collection Practices Act (FDCPA).

Chaney argues Alpha violated the FDCPA in its collection actions against her. Memo in Support, p. 28. The arguments for the different factors are set forth separately below.

1. Alpha is Not Liable Under the FDCPA Because Alpha is Not a Debt Collector.

The FDCPA defines "debt collector" as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692(a)(6). Section 1692(a)(6) also states that "for the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the *enforcement of security interest." Id.* (emphasis added). Since Idaho has no case law on point, foreign case federal case law becomes helpful. The question to be answered here is whether enforcers of security interests are "debt collectors" for purposes of the FDCPA. There is a split of authority on that subject. However, some courts, including the Eleventh and Sixth Circuit Court of Appeals have held an enforcer of a security interest is not a debt collector for purposes other than Section 1692f(6), as this is the only section the FDCPA expressly states they are applicable to. *Derisme v. HuntLeibert Jacobson P.C.,* 880 F.Supp.2d 311, 323-24 (D.Conn. 2012); *Warren v. Countrywide Home Loans, Inc.,* 342 Fed.Appx. 458, 460 (11th Cir. 2009); *Montogmery v. Huntington Bank,* 346 F.3d 693, 700-01 (6th Cir. 2003). Both circuits have held the purposeful inclusion of enforcers of security interests for one section of the FDCPA "implies that the term debt collector does not include an enforcer of security interests for any other section of the FDCPA." *Derisme,* 880 F.Supp.2d 311, 324. The court in *Derisme* summarized the reasoning of the both circuit courts and while it acknowledged there is still a split of authority on this issue, a majority of courts have concluded that foreclosing on a mortgage does not qualify as debt collection activity under the FDCPA. 880 F.Supp.2d 311, 325.

In making its ruling, the Sixth Circuit Court of Appeals relied heavily on the reasoning set forth in *Jordan v. Kent Recovery Servs., Inc.,* 731 F.Supp. 652, (D.Del. 1990). The Court in *Jordan* found that "although Congress included within the definition of "debt collectors" those who enforce security interest, it limited this definition only to the provisions of § 1692f(6)... '[s]uch a purposeful inclusion for one section of the FDCPA implies that the term 'debt collector' does not include an enforcer of a security interest for any other section of the FDCPA' ". 731 F. Supp. 652, 657; *Montgomery,* 346 F.3d 693, 700. The Court in *Jordan* reasoned the FDCPA was enacted in order to "prevent the 'suffering and anguish' which occur when a debt collector attempts to collect money which the debtor, through no fault of his own, does not have", and is not implicated in the situation of a repossession agency that enforces "present right" to a security interest because an enforcer of a security interest with a "present right" to something is attempting to retrieve something the holder of the security interest still owns. 731 F.Supp. 652, *658; Montgomery,* 346 F.3d 693, 700.

This reasoning can be carried over to the situation in the present case. There is currently a lien on Chaney's property for her alleged failure to pay assessments due. Alpha now seeks to foreclose on that lien (a security interest), which it is entitled to do under the Declaration and assignment. The reasoning *of Derisme, Jordan and Montgomery* are persuasive. Ass such, Alpha is not a "debt collector" under the FDCPA.

While Chaney acknowledges the holdings of these cases, she argues they are not applicable to this case because those cases involved "creditors" which are defined in the FDCPA as "any person who offers or extends credit creating a debt .. but such term does not include any person [who] receives an assignment or transfer of a debt in default." Reply, p. 29. Chaney claims the distinction between a creditor and a debt collector is when the debt was transferred. *Id.* Chaney argues since the transfer here allegedly occurred after the debt was in default, Alpha is a debt collector, not a creditor and the FDCPA applies. *Id.* Chaney supports her argument stating Alpha has pointed to "no legal authority that supports its contention that association dues are analogous to a loan under a deed of trust". *Id.* However Chaney also fails to point to any language in *Derisme* and the other cases that limits the holdings to creditors only. In fact, *Derisme* does not use the term "creditor" but consistently uses the phrase "enforcers of security interests" which does not have such a narrow meaning as "creditor" under the FDCPA. The reasoning *of Derisme* and similar cases is persuasive and Chaney's argument fails.

2. The Condominium Assessments are a "Debt" Under the FDCPA.

Though it is not necessary, given the holding above, it may be helpful to address the question of whether condominium assessments are "debts" under the FDCPA. In support of her argument that the assessments are "debts," Chaney cites a number of federal court of appeals cases holding association dues are a "debt" under the FDCPA. *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC,* 698 F.3d 290 (6th Cir. 2012); *Ladick v. Van Gemert,* 146 F.3d 1205 (10th Cir. 1998) *cert denied* 119 S.Ct. 511, 525 U.S. 1002, 142 L.Ed.2d 424; *Newman v. Boehm, Pearlstein & Bright, Ltd.,* 119 F.3d 477 (7th Cir. 1997). In *Haddad,* the Sixth Circuit Court of Appeals held that a condominium assessment is a debt because the obligation to pay "arose in connection with the purchase of the home itself, even if the timing and amount of particular assessments was yet to be determined." 698 P.3d 290, 294. That court held this fit under the FDCPA definition of "debt": "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes..." *Haddad,* 698 F.3d 290, 293.

In response, Alpha cites a Civil Court case from the City of New York, *Barry v. Board of Mgrs. Of Elmwood Park Condominium II,* 18 Misc.3d 559, 853 N.Y.S.2d 827 (2007), which acknowledged the trend to expand the FDCPA to include the collection of condominium association dues, but held the monthly assessments were are statutory obligation to pay imposed on each unit, rather than a "debt" under the FDCPA. Objection to MPSJ, pp. 10-11. Alpha requests this Court go against the trend and adopt the reasoning of the *Barry* court. However, the trend is not only overwhelming, but the holding in those cases that these dues are a "debt" is quite persuasive. As such, this Court finds the assessments in this case are a debt under the FDCPA. However, as Alpha is not a debt

collector, the motion for summary judgment must be denied. Because the Court does not find Alpha to be a debt collector under the FDCPA, the Court will not analyze Chaney's claims that Alpha used misleading misrepresentations, improper notice, or attempted to collect amounts it was not entitled to collect under that Act.

V. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Chaney's and Alpha's Motions to Strike are DENIED except as to the one limited area in each motion which was GRANTED.

IT IS FURTHER ORDERED Chaney's Motion for Partial Summary Judgment is DENIED.

Entered this 11th day of April, 2013.

.....

John T. Mitchell, District Judge

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

REPLY IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant, the City of Boise City, Idaho ("**Boise City**"), by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and respectfully submits this Reply in Support of Defendant's Cross-Motion for Summary Judgment, as follows:

I. INTRODUCTION

Each side in this case, Defendant Boise City and Plaintiffs Bedard and Musser, an Idaho Partnership, and Boise Hollow Land Holdings, RLLP, (together hereinafter "**Boise Hollow**"), filed a motion for summary judgment. Each party also submitted a brief in support of its motion for summary judgment, and affidavits in support thereof. Each party also moved to strike the affidavit(s) filed by the opposing party. All motions were set to be heard on January 29, 2016, but Plaintiffs requested that all motions be set out to allow Plaintiffs more time to conduct discovery. Defendant stipulated to a two (2) week reset. All motions are now set to be heard on February 16, 2016.

This REPLY IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT addresses and refutes the arguments made by Boise Hollow in PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT. Based on the motions, supporting memoranda, declarations, and affidavits, and pursuant to the great weight of established jurisprudence in the state of Idaho, this Court should grant DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT and summarily deny PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

II. ARGUMENT SUMMARY

A. First, Plaintiffs failed to establish that a valid, permanent easement was created by Tee, Ltd. ("**Tee**"), when Tommy Sanderson ("**Sanderson**"), as Tee's President, executed the Permanent Easement Agreement.

B. Second, at the time the Permanent Easement Agreement was executed, Tee was leasing the Quail Hollow Golf Course ("**Golf Course**").[1] Boise Hollow, in PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, provided no evidence to support its argument that a lessee may burden the servient estate with an easement that continues to exist beyond the termination of the leasehold tenancy. Accordingly, based on the vast weight of Idaho case law, any easement granted by Tee to Vancroft terminated with the lease in October of 2007.

C. Third, if the Court finds that a valid, permanent easement was created in 1991, and if the Court finds that the easement, granted by a lessee, survived the termination of the leasehold estate, the plain language of the Permanent Easement Agreement clearly and unambiguously limited the easement to:

- forty feet (40') in width;
- the dimensions and location expressly identified in the legal description attached to and incorporated into the Permanent Easement Agreement;
- for access and utilities only.

Extrinsic evidence is inappropriate at this phase of the proceedings. Only if the Court finds that the Permanent Easement Agreement is ambiguous should extrinsic evidence be considered. Based on the clear and unambiguous language of the document that granted the easement, the easement was only ever forty feet (40') in width. This is substantiated by the demographics of the Golf Course, specifically the 16th hole at the time of the creation of the Easement Agreement, the Affidavit of Tommy Sanderson and the metes and bounds description

[1] The lots comprising the Golf Course property are commonly referred to throughout pertinent documents as "Lot 2 and Lot 6, Block 1, Nibler Subdivision" (those portions of the Golf Course located north of 36th Street) and "Lot 1, Block 2, Nibler Subdivision" (the portion of the Golf Course located south of 36th Street).

of the easement area (which not only called out the precise dimensions of the easement area, it also specified its exact location).

III. ANALYSIS AND ARGUMENT

A. THE EASEMENT AGREEMENT IS UNAMBIGUOUS AND SPECIFIES A MAXIMUM EASEMENT WIDTH OF FORTY FEET (40') FOR THE PURPOSE OF UTILITIES AND ACCESS WITH NO RIGHT OF EXPANSION.

The plain language of the Easement Agreement should govern the Court's decision to grant the City's Cross-motion for Summary Judgment. Boise Hollow agrees that the plain language of the Easement Agreement governs. However, Boise Hollow's argument asks this Court to go back in time to 1991, to the drafting of the Easement Agreement, and to insert language that does not exist (and to which Sanderson, as the grantor of the 40' Easement, would never have agreed).

The plain language of a contract is controlling when the language is unambiguous. *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 266, 297 P.3d 222, 229 (2012). When the language of a contract is unambiguous, its meaning must be determined from its words. *Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (citing *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004)). The words used by the parties in drafting the contract offer the best evidence of the parties' mutual intent. *USA Fertilizer v. Idaho First Nat. Bank*, 120 Idaho 271, 815 P.2d 469 (Ct.App.1991). The parol evidence rule bars the admission of extrinsic evidence when a court is interpreting a written contract, if the contract is complete and unambiguous on its face. *AED, Inc. v. DDC Investments, LLC*, 155 Idaho 159, 165, 307 P.3d 176, 182 (2013). Likewise, "if the language of the contract is plain and unambiguous, the intention of the parties must be determined by the contract itself. *Rowan v. Riley*, 139 Idaho 49, 54, 72 P.3d 889, 894 (2003). Because the language of the

Easement Agreement is plain on its face, parol evidence is not permitted to determine the parties' intent. Plaintiff Boise Hollow's extensive use of extrinsic evidence, outside the plain language of the Easement Agreement itself, belies its argument that the Easement Agreement is unambiguous.

Boise City maintains that Boise Hollow has failed to make a threshold showing that a perpetual, permanent easement was actually created. However, if the Court finds that the Easement was validly created in 1991, the Court must place a strong emphasis on the written expression of the parties' intent. Restatement (Third) of Prop.: Servitudes § 4.1(d) (2000). In drafting the Easement Agreement, Rebecca Arnold could have drafted and created a general grant of easement, reserved in general terms, not containing any limitations. *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991). A general easement is one that identifies the servient parcel, but does not definitively fix the location within that servient parcel. *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012). Plaintiffs' arguments rely on several cases that deal with general easements. A "general easement" is a term of art, and the 40' Easement in our case was not a general easement, because it set forth the exact dimensions and location of the easement area. The easement alleged in the City's case was an express easement that was specific in its dimensions, location, and purpose.

Even if the Easement Agreement had only specified the width of the Easement as being forty feet (40'), but not the precise location of the easement area, the Idaho Supreme Court has held that "Where a conveyance of a right of way does not definitely fix its location, the grantee is entitled to a convenient, reasonable and accessible way within the limits of the grant." *Phillips Industries, Inc. v. Firkins*, 121 Idaho 693, 697, 827 P.2d 706, 710 (1992), quoting *Quinn v. Stone*, 75 Idaho 243, 246, 270 P.2d 825, 826 (1954) (emphasis added). In our case, the precise

location and dimensions of the easement area were included in the express grant of easement. Even if only the dimensions had been included, though, the forty foot (40') maximum width would be applied to prohibit any right of expansion of the easement.

Again, Boise City reiterates that nowhere in the Easement Agreement is there any language that clearly gives Plaintiffs the right to expand, enlarge, or widen the width, size, or dimensions of the 40' Easement. Furthermore, there is no language illustrating the potential future use of public access for a multi-residential subdivision. Boise Hollow attempts to argue that this language somehow is implied by the provisions contained in Paragraph 6 of the Easement Agreement. Boise Hollow argues by conveying the right to dedicate any utility road to ACHD, this somehow implies that the 40' Easement may be expanded. However, if the Court were to read Paragraph 6 to allow for unrestricted expansion of the 40' Easement, this provision would have the effect of nullifying all of the many times in the Easement Agreement that the Easement is limited to being forty feet (40') in width. Not only would this interpretation render Paragraph 1 moot, it would also make the legal description and the metes and bounds dimensions irrelevant as well.

The main error in Boise Hollow's argument is suggesting that Paragraph 1 and Paragraph 6 are related to the same issue and, therefore, conflict. Paragraph 1 and 6 do not relate to the same topic: Paragraph 1 specifies the size and use of the Easement (forty feet (40') and utility access), whereas Paragraph 6 authorizes the right to dedicate any future road constructed within the 40' Easement to the Ada County Highway District ("**ACHD**"). Paragraph 6 does not modify the unambiguous dimensional language of Paragraph 1. In fact, Paragraph 6 does not reference Paragraph 1 at all. Paragraph 6 merely authorizes the *right* to dedicate an as-yet un-built road that, once completed, meets ACHD's road construction standards. "In construing a contract, an

interpretation should be avoided that would render meaningless any particular provision in the contract." *Star Phoenix Min. Co. v. Hecla Min. Co.*, 130 Idaho 223, 233, 939 P.2d 542, 552 (1997) (quoting *Top of the Track Assoc. v. Lewiston Raceways, Inc.*, 654 A.2d 1293, 1296 (Me. 1995)). "A court must look to the contract as a whole and give effect to every part thereof." *USA Fertilizer v. Idaho First Nat. Bank*, 120 Idaho 271, 815 P.2d 469 (Ct.App.1991). If Boise Hollow's request to insert expansion language into Paragraph 6 of the Easement Agreement was allowed, this would take two harmonious paragraphs of the Easement Agreement (Paragraph 1 and Paragraph 6) and make them conflict.

Boise Hollow goes on to say that the 40' Easement must be considered expandable because "Paragraph 1 does not contain words which express any prohibition on future enlargement." PL.S' MEM. IN OPP'N TO DEF.'S CROSS-MOT. FOR SUMM. J., p. 5, ¶ 4. This argument is illogical and incorrect by the very language of Paragraph 1 itself. The Easement Agreement grants a forty foot (40') wide easement. Specific dimensions, locations, and metes and bounds descriptions are plainly written, referenced, and attached to the Easement Agreement. An express easement (**not** a general easement) was created. An express easement specifically identifies the land that will be subject to the easement. *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012). This is solidified by well-known principles of Property Law stating that when the parties to an easement describe with specificity the location, utility or width of the easement, such specification is "ordinarily construed to place an outside limit on the dimensions." Restatement (Third) of Prop.: Servitudes § 4.1(d) (2000) at § 4.8(d).

Boise Hollow misconstrues the language of the Easement Agreement in another major way: Paragraph 6 conveys the *right* to dedicate any *road* constructed within the 40' Easement; such dedication is not mandatory, and does not require the easement to comply with ACHD's

standards; rather, dedication is optional, and any future road constructed within the 40' Easement is required to comply with the construction standards of ACHD. Boise Hollow attempts to reconstruct the language of Paragraph 6 to support their position by inserting the word "size" or the word "width" into Paragraph 6. Nowhere in Paragraph 6 does the word "size" or "width" appear. Boise Hollow writes, "Therefore the state (i.e. the size) of the subject ("Such road") must necessarily be malleable in order to perform its directive." PL.S' MEM. IN OPP'N TO DEF.'S CROSS-MOT. FOR SUMM. J., p. 6, ¶ 2. There is no "directive" to be performed - dedication of a future (e.g., as-yet un-built) road is not directory or mandatory, it is optional.

Boise Hollow interchanges the terms "road", "easement" and "easement road." The Easement Agreement references a 40' Easement and "any such road" constructed within that easement. Defendant Boise City asks the Court to differentiate between the meanings of these words. Nowhere does the Easement Agreement authorize enlargement of the easement, and nowhere does the Easement Agreement make the easement size malleable. Furthermore, it is clear from the context of the Easement Agreement that the term "road" is used to denote infrastructure to be constructed at some point in the future, not to say that any road existed within the area of the 40' Easement in 1991.

If the Court finds an easement was created by the Easement Agreement, it is an express easement, with clear and unambiguous limits on its size. There is no possibility that the language of the Easement Agreement could be construed as creating a general grant of easement. Notwithstanding, Boise Hollow argues in depth that the use of a general easement may be enlarged if necessary and reasonable. See PL.S' MEM. IN OPP'N TO DEF.'S CROSS-MOT. FOR SUMM. J., *citing McFadden v. Sein*, 139 Idaho 924, 88 P.3d 740, 73 (2004). Because the 40' Easement is

an express easement, the language of the Easement Agreement does not allow or permit the 40' Easement to be expanded or enlarged for any reason.

Nonetheless, Boise Hollow argues that expansion of the 40' Easement was contemplated by the parties to the Easement Agreement as illustrated by the language of Paragraph 3. Paragraph 3 reads in pertinent part:

> Grantee shall be solely and exclusively responsible for all costs and expenses over whatever kind or nature incurred in connection with or related to *any repairs, renovations or changes* to the existing golf course caused by the *installation* of the *utilities and or any road* in the easement area.

Permanent Easement Agreement, p. 2, ¶ 3 (emphasis added). Paragraph 3 states that any "repairs, renovations, or changes" to the golf course caused by the "installation of the utilities and/or any road" within the Easement would be paid for by the Grantee. Boise Hollow contends instead, that this paragraph contemplates the destruction of the 16th hole or a larger portion of the Golf Course based on the expansion of the 40' Easement. Boise Hollow basis its contention on two incorrect facts:

First, Boise Hollow claims, for the first time in any of its pleadings, that a road was in existence at the time of the creation of the Easement Agreement and therefore Paragraph 3 must relate to the expansion of that road. Boise Hollow attempts to validate this claim by submitting a developer's affidavit.[2] The Court should not consider this affidavit as it is extrinsic evidence and the easement is unambiguous on its face. Further, Mr. Connell may stand to benefit, should the Court reach back in time to insert an "expandable" width into the 1991 Easement Agreement.[3] In addition, Mr. Connell's assertion is incorrect; no road existed within the 40' Easement that

[2] The lot comprising the Bedard Property is commonly referred to throughout pertinent documents as "Lot 1, Block 4, Nibler Subdivision."

[3] Mr. Connell has met with staff from the City's Planning and Development Services Department about developing the subject Dominant Estate parcel, with Plaintiffs.

connected to the Dominant Estate parcel at the time the Easement Agreement was executed, and no such road connects to the Dominant Estate parcel today.[4] Because no road existed at the time the Easement Agreement was drafted, any reference in Paragraph 3 to changes or repairs based on installation of utilities or a road would be that constructed within the 40' Easement.

Secondly, the plain language of Paragraph 3 states that any "repairs, renovations, or changes" related to the "*installation* of the *utilities and/or any road.*" Easement Agreement ¶ 3. No words or language relating to expansion or enlargement of the easement is stated within this paragraph. Likewise, these *changes* are related to the *installation* of *utilities* or *any* future road. All such repairs or changes are related to any road or utilities installed within the 40' Easement in the future.

The plain language of the Easement Agreement, as well as the attached legal dimensions and metes and bonds description incorporated therein, provides for a forty foot (40') wide easement for access and utility purpose. Nowhere in the 40' Easement is there any language to the contrary. Accordingly, the Court should grant the Defendant's Cross-Motion for Summary Judgment.

B. THE PERMANENT EASEMENT AGREEMENT IS INVALID.

The Court should also consider whether a valid easement agreement was created by the parties drafting the agreement. "An easement can be created only by a person who has title to or an estate in the servient tenement, and an easement may not create a right that the grantor did not possess." 25 AM. JUR. 2D *Easements and Licenses* § 12 (2015). Only the owner of the land in fee simple may grant a *permanent* easement. THE LAW OF EASEMENTS & LICENSES IN LAND, *Servient and dominant estates – Servient and dominant estates less than fee simple,* § 2:9 (2015), *emphasis*

[4] Should the Court determine that extrinsic evidence should be considered, the fact that no road exists will be substantiated by the testimony of Sanderson and actual photographs and aerial depictions of the 40' Easement area, both at the time of the execution of the Easement Agreement and to date.

added. Sanderson had no ability to create a permanent easement that ran with the land beyond his leasehold interest.

"An easement burdening or benefiting an estate less than a fee simple ends when the estate expires." *Id.* at *Inherent limitations on duration – Expiraiton of servient or dominant estate less than fee simple,* § 10:15. Therefore, "an easement that burdens a leasehold is extinguished upon the expiration of the lease." *Id.* If Sanderson did have the ability to grant an easement burdening the servient estate (the Golf Course property) the easement only exists during the term of the lease. Such an easement would not have been perpetual and would not have run with the title of the servient estate.

Boise Hollow argues that the 40' Easement is permanent and perpetual because it is titled "Permanent Agreement" and because Paragraph 1 describes it as "perpetual." As the Court is aware, neither of these propositions creates the legal effect of a permanent, perpetual easement. Likewise, stating that Sanderson intended to create a permanent easement does not change Sanderson's rights and abilities to do so. Even if Sanderson intended to create a permanent 40' easement, he did not possess the property rights or the ownership to burden the land permanently and perpetually. Regardless, argument about Sanderson's intent in creating the Easement Agreement should not be considered for purposes of this Motion as it is parol evidence.

Nowhere in the entire Easement Agreement does it address Vancroft's intent, as the fee title owner of the servient and dominant estate, to consent to a permanent and perpetual easement. Boise Hollow, with no basis, asserts this was the case. It cites no language in the Easement Agreement supporting this contention. In addition, there is no basis in Idaho law for the argument that a lessor may burden the servient estate, just because that was the lessor's intent (as argued by Plaintiffs). Boise Hollow references its argument in its REPLY IN SUPPORT OF

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, but cites law that, upon closer inspection, bolsters Boise City's argument that a person can only burden that portion of the estate he or she holds. Boise City resists the urge to go into excruciating detail distinguishing the Montana case cited by Boise Hollow, *Leichtfuss v. Dabney*, and instead points the Court to the primary (and insurmountable) distinction: *Leichtfuss v. Dabney* involved a leasehold interest on the dominant estate. Our case, which is before the Court, involves a leasehold interest on the servient estate. *Leichtfuss* is wholly inapplicable to our circumstances, and does nothing to support Plaintiffs' arguments. Furthermore, *Leichtfuss* reiterates the principles and nature of the law initially presented by Boise City in its Motion for Summary Judgment, specifically that the "principle is easily understood **where the servient tenement is held in less than fee simple** [as is the situation in our case]**: a person can convey no more or greater title than he holds.**" 329 Mont. 129, 141-145, 122 P.3d 1220, 1229-1232 (emphasis added).

Likewise, in order for the contract to be valid "there must be a meeting of the minds on the essential terms of the agreement." *Id.* The most essential terms of an easement agreement are the location and the scope of the easement. "In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties." *Inland Title Co. v. Comstock,* 116 Idaho 701, 702, 779 P.2d 15, 16 (1989). Boise Hollow argues that the idea there must be a meeting of the minds when contracting only relates to contract formation and is not a substitute for rules of interpretation. Boise Hollow suggests that a meeting of the minds should only be considered in looking for mutual intent to contract as evidence by offer and acceptance. More importantly, there must not only be a meeting of the minds as to the intent to enter into a contract, but there must be a meeting of the minds as to the essential terms of the contract.

Boise Hollow appears to ask this Court to now find an issue of material fact that necessitates a denial of summary judgment even though it zealously asserted there was no issue of fact when they filed for summary judgment first in this case. However, a question of fact does not denote a denial of summary judgment when the case is to be heard by the Court as a court trial. *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001). When an action, as is the case here, will be heard before the court without a jury, the court as the trier of fact is entitled to reach the most probable inferences based upon the undisputed evidence properly before it and grant summary judgment even though there may be a possibility of conflicting inferences. *Id.* Issues of fact may be decided by the Court on summary judgment in a court trial. Only when there is a genuine issue of fact should the Court deny such motion.

CONCLUSION

Defendant hereby replies to Plaintiffs' Memorandum in Opposition Motion to Defendant's Cross-Motion for Summary Judgment and respectfully asks this Court to grant the Defendant's Cross-Motion for Summary Judgment and deny Plaintiffs' Motion for Summary Judgment. In doing so, Defendant respectfully requests that this Court enter judgment declaring Plaintiffs have no easement right across Defendant's Golf Course property. In the alternative, in the event that the Court finds a valid easement was created, Defendant respectfully asks this Court to enter such judgment declaring the width of the easement as fixed at a maximum forty feet (40'), and not expandable beyond the forty feet (40').

DATED this 9 day of February 2016.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9 day of February 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

ORIGINAL

THIRD DECLARATION OF COUNSEL ABIGAIL R. GERMAINE

I, ABIGAIL R. GERMAINE, certify and declare under penalty of perjury pursuant to the laws of the State of Idaho, that the following is true and correct:

1. I am an attorney employed by the City of Boise and represent the Defendant in this case. I make this declaration of my own personal knowledge.

2. The documents attached hereto were previously attached to my original Declaration of Counsel Abigail R. Germaine filed December 31, 2015. The documents attached hereto are the same as previously provided except that these documents are certified by Lynn Darling of Fidelity National Title Insurance Company as being a true and correct copy of the original as recorded.

3. A true and correct copy of an Indenture between The Western Loan & Investment Company and Victor L. Nibler, dated May 7, 1943, and recorded in the records of Ada County, Idaho under instrument number 221685 is attached here as Exhibit B.

4. A true and correct copy of the Memorandum of Lease between Victor and Ruth Nibler and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen dated July 15, 1980 and recorded in the records of Ada County, Idaho under instrument number 8228729 is attached hereto as Exhibit C.

5. A true and correct copy of the Certificate of Sale for the leasehold interest of L.T.S., Inc. by the Sheriff of Ada County to A-J Corporation, dated April 25, 1986, and recorded in the records of Ada County, Idaho under instrument number 8621601 is attached hereto as Exhibit D.

6. A true and correct copy of the Amendment to Lease between Victor and Ruth Nibler and A-J Corporation, dated July 28, 1986, and recorded in the records of Ada County, Idaho under instrument number 8643154 is attached hereto as Exhibit E.

7. A true and correct copy of the Memorandum of Assignment of Leasehold Interest between A-J Corporation and Tee Ltd., dated July 28, 1986, and recorded in the records of Ada County, Idaho under instrument number 8643155 is attached hereto as Exhibit F.

8. A true and correct copy of a Warranty Deed between Victor and Ruth Nibler and Vancroft Corporation, dated June 8, 1990, and recorded in the records of Ada County, Idaho under instrument number 9030574 is attached hereto as Exhibit G.

9. A true and correct copy of a Quitclaim Deed between Victor and Ruth Nibler and Vancroft Corporation, dated August 23, 1994, and recorded in the records of Ada County, Idaho under instrument number 94078184 is attached hereto as Exhibit H.

10. A true and correct copy of the Assignment and Assumption of Golf Course Lease between Tee, Ltd., and David E. Hendrickson, dated June 30, 1993, and recorded in the records of Ada County, Idaho under instrument number 9351843 is attached hereto as Exhibit I.

11. A true and correct copy of a Warranty Deed between Tommy T. and Roxanne M. Sanderson and David E. Hendrickson, dated June 30, 1993, and recorded in the records of Ada County, Idaho under instrument number 9351841 is attached hereto as Exhibit J.

