

6-17-2016

Swafford v. Huntsman Springs, Inc. Clerk's Record v. 2 Dckt. 44240

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COPY

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

2 of 2

LAW CLERK

RONALD L. SWAFFORD and MARGARET SWAFFORD

Plaintiffs/Appellants

vs

HUNTSMAN SPRINGS, INC., an Idaho Corporation

Defendant/Respondent

Appealed from the District Court of the Seventh Judicial District
of the State of Idaho, in and for Teton County
Honorable Gregory W. Moeller, District Judge

Ronald L. Swafford 655 So. Woodruff Idaho Falls, Idaho 83401
Attorney for Appellants

Sean Moulton PO Box 631 Driggs, Idaho 83422
Attorney for Respondent

Filed this _____ day of _____, 20____

Clerk

By _____ Deputy

44240

**Supreme Court No. 44240
Teton County No. CV 15-203**

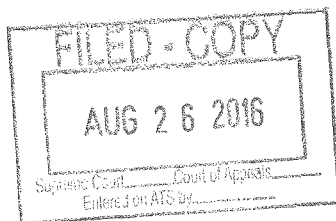
RONALD L. SWAFFORD
MARGARET SWAFFORD
Plaintiffs/ Appellants

VS

HUNTSMAN SPRINGS, INC.
an Idaho Corporation
Defendant/Respondent

Ronald L. Swafford, Esq.
655 So. Woodruff
Idaho Falls, Idaho 83401
Attorney for Appellants

Sean Moulton, Esq.
PO Box 631
Driggs, Idaho 83422
Attorney for Respondents



Volume 2

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Ronald Lynn Swafford, Margaret Swafford vs. Huntsman Springs

Date	Code	User	Judge
7/17/2015	NCOC	PHYLLIS	New Case Filed - Other Claims
	ATRE	PHYLLIS	Plaintiff: Swafford, Ronald Lynn Attorney Retained Ronald L. Swafford
	ATRE	PHYLLIS	Plaintiff: Swafford, Margaret Attorney Retained Ronald L. Swafford
		PHYLLIS	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Swafford Law Receipt number: 0060245 Dated: 7/17/2015 Amount: \$221.00 (Cashiers Check) For: Swafford, Ronald Lynn (plaintiff)
	SMIS	PHYLLIS	Summons Issued
9/23/2015	AFFD	GABBY	Affidavit Of Service
9/28/2015	ANSW	SHILL	Answer to Complaint and Counterclaim
		SHILL	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Moulton Law Receipt number: 0060847 Dated: 9/28/2015 Amount: \$136.00 (Check) For: Huntsman Springs, (defendant)
	ATRE	SHILL	Defendant: Huntsman Springs, Attorney Retained Sean R Moulton
9/29/2015	MOTN	GABBY	Motion For Judgment On Pleadings Or Summary Judgment
	MEMO	GABBY	Memorandum In Support Of Motion For Judgment On Pleadings Or Summary Judgment
	AFFD	GABBY	Affidavit Of Todd Woolstenhulme
	NOTH	GABBY	Notice Of Hearing
	HRSC	GABBY	Hearing Scheduled (Motions 11/03/2015 01:30 PM)
10/1/2015	MISC	GABBY	Note Of Issue And Request For Trial Setting
10/7/2015	NOTH	PHYLLIS	Amended Notice Of Hearing
10/8/2015	HRRS	PHYLLIS	Hearing Rescheduled (Motions 11/17/2015 01:30 PM) for Summary Judgment
11/3/2015	MEMO	SHILL	Memorandum in Opposition to Motion for Judgment on the Pleadings or Summary Judgment
	AFFD	SHILL	Affidavit of Ronald L Swafford in Opposition to Motion for Judgment on the Pleadings or Summary Judgment
11/9/2015	RETS	SHILL	Return Of Service
11/10/2015	MEMO	SHILL	Reply Memorandum in Support of Motion for Judgment on Pleadings or Summary Judgment

Ronald Lynn Swafford, Margaret Swafford vs. Huntsman Springs

Date	Code	User	Judge
11/17/2015	MINE	PHYLLIS	Minute Entry Hearing type: Motion for Summary Judgment Hearing date: 11/17/2015 Time: 1:39 pm Courtroom: Court reporter: Denise Nowak Minutes Clerk: Phyllis Hansen Tape Number: Trevor Castleton, Plaintiffs' Attorney Sean Moulton, Defendants' Attorney Gregory W Moeller
11/18/2015	DCHH	PHYLLIS	Hearing result for Motions scheduled on 11/17/2015 01:30 PM: District Court Hearing Held Court Reporter: Patricia Hubble Number of Transcript Pages for this hearing estimated at: for Summary Judgment Gregory W Moeller
	ADVS	PHYLLIS	Hearing result for Motions scheduled on 11/17/2015 01:30 PM: Case Taken Under Advisement for Summary Judgment Gregory W Moeller
11/25/2015	MOTN	PHYLLIS	Motion to Allow Submission of Additional Evidence in Opposition to Defendant's Motion for Summary Judgment Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Ronald L. Swafford in Support of Motion to Allow Submission of Additional Evidence in Opposition to Defendant's Motion for Summary Judgment Gregory W Moeller
	MOTN	PHYLLIS	Motion to Amend Complaint Gregory W Moeller
	AFFD	PHYLLIS	Affidavit of Plaintiff in Support of Motion to Amend Complaint Gregory W Moeller
	NOTH	PHYLLIS	Notice Of Hearing Gregory W Moeller
	NOTS	PHYLLIS	Notice Of Service Gregory W Moeller
	HRSC	PHYLLIS	Hearing Scheduled (Motions 12/15/2015 02:00 PM) to Allow Submission Gregory W Moeller
12/3/2015	MOTN	PHYLLIS	Motion to Appear Telephonically Gregory W Moeller
12/4/2015	MOTN	SHILL	Motion to Strike Untimely Affidavit Gregory W Moeller
12/8/2015	MISC	GABBY	Opposition To Motion To Amend Complaint Gregory W Moeller
12/15/2015	MINE	PHYLLIS	Minute Entry Hearing type: Motion Hearing date: 12/15/2015 Time: 2:44 pm Courtroom: Court reporter: Patricia Hubbell Minutes Clerk: Phyllis Hansen Tape Number: Plaintiff's Attorney Trevor Castleton Defendant's Attorney Sean Moulton Gregory W Moeller

Ronald Lynn Swafford, Margaret Swafford vs. Huntsman Springs

Date	Code	User	Judge
12/15/2015	DCHH	PHYLLIS	Hearing result for Motions scheduled on 12/15/2015 02:00 PM: District Court Hearing Held Court Reporter: Patricia Hubbell Number of Transcript Pages for this hearing estimated at: less than 100
2/19/2016	MEMO	SHILL	Memorandum Decision on Defendant's Motion for Summary Judgment
4/11/2016	JDMT	PHYLLIS	Judgment
	CDIS	PHYLLIS	Civil Disposition entered for: Huntsman Springs,, Defendant; Swafford, Margaret, Plaintiff; Swafford, Ronald Lynn, Plaintiff. Filing date: 4/11/2016
	CSCP	PHYLLIS	Case Status Closed But Pending: Closed
4/21/2016	MOTN	PHYLLIS	Motion for Attorney's Fees and Costs
	AFFD	PHYLLIS	Affidavit of Sean Moulton in Support of Costs and Attorney's Fees
	MEMO	PHYLLIS	Memorandum of Costs and Attorney Fees
	NOTH	PHYLLIS	Notice Of Hearing
	HRSC	PHYLLIS	Hearing Scheduled (Motions 05/13/2016 11:00 AM) for Attorney's fees
5/5/2016	MISC	SHILL	Objection to Motion for Attorney's Fees and Costs and Memorandum of Costs and Attorney's Fees
5/11/2016	NOTH	GABBY	Amended Notice Of Hearing
	HRRS	GABBY	Hearing Rescheduled (Motions 07/05/2016 11:00 AM) for Attorney's fees
5/20/2016		PHYLLIS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Luis Ortiz - Peak Printing Receipt number: 0062351 Dated: 5/20/2016 Amount: \$129.00 (Check) For: Swafford, Ronald Lynn (plaintiff)
		PHYLLIS	Miscellaneous Payment: Estimate of Clerk's Record Paid by: Luis Ortiz - Peak Printing Receipt number: 0062352 Dated: 5/20/2016 Amount: \$100.00 (Check)
5/24/2016	RVOI	SHILL	Receipt Voided (Receipt# 62352 dated 5/20/2016)
	BNDC	SHILL	Bond Posted - Cash (Receipt 62376 Dated 5/24/2016 for 100.00)
	BNDC	SHILL	Bond Posted - Cash (Receipt 62377 Dated 5/24/2016 for 200.00)

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FILED
NOV 10 2015
TIME:
TETON CO. ID DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

**REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR JUDGMENT ON
PLEADINGS OR SUMMARY
JUDGMENT**

I. SUMMARY

Neither the Swaffords' Memorandum in Opposition nor the Affidavit of Ron L. Swafford raise any issues of fact or law that prevents this Court from granting judgment in favor of Huntsman Springs. The Swaffords' Memorandum in Opposition essentially argues the following:

- (1) The Swaffords' 2014 letter to Huntsman Springs restarted the running of the statute of limitations.

- (2) The statute of limitations begins to run when the aggrieved party is fully aware of all of the alleged damages.¹

Idaho law does not support the Swaffords' arguments. In Idaho, the statute of limitations in a contract case begins to run from the alleged "breach," not from when the plaintiff gives the defendant notice and an opportunity to repair. In this case, it is uncontested that the alleged breaches occurred in 2007 and 2008. And Idaho appellate courts have explicitly stated the statute of limitations begins to run from the breach even when there are absolutely no damages at the time of the breach. *Mason v. Tucker & Associates*, 125 Idaho 429, 436, 871 P.2d 846, 853 (Ct. App. 1994) (citation omitted).

II. DISCUSSION

1. Notice and opportunity to repair does not restart the statute of limitations; breach of the contract starts the running of the statute of limitations.

Ron Swafford alleges that a letter he sent Huntsman Springs in 2014 restarted the statute of limitations. According to Mr. Swafford, the letter clarified to him that Huntsman springs "lacked intent" to repair the alleged breaches. Mr. Swafford has provided no legal authority that a letter can restart a statute of limitations.

Idaho does have the Notice and Opportunity to Repair Act for construction cases. I.C. §§ 6-2501-2504. This is not a construction case. Even if this framework applied here, it is unclear how any "notice and opportunity to repair" restarts a statute of limitations. The concept of giving opportunity to repair prior to filing a lawsuit is intended to prevent

¹ Memorandum in Opposition, p.2.

unnecessary lawsuits; notice and opportunity to repair does not provide plaintiffs additional time to file the lawsuit. Mr. Swafford misapplies the law.

The Swaffords cite *Saddlehorn Ranch Landowner's, Inc. v. Dyer*, 146 Idaho 747, 203 P.3d 677 (2009). In *Saddlehorn*, unlike this case, the letter itself was the breach of contract. That is, in *Saddlehorn* the defendants' letter itself changed a legal interest between the parties. Accordingly, the statute of limitations began to run from the correspondence (the breach). *Saddlehorn Ranch Landowner's, Inc. v. Dyer*, 146 Idaho 747, 750, 203 P.3d 677, 680 (2009). In this case, any correspondence between the Swaffords and Huntsman Springs in 2014 did nothing to the legal relationship between the parties. The breaches alleged by the Swaffords—the detriment of their legal interests allegedly inflicted by Huntsman Springs—occurred in 2007 and 2008.

The Idaho Supreme Court has explicitly rejected the legal reasoning Mr. Swafford now advances. *Chapin v. Stewart*, 71 Idaho 306, 310, 230 P.2d 998, 1001 (1951). In *Chappin*, the Idaho Supreme Court ruled that the statute of limitations began running based on what the plaintiffs *could have* known of the breach, not when they actually knew of the breach.

While it is stipulated that the appellants did not know of their interest in those lots until about a year before this suit was brought, that makes no difference, for they had the means of acquiring that knowledge, as the deed conveying the title to said lots to their father was of record during all that time in the office of the county recorder of Ada county, where said lots were situated. The means of acquiring this knowledge was open to them, and, under the facts of this case, that places them in the same position as though they had such knowledge. When one by his own carelessness or negligence fails to acquire knowledge that is within his reach, and such information is upon the proper records which impart constructive notice, the person cannot protect himself behind the plea that he did not know facts of which the law imputes knowledge to him and thus suspend the running of the statute.

Chapin v. Stewart, 71 Idaho at 311, 230 P.2d at 1001.

In *Chapin*, the knowledge necessary to begin the running of the statute of limitations was filed away in an Ada County office building. That was sufficient “knowledge” to begin the running of the statute of limitations. In this case, the Swaffords *could have known*—and almost certainly *did* know—of the alleged breaches in 2008 because those alleged breaches were visually observable on their own property. This table from Huntsman Springs’ initial Memorandum illustrates the breaches the Swaffords allege compared to when they could have known of those alleged breaches:

Allegations in Swaffords’ Complaint	Swaffords’ Actual or Constructive Knowledge
Huntington Springs represented to the Swaffords that their lot had a Primrose Street address and was “adjacent” to Primrose Street. ²	<p><i>July 20, 2007</i>—Plat was recorded in Teton County showing a park separating the Swaffords’ lot from Primrose Street.³</p> <p><i>September 21, 2007</i>—The Swaffords closed on their property and received a warranty deed and title insurance policy that showed a park separating their property from Primrose Street.⁴</p> <p><i>October 31, 2007</i>—Primrose Street was prepped or paved consistent with the recorded plat; the park separated the Swaffords’ property from Primrose Street.⁵</p>

² Complaint, ¶ 6.

³ Complaint, Exhibit E; Affidavit of Todd Woolstenhulme, ¶ 6.

⁴ Affidavit of Todd Woolstenhulme, ¶ 6.

⁵ Affidavit of Todd Woolstenhulme, ¶ 7.

Huntsman Springs represented that it would build the bike path and family walk on the east side of the Swaffords' lot, but instead the path and walk were built on the west side of the Swaffords' lot.⁶

Huntsman Springs allegedly blocked ingress and egress to the Swaffords' lot from Primrose Street by constructing the bike path and landscaping on the west side, in "Park 3."⁸

The Swaffords allege that Huntsman Springs "intentionally created a barrier between the remainder of Huntsman Springs and the commercial lots."⁹

August 13, 2008—Huntsman Springs completed the bike path and family walkway on the west side of the Swaffords' lot.⁷

August 13, 2008—Huntsman Springs completed the bike path and family walkway on the west side of the Swaffords' lot.

August 13, 2008—"[T]he landscaping, walking paths, and trees directly adjacent to and the west of Lot 4 of Block 50, also identified on the recorded plat as Park 3, were completed on or before August 13, 2008."¹⁰

The alleged breaches, the wrongs the Swaffords allege in their Complaint, were not wrongs committed in the letter. The breaches alleged in the Swaffords' Complaint were physical actions surrounding their actual lot. Those breaches occurred in 2007 and 2008.

2. There is no legal basis for the Swaffords' argument that the 2014 letter restarted the running of the statute of limitations because it made them "fully aware of their damages."

The Swaffords argue on page two of their Memorandum in Opposition that they "were not fully aware of their damages" until they corresponded via letter with Huntsman

⁶ Complaint, ¶¶ 31, 32.

⁷ Affidavit of Todd Woolstenhulme, ¶ 7.

⁸ According to the Swaffords' Complaint, Huntsman Springs represented that "commercial ingress and egress would be from Primrose Street as ingress or egress could not reasonably be placed across a family walk way and bike path," and "access to and from the commercial lots would be from Primrose Street, due to the family walk way and bike path being on the east side of Lot 50." Complaint, ¶¶ 13, 31, 32.

⁹ Complaint, ¶¶ 13, 37.

¹⁰ Affidavit of Todd Woolstenhulme, ¶ 8.

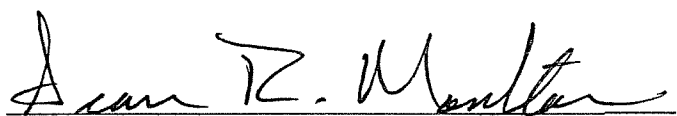
Springs in 2014. Uncertainty about damages is not a basis for tolling or restarting the statute of limitations. "A cause of action for breach of contract accrues upon the breach even though no damage may occur until later." *Mason v. Tucker & Associates*, 125 Idaho 429, 436, 871 P.2d 846, 853 (Ct. App. 1994) (citation omitted). In this case, the alleged damages occurred in 2007 and 2008 and they were immediately observable to the Swaffords.

3. Conclusion

The most conceptually straightforward way to think about this case is to ask the following question: *Could the Swaffords have written their Complaint in 2008?* Absolutely. The Swaffords' alleged breaches all occurred prior to or during 2008: the paving of Primrose Street, the installation of the bike and walking path, the installation of landscaping, the alleged blockage of ingress and egress from Primrose Street, and the visual and conceptual barrier between the Swaffords' lot and the rest of the development. There are no genuine issues of material fact that the breaches alleged by the Swaffords happened in 2007 and 2008. It is now too late for them to file their Complaint.

DATED this 18th day of September, 2015.

MOULTON LAW OFFICE


Sean Moulton, attorney for Defendant

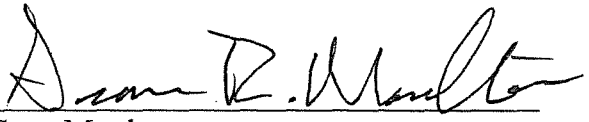
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Memorandum* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 18th day of September, 2015.


Sean Moulton

COURT MINUTES

CV-2015-0000203

Ronald Lynn Swafford, etal. vs. Huntsman Springs

Hearing type: Motion for Summary Judgment

Hearing date: 11/17/2015

Time: 1:39 pm

Judge: Gregory W Moeller

Court reporter: Denise Nowak

Minutes Clerk: Phyllis Hansen

Trevor Castleton, Plaintiffs' Attorney

Sean Moulton, Defendants' Attorney

J calls case; ids those present

Motion for Summary Judgment

Motion to Dismiss under Rule 12

Can't consider the Affidavit if going to be motion to dismiss

Inclined to treat as motion for summary judgment

DA – says court may consider – items that were included in the complaint

Sales contact, the plat, the deed

Court can notice those

No objection to either approach in P's opposition Brief

J – don't think I can glean the time line

PA – will leave to your discretion

We did not take position in memo; going to get the court to the same decision point either way

J – will deem as motion for summary judgment

Would rather make decision on as much info as possible so will treat as motion for SJ
0143

DA – can establish no genuine issue of material fact

Unrebutted facts:

Received Master Plan May 2007 includes "Subject to change"

No reference to Primrose

Recorded

Deed was recorded Sept 21, 2007

No language in the deed regarding Primrose

No rebuttal that Primrose and Front

Question becomes statute of limitations

Doesn't appear P objects to the dates

When did S of L begin to run

Deed is sufficient to start the S of L

Lot has been ignored for 8 years

Master plan pre-dated the plat and the deed

Reply letter did nothing to change the legal

Master Plan and the Plat are different

J – am familiar with the location

2007 and 2008, the roads were constructed; 2008 berm was constructed

0151

J – appears Pas are arguing not currently in compliance, until they received the letter they were not certain

DA - what they are claiming are part and parcel of the contract

J – sounds like what you are suggesting is have to respond to analysis

Can't get there without looking at the contract to see if potential breach

DA - don't think have to go there

DA - Plat was recorded prior to deed being issued to the plaintiff's

In 2008 the pathway was installed

DA - constructive notice

0156

PA - plat, walkway, planting of the trees

Those things didn't give notice of anything

Look at plat - attachment B to the complaint

Description on the plat of a park

200

J - didn't really build a park, they just put a strip with some trees

The timing of the plat is even more compelling

4 days after the contract was signed, the plat was recorded

J - are you arguing the plat doesn't constitute constructive notice

PA - no I'm saying it cannot constitute notice

206

J - you're saying the plat doesn't move the ball down the field

Ask court to review information in 2014

J- not contending they are unaware of roads, trees and walking paths put in; just claiming not sufficient notice

211

DA - this is new creative claim

Reference is to the one page master plan

Ask focus on the complaint

J walk me through a little more carefully

How is this a change in strategy

Most important paragraph is in Chapen

Would have seen division no later than 2008

216

J - two points - you refer to Huntington Springs DA - typo

2 - no objection to driving by to look at property

No objections

Will take under advisement

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
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FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

**MOTION TO ALLOW
SUBMISSION OF ADDITIONAL
EVIDENCE IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW The plaintiff, by and through their attorney of record, RONALD L. SWAFFORD, ESQ., pursuant to Rule 56(c), who hereby requests that this Court allow the submission of additional evidence in opposition to the defendant's Motion for Summary Judgment.

This Motion is based upon the record and file herein and upon the Affidavit of Ronald L. Swafford filed in support of this Motion.

Oral argument is hereby requested.

DATED this 23rd day of November, 2015.



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☒ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☒ Fax: (208) 354-2346

Courtesy Copy:

Gregory W. Moeller
District Judge
159 E. Main Street
P.O. Box 389
Rexburg, ID 83440

- ☒ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☐ Fax: (208)-356-5425



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

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FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND MARGARET SWAFFORD, husband and wife Plaintiffs, vs. HUNTSMAN SPRINGS, INC., an Idaho corporation, Defendant.	Case No. CV-2015-203 AFFIDAVIT OF RONALD L. SWAFFORD IN SUPPORT OF MOTION TO ALLOW SUBMISSION OF ADDITIONAL EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
---	--

STATE OF IDAHO)
 : ss.
County of Bonneville)

I, RONALD L. SWAFFORD, ESQ., plaintiff and one of the attorneys for plaintiffs in
this matter, hereby state and affirm as follows:

1. Since the hearing held on the defendant's Motion for Summary Judgment on
November 17, 2015, I have learned that the real property at issue herein has been rezoned at the
request of defendant to "mixed use" rather than commercial.