12. A true and correct copy of a Quitclaim Deed between Vancroft Corporation and David E. Hendrickson, dated October 27, 1993, and recorded in the records of Ada County, Idaho under instrument number 939201 is attached hereto as Exhibit K.

13. A true and correct copy of a Corporate Warranty Deed between Vancroft Corporation and Bedard & Musser, dated October 19, 1993, and recorded in the records of Ada County, Idaho under instrument number 9392443 is attached hereto as Exhibit L.

14. A true and correct copy of a Corporate Warranty Deed between Vancroft Corporation and Bluegrass, LLC, dated March 29, 1999, and recorded in the records of Ada County, Idaho under instrument number 99030645 is attached hereto as Exhibit M.

15. A true and correct copy of the Termination of Lease between David E. Hendrickson and Victor and Ruth Nibler, dated October 4, 2007, and recorded in the records of Ada County, Idaho under instrument number 107138040 is attached hereto as Exhibit N.

16. A true and correct copy of a Warranty Deed between Blue Grass, LLC, and Quail Hollow, LLC, dated October 4, 2007, and recorded in the records of Ada County, Idaho under instrument number 107130039 is attached hereto as Exhibit P.

17. A true and correct copy of the Deed of Gift between Quail Hollow, LLC, and the City of Boise City, dated November 1, 2013, and recorded in the records of Ada County, Idaho under instrument number 113130306 is attached hereto as Exhibit Q.

18. A true and correct copy of a Quitclaim Deed between Kipp A. Bedard, William Musser, as Bedard & Musser and Boise Hollow Land Holdings, RLLP, dated June 26, 2015, and recorded in the records of Ada County, Idaho under instrument number 2015-062695 is attached hereto as Exhibit R.

19. A true and correct copy of the Assignment and Assumption of Permanent Easement Agreement dated October 27, 1993, and recorded in the records of Ada County, Idaho under instrument number 09392667 is attached hereto as Exhibit S.

DATED this 9 day of February 2016.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9 day of February 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☐ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

EXHIBIT B

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

ADA COUNTY, IDAHO

117 1189

The Western Loan & Investment Co.

to

Victor L. Nibler.

Dated May 7, 1943.

Instrument No. 221685

THIS INDENTURE, Made this 7th day of May, in the year of our Lord one thousand nine hundred and Forty-three, between The Western Loan & Investment Company a corporation duly organized and existing under the laws of the State of Idaho and having its principal office in Idaho at Boise in the County of Ada, party of the first part, and Victor L. Nibler, a single man of Boise, County of Ada, State of Idaho party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Fifteen Thousand & 00/100 Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate situated in _ County of Ada, State of Idaho, to-wit:

Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) and the West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$) and the Southwest Quarter ($SW\frac{1}{4}$) and the West Half of the Southeast Quarter ($W\frac{1}{2}SE\frac{1}{4}$) of Section Twenty One (21)

and the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of Section Twenty-eight (28), all in Twp. 4 North, Range 2, E.B.M., Subject to taxes for the year 1943.

Also subject to lease to present tenant.

(U.S.I.R. Stamps $16.50 Cancelled)(W.L.&I.Co. 9-17-43)

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its Corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

Signed, Sealed and Delivered in Presence of

The Western Loan & Investment Company

By J. W. Cunningham, Its President.

(CORP SEAL)

Attest J. R. Cornell, Its Secretary

STATE OF IDAHO,
) ss
COUNTY OF ADA,)

On this 7th day of May in the year 1943, before me the undersigned a Notary Public in and for said State, personally appeared J. W. Cunningham known to me to be the President of the corporation that executed the instrument or the person who executed

the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

(SEAL)

Wm. B. Davidson
Notary Public for the State of Idaho,
Residing at Meridian, Idaho
My commission expires: 12/1/43.

Recorded at the request of Boise Trust Company at 45 minutes past 3 o'clock P.M., this 20 day of Sept. A. D. 1943.

Fees: $1.20

Recorder

COMPARED

EXHIBIT C

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as Inst. 8028729
FIDELITY NATIONAL TITLE COMPANY

By: AWP

609 132

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, Made and entered into this 15 day of July, 1980, by and between VICTOR NIBLER and RUTH NIBLER, husband and wife, hereinafter referred to collectively as "Lessors," and DENNIS LABRUM, NEIL LABRUM, CLYDE THOMSEN and DAVID SAMUELSEN, hereinafter referred to as "Lessees."

W I T N E S S E T H:

That for and in consideration of the rent reserved and the terms, conditions and covenants contained in that certain Lease agreement dated the 15 day of July, 1980, and executed by the parties hereto, Lessors have leased to Lessees the following described real property located in the County of Ada, State of Idaho, set forth in Exhibit "A" hereby made a part hereof as if set forth in full.

To have and to hold unto the said Lessees, its successors and assigns, subject to its faithful performance of the terms and conditions of said Lease agreement for an initial term of ninety nine (99) years, commencing June 30, 1980.

The grant reserved unto the Lessors is the sum of Nine Hundred ($900.00) per month, and the Lessees, in addition, is to pay all real estate taxes and assessments and all expenses of every kind incident to said leased real property, more specifically set out in said Lease.

In addition Lessor's hereby grant Lessees the right to assign said lease to L. T. S. Inc. an Idaho Corporation however do not in any way waive any rights they may have against Lessees.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum the day and year first above written.

GRANTORS:

Victor Nibler

Victor Nibler

Ruth E Nibler

Ruth Nibler

609 133

STATE OF IDAHO)
) ss.
County of Ada)

On this 7th day of July, 1980, before me a Notary Public in and for the State of Idaho, personally appeared VICTOR NIBLER and RUTH NIBLER, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residence: Boise, Idaho

A parcel of land located in Sections 21 and 28, T.4N., R.2E., B.M., Ada County, Idaho, more particularly described as follows:

Beginning at a brass cap marking the West 1/4 corner of Section 28, T.4N., R.2E., B.M., thence N. 25° 03' 16" E., a distance of 1811.18 feet to THE REAL POINT OF BEGINNING;

Thence S. 58° 59' 18" E., a distance of 1472.40 feet to a point;

Thence N. 79° 25' 00" E., a distance of 300.00 feet to a point;

Thence S. 71° 42' 30" E., a distance of 237.69 feet to a point;

Thence N. 85° 50' 00" E., a distance of 100.00 feet to a point;

Thence N. 18° 33' 05" E., a distance of 196.16 feet to a point;

Thence N. 34° 08' 41" W., a distance of 384.66 feet to a point;

Thence N. 83° 15' 53" E., a distance of 174.01 feet to a point;

Exhibit "A"

Thence N. 30° 44' 30" E., a distance of 360.81 feet to a point;

Thence N. 63° 48' 21" E., a distance of 715.09 feet to a point;

Thence S. 12° 20' 00" E., a distance of 770.00 feet to a point;

Thence S. 89° 03' 08" E., a distance of 92.02 feet to a point;

Thence N. 23° 49' 46" E., a distance of 382.10 feet to a point;

Thence N. 64° 00' 00" E., a distance of 144.21 feet to a point;

Thence N. 00° 03' 07" W., a distance of 2561.55 feet to a point;

Thence N. 84° 10' 00" W., a distance of 922.06 feet to a point;

Thence S. 59° 02' 06" W., a distance of 489.40 feet to a point;

Thence S. 13° 41' 37" W., a distance of 559.24 feet to a point;

Thence S. 02° 37' 32" E., a distance of 738.99 feet to a point;

Thence S. 54° 30' 00" W., a distance of 575.00 feet to a point;

Thence N. 28° 15' 33" W., a distance of 1279.25 feet to a point;

Thence N. 59° 25' 00" W., a distance of 240.00 feet to a point;

Thence S. 69° 35' 00" W., a distance of 78.00 feet to a point;

Thence S. 18° 20' 00" W., a distance of 142.00 feet to a point;

Thence S. 23° 15' 00" E., a distance of 1425.00 feet to a point;

Thence S. 55° 51' 54" W., a distance of 588.78 feet to a point;

Thence S. 83° 45' 00" W., a distance of 312.00 feet to a point;

609 136

Ada County, Idaho, ss.
Request of Ada County
TIME 12:50 P M.
DATE 7-7-82
JOHN BASTIDA
RECORDER
By [illegible] Deputy
1009

Thence N. 30° 18' 48" W., a distance of 813.69 feet to a point;

Thence N. 56° 37' 51" W., a distance of 347.99 feet to a point;

Thence S. 46° 45' 00" W., a distance of 130.00 feet to a point;

Thence S. 14° 02' 09" E., a distance of 181.53 feet to a point;

Thence S. 34° 35' 14" E., a distance of 267.53 feet to a point;

Thence S. 25° 00' 00" E., a distance of 738.00 feet to a point;

Thence N. 77° 17' 00" E., a distance of 93.34 feet to THE REAL POINT OF BEGINNING.

Said parcel containing 150.53 acres more or less

EXHIBIT D

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

8621601 86300[illegible]0951

John F. Kurtz, Jr.
HAWLEY TROXELL ENNIS & HAWLEY
P.O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Plaintiff

Ada County, Idaho, ss
Request of
Hawley, Troxell, Ennis & Hawley
TIME 10:58 A M.
DATE 4-28-86
JOHN BASTIDA
RECORDER
By [signature] Deputy
16.00

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By: [signature]

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

A - J CORPORATION, an Idaho corporation,

Plaintiff,

vs.

L.T.S. INC., an Idaho corporation; DENNIS E. LABRUM and LIZABETH LABRUM; NEIL G. LABRUM and ZOLA C. LABRUM; DAVID R. SAMUELSEN and ANN SAMUELSEN; SHAMANAH, INC., an Idaho corporation; VICTOR L. NIBLER and RUTH E. NIBLER, UNITED PIPE AND SUPPLY CO., INC., a corporation; KESSLER INTERNATIONAL CORPORATION, a corporation; CLYDE THOMSEN and FLORENCE THOMSEN, husband and wife; RANDALL N. CARNE; PROFESSIONAL ADJUSTMENT CO.; ASPHALT PAVING & CONSTRUCTION, INC., a corporation; FARMERS AND MERCHANTS STATE BANK; FIRST SECURITY BANK OF IDAHO; STATE OF IDAHO, DEPARTMENT OF EMPLOYMENT; CAPITOL LITHOGRAPH & PRINTING, INC., an Idaho corporation; STATE OF IDAHO, STATE TAX COMMISSION; N.C.D.D., INC., an Idaho corporation; O.M.

Case No. 80828

CERTIFICATE OF SALE

CERTIFICATE OF SALE - 1

8690000955

SCOTT & SONS COMPANY, an Ohio corporation (DOE I); and DOES II through V,

Defendants.

UNDER AND BY VIRTUE of Judgment and Decree of Foreclosure and Order of Sale filed in the above-entitled Court on March 15, 1986, and the Writ of Execution (Order of Sale) which was issued by the above-entitled Court on March 19, 1986, all of which were directed and delivered to me as Sheriff of the County of Ada, State of Idaho, whereby I was commanded to sell the Defendant L.T.S. Inc.'s Leasehold Interest in that certain real property hereinafter described, which Leasehold Interest is evidenced by that certain Lease for a term of 99 years between Victor Nibler and Ruth Nibler, husband and wife, as lessors, and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982, as Instrument No. 8228729, records of Ada County, Idaho, which Lease was later assigned by said lessees to Defendant L.T.S., Inc., (hereinafter the "Leasehold Interest"), described and referred to in said Judgment and Decree of Foreclosure and Order of Sale situated in Ada County, Idaho, and also described more particularly on EXHIBIT "1" attached hereto and made a part hereof, and to apply the proceeds of sale in satisfaction of the Judgment in said action in the amount of $927,806.83 plus interest and costs as specified in said Judgment and Decree of Foreclosure and Order of Sale.

8690000956

I, Vaughn Killeen, Sheriff of Ada County, State of Idaho, by my undersignd deputy, do hereby certify that I duly sold said Defendant L.T.S., Inc.'s Leasehold Interest in the real property on the 25th day of April, 1986, at 10:00 a.m. of said day at public auction according to law, after due and legal notice given, at the front door of the Ada County Courthouse, Boise, Idaho, to A - J CORPORATION, AN IDAHO CORPORATION. said party being the highest bidder and said sum being the highest bid made at said sale.

That the Defendant L.T.S., Inc.'s Leasehold Interest in the real property was by Order of the Court sold in a single parcel; that the highest price bid therefor was $800,000.00 which sum was the whole price paid for the same, and that said Defendant L.T.S., Inc.'s Leasehold Interest in the real property described on attached EXHIBIT "1" is subject to a right of redemption to and including April 25, 1987.

WITNESS MY hand this 25th day of April, 1986.

VAUGHN KILLEEN, SHERIFF
OF ADA COUNTY, STATE OF IDAHO

By _____
Deputy Sheriff

8690000957

STATE OF IDAHO)
) ss.
County of Ada)

On this 25 day of April, 1986, before me, the undersigned, a notary public in and for said state, personally appeared Tim Burt known or identified to me to be the person whose name is subscribed to the foregoing instrument as Deputy Sheriff of Ada County, State of Idaho, and acknowledged to me that he executed the same.

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

Bill A Weatherby
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires on 9-27, 19[illegible]

8690000958

A parcel of land lying in portions of the S 1/2 of Section 21, the NW 1/4 and the W 1/2 of the NE 1/4 of Section 28, all in T.4N, R.2E., B.M., Boise, Ada County, Idaho, and more particularly described as follows:

Beginning at the brass cap marking the Southwest corner of the said NW 1/4 of Section 28;

thence South 89°39'23" East 4,034.27 feet along the Southerly boundaries of the said NW 1/4 and the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the said W 1/2 of the NE 1/4 of Section 28;

thence North 0°01'58" East 1,192.28 feet along the Easterly boundary of the said W 1/2 of the NE 1/4 of Section 28 to an iron pin, also said point being the REAL POINT OF BEGINNING;

thence continuing North 0°01'58" East 1,452.53 feet along the said Easterly boundary of the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the W 1/2 of the SE 1/4 of the said Section 21;

thence North 0°06'01" West 1,365.82 feet along the Easterly boundary of the said W 1/2 of the SE 1/4 of Section 21 to an iron pin;

thence South 76°41'00" West 200.00 feet, more or less, to an iron pin;

thence North 21°35'00" West 339.15 feet to an iron pin;

thence North 40°59'00" East 190.72 feet to an iron pin;

thence North 25°45'00" West 171.20 feet to an iron pin;

thence South 56°21'30" West 344.30 feet to an iron pin;

thence South 79°42'00" West 404.30 feet to an iron pin;

thence South 30°44'00" West 309.60 feet to an iron pin;

EXHIBIT 1

thence South 41°43'00" West 386.50 feet to an iron pin;

thence South 20°11'00" West 189.20 feet to an iron pin;

thence South 2°59'00" East 378.20 feet to an iron pin;

thence North 77°41'00" East 162.90 feet to an iron pin;

thence South 24°14'00" East 163.90 feet to an iron pin;

thence South 9°44'00" East 116.70 feet to an iron pin;

thence South 25°51'00" East 66.40 feet to an iron pin;

thence South 32°30'00" West 45.10 feet to an iron pin;

thence South 82°13'00" West 64.70 feet to an iron pin;

thence South 76°23'00" West 83.60 feet to an iron pin;

thence South 84°38'00" West 74.61 feet to an iron pin;

thence South 72°11'00" West 161.01 feet to an iron pin;

thence South 54°30'00" West 495.81 feet to an iron pin;

thence South 4°27'00" East 130.99 feet to an iron pin;

thence South 59°51'00" West 32.50 feet to an iron pin;

thence South 3°43'00" West 88.10 feet to an iron pin;

thence South 32°56'00" West 73.70 feet to an iron pin;

thence South 67°27'00" West 116.50 feet to an iron pin;

thence South 79°04'00" West 155.80 feet to an iron pin;

thence North 89°34'00" West 174.90 feet to an iron pin;

thence South 60°34'00" West 388.30 feet to an iron pin;

thence South 80°43'00" West 286.30 feet to an iron pin;

thence North 17°40'00" West 243.00 feet to an iron pin;

thence North 34°24'20" West 937.80 feet to an iron pin;

thence South 78°30'00" West 371.34 feet to an iron pin;

thence South 31°01'20" East 1,103.30 feet to an iron pin;

thence South 23°39'00" East 244.70 feet to an iron pin;

thence South 57°43'00" East 1,398.50 feet to an iron pin;

thence North 87°59'00" East 383.35 feet to an iron pin;

thence South 27°08'00" East 202.00 feet to an iron pin;

thence North 74°10'50" East 539.10 feet to an iron pin;

thence North 18°14'00" West 748.23 feet to an iron pin;

thence North 30°17'00" East 83.80 feet to an iron pin;

thence North 67°27'45" East 456.90 feet to an iron pin;

thence North 22°57'00" East 399.62 feet to an iron pin;

thence South 86°16'00" East 103.20 feet to an iron pin;

thence South 17°34'20" East 895.20 feet to an iron pin;

thence South 78°42'10" East 371.14 feet, more or less, to the point of beginning, comprising 142.27 acres, more or less.

EXHIBIT E

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL. as recorded 8643154
FIDELITY NATIONAL TITLE COMPANY
By:

8920611660

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (the "Amendment"), made and entered into this 28th day of July, 1986, by and between VICTOR NIBLER and RUTH NIBLER, husband and wife, hereinafter referred to as the "Lessors" and A-J CORPORATION, an Idaho corporation, hereinafter referred to as the "Lessee."

WHEREAS, Lessors entered into that certain "Lease" dated July 15, 1980 for a term of 99 years between Lessors, and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982 as Instrument No. 8228729, records of Ada County, Idaho, which Lease was later assigned by said lessees to L.T.S., Inc.;

WHEREAS, L.T.S., Inc.'s leasehold interest evidenced by that Lease was acquired by the Lessee by entering a credit bid at the Sheriff's Sale held on April 25, 1986;

WHEREAS, Lessors and Lessee desire to amend the Lease.

NOW, THEREFORE, in consideration of the premises and the sum of TEN DOLLARS ($10.00) cash in hand paid, the receipt of which is hereby acknowledged by the Lessors, Lessors and Lessee hereby agree to the following amendments to the Lease:

1. Section 11: The last sentence of Section 11, which reads "It is not contemplated that the taxes on the surrounding

ground exclusive of the golf course will be increased but in the event it is the cost shall be paid by Lessees." shall be deleted and removed from the Lease.

2. Section 19: A new paragraph shall be added to Section 19. Such paragraph shall be inserted after the end of the first paragraph which ends "disprove the same." and before the beginning of the second paragraph, which begins "In the event . . ." Such paragraph shall read as follows:

> In the event the current Lessee, A-J Corporation, assigns its interest in this Lease to a third party, A-J Corporation shall continue to receive any said notice of default which is sent to a lessee pursuant to the preceding paragraph.

3. Section 23: The second sentence of the first paragraph of Section 23 shall be amended to take out the phrase "with the consent of Lessors" such that the second sentence will read as follows:

> At the end of the 99 year term hereof lessees shall be able to extend this lease upon the following terms and conditions.

4. Section 28: A new Section 28 shall be added to the Lease and shall read as follows:

> 28. Assignment and Mortgage: The current Lessee, A-J Corporation, may assign its interest in the Lease to another entity, and A-J Corporation may take back a mortgage interest in the Lease as security for A-J Corporation's assignment of the Lease.

8920001662

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease in Boise this 28th day of July, 1986.

Victor Nibler

Victor Nibler

Ruth Nibler

Ruth Nibler

A-J CORPORATION

By

Its President

8920001663

STATE OF IDAHO)
) ss.
County of Ada)

On this ___ day of July, 1986, before me, _____, a Notary Public in and for said state, personally appeared VICTOR NIBLER and RUTH NIBLER, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

_____
Notary Public for Idaho
Residing at _____, Idaho
My commission expires on _____, 19__

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, Kurt TRINKAUS, a Notary Public in and for said State, personally appeared VICTOR A. ACLMON, known or identified to me to be the president of A-J CORPORATION, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Kurt Trinkaus
Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires on 12/10, 1991

Ada County, Idaho, ss
Request of
PIONEER TITLE CO.
TIME 3:55 P M
DATE 7-29-86
JOHN BASTIDA
RECORDER
BY Doreland
DEPUTY
8.00

EXHIBIT F

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL as recorded 8643155
FIDELITY NATIONAL TITLE COMPANY

By:

89200 1664

MEMORANDUM OF
ASSIGNMENT OF LEASEHOLD INTEREST

This Assignment is made and entered into this 28th day of July, 1986, by and among A-J CORPORATION (the "Assignor"), an Idaho corporation, whose place of business is 3521 28th Street, Lewiston, Idaho, and TEE LTD., an Idaho corporation, (the "Assignee"), whose place of business is 4520 North 36th Street, Boise, Idaho.

WHEREAS, Assignor operates a golf course commonly known as Shamanah located at 4520 North 36th Street, Boise, Ada County, Idaho.

WHEREAS, Assignor acquired a leasehold interest in Shamanah by entering a credit bid at the Sheriff's Sale held on April 25, 1986 (the "Leasehold Interest"). The Assignor's Leasehold Interest is in that certain real property described in Exhibit "A" attached hereto, and by this reference made a part hereof, which Leasehold Interest is evidenced by that certain lease for a term of 99 years between Victor Nibler and Ruth Nibler, husband and wife, as lessors, ("Lessors") and Dennis Labrum, Neil Labrum, Clyde Thomsen and David Samuelsen as lessees, recorded July 7, 1982 as Instrument No. 8228729, records of Ada County, Idaho, (the "Lease"), which Lease was later assigned by said lessees to L.T.S., Inc. A Certificate of Sale was issued to Seller and recorded on April 28, 1986 as Instrument No. 8621601, records of Ada County, Idaho. Seller's interest is

subject to such redemption rights as exist following the Sheriff's Sale.

WHEREAS, the parties have entered into a Leasehold Purchase Agreement dated July 28, 1986 for the purchase of the Leasehold Interest and setting forth in detail the rights and obligations of the parties, which Leasehold Purchase Agreement is hereby incorporated by reference.

NOW, THEREFORE, in consideration of value received, the parties agree as follows:

Section 1.

Assignor does hereby sell, assign, set over and transfer to Assignee its Leasehold Interest in that certain real property described in Exhibit "A," subject to the interest reserved in Section 2 below.

Section 2.

2.1 Assignor purchased its Leasehold Interest at a Sheriff's Sale, and such Leasehold Interest is subject to redemption rights, to and including April 25, 1987, as indicated in the Certificate of Sale, recorded as Instrument No. 8621601, records of Ada County, Idaho.

2.2 Assignor has expressly reserved, and has not assigned or sold to Assignee the right to receive any monies if

the property is redeemed, and Assignee agrees that all monies paid by a redemptioner shall be paid to the Assignor.

2.3 Assignee contemplates constructing paved golf cart paths on Shamanah together with other improvements. The existence of the paved golf cart paths and other improvements may give rise to a claim to additional amounts which must be paid by the redemptioner. Assignee assigns all of its right and interest in any sums attributable to the paved golf cart paths to Assignor, and Assignor may enforce such rights and collect such amounts from the redemptioner with no obligation to pay any portion of these amounts to Assignee. Assignee shall have the right to pursue and collect from the redemptioner such amounts as may be attributable to any other improvements constructed by Assignee.

Section 3.

3.1 Assignees covenants that it will comply with, assume and faithfully discharge all the terms of the Lease and any amendments thereof.

3.2 Assignee covenants that if it assigns, sells or otherwise transfers its Leasehold Interest without the written consent of Assignor, which shall not be unreasonably withheld, that the remaining balance owed pursuant to the Leasehold Purchase Agreement and the Promissory Note shall immediately become due and payable to Assignee.

8920001667

A-J CORPORATION

By _____
Its President

TEE LTD.

By _____
Tommy T. Sanderson
Its President

ATTEST:

_____
Roxanne M. Sanderson
Its Secretary

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, RUTH TRINKAUS, a Notary Public in and for said State, personally appeared VICTOR A. ALLISON, known or identified to me to be the President of A-J CORPORATION, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

_____
Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires on 12/10, 1991

8920071668

STATE OF IDAHO)
) ss.
County of Ada)

On this 28th day of July, 1986, before me, Ruth Trinkaus, a Notary Public in and for said State, personally appeared TOMMY T. SANDERSON and ROXANNE M. SANDERSON, known or identified to me to be the President and Secretary, respectively, of TEE, LTD., the corporation that executed the within instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Ruth Trinkaus

Notary Public for Idaho
Residing at Nampa, Idaho
My commission expires on 12/10, ~~STA~~ 1986

Ada County, Idaho, ss
Request of
PIONEER TITLE CO.
TIME 3:55 PM
DATE 7-29-86
JOHN BASTIDA
~~RECORDER~~
By Y Loveland
Deputy
1800

A parcel of land lying in portions of the S 1/2 of Section 21, the NW 1/4 and the W 1/2 of the NE 1/4 of Section 28, all in T.4N, R.2E., B.M., Boise, Ada County, Idaho, and more particularly described as follows:

Beginning at the brass cap marking the Southwest corner of the said NW 1/4 of Section 28;

thence South 89°39'23" East 4,034.27 feet along the Southerly boundaries of the said NW 1/4 and the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the said W 1/2 of the NE 1/4 of Section 28;

thence North 0°01'58" East 1,192.28 feet along the Easterly boundary of the said W 1/2 of the NE 1/4 of Section 28 to an iron pin, also said point being the REAL POINT OF BEGINNING;

thence continuing North 0°01'58" East 1,452.53 feet along the said Easterly boundary of the W 1/2 of the NE 1/4 of Section 28 to an iron pin marking the Southeast corner of the W 1/2 of the SE 1/4 of the said Section 21;

thence North 0°06'01" West 1,365.82 feet along the Easterly boundary of the said W 1/2 of the SE 1/4 of Section 21 to an iron pin;

thence South 76°41'00" West 200.00 feet, more or less, to an iron pin;

thence North 21°35'00" West 339.15 feet to an iron pin;

thence North 48°59'00" East 190.72 feet to an iron pin;

thence North 25°45'00" West 171.20 feet to an iron pin;

thence South 56°21'30" West 344.30 feet to an iron pin;

thence South 79°42'00" West 404.30 feet to an iron pin;

thence South 30°44'00" West 309.60 feet to an iron pin;

thence South 41°43'00" West 386.50 feet to an iron pin;

thence South 20°11'00" West 189.20 feet to an iron pin;

thence South 2°59'00" East 378.20 feet to an iron pin;

thence North 77°41'00" East 162.90 feet to an iron pin;

thence South 24°14'00" East 163.90 feet to an iron pin;

thence South 9°44'00" East 116.70 feet to an iron pin;

thence South 25°51'00" East 66.40 feet to an iron pin;

thence South 32°30'00" West 45.10 feet to an iron pin;

thence South 82°13'00" West 64.70 feet to an iron pin;

thence South 76°23'00" West 83.60 feet to an iron pin;

thence South 84°38'00" West 74.61 feet to an iron pin;

thence South 72°11'00" West 161.01 feet to an iron pin;

thence South 54°30'00" West 495.81 feet to an iron pin;

thence South 4°27'00" East 130.99 feet to an iron pin;

thence South 59°51'00" West 32.50 feet to an iron pin;

thence South 3°43'00" West 88.10 feet to an iron pin;

thence South 32°56'00" West 73.70 feet to an iron pin;

thence South 67°27'00" West 116.50 feet to an iron pin;

thence South 79°04'00" West 155.80 feet to an iron pin;

thence North 89°34'00" West 174.90 feet to an iron pin;

thence South 60°34'00" West 388.30 feet to an iron pin;

thence South 80°43'00" West 286.30 feet to an iron pin;

thence North 17°40'00" West 243.00 feet to an iron pin;

thence North 34°24'20" West 937.80 feet to an iron pin;

thence South 78°30'00" West 371.34 feet to an iron pin;

thence South 31°01'20" East 1,103.30 feet to an iron pin;

thence South 23°39'00" East 244.70 feet to an iron pin;

thence South 57°43'00" East 1,398.50 feet to an iron pin;

thence North 87°59'00" East 383.35 feet to an iron pin;

thence South 27°08'00" East 282.00 feet to an iron pin;

thence North 74°10'50" East 539.10 feet to an iron pin;

thence North 18°14'00" West 748.23 feet to an iron pin;

thence North 36°17'00" East 83.80 feet to an iron pin;

thence North 67°27'45" East 456.90 feet to an iron pin;

thence North 22°57'00" East 399.62 feet to an iron pin;

thence South 86°16'00" East 103.20 feet to an iron pin;

thence South 17°34'20" East 895.20 feet to an iron pin;

thence South 78°42'10" East 371.14 feet, more or less, to the point of beginning, comprising 142.27 acres, more or less.

EXHIBIT G

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By: Yg Dary AVP

9030574

1262000732

re-recorded
9066445

WARRANTY DEED

FOR VALUE RECEIVED, VICTOR L. NIBLER and RUTH NIBLER, husband and wife (the "Grantor"), does hereby grant, bargain, sell and convey unto VANCROFT CORPORATION, an Idaho corporation whose address is 3222 South Pass Court, Boise, Idaho 83705 (the "Grantee"), the real property located in Ada County, Idaho, and described on Exhibit A hereto and incorporated herein, together with its appurtenances, including any and all water rights, (hereinafter the "Premises").

The Grantor does hereby covenant to and with the Grantee, that Grantor is the owner in fee simple of the Premises; that the Premises are free and clear from all encumbrances except as set forth on Exhibit B attached hereto and incorporated herein (the "Permitted Exceptions") and that Grantor will warrant and defend the same from all other claims whatsoever.

TO HAVE AND TO HOLD the Premises unto the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed effective this 8 day of June, 1990.

Ada County, Idaho ss
Request of
SECURITY TITLE
TIME 10:45 A.M.
DATE 6-11-90
JOHN DA
RECORDER
By Deputy

"Grantor"

Victor L Nibler
Victor L. Nibler

Ruth E Nibler
Ruth E. Nibler

STATE OF IDAHO)
) ss.
County of Ada)

On this 8 day of June, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Victor L. Nibler and Ruth E. Nibler, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

THOMAS KEEP
NOTARY
PUBLIC
STATE OF IDAHO

Thomas Keep
Notary Public for Idaho
Residing at ~~Boise~~ Nampa, Idaho
My commission expires: 11/29/95

This document being re-recorded for purpose of correcting legal description.

1262000733

EXHIBIT A

DESCRIPTION OF PROPERTY

The NW 1/4, and the W 1/2 NE 1/4, Section 28, and the SW 1/4 and the W 1/2 SE 1/4, and the W 1/2 NE 1/4, and the NE 1/4 NE 1/4, Section 21, Township 4N, Range 2E, Boise Meridian, Boise, Ada County, Idaho excepting therefrom the following:

Commencing at the Quarter corner common to Section 28 and 29, T. 4N, R. 2E, B.M.; thence
South 89°53' East 50 feet to the REAL PLACE OF BEGINNING; Thence
North 497.3 feet; thence
North 8°58'40" East 464.16 feet; thence
North 43°06' East 870.8 feet; thence
South 58°14; East 1632.0 feet; thence
South 39°23' West 951.72 feet; thence
North 89°53' West 1451.2 feet to the REAL PLACE OF BEGINNING. A parcel of land containing 50.58 acres, more or less. (SEE WARRANTY DEED, Instrument No. 404319, December 6, 1956.)

And further excepting therefrom the following:

Commencing at the Quarter corner common to Section 28 and 29, T. 4N, R. 2E, B.M.; thence
North along the Section line 898.2 feet to an iron pin, the REAL PLACE OF BEGINNING; thence
North 301.3 feet to an iron pin; thence
South 46°54' East 205.9 feet to an iron pin; thence
South 43°06' West 220.0 feet to the PLACE OF BEGINNING. A parcel of land containing 0.52 acres, more or less. (SEE WARRANTY DEED, Instrument No. 506934, July 10, 1961.)

And further excepting therefrom the following:

Commencing at the Southwest corner of the Northwest 1/4 of Section 28, T. 4N, R. 2E, B.M.; thence
North 00°30'30" East along the West Section Line of said Section 28, a distance of 87.38 feet to a point, also said point being the REAL POINT OF BEGINNING; thence
South 53°30'30" East, a distance of 9.28 feet to a point; thence
South 40°45'40 East, a distance of 64.43 feet to a point; thence
North 0°30'30" East, a distance of 463.69 feet to a point; thence
North 09°30'12: East, a distance of 464.17 feet to a point; thence
North 43°37'00" East, a distance of 870.80 feet to a point; thence
North 46°23'00" West, a distance of 50.23 feet to a point; thence
South 43°37'00" West, a distance of 996.51 feet to a point; thence
South 00°30'30" West, a distance of 810.82 feet to the REAL POINT OF BEGINNING.

A parcel of land containing 2.4039 acres, more or less. (SEE QUITCLAIM DEED, Instrument No. 8710730.)
And further excepting any portion thereof lying in Hill Road.

And further excepting therefrom the following:

Commencing at the Brass Cap marking the Southwest corner of the North 1/2 of Section 28, T. 4N, R. 2E, B.M.; thence
South 89°39'23" East 4034.27 feet along the Southerly boundary of the said North 1/2 of Section 28 to an iron pin marking the Southeast corner of the West 1/2 of the Northeast 1/4 of the said Section 28; thence
North 00°01'58" East 2644.81 feet along the Easterly boundary of the said West 1/2 of the Northeast 1/4 of Section 28 to an iron pin, marking the Southeast corner of the West 1/2 of the Southeast 1/4 of the said Seciton 21; thence
North 68°49'12" West 1498. 94 feet to a point, also said point being the REAL POINT OF BEGINNING; thence
North 77°41' East 162.90 feet to a point; thence
South 24°14' East 163.90 feet to a point; thence
South 09°44' East 116.70 feet to a point; thence
South 25°51' East 66.40 feet to a point; thence
South 32°30' West 45.10 feet to a point; thence
South 82°13' West 64.70 feet to a point; thence
South 76°23' West 83.60 feet to a point; thence
South 84°38' West 74.61 feet to a point; thence
South 72°11' West 161.01 feet to a point; thence
North 02°37'32" West 280.03 feet to a point; thence
North 45°31' east 189.06 feet to the POINT OF BEGINNING. A parcel of land containing 2.4039 acres, more or less. (SEE WARRANTY DEED, Instrument No. 8742940.)

And further excepting therefrom the following:

NIELER'S 4 ACRE HOMESITE

Commencing at the Section corner common to Sections 20, 21, 28 and 29, T. 4N, R. 2E, B.M.; Thence
S 89°26'15" E. 1875.64 feet along the line common to Sections 21 and 28 to a point on the Southwesterly property line of this parcel, said point being the REAL POINT OF BEGINNING; Thence
N. 35°30'51" W. 116.81 feet to a point; Thence
N. 54°29'09" E. 427.89 feet to a point; Thence
S. 35°30'51" E. 398.67 feet to a point; Thence
along a curve to the right 51.76 feet, having a central angle of 19°07'56", a radius of 155.00 feet, tangents of 26.12 feet, and a chord of 51.52 feet which bears S. 38°26'59" W. to a point; Thence
S. 48°00'57" W. 62.81 feet to a point; Thence
along a curve to the right 111.04 feet, having a central angle of 16°57'56", a radius of 375.00 feet, tangents of 55.93 feet, and a chord of 110.63 feet which bears S. 56°29'55" W. to a point; Thence
S. 64°58'53" W. 208.90 feet to a point; Thence
N. 35°30'51" W. 261.23 feet to the REAL POINT OF BEGINNING.

REN

EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 1990 and subsequent years.

2. Reservations in U.S. Patent recorded in Book 1 of Patents at Page 60, Book 4 of Patents at Page 5, Book 6 of Patents at Page 78, Book 6 of Patents at Page 104, Book 6 of Patents at Page 112, as follows: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with local customs, laws and decisions of Courts, and also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law ... and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States."

3. Power line easement as granted by Frank Dobson and Lulu B. Dobson, his wife to Idaho Power Company, a corporation, by instrument recorded September 19, 1930, in Book 12 of Miscellaneous at Page 437, as Instrument No. 141535, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

4. Power line easement as granted by Frank Dobson and Lulu B. Dobson, his wife to Idaho Power Company, a corporation, by instrument recorded February 27, 1931, in Book 12 of Miscellaneous at Page 547 as Instrument No. 143612, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

5. Power line easement as granted by Western Loan & Investment Co. to Idaho Power Company, a corporation, by instrument recorded March 18, 1939, in Book 16 of Miscellaneous at Page 223, as Instrument No. 188931, of Official Records; including the right from time to time to cut, trim, and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation, or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system. The exact location and extent of said easement is not disclosed of record.

6. Easement as granted by Victor L. Nibler and Ruth E. Nibler to The Mountain States Telephone and Telegraph Company by instrument recorded March 2, 1967, as Instrument No. 659097, of Official Records; for operation, maintenance and repair of its lines. The exact location and extent of said easement is not disclosed of record.

7. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: sewer and water lines and other utility facilities, whether above ground or underground and a road and related improvements providing public ingress to and egress from

Recorded: August 23, 1978

Instrument No.: 7845243 of Official Records
The exact location and extent of said easement is not disclosed of record.

8. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: access and utilities

Recorded: July 24, 1987

Instrument No.: 8742940 of Official Records
The exact location and extent of said easement is not disclosed of record.

9. Power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation, by instrument recorded October 1, 1987, as Instrument No. 8755532, of Official Records ... including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system.

10. Power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation, by instrument recorded November 18, 1983, as Instrument No. 8362310, of Official Records ... including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system.

11. An easement for the purpose shown below and rights incidental thereto as contained in a document.
Purpose: locating, establishing, constructing,

maintaining, repairing, and operating underground sanitary sewer lines

Recorded: January 14, 1988

Instrument No.: 8802157 of Official Records

Said instrument was corrected and recorded October 12, 1988 as Instrument No. 8850182.

12. Underground power line easement as granted by Victor L. Nibler and Ruth E. Nibler, his wife to Idaho Power Company, a corporation by instrument recorded May 2, 1988 as Instrument No. 8820687 of Official Records.

9066445

Re-record

IDAHO

FOR SECURITY TITLE

'90 DEC 5 PM 1 09

JOHN [illegible] RECORDER

BY [illegible]

18.00

EXHIBIT H

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

P1 32'787.3L4

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By: [illegible] AVP

1774000795

QUITCLAIM DEED

FOR VALUE RECEIVED, VICTOR L. NIBLER and RUTH E. NIBLER, husband and wife, (collectively referred to herein as the "Grantor") does hereby grant, convey, release, remise and forever quitclaim unto VANCROFT CORPORATION, an Idaho corporation, (the "Grantee") whose address is 600 West 76th, No. 101, Anchorage, Alaska 99518, Attention: Mari Montgomery, President, all of Grantor's right, title and interest, if any, in the real property described as Lots 1, 2, 3, 5 and 6 of Block 1 and Lots 1 and 2 of Block 2, Nibler Subdivision, according to the official plat thereof filed in the official records of Ada County, Idaho on January 31, 1992 in Book 59 at pages 5789-5791, instrument number 9205592 (the "Property"); EXCEPTING HOWEVER that this instrument is not intended to, and does not, release any security interest of Grantor in the Property under that certain Mortgage dated June 11, 1990 and recorded on June 11, 1990 as Instrument No. 9030575 in the real property records of Ada County, Idaho (the "Mortgage") and the lien and terms of the Mortgage shall remain in full force and effect to the extent said Mortgage affects the Property.

IN WITNESS WHEREOF, the undersigned have caused the execution of this instrument as of the 23 day of August, 1994.

94078184

[illegible] RDER
J. D[illegible]RO
BOISE ID

PIONEER TITLE

'94 AUG 25 11[illegible]0
FEE 6.00
RECORD[illegible] ST OF

Victor L. Nibler
Victor L. Nibler

Ruth E. Nibler
Ruth E. Nibler

STATE OF Wash.)
) ss.
County of King)

On this 23rd day of August, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared VICTOR L. NIBLER, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

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

JAN H. HOVER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-23-95

Jan H. Hover
Notary Public for State of Wash.
Residing at Kirkland, Wa.
My commission expires: 10-23-95

STATE OF Wash.)
) ss.
County of King)

On this 23rd day of August, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared RUTH E. NIBLER, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that she executed the same.

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

JAN H. HOVER NOTARY PUBLIC STATE OF WASHINGTON

Jan H. Hover
Notary Public for State of Wash.
Residing at Kirkland
My commission expires: 10-23-95

EXHIBIT I

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By:

9351843

STEWART TITLE

ST-93041044 (4)

1568000988

J. DAVID NAVARRO
RECORDER

18

ASSIGNMENT AND ASSUMPTION OF GOLF COURSE LEASE

93 JUN 30 PM 4 13

Assignor: Tee, Ltd.
an Idaho Corporation

Assignee: David E. Hendrickson,
a Single Man

This Assignment of Lease is made effective as of the 30th day of June, 1993, by Tee, Ltd., an Idaho corporation of Boise, Idaho, hereinafter referred to as Assignor, and David E. Hendrickson, a single man, of Boise, Idaho hereinafter referred to as Assignee.

W I T N E S S E T H:

On July 15, 1980, Victor L. Nibbler and Ruth E. Nibbler, husband and wife, as Lessors and Dennis Labrum, Neil Labrum, Clyde Thomson and David Samuelson, as Lessees, entered into a Lease Agreement under the terms of which the Lessees leased for a period of ninety-nine years, the following real property, more particularly described as follows:

> Lots 2 and 6, Block 1, and Lots 1 and 2, Block 2, of Nibbler subdivision according to the records and files of the Ada County Recorder, State of Idaho.

The Lease is a triple net lease, meaning that the Lessee bears all expenses, including taxes, maintenance repairs, upkeep, insurance premiums and all other related expenses. The Lease expires on June 29, 2079.

On April 25, 1986, AJ Corporation, an Idaho corporation, acquired the Lessees' leasehold interest in the identified Lease by purchasing the same at a Sheriff's sale. On July 28, 1986, Victor L. Nibbler and Ruth E. Nibbler, entered into an Amendment

to the Lease Agreement, which Amendment was recorded as Ada County Instrument No. 8643154. On that same date, July 28, 1986, Tee, Ltd. purchased all of AJ Corporation's Lessees' interest in the leasehold estate and has been in possession of the same since that time.

On June 8, 1990, Victor L. Nibbler and Ruth E. Nibbler, husband and wife, assigned all of their landlord/Lessors' interest in and to the July 15, 1980 Lease to Vancroft Corporation, an Idaho corporation, a copy of which Assignment was recorded on June 11, 1990, as Ada County Instrument No. 9030576. The present amount of the monthly rent required to be paid is $1,263.99 and the amount thereof will increase pursuant to the terms of the July 15, 1980 Lease.

Concurrently herewith, Tee, Ltd. is conveying all of its right, title and interest in and to the real and personal property known commonly as the Quail Hollow Golf Course, and in conjunction therewith, Assignor desires to assign the Lease and all of its right, title and interest thereunder to Assignee, and Assignee desires to assume the terms of the Lease and perform the same according to its terms.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the parties agree as follows:

1. ASSIGNMENT:

Assignor hereby assigns, transfers and conveys to Assignee, David E. Hendrickson, all of its right, title and interest in and

to the July 15, 1980 Lease. Assignor has provided a written notice of the Assignment to Vancroft Corporation, the present Lessor of the July 15, 1980 Lease and has obtained from Vancroft, a certificate certifying that as of June 30, 1993, Assignor is in compliance with the terms of the Lease and that all payments required to be made to Vancroft have in fact been made through June 30, 1993. A copy of said Certificate is attached hereto as Exhibit "A" and incorporated herein by reference.

2. ACKNOWLEDGEMENT OF RECEIPT OF LESSEE:

Assignee hereby acknowledges receipt of copies of the Lease, its Amendment, and the Estoppel Certificate and acknowledges that the Lease and Amendment are assigned to Assignee subject to all of the terms thereof.

3. ASSUMPTION OF LEASE:

Assignee agrees to assume the July 15, 1980 Lease and its Amendment according to the terms thereof and pay all amounts required thereunder as they become due, the same as though he had originally executed the Lease and Amendment. Assignee agrees to indemnify and hold Assignor harmless from any liability, and any and all claims, demands, liability, damage or expense of any kind whatsoever, arising out of or in any way related to said Lease and Amendment subsequent to the date hereof and Assignee's Assumption of the Lease.

4. BENEFIT:

This Assignment shall be binding upon and inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment effective as of the day and year first above written.

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

_____
David E. Hendrickson

1568000992

STATE OF IDAHO)
)ss.
County of Ada)

On this 30th day of June, 1993, before me, Tommy T. Sanderson personally appeared, known or identified to me to be the President of the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

JOYCE H. JOHNSON NOTARY PUBLIC STATE OF IDAHO

Joyce H. Johnson
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 1/25/99

STATE OF IDAHO)
)ss.
County of Ada)

On this 30 day of June, 1993, before me, the undersigned notary public in and for said county and state, personally appeared David E. Hendrickson, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

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

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My Commission Expires: 10/5/98

1568000993

ACKNOWLEDGMENT OF NOTICE
AND ESTOPPEL CERTIFICATE

The undersigned, Vancroft Corporation, acknowledges receipt of the Notice of Assignment of the above-identified Lease from Tee, Ltd. to David E. Hendrickson. Vancroft Corporation further acknowledges that the company is completely satisfied with Tee, Ltd.'s performance under the Lease of said property and has no claims or demands against Tee, Ltd., and there are no disputes existing in connection with the Lease of said property. Vancroft Corporation further understands that David E. Hendrickson would not purchase the interest in said Lease in the event there were any disputes or dissatisfactions in connection with the Lease of the property.

DATED this 24th day of June, 1993.

VANCROFT CORPORATION

By Mari E. Montgomery
Its President

EXHIBIT J

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

ST-93041044 (2)

THIS FORM FURNISHED COURTESY OF:

STEWART TITLE OF IDAHO, INC.

1568000976

READ & APPROVED BY GRANTEE(S): DH

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 93041044 JH

WARRANTY DEED

FOR VALUE RECEIVED TOMMY T. SANDERSON and ROXANNE M. SANDERSON, husband and wife

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto DAVID E. HENDRICKSON, a single man

GRANTEE(S), whose current address is:

the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 5 in Block 1 and Lot 3 in Block 2 of NIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: June 30, 1993

Tommy T. Sanderson

Roxanne M. Sanderson

By: Attorney in fact

3851841

STEWART TITLE

AD C ATOR
J. DAVID ...
RECORDER BY

'93 JUN 30 PM 4 42

1568000977

STATE OF IDAHO, County of Ada, ss.

On this 30th day of June in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Tommy T. Sanderson known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Signature: [signature]
Name: _____
(Type or Print)
Residing At: Boise
My Commission expires: 10-5-97

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO, County of Ada, ss.

On this 30th day of June in the year of 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared E. Paul Cripple known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as the attorney in fact of Roxanne M. Sanderson and acknowledged to me that he/she/they subscribed the name(s) of Roxanne M. Sanderson thereto as principal, and his/her own name as attorney in fact.

Signature: [signature]
Name: _____
(Type or Print)
Residing At: Boise
My Commission expires: 10-5-97

KEN FRANKLIN NOTARY PUBLIC STATE OF IDAHO

EXHIBIT K

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By: _____

THIS FORM FURNISHED COURTESY OF:

STEWART TITLE

READ & APPROVED BY GRANTEE(S): _____ _____

AMERICA RECORDER 93986
J. DAVID NAVARRO
BOISE ID
STEWART TITLE 1626001234

'93 OCT 29 PM 5 00

FEE 5.00 DEPUTY
RECORDED AT THE REQUEST OF
Order No.: STE-93041044 JH

QUITCLAIM DEED

FOR VALUE RECEIVED VANCROFT CORPORATION, an Idaho corporation

GRANTOR(S)

do(es) hereby CONVEY, RELEASE, REMISE and FOREVER QUIT CLAIM unto DAVID E. HENDRICKSON, a single man

GRANTEE(S)

whose current mailing address is 2 Lassen Court, Menlo Park, CA 94025 the following described property located in Ada County, State of Idaho, more particularly described as follows, to wit:

Lot 3 in Block 2 of HIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

together with their appurtenances.
Dated: October ___, 1993

VANCROFT CORPORATION, an Idaho corporation

By: Mari E. Montgomery
Mari E. Montgomery, President

STATE OF ALASKA
~~COUNTY OF~~ THIRD JUDICIAL DISTRICT

On this 27th day of October in the year of 1993 before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, PRESIDENT OF VANCROFT CORPORATION,

known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

Signature: Mari E. Montgomery
Name: Mari E. Montgomery
Residing at: Anchorage, Alaska
My Commission Expires: 5/15/94

EXHIBIT L

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

9392443 0939244 ST-93044126 (3)

THIS FORM FURNISHED COURTESY OF:

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL. FIDELITY NATIONAL TITLE COMPANY

STEWART TITLE

By:

READ & APPROVED BY GRANTEE(S):

recorded as ADA CO. RECORDER J. DAVID NAVARRO BOISE ID 1628001352

STEWART TITLE

'93 NOV 3 PM 4 53

FEE 3.00 DEP

RECORDED AT THE REQUEST OF

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 93044126-PC

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, VANCROFT CORPORATION, AN IDAHO CORPORATION

, a corporation organized and existing under the laws of the State of Idaho, with its principal office at 600 W. 76th Ave. #101, Anchorage, Alaska 99518 of County of , State of Idaho, GRANTOR, hereby GRANT, BARGAIN, SELL AND CONVEY unto BEDARD & MUSSER, A PARTNERSHIP

GRANTEE(S), whose current address is: 2101 Ridgecrest Drive, Boise, Idaho 83712 the following described real property located in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 19th day of October , in the year of 1993.

(Corporate Seal)

VANCROFT CORPORATION

(Corporate Name)

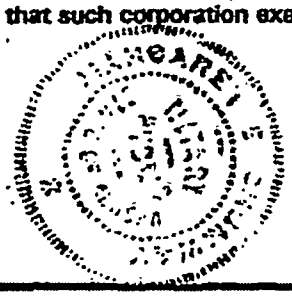
By: Mari E. Montgomery President

Attest: Secretary

STATE OF ALASKA)
COUNTY OF 3rd JUDICIAL DISTRICT)

On this 27th day of October , in the year of 1993 , before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY & JOSEPH R.W. SHIMEK

known or identified to me to be PRESIDENT / SECRETARY of the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



Signature: Margaret E. Shumway

Name: Margaret E. Shumway
(type or print)

Residing at: Anchorage, Alaska

My Commission Expires: 5-15-94

EXHIBIT M

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

(1)

RECORDED-REQUEST OF

THIS FORM FURNISHED COURTESY OF:

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

FEE 3.00 DEPUTY mlapelle

1999 MR 30 AM 11:21

99030645

ALLIANCE TITLE

ALLIANCE TITLE & ESCROW CORP.

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY

READ & APPROVED BY GRANTEE(S): LMD

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 99081089 BHH

CORPORATE WARRANTY DEED

FOR VALUE RECEIVED, VANCROFT CORPORATION, AN IDAHO CORPORATION

, a corporation organized and existing under the laws of the State of Idaho, with its principal office at P.O. BOX 510563 SALT LAKE CITY, UT 84151 of County of ADA , State of Idaho, GRANTOR, hereby GRANT, BARGAIN, SELL AND CONVEY unto BLUEGRASS, LLC.

GRANTEE(S), whose current address is: 2748 WAGONWHEEL COURT, CARROLLTON, TX 75006 the following described real property located in ADA County, State of Idaho, more particularly described as follows, to wit:

Lot 2 and 6 in Block 1 and Lot 1 in Block 2 of NIBLER SUBDIVISION, according to the Official Plat thereof, filed in Book 59 of Plats at Page(s) 5789-91, records of Ada County, Idaho.

Together with any and all water rights appurtenant thereto, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the Grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the Grantor has caused its corporate name to be hereunto affixed by its duly authorized officers this 29th day of March , in the year of 1999.

(Corporate Seal)

VANCROFT CORPORATION
(Corporate Name)

By: Veronica C. Montgomery
VERONICA C. MONTGOMERY, Vice President

Attest: _____
Secretary

STATE OF IDAHO)
COUNTY OF ADA)

On this 29th day of March , in the year of 1999 , before me, the undersigned, a Notary Public in and for said State, personally appeared VERONICA C. MONTGOMERY

known or identified to me to be the Vice President of the corporation that executed the instrument or the person(s) who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

KERENSA MAJERUS
NOTARY PUBLIC
STATE OF IDAHO

Signature: Kerensa Majerus

Name: KERENSA MAJERUS
(type or print)

Residing at: BOISE, ID

My Commission Expires: 01/09/03

EXHIBIT N

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as Recorded
FIDELITY NATIONAL TITLE COMPANY

By: [signature]

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT 9.00 3
BOISE IDAHO 10/04/07 04:41 PM
DEPUTY Vicki Allen
RECORDED – REQUEST OF
Transnation Title

107138040

TERMINATION OF LEASE

BLUEGRASS, LLC, an Idaho limited liability company, as Lessor, and DAVID E. HENDRICKSON, individually, as Lessee, hereby agree that that certain Lease executed executed by Victor and Ruth Nibler, husband and wife, as Lessor, and Dennis LaBrum, Neil LaBrum, Clyde Thomsen and David Samuelsen as Lessee dated July 15, 1980, and commencing on June 30, 1980, all as more particularly described in Exhibit A hereto, being the List of Leases, is hereby terminated effective upon the recording of this Instrument with the Ada County Recorders Office.

Dated: Oct 4, 2007

[signature]
David E. Hendrickson, individually

Dated: Oct 4, 2007

BLUEGRASS, LLC,
an Idaho limited liability company

By: [signature]
Robert M. Donnelly
Its: Member

219311.doc

Notary Acknowledgement to be attached to Termination of Lease

State of **Idaho**, County of **Ada**, ss.

On this **4th** day of **October** in the year of **2007**, before me, the undersigned, a Notary Public in and for said State, personally appeared **David E. Hendrickson** known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

Notary Public
Residing at:
My Commission Expires: Residing in Boise, Idaho
Commission expires 07-30-09

LAURA PAGE NOTARY PUBLIC STATE OF IDAHO

State of **Idaho**, County of **Ada**, ss.

On this **4th** day of **October** in the year of **2007**, before me, the undersigned, a Notary Public in and for said State, personally appeared **Robert M. Donnelly** known or identified to me to be the person whose name is subscribed to the within instrument as the **Member of Bluegrass LLC** and acknowledged to me that **Robert M. Donnelly** executed the same as such **Member**.

Notary Public
Residing at:
My Commission Expires: Residing in Boise, Idaho
Commission expires 07-30-09

LAURA PAGE NOTARY PUBLIC STATE OF IDAHO

A Lease
Dated: July 15, 1980
Lessor/Landlord: Victor and Ruth Nibler
Lessee/Tenant: Dennis Labrum, Neil Labrum, Clyde Thomsen, David Samuelsen
Commenced: June 30, 1980
Term: 99 years
Disclosed by: Memorandum of Lease
Recorded; July 7, 1982
Instrument No: 8228729, of Official Records.

Amendment of Lease
Lessor/Landlord: Victor and Ruth Nibler
Lessee/Tenant: A-J Corporation
Dated: July 28, 1986
Recorded: July 29, 1986
Instrument No: 8643154, of Official Records.

A memorandum of an assignment of leasehold interest
Assignor: A-J Corporation
Assignee: Tee LTD., an Idaho corporation
Dated: July 28, 1986
Recorded: July 29, 1986
Instrument No: 8643155, of Official Records.

Lessor's Assignment of Lease
Assignor: Victor L. Nibler and Ruth E. Nibler
Assignee: Vancroft Corporation
Dated: June 8, 1990
Recorded: June 11, 1990
Instrument No: 9030576, of Official Records.

Lessee's Assignment of Lease
A-J corporation sold its interest in the lease to Tee LTD. on July 28, 1986. Tee LTD. assigned its interest to David E. Hendrickson:
Assignor: Tee LTD.
Assignee: David E. Hendrickson
Effective date: June 30, 1993
Recorded: June 30, 1993
Instrument No: 9351843, of Official Records.

Second Amendment of Lease
Lessor/Landlord: Vancroft Corporation
Lessee/Tenant: David E. Hendrickson
Dated: October 22, 1993
Recorded: October 29, 1993
Instrument No: 9391200, of Official Records.

Assignment of Leases
Assignor: Vancroft Corporation, an Idaho corporation
Assignee: Bluegrass L.L.C., an Idaho Limited Liability Company
Dated: March 29, 1999
Recorded: March 30, 1999
Instrument No: 99030646, of Official Records.