2. Plaintiffs propose to submit additional affidavits for the purpose of evidencing the
defendant's modification of the zoning of the property at issue in this matter.

AFFIDAVIT OF RONALD L. SWAFFORD IN SUPPORT OF MOTION TO ALLOW SUBMISSION OF
ADDITIONAL EVIDENCE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 1

3. In addition, the plaintiffs have prepared a *Proposed* Amended Complaint in this matter and has filed the same as an attachment to a Motion to Amend. A hearing will be held on the plaintiffs' Motion to Amend in the near future. The *Proposed* Amended Complaint is necessary for the purpose to properly, and with clearer articulation, frame the issues in this matter.

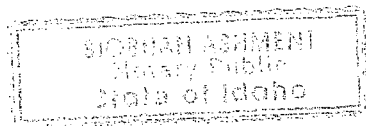
4. There is no prejudice to the defendants in this matter and this modification is not made to hinder or delay this matter.

DATED this 23rd day of November, 2015.



RONALD L. SWAFFORD
Plaintiff

SUBSCRIBED AND SWORN to before me this 23rd day of November, 2015.



NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls, ID
My commission expires: 7-28-16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☒ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☒ Fax: (208) 354-2346

Courtesy Copy:

Gregory W. Moeller
District Judge
159 E. Main Street
P.O. Box 389
Rexburg, ID 83440

- ☒ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☐ Fax: (208)-356-5425


RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

**MOTION TO AMEND
COMPLAINT**

COMES NOW Plaintiffs, Ronald L. Swafford and Margaret Swafford, by and through their attorney of record, Ronald L. Swafford, Esq., and pursuant to Rule 15(a) of the Idaho Rules of Civil Procedure, hereby moves this Court for an order allowing Plaintiffs to amend their Complaint and Jury Demand. A copy of the proposed Amended Complaint and Jury Demand is attached hereto as Attachment "A".

This Motion is based upon the record and file herein.

Oral argument is hereby requested.

DATED this 23rd day of November, 2015.


RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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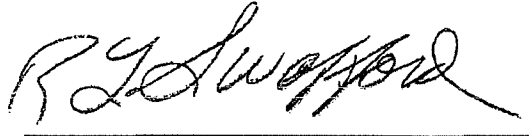
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RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

ATTACHMENT “A”

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
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Larren K. Covert, Esq., Bar No. 7217
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Telephone (208) 524-4002
Facsimile (208) 524-4131

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND MARGARET SWAFFORD, husband and wife Plaintiffs, vs. HUNTSMAN SPRINGS, INC., an Idaho corporation, Defendant.	Case No. CV-2015-203 PROPOSED AMENDED COMPLAINT AND JURY DEMAND
---	---

COMES NOW, Plaintiffs by and through their attorney of record, Ronald L. Swafford,
Esq., who hereby allege and aver as follows:

JURISDICTION AND VENUE

1. Plaintiffs are residents of Bonneville County Idaho.
2. Defendant is an Idaho licensed corporation doing business in Teton County,
Idaho.
3. The real property over which the below described dispute concerns, is located in
Teton County, Idaho. Pursuant to Rules 13 and 14 of the Idaho Rules of Civil Procedure,
jurisdiction is proper in the District Court of the Seventh Judicial District of the State of Idaho.
Venue is proper pursuant to Idaho Code § 5-401(1)

GENERAL ALLEGATIONS

4. Defendant is a developer of real estate in Teton County, Idaho, engaged in the development of Huntsman Springs.

5. During 2006 and 2007 the Defendant elaborately promoted the sale of pre-development lots in Huntsman Springs Phase 1, Driggs Idaho. The Defendant provided the plaintiff with brochures, a web site, advertisements and promotions including, but not limited notices dated May 7, 2007, which purportedly gave priority to early buyers to promote pre-development sales of real property. The documents from Defendant promoted land investments as "just taking off", one of top 10 places to invest anywhere, and great values; that the best values will likely be for those who act first. Preferential treatment was being given to "reservationists". The promotions were designed to convince prospective purchasers that they were being given preferred status, for the "best values". The promotional material referred "priority" customers to their website, which represented current and future development, in colorful, attractive photos, depicting and describing the post development appearance for the investment property. (See Attachment "A")

6. On July 16, 2007, Plaintiffs entered into a real estate contract with the Defendant, a copy of which is attached hereto as **Attachment "B"**. Said real estate contract was for the purchase by Plaintiffs of Lot 4, Block 50 Huntsman Springs PUD Phase I, City Portion of SEC 26, T5N R 45E. Said lot has always been assessed by Teton County as a parcel addressed as 195 Primrose Street, Driggs, Idaho. Defendant has never attempted to change or alter the address since Plaintiffs' purchase.

7. Teton County has not listed the property with any other address than 195 Primrose. (See Attachment "C"). Said lot was particularly set forth on the Master Plan/final

Plat, Huntsman Springs Phase 1, Addition to the City of Driggs, as a commercial lot directly adjacent to Primrose Street (**Attachment "D"**)

8. The real property which was the subject of the real estate contract consisted of an undeveloped parcel of commercial property, which was to be developed in conjunction with the entire Huntsman Springs Development subsequent to the sale. At the time of the contract of sale, the undeveloped lots had not been "staked out". Exhibit B, to **Attachment "B"** provided future "estimates" as to when certain recreational facilities and amenities would be completed, with no specific completion requirement dates.

9. The contract of sale (**Attachment "B"**) further specifically provides in paragraph 23, that the terms and conditions of this contract shall survive the closing and delivery of the warranty deed.

10. Prior to entering into the contract, Defendant provided Plaintiffs with promotional materials, access to their website, and a colored large document entitled "Huntsman Springs Master Plan" attached hereto. (**Attachment "D"**)

11. Defendant was promoting the sale of lots within Huntsman Springs with extensive marketing programs, websites, brochures and promotional material all of which was provided to Plaintiffs and upon which the Plaintiffs relied. Plaintiffs relied extensively on the Master Plan and the recorded "final plat" in forming the decision to purchase the commercial lot.

12. Plaintiffs purchased said commercial lot as an investment based upon the representations, brochures, photo's, website and the Master Plan which depicted the future development and appearance of the 195 Primrose lot in conjunction with the remainder of Phase 1.

13. The contract of sale contained Exhibit B, as an addendum, describes a portion of the future improvements identified in the advertisements, brochures, website and other promotional materials described above.

14. The Master Plan, provided by Defendant prior to the execution of the purchase agreement was issued to prospective purchasers after the Huntsman Springs Final Plat was recorded with Teton County, Idaho. The Master Plan (**Attachment "D"**) and Tax Assessment Notices and representations by Defendant specifically includes the following :

That the address of the lot was 195 Primrose Street.

That access to lot 50 was from Primrose Street, through a park on the west boundary.

That the commercial lot 50, 195 Primrose was visually and conceptually a part of Phase 1 and the entire Huntsman Springs development.

That the lot would be bordered by trees on the east and west boundaries; and a family walk and bike path on the west boundary, and be adjacent to a picnic park on the northwest boundary; as well a park to through which access would be provided to 195 Primrose, and to the remainder of Phase 1. .

That the commercial lot purchased was not separated visually or conceptually from huntsman springs by any man made or natural barrier.

That the express visual representation of the future development Huntsman Spring development in conjunction with the commercial lot would create a picturesque, inclusive development for investment purposes.

That commercial ingress and egress would be from Primrose Street as ingress or egress could not reasonably be placed across a family walk way and bike path.

15. Defendant specifically intended for the Plaintiffs to rely on the Master Plan provided by Defendant. Paragraph 13 of said contract of sale required the purchaser to assess the location of the property in relation to the golf course. (See Special Stipulation 33) which required the use of the Master Plan to determine the location.

16. Subsequent to the closing, Defendant continued with developing other the real property for marketing purposes, but neglected and failed to develop the lot and contiguous areas as represented in the written contract, the Master Plan and recorded final plat.

17. The acts and omissions of Defendant described above have destroyed the marketability and value of the commercial lot purchased by Plaintiffs.

18. The Master Plan represented that access to and from 195 Primrose Street. Further, it would not be reasonable nor feasible to place commercial access and ingress across family walk ways and bike paths.

19. Further, Defendant has segregated and partitioned the commercial lot from the east side of Huntsman springs with trees and a ditch not represented on the plan. Defendant has esthetically destroyed the value and marketability by installing a visual and conceptual barrier between the remainder of Huntsman Springs and the commercial lot. The commercial lot as developed presently is not visually or esthetically or conceptually a part of Huntsman Springs. There is no entrance access to the lot from Primrose Street. There now appears to be a permanent barrier physically and visually separating 195 Primrose from the remainder of Phase 1.

20. The value of said lot has been diminished by the failure of Defendant to follow the Master Plan, and develop the commercial lots as a part of the entire Phase 1 Development.

21. Plaintiffs have demanded Defendant's performance according to the contract and Defendant's representations. Defendant has refused to comply with its representations with regard to future development. As a result, the commercial lot is not reasonable marketable or saleable, to the Plaintiffs' loss and damage.

22. Plaintiff's gave written notice and demand upon the Defendant on August 20, 2014. The Notification of August 20, 2014 is attached hereto as **Attachment "E"**. Said notice demanded compliance with the Master Plan and contract of the parties. Thereafter, the on September 3, 2014, the Defendant notified the Plaintiff for the first time that the Defendant would not perform the contract pursuant to the Master Plan. A second Notice and explanation from the Plaintiff was made on September 12, 2014 demanding restitution as a result of the Defendant's refusal to comply with the Master Plan and Contract between the parties. The second Notice is attached hereto as **Attachment "F"**. A third letter was sent November 3, 2014, to avoid expensive and time consuming litigation, to which no response was ever received. See **Attachment "G"**.

COUNT I

BREACH OF CONTRACT

23. Plaintiffs re-allege and incorporate by reference the allegations herein-above as if set forth in full below.

24. Plaintiffs entered into a contract for the purchase and sale of a commercial lot owned by Defendant. The agreement specifically provided for future development as described in paragraphs 5 through 21 above, and in Exhibit "B" to **Attachment "B"** to the contract of sale.

25. The future developments specifically included a family walk way and bike path (Exhibit "B" to **Attachment "B"**) as represented on the Master Plan, with ingress and egress from Primrose Street.

26. The Master Plan was provided to prospective purchasers and specifically reviewed at the time of closing. The contract required, in part 13, that Plaintiff assess the location of the subject lot with respect to the golf course. Special Section 33 admits that the lots

were not staked out at the time, leaving only the Master Plan as a source of information regarding the location.

27. Defendant has failed to comply with the Master Plan, and have breached the contract of sale, as described in paragraphs 5 through 22 above. Defendant has failed to perform its duties under the contract and the Master Plan.

28. Defendant has breached the contract by failing to comply with the Master Plan; by failing to install a family walk way and bike path as identified on the Master Plan; by failing to develop the commercial lot as represented by the Master Plan; and by effectively visually partitioning the commercial lot from the remainder of Huntsman Springs.

29. As a result of Defendant's breach of contract, Plaintiffs have incurred damages in an amount to be determined at the trial of this matter.

COUNT II

BREACH OF EXPRESS WARRANTY

30. Plaintiffs re-allege and incorporate by reference each of the allegations set forth above, and further allege in support of this Count as follows.

31. Defendant expressly warranted that the lot represented to Plaintiffs would be developed and improved as identified on the Master Plan, website, promotional material and recorded plat.

32. The Master Plan (**Attachment "D"**) set forth the specific location of the lot to be purchased by Plaintiff, and by the visual representation on the Master Plan, it warranted as set forth in Paragraphs 5 to 22 above, and as follows:

There would be a family walk and bike path on the east boundary of the lot, between the city properties and Huntsman Springs.

That there would be trees on both east and west borders of the commercial lot.

That the commercial lot would visually and conceptually be a part of Huntsman Springs.

That access to and from the commercial lots would be from Primrose Street, due to the family walk way and bike path being on the east side of Lot 50.

That as owner of the commercial lot, that a picnic park was accessible at the corner, with access as specified in the Master Plan.

33. That Defendant breached its express warranties described above by failing to develop said commercial property as expressly warranted.

34. As a result of Defendant's breach of express warranty, Plaintiffs have incurred damages in an amount to be determined at the trial of this matter.

COUNT III

ABANDONMENT OF PROPERTY

35. Plaintiffs re-allege and incorporate by reference each of the allegations set forth above, and further allege in support of this Count as follows:

36. Plaintiffs' property was marketed and sold as part of the Huntsman Springs "Town Plaza Commercial" area of properties.

37. The "Town Plaza Commercial" lots were adjacent to the Teton County Courthouse site and were the only designated commercial sites.

38. Defendant has abandoned the Plaintiffs' property as part of the "Town Plaza Commercial" area and has visually and conceptually excluded the property from the Huntsman Springs development as described herein.

39. Defendant has altered the designation and zoning of the "Town Plaza Commercial" area to a mixed use designation. (**Attachment "H", City of Driggs Master Plan p. 94**)

40. Defendant has refused to develop the "Town Plaza Commercial" area as previously represented.

41. Defendant's actions and refusal to develop the area show a knowing, calculated and intentional abandonment of the Plaintiffs' property as part of the Huntsman Springs development.

42. As a result of the Defendant's abandonment of the Plaintiffs' property, Plaintiffs have incurred damages in an amount to be determined at the trial of this matter.

COUNT IV

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

43. Plaintiffs re-allege and incorporate by reference each of the allegations set forth above, and further allege in support of this Count as follows:

44. The Duty of Good Faith and Fair Dealing is implied in the contract between the parties. Defendant breached the Duty of Good Faith and Fair Dealing by failing to develop the commercial lot subsequent to purchase, as identified, represented and expressed. Defendant provided the Master Plan, brochures written materials and recorded Plat specifically to influence Plaintiffs to purchase the commercial real property for investment purposes.

45. Defendant has failed to comply with the terms of the express contract its representations and the express warranties.

46. Defendant has breached their implied covenant of good faith and fair dealing by the acts and omissions contained in paragraphs 5 through 22 above, and further by intentionally created a barrier between the remainder of Huntsman Springs and the commercial lots. Said barrier produces the impression and effect that the commercial lot is not part of Huntsman

Springs. The visual and conceptual effect is that it is part of a dilapidated portion of the city of Driggs.

47. Defendant has intentionally neglected the commercial lot and has segregated it such that it has seriously and irretrievably destroyed reasonable value and marketability of said lot.

48. The Plaintiff made a good faith effort to resolve the issue between the parties, as represented by Attachments E through G. The defendant failed to respond to 'Attachment G', which left the Plaintiff with no alternative other than litigation. These attachments combined with the conduct of the defendant described herein, and to be identified at trial demonstrate a lack of good faith and fair dealing.

49. Plaintiffs have incurred damages as a result of Defendant's breach of the duty of the implied Duty of Good Faith and Fair Dealing, in an amount to be determined at the trial of this matter.

COUNT V

BREACH OF IDAHO CONSUMER PROTECTION ACT

50. Plaintiff re-alleges and incorporates by reference each of the allegations above and further alleges in support of this Count as follows.

51. Defendant operates a business in commerce involving the development and sale of real property within the State of Idaho, Teton County.

52. As real estate developers Defendant comes within the purview of the Idaho Consumer and Protection Act, Idaho Code § 48-601 et. seq. Defendant's marketing and sales conduct for the sale of the undeveloped lots in Teton County as they relate to Plaintiffs consist of unfair and deceptive practices of conduct in trade or commerce. Defendant's practices as set

forth herein in paragraphs 5 through 21, and as established at trial constitute unfair methods and practices under Idaho Code § 48-603. The conduct of Defendant through its agents and representatives was deceptive in that Defendant provided the Master plan, recorded plat, website and promotional materials outlining future developments of undeveloped lots, with no intention of compliance. Defendant intentionally provided all of the above to induce purchases of commercial properties, by identifying specifically the future plan with respect to the commercial lots. Defendant has failed and refused to acknowledge their responsibility under the Master Plan.

53. Plaintiffs have incurred damages as a result of Defendant's breach of the duty of the implied Duty of Good Faith and Fair Dealing, in an amount to be determined at the trial of this matter.

COUNT VI

MISREPRESENTATION

54. Plaintiffs re-allege and incorporate all allegations set forth above, and further alternatively alleges as follows:

55. Defendant provided extensive promotional material, a website, brochures and a Master Plan to Plaintiffs to influence the purchase of undeveloped real property in Huntsman Springs Phase 1. Defendant provided Plaintiffs with promotional materials outlined above, purportedly giving priority and economic advantage to Plaintiffs to purchase commercial real property in advance of development of said parcels and Phase 1. The promotional materials contained express, implied representations and warranties as to the future development of Lot 50, aka 195 Primrose, Driggs Idaho.

56. The representations set forth in parts 5 through 21 above were material factual representations as to the future development of said commercial lot in conjunction with Phase 1. The representations made via correspondence, a master plan, a website, and oral representations.

57. The representations were false. Defendant made said representations either falsely, or with reckless disregard of or without knowledge of the truth. Defendant did not intend to develop Phase 1, and Block 50 as represented, and continue to refuse to develop according to the representations.

58. Defendant intended for the Plaintiffs to rely on said representations, in their marketing plan to pre-sell undeveloped commercial lots. Defendant promoted the investment value of priority pre-development purchases, and encouraged reliance in its marketing strategy.

59. Plaintiff relied upon those representations, and reliance under the circumstances was justified and reasonable under the circumstances existing at that time.

60. Plaintiffs have suffered damages, to be established at the time of trial.

COUNT VII

DAMAGES

61. Plaintiff has suffered damage due to the Defendant's conduct, acts and omissions described above. Plaintiffs request damages awarded under each Count above. Plaintiffs request that damages should first be awarded under the Theory of Rescission. If the Court deems rescission unavailable, Plaintiffs seek damages alternatively under Specific Performance. If specific performance is deemed not available as a remedy, Plaintiffs seek alternatively an abatement of the purchase price.

62. Rescission: Plaintiffs allege that the pleadings and facts herein establish that there is no adequate remedy at law. Plaintiffs request the equitable remedy of rescission, as the breach

of contract relates to the essence and main purpose of the contract. Plaintiff's request that their entire purchase price, with prejudgment interest, be refunded to Plaintiffs in exchange for Plaintiffs returning free and unencumbered title to said commercial parcel to Defendant.

63. Specific Performance: Alternatively, Plaintiffs requests specific performance of the express, implied, and warranted agreement between the parties. There does not exist an adequate remedy at law to compensate Plaintiffs for the damages caused by Defendant. Plaintiffs request that a Judgment be entered, requiring Defendant to modify the development adjacent to and surrounding the commercial lots to conform to the Master Plan, **Attachment "D"**, with commercial lot ingress and egress on the west end of the commercial lot purchased by Plaintiffs; family walk and bike paths on the east side of said Lot; trees on the east and west sides; that the physical access/ingress obstacles on the west end of said lots be removed, with paved access to Primrose Street immediately to the west of said lot; and that the development be modified and changed to reflect that the commercial lot is actually a part of Huntsman Springs as represented by **Attachment "B"** hereto.

64. Abatement: That alternatively, should the remedies of rescission and specific performance not be available as damages to Plaintiffs, that the purchase price be abated to reflect the value of the land at the time of trial or judgment, compared with the value as projected by the Master Plan, **Attachment "D"**.

VIII

ATTORNEY FEES AND COSTS

65. Plaintiffs seek an award of attorney fees and costs pursuant to Idaho Code

§§ 12-120 (3), 12-121, and prejudgment interest, Rule 54 IRCP. Prejudgment interest is sought pursuant to Idaho Code § 28-22-104, at the rate of twelve percent (12%) per annum, from the closing date until Judgment date.

IX

JURY DEMAND

66. Plaintiffs request a trial by jury on all issues herein.

REQUEST FOR RELIEF

WHEREFORE Plaintiffs request relief as follows:

1. Finding Defendant breached its contract with Plaintiffs;
2. Finding Defendant breached an expressed warranty;
3. Finding Defendant abandoned the property of the Plaintiffs;
4. Finding Defendant breached the duty of good faith and fair dealing;
5. Finding Defendant breached the Idaho Consumer Protection Act;
6. Finding the Defendant misrepresented the property and development;
7. Finding that based on any or all of the above the Plaintiffs were damaged by the Defendant in an amount to be determined at trial;
8. Awarding attorney fees and costs to the Plaintiffs pursuant to the rules and statutes referenced above or any other applicable rules or statutes;
9. For such other and further relief as the Court may seem just and proper.

Dated this ____ day of November, 2015.

RONALD L. SWAFFORD ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

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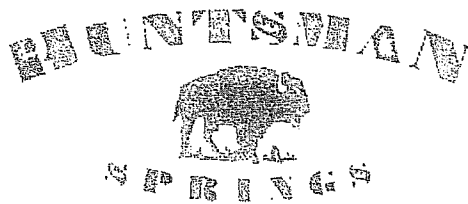
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RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

ATTACHMENT "A"



May 7, 2007

Greetings From Huntsman Springs,

As you have probably heard, Teton County Idaho and the town of Driggs have become one of the hottest real estate markets in the west. After decades of modest growth – land prices, house construction, and development in general have started taking off. This valley has just been discovered! According to the Wall Street Journal, Teton County was recently voted one of the top 10 places to invest anywhere in the country.

Unlike many of the other fully appreciated communities around the west, great values can still be found here. With endless summer and winter activities for the entire family, it is no wonder that Men's Journal Magazine voted Driggs the #1 town in America. This was followed by Adventure Magazine, proclaiming in a recent profile "Driggs stands alone", going on to state "Driggs is ideal for a long weekend, the holiday season, or even retirement."

At Huntsman Springs, we certainly concur with these statements – and we know many of you do too. There has been widespread interest expressed by many to be kept informed of our development progress. Those of you living in or near Teton Valley know our progress has been substantial.

To establish sales priority for those looking to be early buyers before our first planned release of properties to the general public later this summer, we have established a Priority Reservation Program. (The Priority Reservation Agreement and guidelines are attached.)

The program is simple. Starting May 9th every interested person will be treated equally on a first-come first-served basis. A \$10,000 fully refundable deposit (held in a trust account) is all that is necessary to hold your reservation.

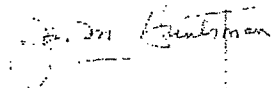
We encourage you to participate in this opportunity. The best values will likely be for those who act first. As information becomes available, you will be contacted by one of our highly trained Huntsman Springs Realty sales agents to answer any questions that you might have. Our sales team is headed up by Sarah Anderson who in 2006 produced more sales transactions and more dollar volume than any other recreational

refundable deposit (held in a trust account) is all that is necessary to hold your reservation.

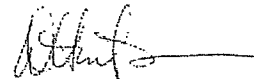
We encourage you to participate in this opportunity. The best values will likely be for those who act first. As information becomes available, you will be contacted by one of our highly trained Huntsman Springs Realty sales agents to answer any questions that you might have. Our sales team is headed up by Sarah Anderson who in 2006 produced more sales transactions and more dollar volume than any other recreational community agent in the country. Her team's knowledgeable and professional approach will give you great confidence.

Please know our entire Huntsman team is absolutely committed to the highest levels of quality and creating the best possible values for you and your family.

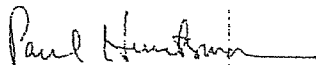
Thanks for your consideration,



Jon M. Huntsman



David H. Huntsman



Paul C. Huntsman



Michael R. Stears

P.S. Please refer to the temporary information page at www.huntsmansprings.com to see the Master Plan and national articles on Teton Valley

Priority Reservation Receipt Guidelines

At 9AM, Wednesday May 9th, 2007, Huntsman Springs Realty will begin accepting Priority Reservation Agreements in the order which they are received.

All Hand delivered agreements must be accompanied by a check or money order for \$10,000. Make checks or money orders out to Huntsman Springs Realty. Payment for faxed reservation agreements must be received within 48 hours. Wiring funds for faxed agreements is permitted. Upon receipt of your faxed reservation, we will return fax wiring instructions for your convenience.

No agreements will be accepted prior to 9 A.M. Those agreements hand delivered to the office on May 9 will be received and time stamped beginning at 9 A.M. The first agreements received will be assigned the first numbers and those prospective buyers will be able to choose property in the established order. Persons hand delivering must be party to the reservation agreement. Each prospective buyer is permitted only two agreements.

All agreements delivered in person at 9A.M. on the 9th will be assigned numbers ahead of the faxed agreements. Emailed agreements will not be accepted. After the hand delivered reservations are accepted, faxed reservations will be accepted in the order received. **FAX: 1-208-354-9605**. Agreements sent by mail or overnight service will be date stamped in order according to the postmark and time on the envelope, converted to Mountain Standard Time.

The priority reservation simply establishes an order for prospective buyers to be contacted and select available sites on the property release date expected to be in July. At least 14 days in advance of the property release date, you(or your agent) will be contacted by a Huntsman Springs Realty Agent to review, property location, size, price, CCR's, golf membership, HOA fees and other pertinent information in the decision process

Co-brokerage commissions will be paid by the seller to local area Real Estate agents outside Huntsman Springs Realty. You must identify your agent on the priority reservation agreement at the time of submittal.

On release day, if property is available after all prospective buyers have been contacted in the order of their reservation number; the agents will go back through the list in order to allow additional purchases.

After the priority reservation list is exhausted, future releases will be previewed by existing property owners. There is no intention to maintain reservation lists for future releases.

Please call 208-354-9660 if you have any questions



Priority Reservation Agreement and Trust Account Instructions

This is a tentative Priority Reservation Agreement and is not a binding contract for conveyance of a lot or unit in a planned community.

EFFECTIVE DATE: _____

DEVELOPER: Huntsman Springs, Inc.

97 North Highway 33

Driggs, ID 83422

RESERVING PARTY: _____

Address: _____

Email: _____

Telephone: _____

Specific Interest: Circle One

Commercial

Residential

Both

If you're working with a licensed local area real estate agent, you must register them here.

Name of Realtor _____

Broker _____

TRUST ACCOUNT : First Bank of the Tetons

PO BOX 744

DRIGGS IDAHO 83422

208-354-7500

Trust Officer: DAWN TRENT

Checks to be paid to the order of "Huntsman Springs Realty"

RECITALS

A. Developer is in the process of developing the Huntsman Springs Community, hereinafter called ("The Development"), a controlled access residential community in Teton County, Idaho, which shall be comprised of multiple phases, one of which is to be called Phase One ("Phase One"). Phase One shall contain residential and commercial sites that shall become ready for sale at the Release Date (the "Release Date"). Although entitlement approvals are in place, Reserving Party acknowledges that Developer is not able at this time to enter into binding agreements to purchase sites in Phase One. However, Reserving Party desires to obtain a preference for the right to purchase from Developer a homesite or commercial site in Phase One on the Release Date.

B. Developer agrees to grant Reserving Party a priority reservation, which shall give Reserving Party a preference for the right to purchase a site from Developer at the Release Date.

C. Reserving Party understands and acknowledges that Phase One will be encumbered by a "Master Declaration of Conditions, Covenants and Restrictions." Reserving Party understands and acknowledges that a significant obligation under the Declaration will be that all owners within Phase One will be a member of a homeowners association as defined in the HOA, Idaho Code § et seq. (the "Act").

D. Reserving Party understands and acknowledges that Developer's right and ability to sell a site is contingent on Teton County and City of Driggs approval of roads, water and sewer currently under construction in Huntsman Springs.

AGREEMENT

Now, therefore, for valuable consideration, the parties agree as follows:

1. Recitals. The parties agree that the above Recitals are a material part of this Agreement and incorporated herein by reference.

2. Reservation.

2.1 For and in consideration of the sum of \$10,000.00 (the "Reservation Price") paid to Developer by Reserving Party in cash, receipt of which is acknowledged by Developer, the parties agree that Reserving Party shall have the right to purchase a site in Phase One upon the occurrence of certain conditions. However, in no event shall Reserving Party be obligated to purchase a site. The Reservation Price, together with an executed original of this Agreement, shall be held in a non-interest bearing trust account ("the Trust Account") at The First Bank of the Tetons. Reserving Party may withdraw the Reservation Price from the Trust Account at any time. Should the Reserving Party withdraw the Reservation Price from the Trust Account, the Reserving Party shall not be included for position to purchase a homesite or commercial site on the Release Date.

2.2 Upon Developer's receipt of the Reservation Price and one executed original of this Agreement from Reserving Party, Developer shall (a) indicate in the space at the bottom of this Agreement, the date and time that this Agreement and the Reservation Price were received by Developer (the "Receipt Time"), and (b) assign and indicate in the space at the bottom of this Agreement a reservation number for the selection of a home-site or commercial site (the "Reservation Number"). Reservation Numbers will be assigned in the order of Receipt Time (the "Receipt Time") for Phase One and corresponding deposits are received based on Receipt Times. Reserving Party acknowledges and that the number of Reservation Numbers assigned may exceed the number of available sites and that the assignment to Reserving Party of a Reservation Number does not guarantee that Reserving Party will be given an opportunity to purchase a site in Phase One. On the Release Date, the Reserving Party will be contacted in order of his or her priority reservation number.

2.3 The Receipt Time of this Agreement shall be determined by the date and time an original signed copy of this Agreement is received at the Developer's office. The executed Agreement must be accompanied by the Reservation Price, which must be in the form of a personal/corporate check, postal/money order, or cashier's check. In the event multiple Priority Reservation Agreements from separate Reserving Parties are received on the same date, priority of the Receipt Time shall be determined by the date and time of the postmark on the envelopes of the individual Agreements.

2.4 Parties will be permitted to purchase only two sites in the first release. If the intention is to purchase multiple sites, a separate priority reservation agreement and separate check must be submitted for each intended purchase. Purchasers will be limited to only one custom single family site or only one commercial site in the first release.

2.5 The Developer or Developers agent will contact all Reserving Parties periodically to update the parties as to the progress of infrastructure construction and to ensure the electronic mailing address provided in this Agreement is in working order.

3. Release Date

3.1 Developer will give Reserving Party notice (the "Notice") of the date of, and information regarding the Release Date at least fourteen (14) days prior to the Release Date. The Notice shall be sent electronically to Reserving Party at the address listed above, and such mailing shall constitute the Notice required hereunder. Simultaneously with the Notice, Developer shall send a Purchase and Sale Contract, a copy of the Covenants, Conditions and Restrictions, and purchase incentives (if any). Additional information in the Notice will include price, site sizes, maps and any additional material deemed necessary to facilitate the Reserving Party decision to purchase property in Phase One of the Development.

3.2 At the Release Date, Developer shall notify Reserving Party of the site(s) available for purchase in accordance with the Reserving Party's Reservation Number, and will provide Reserving Party Developer's standard Purchase and Sale Agreement for Phase One (the "Purchase and Sale Agreement"). The Notice will occur in order of the Reserving Party's Reservation Number via telephone. Should the Reserving Party be unavailable, a representative designated in advance by the Reserving Party may execute the Purchase and Sale Agreement. In the event the Reserving Party or designated representative is unavailable, the Developer will contact the next available Reserving Party and the unavailable Reserving Party will lose his or her priority position. In the event the Reserving Party

elects not to choose a site, the reservation fee will be returned immediately. The Purchase and Sale Agreement shall set forth the purchase price and other terms of the purchase of the site(s); including, without limitation, provisions asserting that the Reservation Fees shall be applied towards the earnest money, which shall be credited to the purchase price, and that the Reserving Party shall execute and deliver to Developer the Purchase and Sale Agreement, together with the earnest money deposit required there under within forty-eight (48) hours of the Release Date to the Developer. Within five (5) days of the Release Date, Developer shall execute the Purchase and Sale Agreement and shall deliver the same to the Escrow Company of the Developer's choice. If the sale of the site(s) fails to close within sixty (60) days of such delivery, the Purchase and Sale Agreement may be voided by the Developer and Developer shall promptly return the entire Reservation Price to Reserving Party.

4. Condition. Developer's right and ability to enter into the Purchase and Sale Agreement is conditioned on Developer completing appropriate infrastructure and receiving approval from Teton County and The City of Driggs.

5. Brokers. Unless a broker is registered on page one, Reserving Party is making a representation that a broker or real estate agent does not represent Reserving Party. No commission will be paid to any broker later introduced to the transaction by Reserving Party, and Reserving Party shall indemnify and hold Developer harmless from any claims made for commission by any such broker or representative.

6. Notices. All notices and communications in connection with this Agreement shall be sent electronically to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date it is transmitted.

7. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of a homesite or commercial site. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

8. Applicable Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Idaho.

9. No Binding Agreement. It is the intention of the parties to comply with all applicable laws, including without limitation Idaho Code § HUD and Idaho Real Estate Law, with regard to this Agreement. Nothing herein shall be construed as imposing any obligation to sell or buy on the part of either Developer or Reserving Party. This Agreement is not assignable by Reserving Party without the prior and express written consent of Developer. Either party may cancel this Agreement without incurring liability to the other at any time until the parties have entered into a Purchase and Sale Agreement for a site and such Agreement has been delivered to the Developer pursuant to section 3.2 above. In the event of cancellation by either party, one hundred percent (100%) of the Reservation Fee shall be returned to Reserving Party within seven (7) days of such cancellation.

IT IS UNDERSTOOD BY THE PARTIES THAT THE TRUST ACCOUNT INSTRUCTIONS CONTAINED HEREIN ARE THE COMPLETE TRUST ACCOUNT INSTRUCTIONS. THESE INSTRUCTIONS MAY NOT INCLUDE ALL THE TERMS OF THE AGREEMENT, WHICH IS THE SUBJECT OF THE TRUST ACCOUNT. BY SIGNING THIS AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THE INSTRUCTIONS CONTAINED HEREIN ARE ACCEPTABLE TO EACH PARTY.

RESERVING PARTY SIGNATURE:

DATE:

DEVELOPER REPRESENTATIVE SIGNATURE:

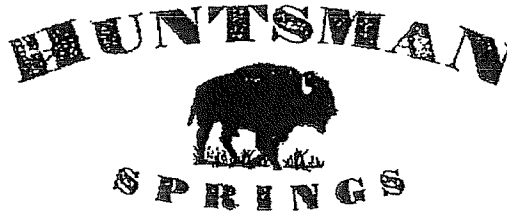
DATE:

Position

Dated this _____ day of _____, 2007 at _____ AM/PM (Receipt Time).

RESERVATION NUMBER ASSIGNED _____

ATTACHMENT “B”



HUNTSMAN SPRINGS CONTRACT FOR LOT SALE

EFFECTIVE DATE: July 16, 2006

PURCHASER (S): Ron Swafford


SELLER: **HUNTSMAN SPRINGS, Inc, d/b/a Huntsman Springs, an Idaho corporation licensed and doing business in Idaho.**

In consideration of the mutual covenants contained herein, and in further consideration of the purchase price specified below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the below described real estate (hereinafter referred to sometimes as the "Lot" or "Property") subject to the terms, conditions and obligations herein:

1. Property: The Purchaser agrees to buy and the Seller agrees to sell Block/Tract number 50, Lot 4, of the Huntsman Springs Community ("Community"), a planned development located in Teton County, Idaho, such Lot being more particularly shown and identified on that certain plat of survey recorded in the Teton County Clerk's Office under Instrument # , dated TBD, 2007, as the same has been or may be amended, such plat being incorporated herein, and made a part hereof, by this reference.
2. Purchase Price and Method of Payment: Purchaser represents that Purchaser will have, at the Date of Closing, sufficient cash (together with the loan, if any, described herein) to complete the purchase hereunder. The purchase price of the Property shall be: (\$ 387,000), to be paid as set forth in subparagraph A or B [select A or B, the option not selected is not a part of the Agreement].

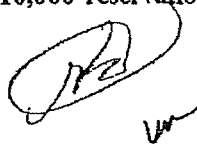
☐ A. ~~All Cash at Closing. At Closing, Purchaser shall pay the purchase price to Seller in cash, or its equivalent. Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing.~~

W

- X B. Where New Loan to be Obtained. This Agreement is made conditional upon Purchaser's "ability to obtain" (as defined herein) a loan in the principal amount of eighty (80) percent of the purchase price to be evidenced by a promissory note and secured by a mortgage on the Property. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan as set forth above. "Ability to obtain" means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. Proceeds of said loan, together with any balance of the purchase price shall be paid in cash or its equivalent by Purchaser to Seller at closing. 

Purchaser agrees to make application for said loan within ten (10) days from date of this Agreement, and pursue said application diligently and in good faith, to execute all papers, to provide all documents, to perform all other actions necessary to obtain such loan and to accept such loan if approved by lender. Should Purchaser not apply for said loan in the time specified above, Seller may declare Purchaser in default and Purchaser shall have five (5) days to cure said default by providing Seller written evidence of formal loan application.

If within thirty (30) calendar days from the date this Contract becomes a binding agreement Seller has not received written notice from Purchaser that Purchaser is unable to qualify for a loan as described herein, then said financing contingency shall be deemed waived by Purchaser and, thereafter, a failure of the Purchaser to close because of the inability to obtain a loan shall be a default by Purchaser. Upon automatic waiver of the contingency, the future inability of the Purchaser to obtain a loan due to the lack of credit worthiness shall be considered a default hereunder. Purchaser acknowledges and represents that he has not relied upon the advice or representation, if any, of Seller or any salespersons representing Seller regarding the type of loan or the terms of any particular loan program to be obtained by Purchaser. Purchaser shall have the responsibility of independently investigating and choosing the lender, type of loan, and said loan program to be applied for by purchaser in connection with this transaction. Purchaser agrees to hold harmless Seller and any salespersons representing Seller, from any claims or loss whatsoever arising out of Purchaser's application and commitment for any loan, and with respect to the terms of instruments evidencing or securing said loan.

3. **Earnest Money:** Purchaser has paid to the Escrow Agent identified below \$38,700 as earnest money, which earnest money is to be applied as part payment of the purchase price at time of closing. Escrow Agent shall deposit the earnest money in the escrow account upon receipt. In the event the earnest money check is returned for insufficient funds or otherwise not honored, Seller shall in its discretion have the right to terminate this Agreement. The earnest money may only be disbursed: (a) at closing, (b) upon written agreement signed by all parties, (c) upon Court order, (d) upon breach by any party than to the non-breaching party, (e) upon failure of any contingency herein, or (f) as otherwise set forth herein. **\$10,000 reservation deposit will be applied as part earnest money.** 

4. **Conveyance of Property:** Seller warrants that it currently has good and marketable, fee simple title to the property and shall convey the property by warranty deed to Purchaser at closing. Good and marketable title means insurable title at normal rates without exception except for permitted title exceptions and preprinted standard title exceptions. Conveyance shall be free of monetary liens or encumbrances, subject to preprinted standard title exceptions and the following permitted title exceptions, to-wit:

- (a) Property taxes for the year of sale;
- (b) Such state of facts as would be disclosed by an accurate survey and inspection of the premises;
- (c) The exact amount of acreage in the property;
- (d) All such other covenants, conditions, restrictions and easements of record as may now affect the Property;
- (e) All those matters shown on the plat of survey referred to above, as has been or may be amended;
- (f) That certain Master Declaration of Protective Covenants for Huntsman Springs, dated May 2007, as amended (the "Declaration");
- (g) Restrictions relating to building upon or using the Property by virtue of any building or zoning ordinance, restrictive covenants or other law of any entity of government or public authority; and
- (h) Any mortgage placed upon the Property by Purchaser in connection with the closing of the sale of the above-described Lot.

5. **Closing Date:** Closing shall take place on or before September 21, 2007. Possession of the Property shall be granted no later than the Closing Date. Huntsman Springs may assess a 1% penalty on the total purchase price for each 15-day period that closing is delayed by no fault of Huntsman Springs.

6. **Closing Expenses:** Seller shall pay the transfer taxes and recording fees on the deed and for the preparation of the deed. Purchaser shall pay all costs, including any Loan discount percentage, if applicable, associated with the financing aspects of the closing and all other closing costs. Purchaser shall also deposit at closing to the Huntsman Springs Master Association (the "Association") the sum of Four Hundred Dollars (\$400.00), Two Hundred Dollars (\$200.00) for each of the following two funds:

(a) Two hundred dollars (\$200.00) toward reserves, which sum shall be non-refundable and shall be deposited by the Board in the Master Association's Reserve Fund; and

(b) Two hundred dollars (\$200.00) toward the Teton County Fire District general fund, which sum shall be non-refundable.

These initial deposits shall be in addition to all Assessment obligations and upon the subsequent transfers of a Lot or Unit a transfer fee in the amount of \$400.00 (\$200.00 to each of the above funds) will be due from the purchaser. The Reserve Fund may be used from time to time for any Master Association purpose deemed appropriate by the Executive Board, and the Reserve Fund may be replenished or improved from time to time by the Executive

Board in its discretion, by inclusion in the Budget and the Regular Assessments based thereon.

7. **Title Evidence:** A title insurance binder or policy, or title opinion, will be issued to Purchaser in connection with the transaction, at the expense of Seller, and will show that Seller, immediately prior to the conveyance of the Lot to Purchaser, is vested with title to the Lot, subject only to the title exceptions provided for in paragraph 4 of this contract which Purchaser, by execution hereof, specifically approves.
8. **Prorations:** General taxes for the year of closing based on the most recent calendar year assessment, irrigation and drainage assessments, grazing fees, government program payments, personal payments, personal property taxes, prepaid rents, water rights, association fees, dues or assessments, utilities, insurance premiums and interest on encumbrances, if any, and, if applicable, will be prorated as of the Closing Date. If on the Closing Date the amount of such taxes, assessments, and fees is not yet fully ascertained for the current year, the apportionment of taxes has been estimated on the basis of the best information available, and such estimate shall be conclusive between the parties.
9. **Seller's Covenants:** Seller will not provide or complete roads, sewer, water, gas, electric, or telephone service, or recreational facilities except:
 - (a) The above-described Lot is or will be located on a paved road (for purposes of this Contract, "paved" means concrete or pavement with bituminous surface that is impervious to water, protects the base, and is durable under the traffic load and maintenance contemplated), which has been or will be built to standards established by the state or the unit of local government in which the Community is located, and the Huntsman Springs Master Association is obligated to accept the road for maintenance;
 - (b) Water lines have been or will be extended to the above-described Lot and service is to be provided by Huntsman Springs Water and Sewer, or the City of Driggs in the case of Driggs Townhome or Town Plaza Properties;
 - (c) Sewer lines have been or will be extended to the above-described Lot and service is to be provided by Huntsman Springs Water and Sewer, or the City of Driggs in the case of Driggs Townhome or Town Plaza Properties;
 - (d) Electric service lines have been or will be extended to the above-described Lot and service is to be provided by Fall River Electric Company;
 - (e) Telephone lines have been or will be extended to the above-described Lot, and service is to be provided by Silver Star Communications or a similar provider; and
 - (f) Seller does not guarantee the construction of any proposed recreational facilities within or adjacent to the Huntsman Springs Community other than those recreational facilities as set forth in Exhibit "B" attached hereto.