EXHIBIT P

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

ADA COUNTY RECORDER J. DAVID NAVARRO AMOUNT 15.00 5
BOISE IDAHO 10/04/07 04:41 PM
DEPUTY Vicki Allen
RECORDED-REQUEST OF
Transnation Title
107138039

LandAmerica Transnation

Order No.: 11044667-NB

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By:

WARRANTY DEED

FOR VALUE RECEIVED

Blue Grass, LLC, an Idaho limited liability company,

GRANTOR(s), does(do) hereby GRANT, BARGAIN, SELL AND CONVEY unto:

Quail Hollow LLC, an Idaho limited liability company

GRANTEE(S), whose current address is: 6553 W. Plantation Drive, Boise Idaho 83714 the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

Lots 2 and 6 in Block 1 and Lot 1 in Block 2 of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Page(s) 5789 through 5791, records of Ada County, Idaho.

Together with Snake River Adjudication Water Rights 63-4037, 63-9758, and 63-21875

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated this 4 day of October, 2007

Blue Grass, LLC

by: Robert M. Donnelly, Member

Order No. 11044667
NB

State of Idaho

County of Ada

On this 4 day of October, 2007, before me the undersigned, a Notary Public in and for said state, personally appeared Robert M. Donnelly known or identified to me to be the person(s) whose name is/are subscribed to the within instrument as the Member of Blue Grass, LLC and acknowledged to me that Robert M. Donnelly executed the same as such Member.

Laura Page
Notary Public

Name: _____
Residing at ~~Residing in Boise, Idaho~~
My Commission Expires: ~~Commission expires 07-30-08~~

LAURA PAGE NOTARY PUBLIC STATE OF IDAHO

Exhibit "B" to Warranty Deed

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.
An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: August 15, 2000
Instrument No: 100064342, of Official Records.

An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: August 15, 2000
Instrument No.: 100064342
Re-recorded: October 19, 2000
Instrument No: 100083420, of Official Records.

Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.C. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement
Between: Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded: November 17, 2004
Instrument No: 104145945, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement
Between: David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded: April 27, 1994
Instrument No: 94038748, of Official Records.

Any rights, interest, or claims which may exist or arise by reason of the following shown on ALTA Survey prepared by Briggs Engineering Inc., Drawing No. 70827-ALTA, as follows:

a. Approximately 10 feet of pavement for 36th Street encroaching at the Southeast corner of Lot 2, Block 1.

b. The fence appurtenant to the subject property is off line and does not conform to the property line.
Affects the South line of Lot 6, Block 1 and the Northeast corner of Lot 1, Block 2.

c. The edge of pavement at the Northeast corner of subject property adjacent to Lot 3, Block 2.

d. A water line over the Northeast corner that serves the subject property and Lot 3, Block 2.

Water rights, claims or title to water.

Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.

EXHIBIT Q

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL. as recorded
FIDELITY NATIONAL TITLE COMPANY
By: [signature]

ADA COUNTY RECORDER Christopher D. Rich AMOUNT 31.00 8
BOISE IDAHO 12/04/2013 11:30 AM
DEPUTY Bonnie Oberbillig
Simplifile Electronic Recording
RECORDED-REQUEST OF
FIDELITY NATIONAL TITLE - BOIS
113130306

Recording requested by and
When recorded return to Boise City
Department of Parks & Recreation,
P.O. Box 500,
Boise, Idaho 83701

DEED OF GIFT

THIS INDENTURE made this 1st day of November, 2013, between Quail Hollow LLC, an Idaho limited liability company, the "Grantor", and the City of Boise City, an Idaho municipal corporation, the "Grantee";

WITNESSETH:

Section 1.

AS A GIFT TO THE GRANTEE, the Grantor does hereby grant and convey to the Grantee all of the real property situated in the County of Ada, State of Idaho, described on **Exhibit 1** attached hereto and by this reference made a part thereof, which will be referred to herein as "the Property".

SUBJECT to:

1. All taxes and assessments levied and assessed upon the Property on and after December 1, 2013, and each year thereafter.

TO HAVE AND TO HOLD the Property unto the Grantee so long as the Grantee shall comply with the following conditions:

(a) The Grantee shall hold, own and operate the Property as a golf course in perpetuity, open to the public at all times, provided, however, that the Grantee may alter or change the use of all or any portion of the property to a public use other than a golf course. This public use restriction shall not limit or prohibit the sale of food and beverages (including alcoholic beverages), renting golf carts or other golfing-related products and charging for use of the golf course or any related facility provided such use is reasonable and fair and designed only to return to the City the cost of operating a public golf course. The Grantee shall utilize any reserves it earns from the operation of the golf course for capital and other improvements and maintenance and operation expenses associated with the Property. The Grantee may also impose reasonable charges and limits as to time and place and number of people entering and utilizing the Property for golf or other purposes in a manner consistent with standard

operating procedures for golf courses. In that regard, the Grantee may restrict and/or prohibit the use of the general public to enter upon all or portions of the golf course in a manner consistent with the safe and reasonable operation of a public golf course and in compliance with the ordinance of the City of Boise City.

(b) If the Grantee determines that it is in the public interest to use all or a portion of the Property for a use other than a golf course the Grantee may so change that use, provided the use remains public and open to the public, provided however, that as with operation as a golf course the Grantee shall be at liberty to impose reasonable restrictions as to time and use and access to all or any portion of the Property and to charge reasonable fees to defray the cost of providing public services which may include, but not limited to, athletic events, concerts, sports fields and such improvements as are necessarily reasonable for such public uses.

At no time and under no circumstances shall the Property be utilized for any residential, commercial, industrial or other use that is not consistent with this public use requirement.

(c) Neither the Property nor any part thereof shall ever be transferred or conveyed by the Grantee. The Grantee shall allow the creation of no lien or encumbrance to attach to the Property, or any part thereof, excepting therefrom easements for utilities serving the Property and *ad valorem* taxes, if any, levied and assessed against the Property. Notwithstanding the foregoing, Grantee, upon payment of just compensation, may transfer additional right-of-way to the Ada County Highway District, any successor highway district or road department as the case may be, as is reasonable and necessary and in the public interest.

Section 2.

To insure that the Property herein conveyed will be developed, used, operated and identified in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift, it shall be a condition of this conveyance that at any time in the future should the Property or any part hereof cease to be used in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift or that the Grantee shall fail, refuse or neglect in any respect to comply with the conditions set forth in subsection (a), (b), and (c) of Section 1 of this Deed of Gift, the Grantee shall be divested of the title to the Property and the title to the Property shall pass to an exempt organization having its principal place of business in Boise, Idaho, excepting therefrom any other governmental entity, and qualifying as such under the provisions of Internal Revenue Code Section 501(c)(3) or Internal Revenue Code Section 170(c)(1) or a comparable provision of the United States Internal Revenue Code then in force and effect created for charitable or public purposes and best able to operate or provide for the operation of that Property for the benefit of the public generally in

compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift. The determination of a successor exempt organization pursuant to this Section 2 shall rest with the then-Administrative District Judge of the Fourth Judicial District (or the successor judge having duties most like that judge if the position of Administrative District Judge no longer exists).

The provisions of this section may be enforced by either Grantor, if it is then in existence, or an exempt organization under the provisions of Internal Revenue Code Section 501(c)(3) or the comparable provision of the United States Internal Revenue Code, designated by the then Administrative District Judge, for the Fourth Judicial District (or the successor judge having duties most like that judge).

The fact that the Grantee has ceased to operate, maintain and use of the Property herein conveyed in compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift may be established of record by either (i) a certified copy of a resolution by the Mayor and Council of the Grantee of that fact, or (ii) a determination thereof through judgment of a court of competent jurisdiction of the State of Idaho.

Section 3:

By the recordation of this Deed of Gift, the Grantee shall be deemed to have accepted and agreed to comply with the restrictions and conditions set forth in Section 1 and Section 2 of this Deed of Gift and to hold the Property subject to full performance by it of those provisions of this Deed of Gift.

Section 4:

The current address of the Grantee is City of Boise, 150 N. Capitol Blvd., Boise, Idaho 83701.

IN WITNESS WHEREOF, this Deed of Gift has been duly executed by the Grantor the day and year herein first above written.

Quail Hollow LLC, an
Idaho limited liability company

By: David E. Hendrickson
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of November, 2013, before me, a Notary Public, personally appeared David Hendrickson, known or identified to me to be the Manager of Quail Hollow LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such corporation executed the same.

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

FREDRIC V. SHOEMAKER NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 11/26/2016

EXHIBIT 1
(Legal Description for Quail Hollow Golf Course)

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

EXHIBIT R

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL as recorded
FIDELITY NATIONAL TITLE COMPANY
By:

ADA COUNTY RECORDER Christopher D Rich
BOISE IDAHO Pgs=2 CHE FOWLER
SUSAN L MIMURA & ASSOC

2015-062695
07/13/2015 03:17 PM
AMOUNT:$13.00

00120865201500626950020022

QUITCLAIM DEED

FOR THE CONSIDERATION OF VALUE RECEIVED, and other good and valuable consideration, the receipt of which is hereby acknowledged,

Kipp A. Bedard, William Musser, and Bedard & Musser ("GRANTORS"), hereby grants, conveys, and hereby releases and forever quitclaims unto Boise Hollow Land Holdings, RLLP ("GRANTEE"), as its sole and separate property, whose current mailing address is 1961 Silvercreek Lane, Boise, ID 83706, and its heirs, successors and assigns forever, all right, title and interest which GRANTORS now have or may hereafter acquire in the following real property situated in Boise, Ada County, State of Idaho, and more particularly described as follows:

> Lot 4, Block 2, NIBLER SUBDIVISION, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument Number 9205592

TO HAVE AND TO HOLD, all and singular the said real property, together with all appurtenances, tenements, hereditaments, reversions, remainders, rents, issues, profits, rights-of-way, and water rights in anywise appertaining to the real property herein described, as well in law as in equity, unto GRANTEE, and to its successors and assigns forever.

WITNESS the hand of said GRANTOR this 26 day of June, 2015.

BEDARD & MUSSER, a Partnership

By: Kipp A. Bedard (General Partner)

BEDARD & MUSSER, a Partnership

William Musser (General Partner)

Kipp A. Bedard, Individual

State of Idaho)
:ss.
County of Ada)

On this 6 day of July, 2015, before me, Kaneecia M Johnson, a notary public in and for the state of Idaho, personally appeared Kipp A. Bedard, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

KANEECIA M JOHNSON NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at ADA COUNTY, Idaho
My Commission Expires: 06·23·2021

William Musser, Individual

State of ~~Idaho~~ Montana)
:ss.
County of ~~Ada~~ Lewis & Clark)

On this 26th day of June, 2015, before me, ~~William Musser~~ Kerry Bouchard, a notary public in and for the state of ~~Idaho~~ Montana, personally appeared William Musser, personally known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

SEAL
KERRY L BOUCHARD
NOTARY PUBLIC for the
State of Montana
Residing at Augusta, MT
My Commission Expires
September 25, 2015

Notary Public
Residing at Augusta, ~~Idaho~~ Montana
My Commission Expires: 9-25-2015

EXHIBIT S

TO

THIRD DECLARATION OF

ABIGAIL R. GERMAINE

09392667

ST-9304126 JH

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID

STEWART TITLE

'93 NOV 4 AM 10 40

FEE [illegible] DEP [illegible]
RECORDED AT THE REQUEST OF

PART OF ORIGINAL
TOO POOR TO COPY

1628001631

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL, as recorded
FIDELITY NATIONAL TITLE COMPANY
By: [signature]

ASSIGNMENT AND ASSUMPTION OF PERMANENT EASEMENT AGREEMENT

This Assignment and Assumption of Permanent Easement Agreement is made and entered in to this 27th day of October, 1993 by and between VANCROFT CORPORATION, an Idaho corporation, ("Assignor") whose address is 600 West 76th Avenue, #101, Anchorage, Alaska 99518-2565, and BEDARD & MUSSER, a partnership, ("Assignee") whose address is 2101 Ridgecrest Dr., Boise Idaho, 83712

Concurrently herewith, Assignor is selling to Assignee that certain real property located in Ada County, Idaho and legally described as: Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592 (the "Property"). In connection with such sale, Assignor desires to assign, and Assignee desires to accept the assignment of, the rights, benefits and obligations of Assignor under the terms and conditions of that certain Permanent Easement Agreement (the "Easement Agreement") made and entered into by and between TEE, LTD., Tommy T. Sanderson and Roxanne Sanderson, as grantor, and Assignor, dated September 14, 1991, and recorded on ~~October~~ November 3, 1993 as Instrument Number 9392442, which Easement Agreement grants a permanent 40' access and utility easement for the benefit of the Property and which Easement Agreement contains certain conditions and obligations which are clearly enumerated therein. A copy of the Easement Agreement is attached as Exhibit A and incorporated herein.

NOW THEREFORE, In consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. ASSIGNMENT. Assignor hereby assigns, transfers, conveys, sells, endorses and delivers to Assignee all of Assignor's right, title and interest under the Easement Agreement.

2. ASSUMPTION. Assignee hereby accepts such assignment and hereby assumes all of the obligations of Assignor under the Easement Agreement and agrees to be bound by all terms and conditions of the Easement Agreement. Assignee hereby covenants and agrees to indemnify, defend and hold harmless Assignor from and against any claims, liabilities, costs, expenses (including reasonable attorneys' fees) and damages asserted against or incurred by Assignor and arising in connection with the Easement Agreement subsequent to the date of this Assignment and Assumption.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By _____

By _____

1628001633

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the year and day first above written.

VANCROFT CORPORATION

By Mari E. Montgomery
Mari E. Montgomery
President

BEDARD & MUSSER

By William L. Musser

By _____

1628001634

STATE OF ALASKA)
) ss.
~~COUNTY OF~~ 3rd JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Shumway
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 2nd day of November, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Kipp A. Bedard, known or identified to me to be the partner of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

Notary Public for Boise
Residing at Boise, Idaho
My commission expires: May 8, 1996

1628001635

STATE OF ALASKA)
) ss.
~~COUNTY OF~~ 3RD JUDICIAL DISTRICT)

On this 27th day of October, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared MARI E. MONTGOMERY, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Margaret E. Adamson
Notary Public for Alaska
Residing at Anchorage, Alaska
My commission expires: 5/15/94

STATE OF ~~IDAHO~~ NEW YORK)
) ss.
COUNTY OF ~~ADA~~ NEW YORK)

On this 2ND day of NOVEMBER 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared WILLIAM L. MUSSER JR. known or identified to me to be the A PARTNER of BEDARD & MUSSER, the partnership that executed the instrument or the person who executed the instrument on behalf of said partnership and acknowledged to me that such partnership executed the same.

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

April Medina
Notary Public for _____
Residing at _____
My commission expires: _____

APRIL MEDINA
Notary Public, State of New York
No. 01-4680535
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Sept. 30, 1994

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT made and entered into by and between TEE, LTD., an Idaho corporation, which has its principal place of business in Boise, Ada County, Idaho, and Tommy T. Sanderson and Roxanne Sanderson, hereinafter collectively referred to as "Grantor" or "Tee, Ltd." and VANCROFT CORPORATION, an Idaho corporation, hereinafter referred to as "Grantee" or "Vancroft," is made and based upon the following facts:

On July 15, 1980, Victor and Ruth Nibler, husband and wife, as lessors, entered into a Lease with Dennis Labrum, Neil Labrum, Clyde Thomsen, and David Samuelsen, as lessees, under the terms of which Niblers leased that certain real property described on Exhibit A hereto for use as a golf course for a term of ninety-nine (99) years. Since that time, Vancroft Corporation has succeeded to the Niblers' interest as lessor, Tee, Ltd. has succeeded to the lessee's interest, and the golf course is now known by the name of Quail Hollow Golf Course.

The parties hereto, together with the Niblers, and Tommy T. Sanderson and Roxanne Sanderson, individually, are presently in the process of preparing and filing a subdivision plat designated as the Nibler Subdivision, which will include the area being leased as the Quail Hollow Golf Course. Pursuant to the subdivision plat, the legal description of the golf course will be as follows:

Lots 2 and 6, Block 1, and Lot 1, Block 2,
Nibler Subdivision, Boise, Ada County, Idaho.

Vancroft has requested Tee, Ltd. to grant it an easement across the southwest portion of Lot 1, Block 2, Nibler Subdivision, to provide access and utilities to Lot 4, Block 2, of the subdivision, and Tee, Ltd. is willing to grant the easement on the condition that (1) all costs associated with the installation thereof be borne by Vancroft; (2) any renovation or repair to the golf course caused by the installation of the easement be borne by Vancroft; and (3) that Tee, Ltd. be held harmless and indemnified by Vancroft from any claim made by third parties for damages caused by flying golf balls in the easement area.

Based upon the foregoing facts, and in consideration of the mutual covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Tee, Ltd. does hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision, the legal description of which is attached hereto as

Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

2. Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to the design, installation, construction and maintenance of the utilities or any road constructed within the easement area, including, but not limited to, all engineering, surveying, construction, and dedication, it being understood that the easement area is for the benefit of the Grantee and the owners, occupants and users of Lot 4, Block 2, Nibler Subdivision. All utilities shall be located in the easement area.

3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.

4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road.

5. Grantee recognizes that the easement area will be immediately adjacent to an operating golf course and that there is a danger to those utilizing the easement area of being hit by a golf ball. In the event any type of screens or netting are required by any governmental agencies or Grantor's insurance company to shield those utilizing the easement area, Grantee shall be responsible for the designing, installation and maintenance thereof and all costs associated therewith, except the cost of maintenance or repair resulting from the wilful misconduct or negligent acts or omissions of Grantor or its employees, agents, contractors or invitees, which costs shall be paid by Grantor. Upon installation of the utilities and road in the easement area, the Grantee, its successors and assigns, shall hold Tee, Ltd., its successors and assigns, harmless from any and all claims arising from any damages occurring in the easement area caused by flying golf balls hit by the customers utilizing the golf course, unless such damages are caused by the wilful misconduct or negligent acts

or omissions of Grantor or its employees, agents or contractors. In the event Tee, Ltd. is required to retain attorneys to represent it to defend itself from any claim for damage covered hereby, Grantee agrees to reimburse and indemnify Tee, Ltd. the reasonable attorneys' fees, and further agrees to pay any reasonable attorneys' fees incurred to collect any sums found due and owing from Vancroft, its successors and assigns, by reason of its failure to defend and/or indemnify Grantor.

6. Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding, etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 14th day of September, 1991.

"GRANTOR"

TEE, LTD.

By _____
Tommy T. Sanderson,
Its President

ATTEST:

By _____
Roxanne Sanderson,
Its Secretary

_____
TOMMY T. SANDERSON, Individually

_____
ROXANNE SANDERSON, Individually

"GRANTEE,"

VANCROFT CORPORATION

By Mari Montgomery Jordan
Mari Montgomery Jordan,
Its President

ATTEST:

By _____
Joseph P. Cango,
Its Secretary

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the President of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 8/1/95

NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO)
)ss.
County of Ada)

ON THIS 17th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared TOMMY T. SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Lawrence P. Lobb
Notary Public for Idaho
Residing at Rigby, Idaho
My Commission Expires: 6/1/95

LAWRENCE P. LOBB NOTARY PUBLIC STATE OF IDAHO

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9 day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the Secretary of TEE, LTD., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Laura J Kenney
Notary Public for Massachusetts
Residing at Littleton Ma.
My Commission Expires: May 8th 1998

1628001641

STATE OF MASSACHUSETTS)
)ss.
County of Middlesex)

ON THIS 9th day of October, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared ROXANNE SANDERSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Mara J Kenney
Notary Public for Massachusetts
Residing at Littleton Ma.
My Commission Expires: May 5th 1998

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared MARI MONTGOMERY JORDAN, known or identified to me to be the President of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

1628001642

STATE OF ALASKA)
)ss.
Third Judicial District)

ON THIS 14th day of September, in the year of 1991, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared JOSEPH P. CANGE, known or identified to me to be the Secretary of VANCROFT CORPORATION, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Grace Montgomery
Notary Public for Alaska
My Commission Expires: 4-10-95

EXHIBIT A

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Golf Course

Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

1628001644

EXHIBIT B

To

PERMANENT EASEMENT AGREEMENT

Legal Description of Easement Area

The easement shall be across the southerly 40 feet of Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789 - 5791, Instrument No. 9205592.

Book 59 Page 5789

1628001645

THIS MAP IS FURNISHED AS AN ACCOMMODATION, STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREON.

⊠	Initial Point, Set 2" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
•	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
○	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar
	Boundary Line
	Section Line
	1/4 Section Line
	1/16 Section Line
	Easement Line

FND. ALUMINUM CAP 1/4 CORNER C.P.& F. NO.8111624B

22

FND. ALUMINUM CAP 1/4 CORNER C.P.& F. NO.8111624B

21 22

28 27

FD. ALUM. CAP C.P.& F. NO.8111624B

BEARING

FND. ALUMINUM CAP 1/4 CORNER C.P.& F. NO.8111624B

28 27

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 49° 30' 36" E	200.23
2	N 66° 41' 41" E	399.58
3	N 88° 13' 01" E	399.83
4	N 87° 32' 36" E	378.17
5	N 24° 27' 09" E	409.18
6	N 22° 46' 35" E	418.87
7	N 45° 03' 29" E	285.53

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access. Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8850182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of side roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

REGISTERED LAND SURVEYOR 4996 STATE OF IDAHO MICHAEL E. EARLY

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

01-13-12

Exhibit C

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

1628001646

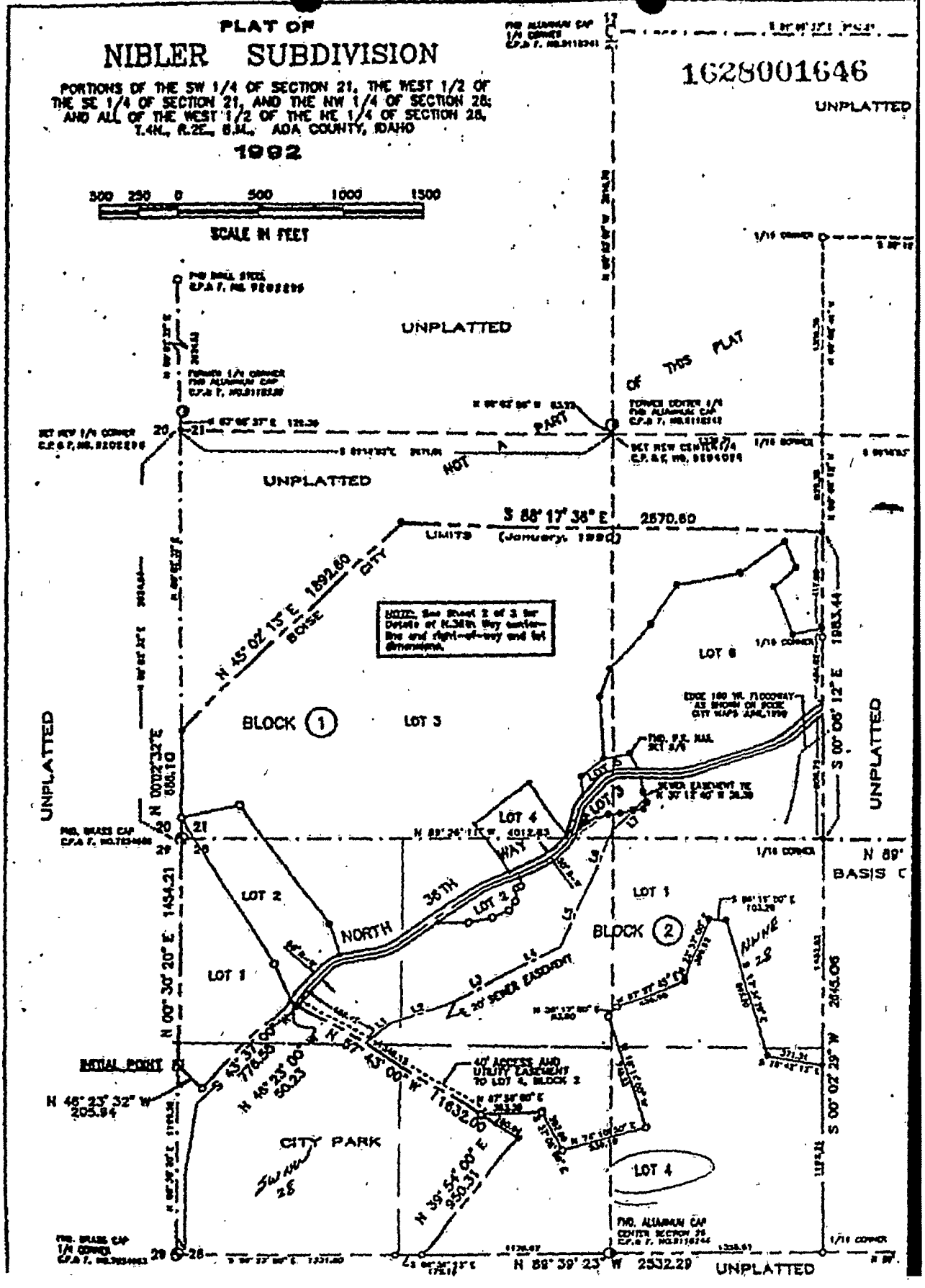


Exhibit C

PLAT OF
NIBLER SUBDIVISION

PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

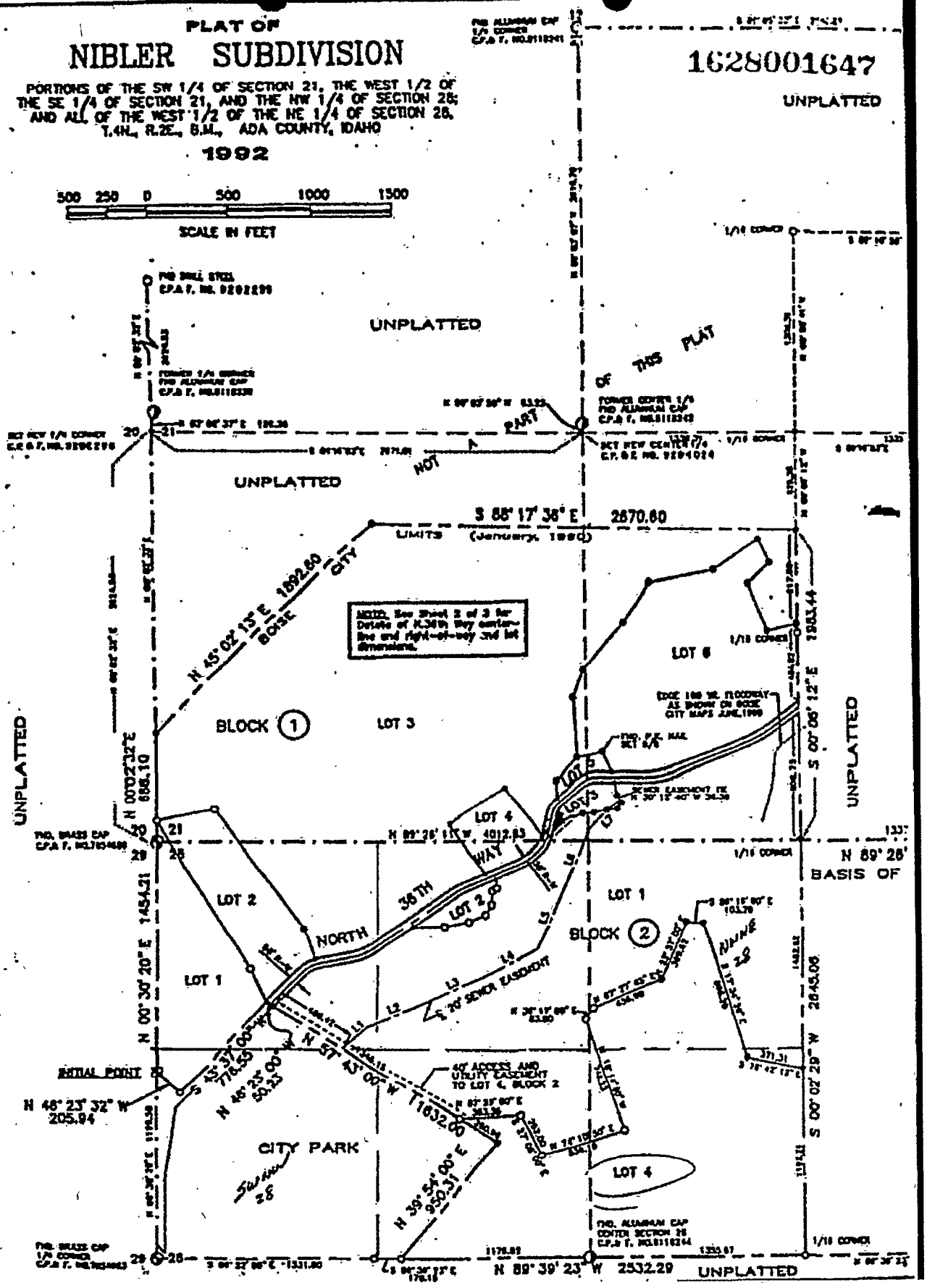
1992

500 250 0 500 1000 1500

SCALE IN FEET

1628001647

UNPLATTED



Bk 59 Pages 5789

1628001648

THIS MAP IS FURNISHED AS AN ACCOMMODATION, STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREON.