The Seller represents that it has entered into a Development Agreement for Huntsman Springs Subdivision, Phase 1, with Teton County for the purpose of

guaranteeing the full and satisfactory completion of the improvements identified within items (a) – (e) of this Section 9. In accordance therewith, the Seller has also established an Irrevocable Letter of Credit to the benefit of the Teton County Commissioners in an effort to insure completion of the items set forth within this Section.

With respect to the above-referenced items (b) – (e), please note the following information with respect to rates and fees which are to be paid by the Purchaser:

- A. Huntsman Springs will charge a hookup fee of \$10,000.00 for Custom Single Family Homesites. Hookup fees are included in the price of Driggs Townhomes and Range Cabins. Town Plaza hookup fees will be established separately by unit and are estimated at \$7500.00 per salable unit within each commercial building. All hookup fees must be paid prior to the start of construction. Utility costs covered by these fees include fiber optic, electrical, water and sewer, to the curb only.
 - B. Fall River Electric Company will provide electric service at customary and usual rates and fees.
 - C. Silver Star Communications, or a similar provider, will provide telephone service at customary and usual rates and fees and the Silver Star hook up fee from edge of lot to the home is included in the \$10,000 fee.
10. **Completion of Facilities:** The only representations made by Seller with respect to the completion of roads, sewer, water, gas, electric, telephone service and recreational facilities are as set forth in Section 9 and no other representations regarding the same have been made or relied upon by Purchaser. All completion dates for roads, sewer, electric and telephone service and recreational amenities as set forth herein are subject to delays and time extensions caused by acts of God, strikes, or manpower shortages, acts of governmental authorities, labor conditions beyond the control of Seller or any other cause beyond Seller's control or other grounds to establish impossibility of performance in the State of Idaho.
11. **Regional Land Trust Agreement:** Huntsman Springs Community features approximately 500 acres of prime wildlife reproductive habitat and has entered into a management agreement with the Teton Regional Land Trust on a number of these acres. The Homeowners Association (the "HOA") upon transfer of responsibility by the Declarant (Developer) will necessarily accept the ongoing responsibility to manage the designated land in accordance with the Regional Land Trust Management Plan and to a standard equal to the standard previously set by the Declarant. Budgets for management of the wildlife areas may not be reduced from levels at the time of transfer of responsibility and escalators for cost of living increase to the budget will be required based on the annual consumer price index increases as published by the Federal Government. The Regional Land Trust has the right of inspection and may at the HOA's expense rectify mismanaged areas, provided the HOA has been given reasonable time to bring offending issues into compliance (not less than 90 days).

12. **Pre-Existing Conditions:** Huntsman Springs Community is adjacent to the Driggs-Reed Memorial Airport. This Airport is owned, operated and sponsored by the City of Driggs as a public airport with shared funding from the Federal Aviation Administration. Operating rules and regulations are governed by the Federal Aviation Regulations. The Airport is classified as a Category B-II Airport with unrestricted hours of operation and noise abatement procedures are conducted on a voluntary basis.

The Airport proximity and related aircraft traffic are pre-existing conditions relating to the surrounding area and property purchase. Certain building height restrictions may apply per the approved FAA Airport Layout Plan.

Since the Airport is a pre-existing facility, owners waive the right to bring litigation or any legal proceeding relating to hours of operation, noise abatement, air traffic, or any other issue in relation to the Driggs-Reed Memorial Airport or the City of Driggs.

13. **Golf Lot Disclosure:** The Property is located or may be located adjacent to or in close proximity to a Golf Course and Club. Purchaser acknowledges that Purchaser has assessed the location of the Property in relation to the layout and operation of the Golf Course and Club and acknowledges that owning the Property adjacent to or in close proximity to the Golf Course and Club involves certain risks which may have an impact and effect upon Purchaser's enjoyment of the Property. Purchaser acknowledges that such risks may include, by way of example and not as a limitation, noise associated with the playing of golf and with using the Golf Course and Club facilities; golf balls being hit into Purchaser's Property, with the potential of causing bodily injury or physical damage to any improvements or personality; and golfers entering Purchaser's Property to retrieve errant golf balls. Purchaser assumes all such risks and agrees that neither Seller, the Association, nor any other entity owning or managing the Golf Course or Club, or any portion thereof, shall be liable to Purchaser or to any person claiming any loss or damage, including, without limitation, actual, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof. Purchaser hereby agrees to indemnify and to hold harmless Seller, the Association, or any other entity owning or managing the Golf Course or Club, against any and all claims by Purchaser's guests, invitees, or licensees, of any nature whatsoever, based upon, due to, arising from, or otherwise related to, the proximity of Purchaser's Property to the Golf Course or Club, or any portion thereof, including, without limitation, all costs of litigation and attorneys fees incurred by Seller, the Association, or any other entity owning or managing the Golf Course or Club, or any portion thereof. Nothing contained in this paragraph, 11, shall restrict or limit any power of the Seller, the Association or any other entity owning or managing the Golf Course or Club, or any portion thereof, to change the design of the Golf Course or Club, or of any other portion of the Golf Course or Club and

related facilities, and any such change shall not be deemed or considered to have nullified, amended, altered, restricted, or impaired the covenants, obligations, and duties of Purchaser contained herein.

14. Purchaser's Acknowledgements Regarding Huntsman Springs Golf Club: (NOTICE: FAILURE TO COMPLY WITH THIS PART COULD PREJUDICE YOUR ABILITY TO OBTAIN A MEMBERSHIP IN THE HUNTSMAN SPRINGS GOLF CLUB.)


Purchaser's Initials

- (a) Purchaser explicitly acknowledges that PURCHASER HAS FROM THE DATE HEREOF UNTIL THE LATER OF SIXTY (60) DAYS FROM THE DATE OF CLOSING HEREIN OR FROM COMPLETION OF THE GOLF COURSE TO OBTAIN APPROVAL AND ACQUIRE MEMBERSHIP IN THE HUNTSMAN SPRINGS GOLF CLUB. Memberships, which are not acquired by Purchaser by said date, may be offered on a first come, first serve basis to other owners and non-owners. Accordingly, owners who do not acquire a membership as of said date may acquire a membership at a later date only if one is then available and only upon payment of the initiation deposit, which is then charged for membership. NOTICE: FAILURE TO ACQUIRE A MEMBERSHIP AT CLOSING MAY PROHIBIT THE PURCHASER FROM HAVING A MEMBERSHIP AVAILABLE. Subsequent purchasers of Lots in the Huntsman Springs Community from members are guaranteed the availability of a membership if the selling member resigns his or her membership and arranges for the subsequent purchaser to acquire such membership. If a membership is not available, the Club of those persons who desire membership in the Club will establish a waiting list. Priority for available memberships will be given to property owners in the Huntsman Springs Community on the waiting list. The Club may, in its sole and absolute discretion, reserve memberships for sale to future purchasers of property in the Huntsman Springs Community. Memberships, which are reserved by the Club, will not be considered to be available memberships, and the Club may not be compelled to sell them.
- (b) The persons interested in acquiring a membership in the Club should IMMEDIATELY UPON THE SIGNING OF THIS CONTRACT submit a fully executed, completed application for membership in the Club. If the Club accepts the applicant, the Club will send the applicant notice of his or her acceptance. In the event the Club does not act favorably upon a person's application, the Club will so notify the applicant. Within the sixty (60) day period set forth above, the applicant, if accepted in the Club, shall pay to the Club the required initiation deposit, dues and any other charges as may be requested as a part of the membership. Upon payment of all deposits and required charges, the Club will then forward to the applicant a membership card for the member and his or her family members who are entitled to use the Club facilities under the membership, together with any other information deemed pertinent by the Club.
1. Purchaser acknowledges that the Club reserves the right, but not the obligation, to convert the Club facilities to an equity membership form of



ownership. Initiation deposit members who acquire an equity membership will be entitled to a credit toward the membership contribution required for equity membership in the amount of the initiation deposit, which they previously paid.

15. **Purchaser's Covenants:** The Purchaser covenants and acknowledges that: (a) Purchaser has received copies of the Declaration and agrees to be bound by the terms and conditions of such document; (b) Purchaser or his or her spouse has made a personal, on-the-lot inspection of the above-described Lot prior to the signing of this Contract; (c) Purchaser has received no offer of gifts, trips, dinners, or other such promotional techniques to induce him/her to visit the Huntsman Springs Community or to execute this Contract, either by direct mail or telephone; (d) Seller has provided Purchaser a good-faith written estimate of the cost of maintaining the roads over the first ten (10) years of ownership, which estimate is attached as Exhibit "A" hereto and incorporated herein by this reference; (e) Purchaser has received a good-faith estimate of the year in which the roads, water and sewer facilities and promised amenities will be completed, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference; (f) if construction staging on an adjacent lot(s) is required to build Purchaser's home, then Purchaser will return that adjacent lot(s) to its condition prior to Purchaser's construction, as soon as possible following completion of Purchaser's home construction; (g) in the event this contract is for a Driggs Townhome or Range Cabin site, Purchaser has been informed of, and agrees to meet the deadline for commencement of home construction of 5 (five) years from the Closing date; and (h) Purchaser agrees that before Purchaser would publicly offer, list or advertise the above-described Lot for sale within two years of the Closing date, Purchaser will first offer the above-described Lot to Seller at the same Purchase Price as Purchaser is paying under paragraph 2 of this contract.
16. **The Huntsman Springs Master Association and Subassociations:** There has been or will be created the Huntsman Springs Master Association, Inc. Purchaser shall be a member of the Association and any Subassociation established for like Properties, and Purchaser's Property shall be subject to assessment by the Association and any Subassociation, which assessment is for the purposes set forth in the Declaration. Purchaser hereby acknowledges that it is aware of the rights of the Association and any Subassociation to levy and enforce assessments against it and Purchaser agrees to pay promptly all such assessments, which are properly made against him by the Association and any Subassociation.
17. **Architectural Requirements:** Architectural approval and control requirements and restrictions are set forth in the Declaration. Such provide that no original construction, improvements, buildings, structures, or development of any kind whatsoever shall commence or be carried out on any lot until approved in writing by the Development Review Committee. Purchaser agrees that the actual construction on the property will have no material variation from the plans approved by the Development Review Committee unless the Development Review Committee shall have also approved such variations in writing. The Development Review Committee may grant or deny approval of Purchaser's plans on any

grounds, including purely aesthetic considerations. All modifications, additions or alterations made on or to existing residential units or structures must obtain the approval of the Development Review Committee, as that term is defined in the Declaration.

18. **Default:** If Purchaser fails to perform his or her obligation under this Contract or to close the sale provided herein, Seller may, at its option, elect to enforce this Contract by declaring this Purchase Contract in default and retain any and all Earnest Money as full liquidated damages, in which event the parties will be released from any further obligation or liability to each other. Purchaser and Seller agree that the exact amount of Seller's actual damages would be impossible to calculate and that such liquidated damages are reasonable. In the event that this sale fails to close due to default on the part of the Seller, or inability of Seller to deliver "good and marketable fee simple title" to the Lot, then upon written notice from Purchaser, Seller shall return all Earnest Money, and the parties shall be released from any and all other further obligations hereunder. Neither Purchaser nor Seller shall have any further rights or remedies on account of any default except as stated in this paragraph.
19. **Condition of Property:** Purchaser and Seller hereby agree that Purchaser shall buy the Property in an "as is" condition, and Seller has not made any commitments or accepted any obligations for further work on the Property other than as expressly set forth herein. Purchaser acknowledges that Seller has not made any pledges, covenants or commitments in regard to the development of the Huntsman Springs Community which has induced a Purchaser of the Property to purchase said Property except as stated in this Contract.
20. **Sole Agreement:** This Contract supersedes any and all understandings and agreements between the parties and constitutes the sole and entire contract between the parties. No oral statements or representations whatsoever shall be considered a part hereof. Any modifications must be in writing and acknowledged by the parties hereto.
21. **Binding Effect:** This Contract is binding upon the heirs, personal representatives, successors and permitted assigns of the parties.
22. **Nonassignability:** Purchaser's interest in this Contract may not be transferred or assigned, in whole or in part, without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his or her interest hereunder without Seller's written consent having first been obtained, Seller may, at its option, treat such event as a default by Purchaser hereunder, and shall not be obligated to recognize the Assignee or the Transferee.
23. **Survival of Closing:** The terms and conditions of this Contract shall survive the Closing and delivery of the warranty deed. Purchaser, on behalf of himself and his successors in title, agrees that in the event of any litigation to enforce this Contract, or in the event Seller is voluntarily or involuntarily made a part to any litigation

concerning this Contract, Purchaser shall protect and hold the Seller harmless from any and all costs in connection with such litigation, including reasonably attorney's fees and court costs incurred by the Seller.

24. **Notices:** Notices hereunder shall be in writing and shall be delivered by hand, courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party as first set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or courier delivery or on the date received.
25. **Idaho Law:** This Contract and all relationships between the parties hereto shall be construed, interpreted and enforced in accordance with the laws of the State of Idaho.
26. **Time of Essence:** Time is of the essence in this Contract, except as otherwise specifically provided.
27. **Severability:** The provisions of this Contract are intended to be independent. In the event that any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Contract.
28. **Full Knowledge:** Purchaser and Seller acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions and the effect of all the provisions of this Contract and every part of the Declaration, the exhibits thereto, the amendments thereto, the By-Laws, the Supplemental Declaration, the Articles of Incorporation of the Association and all parts of the Purchaser's Package.
29. **Real Estate Brokerage Commission:** Seller shall be responsible for all real estate commissions in connection with the transaction described herein to the Broker and to any other agents or co-brokers only if they are listed below. In no event shall Seller have any obligation to pay any real estate commission except in the event of the consummation of the closing of this transaction pursuant to the terms of this Contract. Neither Seller nor Broker has acted as agent in this transaction for the Purchaser. The co-broker listed below, if any, shall receive a total commission at Closing of 0% of the Purchase Price. Purchaser acknowledges that Purchaser has not contracted, negotiated, or otherwise dealt with any real estate broker not specifically identified in this Contract in connection with any aspect of this transaction. Purchaser agrees to indemnify and to hold Seller harmless from any claim made by any real estate broker or any other person asserting any claim for any commission, fee, salary, or other payment for any services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction, except for any claim for such services rendered to, for, or on behalf of Purchaser in connection with any aspect of this transaction by any person specifically identified herein as a real estate broker.

30. Disclaimer: Seller and Purchaser acknowledge that they have not relied upon the advice or representation, if any, of Broker (or Broker's associated salespersons) relative to any consequences of this Contract and the sale of the Property, the purchase and ownership of the Property, the condition of the Property, the availability of utilities to the Property, or the investment potential or resale value of the Property. Seller and Purchaser both acknowledge that if such matters are of concern to them, they have sought and obtained independent advice. Purchaser acknowledges that Broker (or Broker's associated salespersons) are representatives of the Seller and are working with the Purchaser in a non-agent capacity.

31. Revocation: This Contract may be revoked at the option of Purchaser until midnight of the seventh (7th) day following the signing of this Contract. This provision is non-waivable.

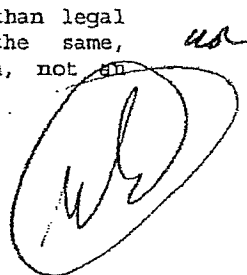
32. Definitions: The words used in this Contract shall have the same meaning as set forth in the Declaration and any amendment applicable thereto, as recorded or to be recorded in the land records of Teton County, Idaho, which, by this reference, are incorporated herein.

33. Special Stipulations:

1. Purchaser acknowledges that sites have not been staked. Seller acknowledges that Purchaser will not be required to close until 30 days after the property has been staked and any viewing contingency has been satisfied. After site is staked, Purchaser will have 14 days viewing contingency. If Seller does not receive written notice from Purchaser that Purchaser does not approve staking within this time frame then contingency will be deemed waived.

2. Seller will provide recorded plat and recorded CC&Rs 30 days prior to closing. Seller will present commercial CC&Rs and commercial building guidelines to Purchaser 30 days prior to closing. Should buyer not agree with building guidelines and CC&Rs for commercial property within 14 days of being provided, sale may be canceled by the Purchaser and earnest money will be returned.

3. Purchaser understands that block 50, Lots 1, 2 and 3 are currently under contract to another party dated July 16, 2007. Mountain Loft Properties are currently in second position on these sites. If other party's contract is canceled for any reason, Purchaser may, at their discretion, transfer to any of these sites noted by indicating in writing on a signed addendum to do so within 24 hours of current contract cancellation. This option is made available up until time of closing on this contract only. Any difference in purchase price will be reflected in a new addendum to this contract. All other terms and conditions, other than legal description and purchase price will remain the same, including closing date. Note: this is an option, not an obligation of the Purchaser.

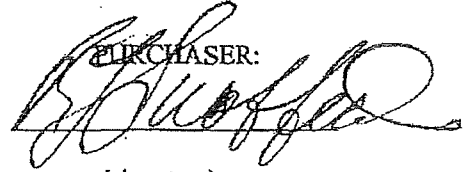


IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals and executed this contract in duplicate on the dates set forth by the signature (the contract date being the date that the last party signs this agreement).

Print Purchaser's Name:

Ron Swafford

PURCHASER:



(signature)

(signature)

Print Purchaser's Address and Phone Numbers:

525 9th St.

Address

IDAHO FALLS ID 83404

Address

208-522-5900

Home Phone

208 524-4002

Business Phone

208-524-4131

Facsimile

Print Purchaser's County of Residence:

Bonneville County Idaho

Signed as to Purchaser this 16
day of July, 2007

Seller's Address:

97 NORTH HWY 33
DRIGGS IDAHO 83422

SELLER:

HUNTSMAN SPRINGS, Inc.
AN IDAHO CORPORATION

By: William E. Leid CEO
Authorized Person/Title



Warranty Deed should be prepared as
_____ Joint tenants with rights
_____ of survivorship
_____ Tenants in common only

X Corporate / partnership *Designated to BE*
_____ Husband/ wife
~~SE~~ Severalty

ACCEPTED BY SELLER this 18
day of July, 2007

Escrow Agent: First American Title
Address: 78 N. Main St.
Driggs, ID 83442

CO BROKER:

NA

Print Name

NA

Address

NA

Address

NA

Business Phone

NA

Facsimile

By: NA

Authorized Agent

BROKER:

Huntsman Springs Realty

Print Name

1 Teton Springs Pkwy

Address

Victor, ID 83455

Address

208-787-8000

Business Phone

208-787-8007

Facsimile

By: Sarah Anderson

Authorized Agent

EXHIBIT "A"

HUNTSMAN SPRINGS, INC.

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 15, Good Faith Estimate, Road Maintenance

FROM: Huntsman Springs, Inc.

To:
(Purchaser)

RE:
The estimated cost of maintaining the roads within the Huntsman Springs Community over the first ten years of ownership is approximately \$300,000.00. Said expense is to be incurred by the Huntsman Springs Master Association, Inc. which will collect monies through the levy of assessments in accordance with the Declaration. Purchaser will only be responsible for their share of the expenses incurred. The developer will pay for the shares held by unsold platted lots.

SELLER: Huntsman Springs, Inc.

By: William G. Reid
Its Authorized Representative

PURCHASER: [Signature]

EXHIBIT "B"

HUNTSMAN SPRINGS, INC

CONTRACT FOR SALE - ADDENDUM

RE: Paragraph 15, Good Faith Estimate, Completion of Improvements

FROM: Huntsman Springs, Inc.

To: (Purchaser)

RE: Lot No.

<u>Facility</u>	<u>Party Responsible for Providing Maintenance</u>	<u>Estimated Year of Completion</u>
A - Roads	Currently Huntsman Springs, Inc. upon relinquishment of maintenance to owner's association, Huntsman Springs Master Association, Inc.	2010
B - Water	City of Driggs Water and Sewer	2008
C - Sewer	City of Driggs Water and Sewer	2008
D - Electricity	Fall River Electric Company	2008
E - Telephone	Silver Star Communications	2008
F - Other Existing	Recreational Facilities or Proposed Amenities	
(i)	18 hole golf course, practice range, and practice facilities, putting greens and related cart paths/bridges and ancillary/ features	2010
(ii)	Golf Operations facility Permanent or temporary	2009
(iii)	Fishing habitat/pond areas - fishing habitat.	2008
(iv)	Golf Club House, Restaurant, locker rooms	2010
(v)	Walking paths, bike paths, equestrian trails within the project.	2010
(vi)	Community Club/fitness center/swimming pool and ancillary support facilities.	
2011		

Exhibit C

CLOSING CONCESSIONS

JULY 16th 2007

Given the early sale situation which requires a high level of trust on the part of the buyer as to construction completion, eventual appearance of the community, amenities etc. the seller wishes to offer the early buyers some incentives to help in their decision to purchase early.