⊠	Initial Point, Set 3" x 36" Galv. Pipe With Alum. Cap
⊙	Found Brass Cap
⊙	Found Aluminum Cap
•	Set 5/8" x 30" Rebar w/Plastic Cap
•	Set 1/2" x 24" Rebar
o	Found 5/8" Rebar
•	Found 1/2" x 24" Rebar
———	Boundary Line
— · — · —	Section Line
— — — —	1/4 Section Line
— — — — —	1/16 Section Line
- - - - - -	Easement Line

21 22 FND. ALUMINUM CAP 1/4 CORNER C.P.& F. #8311

21 22 28 27 FD. ALUM. CAP C.P.& F. #8311

28 27 FND. ALUMINUM CAP 1/4 CORNER C.P.& F. #8311

CENTERLINE SEWER EASEMENT DATA

LINE	BEARING	DISTANCE
1	N 49° 30' 30" E	200.23
2	N 58° 11' 46" E	338.58
3	N 68° 13' 01" E	399.83
4	N 82° 32' 38" E	378.17
5	N 24° 27' 09" E	408.16
6	N 22° 46' 25" E	418.87
7	N 45° 02' 28" E	265.53

NOTES

1. All lots are hereby designated as having a permanent easement for public utilities, drainage, sewer and Boise City street lights over the ten (10) feet adjacent to any public street. This easement shall not preclude the construction of hard surfaced driveways and walkways to each lot.
2. Building setback dimensions in this subdivision shall conform to the applicable zoning regulations of the City of Boise, Ada County, Idaho in effect at the time of issuance of a building permit.
3. Any resubdivision of this plat shall comply with the applicable Zoning Regulations in effect at the time of the resubdivision.
4. This subdivision is not in an irrigation district and irrigation water will not be provided to any lot.
5. Restricted Access (except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, unless said primary access is specifically approved by the Ada County Highway District. This restricted access shall not prevent golf carts and golf course maintenance equipment from crossing N. 36th Way.
6. No new separate principle structures shall be permitted within this subdivision unless specifically approved by the City of Boise. This restriction shall not be applied to prohibit the erection of minor accessory or maintenance buildings related to the existing dwellings or the golf course, provided that proper building permits are obtained.
7. All new development within this subdivision is subject to the requirements of the Boise City Hillside and Foothills Ordinance and Chapter 70 of the Uniform Building Code.
8. Except for accessory structures not intended for human habitation, any new development, separate principle structures, will require improvements to Ada County Highway District standards on North 36th Way, both adjacent to the proposed development and southwesterly of the proposed development to the boundary of the plat.
9. Lots 1 and 3, Block 2 are subject to an existing easement granted to the Northwest Boise Sewer District, Instrument No. 8830182.
10. All lots fronting N. 36th Way are hereby designated as having a temporary construction easement along N. 36th Way for the future widening and improvement of N. 36th Way, which easement shall cease to exist upon the completion of said widening. This easement shall be of varying width, sufficient for the construction of said roadway slopes but not steeper than two (2) horizontal to one (1) vertical.

REGISTERED LAND SURVEYOR 4995 STATE OF IDAHO MICHAEL L. MARKS

VICTOR L. NIBLER
Owner
Boise, Idaho

BRIGGS ENGINEERING, INC.
Consulting Engineers
Boise, Idaho

SHEET 1 OF 3

000642

Exhibit C

PLAT OF
NIBLER SUBDIVISION

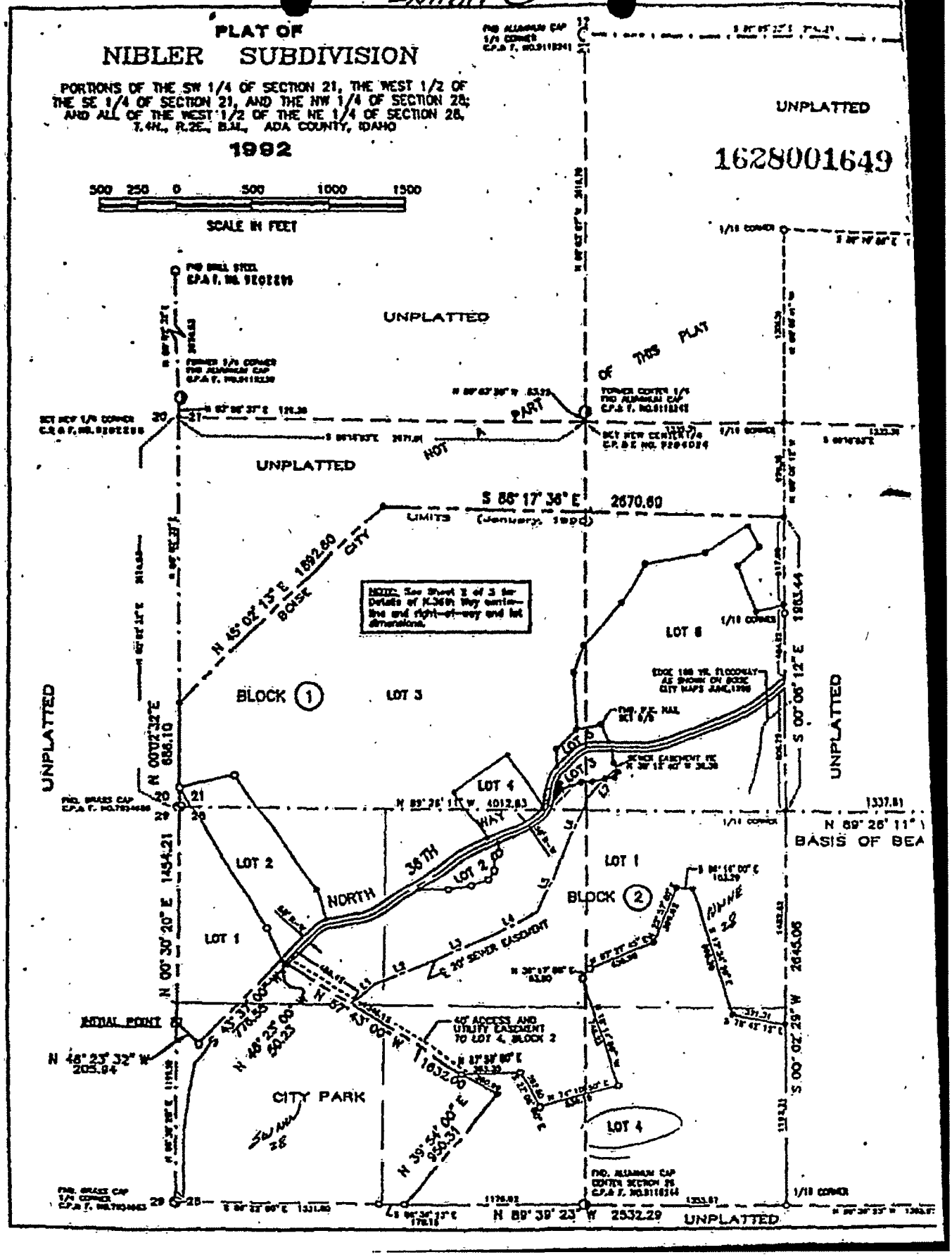
PORTIONS OF THE SW 1/4 OF SECTION 21, THE WEST 1/2 OF THE SE 1/4 OF SECTION 21, AND THE NW 1/4 OF SECTION 28; AND ALL OF THE WEST 1/2 OF THE NE 1/4 OF SECTION 28, T.4N., R.2E., B.M., ADA COUNTY, IDAHO

1992

500 250 0 500 1000 1500

SCALE IN FEET

1628001649



ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

v.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

ORIGINAL

DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF COLIN CONNELL

COMES NOW Defendant, City of Boise City, by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and pursuant to Rules 7(b)(1) and 56(e) of the Idaho Rules of Civil Procedure and Rules 801 – 806, 701 – 705, and 901(a) of the Idaho Rules of Evidence, hereby respectfully move this Court for an Order striking the Affidavit of Colin

Connell as requested below. The Affidavit of Colin Connell is inadmissible as affiant does not qualify as an expert in this matter and the affidavit contains hearsay. Therefore, the Affidavit of Colin Connell should be stricken.

REQUIREMENTS TO QUALIFY AS AN EXPERT

Affidavits in support of a motion for summary judgment must first meet the threshold question of admissibility.

> 'I.R.C.P. 56(e) provides that the adverse party may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial.' *Rhodehouse v. Stutts,* 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994) (citation omitted). Affidavits supporting or opposing the motion for summary judgment 'shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.' *Id.* 'The admissibility of the evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to determine whether the evidence is sufficient to create a genuine issue for trial.' *West v. Sonke,* 132 Idaho 133, 138, 968 P.2d 228, 233 (1998).

Carnell v. Barker Management, Inc., 137 Idaho 322, 327, 48 P.3d 651, 656 (2002).

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702 of the Idaho Rules of Evidence.

The foundation for establishing a witness is qualified as an expert must be offered before his testimony is admitted into evidence. *State v. Johnson,* 119 Idaho 852, 855, 810 P.2d 1138, 1141 (Ct.App. 1991). Whether a witness is sufficiently qualified to give expert testimony is a matter largely within the sound discretion of the trial court. *State v. Winn,* 121 Idaho 850, 855,

828 P.2d 879, 884 (1992). Only admissible evidence can be considered in ruling on a motion for summary judgment. *Orr v. Bank of America, NR & SA,* 285 F.3d 764, 773 (9th Cir. 2002).

REQUIREMENTS FOR ADMISSIBILITY

It is well established that only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment. Rule 56(e) of the Idaho Rules of Civil Procedure states that, "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein." I.R.C.P. 56(e). The requirements of this rule are not met with affidavits that are conclusory, based on hearsay, and not made on personal knowledge. *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005).

DISCUSSION

In paragraph 4 of the Affidavit of Colin Connell, affiant states: "I know that the Niblers, Tee-Sanderson, and Vancroft were advised of and were aware of the City of Boise's requirement that vehicular access between the parcels comprising the Nibler Subdivision and 36th Street be under the authority and per the requirements of the Ada County Highway District (ACHD)." This statement is inadmissible hearsay with no exception identified.

For the expert testimony of Colin Connell to be admitted into evidence pursuant to the cross-motions for summary judgment, it must be shown that his scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue. Further, to qualify as an expert, they must be sufficiently qualified by knowledge, skill, experience, training, or education. Rule 702 of the Idaho Rules of Evidence.

Mr. Connell identifies his knowledge and experience as having "been a real estate developer in the metropolitan area of Boise, Idaho for 36 years." His further expertise is his familiarity with the land in the area, as well as his observation of the platting and subdividing process of the Nibler Subdivision. He has not provided any curriculum vitae or resume and does not identify any experience, training, or education that would constitute specialized knowledge that will assist in understanding the evidence or to determining a fact in issue. Mr. Connell does not claim to have had any involvement with and was not a party to the Easement Agreement that is the subject of this lawsuit, hardly the "knowledge, skill, experience, training, or education" contemplated by Rule 702 of the Idaho Rules of Evidence. Paragraphs 5 -7 are inadmissible expert testimony. It is particularly inappropriate and presumptuous to attempt to comment on the testimony of Tommy Sanderson. There is no foundation for Mr. Connell to opine regarding the Easement Agreement, as he does in paragraphs 5 – 7. Finally, it is a blatant misrepresentation in paragraph 7 that, as of September 14, 1991, "a road already existed within the easement area."

CONCLUSION

The above identified portions of the Affidavit of Colin Connell are not admissible evidence that can be considered by this Court on a motion for summary judgment. As such, Defendant asks that the Affidavit of Colin Connell be stricken from the record in its entirety, or to the extent identified above.

DATED this 9 day of February 2016.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9 day of February 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

NO. 256 FILED
A.M. P.M.
FEB 16 2016
CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF COLIN CONNELL

COME NOW Plaintiffs Bedard and Musser, an Idaho partnership ("Bedard and Musser") and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership ("Boise Hollow") (collectively, "Plaintiffs"), by and through their attorneys of record, Terry C. Copple and Michael E. Band of the firm Davison, Copple, Copple & Copple, LLP, of Boise, Idaho, and hereby submit this brief in response and opposition to DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF COLIN CONNELL ("Motion to Strike") submitted by Defendant City of Boise (the "City") on

ORIGINAL

February 9, 2016.

I. INTRODUCTION

Plaintiffs filed the AFFIDAVIT OF COLIN CONNELL ("Connell Affidavit") on February 2, 2016, in opposition of the City's CROSS-MOTION FOR SUMMARY JUDGMENT (filed December 31, 2015). Mr. Connell is an experienced Boise real estate developer and has owned property adjacent to the parcels at issue in this litigation for approximately 30 years. The City now seeks to strike the Connell Affidavit. The City's Motion to Strike for the reasons stated herein.

II. STANDARD OF REVIEW

A reviewing court applies an abuse of discretion standard when determining whether testimony offered in connection with a motion for summary judgment is admissible. A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. *Shea v. Kevic Corp.*, 156 Idaho 540, 544, 328 P.3d 520, 524 (2014) (internal citations omitted).

III. ANALYSIS

A. Mr. Connell's opinion with respect to the credibility of Mr. Sanderson's denial of having knowledge of Vancroft's intent to develop its land is not an expert opinion and should not be stricken.

Though Mr. Connell may be an expert on real estate development in the Boise foothills, the testimony advanced in his affidavit is not offered as expert testimony. Rather, Mr. Connell simply offers his well-informed lay opinion.

A lay witness may testify in the form of an opinion if: (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the testimony of the witness or the determination of a fact in issue, and (c) not based on scientific, technical or other specialized

knowledge within the scope of Rule 702. *See* IDAHO RULE OF EVIDENCE ("I.R.E.") 701. A trial court has broad latitude in determining whether a lay witness is qualified to testify as to any conclusion based on common knowledge or experience. *United States v. Mandujano*, 499 F.2d 370, 379 (5th Cir. 1974), *cert denied*, 419 U.S. 1114 (1975).

Mr. Connell merely opines as follows:

> It was well known and understood at the time by the sophisticated land-holders in the area, including Tee-Sanderson, that the only reason to own such land was for the purpose of developing it into a multi-lot residential subdivision. Accordingly it is my opinion that the testimony of Tommy Sanderson stating that he was unaware of Vancroft's intent to develop its land, including the Development Parcel, into a multi-lot residential subdivision is not credible.

Connell Aff. at 3.

This opinion is based on his own perception as a neighboring land-owner who has paid meticulous and self-interested attention to the development of these properties over several decades. It is not expert testimony, and it does not require the support of a curriculum vitae or a recitation of Mr. Connell's experience, training, or education. Accordingly, there is no basis to strike this testimony and the Court should deny the City's motion to the extent it so requests.

B. <u>Paragraph 7 should not be stricken as it is not based on expert testimony, and is uncontradicted.</u>

The City incorrectly asserts that Paragraph 7 of Mr. Connell's affidavit contains expert testimony. For the Court's reference, the paragraph at issue is as follows:

> Due to my long-standing familiarity with the Golf Course and the Development Parcel, I can confirm that as of the date of the Permanent Easement Agreement at issue in this litigation, September 14, 1991, a road already existed within the easement area. I understand that the Permanent Easement Agreement requires the easement owner to pay for damage or changes to the Golf Course caused by construction of the road. Because the road already existed at the time of the agreement, no damage or changes to the Golf Course would occur unless the road were substantially expanded upon construction.

Connell Aff. at 3.

There is no expert testimony or opinion offered in Paragraph 7. It recites Mr. Connell's first-hand factual knowledge and memory with respect to the state of this real property as of September 14, 1991. The City further contends that Mr. Connell's testimony confirming that the dirt road which presently exists within the easement area also existed back in 1991 is "a blatant misrepresentation." This is neither accurate, nor a basis for striking the testimony. It is the province of the Court to determine whether there is a conflict of material fact. However, uncontradicted testimony of a credible witness must be accepted by the trier of fact unless the testimony is inherently improbable or impeached in some way. *Casey v. Sevy*, 129 Idaho 13, 19, 921 P.2d 190, 196 (Ct.App.1996). A party opposing summary judgment "may not rest on the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or otherwise pleaded in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e); *see also Smith v Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

The City has not adduced any evidence contradicting Mr. Connell's testimony that the road existed in 1991. Accordingly, this testimony must be accepted as true. As stated by Mr. Connell, the existence of the road at the time of the Permanent Easement Agreement renders certain provisions of the Permanent Easement Agreement meaningful only in the event that the road was expanded to the point of causing damage to the Golf Course.

In any event, there is no basis for the City's request to strike Paragraph 7 of Mr. Connell's affidavit, and therefore the Court should deny the same.

C. <u>The Connell Affidavit does not contain hearsay.</u>

The City incorrectly complains that paragraph 4 of the Connell Affidavit contains hearsay. The testimony to which the City takes umbrage is based on admissible documents previously in the

record, the authenticity of which has not been challenged by the City.

Statements which would otherwise be hearsay, but which are based on the contents of documents admissible in Court, are not inadmissible hearsay. *See, e.g., State v. Barlow*, 113 Idaho 573, 576, 746 P.2d 1032, 1035 (Ct. App. 1987). The particular passage at issue is as follows:

> I know that the Niblers, Tee-Sanderson, and Vancroft were advised of and were aware of the City of Boise's requirement that vehicular access between the parcels comprising the Nibler Subdivision and 36th Street be under the authority and per the requirements of the Ada County Highway District (ACHD).

Connell Aff. at 2, ¶4.

As indicated by Mr. Connell's testimony regarding his involvement and knowledge of the platting and subdividing process of the Nibler Subdivision (Connell Aff. at 2, ¶4), this statement within Paragraph 4 of the Connell Aff. is an indirect reference to Nibler Subdivision Plat (which is a matter of public record) dated January 13, 1992, which contains the following notation:

> 5. Restricted Access: Except for Lots 3 and 4, Block 1, and Lots 2 and 3, Block 2, no lots in this subdivision shall be provided with a primary access to N. 36th Way, **unless said primary access is specifically approved by the Ada County Highway District.**

See AFFIDAVIT OF DEAN W. BRIGGS, P.E. ("Briggs Aff.," filed December 3, 2015) (emphasis added).[1] *See also* Briggs Aff. at 2-3, and EXHIBIT "A" thereto, a letter from the City of Boise confirming parties made aware of City's requirement that access to 36th Street be under ACHD's authority no later than June 22, 1990.

Accordingly Mr. Connell's statement with respect to the knowledge that Vancroft Corporation and Tee, Ltd. knew of the Cty's requirement that vehicular access to the Nibler Subdivision be subject to the authority and requirements of ACHD is based not only on his

[1] Note that Lot 4, Block 2 (*i.e.*, the "Development Parcel," a/k/a the "Bedard Property") is not excepted from ACHD's authority.

personal interactions with the parties, but also the foregoing documents which are in the record in this Case. Therefore, Paragraph 4 of Mr. Connell's affidavit should not be stricken.

IV. CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that the Court deny Defendant's Motion to Strike to the extent argued herein.

DATED this this 15th day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 15th day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivered
- ☒ Facsimile to (208) 384-4454
- ☒ Email

_____
Michael E. Band

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR (ISB No. 4229)
Deputy City Attorney
ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic and corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **REPLY BRIEF REGARDING DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA W. ARNOLD**

COMES NOW Defendant, City of Boise City, by and through its attorneys of record, Scott B. Muir and Abigail R. Germaine, and pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure, hereby respectfully submits this Reply Brief Regarding Defendant's Motion to Strike the Affidavit of Rebecca W. Arnold.

THE AFFIDAVIT OF REBECCA W. ARNOLD IS HEARSAY

Rule 801(c) of the Idaho Rules of Evidence defines hearsay as follows: "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Defendant identified the following statements from the Affidavit of Rebecca W. Arnold, each of which is being offered in evidence to prove the truth of the matter asserted:

1) "This property was owned by Vancroft for the purpose of developing it into a multi-lot residential subdivision."
2) "Accordingly, in order to satisfy that requirement, Vancroft sought to obtain an access easement over the adjacent golf course property from Tee, Ltd. and Tommy and Roxanne Sanderson (the "Grantors")."
3) "Accordingly, the primary purpose of the negotiations between Vancroft and Tee, Ltd./Sanderson was to secure a perpetual easement for ingress and egress across the golf course property for the benefit of the Development Parcel; this was the primary purpose of the PERMANENT EASEMENT AGREEMENT."
4) "As is stated on the first page of the PERMANENT EASEMENT AGREEMENT, the easement was being granted to Vancroft for the purpose of providing access and utilities to the Development Parcel. At the time that we drafted the PERMANENT EASEMENT AGREEMENT, the parties agreed that forty (40') feet for the access and utility easement for the Development Parcel would be sufficient as a private road. However, because Vancroft intended to develop the parcel into a multi-lot residential subdivision, it was contemplated and agreed that the roadway would eventually be dedicated to the Ada County Highway District (ACHD) as a public road and the easement area would have to be expanded to comply with whatever ACHD's requirements for a public road would be at the time of dedication."
5) "Because Vancroft would be pursuing its own development of the Development Parcel and would be improving the road in the future, the Grantors reserved the right to approve the plans for the roadway because of the future expansion and construction."
6) At that time, we also knew that ACHD would have specific provisions relating to the size and other engineering requirements for the public road way in order to be dedicated to ACHD for such a large residential subdivision. We specifically contemplated that, at the time of dedication, the roadway could and would be expanded in order to meet the requirements of ACHD."
7) "I can therefore verify and confirm as one of the drafters of the PERMANENT EASEMENT AGREEMENT that it was the agreement and the intention of the parties to that instrument that the access roadway described in the PERMANENT EASEMENT AGREEMENT would be altered and expanded in order to meet the requirements of ACHD at the time of its eventual dedication to ACHD."

Each of these statements is offered to show the purpose or intent of Vancroft Corporation, Tee, Ltd., or Tommy and Roxanne Sanderson, and each is clearly offered to "prove the truth of the matter asserted."

Statements of Vancroft's intent or purpose, as recalled and related by Vancroft's then-attorney, Rebecca W. Arnold, are not admissible under the hearsay exception of Rule 803(3) of the Idaho Rules of Evidence. This exception would allow "a statement of the declarant's then existing state of mind, emotion, sensation, or physical condition," but the statements offered by Plaintiffs are not statements of Vancroft's then existing condition. Plaintiffs are attempting to use Ms. Arnold to submit evidence of Vancroft's intent, which Ms. Arnold would only know if Vancroft communicated that intent to Ms. Arnold, and those statements are inadmissible hearsay.

Additionally, none of the statements in the Affidavit of Rebecca W. Arnold are admissible as non-hearsay under Rule 801(d)(2) of the Idaho Rules of Evidence, Admission by Party-Opponent. These statements are not made by a party, no matter how creatively plaintiffs argue degrees of privity.

CONCLUSION

Significant portions of the Affidavit of Rebecca W. Arnolds are not admissible in evidence and are based solely on hearsay. As such, Defendant asks that the Affidavit of Rebecca

W. Arnold be stricken from the record to the extent requested in Defendant's Motion to Strike the Affidavit of Rebecca W. Arnold.

DATED this _____ day of February, 2016.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of February, 2016 served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant.	Case No. CV-OC-2015-10297 POST SUMMARY JUDGMENT HEARING BRIEF RE: ENFORCEABILITY OF EASEMENT COVENANT

This brief is filed by Plaintiffs Bedard and Musser, an Idaho partnership, and Boise Hollow Land Holdings, RLLP, an Idaho limited liability partnership, with regard to the above-entitled issue. On February 16, 2016, the Court held oral argument on the parties' respective summary judgment motions. During the course of the oral argument, the Court inquired of counsel

regarding the law of the enforceability of certain easement covenants such as the indemnity obligation for the protection of the City contained in the parties' Permanent Easement Agreement involved in the instant controversy.

Because the Permanent Easement Agreement provides for the forty (40) foot easement being modified in the future to comply with ACHD standards for dedication to it, virtually an entire page of the two and a half page instrument addresses the protections afforded the golf course owner if there are changes to the configuration of the golf course arising from the construction of the roadway to meet those ACHD standards.

The Permanent Easement Agreement clearly states that the forty (40) foot easement is not in the operating golf course area. Section 5 of the Permanent Easement Agreement provides that "Grantee recognizes that the easement area will be immediately adjacent to the operating golf course..." (Underlining added).

Because of the probability that the dedication of the road to the ACHD sometime in the future would require meeting more stringent requirements for a road for public use (*See* December 3, 2015 Affidavit of Dean W. Briggs, P.d. and September 30, 2015 Affidavit of Rebecca W. Arnold), the golf course owner negotiated in the Permanent Easement Agreement approval rights to the necessary changes to the operating golf course occasioned by the necessity to meet the ACHD requirements as well as obtained certain indemnity rights:

> 3. The Grantee shall be solely and exclusively responsible for all costs and expenses of whatever kind or nature incurred in connection with or related to any repairs, renovations or changes to the existing golf course caused by the installation of the utilities and/or any road in the easement area.
>
> 4. Grantor specifically reserves the right to approve all design, engineering, surveying and construction plans for the installation of utilities and the road in the easement area, and to approve any repairs, revisions or renovations to the golf course, which consent Grantor agrees to not unreasonably

> withhold. Any changes to the golf course by Grantee shall be done during the period of October 15th through May 15th, except for emergency repairs of the utilities or the road. (Underlining added).

Since the forty (40) foot private road easement was not in the golf course, there was no need for approval for the private road work because the private road is not in the golf course. Since a dedication to ACHD would require meeting the necessary public street, curb and sidewalk requirements of that public entity as stated in Section 6 of the Permanent Easement Agreement, the golf course owner wanted various protections that could become necessary if there was going to be a "change" or "renovation" to the actual operating golf course occasioned by the work on the roadway for the dedication to the ACHD.

These obligations are contractual in nature in addition to being obligations that run with the land. Since the City is the beneficiary of these protections the City has never argued that they're not entitled to those protections as a matter of contract under the Permanent Easement Agreement. Thus, that issue is not now contested in this matter. In any event, the City could not raise that issue at this late date since such defense has been waived as an unasserted affirmative defense. *See* I.R.C.P. 8(c).

Such covenant obligations are binding on the successors and assigns of the original contracting parties as a matter of contract. In the current litigation, the City of Boise as a matter of contract agreed to comply with the terms of the Permanent Easement Agreement. *See* reference to Permanent Easement Agreement as special item number 13 in Exhibit 1 to the City's Deed of Gift attached as an exhibit to the Affidavit of Michael E. Band. This Deed of Gift is certified. For the convenience of the Court, a true and accurate copy of the Deed of Gift is attached hereto as Exhibit "A" and is incorporated herein by reference. In any event, it is uncontradicted that the Permanent Easement Agreement was recorded with the Ada County Recorder's Office.

Accordingly, the covenants, agreements and restrictions relating to the real property are valid and enforceable. *Jacklin Land Co. v. Blue Dog RV*, 150 Idaho 242, 246, 254 P.3d 1238, 1242 (2011). The Idaho Supreme Court in *West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 106 P.3d 401 (2005) ruled as follows:

> Whether a successor in interest takes the interest subject to the equitable servitude is a question of notice. *Streets*, 898 P.2d at 379-81 (Wyo. 1995). Whether a party has notice of an issue or event is a question of fact. *See, e.g., Taylor v. Soran Restaurant, Inc.* 131 Idaho 525, 960 P.2d 1254 (1998) (Whether notice of injury subject to workers' compensation claim was given to employer was question of fact.) 141 Idaho at P.85

Further, the Idaho Supreme Court has held:

> A purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed. *Kalange v. Rencher*, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing *Cordova v. Hood*, 84 U.S. (17 Wall) 1, 21 L.Ed. 587 (1872); *Northwestern Bank v. Freeman*, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). "This Court has stated: 'One who purchases or encumbrances with notice of inconsistent claims does not take in good faith, and one who fails to investigate the open and obvious inconsistent claim cannot take in good faith.' " *Middlekauff II*, 110 Idaho at 916, 719 P.2d at 1176 (quoting *Langroise v. Becker*, 96 Idaho 218, 220, 526 P.2d 178, 180 (1974)). *West Wood Investments, Inc. v. Acord*, 141 Idaho 75, 85, 106 P.3d 401, 411 (2005).