MEMBERSHIP:

- *Corporate Golf Membership price is included in the price of Commercial Properties. \$30,000 of the Town Plaza pricing is paid through the purchase and \$30,000 is paid by the developer as a consideration for early buyers. \$30,000 of the \$60,000 value is refundable per the Club By-laws. This \$30,000 contribution toward Corporate Golf Membership applies to any corporate sites sold to buyers in the priority reservation group that are closed prior to December 31st 2007.*
- *Residential property purchasers will receive an \$16,000 contribution from the developer toward the \$40,000 Residential Golf Membership provided that Membership is purchased at closing. This incentive applies to Single Family Custom, Range Cabin, and Driggs Town Home property. By applying the \$2000 credit for the Community Club Membership that is included in the land price, the buyer will be able to purchase a Golf Club Membership by adding \$20,000 at closing for the Family category and \$15,000 for the 6 month Category.*
- *Driggs Town Home and Range Cabin Property buyers will be able take advantage of the currently offered Cabin and Town Home pricing and will be given that pricing as long as a building contract is finalized prior to June 1st 2007. The building prices currently available will increase by approximately 5% for future purchasers.*



ATTACHMENT "C"

2014

ASSESSMENT NOTICE
RECEIVED

JUN 03 2014

FILE DO NO
CC No. CC CC date
TS RS TC LC JA

**THIS IS NOT A BILL.
DO NOT PAY.**

PARCEL DESCRIPTION: SWAF
LOT 4 BLK 50
HUNTSMAN SPRINGS PUD PHASE I
CITY PORTION SEC 26 T5N R45E

SE I For any questions, please notify
the Assessor's office immediately.
Assessor's telephone#: (208) 354-3507

PARCEL ADDRESS:
195 PRIMROSE STREET

SWAFFORD RONALD
SWAFFORD TWINKIE (MARGARET)
525 9TH STREET
IDAHO FALLS ID 83404

Appeals of your property value must
be filed in writing on a form provided
by the County, by:

Tax Code Area: 1-0000

Parcel Number: RPA07010500040 A

Property Tax Reduction is not included

ASSESSED VALUE OF YOUR PROPERTY

CATEGORY AND DESCRIPTION	LOTS/ACRES	LAST YEAR'S VALUE	CURRENT YEAR'S VALUE
21 COMM LOTS	.470 AC	100,000	100,000
SUBTOTAL:	.470	100,000	100,000
LESS HOMEOWNERS EXEMPTION: NET TAXABLE PROPERTY VALUE:		100,000	100,000

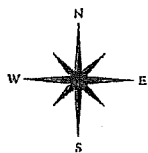
TAXING DISTRICT INFORMATION




TAXING DISTRICTS	PHONE NUMBER	DATE OF PUBLIC BUDGET HEARING
COUNTY	208-354-8771	08/25/2014
DRIGGS	208-354-2362	08/19/2014
SCH DIST 401	208-354-2207	06/09/2014
TORT	208-354-2207	06/09/2014
BOND	208-354-2207	06/09/2014
EMERGENCY	208-354-2207	06/09/2014
PLNT FACILITIES	208-354-2207	06/09/2014
SUPPLEMENTAL	208-354-2207	06/09/2014
CEM DRI-DAR	208-354-8311	08/20/2014
FIRE PROTECTION	208-354-2760	08/12/2014
LIBRARY	208-787-2201	09/02/2014
MOSQUITO ABATE	208-354-2703	08/25/2014
AMBULANCE	208-354-8775	08/25/2014
SPEC ROAD LEVY	208-354-8771	08/25/2014

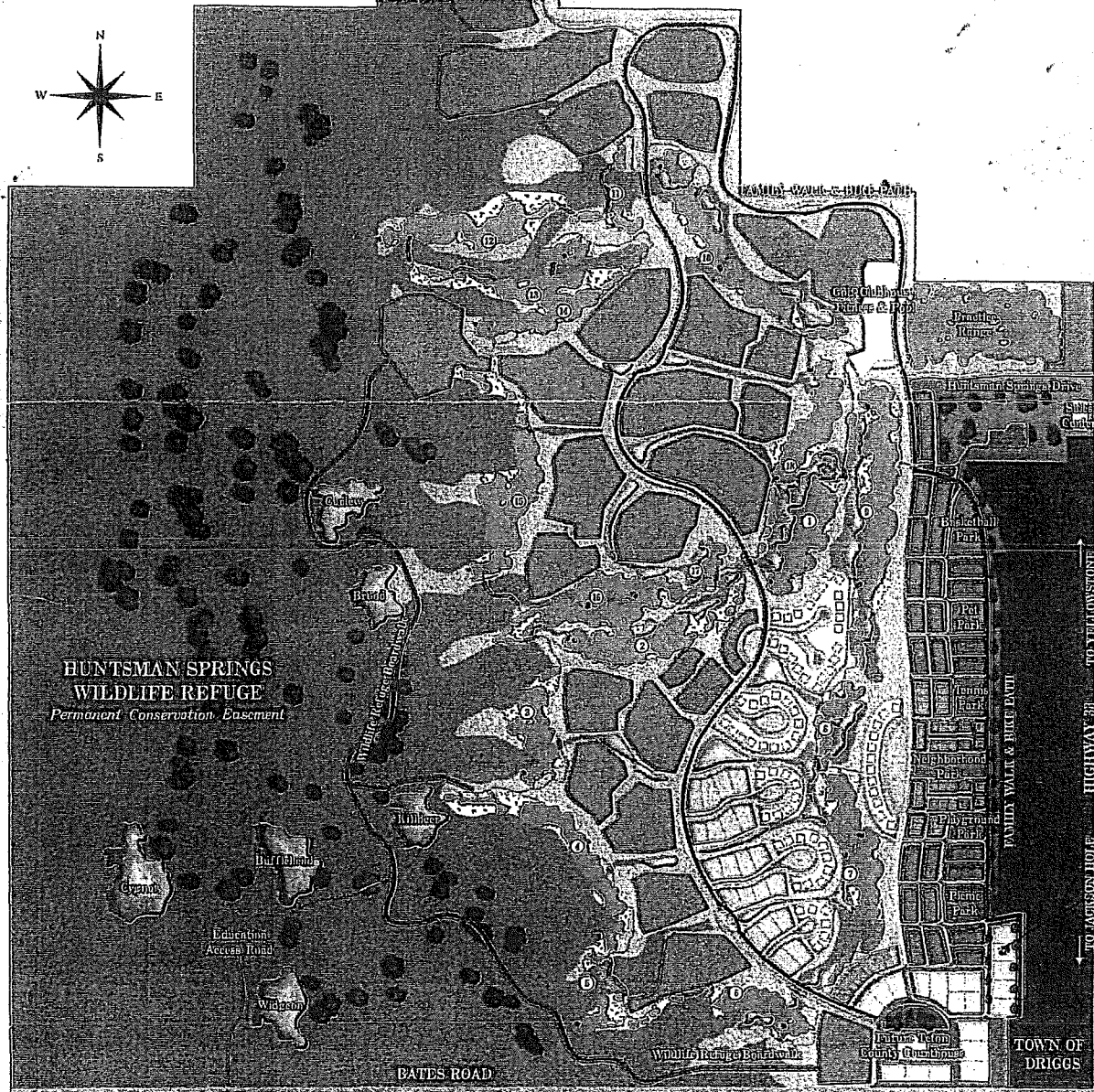
THIS IS NOT A BILL. DO NOT PAY.

ATTACHMENT “D”

HUNTSMAN SPRINGS MASTER PLAN



	STOCKED FISHING PONDS
	FAMILY WALK & BIKE PATHS
	WILDLIFE REFUGE BOARDWALK (1.5 MILES)



ROLE	1	2	3	4	5	6	7	8	9	OUT	10	11	12	13	14	15	16	17	18	IN	TOTAL
PAR	4	4	4	4	4	4	4	4	5	35	5	3	4	4	4	4	4	3	4	35	72
GOLD	440	442	355	580	162	427	482	181	828	3708	608	204	485	410	430	546	427	120	462	3703	7411
BLACK	415	430	325	550	190	405	465	175	610	3535	585	185	470	390	410	530	405	115	440	3520	7055
BLU	385	395	315	520	175	375	430	155	595	3768	550	165	445	360	385	505	390	105	435	3525	6832
WHITE	350	342	255	490	105	320	395	130	530	2817	540	145	395	325	350	460	365	95	375	3050	5967
GREEN	410	425	345	565	165	415	475	185	835	3750	610	205	490	415	435	550	430	125	465	3708	7416

**For Illustrative Purpose
Subject to Change**

Swafford
Lot

ATTACHMENT “E”

SWAFFORD LAW, P.C.

525 NINTH STREET
IDAHO FALLS, IDAHO 83404
TELEPHONE: (208) 524-4002
FAX: (208) 524-4131

RONALD L. SWAFFORD - ATTORNEY-AT-LAW
R. JAMES ARCHIBALD - ATTORNEY-AT-LAW
TREVOR L. CASTLETON - ATTORNEY-AT-LAW
LARREN K. COVERT - ATTORNEY-AT-LAW

TWINKIE SWAFFORD - LEGAL ASSISTANT
MARIANN OLSEN - LEGAL ASSISTANT
SIOBHAN ASHMENT - LEGAL ASSISTANT

August 20, 2014

Huntsman Springs
501 Huntsman Springs Drive
Driggs, ID 83422

To Whom it May Concern:

I am a commercial property lot owner of Huntsman Springs which is addressed as 195 Primrose Street, Driggs Idaho. The legal description is Lot 4, Block 50, Huntsman Springs PUD Phase I, Section 26, T.5N, R. 45 EBM. The contract purchase date was July 16, 2006. The lot was represented by the Huntsman Springs Master Plan which depicted said parcel as connected to the adjacent parcels to the right of the Courthouse, with bike paths, a family walk and trees bordering the parcel. (depicted as a redline).

Huntsman Springs has seriously neglected the development of these lots, and has seriously damaged their value and marketability by building a dividing partition consisting of a tree line and roadway on the Huntsman Springs side, which now separates my lot from Huntsman Springs. The development has changed the address, ingress and egress, as the lot has absolutely no access from Primrose.

The lot now appears to be separated in every respect from Huntsman Springs, and has been completely ignored for eight (8) years. The property appears to the public and potential purchasers as a part of the dilapidated area adjacent, rather than Huntsman. Huntsman has effectively segregated the lots from any semblance of belonging to Huntsman.

I have been more than patient, but see absolutely no progress on compliance with the Master Plan for eight (8) years. For the past eight (8) years, Huntsman has exclusively developed the area for marketing as opposed to fulfilling obligations to past purchasers.

You have effectively changed the address, as well as the access to my lot from the Primrose paved roadway to a gravel road appearing outside of Huntsman Springs. I purchased this lot as an investment based on your express representations as described in the documentation and plans.

COPY

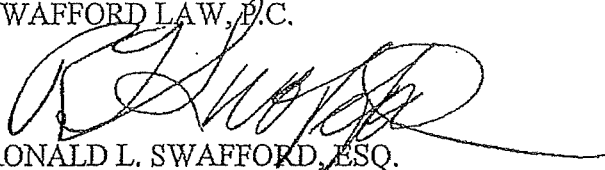
I hereby demand that the Master Plan be complied with, providing my lot with ingress and egress from Primrose as expected from the address. I also insist that the family walk and bike paths as well as trees be in place immediately. I hereby request immediate resolution of this issue. I request the area conform to the plans provided at the time of purchase.

If you are unwilling to comply with my request immediately I hereby demand return of my entire purchase price, with interest and taxes. I am unwilling to continue waiting further.

I request your prompt response to this request. If no response is provided within 10 days, I will presume that you have declined and rejected this request and proceed accordingly with a breach of contract, breach of express and implied warranties, and breach of the implied covenant of good faith and fair dealing.

Sincerely,

SWAFFORD LAW, P.C.


RONALD L. SWAFFORD, ESQ.

Enclosures as stated

ATTACHMENT “F”

SWAFFORD LAW, P.C.

525 NINTH STREET

IDAHO FALLS, IDAHO 83404

TELEPHONE: (208) 524-4002

FAX: (208) 524-4131

RONALD L. SWAFFORD - ATTORNEY-AT-LAW
R. JAMES ARCHIBALD - ATTORNEY-AT-LAW
TREVOR L. CASTLETON - ATTORNEY-AT-LAW
LARREN K. COVERT - ATTORNEY-AT-LAW

TWINKIE SWAFFORD - LEGAL ASSISTANT
MARIANN OLSEN - LEGAL ASSISTANT
SIOBHAN ASHMENT - LEGAL ASSISTANT

September 12, 2014

Sean R. Moulton, Esq.
60 E. Wallace
P.O. Box 631
Driggs, ID 83422

RE: Huntsman Springs

Dear Sean:

I received your letter, and appreciate your response, though I disagree with several aspects. First, I do have the Master Plan provided at the time of purchase. My purchase was based on the representations contained in the plan. I have enclosed a copy for your review. As you can see, the current status is far different from that on the map and chart. The area to the North has a red line along the entire perimeter indicating bike path and family walk. None exists. There were to be trees on the north side (city side) along the bike path. None exist. There was no plan for a road where Front Street is now. The bike path and family walk way were obviously designed to be the outer boundary to the North, with access to my lot on Primrose. Huntsman segregated these 5 commercial lots from the remainder of Huntsman Springs.

It is best to simply examine the information provided to me in the Master Plan and then view the property. There is little similarity.

It is not parole evidence, as I have the Master Plan, which was an express representation and warranty provided at the time of purchase.

I believe we respectfully disagree on the measure of damages. The Master Plan was presented to me to rely upon, and I in fact did. I did not receive what was advertised, represented and promised. I will be seeking rescission of the contract. There are obviously several potential causes of action including contract and tort which are available to me.

It may be that this must be something litigated, and I respect that. I have two witnesses who were with me at the time of purchase, who will testify identically. I have not contacted or

COPY

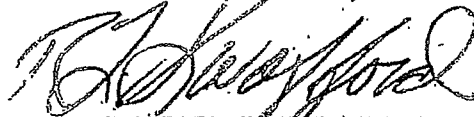
notified the adjacent owners of the remaining 4 lots, as I wish not to complicate the matter further. If I am forced to litigate the issue, I will contact them for further support. If this can be resolved amicably, our resolution can be confidential.

If Huntsman is not willing to comply with their representations let me know. Every time I drive by and look at the lot which is separated from Huntsman springs, I become ill. It truly looks as if it is part of the run down properties to the North. It is absolutely not marketable for any purpose currently.

Thank you for your attention. If this cannot be resolved, are you authorized to accept service on behalf of Huntsman? Considering the investment I made, I am unwilling to ignore this. I have no alternative but to pursue this immediately. My age does not permit me the luxury of extended time.

Sincerely,

SWAFFORD LAW, P.C.

A handwritten signature in dark ink, appearing to read 'R. Swafford', written over the printed name.

RONALD E. SWAFFORD, ESQ.

Enclosures as stated

* * * Communication Result Report (Nov. 4, 2014 9:42AM) * * *

1) Swafford Law, P.C.
2)

Date/Time: Nov. 4, 2014 9:42AM

File	No. Mode	Destination	Pg(s)	Result	Page Not Sent
9221	Memory TX	3542346	P. 2	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection
E. 6) Destination does not support IP-Fax

FAX TRANSMISSION

SWAFFORD LAW, P.C.

525 Ninth Street

Idaho Falls, Idaho 83404

(208) 524-4002

Fax: (208) 524-4131

To:	Sean R. Moulton	Date:	11/04/2014
Fax #:	208-354-2346		
From:	Maddie Redman Legal Assistant	Pages:	2 pages including cover sheet
Subject:	RE: Handsman Springs		
Comments:	Attached is a letter from Ronald L. Swafford. If you have any questions, don't hesitate to call our office. Thank You, Maddie Redman		

THE PAGES CONTAINING THIS FACSIMILE TRANSMISSION CONTAIN CONFIDENTIAL INFORMATION FROM SWAFFORD LAW OFFICES. THIS INFORMATION IS INTENDED SOLELY FOR USE BY THE INDIVIDUAL OR ENTITY NAMED AS THE RECIPIENT. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE ADVISE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THE CONTENTS OF THIS TRANSMISSION IS PROHIBITED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY, SO THAT WE MAY RETRIEVE IT AT NO COST TO YOU. THANK YOU.

IF YOU HAVE PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL OUR OFFICE AT (208) 524-4002.

3/16/20

ATTACHMENT “G”

SWAFFORD LAW, P.C.

525 NINTH STREET
IDAHO FALLS, IDAHO 83404
TELEPHONE: (208) 524-4002
FAX: (208) 524-4131

RONALD L. SWAFFORD - ATTORNEY-AT-LAW
R. JAMES ARCHIBALD - ATTORNEY-AT-LAW
TREVOR L. CASTLETON - ATTORNEY-AT-LAW
LARREN K. COVERT - ATTORNEY-AT-LAW

TWINKIE SWAFFORD - LEGAL ASSISTANT
MARIANN OLSEN - LEGAL ASSISTANT
SIOBHAN ASHMENT - LEGAL ASSISTANT

November 3, 2014

Sean R. Moulton, Esq.
60 E. Wallace
P.O. Box 631
Driggs, ID 83422

VIA FACSIMILE
354-2346

RE: Huntsman Springs

Dear Sean:

A little more than a week ago, we discussed your belief that there was a statute of limitations issue. You requested I provide my authority for disputing your claim. I provided that authority, and awaited your response.

On the phone last Thursday you indicated that the statute of limitations was not the only issue, i.e., that there were other contract law related issues.

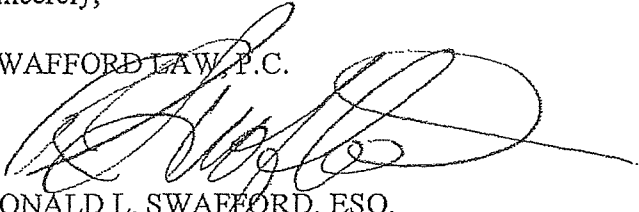
When you requested my research on the statute of limitations, as a courtesy I forwarded my authority to you in hope of avoiding litigation.

I would appreciate the same courtesy from you. If there are contract issues or other issues which you believe are dispositive of the matter, please provide them. Neither of us want unnecessary litigation.

Thank you for your anticipated cooperation.

Sincerely,

SWAFFORD LAW, P.C.


RONALD L. SWAFFORD, ESQ.

FAX TRANSMISSION

SWAFFORD LAW, P.C.

525 Ninth Street

Idaho Falls, Idaho 83404

(208) 524-4002

Fax: (208) 524-4131

To:	Sean R. Moulton	Date:	11/04/2014
Fax #:	208-354-2346	Pages:	2 pages including cover sheet
From:	Maddie Redman Legal Assistant		
Subject:	RE: Huntsman Springs		
Comments:	Attached is a letter from Ronald L. Swafford. If you have any questions, don't hesitate to call our office. Thank You, Maddie Redman		

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IF YOU HAVE PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL OUR OFFICE AT (208) 524-4002.

ATTACHMENT “H”

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

**AFFIDAVIT OF PLAINTIFF IN
SUPPORT OF MOTION TO
AMEND COMPLAINT**


STATE OF IDAHO)
 : ss.
County of Bonneville)

RONALD L. SWAFFORD, being first sworn, states:

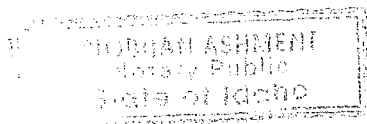
1. I am one of the Plaintiffs in this matter.
2. I would request that this Court enter an order allowing Plaintiffs to file an Amended Complaint and Jury Demand in this matter.

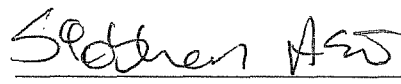
3. This requests is made based upon newly acquired information regarding the change in the zoning of the real property at issue herein.

DATED this 21st day of November, 2015.


RONALD L. SWAFFORD
Plaintiff

SUBSCRIBED AND SWORN to before me this 21st day of November, 2015.




NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls, ID
My commission expires: 7-28-16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

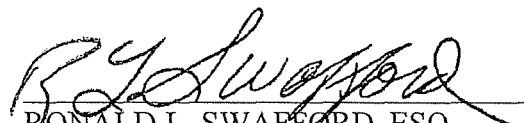
Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

☒ U.S. Mail, postage prepaid
☐ Designated courthouse box
☐ Hand-delivered
☒ Fax: (208) 354-2346

Courtesy Copy:

Gregory W. Moeller
District Judge
159 E. Main Street
P.O. Box 389
Rexburg, ID 83440

☒ U.S. Mail, postage prepaid
☐ Designated courthouse box
☐ Hand-delivered
☐ Fax: (208) 356-5425


RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

NOTICE OF HEARING

To: All Parties and Their Counsel of Record

Please take notice that on the 15th day of December, 2015, at the hour of 2:00 p.m., or as soon thereafter as counsel may be heard, Plaintiffs will call up their Motion to Allow Submission of Additional Evidence in Opposition to Defendant's Motion for Summary Judgment and Motion to Amend Complaint before the Honorable Gregory W. Moeller, District Judge, at the Teton County Courthouse, Driggs, Idaho.

DATED this 23rd day of November, 2015.



RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☒ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☐ Fax: (208) 354-2346

Courtesy Copy:

Gregory W. Moeller
District Judge
159 E. Main Street
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RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
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Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED

NOV 25 2015

TIME: _____
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

NOTICE OF SERVICE

Please take notice that on the 23rd day of November, 2015 Plaintiffs served a true and correct copy of the Plaintiffs' First Set of Interrogatories and Requests for Production of Documents upon the following parties by method of delivery indicated:

Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☒ U.S. Mail, postage prepaid
☐ Designated courthouse box
☐ Hand-delivered
☐ Fax: (208) 354-2346


RONALD L. SWAFFORD, ESQ.
Attorneys for Plaintiffs

SWAFFORD LAW, P.C.

Ronald L. Swofford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED**DEC 03 2015**TIME: _____
TETON COUNTY DISTRICT COURT

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

**MOTION TO APPEAR
TELEPHONICALLY**

COMES NOW Plaintiffs, by and through their attorney of record, Trevor L. Castleton,
Esq., who hereby moves this Court for an order allowing counsel for Plaintiffs to appear
telephonically for the hearing currently scheduled for the 15th day of December, 2015.

DATED this 3rd day of December, 2015.
TREVOR L. CASTLETON, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2015, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:


Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☐ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☒ Fax: (208) 354-2346

Courtesy Copy:

Honorable Gregory W. Moeller
District Judge
159 E. Main Street
P.O. Box 389
Rexburg, ID 83440

- ☐ U.S. Mail, postage prepaid
- ☐ Designated courthouse box
- ☐ Hand-delivered
- ☒ Fax: (208) 356-5425


TREVOR L. CASTLETON, ESQ.
Attorneys for Plaintiffs

FILED

2015 DEC -4 PM 2:16

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylaw.com

TETON COUNTY, IDAHO
DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

MOTION TO STRIKE UNTIMELY
AFFIDAVIT

I. SUMMARY

The new evidence that the Swaffords are attempting to submit to the Court is an allegation that the Swaffords' lot had been "rezoned at the request of defendant to 'mixed use' rather than commercial."¹ That is the entirety of their allegation. This new allegation is untimely pursuant to the Idaho Rules of Civil Procedure 56(c) and 56(e), and the allegation

¹ Affidavit of Ron Swafford, ¶ 1 (Nov. 23, 2015).

raises absolutely no equitable or legal concerns that would prevent this Court from granting summary judgment in Huntsman Springs' favor.

1. The Swaffords' additional argument and affidavit submitted post-hearing is untimely pursuant Rule 56(c).

According to the Swaffords, their most recent motion to present the Court with additional facts and argument is made "pursuant to Rule 56(c)."² Rule 56(c) provides the Court with discretion to "alter or shorten the time periods and requirements of this rule for good cause shown," and the Rule provides that the Court "may continue the hearing." The Swaffords have failed to provide the Court with any legal authority that Rule 56(c) allows parties to submit additional affidavits post-hearing.

All of the timing requirements of Rule 56(c) are *pre-hearing*: Movant submits briefs and affidavits 28 days *prior to hearing*; adverse party submits briefs and affidavits 14 days *prior to hearing*; and movant submits any response 7 days *prior to hearing*. The court has discretion to alter this format or move the date of the hearing in order for the parties to be able to adequately prepare to present their arguments to the court at the hearing. There is nothing in Rule 56(c) that suggests a court may accept additional briefs or affidavits *post-hearing*.

In *Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker*, the Idaho Supreme Court explained that the purpose of the rule requiring the adverse party to serve opposing briefs and affidavits no less than fourteen days before the hearing is to "give the moving

² Motion to Allow Submission of Additional Evidence in Opposition to Defendant's Motion for Summary Judgment (Nov. 23, 2015).

party an adequate opportunity to respond.” 133 Idaho 1, 5, 981 P.2d 236, 240 (1999). The Idaho Supreme Court most recently relied on this reasoning in 2012 when it upheld a trial court’s ruling that an affidavit was untimely filed 11 days prior to the hearing, rather than the 14 days prior to the hearing as provided under Rule 56(c). *Arregui v. Gallegos-Main*, 153 Idaho 801, 805, 291 P.3d 1000, 1004 (2012). In this case, this Court is not even considering pre-hearing additional argument as was the case in *Arregui*. The Swaffords are attempting to submit additional facts and argument post-hearing. This is untimely pursuant to Rule 56(c).

2. The affidavit is not “supplemental” pursuant to Rule 56(e) because it proposes to introduce *new* material, not “supplemental” material as required by the rule;

Rule 56(e) states, “The court may permit affidavits to be supplemented or opposed by ... further affidavits.” In this case, the Swaffords are not seeking to “supplement” their prior affidavit; the Swaffords are submitting a completely new affidavit. The Idaho Supreme Court has explained how Rule 56(e) operates when it overruled a trial court’s decision with the following reasoning:

Rule 56(e) does give the trial court discretion to allow a party to oppose or supplement an affidavit by further affidavits, however, the time limitations set forth in Rule 56(c) still apply unless the court shortens the time for good cause shown. The problem here is that the Jensen affidavit was not a supplement to the earlier factual showing made in support of its motion, but rather presented new and different factual information relating to the judgmental immunity rule. Moreover, while the Jensen affidavit was also filed to oppose information submitted by Sun Valley, the information contained in Jensen's affidavit was clearly known and available to RR & T prior to filing its motion and the record reflects no reason why the affidavit could not have been timely filed.

With the Jensen affidavit in hand, the district judge granted RR & T's motion for partial summary judgment noting that Sun Valley failed to contradict assertions made in the affidavit. Those assertions related to Jensen's personal thought processes as he decided whether to challenge or present certain evidence in the underlying trial. Because RR & T did not serve the affidavit until shortly before the hearing, Sun Valley did not have an opportunity to depose Jensen or otherwise contradict his statements and was, therefore, prejudiced.

Because there was no showing of good cause for failing to comply with the time limits by RR & T, and clearly Sun Valley was at a disadvantage in responding to the summary judgment motion, the district judge abused his discretion in considering Jensen's affidavit. Therefore, we will not consider Jensen's statements in our review of RR & T's motion for partial summary judgment.

Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker, 133 Idaho 1, 6, 981 P.2d 236, 241 (1999).

In this case, the Swaffords' additional affidavit should be stricken for two reasons. First, the affidavit attempting to be submitted was filed post-hearing. It is untimely pursuant to Rule 56(c).

Second, just as in *Sun Valley Potatoes, Inc.* cited above, the Swaffords are not attempting to supplement a prior affidavit. Instead, they are attempting to submit an entirely new argument—an argument they had every ability to make prior to the summary judgment hearing. The title of the Swaffords' motion is "Motion to Allow Submission of *Additional Evidence* in Opposition to Defendant's Motion for Summary Judgment." Clearly the Swaffords are attempting to submit new evidence. The bare assertion made in the affidavit is as follows: "I have learned that the real property at issue herein has been rezoned at the

request of defendant to ‘mixed use’ rather than commercial”;³ and “Plaintiffs propose to submit additional affidavits for the purpose of evidencing the defendant’s modification of the zoning of the property at issue in this matter.”⁴

This is new material, not supplemental material, and should be stricken pursuant to Rule 56(e) and *Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999).

3. The Swaffords have failed to establish “good cause” for allowing them to submit their additional material.

The Swaffords have given absolutely no reasons as to why their material could not have been presented in a timely manner.

4. The Swaffords’ additional information fails to meet the evidentiary standard required by Rule 56(e).

Even if Huntsman Springs had any role in re-zoning, which it does not, the Swaffords have failed to state how a renaming of their zone materially affected their property.

Rule 56(e) states as follows regarding the evidentiary standard when opposing summary judgment:

When a motion for summary judgment is made and supported as provided in this rule, 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*

³ Affidavit of Ronald L. Swafford in Support of Motion to Allow Submission of Additional Evidence in Opposition to Defendant’s Motion for Summary Judgment, ¶ 1 (Nov. 23, 2015).

⁴ Id. at ¶ 2.

genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

I.R.C.P. 56(e) (emphasis added).

The Swaffords' untimely affidavit states, "I have learned that the real property at issue herein has been rezoned at the request of defendant to "mixed use" rather than commercial";⁵ and "Plaintiffs propose to submit additional affidavits for the purpose of evidencing the defendant's modification of the zoning of the property at issue in this matter."⁶ These are allegations. These are not specific facts. Accordingly, even if timely filed, these allegations would not prevent the Court from granting summary judgment in Huntsman Springs' favor.

5. Huntsman Springs petitions the Court for Rule 56(c) sanctions.

Rule 56(c) provides a mechanism for sanctions for situations such as the one the Swaffords have presented the Court. According to Rule 56(c), the Court may award "attorney fees and sanctions against a party or the party's attorney, or both." In this case, Huntsman Springs moves the Court for an award of attorney's fees and costs associated with having to respond to the Swaffords' frivolous, untimely motion.

⁵ Affidavit of Ronald L. Swafford in Support of Motion to Allow Submission of Additional Evidence in Opposition to Defendant's Motion for Summary Judgment, ¶ 1 (Nov. 23, 2015).

⁶ Id. at ¶ 2.

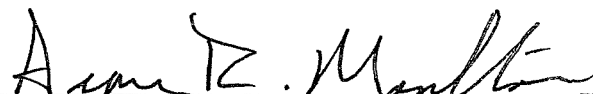
6. Conclusion

Huntsman Springs moves the Court to Strike the affidavit of Ron Swafford filed November 23, 2015 and deny the Swaffords' motion for the following reasons:

1. The material is untimely pursuant to Rule 56(c);
2. The material is not "supplemental" pursuant to Rule 56(e) because it proposes to introduce *new* material, not "supplemental" material as required by the rule;
3. The Swaffords have not established good cause because they have not shown why they could not have submitted their new argument in a timely manner;
4. The affidavit does not set forth "specific facts" supporting its allegations.

DATED this 21 day of December, 2015.

MOULTON LAW OFFICE


Sean Moulton, attorney for Defendant

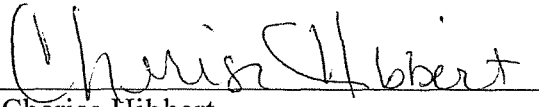
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Memorandum* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 18th day of September, 2015.


Cherise Hibbert

FILED

2015 DEC -8 AM 9:29

TETON COUNTY, IDAHO
DISTRICT COURT

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylaw.com

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

**OPPOSITION TO MOTION TO AMEND
COMPLAINT**

The Swaffords *Motion to Amend Complaint* provides no argument or facts as to why the Court should grant their motion, aside from citing Rule 15(a).¹ The Swaffords' *Affidavit of Plaintiff in Support of Motion to Amend Complaint* states, "This requests [sic] is made upon newly acquired information regarding the change in the zoning of the real property at issue herein."² That is not a claim upon which relief can be granted: Even if true, the Swaffords fail to state *who* is responsible for zoning changes (City of Driggs, not Huntsman

¹ Motion to Amend Complaint (Nov. 23, 2015).

² Affidavit of Plaintiff in Support of Motion to Amend Complaint, ¶ 3 (Nov. 23, 2015).

Springs); the Swaffords fail to state *when* the alleged zoning changes occurred; the Swaffords fail to state *what* impact, if any, the zoning changes had on the Swaffords' property; and, most importantly, the Swaffords fail to state how a zoning change by the City of Driggs affects their breach of contract case against Huntsman Springs. The Swaffords' motion should be denied for two reasons: (1) They have failed to state a claim upon which relief can be granted, and (2) Their new claim, Abandonment of Property, if it were even a valid cause of action in this case, is barred by the statute of limitation.

1. Rule 15(a) Standard

Under Rule 15(a) "a party may amend his pleading once as a matter of course at any time before a responsive pleading is served...." However, where, as here, an answer has been filed, Rule 15(a) provides that "a party may amend his pleading only by leave of court ... and leave shall be freely given when justice so requires...." The decision to grant or refuse permission to amend is left to the sound discretion of the trial court.

"[T]he court may consider whether the new claims proposed to be inserted into the action by the amended complaint state a valid claim." *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991) (citing *Bissett v. State*, 111 Idaho 865, 869, 727 P.2d 1293, 1296 (Ct.App.1986)). "If the amended pleading does not set out a valid claim, or if the opposing party would be prejudiced by the delay in adding the new claim, or if the opposing party has an available defense such as a statute of limitations, it is not an abuse of discretion for the trial court to deny the motion to file the amended complaint." *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho at 175, 804 P.2d at 904.

2. The Swaffords' Proposed Amended Complaint fails to state a valid cause of action against Huntsman Springs because Huntsman Springs is a private corporation and does not change zoning for any property.

The Swaffords allege that "Defendant has altered the designation and zoning of the "Town Plaza Commercial" area. ..." ³ The City of Driggs makes zoning decisions for the Swaffords' property, not Huntsman Springs. This Court can take judicial notice pursuant to Idaho Rule of Evidence 201 that public entities make zoning decisions in Idaho and not Huntsman Springs, Inc.

Out of an abundance of caution, Huntsman Springs submits to the Court the Affidavit of Douglass E. Self. Mr. Self is completely unaffiliated with Huntsman Springs and is the Community Development Director overseeing all planning and zoning matters for the City of Driggs. ⁴ According to Mr. Self, "The PUD-HS-C zone was renamed by the City of Driggs, and not by an application from Huntsman Springs, Inc." ⁵ Mr. Self also states that the zone change was "as a name change only by the City of Driggs, and no commercial uses were removed by the new designation." ⁶

The Swaffords' Proposed Amended Complaint stating that Huntsman Springs allegedly wrongfully changed the zoning does not state a valid claim, so the Swaffords' motion should be denied. *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991) For this reason alone, this Court may deny the Swaffords' *Motion to Amend Complaint*.

³ Proposed Amended Complaint and Jury Demand, ¶ 39.

⁴ Affidavit of Douglass E. Self, ¶ 2.

⁵ Affidavit of Douglass E. Self, ¶ 5.

⁶ Affidavit of Douglass E. Self, ¶ 4.

3. The Swaffords' new cause of action—"Abandonment of Property"—is not a legally recognized cause of action under the facts of this case.

As stated above, the Swaffords have offered no explanation for their *Proposed Amended Complaint*. The Swaffords new cause of action is called "Abandonment of Property," and they have alleged that "Defendant has abandoned the Plaintiffs' property as part of the 'Town Plaza Commercial' area."⁷

In Idaho, there is a legal concept of "abandonment of property," but it absolutely does not apply as the Swaffords allege. "Abandonment of property" applies in tenancy cases, leasehold cases, easement cases, and nuisance cases. The Swaffords have supplied no legal authority for the proposition that the seller of a parcel can be sued for abandoning the property sold to the buyer. Counsel for Huntsman Springs hesitates to even guess as to how the Swaffords seek to apply this legal theory to their case.

The legal relationship between Huntsman Springs and the Swaffords is contractual. The true nature of their complaint against Huntsman Springs is for breach of contract. As Huntsman Springs has argued in its Motion for Summary Judgment, the alleged breaches to that contract occurred in 2007 and 2008.

4. The Swaffords' Proposed Amended Complaint is barred by the same statutes of limitations as their original Complaint.

The Swaffords have failed to allege any new facts or make any new allegations in their Proposed Amended Complaint that would prevent the Court from ruling that it is barred by the relevant statutes of limitation.

⁷ Proposed Amended Complaint and Jury Demand, ¶ 38.

The Swaffords' new allegation is that Huntsman Springs changed the zoning on the Swaffords' lot, and that this changed zoning constituted an "abandonment" of the Swaffords' lot. As stated above, the Swaffords have confused the legal concept of "abandonment of property" with their breach of contract allegations. It seems as though the Swaffords new allegation is that the alleged rezoning was further evidence that Huntsman Springs breached its contract with the Swaffords.

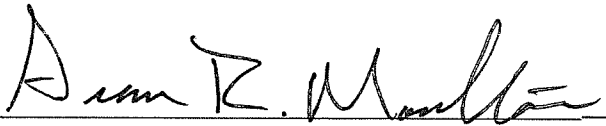
This new allegation, even if it were valid, would be barred by the same statute of limitations as their other claims. In *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.* cited above, the Idaho Supreme Court ruled that a trial court may deny a motion to amend complaint if the proposed amended complaint would be barred by a statute of limitations. *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991).

5. Conclusion

The Swaffords' motion should be denied for two reasons: (1) They have failed to state a claim upon which relief can be granted, and (2) Their new claim, Abandonment of Property, is in actuality their breach of contract case, and even if it were a valid cause of action, it is barred by the five-year statute of limitations.

DATED this 8 day of December, 2015.

MOULTON LAW OFFICE


Sean Moulton, attorney for Defendant

CERTIFICATE OF SERVICE

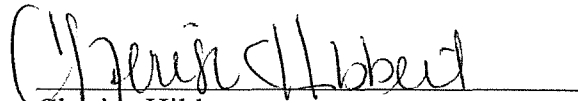
I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Memorandum* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:

- ☒ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Facsimile
- ☐ Email (pdf attachment)

DATED this 8 day of December, 2015.


Cherise Hibbert

COURT MINUTES

CV-2015-0000203

Ronald Lynn Swafford, etal. vs. Huntsman Springs

Hearing type: Motion

Hearing date: 12/15/2015

Time: 2:44 pm

Judge: Gregory W Moeller

Court reporter: Patricia Hubbell

Minutes Clerk: Phyllis Hansen

Plaintiff's Attorney Trevor Castleton

Defendant's Attorney Sean Moulton

J calls case; ids those present

Have taken Motion for Summary Judgment has been taken under advisement

Motion to allow Submission filed

D has objected

PA – motion to Amend Complaint is where should start

Had concern about minutes of City of Driggs - when Swaffords came on notice

More adequately describe the zoning were additional indicia that we believe raise the real concern

J – how is the new cause of action immune from that same defense

PA – it bolsters what the arguments are what we are trying to do 0 that is another is – what we were trying to argue last time

J – are you suggesting at time you don't have actual evidence but you believe that through Discovery you will be able to find it

255

PA we think is abundantly evident

Submit

256

DA – main emphasis was statute of limitations; way past the statute of limitations

J – is the date that the rezone took place in Dispute

DA – no; it is in the Affidavit

J simple question if new cause is subject to affirmative defense

Can it substantively stand don its own

Application was done solely on the City's initiative

Nothing changed the underlying use

Self says change was name change only; nothing substantive

302

Alarmed they made the claim because it's just not truthful

They acknowledge they made the claims based on media reports

Alarms me the basis of the complaint is broad speculation

304

Abandonment of property deeded property in 2007

56 c and 56 e

J – assuming don't let in, would this evidence be of such significance would have to reconsider decision

DA – don't think so

Obtain facts that I was easily able to obtain

307

PA court should be prudent in considering what D says

Prepared to submit it

I need to think through

Will incorporate my ruling into the SJ ruling

That extends the date I have taken under advisement

FILED IN CHAMBERS AT REXBURG,
MADISON COUNTY, IDAHO.

Date: February 19, 2016

Time: 5:30 p.m.

By: G. W. Myell
DISTRICT JUDGE

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY**

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC. an Idaho
Corporation,

Defendant,

Case No. CV-2015-203

MEMORANDUM DECISION ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs Ronald and Margaret Swafford (collectively "Swaffords") initiated this action to collect damages for the alleged devaluation of their real property. They claim that Defendant Huntsman Springs, Inc. ("Huntsman Springs") effectively severed a lot they purchased in the Huntsman Springs planned development by building a park and planting trees between their lot and the rest of the development.

Initially, Huntsman Springs brought a motion for judgment on the pleadings or, in the alternative, summary judgment. That hearing took place on November 17, 2015. The Court determined that summary judgment was the more appropriate motion because it may have to look at evidence beyond the pleadings, and converted the motion accordingly. Swaffords made a motion for the Court to allow additional time to submit evidence in opposition to summary judgment, as well as to file a motion to amend their complaint. The matter was rescheduled for a new hearing on just the summary judgment motion. Additionally, the Court considered a

motion to strike filed by Huntsman Spring. These motions were heard on December 15, 2015, after which the Court took all three pending motions under advisement.

II. STATEMENT OF FACTS

Most of the facts in this matter are relatively simple and straightforward. Any disputed facts are noted as such.

Huntsman Springs is a development in Driggs, Teton County, Idaho.¹ From 2006 to 2007, it actively promoted the development to customers, including Swaffords.² Swaffords entered into a contract to purchase a lot from Huntsman Springs on July 16, 2007.³ The contract was for the purchase of Lot 4, Block 50, Huntsman Springs PUD Phase I, city Portion of SEC 26, T5N R 45E (“the lot”).⁴ This parcel is also known as 195 Primrose Street, Driggs Idaho.⁵

At the time of purchase, the lot was undeveloped and designated as commercial property.⁶ On July 20, 2007, Huntsman Springs recorded the “Final Plat” for the subdivision showing an area designated as “Park 3” between Swaffords’ lot and Primrose Street.⁷ The warranty deed for the lot was recorded in Teton County on September 21, 2007.⁸

Primrose Street was completed on or before October 31, 2007.⁹ A bike path, walkway, and landscaping, including trees, were also completed by August 13, 2008.¹⁰

Swaffords wrote a letter to Huntsman Springs, dated August 20, 2014, alleging that Huntsman Springs breached its agreement by building a dividing partition between their lot and Primrose Street.¹¹

In materials submitted after oral argument, Swaffords suggest that new information shows that the zoning for the lot was changed on February 12, 2015, without their knowledge or

¹ *Compl.*, Attach. A, July 1, 2015

² *Id.*

³ *Id.*, Attach. B.

⁴ *Id.*

⁵ *Id.*, Attach. C.

⁶ *Id.*, Attach. B.

⁷ *Id.*, Attach. E.

⁸ *Teton County, Instrument No.191809.*

⁹ *Aff. of Todd Woolstenhulme*, ¶ 7. Sep. 29, 2015.

¹⁰ *Id.*, at ¶8.