So strong is the binding nature of the recorded instrument on grantees in the chain of title that even if the instrument is misfiled by the county recorder, it is still binding on the Grantees:

> Consequently, we find the rule of law established by this Court nearly a century ago is still valid precedent on this issue. The Idaho recording statute clearly establishes that once an instrument has been acknowledged, certified, and presented for recording it provides constructive notice to all subsequent purchasers regardless of whether the instrument is thereafter properly recorded by county officials or not. *Miller v. Simonson*, 140 Idaho 287, 92 P.3d 537 (2004). 140 Idaho at P.291.

Those Courts that have specifically considered the issue of the contractual nature of covenants have ruled that recorded covenants and declarations are contractual in nature because the acceptance of the terms of the covenants and chain of title agreements results from an owner voluntarily taking title to the property as part of a sale and thereby impliedly agrees and consents to the obligations contained in those recorded covenants and conditions. *Pinnacle Museum Tower v. Pinnacle Market*, 55 Cal. 4th 223 (California Supreme Court 2012). Thus, the recorded agreement and covenants therein become the rights and responsibilities of contracting parties determined by the terms of their recorded contract. *Frances T. v. Village Green Owners Association*, 42 Cal. 3d 490 (1986).

Accordingly, whether one views the acceptance of the gift as binding the City of Boise to the Permanent Easement Agreement as a matter of contract or one views the City as being bound by the recorded instrument as a matter of contract and real estate law, the City is bound by the covenants and terms of that agreement.

DATED this this 17th day of February, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this this 17th day of February, 2016, I caused to be served a true and accurate copy of the foregoing instrument by the method indicated, addressed to the following:

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
P.O. Box 500
Boise, Idaho 83701-0500
Attorney for Defendants

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivered
- ☑ Facsimile – 208-384-4454
- ☐ Email

Michelle J. Silva

EXHIBIT "A"

to

Post Summary Judgment Hearing Brief
Re: Enforceability of Easement Covenant

ADA COUNTY RECORDEF stopher D. Rich AMOUNT 31.00 8
BOISE IDAHO 12/04/201. 11:30 AM
DEPUTY Bonnie Oberbillig
Simplifile Electronic Recording
RECORDED-REQUEST OF
FIDELITY NATIONAL TITLE - BOIS 113130306

Recording requested by and
When recorded return to Boise City
Department of Parks & Recreation,
P.O. Box 500,
Boise, Idaho 83701

DEED OF GIFT

THIS INDENTURE made this 1st day of November, 2013, between Quail Hollow LLC, an Idaho limited liability company, the "Grantor", and the City of Boise City, an Idaho municipal corporation, the "Grantee";

WITNESSETH:

Section 1.

AS A GIFT TO THE GRANTEE, the Grantor does hereby grant and convey to the Grantee all of the real property situated in the County of Ada, State of Idaho, described on **Exhibit 1** attached hereto and by this reference made a part thereof, which will be referred to herein as "the Property".

SUBJECT to:

1. All taxes and assessments levied and assessed upon the Property on and after December 1, 2013, and each year thereafter.

TO HAVE AND TO HOLD the Property unto the Grantee so long as the Grantee shall comply with the following conditions:

(a) The Grantee shall hold, own and operate the Property as a golf course in perpetuity, open to the public at all times, provided, however, that the Grantee may alter or change the use of all or any portion of the property to a public use other than a golf course. This public use restriction shall not limit or prohibit the sale of food and beverages (including alcoholic beverages), renting golf carts or other golfing-related products and charging for use of the golf course or any related facility provided such use is reasonable and fair and designed only to return to the City the cost of operating a public golf course. The Grantee shall utilize any reserves it earns from the operation of the golf course for capital and other improvements and maintenance and operation expenses associated with the Property. The Grantee may also impose reasonable charges and limits as to time and place and number of people entering and utilizing the Property for golf or other purposes in a manner consistent with standard

operating procedures for golf courses. In that regard, the Grantee may restrict and/or prohibit the use of the general public to enter upon all or portions of the golf course in a manner consistent with the safe and reasonable operation of a public golf course and in compliance with the ordinance of the City of Boise City.

(b) If the Grantee determines that it is in the public interest to use all or a portion of the Property for a use other than a golf course the Grantee may so change that use, provided the use remains public and open to the public, provided however, that as with operation as a golf course the Grantee shall be at liberty to impose reasonable restrictions as to time and use and access to all or any portion of the Property and to charge reasonable fees to defray the cost of providing public services which may include, but not limited to, athletic events, concerts, sports fields and such improvements as are necessarily reasonable for such public uses.

At no time and under no circumstances shall the Property be utilized for any residential, commercial, industrial or other use that is not consistent with this public use requirement.

(c) Neither the Property nor any part thereof shall ever be transferred or conveyed by the Grantee. The Grantee shall allow the creation of no lien or encumbrance to attach to the Property, or any part thereof, excepting therefrom easements for utilities serving the Property and *ad valorem* taxes, if any, levied and assessed against the Property. Notwithstanding the foregoing, Grantee, upon payment of just compensation, may transfer additional right-of-way to the Ada County Highway District, any successor highway district or road department as the case may be, as is reasonable and necessary and in the public interest .

Section 2.

To insure that the Property herein conveyed will be developed, used, operated and identified in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift, it shall be a condition of this conveyance that at any time in the future should the Property or any part hereof cease to be used in full compliance with the conditions set forth in subsections (a), (b), and (c) of Section 1 of this Deed of Gift or that the Grantee shall fail, refuse or neglect in any respect to comply with the conditions set forth in subsection (a), (b), and (c) of Section 1 of this Deed of Gift, the Grantee shall be divested of the title to the Property and the title to the Property shall pass to an exempt organization having its principal place of business in Boise, Idaho, excepting therefrom any other governmental entity, and qualifying as such under the provisions of Internal Revenue Code Section 501(c)(3) or Internal Revenue Code Section 170(c)(1) or a comparable provision of the United States Internal Revenue Code then in force and effect created for charitable or public purposes and best able to operate or provide for the operation of that Property for the benefit of the public generally in

compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift. The determination of a successor exempt organization pursuant to this Section 2 shall rest with the then-Administrative District Judge of the Fourth Judicial District (or the successor judge having duties most like that judge if the position of Administrative District Judge no longer exists).

The provisions of this section may be enforced by either Grantor, if it is then in existence, or an exempt organization under the provisions of Internal Revenue Code Section 501(c)(3) or the comparable provision of the United States Internal Revenue Code, designated by the then Administrative District Judge, for the Fourth Judicial District (or the successor judge having duties most like that judge).

The fact that the Grantee has ceased to operate, maintain and use of the Property herein conveyed in compliance with the provisions of subsections (a), (b), and (c) of Section 1 of this Deed of Gift may be established of record by either (i) a certified copy of a resolution by the Mayor and Council of the Grantee of that fact, or (ii) a determination thereof through judgment of a court of competent jurisdiction of the State of Idaho.

Section 3:

By the recordation of this Deed of Gift, the Grantee shall be deemed to have accepted and agreed to comply with the restrictions and conditions set forth in Section 1 and Section 2 of this Deed of Gift and to hold the Property subject to full performance by it of those provisions of this Deed of Gift.

Section 4:

The current address of the Grantee is City of Boise, 150 N. Capitol Blvd., Boise, Idaho 83701.

IN WITNESS WHEREOF, this Deed of Gift has been duly executed by the Grantor the day and year herein first above written.

Quail Hollow LLC, an
Idaho limited liability company

David E. Hendrickson

By: David E. Hendrickson
Its: Manager

STATE OF IDAHO)
) ss.
County of Ada)

On this 1st day of November, 2013, before me, a Notary Public, personally appeared David Hendrickson, known or identified to me to be the Manager of Quail Hollow LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at: Idaho
My Commission Expires: 12/26/2016

EXHIBIT 1
(Legal Description for Quail Hollow Golf Course)

Lots 2, 5 and 6 in Block 1, and Lots 1 and 3 in Block 2, of Nibler Subdivision, according to the official plat thereof, filed in Book 59 of Plats at Pages 5789 through 5791, records of Ada County, Idaho.

TOGETHER, will all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining thereto and subject to and including rights of Grantor in the following:

(1) As disclosed in the ALTA survey prepared by Briggs Engineering, Inc. dated October 16, 2007.

(2) Easements, reservations, restrictions and dedications, if any, as shown on the official plat of said subdivision.

(3) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: March 18, 1939
Book: 16 of Miscellaneous at
Page: 223, of Official Records.

(4) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: September 19, 1930
Book: 12 of Miscellaneous at
Page: 437, of Official Records.

(5) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: February 27, 1931
Book: 12 of Miscellaneous at
Page: 547, of Official Records.

(6) An easement for public utilities and incidental purposes in favor of The Mountain States Telephone and Telegraph Company
Recorded: March 2, 1967
Instrument No: 659097, of Official Records.

(7) Conditions and provisions contained in instrument
Executed By: Ada County Highway District
Recorded: October 27, 1993
Instrument No: 9389380, of Official Records.

(8) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: November 18, 1983
Instrument No: 8362310, of Official Records.

(9) An easement for access and utilities and rights incidental thereto as contained in a Warranty Deed
Recorded: July 24, 1987
Instrument No: 8742940, of Official Records

The exact location and extent of said easement is not disclosed of record.

(10) An easement for underground sanitary sewer lines and the terms and conditions thereof in favor of Northwest Boise Sewer District
Recorded: January 14, 1988
Instrument No: 8802157, of Official Records.

Corrected grant of easement
Recorded: October 12, 1988
Instrument No: 8850182, of Official Records.

(11) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation
Recorded: May 2, 1988
Instrument No: 8820687, of Official Records.

(12) A easement for roadway drainage and the terms and conditions thereof in favor of Tee Limited, Inc.
Recorded: September 10, 1991
Instrument No: 9150430, of Official Records.

(13) Terms, conditions, provisions, easements and obligations set forth in that certain Permanent Easement Agreement
Between: Tee, Ltd., an Idaho corporation, Tommy T. Sanderson and Roxanne Sanderson and Vancroft Corporation, an Idaho corporation
Recorded: November 3, 1993
Instrument No: 9392442, of Official Records.

Terms, conditions, provisions, easements and obligations set forth in that certain Assignment and Assumption of Permanent Easement Agreement
Between: Vancroft Corporation, an Idaho corporation, Assignor and Bedard & Musser, a partnership, Assignee
Recorded: November 4, 1993
Instrument No: 9392667, of Official Records.

(14) Terms, conditions, provisions, easements and obligations set forth in that certain Landscape Agreement

Between:	David E. Hendrickson dba Quail Hollow Golf Course and Siebel, Inc., an Idaho corporation
Recorded:	April 27, 1994
Instrument No:	94038748, of Official Records.

(15) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No:	100064342, of Official Records.

(16) An easement for public utilities and incidental purposes in favor of Idaho Power Company, a corporation

Recorded:	August 15, 2000
Instrument No.:	100064342
Re-recorded:	October 19, 2000
Instrument No:	100083420, of Official Records.

(17) Protective Covenants, Conditions, Restrictions and/or Easements, and other matters imposed by instrument recorded May 31, 2001 as Instrument No. 101052421, of Official Records.

This exception omits any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin as provided in 42 U.S.X. Section 3604, unless and only to the extent that the covenant (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. Section 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

(18) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	David E Hendrickson and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145944, of Official Records.

(19) Terms, conditions, provisions, easements and obligations set forth in that certain Easement Agreement

Between:	Bluegrass, LLC and Cable One, Inc., a Delaware corporation
Recorded:	November 17, 2004
Instrument No:	104145945, of Official Records.

(20) Terms, conditions, provisions, easements and obligations set forth in that certain Well and Irrigation Easement Agreement

Between:	David E Hendrickson, an unmarried man and Quail Hollow LLC, an Idaho limited liability company
Recorded:	June 1, 2010
Instrument No:	110050343, of Official Records.

(21) Terms, conditions, provisions and obligations set forth in that certain Settlement Agreement

Between:	Quail Hollow LLC, an Idaho limited liability company and Edwards Family, LLC, an Idaho limited liability company
Recorded:	September 22, 2010
Instrument No:	110088550, of Official Records.

(22) Unrecorded leaseholds, if any; rights of parties in possession other than the vestees herein; rights of chattel mortgagees and vendors under conditional sales contracts of personal property installed on the premises herein; and the rights of tenants to remove trade fixtures.

STATE OF IDAHO, COUNTY OF ADA, ss.

I, Christopher D. Rich, Ada County Recorder, do hereby certify that the annexed is a full, true and correct copy of Instrument Number 113030606 as it appears in the recorded documents system of the Ada County Recorder.

State of Idaho IN WITNESS WHEREOF, I have set my hand and affixed my official Seal this 16 day of February 20 16

Christopher D. Rich, Recorder

By _____ Deputy Recorder

COUNTY RECORDER STATE OF IDAHO OF ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

vs.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

MEMORANDUM DECISION AND ORDER RE: PARTIES' VARIOUS MOTIONS TO STRIKE

Each party has filed a motion for summary judgment. Each party has submitted various declarations in support of their respective motion. Each party has filed a motion seeking to strike some portion of one or more declarations filed by the other party. Herein the Court discusses and decides each motion.

Whether to admit evidence is a decision left to the discretion of the trial court. In exercising its discretion, the Court is guided by the Idaho Rules of Evidence.

DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA ARNOLD AND THE DECLARATION OF COLIN CONNELL

The plaintiffs filed an affidavit by Vancroft's attorney, Rebecca Arnold, in support of their motion to summary judgment. Defendant has moved to strike certain statements contained in that affidavit largely on two grounds – that the statements are inadmissible because they are speculative or contain hearsay and that the statements are parole evidence that is inadmissible to determine the

parties' intent when executing the Permanent Easement Agreement because the language of the Agreement is unambiguous[1].

Plaintiffs also filed an affidavit by Colin Connell in which Mr. Connell proffers some personal knowledge of the condition of Lot 1 at the time the agreement was signed, an opinion regarding the veracity of statements made by Tommy Sanderson in his first declaration, an opinion as to the value of Lot 4. The City has moved to strike the affidavit on various evidentiary grounds.

Because Tee, Ltd., could not convey a greater interest in what became Lot 1, Block 2, Nibler subdivision than it possessed, and because Tee, Ltd., possessed only a term leasehold estate, it is not necessary to interpret the Agreement to determine what the parties thought Tee was conveying. It was not possible for Tee to convey an easement which burdened Lot 1 in perpetuity. Whatever Tee conveyed to Vancroft expired no later than when the leasehold Tee held was terminated. Therefore, defendant is entitled to summary judgment as a matter of law without interpreting the Agreement itself. Therefore, the various averments about the intent of the parties and the circumstances surrounding the execution of the Agreement are irrelevant. The affiants' and declarants' statements about themselves, their backgrounds, and their opinions are also irrelevant.

The affidavit of Colin Connell, the second declaration of Tommy Sanderson, all but one paragraph of the initial declaration of Tommy Sanderson, and all but one paragraph of the affidavit of Rebecca Arnold contain assertions regarding the intent of the parties who executed this agreement or circumstances surrounding the drafting and execution of the agreement. None of these statements are relevant to the Court's decision regarding what interest, if any, Tee Ltd had to convey. The Court has excluded them all from its consideration in granting summary judgment on those grounds.

The Court admits the assertions contained in paragraph 2, on page 2, of the declaration of Tommy Sanderson filed December 31, 2015 regarding the authenticity of the copy of the Agreement attached to his declaration and the identity of two of the signatories. The Court admits the copy of the Agreement attached to that declaration. The Court excludes the remainder of the assertions contained therein for the reasons set forth above.

The Court admits the assertions contained in the last full paragraph on page 2 of the affidavit of Rebecca Arnold, wherein Ms. Arnold asserts that, as Vancroft's attorney, she personally

[1] The City's argument is notably that the language of the agreement describing the size and location of any easement conveyed is unambiguous. They make no argument about whether the language of the agreement is ambiguous regarding the parties' intent to grant an easement versus a license.

drafted the permanent easement agreement and that a true and accurate copy of the Agreement is attached to her affidavit. The Court admits the copy of the Agreement attached to the affidavit of Ms. Arnold. The Court excludes the remainder of the affidavit as irrelevant.

THE DECLARATIONS OF ABIGAIL R. GERMAINE

Counsel for the City of Boise, Ms. Germaine, submitted three declarations to the Court in connection with the motions for summary judgment. Plaintiffs moved to strike the initial declaration filed December 31, 2015 on the grounds that the Ms. Germaine lacked personal knowledge of the assertions contained in her declaration. In her declaration, Ms. Germaine asserted that attached to her declaration were an illustrative exhibit of the properties in question, and true and correct copies of various documents recorded by the Ada County Recorder relating to the land in dispute in this case. Plaintiffs objected on the grounds that I.R.C.P. 56(e) requires affidavits supporting a motion for summary judgment be made by persons with personal knowledge and must set forth the facts that affirmatively show the affiant is competent to testify to the matters therein. The Court takes the plaintiffs' argument to be that Ms. Germaine failed to declare that she personally copied the items attached to her exhibit from the records of the County Recorder or that she personally compared those records to the records on file with the County Recorders' Office before she attached them to her affidavit.

This Court concludes the level of specificity asserted by the plaintiffs is not necessary. Ms. Germaine's competency to testify as to the accuracy of a copy is evident from her ability to write English. Her assertion that the copies attached to her declaration are true and correct copies of records on file with the county recorders' office includes the assertion that she has either physical produced the copies herself or compared the copies to the originals to verify their accuracy. The Court finds this assertion sufficient. The motion to strike the affidavit of Ms. Germaine as to paragraphs 1, and 3 through 21 is denied. The motion to strike exhibit B through Exhibit T is denied. Those portions of the declaration and those exhibits are admitted.

As to paragraph 2, therein Ms. Germaine avers that Exhibit A is an illustrative rendering to the various properties involved in this case. Her declaration fails to aver that she has personally been to the properties or otherwise indicate how this illustration was rendered. Also, both parties admitted very similar illustrations at the hearing on the motion for summary judgment. Therefore, Exhibit A is cumulative of other evidence already admitted. For these reasons, the motion to strike

the declaration of Abigail Germaine filed December 31, 2015 is granted in part and denied in part. The motion is granted only as to paragraph 2 and Exhibit A of the declaration. The motion is denied in all other respects.

On February 9, 2016, Ms. Germaine filed a third declaration.[2] Her third declaration is largely identical to her declaration filed December 31, 2015. The differences are that the February 9 declaration does not include the illustrative Exhibit A and does not include a copy of the plat of the Nibler subdivision that were attached to her declaration in December. As to the other documents, the declaration and documents are identical except the documents have been certified by a title company as being true and correct copies of the originals as recorded.[3] Plaintiffs object to these documents as being untimely under I.R.C.P. 56(c). The declaration was filed only seven (7) days prior to the hearing, not the fourteen (14) required by Rule 56(c).

The purpose of the time requirements in I.R.C.P. 56(c) is to give the opposing party a fair and adequate opportunity respond and to support its case. *Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999). In appropriate circumstances the Court may shorten the time period for good cause shown. *Id.* The February 9 declaration of Ms. Germaine and the documents attached to it were identical to portions of her December 31, 2015 declaration and documents attached to it. The plaintiffs certainly had a fair and adequate opportunity to review any factual assertions in these documents and prepare to meet such assertions. The plaintiffs also had a fair and adequate opportunity to compare these documents with the property records actually on file with the County Recorder and to raise any concerns about the authenticity of such copies. The February 9 declaration was simply submitted to cure the objection raised to the December 31 declaration regarding Ms. Germaine's lack of personal knowledge. The Court finds good cause to shorten the time period permitted for the filing of the declaration under I.R.C.P. 56(c). The objection to the declaration is overruled. The declaration and the attached exhibits are admitted.

THE POST HEARING BRIEF OF THE PLAINTIFFS

After oral argument and after the Court had taken the matter under advisement, plaintiffs lodged a 'Post Summary Judgment Hearing Brief re: Enforceability of Easement Covenant.' In this briefing,

---

[2] There has been no objection to the 2nd declaration. Therefore, it is not discussed here.

[3] The Court advises counsel for both parties that disputes about the authenticity of records kept by a public agency such as the office of the County Recorder, especially records which the public agency is charged by law to maintain, are easily resolved by contacting the public agency itself. The Ada County Recorder's office is located in the Ada County Courthouse on the first floor and provides certified copies of land records to the public for a nominal copy fee. Such documents are also readily available on-line and electronically at the Recorder's office.

plaintiffs assert that the Permanent Easement Agreement 'is binding' on the City of Boise, not because the Agreement conveyed an interest in land the City now owns to a former owner of land plaintiffs now own and the interest conveyed runs with the land. Such is the assertion of the plaintiffs in their first amended complaint to quiet title. Rather, the plaintiffs now assert that the city of Boise is 'bound' by obligations in the permanent easement agreement under the theory that the permanent easement agreement was a either a contract to which the City of Boise is a party as the assignee of Tee, Ltd. or as a covenant, conditions or restriction between land-owners to which the City of Boise agreed to be bound when the City of Boise accepted title to the land they know own.

The city objected to the Court's consideration of this brief on the grounds the brief was filed untimely.

I.R.C.P. 56 contains no provision for the filing of supplemental briefing after the hearing on the motion. The Court did not request and did not authorize the filing of supplemental briefing. Plaintiffs have alleged no good cause why they could not have raised these arguments in their various other briefings. Therefore, the objection to the plaintiffs' post hearing brief is sustained. The Court has not considered the briefing in making its decision as to the motions for summary judgment. Specifically when those argument appear to be regarding a claim for relief based in contract when the only cause of action plaintiffs have raised in their pleadings is one regarding title to property.

It is so Ordered this 1st day of April, 2016.

JONATHAN MEDEMA
District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 21 day of April, 2016, one copy of the ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

TERRY C. COPPLE
MICHAEL E. BAND
DAVISON, COPPLE, COPPLE & COPPLE, LLP
PO BOX 1583
BOISE, ID 83701

SCOTT B. MUIR
ABIGAIL R. GERMAINE
DEPUTY CITY ATTORNEYS
BOISE CITY ATTORNEY'S OFFICE
PO BOX 500
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT IN AND FOR ADA COUNTY - OF THE STATE OF IDAHO -

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

vs.

CITY OF BOISE CITY, a body politic and corporate of the State of Idaho,

Defendant.

Case No. CV-OC-2015-10297

MEMORANDUM DECISION AND ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT

PROCEDURAL HISTORY

Bedard & Musser, a partnership, filed this action to quiet title in land described in the complaint as Lots 2 and 6, Block 1 and Lot 1, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument No. 9205592. The parties refer to this as the Golf Course Property. The Court will as well. (These parcels, and several others, are currently used by the City of Boise to operate the Quail Hollow Golf Course). The easement at issue is alleged to run across Lot 1, Block 2.

Subsequently, Boise Hollow Land Holdings, RLLP ("Boise Hollow") was joined as a plaintiff by stipulation of parties and the complaint was amended to reflect that change.[1] The Court will refer to Bedard & Musser and Boise Hollow collectively as "Plaintiffs".

Plaintiffs assert in the amended complaint that they acquired an easement over the Golf Course Property in favor of an adjacent parcel of land owned by Plaintiffs. That land is described in

[1] The amended complaint alleges that Bedard & Musser transferred its entire interest in the Golf Course Property to Boise Hollow Land Holdings via a quitclaim deed. Therefore, it seems it would have been more appropriate simply to substitute Boise Hollow for Bedard & Musser as the plaintiff. Because the parties stipulated to join Boise Hollow as a plaintiff, the Court did so.

the complaint as Lot 4, Block 2, Nibler Subdivision, according to the plat filed in Ada County, Idaho, on January 31, 1992, in Book 59, Pages 5789-5791, Instrument No. 9205592. The Court will refer to this parcel as "Lot 4".

Plaintiffs allege they are the owners in fee simple of Lot 4. Plaintiffs allege the City of Boise ("the City") is the owner of the Golf Course Property. (First Am. Compl. at 3).

In the amended complaint, Plaintiffs allege that Vancroft Corporation (Vancroft) was a "predecessor-in-interest" to the Plaintiff's interest in Lot 4. The Court assumes this allegation to be that Vancroft owned Lot 4 in fee simple.

Plaintiffs allege that "[a] predecessor-in-interest with respect to [the City's] interest in the Golf Course Property was Tee, Ltd., an Idaho corporation, and Tommy T. Sanderson and Roxanne Sanderson (collectively, "Tee-Sanderson")." (First Am. Compl. at 4). Because Plaintiff's alleged earlier in the complaint that the City "owned" the Golf Course Property, the Court initially read this allegation to be that Tee-Sanderson also "owned" the Golf Course Property. However, the evidence and argument in this summary judgment motions has made clear that is not in fact the plaintiffs' assertion. Plaintiffs' assert Tee, Ltd. held a leasehold estate in the Golf Course Properties. The Sandersons are alleged to have held other parcels of land that are not the subject of this litigation in fee.

Plaintiffs allege that in 1991 Tee-Sanderson "granted, conveyed, and remised to Vancroft and its heirs, assigns, and transferees, a permanent and perpetual easement under, over, and across the southwest quarter of the Golf Course Property for the purpose of providing utilities and vehicular access (*i.e.*, ingress and egress) to [Lot 4]." *Id.*

Plaintiffs allege the easement was conveyed via a document called the 'Permanent Easement Agreement' ("the Agreement") executed by Vancroft, Tee, Ltd. and the Sandersons in 1991. In the Agreement there is language regarding the building of a road upon the easement and the right of the easement holder to dedicate the road to the Ada County Highway District ("ACHD") as a public road.

Plaintiffs contend Tee-Sanderson conveyed an easement of whatever width was necessary for Plaintiffs to build a road that meets ACHD standards for public roads.

The City answered and denied that the Agreement created an easement. Further, the City argues if an easement was created, the language of the Agreement sets the width of that easement at 40 feet.

Plaintiffs' filed this action seeking to quiet their title in an easement in the Golf Course Property allegedly granted by the Agreement. The parties each filed for summary judgment. In conjunction with the motions each party has filed the appropriate briefing. Each party also filed a number of affidavits and declarations with various attachments. Consequently, each party has filed various motions to strike all or portions of the other party's various affidavits and declarations and briefing that accompany those motions.

The Court consolidated all of the motions for hearing on February 16, 2016. Subsequent to the hearing, Plaintiffs submitted a post hearing brief to which the City filed an objection.

LEGAL STANDARDS APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

Under I.R.C.P. 56(c), the moving party shall be entitled to summary judgment if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Doe v. Durtschi*, 110 Idaho 466, 469, 716 P.2d 1238, 1241 (1986). In determining whether an issue of material fact exists, all disputed facts are liberally construed and all reasonable inferences made in favor of the non-moving party. *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). This requirement is a strict one. *Clarke v. Prenger*, 114 Idaho 766, 760 P.2d 1182 (1988). If the record contains conflicting inferences upon which reasonable minds could differ, summary judgment should not be granted. *Sewell v. Neilson Monroe, Inc.,* 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct.App.1985). The burden of proving the absence of a genuine issue of material fact rests at all times upon the moving party. *G&M Farms v. Funk, supra.* This burden is onerous because even "circumstantial evidence can create a genuine issue of material fact." *Durtschi*, 110 Idaho at 470, 716 P.2d at 1242.

THE HISTORY OF THE PROPERTIES

The parties have both submitted various deeds and a lease involving the parcels that are alleged to be the dominant and servient estate of the easement allegedly granted in the Agreement. While the legal history of the parcels is somewhat complicated, it is not in dispute. Indeed, while the parties dispute the meaning and legal effect of the language contained in the Agreement itself, there are no issues of material fact as to the nature and extent of the other various interests in the Golf Course Property or Lot 4; the transfers of such interests, or the timing of such transfers. The parties

have submitted various deeds recording such transfers. The Court finds the undisputed facts to be as follows:

In 1943 for the sum of fifteen thousand dollars ($15,000) Victor Nibler purchased the Northeast ¼ of the Northeast ¼, the West ½ of the Northeast ¼, the Southwest ¼, and the West ½ of the Southeast ¼ of Section 21, Township 4 North, Range 2 East, Boise Meridian. Mr. Nibler also purchased the Northwest ¼ and the Northwest ¼ of the Northeast ¼ of Section 28 in Township 4 North, Range 2 East from the Boise Meridian. That land includes both of the parcels at issue in this case.