¹¹ *Compl.*, Attach. F.

approval.¹² If true, this would potentially undermine some of the statute of limitation objections raised by Huntsman Springs on summary judgment. However, Teton Springs has presented undisputed evidence from the Teton County Community Development Director showing that no actual rezoning ever took place. Although the original designation of Swaffords' lot was changed from "MUC-1" (Mixed Use Commercial) to "PUD-HS-C," this was simply a name change for the zoning designation. It was initiated by the City of Driggs, not Huntsman Springs, and it did not limit any of the previous commercial uses available under the previous MUC-1 designation.¹³ There is no evidence in the record to suggest that the re-designation adversely affected any of Swaffords' rights in the lot.

III. LEGAL STANDARD ON SUMMARY JUDGMENT

Summary judgment should be granted at the trial level when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact, and the moving party is entitled to summary judgment as a matter of law." I.R.C.P. 56(c). "The burden of establishing the absence of an issue of material fact is on the moving party." *Hayward v. Jack's Pharmacy Inc.*, 141 Idaho 622, 625, 115 P.3d 713, 716 (2005). This burden may be met by demonstrating the absence of evidence of an element the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000).

The standards applicable to summary judgment require the court to liberally construe facts in the existing record and draw all reasonable inferences in favor of the party opposing the motion. *Ray v. Nampa School Dist. No. 131*, 120 Idaho 117, 122, 814 P.2d 17, 19 (1991). However, the nonmoving party "may not merely rest on allegations contained in his pleadings, but must come forward and produce evidence by way of deposition or affidavit to contradict the

¹² *Aff. of Ronald L. Swafford in Supp. of Mot. To Allow Submission of Additional Evidence in Op. to Def's Mot. for Summ. J.*, ¶ 1, November 25, 2015.

¹³ *Aff. of Douglass E. Self*, ¶¶ 2-5, December 8, 2015.

assertions of the moving party and establish a genuine issue of fact.” *McCoy v. Lyons*, 120 Idaho 765, 770, 820 P.2d 360, 365 (1991). “[T]he nonmoving party cannot rely on mere speculation, and a scintilla of evidence is insufficient to create a genuine issue of material fact.” *Bollinger v. Fall River Rural Elec. Co-op., Inc.*, 152 Idaho 632, 637, 272 P.3d 1263, 1268 (2012). If, after drawing all inferences in favor of the nonmoving party, “[t]he facts. . . are such that reasonable persons could reach differing conclusions, summary judgment is not available. *Hayward*, 141 Idaho at 625, 115 P.3d at 716.

II. DISCUSSION

A. Swaffords’ claims are barred by the applicable statutes of limitations.

Swaffords alleges five counts: 1) Breach of Contract; 2) Breach of Express Warranty; 3) Breach of Duty of good Faith and Fair Dealing; 4) Breach of Idaho Consumer Protection Act; and 5) Misrepresentation. The summary judgment motion is not substantially directed at the merits of any particular claims; instead, Huntsman Springs is alleging that none of the asserted claims are timely. Counts 1, 2, and 3 relate to the terms of a written contract, making them subject to the five-year statute of limitations set forth in I.C. § 5-216. Count 4, the private actions under the Idaho Consumer Protection Act, is subject to a two-year statute of limitation from the time the cause of action “accrued.” I.C. § 48-619. Count 5, the misrepresentation claim, is subject to a three-year statute of limitation. I.C. § 5-218.

In a breach of contract case, the statute of limitations begins to run when a cause of action arises. *Galbraith v. Vangas, Inc.*, 103 Idaho 912, 915, 655 P.2d 119, 112 (1982). In other words, the statute of limitation only runs after an “aggrieved party suffers damages.” *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 88, 730 P.2d 1005, 1008 (1986).

Central to Swaffords’ breach of contract claims, is their lot’s lack of access to Primrose Street. They claim that Huntsman Springs failed to follow the Master Plat, and effectively partitioned the lot from the rest of the development—using a park and trees as a buffer. However, the “Final Plat,” recorded in Teton County on July 20, 2007, shows that “Park 3” separates the lot from Primrose Street.¹⁴ Whether Stafford knew or understood what the plat

¹⁴ *Compl.*, Att. E.

showed at the time the Final Plat was recorded is immaterial. Swaffords are deemed to have at least constructive knowledge of the contents of the plat. It is well-settled that “the recording of an instrument affecting the title to real property constitutes constructive notice to all parties interested,” because they “had the means of acquiring that knowledge,” *Chapin v. Stewart*, 71 Idaho 306, 310-311, 230 P.2d 998, 1001 (1951). Inasmuch as the statute of limitations started to run no later than July 20, 2007, the date the Final Plat was filed, Swaffords’ breach of contract claims, filed on July 17, 2015, are almost three years too late. Any breach of contract claims should have been filed before July 20, 2012. Assuming, *arguendo*, that constructive knowledge of the Final Plat was not enough, Swaffords had actual knowledge of construction of the park and planting of the trees. It is undisputed that the park separating Swaffords’ lot from Primrose Street was completed by August 2008. Even applying this later date, Swaffords’ complaint is still time-barred.

Swaffords contend that the statute of limitations only accrued when they received a letter dated September 3, 2014, informing them that Huntsman Springs did not intend to allow access to their lot from Primrose Street.¹⁵ However, the facts show that that Huntsman Springs sent the letter in response to a letter sent by Swaffords on August 20, 2014, already alleging a breach of contract.¹⁶ By suggesting in their letter that they would sue if they did not receive a response, Swaffords have essentially conceded to knowing that an alleged breach of contract had already occurred.

The Court has examined the undisputed evidence in a light most favorable to Swaffords, and has drawn every reasonable inference in their favor. Nevertheless, it must conclude that there are no genuine issues of material fact on the issue of timeliness, and Huntsman Springs is entitled to summary judgment on the contract-based claims (Counts 1, 2, and 3) as a matter of law.

In Count 4, Swaffords assert a claim under the Idaho Consumer Protection Act (“the Act”). I.C. § 48-619. The statute of limitations for such claims is only two years, and begins to run when the action “accrues.” I.C. § 48-619. Again, an action accrues when an “aggrieved party suffers damages.” *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 88, 730 P.2d 1005, 1008 (1986). Nothing in the record would support a finding that a cause of action under the Act could have

¹⁵ *Aff. of Ron L. Swafford*, Att. N.

¹⁶ *Compl.*, Att. F.

accrued any later than the date applicable to the breach of contract claims. Because the statute governing the Act bars any action after two years, Count 4 is even more untimely than those centered on a breach of written contract.

Finally, the statute of limitations for misrepresentation or fraud (Count 5) is three years. It does not “[accrue] until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” I.C. § 5-218(4). Again, the facts alleging fraud were discovered, or could have been discovered, when the final plat was recorded with the County, or at the very least, when the park separating the lot and Primrose Street was completed. Therefore, this action should have been brought by July 20, 2010, or at least by August 2011 under the most generous interpretation of the facts. The Court simply does not have jurisdiction to consider any of Swaffords’ claims because all counts are time-barred.

Swaffords claim “to have learned that the real property at issue herein has been rezoned” to their detriment.¹⁷ They also “proposed to submit additional affidavits” to establish the modification.¹⁸ If true, this could create a new, timely cause of action. However, no evidence establishing the substance or timing of the alleged zoning change was ever submitted by Swaffords. Therefore, Swaffords’ assertions have never been substantiated by admissible evidence in the record. Nevertheless, Huntsman Springs has responded to these allegations with admissible evidence showing that the re-designation of Swaffords’ lot did not materially change its commercial use, it merely changed the name of the commercial zone. Additionally, it is undisputed that the County initiated the re-designation, not Huntsman Springs.¹⁹ Therefore, looking at the admissible evidence in a light most favorable to Swaffords, the Court must still conclude that a later accrual date should not apply to any of their claims.

B. Amending the Complaint is futile because Swafford’s claims would still be barred by the relevant statutes of limitations.

Idaho Rule of Civil Procedure 15(a) allows a complaint to be amended “once as a matter of course at any time before a responsive pleading is served... [o]therwise, a party may amend a

¹⁷ *Aff. of Ronald L. Swafford*, at ¶ 1.

¹⁸ *Id.*, at 2.

¹⁹ *Aff. of Douglass E. Self*, at ¶¶ 2-5.

pleading only by leave of court or by written consent of the adverse party.” Leave to amend pleadings is to be “freely given when justice so requires.” *Id.* The purpose of this rule is to allow a claim to be determined on its merits rather than on some procedural technicality. *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986); *Drennon v. Craven*, 141 Idaho 942, 945, 120 P.3d 1146, 1149 (Ct.App.2004). If, however, a motion to amend a complaint is futile, it may be denied. *McCann v. McCann*, 138 Idaho 228, 237, 61 P.3d 585, 594 (2002); *Black Canyon Racquetball Club, Inc. v. Idaho First Nat’l Bank*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991)

The Swaffords’ newly added claim for “abandonment” of their lot is not supported by any statute or case law. Even it was, the amendments proposed by Swaffords are subject to the same legal infirmities as were the claims in the original complaint. Swaffords allege that Huntsman Springs has effectively abandoned Swaffords’ lot by (1) visually and conceptually excluding the property from the rest of the subdivision, and (2) failing to maintain the “Town Plaza commercial” area depicted in the brochures. Looking at the substance of these new allegations, it appears that Swaffords are merely repackaging their breach of contract claims, rather than articulating a new and viable cause of action. One cannot avoid a limiting statute by simply changing the title of the cause of action. At their essence, these claims are merely a rebranding of the existing breach of contract claims. Because any breach of contract claims are barred by the statute of limitations, the Court must conclude this claim would also be barred.

Most importantly, even if the Court somehow recognized the new abandonment claim as a permissible cause of action, there is no reason to conclude that the applicable statute of limitations for this theory would exceed five years. The Court concludes that at this stage of the proceedings, permitting the proposed amendments would be both unjust and futile under Rule 15. Therefore, the Court denies Swaffords’ motion to amend the complaint.

C. Huntsman Springs’ motion to strike untimely affidavit is denied.

Huntsman Springs filed a motion to strike the affidavit of Plaintiffs in support of their motion to amend the complaint for being untimely. Recognizing that denying the motion to amend would likely be dispositive, without an adjudication on the merits, the Court determined it would be wiser to consider the affidavit, so that it could fully draw all reasonable inferences in favor of the Plaintiff before granting summary judgment or denying the proposed amendment. Therefore, the Court denies Huntsman Spring’s motion to strike. However, notwithstanding the

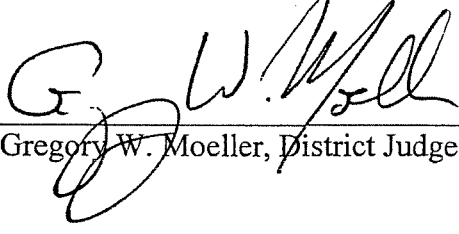
Court's consideration of the evidence contained in the late affidavit, the Court concludes that the affidavit contained little, if any, admissible or material evidence. The affidavit from Douglas Self fully dispelled the notion that Huntsman Springs was involved in any improper or prejudicial rezoning of the lot.²⁰

III. CONCLUSION

For the reasons set forth above, the Court hereby orders as follows:

1. Huntsman Springs' motion to strike the late *Affidavit of Ronald L. Swafford* is DENIED;
2. Swaffords' *Motion to Amend Complaint* is DENIED;
3. Summary judgment is GRANTED in favor of Huntsman Springs as to all claims asserted in their complaint; and
4. This decision being fully dispositive of the matter, counsel for Huntsman Springs is directed to prepare a proposed final judgment complying with I.R.C.P. 54(a).

SO ORDERED this 19th day of February, 2016.



Gregory W. Moeller, District Judge

²⁰ *Id.*

CERTIFICATE OF SERVICE

I CERTIFY that I sent a true and correct copy of the foregoing *Memorandum Decision On Plaintiff's Motion for Judgment on Pleadings or Summary Judgment* on this 22 day of February, 2016, upon the following individuals via U.S. Mail, postage prepaid, and facsimile transmission:

Ronald L. Swafford
SWAFFORD LAW, P.C
525 Ninth Street
Idaho Falls, ID 83404

Sean Moulton
MOULTON LAW OFFICE
P.O. Box 631
Driggs, ID 83422

By:



Court Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

FILED

APR 11 2016

TIME: _____
TETON CO. ID DISTRICT COURT

RONALD L. SWAFFORD and)
MARGARET SWAFFORD, husband and wife)

Plaintiffs,)

vs.)

HUNTSMAN SPRINGS, INC., an Idaho)
Corporation,)

Defendant.)

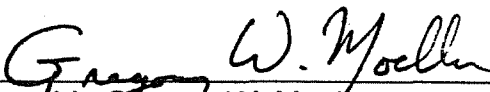
CASE NO. CV 2015-203

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiffs' Motion to Amend Complaint is denied.
2. Summary Judgment is granted in favor of defendant as to all claims asserted in the plaintiffs' complaint.

DATED this 11th day of April 2016.



Honorable Gregory W. Moeller
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a correct copy of the foregoing on the following, by the indicated method, this 13th day of April 2016, to the following:

Ronald L. Swafford
525 Ninth Street
Idaho Falls, Idaho 83404

Fax ✓

Sean Moulton
PO Box 631
Driggs, Idaho 83422

Courthouse Box ✓

Phyllis A Hansen
Deputy Clerk

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylegal.com

FILED
APR 21 2016
TIME: _____
TETON CO. ID DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

**MOTION FOR ATTORNEY'S FEES AND
COSTS**

COMES NOW HUNTSMAN SPRINGS, INC., by and through its attorney, SEAN MOULTON of Moulton Law Office, and pursuant to I.C. §§ 12-120(3), 12-121, and Rule 54 of the Idaho Rules of Civil Procedure, moves this Honorable Court for an order granting Huntsman Springs attorney's fees and costs.

This motion is supported by the *Memorandum of Costs and Attorney Fees*, and the *Affidavit of Sean Moulton in Support of Costs and Attorney Fees*. This motion is made on the following grounds:

1. Huntsman Springs, Inc. is the “prevailing party.” I.R.C.P. 54(d)(B); *Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 999 P.2d 914, 917 (Idaho App. 2000) *abrogated by BECO Const. Co., Inc. v. J-U-B Engineers Inc.*, 233 P.3d 1216 (Idaho 2010). This Court granted summary judgment in Huntsman Springs’ favor and dismissed all of Plaintiffs’ claims as time barred.¹
2. Huntsman Springs is entitled to attorney’s fees pursuant to Idaho Code § 12-120(3) because the subject of the Plaintiffs’ law suit was a contract claim on a “commercial lot.” Section 12-120(3) states, “The term ‘commercial transaction’ is defined to mean all transactions except transactions for personal or household purposes.” Throughout Swaffords’ Complaint they refer to the contract under which they purchased the “commercial lot.” At the end of the Complaint, the Swaffords petition the Court for attorney’s fees pursuant to Section 12-120(3). Additionally, the Idaho Supreme Court has granted attorney fees pursuant to Idaho Code § 12-120(3) when a party prevailed at summary judgment on statute of limitations grounds. *Reynolds v. Trout Jones Gledhill Fuhrman, P.A.*, 154 Idaho 21, 27, 293 P.3d 645, 651 (2013).
3. Huntsman Springs is entitled to an award of attorney’s fees pursuant to Idaho Code § 12-121. As stated above, Huntsman Springs is the “prevailing party.” Rule 54(e)(1) states, “attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation.” This Court ruled that

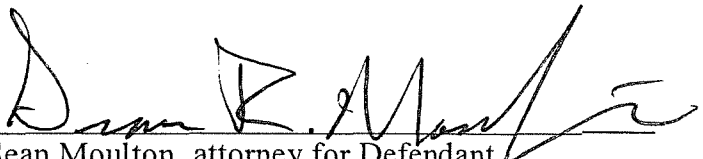
¹ Memorandum Decision on Defendant’s Motion for Summary Judgment (Feb. 19, 2016).

the Swaffords' Complaint was three years too late.² Additionally, the Court concluded that the Swaffords' letter, "essentially conceded to knowing that an alleged breach of contract had already occurred."³ The Swaffords lacked any basis in law or fact to file their untimely complaint.

4. Huntsman Springs moves the Court for an award of costs pursuant to Rule 54(d).
5. Huntsman Springs requests that time for the hearing of this motion be set by the Court.

DATED this 21st day of April, 2016.

MOULTON LAW OFFICE


Sean Moulton, attorney for Defendant

² Memorandum Decision on Defendant's Motion for Summary Judgment, p.5.

³ Id.

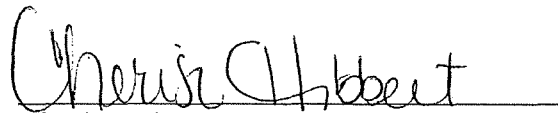
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Memorandum* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via;
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 21 day of April, 2016.


Cherise Hibbert

SEAN MOULTON
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seanmoulton@tetonvalleylaw.com

FILED

APR 21 2016

TIME: _____
TETON CO. ID DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife,

Plaintiffs,

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Defendant.

Case No.: CV-2015-203

**AFFIDAVIT OF SEAN MOULTON IN
SUPPORT OF COSTS AND
ATTORNEY'S FEES**

STATE OF IDAHO)
) ss:
County of Teton)

SEAN R. MOULTON, being first duly sworn on oath deposes and says:

1. That he is the attorney for Huntsman Springs, Inc. and as such is well informed as to the costs, disbursements and attorney's fees of Huntsman Springs, Inc.
2. That to the best of his knowledge and belief, the Detail of Attorney Fees below and disbursements have been necessarily incurred in said action and are being claimed in compliance with Rule 54(d) and 54(e)(3) of the Idaho Rules of Civil Procedure.

AFFIDAVIT OF SEAN MOULTON IN SUPPORT
OF COSTS AND ATTORNEY'S FEES

3.

Attorney's Fees in Detail				
Date	Professional Service	Hours	Amount	Balance
9/07/15	Balance forward			\$0.00-
9/08/15	Review Swafford complaint and exhibits; correspondence w/D Prows and T Woolstenhulme re: Swafford complaint	1.0	\$195.00	\$195.00
9/09/15	Review Swafford file, contract, and plats; legal research re: statute of limitations; phone conference w/T Woolstenhulme re: plat and as-built dates; review T Woolstenhulme correspondence re: Swafford notes; reply correspondence w/T Woolstenhulme re: dates for affidavits; notes for affidavits	2.5	\$487.50	\$682.50
9/17/15	Review statute of limitations law on fraud; phone conference w/T Woolstenhulme re: affidavit and exhibits	0.5	\$97.50	\$780.00
9/18/15	Review documentation from T Woolstenhulme re: road construction and landscaping dates; follow-up correspondence w/Todd; research motion to dismiss versus summary judgment issues; phone conference w/H Walker re: City of Driggs storm water discharge issues	2.0	\$390.00	\$1,170.00
9/21/15	Review T Woolstenhulme correspondence re: affidavit information	0.3	\$58.50	\$1,228.50
9/23/15	Review dates for T Woolstenhulme affidavit; review correspondence from J Prows re: assignment of buyback option to Jeff Davis; research Brock Development title for recorded buyback option; reply correspondence w/D Prows	1.0	\$195.00	\$1,423.50
9/24/15	Draft T Woolstenhulme Affidavit in Support of Motion to Dismiss; meeting w/T Woolstenhulme to review Swafford complaint, exhibits for affidavit, and revise affidavit; prepare exhibits; research: statute of limitations for breach of contract, Idaho Consumer Protection Act, fraud, motion to dismiss converting to summary judgment, Idaho Code 12-120(3) (8)	8.0	\$1,560.00	\$2,983.50
9/25/15	Reply to D Prows correspondence re: Swafford Answer and Motion to Dismiss; phone conference and call w/T Woolstenhulme re: affidavit exhibits; meeting w/T Woolstenhulme re: exhibits and affidavit signature; draft Answer to Swafford Complaint; draft Memorandum of Law	10	\$1,950.00	\$4,933.50
9/28/15	Filing Fee: Teton County - Swafford Answer	0.0	\$136.00	\$5,069.50
9/28/15	Supervise filing of Complaint; draft Motion to Dismiss; draft Notice of Hearing	1.0	\$195.00	\$5,264.50
9/29/15	Phone conference w/Teton County clerks re: exhibit labeling and date for hearing; finalize T	1.5	\$292.50	\$5,557.00

AFFIDAVIT OF SEAN MOULTON IN SUPPORT
OF COSTS AND ATTORNEY'S FEES

	Woolstenhulme affidavit; supervise filing of Motion to Dismiss, Memorandum in Support, and Notice of Hearing; draft correspondence w/R Swafford re: court filings; review and reply to T Woolstenhulme re: affidavit and status conferencere: religion and visitation issues			
10/06/15	Correspondence w/R Swafford re: hearing dates for summary judgment motion	0.3	\$58.50	\$5,615.50
10/07/15	Phone conference w/court clerk re: amended hearing date; revise Notice of Hearing; supervise filing	0.5	\$97.50	\$5,713.00
10/08/15	Review IRCP 56(c) for summary judgment opposition brief deadline	0.2	\$39.00	\$5,752.00
11/03/15	Review Swafford Exhibits	0.3	58.50	\$5,810.50
11/09/15	Review Swafford Memorandum in Opposition and Affidavit; outline affidavit in preparation for drafting reply; phone conference w/T Woolstenhulme re: additional affidavit information; correspondence w/T Woolstenhulme re: fence construction date	2.8	\$546.00	\$6,356.50
11/10/15	Research Idaho jurisdiction and statute of limitations issues; draft reply brief to Swafford's Memorandum in Opposition to Summary Judgment; phone conference w/T Woolstenhulme re: fencing invoice; meeting w/T Woolstenhulme re: 2nd affidavit	4.8	\$936.00	\$7,292.50
11/17/2015	Interoffice meeting re: hearing arguments; review memorandum for summary Judgment, opposition, and reply in preparation for hearing; draft hearing presentation outline and rehearse; hearing attendance	4.5	\$877.50	\$8,170.00
11/21/15	Reply correspondence w/D Prows re: Swafford suit and potential for counter-suit	0.2	\$39.00	\$8,209.00
11/23/15	Reply correspondence w/D Prows re: Swafford litigation and briefing; review Swafford Motion to Allow Submission of Additional Evidence in Opposition to Defendants Motion for Summary Judgment, Affidavit of R Swafford to Submit Additional Evidence, Motion to Amend Complaint, and Affidavit in Support of Amending Complaint; schedule hearing; review interrogatories and Requests for Production; phone conference w/T Woolstenhulme re: City of Driggs rezoning related to Swafford property; revise Holland agreements; follow-up correspondence w/D Prows	2.5	\$487.50	\$8,696.50
11/24/15	Phone conference w/City of Driggs P&Z administrator re: name change of PUD HS-C zone to Mixed Use Commercial; phone conference w/City of Driggs attorney re: coordination of A Koehler affidavit concerning Swafford allegations of zone change	0.5	\$97.50	\$8,794.00
11/25/15	Correspondence w/ D. Prows and T.	0.2	\$39.00	\$8,833.00

AFFIDAVIT OF SEAN MOULTON IN SUPPORT
OF COSTS AND ATTORNEY'S FEES

	Woolstenhulme re: Swafford Motion for Additional Information			
12/01/15	Research Rule 56(c) and miscellaneous case law re: Swafford request to submit additional information	1	\$195.00	\$9,028.00
12/04/15	Research and drafting of Motion to Strike Swafford Motion to Submit Additional Information; research and drafting of Opposition to Swafford Motion to Amend Complaint; draft cover letter to Judge Moeller for chamber copies of Motion to Strike and Opposition briefs; supervise filing of Motion to Strike; draft cover letter to R Swafford re: copies of Motion to Strike	6	\$1,170.00	\$10,198.00
12/07/15	Draft A Koehler Affidavit for Opposition to Swafford Motion to Amend; review T Woolstenhulme correspondence re: new land development and zoning codes; correspondence w/S Zollinger and Annie re: affidavit; phone conference w/S Zollinger re: affidavit approval; correspondence w/D Self re: affidavit changes; phone conference w/D Self re: affidavit changes; meeting w/D Self re: pick up notarized affidavit	2.5	\$487.50	\$10,685.50
12/08/15	Finalize Opposition to Swafford Motion to Amend; draft cover letter to R Swafford and Judge Moeller re: Opposition to Motion to Amend copies; supervise filing;	0.5	\$97.50	\$10,783.00
12/15/2015	Preparation for and attendance at hearing to amend Swafford Complaint	1.0	\$195.00	\$10,978.00
01/07/16	Review R Swafford letter re: meet and confer letter; reply letter re: refusal to reply to discovery until post-summary judgment	1.0	\$195.00	\$11,173.00
02/25/16	Review Memorandum of Decision re: Swafford complaint; correspondence w/Dale re: Memorandum results and possibility of appeal; review D Prows correspondence re: appeal potential	0.7	\$136.50	\$11,309.50
03/14/16	Review Memorandum in preparation for drafting judgment	.2	\$39.00	\$11,348.50
03/21/16	Research Idaho Code 12-120(3), 12-121, Rule 54 and Court's decision re: costs and fees; draft Judgment for Summary Judgment; draft Motion for Fees and Costs; draft Memorandum of Fees and Costs; draft cover letter re: proposed judgment; phone conference w/court clerk re: digital copy of letter; supervise filing - Swafford case	3.7	\$721.50	\$12,070.00
03/22/16	Review Swafford Objection to Defendant's Proposed Judgment; compare Objection to court's Memorandum of Decision	.3	\$58.50	\$12,128.50
04/19/16	Review judgment for filing deadline for motion for fees and costs; review billings for affidavit for Swafford motion for fees and costs;	.3	\$58.50	\$12,187.00

AFFIDAVIT OF SEAN MOULTON IN SUPPORT
OF COSTS AND ATTORNEY'S FEES

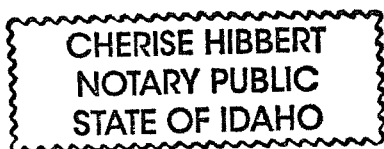
4/21/16	Telcon w/ business manager re: Swafford/Huntsman legal billings for Memorandum of Fees; revise motion and memorandum of fees; draft affidavit of fees; supervise filing;	2.0	\$390.00	\$12,577.00
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DATED this 21ST day of April, 2016.

MOULTON LAW OFFICE

Sean R. Moulton
Sean Moulton, attorney for Defendant

SUBSCRIBED AND SWORN before me this 21 day of April 2016.



Cherise Hibbert
NOTARY PUBLIC for Idaho
Residing at: Driggs
My commission expires: 8-21-2017

AFFIDAVIT OF SEAN MOULTON IN SUPPORT
OF COSTS AND ATTORNEY'S FEES


CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Affidavit of Sean Moulton In Support of Costs and Attorney Fees* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 21 day of April, 2016.


Cherise Hibbert

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylaw.com

FILED

APR 21 2016

TIME: _____
TETON CO. ID DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

**MEMORANDUM OF COSTS AND
ATTORNEY FEES**

COMES NOW Sean Moulton of Moulton Law Office on behalf of Huntsman Springs, Inc., pursuant to Idaho Code §§ 12-120(3) and 12-121, Rule 54(d), 54(e)(1) and 54(e)(3) of the Idaho Rules of Civil Procedure, and supported by the *Affidavit of Sean Moulton in Support of Costs and Attorney's Fees* submit the following items of costs to which Huntsman Springs is entitled as a matter of course:

Costs	Total amount \$136.00
Reasonable attorney fees to be fixed by the Court as set out in the <i>Affidavit for Attorney Fees</i> filed herewith.	Total amount \$12,441.00

DATED this 21st day of April, 2016.

MOULTON LAW OFFICE

Sean D. Moulton
Sean Moulton, attorney for Defendant

SEAN MOULTON being first duly sworn and on oath, deposes and says:

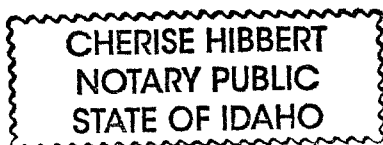
That he is the attorney for Huntsman Springs, Inc. and as such is well informed as to the costs, disbursements and attorney's fees of Huntsman Springs, Inc.; that to the best of his knowledge and belief, the items in the *Memorandum of Costs and Attorney Fees* are correct and that the said disbursements have been necessarily incurred in said action and are being claimed in compliance with Rule 54(d) and 54(e)(3) of the Idaho Rules of Civil Procedure.

DATED this 21st day of April, 2016.

Sean D. Moulton
Sean Moulton, attorney for Defendant

STATE OF IDAHO)
) ss:
COUNTY OF TETON)

SUBSCRIBED AND SWORN to before me this 21 day of April, 2016.



Cherise Hibbert
Notary Public for Idaho
Residing at: Driggs
My commission expires: 8.21.2019

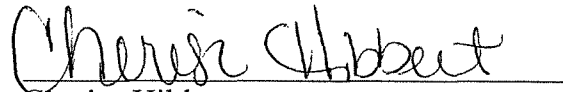
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Memorandum of Costs and Attorney Fees* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 21 day of April, 2016.


Cherise Hibbert

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylaw.com

FILED

APR 21 2016

TIME: _____
TETON CO. ID DISTRICT COURT

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

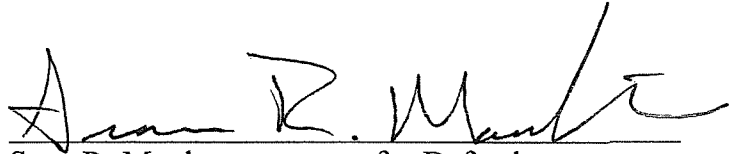
NOTICE OF HEARING

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN that Defendant, by and through counsel of record, MOULTON LAW OFFICE, that a hearing will be held on Defendant's Motion for Attorney's Fees and Costs on May 13, 2016 at 11:00(a.m)/p.m. at the Teton County Courthouse.

DATED this 21st day of April, 2016.

MOULTON LAW OFFICE


Sean R. Moulton, attorney for Defendant

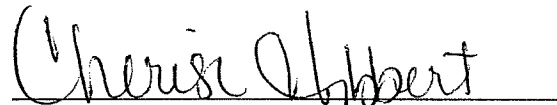
CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Notice of Hearing* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
525 Ninth Street
Idaho Falls, ID 83404
Facsimile: (208) 524-4131

Via:
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ Email (pdf attachment)

DATED this 21st day of April 2016.


Cherise Hibbert

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657

Trevor L. Castleton, Esq., Bar No. 5809

Larren K. Covert, Esq., Bar No. 7217

655 South Woodruff Avenue

Idaho Falls, Idaho 83401

Telephone (208) 524-4002

Facsimile (208) 524-4131

FILED

MAY - 5 2016

TIME:
TETON COUNTY CLERK

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETONRONALD L. SWAFFORD and MARGARET
SWAFFORD, husband and wife

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No. CV-2015-203

**OBJECTION TO MOTION FOR
ATTORNEY'S FEES AND COSTS
AND MEMORANDUM OF COSTS
AND ATTORNEY'S FEES**

COMES NOW The plaintiffs who hereby object to the defendant's *Motion for Attorney's Fees and Memorandum of Costs and Attorney's Fees*, pursuant to Rules 54(d)(6) and 54(e)(6) of the Idaho Court Rules.

1. **IDAHO CODE §12-120(3)**: Idaho Code §12-120(3) states as follows:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs. (emphasis added)

The determination of the reasonableness of the attorney's fees to be awarded to a prevailing party is committed to the sound discretion of the Trial Court and its application of the Rule 54(e)(3) factors. The defendant submitted no information as to the factors of 54(e)(3) for the Court's consideration and/or review. The plaintiffs submit that the fees requested by defendant are excessive and unreasonable.

A review of the *Attorney's Fees In Detail* attached to the *Affidavit of Sean Moulton in Support of Costs and Attorneys Fees* support a reduction in the fees requested as follows:

1. Entry dated 9/23/15: This entry for the sum of \$1,423.50 addresses issues of buyback options not the issue of statute of limitations or any of the other causes of action contained in the plaintiff's Complaint.
2. Entry dated 9/24/15: This entry is for \$1,560.00 and contains duplicative work for the entries dated 9/9/15 and 9/17/2015.
3. Entry dated 9/25/2015: This entry is for \$1,950.00 and is duplicative of entries dated 9/9/2015 and 9/17/2015.

This case was adjudicated in a very quick fashion with the filing of a short Answer and a Motion for Summary Judgment. Any award of fees to the defendant in this matter should not exceed the sum of \$5,000.00.

2. IDAHO CODE §12-121: The defendant has stated to the Trial Court that it is entitled to an award of fees pursuant to Idaho Code §12-121. The defendant has not submitted any authority for such "entitlement."

The plaintiffs submit the following argument and authority in opposition to an award of fees under Idaho Code §12-121.

The fact that a party loses is not grounds to award fees under Idaho Code § 12-121 unless,

the position advocated by the non-prevailing party is plainly fallacious and, therefore, not fairly debatable." *Associates Northwest, Inc., v. Beets*, 112 Idaho 603, 605, 733 P.2d 824, 826 (Ct. App. 1987); *Clements Farms, Inc. v. Ben Fish & Son*, 120 Idaho 209, 814 P.2d 941 Ct. App. 1990), *rev'd on other grounds*, 120 Idaho 185, 814 P.2d 917 (1991) (holding that attorney fee awards under Idaho Code §12-121 are "improper were the non-prevailing party has presented a 'genuine and fairly debatable issue'").

The dismissal of a case before trial is not automatic grounds for §12-121 attorney fees.

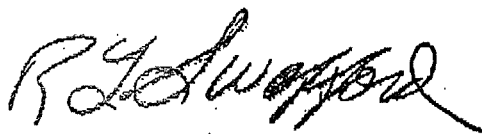
Mere dismissal of a claim without a trial does not necessarily mean that the party against whom the claim was made is a prevailing party for the purpose of awarding costs and fees.

Dismissal of a claim may be but one of many factors to consider. When the claim was dismissed may be another. *Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 692, 682 P.2d 640, 645 (Ct. App. 1984)

There has been no finding by the Trial Court that this matter was pursued and/or defended frivolously.

Defendant's requested fees and costs pursuant to Idaho Code §12-121 must be denied.

DATED this 5th day of May, 2016.



RONALD L. SWAFFORD, ESQ.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I served a copy of the foregoing document upon the designated parties affected thereby as follows:

Sean Moulton, Esq.
60 East Wallace Avenue
P. O. Box 631
Driggs, Idaho 83422

☐ U.S. MAIL
☒ FAX (208) 354-2346
☐ HAND DELIVERY
☐ COURTHOUSE BOX
☐ EXPRESS DELIVERY

COURTESY COPY TO:

Honorable Gregory W. Moeller
District Judge
159 East Main Street
P. O. Box 389
Rexburg, Idaho 83440

☐ U.S. MAIL
☒ FAX (208) 356-5425
☐ HAND DELIVERY
☐ COURTHOUSE BOX
☐ EXPRESS DELIVERY

DATED this 5th day of May, 2016.



RONALD L. SWAFFORD, ESQ.
Attorney for Plaintiffs.

FILED

2016 MAY 11 PM 4:01

TETON COUNTY, IDAHO
DISTRICT COURT

SEAN MOULTON
MOULTON LAW OFFICE
P.O. Box 631
60 East Wallace
Driggs, ID 83422
Telephone: (208) 354-2345
Fax: (208) 354-2346
seanmoulton@tetonvalleylaw.com

Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR TETON COUNTY

RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and
wife,

Plaintiffs,

vs.

HUNTSMAN SPRINGS, INC., an Idaho
corporation,

Defendant.

Case No.: CV-2015-203

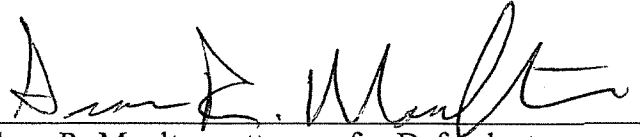
AMENDED NOTICE OF HEARING

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN that Defendant, by and through counsel of record, MOULTON LAW OFFICE, that a hearing will be held on Defendant's Motion for Attorney's Fees and Costs on July 5, 2016 at ~~11:00~~ 1:00 a.m./p.m. at the Teton County Courthouse.

DATED this 11th day of May, 2016.

MOULTON LAW OFFICE



Sean R. Moulton, attorney for Defendant

CERTIFICATE OF SERVICE

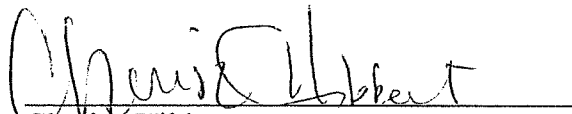
I hereby certify that on the date indicated below, I served a true and correct copy of the foregoing *Notice of Hearing* on the following individual via the method(s) indicated below:

Ronald L. Swafford
SWAFFORD LAW, P.C.
655 S. Woodruff Ave
Idaho Falls, ID 83401
Facsimile: (208) 524-4131

Via:

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Facsimile
- ☐ Email (pdf attachment)

DATED this 11th day of May 2016.


Cherise Hibbert

SWAFFORD LAW, P.C.

Ronald L. Swafford, Esq., Bar No. 1657
Trevor L. Castleton, Esq., Bar No. 5809
Larren K. Covert, Esq., Bar No. 7217
655 S. Woodruff Avenue
Idaho Falls, ID 83401
Telephone (208) 524-4002
Facsimile (208) 524-4131

FILED**MAY 20 2016**TIME: **3:32**
TETON CO. ID DISTRICT COURT

Attorneys for Plaintiffs/Appellants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TETON COUNTY**

**RONALD L. SWAFFORD AND
MARGARET SWAFFORD, husband and wife**

Plaintiffs/Appellants,

vs.

**HUNTSMAN SPRINGS, INC., an Idaho
corporation,**

Defendant/Respondent.

Case No. CV-2015-203**NOTICE OF APPEAL**

TO: The above named Respondent, HUNTSMAN SPRINGS, INC., and its attorney of record,
SEAN MOULTON, ESQ., and THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant appeals from the District Court of the Seventh Judicial District, Teton County, State of Idaho, to the Idaho Supreme Court, State of Idaho, from the Judgment entered April 11, 2016 by the Honorable Gregory Moeller, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, as the Judgment identified in Paragraph One above, is an appealable Judgment under and pursuant to Idaho Court 11(a)(2) of the Idaho Appellate Rules.
3. This appeal is taken upon matters of law and fact.

4. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal:

- a. Summary Judgment was improperly granted as there existed genuine issues of material fact.
- b. The Court abused its discretion by failing to view all evidence and factual inferences reasonably drawn from the evidence in a light most favorable to the Appellant.
- c. The Court erred in the application of law to facts and evidence.
- d. The Court abused its discretion in denying Appellants the right to amend its pleadings prior to Summary Judgment.

5. No order has been entered sealing all or any portion of the record.

6. The Appellant does not requests the preparation of any transcript in this matter as the issues on appeal are questions of law and fact contained in the Clerk's record.

7. The Appellant requests all documents of the Clerk's record to be provided to the Idaho Supreme Court including, but not limited to.

- a. Copies of all correspondence between the parties and Judge Gregory Moeller.
- b. All exhibits offered at any hearing in this matter, whether admitted or not.

8. I certify that:

- 1. The estimated fee of \$200.00 for preparation of the clerk's or agency's record has been paid.
- 2. That the appellate filing fee has been paid.

3. That service has been made upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules.

DATED this 20th day of May, 2016.


TREVOR L. CASTLETON, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2016, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

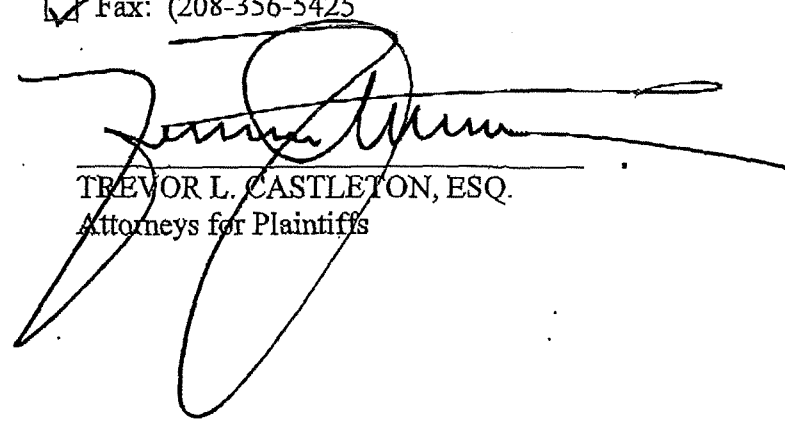
Sean Moulton, Esq.
60 E. Wallace Avenue
P.O. Box 631
Driggs, ID 83422

- ☐ U.S. Mail, postage prepaid
☐ Designated courthouse box
☐ Hand-delivered
☒ Fax: (208) 354-2346

Courtesy Copy:

Honorable Gregory W. Moeller
District Judge
159 E. Main Street
P.O. Box 389
Rexburg, ID 83440

- ☐ U.S. Mail, postage prepaid
☐ Designated courthouse box
☐ Hand-delivered
☒ Fax: (208) 356-5425


TREVOR L. CASTLETON, ESQ.
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

RONALD L. SWAFFORD and
MARGARET SWAFFORD

Plaintiffs/Appellants

- vs -

HUNTSMAN SPRINGS, INC, an Idaho
Corporation

Defendant/Respondent.

)
)
) Supreme Court No. 44240
)
)

) TETON COUNTY CASE NO.
) CV 15-203
)

) CERTIFICATE OF EXHIBITS
)
)

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that there were NO EXHIBITS which were offered or admitted into evidence during the hearings in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 17th day of June, 2016.

Mary Lou Hansen

by Phyllis A. Hansen
Phyllis A. Hansen, Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

RONALD L. SWAFFORD and
MARGARET SWAFFORD

Plaintiffs/Appellants

- vs -

HUNTSMAN SPRINGS, INC, an Idaho
Corporation

Defendant/Respondent.

)
)
) Supreme Court No. 44240
)
)

) TETON COUNTY CASE NO.
) CV 15-203
)

) CLERK'S CERTIFICATE OF SERVICE
)
)

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all documents, charts and pictures offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcripts and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 17th day of June, 2016.

Mary Lou Hansen

by Phyllis A. Hansen
Phyllis A. Hansen, Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

RONALD L. SWAFFORD and
MARGARET SWAFFORD

Plaintiffs/Appellants

- vs -

HUNTSMAN SPRINGS, INC, an Idaho
Corporation

Defendant/Respondent.

)
)
) Supreme Court No. 44240
)
)
)

) TETON COUNTY CASE NO.
) CV 15-203
)
)

) CERTIFICATE OF SERVICE
)
)
)

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that I have personally served or mailed, by Unites States Mail, postage prepaid, one copy of the Clerk's Record to each of the parties or their Attorney of Record as follows:

Ronald L. Swafford
655 So. Woodruff
Idaho Falls, Idaho 83401

Sean Moulton
PO Box 631
Driggs, Idaho 83422

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 26 day of July, 2016.

Mary Lou Hansen

by Phyllis A. Hansen
Phyllis A. Hansen, Deputy