In the 1970s Victor and Ruth Nibler ("the Niblers") constructed a golf course on portions of their land. A portion of the golf course itself constitutes what the parties refer to in this lawsuit as the Golf Course Property. In 1980, the Niblers leased the Golf Course Property to a group of individuals for a period of 99 years. The memorandum of lease is attached to the declaration of counsel for the City. There is no dispute that the lease includes the Golf Course Property.

The leasehold was subsequently assigned by those individuals to a corporation whose leasehold was judicially foreclosed and purchased at the foreclosure sale by an entity called A-J Corporation. The Niblers and A-J Corporation subsequently amended the lease agreement, but did not change the duration of the leasehold.

In 1986, A-J Corporation assigned its interest in the leasehold to Tee, Ltd., whose principals included Tommy Sanderson.

In 1990, the Niblers sold a large portion of their land to Vancroft Corporation. This sale occurred before the Niblers filed their subdivision plat. Therefore, the property description does not reference the lots and blocks of the Nibler subdivision. The parties conceded at oral argument that this transfer included both the Golf Course Property and additional property adjacent to the Golf Course Property that was not subject to the leasehold held by Tee, Ltd. The parties agreed this transfer included what later became both parcels at issue in this case - Lot 1 and Lot 4, Block 2 of the Nibler Subdivision.

The Niblers also assigned their interest as landlords to Vancroft.

Sometime between September of 1991 and November of 1993[2], Vancroft, Tee, Ltd., and the Sandersons executed a "Permanent Easement Agreement." ("the Agreement"). The language of the Agreement and the fact of its execution are not disputed by the parties.

In 1992, the Niblers, the Sandersons, and Vancroft recorded a subdivision plat with the Ada County Recorder's Office. On the plat, the Golf Course Property was designated as being Lots 2 and 6 in Block 1 and Lot 1 in Block 2 ("Lot 1") of the Nibler subdivision. The portion of Vancroft's land that was not subject to the leasehold held by Tee, Ltd., was designated as Lot 4 of Block 2 ("Lot 4").

The crux of the parties' dispute is whether the Agreement created an easement over that portion of the Golf Course Property now designated[3] as Lot 1, Block 2, of the Nibler subdivision. The Agreement's terms are discussed in depth below.

In 1993, Tee, Ltd. assigned its interest in the leasehold in the Golf Course Property to a Mr. David Hendrickson.

In October of 1993, Vancroft transferred title in Lot 4 to Bedard & Musser.

In 1999, Vancroft sold the Golf Course Property, including Lot 1, to BlueGrass, LLC.

In 2007, Bluegrass, LLC and David Hendrickson terminated the lease. Bluegrass then conveyed the Golf Course Property to Quail Hollow, LLC, whose only apparent member was Hendrickson.

In 2013, Quail Hollow, LLC conditionally gifted the Golf Course Property, including Lot 1, to the City of Boise.

In 2015, Bedard & Musser conveyed title in Lot 4 to Boise Hollow, LLC.

The parties agree, and the Court finds, that currently Boise Hollow, LLC holds title in fee simple to Lot 4, Block 2 of the Nibler subdivision. The City of Boise appears to hold a conditional possessory interest in Lot 1, Block 2 of the Nibler subdivision and the rest of the Golf Course

---

[2] In the Court's view, there is significant evidence in the record that suggests the Agreement was not executed in 1991 as it would appear from its face. Or at least, that it was not in the form it currently has at the time it was signed in 1991. This includes the testimony of Dean Briggs that the Agreement was negotiated in 1993 and the fact the attachments to the Agreement refer to the book number, page number, and instrument number of the Nibler subdivision plat. Such numbers are assigned when the plat is recorded. The Nibler subdivision plat was recorded in January of 1992, *after* the Agreement was executed. Such exhibits could not have existed in their current form at that time. Also one of the pages has a facsimile date stamped on it from 1993. As this question is ultimately irrelevant to the Court's decision, the Court has decided to omit what had been a lengthy discussion of this issue from this memorandum.

[3] The parcels of land at issue here were all designated as lots in a subdivision plat after the Agreement was signed. For convenience, the Court will refer to the parcels by their subsequent designations in the plat, as the parties have done.

Properties[4]. The issue in this suit is whether the City's interest is subject to an easement allegedly created in the 1991 Permanent Easement Agreement and, if so, what is the nature and extent of that easement.

THE AGREEMENT

The Agreement is entitled "PERMANENT EASEMENT AGREEMENT". The Agreement was executed by Tee, Ltd., Tommy and Roxanne Sanderson, and Vancroft. The Agreement refers to Tee, Ltd., and the Sandersons as "Grantors" and to Vancroft as "Grantee". The Agreement specified that Tee and the Sandersons:

> Hereby grant, convey and remise to Vancroft Corporation a forty (40') foot perpetual easement under, over and across the southwest quarter of Lot 1, Block 2, Nibler Subdivision the legal description of which is attached hereto as Exhibit B and incorporated herein by this reference, for the purposes of providing utilities and access (i.e., ingress and egress) to Lot 4, Block 2, Nibler Subdivision. A drawing of the location of the easement is shown on Exhibit C which is attached hereto and incorporated herein by this reference and is also shown on the Nibler Subdivision Plat as a forty (40') foot access and utility easement to Lot 4, Block 2.

(First. Am. Compl. Ex. 'C')[5].

The Agreement further specified that Vancroft would be responsible for costs and expenses related to installation and maintenance of any utilities and any roadway within the easement area. Vancroft would be responsible for costs and expenses of any kind related to repairs or changes to the Golf Course Property caused by the installation of the road or the utilities. Tee, Ltd. and the Sandersons reserved a right to approve plans for the installation of such roads and utilities and Vancroft was limited to making improvements within the easement area from mid-October to mid-May, presumably because the golf course was less busy during this time. Vancroft agreed to install screens or netting to shield users of the easement from golf balls and Vancroft agreed to indemnify Tee, Ltd. and the Sandersons against claims arising from damages in the easement area caused by golf balls or acts by Tee, Ltd., the Sandersons, and their agents and employees. Finally, the Agreement contains a provision that stated:

---

[4] The deed of gift states that Quail Hollow, LLC is conveying to the City of Boise the right to "have and to hold" the properties subject to certain ongoing conditions. Neither party contends the Court needs to determine the exact nature of the city's interest in the Golf Course Properties. The only issue is whether the city's interest is subject to an easement. Neither party contends Quail Hollow, LLC is a necessary party to this litigation.

[5] The parties have submitted the Agreement to the Court in several ways. It is an exhibit to the plaintiff's amended complaint. It is an exhibit to the affidavit of Rebecca Arnold submitted by plaintiffs. It is also attached to the declaration of Tommy Sanderson filed Dec. 31, 2015. All of those copies are identical. The parties do not dispute the content of the Agreement. The Court will refer to the Permanent Easement Agreement throughout the remainder of this decision simply as the Agreement and without further citation to the record.

> Upon the completion of the construction of the roadway, Grantee shall have the right to dedicate said road to the Ada County Highway District or such other governmental agency then having jurisdiction and control over public roads and highways in Boise, Ada County, Idaho. Such road shall meet all then existing ordinances and requirements, including the construction of roads, curbs, sidewalks, bonding etc. Upon such dedication, Grantee shall have no further obligations hereunder, except for any obligation of this Agreement not assumed by the governmental agency.
>
> *Id.*

Plaintiffs contend that the language – "such road shall meet all then existing ordinances..." etc. – contains the implicit agreement that the 40' easement area specified may be expanded to permit the building of a road that meets such requirements.

THE LAW REGARDING EASEMENTS

The term 'easement' has been variously defined and may be said broadly to be a privilege which the owner of one tenement has a right to enjoy over the tenement of another; a right which one person has to use the land of another for a specific purpose, or a servitude imposed as a burden upon land." *Sinnett v. Werelus*, 83 Idaho 514, 520, 365 P.2d 952, 955 (1961). Black's Law Dictionary, Tenth Edition, p. 622 contains the following definition: An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose...unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land.

The law refers to easements using different terms depending upon the purpose for which and the manner in which the easement was created. An easement maybe an easement 'in gross' or may be appurtenant to a parcel of land. The difference has been summarized by the Idaho Supreme Court as follows:

> An easement ... "appurtenant" is one whose benefits serve a parcel of land. More exactly, it serves the owner of that land in a way that cannot be separated from his rights in the land. It in fact becomes a right in that land and, as we shall see, passes with the title. Typical examples of easements appurtenant are walkways, driveways, and utility lines across Blackacre, leading to adjoining or nearby Whiteacre.
>
> Easements ... "in gross" are those whose benefits serve their holder only personally, not in connection with his ownership or use of any specific parcel of land.... Examples

> are easements for utilities held by utility companies, street easements, and railroad easements.
> *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 551, 808 P.2d 1289, 1296 (1991) (quoting R. Cunningham, W. Stoebuck and D. Whitman, *The Law of Property* § 8.2, p. 440 (Hornbook Series Lawyer's Edition (1984)).

Easements are also given different terms based on how they are created. An easement may be created by a property owner expressly granting to another the right to use the land of the owner. Such easements are termed express easements.

Express easements may be created by either reservation or exception. *Akers v. D.L. White Const.*, 142 Idaho 293, 301, 127 P.3d 196, 204 (2005) (citing 7 Thompson on Real Property, Thomas Edition § 60.03(a)(2)(i) (David A. Thomas ed., 1994)). "An express easement by reservation reserves to the grantor some new right in the property being conveyed; an express easement by exception operates by withholding title to a portion of the conveyed property." *Id.* Because an express easement is an interest in real property, it "may only be created by a written instrument." *Tower Asset Sub Inc. v. Lawrence,* 143 Idaho 710, 714, 152 P.3d 581, 585 (2007) (citing *Shultz v. Atkins,* 97 Idaho 770, 773, 554 P.2d 948, 951 (1976)). At a minimum, a valid express easement must identify the land subject to the easement and express the intent of the parties. *Hodgins v. Sales,* 139 Idaho 225, 233, 76 P.3d 969, 977 (2003) (citing *Nw. Pipeline Corp. v. Forrest Weaver Farm, Inc.*, 103 Idaho 180, 181, 646 P.2d 422, 423 (1982)). Thus, while specific words are not required to create an express easement, the writing must make clear the parties' "intention to establish a servitude." *Coward v. Hadley,* 150 Idaho 282, 287, 246 P.3d 391, 396 (quoting *Capstar Radio Operating Co. v. Lawrence,* 143 Idaho 704, 707, 152 P.3d 575, 578 (2007)(*Capstar I*)).

In this case, Plaintiffs contend that via the 1991 Agreement, Tee, Ltd., expressly conveyed an easement over, under, and across Lot 1 to Vancroft for the benefit of Lot 4. Therefore, this Court must interpret the Agreement as a deed conveying an interest in property.

When this Court interprets or construes a deed, "the primary goal is to seek and give effect to the real intention of the parties." *Porter v. Bassett,* 146 Idaho 399, 404, 195 P.3d 1212, 1217 (2008) (quoting *Benninger v. Derifield,* 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006)). If the deed is ambiguous, the trier of fact must "determine the intent of the parties according to the language of the conveyance and the circumstances surrounding the transaction." *Id.* (citing *Neider v. Shaw,* 138 Idaho 503, 508, 65 P.3d 525, 530 (2003)). However, "[i]f the language of a deed is

plain and unambiguous, the intention of the parties must be ascertained from the deed itself and extrinsic evidence is not admissible." *Benninger,* 142 Idaho at 489, 129 P.3d at 1238 (citing *Simons v. Simons,* 134 Idaho 824, 11 P.3d 20 (2000)). "Ambiguity may be found where the language of the deed is subject to conflicting interpretations." *Read v. Harvey,* 141 Idaho 497, 499, 112 P.3d 785, 787 (2005) (citing *Neider,* 138 Idaho at 508, 65 P.3d at 530). Whether or not a deed is unambiguous is a question of law for this Court to decide. *McKay v. Boise Project Bd. of Control,* 141 Idaho 463, 469, 111 P.3d 148, 154 (2005) (citing *City of Chubbuck v. City of Pocatello,* 127 Idaho 198, 899 P.2d 411 (1995)). Similarly, "[t]he legal effect of an unambiguous written document must be decided by the trial court as a question of law." *Mountainview Landowners,* 139 Idaho 770, 772, 86 P.3d 484, 486 (2004)(quoting *Latham v. Garner,* 105 Idaho 854, 857, 673 P.2d 1048, 1051 (1983)).

THE COURT'S INTERPRETATION OF THE AGREEMENT

Plaintiffs contend that the Agreement conveyed a permanent easement across Lot 1, Block 2 of the Nibler subdivision in favor of Lot 4, Block 2. The Court disagrees. The Court determines upon that the defendant is entitled, as a matter of law, to entry of judgment summarily.

Initially, the plaintiffs' contend the Agreement created an easement over Lot 1 appurtenant to Lot 4. According to their own pleading and the uncontroverted evidence submitted, Plaintiff Bedard & Musser currently has no interest in Lot 4. It conveyed title to Lot 4 to plaintiff Boise Hollow, LLP in 2015. Therefore, defendant is entitled to judgment as a matter of law dismissing the claim to quiet any title in Lot 1 to Bedard & Musser.

The Court will then turn to the Agreement itself. This Court concludes that, as a matter of law, the Agreement could not convey an easement burdening the title of Lot 1 in perpetuity because the only Grantor with any interest in the property that became Lot 1 – Tee, Ltd. – held a leasehold under which Tee only held a possessory interest in the land and only held that interest until the year 2079.

The parties concede that at the time the Agreement was executed, Vancroft held a fee simple interest in Lot 4, Block 2 and a fee simple interest in Lot 1, Block 2 (and the rest of the Golf Course Property) subject to the leasehold interest held by Tee, Ltd. (*See for example*, Reply in Supp. of Pl's Mot. for Summ. J. at 6 (arguing at the time of the Agreement Vancroft held title to both Lot 4,

Block 2 and Lot 1, Block 2, but not possession)).[6] The Court also finds from the evidence submitted in conjunction with the motions for summary judgment that at the time the Agreement was executed in the fall of 1991, Vancroft held fee title to both the land that would later be designated as Lot 1, Block 2 of the Nibler subdivision and the land that was designated as Lot 4, Block 2 of the Nibler subdivision. At that time, Tee, Ltd., held a leasehold estate giving it a possessory interest in Lot 1 until the year 2079. As to these facts, there is no dispute between the parties and as to these facts the evidence is consistent and uncontroverted.

An easement can be created only by a person who has title to or an estate in the servient tenement, and an easement may not create a right that the grantor did not possess. 25 Am. Jur. 2d *Easements and Licenses* § 12. A lessee has a limited ownership interest in the real property. *Krasselt v. Koester*, 99 Idaho 124, 125, 578 P.2d 240, 241 (1978). A lessee has a possessory interest and the landlord has a reversionary interest. *Wing v. Martin,* 107 Idaho 267, 272, 688 P.2d 1172, 1177 (1984). Here Tee, Ltd., held only a possessory interest in the property until the expiration of the leasehold estate. Tee, Ltd., could not convey any interest in the property greater than Tee, Ltd.'s, own possessory interest. Therefore, any right that Tee, Ltd., could have conveyed to Vancroft via the Agreement would have terminated with the leasehold.

The other signatories to the Agreement – the Sandersons – held no interest at all in Lot 1 other than as principals in Tee, Ltd. The Sandersons owned other parcels in fee, but not Lot 1. The land that became Lot 1 was held in fee by Vancroft, subject to Tee's leasehold. Therefore, the Sandersons could convey no interest in Lot 1 because they had none. Tee could convey an interest in its leasehold, but it could convey no more than that. As the Supreme Court of Illinois once stated: "It would be unheard of, for a trespasser, or even a tenant, to exercise the right of granting a valid easement over the land of the owner." *Gentleman v. Soule*, 32 Ill. 271, 280, 1863 WL 3182, 3, 83 Am.Dec. 264, _ (1863).

---

[6] There is a 1994 quitclaim deed from the Niblers to Vancroft conveying the Nibler's interest "if any" in Lots 1, 2, 3, 5 and 6 of Block 1 and Lots 1 and 2 of Block 2 of the Nibler subdivision to Vancroft. The deed specifies it does not release any security interests in a 1990 mortgage recorded as instrument No. 9030575. That document is not in the record. However, the Court notes the instrument number on the 1990 warranty deed from the Niblers to Vancroft was 9030574. The Court concludes the 1994 deed was intended to clear up any questions as to whether those lots had been included in the 1990 warranty deed. As stated, the parties have both asserted that Vancroft held title to both Lot 4 and the Golf Course Property at the time of the Agreement in 1991. The Court finds there is some evidence to support that conclusion, despite the 1994 deed suggesting otherwise. The Court will accept the parties' argument and find that Vancroft held title in 1991 to what subsequently became both Lot 1 and Lot 4 of Block 2 of the Nibler subdivision.

In Plaintiffs' reply memorandum in support of their motion for summary judgment, Plaintiffs cite to a number of authorities for the proposition that a leasehold is an estate in property, that a leasehold interest is an 'estate for years,' that it gives the holder the right to both possess the property and the right to burden that possessory interest. Those statements of law are correct, but do not support the plaintiffs' arguments. None of the authorities cited stand for the proposition that the holder of a leasehold estate may burden the property for longer than the lessee has the right to possess the property in the first place.

Plaintiffs recognize this in their reply brief in support of their motion when they accurately state that a leaseholder generally has no power to burden the reversionary interest in land. Plaintiffs argue, however, that this rule should not apply because that rule exists to protect landowners from having their lessee burden the servient estate without the consent of the owner. Plaintiffs argue that because Vancroft held title to Lot 1 at the time the Agreement was executed, and Vancroft consented to the Agreement, Vancroft necessarily consented to the creation of an easement which burdened its servient parcel in favor of its dominant parcel in perpetuity.

However, this argument fails to recognize that an easement is not something that is created; an easement is a right to use one persons' property that is conveyed to another. While Tee could certainly give Vancroft the right to access Lot 1 until the expiration of Tee's possessory interest, Tee could not convey any rights as to Vancrofts' reversionary interest to Vancroft itself.

This argument also ignores the reality that Vancroft had no need to burden Lot 1 with an easement in perpetuity. When the leasehold expired Vancroft could do whatever it wished with the property as the holder of title in fee simple. Plaintiffs' argument is essentially that Vancroft created an interest which burdened Vancroft's remainder interest in Lot 1, gave that interest to Tee, and then Tee gave it back to Vancroft - but not as the owner of Lot 1 itself, only as an interest appurtenant to Vancroft's title in Lot 4. The Court rejects this proposition. Plaintiffs' argument is contrary to the general rule that an owner of property cannot create an easement across his own land. In other words, "'an easement is defined as a right in the lands of another, and therefore one cannot have an easement in his own lands.' " *Zingiber Inv., L.L.C., v. Hagerman Highway Dist.,* 150 Idaho 675, 681, 249 P.3d 868, 874 (2011) (quoting *Gardner v. Fliegel,* 92 Idaho 767, 771, 450 P.2d 990, 994 (1969)).

Therefore, the Court concludes the Agreement did not create a perpetual easement over Lot 1 (alleged servient estate) in favor of Lot 4 (alleged dominant estate) because Tee, Ltd., as Grantor,

only held a limited possessory interest in Lot 1. Tee, Ltd., could not grant more rights in the servient estate than it possessed. At most the Agreement could convey a right to enter the servient estate for the purpose of accessing the dominant estate during the duration of the leasehold estate. That right expired when the lease was terminated. The Agreement could not create an easement appurtenant to Lot 4 that would pass to subsequent holders of title to that land in perpetuity because neither Tee nor the Sandersons could convey a greater interest in Lot 1 than they held and neither held an interest in Lot 1 that exceeded the expiration of Tee's leasehold in the year 2079. Tee was a tenant.

A fair portion of the plaintiffs' arguments dealt with the doctrine of merger. Plaintiffs argue that the doctrine of merger should not apply and should not prevent Vancroft from creating an easement over one parcel of land it owns in favor of another parcel it owns, because Vancroft did not have unity of title and possession at the time it executed the Agreement. Plaintiffs' arguments regarding the doctrine of merger are misplaced. As plaintiffs correctly point out, the doctrine of merger deals with the situation where the law will presume an easement has been extinguished, not when an easement may be conveyed. Also, in this case, the issue is not whether Tee could burden its leasehold estate. The issue is whether Tee could convey an interest that burdened Vancrofts' reversionary interest in Lot 1 after the expiration of the leasehold. As to that interest, Vancroft had both title and a right to possession. For the reasons stated above, Vancroft could not "create" an easement in its own land. In the simplest terms, Vancroft cannot grant to itself the right to use Lot 1 after the leasehold expires.

Vancroft certainly could have given plaintiffs that right when it conveyed Lot 4 to Bedard & Musser via warranty deed on the 27th day of October, 1993.[7] However that deed contains no language regarding a conveyance of a right to use Lot 1 to access Lot 4. Also, plaintiffs have not alleged in their complaint that Vancroft conveyed to them a right to cross Lot 1 when Vancroft sold them Lot 4. Their only claim is that they received that right as an appurtenance to the title in Lot 4 because Tee conveyed that right to Vancroft via the Agreement.

Even if the Court were to accept plaintiffs' argument that Vancroft is legally capable of creating an easement over a portion of its own land in favor of another portion of its own land and

[7] The language of the deed indicates it was executed on October 19. However, the notary public indicates the principle in the corporation did not sign the deed until October 27.

conveying that interest to itself,[8] that is not what the Agreement purports to do. The plain language of the Agreement indicates the only entities conveying any interest in the land are Tee, Ltd., and the Sandersons. Tee, Ltd. only had a possessory interest for a limited term; it could convey no more than that. Even the authority plaintiffs cite in support of their argument - *Leichtfuss v. Dabney*, 122 P.3d 1220 (Mont. 2005) - clearly stated the relevant basic principle: a person can convey no more or greater title than he holds. *Id.* at 1229.

Because Tee could not convey an interest in Lot 1 that burdened Vancroft's reversionary interest in that land, whatever interest Tee conveyed via the Agreement, if it in fact conveyed an interest in land, was extinguished when Tee's leasehold ended in 2007. *See* Jon W. Bruce and James W. Ely, The Law of Easements and Licenses in Land § 10:15 (2015). Therefore, defendant is entitled to judgment as a matter of law dismissing plaintiffs' claim that the Agreement conveyed an easement appurtenant across Lot 1 in favor of Lot 4 that ran with title in Lot 4.

As an independent ground for granting the defendant summary judgment, the Court finds that the unambiguous language of the Agreement itself makes clear that the parties did not intend to create an easement appurtenant to Lot 4. Indeed, the section of the Agreement upon which the plaintiffs rely most heavily for their argument that the Agreement created an *expandable* easement is the portion of the document that clearly shows this Agreement was never intended by the parties to create an easement appurtenant at all.

The Agreement purports to convey a permanent easement over, across, and under Lot 1 in favor of Lot 4. The Agreement clearly indicates the parties' intent to construct a roadway within the "easement." The Agreement also clearly states that the grantee (Vancroft) shall have the right to dedicate the road to the county highway district or such other governmental agency that has jurisdiction over public roadways at the time of the dedication. In other words, the parties intended to dedicate the roadway to the public. Indeed, the parties' plan was to create a public street, rather than a public right-of-way. (*See* I.C. §§s 50-1301(10) and (11) for the distinction).

Under Idaho law, dedication of a public street may be accomplished by statute or under the common law. *Ponderosa Homesite Lot Owners v. Garfield Bay Resort, Inc.,* 139 Idaho 669, 85 P.3d 674 (2004). The legal effect of dedicating land to the public is to convey a determinable fee. *Mochel*

[8] Or to Tee and then back to itself, as counsel suggests was done.

v. Cleveland, 51 Idaho 468, 481, 5 P.2d 549, 553 (1930)[9]. Were the dedication accepted, the rights of the holders of fee title in both Lot 1 and in Lot 4 would be different than if the Agreement conveyed only an easement over Lot 1 for the purposes of granting access to Lot 4. For example, under an easement, the owner of Lot 1 would retain the right to bar members of the public, other than the owner of Lot 4 and his invitees, from crossing his land. He could not do so if the roadway were dedicated to the public.

This language in the Agreement shows Vancroft was not intending to create an easement across a portion of its land (what became Lot 1) in favor of another portion of its land (what became Lot 4). Instead, Vancroft was intending to install utilities across land it owned to other land it owned and to build a roadway on part of its land that it planned to eventually dedicate to the public.

So if the Permanent Easement Agreement did not convey an easement, what was the Agreement? The plain language of the document answers this question as well. In order to construct the roadway it desired to construct, Vancroft needed permission from its tenant to access that portion of Vancroft's land to which the tenant had a possessory interest until the year 2079. The tenant, Tee, Ltd., was willing to grant such permission under certain conditions.

An instrument which conveys the right to use the property of another without conveying an interest in the property itself is called a license. The Idaho Supreme Court explained the difference between a license and an easement in *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889 (2003) as follows:

> While it is often difficult to determine the difference between an easement and a license, they are distinct in principle. An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner. *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991). In contrast to an easement, "[a] license is a permissive use of land by which the owner allows another to come onto his land for a specific purpose." 25 Am Jur 2d *Easements and Licenses* § 2 (1996). In addition, a license does not pass with the title to the property but is only binding between the parties expiring upon the death of either party. *State v. Camp*, 134 Idaho 662, 667, 8 P.3d 657, 662 (Ct.App.2000). In determining whether an agreement constitutes a license or an easement, the title of the instrument is not controlling. Rather, the character of the interest created "depends upon the intent of the parties as interpreted from the language used and to the extent the rules of evidence permit from the surrounding circumstances, viewed in the light of applicable law." *Cooper v. Boise Church of Christ of Boise, Idaho, Inc.*, 96 Idaho 45, 47, 524 P.2d 173, 175 (1974)(citation omitted).
>
> *Id. at* 56.

[9] The Idaho Supreme Court has also described the public's interest in a roadway dedicated to its use as being an easement held by a governmental agency or municipal corporation for the benefit of the public. *Shaw v. Johnston,* 17 Idaho 676, 683, 107 P. 399, 401 (1910). The point here is simply that the interest conveyed by a dedication is different than the interest one conveys when one conveys an easement to an adjacent land owner permitting him to access land owned by him.

By the plain language of the Agreement, Tee, Ltd. conveyed permission as the holder of a limited term possessory interest in the land to Vancroft, as holder of the reversionary interest, to access the land during Tee's leasehold estate, to make changes and improvements to the land including the installation of utilities and the construction of a roadway, and ultimately to dedicate a portion of Vancroft's land during Tee's leasehold estate to the public. In exchange for granting Vancroft the right to access the property during the leasehold and to dedicate a portion of the servient estate to the public while Tee still had the right to possess that land, Vancroft agreed to indemnify Tee from liability for persons injured, to limit its construction of the roadway to certain times of the year, to repair any damage to the way in which Tee was utilizing its possessory interest (*i.e.* operating a golf course), and to let Tee approve the plans for construction of the roadway before construction began. These terms make little sense if one tries to apply them as an easement to a right held by a hypothetical future owner of Lot 4 as against a future owner of Lot 1. These terms clearly show Tee was granting Vancroft the right to access the land during the term of Tee's possessory interest to install utilities and to build a roadway that would then be given to the public. If the Agreement shows the parties intent to convey any easement, it is not an easement appurtenant to Lot 4, rather it is an easement to the public at large. In essence, the Agreement is an agreement to convey, at some point in the future, to members of the public, the right to cross Lot 1. Such a right would be a burden on both Tee's possessory interest and Vancroft's reversionary interest in that land. However, such dedication never occurred. Instead, Tee merely conveyed the right to access the property, to install utilities, and to construct a roadway in anticipation of such dedication during the limited term of Tee's possessory interest.

The Court holds the Agreement is a license that conveyed to Vancroft the right to access Vancroft's land (Lot 1) while Tee had a possessory interest in that land. This grant likely ended when Tee transferred its leasehold to another tenant in 1993. Certainly it lasted no longer than the termination of the lease itself in 2007. In any event, it did not create a right to access the property that ran with title to Lot 4. It did not create a right to access Lot 1 that lasted longer than Tee's possessory interest.

If the Court were to conclude that the Agreement conveyed an easement appurtenant to Lot 4, the Court would have to conclude the Agreement granted the owner of Lot 4 not only a right to use the servient tenement in a manner or for a purpose that is not inconsistent with the general use of the property by the owner (An easement is defined as the right to use the land of another for a

specific purpose that is not inconsistent with the general use of the property by the owner. *Akers v. D.L. White Const., Inc.* 142 Idaho 293, 301, 127 P.3d 196, 204 (2005)), but also granted the owner of Lot 4 – and notably *any* owner of Lot 4 – the right to destroy a portion of the interest of the owner of the servient tenement by dedicating the roadway to the public. The right to dedicate the roadway to the public would be inconsistent with the rights of the owner of the servient estate. It would also diminish the rights of the owner of the dominant estate by forever altering the 'easement' he held to simply be a right of way available to the general public. The term of the Agreement giving Vancroft the right to dedicate a portion of its property to the public, notwithstanding Tee's possessory interest in that land, clearly shows the Agreement was not intended to create a permanent easement over Lot 1 appurtenant to Lot 4. Vancroft simply wanted to build a road over one piece of land it owned to another piece of land it owned. In order to do that, it needed the permission of its tenant to make entry upon and make changes to the land while the tenant was in possession of that land. It also needed its tenant's permission to alter a portion of the leasehold in the future. Tee, Ltd., granted those permissions upon certain conditions and in exchange for certain promises.

CONCLUSIONS

The language of the "PERMANENT EASEMENT AGREEMENT" is unambiguous. By that document, Tee, Ltd., the holder of a term possessory interest in Lot 1, granted to Vancroft, the holder of the remainder fee in Lot 1, the right to access Lot 1, to install utilities across the Lot, to construct a roadway upon that property, and to dedicate that roadway to the public, if Vancroft as holder of the remainder fee chose to do so. If that right was an easement upon Tee's possessory interest, i.e. if it was an interest in Tee, Ltd.'s, leasehold estate, Tee could grant no more interest in Lot 1 than it possessed - A limited possessory interest. Tee could not burden the servient tenement in perpetuity. Therefore, defendant is entitled to summary judgment upon plaintiffs' claim to quiet title.

Alternatively, if the Agreement simply conveyed a license permitting Vancroft to access land it had leased to its tenant during the lease period, as the Court finds it did, defendant is entitled to summary judgment on that basis as well.

Plaintiffs' complaint to quiet title is premised only upon the argument that the Agreement created an easement over Lot 1 appurtenant to Lot 4 that runs with the title to Lot 4. For the reasons

set forth above, this Court concludes the Agreement did not and could not create such an easement. Therefore, the defendant is entitled to dismissal of the complaint to quiet title as a matter of law.

The Court notes there are a number of other conveyances of interests in property that the parties have discussed in this case: the plat creating the Nibler Subdivision, the warranty deed conveying Lot 4 from Vancroft to Bedard and Musser, and the warranty deed conveying Lot 1 from Vancroft to Bluegrass. Plaintiffs have not asserted in their complaint to quiet title that the warranty deed by which Vancroft conveyed fee title in Lot 4 to Bedard & Musser also conveyed an easement to access that parcel across Lot 1 or that any other transfer of property conveyed an easement across Lot 1 to the holder of title in Lot 4. Plaintiffs' only argument has been that the Agreement was such a conveyance. Therefore, that is the only claim the Court has considered. Tee, Ltd. and the Sandersons did not and could not convey a perpetual right to cross Lot 1 to the holder of title in Lot 4. Defendant is entitled to judgment as a matter of law.

Plaintiffs' motion for summary judgment is denied.

Defendant's motion for summary judgment is granted.

Plaintiffs' complaint to quiet title is Dismissed.

IT IS SO ORDERED.

Dated this 15th day of April, 2016.

JONATHAN MEDEMA
District Judge

CERTIFICATE OF MAILING

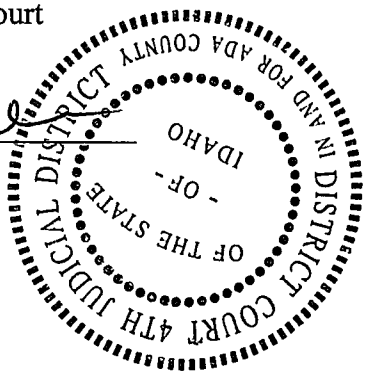
I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 24 day of April, 2016, one copy of the ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

TERRY C. COPPLE
MICHAEL E. BAND
DAVISON, COPPLE, COPPLE & COPPLE, LLP
PO BOX 1583
BOISE, ID 83701

SCOTT B. MUIR
ABIGAIL R. GERMAINE
DEPUTY CITY ATTORNEYS
BOISE CITY ATTORNEY'S OFFICE
PO BOX 500
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: _____
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **JUDGMENT**

IT IS HEREBY ORDERED, adjudged, and decreed that the "Permanent Easement Agreement" dated September 14, 1991, did not create a valid easement over Lot 1, Block 2 of the Nibler Subdivision. Lot 1, Block 2 of the Nibler Subdivision is not encumbered by an easement or license pursuant to the "Permanent Easement Agreement."

THEREFORE, all claims asserted in the First Amended Complaint are dismissed with prejudice.

IT IS SO ORDERED.

DATED this 18 day of April 2016.

JONATHAN MEDEMA
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I have on this 18 day of April 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
PO Box 500
Boise ID 83701-0500

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☑ Electronic Means w/ Consent
- ☐ Other: _____

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County

By: _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

Medema
Janet
5/10/16 9H

NO. _____ FILED
A.M. _____ P.M. 2:16

MAY 09 2016

CHRISTOPHER D. RICH, Clerk
By TYLER ATKINSON
DEPUTY

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAIN
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BEDARD AND MUSSER, an Idaho partnership Plaintiff, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **RESPONSE TO PLAINTIFFS' MOTION TO AMEND JUDGMENT**

COMES NOW, Defendant City of Boise City, by and through counsel of record, and responds to Plaintiffs' Motion to Amend Judgment.

Defendant objects to Plaintiffs' Proposed Amended Judgment in that it does not accurately reflect the decision of the Court. Defendant proposes the Amended Judgment attached hereto as "Exhibit A".

DATED this 9th day of May 2016.

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9th day of May 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☐ Electronic Means w/ Consent
- ☐ Other: _____

Scott B. Muir

SCOTT B. MUIR
Deputy City Attorney

EXHIBIT "A"

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant.	Case No. CV-OC-2015-10297 **AMENDED JUDGMENT**

JUDGMENT IS ENTERED AS FOLLOWS: Plaintiffs' motion for summary judgment is denied, Defendant's motion for summary judgment is granted, and the First Amended Complaint is dismissed with prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Defendant.

DATED this _____ day of May 2016.

JONATHAN MEDEMA
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of May 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ❑ U.S. Mail
- ❑ Personal Delivery
- ❑ Facsimile
- ❑ Electronic Means w/ Consent
- ❑ Other: _____

Scott B. Muir
Abigail R. Germaine
Deputy City Attorneys
Boise City Attorney's Office
PO Box 500
Boise ID 83701-0500

- ❑ U.S. Mail
- ❑ Personal Delivery
- ❑ Facsimile
- ❑ Electronic Means w/ Consent
- ❑ Other: _____

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County

By: _____
Deputy Clerk

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs-Appellants
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant-Respondent.	Case No. CV-OC-2015-10297 NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CITY OF BOISE, AND ITS ATTORNEY OF RECORD, SCOTT B. MUIR, DEPUTY CITY ATTORNEY OF THE BOISE CITY ATTORNEY'S OFFICE, 150 N. CAPITOL BOULEVARD, BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. **Designation of Appeal:** The above-named Plaintiffs-Appellants, BEDARD AND

MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership ("Appellants"), appeals against the above-named Defendant-Respondent CitiMortgage, Inc. ("Respondent") to the Idaho Supreme Court from the JUDGMENT, entered in the above-entitled action on the 18th day of April, 2016, Honorable Jonathan Medema presiding.

Pursuant to Rule 17(e)(1), I.A.R., this NOTICE OF APPEAL shall be deemed to include and present on appeal all judgments, orders, and decrees entered prior to the order appealed and all orders, judgments, or decrees entered after the order appealed.

2. **Jurisdictional Statement:** Appellants have a right to appeal to the Idaho Supreme Court, and the judgments or orders described herein at Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. **Preliminary Statement of Issues of Appeal:** The following list of issues on appeal is preliminary in nature and is based on such preliminary research and legal analysis as could reasonably be conducted to date. Appellants therefore reserve the right to assert additional issues on appeal.

At present, Appellants intend to assert the following issues on appeal:

a. Whether the District Court erred in determining that the "Permanent Easement Agreement" dated September 14, 1991, did not create a valid easement over Lot 1, Block 2 of the Nibler Subdivision.

b. Whether the District Court erred in determining that Lot 1, Block 2 of the Nibler Subdivision is not encumbered by an easement or license pursuant to the "Permanent Easement Agreement."

c. Whether the District Court erred in determining that the "Permanent Easement Agreement" did not create an easement across Lot 1, Block 2 of

the Nibler Subdivision (the servient estate) for the benefit of Lot 4, Block 2 of the Nibler Subdivision (the dominant estate) which could be expanded at the election of the owner of the dominant estate (*i.e.*, Appellants) to such dimensions which are necessary to meet the ordinances and requirements of the Ada County Highway District (ACHD) for a public roadway at the time of such expansion.

d. Whether the District Court erred in determining that Appellants do not have the right to expand the easement area set forth in the "Permanent Easement Agreement" by dedicating the easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication

e. Whether the District Court erred in determining that the "Permanent Easement Agreement" was unambiguous.

f. Whether the District Court erred in striking or partially striking and excluding from its consideration the AFFIDAVIT OF REBECCA W. ARNOLD dated September 30, 2015.

g. Whether the District Court erred in striking or partially striking and excluding from its consideration the AFFIDAVIT OF COLIN CONNELL dated February 2, 2016.

h. Whether the District Court erred in striking or partially striking and excluding from its consideration the SECOND DECLARATION OF TOMMY T. SANDERSON dated February 1, 2016.

i. Whether the District Court's JUDGMENT dated April 18, 2016, is void, invalid or otherwise ineffective for failure to comply with Rule 54(a) of the IDAHO RULES OF CIVIL PROCEDURE.

4. No order has been entered sealing all or any portion of the record.

5. **Reporter's Transcripts:**

a. Is a reporter's transcript requested? Yes

b. The Appellants request the preparation of the following portions of the reporter's transcript in both hard copy and electronic format.

i. Transcript of the hearing on the parties' cross-motions for summary judgment and motions to strike held on February 16, 2016.

6. **Clerk's Record:** Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

a. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 3, 2015.

b. MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 3, 2015.

c. AFFIDAVIT OF REBECCA W. ARNOLD, dated September 30, 2015, and filed with the District Court on December 3, 2015.

d. AFFIDAVIT OF KEVIN MCCARTHY, P.E., dated November 17, 2015, and filed with the District Court on December 3, 2015.

e. AFFIDAVIT OF DEAN W. BRIGGS, P.E., dated November 4, 2015, and filed with the District Court on December 3, 2015.

f. DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 31, 2015.

g. DECLARATION OF TOMMY T. SANDERSON, dated December 29, 2015, and filed with the District Court on December 31, 2015.

h. THIRD DECLARATION OF COUNSEL ABIGAIL R. GERMAINE, dated and filed with the District Court February 9, 2016.

i. MEMORANDUM IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 31, 2015.

j. DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA W. ARNOLD, dated and filed with the District Court January 15, 2016.

k. DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court January 15, 2016.

l. REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 2, 2016.

m. AFFIDAVIT OF COLIN CONNELL, dated and filed with the District Court February 2, 2016.

n. SECOND DECLARATION OF TOMMY T. SANDERSON, dated February 1, 2016, and filed with the District Court on February 2, 2016.

o. PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF REBECCA W. ARNOLD, dated and filed with the District Court February 2, 2016.

p. REPLY IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 9, 2016.

q. PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF COLIN CONNELL, dated and filed with the District Court February 15, 2016.

r. PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 2, 2016.

s. MOTION TO AMEND JUDGMENT, dated and filed with the District Court on May 2, 2016.

7. **Exhibits:** In addition to those exhibits attached to and included within the various affidavits and declarations enumerated hereinabove, Appellants request the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court:

a. Plaintiff's EXHIBIT 1 introduced during February 16, 2016, motion hearing.

8. **I certify:**

a. That a copy of this NOTICE OF APPEAL has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

i. Reporter for the Hearings February 16, , 2016:

Sue Wolf
Official Court Reporter, Fourth Judicial District
Ada County Courthouse
200 W. Front Street
Boise, ID 83702

b. That the clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript;

c. That the estimated fee for preparation of the clerk's record has been paid;

d. That the appellate filing fee has been paid; and

e. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

f. Appellants reserve the right to seek attorneys' fees on appeal to the extent allowed by law pursuant to I.A.R. 41.

DATED this 6th day of May, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiff

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following individual, by the method indicated, and addressed as follows:

Scott B. Muir Abigail R. Germaine Deputy City Attorneys Boise City Attorney's Office P.O. Box 500 Boise, Idaho 83701-0500 *Attorney for Defendant-Respondent*	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile E-Mail
Sue Wolf Official Court Reporter, Fourth Judicial District Ada County Courthouse 200 W. Front Street Boise, ID 83702	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile E-Mail

Michelle Silva

Medema
Janet
RW
5/19

ROBERT B. LUCE
BOISE CITY ATTORNEY

SCOTT B. MUIR
Deputy City Attorney
ABIGAIL R. GERMAINE
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Idaho State Bar No. 4229 and 9231
Email: BoiseCityAttorney@cityofboise.org

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ORIGINAL

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, v. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant-Respondent.	Case No. CV-OC-2015-10297 **REQUEST FOR ADDITIONAL RECORD ON APPEAL**

TO: THE ABOVE NAMED APPELLANTS, BEDARD AND MUSSER, BOISE HOLLOW LAND HOLDINGS, RLLP, AND THEIR ATTORNEY OF RECORD, TERRY C. COPPLE OF THE OFFICE DAVISON, COPPLE, COPPLE & COPPLE, LLP, 199 N. CAPITOL BOULEVARD, BOISE, IDAHO 83701 AND THE CLERK OF THE ABOVE-ENTITLED COURT.

RW

NOTICE IS HEREBY GIVEN, that the Respondent in the above-entitled proceeding hereby requests pursuant to Idaho Appellate Rule 19, the inclusion of the following material in the clerk's record in addition to that required to be included by the Idaho Appellate Rules and the notice of appeal:

a. DECLARATION OF COUNSEL ABIGAIL R. GERMAINE – Filed with the District Court on December, 31, 2015.

b. SECOND DECLARATION OF COUNSEL ABIGAIL R. GERMAINE – Filed with the District Court on January 15, 2015.

c. MOTION TO STRIKE THE DECLARATION OF ABIGAIL R. GERMAINE – Filed with the District Court on February 2, 2016.

d. AFFIDAVIT OF COUNSEL MICHAEL E. BAND – Filed with the District Court on February 2, 2016.

e. DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF COLIN CONNELL – Filed with the District Court on February 9, 2016.

f. REPLY BRIEF REGARDING MOTION TO STRIKE THE AFFIDAVIT OF REBECCA ARNOLD – Filed with the District Court on February 17, 2016.

g. RESPONSE TO PLAINTIFFS' MOTION TO AMEND – Filed with the District Court on May 9, 2016.

EXHIBITS – In addition to those exhibits attached to and included within the various affidavits and declarations enumerated above, Respondents request the following be sent to the Supreme Court:

a. All Defense exhibits, charts, documents, or pictures introduced and admitted during the February 16, 2016, Summary Judgment Motion Hearing.

DATED this 19 day of May 2016.

ABIGAIL R. GERMAINE
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 19 day of May 2016, served the foregoing document on all parties of counsel as follows:

Terry C. Copple
Michael E. Band
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
PO Box 1583
Boise ID 83701

- ☐ U.S. Mail
- ☐ Personal Delivery
- ☐ Facsimile
- ☒ Electronic Means w/ Consent
- ☐ Other: _____

ABIGAIL R. GERMAINE
Deputy City Attorney

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs, vs. CITY OF BOISE, a body politic corporate of the State of Idaho, Defendant.	Case No. CVOC2015-10297 AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiff's complaint to quiet title is dismissed with prejudice.

Dated this 7th day of June 2016.

JONATHAN MEDEMA
District Judge

CERTIFICATE OF MAILING

I hereby certify that on June 7th, 2016, I mailed (served) a true and correct copy of the within instrument to:

Terry C. Copple
DAVISON COPPLE COPPLE & COPPLE
199 N Capitol Blvd, Ste 600
PO Box 1583
Boise, ID 83701
tc@davisoncopple.com

( ) U.S. Mail, Postage Prepaid
( ) Interdepartmental Mail
(x) Electronic Mail
( ) Facsimile

Scott B. Muir
Abigail Germain
BOISE CITY ATTORNEY'S OFFICE
150 N Capitol Blvd
PO Box 500
Boise, ID 83701-0500
smuir@cityofboise.org
agermaine@cityofboise.org

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
(x) Electronic Mail
( ) Facsimile

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT IN AND FOR ADA COUNTY - OF - OF THE STATE IDAHO

TERRY C. COPPLE (ISB No. 1925)
MICHAEL E. BAND (ISB No. 8480)
DAVISON, COPPLE, COPPLE & COPPLE, LLP
Attorneys at Law
Chase Capitol Plaza
199 North Capitol Blvd., Ste. 600
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Facsimile: (208) 386-9428
tc@davisoncopple.com
band@davisoncopple.com

Attorneys for Plaintiffs-Appellants
Bedard and Musser and Boise Hollow Land Holdings, RLLP

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho. Defendant-Respondent.	Case No. CV-OC-2015-10297 AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, CITY OF BOISE, AND ITS ATTORNEY OF RECORD, SCOTT B. MUIR, DEPUTY CITY ATTORNEY OF THE BOISE CITY ATTORNEY'S OFFICE, 150 N. CAPITOL BOULEVARD, BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. **Designation of Appeal:** The above-named Plaintiffs-Appellants, BEDARD AND

MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership ("Appellants"), appeals against the above-named Defendant-Respondent CitiMortgage, Inc. ("Respondent") to the Idaho Supreme Court from the AMENDED JUDGMENT entered in the above-entitled action on the 7th day of June, 2016, a true and accurate copy of which is attached hereto as EXHIBIT "A," Honorable Jonathan Medema presiding.

Pursuant to Rule 17(e)(1), I.A.R., this AMENDED NOTICE OF APPEAL shall be deemed to include and present on appeal all judgments, orders, and decrees entered prior to the order appealed and all orders, judgments, or decrees entered after the order appealed.

2. **Jurisdictional Statement:** Appellants have a right to appeal to the Idaho Supreme Court, and the judgments or orders described herein at Paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. **Preliminary Statement of Issues of Appeal:** The following list of issues on appeal is preliminary in nature and is based on such preliminary research and legal analysis as could reasonably be conducted to date. Appellants therefore reserve the right to assert additional issues on appeal.

At present, Appellants intend to assert the following issues on appeal:

a. Whether the District Court erred in determining that the "Permanent Easement Agreement" dated September 14, 1991, did not create a valid easement over Lot 1, Block 2 of the Nibler Subdivision.

b. Whether the District Court erred in determining that Lot 1, Block 2 of the Nibler Subdivision is not encumbered by an easement or license pursuant to the "Permanent Easement Agreement."

c. Whether the District Court erred in determining that the "Permanent Easement Agreement" did not create an easement across Lot 1, Block 2 of the Nibler Subdivision (the servient estate) for the benefit of Lot 4, Block 2 of the Nibler Subdivision (the dominant estate) which could be expanded at the election of the owner of the dominant estate (*i.e.*, Appellants) to such dimensions which are necessary to meet the ordinances and requirements of the Ada County Highway District (ACHD) for a public roadway at the time of such expansion.

d. Whether the District Court erred in determining that Appellants do not have the right to expand the easement area set forth in the "Permanent Easement Agreement" by dedicating the easement as a road to ACHD and thereupon to bring such road into compliance with all ordinances and requirements existing at the time of such dedication

e. Whether the District Court erred in determining that the "Permanent Easement Agreement" was unambiguous.

f. Whether the District Court erred in striking or partially striking and excluding from its consideration the AFFIDAVIT OF REBECCA W. ARNOLD dated September 30, 2015.

g. Whether the District Court erred in striking or partially striking and excluding from its consideration the AFFIDAVIT OF COLIN CONNELL dated February 2, 2016.

h. Whether the District Court erred in striking or partially striking and excluding from its consideration the SECOND DECLARATION OF TOMMY T. SANDERSON dated February 1, 2016.

4. No order has been entered sealing all or any portion of the record.

5. **Reporter's Transcripts:**

a. Is a reporter's transcript requested? Yes

b. The Appellants request the preparation of the following portions of the reporter's transcript in both hard copy and electronic format.

i. Transcript of the hearing on the parties' cross-motions for summary judgment and motions to strike held on February 16, 2016.

6. **Clerk's Record:** Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

a. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 3, 2015.

b. MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 3, 2015.

c. AFFIDAVIT OF REBECCA W. ARNOLD, dated September 30, 2015, and filed with the District Court on December 3, 2015.

d. AFFIDAVIT OF KEVIN MCCARTHY, P.E., dated November 17, 2015, and filed with the District Court on December 3, 2015.

e. AFFIDAVIT OF DEAN W. BRIGGS, P.E., dated November 4, 2015, and filed with the District Court on December 3, 2015.

f. DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 31, 2015.

g. MEMORANDUM IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court December 31, 2015.

h. DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court January 15, 2016.

i. DECLARATION OF TOMMY T. SANDERSON, dated December 29, 2015, and filed with the District Court on December 31, 2015.

j. DECLARATION OF COUNSEL ABIGAIL R. GERMAINE, dated and filed with the District Court December 31, 2015.

k. SECOND DECLARATION OF COUNSEL ABIGAIL R. GERMAINE, dated and filed with the District Court January 15, 2016.

l. DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF REBECCA W. ARNOLD, dated and filed with the District Court January 15, 2016.

m. MOTION TO STRIKE THE DECLARATION OF ABIGAIL R. GERMAINE, dated and filed with the District Court February 2, 2016.

n. PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 2, 2016.

o. REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 2, 2016.

p. AFFIDAVIT OF COUNSEL MICHAEL E. BAND, dated and filed with the District Court February 2, 2016.

q. AFFIDAVIT OF COLIN CONNELL, dated and filed with the District Court February 2, 2016.

r. SECOND DECLARATION OF TOMMY T. SANDERSON, dated February 1, 2016, and filed with the District Court on February 2, 2016.

s. PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF REBECCA W. ARNOLD, dated and filed with the District Court February 2, 2016.

t. THIRD DECLARATION OF COUNSEL ABIGAIL R. GERMAINE, dated and filed with the District Court February 9, 2016.

u. DEFENDANT'S MOTION TO STRIKE THE AFFIDAVIT OF COLIN CONNELL, dated and filed with the District Court February 9, 2016.

v. REPLY IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, dated and filed with the District Court February 9, 2016.

w. PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE AFFIDAVIT OF COLIN CONNELL, dated and filed with the District Court February 15, 2016.

x. REPLY BRIEF REGARDING MOTION TO STRIKE THE AFFIDAVIT OF REBECCA ARNOLD, dated and filed with the District Court February 17, 2016.

y. POST SUMMARY JUDGMENT HEARING BRIEF RE: ENFORCEABILITY OF EASEMENT COVENANT, dated and filed with the District Court February 17, 2016.

7. **Exhibits:** In addition to those exhibits attached to and included within the various affidavits and declarations enumerated hereinabove, Appellants request the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court:

a. All exhibits, charts, documents, or pictures introduced and admitted during the February 16, 2016, motion hearing.

8. **I certify:**

a. That a copy of this AMENDED NOTICE OF APPEAL has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

i. Reporter for the Hearings February 16, 2016:

Sue Wolf
Official Court Reporter, Fourth Judicial District
Ada County Courthouse
200 W. Front Street
Boise, ID 83702

b. That the clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript;

c. That the estimated fee for preparation of the clerk's record has been paid;

d. That the appellate filing fee has been paid; and

e. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

f. Appellants reserve the right to seek attorneys' fees on appeal to the extent allowed by law pursuant to I.A.R. 41.

DATED this 8th day of June, 2016.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
Terry C. Copple, of the firm
Attorneys for Plaintiff

By: _____
Michael E. Band, of the firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2016, I caused a true and accurate copy of the foregoing document to be served upon the following individual, by the method indicated, and addressed as follows:

Scott B. Muir Abigail R. Germaine Deputy City Attorneys Boise City Attorney's Office P.O. Box 500 Boise, Idaho 83701-0500 *Attorney for Defendant-Respondent*	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile E-Mail
Sue Wolf Official Court Reporter, Fourth Judicial District Ada County Courthouse 200 W. Front Street Boise, ID 83702	☒ ☐ ☐ ☐	U.S. Mail, postage prepaid Hand Delivered Facsimile E-Mail

_____
Michelle J. Silva

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership,

Plaintiffs,

vs.

CITY OF BOISE, a body politic corporate of the State of Idaho,

Defendant.

Case No. CVOC2015-10297

AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiff's complaint to quiet title is dismissed with prejudice.

Dated this 7th day of June 2016.

JONATHAN MEDEMA
District Judge

CERTIFICATE OF MAILING

I hereby certify that on June 7th, 2016, I mailed (served) a true and correct copy of the within instrument to:

Terry C. Copple
DAVISON COPPLE COPPLE & COPPLE
199 N Capitol Blvd, Ste 600
PO Box 1583
Boise, ID 83701
tc@davisoncopple.com

( ) U.S. Mail, Postage Prepaid
( ) Interdepartmental Mail
(x) Electronic Mail
( ) Facsimile

Scott B. Muir
Abigail Germain
BOISE CITY ATTORNEY'S OFFICE
150 N Capitol Blvd
PO Box 500
Boise, ID 83701-0500
smuir@cityofboise.org
agermaine@cityofboise.org

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
(x) Electronic Mail
( ) Facsimile

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT IN AND FOR ADA COUNTY - OF THE STATE OF IDAHO

TO: CLERK OF THE COURT, IDAHO SUPREME COURT
451 WEST STATE STREET, BOISE, IDAHO
FAX (208) 334-2616

BEDARD and MUSSER, et al, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, Defendant-Respondent.	Docket No. 44171-2016 Case No. CVOC-2015-~~0012097~~ 10297 NOTICE OF LODGING

NOTICE OF TRANSCRIPT(S) LODGED

Notice is hereby given that on July 26, 2016, I lodged one (1) transcript, totaling 106 pages, for the following dates/proceedings:

02-16-16 Cross-Motions for Summary Judgment

for the above-referenced appeal with the District Court Clerk for Ada County, in the Fourth Judicial District.

Susan M. Wolf,
RPR, CSR No. 728

KW

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant-Respondent.	Supreme Court Case No. 44171 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 26th day of July, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

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

JONATHAN MEDEMA/JANET ELLIS — FEBRUARY 16, 2016
DISTRICT JUDGE DEPUTY CLERK

BEDARD & MUSSER,

Plaintiff,

vs.

CITY OF BOISE,

Defendant.

Case No. CV OC 15-10297

EXHIBIT LIST
MOTION SUMMARY JUDGMENT

APPEARANCES:

TERRY COPPLE/MIKE BAND — COUNSEL FOR BEDARD & MUSSER
ATTORNEY AT LAW

ABIGAIL GERMAINE/SCOTT MUIR — COUNSEL FOR DEFENDANT CITY BOISE
BOISE CITY ATTORNEY

BY	NO.	DESCRIPTION	STATUS
PL	1	GOOGLE MAP	ADMITTED/ DEMONSTRATIVE
DEF	A	MAP	ADMITTED/ DEMONSTRATIVE

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant-Respondent.	Supreme Court Case No. 44171 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:

TERRY C. COPPLE
MICHAEL E. BAND
ATTORNEY FOR APPELLANT
BOISE, IDAHO

SCOTT B. MUIR
ABIGAIL R. GERMAINE
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

Date of Service: JUL 2 6 2016

CERTIFICATE OF SERVICE

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

BEDARD AND MUSSER, an Idaho partnership, and BOISE HOLLOW LAND HOLDINGS, RLLP, an Idaho limited liability partnership, Plaintiffs-Appellants, vs. CITY OF BOISE CITY, a body politic corporate of the State of Idaho, Defendant-Respondent.	Supreme Court Case No. 44171 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 10th day of May 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk